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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 APPROVE SHORT SALE**

15 **Real Property consisting of approximately 26**
16 **acres located in Oro Valley, Pima County,**
17 **Arizona, known as Rancho Vistoso**

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

18 ML Manager LLC (“ML Manager”), requests that the Court enter an order
19 authorizing ML Manager as the manager for VP I Loan LLC and the agent for certain
20 Pass-Through Investors to accept a short sale by its Borrower which would pay ML
21 Manager net sale proceeds from the sale of certain real property and personal property.
22 The Property consists of approximately 26 acres which is zoned for single family
23 residences located in Oro Valley, Pima County, Arizona in the Master Planned
24 Community known as Rancho Vistoso, as more specifically described in the Agreement
25 of Sale and Purchase (“Property”). Borrower wants to sell the Property to True Life
26 Communities, LLC, a California limited liability company (“Purchaser”), for the price of

1 approximately \$3.38 million (“Purchase Price”) which is \$130,000 per acre and on
2 substantially the terms set forth in the Agreement of Sale and Purchase (“Sale
3 Agreement”) which is attached as Exhibit A or upon better terms to another party as
4 determined by ML Manager in its sole discretion. ML Manager would receive the net
5 sales proceed and would release the lien on only the subject 26 acres. The lien on the
6 remaining approximate 26 acres which is zoned for multi family use which is also subject
7 to the deed of trust held by the investors would not be released. The Sale is contemplated
8 to close in January 21, 2013.

9 Borrower Vistoso Partners, LLC (“Borrower”) defaulted on its loan with
10 Mortgages Ltd. The unpaid principal balance on the loan (Loan No. 857406) is about \$11
11 million. Interest and fees also are due. ML Manager has not foreclosed on the Property
12 and is currently working on a global settlement with the Borrower, other Borrowers and
13 guarantors on what is known as the Wolfswinkel Loans. Pursuant to the Official
14 Investors’ Committee’s First Amended Plan confirmed by the Court, VP I Loan LLC was
15 formed on the effective date and the fractional interests in the note and deed of trust which
16 were held by the MP Funds were transferred into VP I Loan LLC. Subsequently some of
17 the pass-through investors transferred their interests into VP I Loan LLC. Certain Pass-
18 Through Investors have not transferred their fractional interests (“Pass-Through
19 Investors”). As a result, 54.010% of the interest in the loan is owned by VP I Loan LLC
20 and the rest is owned by the Pass-Through Investors in the loan.

21 Borrower retained the services of Land Advisors Organization, a leading a real
22 estate brokerage firm, to market the property for sale. After significant bidding and
23 negotiations with two aggressive bidders, Purchaser made an offer of \$3.38 million and
24 Borrower and Purchaser have signed the Sale Agreement for that price, subject to the
25 agreement of ML Manager and its regular contingencies.¹ Purchaser has deposited

26 ¹ Prior to consenting to the Sale Agreement and when the negotiations of price were at

1 \$100,000 and opened escrow at Thomas Title & Escrow. This is not proposed to be an
2 auction and no higher and better bids are being solicited. The contingencies include
3 approval by the investors in VP I Loan LLC and the applicable MP Funds and Bankruptcy
4 Court approval. One of the contingencies is the waiver of the right to compete by the exit
5 financier. The Purchase Price is to be paid in cash at closing. This is an arms-length,
6 negotiated sale between unrelated parties. The anticipated closing is January 21, 2013.
7 The Property is being sold “As-Is” “Where-Is” and “With All Faults”.

8 Even though the debt will not be paid in full, ML Manager believes that this price
9 reflects the current market value of the Property and that it is unlikely in the foreseeable
10 future to get a higher amount for the Property. Borrower will continue to own about 26
11 acres that are zoned for multi family use and the investors will continue to hold a first lien
12 position on the additional 26 acres. There are ongoing holding costs, including, interest
13 costs on the replacement loan, among other costs. ML Manager believes that this sale is in
14 the best interest of the investors in the Loan LLC and the Pass-Through Investors and is a
15 valid exercise of its business judgment consistent with any fiduciary responsibilities.

