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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

**MOTION TO SELL REAL PROPERTY**

**Real Property located at 5116 N. Dysart Rd.,  
Litchfield Park, Arizona**

**Hearing Date: December 19, 2011**

**Hearing Time: 11:30 a.m.**

18 ML Manager LLC (“ML Manager”), requests that the Court enter an order  
19 authorizing ML Manager as the manager for NRDP Loan LLC and the agent for certain  
20 Pass-Through Investors to sell the real property located at 5116 N. Dysart Rd., Litchfield  
21 Park, Arizona, as more specifically described in the Sale Agreement (“Property”), to The  
22 Southwest Mack Corporation, an Arizona corporation (“Purchaser”) for the price of \$2.3  
23 million (“Purchase Price”) and on the terms set forth in the Agreement of Sale and  
24 Purchase (“Sale Agreement”) which is attached as Exhibit A or upon better terms as  
25 reasonably determined by ML Manager. The Sale Agreement has a contemplated closing  
26 of early January, 2012.

1 Borrower National Retail Development Partners I LLC defaulted on its loan with  
2 Mortgages Ltd. The unpaid principal balance on the loan (Loan No. 860905) is about  
3 \$5,201,962. Interest and fees also are due. ML Manager held a deed of trust sale and  
4 foreclosed on the Property. The guarantors are Rick and Mollie Sodja and Trent and Amy  
5 Schelkopf. Pursuant to the Official Investors' Committee's First Amended Plan confirmed  
6 by the Court, NRDP Loan LLC was formed on the effective date and the fractional  
7 interests in the note and deed of trust which were held by the MP Funds were transferred  
8 into NRDP Loan LLC. Subsequently some of the pass-through investors transferred their  
9 interests into NRDP Loan LLC. At the time of the trustee sale, 12 Pass-Through Investors  
10 had not transferred their fractional interests ("Pass-Through Investors"). As a result,  
11 73.872% of the interest in the real property is owned by NRDP Loan LLC and the rest is  
12 owned by the 12 Pass-Through Investors in the loan.

13 ML Manager retained the services of CB Richard Ellis, a leading real estate  
14 brokerage firm, to widely market the property for sale. After completing substantial  
15 marketing efforts, Purchaser made an offer of \$2.3 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. Because the property has already been fully marketed, this is not proposed to be  
19 an auction and no higher and better bids are being solicited. The contingencies include  
20 approval by the investors in NRDP Loan LLC and the applicable MP Funds and  
21 Bankruptcy Court approval. One of the contingencies is the waiver of the right to compete  
22 by the exit financier. The Purchase Price is to be paid in cash at closing. This is an arms-  
23 length, negotiated sale between unrelated parties. The anticipated closing is early January,  
24 2012. The Property partially completed buildings and is being sold "As-Is" "Where-Is"  
25 and "With All Faults".

26 Even though the debt will not be paid in full, ML Manager believes that this price

1 reflects the current market value of the Property and that it is unlikely in the foreseeable  
2 future to get a higher amount for the Property. ML Manager believes that this sale is in the  
3 best interest of the investors in the Loan LLC and the Pass-Through Investors and is a  
4 valid exercise of its business judgment consistent with any fiduciary responsibilities.

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

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

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

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

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

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

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

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

25 ...  
26 ...

1 DATED: November 30, 2011

FENNEMORE CRAIG, P.C.

2  
3 By /s/ Cathy L. Reece  
4 Cathy L. Reece

5 Attorneys for ML Manager LLC

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# EXHIBIT

# A

**AGREEMENT OF SALE AND PURCHASE  
(5116 North Dysart Road)**

This Agreement of Sale and Purchase (this "Agreement") is made effective as of November \_\_\_\_, 2011 (the "Effective Date"), by and among NRDP Loan LLC, an Arizona limited liability company, as to an undivided 73.872% ownership in the Property (as hereinafter defined) ("NRDP"); and ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners listed on Exhibit "A" attached with an undivided 26.128% ownership interest in the Property (with NRDP, the "Owners") (collectively, "Seller"); and The Southwest Mack Corporation, an Arizona corporation ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party."

