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6 IN THE UNITED STATES BANKRUPTCY COURT
7 FOR THE DISTRICT OF ARIZONA

8 In re

Chapter 11

9 MORTGAGES LTD.,

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

10 Debtor.

**MOTION TO APPROVE SETTLEMENT OF
WOLFSWINKEL LOANS**

Hearing Date: December 11, 2012

Hearing Time: 11:00 a.m.

13 ML Manager LLC (“ML Manager”), as manager for six Loan LLCs¹ and as agent
14 for the non-transferring pass-through investors who are undivided fractional note and deed
15 of trust holders in the six Wolfswinkel Loans², requests that the Court enter an order
16 approving the global settlement and authorizing ML Manager to enter into and implement
17 the settlement with the Wolfswinkel Borrowers and Guarantors³ as presented in the draft
18 Settlement Agreement (“Settlement Agreement”) that is attached hereto as Exhibit A.
19 The final version is being corrected to reflect the changes need due to the settlement with
20 the Mortgages Ltd. 401k Plan which is being also being finalized. The signed Settlement
21 Agreement will be filed with the Court as soon as possible.

22 The Settlement Agreement provides for a global settlement with the Wolfswinkel
23 Borrowers and Guarantors. Among other things, the primary terms permit the immediate
24 foreclosure upon and/or sale of each of the properties which are secured by deeds of trust

25
26 ¹ The six Loan LLCs are ABCDW I Loan LLC; ABCDW II Loan LLC; ABCDW III Loan
LLC; VP I Loan LLC; VP II Loan LLC; and VF I Loan LLC.

27 ² The Loans are 850206, 857306, 857406, 858006, 859606 and 861206.

28 ³ The Borrowers are ABCDW, LLC; Vanderbilt Farms, LLC; Torrey Pines Development,
LLC; Riggs/Queen Creek 480, LLC; Ellsworth Road 160, LLC; and Vistoso Partners,
LLC. The Guarantors are Brandon D. Wolfswinkel, Ashton A. Wolfswinkel, and Conley
D. Wolfswinkel.

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1 in the Wolfswinkel Loans. The Borrowers and Guarantors are to pay all past due real
2 property taxes. The Borrowers and Guarantors will stipulate to Deficiency Judgments in
3 the collective amount of \$100 million as is broken down and itemized per loan in Section
4 9 of the Settlement Agreement. The Borrowers and Guarantors will be given 18 months to
5 pay off the Deficiency Judgments at a reduced rate (the "Settlement Amount") which is
6 broken down and itemized per loan on Exhibit F to the Settlement Agreement. The
7 Settlement Amounts vary over time but the maximum amount if paid at 18 months would
8 be \$10.3 million which would release the remaining amount of the Deficiency Judgments.
9 The obligations of the Borrowers and Guarantors would be secured by the pledge of
10 ownership interests in entities that have ownership rights to properties west of the White
11 Tank Mountains and in the Harquahala Valley. In the event that the Settlement Amount is
12 not timely paid in 18 months then ML Manager may pursue the full amount of the
13 Deficiency Judgments. ML Manager, the Loan LLCs and the Pass-Through Investors will
14 receive full releases from the Borrowers and Guarantors.

15 The contingencies include approval by the investors in each of the six Loan LLCs
16 (and applicable MP Funds) by a majority of dollars voted in each Loan LLC. The vote of
17 the investors in the Loan LLCs and the applicable MP Funds will be conducted and the
18 results will be reported to the Court at the hearing. Another contingency is Bankruptcy
19 Court approval of the Settlement Agreement and Bankruptcy Court approval of the
20 settlement between ML Manager and the Mortgages Ltd. 401k Plan (as it holds an
21 undivided fraction interest in the Queen Creek & Ellsworth loan). Another contingency is
22 the consent or waiver of the right to compete by the Exit Financier. The Closing would be
23 15 days after the satisfaction of the contingencies which is anticipated to be end of
24 December 2012 or early January 2013.

25 A number of factors justify and support the reasonableness of this Settlement
26 Agreement. A Rule 9019 Motion may or may not be applicable for the post-confirmation
27 settlement, but the factors announced in the cases implementing this Rule are illuminating
28 and helpful here. *In re Woodson*, 839 F.2d 610 (9th Cir. 1988); *In re A&C Properties*, 784

1 F.2d 1377 (9th Cir. 1986), *cert. denied*, 479 U.S. 854 (1986). As noted in *Woodson*, the
2 Court should analyze the proposed settlement considering the following factors: (1) the
3 probability of success on the merits, (2) the complexity of the litigation involved (3) the
4 likely difficulties in collection, (4) the expense, inconvenience and delay necessarily
5 attendant to the litigation and collection, and (5) the paramount interest to the investors
6 with a proper deference to their reasonable views. The ultimate inquiry is whether the
7 proposed action is reasonable and in the investors' best interest. *In re Walsh Construction,*
8 *Inc.*, 669 F.2d 1325 (9th Cir. 1982).

9 ML Manager spent a significant amount of time receiving and reviewing
10 information, understanding the transactions and the properties, and meeting with and
11 negotiating with the Borrowers and Guarantors and their professionals. ML Manager
12 requested and received significant financial information about the Borrowers and
13 Guarantors and hired a financial advisor, Simon Consulting, LLC, which spent a
14 significant amount of time and resources inspecting and analyzing the financial records
15 and information provided by the Borrowers and Guarantors, among other information.
16 The negotiations were extensive and conducted over a significant amount of time. The
17 result is an arms length agreement based on extensive negotiations that is well thought out
18 and thorough. Among other things, the settlement takes into account the likelihood of
19 success, the collectability of the judgments, the cost and expense of pursuing the
20 alternative verses the settlement and the economics of a swift and certain resolution of the
21 issues. It gives ML Manager the immediate ability to complete the trustee sales and take
22 possession of the properties without interference by Borrower bankruptcies. It provides
23 stipulated Deficiency Judgments against the Borrowers and the Guarantors in sufficient
24 amounts to reflect the likely results if litigation were pursued absent a settlement.
25 However, such Deficiency Judgments were obtained in the settlement without the cost and
26 expense and delay of litigation. Additionally, new security will be pledged as collateral
27 for the Deficiency Judgments. It takes into account the difficulty in collecting any
28 judgments against the Borrowers and Guarantors in light of their assets and other

1 creditors. It provides for the voluntary payment of cash by Borrowers and Guarantors
2 within a reasonable period of time without the cost, expense or time of collection
3 litigation. Based on all the facts the Court should easily conclude that this Settlement is in
4 the best interest of the investors, is fair and equitable, and is within the range of what is
5 reasonable in light of all the circumstances. ML Manager believes this settlement is a
6 valid exercise of its business judgment consistent with its fiduciary duties and
7 responsibilities.

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

13 Since releases and settlements with the Guarantors, among other things, are Major
14 Decisions under the Operating Agreements of the six Loan LLCs, ML Manager will seek
15 approval from the investors in each of the six Loan LLCs and the applicable MP Funds. If
16 approved ML Manager asserts it has the authority and ability to go forward with the
17 Settlement Agreement. Further, ML Manager asserts it has the authority as the agent for
18 the Pass-Through Investors in each of the six Wolfswinkel Loans to enter into and
19 implement the Settlement Agreement. ML Manager as agent will execute the documents
20 on behalf of the Pass-Through Investors since it holds the irrevocable power of attorney
21 coupled with an interest to do so. ML Manager will include language in the order
22 authorizing ML Manager to execute any and all such documents on behalf of the Pass-
23 Through Investors.

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

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 replacement
7 loans authorized and contemplated in the Plan. Accordingly, the Bankruptcy Court retains
8 post-confirmation jurisdiction.

9 WHEREFORE, ML Manager requests that the Court enter an order authorizing and
10 approving the Settlement Agreement, authorizing ML Manager to enter into and
11 implement the Settlement Agreement, and for such other and further relief as is just and
12 proper under the circumstances.

13
14 DATED: November 30, 2012

FENNEMORE CRAIG, P.C.

15
16 By /s/ Cathy L. Reece
17 Cathy L. Reece
18 Attorneys for ML Manager LLC
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EXHIBIT

A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into effective as of November 16, 2012 (the “Effective Date”), by and among by and among the following: (i) ABCDW I Loan LLC, an Arizona limited liability company (“ABCDW I Loan LLC”); (ii) ABCDW II Loan LLC, an Arizona limited liability company (“ABCDW II Loan LLC”); (iii) VP I Loan LLC, an Arizona limited liability company (“VP I Loan LLC”); (iv) VF I Loan LLC, an Arizona limited liability company (“VF I Loan LLC”); (v) ABCDW III Loan LLC, an Arizona limited liability company (“ABCDW III Loan LLC”); (vi) VP II Loan LLC, an Arizona limited liability company (“VP II Loan LLC”); (vii) ML Manager LLC, an Arizona limited liability company, as Manager of the Loan LLC’s (described below) and as authorized agent (“Agent”) for the Pass Through Investors (described below); (viii) Mortgages Ltd. 401(k) Plan (the “Plan” and with the Loan LLC’s and the Pass Through Investors collectively, the “Lenders”); (ix) ABCDW, L.L.C., an Arizona limited liability company (“ABCDW”); (x) Vanderbilt Farms, L.L.C., an Arizona limited liability company (“Vanderbilt”); (xi) Torrey Pines Development, L.L.C., an Arizona limited liability company (“Torrey Pines”); (xii) Riggs/Queen Creek 480, L.L.C., an Arizona limited liability company (“Riggs”); (xiii) Ellsworth Road 160 LLC, an Arizona limited liability company (“Ellsworth”); (xiv) Vistoso Partners, L.L.C., an Arizona limited liability company (“Vistoso”); (xv) Brandon D. Wolfswinkel, a single man (“Brandon”); (xvi) Ashton A. Wolfswinkel, a single man (“Ashton”); and (xvii) Conley D. Wolfswinkel, a single man (“Conley”). ABCDW, Vanderbilt, Torrey Pines, Riggs, Ellsworth and Vistoso may be referred to herein collectively as “Borrowers”. Brandon, Ashton and Conley may be referred to together as “Guarantors”. Lenders, Borrowers and Guarantors may be referred to herein together as the “Parties”.

RECITALS

A. Loan 850206 (La Osa Ranch). Mortgages Ltd., an Arizona corporation (“Mortgages Ltd”) as the lender and ABCDW, Torrey Pines, Riggs, Ellsworth and Vanderbilt as borrowers executed certain documents, dated June 26, 2006 (collectively, the “Loan 850206 Documents”) in connection with a loan in the original principal amount of \$40,000,000 (“Loan 850206”). The Loan 850206 Documents include, but are not limited to, a Promissory Note in the principal amount of \$40,000,000, executed by ABCDW, Torrey Pines, Riggs, Ellsworth and Vanderbilt as makers and payable to the order of Mortgages Ltd as holder, which Promissory Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated June 26, 2006, and recorded on June 29, 2006, as Fee No. 2006-092459, in the official records of Pinal County, Arizona (the “850206 Deed of Trust”). The 850206 Deed of Trust encumbers that certain real property located in Pinal County, Arizona, more particularly described in the 850206 Deed of Trust (the “850206 Property”). Additionally, Loan 850206 is personally guarantied by Brandon and Ashton, as evidenced by the loan guaranty documents, dated June 26, 2006. The unpaid balance of Loan 850206 was all due and payable on June 29, 2008 and has not been paid. A portion of the 850206 Property consisting of approximately 1,888 acres (“Pearce Farm”) was sold on May 31, 2012 for a sales price of \$5,500,000. The applicable Lenders executed a deed of partial release and partial reconveyance that released Pearce Farm from the 850206 Deed of Trust and received net proceeds from the sale of Pearce Farm. There is a pending trustee’s sale of

foreclosure under the Loan 850206 Deed of Trust, with Christopher M. McNichol as the trustee for the balance of the 850206 Property.

