

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

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

8 Attorneys for ML Manager LLC

9
10 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

11 In re
12 MORTGAGES LTD.,
13 Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

14 **MOTION TO SELL REAL PROPERTY**

15 **Real Property and improvements located at the**
16 **southeast corner of Central Ave. and Monroe St.**
17 **in downtown Phoenix, Arizona**

Hearing Date: March 8, 2012
Hearing Time: 11:30 a.m.

18 ML Manager LLC (“ML Manager”) requests that the Court enter an order
19 authorizing ML Manager as the manager for C&M Loan LLC and the agent for certain
20 Pass-Through Investors to sell the real property and improvements located at the southeast
21 corner of Central Avenue and Monroe Street in downtown Phoenix, Arizona, as more
22 specifically described in the Sale Agreement (“Property”), to Evergreen Devco, Inc., a
23 California corporation (“Purchaser”) for the price of \$7,000,000 (“Purchase Price”) and
24 on the terms set forth in the proposed Agreement of Sale and Purchase and all
25 amendments (“Sale Agreement”) or to another buyer upon the same or better terms as
26 determined by ML Manager in its sole discretion. The Sale Agreement has a contemplated

1 closing in May, 2012. As explained below, ML Manager proposes to hold all the net sale
2 proceeds in escrow until the priority and extent of the General Contractors and mechanics
3 and materialmen liens and the settlement deed of trust are determined.

4 Borrower, Central & Monroe, LLC, defaulted on its loan with Mortgages Ltd. The
5 unpaid principal balance on the loan (Loan No. 858606) is about \$27 million. Interest and
6 fees also are due. Pursuant to the Official Investors' Committee's First Amended Plan
7 confirmed by the Court, C&M Loan LLC was formed on the effective date and the
8 fractional interests in the note and deed of trust which were held by the MP Funds were
9 transferred into C&M Loan LLC. Subsequently some of the pass-through investors
10 transferred their interests into C&M Loan LLC. At the time of the trustee sale, certain
11 Pass-Through Investors had not transferred their fractional interests ("Pass-Through
12 Investors"). As a result, 82.497% of the interest in the real property is owned by C&M
13 Loan LLC and the rest is owned by the Pass-Through Investors in the loan.

14 On July 12, 2010 the Court approved the settlement with the Grace Entities,
15 including Central & Monroe, LLC. The settlement was consummated and closed on July
16 27, 2010 and soon thereafter ML Manager held a deed of trust sale and foreclosed on the
17 Property. At the closing of the settlement ML Manager issued a note in the amount of
18 \$615,000 and recorded a settlement deed of trust on the Property.

19 Thereafter, ML Manager retained the services of Nationwide Real Estate, Inc. and
20 Cassidy Turley, leading real estate brokerage firms, to widely market the property for sale.
21 After completing substantial marketing efforts, Purchaser made an offer of \$7,000,000
22 and ML Manager and Purchaser are negotiating a Sale Agreement for that price, subject to
23 the regular contingencies for ML Manager. The draft of the Sale Agreement is attached as
24 Exhibit A and a copy of the executed Sale Agreement will be filed with the Court as soon
25 as it is available. Purchaser will deposit \$50,000 and open escrow at Thomas Title &
26 Escrow. The Purchaser will deposit an additional \$100,000 at the end of the 90-day

1 Feasibility Period. Because the property has already been fully marketed, this is not
2 proposed to be an auction and no higher and better bids are being solicited. The
3 contingencies include approval by the investors in the Loan LLC and the applicable MP
4 Funds and Bankruptcy Court approval. One of the contingencies is the waiver or the
5 exercise of the right to compete by the exit financier. The exit financier has informed ML
6 Manager that it will not be exercising its right to compete on the Property. The Purchase
7 Price is to be paid in cash at closing. This is an arms-length, negotiated sale between
8 unrelated parties. The Purchaser is not connected with the investors, ML Manager or the
9 exit financier. The anticipated closing is in May 2012.

10 Even though the debt will not be paid in full, ML Manager believes that this price
11 reflects the current market value of the Property and that it is unlikely in the foreseeable
12 future to get a higher amount for the Property. As the Court may remember, the Property
13 consists of a partially renovated hotel which requires significant work. Significant funds
14 would be needed to complete the project. There are significant holding costs associated
15 with this property, including taxes, insurance, security, and interest costs. Under the Sale
16 Agreement, the Property is being sold in its current partially completed condition “as is”,
17 “where is” and “with all faults”. ML Manager believes that this sale is in the best interest
18 of the investors in the Loan LLC and the Pass-Through Investors and is a valid exercise of
19 its business judgment consistent with any fiduciary responsibilities.

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

25 Under the Operating Agreement of Loan LLC, since this event is a Major Decision,
26 ML Manager must seek approval of the sale from the investors in the Loan LLC and the

1 MP Funds investors. Approval must be obtained by a majority of the investors' dollars
2 voting. The voting process will start shortly and by the time the parties get to a sale
3 hearing the results will be known to ML Manager. If approved ML Manager asserts it has
4 the authority and ability to go forward with the sale of the Loan LLC interests.

5 ML Manager, as the agent for the Pass-Through Investors, has the authority and
6 ability to engage a broker, enter into a sale agreement and to sell the real estate on behalf
7 of the principals. ML Manager as the agent will execute the documents on behalf of the
8 Pass-Through Investors since it holds the irrevocable power of attorney coupled with an
9 interest to do so. ML Manager may include language in the Sale order authorizing ML
10 Manager to execute any and all such documents on behalf of the Pass-Through Investors.
11 The interests of the Pass-Through investors will attach to and be paid from the net sales
12 proceeds.

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

25 As is customary ML Manager does propose to pay the closing costs, real property
26 taxes, commissions and other costs of ML Manager at the closing out of the gross sale

1 proceeds. General Contractors that performed the work on the Property have asserted liens
2 against the Property that together with the costs and interest exceed \$8,000,000. There is a
3 dispute as to the extent and priority of the liens of the General Contractors, mechanics and
4 materialmen, the priority of the \$615,000 settlement deed of trust and the interest of the
5 investors. ML Manager proposes and the General Contractors have agreed that the net
6 sales proceeds shall be escrowed at Thomas Title or another title company as determined
7 by ML Manager pending a determination by the Court of the disputes. All alleged liens
8 and interests will attach to the escrowed proceeds in the same priority as exists prior to the
9 sale. As a result no net sales proceeds will be disbursed until the priority and extent of
10 liens and interests is determined by the Court.

