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8 Attorneys for ML Manager LLC

9  
10 IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

11 In re  
12 MORTGAGES LTD.,  
13 Debtor.

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

14 **MOTION TO SELL REAL PROPERTY**

15 **Real Property located at 1<sup>st</sup> Ave. and Maryland**  
16 **Ave. in Phoenix, Arizona known as Residences**  
17 **on Maryland**

**Hearing Date: November 1, 2011**  
**Hearing Time: 3:00 p.m.**

18 ML Manager LLC (“ML Manager”), requests that the Court enter an order  
19 authorizing ML Manager as the manager for ZDC III Loan LLC and the agent for certain  
20 Pass-Through Investors to sell the real property located at 1<sup>st</sup> Ave. and Maryland Ave. in  
21 Phoenix, Arizona, known as Residences on Maryland, as more specifically described in  
22 the Sale Agreement (“Property”), to All Saints’ Episcopal Church, an Arizona nonprofit  
23 corporation, (“Purchaser”) for the price of \$2.16 million (“Purchase Price”) and on the  
24 terms set forth in the Agreement of Sale and Purchase (“Sale Agreement”) which is  
25 attached as Exhibit A or upon better terms as reasonably determined by ML Manager. The  
26 Sale Agreement has a contemplated closing of early December, 2011.

1 Borrower The Zacher Development Corporation defaulted on its loan with  
2 Mortgages Ltd. The unpaid principal balance on the loan (Loan No. 857802) is about  
3 \$11,160,641. Interest and fees also are due. ML Manager held a deed of trust sale and  
4 foreclosed on the Property. The guarantors are Richard and Kristin Zacher. Pursuant to the  
5 Official Investors' Committee's First Amended Plan confirmed by the Court, ZDC III  
6 Loan LLC was formed on the effective date and the fractional interests in the note and  
7 deed of trust which were held by the MP Funds were transferred into ZDC III Loan LLC.  
8 Subsequently some of the pass-through investors transferred their interests into ZDC III  
9 Loan LLC. At the time of the trustee sale, 8 Pass-Through Investors had not transferred  
10 their fractional interests ("Pass-Through Investors"). As a result, 82.242% of the interest  
11 in the real property is owned by ZDC III Loan LLC and the rest is owned by the 8 Pass-  
12 Through Investors in the loan.

13 ML Manager retained the services of Cherokee Development, Ltd., a leading real  
14 estate brokerage firm, to widely market the property for sale. After completing substantial  
15 marketing efforts, Purchaser made an offer of \$2.16 million and ML Manager entered into  
16 the Sale Agreement with Purchaser for that price, subject to the regular contingencies for  
17 ML Manager. Purchaser has deposited \$50,000 and opened escrow at Thomas Title &  
18 Escrow. An additional \$50,000 shall be deposited by Purchaser at the end of the  
19 Feasibility Period. Because the property has already been fully marketed, this is not  
20 proposed to be an auction and no higher and better bids are being solicited. The  
21 contingencies include approval by the investors in ZDC III Loan LLC and the applicable  
22 MP Funds and Bankruptcy Court approval. One of the contingencies is the waiver of the  
23 right to compete by the exit financier, which waiver has been given by the exit financier.  
24 Another contingency is for ML Manager to complete the legal proceedings on title to the  
25 tracts as set forth in Section 7.7 of the Sale Agreement, which is anticipated to be  
26 completed by the end of October 2011. The Purchase Price is to be paid in cash at closing.

1 This is an arms-length, negotiated sale between unrelated parties. The anticipated closing  
2 is early December, 2011.

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

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

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

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

25 ML Manager asserts that the Court has retained and reserved jurisdiction in the  
26 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among

1 others, and has the authority to approve the sale under Section 105 of the Bankruptcy  
2 Code, among other sections, as an order in aid of implementation of the Plan. As the  
3 Court has noted at several prior sale hearings, there is a close nexus between the sale  
4 motion and the bankruptcy because the relief requested is an important part of the Plan.  
5 *See, State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th  
6 Cir. 2005). The Plan specifically called for the creation of the ML Manager to manage the  
7 Loan LLCs and to step into the role as manager of the MP Funds and agent of non-  
8 transferring pass through investors. The relief requested by ML Manager affects the  
9 amount of money that the investors will receive and the pay down of the exit financing.  
10 Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

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

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

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

1 DATED: October 11, 2010

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FENNEMORE CRAIG, P.C.

