

## LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into as of June 11, 2009, by and between Universal-SCP 1, L.P., an Arizona limited partnership ("Lender"), and the followings persons and entities (collectively called the "Borrower"): Kevin O'Halloran, not individually but solely as trustee ("Liquidating Trustee") of the ML Liquidating Trust established under the ML Liquidating Trust Agreement dated June 11, 2009 ("Liquidating Trust Agreement"), ML Manager, LLC, an Arizona limited liability company ("ML Manager"), and each of the Loan LLCs ("Loan LLC's") listed on Exhibit A attached hereto and incorporated herein by reference, who have executed this Agreement below.

### RECITALS

A. Debtor was the debtor in a Chapter 11 Proceeding ("Chapter 11 Case") entitled In re: Mortgages Ltd., Debtor, Case No. 2:08-bk-07465-RJH ("Bankruptcy Court") and pursuant to the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009, in the Chapter Case which was confirmed by the Court on May 20, 2009 ("Plan") and became effective on June 15, 2009 ("Effective Date"), the Debtor was (i) reorganized with the Liquidating Trustee as the sole shareholder; (ii) renamed as ML Servicing Co., Inc.; (iii) required to execute and deliver the Liquidating Trust Agreement; and (iv) transfer certain Non-Loan Assets to the Trustee to be held and administered in accordance with the terms of Liquidating Trust [or in the alternative specify which assets shall continue to be held by Debtor for the benefit of the Trust and which respect to which the Liquidating Trustee will cause the Debtor to execute this Agreement agreeing to encumber such assets in favor of the Lender].

B. Under the Plan, the Loan LLCs which execute this Agreement were authorized to be formed to hold through transfers, approved by the Plan and from the Pass-Through Investors electing to transfer their fractional interests, of the fractional interests in the ML Loans and ML Loan Documents described in Exhibit B attached hereto and to become the members of ML Manager, which is the sole manager of each of the Loan LLCs.

C. In order to implement the Plan, a loan is required in the amount of \$20,000,000 to pay for Claims Required to be Paid under the Plan and the Bankruptcy Code in order to effectuate the Plan and to pay for operating expenses and costs of the Liquidating Trustee in selling or pursuing the Non-Loan Assets and to pay certain expenses of the Loan LLCs and the ML Manager in servicing the ML Loans held by the Loan LLCs and pursuing realization on the ML Loans. Borrower has requested Lender to make a multiple advance loan (the "Loan") to Borrower in the maximum aggregate amount of \$20,000,000.00, the proceeds of which shall be utilized by Borrower for the purposes so specified; and

D. Lender is willing to make the Loan to Borrower upon and subject to the terms and conditions hereinafter set forth.

### AGREEMENTS

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

**SECTION 1. DEFINITIONS.** Any capitalized terms used but not defined in this Section 1 or in the definitional parentheticals at other places in this Agreement shall have the meanings given to such terms in the Plan. The following terms shall have the following meanings.

1.1 "Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§101-1330, as amended from time to time and as applicable to the Chapter 11 Case

1.2 "Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of Arizona or is a day on which banking institutions located in Arizona are authorized by law to close.

1.3 "Claims Required to be Paid" means all of the following Claims as defined in the Plan: Administrative Claims; Stratera Claims; Priority Non-Tax Claims; Priority Tax Claims; and the Arizona Bank Secured Claims and the Artemis Secured Claims to the extent such Claims are required to be paid under the Plan.

1.4 "Collateral" means (i) the fractional interests in the ML Notes owned by the Loan LLCs and listed on Exhibit B attached hereto (each a "Note" and collectively the "Notes"), which are each secured by the ML Deeds of Trust on property listed on Exhibit B, and any other ML Loan Documents given to secure the indebtedness evidenced by the Notes, (ii) the REO Property, (iii) the ML Charges collected by the ML Manager for the benefit of a Loan LLC, (iv) the Loan LLC Causes of Actions, and (v) the Non-Loan Assets owned by the Liquidating Trustee under the Liquidating Trust Agreement, including the Liquidating Trustee Causes of Action. The term Collateral includes, without limitation, all instruments, agreements or documents now or hereafter in existence evidencing or relating to the foregoing, replacements, substitutions, renewals and proceeds, including insurance proceeds thereof, as further defined in the various security documents executed in furtherance of this Agreement, in form and substance acceptable to Lender and Borrower.

1.5 "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan in accordance with the Bankruptcy Code.

1.6 "Default" means the occurrence of an event or condition described in Section 7 hereof which, after passage of time and/or giving of notice, could ripen into or become an Event of Default hereunder

1.7 "Default Rate" means the default rate of interest stated in the Note and computed as stated therein.

1.8 "Draw Request" means a request for an Advance of Loan proceeds in the form attached here to as Exhibit D executed by ML Manager and the Liquidating Trustee and delivered to the Lender.

1.9 "Disposition Incentive Payment" means ten percent (10%) of the Net Disposition Proceeds received by: (i) a Loan LLC upon repayment in part or in full of a ML Loan owned by that Loan LLC (excluding interest payments), principal repayments made on a ML Loan in settlement or modification of the ML Loan, the sale of part or all of the entire interest by a Loan LLC in a Loan owned by it or the sale of all or a portion of REO Property acquired by a Loan LLC upon foreclosure of a ML Loan, from Loan LLC Recoveries; and (ii) the Liquidating Trustee from the sale of all or portions of the Non-Loan Assets, including Recoveries by the Liquidating Trust under Liquidating Trust Causes of Action which are part of the Non-Loan Assets.

1.10 "Extension Fee" means an amount equal to five percent (5%) of the permitted Maximum Loan Balance.

1.11 "Event of Default" means any Event of Default as described in Section 7 hereof or in any other Loan Document.

1.12 "Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.13 "Interest Rate" means the rate of interest on the Loan stated in the Note computed as specified therein.

1.14 "Liquidating Trust" shall mean the trust formed and existing under the Liquidating Trust Agreement.

1.15 "Liquidating Trustee Causes of Action" means all rights, claims, torts, liens, liabilities, obligations, actions, causes of action, avoiding powers, proceedings, debts, contracts, judgments, offsets, damages and demands whatsoever in law or equity, whether known or unknown, contingent or otherwise, that the Debtor and its Bankruptcy Estate may have against any Person, including but not limited to any state or federal cause of action or claim against any such Person but excluding Loan LLC Causes of Action.

1.16 "Liquidating Trustee Deed of Trust" shall mean the Deed of Trust, Assignment of Rents and Security Agreement executed and delivered by the Liquidating Trustee, not individually but solely as Trustee of the Liquidating Trust, in favor of Lender creating a lien or security interest in all Non-Loan Assets owned by the Trustee, including the Causes of Action. The defined term "Liquidating Trustee Deed of Trust" also includes any additional security document or instrument evidencing the lien or security interest granted by the Liquidating Trust in favor of Lender in the Non-Loan Assets owned by the Liquidating Trustee, including the Causes of Action.

1.17 "Loan" means all Advances to or on behalf of Borrower pursuant to the Loan Documents.

1.18 "Loan Documents" means this Agreement, the Note, the separate Collateral Assignment by the Loan LLCs of each ML Note and the ML Deed of Trust securing the ML Note and the separate Collateral Assignment of ML Charges and Loan LLC Causes of Action, the Liquidating Trustee Deed of Trust, a separate Liquidating Trustee Collateral Assignment of Liquidating Trustee Causes of Action and all other instruments, documents and agreements executed in connection herewith, referred to herein, or contemplated hereby.

1.19 "Loan LLC Causes of Action" means those causes of action, including avoidance actions that arose out of the ML Notes and ML Loan Documents and became the property of the Loan LLCs under the Plan.

1.20 "Maturity Date" means the final date upon which all funds are due under the Note and the Loan Documents.

1.21 "Maximum Loan Balance" means the maximum amount of the Outstanding Loan Balance which is permitted to be outstanding at a given point in time.

1.22 "ML Charges" means interest spread, fees, extension fees, default interest and other interest, fees and charges arising out of or related to the ML Loans or the servicing rights or agency agreements which had formerly been collected by the Debtor but which are transferred to the Loan LLCs under the Plan.

1.23 "ML Note(s)" means the promissory notes or fractional interests in the promissory notes evidencing loans from the Debtor to third-party borrowers, which are secured by the ML Deeds of Trust and ML Loan Documents and which will be transferred to separate Loan LLCs pursuant to the Plan.

1.24 "ML Deed(s) of Trust" means the deeds of trust and other security documents securing the ML Notes granted by third party borrowers to the Debtor, which ML Deeds of Trust will be transferred to the respective separate Loan LLCs pursuant to the Plan.

1.25 "ML Loan Documents" means all loan documents that evidence or secure the ML Loans, including the ML Notes and ML Deeds of Trust, and all related correspondence and other books and records regarding the ML Loans, including without limitation, guarantees, indemnities, servicing or agency agreements, and all other similar evidencing rights of the Debtor, as lender.

1.26 "ML Loans" means each of the loans made by the Debtor to third-party borrowers, evidenced by the ML Note(s), ML Deed(s) of Trust and/or ML Loan Documents.

1.27 "Net Disposition Proceeds" means: (i) the gross sale price from a sale of all or a part of an ML Note, REO Property, or any real or tangible personal property owned by the Liquidating Trust (each, a Disposition") less in the case of such sale: (a) all costs and expenses, including, without limitation, commissions, legal fees, title costs, appraisal fees and other fees and costs, incurred in connection with such sale or preparing the property for sale; (b) any encumbrances or liens on the property sold which are required to be paid off as part of the sale or which are assumed by the buyer and deducted from the sales price; (c) any other items which under the sales agreement are to be deducted from or netted against the gross sales price, including, without limitation, pro rations, security deposits, reserves to be held by the buyer, title company or other third party for repairs or to provide a fund for damages in the event of any misrepresentations; and (d) the face amount of any promissory note, deferred payment amount or other evidence of indebtedness accepted by the seller in connection with the sale until such amounts are actually received by seller; (ii) amounts received in full or partial payment of principal on an ML Note or in connection with a modification or settlement of all or portions of the principal of an ML Note, less any costs, deductions or liens paid by Borrower in order to clear title and release the Loan Documents; and (iii) amounts received by the Liquidating Trust or Loan LLC from a Recovery by settlement or judgment collection (excluding interest on such judgment amount paid at the same time) on Liquidating Trustee Causes of Action and Loan LLC Causes of Action, respectively, less all unrecovered out-of-pocket costs and expenses not paid with proceeds from an Advance under the Loan and, incurred or accrued, in the aggregate, by the entity making the Recovery of pursuing all Causes of Action then being pursued by such entity at the time such Recovery is obtained and all attorneys fees (regular or contingent), court costs, expert witness fees, accountant's fees, costs of appeal, costs incurred in collecting a judgment, costs and fees incurred in any bankruptcy of a defendant in any such Cause of Action resulting in such Recovery, and in the case of either (i) or (ii) above a deduction for Permitted Reserves as determined by the ML Manager, and in the case of the Liquidating Trustee or Loan LLC under (iii) above, Permitted Reserves to be held to pay anticipated futures costs and expenses until released from such reserves, and any Repayment Incentive Fees which are payable within the next sixty days after receipt of such funds. In no event will the exclusions from the gross sale price described in section (i)(a) above, exceed the reasonable, customary, commercially typical amount payable by a seller of similar property in the county where the property is located, or be payable to Borrower or an affiliate of Borrower without Lender's prior, express consent.

1.28 "Non-Loan Assets" means and includes all assets that are not used to make those payments that are due on the Effective Date of the Plan, and that are not transferred to one of the ML Manager LLC or the Loan LLCs on the Effective Date of the Plan. Non-Loan Assets shall specifically include all of the Debtor's interest in real property; avoidance and third-party claims; Avoidance Actions and Causes of Action; tangible assets, including, without limitation, computers, intellectual property, furniture, fixtures and equipment; and employee and related business contracts and customer lists, excluding existing servicing rights or agency agreements, related to the ML Loans, and excluding the Debtor's prior rights, if any, to the ML Charges.

1.29 "Note" means the Multiple Advance Promissory Note in form and substance identical to Exhibit C hereto, to be executed by Borrower and delivered to Lender to evidence

Borrower's obligation to repay the Loan, and shall also include any note, agreement or other instrument accepted by Lender in whole or partial substitution for or replacement of the Note.

1.30 "Origination Fee" means one million six hundred thousand dollars (\$1,600,000.00)

1.31 "Outstanding Loan Balance" means at a point in time the aggregate of all loan Advances, including Advances to pay interest and fees which are added to the principal balance upon Advance, funded to the Borrower plus accrued interest and fees which are accrued but not Advanced under the Loan to such point in time less all payments made by Borrower of principal, interest and fees excluding Repayment Incentive Fees and Disposition Incentive Payments which shall not part of the Outstanding Loan Balance and payment of which does not reduce the Outstanding Loan Balance.

