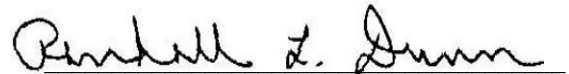


September 10, 2014

Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

Bay Club Partners-472, LLC,

Debtor.

Case No. 14-30394-rld11

**ORDER CONFIRMING DEBTOR'S
SECOND AMENDED PLAN OF
REORGANIZATION (AUGUST 29, 2014)**

Debtor's Second Amended Plan of Reorganization (August 29, 2014) came on for hearing on September 5, 2014. Legg Mason Real Estate CDO I, Ltd ("CDO") filed a statement in support of the Second Amended Plan [ECF No. 296]. Trail Ranch Partners filed an objection to the Second Amended Plan [ECF No. 294]. The Court heard and considered the evidence introduced at the hearing, the arguments of counsel, and the records in this case; now, therefore,

THE COURT HEREBY FINDS AND CONCLUDES that:

A. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Second Amended Plan is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the confirmation hearing was provided to creditors and other parties in interest pursuant to Bankruptcy Rules 2002, 3017 and 3020, and such notice was reasonable, adequate, and sufficient.

C. The disclosure statement and ballots were transmitted and served in compliance with the Bankruptcy Code and the Bankruptcy Rules. Votes for acceptance of the Second Amended Plan were solicited in good faith and in compliance with Sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 2002, 3017 and 3018.

D. Debtor filed its initial Plan of Reorganization [ECF No. 115] and Disclosure Statement [ECF No. 116] on April 11, 2014.

E. Debtor filed its First Amended Plan of Reorganization [ECF No. 178] and First Amended Disclosure Statement [ECF No. 179] on June 30, 2014. The Court entered an order approving Debtor's First Amended Disclosure Statement on July 1, 2014 [ECF No. 180] and the First Amended Plan was noticed for acceptance or rejection to all creditors and parties in interest.

F. The sole impaired classes, Classes 3 and 4, voted to reject the First Amended Plan.

G. Debtor filed its Second Amended Plan of Reorganization [ECF No. 295] on August 29, 2014. The Second Amended Plan reflects a settlement and compromise (the "Compromise") between Debtor and CDO, the holder of the Class 3 claim and the controlling vote in Class 4.

H. The Compromise, as set forth in the Second Amended Plan, is in the best interest of creditors and Debtor's estate and, to the extent necessary, fulfills the requirements of Bankruptcy Rule 9019.

I. The Second Amended Plan, as it amended Debtor's First Amended Plan of Reorganization, does not adversely change the treatment of the claim of any creditor or the interest of any equity holder who has not accepted in writing the modification.

J. Under the facts and circumstances of the case, there is no need for additional disclosure pursuant to 11 U.S.C. § 1125.

K. CDO has filed new ballots accepting the Second Amended Plan based on the Compromise. The Court approves the change of ballots. The Court approves the Summary of Acceptances and Rejections of ballots filed by the Debtor [ECF No. 298].

L. CDO has acted in good faith and at arms-length throughout the case including but not limited to its positions on all issues arising in the case, its purchase of claims, its negotiations with respect to the Second Amended Plan, and its filing of ballots accepting the Second Amended Plan.

M. The Second Amended Plan complies with the applicable provisions of the Bankruptcy Code and satisfies Section 1129(a)(1) of the Bankruptcy Code. The Second Amended Plan complies with the classification and other requirements of Bankruptcy Code Sections 1122 and 1123.

N. Debtor has complied with all applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules, and has satisfied Section 1129(a)(2) of the Bankruptcy Code.

O. The Second Amended Plan was proposed in good faith and not by any means forbidden by law, and Section 1129(a)(3) of the Bankruptcy Code has been satisfied.

P. Section 1129(a)(4) of the Bankruptcy Code has been satisfied because all of Debtor's payments for services or costs and expenses have been approved or will be made with Court approval.

Q. Debtor has disclosed the identity and affiliation of any individual proposed to serve, after confirmation of the Second Amended Plan, as a director or officer of Reorganized Debtor, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy. Debtor has disclosed the identity of any insider that will be employed or retained by Reorganized Debtor and the nature of any compensation for such insider. Therefore, Bankruptcy Code Section 1129(a)(5) has been satisfied.

