

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  
11 FOR THE DISTRICT OF ARIZONA

12 In re

Chapter 11

13 MORTGAGES LTD.,

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

14 Debtor.

**MOTION TO SELL REAL PROPERTY**

**Real Property located in Pinal County, Arizona  
known as All State XVI and All State IX  
properties**

**Hearing Date: August 30, 2012  
Hearing Time: 2:30 p.m.**

15  
16  
17  
18  
19 ML Manager LLC (“ML Manager”), requests that the Court enter an order  
20 authorizing ML Manager as the manager for ASA XVI Loan LLC and ASA IX Loan LLC  
21 and the agent for certain Pass-Through Investors to sell the real property located in Pinal  
22 County, Arizona, as more specifically described in the Sale Agreement (“Property”), to  
23 Wilson Property Services, Inc., an Arizona corporation, (“Purchaser”) for the price of  
24 \$922,950 (“Purchase Price”) and on the terms set forth in the Agreement of Sale and  
25 Purchase (“Sale Agreement”) which is attached as Exhibit A or upon better terms as  
26 reasonably determined by ML Manager. The Purchase Price will be allocated between the

1 two properties based upon the respective acres. The Sale Agreement has a contemplated  
2 closing of October 11, 2012.

3 Borrower All State Associates of Pinal IX, LLC defaulted on its loan with  
4 Mortgages Ltd. The unpaid principal balance on the loan (Loan No. 861506) is about  
5 \$17,750,000. Interest and fees also are due. ML Manager held a deed of trust sale and  
6 foreclosed on the Property. The guarantors are C. Thomas and Pamela Cummings have  
7 filed their own chapter 7 bankruptcy proceeding. Pursuant to the Official Investors'  
8 Committee's First Amended Plan confirmed by the Court, ASA IX Loan LLC was formed  
9 on the effective date and the fractional interests in the note and deed of trust which were  
10 held by the MP Funds were transferred into ASA IX Loan LLC. Subsequently some of the  
11 pass-through investors transferred their interests into ASA IX Loan LLC. At the time of  
12 the trustee sale, 6 Pass-Through Investors had not transferred their fractional interests  
13 ("Pass-Through Investors"). As a result, 97.377% of the interest in the real property is  
14 owned by ASA IX Loan LLC and the rest is owned by the 6 Pass-Through Investors in  
15 the loan. ML Manager previously sought Court and investor approval to sell substantially  
16 all of the ALL State IX property and after it obtained the approvals closed that sale in  
17 April 2011. The last acreage of the All State IX property which is about 80 acres is  
18 included in this sale.

19 Borrower All State Associates of Pinal XVI, LLC defaulted on its loan with  
20 Mortgages Ltd. The unpaid principal balance on the loan (Loan No. 859506) is about  
21 \$20,000,000. Interest and fees also are due. ML Manager held a deed of trust sale and  
22 foreclosed on the Property. The guarantors are C. Thomas and Pamela Cummings have  
23 filed their own chapter 7 bankruptcy proceeding. Pursuant to the Official Investors'  
24 Committee's First Amended Plan confirmed by the Court, ASA XVI Loan LLC was  
25 formed on the effective date and the fractional interests in the note and deed of trust which  
26 were held by the MP Funds were transferred into ASA XVI Loan LLC. Subsequently

1 some of the pass-through investors transferred their interests into ASA XVI Loan LLC. At  
2 the time of the trustee sale, 9 Pass-Through Investors had not transferred their fractional  
3 interests (“Pass-Through Investors”). As a result, 94.421% of the interest in the real  
4 property is owned by ASA XVI Loan LLC and the rest is owned by the 9 Pass-Through  
5 Investors in the loan. All of the All State XVI property will be included in this sale.

6 ML Manager retained the services of Land Advisors Organization, and Cassidy  
7 Turlsey/BRE Commercial, leading real estate brokerage firms, to widely market the  
8 property for sale for over two years. After completing substantial marketing efforts,  
9 Purchaser made an offer of \$922,950 and ML Manager entered into the Sale Agreement  
10 with Purchaser for that price, subject to the regular contingencies for ML Manager.  
11 Purchaser has deposited \$20,000 and opened escrow at Thomas Title & Escrow and will  
12 make an additional deposit of \$30,000 after expiration of the Feasibility Period. Because  
13 the property has already been fully marketed, this is not proposed to be an auction and no  
14 higher and better bids are being solicited. The contingencies include approval by the  
15 investors in both Loan LLCs and the applicable MP Funds and Bankruptcy Court  
16 approval. One of the contingencies is the waiver or the exercise of the right to compete by  
17 the exit financier which has already been waived. The Purchase Price is to be paid in cash  
18 at closing. This is an arms-length, negotiated sale between unrelated parties. The  
19 anticipated closing is October 11, 2012. ML Manager believes that this price reflects the  
20 current market value of the Property and that it is unlikely in the foreseeable future to get  
21 a higher amount for the Property.