**RECITALS**

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

B. NRDP 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"), in connection with a loan made by Mortgages Ltd., an Arizona corporation (now known as ML Servicing Company, Inc.) ("ML").

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 Property from Seller, and Seller is willing to enter into an agreement with Buyer regarding the purchase of the Property, 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, which is located for mailing purposes at 5116 North Dysart Road, Litchfield Park, Arizona, but located in Maricopa County, AZ and not in Litchfield Park, Arizona, 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

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avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; (v) permits, licenses, applications, approvals, and any other authorizations issued by governmental entities or quasi-governmental entities for the Property; (vi) entitlements, subdivision agreements and other agreements relating to the development of Property; (vii) plats, plans, drawings, designs, engineering materials, studies, reports and other documents relating to any improvements to or serving the Property; (viii) claims, awards, and any similar rights relating to and benefiting the Property; (ix) water and sewer taps and hookup connections relating to the Property; (x) development rights benefiting the Property; (xi) rights to receive any payments, impact fee or other credits, reimbursements, or refunds arising from any payments, dedications or any other actions taken by any predecessor in title to the Property; (xii) 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, (xiii) pre-paid impact fees, school fees, and/or development fees of any kind previously paid by any predecessor in title to the Property, (xiv) 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 (xv) any other rights, privileges, and appurtenances owned by Seller and related to, or used in connection with the operation of the Land to the extent that they are assignable (collectively, the "Property"). However, the Property does not include any rights of Seller, NRDP, Agent or the Owners as against any borrower or guarantor of the loan that was previously secured by the Property, or any rights to the extent related to other property.

## 1.2 Contingencies.

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

(i) Intentionally Deleted;

(ii) the members of NRDP ("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 NRDP (the "Members Approval"); and

(iii) If Seller deems it necessary, Seller must have obtained the approval of the Court by final order with respect to the sale to Buyer for which no stay order pending appeal has been ordered, and the Title Insurer (described below) is committed to issue the Title Policy (described in Section 7.7 below).

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

(c) If all of the Contingencies have been satisfied prior to the end of the period commencing on the Effective Date and ending 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 that the Contingencies have not been satisfied, whereupon either party may terminate this Agreement by written notice to the other party. Upon any such termination, Escrow Agent (defined below) shall return the Deposit (defined below) to Buyer, and Seller and Buyer shall have no further obligations hereunder, except as expressly provided herein.

2. Opening of Escrow. Upon execution of this Agreement by Seller and Buyer, the parties will establish an escrow with Thomas Title & Escrow (Diane F. Carpenter), Promenade Corporate Center, 16435 N. Scottsdale Road, Suite 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 by execution of the Agreement and Consent of Escrow Agent 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. 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 Three Hundred Thousand Dollars (\$2,300,000.00) (the "Purchase Price"). The Purchase Price shall be payable as follows:

(a) Upon execution of this Agreement by Seller and Buyer, Buyer shall deposit with Escrow Agent the amount of Fifty Thousand Dollars (\$50,000.00) (the "Deposit") by wire transfer, cashier's check, or other readily available funds.

(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 at Seller's office the following documents to the extent they are in Seller's possession: all permits, approvals, plats, plans, specifications, certificates, surveys, engineering reports (including, without limitation, any geotechnical reports), studies, environmental reports, appraisals, leases, permits, contracts, improvement plans, utility plans, architectural plans and elevations, construction bids and/or estimates and other materials relating to the condition or development of the Property (collectively, the "Property Documents"). Seller makes no representation or warranty that (i) the Property Documents provided will constitute all information which exists concerning the Property or that

such information will be sufficient in itself to permit an adequate analysis of the Property or (ii) the Property Documents are complete, current or accurate.

