

AGREEMENT FOR PURCHASE AND SALE OF LOAN

This Agreement for Purchase and Sale of Loan ("Agreement") is made on _____, 20____, by and between _____, a _____ ("Seller"), and _____, a _____ company ("Buyer"), with reference to the following facts:

RECITALS

A. On or about _____, 20____, Seller, as Lender, entered into a loan transaction pursuant to the terms of which Seller loaned to _____ ("Borrower") the sum of _____ Thousand and ____/100 Dollars (\$_____) (the "Loan"). The Loan is evidenced by other documents (of even date), including a Construction Loan Agreement (as amended or superseded, "CLA") and a Promissory Note ("Note"), true and correct copies of which are attached hereto and marked Exhibits "A" and "B," respectively.

B. To secure the Loan, Borrower executed and delivered to Seller a Deed of Trust dated _____, 20____, encumbering the real property as more particularly described therein (the "Property"), serving as collateral for the Loan. The Property was developed as _____ homes (the "Project"). The Deed of Trust was recorded in the office of the County Recorder of _____ County, California, on _____, 20____, as Instrument No. _____ (the "Deed of Trust").

C. At the time of the Loan, Lender obtained a Commercial Guaranty (the "Commercial Guarantees") from each of _____, _____, _____, and _____, (the "Guarantors"), and in addition, obtained a Guaranty of Completion and Performance (as amended or superseded, "GCP") from _____, _____, and _____ separately guaranteeing the performance of all of the terms of the Loan and the Loan Documents, as well as completion of the Project.

D. The Loan was modified on _____, 20____, evidenced by a Change in Terms Agreement of same date, which, among other things, extended the maturity date and added real property collateral through a Construction Deed of Trust dated _____, 20____ (the "Second Deed of Trust"). The Second Deed of Trust was recorded in the Office of the County Recorder of _____ County, California, on _____, 20____ as Instrument No. _____. The Deed of Trust and Second Deed of Trust are referred to herein collectively as the "Deeds of Trust." In addition, Lender obtained a new GCP from Guarantors separately guaranteeing the performance of all of the terms of the Loan and the Loan Documents, as well as completion of the Project. The original Commercial Guarantees, the GCP and the new GCP are collectively referred to herein as the "Guarantees."

E. The Loan was modified again on _____, 20____, which, among other things, extended the Loan amount to \$_____, extended the maturity date and provided for a new CLA.

F. Buyer and Seller acknowledge and incorporate by reference all other documents evidencing the Loan and not specifically referenced in these Recitals. The Note, CLA, Deed of

Trust, Second Deed of Trust, Note, and any and all other documents evidencing, collateralizing, and securing the Loan are hereafter collectively referred to as the "Loan Documents."

G. The Loan matured on _____, 20____. Seller made demand on Borrower and accelerated and declared the unpaid balance of the Note all due and payable. Borrower did not pay Seller the Loan balance and Seller began a non-judicial foreclosure of its Deeds of Trust on _____, 20____ (the "Default").

H. The outstanding balance on the Loan as of the date of this Agreement is \$_____
_____.

I. As a result of the Default, Seller commenced foreclosure on _____, 20____ by having the trustee under the Deeds of Trust record a Notice of Default in the Office of the County Recorder of _____ County, California, under Instrument No. _____ ("Non-Judicial Foreclosure").

J. Buyer desires to purchase, and Seller desires to sell, the Loan, including the Guarantees and all collateral and security for the Loan, on the terms and conditions as more specifically hereafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** All of the above Recitals are true and correct and are incorporated herein.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the following definitions:

2.1 "Business Day" means any day that is not a Saturday, Sunday, or a holiday as defined in the California Government Code.

2.2 "Buyer's Address" means _____.

2.3 "Closing" shall mean the date specified in Paragraph 7, below.

2.4 "Deeds of Trust" shall have the meaning set forth in Recital D above.

2.5 "Deposit" means Immediately Available Funds in the amount of _____
_____ Thousand Dollars (\$_____).

2.6 "Due Diligence Period" shall mean the period starting from the date upon which Seller and Buyer have fully executed this Agreement and ending on _____, 20____.