22 The sale of the ASA IX property which consists of approximately 80 acres will  
23 generate about \$126,215 of gross sale proceeds. After payment of the closing costs and  
24 real property taxes of about \$115,000, there will be about \$11,215 of net sale proceeds.  
25 The allocated costs under the Cost Allocation Model for this Property were fully paid  
26 previously upon the sale of the bulk of the All State IX properties. The remaining sale

1 proceeds will be distributed as provided for in the Plan and Confirmation Order. Pursuant  
2 to the Interborrower Agreement, the other Loan LLCs and the ML Liquidating Trust shall  
3 reimburse ASA IX Loan LLC for their proportionate share of the exit financing plus  
4 interest as they collect or dispose of their properties and assets. As ASA IX Loan LLC is  
5 reimbursed the distributions can be made by ASA IX Loan LLC to its members. Once the  
6 80 acres are sold, no more property remains to be sold for the ASA IX investors.

7         The sale of the ASA XVI property consists of about 505 acres. Assuming a gross  
8 sale price for the ASA XVI property of \$796,735 the gross sale price will be reduced by  
9 the closing costs and the real property taxes in an amount estimated to be approximately  
10 \$665,000, leaving a balance of \$131,735. The amount of expenses allocated to the  
11 property under the Court approved cost allocation model is about \$1,600,000. This  
12 amount is based on the original principal loan balance of the loan of \$20 million.  
13 Obviously, the sales proceeds will be substantially insufficient to pay such costs.  
14 Although a portion of the allocated costs could be paid from the net sales proceeds and the  
15 exit financing will be reduced, no funds will remain for distribution to the investors. It is  
16 not the desire of ML Manager to sell properties for amounts that will not return funds to  
17 the investors, however, the prospects for ASA XVI are bleak. In order to generate enough  
18 money to merely pay the costs allocated to ASA XVI, the property would have to sell for  
19 approximately \$2,500,000. ML Manager does not think there is any realistic likelihood of  
20 the property appreciating to this value for many years. In the mean time, the interest and  
21 taxes will continue to accrue and any future increase in value is uncertain. Even if a price  
22 of \$2,500,000 were achieved, the costs allocated to the property would be paid and no  
23 funds would remain for distribution to investors. Under the Cost Allocation Model, if a  
24 property cannot cover its allocated costs then such uncovered costs are then reallocated  
25 and become the burden of the other properties. This sale of the ASA XVI property would  
26 generate funds to reduce some of the allocated costs owed by this property, which in turn

1 will help investors who are in other loans by covering what would otherwise be uncovered  
2 costs for which they will be responsible. Further, if the sale is not approved and closed,  
3 ML Manager has no money to pay the past due property taxes or future taxes and it is  
4 likely that tax liens will be foreclosed at some point and investors will lose the property.  
5 ML Manager believes that this sale of both Properties is in the best interest of the  
6 investors in both Loan LLCs and the Pass-Through Investors and is a valid exercise of its  
7 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 Loan LLCs, since this event is a Major  
14 Decision, ML Manager must seek approval of the sale from the investors in both of the  
15 Loan LLCs and the MP Funds investors. Approval must be obtained by a majority of the  
16 investors' dollars voting. The voting process will start shortly and by the time the parties  
17 get to a sale hearing the results will be known to ML Manager. If approved ML Manager  
18 asserts it has the authority and ability to go forward with the sale of the Loan LLC  
19 interests.

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

26 ML Manager asserts that the Court has retained and reserved jurisdiction in the

1 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among  
2 others, and has the authority to approve the sale under Section 105 of the Bankruptcy  
3 Code, among other sections, as an order in aid of implementation of the Plan. As the  
4 Court has noted at several prior sale hearings, there is a close nexus between the sale  
5 motion and the bankruptcy because the relief requested is an important part of the Plan.  
6 *See, State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th  
7 Cir. 2005). The Plan specifically called for the creation of the ML Manager to manage the  
8 Loan LLCs and to step into the role as manager of the MP Funds and agent of non-  
9 transferring pass through investors. The relief requested by ML Manager affects the  
10 amount of money that the investors will receive and the pay down of the exit financing.  
11 Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

12 As is customary ML Manager does propose to pay the closing costs, real property  
13 and any commission as set forth in the Sale Agreement at the closing out of the gross sale  
14 proceeds. ML Manager also proposes to pay the replacement loans to the other Loan  
15 LLCs, from the Loan LLC's portion of the sale proceeds pursuant to the Loan Agreement  
16 and the Interborrower Agreement.

17 Pursuant to the Allocation Model which has been approved by this Court, ML  
18 Manager will pay to the extent funds are available amounts allocated to the Pass-Through  
19 Investors as their fair share of the expenses, including exit financing. Also pursuant to the  
20 Allocation Model, ML Manager will pay to the extent funds are available amounts  
21 attributable to the ownership interest to the Loan LLC pursuant to its agreements, the  
22 Plan, Confirmation Order, and Interborrower Agreement.