B. Loan 857306 (Part of DeJong Farms). Mortgages Ltd as the lender and ABCDW as borrower executed certain documents, dated March 9, 2007 (the “Loan 857306 Documents”), in connection with a loan to ABCDW in original principal amount of \$11,000,000 (“Loan 857306”). The Loan 857306 Documents include, but are not limited to, a Promissory Note in the principal amount of \$11,000,000, executed by ABCDW as maker and payable to Mortgages Ltd as holder, which Promissory Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated March 09, 2007, and recorded on March 15, 2007, as Fee No. 2007-031661, in the official records of Pinal County, Arizona (the “857306 Deed of Trust”). The 857306 Deed of Trust encumbers that certain real property located in Pinal County, Arizona, more particularly described in the 857306 Deed of Trust (the “857306 Property”). Additionally, Loan 857306 is personally guarantied by Brandon and Ashton, as evidenced by the loan guaranty documents, dated March 9, 2007. The unpaid balance of Loan 857306 was all due and payable on September 15, 2008 and has not been paid. There is a pending trustee’s sale of foreclosure under the Loan 857306 Deed of Trust, with Christopher M. McNichol as the trustee.

C. Loan 857406 (Rancho Vistoso). Mortgages Ltd as the lender and Vistoso as borrower executed certain documents, dated March 12, 2007 (the “Loan 857406 Documents”) in connection with a loan to Vistoso in the original principal amount of \$11,000,000 (“Loan 857406”). The Loan 857406 Documents include, but are not limited to, a Promissory Note in the original principal amount of \$11,000,000, payable from Vistoso as maker to Mortgages Ltd as holder, which Promissory Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated March 12, 2007, and recorded on March 22, 2007, as Docket 13017, Page 4875, in the official records of Pima County, Arizona (the “857406 Deed of Trust”). The 857406 Deed of Trust encumbers that certain real property located in Pima County, Arizona, more particularly described in the 857406 Deed of Trust (the “857406 Property”). Additionally, Loan 857406 is personally guarantied by Brandon and Ashton, as evidenced by the loan guaranty documents, dated March 12, 2007. The unpaid balance of Loan 857406 was all due and payable on September 22, 2008 and has not been paid. There is a pending trustee’s sale of foreclosure under the Loan 857406 Deed of Trust, with Christopher M. McNichol as the trustee.

D. Loan 858006 (Rancho Vistoso). Mortgages Ltd as the lender and Vistoso as the borrower executed certain documents, dated April 9, 2007 (the “Loan 858006 Documents”), in connection with a loan (“Loan 858006”) to Vistoso in the original principal amount of \$14,300,000. The Loan 858006 Documents include, but are not limited to, a Promissory Note in the principal amount of \$14,300,000, payable from Vistoso as maker to Mortgages Ltd as holder, which is secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated April 9, 2007, and recorded on April 12, 2007, as Docket 13032, Page 6880, in the official records of Pima County, Arizona (the “858006 Deed of Trust”). The 858006 Deed of Trust encumbers that certain real property located in Pima County, Arizona, more particularly described in the 858006 Deed of Trust (the “858006 Property”). Additionally, Loan 858006 was personally guarantied by Brandon, Ashton and Conley, as evidenced by the loan guaranty documents, dated April 9, 2007. The outstanding principal balance of Loan 858006 is \$12,300,000. The unpaid balance of Loan 858006 was all due and payable on October 12, 2008 and has not been paid. There is a

pending trustee's sale of foreclosure under the Loan 858006 Deed of Trust, with Christopher M. McNichol as the trustee.

E. Loan 859606 (Queen Creek & Ellsworth). Mortgages Ltd and Mortgages Ltd 401(k) Plan as the lenders and Vanderbilt and Vistoso as borrowers executed certain documents, dated July 5, 2007 (the "Loan 859606 Documents") in connection with a loan to Vanderbilt and Vistoso in the original principal amount of \$11,000,000 ("Loan 859606"). The Loan 859606 Documents include, but are not limited to, a Promissory Note in the principal amount of \$11,000,000, payable from Vanderbilt and Vistoso as makers to Mortgages Ltd and Mortgages Ltd. 401(k) Plan as holders, which Promissory Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated July 05, 2007, and recorded on July 12, 2007, as Instrument No. 2007-0795684, in the official records of Maricopa County, Arizona and on July 12, 2007 in Docket 13095, Page 3899, in the official records of Pima County, Arizona (collectively, the "859606 Deed of Trust"). The 859606 Deed of Trust encumbers that certain real property located in Maricopa County, Arizona and Pima County, Arizona, more particularly described in the 859606 Deed of Trust (collectively, the "859606 Property"). Additionally, Loan 859606 was personally guarantied by Brandon and Ashton, as evidenced by the loan guaranty documents, dated July 5, 2007. The unpaid balance of the Loan was all due payable on July 11, 2008, and has not been paid. A trustee's sale to foreclose the Loan 859606 Deed of Trust was held on July 20, 2010, and an action pursuing a claim deficiency under the Deed of Trust is pending in the Superior Court, Maricopa County, Arizona as Case No. CV2010-027713 (the "Pending Action").

F. Loan 861206 (Sierra Vista). Mortgages Ltd as the lender and ABCDW as borrower executed certain documents, dated September 20, 2007 (the "Loan 861206 Documents") in connection with a loan to ABCDW in the original principal amount of \$22,000,000 ("Loan 861206"). The Loan 861206 Documents include, but are not limited to, a Promissory Note in the principal amount of \$22,000,000, payable from ABCDW as maker to Mortgages Ltd as holder, which is secured by a Deed of Trust, Assignment of Rents and Security Agreement, dated September 20, 2007, and recorded on September 28, 2007, as Fee No. 0709-31850 in the official records of Cochise County, Arizona and recorded as Fee No. 2007-110344 in the official records of Pinal County, Arizona (collectively, the "861206 Deed of Trust"). The 861206 Deed of Trust encumbers that certain real property located in Cochise County, Arizona and Pinal County, Arizona, more particularly described in the 861206 Deed of Trust (collectively, the "861206 Property"). Additionally, Loan 861206 was personally guarantied by Brandon and Ashton, as evidenced by the loan guaranty documents dated September 20, 2007. The unpaid balance of Loan 861206 was all due and payable on October 25, 2008 and has not been paid. There is a pending trustee's sale of foreclosure under the Loan 861206 Deed of Trust, with Christopher M. McNichol as the trustee.

G. Borrowers have committed defaults under the Loan 850206 Documents, Loan 857306 Documents, Loan 857406 Documents, Loan 858006 Documents, Loan 859606 Documents and Loan 861206 Documents (collectively, the "Loan Documents") for all of Loans 850206, 857306, 857406, 858006, 859606 and 861206 (collectively, the "Loans"). The Loan Documents include all documents executed by the Guarantors in connection with the Loans (collectively, the "Loan Guaranties"). As a result, Lenders are entitled to exercise any and all

rights and remedies for default under the Loan Documents, including the right to foreclose against the real properties that are subject to the Deeds of Trust that are included in the Loan Documents for the Loans.

H. Lenders and Borrowers anticipate that deficiencies would remain due and owing to Lenders following the trustees' sales under the Deeds of Trust described above for the Loans, the existence and/or extent of which would be subject to dispute by Borrowers and Guarantors. The Parties desire to resolve any such dispute by entering into this Agreement regarding the Loans on the terms and conditions set forth herein.

I. Each of the Loan LLC's 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 (the "Bankruptcy Case") which was confirmed by the Bankruptcy Court ("Court") on May 20, 2009 ("Approved Plan"), pursuant to which persons holding fractional interests ("Fractional Interests") in a loan made by Mortgages Ltd., an Arizona corporation (now known as ML Servicing Company, Inc.) ("ML") could elect to assign and transfer such Fractional Interests to consolidate such Fractional Interests to the extent possible in a single entity.

J. 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 Pass Through Investors (described below), and the Agent is acting under this Agreement pursuant to the power of attorney, as the Agent of the Pass Through Investors.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Background Recitals.** The recitals set forth above are hereby incorporated into this Agreement.

2. **Definitions:** For the purposes of this Agreement, the following terms shall have the meanings set forth herein:

"Affiliate" means with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting interests of such Person; (c) any officer, director, member or general partner of such Person; or (d) any Person who is an officer, director, general partner, trustee, member or holder of 10% or more of the voting interests of any Person described in clauses (a) through (c) of this definition.

"Approved Plan" means The Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009, as modified by the Order confirming the Plan

entered on May 20, 2009 by the United States Bankruptcy Court for the District of Arizona in the Bankruptcy Case.

“Bankruptcy Action” shall mean, with respect to a Party (a) the filing by such Party of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Party under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law, in which such Party colludes with or otherwise assists the Person who filed such involuntary petition, or causes to be solicited petitioning creditors for such involuntary petition; (c) the filing of an answer by such Party consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (d) consenting to, acquiescing in, or joining in an application for the appointment of a custodian, receiver, trustee or examiner for such Party, or any portion of its Property; or (e) making an assignment for the benefit of creditors.

“Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other federal or state bankruptcy or insolvency law.

“Borrowers” means, collectively, ABCDW, Vanderbilt, Torrey Pines, Riggs, Ellsworth and Vistoso.

“Guarantors” means, collectively, Brandon, Ashton and Conley.

“Investors” means all Persons or entities holding fractional or participating interests in the Loans or in the Loan LLCs which hold fractional or participating interests in the Loans.

“Lenders” means, collectively, Mortgages Ltd. 401(k) Plan, the Loan LLC’s and the Pass Through Investors.

“Loan LLC’s” means, collectively, ABCDW I Loan LLC, ABCDW II Loan LLC, VP I Loan LLC, VF I Loan LLC and ABCDW III Loan LLC.

“Pass Through Investors” shall mean those Investors that hold, as of the Effective Date, an interest in the Loans outside of the Loan LLC’s. The Pass Through Investors are described on Exhibit A attached.

“Person” means any individual, partnership, corporation, trust or other entity.

“Properties” shall mean, collectively, the 850206 Property, 857306 Property, 857406 Property, 858006 Property, 85906 Property, and 861206 Property.

“Security Agreements” shall mean, collectively, the Pledge and Security Agreements described in Paragraphs 10.1 and 10.2 below.

3. **Validity, Reaffirmation and Incorporation.** Borrowers and Guarantors hereby acknowledge the validity of the Loan Documents for all of the Loans, and hereby reaffirm the Loan Documents for all of the Loans in their entirety, which are hereby incorporated into this Agreement by reference. Borrowers and Guarantors acknowledge that they have no claims, defenses, setoffs or counterclaims against Lenders with respect to the Loan Documents for any of the Loans, or any other document or agreement incorporated into this Agreement. The obligations of Borrowers and Guarantors under the Loan Documents shall be released and discharged upon full and complete performance by Borrowers and Guarantors under this Agreement, as hereafter provided.

4. **Contingencies.**

4.1 Notwithstanding any provision to the contrary contained herein, the obligations of the Parties under this Agreement are contingent upon the satisfaction of each of the following contingencies (collectively, the “Contingencies”):

(a) Exit Lender Consent. The lender under the exit financing loan dated June 11, 2009 to which the Loan LLC’s are parties (the “Exit Financing Loan”) has consented to the terms of this Agreement to the extent required by the terms of the Exit Financing Loan;

(b) The members of each of the Loan LLC’s (collectively, the “Members”) must have approved this Agreement in accordance with the terms of the operating agreements or other governing documents of each of the Loan LLC’s (the “Members Approval”); and

(c) Lenders must have obtained the approval of this Agreement by the Bankruptcy Court in the Bankruptcy Case by final order for which no stay order pending appeal has been issued.

4.2 Lenders will undertake reasonable efforts in a good faith attempt to satisfy the Contingencies by taking such action as they deem appropriate; provided, however, Lenders shall not be in default hereunder if any of the Contingencies is not satisfied.

4.3 If all of the Contingencies have been satisfied prior to the end of the period commencing on the Effective Date and ending 90 days thereafter (the “Contingency Period”), then Lenders shall notify Borrowers and Guarantors (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 Lenders shall notify Borrowers and Guarantors 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, the Parties shall have no further obligations hereunder, except as expressly provided herein.

5. **Acknowledgment of Default.** Borrowers and Guarantors acknowledge and agree that Borrowers are in default of their obligations to Lenders under the Loan Documents for all of

the Loans for failure to make payments to Lenders when due. As a result of these defaults, Borrowers and Guarantors acknowledge and agree that Lenders are entitled to exercise all of their default rights and remedies, including trustee's sales under the Deeds of Trust that are included in the Loan Documents for the Loans.

