

1 FENNEMORE CRAIG, P.C.  
Cathy L. Reece (005932)  
2 3003 N. Central Ave., Suite 2600  
Phoenix, Arizona 85012  
3 Telephone: (602) 916-5343  
Facsimile: (602) 916-5543  
4 Email: [creece@fclaw.com](mailto:creece@fclaw.com)

5 MOYES SELLERS & HENDRICKS  
Keith L. Hendricks (012750)  
6 1850 N. Central Ave., Suite 1100  
Phoenix, Arizona 85004  
7 Telephone: (602) 604-2120  
Email: [khendricks@law-msh.com](mailto:khendricks@law-msh.com)

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 902 N. Signal Butte Rd.  
in Maricopa County, Arizona known as Adobe  
16 Meadows**

17 **Hearing Date: November 22, 2011  
Hearing Time: 11:00 a.m.**

18 ML Manager LLC (“ML Manager”), requests that the Court enter an order  
19 authorizing ML Manager as the manager for VCB Loan LLC and the agent for certain  
20 Pass-Through Investors to sell the real property located at 902 N. Signal Butte Rd. in  
21 Maricopa County, Arizona known as Adobe Meadows, as more specifically described in  
22 the Sale Agreement (“Property”), to Pinnacle Ridge Holdings, LLC, a limited liability  
23 company, (“Purchaser”) for the price of \$1.2 million (“Purchase Price”) and on the terms  
24 set forth in the Agreement of Sale and Purchase (“Sale Agreement”) which is attached as  
25 Exhibit A or upon better terms as reasonably determined by ML Manager. The Sale  
26 Agreement has a contemplated closing of early December, 2011.

1 Borrower VCB Properties, LLC defaulted on its loan with Mortgages Ltd. The  
2 unpaid principal balance on the loan (Loan No. 856805) is about \$6.4 million. Interest and  
3 fees also are due. ML Manager held a deed of trust sale and foreclosed on the Property.  
4 The guarantors were Eric and Julie Capranica. A settlement was previously approved  
5 with the Guarantors. Pursuant to the Official Investors' Committee's First Amended Plan  
6 confirmed by the Court, VCB Loan LLC was formed on the effective date and the  
7 fractional interests in the note and deed of trust which were held by the MP Funds were  
8 transferred into VCB Loan LLC. Subsequently some of the pass-through investors  
9 transferred their interests into VCB Loan LLC. At the time of the trustee sale, 17 Pass-  
10 Through Investors had not transferred their fractional interests ("Pass-Through  
11 Investors"). As a result, 73.851% of the interest in the real property is owned by VCB  
12 Loan LLC and the rest is owned by the 17 Pass-Through Investors in the loan.

13 The property was put under contract over a year ago for a price of \$1,616,000,  
14 however, the buyer terminated the Sale Agreement after discovery issues concerning the  
15 development of the property. These issues were subsequently analyzed and the property  
16 was re-marketed for sale by Nathan & Associates, Inc., a leading real estate brokerage  
17 firm that is familiar with this local area and the market. After completing substantial  
18 marketing efforts, Purchaser made an offer of \$1.2 million and ML Manager entered into  
19 the Sale Agreement with Purchaser for that price, subject to the regular contingencies for  
20 ML Manager. Purchaser has deposited \$50,000 and opened escrow at Thomas Title &  
21 Escrow. An additional \$100,000 shall be deposited by Purchaser at the end of the  
22 Feasibility Period. Because the property has already been fully marketed, this is not  
23 proposed to be an auction and no higher and better bids are being solicited. The  
24 contingencies include approval by the investors in VCB Loan LLC and the applicable MP  
25 Funds and Bankruptcy Court approval. One of the contingencies is the waiver of the right  
26 to compete by the exit financier. The Purchase Price is to be paid in cash at closing. This

1 is an arms-length, negotiated sale between unrelated parties. The anticipated closing is  
2 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 VCB 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 Inter-  
16 borrower Agreement and to create and use any reserves pursuant to the Inter-borrower  
17 Agreement.

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

25 WHEREFORE, ML Manager LLC requests that the Court enter an order  
26 authorizing and approving the sale as set forth above, and for such other and further relief

1 as is just and proper under the circumstances.