R. No governmental regulatory commission has jurisdiction over the rates of Debtor, and Bankruptcy Code Section 1129(a)(6) is not applicable.

S. Bankruptcy Code Section 1129(a)(7) has been satisfied because each holder of a Claim in an impaired class of claims has accepted the Second Amended Plan or will receive or retain under the Second Amended Plan on account of such Claim property of a value as of the Effective Date of the Second Amended Plan that is not less than the amount such holder would receive or retain if Debtor was liquidated under Chapter 7.

T. Bankruptcy Code Section 1129(a)(8) has been satisfied because all impaired classes accepted the Second Amended Plan.

U. Bankruptcy Code Section 1129(a)(9) is satisfied because the Second Amended Plan provides for payment in full of all Administrative Claims on the Effective Date of the Second Amended Plan unless the holder of a claim agrees to different treatment.

V. At least one class of impaired claims has accepted the Second Amended Plan and Bankruptcy Code Section 1129(a)(10) is satisfied.

W. Bankruptcy Code Section 1129(a)(11) is satisfied because confirmation of the Second Amended Plan is not likely to be followed by the liquidation or further financial reorganization of Debtor.

X. All fees payable under 28 U.S.C. § 1930 have been paid or the Second Amended Plan provides for the payment of all such fees on the Effective Date of the Second Amended Plan. The Second Amended Plan, therefore, satisfies Bankruptcy Code Section 1129(a)(12).

Y. Bankruptcy Code Sections 1129(a)(13) – (16) do not apply to the Second Amended Plan. Now, therefore,

IT IS HEREBY ORDERED that:

1. The Second Amended Plan is confirmed in all respects pursuant to 11 U.S.C. § 1129. All objections have either been overruled or are addressed in this Order.

Capitalized terms used but not defined in this Order shall have the meaning assigned to them in the Second Amended Plan. A copy of the Second Amended Plan is attached as **Exhibit 1** hereto.

2. The Effective Date of the Second Amended Plan is September 8, 2014.

3. CDO's Class 3 Secured Claim is Allowed in the amount of \$27,971,415, plus attorneys' fees and costs as allowed by Court Order pursuant to Local Bankruptcy Rule 2016-1(h). CDO's reasonable post-Effective Date fees and costs will be reimbursed by Reorganized Debtor as set out in the Second Amended Plan and will not be subject to further Court approval.

4. Reorganized Debtor shall provide to Equity Security Holders all documents or reports that Reorganized Debtor provides to CDO at the same it provides any such documents or reports to CDO.

5. This Court shall retain jurisdiction to resolve any controversy or claim as set forth in the Second Amended Plan, including but not limited to all disputes relating to distributions to Equity Security Holders.

6. Debtor, Reorganized Debtor, and their agents and manager, are hereby authorized and directed to take all actions, and enter into and execute all documents, reasonably necessary or appropriate to effectuate the Second Amended Plan and to consummate the transactions contemplated by the Second Amended Plan or this Order. In the event of a purchase of Midtown on Main by CDO pursuant to Section 5.1.8 of the Second Amended Plan, such purchase will be pursuant to a purchase and sale agreement in form and content substantially similar to Exhibit 1 to the Second Amended Plan.

7. Pursuant to Section 1141 of the Bankruptcy Code, except as otherwise expressly provided in the Second Amended Plan or this Order, the distributions and rights provided in the Second Amended Plan and this Order shall be in complete satisfaction and discharge of all Claims, whether known or unknown, against Debtor that arose prior to the

Effective Date, provided that nothing in the Second Amended Plan or this Order, shall affect the liability of any entity other than the Debtor on a Claim.

8. Pursuant to Section 1146(a) of the Bankruptcy Code, the transfer or sale of Midtown on Main pursuant to, in implementation of and as contemplated by the Second Amended Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any city, county or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to this Order, be ordered and directed to accept such instrument without requiring the payment of any documentary stamp tax, deed stamps, transfer tax, intangible tax or similar tax.

9. If there is any conflict between the Second Amended Plan and this Order, the terms of this Order shall control.

10. To the extent any provision designated herein as a finding of fact is more properly characterized to be a conclusion of law, it shall be so deemed, and vice versa.