16 Due to the actions pending in the Bankruptcy Court and District Court by certain
17 investors, ML Manager believes that it is prudent to seek Bankruptcy Court approval of
18 the sale. An order approving the sale and authorizing the sale by ML Manager of 100% of
19 the interest in the loan will insure a smooth closing and will aid in the implementation of
20 the Plan.²

21 \$110,000 an acre in October 2012, ML Manager contacted Mr. Furst to inform him of the
22 existing offer and to give him the opportunity to make an offer for the same property. He
23 was encouraged to contact the broker, the Borrower or Mr. Winkleman. Mr. Furst asked
24 for a few more days to consider it and then informed Mr. Winkleman that he did not
intend to make an offer for the property. Broker then continued in its negotiations with
interested parties and the Purchaser and Borrower reached an agreement at the price of
\$130,000 an acre. ML Manager then accepted the agreement.

25 ² Mr. Furst has recently filed an adversary proceeding seeking partition of the note and
26 deed of trust reflecting the Vistoso loan, Case No. 2-12-ap-1870, and filed a lawsuit in
District Court for a declaratory judgment, Case No. CV-12-2304. He has also in the last
day or two filed a Motion for Partial Withdrawal of the Reference (Docket No. 3644).

1 Under the Operating Agreement of VP I Loan LLC, since this event is a Major
2 Decision, ML Manager must seek approval of the release of part of the deed of trust and
3 accept a short sale from the investors in the Loan LLC and the MP Funds investors.
4 Approval must be obtained by a majority of the investors' dollars voting. The voting
5 process will start shortly and by the time the parties get to a hearing the results will be
6 known to ML Manager. If approved ML Manager asserts it has the authority and ability to
7 go forward with the short sale of the Loan LLC interests as described.

8 ML Manager, as the agent for the Pass-Through Investors, has the authority and
9 ability to enter into a short sale agreement and to release the deed of trust on a part of the
10 real estate on behalf of the principals. ML Manager as the agent will execute the
11 documents on behalf of the Pass-Through Investors since it holds the irrevocable power of
12 attorney coupled with an interest to do so. ML Manager will include language in the Sale
13 order authorizing ML Manager to execute any and all such documents on behalf of the
14 Pass-Through Investors.

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

1 post-confirmation jurisdiction.

2 As is customary ML Manager does propose to allow the Borrower to pay the
3 closing costs, real property taxes and any commission as set forth in the Sale Agreement
4 at the closing out of the gross sale proceeds. ML Manager will receive the net sale
5 proceeds and also proposes to repay the replacement loans to the other Loan LLCs, from
6 the Loan LLC's portion of the sale proceeds pursuant to the Loan Agreement and the
7 Inter-borrower Agreement and to create and use any reserves pursuant to the Inter-
8 borrower Agreement.

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

16 WHEREFORE, ML Manager LLC requests that the Court enter an order
17 authorizing and approving the short sale and release of a part of the deed of trust collateral
18 as set forth above, and for such other and further relief as is just and proper under the
19 circumstances.

20 DATED: November 29, 2012

21

22

FENNEMORE CRAIG, P.C.

23

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

24

25

26

EXHIBIT

A

AGREEMENT OF SALE AND PURCHASE
(Vistoso 26 acres)

AM
This Agreement of Sale and Purchase (this "Agreement") is made effective as of November 21, 2012 (the "Effective Date"), by and between Vistoso Partners, L.L.C., an Arizona limited liability company ("Seller"); and True Life Communities, a California limited liability company ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party."

RECITALS

Seller is the owner of the real property located in Pima County, Arizona, and described on Exhibit "A" attached hereto (the "Land"). Buyer desires to enter into an agreement to acquire Seller's interest in the Land, and Seller is willing to enter into an agreement with Buyer regarding the purchase of Seller's interest in 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 and to the Land, consisting of approximately 26 acres located in Oro Valley, Pima County, 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 and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) all land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; (v) any pre-paid impact fees, school fees and other development fees; (vi) any development agreements, improvement agreements, plans and permits, and (vii) any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such Land (collectively, the "Property").

1.2 Contingencies.

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

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(i) VP I Loan, LLC, an Arizona limited liability company ("First Lien Lender"), 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. The Members of First Lien Lender must have approved the sale of the Property for the Purchase Price, must have approved the amount of the release price to be paid to First Lien Lender for the release of its lien against the Property and must have approved the release of First Lien Lender's lien against the Property, as required by Section 5.4(h) of the Operating Agreement of First Lien Lender;

(ii) The lender for First Lien Lender (the "Exit Financing Lender") under the Exit Financing Loan dated June 11, 2009 has the right to compete to acquire the loan held by First Lien Lender and/or the Property under Section 6.11(a) of the Exit Financing Loan Agreement. The Exit Financing Lender must have failed to exercise or must have waived the right to compete for the acquisition of the loan held by First Lien Lender and the Property;

(iii) First Lien Lender and the other individual owners of the loan that is secured by the Property must have obtained the approval of the Court by final order with respect to the sale of the Property to Buyer and the release of First Lien Lender's lien against the Property, for which order 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); and

(b) Seller, at Seller's sole cost and expense, shall use commercially reasonable efforts to satisfy the Contingencies on or prior to the expiration of the Contingency Period (as defined below); provided, however, Seller shall not be in default hereunder if any of the Contingencies are not satisfied.