2

3 DATED: October 26, 2011

4

FENNEMORE CRAIG, P.C.

5

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

6

Attorneys for ML Manager LLC

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

# EXHIBIT

# A

**AGREEMENT OF SALE AND PURCHASE  
AND ESCROW INSTRUCTIONS  
(Adobe Meadows)**

THIS AGREEMENT OF SALE AND PURCHASE AND ESCROW INSTRUCTIONS (this "Agreement") is made effective as of October 18, 2011 (the "Effective Date"), between VCB LOAN LLC, an Arizona limited liability company ("VCB"), and ML MANAGER LLC, an Arizona limited liability company as agent ("Agent") for those individual owners ("Owners") listed on Exhibit "A" attached (collectively, "Seller"); and PINNACLE RIDGE HOLDINGS, LLC, 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. Through foreclosure proceedings involving a certain loan (the "Loan") made by Mortgages Ltd, an Arizona corporation and other proceedings described below, Seller obtained title to certain real property located in Maricopa County Arizona, and described on Exhibit "B" attached hereto (the "Land").

B. VCB 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 the Loan made by Mortgages Ltd. (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 under the Agency Agreement, 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 37 acres, located in Maricopa County,

Arizona, in the development known as "Adobe Meadows", 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; (v) pre-paid impact fees, school fees, and other development fees, and (vi) 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.

## 1.2 Contingencies

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

(a) 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");

(b) the members of VCB ("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 VCB (the "Member Approval"); and

(c) If deemed necessary by Seller, 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).

1.2.2 Seller will use good faith, reasonable efforts to attempt to satisfy the Contingencies and shall keep Buyer reasonably apprised of the status of the satisfaction of the Contingencies; provided, however, Seller does not guaranty that the Contingencies can be satisfied and Seller shall not be in default hereunder if any of the Contingencies is not satisfied.

1.2.3 If all of the Contingencies have been satisfied prior to the expiration of the period commencing on the Effective Date and ending forty (40) days thereafter (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 which Contingencies have not been satisfied, whereupon either party may terminate this Agreement by written notice to the other party at any time prior to the satisfaction of the Contingencies. 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 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 ("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 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 One Million Two Hundred Thousand Dollars (\$1,200,000) (the "Purchase Price"). The Purchase Price shall be payable as follows:

(i) 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 one (1) business day after the Opening of Escrow. Prior to the expiration of the Feasibility Period, 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 Thousand Dollars (\$100,000) (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".

(ii) 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 Deposits. 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 ten (10) 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 loan documents, all trustee's sale and UCC sale documents, all permits, approvals, plats, plans, specifications, certificates, surveys, engineering reports (including, without limitation, any environmental or geotechnical reports), crop records, studies, environmental reports, appraisals, leases, permits, contracts, improvement plans, utility plans, architectural plans and elevations, permit fee estimates and statements, construction bids and/or estimates, impact fee estimates and other materials relating to the Property or the condition or

development thereof (collectively, the "Property Documents"). Other than the representations, warranties, and covenants expressly stated in this Agreement or in the instruments executed and delivered by Seller at Closing (the "Express Representations"), the Property Documents are delivered without representation or warranty, subject to independent investigation by Buyer. Seller shall cooperate with Buyer, at no out-of-pocket cost to Seller, (i) to cause any of the Property Documents to be updated and recertified to Buyer, (ii) to obtain reliance letters from any of the preparers of the Property Documents, and (iii) to obtain any consents that may be required so that Buyer may receive the benefits of any agreements comprising the Property Documents.

5. Feasibility Period. During the period commencing on the date the Effective Date and ending at 5:00 P.M. (Arizona time) on the date that is thirty (30) 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 at any time on or before the expiration of the Feasibility Period. If Buyer fails to deliver a written notice to Seller and Escrow Agent approving the feasibility of acquiring the Property ("Approval Notice") on or before the expiration of the Feasibility Period, then this Agreement and the Escrow shall automatically terminate. If Buyer delivers an Approval Notice, 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 will be released from further liability hereunder.