1.32 "Permitted Encumbrances" means current taxes, assessments, reservations, patents, easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, set off rights and other liabilities of record as may exist with respect to the Non-Loan Assets and ML Notes and ML Loan Documents, including the senior security interest of the VTL Fund in fractional interests in the ML Notes, ML Deeds of Trust and ML Loan Documents contributed by the MP Funds to the Loan LLCs. Lender understands that there may be set off rights and other liabilities stated in the approximately 1800 proofs of claims filed in the Bankruptcy which proof of claim Borrower has not reviewed and that set off rights may exist which are not set forth in any proof of claim, but Borrower specifically wishes to bring to the attention of Lender those claims or set off rights or other liabilities as set forth in Exhibit E attached hereto which came to the attention of Borrower in the Chapter 11 Case. In addition, each of the Loan LLCs may grant a security Interest in its ML Notes, ML Deeds of Trust and ML Loan Documents as long as such security interest has a priority behind the security interest of the Lender.

1.33 "Permitted Reserves" shall mean amounts to be deducted in arriving at Net Disposition Proceeds which shall be no more than ten percent (10%) of the gross sale price or Recovery on a particular Disposition and shall not exceed a cumulative, aggregate, non-revolving total of Five Million Dollars (\$5,000,000), which reserve total may be allocated among dispositions by the Liquidating Trustee and the Loan LLCs as they may determine.

1.34 "Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof.

1.35 "Recovery" means the gross cash or non-cash consideration received by the Liquidating Trust or the Loan LLC by settlement or judgment collection, on Liquidating Trustee Causes of Action and Loan LLC Causes of Action, respectively.

1.36 REO Property" means any real property to which a Loan LLC is currently in title, or in the future receives title by reason of a judicial or non-judicial foreclosure of a ML Deed of Trust, a deed-in-lieu of foreclosure under a ML Deed of Trust or payment on an ML Note in kind consisting of real or personal property.

1.37 "Repayment Incentive Fee" means a fee payable to Lender equal when due to (i) three percent (3%) of the then permitted Maximum Loan Balance if no Event of Default then exists, or (ii) five percent (5%) of the permitted Maximum Loan Balance if an uncured Event of Default then exists.

## SECTION 2. AMOUNT AND GENERAL TERMS OF THE LOAN

### 2.1 The Loan.

(a) Purpose of Advance. Subject to the terms and conditions of this Agreement, Lender agrees to make a loan to Borrower in an amount of up to \$20,000,000.00 in multiple advances (each an "Advance") to Borrower to provide funds to Borrower for the Liquidating Trust to pay Claims Required to be Paid and pursue realization on the Non-Loan Assets and to provide funds for the Loan LLCs and the ML Manager to service and realize upon the ML Loans and for other liquidity needs.

#### (b) Advances.

(i) The first Advance ("First Advance") shall be in an amount requested by Borrower by a Draw Request of not less than \$12,000,000 and shall be made on the date of execution and delivery of this Agreement. Lender shall withhold the Origination Fee from the First Advance and shall disburse the balance as directed by the Borrower.

(ii) Future Advances ("Future Advances") shall be not more than often than monthly in an amount requested by Borrower by Draw Request of up to the permitted Maximum Loan Balance. Lender shall fund an Advance requested up to but not in excess of the permitted Maximum Loan Balance within five Business Days after receipt of the Draw Request.

(c) Limitation on Advances. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, Lender shall not be required to make Advances on the Loan to the extent such Advance would cause the Outstanding Loan Balance to exceed the permitted Maximum Loan Balance. The permitted Maximum Loan Balance as set forth below will decrease over the term of the Loan and the extension period based on the following schedule:

Months 1-24	\$20,000,000
Months 25-36	\$15,000,000
Months 37-48	\$10,000,000
Months 49-60	\$ 5,000,000

No Advances shall be made after the Maturity Date. Borrower may make borrowings and prepayments, as permitted or required in the Note and this Agreement. The aggregate total of all Advances minus repayments shall not exceed the permitted Maximum Loan Balance. Borrower shall have no right to re-borrow any portion of the Loan which has been repaid by a cash payment made to the Lender, but Borrower may borrow an additional Advance for the payment of interest and any fees due Lender which can be added to the Outstanding Loan Balance without causing such Outstanding Loan Balance to exceed the permitted Maximum Loan Balance.

2.2 Term and Extensions. The initial term of the Loan shall be 36 months from the First Advance at which time, unless the term is extended as provided herein, the Loan shall be due and payable without further notice. Borrower shall have the right to extend the term of the Loan at the end of the thirty-sixth (36<sup>th</sup>) month for up to four (4) successive six (6) month periods by giving written notice to the Lender at least sixty (60) days in advance of the then end of the Loan term and by paying lender an Extension Fee on the last Business Day of the current term. Borrower may elect to pay the Extension Fee by an Advance under the Loan.

2.3 Payments on Loan.

(a) Interest. Interest on the Loan shall accrue at the interest rate stated in the Note and unless paid by Borrower at its option shall be Advanced by the Lender under the Loan without a Draw Request for the first eighteen (18) Months from the date of the First Advance; provided that, such Advance will not cause the Outstanding Loan Balance to exceed the then permitted Maximum Loan Balance. Thereafter interest computed on the Outstanding Loan Balance shall be paid monthly by the Borrower beginning on the date which is nineteen (19) months from the date of the First Advance either from Borrowers own funds or from an Advance on the Loan to the extent that the Outstanding Loan Balance will not exceed the permitted Maximum Loan Balance as a result of such Advance.

(b) Place of Payment. All payments by Borrower on account of the principal of or interest on the Loan, or of any other amount owed to the Lender under this Agreement, the Note or any other Loan Document shall be made not later than 2:00 p.m., Phoenix time, on the date specified for payment at a place specified by the Lender in writing to Borrower. Funds received after such hour on any day shall be treated for all purposes of this Agreement as having been received on the next succeeding Business Day. If some, but less than all, amounts due from Borrower are received by Lender, then Lender shall apply such funds in payment of amounts due from Borrower to Lender hereunder in such manner and order as Lender determines in its sole discretion.

(c) Business Days. Any payment due to Lender hereunder which is due on a day which is not a Business Day shall be paid on the next Business Day.

2.4 Required Payments. Borrower shall make payments of interest and then principal based upon the Net Disposition Proceeds received by Borrower from time to time in the ratio of seventy percent (70%) to the Lender and thirty percent (30%) to the Borrower entity which sold



all or part of such collateral in the case of a sale or received a full or partial payoff of an ML Note and in the case of a Recovery, to the Liquidating Trustee or Loan LLC which made the Recovery, until such time as the principal and interest and all other payments due Lender (other than Disposition Incentive Payments) under the Loan have been made in full. No Disposition Incentive Payments will be made on a disposition until the Loan is paid in full but the amount owed to Lender on such dispositions shall be accrued and paid as hereafter set forth. At any time after the Loan has been paid in full (other than the Dispositions Incentive Payments), the Net Disposition Proceeds will continue to be paid seventy percent (70%) to Lender and thirty percent (30%) to the Borrower entity which made the disposition until such time as the Lender has received all Disposition Incentive Payment accrued on all dispositions which occurred prior to payment in full of all principal and interest and other payment due Lender under the Loan (excluding Disposition Incentive Payments). Once the Disposition Incentive Payments due under the immediately preceding sentence have been paid to Lender, the Lender shall be paid a Disposition Incentive Payment thereafter from any further Net Disposition Proceeds and the balance of the Net Disposition Proceeds, if any, shall be paid to the Borrower entity which made the dispositions. Notwithstanding the foregoing, the total aggregate Disposition Incentive Payment to be made to the Lender under this Agreement shall never exceed a total of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) at which point all further payment obligations to Lender shall cease, Lender shall release, at Borrower's expense, any remaining Collateral which has not been previously released by documents satisfactory to Borrower, Lender shall deliver to Borrower the original Note marked paid in full, and Borrower shall be authorized to file any UCC termination statements relating to the released Collateral.

2.5 Release of Collateral Prior to Full Payment of Loan Borrower shall not sell, modify or restructure any ML Loans or REO Property which are Collateral, whether performing or non-performing, without the written consent of Lender, which shall not be unreasonably withheld. If Lender consents to a sale of an ML Loan or REO Property, Lender at the time of closing of such sale shall provide a release of any lien or security interest which Lender has in such property by documents in form acceptable to Borrower and the purchaser of the ML Loan or REO Property. After full payment of all principal and interest and other sums owing under the Loan except for final payment of the remaining Disposition Incentive Payments, and after all catch up payments of Disposition Incentive Payments have been made under the third sentence of Section 2.4 hereof, no further consent of Lender shall be required under this Section 2.5 for any sale, modification or restructure of any ML Loan or REO Property which remains as Collateral. Lender recognizes that some of the Loan LLCs may wish to obtain a release of their ML Notes and ML Loan documents or REO Property from the lien of the Lender for a variety of reasons, including without limitation, a desire to refinance, do development on such property or to joint venture with others with respect to the asset. The Loan LLCs understand that given the unknown values of all of the Collateral that it is not practicable to establish any type of release price at the inception of the Loan. Upon the request of a Loan LLC for a release price, the Lender will exercise good faith efforts to determine a release price based upon the then current knowledge of the Collateral values, including the Collateral which the Loan LLC seeks to release, market conditions, the status of the Loan repayments, the state of the economy and other factors which the Lender considers to be important. Any release price will be set by Lender in its sole discretion as the Loan does not provide for individual releases of pieces of Collateral.

2.6 Repayment Incentive Fee. Beginning on the date which is the first Business Day of the thirteenth (13<sup>th</sup>) month after the First Advance and each six months thereafter until the Loan is repaid in full (excluding any Disposition Incentive Payments), Borrower will pay to Lender a Repayment Incentive Fee which, at Borrower's option, may be funded by an Advance. Repayment Incentive Fee payments shall not be applied to the Outstanding Loan Balance but shall be paid in addition to the payment of the Outstanding Loan Balance.

2.7 Non-Recourse Obligation. Notwithstanding any provision of this Agreement, the Note or any other Loan Document to the contrary (but without in any manner releasing, impairing or otherwise affecting the Note, the validity thereof or the rights and remedies under this Agreement or the Note upon the occurrence of an Event of Default), the execution of this Agreement, the Note and any other Loan Document shall impose no personal liability on Borrower or any member, manager, officer, director or trustee of an entity which is a Borrower for the payment of any amount payable to Lender under this Agreement, the Note or any Loan Document. Lender shall look only to the Collateral given to secure the Note, and in the event of a default in the payment of any amount payable to Lender under this Agreement, the Note or any other Loan Document, Lender shall not seek any deficiency or personal judgment against Borrower or the member, manager, officer, director or trustee of a Borrower except such judgment or decree as may be necessary to foreclose and/or bar any interest in the Collateral given to secure the Note; provided, however, that Lender shall have and retain the right to proceed against or recover personally from Borrower (but not from the members of Borrower) for or on account of any loss occasioned by the following: (a) intentional or willful fraud or misrepresentation by or on behalf of Borrower in connection with the delivery of the Note or the performance of any of Borrower's obligations hereunder or under any of the Loan Documents; (b) the retention of Net Disposition Proceeds required to be paid to Lender after Lender has given Borrower a written notice of Default for failure of Borrower to pay Lender its share of such Net Disposition Proceeds, to the full extent of Lender's share of such Net Disposition Proceeds collected and retained by Borrower; (c) the fair market value as of the time of the giving of a written notice of Default of any Collateral given to secure the Note that is removed or disposed of by Borrower without the consent of Lender and in violation of the terms of any of the Loan Documents; or (d) the misapplication by Borrower of any proceeds in violation of the terms of the Note or any Loan Document, to the full extent of such misapplied proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain, or sale in lieu of condemnation. Lender acknowledges that the Liquidating Trustee is executing this Agreement and the Loan Documents, not individually but solely as the Trustee of the Liquidating Trust and any liability of the Liquidating Trustee under any of the Loan Documents shall be limited in all events solely to a recovery against the assets of the Liquidating Trust.

2.8 Release of Loan LLC. When a Loan LLC has disposed of all of its assets which are Collateral and has permitted the payment to Lender of the Lender's required Share of Net Disposition Proceeds, the Lender shall release such Loan LLC from any further liability to the Lender under the Agreement, the Note or the other Loan Documents by a release in form reasonably satisfactory to such Loan LLC. The other Borrower parties agree that the release of a

Loan LLC under this Section 2.8 shall not affect the liability of the other Borrower parties to the Lender.

### **SECTION 3. COLLATERAL**

3.1 Security Interest in Collateral. The performance of Borrower hereunder and with respect to the Loan, including all extensions, renewals or replacements thereof, and all obligations of Borrower to Lender of any kind or description, including without limitation those arising under, evidenced by or provided for in the Loan Documents, whether direct or indirect, absolute or contingent, due or to become due, whether now existing or hereafter arising, including any obligation to perform or forebear from any action, as well as any obligation to pay money, shall be secured by the Collateral, it being the intention of the parties hereto that all Advances to Borrower under the Loan Documents shall constitute one loan, and all indebtedness and all obligations of Borrower to Lender arising under, provided for in or evidenced by the Loan Documents, present and future, shall constitute one general obligation with all of the rights of Lender contained in the Loan Documents to apply to any modification of or supplement to the Loan Documents secured by the Collateral and all other security held by Lender hereunder. Unless agreed to by Lender at the time of an Advance hereunder, the security for the Loan shall be valid and perfected lien interests in the Collateral subject only to the Permitted Encumbrances.