(c) If all of the Contingencies have been satisfied prior to the end of the period commencing on the Effective Date and ending forty (40) days thereafter (the "Contingency Period"), then Seller shall notify Buyer of such satisfaction (the "Contingency Satisfaction Notice"), and this Agreement shall continue in full force and effect. If (i) 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, or (ii) Seller fails to deliver a Contingency Satisfaction Notice to Buyer, either party may terminate this Agreement by written notice to the other party at any time until the Contingencies are satisfied. Upon any such termination, Escrow Agent (defined below) shall return the Deposit (defined below) to Buyer, and Seller and Buyer shall have no further obligations hereunder, except as expressly provided herein.

2. Opening of Escrow. Within two (2) business days after both parties have executed this Agreement, the parties will establish an escrow with Thomas Title & Escrow (Diane F. Carpenter), Promenade Corporate Center, 16435 N. Scottsdale Rd., Ste. 405, Scottsdale, Arizona 85254; (480) 222-1116, ext. 2003 ("Escrow Agent"). Upon delivery to the Escrow Agent of this executed Agreement, Escrow Agent is instructed to open an escrow and deliver copies of the executed Agreement to Buyer and Seller. "Opening of Escrow" shall occur



when Escrow Agent accepts this Agreement by execution of the Agreement and Consent by Escrow Agent provided at the end of this Agreement. This Agreement, and the exhibits attached hereto, shall constitute escrow instructions to Escrow Agent in connection with this transaction, but the parties agree to execute such supplemental instructions, not inconsistent with this Agreement, as Escrow Agent may reasonably require.

3. Purchase Price; Deposits.

3.1 Purchase Price. The purchase price for the Property shall be Three Million Three Hundred Eighty Thousand Dollars (\$3,380,000.00) (the "Purchase Price"), subject to adjustment as provided below. The Purchase Price shall be payable as follows:

(a) Buyer shall deposit with Escrow Agent the amount of One Hundred Thousand Dollars (\$100,000) (the "Deposit") by wire transfer, cashier's check, or other readily available funds, within one (1) business days after the Opening of Escrow.

(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. If requested by Buyer, the Deposit shall be held in an interest bearing, federally insured account by Escrow Agent pending consummation of this transaction.

3.3 Adjustment to Purchase Price. The Purchase Price is based upon the Land having a net area of 26 acres at a purchase price of \$130,000 per acre. During the Feasibility Period, Buyer will obtain a Survey of the Land as provided for in Section 7.5. The Survey shall set forth the net area of the Land. For purposes of determining the "Purchase Price", the "net area" of the Land means the gross area of the Land less the area of any portion of the Land that is subject to an existing perpetual easement for a public roadway or right-of-way, or is currently dedicated for a public roadway or right-of-way. If the net area of the Land is more or less than 26 acres, then the Purchase Price shall be adjusted to equal the product of the net area of the Land multiplied times \$130,000 per acre.

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 and other materials relating to the condition or development of the Property (collectively, the "Property Documents"). Seller makes no representation or warranty that (i) the Property Documents provided will constitute all information which exists concerning the Property or that such information will be sufficient in itself to permit an adequate analysis of the Property or (ii) the Property Documents are complete, current or accurate. If the Property Documents include any 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 Period. During the period commencing on the Effective Date and ending thirty (30) days thereafter (the "Feasibility Period"), Buyer will determine whether the Property is suitable for Buyer's acquisition. 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 at any time prior to the expiration of the Feasibility Period. If no such written notice is given to Seller and Escrow Agent prior to the expiration of the Feasibility Period, then Buyer will be deemed to have elected to waive its right to terminate this Agreement pursuant to this Section, and the Deposit shall be non-refundable to Buyer except as expressly provided herein. If this Agreement is terminated pursuant to this Section, Escrow Agent shall return the Deposit to Buyer not later than the second business day after such termination, and the parties shall have no further obligations hereunder, except as expressly provided herein.