6. **Trustee's Sales.** Trustee's sales are scheduled, or have been conducted, under the Deeds of Trust that provide collateral security for all of the Loans. Lenders may elect, in Lenders' sole and absolute discretion, to conduct one or more of the trustee's sales on less than all of any one or more of the Properties, including, without limitation, less than all of the 850206 Property. In such event, the Parties agree that a Foreclosure Sale of less than all of one or more of the Properties shall not affect the amount of the Total Deficiency or the Settlement Amount. There may also be uniform commercial code proceedings pending or brought in the future to exercise remedies against personal property that is collateral for the Loans. These trustee's sales and other proceedings are referred to collectively as the "Foreclosure Sales". Borrowers and Guarantors will not oppose, contest, hinder or delay the Foreclosure Sales in any manner whatsoever, and agree that the Foreclosure Sales shall be held as and when determined by Lenders. Lenders shall be entitled to bid at the Foreclosure Sales whatever bid amounts Lenders determine to be appropriate. The Parties agree the Total Deficiency and the Settlement Amount will not be reduced by, and neither Borrowers nor Guarantors will be entitled to receive any credit for, any amounts bid at the Foreclosure Sales.

7. **Deficiency Actions / Stipulated Judgment Against Borrowers.**

7.1 Prior to or following the completion of the Foreclosure Sales, Lenders intend to file deficiency actions against Borrowers and Guarantors relating to the Loans in order to satisfy the requirements of Arizona Revised Statutes ("A.R.S.") § 33-814 (the "Deficiency Actions"). Notwithstanding anything to the contrary in the Loan Documents, the Parties hereby agree that the Deficiency Actions for all of the Loans may be brought in Maricopa County Superior Court, and each Party waives any objection that it may have to jurisdiction or the laying of the venue of any such Deficiency Actions in Maricopa County, Arizona.

7.2 At the Closing, the Parties and their respective counsel agree to execute a stipulated judgment against the respective Borrowers in each of the Deficiency Actions in the aggregate amount of the Total Deficiency (as defined below), pursuant to the form attached hereto as Exhibit B-1 (the "Borrower Judgments"), apportioned among the Deficiency Actions according to the amounts stated for each in Paragraphs 9.1 through 9.6. Following the Closing and the filing of the Deficiency Actions by Lenders, Lenders will file, but shall not record the Borrower Judgments.

7.3 At Closing, the Lenders shall enter into a Covenant Not to Execute on the Borrower Judgments pursuant to the form attached hereto as Exhibit C-1 whereby the Lenders stipulate, covenant and agree not to execute on, enforce, record or otherwise take any action on the Borrower Judgments provided that the Borrower is not in breach of this Agreement.

8. **Stipulated Judgment/Covenant Not to Execute With Guarantors.**

8.1 In addition to the Borrower Judgments, at the Closing the Parties and their respective counsel agree to execute a stipulated judgment against the respective Guarantors in each of the Deficiency Actions in the aggregate amount of the Total Deficiency (as defined below), pursuant to the form attached hereto as Exhibit B-2 (the “Guarantor Judgments”), apportioned among the Deficiency Actions according to the amounts stated for each in Paragraphs 9.1 through 9.6. The Lenders’ counsel shall maintain the original of the Guarantor Judgments, and, except as provided herein, shall not file them with the Court or record them in any public record.

8.2 At Closing, the Lenders shall enter into a Covenant Not to Execute on the Guarantor Judgments pursuant to the form attached hereto as Exhibit C-2 whereby the Lenders stipulate, covenant and agree not to execute on, enforce, record, file or otherwise take any action on the Guarantor Judgments provided that the Guarantors are not in breach of this Agreement.

8.3 At Closing, the Parties, through their respective counsel, shall execute a stipulation to dismiss, without prejudice, in each of the Deficiency Actions as to the Guarantors pursuant to the form attached hereto as Exhibit D (the “Stipulations to Dismiss”). The Stipulations to Dismiss shall provide, among other things, that they are pursuant to a settlement between the Parties and that the Court shall retain jurisdiction to enforce the terms of this Agreement. Provided that there is no default or breach by the Guarantors or Borrowers under this Agreement, the Stipulations to Dismiss shall be filed by the Lender, but not sooner than one hundred twenty (120) days after the Closing.

8.4 At Closing, the Parties and their respective counsel shall further execute a stipulation to reopen each of the Deficiency Action as to the Guarantors pursuant to the form attached hereto as Exhibit E (the “Stipulations to Reopen”). The Stipulations to Reopen shall be held by the Lenders or its Counsel and shall not be filed unless there is a default or breach by the Borrowers or Guarantors under this Agreement. If there is a default or breach of this Agreement by any of the Borrowers or Guarantors, the Lenders may, at their sole option, file with the Court the Stipulations to Reopen and the Guarantor Judgments. Following entry of the Guarantor Judgments, the Lenders may take whatever action they deem necessary to effectuate and enforce the Guarantor Judgments.

9. **Deficiencies.** Borrowers and Guarantors acknowledge and agree that the Loans are all due and payable according to the terms of the Loan Documents, subject only to the limitation on the amount of any deficiency claims against Borrowers and Guarantors following the Foreclosure Sales as provided by A.R.S. § 33-814. By the terms of this Agreement, the Parties agree to establish the anticipated amount of such deficiency claims following the Foreclosure Sales, to settle and compromise the amount of such claims that would otherwise be contested litigation, and to waive all other claims and defenses to the full extent allowed by law. In connection therewith, the Parties agree as follows with respect to each of the Loans:

9.1 Loan 850206. A portion of the 850206 Property consisting of approximately 1,888 acres (“Pearce Farm”) was sold to Arnolito Burruel and Judith Burruel on May 31, 2012 for a sales price of \$5,500,000. The applicable Lenders executed a deed of partial

release and partial reconveyance that released Pearce Farm from the 850206 Deed of Trust and received net proceeds from the sale of Pearce Farm. Subject to Paragraph 6 above, at the trustee's sale for the balance of the 850206 Property, the applicable Lender anticipates that it will credit bid an amount that does not exceed the fair market value of the balance of the 850206 Property, as permitted by Arizona law. As a result, on account of the sale of Pearce Farm and upon the completion of the trustee's sale relating to the 850206 Deed of Trust and the balance of the 850206 Property, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist relating to Loan 850206 in an amount in excess of \$24,636,058.

9.2 Loan 857306. Subject to Paragraph 6 above, at the trustee's sale for 857306 Property, the applicable Lender anticipates that it will credit bid an amount that does not exceed the fair market value of the 857306 Property, as permitted by Arizona law. As a result, upon the completion of the trustee's sale relating to the 857306 Deed of Trust and the 857306 Property, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist relating to Loan 857306 in an amount in excess of \$12,318,029.

9.3 Loan 857406. Subject to Paragraph 6 above, at the trustee's sale for 857406 Property, the applicable Lender anticipates that it will credit bid an amount that does not exceed the fair market value of the 857406 Property, as permitted by Arizona law. As a result, upon the completion of the trustee's sale relating to the 857406 Deed of Trust and the 857406 Property, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist relating to Loan 857406 in an amount in excess of \$12,318,029.

9.4 Loan 858006. Subject to Paragraph 6 above, at the trustee's sale for 858006 Property, the applicable Lender anticipates that it will credit bid an amount that does not exceed the fair market value of the 858006 Property, as permitted by Arizona law. As a result, upon the completion of the trustee's sale relating to the 858006 Deed of Trust and the 858006 Property, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist relating to Loan 858006 in an amount in excess of \$13,773,797.

9.5 Loan 859606. Subject to Paragraph 6 above, at the trustee's sale for 859606 Property, the applicable Lender anticipates that it will credit bid an amount that does not exceed the fair market value of the 859606 Property, as permitted by Arizona law. As a result, upon the completion of the trustee's sale relating to the 859606 Deed of Trust and the 859606 Property, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist relating to Loan 859606 in an amount in excess of \$12,318,029.

9.6 Loan 861206. Subject to Paragraph 6 above, at the trustee's sale for 861206 Property, the applicable Lender anticipates that it will credit bid an amount that does not exceed the fair market value of the 861206 Property, as permitted by Arizona law. As a result, upon the completion of the trustee's sale relating to the 861206 Deed of Trust and the 861206 Property, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist relating to Loan 861206 in an amount in excess of \$24,636,058.

9.7 Total Agreed Deficiency. In order to avoid the time and costs associated with establishing the total amount of the deficiencies at the Deficiency Actions, the Parties agree that a deficiency for purposes of A.R.S. § 33-814 will exist following the completion of the

Foreclosure Sales for all of the Loans in an aggregate amount in excess of One Hundred Million Dollars (\$100,000,000) (the "Total Deficiency"). The Parties further agree that the Total Deficiency represents the amount of the deficiency that otherwise would be established pursuant to A.R.S. § 33-814. Accordingly, the Parties agree that a fair market value hearing pursuant to A.R.S. § 33-814 is not necessary or desired in order to establish the amount of the deficiency following the Foreclosure Sales.

9.8 **Settlement of Total Deficiency.** In consideration of, and in settlement and compromise of Borrowers' and Guarantor's obligation to pay the Total Deficiency to Lenders, and the mutual promises, obligations, covenants, conditions, and releases provided herein, Borrowers and Guarantors jointly and severally hereby agree: (i) to pay Lenders the amount of Ten Million Three Hundred Thousand Dollars (\$10,300,000.00) (the "Settlement Amount") as set forth in Paragraph 10; (ii) to grant, or cause the granting of, the security interests described in Paragraph 11 to Lenders; (iii) to grant and convey the additional interests relating to the Properties to Lenders as set forth in Paragraph 12; (iv) to exchange certain properties with Lenders as set forth in Paragraph 16; and (v) to otherwise perform all of the obligations and agreements of Borrowers and Guarantors under this Agreement. By entering into this Agreement and agreeing to perform the obligations and agreements set forth herein, Borrowers and Guarantors acknowledge and agree that Lenders are foregoing the right to immediately collect from Borrowers and Guarantors the full amount owed under the Loans or the Total Deficiency following the Foreclosure Sales, as applicable, as permitted by the Loan Documents and applicable law. Borrowers and Guarantors further acknowledge and agree with Lenders that such forbearance by Lenders is valuable and independent consideration for the promises and agreements made by Borrowers and Guarantors under this Agreement. In addition, Borrowers and Guarantors have informed Lenders that dismissing the Deficiency Actions against Guarantors as set forth in this Agreement is critically important to Borrowers' and Guarantors' ability to transact business in the future, and that Lenders' agreement to dismiss the Deficiency Actions against Guarantors as set forth herein is valuable and independent consideration for the promises and agreements made by Borrowers and Guarantors under this Agreement.

10. **Payment of Settlement Amount.** Borrowers and Guarantors shall jointly and severally pay the Settlement Amount to Lenders, and payment thereof shall be due and payable in full on or before the date that is eighteen (18) months after the Closing Date (the "Settlement Payment Date"). If the Settlement Amount shall not be paid in full by the Settlement Payment Date, then the Borrowers and the Guarantors shall be in default hereunder.

10.1 The Settlement Amount shall not bear interest while there is no default under this Agreement or the Security Agreements described above.