23 ...

24 ...

25 ...

26 ...

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

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED: August 13, 2012

FENNEMORE CRAIG, P.C.

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

# EXHIBIT

# A



**AGREEMENT OF SALE AND PURCHASE  
(All State Properties)**

This Agreement of Sale and Purchase (this "Agreement") is made effective as of July \_\_, 2012 (the "Effective Date"), by and among ASA XVI Loan LLC, an Arizona limited liability company ("ASA XVI"); ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners listed on Exhibit "A-1" attached (with ASA XVI, the "Parcel A Owners"); ASA IX Loan LLC, an Arizona limited liability company ("ASA IX"), and ML Manager LLC, an Arizona limited liability company as Agent for those individual owners listed on Exhibit "A-2" attached (with ASA IX, the "Parcel B Owners") (collectively, "Seller"); and Wilson Property Services, Inc., an Arizona corporation, and/or assigns ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party."

**RECITALS**

A. The Parcel A Owners are the owners of the real property located in Pinal County Arizona, and described as Parcel A on Exhibit "B" attached hereto ("Parcel A"). The Parcel B Owners are the owners of the real property located in Pinal County Arizona, and described as Parcel B on Exhibit "B" attached hereto ("Parcel B"). (Parcel A and Parcel B are referred to together as the "Land").

B. ASA XVI and ASA IX were 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 certain loans 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 Parcel A Owners and the Parcel B Owners, and the Agent is acting under this Agreement pursuant to the power of attorney, as the Agent of the Parcel A Owners and Parcel B Owners who have not transferred their undivided interests in the Land to ASA XVI or ASA IX. The Parcel A Owners and the Parcel B Owners may be referred to together as 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 (comprised of Parcel A and Parcel B), comprising approximately 585 acres, located in Pinal County, Arizona, together with all of Seller's right, title and interest in and to (i) all structures and improvements, if any, located thereon; (ii) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) all land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; (v) any pre-paid impact fees, school fees and other development fees; (vi) any plans, and (vii) and any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such Land (collectively, the "Property"). For the avoidance of doubt, Seller, Agent and the Owners acquired the Property in foreclosure and may have rights against borrowers or guarantors whose obligations to Seller, Agent or the Owners were secured by the Property prior to foreclosure, and the Property does not include any rights of Seller, Agent or the Owners as against any such borrower or guarantor, or any rights of Seller, Agent or the Owners to any other real property.

1.2 Contingencies.

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

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

(ii) the members of ASA XVI and ASA IX ("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 Agreements of ASA XVI and ASA IX (the "Members Approval"); and

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

(b) Seller will attempt to satisfy the Contingencies by taking such action as it deems commercially reasonable; 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 40 days after the Effective Date (the

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

2. Opening of Escrow. Within two (2) business days after both parties have executed this Agreement, the parties will establish an escrow with 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 by execution of the Agreement and Consent by Escrow Agent 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 Nine Hundred Twenty-Two Thousand Nine Hundred Fifty Dollars (\$922,950) (the “Purchase Price”). The Purchase Price shall be allocated between Parcel A and to Parcel B based upon the respective areas of the Parcels. The Purchase Price shall be payable as follows:

(a) Buyer shall deposit with Escrow Agent the amount of Twenty Thousand Dollars (\$20,000) (the “Initial Deposit”) by wire transfer, cashier’s check, or other readily available funds, within two (2) business days after the Effective Date. On or prior to the expiration of the Feasibility Period (described below), unless this Agreement is terminated by Buyer on or prior to the expiration of the Feasibility Period, Buyer shall deposit with Escrow Agent an additional Thirty Thousand Dollars (\$30,000) (the “Additional Deposit”). To the extent deposited into escrow, the Additional Deposit and the Initial Deposit are individually and/or collectively referred to as the “Deposit”.

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

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

4. Property Documents. Within five (5) days after the Effective Date, Seller will make available to Buyer for review and copying the following documents to the extent they are in Seller’s possession: all permits, approvals, plats, plans, specifications, certificates, surveys,

engineering reports (including, without limitation, any geotechnical reports), studies, environmental reports, leases, permits, contracts, improvement plans, utility plans, and other materials relating to the condition or development of the Property (collectively, the "Property Documents"). Seller makes no representation or warranty that (i) the Property Documents provided will constitute all information which exists concerning the Property or that such information will be sufficient in itself to permit an adequate analysis of the Property or (ii) the Property Documents are complete, current or accurate. If the Property Documents include any leases or other agreements that continue in effect after the Closing, then Buyer shall assume all of Seller's obligations under such leases and agreements if Buyer does not terminate this Agreement as provided for in Section 5 of this Agreement prior to the expiration of the Feasibility Period.