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

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

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

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

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

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

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

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

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

7. Title Review.

7.1 Status of Title. As soon as possible after Opening of Escrow, Escrow Agent, as issuing agent for Fidelity National Title Insurance Company or First American Title Insurance Company ("Title Insurer"), shall provide Buyer and Seller with a commitment ("Title Report") of the title to the Property for issuance of an extended coverage owner's policy of title insurance, disclosing all matters of record which relate to the title to the Property, and Escrow Agent's requirements for both closing the escrow created by this Agreement and issuing the policy of title insurance described herein. At such time as Buyer receives the Title Report (and any amended Title Report adding additional title exceptions), Escrow Agent shall also cause legible copies of all instruments referred to in the Title Report or amended Title Report to be furnished to Buyer. Buyer shall have until ten (10) days prior to the end 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 or requirements (other

than items created by Buyer), Buyer shall be entitled to object thereto by delivering an Objection Notice to Seller and Escrow Agent within five (5) days after Buyer receives such amendment, said notice to specify in reasonable detail the basis for Buyer's objection. If Buyer fails to deliver notice of objection to any matter set forth in any amendment to the Title Report within the time period prescribed above, Buyer shall be deemed to have approved such additional matter.

7.3 Right to Cure. If Buyer timely delivers any Objection Notice, Seller may deliver a written notice (a "Response") to Buyer and Escrow Agent within five (5) days after receipt of such Objection Notice, which Response 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 most recent Title Report issued to Buyer. If Buyer has conditionally waived, or has been deemed by its non-response to waive, an objection that Seller has agreed to cure, and the condition is not satisfied and/or the cure has not been effected on the Closing Date, Buyer shall have the right, as its sole remedies, either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit, or (b) to proceed with this transaction and waive such objection. In the event that Buyer waives an objection, the item with respect to which the objection was made shall be deemed to be an Approved Exception.

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

7.5 Survey. As part of the Property Documents, Seller will provide Buyer with 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 Escrow Agent, Title Insurer, Buyer and Seller. Buyer shall provide Seller and Escrow Agent with copies of such Survey.

7.6 Condition of Closing. It shall be a condition of Buyer's obligations hereunder that at the Closing, 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 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; Buyer shall be responsible for any additional cost of extended coverage and any endorsements obtained by Buyer. Seller will cooperate with Buyer's efforts to obtain such title insurance coverage, including any endorsements requested by Buyer.

8. Conditions to Closing.

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

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

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

(c) There shall have been no material adverse change in the condition of the Property (except as caused by Buyer).

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

If any of the conditions set forth in subsections (a) or (b) above are not satisfied on the Closing Date, Buyer shall be entitled to the remedies prescribed under either Section 14 or Section 18.2 below, as applicable. If the condition set forth in subsection (c) 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, 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 "B" (the "Deed"); and

will execute a Blanket Assignment and Bill of Sale ("Blanket Assignment") in the form attached hereto as Exhibit "C".

10. Closing Date. The closing of the transaction contemplated by this Agreement (the "Close of Escrow") will occur on or before the date that is thirty (30) 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" in the form required by 26 U.S.C. 1445;

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

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

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

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

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

(c) deliver such settlement statements, affidavits and agreements as the 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; 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 all general and special assessments existing 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 after the first anniversary of the Closing Date.

12.3 Intentionally Deleted.

13. Damage or Condemnation. If, prior to the Close of Escrow, all or any portion of the Property is damaged or destroyed by casualty or becomes the subject of any pending or threatened eminent domain proceeding (or any transfer in lieu thereof has occurred), then Buyer may terminate this Agreement by giving written notice of termination to Seller within 20 days after notice of such damage, destruction or pending or threatened eminent domain proceeding, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination and the parties will have no further obligations hereunder, except as expressly provided herein. If Buyer fails to give notice or termination during the foregoing 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.

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

14.1 Agreements. Except for any matters that are disclosed in the Property Documents and any matters that are disclosed in the Title Report, 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.

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. This Agreement has been duly authorized and executed by Seller and constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms.

14.4 Title. Seller is the sole owner of marketable fee simple title to the Property.

For purposes of this Section 14, the phrases "Seller's knowledge", "Seller is not aware of" and similar terms mean the actual knowledge of Lee Allen Johnson 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 six (6) months.