6. Title and Survey Review.

6.1 Title Documents. Within ten (10) days after the Effective Date, Escrow Agent will provide Buyer with a title commitment (the "Title Commitment") issued by the title insurer ("Title Insurer") for Escrow Agent leading to the issuance of an ALTA Extended Coverage Owner's Policy of Title Insurance (ALTA 2006 form) insuring fee simple title in Buyer in the amount of the Purchase Price (the "Title Policy"), together with legible copies of all documents listed therein (the "Exception Documents"). The Title Commitment, the Exception Documents and the Survey (described below) are herein referred to collectively as the "Title Documents." If the Title Documents reflect encumbrances or other conditions not acceptable to Buyer ("Defects") and Buyer notifies Seller and Escrow Agent of same in writing not less than ten (10) days prior to the expiration of the Feasibility Period, then within five (5) days after Seller's receipt of Buyer's notification of the Defects, Seller may notify Buyer which Defects Seller will cure prior to the Close of Escrow and which Defects Seller will not cure prior to the Close of Escrow (herein called a "Seller's Notice"). Seller shall not be obligated to cure any Defects, except as otherwise provided herein. If Seller's Notice specifies Defects that will not be cured by Seller prior to the Close of Escrow or if Seller fails to provide a Seller's Notice, then Buyer may, within five (5) days after the expiration of the period for Seller to provide a Seller's Notice, accept the Defects (in which event such Defects will constitute Permitted Exceptions (as defined below) hereunder) or Buyer may terminate this Agreement by written notice to Seller and Escrow Agent, 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 be released from further liability hereunder.

6.2 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 surveys or obtain a new survey of the Property (the "Survey") sufficient for the issuance of the Title Policy. The Survey shall be certified to the title issuer for Escrow Agent. Buyer shall provide Seller and Escrow Agent with copies of the Survey, if obtained by Buyer.

6.3 Supplemental Title Reports. If any supplemental title commitment or report or other notice from Escrow Agent after the Title Commitment ("Supplemental Report") shall reflect encumbrances or other conditions not reflected in the original Title Documents and not acceptable to Buyer ("Supplemental Defects") and Buyer notifies Seller and Escrow Agent of same in writing on or before the latter of (i) ten (10) days prior to the expiration of the Feasibility Period, and (ii) five (5) days after its receipt of the Supplemental Report, then within five (5) days after Seller's receipt of Buyer's notification of the Supplemental Defects (but not later than the Close of Escrow), Seller may provide to Buyer a Seller's Notice. Seller shall not be obligated to cure any Supplemental Defects, except as otherwise provided herein. If any Seller's Notice relating to Supplemental Defects specifies Supplemental Defects that will not be cured by Seller prior to the Close of Escrow, or if Seller does not deliver a Seller's Notice, then Buyer may, within five (5) days after the expiration of the five (5)-day period for Seller to provide a Seller's Notice, accept the Supplemental Defects (in which event such Supplemental Defects will constitute Permitted Exceptions hereunder) or Buyer may terminate this Agreement by written notice to Seller and Escrow Agent, 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 be released from further liability hereunder. If Buyer does not elect to terminate this Agreement by written notice to Seller and Escrow Agent during the foregoing five (5)-day period, then Buyer shall be deemed to have accepted the Supplemental Defects. If Seller does not timely deliver a Seller's Notice for any Supplemental Defects, Seller shall be deemed to have elected to not cure the Supplemental Defects.

6.4 Other Title Matters. All matters referenced in Schedule B (or similar schedule) of the Title Commitment or in any Supplemental Report which are not Defects or Supplemental Defects, and any Defects and Supplemental Defects that have been approved by Buyer, shall be "Permitted Exceptions" hereunder. Seller shall not record any additional liens, encumbrances or other matters against title to the Property after the effective date of the Title Commitment. Notwithstanding anything to the contrary contained in this Agreement, at or before the Closing, and without the need for Buyer to object to same in a Defects notice, Seller shall pay off or obtain releases on all existing private financing mortgages or encumbrances; mechanics', materialmen's and supplier's liens; judgment liens; federal or state income or sales tax liens; and lis pendens to the extent that they were caused by Seller, without cost to Buyer, and such matters shall not be considered "Permitted Exceptions."