2.7 "Escrow Holder" shall mean _____ Title Insurance Company, _____
_____, c/o _____.

2.8 “Loan” shall have the meaning set forth in Recital A above.

2.9 “Loan Documents” shall have the meaning set forth in Recital A above.

2.10 “Official Records” means the office of the County Recorder of _____

County, California.

2.11 “Purchase Price” means Immediately Available Funds in the amount of approximately \$_____ for each of the remaining ____ Homes at the Project which total amount is currently estimated to be _____ Dollars (\$_____).

2.12 “Seller’s Address” means:

Attention: _____
Facsimile No.: _____
Telephone No.: _____
E-mail: _____

With a copy to:

Attention: _____
Facsimile No.: _____
Telephone No.: _____
E-mail: _____

2.13 “Servicing File” means any documents relating to the origination, underwriting and servicing of the Loan, including without limitation, any closing binder for the Loan and any and all files, correspondence, legal opinions, third-party appraisal, third-party environmental report, the latest third-party property inspection or construction engineering report, any plans and specifications or sample floor plans for improvements to be constructed on the Project, third-party engineering report, architectural report, draw requests (including all accompanying documentation) operating statements, rent rolls, leases, financial statements, organizational documents, insurance certificates and/or policies, proformas, budgets, marketing and sales reports, loan statements, bank statements, photographs and any other financial or other information pertaining to the Loan, Property, Project, Borrower and/or Guarantors.

3. **Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Loan, the Loan Documents and the Guarantees, for the Purchase Price and upon the terms and conditions herein set forth.

4. **Payment of Purchase Price.** The Purchase Price for the Property shall be paid by Buyer to Seller as follows:

4.1 **Deposit.** Within one (1) Business Days following the Opening of Escrow, Buyer shall place the Deposit with Escrow Holder, in cash, by a bank or cashier's check made payable to Seller, or by a confirmed wire transfer of funds ("Immediately Available Funds"). Escrow Holder shall place the Deposit into an interest-bearing account. The Deposit shall be applied to the Purchase Price upon the Closing.

4.2 **Closing Funds.** On or before 12:00 p.m. on the day of Closing, Buyer shall place the balance of the Purchase Price with Escrow Holder in Immediately Available Funds.

5. **Non-Judicial Foreclosure.** Buyer may continue the Non-Judicial Foreclosure after Closing, at Buyer's sole and exclusive expense. Should Buyer continue the Non-Judicial Foreclosure, then Buyer hereby indemnifies and agrees to hold harmless Seller from all expense and liability arising from or related to the Non-Judicial Foreclosure first arising after the Closing and only to the extent such expense or liability is not incurred as a result of Seller's negligence or willful misconduct. Buyer's indemnification and hold harmless shall survive the Closing.

6. **Due Diligence Period.** Buyer shall have the Due Diligence Period to conduct its own investigation and review of the Loan, Loan Documents, the Guarantees, and the Property.

6.1 **Seller's Deliveries to Buyer.** Within two (2) business days of mutual execution of this Agreement, Seller shall deliver to Buyer the following documents ("Due Diligence Items") if in Seller's possession, custody or control:

6.1.1 All appraisals for the Property;

6.1.2 All organizational documents of Borrower;

6.1.3 All financial statements of any guarantors;

6.1.4 A complete accounting of the Loan, including a general ledger showing all loan activity including disbursements, partial payoffs and interest accruals;

6.1.5 All preliminary reports and policies of title insurance pertaining to the Property;

6.1.6 All UCC-1 financing statements filed in connection with the Property;

6.1.7 The Servicing File.

Seller will otherwise cooperate reasonably with Buyer in its examination of the Due Diligence Items and its due diligence review of the Due Diligence Items, Loan Documents, Guarantees, Property and Project.

7. **Closing.** The Closing shall be on or before _____, 20____.