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By /s/ Cathy L. Reece  
Cathy L. Reece

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Attorneys for ML Manager LLC

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# EXHIBIT

# A

# 103676

**AGREEMENT OF SALE AND PURCHASE  
(122 West Maryland Avenue)**

25 This Agreement of Sale and Purchase (this "Agreement") is made effective as of August 2011 (the "Effective Date"), by and among ZDC III Loan LLC, an Arizona limited liability company ("ZDC"), and ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners listed on Exhibit "A" attached (with ZDC, the "Owners") (collectively, "Seller"); and All Saints Episcopal Church, an Arizona nonprofit corporation ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party."

**RECITALS**

A. Seller is the owner of the real property located in Maricopa County Arizona, and described on Exhibit "B" attached hereto (the "Land"). As provided in Section 7.7, Seller will attempt to obtain title to the Tracts (described in Section 7.7).

B. ZDC 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"), to which persons holding fractional interests ("Fractional Interests") in a 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. Certain of the Fractional Interests were assigned to ZDC.

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 under the Agency Agreement, as the Agent of the Owners.

E. 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

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interest in the Land, 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, air rights and rights as "declarant", "developer", "owner" or other words of similar import under any declaration or other document or instrument affecting the Land; (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, and (vi) 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 (i) 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, or (ii) any leases, service contracts or other agreements that affect the Property that are not expressly assumed by Buyer in a document executed at Closing.

## 1.2 Seller 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 ZDC ("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 ZDC (the "Members Approval"); and

(iii) 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).

(iv) Seller has completed the legal proceedings regarding title to the Tracts as provided for in Section 7.7 below and the Title Insurer is committed to insuring that the Tracts are owned in fee simple title by Seller and that Seller has the ability to convey fee simple title to the Tracts to Buyer so that the Tracts can be included as part of the Property to be insured under the Title Policy under Section 7.6 below (the "Tract Contingency").

(b) Seller will submit the information required under the Exit Financing Loan in attempting to obtain the Lender Approval. Seller will submit the appropriate ballot to the Members in attempting to obtain the Members Approval. Seller will file an appropriate motion requesting the Court order provided for under Section 1.2(a)(iii) above. Seller has commenced litigation to attempt to satisfy the Tract Contingency. Seller will attempt to



satisfy the Contingencies by taking the foregoing actions and such additional action as it deems appropriate. 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 90 days after the Effective Date (the "Contingency Period"), then Seller shall notify Buyer 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 notify Buyer that the Contingencies have not been satisfied. If the Contingencies have not been satisfied prior to the expiration of the Contingency Period, either party may terminate this Agreement by delivering written notice to the other party at any time before the Contingencies are satisfied, or the parties may agree to extend the Contingency Period for a period of time that is subject to the approval of both parties. 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.

1.3 Buyer Contingencies. Notwithstanding any provision to the contrary contained herein, the obligations of Buyer under this Agreement are contingent upon the approval of this Agreement by the following governing bodies of Buyer (the "Governing Bodies") prior to the expiration of the Feasibility Period (described below): All Saints' Episcopal Day School Board of Trustees; All Saints' Episcopal Church Vestry; and Standing Committee of the Episcopal Diocese of Arizona. If this Agreement has not been approved by the Governing Bodies prior to the expiration of the Feasibility Period, 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 herein. 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 herein.

2. Opening of Escrow. Within three (3) business days after both parties have executed this Agreement, the parties will establish an escrow with Thomas Title & Escrow (Diane F. Carpenter), Promenade Corporate Center, 16435 N. Scottsdale Rd., Ste. 405, Scottsdale, Arizona 85254; (480) 222-1116; ext. 203. 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 as provided at the end of this Agreement. 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.