11 Once the extent and priority of liens is determined, and to the extent there are
12 proceeds available to be disbursed to the investors, ML Manager proposes to pay the exit
13 financier, and to the extent that it has been paid then to repay the replacement loans to the
14 other Loan LLCs, from the Loan LLC's portion of the sale proceeds pursuant to the Loan
15 Agreement and the Interborrower Agreement and to create and use any reserves pursuant
16 to the Interborrower Agreement. Further, pursuant to the Allocation Model which has
17 been approved by this Court, ML Manager will disburse the net sale proceeds attributable
18 to the Pass-Through Investors subject to what amount should be charged back or allocated
19 to the Pass-Through Investors as their fair share of the expenses, including exit financing.
20 Also pursuant to the Allocation Model, ML Manager will distribute net sale proceeds
21 attributable to the ownership interest to the Loan LLC pursuant to its agreements, the
22 Plan, Confirmation Order, and Inter-borrower Agreement.

23 ML Manager intends to include language in the order consistent with the Plan and
24 Confirmation Order concerning the exemption under Section 1146 of the Bankruptcy
25 Code and Section 105 of the Plan for any transfer taxes due on the transfer, including the
26 speculative builder tax.

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

DATED: February 20, 2012

FENNEMORE CRAIG, P.C.
By /s/ Cathy L. Reece
Cathy L. Reece
Attorneys for ML Manager LLC

EXHIBIT

A

**AGREEMENT OF SALE AND PURCHASE
(Hotel Monroe)**

This Agreement of Sale and Purchase (this "Agreement") is made effective as of February ____, 2012 (the "Effective Date"), by and among C&M Loan LLC, an Arizona limited liability company, as to an undivided 82.497% ownership ("C&M"); and ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners listed on Exhibit "A" attached (the "Owners" and with C&M, collectively "Seller"); and Evergreen Devco, Inc., a California corporation ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party."

RECITALS

A. Seller owns certain real property located in Maricopa County Arizona, and described on Exhibit "B" attached hereto (the "Land") and the improvements located on the Land.

B. C&M was formed pursuant to the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009 in the Chapter 11 Proceedings in In re: Mortgages Ltd., Case No. 2:08-bk-07465-RJH which was confirmed by the Bankruptcy Court ("Court") on May 20, 2009 ("Approved Plan"), in connection with a loan made by Mortgages Ltd., an Arizona corporation (now known as ML Servicing Company, Inc.) ("ML").

C. Pursuant to the Approved Plan, the Agent was designated as successor agent to ML under certain agency agreements ("Agency Agreement") wherein the Agent was given a power of attorney to act for the Owners, and the Agent is acting under this Agreement pursuant to the power of attorney under the Agency Agreement, as the Agent of the Owners.

D. Buyer desires to enter into an agreement to acquire the Land from Seller, and Seller is willing to enter into an agreement with Buyer regarding the purchase of the Land, on the terms and conditions set forth herein.

AGREEMENT

In consideration of the covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agreement to Sell and Purchase.

1.1 Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms and conditions of this Agreement, all of Seller's right, title and interest in the Land, which is located at the southeast corner of Central Avenue and Monroe Avenue, in Phoenix, Arizona, together with all of Seller's right, title and interest in and to (i) all buildings, structures and improvements located thereon; (ii) all appurtenances, hereditaments,

easements, rights-of-way, reversions, remainders, development rights, well rights, water rights and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) all land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; (v) permits, licenses, applications, approvals, and any other authorizations issued by governmental entities or quasi-governmental entities for the Land; (vi) entitlements, subdivision agreements and other agreements relating to the development of the Land; (vii) plats, plans, drawings, designs, engineering materials, studies, reports and other documents relating to any improvements to or serving the Land; (viii) claims, awards, and any similar rights relating to and benefiting the Land; (ix) water and sewer taps and hookup connections relating to the Land; (x) development rights benefiting the Land; (xi) rights to receive any payments, impact fee or other credits, reimbursements, or refunds arising from any payments, dedications or any other actions taken by any predecessor in title to the Land; (xii) rights to receive a reimbursement, credit or refund from the applicable agency or entity of any deposits or fees paid in connection with the development of the Land, (xiii) pre-paid impact fees, school fees, and/or development fees of any kind previously paid by any predecessor in title to the Land, (xiv) guarantees, warranties, indemnities, and covenants under any and all contracts and agreements with contractors, subcontractors, suppliers and other persons and entities providing labor, services or materials in connection with the design, construction and installation of any improvements to or serving the Land, (xv) all personal property located at the Land including, without limitation, all building (construction) materials or supplies, and (xvi) any other rights, privileges, and appurtenances owned by Seller and related to, or used in connection with the operation of the Land to the extent that they are assignable (collectively, the "Property"). However, the Property does not include any rights of Seller, C&M, Agent or the Owners as against any borrower or guarantor of the loan that was previously secured by the Property, or any rights to the extent related to other property. It is understood and agreed that there may be items of personal property, including mechanical equipment and building materials, located on the Land that are not owned by Seller. For example, there are three elevator units and HVAC ducting located on the Land that may not be owned by Seller. Also, there may be doors for the Property that are being refurbished, which may not be owned by Seller. Seller does not represent that it owns any of the personal property located on the Land, but only that it will quit claim to Buyer any interest that it has in such personal property. The personal property is subject to any claims by third parties that the personal property is owned by the third parties or that there are amounts due and owing to third parties relating to the person property.

1.2 Contingencies.

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

(i) Seller's lender under the Exit Financing Loan dated June 11, 2009 has the right to compete to acquire the Property from the Seller under Section 6.11(a) of the Exit Financing Loan Agreement. Seller's lender must have failed to exercise or must have waived the right to compete. Seller will endeavor to provide Buyer with either a written waiver of the right to compete or a "Lender Offer" (as described in the right to compete) within ten (10) days after the Effective Date;

(ii) the members of C&M (“C&M Members”) must have approved the sale of the Property for the Purchase Price specified herein as required by Section 5.4(h) of the Operating Agreement of C&M. (the “Members Approval”); and

(iii) Seller must have obtained the approval of the Court (the “Approval Order”) by final order with respect to the sale of the Property to Buyer for which no stay order pending appeal has been ordered, which order is sufficient for the Title Insurer (described below) to issue the Title Policy (described below) without exceptions for the Lien Claims and Deeds of Trust (both as defined in Section 7.7 below).