10.2 The Settlement Amount shall be apportioned among loans as set forth on Exhibit F.

10.3 Provided that there is no event of default by any of the Borrowers and Guarantors hereunder and there has been no default hereunder or under the Security Agreements by any of the Borrowers and Guarantors, Borrowers may prepay the Settlement Amount by paying the following amounts in full on or before the following dates:

<u>Payoff Amount</u>	<u>Due Date for Prepayment</u>
\$6,800,000 if paid by	The later of (a) 15 days the date of Closing or (b) 60 days after the date of this Agreement (the “First Prepayment Date”)
\$7,300,000 if paid by	Three (3) months after the First Prepayment Date
\$7,800,000 if paid by	Six (6) months after the First Prepayment Date
\$8,300,000 if paid by	Nine (9) months after the First Prepayment Date
\$8,800,000 if paid by	Twelve (12) months after the First Prepayment Date
\$10,300,000 if paid by	Fifteen (15) months after the First Prepayment Date

11. **Security for Obligations under Agreement.** The Borrowers and Guarantors shall provide security for the payment of the their obligations under this Agreement (including, but not limited to, payment of the Settlement Amount and Total Deficiency, as applicable) as follows:

11.1 Borrowers and Guarantors represent and warrant to Lenders that: (i) Borrowers and Guarantors directly or indirectly control W Harquahala, LLC, an Arizona limited liability company (“Harquahala”); and (ii) Harquahala owns a 49% membership interest in Club Vista Holding, LLC, a Delaware limited liability company (“CVH”). At the Closing (as defined below), Borrowers and Guarantors shall provide to Lenders fully executed Pledge and Security Agreements in the form attached hereto as Exhibit G, whereby Lenders collectively are granted a security interest in 25% of Harquahala’s membership interest in CVH, including the right to collectively receive 25% of all distributions from CVH to Harquahala (the “CVH Interest”), as security for the payment of Borrower’s and Guarantor’s obligations under this Agreement. In addition, Borrowers and Guarantors shall provide to Lenders a fully executed Consent in the form attached hereto as Exhibit H.

11.2 Borrowers and Guarantors represent and warrant to Lenders that Ashton and Brandon collectively own 100% of the membership interest in West Valley Ventures, LLC, an Arizona limited liability company (“West Valley”). At the Closing, Borrowers and Guarantors shall cause Ashton and Brandon to execute and deliver to Lenders the Pledge and Security Agreement in the form attached hereto as Exhibit I, whereby Lenders collectively are granted a security interest in 25% of the total membership interest in West Valley, including the right to collectively receive 25% of all distributions from West Valley to Ashton and Brandon (the “West Valley Interest”), as security for the payment of Borrower’s and Guarantor’s obligations under this Agreement. In addition, Borrowers and Guarantors shall provide to Lenders a fully executed Consent from West Valley in the form attached hereto as Exhibit J.

12. **Additional and Subsequent Conveyances; Further Cooperation.** The Parties anticipate that the Foreclosure Sales will result in Lenders acquiring all of Borrowers’ collective right, title and interest in and to the Properties. However, to ensure that Lenders do acquire all of Borrowers’ collective right, title and interest in and to the Properties, at the Closing and at any time after the Closing upon request by Lenders, Borrowers agree that they will execute such documents and take such actions as are necessary for Lenders to obtain all of the right, title and interest of each entity comprising Borrowers in and to the Properties, including, without limitation: (a) fee simple title to the real properties legally described on Exhibit K attached

hereto (the “Real Properties”), subject to all matters of record, and all fixtures, and other improvements situated thereon (all said buildings and other improvements hereinafter called the “Improvements”), all of Borrowers’ right, title, and interest in and to and all easements, rights, tenements, and appurtenances thereunto belonging or appertaining to the Real Properties and Improvements, and all of Borrowers’ right, title, and interest in and to any and all streets, alleys, or public ways adjacent thereto, before or after vacation thereof; (b) all of Borrowers’ right, title, and interest as lessor or lessee in all leases, licenses, and other agreements to occupy, cultivate or use all or any part of the Real Properties and any properties owned by the State of Arizona or the United States that adjoin or are used in connection with any of the Properties (the “Leases”), including any extensions thereof, including but not limited to lease payments pursuant to the leases identified on Exhibit L. Borrowers agree to execute and deliver any documents reasonably necessary to transfer, assign, attorn and (if and to the extent any such documents shall require Borrowers’ execution or approval) extend the term of such Leases; (c) all of Borrowers’ rights in and to all water rights, well rights, irrigation rights and any grandfathered water rights pertaining to the Real Properties; (d) all right, title, and interest of Borrowers in and to all plans and specifications, plats, entitlement files and studies relating to the Improvements (the “Plans and Specifications”) and all unexpired claims, warranties and guarantees from third parties relating thereto, if any, received in connection with the Improvements or any construction on the Real Properties, if and to the extent assignable (“Warranties”) and any Real Properties documentation, diligence materials and all documentation in Borrowers’ possession or reasonably obtainable by Borrowers relating to the Real Properties (including but not limited to planning and engineering documents, specific plans, plats, maps (preliminary, in progress or completed) and all files and financial information and projections relating to the zoning, development, use or improvement of the Real Properties and all surveys and reports, whether environmental real property, soils or other) (collectively, the “Property Documents”); (e) all of Borrowers’ right, title and interest to receive a reimbursement, credit or refund from any governmental authority or utility provider relating to any deposits, development fees or costs paid or incurred in connection with the development of, or provision of utility service to, the Real Properties and/or Improvements; (f) all of Borrowers’ right, title and interest under any declarations of covenants, conditions and restrictions relating to the Real Properties, including, without limitation, all rights, privileges and exemptions as a declarant; and (g) all personal property of Borrowers located at or upon the Real Properties and used in connection with the operation, development, or cultivation thereof, including but not limited to any furniture, machinery, fixtures and related personal property of Borrowers’ located at the Real Properties (the “Personal Property”).

If Lenders elect to acquire title to any of the Properties prior to a Foreclosure Sale or elect to arrange for the transfer of any of the Properties to a third party or parties determined by Lenders prior to a Foreclosure Sale in a “short sale”, Borrowers agree that they will execute such documents and take such actions as are necessary for either (a) Lenders to obtain all of the right, title and interest of each entity comprising Borrowers in and to the applicable Property or Properties and each item described in the immediately preceding paragraph as to each Property or Properties or (b) Borrowers to convey to a third party or parties determined by Lenders all of the right, title and interest of each entity comprising Borrowers in and to the applicable Property or Properties and each item described in the immediately preceding paragraph as to each Property or Properties, with all net proceeds of such transaction or transactions payable to Lenders.

Lenders shall have the right to take title to any or all of the Properties (including the additional interests described above) in the name of one or more limited liability companies or other entities established by Lenders for purpose of holding title to any portion of the Properties, including the Real Properties. In the event Lenders so elect, such limited liability companies or other entities (the "Ownership Companies") shall be bound by all of the provisions hereof and shall have all of the applicable rights of Lenders hereunder relating to such Properties.

Following the completion of the Foreclosure Sales, Borrowers and Guarantors shall provide such assistance to Lenders (and/or the Ownership Companies, as applicable), as each may request from time to time, in connection with the ownership, marketing, entitlement, and further development of the Properties. Such assistance shall include all reasonable requests for the time and effort of any of the Guarantors and employees or principals of Borrowers familiar with the Properties; provided, however, that Borrowers and Guarantors shall not be obligated to incur material expense (other than employee compensation) in providing such assistance.

13. **Books and Records.** Upon Closing, and to the extent not previously provided to Lenders, Borrowers shall deliver the following documents and items to Lenders, to the extent in Borrowers' possession:

13.1 Copies of all outstanding bills and debts arising from or related to Borrowers' ownership, construction or operation of the Properties.

13.2 Copies of all warranties and maintenance, service, vendor and other contracts affecting or relating to the Properties, if any.

13.3 A complete and accurate list of the personal property owned by Borrowers, which is located on and/or used in connection with the Properties, if any.

13.4 Copies of all licenses, permits and inspection reports issued with respect to the Properties, if any.

13.5 Copies of all filings, correspondence or other documents relating to any irrigation district, adjudication of water rights or water rights title matters, including without limitation all filings and correspondence to or from the Arizona Department of Water Resources related to the Real Properties.

13.6 Copies of all real estate and personal property tax statements for the immediately preceding three (3) years with respect to the Real Properties and the valuation notice issued with respect to the Real Properties for the current tax year, and any and all information, letters or forms submitted to the County in which the Real Properties are located or the State of Arizona in connection with or relating to the valuation of the Real Properties for the period from the date of the Deed of Trust applicable to each Property until the date of the trustee's sale for each of the Real Properties.

13.7 Copies of all of the materials described in Section 12 above.

14. **Title Policies.** Lenders may, at their own expense, obtain “date downs” on their lender’s title policies to ensure that no liens, encumbrances or judgments are attached to the Real Properties and/or obtain one or more ALTA extended owner’s policies (with endorsements acceptable to Lenders and their counsel, in their sole and absolute discretion) from a reputable title company of its choosing, for the transfer of the Properties.

15. **Real Property Taxes and Other Payments.**

15.1 On or before the First Prepayment Date, Borrowers shall pay to Lenders an amount equal to the sum of all past due real property taxes and assessments that are due and owing with respect to the Real Properties as of the date of the Closing, reduced by a credit of a net \$121,007.18 on account of matters included in the Pearce Farm transaction referenced in Paragraph 9.1 (specifically, \$200,000 paid to Lenders for non-collateral property of Borrowers included in the sale, less \$50,000 paid from sale proceeds to third-party creditors of Borrowers and less \$28,992.82 paid from sale proceeds for real property taxes). If there are any payments of real property taxes or fees to creditors to obtain the release of liens in connection with any “short sales” as contemplated in Section 12 above, so that the net proceeds of such sale payable to Lenders are reduced, then Borrowers shall pay to Lenders amounts equal to all such real property tax payments and fees to creditors on or before January 15, 2013.

15.2 At the Closing, Borrowers shall pay Simon Consulting, LLC all amounts that are due and owing to Simon Consulting, LLC in connection with the review of the financial condition of Borrowers for Lenders in connection with this Agreement.

16. **Exchange of Properties.**

16.1 The repayment of Loan 858006 is secured by the 858006 Deed of Trust encumbering certain parcels of real property, including the real property described on Exhibit M attached (the “Rancho Vistoso Property”). Vistoso is the owner of the real property described on Exhibit N attached (the “Exchange Property”). Lenders may, at their option, exchange the Rancho Vistoso Property for the Exchange Property upon ten (10) days prior written notice to Borrowers. The exchange of properties shall be completed at the Closing (described below).

16.2 During the Contingency Period, Lenders will conduct such investigation and analysis, including a review of the condition of title to the Exchange Property, as is necessary for Lenders to determine whether the Exchange Property is suitable for acquisition by the Lenders under Loan 858006 (the “858006 Lenders”). If the 858006 Lenders determine, in their sole discretion, that the Exchange Property is not suitable for their acquisition, then the 858006 Lenders will give written notice to Borrowers that the 858006 Lenders will not proceed with the exchange of the Rancho Vistoso Property for the Exchange Property.

16.3 If the 858006 Lenders elect to proceed with the exchange of properties, the following provisions shall apply:

(a) If the Foreclosure Sale for the 858006 Property occurs prior to the Closing, then at the Closing each party shall convey fee simple title to its respective property by special warranty deed warranting title subject to all matters of record. It shall be a condition of the 858006 Lenders’ acquisition of the Exchange Property that Borrowers shall provide the

858006 Lenders with an ALTA extended owner's policy of title insurance in an amount to be reasonably designated by Lenders prior to Closing, insuring that the 858006 Lenders are the owners of fee simple title to the Exchange Property, free and clean of liens and encumbrances, subject to only those title matters that have been approved by the 858006 Lenders during the Contingency Period. It shall be a condition of Vistoso's acquisition of the Rancho Vistoso Property that the 858006 Lenders shall provide Vistoso with an ALTA extended owner's policy of title insurance in an amount to be reasonably designated by Vistoso prior to Closing, insuring that Vistoso is the owner of fee simple title to the Rancho Vistoso Property, free and clean of liens and encumbrances.

(b) If the Foreclosure Sale for the 858006 Property has not occurred prior to the Closing, then at the Closing Borrowers shall convey fee simple title to the Exchange Property by special warranty deed warranting title subject to all matters of record. It shall be a condition of the 858006 Lenders' acquisition of the Exchange Property that Borrowers shall provide the 858006 Lenders with an ALTA extended owner's policy of title insurance in an amount to be reasonably designated by Lenders prior to Closing, insuring that the 858006 Lenders are the owners of fee simple title to the Exchange Property, free and clean of liens and encumbrances, subject to only those title matters that have been approved by the 858006 Lenders during the Contingency Period. Lenders shall thereafter release the lien of the 858006 Deed of Trust with respect to the Rancho Vistoso Property only.

