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

12 In re  
13 MORTGAGES LTD.,  
14 Debtor.

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

**MOTION TO APPROVE AMENDMENT TO  
SALE AGREEMENT PREVIOUSLY  
APPROVED**

**Real Property located at 3520 North 70<sup>th</sup> Street,  
Scottsdale, Arizona**

**Hearing Date: December 11, 2012  
Hearing Time: 11:00 a.m.**

18 ML Manager LLC (“ML Manager”), as the manager for 70 SP Loan LLC and the  
19 agent for certain Pass-Through Investors, requests that the Court approve an amendment  
20 to the Sale Agreement which the Court previously approved in a Sale Order dated  
21 September 4, 2012 (Docket No. 3571). Previously the Court approved the sale of the real  
22 property located at 3520 North 70<sup>th</sup> Street, Scottsdale, Arizona consisting of  
23 approximately 1.58 acres, as more specifically described in the Sale Agreement  
24 (“Property”), to RDM Holdings IV, LLC, an Arizona limited liability company,  
25 (“Purchaser”) for the price of \$875,000 (“Purchase Price”) and on the terms set forth in  
26

1 the Agreement of Sale and Purchase (“Sale Agreement”) which was attached to the  
2 Motion to Sell (Docket No. 3543). The Second Amendment to the Sale Agreement  
3 (“Amendment”) for which approval is sought is attached hereto as Exhibit A.

4 The material change in the Sale Agreement is that the Purchase Price will not be  
5 paid in full in cash at the Closing. Instead the Amendment allows the Buyer to close with  
6 \$400,000 cash and with a Note and first position Deed of Trust issued to ML Manager for  
7 the balance of \$475,000 payable in 90 days with interest at 8% per annum (“Seller  
8 Carryback”). This Amendment allows the sale to go forward with a December 27, 2012  
9 close, provides \$400,000 of immediate proceeds and provides a customary method of sale  
10 protection for a Seller Carryback, the issuance of a Note and first position Deed of Trust.  
11 The risk is not material as the Note is due and payable in 90 days. In addition, the  
12 Amendment acknowledges the assignment by Buyer of its interest under the Sale  
13 Agreement to an entity that Buyer states is an affiliate of Buyer, Canary Holdings, LLC,  
14 an Arizona limited liability company. The Sale Agreement permitted Buyer to make an  
15 assignment. The Amendment formalizes the assignment. The Closing is December 27,  
16 2012. Feasibility has already expired and the Buyer has waived its right to terminate the  
17 Sale Agreement. \$25,000 deposit has been received and escrow is open at the Thomas  
18 Title.

19 In addition to seeking Court approval of this Amendment, ML Manager will also  
20 seek the approval and vote of 70 SP Loan LLC which holds 71.035% of the interest in the  
21 real property. The results of that vote will be reported to the Court at the hearing.

22 Due to the actions pending in the Bankruptcy Court and appellate courts by certain  
23 investors, ML Manager believes that it is prudent to seek Bankruptcy Court approval of  
24 the Amendment including the Seller Carryback. ML Manager asserts that the  
25 Amendment is in the best interest of the investors and that the sale should go forward even  
26 with a Seller Carryback. ML Manager asserts that the sale and decision to allow a Seller

1 Carryback is supported by its best business judgment consistent with its fiduciary duties  
2 and responsibilities.

3 WHEREFORE, ML Manager LLC requests that the Court enter an order  
4 authorizing and approving the Amendment, including the Seller Carryback, to the Sale  
5 Agreement which has previously been approved by the Court, and for such other and  
6 further relief as is just and proper under the circumstances.

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DATED: November 29, 2012

FENNEMORE CRAIG, P.C.

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

# EXHIBIT

# A

**SECOND AMENDMENT TO  
AGREEMENT OF SALE AND PURCHASE  
(3520 North 70<sup>th</sup> Street)**

This Second Amendment to Agreement of Sale and Purchase (this "Amendment") is entered into effective as of November 28, 2012, by and among 70 SP LOAN LLC, an Arizona limited liability company ("SP Loan") and ML Manager LLC, an Arizona limited liability company, as agent ("Agent") for those individual owners listed on Exhibit "A" to the Purchase Agreement described below (the "Owners" and with SP Loan, collectively "Seller"); RDM Holdings IV, LLC, an Arizona limited liability company ("Buyer"). The parties may herein be referred to collectively as "the parties" or individually as "a party."

**RECITALS**

Buyer and Seller entered into that certain Agreement for Sale and Purchase dated July 30, 2012, as amended (the "Purchase Agreement") for the purchase and sale of real property described therein located in Maricopa County, Arizona (the "Property"). The Purchase Agreement is subject to Thomas Title & Escrow LLC, Escrow No. 121446-33 (the "Escrow"). The Purchase Agreement was terminated by a letter of termination from Buyer, dated November 20, 2012. The parties desire to reinstate and amend the Purchase Agreement on the terms and conditions set forth herein.