3.2 Financing Statements and Additional Documents. Borrower shall execute and deliver appropriate financing statements with respect to the liens created by the Loan Documents and Borrower shall also execute and deliver to Lender, such financing statements, security agreements, deeds of trust and other documents and instruments as Lender shall from time to time reasonably request to perfect, evidence or protect Lender's security interest in, or lien upon, the Collateral.

3.3 Rights and Duties with Respect to the Collateral. Lender shall have no duty as to the collection or protection of the Collateral, or any income therefrom, nor as to the preservation of rights against prior parties nor as to the preservation of any rights pertaining thereto beyond the safe custody of any Collateral which may be in Lender's possession. Lender may exercise its rights with respect to all or any portion of the Collateral without resorting or regard to other portions of the Collateral or to any other sources of reimbursement for the indebtedness of Borrower.

### **SECTION 4. CONDITIONS PRECEDENT TO DISBURSEMENT OF THE LOAN**

4.1 Conditions Precedent to Advances. In addition to any requirements set forth in Sections 2 and 3 hereof, the following are conditions precedent to the disbursement of proceeds of the Loan:

(a) Loan Documents. Borrower shall deliver (or cause the appropriate parties to execute and deliver) all Loan Documents and other documents required by this Agreement, in form and substance satisfactory to and approved by Lender. In addition, Borrower shall execute and deliver (and certify if required) trustee, corporate and limited liability company borrowing

resolutions, any other closing documents which Lender may reasonably require and all other documents and writings deemed necessary by Lender in its reasonable discretion to close the Loan.

(b) Effective Date. The Effective Date of the Plan shall have occurred.

(c) Accuracy of Representations and Warranties. Borrower's representations and warranties contained herein and in the other Loan Documents are then true with the same effect as though they had been made at the time of the disbursement.

(d) No Default. There shall exist or have occurred no condition, event or act that would constitute a Default or an Event of Default by Borrower under any of the Loan Documents.

(e) Title Policy. Borrower has agreed to pay for an extended coverage Lender's Loan Policy ("Title Policy") for a title company approved by Lender (Lawyers Title Insurance Company and Fidelity National Title Insurance Company are both approved) in the amount of the Loan insuring Lender that Borrower is the fee owner of any real property Collateral described in the Title Policy and encumbered by Liquidating Trustee Deed of Trust, and that the Liquidating Trustee Deed of Trust constitutes a valid, perfected lien on such real property described in the Title Policy, subject to all matter shown as exceptions in such Title Policy, including the Permitted Encumbrances. Lender understands that such extended coverage policy may contain a survey exception since there will not be current surveys on any of the real properties. With respect to the ML Notes and ML Deeds of Trust being assigned as Collateral, the Loan LLCs will request an endorsement to the existing ML Policies as successor lender and a collateral assignment endorsement from the same title company that there are no prior assignment of record of such ML Mortgages except for any matters described in the Title Policy, including the Permitted Exceptions, in form and substance agreed upon between Lender and the Title Company. The cost of any Title Policy or endorsement shall be paid by Borrower when due under Advance under the Note and the Loan. The Closing of the Loan and the First and future Advances under the Loan are not subject to any conditions precedent relating to title insurance or endorsements to title insurance.

4.2 No Waiver. Lender may, in its sole discretion, advance the Loan proceeds even though the conditions in this Section are not satisfied. Any Advance so made shall be deemed to have been made pursuant to this Agreement and shall not be deemed a waiver by Lender of (a) any Default or future Default, (b) the remedies afforded Lender in any of the Loan Documents, or (c) any requirement by Lender that Borrower satisfy its obligation to Lender under any of the foregoing.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES**

Each of the separate entities constituting the Borrower represents and warrants to Lender solely as to itself as follows:

5.1 Binding Nature. The execution and delivery of the Loan Documents by such Borrower and the consummation of all the transactions contemplated hereby create legal, valid and binding obligations of such Borrower subject to bankruptcy or other similar laws affecting creditor's rights generally and to general principles of equity.

5.2 Third-Party Consents. Except as disclosed to and approved by Lender in writing, such Borrower is not required pursuant to any law, regulation or contractual or other obligation, to obtain the consent, approval or authorization of any Person (including any Governmental Authority) to validly enter into, execute and deliver the Loan Documents and perform the acts and obligations required or contemplated thereby.

5.3 Non-Default of Borrower. There exists no Event of Default by such Borrower under any of the Loan Documents.

5.4 Purpose of the Loan. The Loan is a business loan and the proceeds thereof shall be used solely for commercial or business purposes, and no portion thereof is intended to be or shall be used for any other purpose, including without limitation, the purpose (whether immediate, incidental or ultimate) of purchasing any margin stock or for carrying, reducing or retiring any debt incurred for such purpose.

5.5 No Broker's or Finder's Fee. Such Borrower has not employed or retained any broker or finder or incurred liability for any brokerage fees, commissions, consulting fees or finder's fees in connection with the lending transactions contemplated herein.

5.6 Good Standing. Each such Borrower has been duly organized and is validly existing under the law of the jurisdiction of its organization. Such Borrower has the full power and authority to own the Collateral owned by it and conduct its business as now being conducted and to enter into and consummate the transactions contemplated by this Agreement.

## **SECTION 6. COVENANTS**

6.1 Use of Loan Proceeds. Borrower shall expend the Loan proceeds for the purposes set forth in this Agreement and any business plans and budgets adopted pursuant to the Loan LLC's Operating Agreements. No part of the proceeds of any borrowing hereunder shall be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock. If requested by Lender, Borrower shall furnish to Lender a statement in conformity with the requirements of the Federal Reserve Form U-1 referred to in Regulation U of the Board of Governors of the Federal Reserve System of the United States. Neither the making of the Loan, nor the use of the proceeds thereof, will violate or be inconsistent with the provisions of Regulations G, T, U or K of the Board of Governors of the Federal Reserve System of the United States.

6.2 Existence of Limited Liability Company, Etc. Each separate entity constituting a part of Borrower shall at all times preserve and keep in full force and effect its existence as a

Delaware trust in the case of the Liquidating Trust and prior to a release under Section 2.8 as a limited liability company in the case of the Loan LLCs, and shall not allow or permit the dissolution and winding up of such separate Borrower entity and the rights and franchises material to its business.

6.3 Payment of Taxes; Obligations, Indebtedness and Claims. Each separate entity constituting a part of Borrower shall pay all taxes, assessments and other governmental charges imposed upon it or any of its properties or assets or in respect to any of its business, income or Collateral before any penalty or interest accrues thereon, and all claims (including, without limitation, claims for labor, services, materials and supplies) for sums which have become due and payable and which by law have or may become a lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto.

6.4 Maintenance of Property and Underlying Assets. Borrower shall, at its own expense, maintain or cause to be maintained in good repair, working order and condition any REO Property owned by it and from time to time make or cause to be made all appropriate repairs, renewals and replacements thereof. Borrower shall exercise commercially reasonable efforts to enforce any provisions of the ML Loans which require the borrowers under the ML Loans to maintain or cause to be maintained in good repair, working order and condition any real or personal property owned by such borrowers which is security for the ML Loan. Borrower shall not, without the prior written consent of Lender, make any material alteration to the REO Property or, without the prior written consent of Lender, remove or permit the removal of any fixtures, equipment, goods or other items of personal property which constitute part of the REO Property, unless otherwise permitted herein. Notwithstanding the foregoing, if the computer equipment and software owned by the Debtor is transferred to the Liquidating Trust or if the Plan permits the Debtor to continue to own such compute equipment and software, the Liquidating Trust can permit the computer equipment and software to be used by the Debtor or other servicing agreement to service the ML Loans without any consent from Lender.

6.5 Insurance.

(a) General Requirements. For as long as the Loan is outstanding, Borrower shall provide and maintain comprehensive general public liability insurance (with coverages of not less than \$1,000,000), including "premises/operations" and "contractual" coverages, and such other insurance with respect to the REO Property against such other insurable hazards which at the time in question are commonly insured against in the case of like property in the locality of the REO Property or would be required by prudent institutional lenders making loans similar to the type secured hereby. All such insurance shall be at Borrower's own expense; shall contain a standard mortgagee clause naming Lender as additional insured; shall provide for thirty (30) days prior notice to Lender of cancellation; and may be provided by a so-called "blanket" or umbrella coverage so long as Lender approves the form of same and the blanket or overall policy provides coverages as stated above and names Lender as an additional insured in the forms stated above. Borrower shall also maintain all insurance required by any other Loan Document.

(b) Form of Policy; Failure to Maintain. All insurance policies shall be with companies or associations of companies from time to time approved by Lender and shall otherwise be in form and substance reasonably satisfactory to Lender. A certificate of insurance or certified copy of each policy shall be delivered to Lender prior to the execution of this Loan Agreement and thirty (30) days before the expiration date of each policy as evidence of the renewal of such policies. If any policy required by Lender is not renewed on or before thirty (30) days of its expiration and evidence thereof not provided to Lender on or before such date, Lender may, upon ten (10) days' prior written notice to Borrower, procure such insurance, pay the premium therefor as an Advance to Borrower which will be secured hereby.

6.6 Inspection. Borrower shall permit any authorized representatives designated by Lender to visit and inspect the REO Property, upon reasonable notice and at such times during normal business hours and as often as may be reasonably requested.

6.7 Compliance with Laws, Etc. Each separate entity constituting Borrower shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, noncompliance with which would materially adversely affect the business, properties, assets, operations or condition (financial or otherwise) of such Borrower entity.

6.8 Services to Benefit Lender. All inspections and other services rendered by or on behalf of Lender, whether or not paid for by Borrower, shall be rendered solely for the protection and benefit of Lender, and Borrower shall not be entitled to claim of loss or damage against Lender or against any of Lender's agents or employees for failure to properly discharge their duties to Lender.

6.9 Expenses. Upon an Event of Default, Borrower shall, upon demand, pay for or reimburse Lender for all reasonable costs incurred by Lender in connection with the reasonable enforcement of the Loan.

6.10 Prepayment. Borrower may prepay the Loan in part or in whole at any time and from time to time without premium or penalty; provided, however, that (i) the obligation to pay Lender the Disposition Incentive Payments shall continue until Lender, upon disposition of assets or from Recoveries by the Liquidating Trust or Loan LLCs, has received a total of \$7,500,000.00 in Disposition Incentive Payments, and (ii) the Right to Compete under Section 6.11 shall continue until it terminates as provided in such Section 6.11.

6.11 Right to Compete.

(a) From and after the First Advance and continuing as long as Borrower owns ML Loans or REO Property which was originally Collateral for the Loan, Borrower agrees to give Lender the opportunity to compete for the purchase of ML Loans being sold for less than the outstanding loan amount and any REO Property that is being marketed for sale. If Borrower makes any public announcement or advertisement of any such sale, the Borrower will furnish a copy thereof to Lender as soon as possible upon its public release. When the Borrower has an

offer from a third party ("Third Party") that Borrower is willing to accept ("Third Party Offer") Borrower will give written notice to Lender and provide Lender with a copy of the Third Party Offer. Lender shall have seven days from the date it receives a copy of the Third Party Offer to make a competing offer. If Lender makes a competing offer ("Lender Offer") which the Borrower is not willing to accept, then Borrower will provide a written statement of the items which would cause the Borrower to reject the Lender's offer ("Rejection Notice") and give Lender three days after receipt of such to amend in writing the items described in the Rejection Notice to Borrower's satisfaction. If Borrower is willing to accept a Lender Offer, or if Lender amends in writing items in the Rejection Notice to Borrower's satisfaction, then Borrower can at its option accept such offer or may provide a copy of the acceptable Lender Offer to the Third Party who shall have seven days from the receipt of the Lender Offer to make a revised Third Party Offer which Borrower is willing to accept. Thereafter Lender and then the Third Party may, in turn, continue to make revised offers and if the Borrower is willing to accept such revised offer, Borrower shall provide a copy of the revised offer to the other offeror who shall have three days after receipt of such revised offer to make a further offer, and the process shall continue until either the Third Party or the Lender shall decline to make a further offer, at which time Borrower shall have 30 days to enter into a binding contract with the winning offeror on the specific terms acceptable to Borrower to purchase the specific ML Loan or REO Property. For this purpose, the Lender shall be the winning offeror if the Borrower elects to accept the Lender's Offer or revised Lender's Offer and not provide a copy of such offer to the Third Party and there shall be no losing offeror. If a binding contract with the winning offeror is not entered into within such 30 day period, then Borrower shall offer to enter into a binding contract with the losing offeror, if applicable, on the specific terms contained in the losing offeror's last offer to purchase the specific ML Loan or REO Property. If no acceptable contract is entered into with the winning offer within the 30 day period provided to the winning offeror, and no acceptable contract is entered into with the losing offeror within the 30 day period provided to the losing offeror, the Borrower shall be free to sell the specific ML Loan or REO Property to anyone on the terms at least as favorable to Borrower as those contained in the winning offer but if the ML Loan or REO Property is not sold to another person within six months, the right of the Lender to complete shall be reinstated with respect to the specific ML Loan or REO Property. In the event that Lender enters into a binding contract to purchase an ML Loan or REO Property and defaults under the terms of the contract to purchase such asset, then the right of Lender to compete for the purchase of future sale of said asset shall terminate.