(b) Immediately following the Effective Date, Seller will commence the exercise of commercially reasonable and diligent efforts to satisfy the Contingencies on or before the expiration of the Contingency Period (defined below); provided, however, Seller shall not be in default hereunder if any of the Contingencies is not satisfied.

(c) As each Contingency is satisfied, Seller will provide a copy of the written documentation evidencing such satisfaction to Buyer. If all of the Contingencies have been satisfied prior to the end of the period commencing on the Effective Date and ending 50 days after the Effective Date (the “Contingency Period”), then Seller shall notify Buyer of such satisfaction (the “Contingency Satisfaction Notice”), and this Agreement shall continue in full force and effect. If the Contingencies have not been satisfied prior to the end of the Contingency Period, then Seller shall notify Buyer that the Contingencies have not been satisfied, whereupon this Agreement shall automatically terminate, Escrow Agent (defined below) shall return the Deposit (defined below) to Buyer, and Seller and Buyer shall have no further obligations hereunder, except as expressly provided herein; provided, however, that Buyer may elect, in its sole and absolute discretion, to extend the Contingency Period for up to thirty (30) days to allow Seller additional time to satisfy the Contingencies, and in such event the commencement of the Feasibility Period (defined below) shall be delayed for an identical period of time.

2. Opening of Escrow. Within three (3) business days after both parties have executed this Agreement by Seller and Buyer, the parties will establish an escrow with Thomas Title & Escrow (Diane F. Carpenter), Promenade Corporate Center, 16435 N. Scottsdale Rd., Ste. 405, Scottsdale, Arizona 85254; (480) 222-1116 ext. 203. Upon delivery to the Escrow Agent of this executed Agreement, Escrow Agent is instructed to open an escrow and deliver copies of the executed Agreement to Buyer and Seller. “Opening of Escrow” shall occur when Escrow Agent accepts this Agreement by execution of the Agreement and Consent by Escrow Agent provided at the end of this Agreement. This Agreement, and the exhibits attached hereto, shall constitute escrow instructions to Escrow Agent in connection with this transaction, but the parties agree to execute such supplemental instructions, not inconsistent with this Agreement, as Escrow Agent may reasonably require.

3. Purchase Price; Deposits.

3.1 Purchase Price. The purchase price for the Property shall be Seven Million Dollars (\$7,000,000.00) (the “Purchase Price”). The Purchase Price shall be payable as follows:

(a) Upon execution of this Agreement by Seller and Buyer, Buyer shall deposit with Escrow Agent the amount of Fifty Thousand Dollars (\$50,000) (the "Initial Deposit") by wire transfer, cashier's check, or other readily available funds. On or prior to the expiration of the Feasibility Period (described below), unless this Agreement is terminated by Buyer on or prior to the expiration of the Feasibility Period, Buyer shall deposit with Escrow Agent an additional One Hundred Thousand Dollars (\$100,000) (the "Additional Deposit"). To the extent deposited into escrow, the Additional Deposit and the Initial Deposit are individually and/or collectively referred to as the "Deposit".

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

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

4. Property Documents. Within five (5) days after the Effective Date, Seller will make available to Buyer for review and copying the following documents to the extent they are in Seller's possession: all permits, approvals, plats, plans, specifications, certificates, surveys, engineering reports (including, without limitation, any geotechnical reports), studies, environmental reports, appraisals, leases, permits, contracts, improvement plans, utility plans, architectural plans and elevations, construction bids and/or estimates, copies of mechanics' liens and materialmen's liens (together with all letters, claims, preliminary lien notices and other documents relating to such liens), all documents related to the property tax appeal described in Section 12.3, and any other materials relating to the condition or development of the Property (collectively, the "Property Documents"). Copies of any such items not in Seller's possession upon Opening of Escrow (the "Additional Due Diligence Documents") but which come into Seller's possession prior to the Closing Date, shall be delivered to Buyer within three (3) business days after coming into Seller's possession, but in no event later than the Closing Date. Seller makes no representation or warranty that (i) the Property Documents provided will constitute all information which exists concerning the Property or that such information will be sufficient in itself to permit an adequate analysis of the Property or (ii) the Property Documents are complete, current or accurate. Seller does represent and warrant that the Property Documents provided by Seller constitute complete copies of the documents in Seller's possession, and that it has no actual knowledge of any inaccuracies in the Property Documents, subject to the understanding and condition that Seller has not reviewed and has no duty to review the Property Documents. If the Property Documents include any leases or other agreements that continue in effect after the Closing, then Buyer shall assume all of Seller's obligations under such agreements if Buyer does not terminate this Agreement as provided for in Section 5 of this Agreement prior to the expiration of the Feasibility Period.

5. Feasibility Analysis.

5.1 Feasibility Analysis. During the period commencing on the date that Seller gives Buyer written notice that the Court has issued the Approval Order as provided for under Section 1.2(a)(iii) (but without the running of the 14-day appeal period for the Approval

Order) and ending ninety (90) days thereafter (the "Feasibility Period"), Buyer will determine whether the Property is suitable for Buyer's acquisition. If Buyer determines, in its sole discretion, that the Property is not suitable for Buyer's acquisition, then Buyer may terminate this Agreement by giving written notice of termination to Seller and Escrow Agent prior to the expiration of the Feasibility Period. If no such written notice is given to Seller and Escrow Agent prior to the expiration of the Feasibility Period, then Buyer will be deemed to have elected to waive its right to terminate this Agreement pursuant to this Section, and the Deposit shall be non-refundable to Buyer except as expressly provided in this Agreement. If this Agreement is terminated pursuant to this Section, Escrow Agent shall return the Deposit to Buyer not later than the second business day after such termination, and the parties shall have no further obligations hereunder, except as expressly provided herein.

5.2 Interim Acts of Seller. Seller will not take any action before any Governing Authorities that could change the present zoning of the Property, any portion of the Property, or change the potential use of the Property..