**AGREEMENT**

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

1. Capitalized terms used in this Amendment have the meanings given to them in the Purchase Agreement, unless they are separately defined herein.
2. The Purchase Agreement is hereby reinstated and acknowledged to be in full force and effect, as amended by this Amendment.
3. Section 3.1 of the Purchase Agreement is revised as follows. The Purchase Price shall remain Eight Hundred Seventy-Five Thousand Dollars (\$875,000.00). Upon execution of this Amendment by Seller and Buyer, Buyer shall deposit with Escrow Agent the Additional Deposit of Twenty-Five Thousand Dollars (\$25,000) provided for under Section 3.1(a) of the Purchase Agreement. At the Close of Escrow, Buyer shall pay Four Hundred Thousand Dollars (\$400,000.00) of the Purchase Price (including the Deposit) to Seller, in cash by wire transfer, cashier's check or other readily available funds. Buyer shall pay the balance of the Purchase Price in the amount of Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) on or before ninety (90) days after the Close of Escrow. The obligation to pay the unpaid balance of the Purchase Price shall be evidenced by a promissory note (the "Promissory Note") that is executed by Buyer and delivered to Seller at the Close of Escrow. The Promissory Note shall be secured

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by a first priority lien deed of trust against the Property (the "Deed of Trust") that is executed by Buyer and recorded at the Close of Escrow. The unpaid balance of the Purchase Price shall bear interest at the rate of eight percent (8%) per annum from the Close of Escrow until paid, so long as Buyer is not in default under the Promissory Note and Deed of Trust. Interest shall accrue at the rate of 15% per annum in the event of default under the Promissory Note. The Promissory Note and Deed of Trust shall be consistent with the terms of this Amendment, shall contain such additional terms as are customary for commercial loan transactions in the Phoenix metropolitan area, and shall be reasonably acceptable to Seller and Buyer.

4. The Feasibility Period under Section 5 of the Purchase Agreement has expired, and Buyer waives its rights to terminate the Purchase Agreement under Section 5.

5. As a result of the modification of the terms of payment of the Purchase Price and the other provisions of this Amendment, Seller is required to obtain the Lender Approval (waiver of the right to submit a Lender Offer), Member Approval and approval of the Court (all as described in Section 1.2(a) of the Purchase Agreement) for this Amendment (the "Modification Contingencies"). Seller will attempt to satisfy the Modification Contingencies by taking such action as it deems appropriate; provided, however, Seller shall not be in default hereunder if any of the Modification Contingencies is not satisfied. If all of the Modification Contingencies have been satisfied prior to the end of the period commencing on the date hereof and ending 30 days thereafter (the "Modification Contingency Period"), then Seller shall notify Buyer of such satisfaction (the "Modification Contingency Satisfaction Notice"), and this Agreement shall continue in full force and effect. If all of the Modification Contingencies have not been satisfied prior to the end of the Modification Contingency Period, then Seller shall notify Buyer that the Modification Contingencies have not been satisfied, whereupon either party may terminate this Agreement by written notice to the other party. Upon any such termination, Escrow Agent shall return the Deposit to Buyer not later than the second business day after such termination, and Seller and Buyer shall have no further obligations hereunder, except as expressly provided in the Purchase Agreement.

6. The Closing Date under Section 10 of the Purchase Agreement shall remain December 27, 2012, subject to the satisfaction of the Modification Contingencies. If the Modification Contingencies have not been satisfied by December 27, 2012, then the Closing Date shall be one (1) day after the satisfaction of the Modification Contingencies.

7. Buyer hereby assigns all of its rights and obligations as Buyer under the Purchase Agreement to Canary Holdings LLC, an Arizona limited liability company ("Assignee"). By execution of this Amendment, Assignee hereby accepts such assignment and agrees to be bound by all of the terms and conditions of the Purchase Agreement.

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

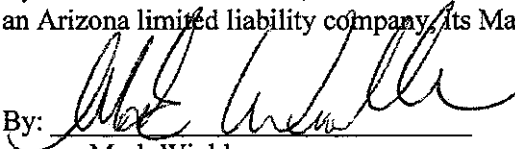
9. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument. Facsimile or pdf signatures on this Amendment shall be valid.

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

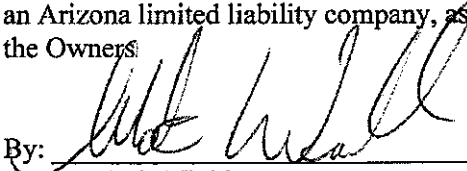
**SELLER:**

70 SP 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:**

RDM HOLDINGS IV, LLC, an Arizona limited liability company

By: RSB Arcadia, LLC, an Arizona limited liability company, Member/Manager

By: McLean Real Estate Services, Inc., Manager

By: \_\_\_\_\_  
Scott D. McLean  
Its: President

**ASSIGNEE:**

CANARY HOLDINGS LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_