

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 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 MODIFY PORTALES PLACE  
SALE AGREEMENT**

15 **Real Property consisting of approximately 9.7**  
16 **acres located west of the northwest corner of**  
17 **Goldwater Drive and Scottsdale Road in**  
**Scottsdale, Arizona, known as the northwest**  
**quadrant of Portales Place**

18 **Hearing Date: TBD**  
**Hearing Time: TBD**

19 ML Manager LLC (“ML Manager”), requests that the Court enter an order  
20 approving and authorizing ML Manager as the manager for PPP Loan LLC and the agent  
21 for certain Pass-Through Investors to modify the previously approved Sale Agreement  
22 concerning the sale of the real property consisting of approximately 9.7 acres located west  
23 of the northwest corner of Goldwater Drive and Scottsdale Road in Scottsdale, Arizona,  
24 known as the northwest quadrant of Portales Place, as more specifically described in the  
25 Sale Agreement (“Property”).  
26

1 ML Manager filed a Motion Sell [Docket No. 3145] requesting a sale order for the  
2 Property and approval of the Sale Agreement which was attached to the Motion. On May  
3 2, 2011, the Court held the hearing and approved the sale pursuant to the Sale Agreement.  
4 The Order was signed and entered on May 9, 2011 [Docket No. 3200]. The sale has not  
5 closed.

6 In conducting its due diligence, the Buyer encountered objection from the  
7 developer under the CCRs and from the City of Scottsdale which required the Buyer to  
8 have to change its use and density for the Property. Rather than terminate the purchase,  
9 the Buyer and ML Manager negotiated a reduction of the Purchase Price from  
10 \$14,665,000 to \$13,877,500 subject to the price being adjusted upward if the Buyer  
11 subsequently obtains approval from the City of Scottsdale for the development of more  
12 than 369 residential units on the Property within 3 years from the Closing Date. It is  
13 possible with obtaining approvals for additional units during the next 3 years that the  
14 Buyer could pay ML Manager an additional amount which in the long run could recover  
15 for ML Manager all of the reduction in the original purchase price. On the other hand, it is  
16 also possible that the Buyer will not obtain approval from the City of Scottsdale and so no  
17 additional amount will be paid. This adjustment and provision is reflected in an  
18 amendment to the Sale Agreement. The Fifth Amendment to Agreement of Sale and  
19 Purchase (“Amendment”) is attached hereto as Exhibit A and incorporated by reference.

20 While it may not be necessary to seek approval for this Amendment as the original  
21 Sale Agreement allowed the parties to enter into modifications and amendments, because  
22 it involves a downward adjustment of the Purchase Price of approximately \$787,500 on a  
23 total price of \$14,665,000, ML Manager decided to seek Court approval of the  
24 Amendment. ML Manager is also seeking the approval of the Amendment from the PPP  
25 Loan LLC. The vote is being solicited and will be completed by the hearing date.

26 ML Manager in the exercise of its business judgment believes that under the

1 circumstances, the adjustment in the Purchase Price and the Amendment are appropriate  
2 and acceptable. The Property was marketed over a 6 month period of time and ML  
3 Manager and the Broker negotiated potential sales with multiple parties. This Buyer  
4 provided the highest bid, even taking into account this adjustment in the Purchase Price to  
5 \$13,877,500. Further Buyer is sophisticated and has the ability to pay cash at closing and  
6 close the transaction as amended. It is possible that with this Amendment the deal can  
7 close in mid-December 2011. The Buyer has invested a significant amount of time and  
8 resources in getting to this point in time and is vested in closing this deal. If ML Manager  
9 had not accepted this Amendment and adjustment in price, it would have needed to  
10 remarket the Property and all other potential purchasers would have the same limitations  
11 on density and use as this Buyer. It is not certain that by remarketing the Property that  
12 ML Manager would obtain another buyer within a reasonable period of time or for any  
13 more money. ML Manager in the exercise of its business judgment believes entering into  
14 this Amendment and selling at this time for the adjusted price is the best business decision  
15 for the investors and that this decision is consistent with its duties and responsibilities to  
16 the investors.