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

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

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

6.3 provide Seller's designated representative, Mark Winkleman, advance telephonic notice of any entry onto the Property so as to permit Seller to have a representative present during all Investigations undertaken hereunder;

6.4 if this Agreement is terminated, then promptly after such termination, furnish to Seller, at no cost or expense to Seller, copies of all surveys, soils, engineering and environmental reports, which Buyer has obtained or will obtain with respect to the Property. Buyer makes no representation or warranty that any such documents are complete, current or accurate;

6.5 maintain or cause to be maintained, at Buyer's expense, a policy of commercial general liability insurance, with a combined single limit of not less than \$1,000,000.00 general liability and \$2,000,000.00 excess umbrella liability, insuring Buyer and Seller, as additional insured, against injuries or damages to persons or property that may result from or are related to any and all activities undertaken by Buyer or Buyer's representatives upon the Property, in such forms and with an insurance company reasonably acceptable to Seller, and

deliver a copy of such insurance policy or certificate evidencing such policy to Seller prior to the first entry on the Property;

6.6 not allow the Investigations or any and all other activities undertaken by Buyer or Buyer's representatives to result in any liens, judgments or other encumbrances being filed or recorded against the Property, and Buyer must, at its sole cost and expense, promptly discharge of record any such liens or encumbrances that are so filed or recorded (including, without limitation, liens for service, labor or materials furnished), provided that Buyer's obligations hereunder shall not extend to pre-existing conditions which are discovered, disturbed or exacerbated as a result of Buyer's activities on the Property; and

6.7 indemnify, defend and hold Seller harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including without limitation, attorneys' fees and disbursements), suffered or incurred by Seller to the extent arising out of or directly in connection with (i) Buyer's and/or Buyer's representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon by Buyer or Buyer's representatives, (iii) any liens or encumbrances filed or recorded against the Property as a consequence of the Investigations or any and all other activities undertaken by Buyer or Buyer's representatives, or (iv) any and all other activities undertaken by Buyer or Buyer's representatives with respect to the Property. Notwithstanding the foregoing, Buyer's indemnity obligations hereunder shall not extend to any claims, demands, causes of action, losses, damages, liabilities, costs and expenses arising out of Buyer's discovery, disturbance or exacerbation of any conditions existing in, on or about the Property independently and/or prior to Buyer's entry upon the Property.

6.8 Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth in this Section 6 survive any termination of this Agreement.

7. Title Review.

7.1 Status of Title. As soon as possible after the Opening of Escrow, Escrow Agent shall provide Buyer and Seller with a commitment ("Title Report") of the title to the Property for issuance of an ALTA extended coverage owner's policy of title insurance, disclosing all matters of record which relate to the title to the Property, and Escrow Agent's requirements for both closing the escrow created by this Agreement and issuing the Title Policy (defined in Section 7.8 below). At such time as Escrow Agent delivers the Title Report (and any amended Title Report adding additional title exceptions), Escrow Agent shall also cause complete and legible copies of all instruments referred to in the Title Report or amended Title Report to be furnished to Buyer. Buyer shall have until fifteen (15) days prior to the expiration of the Feasibility Period (the "Title Review Period") to object in writing to any matter shown in the Title Report. If Buyer fails to object within the Title Review Period, the condition of title to the Property as reflected in the most recent Title Report issued to Buyer shall be deemed approved by Buyer. If Buyer does object to any matter disclosed in the Title Report, Buyer shall deliver a written notice of such objection (an "Objection Notice") to Seller and Escrow Agent within the Title Review Period. All matters in the Title Report to which Buyer does not object in

an Objection Notice, and any matters subsequently approved by Buyer, are referred to as "Approved Exceptions".

7.2 Right to Object to Title Report Amendments. If the Title Report is amended prior to the Closing to show any additional exceptions to title (other than items created by Buyer), Buyer shall be entitled to object thereto by delivering an Objection Notice to Seller and Escrow Agent within five (5) business days after Buyer receives such amendment and legible and complete copies of all instruments referred to therein, said notice to specify in reasonable detail the basis for Buyer's objection. If Buyer fails to deliver notice of objection to any matter set forth in any amendment to the Title Report within the time period prescribed above, Buyer shall be deemed to have approved such additional matter.

7.3 Right to Cure. If Buyer timely delivers any Objection Notice, Seller may deliver a written notice (a "Response") to Buyer and Escrow Agent within five (5) days after receipt of such Objection Notice, which Response may state any actions that Seller intends to take and their anticipated effect on the matters to which Buyer has objected. If the Response does not state an intention to remove each matter to which Buyer has objected, or if Seller does not deliver a Response, Buyer shall deliver to Seller and Escrow Agent within five (5) days after the expiration of the period for Seller's Response, a written notice (a "Reply") stating Buyer's election either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit or (b) to waive Buyer's objections (on the condition that Seller accomplishes any objectives described by Seller in the Response). If Buyer fails to make a timely election pursuant to the preceding sentence, Buyer shall be deemed to have elected to waive Buyer's objections and accept the condition of title to the Property as reflected in the Title Report, or if applicable, the most recent amendment to the Title Report issued to Buyer. If Buyer has conditionally waived, or has been deemed by its non-response to waive, an objection that Seller has agreed to cure, and the condition is not satisfied on the Closing Date, Buyer shall have the right, as its sole remedies, either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit, or (b) to proceed with this transaction and waive such objection. In the event that Buyer waives an objection, the item with respect to which the objection was made shall be deemed to be an Approved Exception.

7.4 Amendment to Title Report Issued Shortly Before Closing. If an amendment to the Title Report is issued shortly before the Closing Date, the Closing Date shall be extended if (and to the minimum extent) necessary: (a) to provide Buyer the period contemplated by Section 7.2 hereof to deliver an Objection Notice; (b) to provide Seller the period contemplated by Section 7.3 hereof to deliver a Response, if Buyer delivers an Objection Notice; and (c) to provide Buyer the period contemplated by Section 7.3 hereof to deliver a Reply, if Seller fails to deliver a Response or delivers a Response which does not include a commitment to remove all of the matters to which Buyer has objected.

7.5 No Additional Encumbrances. Seller agrees not to place any additional consensual liens, consensual encumbrances, easements or other matter of record against the Property or any portion thereof following Opening of Escrow and during the term of this Agreement.

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

7.7 Monetary Matters. Seller discloses that there are several claims of mechanics' and materialmen's liens and lawsuits that encumber or affect the Property (the "Lien Claims") and one or more deeds of trust that encumber or affect the Property (the "Deeds of Trust"). As described in Section 1.2(a)(iii) above, the Approval Order will include such rulings as are required by the Title Insurer for it to unconditionally commit to issue the Title Policy either (a) without the Lien Claims and Deeds of Trust being shown as exceptions to title or (b) endorsing over any claims or losses on account of the Lien Claims and Deeds of Trust.