3. Purchase Price; Deposits.

3.1 Purchase Price. The purchase price for the Property shall be Two Million One Hundred Sixty Thousand Dollars (\$2,160,000) (the "Purchase Price"). The Purchase Price shall be payable as follows:

(a) Buyer shall deposit with Escrow Agent the amount of Fifty Thousand Dollars (\$50,000) (the "Initial Deposit") by wire transfer, cashier's check, or other readily available funds, within three business days after the Opening of Escrow. 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 Fifty Thousand Dollars \$50,000 (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 to Seller at Close of Escrow (as defined below) in cash by wire transfer, cashier's check or other readily available funds.

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. Within five (5) days after the Effective Date, 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, notices, correspondence 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.

5. Feasibility Period. During the period commencing on the date that Seller gives Buyer notice that the Tract Contingency has been satisfied and ending thirty (30) days thereafter, but not in any event before September 30, 2011 (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 herein. 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 herein. Seller agrees to cooperate, at no cost to Seller, with Buyer in Buyer's efforts to obtain any approvals required for the development of the Property, provided

that no approvals shall be effective until after the Closing without the prior written approval of Seller.

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 provide Seller with the opportunity to have a representative present during all Investigations undertaken hereunder;

6.4 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; provided, however, that Buyer makes no representations or warranties of any kind whatsoever relating to any items delivered to Seller;

6.5 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, 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;

6.6 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

6.7 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 with respect to the Property; provided, however, that Buyer shall not indemnify Seller for (i) any matter caused by Seller or any of its agents, employees or representatives or (ii) the discovery of existing environmental or physical conditions at the Property and the consequences relating thereto. Notwithstanding anything in this Agreement to the contrary, the indemnities set forth in this Section 6 survive any termination of this Agreement.

## 7. Title Review.

7.1 Status of Title. On or before the date that is five (5) days after Seller gives Buyer and Escrow Agent notice that the Tract Contingency has been satisfied, Escrow Agent shall provide Buyer and Seller with a commitment ("Title Report") setting forth the condition of title to the Property and the Tracts and providing for issuance of an extended coverage owner's policy of title insurance, disclosing all matters of record which relate to the title to the Property and the Tracts, 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 as Buyer receives 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 a period of twenty (20) days after receipt of the Title Report (the "Title Review Period") to object in writing to any matter shown in the Title Report or Survey (as defined in Section 7.5). 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, 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, 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 and obtain a return of the Deposit or (b) to waive

Buyer's objections (on the condition that Seller accomplishes any objectives described by Seller in the Response). 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 Buyer has conditionally waived an objection that Seller has agreed to cure, and the condition is not satisfied on the Closing Date, Buyer shall have the right, as its sole remedies, either (a) to terminate this Agreement and obtain a return of the Deposit, or (b) to proceed with this transaction and waive such objection. In the event that Buyer waives an objection, Buyer shall be deemed to have approved the item with respect to which the objection was made.

**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 the Title Insurer and Seller. Buyer shall provide Seller and Escrow Agent with copies of the 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 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 and with such endorsements as may be requested by Buyer, insuring that fee simple title to the Property and the Tracts 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 pursuant to Section 7, and (c) any interests (such as deeds of trust or mortgages) which may be granted by Buyer. The Title Insurer shall be Fidelity National Title Insurance Company, First American Title Insurance Company or another title insurance company that is satisfactory to Buyer. Seller shall be responsible for the cost of a standard coverage title insurance policy; and Buyer shall be responsible for any additional cost of extended coverage and any endorsements obtained by Buyer. Seller will cooperate with Buyer's efforts to obtain such title insurance coverage, including any endorsements requested by Buyer.

**7.7 Title to Tracts.** Seller does not currently own Tracts A, B and C as shown on the subdivision plat for the Property recorded in Book 898 of Maps, Page 49, records of Maricopa County, Arizona (the "Tracts"). The Tracts are designated on the plat for use as common areas. Seller shall use its commercially reasonable efforts to obtain title to the Tracts prior to the expiration of the Contingency Period. Seller does not represent that it will be able to obtain title to the Tracts, and Seller shall not be in default hereunder if Seller fails to obtain title

to the Tracts. If Seller fails to obtain title to the Tracts prior to the expiration of the Contingency Period, Buyer's sole remedy shall be to terminate this Agreement by written notice to Seller and Escrow Agent within ten (10) days after Seller provides notice to Buyer that the Contingency under this Section 7.7 has not been satisfied. If Seller obtains title to the Tracts and the Title Insurer is committed to insuring that the Tracts are owned in fee simple title by Seller and that Seller has the ability to convey fee simple title to the Tracts to Buyer, then the Tracts shall be included in the Property to be conveyed to Buyer hereunder.