17 The other provisions in the Sale Order, such as the Escrowed Funds provision for  
18 the Lis Pendens Objectors, remain unchanged in the Sale Order.

19 WHEREFORE, ML Manager LLC requests that the Court enter an order  
20 authorizing and approving the Amendment as set forth above, and for such other and  
21 further relief as is just and proper under the circumstances.

22 DATED: November 10, 2011

23 FENNEMORE CRAIG, P.C.

24 By /s/ Cathy L. Reece  
25 Cathy L. Reece  
Attorneys for ML Manager LLC

26 2508182

# EXHIBIT

# A

**FIFTH AMENDMENT TO  
AGREEMENT OF SALE AND PURCHASE  
(Portales Place)**

This Fifth Amendment to Agreement of Sale and Purchase (this "Amendment") is made effective as of November 8, 2011, by and among PPP Loan LLC, an Arizona limited liability company ("PPP"); ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners listed on Exhibit "A" attached to the Purchase Agreement described below (with PPP, the "Owners"); (collectively, "Seller"); and JLB Portales Partners L.P., a Texas limited partnership ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party".

**RECITALS**

Seller and JLB Realty LLC, a Texas limited liability company, whose interests have been assigned to Buyer previously executed that certain Agreement of Sale and Purchase (Portales Place), dated April 1, 2011, as amended (the "Purchase Agreement"). The Purchase Agreement is the subject of Escrow No. 114960 with Thomas Title & Escrow. The parties desire to amend the Purchase Agreement on the terms and conditions set forth herein.

**AGREEMENT**

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Capitalized terms used in this Amendment have the meanings given to them in the Purchase Agreement, unless they are separately defined herein.
2. The Purchase Agreement is hereby reinstated and acknowledged to be in full force and effect, as previously amended and as amended hereby.
3. The Purchase Price is reduced by the amount of \$787,500, so that the revised Purchase Price is \$13,877,500. The Purchase Price is subject to adjustment as provided below. The Purchase Price is based upon Buyer being able to obtain approval from the City of Scottsdale (the "City") for the development of not more than 369 residential units (the "Units") on the Property. If, within three (3) years following the Closing Date, Buyer is able to obtain approval from the City for the development of more than 369 Units, then Buyer shall pay to Seller, as additional Purchase Price (the "Additional Purchase Price"), an amount equal to the lesser of: (a) \$787,500.00; or (b) the amount of \$37,500 for each Unit approved by the City for development on the Property in excess of 369 Units ("Excess Units"). For example, if the City approved the development of 380 Units on the Property, the Additional Purchase Price would be \$412,500 (\$37,500 per Unit x 11 Units). Buyer shall pay the Additional Purchase Price to Seller within 15 days after the final approval by the City's Design Review Board of the number of Units permitted for development on the Property, including the expiration of all appeal periods in connection therewith with no appeal having been filed or if an appeal is filed, the appeal shall have been dismissed and the final approval upheld. Any portion of the Additional Purchase Price

PHX/2503823.6/028149.0031

that is not paid when due shall bear interest at the rate of 15% per annum until paid. The obligation to pay the Additional Purchase Price shall survive the Closing and be binding upon successor owners of the Property until paid. The Additional Purchase Price will only be payable in connection with Excess Units which are finally approved by the City within three (3) years following the Closing Date. At the Closing, the parties shall execute and record a memorandum (the "Memorandum") that gives notice of the obligation of Buyer to pay the Additional Purchase Price, and provides that the obligation is binding upon successor owners of the Property until paid with respect to Excess Units finally approved by the City within three (3) years following the Closing Date. If Excess Units are not finally approved by the City within three (3) years following the Closing Date, the Memorandum and all obligations of Buyer thereunder and under this paragraph shall terminate. The Memorandum shall be in form and substance reasonably satisfactory to Seller and Buyer.