6.5 Condition of Closing. It shall be a condition of Buyer's obligations hereunder that at the Closing, the Title Insurer shall deliver to Buyer 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 Permitted Exceptions and any exceptions which are approved by Buyer pursuant to Section 6, 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 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. Conditions to Closing.

7.1 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:

- (i) Seller's representations and warranties contained herein shall be materially true and accurate.
- (ii) Seller will not be in default of this Agreement.
- (iii) Title Insurer will be irrevocably and unconditionally committed to issue the Title Policy to Buyer, subject to only the matters described in Section 6.5.

If any of the conditions set forth in subsections (i) or (ii) above are not satisfied on the Closing Date, then, following the expiration of the notice and cure period, Buyer shall be entitled to the remedies prescribed under either Section 13 or Section 17.2 below, as applicable. If the condition set forth in subsections (iii) above is not satisfied on the Closing Date (unless as a result of a default by Seller in which event the provisions of Section 17.2 below shall apply), 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 not later than the second business day after such termination and the parties will be released from further liability hereunder, except as expressly provided herein.

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

- (i) Buyer's representations and warranties contained herein shall be materially true and accurate.
- (ii) Buyer will not be in default of the Agreement.

If any of such conditions are not satisfied on the Closing Date, then Seller may, following the expiration of the notice and cure period prescribed under Section 17.1 below, terminate this Agreement by giving written notice of termination to Buyer. If Seller terminates this Agreement for the reasons stated in subsections (i) or (ii) above, Seller shall be entitled to the remedies prescribed under Section 17.1 below.

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

9. Closing Date. The closing of the transaction contemplated by this Agreement (the "Close of Escrow" or "Closing") will occur on or before the date that is fifteen (15) days after expiration of the Feasibility Period (the "Closing Date").

10. Closing Documents.

10.1 Seller's Obligations. On or before the Close of Escrow, Seller will execute and deposit the following documents with Escrow Agent for delivery to Buyer at the Close of Escrow: (a) the Deed, (b) the Blanket Assignment; (c) an Affidavit of Property Value in form required by Arizona law; (d) a Non-Foreign Person Affidavit in form reasonably acceptable to Buyer; (e) an owner's affidavit which will enable Escrow Agent to issue the Title Policy without any exceptions for parties in possession or liens and encumbrances; (f) such documents as may be required by Buyer or Escrow Agent evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the sale of the Property; and (g) any other assignments or instruments that are necessary for Seller to convey title to the Property and the Property Documents to Buyer.

10.2 Buyer's Obligations. On or before the Close of Escrow, Buyer will execute and deposit the following with Escrow Agent for delivery to Seller at the Close of Escrow: (a) the balance of the Purchase Price in cash or immediately available funds; (b) the Affidavit of Property Value; and (c) such documents as may be required by Seller or Escrow Agent evidencing the status and capacity of Buyer and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the purchase of the Property.

10.3 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.

11. 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:

11.1 Apportionments. Seller will pay the fee for the Title Policy to the extent of the cost of a "Standard Owner's" 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 in excess of the cost of a Standard Owner's policy necessary to obtain the "ALTA Extended Owner's" coverage, plus the cost of any title endorsements Buyer may request. Real property taxes and general assessments will be prorated as of the Closing Date. All improvement and special liens and assessments shall be paid in full by

Seller at or before the Closing. Seller shall pay all special liens and assessments at or before the Closing. 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.

11.2 Post-Closing Reconciliation. If any of the apportionments or prorations 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 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.

11.3 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 assume said tax appeal agreement at Closing and to pay for its proportional savings under the terms of said agreement. Buyer and Seller also both understand that the real property tax prorations provided for under Section 11 of the Purchase 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 or refunds for any year prior to Closing.

12. 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 twenty (20) days after notice of such damage, destruction or eminent domain, 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 be released from further liability hereunder. If Buyer elects to waive its right to terminate, then 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.

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

13.1 Agreements. Seller has not and will not enter into any contract, operating arrangement, lease, or other agreement relating to the Property, or cause or permit any new liability, encumbrance or obligation to be placed or imposed upon all or any part of the Property from the date hereof that will remain in effect after the Close of Escrow.