11. This Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications or other supporting documents.

12. This Order is a Final Order. There shall be no stay of this Order under Bankruptcy Rule 3020(e) and the period in which an appeal must be filed shall commence immediately upon the entry hereof in accordance with Bankruptcy Rule 3020(e).

#

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

TONKON TORP LLP

By /s/ Ava L. Schoen

Albert N. Kennedy, OSB No. 821429

Ava L. Schoen, OSB No. 044072

888 S.W. Fifth Avenue, Suite 1600

Portland, OR 97204-2099

Telephone: 503-221-1440

Facsimile: 503-274-8779

E-mail: al.kennedy@tonkon.com

ava.schoen@tonkon.com

Attorneys for Debtor

cc: List of Interested Parties

1 **Albert N. Kennedy**, OSB No. 821429 (Lead Attorney)

2 Direct Dial: (503) 802-2013

3 Facsimile: (503) 972-3713

4 E-Mail: al.kennedy@tonkon.com

5 **Ava L. Schoen**, OSB No. 044072

6 Direct Dial: (503) 802-2143

7 Facsimile: (503) 972-3843

8 E-Mail: ava.schoen@tonkon.com

9 **TONKON TORP LLP**

10 1600 Pioneer Tower

11 888 S.W. Fifth Avenue

12 Portland, OR 97204

13 Attorneys for Debtor

14 UNITED STATES BANKRUPTCY COURT

15 DISTRICT OF OREGON

16 In re

Case No. 14-30394-rld11

17 Bay Club Partners-472, LLC,

**DEBTOR'S SECOND AMENDED
PLAN OF REORGANIZATION
(AUGUST 29, 2014)**

18 Debtor.

26 DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION (AUGUST 29, 2014)

TONKON TORP LLP
888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204
503-221-1440

TABLE OF CONTENTS

1		
2		
3	ARTICLE 1	DEFINITIONS.....1
4	ARTICLE 2	UNCLASSIFIED CLAIMS6
5	ARTICLE 3	CLASSIFICATION7
6	ARTICLE 4	TREATMENT OF UNIMPAIRED CLASSES8
7	ARTICLE 5	TREATMENT OF IMPAIRED CLASSES.....8
8	ARTICLE 6	DISPUTED CLAIMS; OBJECTIONS TO CLAIMS.....10
9	ARTICLE 7	IMPLEMENTATION OF THE PLAN11
10	ARTICLE 8	EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....14
11	ARTICLE 9	EFFECT OF CONFIRMATION15
12	ARTICLE 10	RETENTION OF JURISDICTION15
13	ARTICLE 11	ADMINISTRATIVE PROVISIONS.....17
14	ARTICLE 12	MISCELLANEOUS PROVISIONS.....18

1 Bay Club Partners—472, LLC, as debtor and debtor in possession, proposes this Plan
2 of Reorganization (the "Plan") pursuant to Section 1121(a) of Title 11 of the United States
3 Code.

4 This Plan provides for the repayment of Debtor's obligations to its Creditors. The
5 Plan provides for payment to all Creditors as set forth below.

6 ARTICLE 1

7 DEFINITIONS

8 Definitions of certain terms used in this Plan are set forth below. Other terms are
9 defined in the text of this Plan or the text of the Disclosure Statement. In either case, when a
10 defined term is used, the first letter of each word in the defined term is capitalized. Terms
11 used and not defined in this Plan or the Disclosure Statement shall have the meanings given
12 in the Bankruptcy Code or Bankruptcy Rules, or otherwise as the context requires. The
13 meanings of all terms shall be equally applicable to both the singular and plural, and
14 masculine and feminine, forms of the terms defined. The words "herein," "hereof," "hereto,"
15 "hereunder," and others of similar import, refer to the Plan as a whole and not to any
16 particular section, subsection or clause contained in the Plan. Captions and headings to
17 articles, sections and exhibits are inserted for convenience of reference only and are not
18 intended to be part of or to affect the interpretation of the Plan. The rules of construction set
19 forth in Section 102 of the Bankruptcy Code shall apply. In computing any period of time
20 prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.
21 Any capitalized term that is not defined herein but is defined in the Bankruptcy Code shall
22 have the meaning ascribed to such term in the Bankruptcy Code.