(b) In the event that a Loan LLC is willing to modify or compromise with a borrower on a permanent reduction of the principal amount of an ML Loan under a proposal by the borrower ("borrower proposal") that the Loan LLC is willing to accept, then the Loan LLC shall give written notice to the Lender of the borrower proposal accompanied by a copy of the borrower proposal and the Lender shall have a period of seven days to elect to purchase the ML Loan on a without recourse basis for the adjusted principal amount and accrued interest due under the modification to such date thereon which has been agreed to by the borrower and shall close the transaction within ten days after receipt of the written notice from the Loan LLC. If Lender fails to elect to purchase the ML Loan under Section 6.11(a) then Lender shall be deemed to have consented to the modification of the ML Loan with the borrower. The provisions of Section 6.11(a) above shall not be applicable to require a re-offer to the borrower and, if the



Lender elects to acquire the ML Loan, the Loan LLC shall accept the Lender's election and proceed to sale. The Lender may elect to pay seventy percent of the principal amount and the Disposition Incentive Payment on the transaction by a reduction in the Outstanding Loan Balance and the balance of thirty percent of the principal amount and accrued interest owed by the borrower shall be paid to the Loan LLC in cash. In the event that the borrower proposal involves a reduction of principal and or interest in settlement of an alleged claim against the Loan LLC or its members for the Debtor's failure to fund or other breach of the ML Loan Documents by Debtor, then if Lender elects to acquire the ML Loan for the modified or compromised ML Loan amount, the Lender shall upon closing assume the obligation to defend any litigation against the Loan LLC or its members arising out of such alleged claim and to indemnify and hold the Loan LLC and its members harmless from and against any loss, cost, damage, or expense, including attorney's fees and costs, ("Costs") and any judgment ("Judgment") which the borrower or its successors may obtain against the Loan LLC or its members, whether incurred at trial or upon appeal or in a bankruptcy court. Such Costs and Judgments shall be paid by Lender upon written demand by the Loan LLC and if not paid in ten days after demand, the Loan LLC can cause the amount demanded to be offset against any amounts payable to lender under this Agreement. If the Lender fails to close the purchase of the ML Loan within the required ten day period, then the right of Lender to compete for the purchase of future sales of said ML Loan under this Section 6.11(b) shall terminate.

6.12 Agency Agreements. Under the Plan, the Debtor is required to transfer to ML Manager all rights that the Debtor had under any and all agency and servicing agreements with borrowers and with the holders of Fractional Interests in the ML Note and ML Loan Documents ("Agency Agreements"). The Borrower through ML Manager agrees that it will exercise whatever rights it may have under the Agency Agreements to assist Borrower to meet its obligations under this Agreement and the Loan Documents.

## **SECTION 7. EVENTS OF DEFAULT**

The existence or occurrence of any one or more of the following shall constitute a Default under the Loan Documents and all other documents executed or to be executed in connection with the Loan and, if such Default is not promptly cured within the periods set forth herein, there shall exist an Event of Default hereunder and under the Loan Documents:

7.1 Non-Payment. Borrower's failure to make any required payment within thirty (30) days after its due date under any Loan Document or Borrower's failure to pay any other indebtedness of Borrower to Lender within thirty (30) days of its due date.

7.2 Default in Performance; Breach of Condition. Borrower's default in the performance of any obligation to be performed under, or breach of, any nonmonetary term, condition, covenant, warranty or representation contained in any of the Loan Documents (or under the documents for any other loan from Lender to Borrower) shall have occurred and be continuing for sixty (60) days after notice thereof from Lender to Borrower.

## SECTION 8. LENDER'S REMEDIES

Upon the occurrence of any Event of Default hereunder, Lender shall have the absolute right, without further notice, at Lender's option and election and in its sole discretion, to:

8.1 Termination of Funding. Cease making any Advances hereunder or pursuant to any of the Loan Documents until the Event of Default is cured.

8.2 Specific Performance. Institute appropriate proceedings to specifically enforce performance of the terms and conditions of the Loan Documents in the event of an Event of Default under Section 7.2 of this Agreement.

8.3 Required Sale. If a Non-Payment Event of Default with respect to Borrower has occurred under Section 7.1 of this Agreement, Lender can require Borrower to sell sufficient of the Collateral to make any payment required to be made to Lender under this Agreement or the Loan Documents, including a payment on the Loan sufficient to reduce the Outstanding Loan Balance to the permitted Maximum Loan Balance at the time of cure by written notice of required sale ("Required Sale Notice") specifying the dollar amount of Collateral which must be sold to provide sufficient Net Disposition Proceeds from Lender's share thereof to cure such Event of Default. Borrower shall attempt to sell a portion of the Collateral as required and if Borrower obtains a Third Party Offer under Section 6.11(a) and Lender wishes to compete for such Collateral under Section 6.11(a), the proceeding under this Section 8.3 shall be held in abeyance with respect to such Collateral until that process is complete. If Lender invokes rights under Section 6.11(a), but no contract of sale is entered into, then Borrower shall have 120 days after such failure to enter into a contract under Section 6.11(a) to cure the Event of Default by sale of Collateral or otherwise. If Lender does not invoke its rights under Section 6.11(a), then Borrower shall cure such payment Event of Default within 120 days after receipt of the Required Sale Notice by sale of Collateral or otherwise, and if Borrower fails to cure such Event of Default within the time period, then Lender can, by written mandatory sale notice ("Mandatory Sale Notice") to Borrower, designate specific Collateral which Borrower must sell to third parties within 120 days to produce sufficient Net Disposition Proceeds from Lender's share thereof to make the required payments or to make a reduction of the Outstanding Loan Balance to the permitted Maximum Loan Balance, subject always to the Borrower's right to repay the Loan from other sources if it is able to do so. The amount of Collateral specified in the Mandatory Sale Notice may be more than may be necessary to provide a greater chance for success in selling the required amount of Collateral. As with the required sale procedures above, Lender shall have the right to compete as to any one or any portions of the Collateral specified in the Mandatory Sale Notice under Section 6.11(a) and if Lender invokes that right, the proceedings with respect to the mandatory sale of that specific portion of the Collateral shall be held in abeyance with respect to such Collateral until that process is complete. Once the Event of Default is cured by the sale of Collateral by the Borrower or by other repayment by the Borrower, the parties shall be returned to their former positions under this Agreement and the Loan Documents as if such Event of Default had not occurred.

8.4 Sale by Receiver. In the event that the Borrower does not cure the Event of Default within the 120 day period after receipt of the Mandatory Sale Notice as set forth in Section 8.3 above, Lender shall have the right to have a receiver designated by Lender ("Receiver") appointed by a court of competent jurisdiction without regard to the solvency of Borrower, the value of the Collateral, or the commission of actual waste or damage to the Collateral, and without the requirement of a bond or security, for the purpose of taking possession of the Collateral designated in the Mandatory Sale Notice. The Receiver shall advertise, market and, directly or by the use of a third-party auctioneer, conduct one or more sales, including auction sales if deemed appropriate by the Receiver, of such Collateral as quickly as the auctioneer can reasonably schedule such a sale, but in no event more than 60 days following the date of appointment of the Receiver. The specific methodology, details and extent of the advertising, notice and conduct of the auction sale shall be commercially reasonable as determined in the sole discretion of the Receiver. At such an auction, the Receiver shall conduct the sale of the Collateral in the agreed order designated by Lender and in the absence of a designation by the Lender in the order determined by the Receiver. Each such sale shall be for cash and the provisions of Section 6.11(a) shall not apply to the sale. Lender shall have the right to make an opening bid which any purchaser must beat in order to become the buyer and Lender may increase its bid from time to time during the sale process. The Lender's bids may be credit bids up to an amount not in excess of the then remaining Outstanding Loan Balance and any Disposition Incentive Fees which would be payable to Lender as a result of the sale (collectively, the "Maximum Credit Bid") and any amount bid by the Lender in excess of the Maximum Credit Bid shall be paid in cash. If the Lender is the winning bidder, the Receiver shall complete the sale of the Collateral to the Lender within five days. The Receiver shall sell so much of the Collateral as is necessary to cure the payment Event of Default or pay down the Outstanding Loan Balance by a sufficient amount to bring the required permitted Maximum Loan Balance back into balance and to take such other action as Lender or the Receiver may deem necessary or desirable. All costs and expenses incurred by Lender or the Receiver in connection with the appointment of such Receiver and all costs incurred by Lender or the Receiver in connection with the protection, preservation, improvement or sale of the Collateral shall be charged against Borrower shall be added to the principal amount of the note and shall be enforced as a lien against the Collateral under the applicable Loan Document. Any commissions due or payable as a result of the auction sale (exclusive of the charges, costs or expenses of the Receiver) shall be charged to the buyer of the Collateral as a deduction from the gross sale price. Once the Event of Default is cured, the Receiver shall be discharged and the parties shall be returned to their former positions under this Agreement and the Loan Documents as if such Event of Default had not occurred.

8.5 Higher Rate of Interest; Repayment Incentive Fees. During the existence of any Event of Default hereunder or under any other Loan Document (i) interest under all of the Loan Documents shall accrue, at the option of Lender on the Outstanding Loan Balance, but without the necessity of notice to Borrower at the Default Rate of interest (as defined in the Note) and (ii) any Repayment Incentive Fees due while the Event of Default continues shall be increased to the rate of five percent (5%).

8.6 Advances to Cure Default. Lender may make Advances under the Loan of any sums as may be necessary to cure any Default. All sums so advanced shall be deemed advances of principal under the Loan and the Note, and shall bear interest at the Default Rate set forth in the Note.

8.7 Remedies Exclusive. The remedies granted to Lender in this Agreement are intended to be the exclusive remedies available to Lender in the event of an Event of Default and while Lender can accelerate the Outstanding Loan Balance and accrue a higher Default Rate during the period that the Event of Default remains uncured, the Lender may not sell the Collateral except as provided herein.

8.8 Costs and Expenses. Borrower shall pay to Lender upon demand all reasonable costs, expenses and fees (including reasonable attorneys' fees based upon the Phoenix, Arizona legal market), whether suit be instituted or not, incurred by Lender in protecting or enforcing its rights upon the occurrence of an Event of Default under the Loan Documents, and all expenses of taking any permitted taking any action to dispose of the Collateral, whether the same shall be paid or incurred pursuant to provisions of this Section or otherwise, and all payments made or liabilities incurred by Lender under this Agreement upon the occurrence of an Event of Default of any kind whatsoever. All or any portion of such costs, fees and expenses, at Lender's election, and without notice, shall be payable on demand with interest at the Default Rate set forth in the Note, or may be added to the principal balance of the Loan, and shall bear interest at the rate then and thereafter applied to said balance.

## **SECTION 9. REPRESENTATION BY COUNSEL; ARMS-LENGTH AGREEMENT**

9.1 The parties to this Agreement represent, acknowledge and agree that, with respect to this Agreement, each of the other Loan Documents, and all of the transactions contemplated herein:

(a) The parties are represented by qualified counsel and have been advised by and consulted with such counsel;

(b) The parties are aware of the risks and benefits associated with the Loan, the Loan Documents and the terms thereof, and such terms are in no sense grossly unfair, oppressive or unconscionable;

(c) The Loan (and each provision of the Loan Documents) is an arm's-length, bargained for transaction entered into by the parties freely, with full knowledge of all material facts and without duress or coercion of any form; and

(d) Each of the parties to this Agreement understands and is conversant with the respective rights and obligations of the parties under the Loan Documents.

## **SECTION 10. JURISDICTION; VENUE; SERVICE OF PROCESS**

Borrower hereby irrevocably submits to the jurisdiction of any Arizona or United States Federal court sitting in Arizona over any action or proceeding arising out of or relating to this Agreement and the Loan Documents, and Borrower hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Arizona or Federal court. Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Borrower at Borrower's address specified herein. Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Borrower further waives any objection to venue in such State on the basis of forum non conveniens. Borrower further agrees that any action or proceeding brought against Lender shall be brought only in Arizona or United States Federal court sitting in Maricopa County. Nothing contained herein shall affect the right of Lender to serve legal process in any other manner permitted by law or affect the right of Lender to bring any action or proceeding against Borrower or its property in the courts of any other jurisdictions. To the extent that Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Borrower hereby irrevocably waives such immunity in respect of its obligations under this Agreement and the Loan Documents.

## **SECTION 11. MISCELLANEOUS**

11.1 This Agreement Part of Loan Documents. The Loan Documents shall be deemed to incorporate this Agreement. In the event of a conflict between any of the provisions of this Agreement and any provision of any of the other Loan Documents, the provisions of this Agreement shall control. Any occurrence of an Event of Default under any term or condition of this Agreement shall constitute an Event of Default under all other Loan Documents.