13.2 No Government Actions or Litigation. Seller is not aware of, and Seller has not received any written notices of any planned public improvements that will result in special assessments against the Property, nor any pending or threatened condemnation proceedings or zoning or other land use regulation proceedings relating to the Property. Seller is not aware of, and Seller has not received any written notices from governmental agencies requiring alterations or corrections of any existing conditions at the Property.

13.3 Hazardous Materials. Seller will provide Buyer with copies of any environmental reports in its possession as part of the Property Documents. Except for any matters that are disclosed in the Property Documents or any environmental assessment obtained by Buyer, Seller has not released or caused the release of any Hazardous Materials (defined below); Seller has no knowledge of any release of Hazardous Materials upon the Property; and Seller has not received written notice of any release of Hazardous Materials upon the Property. The term "Hazardous Materials" shall mean any hazardous, toxic or contaminated substance, material or waste that is regulated by any local governmental authority, the State in which the Property is located or the United States Government, including, without limitation, (i) substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601, et seq.) and/or the Hazardous Materials Transportation Act (49 USC Section 1801, et seq.), (ii) those substances defined as any of the foregoing in the regulations adopted and publications promulgated pursuant to the aforesaid laws; and (iii) petroleum products. Except for any matters that are disclosed in the Property Documents or any environmental assessment obtained by Buyer, to Seller's knowledge there are no underground storage tanks located at the Property.

13.4 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.

13.5 Subject to the satisfaction of the Contingencies, Seller has full right, power and authority to sell the Property to Buyer as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms hereof and thereof. This Agreement is, and all other instruments, documents and agreements to be executed and delivered by Seller in connection with this Agreement shall be, duly authorized, executed and delivered by Seller and shall be valid, binding and enforceable obligations of Seller.

13.6 Subject to satisfaction of the Contingencies, to Seller's knowledge, the execution, delivery and performance by Seller of this Agreement and such other instruments and documents to be executed and delivered in connection herewith by Seller does not, and shall not, result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of Seller or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument, covenant, obligation, or agreement to which Seller or the Property is subject, or any judgment, law, writ, decree, order, injunction, rule, ordinance or governmental regulation or requirement affecting Seller or the Property.

For purposes of this Section 13, 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 materially true and correct as of the date hereof and on the Closing Date and subject to Section 16, below, will survive the Closing Date for a period of one (1) year except that any claim for which Buyer has filed a lawsuit in a court of competent jurisdiction within such time period shall survive until resolution of such lawsuit.

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 13 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 13 shall thereafter be deemed to have been modified as provided in the Change Notice. Notwithstanding anything stated to the contrary above, if Buyer discovers that any of Seller's warranties or representations was untrue when made or becomes untrue as the result of the intentional acts or omissions of Seller, then the provisions of Section 17.2 shall apply.

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

14.1 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 obligation in accordance with the terms and conditions hereof and thereof.

14.2 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.



14.3 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.

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

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

15.1 Seller Inducements. To induce Seller to accept this Agreement, Buyer acknowledges that, except for the Express Representations: (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.

15.2 Additional Buyer Warranties. Buyer represents and warrants that, except for the Express Representations: (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, except for the Seller's obligations with respect to the Express Representations, 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 15 shall expressly survive the Closing without limitation.

15.3 Release. Except for the Express Representations and any claims arising from any intentional misconduct on the part of Seller, 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, regardless of the sole or concurrent negligence of any kind of the Seller Parties with respect to such claims, 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 breach of the Express Representations or intentional misconduct of Seller. 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 15.3 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, except as otherwise provided above.

16. Survival. The covenants, representations or warranties made by Seller and Buyer, respectfully, in Sections 13, 14, and 15 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 one (1) year after the Closing or be forever barred.

17. Remedies.

17.1 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 retain 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.

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

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

18. Brokerage Commission. If and only if the Closing hereunder occurs, Seller agrees to pay a commission to Nathan & Associates, Inc. in the amount of two and one half percent (2.5%) of the Purchase Price. If and only if the Closing hereunder occurs, Buyer agrees to pay a commission to Westland Properties Group (Grant D. Helgeson) in the amount of two and one half percent (2.5%) of the Purchase Price. 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 attorneys' 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. Buyer discloses and Seller acknowledges that Buyer and its various officers, employees, and affiliates may hold Arizona real estate licenses as brokers and/or salespersons. Seller discloses and Buyer acknowledges that one or more of the principals, employees, officers and affiliates of Seller may be licensed as a real estate broker or salesperson in the State of Arizona.