4. Within two (2) business days following Buyer's receipt of a fully executed copy of this Amendment, Buyer shall deposit with Escrow Agent the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Additional Deposit") by wire transfer, cashier's check, or other readily available funds. The Additional Deposit shall be applicable to the Purchase Price. If the Purchase Agreement is not terminated by Buyer prior to the expiration of the Approvals Period (described below), then the Additional Deposit shall be non-refundable to Buyer, except as expressly provided in this Amendment and except that if the Purchase Agreement is terminated pursuant to Sections 7, 8, 14 or 18.2 of the Purchase Agreement, then Buyer shall be entitled to obtain a refund of the Additional Deposit. The Deposit and the Additional Deposit shall be applicable to the Purchase Price at the Closing.

5. Buyer will have a period of 30 days from date of this Amendment (the "Approvals Period") in which to obtain the approvals required by Buyer for the development of the Property, in Buyer's sole discretion (collectively, the "Approvals"). If Buyer is unable to obtain the Approvals that Buyer determines are necessary for the development of the Property, in Buyer's sole discretion, then Buyer may terminate the Purchase Agreement by giving written notice of termination to Seller and Escrow Agent at any time prior to the expiration of the Approvals Period. If no such written notice is given to Seller and Escrow Agent prior to the expiration of the Approvals Period, then Buyer will be deemed to have elected to waive its right to terminate the Purchase Agreement pursuant to this Section, and the Additional Deposit shall be non-refundable to Buyer, except as expressly provided in the Purchase Agreement. If the Purchase Agreement is terminated pursuant to this Section, Escrow Agent shall return the Additional Deposit to Buyer not later than the second business day after such termination, and the parties shall have no further obligations hereunder, except as expressly provided in the Purchase Agreement.

6. As a result of the modification of the Purchase Price and the other provisions of this Amendment, Seller is required to obtain the Lender Approval, Member Approval and approval of the Court (as described in Section 1.2(a) of the Purchase Agreement) for this Amendment (the "Modification Contingencies"). Seller will attempt to satisfy the Modification Contingencies by taking such action as it deems appropriate; provided, however, Seller shall not be in default hereunder if any of the Modification Contingencies is not satisfied. If all of the Modification Contingencies have been satisfied prior to the end of the period commencing on the date hereof and ending 30 days thereafter (the "Modification Contingency Period"), then Seller

shall notify Buyer of such satisfaction (the "Modification Contingency Satisfaction Notice"), and this Agreement shall continue in full force and effect. If all of the Modification Contingencies have not been satisfied prior to the end of the Modification Contingency Period, then Seller shall notify Buyer that the Modification Contingencies have not been satisfied, whereupon either party may terminate this Agreement by written notice to the other party. Upon any such termination, Escrow Agent (defined below) shall return the Additional Deposit to Buyer not later than the second business day after such termination, and Seller and Buyer shall have no further obligations hereunder, except as expressly provided in the Purchase Agreement.

7. The Closing Date under Section 10 of the Purchase Agreement is extended to five (5) business days after the expiration of the Approvals Period.

8. Except as modified herein, the Purchase Agreement remains in full force and effect.

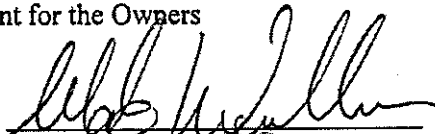
9. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument. Facsimile or pdf signatures on this Amendment shall be valid.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date above first written.

**SELLER:**

PPP LOAN LLC, an Arizona limited liability company

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

By:   
Mark Winkleman,  
Chief Operating Officer

**BUYER:**

JLB PORTALES PARTNERS L.P.,  
a Texas limited partnership

By: JLB Portales Partners GP LLC,  
a Texas limited liability company,  
its General Partner

By:   
Ben Miltenberger, Manager