**7.8 Mechanics' and Materialmen's Liens.** If and to the extent that there are any claims of mechanics' and materialmen's liens that encumber the Property (the "Lien Claims"), this Section 7.8 shall apply. It shall be a condition to Buyer's obligations hereunder that the Title Insurer shall at Closing be unconditionally committed to issue the Title Policy either (a) without the Lien Claims being shown as exceptions to title or (b) endorsing over any claims or losses on account of the Lien Claims. Seller shall not be in default hereunder if the condition of this Section 7.8 is not satisfied at Closing.

**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, and at all times remain, materially true and accurate.
- (b) Seller will not be in default under this Agreement.
- (c) Title Insurer will be irrevocably and unconditionally committed to issue the Title Policy to Buyer in accordance with 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, 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 under Section 11.2 of this 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 the date that is fifteen (15) days after the later to occur of (a) the expiration of the Feasibility Period and (b) the date on which Seller gives Buyer the Contingency Satisfaction Notice under Section 1.2(c) (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;
- (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;
- (d) execute and deliver to Buyer the Blanket Assignment; and
- (e) pay any sums required to be paid by Seller pursuant to Section 12.

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

- (a) deliver the Purchase Price, less the amount of the Deposit and any adjustments or prorations calculated pursuant to Section 12, to the Escrow Agent for distribution to Seller, by wire transfer of immediately available funds;
- (b) deliver any additional amounts required to be paid by Buyer pursuant to Section 12; 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 standard owner's coverage portion of the cost 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.

12.3 Property Tax Appeals. Buyer and Seller both understand and agree that Seller may have initiated a property tax appeal for the year in which the Property is being sold from Seller to Buyer. Buyer agrees to allow Seller to continue prosecuting the tax appeal, at Seller's sole cost and expense, after the Closing. Buyer and Seller also both understand that the real property tax prorations provided for under Section 12 of this Agreement may use an estimated property tax amount from a prior year or a current year amount that is under appeal, and said amount may not necessarily reflect the ultimate liability for the year in which the Closing occurs. Buyer and Seller also understand and agree that any reduction of real property tax for the year in which the Closing occurs will be pro-rated between Buyer and Seller, as well as any fee incurred to achieve said savings, which fee shall not exceed the tax savings. 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. Seller shall be entitled to any reduction of real property tax for any year prior to Closing.

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 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 of 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.

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

14.1 Agreements. Except for the Property Documents and any matters that are disclosed in the Title Commitment, to Seller's knowledge no contract, operating arrangement, lease, or other agreement relating to the Property will remain in effect and be binding on the Property after the Close of Escrow.

14.2 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.

14.3 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 Winkelman 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 (6) months.

If Seller becomes aware of any facts or circumstances that cause any of such representations and warranties to become materially false or incorrect, Seller will promptly notify Buyer of same. 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), 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 (as Buyer's sole remedy) shall have ten (10) days following its receipt of a Change Notice within which to terminate this Agreement by written notice to Seller. 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 foregoing ten (10)-day period 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. Subject to the satisfaction of the Contingencies set forth in Section 1.3, 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 Financial Ability. Buyer has, or will have prior to closing, the financial ability to perform Buyer's obligations under this Agreement.

The matters set forth in this Section constitute representations and warranties by Buyer 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 (6) months.