If Seller becomes aware of any facts or circumstances that cause any of such representations and warranties to become materially false or incorrect, Seller will promptly notify Buyer of same. Notwithstanding any contrary provision of this paragraph, the representations, warranties and covenants of Seller set forth in this Section shall not apply to the extent that any matter or condition is caused by the act or acquiescence of Buyer, its affiliates, employees, agents, contractors, subcontractors or representatives, or to the extent Buyer has actual knowledge of any inaccuracy in any such representation, warranty or covenant at the time of the Closing. If Seller becomes aware of any change in the representations, warranties or covenants of Seller set forth in this Section 14 after the date hereof (whether arising before or after the date hereof), Seller shall give prompt written notice (a "Change Notice") to Buyer, which shall specifically reference this Section and the representation and warranty being modified. Buyer (as Buyer's sole remedy) shall have ten (10) business 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)-business day period shall be deemed acceptance of the matters disclosed in the Change Notice and an election by Buyer to proceed with the purchase of the Property notwithstanding the Change Notice. If Buyer elects (or is deemed to have elected) to proceed with the purchase of the Property after receipt of a Change Notice, then Buyer shall be deemed to have assumed all risk of and released Seller from all liability for the matter(s) specified in such Change Notice, and Seller's representations, warranties and covenants under this Section 14 shall thereafter be deemed to have been modified as provided in the Change Notice.

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

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

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

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

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

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 six (6) months.

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

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



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

16.3 Release. Except as expressly provided in this Agreement, the Deed or any other document executed by Seller at Closing, or otherwise arising from Seller's breach of this Agreement or any document executed by Seller in connection herewith, 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 six (6) months after the Closing or be forever barred.



18. Remedies.

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

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

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 Land Advisors Organization in an amount and on terms set forth in a separate agreement. ~~Seller acknowledges that True Life Properties, LLC, an affiliate of Seller, will be participating in the commission paid to Land Advisors Organization pursuant to a separate agreement.~~ Except for the foregoing commission 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. b/w JM

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:

Vistoso Partners, L.L.C.
121 West Warner Road, Suite 109
Tempe, Arizona 85284
Attn: Lee Allen Johnson
Facsimile: (480) 893-1604
Telephone: (480) 831-2000; ext. 228
Email: laj@wholdings.com

with a copy to:

Udall Law Firm, LLP
4801 East Broadway Road, Suite 400
Tucson, Arizona 85711
Attn: Lawrence S. Rollin, Esq.
Facsimile: (520) 792-3426
Telephone: (520) 623-4353
Email: lrollin@udalllaw.com

20.2 If addressed to Buyer:

True Life Communities, LLC
2555 E. Camelback Road, Suite 770
Phoenix, Arizona 85016
Attn: Taber Anderson
Facsimile: (925) 355-1607
Telephone: (602) 626-8777
Email: tanderson@truelifecommunities.com

and:

True Life Communities, LLC
12467 Alcosta Blvd., Suite 470
San Ramon, CA 94583
Attn: Russell K. Schaeffer
Facsimile: (925) 355-1607
Telephone: (925) 824-4304
Email: rschaeffer@truelifecommunities.com



with a copy to:

Biskind Hunt, PLC
11201 N. Tatum Blvd., Suite 330
Phoenix, Arizona 85028
Attn: Geoffrey D. Semro, Esq.
Facsimile: (602) 955-2272
Telephone: (602) 652-8528
Email: geoff@biskindlaw.com

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

Thomas Title & Escrow
Promenade Corporate Center
16435 N. Scottsdale Rd., Ste. 405
Scottsdale, Arizona 85254
Attention: Diane F. Carpenter
480.222.1116 ext. 2003
480.383.6792 direct facsimile
Email: dcarpenter@thomastitle.com

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

21. Miscellaneous.

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

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

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

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

21.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument. The parties may deliver their signatures by facsimile or email transmission.

21.6 Assignment. Buyer may assign its rights and obligations under this Agreement to an entity this is controlled by or under common control with Buyer, upon written notice to Seller, or to an unaffiliated third party, subject to Seller's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. 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 hereto constitute the entire agreement between the parties. All terms and conditions contained in any other instruments previously executed by the parties in connection with the Property are superseded hereby and merged herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

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

21.9 Broker Disclosure. 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. Buyer discloses that Buyer and its various members, managers, officers, employees, and affiliates may hold Arizona and/or California real estate licenses as brokers and/or salespersons.