8. **Title Policy.** Seller presently has an ALTA lender's policy of title insurance policy issued by _____ Title Company. Seller shall assign the ALTA lender's policy and any endorsements to that policy to Buyer insuring, in an amount not less than the Purchase Price, that as of the date of the Closing, the Deeds of Trust are valid first priority liens on the respective Property, subject only to (i) the lien for current real estate taxes and assessments not yet due and payable, and (ii) covenants, conditions and restrictions, rights of way, easements and other matters reasonably acceptable to Buyer. Seller shall, at its sole cost and expense, obtain a Form 104 Endorsement (or equivalent) to the title policy to be issued in Buyer's name by the original issuer of the title policy pursuant to which the lien status of the Deeds of Trust shall be confirmed to Buyer.

9. **Conditions to Closing.**

9.1 **Conditions to Buyer's Obligations.** Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to Buyer's review and approval (or waiver) of the Loan, the Loan Documents, the Due Diligence Items, the Guarantees and the Property prior to the end of the Due Diligence Period. If Buyer approves or waives its review above on or prior to the end of the Due Diligence Period, Buyer shall conclusively be deemed to be satisfied with all aspects of the Loan and the Loan Documents, including the CLA, Note and Deeds of Trust, and the Deposit shall thereafter be non-refundable to Buyer, except if Seller fails to perform. Buyer hereby acknowledges that Seller shall have no duty or obligation of any kind whatsoever to amend, modify or in any way ameliorate or attempt to amend, modify or ameliorate any matter or condition disapproved by Buyer. If by the end of the Due Diligence Period, Buyer elects not to continue with its purchase, Buyer shall notify Seller and Escrow Holder in writing, and Escrow Holder shall return the Deposit to Buyer within three (3) days of Buyer's request without need for any further action on the part of Seller.

9.2 **Conditions to Seller's Obligations.** For the benefit of Seller, the Closing shall be conditioned upon the timely occurrence or satisfaction (on or prior to the Closing) by Buyer of all obligations required to be performed by Buyer under this Agreement for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) and the representations and warranties of Buyer contained herein shall remain true and accurate in all respects.

10. **Closing Deposits by Seller.** Concurrently with Buyer's payment to Seller of the Purchase Price, Seller shall deposit or cause to be deposited with Buyer the following documents and instruments:

10.1 **Assignment.** The assignment of the CLA, Note, Deeds of Trust, Guarantees and all other Loan Documents and the recordable Assignment of Deeds of Trust in the form attached hereto and marked as Exhibits "C," and "D", respectively, [PLEASE PROVIDE ALL EXHIBITS] duly executed by Seller and acknowledged.

10.2 **Allonge.** An allonge duly endorsed by Seller in blank, without recourse, evidencing Seller's endorsement of the Note to Buyer.

11. **Closing Deposits by Buyer.** In addition to the Deposit, Buyer shall deposit or cause to be deposited with Escrow Holder the balance of the Purchase Price in the amounts and at the times set forth in this Agreement, concurrently upon Seller's delivery to Buyer of the items listed in Paragraph 10, above.

12. **Prorations.** There shall be no proration between Buyer and Seller as of the Closing.

13. **Seller's Representations, Warranties and Covenants.** Seller hereby makes the following representations and warranties to Buyer, each of which is material and may be relied upon by Buyer and will be true and correct as of the Closing:

13.1 **Authority.** Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution and delivery of this Agreement has been duly authorized and no other action by Seller is requisite to the valid and binding execution and delivery of this Agreement, except as otherwise expressly set forth herein.

13.2 **Foreign Person Affidavit.** Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

13.3 **Conflict with Existing Laws or Contracts.** The execution and delivery of this Agreement and the performance by the Seller of its obligations thereunder will not conflict with or be a breach of any material provision of any law, regulation, judgment, order, decree, writ, injunction, contract, agreement or instrument to which the Seller is subject; and the Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery and performance by the Seller of this Agreement.

13.4 **Litigation.** There is no action, suit, investigation or proceeding of which the Seller has received actual notice in any court or by or before any other governmental agency or instrumentality which would materially affect the Loan Documents, Property or ability of Seller to carry out the transactions contemplated by this Agreement.