5. Feasibility Period. During the period commencing on the Effective Date and ending on 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 prior to the expiration of the Feasibility Period. If no such written notice is given to Seller and Escrow Agent prior to the expiration of the Feasibility Period, then Buyer will be deemed to have elected to waive its right to terminate this Agreement pursuant to this Section, and the Deposit shall be non-refundable to Buyer except as expressly provided herein. If this Agreement is terminated pursuant to this Section, Escrow Agent shall return the Deposit to Buyer not later than the second business day after such termination, and the parties shall have no further obligations hereunder, except as expressly provided herein.

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

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

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

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

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

the environment, and cause no damage to the Property or other property of Seller or other persons;

6.5 if this Agreement is terminated for a reason other than Seller's failure to satisfy the Contingencies, then promptly after such termination, furnish to Seller, at no cost or expense to Seller, copies of all surveys, soils, engineering and environmental reports, which Buyer will obtain with respect to the Property. Buyer makes no representation or warranty that any such documents are complete, current or accurate. If this Agreement is terminated by reason of Seller's failure to satisfy the Contingencies prior to the end of the Contingency Period, then Buyer shall not be obligated to furnish any surveys, soils, engineering and environmental reports, etc., to Seller;

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 Agent, as additional insured, against injuries or damages to persons or property that may result from or are related to (i) Buyer's and/or Buyer's representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon, and (iii) any and all other activities undertaken by Buyer or Buyer's representatives upon the Property, in such forms and with an insurance company reasonably acceptable to Seller, and deliver a copy of such insurance policy or certificate evidencing such policy to Seller prior to the first entry on the Property;

6.7 not allow the Investigations or any and all other activities undertaken by Buyer or Buyer's representatives to result in any liens, judgments or other encumbrances being filed or recorded against the Property, and Buyer must, at its sole cost and expense, either (i) 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); or (ii) if such liens, judgments or encumbrances are being contested by the Buyer in good faith, promptly furnish a bond in form reasonably acceptable to Agent for the discharge of such liens, judgments or encumbrances; and

6.8 indemnify, defend and hold Seller harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including without limitation, attorneys' fees and disbursements), suffered or incurred by Seller and arising out of or in connection with (i) Buyer's and/or Buyer's representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon by Buyer or Buyer's representatives, (iii) any liens or encumbrances filed or recorded against the Property as a consequence of the Investigations or any and all other activities undertaken by Buyer or Buyer's representatives, or (iv) any and all other activities undertaken by Buyer or Buyer's representatives upon the Property. Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth in this Section 6 survive any termination of this Agreement.

## 7. Title Review.

7.1 Status of Title. As soon as possible after Opening of Escrow, the title insurer for Escrow Agent (the "Title Insurer") shall provide Buyer and Seller with a commitment ("Title Report") of the title to the Property providing for issuance of a standard coverage owner's

policy of title insurance (or at Buyer's election an extended coverage policy), 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 may 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 whether the Seller intends to remove each matter to which Buyer has objected and may state any actions that Seller intends to so take. 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 waive Buyer's objections and accept the condition of title to the Property as reflected in the most recent Title Report issued to Buyer. If Buyer has conditionally waived, or has been deemed by its non-response to waive, an objection that Seller has agreed to cure, and the matter to which Buyer had objected 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.

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

7.6 Condition of Closing. It shall be a condition of Buyer's obligations hereunder that at the Closing, that Title Insurer shall deliver to Buyer an standard coverage (or extended coverage if elected by Buyer) 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. Seller shall be responsible for the cost of a standard coverage title insurance policy; and if Buyer desires extended coverage, 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.

## 8. Conditions to Closing.

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

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

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

(c) Title Insurer will be irrevocably and unconditionally committed to issue the Title Policy to Buyer, subject to only the matters described in Section 7.6.

For the avoidance of doubt, except as expressly provided herein, Buyer shall not be obligated to purchase a portion of the Property which comprises less than all of the Property. If any of the conditions set forth in subsections (a) or (b) above are not satisfied on the Closing Date, Buyer shall be entitled to the remedies prescribed under either Section 14 or Section 18.2 below, as applicable. If the condition set forth in subsection (c) above is not satisfied on the Closing Date, then Buyer may terminate this Agreement by giving written notice of termination to Seller, in which event Escrow Agent will return the Deposit to Buyer, and the parties shall have no further obligations hereunder, except as expressly provided herein.

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

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

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

(c) Seller's Contingencies as set forth in Section 1.2 of this Agreement have been satisfied to Seller's satisfaction.

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, the Parcel A Owners will convey title to Parcel A to Buyer by a special warranty deed in the form attached hereto as Exhibit "C" (the "Deed") and will execute a Blanket Assignment and Bill of Sale ("Blanket Assignment") in the form attached hereto as Exhibit "D" as to Parcel A. At the Close of Escrow, the Parcel B Owners will convey title to Parcel B to Buyer by a special warranty deed in the form of the Deed attached hereto as Exhibit "C" and will execute a Blanket Assignment in the form attached hereto as Exhibit "D" as to Parcel B.