11.2 No Excessive Interest. No provision of the Note or any other aspect of the transaction of which the Note is a part is intended to or shall require or permit the holder to take, receive, collect, contract for or reserve, directly or indirectly, in money, goods or things in action, or in any other way, any interest, sum or value in excess of the maximum rate of interest permitted by law in effect in the State of Arizona at the date hereof. If any such excess shall nevertheless be provided for, or adjudicated to be provided for, Borrower shall not be obligated to pay such excess, but, if paid, then such excess shall be applied against the unpaid balance of the principal sum or, to the extent that the principal sum has been paid in full by reason of such application or otherwise, such excess shall be remitted to and accepted by Borrower. In the event of conflict between the provisions of this Section 11.2 and any other provision of the Note or any other agreement given or executed in connection with the Note, the provisions of this Section 11.2 shall control.

11.3 Lender's Right to Appear in Litigation. Lender shall have the right to commence, appear in or defend any action or proceeding which Lender believes may affect the rights or duties of any of the parties hereunder or in connection therewith or in and to the Collateral, and

to pay all necessary and reasonable expenses in connection therewith (including but not limited to fees of counsel retained by Lender in connection with such action or proceeding), and Borrower shall repay all of the foregoing expenses to Lender upon demand.

11.4 No Other Parties to Benefit. The Loan Documents are made for the sole benefit of Borrower and Lender, and their heirs, personal representatives, successors and assigns, and no other Person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiary or otherwise.

11.5 Notices. Any notices or other communications which any party may be required, or may desire, to give, unless otherwise specified, shall be in writing and shall be (i) hand-delivered, effective upon receipt, (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested and addressed to such party at the address set forth below, or to such other address(es) or addressee(s) as the party to be served with notice may have furnished in writing to the other party, effective three (3) days after mailing.

If to Lender:

Universal-SCP 1, L.P.  
80 E. Rio Salado Parkway, Suite 703  
Tempe, Arizona 85281

With a copy to:

J. Lawrence McCormley  
Tiffany & Bosco, P.A.  
Third Floor Camelback Esplanade II  
2525 East Camelback Road  
Phoenix, Arizona 85016

If to Borrower:

Kevin O'Halloran, not individually but as  
Trustee of the ML Liquidating Trust under  
Liquidating Trust Agreement  
100 Peachtree Street, Suite 1475  
Atlanta, Georgia 30303

Each Loan LLC  
c/o Fennemore Craig, P.C.  
3003 N. Central Ave., Suite 2600  
Phoenix, Arizona 85012

With a copy to:

Attorneys designated in writing  
Bb the Liquidating Trustee and  
the ML Manager

11.6 Governing Law; Construction. The Loan Documents are executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona shall govern their interpretation and enforcement. This Agreement and the other Loan Documents are intended to express the mutual intent of the parties hereto and thereto, and irrespective of the party preparing any document, no rule of strict construction shall be applied against any party. All words used herein shall refer to the appropriate number or gender, regardless of the number or gender stated.

11.7 Modification and Waiver. No provision of this Loan Agreement shall be amended, waived or modified except by an instrument in writing signed by the parties hereto.

11.8 Survival. All covenants, agreements, representations and warranties made herein or in any Loan Document shall survive the execution and delivery of any of the Loan Documents and any disbursement or advance of funds made pursuant to this Agreement, until all of Borrower's obligations under the Loan Documents have been paid in full.

11.9 Headings. All sections and descriptive headings of sections in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

11.10 Severability; Integration; Form and Substance of Documents; Time of the Essence. Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. The Loan Documents supersede all prior agreements (including without limitation any commitment letter), and constitute the entire agreement between the parties with respect to the subject matter hereof. All documents and other matters required to be furnished by Borrower shall be reasonably satisfactory in form and substance to counsel for Lender. Time is of the essence hereof.

11.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

11.12 Assignability. Borrower shall not assign this Agreement or any part of any advance to be made hereunder without the consent of Lender which may be given or withheld in Lender's sole and absolute discretion. The rights of Lender under this Agreement are assignable in part or in whole, to any financially responsible assignee who has the financial capacity to and is willing to assume the obligation to fund the Advances under this Agreement, and any assignee of Lender shall succeed to and be possessed of the rights and assume the obligations of Lender hereunder to the extent of the assignment made, including the right to make Advances to Borrower or any approved assignee of Borrower in accordance with this Agreement. Notwithstanding the foregoing, in the event of a partial assignment by Lender, any approval or consent required from the Lender for any action or omission by Borrower under this Agreement shall only require the consent or approval of the original Lender named in this Agreement.

11.13 No Agency Relationship. Borrower understands and agrees that Lender is not Borrower's agent or representative, and this Agreement shall not make Lender liable to any materialman, contractor, subcontractor, craftsman, laborer or any other Person or entity for any goods delivered to or services performed by them upon the Collateral, or for any debts or claims accruing to such parties against Borrower, and there is no contractual relationship imposing any duty, obligation or liability on Lender, either express or implied, between Lender and any materialman, contractor, subcontractor, craftsman, laborer or any other Person or entity supplying work, labor or materials for the improvement of any property of Borrower.

11.14 No Joint Venture, Alter Ego, or Control Person Relationship. It is expressly understood and agreed by Borrower that Lender, by its making of the Loan, does not become a member or partner of or with Borrower. It is the express intention of the parties hereto that for all purposes the relationship between Lender and Borrower be deemed to be that of creditor and debtor. In this regard, the parties acknowledge that it is not now, nor has it ever been, their intent to be partners or joint venturers as a result of the Loan. The parties also expressly disclaim any intent that Borrower become Lender's alter ego or instrumentality and that Lender become a "control person" within the scope of federal securities law. Borrower also acknowledges that Lender has not participated directly or indirectly in any securities offerings made by Borrower.

11.15 Waiver of Defaults. The waiver by Lender of any breach or default by Borrower under any of the terms of any of the Loan Documents shall not be deemed to be a waiver of any subsequent breach or default on the part of Borrower under the same or any other of the Loan Documents.

11.16 Costs and Expenses. Borrower shall pay Lender upon demand any and all costs, expenses and fees (including reasonable attorneys' fees ) incurred in closing the Loan or in enforcing or attempting to recover payment of the amounts due under the obligations secured, including negotiating, documenting and otherwise pursuing or consummating modifications, extensions, compositions, renewals or other similar transactions pertaining to this Agreement, the



Note, or the Loan Documents, irrespective of the existence of a Default, and including costs, expenses and fees incurred before, after or irrespective of whether suit is commenced, and in the event suit is brought to enforce payment hereof, such costs, expenses and fees shall be determined by a court sitting without a jury. Should any proceedings or litigation be commenced between the parties hereto concerning the terms of this Agreement, or the rights and duties of the parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees.

11.17 Lender's Consent. Except as otherwise provided herein, whenever Lender's consent, approval or judgment is called for in the Loan Documents, it may be withheld, exercised or given in Lender's sole, only and unfettered discretion.

11.18 Exhibits. All Exhibits attached to this Agreement are fully incorporated herein and are made part of the covenants of this Agreement whether or not the Exhibits are executed by any or all of the parties.

11.19 Incorporation of Recitals. The prefatory language and Recitals made and stated hereinabove are hereby incorporated by reference into, and made a part of, this Agreement.

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

Lender:

Universal-SCP 1, L.P., an Arizona  
limited partnership

By: Universal-SCP Management, LLC, an  
Arizona limited liability company,  
Its Manager

By: 

Its: Member/Manager

Borrower:

Each of the Arizona limited liability companies  
listed on Exhibit A attached hereto and incorporated  
herein by reference

By: ML Manager, LLC, an Arizona  
limited liability company, Its Manager

By: 

Its: Authorized Manager

ML Manager, LLC, an  
Arizona limited liability company

By: 

Its: Authorized Manager



Kevin O'Halloran, not individually but solely as  
Trustee of the ML Liquidating Trust under the  
ML Liquidating Trust Agreement

## **Exhibit "A"**

### **List of Loan LLCs**

300 EC Loan LLC  
CS Loan LLC  
MK I Loan LLC  
MK II Loan LLC  
Nocit Loan LLC  
Citno Loan LLC  
44 CP I Loan LLC  
ABCDW I Loan LLC  
Osborn III Loan LLC  
44 CP II Loan LLC  
PPP Loan LLC  
Bison Loan LLC  
FP IV Loan LLC  
CP Loan LLC  
ZDC I Loan LLC  
AZ CL Loan LLC  
RG I Loan LLC  
VCB Loan LLC  
SOJ Loan LLC  
ABCDW II Loan LLC  
VP I Loan LLC  
ZDC II Loan LLC  
Centerpoint II Loan LLC  
ZDC III Loan LLC  
RRE I Loan LLC  
VP II Loan LLC  
HH Loan LLC

RLD I Loan LLC  
MWP Loan LLC  
C&M Loan LLC  
U&A Loan LLC  
RG II Loan LLC  
PDG LA Loan LLC  
ASA XVI Loan LLC  
VF I Loan LLC  
RLD II Loan LLC  
4633 VB Loan LLC  
MCKIN Loan LLC  
Metro Loan LLC  
Citlo Loan LLC  
NRDP Loan LLC  
CGSR Loan LLC  
ABCDW III Loan LLC  
TLDP Loan LLC  
ASA IX Loan LLC  
70 SP Loan LLC  
ZDC IV Loan LLC  
Centerpoint I Loan LLC

## **EXHIBIT B**

### **List of ML Notes, ML Deeds of Trust and MI Loan Documents Assigned**

1. Promissory Note dated April 12, 2007 in the original principal amount of \$51,000,000.00 made by Rightpath Limited Development Group, LLC, a Delaware limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 858406 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded April 13, 2007 as Instrument No. 2007-0435018, and by a First Modification of Deed of Trust recorded May 15, 2007 as Instrument No. 2007-0566181, and by a Second Modification of Deed of Trust, recorded October 16, 2007 as Instrument No. 2007-1126954, and by a Third Modification of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded February 27, 2009 as Instrument No. 2009-0176898 and a Assignment of Rights recorded as Instrument No. 2007-0435019 in the records of the County Recorder of Maricopa County Recorder.
2. Promissory Note dated May 2, 2007 in the original principal amount of \$20,425,000.00, made by Maryland Way Partners, LLC, an Arizona limited liability company and Rightpath Limited Development Group, LLC, a Delaware limited liability company ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 858506 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Maryland Way Partners, LLC, an Arizona limited liability company, as to Parcel 3 and Rightpath Limited Development Group, LLC, a Delaware limited liability company, as to Parcels 1, 2, 4 & 5 ("Trustor") recorded May 3, 2007 as Instrument No. 2007-0519320, and by a First Modification of Deed of Trust recorded October 16, 2007 as Instrument No. 2007-1126957, and by a Second Modification of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded February 27, 2009 as Instrument No. 2009-0176896, and by a Assignment of Rights dated May 2, 2007 and recorded May 3, 2007 as Instrument No. 2007-0519321 in the records of the County Recorder of Maricopa County Recorder.
3. Promissory Note dated August 22, 2007 in the original principal amount of \$49,500,000.00, made by Rightpath Limited Development Group, LLC, a Delaware limited liability company ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 859806 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Rightpath Limited Development Group, LLC, a Delaware limited liability company, as to Parcels 1, 2, 4, 5, 14, 15, and 17; and Maryland Way Partners, LLC, an Arizona limited liability company, as to Parcel 3 ("Trustor") recorded August 30, 2007 as Instrument No. 2007-0977254, and by a First Modification of Deed of Trust recorded October 12, 2007 as Instrument No. 2007-1118128, and by a Second Modification of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded February 27, 2009, as Instrument No. 2009-0176897, and by a Assignment of Rights dated August 22, 2007 and recorded August

30, 2007 as Instrument No. 2007-0977255, in the records of the County Recorder of Maricopa County Recorder.