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" 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 for Seller's representations and warranties set forth in this Agreement or documents executed pursuant hereto and 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, construction defects, 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 representations, warranties, obligations and liabilities 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. Notwithstanding anything to the contrary contained in this Agreement, the release and waiver in this Section 16.3 is not intended and shall not be construed as (a) affecting or impairing any rights or remedies that Buyer may have against Seller as a result of a breach of any of Seller's representations, warranties or covenants in this Agreement or in any document executed in connection herewith or pursuant hereto or any of Seller's obligations under this Agreement that survive the Closing or (b) the assumption by Buyer of any obligation or liability that is not expressly assumed by Buyer in this Agreement or in any document executed in connection herewith or pursuant hereto.

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 twelve (12) 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 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 entitle 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. However, if the remedy of specific performance is not available because Seller has conveyed the Property to a third party, then Buyer shall be entitled to exercise any remedies available at law or equity.

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 Cherokee Development, Ltd. in an amount and on terms set forth in a separate agreement with Seller. Except for the foregoing, 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 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. 83<sup>rd</sup> Avenue, #180  
Peoria, Arizona 85381  
Attn: Mark Winkleman  
Facsimile: (623) 234-9575  
Telephone: (623) 234-9562

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@fclaw.com

20.2 If addressed to Buyer:

All Saints Episcopal Church  
6300 North Central Avenue  
Phoenix, Arizona 85012  
Attention: The Reverend Poulson C. Reed  
Facsimile: (602) 279-1429  
Email: preed@allsaints.org

with a copy to:

Lewis and Roca LLP  
40 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004  
Attention: John M. Rawicz  
Facsimile: (602) 734-3761  
Phone: (602) 262-5715  
Email: jrawicz@lrllaw.com

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

Thomas Title & Escrow  
Promenade Corporate Center  
16435 N. Scottsdale Rd., Ste. 405  
Scottsdale, Arizona 85254  
Attention: Diane F. Carpenter  
(480) 222-1116; ext. 203  
(480) 383-6792 direct facsimile  
Email: dcarpenter@thomastitle.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. 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 entity this is controlled by or under common control with Buyer, 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. The original or previous Buyer, upon the assignment, will be relieved of all obligations under this Agreement, except for the acts or omissions of that entity occurring prior to the assignment.

21.7 Entire Agreement. This Agreement constitutes 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. 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.

21.10 Exclusivity. While this Agreement continues in effect, Seller agrees that it will not market the Property for sale to third parties and will not enter into any back-up contracts for the sale of the Property to third parties.

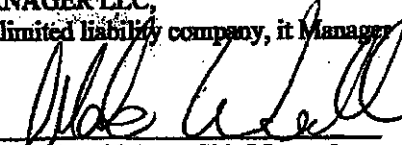
*(Signatures of the parties appear on the following page.)*

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

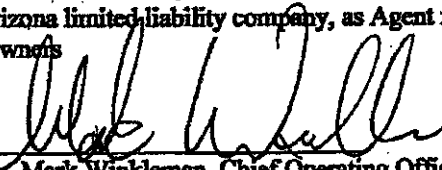
**SELLER:**

ZDC III LOAN LLC, an Arizona limited liability company

By ML MANAGER LLC,  
an Arizona limited liability company, its Manager


By:   
Mark Winkleman, Chief Operating Officer

ML MANAGER LLC,  
an Arizona limited liability company, as Agent for the Owners

By:   
Mark Winkleman, Chief Operating Officer

**BUYER:**

ALL SAINTS' EPISCOPAL CHURCH,  
an Arizona nonprofit corporation, dba ALL SAINTS' EPISCOPAL CHURCH AND DAY SCHOOL

By:   
Its: Rectar and President



**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, (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent, and (iv) agrees to deliver to Buyer and Seller, within five (5) days after the Opening of Escrow, an insured closing protection letter from the Title Insurer, and (v) agrees to be the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986 (the "Code") and filing all necessary information reports, returns and statements (collectively, the "Tax Reports") regarding the transaction required by the Code and, promptly upon the filing of the Tax Reports, transmit copies of the Tax Reports to Buyer and Seller.

Dated this 25 day of Aug, 2011.