10. Closing Date. The closing of the transaction contemplated by this Agreement (the "Close of Escrow") will occur on or before forty-five (45) days after the expiration of the Feasibility Period (the "Closing Date").

11. Closing Documents.

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

(a) the Parcel A Owners will execute, acknowledge, and deliver the Deed for Parcel A;

(b) the Parcel B Owners will execute, acknowledge, and deliver the Deed for Parcel B;

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

(d) 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 order to consummate the transactions contemplated by this Agreement;



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

(f) the Parcel A Owners will execute and deliver to Buyer the Blanket Assignment as to Parcel A; and

(g) the Parcel B Owners will execute and deliver to Buyer the Blanket Assignment as to Parcel B.

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

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

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

(c) deliver such settlement statements, affidavits and agreements as the Escrow Agent may require or request in order to consummate the transactions contemplated by this Agreement.

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

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

12.1 Apportionments. Seller will pay the fee for the standard coverage owner's portion of the Title Policy; one-half of Escrow Agent's escrow fee; and recording fees with respect to release of any liens or encumbrances. Buyer will pay one-half of Escrow Agent's escrow fee; recording fees with respect to the Deed and the Affidavit of Real Property Value; and the cost of the Title Policy in excess of the cost of a standard coverage owner's policy of title insurance, plus the cost of any title endorsements Buyer may request. Real property taxes, general and special assessments, rental and other income from the Property and costs of operating the Property 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. Any rental and other income from the Property and any costs of operating the Property shall be prorated as of the Closing Date.

12.2 Post-Closing Reconciliation. If any of the apportionments or prorations (including the apportionment of taxes on the basis of the tax rate for the preceding year) required above cannot be calculated accurately on the Closing Date or are miscalculated, then they shall be calculated or recalculated as soon as possible after the Closing Date. Either party owing the other party a sum of money based on such subsequent apportionments or prorations shall promptly pay said sum to the other party outside of escrow within ten (10) days after receipt of

an invoice therefor. There shall be no further adjustments of such apportionments or prorations after the first anniversary of the Closing Date.

12.3 Property Tax Appeals. Buyer and Seller both understand and agree that Seller may have initiated a property tax appeal for the year in which the Property is being sold from Seller to Buyer. Buyer agrees to 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 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.

13. Damage or Condemnation. If, prior to the Close of Escrow, all or any portion of the Property is damaged or destroyed by casualty or becomes the subject of any pending or threatened eminent domain proceeding (or any transfer in lieu thereof has occurred), then Buyer may terminate this Agreement by giving written notice of termination to Seller within ten (10) days after notice of such damage, destruction or pending or threatened eminent domain proceeding, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination and the parties will have no further obligations hereunder, except as expressly provided herein. If Buyer fails to give notice or termination during the foregoing 10-day period, Buyer shall be deemed to have elected to waive its right to terminate, the parties shall proceed with the purchase and sale transaction described herein, and all rights, claims, benefits, insurance proceeds, or other consideration relating to the damage, destruction or eminent domain proceeding shall be assigned and transferred to Buyer at Close of Escrow.

14. Seller Representations and Warranties. The Parcel A Owners hereby represent and warrant to Buyer the following as to themselves and Parcel A; and the Parcel B Owners hereby represent and warrant to Buyer the following as to themselves and Parcel B:

14.1 Agreements for Parcel A. Except for the Property Documents and any matters that are disclosed in the Title Commitment, to Seller's knowledge, the Parcel A Owners have not entered into any contract, operating arrangement, lease, or other agreement relating to Parcel A that will remain in effect and be binding on Parcel A after the Close of Escrow.

14.2 Agreements for Parcel B. Except for the Property Documents and any matters that are disclosed in the Title Commitment, to Seller's knowledge, the Parcel B Owners have not entered into any contract, operating arrangement, lease, or other agreement relating to Parcel B that will remain in effect and be binding on Parcel B after the Close of Escrow.

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

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

For purposes of this Section 14, the phrases “Seller’s knowledge”, “Seller is not aware of” and similar terms mean the actual knowledge of Mark Winkleman without the duty of inquiry or investigation. The matters set forth in this Section constitute representations and warranties by Seller that will be true and correct as of the date hereof and on the Closing Date and will, subject to Section 17, survive the Closing Date for a period of three (3) 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 Closing is scheduled to occur during the ten (10) day period following Buyer’s receipt of a Change Notice, then Closing shall be postponed until the end of such period, so that Buyer may have the full ten (10) day period to review and consider 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.

The matters set forth in this Section constitute representations and warranties by Buyer that will be true and correct as of the date hereof and on the Closing Date and will, subject to Section 17, survive the Closing Date for a period of three (3) months.