23 1.1. "Administrative Expense Claim" means any Claim entitled to the priority
24 afforded by Sections 503(b) and 507(a)(1) of the Bankruptcy Code.

25 1.2. "Allowed" means, with respect to any Claim, proof of which has been
26 properly Filed or, if no Proof of Claim was so Filed, which was or hereafter is listed on

1 the Schedules as liquidated in amount and not disputed or contingent, and, in either case,
2 a Claim as to which no objection to the allowance thereof, or motion to estimate for
3 purposes of allowance, shall have been Filed on or before any applicable period of
4 limitation that may be fixed by the Bankruptcy Code, the Bankruptcy Rules and/or the
5 Bankruptcy Court, or as to which any objection, or any motion to estimate for purposes
6 of allowance, shall have been so Filed, to the extent allowed by a Final Order.

7 1.3. "Allowed Secured Claim" means an Allowed Claim that is secured by a
8 lien, security interest or other charge against or interest in property in which Debtor has
9 an interest or that is subject to setoff under Section 553 of the Bankruptcy Code, to the
10 extent of the value (as set forth in the Plan, or if no value is specified, as determined in
11 accordance with Section 506(a) of the Bankruptcy Code or, if applicable, Section 1111(b)
12 of the Bankruptcy Code) of the interest of the holder of such Claim in Debtor's interest in
13 such property or to the extent of the amount subject to setoff, as the case may be.

14 1.4. "Allowed Unsecured Claim" means an Allowed Claim that is not an
15 Allowed Secured Claim.

16 1.5. "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as
17 amended from time to time, set forth in Sections 101 et seq. of Title 11 of the United
18 States Code.

19 1.6. "Bankruptcy Court" means the United States Bankruptcy Court for the
20 District of Oregon, or such other court that exercises jurisdiction over the Bankruptcy
21 Case or any proceeding therein, including the United States District Court for the District
22 of Oregon, to the extent that the reference to the Bankruptcy Case or any proceeding
23 therein is withdrawn.

24 1.7. "Bankruptcy Rules" means, collectively, the Federal Rules of Bankruptcy
25 Procedure, as amended and promulgated under Section 2075, Title 28, of the United
26 States Code, and the local rules and standing orders of the Bankruptcy Court.

- 1.8. "Business Day" means a day other than a Saturday, Sunday or other day on which banks in Portland, Oregon are authorized or required by law to be closed.
- 1.9. "CDO" means Legg Mason Real Estate CDO I, Ltd.
- 1.10. "Cash" means lawful currency of the United States of America.
- 1.11. "Chapter 11 Case" means the case under Chapter 11 of the Bankruptcy Code with respect to the Debtor, pending in the District of Oregon, administered as *In re Bay Club Partners-472, LLC*, Case No. 14-30394-rld11.
- 1.12. "Claim" means (a) any right to payment from Debtor arising before the Effective Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy against Debtor arising before the Effective Date for breach of performance if such breach gives rise to a right of payment from Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.
- 1.13. "Class" means one of the classes of Claims defined in Article 3 hereof.
- 1.14. "Collateral" means any property in which Debtor has an interest that is subject to a lien or security interest securing the payment of an Allowed Secured Claim.
- 1.15. "Confirmation Date" means the date on which the Confirmation Order is entered on the docket by the Clerk of the Bankruptcy Court.
- 1.16. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.
- 1.17. "Creditor" means any entity holding a Claim against Debtor.
- 1.18. "Debtor" means Bay Club Partners-472, LLC, as Debtor and Debtor-in-Possession in the Bankruptcy Case.

1.19. "Disclosure Statement" means Debtor's Disclosure Statement as amended, modified, restated or supplemented from time to time, pertaining to the Plan.

1.20. "Disputed Claim" means a Claim with respect to which a Proof of Claim has been timely Filed or deemed timely Filed under applicable law, and as to which an objection, timely Filed, has not been withdrawn on or before the Effective Date or any date fixed for filing such objections by order of the Bankruptcy Court, and has not been denied by a Final Order and which Claim has not been estimated or temporarily allowed by the Bankruptcy Court on timely motion by the holder of such Claim. If an objection related to the allowance of only a part of a Claim has been timely Filed or deemed timely Filed, such Claim shall be a Disputed Claim only to the extent of the objection.

1.21. "Effective Date" means September 8, 2014.