19. 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:

19.1 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

19.2 If addressed to Buyer:

Pinnacle Ridge Holdings, LLC  
3321 East Baseline Road  
Gilbert, Arizona 85234  
Attention: Jeff Blandford  
Facsimile: (480) 892-4492  
Telephone: (480) 892-8885

19.3 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](mailto: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.

20. Miscellaneous.

20.1 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.

20.2 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.

20.3 Entry. At any time after the Effective Date and prior to the Close of Escrow, Buyer and its designated agents and contractors will have the right to enter upon the Property to conduct surveys, soils tests, investigations and studies; provided Buyer shall return the Property to substantially the same condition existing prior to the time of any entry. Buyer shall defend, indemnify and hold Seller harmless for, from and against any and all liabilities, costs and expenses (including, but not limited to, mechanics' and materialmen's liens and reasonable attorney fees) incurred by Seller arising from any exercise of the rights granted under this Section 20.3, which obligations of Buyer shall survive the termination of this Agreement.

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

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

20.6 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.

20.7 Assignment. Buyer may assign its rights and obligations under this Agreement, upon written notice to Seller and subject to Seller's approval, which shall not be unreasonably withheld.

20.8 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.

20.9 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 attorneys' fees, expenses and court costs.

20.10 No Assumption of Liabilities. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume or agree to pay, and shall not indemnify Seller or any other person against, any liability, obligation, or expense of Seller or relating in any way to the Property except to the extent, if any, except to the extent, if any, such obligation runs with the Property, or is expressly and specifically provided for in this Agreement.

20.11 WAIVER OF JURY TRIAL. THE PARTIES HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN THEM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT. NO JURY SHALL BE EMPANELED FOR ANY DISPUTE INVOLVING THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY ADVISORY JURY.

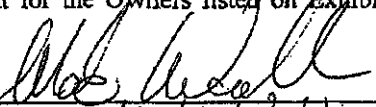
[Balance of Page Intentionally Left Blank; Signature Page Follows]

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

**SELLER:**

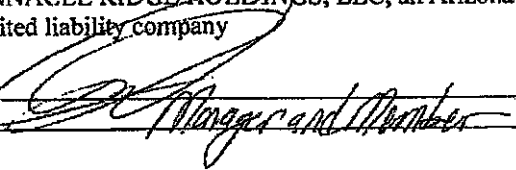
VCB LOAN LLC, an Arizona limited liability company

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

By:   
Printed Name: Mark Walker  
Its: Manager

**BUYER:**

PINNACLE RIDGE HOLDINGS, LLC, an Arizona  
limited liability company

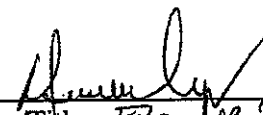
By:   
Its: Manager and Member

**AGREEMENT AND CONSENT BY ESCROW AGENT**

The undersigned hereby agrees to (i) accept the foregoing Agreement of Sale and Purchase and Escrow instructions 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, (iv) 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, (v) agrees to indemnify and hold harmless Seller, Buyer and their respective attorneys and brokers from and against all claims, costs, liabilities, penalties, or expenses resulting from Escrow Agent's failure to file the Tax Reports, (vi) agrees to deliver to Buyer, within five (5) days after the Opening of Escrow, an insured closing protection letter from Title Insurer and (vii) confirms that the Opening of Escrow occurred on October 18, 2011.

Dated this 18 day of October, 2011.