5. Feasibility Analysis. During the period commencing on the Effective Date and ending thirty (30) days thereafter (the "Feasibility Period"), Buyer will determine whether the Property is suitable for Buyer's acquisition, including whether Buyer shall have the right to use of Seller's monument sign(s). Seller agrees to cooperate with Buyer in assisting Buyer in Buyer's efforts to perform due diligence during the Feasibility Period, provided that Seller shall not be required to incur any costs in providing such cooperation. 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 terminate this Agreement pursuant to this Section, Escrow Agent shall return the Deposit to Buyer, and the parties shall have no further obligations hereunder, except as expressly provided herein. Buyer may at its election, extend the Feasibility Period for fifteen (15) days ("First Extension Period") by giving written notice of such extension to Seller and Escrow Agent prior to the expiration of the Feasibility Period. The sole purpose of the First Extension Period shall be for Buyer to obtain a satisfactory lease of the Property to Goodwill Industries, and by such extension Buyer shall be deemed to have accepted the Property and waived all other feasibility conditions. If during the First Extension Period Buyer (i) is unable to obtain a fully executed lease of the Property with Goodwill Industries ("Goodwill") or (ii) determines, in Buyer's good faith, that Buyer will not be able to satisfy any or all of the contingencies that are incorporated in the Goodwill lease, then Buyer may at its election, extend the Feasibility Period for an additional fifteen (15) days ("Second Extension Period") solely for the purposes of obtaining a fully executed lease with Goodwill by giving written notice of such extension to Seller and Escrow Agent prior to the expiration of First Extension Period and by depositing with Escrow Agent the amount of \$10,000 (the "Extension Payment"). The Extension Payment shall be nonrefundable to Buyer as of the end of the First Extension Period. Such Extension Payment shall be considered part of the Deposit and shall apply to the Purchase Price. If Buyer determines to terminate this Agreement on account of the failure to obtain an executed lease with Goodwill, Buyer shall give written notice of termination to Seller and Escrow Agent prior to the expiration of the First Extension Period or Second Extension Period, as applicable. If no such written notice is given to Seller and Escrow Agent prior to the expiration of the First or Second Extension Period, as applicable, 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 during the First or Second Extension Period, then Escrow Agent shall disburse the Extension Payment to Seller (if termination occurs during the Second Extension Period), shall return the balance of the Deposit to Buyer, and the parties shall have no further obligations hereunder, except as expressly provided herein.

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

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

6.5 if this Agreement is terminated, then promptly after such termination, furnish to Seller, at no cost or expense to Seller, copies of all surveys, soils, engineering and environmental reports, which Buyer has obtained or will obtain with respect to the Property;

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

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

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

(iv) any and all other activities undertaken by Buyer or Buyer's representatives with respect to the Property. Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth in this Section 6 survive any termination of this Agreement.

7. Title Review.

7.1 Status of Title. No later than five (5) days after Opening of Escrow, Escrow Agent shall provide Buyer and Seller with a commitment ("Title Report") of the title to the Property for issuance of an extended coverage owner's policy of title insurance, disclosing all matters of record which relate to the title to the Property, and Escrow Agent's requirements for both closing the escrow created by this Agreement and issuing the policy of title insurance described herein. At such time 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 until fifteen (15) days after receipt of the Title Report (the "Title Review Period") to object in writing to any matter shown in the Title Report. If Buyer fails to object within the Title Review Period, the condition of title to the Property as reflected in the most recent Title Report issued to Buyer shall be deemed approved by Buyer. If Buyer does object to any matter disclosed in the Title Report, Buyer shall deliver a written notice of such objection (an "Objection Notice") to Seller and Escrow Agent within the Title Review Period. All matters in the Title Report to which Buyer does not object in an Objection Notice, and any matters subsequently approved by Buyer, 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 shall deliver a written notice (a "Response") to Buyer and Escrow Agent within five (5) days after receipt of such Objection Notice, which Response shall 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, in which event Buyer shall be entitled to the 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 terminate this Agreement. If Seller has agreed to cure an objection, and the objection is not satisfied on the Closing Date, Buyer shall have the right, as its sole remedies, either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit, or (b) to proceed with this transaction and waive such objection. In the event that Buyer waives an

objection, the item with respect to which the objection was made shall be deemed to be an Approved Exception.