13.5 **Ownership.** Seller is the sole owner of the Loan free and clear of all liens, security interests and encumbrances in favor of any third party. The Loan is not subject to any prior assignment, conveyance, transfer or participation or agreement to assign, convey, transfer or participate, in whole or in part.

13.6 **Due Diligence Items.** The Due Diligence Items constitute all material information, documents, instruments and agreements in Seller's possession, custody or control related to the Loan. The ALTA policy is in effect and enforceable.

13.7 **No Modification.** Except by written instrument or other written documentation delivered to Buyer, the Seller has not modified the Note or other Loan Documents or satisfied, cancelled or subordinated the Note or other Loan Documents in whole or in part or released all or any material portion of the Property from the liens of the Deeds of Trust or executed any instrument of release, cancellation or satisfaction.

13.8 Balance of Note. As of _____, 20____, the outstanding principal balance of the Note is [\$_____] (the “Note Balance”) and interest accrued to _____, 20____ is owing in the amount of _____ Dollars (\$_____) (based on default interest commencing _____, 20____).

13.9 Disbursement of Loan Proceeds. The Borrower does not have the right to disbursement of additional loan proceeds or future advances with respect to the Loan.

13.10 Cross-Collateralization. The Loan is not secured by the same property as any other loan held by Seller or its affiliated entities, which is not the subject of this Agreement and to the best of Seller’s knowledge is not cross-defaulted with any loan.

13.11 Offsets. Seller has taken no action which would give rise to, and Seller has not received any written notice of, any defense, counterclaim or right of offset or rescission has been asserted or, to the best of Seller’s knowledge, threatened against Seller by the Borrower or Guarantors with respect to the Note or other Loan Documents.

13.12 Bankruptcy. To the best of Seller’s knowledge, Borrower and Guarantors are not currently debtors in any state or federal bankruptcy or insolvency proceeding.

13.13 No Default. There exists no payment default and, to the best of Seller’s knowledge, no material non-payment default, breach, violation or event of acceleration under the Loan Documents, except for that certain Default noted in recital G above.

Seller agrees, on demand, to defend, indemnify, and hold harmless Buyer and its affiliates, and their respective employees, agents and representatives, from and against any and all harm, liability, judgment, damage, claim, demand, cost, expense (including reasonable legal fees and expenses) or loss (“Claims”) suffered or incurred by reason of any representation or warranty made by Seller in this Agreement having been untrue, incorrect, false or misleading in any material respect when made or deemed made or the breach or alleged breach by Seller of any covenant or agreement made by Seller herein.

14. **Buyer’s Covenants, Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Loan and Loan Documents to Buyer, Buyer makes the following covenants, representations and warranties, each of which is material and is being relied upon by Seller:

14.1 Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

14.2 Buyer’s Inspection and Investigation. Buyer acknowledges and agrees that, except as set forth herein, it is purchasing the Loan, the Loan Documents and the Guarantees based solely on Buyer’s inspection and investigation of the Loan, the Loan Documents, the Guarantees and the Property and Buyer’s purchase is “AS IS, WHERE IS”,

without relying upon any representations or warranties, express, implied or statutory, of any kind other than that in Paragraph 13, above.

14.2.1 Without limiting the above, Buyer acknowledges that except as expressly set forth herein, neither Seller nor any other party has made any representations or warranties, express or implied, on which Buyer is relying as to any matters, directly or indirectly, concerning the Loan, the Loan Documents, the Guarantees and the Property, including, but not limited to, the land, the square footage of the Property, the improvements and infrastructure, the development rights and exactions, expenses associated with the Property, taxes, assessments, bonds, permissible uses, title exceptions, water or water rights, topography, utilities, availability or capacity of utilities, zoning of the Property, soil, subsoil, the purposes for which the Property is to be used, drainage, environmental or building laws, existence of building permits of any nature, rules or regulations, toxic waste or Hazardous Materials or any other matters affecting or relating to the Property. Buyer hereby expressly acknowledges that no such representations have been made.