4. Promissory Note dated May 21, 2007 in the original principal amount of \$6,500,000.00, made by VCB Properties, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 856805 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded February 23, 2007 as Instrument No. 2007-0220891, and by a Assignment of Rights dated February 21, 2007 and recorded February 23, 2007 as Instrument No. 2007-0220892, in the records of the County Recorder of Maricopa County Recorder.
5. Promissory Note dated June 27, 2007 in the original principal amount of \$3,465,000.00, made by Rodeo Ranch Estates, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857906 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded April 19, 2007 as Instrument No. 2007-047339, and by a Assignment of Rights dated April 12, 2007 and recorded April 19, 2007 as Instrument No. 2007-047340, in the records of the County Recorder of Pinal County Recorder.
6. Promissory Note dated January 8, 2007 in the original principal amount of \$16,000,000.00, made by Arizona Commercial Land Acquisitions I, LLC, an Arizona limited liability company and Elizabeth May Real Estate, LLC, an Arizona limited liability company ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 856206 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Arizona Commercial Land Acquisitions I, LLC, an Arizona limited liability company, as to Parcel A and Elizabeth May Real Estate, LLC, an Arizona limited liability company, as to Parcel B ("Trustor") recorded January 18, 2007 as Instrument No. 2007-0068332, and by a Assignment of Rights dated January 8, 2007 and recorded January 18, 2007 as Instrument No. 2007-0068333 and by a UCC-1 Financing Statement recorded January 18, 2007 as Instrument No. 2007-0068334, in the records of the County Recorder of Maricopa County Recorder.
7. Promissory Note dated July 17, 2007 in the original principal amount of \$20,000,000.00, made by All State Associates of Pinal XVI, LLC, an Arizona limited liability company, Turtle Creek Vista Associates, LLC, a Michigan limited liability company, and Chesapeake Mill Associates, LLC, a Michigan limited liability company, f/k/a Chesapeake Mill Limited Partnership, ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 859506 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by All State Associates of Pinal XVI, LLC, an Arizona limited liability company, as to an undivided 40.9% interest and Turtle Creek Vista Associates, LLC, an Michigan limited liability company, as to an undivided 19.1% interest and Chesapeake Mill Associates, LLC, a Michigan limited liability company, f/k/a Chesapeake Mill Limited Partnership, as to an undivided 40%

interest recorded August 16, 2007 as Instrument No. 2007-093889, and by a Assignment of Rights dated July 17, 2007 and recorded August 16, 2007 as Instrument No. 2007-093890, in the records of the County Recorder of Pinal County Recorder.

8. Promissory Note dated November 15, 2007 in the original principal amount of \$18,700,000.00, made by All State Associates of Pinal IX, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861506 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded November 19, 2007 as Instrument No. 2007-127183, and by a Assignment of Rights dated November 15, 2007 and recorded November 19, 2007 as Instrument No. 2007-127184, in the records of the County Recorder of Pinal County Recorder.
9. Promissory Note dated October 3, 2007 in the original principal amount of \$5,950,000.00, made by Town Lake Development Partners, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861305 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded October 5, 2007 as Instrument No. 2007-1098776, and by a Assignment of Rights dated October 3, 2007 and recorded October 5, 2007 as Instrument No. 2007-1098777, in the records of the County Recorder of Maricopa County Recorder.
10. Promissory Note dated September 5, 2006 in the original principal amount of \$25,740,000.00, made by Foothills Plaza IV, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 853106 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded September 7, 2006 as Instrument No. 2006-1193302, and by a Assignment of Rents, Leases and Profits dated September 5, 2006 and recorded September 7, 2006 as Instrument No. 2006-1193303, and a Assignment of Rights dated September 5, 2006 and recorded September 7, 2006 as Instrument No. 2006-1193304, and a UCC-1 Financing Statement recorded September 7, 2006 as Instrument No. 2006-1193305, in the records of the County Recorder of Maricopa County Recorder.
11. Promissory Note dated February 22, 2007 in the original principal amount of \$24,150,000.00, made by SOJAC I, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857106 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded February 26, 2007 as Instrument No. 2007-0229529, and by a Assignment of Rights dated February 22, 2007 and recorded February 26, 2007 as Instrument No. 2007-0229530, in the records of the County Recorder of Maricopa County Recorder.
12. Promissory Note dated May 8, 2006 in the original principal amount of \$10,775,000.00, made by Northern 120, L.L.C., an Arizona limited liability company, and Citrus 278, L.L.C., an Arizona limited liability company, ("Borrower") in favor of Mortgages, Ltd., an

Arizona corporation ("Lender") commonly known as Loan No. 849206 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Northern 120, L.L.C., an Arizona limited liability company, as to Parcel A and Citrus 278, L.L.C., an Arizona limited liability company, as to Parcel B ("Trustor") recorded May 15, 2006 as Instrument No. 2006-0658172, and by a Assignment of Rents, Leases and Profits dated May 8, 2006 and recorded May 15, 2006 as Instrument No. 2006-0658173, and a Assignment of Rights dated May 8, 2006 and recorded May 15, 2006 as Instrument No. 2006-0658174, and a UCC-1 Financing Statement recorded May 15, 2006 as Instrument No. 2006-0658178, in the records of the County Recorder of Maricopa County Recorder.

13. Promissory Note dated June 6, 2006 in the original principal amount of \$26,250,000.00, made by Citrus 278, L.L.C., an Arizona limited liability company, and Northern 120, L.L.C., an Arizona limited liability company, ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 849306 and secured by a Deed of Trust, Assignment of Rents and Security Agreement made by Citrus 278, L.L.C., an Arizona limited liability company, as to Parcel A and Northern 120, L.L.C., an Arizona limited liability company, as to Parcel B ("Trustor") recorded June 16, 2006 as Instrument No. 2006-0814601, and by a Assignment of Rents, Leases and Profits dated June 6, 2006 and recorded June 16, 2006 as Instrument No. 2006-0814602, and a Assignment of Rights dated June 6, 2006 and recorded June 16, 2006 as Instrument No. 2006-0814603, and a UCC-1 Financing Statement recorded June 16, 2006 as Instrument No. 2006-0814607, in the records of the County Recorder of Maricopa County Recorder.
14. Promissory Note dated May 29, 2007 in the original principal amount of \$130,000,000.00, made by University & Ash, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 858905 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded June 11, 2007 as Instrument No. 2007-0671778, and by a Assignment of Rights dated May 29, 2007 and recorded June 11, 2007 as Instrument No. 2007-0671779, in the records of the County Recorder of Maricopa County Recorder.
15. Promissory Note dated February 19, 2007 in the original principal amount of \$7,000,000.00, made by Roosevelt Gateway LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 856605 and secured by a Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing recorded February 22, 2006 as Instrument No. 2007-0217988, and by a First Modification of Deed of Trust recorded June 28, 2007 as Instrument No. 2007-0744825, and by a Assignment of Rights dated February 19, 2007 and recorded February 22, 2007 as Instrument No. 2007-0217989, and a UCC-1 Financing Statement recorded February 22, 2007 as Instrument No. 2007-0217992, in the records of the County Recorder of Maricopa County Recorder.
16. Promissory Note dated May 22, 2007 in the original principal amount of \$6,100,000.00, made by Roosevelt Gateway II LLC, an Arizona limited liability company as to Parcels A



and B and Roosevelt Gateway LLC, an Arizona limited liability company as to Parcel D ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 859205 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Roosevelt Gateway II LLC, an Arizona limited liability company and Roosevelt Gateway LLC, an Arizona limited liability company ("Trustor") recorded May 29, 2007 as Instrument No. 2007-0619019, and by a First Modification of Deed of Trust dated June 20, 2007 and recorded June 27, 2007 as Instrument No. 2007-0738650, and by a Assignment of Rights dated August 29, 2007 and recorded August 31, 2007 as Instrument No. 2007-0981635, in the records of the County Recorder of Maricopa County Recorder.

17. Promissory Note dated November 1, 2004 in the original principal amount of \$16,000,000.00, made by Panwebster Holdings, LLC, an Arizona limited liability company, Ganem Esperanza Holdings, LLC, an Arizona limited liability company, and Central Arizona Land Planners, LLC, an Arizona limited liability company ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 832705 and secured by a Deed of Trust, Assignment of Rents and Security Agreement made by Panwebster Holdings, LLC, an Arizona limited liability company, as to an undivided 33 1/3% interest, Ganem Esperanza Holdings, LLC, an Arizona limited liability company, as to an undivided 33 1/3% interest, and Central Arizona Land Planners, LLC, an Arizona limited liability company, as to an undivided 33 1/3% interest, ("Trustor") recorded November 8, 2004 as Instrument No. 2004-090970, and by a Assignment of Rights dated November 1, 2004 and recorded November 8, 2004 as Instrument No. 2004-090971, and a UCC-1 Financing Statement recorded November 8, 2004 as Instrument No. 2004-090974, in the records of the County Recorder of Pinal County Recorder.
18. Promissory Note dated September 21, 2007 in the original principal amount of \$30,350,104.00, made by CGSR, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861105 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded September 28, 2007 as Instrument No. 2007-109677, and by a Assignment of Rights dated September 22, 2007 and recorded September 28, 2007 as Instrument No. 2007-109678, in the records of the County Recorder of Pinal County Recorder.
19. Promissory Note dated March 20, 2007 in the original principal amount of \$150,200,000.00, made by Tempe Land Company, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857605 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 22, 2007 as Instrument No. 2007-0340687 and by a First Modification to Deed of Trust recorded April 2, 2008 as Instrument No. 2008-0292160 and by a Assignment of Rights dated March 20, 2007 and recorded March 22, 2007 as Instrument No. 2007-0340688, in the records of the County Recorder of Maricopa County Recorder.

20. Promissory Note dated March 26, 2008 in the original principal amount of \$45,000,000.00, made by Tempe Land Company, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861905 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 22, 2007 as Instrument No. 2007-0340687 and by a First Modification to Deed of Trust recorded April 2, 2008 as Instrument No. 2008-0292160 and by a Assignment of Rights dated March 20, 2007 and recorded March 22, 2007 as Instrument No. 2007-0340688, in the records of the County Recorder of Maricopa County Recorder.
21. Promissory Note dated September 5, 2006 in the original principal amount of \$1,500,000.00, made by Bisontown L.L.C., an Arizona limited liability company and Gary A. Martinson, a married man, as a sole and separate individual ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 852806 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Bisontown L.L.C., an Arizona limited liability company, as to Parcel A and Gary A. Martinson, a married man, as his sole and separate property, as to Parcel B ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation, recorded September 8, 2005 as Instrument No. 2006-27382, and by a Assignment of Rents, Leases and Profits dated September 5, 2006 and recorded September 8, 2006 as Instrument No. 2006-27383, and a UCC-1 Financing Statement recorded September 8, 2006 as Instrument No. 2006-27386, in the records of the County Recorder of Navajo County Recorder.
22. Promissory Note dated October 24, 2006 in the original principal amount of \$7,575,000.00, made by Riverfront Commons, L.L.C., an Arizona limited liability company ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 853705 and secured by a Deed of Trust, Assignment of Rents and Security Agreement made by Cottonwood Parking, Inc., an Arizona corporation ("Trustor") recorded October 27, 2006 in Book 4449, Page 723 and by a Assignment of Rents, Leases and Profits recorded October 27, 2006 in Book 4449, Page 724 and by a Assignment of Rights recorded October 27, 2006 in Book 4449, Page 725, and re-recorded on December 28, 2006 in Book 4467, Page 971, and by a UCC-1 Financing Statement and recorded October 27, 2006 in Book 4449, Page 726, in the records of the County Recorder of Yavapai County Recorder.
23. Promissory Note dated May 31, 2005 in the original principal amount of \$7,495,000.00, made by MK Custom Residential Construction, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 839506 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded June 1, 2005 as Instrument No. 2005-0735789, and a UCC-1 Financing Statement recorded June 1, 2005 as Instrument No. 2005-0735791 in the records of the County Recorder of Maricopa County Recorder.
24. Promissory Note dated January 10, 2006 in the original principal amount of \$2,500,000.00, made by MK Custom Residential Construction, LLC, an Arizona limited liability company

("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 845006 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded January 17, 2006 as Instrument No. 2006-0067500, and re-recorded January 19, 2006 as Instrument No. 2006-0083597, and by a Assignment of Rights dated January 10, 2006 and recorded January 17, 2006 as Instrument No. 2006-0067500, and re-recorded on January 19, 2006 as Instrument No. 2006-0083598, and a UCC-1 Financing Statement recorded January 17, 2006 as Instrument No. 2006-0067503, in the records of the County Recorder of Maricopa County Recorder.

25. Promissory Note dated July 23, 2007 in the original principal amount of \$9,916,570.00, made by 4633 Van Buren, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 860506 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 26, 2007 as Instrument No. 2007-0848617, and by a Assignment of Rights dated July 23, 2007 and recorded July 26, 2007 as Instrument No. 2007-0848618, in the records of the County Recorder of Maricopa County Recorder.
26. Promissory Note dated July 24, 2007 in the original principal amount of \$12,800,000.00, made by McKinley Lofts, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 860606 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 26, 2007 as Instrument No. 2007-0848925, and by a Assignment of Rights dated July 24, 2007 and recorded July 26, 2007 as Instrument No. 2007-0848926, in the records of the County Recorder of Maricopa County Recorder.
27. Promissory Note dated July 24, 2007 in the original principal amount of \$20,375,000.00, made by Metropolitan Lofts, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 860706 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 30, 2007 as Instrument No. 2007-0859638, and by a Assignment of Rights dated July 24, 2007 and recorded July 30, 2007 as Instrument No. 2007-0859639, in the records of the County Recorder of Maricopa County Recorder.
28. Promissory Note dated July 24, 2007 in the original principal amount of \$11,888,000.00, made by City Lofts, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 860806 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 26, 2007 as Instrument No. 2007-0849665, and by a Assignment of Rights dated July 24, 2007 and recorded July 26, 2007 as Instrument No. 2007-0849666, in the records of the County Recorder of Maricopa County Recorder.
29. Promissory Note dated August 23, 2001 in the original principal amount of \$990,000.00, made by 300 East Camelback, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 794402 and secured by a Deed of Trust, Assignment of Rents and Security Agreement

recorded August 27, 2001 as Instrument No. 2001-0787797, and by a Assignment of Rents, Leases and Profits dated August 23, 2007 and recorded August 27, 2007 as Instrument No. 2001-0787798, in the records of the County Recorder of Maricopa County Recorder.