1.22. "Equity Security" shall have the meaning ascribed to it by Section 101(16) of the Bankruptcy Code.

1.23. "Equity Security Holders" means a holder of an Equity Security of Debtor.

1.24. "Filed" means filed with the Bankruptcy Court in the Bankruptcy Case.

1.25. "Final Order" means an order or judgment entered on the docket by the Clerk of the Bankruptcy Court or any other court exercising jurisdiction over the subject matter and the parties that has not been reversed, stayed, modified or amended and as to which the time for filing a notice of appeal, petition for certiorari, request for certiorari, or request for rehearing shall have expired.

1.26. "Insider" shall have the meaning ascribed to it by Section 101(31) of the Bankruptcy Code.

1.27. "Loan Documents" means the promissory note, deed of trust, and other loan documents entered into by Debtor and CDO, and all amendments thereto.

1.28. "MEB" means Morrison Ekre & Bart Management Services, Inc., the property manager for Midtown on Main.

1.29. "Midtown on Main" means the building and real property located at 2121 W. Main St., Mesa, Arizona 85201.

1.30. "Net Operating Income Surplus" means, with respect to each month following the Effective Date, the amount of cash held by Reorganized Debtor and/or MEB on the last day of each month after payment of or allowance for all interest accrual, operating expenses, including maintenance, repairs, capital expenses, real property taxes, and insurance, with limitations as described in the Final Order Authorizing Use of Cash Collateral dated March 25, 2014, all as determined in the good faith judgment of MEB; and after Allowed Administrative Expense and Priority Claims.

1.31. "Other Priority Claim" means any Claim for an amount entitled to priority in right of payment under Section 507(a)(3), (4), (5), (6), or (7) of the Bankruptcy Code.

1.32. "Petition Date" means January 28, 2014, the date on which the petition commencing the Chapter 11 Case was Filed.

1.33. "Plan" means this Plan of Reorganization, as amended, modified, restated or supplemented from time to time.

1.34. "Priority Tax Claim" means a Claim of a governmental unit of the kind entitled to priority under Section 507(a)(8) of the Bankruptcy Code or that would otherwise be entitled to priority but for the secured status of the Claim.

1.35. "Reorganized Debtor" means Debtor from and after the Effective Date.

1.36. "Restated Articles of Organization" means the restated articles of organization and restated operating agreement ("Organizational Documents") of Debtor, which shall modify and amend Debtor's Organizational Documents to prohibit the issuance of non-voting equity securities to the extent required by Section 1123(a)(6) of the Bankruptcy Code.

1.37. "Scheduled Amounts" means the Claim amounts as set forth in Debtor's Bankruptcy Schedules.

1 1.38. "Schedules" means the Schedules of Assets and Liabilities and the
2 Statement of Financial Affairs Filed by Debtor pursuant to Section 521 of the Bankruptcy
3 Code, as amended, modified, restated or supplemented from time to time.

4 1.39. "Secured Claim" means any Claim against Debtor held by any entity,
5 including, without limitation, an Affiliate or judgment creditor of Debtor, to the extent
6 such Claim constitutes a secured Claim under Sections 506(a) or 1111(b) of the
7 Bankruptcy Code.

8 1.40. "Tenant Leases" means all leases between Debtor and tenants of units in
9 Midtown on Main.

10 1.41. "Unsecured Claim" means an unsecured Claim that is not an
11 Administrative Claim, a Secured Claim, a Tax Claim, or an Other Priority Claim.

12 1.42. "Unsecured Creditor" means a holder of an Allowable Unsecured Claim.

13 1.43. "Utility Deposits" means deposits with utilities made by Debtor after the
14 Petition Date pursuant to Section 366(b) of the Bankruptcy Code.