14.2.2 Without limiting the generality of the foregoing, Buyer hereby expressly waives, releases and relinquishes any and all claims, causes of action, rights or remedies Buyer may now or hereafter have against Seller and the affiliates, members, directors, officers, attorneys, employees, partners, shareholders and agents of Seller, whether known or unknown, regarding any matters affecting the Loan and the Loan Documents, but specifically excluding the obligations of Seller arising under this Agreement, including, but not limited to, the Note, Deeds of Trust, and/or the condition of the Property in general, including, without limitation, the status and condition of improvements which has been constructed on the Property. Buyer hereby acknowledges and agrees that it has read and is familiar with the provisions of California Civil Code section 1542 (“Section 1542”), which is set forth below:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

By initialing below, Buyer hereby waives the provisions of Section 1542 solely in connection with the matters which are the subject of the foregoing waivers and releases:

Buyer's Initials

The waivers and releases by Buyer herein contained shall survive the Closing and the recordation of the Assignment and shall not be deemed merged into the Assignment upon its recordation.

15. Remedies.

15.1 Seller's Remedies. If at the Closing, Buyer fails to perform its obligations under this Agreement, and fails to cure the same within three (3) Business Days after receipt of

written notice from Seller advising Buyer of such failure, then Buyer shall be deemed to be in default under this Agreement, and in any such event, the Seller may be instructed by Seller to cancel the sale and shall thereupon be released from its obligations hereunder. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damage by reason of Buyer's default under this Agreement. Accordingly, Buyer and Seller agree that in the event of default by Buyer under this Agreement after the expiration of the Due Diligence Period, it would be reasonable at such time to award Seller, as Seller's sole and exclusive remedy, "Liquidated Damages" equal to the amount represented by the Deposit (to the extent deposited with Seller hereunder, as applicable) plus any and all accrued interest thereon.

Seller and Buyer acknowledge that they have read and understand the provisions of this Paragraph 15 and by their initials immediately below agree to be bound by its terms.

Seller's Initials

Buyer's Initials

15.2 **Buyer's Remedies.** If the Closing does not occur due to a default on the part of the Seller, then the Buyer may, in the Buyer's sole and absolute discretion, elect to either: (a) terminate this Agreement, in which the Deposit shall promptly be refunded to Buyer and neither Buyer nor Seller shall have any liability for any act or omission occurring prior to or after such termination; (b) sue for specific performance; or (c) pursue any other rights or remedies that Buyer may have against Seller at law, in equity, or otherwise with respect to such default by Seller.

16. **Notices.** All notices, approvals, demands, or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by a nationally recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by telecopy and shall be deemed received upon the date the party actually receives such notice. If a party receives a notice after 5:00 p.m. on any day or receives a notice on a day which is not a Business Day, the notice shall be deemed received on the next Business Day. Any notice, request, demand, direction or other communication sent by cable, telex or telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. All notices to Seller shall be sent to Seller's Address with a copy to Seller's Counsel's address. All notices to Buyer shall be sent to Buyer's Address with a copy to Buyer's Counsel's address (if applicable). All notices to Seller shall be sent to Seller's Address. Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

17. **Dispute Resolution.** Any controversy, claim or dispute arising out of or relating to this Agreement, the breach thereof or the relationship between the parties shall be settled by binding arbitration in _____, California, conducted before a retired judicial officer. Each party shall provide the other party with a list of three (3) proposed retired judicial officers to act as the arbitrator. If the parties cannot agree on an arbitrator from the lists, then the arbitration shall take place before JAMS in _____, California, and the arbitrator shall

be chosen by JAMS. The rules of such arbitration shall be established by the arbitrator, who shall have the authority to award attorneys' fees and costs. The provisions of California Code of Civil Procedure section 1283.05 or like federal statute shall apply to the arbitration, provided that requests for admission and interrogatories shall not be allowed, absent good cause as determined by the arbitrator, and depositions and requests for production shall be permitted. The arbitrator shall decide all discovery disputes.