(c) The Parties agree that the exchange of properties contemplated by this Paragraph 15 shall not affect the amount of the Total Deficiency or the Settlement Amount, even if Lenders conduct a Foreclosure Sale on less than all of the 858006 Property.

17. **Closing.** The closing ("Closing") of the transactions provided for in this Agreement shall occur on or before the later of: (i) the date that is 15 days after Lenders file all of the Deficiency Actions; or (ii) the date that is 15 days after the date that all of the Contingencies have been satisfied and Lenders deliver the Contingency Satisfaction Notice to Borrowers and Guarantors (the "Closing Date"). The Closing shall be held at the office of Thomas Title & Escrow (Diane Carpenter), Promenade Corporate Center, 16435 N. Scottsdale Rd., Ste. 405, Scottsdale, Arizona 85254; (480) 222-1116 ext. 203. ("Escrow Agent") or at such other location as is agreed to by the Parties. The Parties agree to execute and deliver to Escrow Agent on or prior to the Closing Date the documents provided for herein and such additional documents and agreements as may be necessary to carry out the intent and purpose of this Agreement.

18. **Use and Ownership of Properties.** Upon Lenders (and/or Ownership Companies, if applicable) becoming the fee owners of all of the Properties, Lenders (and/or Ownership Companies, if applicable) may sell, transfer, lease or grant any interest in all or any portion of any of the Properties at any price and on any terms determined by Lenders (and/or Ownership Companies, if applicable) in their sole discretion, and the amount received by Lenders (and/or Ownership Companies, if applicable) upon sale of all or any portion of the Properties shall not constitute a credit to the Settlement Amounts or otherwise change or amend the Settlement Amounts due hereunder.

19. **Default.** Borrowers and Guarantors shall be in default hereunder in the event of any one or more of the following, each of which shall be a “Default” hereunder:

19.1 Default, breach or failure of performance of any term, condition, covenant, warranty or representation contained in this Agreement or the Security Agreements.

19.2 Failure of Lenders (or Ownership Companies, if applicable) to receive any payment or any distribution provided by Section 10 above when due.

19.3 The filing of bankruptcy petition by or against Harquahala; or the entry of any money judgment against Harquahala in excess of the amount of \$50,000; or the filing of any state or federal tax lien against Harquahala or any property owned by Harquahala.

19.4 The default by Harquahala under any pledge or security agreement other than the Security Agreements, in which the collateral security is a membership interest in CVH; or any third party commences foreclosure or similar proceedings against any membership interest of Harquahala in CVH.

19.5 The filing of bankruptcy petition by or against West Valley; or the entry of any money judgment against West Valley in excess of the amount of \$50,000; or the filing of any state or federal tax lien against West Valley or any property owned by West Valley.

19.6 The default by Ashton or Brandon under any pledge or security agreement other than the Security Agreements, in which the collateral security is a membership interest in West Valley; or any third party commences foreclosure or similar proceedings against any membership interest of Ashton or Brandon in West Valley.

19.7 The sale or transfer of any real property owned by CVH or West Valley to an Affiliate of any of the Borrowers or Guarantors, without the prior written approval of Lenders.

19.8 The filing of bankruptcy petition by or against any of the entities comprising Borrowers.

19.9 The filing of bankruptcy petition by or against any of the Guarantors.

19.10 Failure to pay the Settlement Amount in full on or before the Settlement Payment Date.

20. **Remedies Upon Default.** In the event of Default hereunder, and if such Default continues for five (5) days after written notice of Default is given by Lenders to Borrowers, Lenders may exercise any one or more of the following remedies against Borrowers and/or Guarantors, which remedies are non-exclusive:

20.1 Declare this Agreement in default, at which time Lenders shall be relieved of any further performance required by Lenders under this Agreement.

20.2 Demand immediate payment of the Settlement Amount in full, at which time the same shall be due and payable in full without further notice, presentment or demand, and shall bear interest at the rate of 15% per annum until paid.

20.3 File the Stipulations to Reopen against Borrowers and Guarantors relating to the Deficiency Actions.

20.4 Execute on the Borrower Judgments and/ or the Guarantor Judgments, in which event Borrowers and Guarantors shall be jointly and severally liable for the payment of the then-existing Total Deficiency to Lenders.

20.5 Exercise any remedy upon default set forth in the Loan Documents.

20.6 Exercise any remedy upon default set forth in any document or agreement executed in conjunction with this Agreement.

20.7 Exercise any remedy under the Security Agreements.

20.8 Exercise any remedy upon default available to Lenders at law or otherwise.

21. **Release of Lenders.** In consideration for the terms and conditions of this Agreement, effective as of the Effective Date, Borrowers and Guarantors release Lenders, and all of their past and present employees, officers, directors, shareholders, agents, affiliates, participants, predecessors, parent companies and attorneys from any and all liability for all claims, demands and causes of action, whether existing in tort, contract or otherwise, whether known or unknown, asserted or unasserted, and arising in any manner out of any lending relationship with Lenders, including the Loan Documents, excepting only for breach of this Agreement by Lenders. These releases in favor of Lenders are in addition to and not in replacement or substitution of any previous releases. These releases are intended to be full and complete releases, and nothing is reserved in favor of Borrowers or Guarantors, excepting only for claims of breach of this Agreement by Lenders.

22. **Release of Borrowers and Guarantors.** If Borrowers pay the Settlement Amount to Lenders in full on or before the Settlement Payment Date, then effective as of the Release Date (defined below), Lender Parties hereby agree to release and forever discharge Borrower Parties from any and all liabilities, claims, causes of action, damages, losses or expenses, whether known or unknown, which Lender Parties may now have or be entitled to bring, whether accrued or not, against Borrower Parties arising out of or related in any way to (i) the Loans; (ii) the Loan Guaranties; (iii) the Loan Documents; or (iv) any actions of Borrowers and/or Guarantors in connection with the Loans. The term "Release Date" as used in this Section means the date that is ninety-one (91) days after the Settlement Amount has been paid in full to Lenders in accordance with the terms of this Agreement, provided that no Bankruptcy Action has occurred with respect to any Borrower or Guarantor prior to such date.

23. **Adequacy of Consideration.** Borrowers and Guarantors acknowledge and agree that Lenders have given good, valuable and adequate consideration for all of the terms and conditions of this Agreement, including all releases and waivers. Lenders acknowledge and agree

that Borrowers and Guarantors have given good, valuable and adequate consideration for all of the terms and conditions of this Agreement, including all releases and waivers.

24. **Waivers.** To the maximum extent permitted by applicable law, Borrowers and Guarantors further knowingly, intentionally and expressly waive the right to have a fair market value hearing relating to the Properties pursuant to A.R.S. § 33-814, which Borrowers and Guarantors acknowledge is not necessary as a result of this Agreement. To the maximum extent permitted by applicable law, Borrowers and Guarantors further knowingly, intentionally and expressly waive the 90-day limitations period set forth in A.R.S. § 33-814, which Borrowers and Guarantors acknowledge is not necessary as a result of this Agreement. Alternatively, to the maximum extent permitted by applicable law, Borrowers and Guarantors knowingly and intentionally agree with Lenders to toll the 90-day limitations period set forth in A.R.S. § 33-814 until such time as Borrowers and Guarantors have fully satisfied all of their respective obligations under this Agreement. In the event of any action to enforce Borrowers' and Guarantors' liability relating to the Total Deficiency and/or under this Agreement, Borrowers and Guarantors agree not to assert any defense related to the running of such 90-day limitation or any other protection under A.R.S. § 33-814. Alternatively, at the election of the Lenders, which election is within the sole and exclusive discretion of the Lenders without any limitation, Borrowers and Guarantors knowingly, intentionally and expressly agree that the obligations set forth herein are a substitute and independent obligation, and that any defenses to the deficiency amounts set forth above created by A.R.S. § 33-814 do not apply to the obligations created under this Agreement.

25. **Representation by Attorney.** All Parties acknowledge that they have been represented by an attorney with respect to entry into this Agreement, or have had an adequate opportunity to be represented by an attorney, and have knowingly and voluntarily entered into this Agreement without representation by an attorney.

26. **Authority and Capacity.** Borrowers and Guarantors acknowledge that they have full and complete limited liability company authority to enter into and perform under this Agreement, and the person or persons executing this Agreement on behalf of Borrowers are duly authorized and empowered to bind such parties to this Agreement. ML Manager warrants and represents that is has full and complete authority to enter into this Agreement for and on behalf of the Lenders, and that this Agreement is binding upon each of the Lenders.

27. **Payment of Fees and Expenses.** Borrowers and Guarantors acknowledge and agree that Lenders are entitled to recovery of their legal fees, expert witness' fees, court costs and other litigation-related expenses in the event of default of this Agreement.

28. **Representations and Warranties of Borrowers.** Borrowers warrant and represent to Lenders that:

28.1 Borrowers have not received any notice from, and have no actual knowledge of, any governmental authority having jurisdiction over the Real Properties, requiring or specifying any work to be done to the Real Properties that has not been performed.

28.2 There are no contracts or agreements relating to or affecting the Real Properties, other than the agreements and leases listed in Exhibit N hereto, and this Agreement and the Lenders approved permitted encumbrances, which cannot be terminated, without liability, on seven (7) days' notice.

28.3 Except in connection with lawful agricultural use, or as otherwise disclosed in the Property Documents, neither Borrowers nor, to Borrowers' actual knowledge, any other person or entity has ever caused or permitted any Environmental Pollutant to be released or removed from, or placed, held, located or disposed of on, under or at the Real Properties or any part thereof, and to Borrowers' actual knowledge, no part of the Real Properties has ever been used (whether by Borrowers or any other person or entity) as a treatment, storage or disposal (whether permanent or temporary) site for any Environmental Pollutant. Except in connection with lawful agricultural use, or as otherwise disclosed in the Property Documents, to Borrowers' actual knowledge, there is no Environmental Pollutant present on, under or at the Real Properties or any part thereof. For purposes of this Agreement, "Environmental Pollutant" means and includes asbestos, PCBs, radon, urea, formaldehyde, foam insulation, and any other pollutant, contaminant, solvent, waste, or hazardous or toxic waste, substance or material defined as such pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, et seq.), the Arizona Water Quality Control Program (A.R.S. Title 49, Chapter 2), or any other Federal, state or local environmental law, statute, code, rule, regulation, order, decree or ordinance.

28.4 Except as may be otherwise disclosed in the Property Documents, to Borrowers' belief, the Real Properties are in compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees (whether federal, state, county or municipal), and all applicable restrictive covenants (collectively, "Regulations"), including, without limitation, any Regulations relating to environmental protection, pollution, safety, health or fire. Borrowers have received no notice of and have no actual knowledge of any proposed or pending proceeding to change or redefine the current zoning classification of all or any part of the Real Properties. Borrowers have obtained all licenses, permits, authorizations and approvals with respect to the Real Properties necessary for its current intended use.

28.5 Until completion of the Foreclosure Sales, Borrowers shall operate, manage and maintain the Real Properties in a good condition and state of repair, reasonable wear and tear excepted.

28.6 Harquahala is a limited liability company, duly organized and validly existing under the laws of the State of Arizona. CVH is a limited liability company, duly organized and validly existing under the laws of the State of Delaware.

28.7 Harquahala owns 49% of the total membership interest of CVH (the "CVH Interest").

28.8 Borrowers have good and marketable title to the W Harquahala membership interest and Harquahala has good and marketable title to the CVH Interest, free and clear of all liens, encumbrances and claims whatsoever except the security interest evidenced by

this Agreement, except as provided in the CVH Limited Liability Agreement. Borrowers have the right and authority to grant a security interest in the W Harquahala membership interest and Harquahala has the right and authority to grant a security interest in the CVH Interest, with the consent of CVH.

28.9 There is no financing statement covering the W Harquahala membership interest or the CVH Interest or their respective proceeds on file in any public office other than any financing statement given to secure Borrowers' obligations under this Agreement.