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. A failure of Seller's agreement to remove any new title document shall result in the same remedies referenced in Section 7.3.

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

7.6 Mechanics' and Materialmen's Liens. Seller discloses that there are several claims of mechanics' and materialmen's liens that encumber the Property (the "Lien Claims"). 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 7.6 is not satisfied at Closing. Notwithstanding the foregoing, if Title Insurer fails to remove all such liens, Buyer shall have the right, as its sole remedies, either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit or (b) to proceed with this transaction and Close on the Property.

7.7 Condition of Closing. It shall be a condition of Buyer's obligations hereunder that at the Closing, that the title insurer for Escrow Agent (the "Title Insurer") shall deliver to Buyer a 2006 ALTA extended coverage owner's title insurance policy (the "Title Policy") or the unconditional commitment of Title Insurer to issue such policy with a limit of liability in the amount of the Purchase Price, insuring that fee simple title to the Property is held by Buyer subject only to (a) the printed exceptions normally contained in such policy, (b) the Approved Exceptions and any exceptions which are approved by Buyer pursuant to Section 7, and (c) any interests (such as deeds of trust or mortgages) which may be granted by Buyer.

## 8. Conditions to Closing.

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

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

(b) Seller will not be in default of this Agreement.

(c) Title Insurer will be irrevocably and unconditionally committed to issue the Title Policy to Buyer, subject to only the matters described in Section 7.7.

(d) The Contingencies have been satisfied.

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 any of the conditions set forth in subsections (c) and (d) above are 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 of the Agreement.

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

9. Transfer of Title. At the Close of Escrow, Seller will convey title to the Property to Buyer by a special warranty deed in the form attached hereto as Exhibit "C" (the "Deed") and 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 later to occur of the following (the "Closing Date"): (a) seven (7) days after the expiration of the Feasibility Period, subject to any extension of the Feasibility Period as provided for herein; or (b) three days after Seller gives Buyer the Contingency Satisfaction Notice under Section 1.2(c) above.

11. Closing Documents.

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

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

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

(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.

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

(a) deliver the Purchase Price, less the amount of the Deposit, to the Escrow Agent for distribution to Seller, by wire transfer 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 Escrow Agent may require or request, in form and substance reasonably acceptable to Buyer, in order to consummate the transactions contemplated by this Agreement.

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

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

12.1 Apportionments. Seller will pay the fee for the standard coverage owner's portion of the Title Policy and any endorsements obtained by Seller to eliminate any title exceptions objected to by Buyer; 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 (not otherwise Seller's obligations as noted above), plus the cost of any title endorsements Buyer may request. Real property taxes and general and special assessments will be prorated 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. This provision shall survive the Closing Date but here 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 and, in such event, Seller shall deliver to Buyer a copy of Seller's contract and/or other relevant material with the third party that is undertaking any such property tax appeal within five (5) days after the Effective Date. 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 pro rations provided for under Section 12 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 will 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. This provision shall survive until completion of the property tax appeal on the Property.

13. Damage or Condemnation. If, prior to the Close of Escrow, all or any material 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 eminent domain proceeding, in which event Escrow Agent will return the Deposit to Buyer, and the parties will have no further obligations hereunder, except as expressly provided herein. If Buyer fails to give notice or termination during the foregoing 20-day period, Buyer shall be deemed to have elected to waive its right to terminate, the parties shall proceed with the purchase and sale transaction described herein, and all rights, claims, benefits, insurance proceeds, or other consideration relating to the damage, destruction or eminent domain proceeding shall be assigned and transferred to Buyer at Close of Escrow. For purposes of this Agreement, a "material portion of the Property" shall mean damage or loss to the Property in the amount of \$250,000 or more.