7.8 Condition of Closing. It shall be a condition of Buyer's obligations under this Agreement that at the Closing, the title insurer ("Title Insurer") for Escrow Agent shall deliver to Buyer an ALTA extended coverage owner's title insurance policy (the "Title Policy") or the unconditional commitment of Title Insurer to issue such policy (which commitment shall be deemed made upon Escrow Agent's recordation of the Deed) with a limit of liability in the amount of the Purchase Price, insuring that fee simple title to the Property is held by Buyer subject only to (a) the printed exceptions normally contained in such policy, (b) the Approved Exceptions and any exceptions which are approved by Buyer pursuant to Section 7, and (c) any interests (such as deeds of trust or mortgages) which may be granted by Buyer. Seller shall be responsible for the cost of a standard coverage title insurance policy; except that if Seller offers any endorsements ("Curative Endorsements") to the title insurance policy to cure or otherwise address any title or survey matter objected to by Buyer in an Objection Notice (and Buyer accepts such Curative Endorsements), Seller shall pay the cost of such Curative Endorsements; Buyer shall be responsible for any additional cost of extended coverage. Seller will cooperate with Buyer's efforts to obtain such title insurance coverage, including any endorsements requested by Buyer.

8. Conditions to Closing.

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

- (a) Seller's representations and warranties contained herein shall be materially true and accurate as of the Effective Date and on the Closing Date.
- (b) Seller will not be in default of this Agreement.
- (c) Title Insurer will be irrevocably and unconditionally committed to issue the Title Policy to Buyer, subject to only the matters described in Section 7.8.

(d) There shall not be in effect an order of any court or governmental authority restraining, enjoining or otherwise prohibiting consummation of the transactions contemplated by this Agreement.

If any of the conditions set forth in subsections (a) or (b) above are not satisfied on the Closing Date, Buyer shall be entitled to the remedies prescribed under either Section 14 or Section 18.2 below, as applicable. If any of the conditions set forth in subsections (c) or (d) above is not satisfied on the Closing Date, then Buyer may terminate this Agreement by giving written notice of termination to Seller, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after termination, and the parties shall have no further obligations hereunder, except as expressly provided herein.

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

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

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

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

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

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

11. Closing Documents.

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

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

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

(c) deliver an Affidavit of Real Property Value in the form required in the State of Arizona;

(d) deliver such settlement statements, affidavits, and agreements that are not inconsistent with the provisions of this Agreement as the Escrow Agent may require or request, in form and substance reasonably acceptable to Seller, in order to consummate the transactions contemplated by this Agreement; and

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

(f) deliver exclusive possession of the Property, subject to any leases to be assumed by Buyer as provided for herein.

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

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

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

(c) deliver such settlement statements, affidavits and agreements as the Title Company may require or request, in form and substance reasonably acceptable to Buyer, in order to consummate the transactions contemplated by this Agreement.

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

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

12.1 Apportionments. Seller will pay the fee for the standard coverage owner's portion of the Title Policy, plus the cost of any Curative Endorsements; one-half of Escrow Agent's escrow fee; and recording fees with respect to release of any liens or encumbrances. Buyer will pay one-half of Escrow Agent's escrow fee; recording fees with respect to the Deed and the Affidavit of Real Property Value; and the cost of the Title Policy in excess of the cost of a standard coverage owner's policy of title insurance, plus the cost of any title endorsements Buyer may request. Real property taxes will be prorated as of the Closing Date. Seller shall pay in full all general and special assessments that affect the Property and exist as of the Closing Date. If the Closing Date shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation.

12.2 Post-Closing Reconciliation. If any of the apportionments or prorations (including the apportionment of taxes on the basis of the tax rate for the preceding year) required above cannot be calculated accurately on the Closing Date or are miscalculated, then they shall be calculated or recalculated as soon as possible after the Closing Date. Either party owing the

other party a sum of money based on such subsequent apportionments or prorations shall promptly pay said sum to the other party outside of escrow within ten (10) days after receipt of an invoice therefor. There shall be no further adjustments of such apportionments or prorations six (6) months after the Closing Date.

12.3 Property Tax Appeals. Buyer and Seller both understand and agree that Seller may have initiated a property tax appeal for the year in which the Property is being sold from Seller to Buyer. Buyer agrees to assume said tax appeal agreement at Closing and to pay for its proportional savings under the terms of said agreement. Buyer and Seller also both understand that the real property tax pro rations provided for under Section 12 of the Purchase Agreement may use an estimated property tax amount from a prior year or a current year amount that is under appeal, and said amount may not necessarily reflect the ultimate liability for the year in which the Closing occurs. Buyer and Seller also understand and agree that any reduction of real property tax for the year in which the Closing occurs will be pro-rated between Buyer and Seller, as well as any fee incurred to achieve said savings, which fee shall not exceed the tax savings. Either party owing the other party a sum of money based on such subsequent apportionments or prorations shall promptly pay said sum to the other party outside of escrow within ten (10) days after receipt of an invoice therefor. Seller shall be entitled to any reduction of real property tax for any year prior to Closing.

13. Damage or Condemnation. If, prior to the Close of Escrow, all or any material portion of the Property is damaged or destroyed by casualty or becomes the subject of any pending or threatened eminent domain proceeding (or any transfer in lieu thereof has occurred), then Buyer may terminate this Agreement by giving written notice of termination to Seller within 20 days after Buyer's receipt of written notice of such damage, destruction or pending or threatened eminent domain proceeding, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination and the parties will have no further obligations hereunder, except as expressly provided herein. If Buyer fails to give notice of termination during the foregoing 20-day period, Buyer shall be deemed to have elected to waive its right to terminate, the parties shall proceed with the purchase and sale transaction described herein, and all rights, claims, benefits, insurance proceeds, or other consideration relating to the damage, destruction or eminent domain proceeding shall be assigned and transferred to Buyer at Close of Escrow. For purposes of this Agreement, a "material portion of the Property" shall mean damage or loss to the Property in the amount of \$250,000 or more.