18. **Legal Fees.** If any action or suit is brought by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement or any other dispute between the parties concerning this Agreement or the Loan, then in that event, the prevailing party in such action or dispute, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, attorneys' fees and experts' fees costs and expenses incurred in the following: (i) post judgment motions; (ii) contempt proceeding; (iii) garnishment, levy, and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This paragraph shall survive any termination of this Agreement prior to the Closing and shall also survive the recordation of the Assignment and the Closing and shall not be deemed merged into the Assignment upon its recordation.

19. **Assignment.** Except for an entity controlled by Buyer, Buyer shall not assign, transfer or convey its rights and/or obligations under this Agreement and/or with respect to the Loan without the prior written consent of Seller, which consent Seller may withhold in its sole, absolute and subjective discretion. Any attempted assignment without the prior written consent of Seller shall be void and Buyer shall be deemed in default hereunder. Any assignment shall not relieve, alter or release Buyer from its primary obligations or liability under this Agreement.

20. **Confidentiality.** Except as specifically provided herein, Buyer shall not disclose any of the terms or provisions of this Agreement prior to the Closing to any person or entity not a party to this Agreement, and Buyer shall keep all materials provided or made available to Buyer by Seller, and all materials generated by Buyer in the course of conducting its inspections, review of books and records, and other due diligence activities relating to the Loan (including, without limitation, matters relating to the environmental condition of the Property), whether obtained through documents, oral or written communications, or otherwise (collectively, the "Information"), in the strictest confidence; provided, however, Buyer may make necessary disclosures to potential lenders, partners, consultants and attorneys. Under no circumstances shall any of the Information be used for any purpose other than the investigation of the Loan in connection with its purchase by Buyer as contemplated under this Agreement. If the Closing fails to occur, Buyer shall return to Seller all original materials, together with any copies made by Buyer, and all copies of any reports or compilations of data generated from materials or other Information provided to Buyer, and Buyer will cause third parties acting on behalf of Buyer to deliver to Seller all such materials in their possession.

21. **Broker's Commission.** Except for a commission payable by Buyer to _____ upon Closing, Seller and Buyer each represent and warrant to the other that no other broker's commission is due in connection with this Agreement, and each party indemnifies and holds the other harmless against any claim brought by a third party against that party for a commission.

22. **Miscellaneous.**

22.1 **Required Actions of Buyer and Seller.** Buyer and Seller agree to execute such instruments and documents, shall cooperate with each other and diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Closing in accordance with the provisions hereof.

22.2 **Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof. All references herein to a particular time of day shall be deemed to refer to California time.

22.3 **Counterparts; Facsimile Execution.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopy shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Agreement by telecopy shall also deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. Signature, initial and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) executed document.

22.4 **Captions.** Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

22.5 **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto.

22.6 **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

22.7 **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

22.8 **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

22.9 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

22.10 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, including any letter of intent or letter of understanding previously executed by such parties, if any.

23. **Post Closing Obligations.**

23.1 At the request and sole cost and expense of the Buyer, the Seller shall cooperate with the Buyer in executing written requests to each hazard, casualty and liability insurer, issuing a policy of insurance obtained by Seller with respect to the Loan, requesting an endorsement of its policy of insurance effective on the Closing adding the Buyer as the mortgagee, the loss payee and/or an insured named therein, as the case may be, together with instructions that such endorsement be forwarded directly to the Buyer, with a copy to the Seller at the address herein specified for notices. Each such request shall be prepared by the Buyer at its sole cost and expense, and any additional premium or other charge in connection therewith shall be paid by the Buyer.

23.2 The Buyer and Seller shall, within five (5) business days after the Closing or such other period as may be required by applicable regulations or laws, give notice of this transfer to the Borrower and Guarantors by first class U.S. Mail.

23.3 From time to time after the Closing, the Seller shall pay to the Buyer, promptly after receipt thereof, any payments, proceeds and/or awards, received by Seller for application to the indebtedness of a Borrower under the Loan, and not already so paid to the Buyer, but only after all payments due to Seller from Buyer hereunder have been paid to Seller.

[Signatures on Following Page]

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

“Seller”

_____,
a _____

By: _____
Name: _____
Title: _____

“Buyer”

_____,
a _____

By: _____,
a _____,
Its _____

By: _____
Name: _____
Title: _____