28.10 No bankruptcy or insolvency proceedings are pending by or against Harquahala or CVH.

28.11 The execution and delivery of this Agreement does not contravene, result in a breach of, or constitute a default under the organizational documents of Harquahala or CVH or under any contract or agreement to which Harquahala or CVH or Borrowers is a party or by which Harquahala or CVH or Borrowers or any of their properties are bound and does not violate or contravene any law, order, decree, rule, or regulation to which Harquahala or CVH or Borrowers is subject.

28.12 There are no agreements that require the sale by Borrowers of any of the securities of Harquahala or CVH or which will require or permit the redemption of the securities CVH, except as provided in the CVH Limited Liability Agreement.

28.13 All of the foregoing representations and warranties shall survive the Closing.

29. **Representations and Warranties of Ashton and Brandon.** Ashton and Brandon warrant and represent to Lenders that:

29.1 West Valley is a limited liability company, duly organized and validly existing under the laws of the State of Arizona.

29.2 Ashton and Brandon have good and marketable title to the West Valley Interest, free and clear of all liens, encumbrances and claims whatsoever except the security interest evidenced by this Agreement. Ashton and Brandon have the right and authority to grant a security interest in the West Valley Interest.

29.3 There is no financing statement covering the West Valley Interest or its proceeds on file in any public office other than any financing statement given to secure Ashton and Brandon's obligations under this Agreement.

29.4 No bankruptcy or insolvency proceedings are pending by or against West Valley.

29.5 The execution and delivery of this Agreement does not contravene, result in a breach of, or constitute a default under the organizational documents of West Valley or under any contract or agreement to which West Valley or Ashton or Brandon is a party or by which West Valley or Ashton or Brandon or any of their properties are bound and does not

violate or contravene any law, order, decree, rule, or regulation to which West Valley or Ashton or Brandon is subject.

29.6 There are no agreements that require the sale by Ashton or Brandon of any of the securities of West Valley or which will require or permit the redemption of the securities West Valley.

29.7 All of the foregoing representations and warranties shall survive the Closing.

30. **Negative Covenants.** Borrowers, Ashton and Brandon shall not take or omit to take any action that would result in a violation or breach of any of the representations, warranties or covenants set forth in this Agreement. Borrowers, Ashton and Brandon shall indemnify, defend and hold Lenders harmless for, from and against any and all actual or alleged liability, claims, causes of action, loss, damage, costs and expenses (including, without limitation, actual attorneys' fees, expert witness' fees, court costs and other litigation-related expenses) that Lenders may incur by reason of any breach of, or inaccuracy in, the representations, warranties and covenants contained herein or in any certificate or other instrument furnished by Borrowers or Guarantors to Lenders pursuant hereto.

31. **Survival of Terms and Conditions.** In the event of default or termination of this Agreement, or failure of satisfaction of the Settlement Amount due Lenders in full, the releases and waivers contained in this Agreement and previously granted to Lenders shall survive and remain fully enforceable and in effect.

32. **Entire Agreement.** This is the entire agreement among the Parties. There are no other agreements or understandings, express or implied, except as set forth in this Agreement. This Agreement may be amended or modified only in writing signed by all of the Parties.

33. **Counterparts.** This Agreement may be executed in counterparts, with all such counterparts constituting the entire Agreement.

34. **No Waiver.** Lenders shall not at any time be deemed, by any act of omission or commission, to have waived any of their rights or remedies under this Agreement, unless such waiver is in writing and signed by Lenders and then only to the extent specifically set forth in such writing. A waiver of one event shall not be construed as a continuing waiver or as a bar to or waiver of any right or remedy in connection with any subsequent event.

35. **Joint and Several Liability.** Borrowers and Guarantors shall each be primarily liable as well as jointly and severally liable for all of the obligations of Borrowers and/or Guarantors under this Agreement, including, without limitation, the obligation to pay the Settlement Amount; PROVIDED, HOWEVER, that each judgment debtor under any of the Borrower Judgments and Guarantor Judgments shall be liable, as applicable, only on the judgment(s) to which each is a party. To the extent any of Borrowers or Guarantors are deemed to be a guarantor or surety of the obligations under this Agreement, including, without limitation, the obligation to pay the Settlement Amount, such Party waives (a) diligence, presentment, demand for payment and protest; and (b) all notices, whether to such Party or any other persons, including, without limitation, notice of nonpayment, dishonor, protest, occurrence of any event

of default under this Agreement, intent to accelerate, notice of any matter relating to this Agreement, and all demands whatsoever, except as otherwise expressly provided herein.

36. **Reservation of Rights.** There is a dispute between the Agent and the Plan regarding, among other things, agency issues and the authority of the Agent to act on behalf of the Plan (the "Dispute"). The Dispute is the subject of proceedings before the United States District Court for the District of Arizona (Cordello, et al. v ML Manager, LLC, et al., 10-1863 (D. Ariz.) (RCJ)) (the "Court Proceedings"). As between the Agent and the Plan, the Agent and the Plan reserve any and all arguments and rights that they have as to any and all issues pending in the Court Proceedings. The foregoing reservation of rights shall not affect the enforceability of this Agreement as among the Parties hereto.

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

In witness whereof, the Parties have executed this Agreement as of the date above first written.

LENDERS:

ML Manager, LLC, an Arizona limited liability company

By: _____

Name: _____

Title: _____

ABCDW I Loan LLC, an Arizona limited liability company

By: ML Manager, LLC, Manager

By: _____

Mark Winkleman,
Chief Operating Officer

ABCDW II Loan LLC, an Arizona limited liability company

By: ML Manager, LLC, Manager

By: _____

Mark Winkleman,
Chief Operating Officer

VP I Loan LLC, an Arizona limited liability company

By: ML Manager, LLC, Manager

By: _____

Mark Winkleman,
Chief Operating Officer

VF I Loan LLC, an Arizona limited liability company

By: ML Manager, LLC, Manager

By: _____
Mark Winkleman,
Chief Operating Officer

ABCDW III Loan LLC, an Arizona limited liability company

By: ML Manager, LLC, Manager

By: _____
Mark Winkleman,
Chief Operating Officer

Mortgages Ltd. 401(k) Plan

By: _____
Its: _____

ML Manager LLC, as Agent for the Pass Through Investors

By: _____
Mark Winkleman,
Chief Operating Officer

BORROWERS:

ABCDW, L.L.C., an Arizona limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

VANDERBILT FARMS, L.L.C., an Arizona limited liability company

By: _____
Name: _____
Title: _____

TORREY PINES DEVELOPMENT, L.L.C., an Arizona limited liability company

By: _____
Name: _____
Its: _____

RIGGS/QUEEN CREEK 480, L.L.C., an Arizona limited liability company

By: _____
Name: _____
Its: _____

ELLSWORTH ROAD 160 LLC, an Arizona
limited liability company

By: _____
Name: _____
Its: _____

VISTOSO PARTNERS, L.L.C., an Arizona
limited liability company

By: _____
Name: _____
Its: _____

Brandon D. Wolfswinkel

Ashton A. Wolfswinkel

Conley D. Wolfswinkel

Schedule of Exhibits

Exhibit A	List of Pass Through Investors
Exhibit B	Forms of Judgments for Borrowers and Guarantors
Exhibit C	Forms of Covenants Not to Execute
Exhibit D	Form of Stipulation to Dismiss
Exhibit E	Form of Stipulation to Reopen
Exhibit F	Allocation of Settlement Amount
Exhibit G	Pledge and Security Agreement (Club Vista Holding, LLC)
Exhibit H	Consent (Club Vista Holding, LLC)
Exhibit I	Pledge and Security Agreement (West Valley Ventures, LLC)
Exhibit J	Consent (West Valley Ventures, LLC)
Exhibit K	Real Properties
Exhibit L	Leases
Exhibit M	Rancho Vistoso Property
Exhibit N	Exchange Property

EXHIBIT A

LIST OF PASS THROUGH INVESTORS

(See attached lists from the Loans)

EXHIBIT A-1
(Loan 850206)

First Trust Company of Onaga, Custodian FBO Jane A. Bartelme Roth IRA #R215XXXX, as to an undivided 0.625% ownership

June Behrendt, a single woman, as to an undivided 0.250% ownership

ABCDW I Loan LLC, an Arizona Limited Liability Company, as to an undivided 61.055% ownership

SL Affiliated, L.L.C., an Arizona limited liability company, as to an undivided 0.672% ownership

Karen E. Lamb, Trustee of The Karen Lamb Living Trust dated February 26, 2007, and any amendments thereto, as to an undivided 1.250% ownership

Beverly Clarke, Trustee of The Beverly Clarke 1995 Revocable Trust dated October 31, 1995, and any amendments thereto, as to an undivided 0.200% ownership

First Trust Company of Onaga, Custodian FBO Walter J. Clarke, Sr. Roth IRA Account #R215XXXX, as to an und

Gerald K. Smith, Successor Trustee of the SMC Revocable Trust U/T/A dated December 22, 1994, as amended, as to an undivided 0.063% ownership

Melvin L. Dunsworth, Jr., Trustee of the Revocable Living Trust of Melvin Dunsworth, Jr., dated December 23, 2003, and any amendments thereto, as to an undivided 5.000% ownership

Robert M. Facciola, Trustee of The Robert Maurice Facciola Trust dated December 2, 1994, and any amendments thereto, as to an undivided 2.500% ownership

First Trust Company of Onaga, Custodian FBO Donald Fruchtmann Roth IRA Account #R215XXXX, as to an undivided 0.250% ownership

Delery Guillory and Kathy Guillory, husband and wife, as joint tenants with right of survivorship, as to an undivided 2.500% ownership

Golden Lending Group, LLC, an Arizona limited liability company, as to an undivided 0.625% ownership

Bear Tooth Mountain Holdings Limited Partnership, an Arizona limited liability partnership, as to an undivided 1.527% ownership

Pueblo Sereno Mobile Home Park L.L.C., an Arizona limited liability company, as to an undivided 1.250% ownership

First Trust Company of Onaga, Custodian FBO Frederick Carl Heitman Roth IRA Account #R215XXXX, as to an undivided 0.625% ownership

First Trust Company of Onaga, Custodian FBO Donna Heitman Roth IRA Account #R215XXXX, as to an undivided 0.175% ownership

Michael Johnson Investments II, L.L.C., an Arizona limited liability company, as to an undivided 0.875% ownership

Lonnie Joel Krueger, Trustee of The Lonnie Joel Krueger Family Trust Agreement dated January 24, 1991, as to an undivided 1.400% ownership

Leah L. Lewis, Trustee of The Leah L. Lewis Trust dated February 23, 2000, and any amendments thereto, as to an undivided 1.250% ownership

Jeanne Lewis, Trustee of The Jeanne Lewis Revocable Trust dated March 12, 2003, and any amendments thereto, as to an undivided 0.500% ownership

Delbert R. Lewis, Jr. and Heather N. Lewis, Trustees of the Delbert R. Lewis, Jr. Family Trust U/T/A dated December 31, 1997, and any amendments thereto, as to an undivided 1.250% ownership

Lynton R. Leslie and Rae D. Leslie, Trustees of The Lynton R. Leslie and Rae D. Leslie Revocable Trust dated November 11, 1992, and any amendments thereto, as to an undivided 0.244% ownership

WCL850206 LLC, an Arizona limited liability company, as to an undivided 2.500% ownership

First Trust Company of Onaga, Custodian FBO Leah L. Lewis Roth IRA Account #R215XXXX, as to an undivided 0.275% ownership

First Trust Company of Onaga, Custodian FBO Nancy Lutz Roth IRA Account #R215XXXX, as to an undivided 0.250% ownership

William J. Miller and Sandra B. Miller, Trustees of the Miller Family Trust dated February 7, 2000, and any amendments thereto, as to an undivided 0.625% ownership

Louis B. Murphey, an unmarried man, as to an undivided 2.500% ownership

Michael L. Norman and Susan L. Tharp, Trustee of the Norman Tharp Family Trust #3 dated July 19, 2002, and any amendments thereto, as to an undivided 0.188% ownership

Robert K. Rader and Katalin A.V. Rader, Trustees of The Rader Family Trust dated September 6, 2002, and any amendments thereto, as to an undivided 1.250% ownership

First Trust Company of Onaga, Custodian FBO Katalin Rader Roth IRA Account #R215XXXX, as to an undivided 0.125% ownership