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

14.1 Agreements. Except for matters disclosed in the Property Documents and the Title Report, to Seller's knowledge, Seller has not entered into any contract, operating arrangement, lease or other agreement relating to the Property that will remain in effect and be binding on the Property after the Close of Escrow. Seller has made no commitment to any tenant, governmental or quasi-governmental entity or other person or entity which imposes upon Seller or its successors or assigns any obligation to pay or contribute property or money or to construct, install or maintain any improvements on or off the Property.

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

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

14.4 No Violation. Subject to the satisfaction of the Contingencies set forth in Section 1.2(a), to Seller’s knowledge, execution of this Agreement and all documents executed pursuant to this Agreement by Seller, and performance by Seller of each and all of its obligations hereunder, will not breach or violate any other agreement, court order or other arrangement by which Seller is bound.

14.5 Recitals. To Seller’s knowledge, Recitals A through C are true and correct and are incorporated herein by this reference as if fully set forth in this Agreement.

14.6 Compliance. Subject to the satisfaction of the Contingencies set forth in Section 1.2(a), to Seller’s knowledge, all necessary and appropriate action on the part of Seller which is required for the execution, delivery and performance of this Agreement has been fully and effectively taken.

For purposes of this Section 14, the phrases “Seller’s knowledge,” “Seller is not aware of” and similar terms mean the actual knowledge of Mark Winkleman without the duty of inquiry or investigation. The matters set forth in this Section constitute representations and warranties by Seller that will be true and correct as of the date hereof and on the Closing Date and will, subject to Section 17, survive the Closing Date for a period of one (1) year.

If Seller becomes aware of any facts or circumstances that cause any of such representations and warranties to become materially false or incorrect, Seller will promptly notify Buyer of same. Notwithstanding any contrary provision of this paragraph, the representations, warranties and covenants of Seller set forth in this Section shall not apply to the extent that any matter or condition is caused by the act or acquiescence of Buyer, its affiliates, employees, agents, contractors, subcontractors or representatives, or to the extent Buyer has actual knowledge of any inaccuracy in any such representation, warranty or covenant at the time of the Closing. If Seller becomes aware of any change in the representations, warranties or covenants of Seller set forth in this Section 14 after the date hereof (whether arising before or after the date hereof), Seller shall give prompt written notice (a “Change Notice”) to Buyer, which shall specifically reference this Section and the representation and warranty being modified. Buyer (as Buyer’s sole remedy) shall have ten (10) days following its receipt of a Change Notice within which to terminate this Agreement by written notice to Seller. In the event of such termination, Escrow Agent shall return the Deposit to Buyer and neither party shall have any further obligations hereunder, except as expressly provided herein. Buyer’s failure to terminate this Agreement within the foregoing ten (10)-day period shall be deemed acceptance of the matters disclosed in the Change Notice and an election by Buyer to proceed with the purchase of the Property notwithstanding the Change Notice. If Buyer elects (or is deemed to have elected) to proceed

with the purchase of the Property after receipt of a Change Notice, then Buyer shall be deemed to have assumed all risk of and released Seller from all liability for the matter(s) specified in such Change Notice, and Seller's representations, warranties and covenants under this Section 14 shall thereafter be deemed to have been modified as provided in the Change Notice.

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

15.1 Power and Authority. Buyer has full power and authority to enter into this Agreement and all documents executed pursuant to this Agreement, and to perform its obligations in accordance with the terms and conditions hereof and thereof.

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

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

The matters set forth in this Section constitute representations and warranties by Buyer that will be true and correct as of the date hereof and on the Closing Date and will, subject to Section 17, survive the Closing Date for a period of one (1) year.

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

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

16.2 Additional Buyer Warranties. Buyer represents and warrants that, except as expressly set forth in this Agreement: (i) Buyer is a knowledgeable, experienced and sophisticated purchaser of real estate and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property; (ii) Buyer is, or at the end of the Feasibility Period will be, familiar with the Property; (iii) Buyer is relying solely upon, and as of the Closing Date will have conducted, its own independent inspection, investigation and analysis of

the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including without limitation, physical inspections, environmental assessments, analysis of any and all matters concerning the condition of the Property and its suitability for Buyer's intended purposes, and review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the use, occupancy or enjoyment of the Property; (iv) Seller is not liable or bound in any manner by any oral or written statements, representations, warranties, or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein; and (v) Buyer acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Buyer has fully reviewed the representations, warranties, disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof. Buyer acknowledges and agrees that the representations, warranties, disclaimers and other agreements set forth in this Agreement are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without such representations, warranties, disclaimers and other agreements set forth in this Agreement. Buyer further acknowledges and agrees that regardless of the outcome or contents of any inspection or assessment of the Property Buyer may undertake, Seller has no obligation whatsoever to cure any faults, defects or other adverse conditions affecting the Property, whether or not disclosed in any such inspection or assessment or in any disclosures by Seller. The covenants, representations and warranties contained in this Section 16 shall expressly survive the Closing without limitation.

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

17. Survival. The covenants, representations or warranties made by Seller and Buyer, respectfully, in Sections 14, 15, and 16 are made as of the Opening of Escrow and as of the Close

of Escrow and shall survive the Closing, except that any claim for breach of warranty by either party must be asserted within one (1) year after the Closing or be forever barred.

18. Remedies.

18.1 Seller's Remedies. If Buyer fails to deposit the Purchase Price in accordance with the terms of this Agreement, or to timely close escrow as required hereunder, or fails to perform any of its other obligations under this Agreement, which failure is not cured within three (3) business days after written notice from Seller, Seller shall be entitled, as Seller's sole and exclusive right and remedy hereunder, to terminate this Agreement by giving written notice of termination to Buyer, in which event Seller shall be entitled to receive and retain the Deposit as liquidated damages and as consideration for acceptance of this Agreement. Notwithstanding anything mentioned herein to the contrary, Seller hereby waives any claim for consequential, special, punitive, exemplary or similar damages against Buyer. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damages by reason of default by Buyer. Accordingly, Buyer and Seller agree that it would be reasonable at such time to award to Seller "liquidated damages" equal to the amount of the Deposit in the event of a default by Buyer.

18.2 Buyer's Remedies. Upon a breach or default by Seller hereunder, which default is not cured within three (3) business days after written notice from Buyer, Buyer shall be entitled, as its sole remedies for Seller's default hereunder, to exercise one of the following remedies: (i) terminate this Agreement, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination; (ii) proceed with the transaction and waive the default; or (iii) seek specific performance of Seller's obligations hereunder within one hundred twenty (120) days after the purported default. Notwithstanding anything mentioned herein to the contrary, Buyer hereby waives any claim for consequential, special, punitive, exemplary or similar damages against Seller.