15 ARTICLE 2

16 UNCLASSIFIED CLAIMS

17 2.1. Administrative Expense Claims. Each holder of an Allowed
18 Administrative Expense Claim shall be paid by Debtor in full in Cash on the later of
19 (a) the Effective Date or (b) the date on which such Claim becomes Allowed, unless such
20 holder shall agree in writing to a different treatment of such Claim (including, without
21 limitation, any different treatment that may be provided for in any documentation, statute
22 or regulation governing such Claim); provided, however, that Administrative Expense
23 Claims representing obligations incurred in the ordinary course of business by Debtor
24 during the Bankruptcy Case shall be paid by Debtor or Reorganized Debtor in the
25 ordinary course of business and in accordance with any terms and conditions of the
26 particular transaction, and any agreements relating thereto. With the exception of

1 ordinary course of business administrative expense claims, the Allowed Administrative
 2 Expense Claims shall be limited to the professional fees and costs incurred by Tonkon
 3 Torp, LLP and Maginnis & Carey, LLP, and approved by the Court, and United States
 4 Trustee fees.

5 2.2. Priority Tax Claims. Each holder of an Allowed Priority Tax Claim shall
 6 be paid by Debtor the full amount of its Allowed Priority Tax Claim on the Effective
 7 Date or the date the claim is Allowed, whichever first occurs.

8 2.3. Bankruptcy Fees. Fees payable by Debtor under 28 USC § 1930, or to the
 9 Clerk of the Bankruptcy Court, will be paid in full in Cash on the Effective Date. After
 10 confirmation, Reorganized Debtor shall continue to pay quarterly fees of the Office of the
 11 United States Trustee and to file quarterly reports with the Office of the United States
 12 Trustee until this case is closed by the Court, dismissed or converted. This requirement is
 13 subject to any amendments to 28 USC § 1930(a)(6) that Congress makes retroactively
 14 applicable to confirmed Chapter 11 cases.

15 **ARTICLE 3**

16 **CLASSIFICATION**

17 For purposes of this Plan, Claims and interests are classified as provided below. A
 18 Claim is classified in a particular Class only to the extent that such Claim qualifies within the
 19 description of such Class, and is classified in a different Class to the extent that such Claim
 20 qualifies within the description of such different Class.

21 3.1. Class 1 - Other Priority Claims. Class 1 consists of Allowed Other
 22 Priority Claims.

23 3.2. Class 2 – Equity Security Holders. Class 2 consists of the Equity Security
 24 interests or claims of the Equity Security Holders.

25 3.3. Class 3 – Legg Mason Real Estate CDO I Ltd.'s Secured Claim. Class 3
 26 consists of the Allowed Secured Claim of CDO.

1 3.4. Class 4 – General Unsecured Claims. Class 4 consists of all Allowed
2 Unsecured Claims other than Administrative Expense Claims, Priority Tax Claims, and
3 Other Priority Tax Claims.

4 **ARTICLE 4**

5 **TREATMENT OF UNIMPAIRED CLASSES**

6 4.1. Class 1 (Other Priority Claims). Each holder of an Allowed Class 1 Claim
7 shall be paid in full in Cash the amount of its Allowed Class 1 Claim on the latest to
8 occur of (a) the Effective Date, (b) the date such claim becomes an Allowed Claim, or
9 (c) the date that the such claim becomes due and owing, unless such holder shall agree in
10 writing or has agreed to a different treatment of such Claim (including, without
11 limitation, any different treatment that may be provided for in any documentation,
12 agreement, contract, statute, law or regulation creating and governing such Claim).

13 4.2. Class 2 (Equity Security Holders). Class 2 Equity Security Holders will
14 retain their Equity Securities in Debtor.

15 **ARTICLE 5**

16 **TREATMENT OF IMPAIRED CLASSES**

17 5.1. Class 3 (CDO's Secured Claim)

18 5.1.1. CDO's Allowed Secured Claim is secured by a perfected security
19 interest in substantially all of Debtor's assets, including, but not limited to, rents and all
20 accounts. CDO will retain its interests in its Collateral with the same priority it had as of the
21 Petition Date. CDO's Claim will be an Allowed Secured Claim in the amount of
22 \$27,971,415, plus attorneys' fees and costs as allowed by Court Order pursuant to Local
23 Bankruptcy Rule 2016-1(h) ("CDO's Allowed Secured Claim"). Debtor or Reorganized
24 Debtor will not object to CDO's fee application. Interest will accrue on the unpaid balance
25 of CDO's Allowed Secured Claim from and after the Effective Date at a fixed rate equal to
26 6.75% per annum.

1 5.1.2. Debtor will pay CDO \$600,000 on the Effective Date.