First Trust Company of Onaga, Custodian FBO Robert Rader Roth IRA Account #R214XXXX, as to an undivided 0.500% ownership

Morley Rosenfield, Trustee of The Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan, as to an undivided 0.625% ownership

James C. Schneck, Trustee of The James C. Schneck Revocable Trust dated October 1, 1999 and any amendments thereto, as to an undivided 1.800% ownership

Jan M. Sterling, Trustee of The Jan M. Sterling Living Trust dated January 4, 1995, and any amendments thereto, as to an undivided 2.375% ownership

First Trust Company of Onaga, Custodian FBO Jan M. Sterling IRA #410213XXXX, as to an undivided 0.225% ownership

Kathleen K. Tomasulo, Trustee of The Tomasulo Credit Shelter Irrevocable Trust dated September 16, 1997, and any amendments thereto, as to an undivided 0.250% ownership

Bernardo R. Urquieta and Kathleen Smythe de Urquieta, Trustees of The Urquieta Smythe Family Trust dated December 5, 1990, and any amendments thereto, as to an undivided 0.176% ownership

First Trust Company of Onaga, Custodian FBO Louis Vazquez Roth IRA Account #R215XXXX, as to an undivided 0.625% ownership

Verma Kataria Mortgage Investment L.L.C., an Arizona limited liability company, as to an undivided 1.250% ownership

First Trust Company of Onaga, Custodian FBO Charles S. Vose IRA #4102XXXXXX, as to an undivided 0.250% ownership

EXHIBIT A-2
(Loan 857306)

First Trust Company of Onaga, Custodian FBO M. Gordon Bagne Roth IRA Account ##R215XXXX, as to an undivided 0.909% ownership\

June Behrendt, a single woman, as to an undivided 0.909% ownership

ABCDW II Loan LLC, an Arizona Limited Liability Company, as to an undivided 79.677% ownership

David Furst, Trustee of the DHF Corporation Retirement Trust dated August 4, 1981, and any amendments thereto, as to an undivided 0.273% ownership

Harvey Golden and Merylee Golden, husband and wife as joint tenants with right of survivorship, as to an undivided 1.591% ownership

Kevin Goff and Ki Ngo, as joint tenants with right of survivorship, as to an undivided 0.454% ownership

Golden Lending Group, LLC, an Arizona limited liability company, as to an undivided 1.364% ownership

AJ Chandler 25 Acres, L.L.C., an Arizona limited liability company, as to an undivided 4.546% ownership

Pueblo Sereno Mobile Home Park L.L.C., an Arizona limited liability company, as to an undivided 4.546% ownership

First Trust Company of Onaga, Custodian FBO Deborah L. Hooker IRA #41021XXXXX, as to an undivided 0.682% ownership

Lonnie Joel Krueger, Trustee of The Lonnie Joel Krueger Family Trust Agreement dated January 24, 1991, as to an undivided 0.503% ownership

WCL857306 LLC, an Arizona limited liability company, as to an undivided 4.546% ownership

EXHIBIT A-3
(Loan 857406)

Daniel M. Abrams and Audrey Abrams, Trustees of the Abrams Family Trust dated December 7, 1979, and any amendments thereto, as to an undivided 0.446% ownership

June Behrendt, a single woman, as to an undivided 0.909% ownership

VP I Loan LLC, an Arizona Limited Liability Company, as to an undivided 54.011% ownership

SL Affiliated, L.L.C., an Arizona limited liability company, as to an undivided 3.902% ownership

Bruce Dennis Buckley and Alivia Virginia Buckley, Trustees of The Bruce Dennis Buckley and Alivia Virginia Buckley Revocable Living Trust dated June 4, 1985 and Amended December 7, 1994, as to an undivided 1.355% ownership

Harold J. Christ, Ltd., an Arizona corporation, as to an undivided 2.273% ownership

Tony Christensen and Jonna Christensen, husband and wife, as community property with right of survivorship, as to an undivided 1.136% ownership

First Trust Company of Onaga, Custodian FBO Donald Fruchtman Roth IRA Account #R215XXXX, as to an undivided 0.727% ownership

David Furst, Trustee of the DHF Corporation Retirement Trust dated August 4, 1981, and any amendments thereto, as to an undivided 0.545% ownership

Robert G. Furst, Trustee of The Robert G. Furst & Associates Defined Benefit Pension Plan, as to an undivided 0.909% ownership

David Furst and Hannah Furst, Trustees of The Furst Family Trust dated July 1, 1988, and any amendments thereto, as to an undivided 0.175% ownership

Harvey Golden and Merylee Golden, husband and wife as joint tenants with right of survivorship, as to an undivided 1.736% ownership

Stephen C. Gresser, Trustee of the Stephen C. Gresser 1995 Trust dated November 28, 1995, and any amendments thereto, as to an undivided 0.909% ownership

Bear Tooth Mountain Holdings Limited Partnership, an Arizona limited liability partnership, as to an undivided 4.545% ownership

Maryanne B. Krueger, wife of Lonnie J. Krueger, as her sole and separate property, as to an undivided 0.455% ownership

Maurice J. Lazarus, Husband of Marjorie A. Lazarus, as his sole and separate property, as to an undivided 0.593% ownership

Maurice J. Lazarus, Trustee of The Maurice J. Lazarus Charitable Remainder Annuity Trust under Agreement dated March 15, 1999, as to an undivided 0.903% ownership

WCL857406 LLC, an Arizona limited liability company, as to an undivided 4.545% ownership

Jeanne Lewis, Trustee of The Jeanne Lewis Revocable Trust dated March 12, 2003, and any amendments thereto, as to an undivided 0.909% ownership

Linda Mayne and Stephen Mayne, wife and husband, as community property with right of survivorship, as to an undivided 0.227% ownership

Linda Mayne, Trustee of the Mayne and Company Defined Benefit Pension Plan dated December 31, 2005, and any amendments thereto, as to an undivided 1.000% ownership

Investor CLOUT, an Arizona Partnership, as to an undivided 2.727% ownership

William J. Miller and Sandra B. Miller, Trustees of the Miller Family Trust dated February 7, 2000, and any amendments thereto, as to an undivided 2.273% ownership

First Trust Company of Onaga, Custodian FBO Katalin Rader Roth IRA Account #R215XXXX, as to an undivided 0.818% ownership

Linda A. Reeves, Trustee of The Linda Ann Reeves Trust dated March 2, 2005, and any amendments thereto, as to an undivided 5.480% ownership

First Trust Company of Onaga, Custodian FBO Jayesh Shah Roth IRA Account #R215XXXX, as to an undivided 0.909% ownership

John K. Solheim and Brooke L. Solheim, husband and wife, as joint tenants with right of survivorship, as to an undivided 0.204% ownership

Jan M. Sterling, Trustee of The Jan M. Sterling Living Trust dated January 4, 1995, and any amendments thereto, as to an undivided 4.545% ownership

First Trust Company of Onaga, Custodian FBO Jan M. Sterling IRA #410213XXXX, as to an undivided 0.834% ownership

EXHIBIT A-4
(Loan 858006)

Trine Holdings, L.L.C., an Arizona limited liability company, as to an undivided 2.894% ownership

VP II Loan LLC, an Arizona Limited Liability Company, as to an undivided 71.221% ownership

Bruce Dennis Buckley and Alivia Virginia Buckley, Trustees of The Bruce Dennis Buckley and Alivia Virginia Buckley Revocable Living Trust dated June 4, 1985 and Amended December 7, 1994, as to an undivided 0.813% ownership

Walter J. Clarke, Sr., a married man, as his sole and separate property, as to an undivided 0.151% ownership

First Trust Company of Onaga, Custodian FBO Walter J. Clarke, Sr. Roth IRA Account #R215XXXX, as to an undivided 0.255% ownership

David Furst and Hannah Furst, Trustees of The Furst Family Trust dated July 1, 1988, and any amendments thereto, as to an undivided 0.427% ownership

Harvey Golden and Merylee Golden, husband and wife as joint tenants with right of survivorship, as to an undivided 0.184% ownership

Queen Creek XVIII, L.L.C., an Arizona limited liability company, as to an undivided 4.065% ownership

First Trust Company of Onaga, Custodian FBO Stephen L. Hooker IRA #41021XXXXX, as to an undivided 0.602% ownership

Lonnie Joel Krueger, Trustee of The Lonnie Joel Krueger Family Trust Agreement dated January 24, 1991, as to an undivided 0.504% ownership

Maurice J. Lazarus, Trustee of The Maurice J. Lazarus Charitable Remainder Annuity Trust under Agreement dated March 15, 1999, as to an undivided 0.705% ownership

WCL858006, LLC, an Arizona limited liability company, as to an undivided 4.065% ownership

Investor CLOUT, an Arizona Partnership, as to an undivided 4.065% ownership

William J. Miller and Sandra B. Miller, Trustees of the Miller Family Trust dated February 7, 2000, and any amendments thereto, as to an undivided 2.033% ownership

First Trust Company of Onaga, Custodian FBO Katalin Rader Roth IRA Account #R215XXXX, as to an undivided 0.813% ownership

Linda A. Reeves, Trustee of The Linda Ann Reeves Trust dated March 2, 2005, and any amendments thereto, as to an undivided 2.106% ownership

Robert G. Roden, Trustee of The Robert G. Roden Living Trust dated October 1, 2004, and any amendments thereto, as to an undivided 1.626% ownership

First Trust Company of Onaga, Custodian FBO Susan E. Shipley IRA #41021XXXXX, as to an undivided 0.813% ownership

David Brian Stanton, Trustee of the David Brian Stanton Revocable Trust dated August 25, 2004, and any amendments thereto, as to an undivided 0.594% ownership

John C. Vinson and Taeko Vinson, Trustees of the John Charles Vinson Family Trust dated December 3, 1984, and any amendments thereto, as to an undivided 2.064% ownership

**EXHIBIT A-5
(Loan 859606)**

June Behrendt, a single woman, as to an undivided 0.909% ownership

VF I Loan LLC, an Arizona Limited Liability Company, as to an undivided 12.180% ownership

Stephen N. Brotzman and Sigrid Van Bladel, Trustees of The Stephen N. Brotzman and Sigrid Van Bladel Revocable Trust dated February 15, 2007 and any amendments thereto, as to an undivided 0.909% ownership

Equity Trust Company, Custodian FBO Bruce D. Buckley IRA Acct.#3XXXX, as to an undivided 0.836% ownership

Sheryl Calcavecchia, an unmarried woman, as to an undivided 0.454% ownership

Karen E. Lamb, Trustee of The Karen Lamb Living Trust dated February 26, 2007, and any amendments thereto, as to an undivided 0.909% ownership

Harvey Golden and Merylee Golden, husband and wife as joint tenants with right of survivorship, as to an undivided 1.818% ownership

Stephen L. Hooker and Deborah L. Hooker, Trustees of The Stephen L. Hooker and Deborah L. Hooker Revocable Trust dated July 26, 2002 and any amendments thereto, as to an undivided 0.455% ownership

First Trust Company of Onaga, Custodian FBO Nancy Lutz Roth IRA Account #R215XXXX, as to an undivided 0.909 ownership

William J. Miller and Sandra B. Miller, Trustees of the Miller Family Trust dated February 7, 2000, and any amendments thereto, as to an undivided 2.273% ownership

Christopher J. Olson, Trustee of The Mortgages Ltd. 401(k) Plan, as to an undivided 64.074% ownership

Linda A. Reeves, Trustee of The Linda Ann Reeves Trust dated March 2, 2005, and any amendments thereto, as to an undivided 5.391% ownership

Jayesh K. Shah and Vaishali Shah, Trustees of The Jayesh K. & Vaishali Shah Family Trust dated August 16, 2000, and any amendments thereto, as to an undivided 0.909% ownership

Marian M. Sornoff, Trustee of the William and Marian Sornoff Trust dated April 17, 1994, and any amendments thereto, as to an undivided 0.455% ownership

David Brian Stanton, Trustee of the David Brian Stanton Revocable Trust dated August 25, 2004, and any amendments thereto, as to an undivided 0.682% ownership

First Trust Company of Onaga, Custodian FBO Jan Sterling Roth IRA Account #R215XXXX, as to an undivided 1.364% ownership