30. Promissory Note dated April 11, 2007 in the original principal amount of \$6,900,000.00, made by HH 20, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 858305 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded April 16, 2007 as Instrument No. 2007-045675, and by a Assignment of Rights dated April 11, 2007 and recorded April 16, 2007 as Instrument No. 2007-045676, in the records of the County Recorder of Pinal County Recorder.
31. Promissory Note dated June 18, 2007 in the original principal amount of \$26,000,000.00, made by PDG LOS ARCOS, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 859305 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded June 22, 2007 as Instrument No. 2007-0721669, and by a Assignment of Rights dated June 18, 2007 and recorded June 22, 2007 as Instrument No. 2007-0721670, in the records of the County Recorder of Maricopa County Recorder.
32. Promissory Note dated August 16, 2007 in the original principal amount of \$10,050,000.00, made by National Retail Development Partners I, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 860905 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded August 22, 2007 as Instrument No. 2007-0945414, and by a Assignment of Rights dated August 16, 2007 and recorded August 22, 2007 as Instrument No. 2007-0945415, in the records of the County Recorder of Maricopa County Recorder.
33. Promissory Note dated August 14, 2006 in the original principal amount of \$41,400,000.00, made by Osborn III Partners, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 851106 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded August 22, 2006 as Instrument No. 2006-1116307, and by a Assignment of Rights dated August 14, 2006 and recorded August 22, 2006 as Instrument No. 2006-1116308, and a UCC-1 Financing Statement recorded August 22, 2006 as Instrument No. 2006-1116311 in the records of the County Recorder of Maricopa County Recorder.
34. Promissory Note dated August 21, 2006 in the original principal amount of \$32,000,000.00, made by Portales Place Property, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 852606 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded August 22, 2006 as Instrument No. 2006-1117716 and by a Assignment of Rights dated August 21, 2006 and recorded August 22, 2006 as Instrument No. 2006-1117717, an

a UCC-1 Financing Statement recorded August 22, 2006 as Instrument No. 2006-1117718, in the records of the County Recorder of Maricopa County Recorder.

35. Promissory Note dated November 26, 2007 in the original principal amount of \$11,395,000.00, made by 70<sup>th</sup> Street Property, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861706 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded November 28, 2007 as Instrument No. 2007-1260084, and by a Assignment of Rights dated November 26, 2007 and recorded November 28, 2007 as Instrument No. 2007-1260085, in the records of the County Recorder of Maricopa County Recorder.
36. Promissory Note dated June 15, 2006 in the original principal amount of \$10,900,000.00, made by 44<sup>th</sup> & Camelback Property, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 849606 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded June 22, 2006 as Instrument No. 2006-0839714, and re-recorded September 12, 2006 as Instrument No. 2006-1213230, and by a First Modification of Deed of Trust recorded September 21, 2006 as Instrument No. 2006-1253508, and by a Assignment of Rents, Leases and Profits dated June 15, 2006 and recorded June 22, 2006 as Instrument No. 2006-0839715 and re-recorded September 12, 2006 as Instrument No. 2006-1213231, and a Assignment of Rights dated June 15, 2006 and recorded June 22, 2006 as Instrument No. 2006-0839716 and re-recorded on June 22, 2006 as Instrument No. 2006-1213232, and a UCC-1 Financing Statement recorded June 22, 2006 as Instrument No. 2006-0839717 and re-recorded September 12, 2006 as Instrument No. 2006-1213233, in the records of the County Recorder of Maricopa County Recorder.
37. Promissory Note dated August 17, 2006 in the original principal amount of \$10,200,000.00, made by 44<sup>th</sup> & Camelback Property, LLC, an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 852406 and secured by a Deed of Trust, Assignment of Rents and Security Agreement recorded August 31, 2006 as Instrument No. 2006-1165312, and by a First Modification To Deed of Trust recorded March 13, 2008 as Instrument No. 2008-0224417, and by a Assignment of Rents, Leases and Profits dated August 17, 2006 and recorded August 31, 2006 as Instrument No. 2006-1165313, and a Assignment of Rights dated August 17, 2006 and recorded August 31, 2006 as Instrument No. 2006-1165314, and a UCC-1 Financing Statement recorded August 31, 2006 as Instrument No. 2006-1165315, in the records of the County Recorder of Maricopa County Recorder.
38. Promissory Note dated May 11, 2007 in the original principal amount of \$75,600,000.00, made by Central & Monroe, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 858606 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded May 16, 2007 as Instrument No. 2007-0571099 and

by a Assignment of Rights dated May 11, 2007 and recorded May 16, 2007 as Instrument No. 2007-0571100, in the records of the County Recorder of Maricopa County Recorder.

39. Promissory Note dated June 26, 2006 in the original principal amount of \$40,000,000.00, made by ABCDW, L.L.C., an Arizona limited liability company, Torrey Pines Development, L.L.C., an Arizona limited liability company, Riggs/Queen Creek 480, L.L.C., an Arizona limited liability company, Ellsworth Road 160 LLC, an Arizona limited liability company, and Vanderbilt Farms, L.L.C., an Arizona limited liability company ("Borrower") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 850206 and secured by a Deed of Trust, Assignment of Rents and Security Agreement made by ABCDW, L.L.C., an Arizona limited liability company, as to an undivided 59.5520% interest, Torrey Pines Development, L.L.C., an Arizona limited liability company, as to an undivided 17.8392% interest, Riggs/Queen Creek 480, L.L.C., an Arizona limited liability company, as to an undivided 8.8409% interest, Ellsworth Road 160 LLC, an Arizona limited liability company, as to an undivided 2.3137% interest, and Vanderbilt Farms, L.L.C., an Arizona limited liability company, as to an undivided 11.4542% interest, ("Trustor") recorded June 29, 2006 as Instrument No. 2006-092459, and by a Assignment of Rents, Leases and Profits dated June 26, 2006 and recorded June 29, 2006 as Instrument No. 2006-092460, and a Assignment of Rights dated June 26, 2006 and recorded June 29, 2006 as Instrument No. 2006-092461, in the records of the County Recorder of Pinal County Recorder.
40. Promissory Note dated March 9, 2007 in the original principal amount of \$11,000,000.00, made by ABCDW, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857306 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 15, 2007 as Instrument No. 2007-031661 and by a Assignment of Rights dated March 9, 2007 and recorded March 15, 2007 as Instrument No. 2007-031662, in the records of the County Recorder of Pinal County Recorder.
41. Promissory Note dated March 12, 2007 in the original principal amount of \$11,000,000.00, made by Vistoso Partners, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857406 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 22, 2007 as Docket 13017, Page 4875 and by a Assignment of Rights dated March 12, 2007 and recorded March 22, 2007 as Docket 13017, Page 4893, in the records of the County Recorder of Pima County Recorder.
42. Promissory Note dated April 9, 2007 in the original principal amount of \$14,300,000.00, made by Vistoso Partners, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 858006 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded April 12, 2007 as Docket 13032, Page 6880 and by a Assignment of Rights dated April 9, 2007 and recorded April 12, 2007 as Docket 13032, Page 6901, in the records of the County Recorder of Pima County Recorder.

43. Promissory Note dated July 5, 2007 in the original principal amount of \$11,000,000.00, made by Vanderbilt Farms, L.L.C., an Arizona limited liability company and Vistoso Partners, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 859606 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 12, 2007 as Instrument No. 2007-0795684, in the records of the County Recorder of Maricopa County and recorded July 12, 2007 in Docket 13095, Page 3899 in the records of the County Recorder of Pima County, and by a Assignment of Rights dated July 5, 2007 and recorded July 12, 2007 as Instrument No. 2007-0795685 in the records of the County Recorder of Maricopa County and recorded July 12, 2007 in Docket 13095, Page 3921 in the records of the County Recorder of Pima County Recorder.
44. Promissory Note dated September 20, 2007 in the original principal amount of \$22,000,000.00, made by ABCDW, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861206 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded September 28, 2007 as Fee No. 0709-31850 in the records of the County Recorder of Cochise County and recorded as Fee No. 2007-110344 in the records of the County Recorder of Pinal County and by a Assignment of Rights dated September 20, 2007 and recorded September 28, 2007 as Fee No. 0709-31851 in the records of the County Recorder of Cochise County and recorded as Instrument No. 2007-110345, in the records of the County Recorder of Pinal County Recorder.
45. Promissory Note dated March 8, 2007 in the original principal amount of \$12,800,000.00, made by The Zacher Development Company, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857502 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 9, 2007 as Instrument No. 2007-0286680 and by a Assignment of Rights dated March 8, 2007 and recorded March 9, 2007 as Instrument No. 2007-0286681, in the records of the County Recorder of Maricopa County Recorder.
46. Promissory Note dated March 5, 2008 in the original principal amount of \$1,220,000.00, made by The Zacher Development Company, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 861805 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 10, 2008 as Instrument No. 2008-0211637 and by a Assignment of Rights dated March 5, 2008 and recorded March 10, 2008 as Instrument No. 2008-0211638, in the records of the County Recorder of Maricopa County Recorder.

47. Promissory Note dated January 11, 2007 in the original principal amount of \$20,000,000.00, made by The Zacher Development Company, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 855102 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded January 19, 2007 as Instrument No. 2007-0075240 and by a Assignment of Rights dated January 11, 2007 and recorded January 19, 2007 as Instrument No. 2007-0075241, in the records of the County Recorder of Maricopa County Recorder.
48. Promissory Note dated March 23, 2007 in the original principal amount of \$12,386,000.00, made by The Zacher Development Company, L.L.C., an Arizona limited liability company ("Trustor") in favor of Mortgages, Ltd., an Arizona corporation ("Lender") commonly known as Loan No. 857802 and secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 29, 2007 as Instrument No. 2007-0372786 and by a Assignment of Rights dated March 23, 2007 and recorded March 29, 2007 as Instrument No. 2007-0372787, in the records of the County Recorder of Maricopa County Recorder.



## Exhibit "C"

### Multiple Advance Promissory Note

#### MULTIPLE ADVANCE PROMISSORY NOTE

\$20,000,000.00

Phoenix, Arizona

June \_\_, 2009

FOR VALUE RECEIVED, the undersigned borrowers (collectively, called the "Maker"), promise to pay to the order of Universal-SCP 1, L.P., an Arizona limited partnership ("Lender"), or such other person as Lender may from time to time designate in writing, no later than 2:00 p.m., Phoenix, Arizona time, on the date specified for payment in immediately available funds at such address as Lender may from time to time designate in writing, in lawful money of the United States of America, the principal sum of TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000.00), or so much thereof as may be advanced from time to time by Lender to or for the benefit of Maker pursuant to the terms of that certain Loan Agreement of even date herewith by and between Maker, as Borrower, and Lender, as Lender (the "Loan Agreement"), together with interest thereon from the date of disbursement at the Agreed Rate (as hereinafter defined). Capitalized terms used but not defined in this Multiple Advance Promissory Note ("Note") shall have the meaning ascribed thereto in the Loan Agreement.

Interest on the Outstanding Loan Balance from time to time shall be paid on the date which is first monthly anniversary of the First Advance under this Note and on each monthly anniversary date thereafter, unless the payment date is not a Business Day in which case the payment shall be due on the next Business Day, and unless paid by Borrower shall be accrued and compounded monthly for the first eighteen monthly payments. Beginning on the due date for the nineteenth monthly payment and on each monthly payment date thereafter, Borrower shall pay from its own funds, or from an Advance under the Note, the monthly required interest payment. The amount of interest which is due on each monthly payment date shall be calculated by Lender through the day before the payment is due and written notice of the amount due shall be provided to Borrower by facsimile or by e-mail at least two Business Days prior to the due date of the payment.

In addition to the required monthly interest payments, payments shall be made to Lender within five Business Days after Borrower receives Net Disposition Proceeds as defined in the Loan Agreement in the amount of Seventy Percent (70%) of such Net Disposition Proceeds until such time as all principal and interest and other amounts due under the Note (excluding Disposition Incentive Payments) have been paid in full. Payments of Net Disposition Proceeds paid to Lender shall be first applied to amounts owing to Lender other than principal and interest, then to accrued but unpaid interest and lastly to reduce the Outstanding Principal Balance.

If at any time during the term of the Loan, the Outstanding Loan Balance shall exceed the permitted Maximum Loan Balance, Borrower shall make a payment to Lender within two Business Days after receipt of written notice from Lender as to the amount of the required reduction necessary to reduce the Outstanding Loan Balance to the permitted Maximum Loan Balance. The entire outstanding principal balance of the Note, all accrued and unpaid interest and all costs and charges incurred by Lender which are an obligation of Maker under the Loan Agreement shall be due and payable in full on or before the Maturity Date (hereinafter defined) except that Disposition Incentive Payments shall continue to be paid to Lender after full payment of all other amounts due until the Lender has received Disposition Incentive Payments in the aggregate amount of \$7,500,000.00. Disposition Incentive Payments shall be treated as additional interest on the Loan.