2 5.1.3. Commencing on October 10, 2014 and continuing on the 10th day of
3 each month thereafter until CDO's Allowed Secured Claim is paid in full, Debtor will pay
4 CDO the unpaid post-Effective Date accrued interest plus any Net Operating Income Surplus
5 as of the prior month end. By way of example only, Debtor will pay CDO accrued interest
6 and any Net Operating Income Surplus as of September 30, 2014 on October 10, 2014.
7 There will be no cash flow to Debtor or Reorganized Debtor except for a one-time payment
8 to Tonkon Torp and Maginnis & Carey for professional fees and costs accrued prior to the
9 Effective Date and approved by the Court.

10 5.1.4. Each payment will be applied first to interest accruing from and after
11 the Effective Date and then to the unpaid balance owing on CDO's Allowed Secured Claim.

12 5.1.5. To the extent not inconsistent with this Plan, the Loan Documents by
13 and between the Debtor and CDO shall remain in full force and effect. CDO's reasonable
14 post-Effective Date fees and costs will be reimbursed by Reorganized Debtor and paid to
15 CDO as of the Closing Date or, in the event Midtown on Main is purchased by CDO, as of
16 the date CDO purchases Midtown on Main.

17 5.1.6. The unpaid balance of CDO's Allowed Secured Claim will be paid or
18 credited at closing of the sale of Midtown on Main.

19 5.1.7. Closing of a sale of Midtown on Main to a purchaser other than CDO
20 shall occur on or before January 31, 2015 (the "Closing Date"); provided, however, that in
21 the event a signed purchase agreement is terminated by a potential buyer of Midtown on
22 Main during that buyer's due diligence period, then the Closing Date shall be extended to
23 March 2, 2015; provided, further, that if a potential buyer of Midtown on Main has (a) signed
24 a purchase agreement, (b) provided a non-refundable deposit in the amount of \$500,000 or
25 more into escrow, and (c) requested an extension to close the sale of Midtown on Main, then
26 the Closing Date shall be extended by 30 days from the existing Closing Date.

1 5.1.8. If the sale of Midtown on Main has not closed by January 31, 2015, or
2 any extension thereof as set out in Section 5.1.7. above, then within 30 days thereafter
3 Reorganized Debtor will sell and CDO will purchase Midtown on Main for \$30,000,000 less
4 (a) the unpaid balance owing on CDO's Allowed Secured Claim, including any accrued and
5 unpaid attorneys' fees and costs; and (b) the Allowed Unsecured Claims assigned of record
6 to CDO. CDO shall have an Allowed Unsecured Claim totaling \$167,900.27 plus interest
7 accruing at the rate of 3% per annum from the Effective Date. The purchase of Midtown on
8 Main by CDO pursuant to this Section 5.1.8. will be pursuant to a purchase and sale
9 agreement in form and content substantially similar to **Exhibit 1** attached hereto.

10 5.1.9. Reorganized Debtor will maintain and insure Midtown on Main and
11 promptly pay all real property taxes as they come due.

12 5.2. Class 4 –General Unsecured Claims. Each holder of an Allowed Class 4
13 General Unsecured Claim shall be paid in full in Cash within 15 days of the closing of
14 the sale of Midtown on Main, together with interest accruing from the Effective Date at a
15 fixed rate of 3.0% per annum.

16 **ARTICLE 6**

17 **DISPUTED CLAIMS; OBJECTIONS TO CLAIMS**

18 Only Claims that are Allowed shall be entitled to distributions under the Plan. Except
19 for CDO's Allowed Secured and Unsecured Claims, Debtor reserves the right to contest and
20 object to any Claims and previously Scheduled Amounts, including, without limitation, those
21 Claims and Scheduled Amounts that are specifically referenced herein; are not listed in the
22 Schedules; are listed therein as disputed, contingent and/or unliquidated in amount; or are
23 listed therein at a different amount than Debtor currently believes is validly due and owing.
24 Unless otherwise ordered by the Bankruptcy Court, all objections to Claims and Scheduled
25 Amounts (other than Administrative Expense Claims) shall be Filed and served upon counsel
26 for Debtor and the holder of the Claim objected to on or before the later of (a) thirty (30)

1 days after the Effective Date or (b) sixty (60) days after the date (if any) on which a Proof of
2 Claim is Filed in respect of a Rejection Claim. The last day for filing objections to
3 Administrative Expense Claims shall be set pursuant to an order of the Bankruptcy Court.
4 All Disputed Claims shall be resolved by the Bankruptcy Court, except to the extent that
5 (a) Debtor may otherwise elect consistent with the Plan and the Bankruptcy Code or (b) the
6 Bankruptcy Court may otherwise order.