First Trust Company of Onaga, Custodian FBO Kathleen Tomasulo Roth IRA Account #R215XXXX, as to an undivided 2.273% ownership

John C. Vinson and Taeko Vinson, Trustees of the John Charles Vinson Family Trust dated December 3, 1984, and any amendments thereto, as to an undivided 2.273% ownership

First Trust Company of Onaga, Custodian FBO Charles S. Vose IRA #4102XXXXXX, as to an undivided 0.909% ownership

Chris Welsh, Custodian for Lauren Victoria Welsh, under the uniform gift to minors act, as to an undivided 0.009% ownership

Chris Welsh, Custodian for Christopher Jacob Welsh, under the Uniform Gift to Minors Act, as to an undivided 0.009% ownership

**EXHIBIT A-6
(Loan 861206)**

ABCDW III Loan LLC, an Arizona Limited Liability Company, as to an undivided 80.261% ownership

Robert M. Facciola, Trustee of The Robert Maurice Facciola Trust dated December 2, 1994, and any amendments thereto, as to an undivided 9.091% ownership

Bear Tooth Mountain Holdings Limited Partnership, an Arizona limited liability partnership, as to an undivided 2.614% ownership

AJ Chandler 25 Acres, L.L.C., an Arizona limited liability company, as to an undivided 2.261% ownership

WCL861206 LLC, an Arizona limited liability company, as to an undivided 2.273% ownership

Alfred D. Sachs, Trustee and Frances T. Sachs, Trustee of the Sachs Family Trust Agreement dated July 1, 1984, and any amendments thereto, as to an undivided 0.227% ownership

RKU861206 LLC, an Arizona limited liability company, as to an undivided 2.273% ownership

Verma Kataria Mortgage Investment L.L.C., an Arizona limited liability company, as to an undivided 1.000% ownership

EXHIBIT B

FORMS OF JUDGMENTS FOR BORROWERS AND GUARANTORS

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT C

FORMS OF COVENANTS NOT TO EXECUTE

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT D

FORMS OF STIPULATION TO DISMISS

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT E

FORMS OF STIPULATION TO REOPEN

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT F

ALLOCATION OF SETTLEMENT AMOUNT

<u>Loan</u>	<u>Settlement Allocation Amount</u>
Loan 850206 (La Osa Ranch)	\$2,537,508
Loan 857306 (Part of DeJong Farms)	\$1,268,754
Loan 857406 (Rancho Vistoso)	\$1,268,754
Loan 858006 (Rancho Vistoso)	\$1,418,722
Loan 859606 (Queen Creek/Ellsworth)	\$1,268,754
Loan 861206 (Sierra Vista)	<u>\$2,537,508</u>
Total	\$10,300,000

EXHIBIT G

**PLEDGE AND SECURITY AGREEMENT
(CLUB VISTA HOLDING, LLC)**

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT H
CONSENT
(CLUB VISTA HOLDING, LLC)

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT I

**PLEDGE AND SECURITY AGREEMENT
(WEST VALLEY VENTURES, LLC)**

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT J
CONSENT
(WEST VALLEY VENTURES, LLC)

(The form of this exhibit shall be subject to the reasonable approval of the parties during the Contingency Period.)

EXHIBIT K

REAL PROPERTIES

The Real Properties are comprised of the 850206 Property, the 857306 Property, the 857406 Property, the 858006 Property, the 859606 Property and the 861206 Property. The legal descriptions of the Real Properties are set forth in the 850206 Deed of Trust, the 857306 Deed of Trust, the 857406 Deed of Trust, the 858006 Deed of Trust, the 859606 Deed of Trust and the 861206 Deed of Trust.

EXHIBIT L

LEASES

EXHIBIT M
RANCHO VISTOSO PROPERTY

EXHIBIT N

EXCHANGE PROPERTY

**LEGAL DESCRIPTION
RANCHO VISTOSO NEIGHBORHOOD 5
PARCEL 5V**

That portion of Section 25, Township 11 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the North Quarter corner of said Section 25;

THENCE S 89°55'45" W, along the North line of the Northwest Quarter (NW 1/4) of said Section 25, a distance of 1620.19 feet to a point of a non-tangent curve concave to the East, being the Easterly right-of-way line of Rancho Vistoso Boulevard, as recorded in Docket 8178, Page 1966 in the office of the Pima County, Arizona Recorder, a radial line through said point bears N 79°43'47" W;

THENCE Southeasterly along said right-of-way line and the arc of said curve to the left, having a radius of 1,645.00 feet, and a central angle of 42°25'20", for an arc distance of 1,217.97 feet to a point of tangency.

THENCE S 32°09'07" E, along the Easterly right-of-way line of Rancho Vistoso Boulevard a distance of 2761.34 feet to a point on the centerline of a 80.00 (eighty) foot wide easement described in Docket 13904 at Page 5308 in the office of the Pima County, Arizona Recorder;

THENCE N 57°50'53" E a distance of 302.84 feet to the beginning of a curve, concave to the Northwest, having a radius of 500.00 feet;

THENCE Northeasterly along said curve, through a central angle of 65°30'00", a distance of 571.60 feet;

THENCE N 07°39'07" W a distance of 213.19 feet to the beginning of a curve, concave to the East, having a radius of 670.00 feet;

THENCE Northerly along said curve, through a central angle of 48°39'00", a distance of 568.90 feet;

THENCE N 40°59'53" E a distance of 224.83 feet to the beginning of a curve, concave to the Northwest, having a radius of 1150.00 feet;

THENCE Northeasterly along said curve, through a central angle of 17°15'28", a distance of 346.39 feet to a point on the curve from which the radius point bears N 66°15'36" W, said point being the TRUE POINT OF BEGINNING;

THENCE N 48°00'00" W a distance of 42.11 feet to a point on a non-tangent curve, concave to the West, having a radius of 1110.00 feet, a radial line passing through said point bears S 66°56'39" E;

THENCE Northerly along said curve, through a central angle of 8°21'42", a distance of 161.99 feet;

THENCE N 14°41'39" E a distance of 99.44 feet;

THENCE N 01°22'02" W a distance of 18.54 feet;

THENCE N 02°03'18" E a distance of 24.66 feet;

THENCE N 17°19'38" W a distance of 17.50 feet;

THENCE N 89°55'28" E a distance of 20.40 feet

THENCE N 14°41'39" E a distance of 147.33 feet to the beginning of a curve, concave to the Southeast, having a radius of 790.00 feet;

THENCE Northeasterly along said curve, through a central angle of 40°29'52", a distance of 558.39 feet;

THENCE N 55°11'31" E a distance of 738.94 feet;

THENCE S 26°00'00" E a distance of 412.97 feet;

THENCE S 67°00'00" W a distance of 760.85 feet;

THENCE S 34°00'00" E a distance of 150.16 feet;

THENCE S 31°00'00" W a distance of 606.01 feet;

THENCE S 90°00'00" E a distance of 379.22 feet;

THENCE S 43°00'00" E a distance of 270.00 feet;

THENCE N 00°00'00" ' W a distance of 350.00 feet;

THENCE N 20°00'00" ' E a distance of 275.00 feet;

THENCE N 43°00'00" ' E a distance of 510.00 feet;

THENCE S 03°49'58" W a distance of 385.80 feet;

THENCE S 26°41'56" W a distance of 420.95 feet;

THENCE S 20°24'36" E a distance of 963.69 feet;

THENCE S 15°47'58" W a distance of 385.65 feet;

THENCE N 36°44'21" W a distance of 192.20 feet;

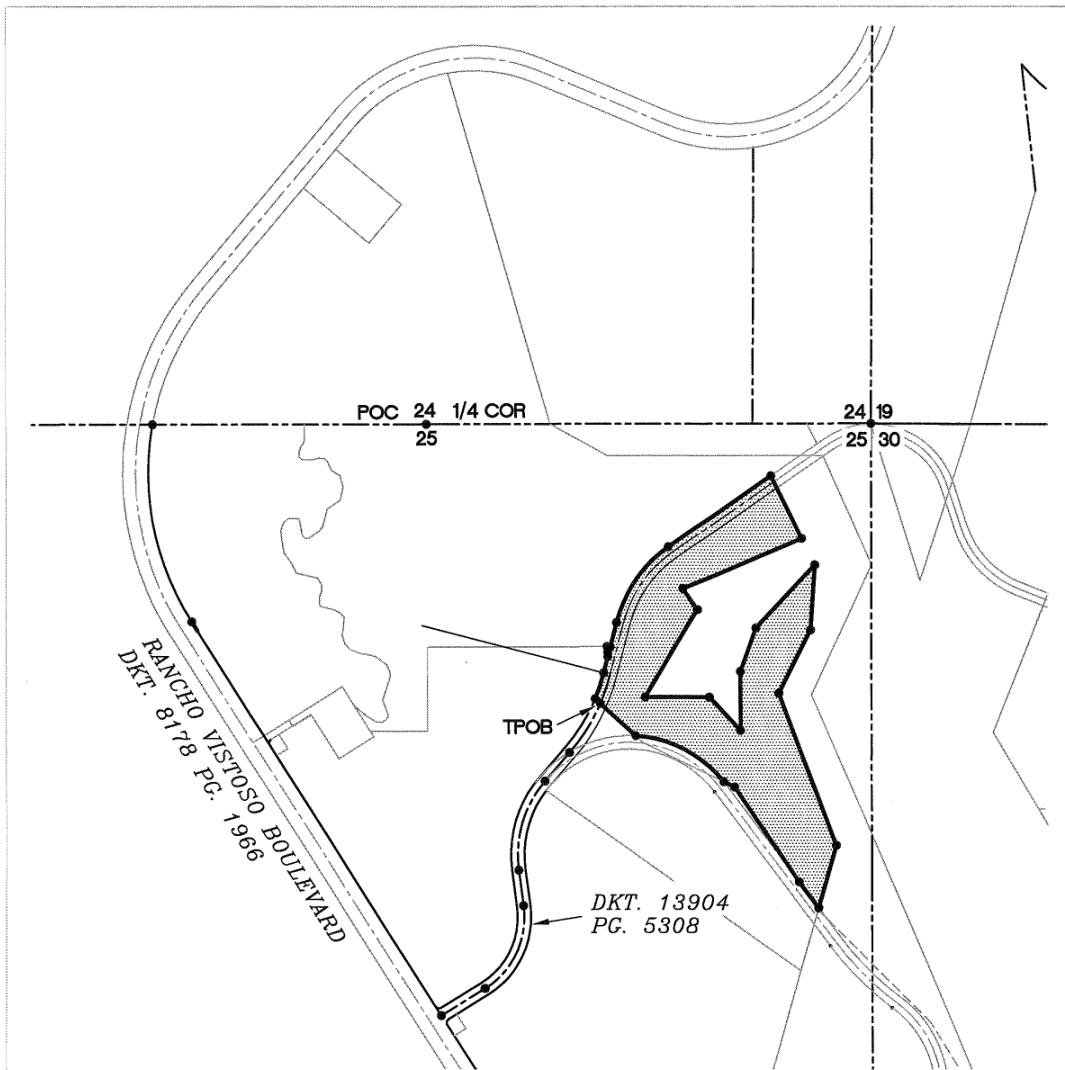
THENCE N 34°00'00" W a distance of 680.38 feet;

THENCE N 64°00'00" W a distance of 71.31 feet to a point on a non-tangent curve, concave to the Southwest, having a radius of 710.00 feet, a radial line passing through said point bears N 52°05'16" E;

THENCE Northwesterly along said curve, through a central angle of 48°53'31", a distance of 605.86 feet to a point of non-tangency, a radial line passing through said point bears N 03°11'45" E;

THENCE N 48°00'00" W a distance of 286.64 feet to the TRUE POINT OF BEGINNING.

Containing 30.75 acres, more or less.



**EXHIBIT TO ACCOMPANY DESCRIPTION OF
 PARCEL 5V
 WITHIN
 RANCHO VISTOSO NEIGHBORHOOD 5
 SECTION 25, T. 11 S., R. 13 E., G.&S.R.M.,
 PIMA COUNTY, ARIZONA**

WLB# project No. 185050-A-022X-1003
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