The maturity date ("Maturity Date") of this Note shall be thirty six months from the date of the First Advance, provided that the Maturity Date may be extended by the Borrower in accordance with Section 2.2 of the Loan Agreement.

For purposes of this Note, the agreed rate of interest ("Agreed Rate") shall be Seventeen and One-Half Percent (17.5%) per annum compounded monthly. If any payment of principal, interest or other amount due hereunder or under the Loan Agreement is not paid when the same becomes due and payable, each and every such delinquent payment, including the entire principal balance and accrued interest or other amount due hereunder or under the Loan Agreement shall bear interest at the rate of Twenty Nine and One-Half percent (29.5%) per annum, compounded monthly ("Default Rate") from the due date of the delinquent payment until the date of receipt by Lender of the delinquent payment. All interest referred to herein shall be calculated on the basis of a three hundred sixty (360) day year for the actual number of days outstanding, from, and including, the date Advanced or the most recent date of principal or interest payment (as applicable) to, but excluding, the date of receipt of payment. The principal of this Note is not subject to acceleration and shall be paid in accordance with the terms of the Loan Agreement.

Subject to the terms of the Loan Agreement, principal under this Note may be disbursed in more than one Advance. Except as provided in the Loan Agreement, Maker may not re-borrow of principal under this Note which has been repaid. This Note may be prepaid at any time without premium or penalty.

This Note shall be secured by a pledge of or lien on the Collateral described in the Loan Agreement by execution of the Loan Documents described in or consistent with the Loan Agreement.

It is agreed that time is of the essence in the performance of all obligations hereunder and under any other instrument now or hereafter given to secure the payment hereof or executed and delivered in connection with the loan evidenced hereby. The rights and remedies of Lender as provided in this Note and the Loan Documents shall be cumulative and concurrent, and may be pursued singly, successively, or together against

Maker, the Collateral described in the Loan Documents, and any other funds, property or security held by Lender for the payment hereof or otherwise at the sole discretion of Lender. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights and remedies or of the right to exercise them at any later time.

The Maker, endorsers, and accommodation parties hereof and all other persons liable or to become liable for all or any part of the indebtedness evidenced hereby, jointly and severally waive all applicable exemption rights, whether under the State of Arizona constitution, homestead laws or otherwise, and also jointly and severally waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity; and they also jointly and severally hereby consent to any and all renewals, extensions or modifications of the terms hereof, including time for payment, or of the terms of any of the Loan Documents, and further agree that any such renewal, extension or modification of the terms hereof, or of the terms of any of the Loan Documents, or the release or substitution of any security for the indebtedness evidenced hereby or any other indulgences shall not affect the liability of any of such parties for the indebtedness evidenced by this Note. Any such renewals, extensions or modifications may be made without notice to any of such parties.

The Maker, endorsers and accommodation parties hereof and all other persons liable or to become liable on this Note, agree, jointly and severally, to pay all amounts payable to Lender under this Note and the Loan Agreement and all costs of collection, including reasonable attorneys' fees based upon the Phoenix, Arizona legal market, and all costs of suit, in case the unpaid principal sum of this Note, or any payment of principal, interest thereon or other sum due hereunder or under the Loan Agreement, is not paid when due, or in case it becomes necessary to protect the security for the indebtedness evidenced hereby, or for the foreclosure by Lender of any Loan Document, or in the event Lender is made party to any litigation because of the existence of the indebtedness evidenced by this Note, or because of the existence of any Loan Document, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a Bankruptcy Court or other legal proceedings.

This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought; provided, however, that all endorsers and accommodation parties hereof and all other persons liable or to become liable on this Note, agree that, without notice to or consent from any of them, and without affecting their obligations hereunder (a) this Note may from time to time be extended or renewed or its terms (including the terms of payment of principal and interest) otherwise modified; (b) any of the provisions of this Note or the Loan Documents may be amended or any requirement thereof or default thereunder waived or any departure therefrom consented to or any other forbearance or indulgence exercised with respect thereto; and (c) any collateral now or hereafter securing this Note may be exchanged, substituted, realized upon, released, compromised, extended or otherwise dealt with or disposed of.

Maker agrees to pay an effective rate of interest which is the rate provided for in this Note plus any additional rate of interest resulting from any charges of interest or in the nature of interest paid or to be paid in connection with the loan evidenced by this Note. Maker expressly acknowledges that the Agreed Rate, and any other fees, charges, incentives, or other repayment obligations of Maker described herein or in the Loan Agreement, whether in the nature of interest or otherwise, have been specifically discussed and agreed upon by Maker after consultation with counsel of Maker's choice. Notwithstanding any provision herein or in any instrument now or hereafter securing this Note, the total liability for payments of interest and in the nature of interest shall not exceed the limits imposed by the usury laws of the State of Arizona. If Lender receives as interest an amount which would exceed such limits, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance and not to the payment of interest, and if a surplus remains after full payment of principal and lawful interest, the surplus shall be remitted to Maker by Lender, and Maker hereby agrees to accept such remittance.

Maker hereby irrevocably submits to the jurisdiction of any Arizona or United States Federal court sitting in Arizona over any action or proceeding arising out of or relating to this Note and the Loan Documents, and Maker hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Arizona or Federal court. Maker irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Maker at Maker's addresses specified herein. Maker agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Maker further waives any objection to venue in such State and any objection to an action or proceeding in such State on the basis of forum non conveniens. Maker further agrees that any action or proceeding brought against Lender shall be brought only in Arizona or United States Federal court sitting in Maricopa County. Nothing contained herein shall affect the right of Lender to serve legal process in any other manner permitted by law or affect the right of Lender to bring any action or proceeding against Maker or its property in the courts of any other jurisdictions. To the extent that Maker has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Maker hereby irrevocably waives such immunity in respect of its obligations under the Note and the Loan Documents.

It is expressly understood and agreed by Maker that Lender, by its making of the loan evidenced by this Note, does not become a member or partner of or with Maker, and in no event shall Lender be liable for any of the debts, obligations or liabilities of Maker, or of Maker's members or beneficiaries, as a result of the making of the loan evidenced by this Note, nor is Lender liable for any contributions to Maker. It is the express intention of the parties hereto that for all purposes the relationship between Lender and Maker be deemed to be that of debtor and creditor. In this regard, the parties acknowledge that it is not now, nor

has it ever been, their intent to be partners or joint venturers as a result of this Note or the Loan Documents.

Notwithstanding any provision of this Note to the contrary (but without in any manner releasing, impairing or otherwise affecting this Note or availing itself of any of its other rights and remedies under this Note upon the occurrence of an Event of Default hereunder or under the Loan Agreement), none of the entities constituting the Maker and or their members, managers, beneficiaries and trustees shall have any personal liability for the repayment except as otherwise provided in Section 2.7 of the Loan Agreement.

Whenever used herein, the words "Maker" and "Lender" shall be deemed to include their respective heirs, personal representatives, successors and assigns.

This Note shall be governed by and construed in accordance with the laws of the State of Arizona.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, Maker has executed this Note as of the date first above written.

Borrower:

Each of the Arizona limited liability companies listed on Exhibit A attached hereto and incorporated herein by reference

By: ML Manager, LLC, an Arizona limited liability company, their sole Manager

By: \_\_\_\_\_  
Its: Authorized Manager

ML Manager, LLC, an  
Arizona limited liability company

By: \_\_\_\_\_  
Its: Authorized Manager

A handwritten signature in black ink, appearing to read "Kevin O'Halloran", is written over a horizontal line.

Kevin O'Halloran, not individually but solely  
as Trustee of the ML Liquidating Trust under  
Liquidating Trust Agreement dated  
June \_\_, 2009

## EXHIBIT A

### LIST OF LOAN LLCs

300 EC Loan LLC

CS Loan LLC

MK I Loan LLC

MK II Loan LLC

Nocit Loan LLC

Citno Loan LLC

44 CP I Loan LLC

ABCDW I Loan LLC

Osborn III Loan LLC

44 CP II Loan LLC

PPP Loan LLC

Bison Loan LLC

FP IV Loan LLC

CP Loan LLC

ZDC I Loan LLC

AZ CL Loan LLC

RG I Loan LLC

VCB Loan LLC

SOJ Loan LLC

ABCDW II Loan LLC

VP I Loan LLC

ZDC II Loan LLC

Centerpoint II Loan LLC

ZDC III Loan LLC

RRE I Loan LLC

VP II Loan LLC

HH Loan LLC

RLD I Loan LLC

MWP Loan LLC

C&M Loan LLC

U&A Loan LLC

RG II Loan LLC

PDG LA Loan LLC

ASA XVI Loan LLC

VF I Loan LLC

RLD II Loan LLC

4633 VB Loan LLC

MCKIN Loan LLC

Metro Loan LLC

Citlo Loan LLC

NRDP Loan LLC

CGSR Loan LLC

ABCDW III Loan LLC

TLDP Loan LLC

ASA IX Loan LLC

70 SP Loan LLC

ZDC IV Loan LLC

Centerpoint I Loan LLC



## Exhibit "D"

### Form of Draw Request

#### DRAW REQUEST

Pursuant to Section 2.1(b) of that certain Loan Agreement dated as of June \_\_, 2009, by and between Universal-SCP 1, L.P., an Arizona limited partnership ("Lender"), and the followings persons and entities (collectively called the "Borrower"): Kevin O'Halloran, not individually but solely as trustee ("Liquidating Trustee") of the ML Liquidating Trust established under the ML Liquidating Trust Agreement dated June \_\_, 2009 ("Liquidating Trust Agreement"), ML Manager, LLC, an Arizona limited liability company ("ML Manager"), and each of the Loan LLCs ("Loan LLC's") listed on Exhibit A to the Loan Agreement, the Borrowers hereby request an Advance of funds under the Loan as follows:

Amount of Advance Requested: \$ \_\_\_\_\_

Date of Advance: Five Business Days after Lender's receipt of this Draw Request

Purpose of Advance: For expenses for which Advances are permitted under the Loan Agreement

The Advance should be divided as indicated below

ML Manager for the Loan LLCs	Liquidating Trustee
Amount \$ _____	Amount \$ _____
Wiring Instructions _____ _____	Wiring Instructions _____ _____

Executed this \_\_ day of \_\_\_\_\_, 20 \_\_.

ML Borrower, LLC	
By: _____ Authorized Manager	_____ Kevin O'Halloran, Liquidating Trustee

**Exhibit "E"**  
**List of Certain Potential Claims or Set Off Rights and Other Liabilities**

Lender understands that there may be set off rights and other liabilities stated in the approximately 1800 proofs of claims filed in the Bankruptcy which proofs of claims Borrower has not reviewed and that set off rights may exist which are not set forth in any proof of claim, but Borrower specifically wishes to bring to the attention of Lender the entities that are or might assert such claims or set off rights or other liabilities which came to the attention of Borrower in the Chapter 11 Case. This list is not an exhaustive list but is based upon Borrower's best estimate and limited available information. The Borrower is not the Debtor and does not have access to all the available information on such claims. To the best of Borrower's information, the entities asserting such proofs of claim and/or set off rights and other liabilities include, but are not limited to, the following:

1. SOJAC I, LLC and Guarantors—modified with court order but no release of claims
2. CGSR, LLC and CS 11 Maricopa, LLC and Guarantors—settlement included release
3. Rightpath Limited Development Group, LLC, Maryland Way Partners, LLC, KML Development and Guarantors—settlement included release
4. University & Ash, LLC and Roosevelt Gateway LLC, Roosevelt Gateway II LLC and Guarantors
5. Grace Entities, including but not limited to, Central & Monroe, LLC, Osborn III Partners, LLC, 44<sup>th</sup> & Camelback, LLC, 70<sup>th</sup> Street Property, LLC, Portales Place Property, LLC, KGM Builders Inc. and the Guarantors
6. Riverfront Commons, LLC and Cottonwood Parking Inc. and Guarantors
7. Foothills Plaza IV, LLC and Guarantors, including Drago Family Trust
8. Nat'l Retail Dev. Partners I, LLC and Guarantors
9. PDG Los Arcos, LLC and Guarantors
10. Tempe Land Company, LLC and Guarantors
11. HH20 LLC and Guarantors, including Eric and Cheryl Faas and Jason and Kristina Saveli
12. Zacher Development Company and Guarantors

In addition several of the properties upon which the debtor foreclosed or took back in some manner (and which may be REO) have mechanics lien holders and materialmen who might claim prior liens. They are Chateaux on Central (lien is asserted by Gold Creek Inc. and its subcontractors), Fountain Hills (which has a small mechanics lien which may be asserting priority), and Rodeo Ranch (small lien claimed against it may be asserting priority).

In addition to the above items, there may be mechanics lien holders or materialmen who assert claims and liens against the borrowers of the Debtor on their properties which are subject to the ML Deeds of Trust and ML Notes. This list does not include such mechanics liens or materialmen lien holders on borrower's properties who may be asserting a break in priority, however, such borrower's properties include, but are not limited to, Tempe Land Company, Central & Monroe, Osborn III, and Metropolitan Lofts.