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

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

16.2 Additional Buyer Warranties. Buyer represents and warrants that, except as expressly set forth in this Agreement: (i) Buyer is a knowledgeable, experienced and sophisticated purchaser of real estate and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property; (ii) Buyer is, or as of the end of the Feasibility Period will be, familiar with the Property; (iii) Buyer is relying solely upon, and as of the end of the Feasibility Period, will have conducted, its own independent inspection, investigation and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including without limitation, physical inspections, environmental assessments, analysis of any and all matters concerning the condition of the Property and its suitability for Buyer's intended purposes, and review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the use, occupancy or enjoyment of the Property; (iv) Seller is not liable or bound in any manner by any oral or written statements, representations, warranties, or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein; and (v) Buyer

acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Buyer has fully reviewed the representations, warranties, disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof. Buyer acknowledges and agrees that the representations, warranties, disclaimers and other agreements set forth in this Agreement are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without such representations, warranties, disclaimers and other agreements set forth in this Agreement. Buyer further acknowledges and agrees that regardless of the outcome or contents of any inspection or assessment of the Property Buyer may undertake, Seller has no obligation whatsoever to cure any faults, defects or other adverse conditions affecting the Property, whether or not disclosed in any such inspection or assessment or in any disclosures by Seller. The covenants, representations and warranties contained in this Section 16 shall expressly survive the Closing without limitation.

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

17. Survival. The covenants, representations or warranties made by Seller and Buyer, respectfully, in Sections 14, 15, and 16 are made as of the Opening of Escrow and as of the Close of Escrow and shall survive the Closing, except that any claim for breach of warranty by either party must be asserted within three (3) months after the Closing or be forever barred.

18. Remedies.

18.1 Seller's Remedies. If Buyer fails to deposit the Purchase Price in accordance with the terms of this Agreement, or to timely close escrow as required hereunder, or fails to perform any of its other obligations under this Agreement, which failure is not cured

within three (3) business days after written notice from Seller, Seller shall be entitled, as Seller's sole and exclusive right and remedy hereunder, to terminate this Agreement by giving written notice of termination to Buyer, in which event Seller shall be entitled to receive the Deposit as liquidated damages and as consideration for acceptance of this Agreement. Notwithstanding anything mentioned herein to the contrary, Seller hereby waives any claim for consequential, special, punitive, exemplary or similar damages against Buyer. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damages by reason of default by Buyer. Accordingly, Buyer and Seller agree that it would be reasonable at such time to award to Seller "liquidated damages" equal to the amount of the Deposit in the event of a default by Buyer. Notwithstanding anything to the contrary in this Section 18.1, the obligation of Buyer to indemnify, defend and hold Seller and others harmless pursuant to Sections 6 and 19 and Buyer's obligation to pay certain costs pursuant to Section 21.8, shall be independent of and shall not be modified, abrogated, or otherwise affected by the limitation of Buyer's liability as set forth in this Section 18.1. Notwithstanding anything to the contrary in this Section 18.1, the obligation of Buyer to indemnify, defend and hold Seller and others harmless pursuant to Sections 6 and 19 and Buyer's obligation to pay certain costs pursuant to Section 21.8, shall be independent of and shall not be modified, abrogated, or otherwise affected by the limitation of Buyer's liability as set forth in this Section 18.1.

18.2 Buyer's Remedies. Upon a breach or default by Seller hereunder, which default is not cured within three (3) business days after written notice from Buyer, Buyer shall be entitled, as its sole remedies for Seller's default hereunder, to exercise one of the following remedies: (i) terminate this Agreement, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination; (ii) proceed with the transaction and waive the default; or (iii) seek specific performance of Seller's obligations hereunder within forty-five (45) days after the purported default. Notwithstanding anything mentioned herein to the contrary, Buyer hereby waives any claim for consequential, special, punitive, exemplary or similar damages against Seller. Notwithstanding anything to the contrary in this Section 18.2, the obligation of Seller to indemnify, defend and hold Buyer and others harmless pursuant to Section 19 and Seller's obligation to pay certain costs pursuant to Section 21.8, shall be independent of and shall not be modified, abrogated, or otherwise affected by the limitation of Seller's liability as set forth in this Section 18.2.

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

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

finder with whom the indemnifying party has dealt, or has allegedly employed, in violation of the warranty contained in this Section.

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

20.1 If addressed to Seller:

ML Manager LLC  
14050 N. 83<sup>rd</sup> Avenue, Suite 180  
Peoria, Arizona 85381  
Attn: Mark Winkleman  
Facsimile: (623) 234-9575  
Telephone: (623) 234-9562  
Email: [mwinkleman@mtgltd.com](mailto: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:

Wilson Property Services, Inc.  
8120 East Cactus Road, Suite 300  
Scottsdale, Arizona 85260  
Attention: Eric M. Rinestone  
Facsimile: (480) 874-2601  
Telephone: (480) 874-2600  
Email: [erinestone@wilsonps.net](mailto:erinestone@wilsonps.net)

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  
Telephone: (480) 222-1116; ext. 203  
Facsimile: (480) 383-6792  
Email: dcarpenter@thomastitle.com

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

21. Miscellaneous.

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

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

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

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

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

21.6 Assignment. Buyer may assign its rights and obligations under this Agreement to an entity that controls, is controlled by or is under common control with the Buyer or the principals of Buyer, including a new entity formed by Buyer to acquire the Property, 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 and any schedules and exhibits attached thereto constitute the entire agreement between the parties. All terms and conditions



contained in any other instruments previously executed by the parties in connection with the Property are superseded hereby and merged herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first written above.