Thomas Title & Escrow

By:   
Name/Title: Eric W. Crane Escrow Agent



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

First Trust Company of Onaga, Custodian FBO Jane A. Bartelme IRA #410213XXXX, as to an undivided 0.563% interest;

VCB Loan LLC, an Arizona Limited Liability Company, as to an undivided 73.851 % interest;

Bruce Dennis Buckley and Alivia Virginia Buckley, Trustees of The Bruce Dennis Buckley and Alivia Virginia Buckley Revocable Living Trust dated June 4, 1985 and Amended December 7, 1994, as to an undivided 1.950% interest;

Karen E. Lamb, Trustee of The Karen Lamb Living Trust dated February 26, 2007, and any amendments thereto, as to an undivided 1.560% interest;

Stephen G. Franklin and Donna M. Franklin, Trustees of the Franklin Family Trust dated June 11, 2002, and any amendments thereto, as to an undivided 1.560% interest;

Robert G. Furst, Trustee of The Robert G. Furst & Associates Defined Benefit Pension Plan, as to an undivided 1.993% interest;

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 1.288% interest;

Linda Mayne and Stephen Mayne, wife and husband, as community property with right of survivorship, as to an undivided 1.560% interest;

Linda Mayne, Trustee of the Mayne and Company Defined Benefit Pension Plan dated December 31, 2005, and any amendments thereto, as to an undivided 1.014% interest;

William J. Miller and Sandra B. Miller, Trustees of the Miller Family Trust dated February 7, 2000, and any amendments thereto, as to an undivided 3.901% interest;

Christo Panagiotakopoulos and Constance Panagiotakopoulos, Husband and Wife, as Joint Tenants With Right of Survivorship, as to an undivided 1.485% interest;

Linda A. Reeves, Trustee of The Linda Ann Reeves Trust dated March 2, 2005, and any amendments thereto, as to an undivided 0.780% interest;

First Trust Company of Onaga, Custodian FBO Jayesh K. Shah IRA #41021XXXXXX, as to an undivided 1.552% interest;

Jan M. Sterling, Trustee of The Jan M. Sterling Living Trust dated January 4, 1995, and any amendments thereto, as to an undivided 3.900% interest;

Kathleen K. Tomasulo, Trustee of The Tomasulo Credit Shelter Irrevocable Trust dated September 16, 1997, and any amendments thereto, as to an undivided 0.780% interest;

Bernardo R. Urquieta and Kathleen Smythe de Urquieta, Trustees of The Urquieta Smythe Family Trust dated December 5, 1990, and any amendments thereto, as to an undivided 0.780% interest;

John C. Vinson and Taeko Vinson, Trustees of the John Charles Vinson Family Trust dated December 3, 1984, and any amendments thereto, as to an undivided 1.170% interest; and

Chris Welsh and Tracey Welsh, husband and wife, as joint tenants with right of survivorship, as to an undivided 0.313% interest.

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

**Lots 1 through 32, inclusive, and Tracts A through D, inclusive, of ADOBE MEADOWS, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 822 of Maps, page 24.**

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, VCB 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 PINNACLE RIDGE HOLDINGS, LLC, an Arizona limited liability company ("Grantee"), the following real property together with all rights and privileges appurtenant thereto:

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

TOGETHER WITH all (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; (iv) 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")

SUBJECT TO all current 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, obligations, liabilities and other non-financial matters (meaning matters that are not monetary liens or encumbrances) 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

VCB 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: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, known by me to be the \_\_\_\_\_ of ML Manager LLC, an Arizona limited liability company, the Manager of VCB 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

**EXHIBIT B  
TO THE SPECIAL WARRANTY DEED**

List of Owners

EXHIBIT "D"

BLANKET ASSIGNMENT AND BILL OF SALE

THIS BLANKET ASSIGNMENT AND BILL OF SALE (the "Assignment") is given as of \_\_\_\_\_, 2011, by ("Assignor") for the benefit of \_\_\_\_\_, its successors and assigns ("Assignee").

RECITALS

A. Assignor and Assignee entered into that certain Agreement of Sale and Purchase and Escrow Instructions dated October \_\_\_\_, 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, 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) any rights under any representations, warranties, indemnities, and/or covenants in Assignor's favor under any agreement and/or instrument by which Assignor acquired title to the Property; (ix) 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, (x) all 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, (xi) 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, 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.** 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. **Further Assurances.** The parties agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered any and all such further acts, instruments, and assurances as may be reasonably required to effectuate the assignment contemplated herein.

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

6. **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.

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

ASSIGNOR:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Legal Description of the Property