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

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

20. Notices. All notices, demands and requests under this Agreement must be in writing, and will not be effective unless given to the other party by prepaid registered or certified

mail, return receipt requested, by nationally recognized commercial overnight courier service, by hand-delivery with a signed acknowledgement of receipt by the receiving party, or by confirmed facsimile transmittal (if a facsimile number is given below), addressed as follows:

20.1 If addressed to Seller:

ML Manager LLC
14050 North 83rd Avenue, #180
Peoria, Arizona 85381
Attn: Mark Winkleman
Facsimile: (623) 234-9575
Telephone: (623) 234-9562
Email: mwinkleman@mtgltd.com

with a copy to:

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

20.2 If addressed to Buyer:

Evergreen Devco, Inc.
2390 East Camelback Road, Suite 410
Phoenix, Arizona 85016
Attention: Tim O'Neil
Facsimile: (602) 808-9100
Telephone: (602) 808-8600
Email: toneil@evgre.com

with a copy to:

Westroc Hotels & Resorts
7305 East Greenway Road
Scottsdale, Arizona 85260
Attention: Scott B. Lyon
Facsimile: _____
Telephone: _____
Email: slyon@westroc.net

with a copy to:

Pyramid Community Developers

Attention: Mark Stapp

Facsimile: _____

Telephone: _____

Email: mark.stapp@asu.edu

20.3 Copies of all notices, demands and requests shall also be delivered to
Escrow Agent:

Thomas Title & Escrow
Promenade Corporate Center
16435 N. Scottsdale Rd., Ste. 405
Scottsdale, Arizona 85254
Attention: Diane F. Carpenter
Telephone: (480) 222-1116; ext. 203
Facsimile: (480) 383-6792
Email: dcarpenter@thomastitle.com

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

21. Miscellaneous.

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

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

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

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

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

21.6 Assignment. Buyer may assign its rights and obligations under this Agreement to an affiliate of Buyer, upon written notice to Seller, or to an unaffiliated third party, subject to Seller's approval. Upon any such assignment, the assignee will be deemed the "Buyer" for all purposes and entitled to exercise all rights and privileges under this agreement as such. The original or previous Buyer, upon the assignment, will be relieved of all obligations under this Agreement, except for the acts or omissions of that entity occurring prior to the assignment.

21.7 Entire Agreement. This Agreement and any schedules and exhibits attached thereto constitute the entire agreement between the parties. All terms and conditions contained in any other instruments previously executed by the parties in connection with the Property are superseded hereby and merged herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

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

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

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

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

SELLER:

C&M LOAN LLC, an Arizona limited liability company

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

By: _____
Mark Winkleman, Chief Operating Officer

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

By: _____
Mark Winkleman,
Chief Operating Officer

BUYER:

EVERGREEN DEVCO, INC.,
a California corporation

By: _____
Its: _____

AGREEMENT AND CONSENT BY ESCROW AGENT

The undersigned hereby agrees to (i) accept the foregoing Agreement of Sale and Purchase as instructions to the undersigned, (ii) act as Escrow Agent under said Agreement in consideration of its fees normally charged in such transactions, (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent, and (iv) agrees to deliver to Buyer and Seller, within five (5) days after the Opening of Escrow, an insured closing protection letter from the Title Insurer, and (v) agrees to be the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986 (the "Code") and filing all necessary information reports, returns and statements (collectively, the "Tax Reports") regarding the transaction required by the Code and, promptly upon the filing of the Tax Reports, transmit copies of the Tax Reports to Buyer and Seller.

Dated this ____ day of February, 2012.

Thomas Title & Escrow

By: _____
Name/Title: _____

EXHIBIT "A"
NAMES OF OWNERS OF LAND

C & M Loan LLC, an Arizona Limited Liability Company, as to an undivided 82.497% ownership

Delery Guillory, married man, as his sole and separate property, as to an undivided 2.563% ownership

Golden Lending Group, LLC, an Arizona limited liability company, as to an undivided 0.490% ownership

William L. Hawkins Family L.L.P., an Arizona limited liability partnership, as to an undivided 1.849% ownership

AJ Chandler 25 Acres, L.L.C., an Arizona limited liability company, as to an undivided 1.831% ownership

Ronald L. Kohner, an unmarried man, as to an undivided 0.708% ownership

Lonnie Joel Krueger, Trustee of The Lonnie Joel Krueger Family Trust Agreement dated January 24, 1991, as to an undivided 1.025% ownership

Louis B. Murphey, an unmarried man, as to an undivided 3.661% ownership

Robert G. Roden, Trustee of The Robert G. Roden Living Trust dated October 1, 2004, and any amendments thereto, as to an undivided 0.458% ownership

James C. Schneck, Trustee of The James C. Schneck Revocable Trust dated October 1, 1999 and any amendments thereto, as to an undivided 2.636% ownership

W. Scott Schirmer, Trustee of The WSS 048 Trust dated September 17, 2004, and any amendments thereto, as to an undivided 0.451% ownership

Kuldip Verma and Tarun Vig, as tenants in common, as to an undivided 1.831% ownership

EXHIBIT "B"
Legal Description

Parcel A

PARCEL 1:

Lots 7, 9 and 11, Block 8, ORIGINAL TOWNSITE OF PHOENIX, a subdivision recorded in Book 2 of Maps, Page 51, records of Maricopa County, Arizona;

EXCEPT title to any mine of gold, silver, cinnabar, copper or lead or any valid mining claim or possession held under the existing laws of Congress, as set forth in the Patent from the United States of America.

Parcel B

PARCEL 2:

Lot 5, Block 8, ORIGINAL TOWNSITE OF PHOENIX, a subdivision recorded in Book 2 of Maps, Page 51, records of Maricopa County, Arizona;

EXCEPT title to any mine of gold, silver, cinnabar, copper or lead or any valid mining claim or possession held under the existing laws of Congress, as set forth in the Patent from the United States of America.

PARCEL 2A:

Easement for Support of Floor and Roof Beams and Curtain Wall along the West side of the South 100 feet of Lot 3, Block 8, as created in Book 294 of Deeds, Page 588.