21.10 Approval by First Lien Lender. By its signature below, First Lien Lender and the individual owners of beneficial interests in the loan held by First Lien Lender acknowledge and approve the terms and conditions of this Agreement; provided, however, that the foregoing acknowledgement and approval shall not constitute satisfaction of any of the Contingencies, and this Agreement shall remain subject to satisfaction of the Contingencies. It is understood and agreed that the amount owed by Seller to First Lien Lender and the individual owners of beneficial interests in the loan held by First Lien Lender exceeds the amount of the Purchase Price. All net proceeds from the sale of the Property under this Agreement shall be paid to First Lien Lender and the individual owners of beneficial interests in the loan held by First Lien Lender in consideration for the release of its lien, and Seller shall not be entitled to receive any proceeds from the sale of the Property.

(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:


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

By: 
Its: Manager

By: _____
Its: _____

BUYER:

TRUE LIFE COMMUNITIES, LLC

By: 
Its: Principal, Chief Investment Officer

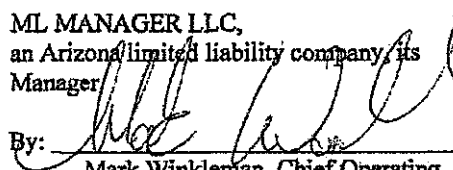
ACKNOWLEDGMENT OF FIRST LIEN LENDER

Subject to Section 21.10 above, the undersigned hereby acknowledges and approves the terms and conditions of the foregoing Agreement.

FIRST LIEN LENDER:

VP I 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 individual owners of beneficial interests in the loan held by First Lien Lender

By: 
Mark Winkleman, Chief Operating Officer

AGREEMENT AND CONSENT BY ESCROW AGENT

The undersigned hereby agrees to (i) accept the foregoing Agreement of Sale and Purchase as instructions to the undersigned, (ii) act as Escrow Agent under said Agreement in consideration of its fees normally charged in such transactions, (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent, (iv) 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) 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 21 day of November, 2012.

Thomas Title & Escrow

By: _____

Its: _____

[Handwritten Signature]
[Handwritten Title: Exec VP]

[Handwritten mark]

EXHIBIT "A"

LEGAL DESCRIPTION

(Pima County Assessor tax parcel number(s): _____)

EXHIBIT "B"

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, _____ ("Grantor"), do 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 (v) and any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such property:

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

SUBJECT TO all general and special real property taxes and other assessments, reservations in patents, water rights, claims or title to water and all easements, rights of way, covenants, conditions, restrictions, reservations, declarations, encumbrances, liens, obligations, liabilities and other matters as may appear of record, any and all conditions, easements, encroachments, rights of way or restrictions which a current physical inspection or accurate ALTA survey of the Property would reveal, any matters arising in connection with any action of the Grantee or its employees, contractors, agents or representatives, any other matter not caused by the act or authorization of Grantor and the applicable municipal, county, state or federal zoning and use regulations affecting the Property.

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



DATED this _____ day of _____, 201__.

GRANTOR

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by _____, known by me to be the _____ of _____, an Arizona limited liability company, the Manager of _____, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:



**EXHIBIT A
TO THE SPECIAL WARRANTY DEED**

Legal Description of the Property

7500570.5028149.0019

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(A)

EXHIBIT "C"
TO PURCHASE AND SALE AGREEMENT

BLANKET ASSIGNMENT AND BILL OF SALE

THIS BLANKET ASSIGNMENT AND BILL OF SALE (the "Assignment") is given as of _____, 201____, by _____ ("Assignor") for the benefit of _____, its successors and assigns ("Assignee").

RECITALS

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

B. In connection with the foregoing transaction, 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 development agreements, improvement agreements, plats, plans, drawings, designs, engineering materials, studies, reports and other documents relating to any improvements to or serving the Property; (iv) all water and sewer taps and hookup connections relating to the Property; (v) all development rights benefiting the Property; (vi) all guarantees, warranties, indemnities, and covenants under any and all contracts and agreements with contractors, subcontractors, suppliers and other persons and entities providing labor, services or materials in connection with the design, construction and installation of any improvements to or serving the Property, (vii) any pre-paid impact fees, school fees and other development fees, and (viii) any plans, to the extent that they are assignable (collectively, the "Assigned Items") but reserving to Assignor any such Assigned Items to the extent related to other property.

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

AGREEMENT

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

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

D

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.

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

ASSIGNOR:

By: _____
Its: _____



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

Legal Description of the Property

7500570.5/028149.0019

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