Thomas Title & Escrow

By:

Name/Title:   
Diane Carpenter Exec VP

**EXHIBIT "A"**  
**NAMES OF OWNERS OF LAND**

ZDC III Loan LLC, an Arizona Limited Liability Company, as to an undivided 82.242% ownership

Melvin L. Dunsworth, Jr., Trustee of the Revocable Living Trust of Melvin Dunsworth, Jr., dated December 23, 2003, and any amendments thereto, as to an undivided 0.398% ownership

Harvey Golden and Merylee Golden, husband and wife as joint tenants with right of survivorship, as to an undivided 1.446% ownership

Golden Lending Group, LLC, an Arizona limited liability company, as to an undivided 1.195% ownership

Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust dated January 1, 2004, and any amendments thereto, as to an undivided 3.985% ownership

Morris A. Kaplan and Carolyn N. Kaplan, Trustees under the Second Amendment and Restatement of the Morris and Carolyn Kaplan Revocable Trust dated October 15, 1999, as to an undivided 0.399% ownership

Robert G. Roden, Trustee of The Robert G. Roden Living Trust dated October 1, 2004, and any amendments thereto, as to an undivided 1.196% ownership

James C. Schneck, Trustee of The James C. Schneck Revocable Trust dated October 1, 1999 and any amendments thereto, as to an undivided 6.451% ownership

Verma Kataria Mortgage Investment L.L.C., an Arizona limited liability company, as to an undivided 2.688% ownership

**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

**Lots 1 through 36, inclusive, RESIDENCES ON MARYLAND, a subdivision recorded in Book 898 of Maps, Page 49, records of Maricopa County, Arizona.**

**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, ZDC III 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"), do hereby convey to \_\_\_\_\_ ("Grantee"), the following real property together with all of Seller's right, title and interest in (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, any matters arising in connection with any action of the Grantee or its employees, contractors, agents or representatives, any other matter not caused by the act or authorization of Grantor 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 \_\_\_\_\_, 2011.

**GRANTOR**

**ZDC III LOAN LLC, an Arizona limited liability  
company**

**By ML MANAGER LLC,  
an Arizona limited liability company, its Manager**

**By: \_\_\_\_\_  
Mark Winkleman, Chief Operating  
Officer**

**ML MANAGER LLC,  
an Arizona limited liability company, as Agent for  
the Owners**

**By: \_\_\_\_\_  
Mark Winkleman, Chief Operating Officer**

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Mark Winkleman, known by me to be the Chief Operating Officer of ML Manager LLC, an Arizona limited liability company, the Manager of ZDC III LOAN LLC, an Arizona limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Mark Winkleman, known by me to be the Chief Operating Officer of ML Manager LLC, an Arizona limited liability company, 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/2329647.7/028149.0001

25

**EXHIBIT B  
TO THE SPECIAL WARRANTY DEED**

**List of Owners**

PHX/2329647.7/028149.0001



**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 \_\_\_\_\_, 2011, by ZDC III 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 \_\_\_\_\_, 2011 (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 claims, awards, and any similar rights relating to and benefiting the Property; (v) all water and sewer taps and hookup connections relating to the Property; (vi) all development rights benefiting the Property; (vii) any and all rights to receive any payments, impact fee or other credits, reimbursements, or refunds arising from any payments, dedications or any other actions taken by Assignor or any predecessor in title to the Property; (viii) all rights to receive a reimbursement, credit or refund from the applicable agency or entity of any deposits or fees paid in connection with the development of the Property, (ix) any pre-paid impact fees, school fees, and/or development fees of any kind previously paid by Seller or any predecessor in title to the Property, (x) 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, (xi) any house plans, and (xii) any and all other rights, privileges, and appurtenances owned by Assignor and in any way related to, or used in connection with the operation of the Property to the extent that they are assignable (collectively, the "Assigned Items").

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:**

**ZDC III LOAN LLC, an Arizona limited liability company**

**By ML MANAGER LLC,  
an Arizona limited liability company, its Manager**

**By: \_\_\_\_\_  
Mark Winkleman, Chief Operating  
Officer**

**ML MANAGER LLC,  
an Arizona limited liability company, as Agent for  
the Owners**

**By: \_\_\_\_\_  
Mark Winkleman, Chief Operating Officer**

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

**List of Owners**

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

**Legal Description of the Property**

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