**SELLER:**

ASA XVI LOAN LLC, an Arizona limited liability company

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

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


ASA IX LOAN LLC, an Arizona limited liability company

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

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

**BUYER:**

WILSON PROPERTY SERVICES, INC. an  
Arizona corporation

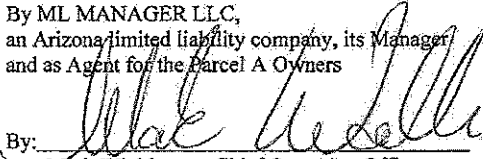
By:   
Its: Vice President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first written above.

**SELLER:**

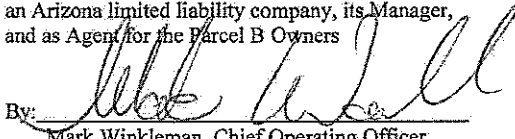
ASA XVI LOAN LLC, an Arizona limited liability company

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

By:   
Mark Winkleman, Chief Operating Officer

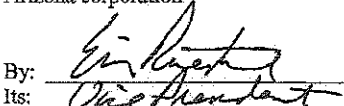
ASA IX LOAN LLC, an Arizona limited liability company

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

By:   
Mark Winkleman, Chief Operating Officer

**BUYER:**

WILSON PROPERTY SERVICES, INC. an  
Arizona corporation

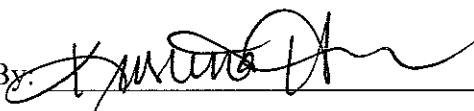
By:   
Its: Vice President

## 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, (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 26 day of July, 2012.

Thomas Title & Escrow, LLC

By:   
Its: Escrow Officer

**EXHIBIT "A-1"**  
**NAMES OF PARCEL A OWNERS**

- ✓ ASA XVI Loan LLC, an Arizona Limited Liability Company, as to an undivided 94.421% ownership
- ✓ Harvey Golden and Merylee Golden, husband and wife as joint tenants with right of survivorship, as to an undivided 0.564% ownership
- ✓ Merylee Golden, Trustee of the Merylee Golden Family Trust Agreement dated May 19, 2000, and any amendments thereto, as to an undivided 0.201% ownership
- ✓ Golden Lending Group, LLC, an Arizona limited liability company, as to an undivided 0.750% ownership
- ✓ H. Susan Kower, an unmarried woman, as to an undivided 0.250% ownership
- ✓ Athanasios Panagiotakopoulos and Athanasia Panagiotakopoulos, husband and wife as Joint Tenants with Right of Survivorship, as to an undivided 0.215% ownership
- ✓ Linda A. Reeves, Trustee of The Linda Ann Reeves Trust dated March 2, 2005, and any amendments thereto, as to an undivided 1.275% ownership
- ✓ Michael L. Rosenfield and Sigrid K. Rosenfield, husband and wife as joint tenants with right of survivorship, as to an undivided 0.489% ownership
- ✓ Robert G. Roden, Trustee of The Robert G. Roden Living Trust dated October 1, 2004, and any amendments thereto, as to an undivided 1.524% ownership
- ✓ Richard J. Sharp and Melinda A. Sharp, husband and wife as joint tenants with right of survivorship, as to an undivided 0.311% ownership

**EXHIBIT "A-2"**  
**NAMES OF PARCEL B OWNERS**

- ✓ ASA IX Loan LLC, an Arizona Limited Liability Company, as to an undivided 97.377% ownership
- ✓ First Trust Company of Onaga, Custodian FBO Deborah L. Hooker IRA #41021XXXXX, as to an undivided 0.286% ownership
- ✓ First Trust Company of Onaga, Custodian FBO Brett W. Howell Roth IRA #46021XXXXX, as to an undivided 0.168% ownership
- ✓ First Trust Company of Onaga, Custodian FBO Justin E. Howell Roth IRA #46021XXXXX, as to an undivided 0.202% ownership
- ✓ Morris A. Kaplan and Carolyn N. Kaplan, Trustees under the Second Amendment and Restatement of the Morris and Carolyn Kaplan Revocable Trust dated October 15, 1999, as to an undivided 0.281% ownership
- ✓ First Trust Company of Onaga, Custodian FBO Jan Sterling Roth IRA Account #R215XXXX, as to an undivided 0.843% ownership
- ✓ First Trust Company of Onaga, Custodian FBO Kathleen Tomasulo Roth IRA Account #R215XXXX, as to an undivided 0.843% ownership

**EXHIBIT "B"**

**PARCEL A**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PINAL, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

The South half of Section 1, Township 7 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona.