PARCEL A IS NOW KNOWN AS:

Lot 1, HOTEL MONROE, a replat of Lots 7, 9 and 11, Block 8, ORIGINAL TOWNSITE OF PHOENIX, according to the Final Plat recorded in Book 993, Page 35, records of Maricopa County, Arizona.

EXCEPT title to any mine of gold, silver, cinnabar, copper or lead or any valid mining claim or possession held under the existing laws of Congress, as set forth in the Patent from the United States of America.

EXHIBIT "C"

WHEN RECORDED MAIL TO:

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, C&M Loan LLC, an Arizona limited liability company; and ML Manager LLC, an Arizona limited liability company as agent ("Agent"), as attorney-in-fact for those individual owners ("Owners") listed on Exhibit "B" attached ("Grantor"), does hereby convey to _____ ("Grantee"), the following real property together with all of Seller's right, title and interest in and to (i) all buildings, structures and improvements located thereon; (ii) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; and (iv) and any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such property:

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

SUBJECT ONLY TO all general and special real property taxes and other assessments, reservations in patents, water rights, claims or title to water and all easements, rights of way, covenants, conditions, restrictions, reservations, declarations, encumbrances, liens, obligations, liabilities and other matters as may appear of record, any and all conditions, easements, encroachments, rights of way or restrictions which a physical inspection or accurate ALTA survey of the Property would reveal.

AND the Grantor hereby binds itself and its successors and assigns to warrant and defend the title in Grantee, its successors and assigns, as against all acts of the Grantor herein and no other, subject to the matters above set forth.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

DATED this _____ day of _____, 2012.

GRANTOR

C&M LOAN LLC, an Arizona limited liability company

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

By: _____
Mark Winkleman,
Chief Operating Officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Mark Winkleman, known by me to be the Chief Operating Officer of ML Manager LLC, an Arizona limited liability company, the Manager of C&M LOAN LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

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

By: _____
Mark Winkleman,
Chief Operating Officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Mark Winkleman, known by me to be the Chief Operating Officer of ML Manager LLC, an Arizona limited liability company, on behalf of the company as the Agent for the Owners listed on Exhibit B attached.

Notary Public

My Commission Expires:

EXHIBIT A
TO THE SPECIAL WARRANTY DEED

Legal Description of the Property

**EXHIBIT B
TO THE SPECIAL WARRANTY DEED**

List of Owners

EXHIBIT "D"
TO PURCHASE AND SALE AGREEMENT

BLANKET ASSIGNMENT AND BILL OF SALE

THIS BLANKET ASSIGNMENT AND BILL OF SALE (the "Assignment") is given as of _____, 2012, by C&M Loan LLC, an Arizona limited liability company, and ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners ("Owners") listed on Exhibit "A" attached ("Assignor") for the benefit of _____, its successors and assigns (collectively, "Assignee").

RECITALS

A. Assignor and Assignee entered into that certain Agreement of Sale and Purchase, dated _____, 2012 (the "Agreement"), whereby Assignor agreed to sell and Assignee agreed to purchase that certain real property located more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. In connection with the foregoing transaction, but excluding any rights of Assignor as against any borrower or guarantor of any loan that was secured by the Property, Assignor desires to transfer and assign to Assignee, without representation or warranty, on the terms and conditions set forth below, all of Assignor's right, title and interest in all rights, materials and/or claims relating to Property or the use, entitlement or development thereof, including, without limitation: (i) all permits, licenses, applications, approvals, and any other authorizations issued by governmental entities or quasi-governmental entities; (ii) all entitlements, subdivision agreements and other agreements relating to the development of Property; (iii) all plats, plans, drawings, designs, engineering materials, studies, reports and other documents relating to any improvements to or serving the Property; (iv) all claims, awards, and any similar rights relating to and benefiting the Property; (v) all water and sewer taps and hookup connections relating to the Property; (vi) all development rights benefiting the Property; (vii) any and all rights to receive any payments, impact fee or other credits, reimbursements, or refunds arising from any payments, dedications or any other actions taken by Assignor or any predecessor in title to the Property; (viii) all rights to receive a reimbursement, credit or refund from the applicable agency or entity of any deposits or fees paid in connection with the development of the Property, (ix) all pre-paid impact fees, school fees, and/or development fees of any kind previously paid by Seller or any predecessor in title to the Property, (x) all guarantees, warranties, indemnities, and covenants under any and all contracts and agreements with contractors, subcontractors, suppliers and other persons and entities providing labor, services or materials in connection with the design, construction and installation of any improvements to or serving the Property, (xi) all personal property located at the Property including, without limitation, all building (construction) materials or supplies, and (xii) any and all other rights, privileges, and appurtenances owned by Assignor and in any way related to, or used in connection with the operation of the Property to the extent that they are assignable (collectively, the "Assigned Items") but reserving to Assignor any of the Assigned Items to the extent related to other property. It is understood and agreed that there may be items of personal property, including mechanical equipment and building materials,

located on the Property that are not owned by Assignor. For example, there are three elevator units and HVAC ducting located on the Property that may not be owned by Assignor. Also, there are doors for the Property being refurbished in Chicago, which may not be owned by Assignor. Assignor does not represent that it owns any of the personal property located on the Property, but only that quits claim to Buyer any interest that it has in such personal property. The personal property is subject to any claims by third parties that the personal property is owned by the third parties or that there are amounts due and owing to third parties relating to the person property. The Assigned Items include, but are not limited to, all of Assignor's right, title and interest in the items described on Exhibit C attached hereto.

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

AGREEMENT

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by reference as agreements of Assignor and Assignee.
2. Assignment. Subject to the limitations stated herein, Assignor hereby assigns and transfers unto Assignee, all of Assignor's right, title and interest, if any, in and to the Assigned Items without representation or warranty of any kind.
3. No Assumption of Obligations. Assignee does not assume any duties or obligations of Assignor to be performed, paid or complied with under or with respect to any of the Assigned Items arising prior to the date of this Assignment.
4. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
5. Counterparts. This Assignment may be executed in one or more counterparts each of which shall be deemed an original instrument and all of which combined shall constitute one and the same instrument.

(Signatures appear on the following page.)

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

ASSIGNOR:

C&M LOAN LLC, an Arizona limited liability company

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

By: _____
Mark Winkleman, Chief Operating
Officer

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

By: _____
Mark Winkleman,
Chief Operating Officer

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

List of Owners

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

Legal Description of the Property

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

Specific Assigned Items