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

14.1 Agreements. Except for any matters that are disclosed in the Property Documents and any matters that are disclosed in the Title Report, to Seller's knowledge, Seller has not entered into any contract, operating arrangement, lease or other agreement relating to the Property that will remain in effect 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.

For purposes of this Section 14, the phrase "Seller's knowledge" 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 will, subject to Section 17, survive the Closing Date for a period of three 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. Buyer has full power and authority to enter into this Agreement and all documents executed pursuant to this Agreement, and to perform its obligations in accordance with the terms and conditions hereof and thereof.

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

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

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

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

16.1 Seller Inducements. To induce Seller to accept this Agreement, Buyer acknowledges that, except as expressly set forth in this Agreement: (i) no understandings, representations or promises of any kind have been made to induce the execution of this Agreement; (ii) Buyer has not relied on any oral agreement, statement, representation or other promise; (iii) none of Seller, Seller's agents or any brokers have made any express or implied warranties concerning the condition of the Property, 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 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 familiar with the Property; (iii) Buyer is relying solely upon 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 environmental conditions, or any other conditions (whether patent, latent or otherwise) affecting the Property, except for claims against Seller based upon any obligations and liabilities of Seller expressly provided in this Agreement. Buyer further acknowledges and agrees that this release will be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to known and suspected claims, damages, and causes of action. The provisions of this Section 16.3 will survive the Closing and delivery of the Deed. Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit all of the Seller Parties from any such unknown losses, damages, liabilities, costs and expenses.

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

18. Remedies.

18.1 Seller's Remedies. If Buyer fails to deposit the Purchase Price in accordance with the terms of this Agreement, or to timely close escrow as required hereunder, or fails to perform any of its other obligations under this Agreement, which failure is not cured within three (3) business days after written notice from Seller, Seller shall be entitled, as Seller's sole and exclusive right and remedy hereunder, to terminate this Agreement by giving written notice of termination to Buyer, in which event Seller shall be entitled to receive and 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.

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 any 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 following such purported default. Notwithstanding

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

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

19. Brokerage Commission. If and only if the Closing hereunder occurs, Seller agrees to pay a commission to CB Richard Ellis, Seller's broker, in an amount set forth in a separate agreement. 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  
Email: mwinkleman@mtgltd.com

with a copy to:

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

20.2 If addressed to Buyer:

The Southwest Mack Corporation

2415 East Camelback Road, Suite 350  
Phoenix, Arizona 85016  
Attn: Ralph Henig

with a copy to:

Ballard Spahr LLP  
1 East Washington Street, Suite 2300  
Phoenix, Arizona 85004  
Attention: M. Virginia Perry  
Facsimile: (602) 79805595  
Telephone: (602) 798-5473  
Email: [perryg@ballardspahr.com](mailto:perryg@ballardspahr.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](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.

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. The parties may deliver their signatures by email or facsimile transmission.

21.6 Assignment. Buyer may assign its rights and obligations under this Agreement to an entity that controls, is controlled by or is under common control with the Buyer, upon written notice of such assignment to Seller. Any other assignment by Buyer of its rights and obligations hereunder shall be subject to Seller's prior written approval, which shall not be unreasonably withheld.

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.

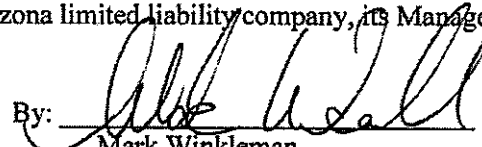
(Signatures of the parties appear on the following page.)