Except the North 16 1/2 feet of the Northwest quarter of the Southwest quarter of said Section 1; and

ALSO Except that part of the Southeast quarter of said Section 1, described as follows:

BEGINNING at the Southeast corner of said Section 1;

Thence North 00 degrees 22 minutes 22 seconds East (North 00 degrees 22 minutes 19 seconds East Measured) along the East line of said Section 1, a distance of 1234.78 feet;

Thence South 89 degrees 46 minutes 48 seconds West, a distance of 1234.78 feet;

Thence South 00 degrees 22 minutes 22 seconds West (South 00 degrees 22 minutes 19 seconds West Measured), a distance of 1234.78 feet to a point on the South line of said Section 1;

Thence North 89 degrees 46 minutes 48 seconds East along the South line, a distance of 1234.78 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

Government Lots 1 and 2; the South half of the Northeast quarter AND the East half of the Southeast quarter of Section 2, Township 7 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona.

Except that part of Government Lot 1 of said Section 2, described as follows:

BEGINNING at the Northeast corner of said Section 2;

Thence South 00 degrees 19 minutes 44 seconds East (South 00 degrees 19 minutes 42 seconds East Measured) along the East line of said section 2, a distance of 854.16 feet;

Thence North 89 degrees 47 minutes 34 seconds West (North 89 degrees 47 minutes 37 seconds West Measured), a distance of 765.00 feet;

Thence North 00 degrees 19 minutes 44 seconds West (North 00 degrees 19 minutes 42 seconds West Measured), a distance of 854.16 feet to a point on the North line of said Section 2;

Thence South 89 degrees 47 minutes 34 seconds East (South 89 degrees 47 minutes 37 seconds East Measured) along said North line, a distance of 765.00 feet to the POINT OF BEGINNING.

Except all oil and gas rights within the East half of the Southeast quarter of said Section 2, as reserved in instrument recorded in Book 53, Page 186 of Deeds, records of Pinal County, Arizona.

**APN(s): 402-02-004 through 402-02-006, a portion of 402-02-007, a portion of 402-03-008C, 402-03-008D, and 402-03-008F/ Pinal**



**EXHIBIT "B"**

**PARCEL B**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PINAL, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

The Southwest quarter of the Southeast quarter of Section 2, Township 7 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona.

Parcel 2:

The West half of the East half of the Northwest quarter of the Southeast quarter of Section 2, Township 7 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona.

Parcel 3:

The West half of the Northwest quarter of the Southeast quarter of Section 2, Township 7 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona.

Parcel 4:

The East half of the East half of the Northwest quarter of the Southeast quarter of Section 2, Township 7 South, Range 7 East of the Gila and Salt River Meridian, Pinal County, Arizona.

APN's: Parcels 10 thru 13 – 402-03-018A, 018B, 402-03-019A, 019C and 019D/Pinal County.

**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, ASA XVI Loan LLC, an Arizona limited liability company, (*For Parcel B: ASA IX Loan LLC, an Arizona limited liability company*) and ML Manager LLC, an Arizona limited liability company as agent ("Agent"), as attorney-in-fact for those individual owners ("Owners") listed on Exhibit "B" attached ("Grantor"), does hereby convey to \_\_\_\_\_ ("Grantee"), the following real property together with all of Seller's right, title and interest in and to (i) all 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.

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 \_\_\_\_\_, 2012.

GRANTOR

ASA XVI LOAN LLC, an Arizona limited liability company

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

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

*(For Parcel B: ASA IX LOAN LLC, an Arizona  
limited liability company*

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

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



EXHIBIT A  
TO THE SPECIAL WARRANTY DEED

Legal Description of the Property

*(Describe Parcel A or Parcel B, as applicable)*

EXHIBIT B  
TO THE SPECIAL WARRANTY DEED

List of Owners

*(Parcel A Owners or Parcel B Owners, as applicable.)*

**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 \_\_\_\_\_, 2012, by ASA XVI Loan LLC, an Arizona limited liability company; (*For Parcel B: ASA IX 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 \_\_\_\_\_, 2012 (the "Agreement"), whereby Assignor agreed to sell and Assignee agreed to purchase that certain real property located more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "Property").

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

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

**AGREEMENT**

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

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

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

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

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

(Signatures appear on the following page.)



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

ASSIGNOR:

ASA XVI LOAN LLC, an Arizona limited liability company

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

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

*(For Parcel B: ASA IX LOAN LLC, an Arizona  
limited liability company*

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

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

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

List of Owners

*(Parcel A Owners or Parcel B Owners, as applicable.)*

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

Legal Description of the Property

*(Describe Parcel A or Parcel B, as applicable)*