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

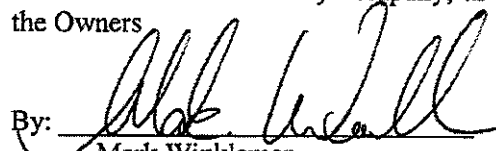
**SELLER:**

NRDP LOAN LLC, an Arizona limited liability company

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

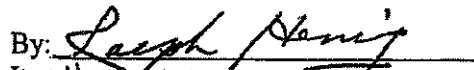
By:   
Mark Winkleman,  
Chief Operating Officer

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

By:   
Mark Winkleman,  
Chief Operating Officer

**BUYER:**

THE SOUTHWEST MACK CORPORATION,  
an Arizona corporation

By:   
Its: VICE 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 \_\_\_\_ day of November, 2011.

Thomas Title & Escrow, LLC

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_



**EXHIBIT "A"**

**NAMES 004FF OWNERS OF PROPERTY**

NRDP Loan LLC, an Arizona limited liability company, as to an undivided 73.872% interest;

Robert L. Barnes, Jr., a single man, as to an undivided 1.210%;

Equity Trust Company, Custodian FBO Bruce D. Buckley IRA Acct.#3XXXX, as to an undivided 1.538% interest;

Morris A. Kaplan, Trustee of Carolyn's Interiors Ltd., Profit Sharing Plan & Trust dated October 4, 1990, as to an undivided 0.867% interest;

Harold J. Christ, Ltd., an Arizona corporation, as to an undivided 4.183% interest;

Queen Creek XVIII, L.L.C., an Arizona limited liability company, as to an undivided 9.612% interest;

James L. Kaplan and Karen L. Kaplan, husband and wife, as joint tenants with right of survivorship, as to an undivided 0.144% interest;

Lorinda S. McMullen and Laura Martini, as joint tenants with right of survivorship, as to an undivided 1.000% interest;

Gabriel Martini and Laura Martini, as joint tenants with right of survivorship, as to an undivided 0.043% interest;

First Trust Company of Onaga, Custodian FBO Laura Martini IRA Acct # TW00XXXX, as to an undivided 1.129% interest;

First Trust Company of Onaga, Custodian FBO Lorinda S. McMullen IRA #41021XXXX, as to an undivided 1.158% interest;

Kimberly Westberg and LaVerne Westberg, Trustees of The Westberg Family Trust, dated May 26, 1998 and any amendments thereto, as to an undivided 1.992% interest; and

Chris Welsh and Tracey Welsh, husband and wife, as joint tenants with right of survivorship, as to an undivided 3.252% interest.

**Exhibit "B"**  
**Legal Description**

Lot 7, of FINAL PLAT OF CAMELBACK PLACE AT DYSART, a subdivision recorded in Book 917 of Maps, Page 48 of the records of the County Recorder of Maricopa County, Arizona.

PHX/2500658.5/028149.0036  
DMWEST #8618475 v1

B-1

**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, NRDP Loan LLC, an Arizona limited liability company, as to an undivided 73.872% ownership ("NRDP") 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 as to an undivided 26.128% ownership (NRDP and Owners collectively "Grantor"), does 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 (iv) and 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**

NRDP LOAN LLC, an Arizona limited liability company

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

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 NRDP LOAN LLC, an Arizona limited liability company, on behalf of the company.

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

My Commission Expires:

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, on behalf of the company as the Agent for the Owners.

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

My Commission Expires:

**EXHIBIT A  
TO THE SPECIAL WARRANTY DEED**

Legal Description of the Property

PHX/2500658.5/028149.0036  
DMWEST #8618475 v1

C-4

**EXHIBIT B  
TO THE SPECIAL WARRANTY DEED**

List of Owners

PHX/2500658.5/028149.0036  
DMWEST #8618475 v1

C-5

**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 NRDP 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) 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, (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, and (xi) 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") but reserving to Assignor any of the Assigned Items to the extent related to other property.

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



## AGREEMENT

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

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

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

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

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

(Signatures appear on the following page.)

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

ASSIGNOR:

NRDP LOAN LLC, an Arizona limited liability company

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

PHX/2500658.5/028149.0036  
DMWEST #8618475 v1

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