7 ARTICLE 7

8 IMPLEMENTATION OF THE PLAN

9 7.1. General

10 7.1.1. MEB shall remain the property manager at least until the sale of
11 Midtown on Main. Debtor has executed an Exclusive Listing Agreement—Sale with Collier's
12 International AZ, LLC ("Colliers"), and Colliers has commenced marketing Midtown on
13 Main. A copy of the Listing Agreement is attached hereto as **Exhibit 2**.

14 7.1.2. Reorganized Debtor will sell Midtown on Main on or before the
15 Closing Date as provided herein in Section 5.1.7. If a sale is not closed by the Closing Date
16 provided in Section 5.1.7. , then pursuant to the terms of the purchase and sale agreement in
17 form and content substantially similar to **Exhibit 1** attached to this Plan, Reorganized Debtor
18 will sell and CDO will purchase Midtown on Main for \$30,000,000 less a credit for the
19 unpaid balance owing on CDO's Allowed Secured Claim including all accrued interest,
20 attorneys' fees and costs, and CDO's Allowed Unsecured Claims.

21 7.2. Member Compensation and Distributions. The manager of Reorganized
22 Debtor shall be entitled to reimbursement of expenses (including travel) in an amount not
23 to exceed \$2,000 per month. Except for the foregoing, Reorganized Debtor will not
24 make any payments or distributions to any Equity Security Holders, members of
25 Reorganized Debtor or their members until the Class 3 and Class 4 Allowed Claims have
26 been paid and satisfied in full as provided in this Plan.

1 7.3. Distributions to Equity Security Holders. Reorganized Debtor will make
2 distributions to Equity Security Holders as provided in Debtor's Organizational
3 Documents after Class 3 and 4 Allowed Claims have been paid in full. The Bankruptcy
4 Court shall have and retain full and exclusive jurisdiction to resolve all disputes relating
5 to distributions to Equity Security Holders.

6 7.4. Restated Articles of Organization. Reorganized Debtor shall be deemed to
7 have adopted the Restated Articles of Organization on the Effective Date and shall
8 promptly thereafter cause the same to be filed with the Secretary of State of the State of
9 Oregon. After the Effective Date, Reorganized Debtor may amend the Restated
10 Organizational Documents and may amend its bylaws in accordance with the Restated
11 Articles of Organization, such bylaws and applicable state law. All such documents shall
12 be consistent with this Plan.

13 7.5. Setoffs. Debtor may, but shall not be required to, set off against any
14 Claim and the distributions to be made pursuant to the Plan in respect of such Claim, any
15 claims of any nature whatsoever which Debtor may have against the holder of such
16 Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall
17 constitute a waiver or release of any such claim Debtor may have against such holder.

18 7.6. Corporate Action. Upon entry of the Confirmation Order by the Clerk of
19 the Bankruptcy Court, all actions contemplated by the Plan shall be authorized and
20 approved in all respects (subject to the provisions of the Plan), including, without
21 limitation, the following: (a) the adoption and filing with the Secretary of State of the
22 State of Oregon the Restated Articles of Organization; and (b) the execution, delivery and
23 performance of all documents and agreements relating to the Plan and any of the
24 foregoing. On the Effective Date, the manager of Reorganized Debtor is authorized and
25 directed to execute and deliver the agreements, documents and instruments contemplated
26

1 by the Plan and the Disclosure Statement in the name of and on behalf of Reorganized
2 Debtor.

3 7.7. Saturday, Sunday or Legal Holiday. If any payment or act under the Plan
4 is required to be made or performed on a date that is not a Business Day, then the making
5 of such payment or the performance of such act may be completed on the next
6 succeeding Business Day, but shall be deemed to have been completed as of the required
7 date.

8 7.8. Utility Deposit. All utilities holding a Utility Deposit shall immediately
9 after the Effective Date return or refund such Utility Deposit to Reorganized Debtor. At
10 the sole option of Reorganized Debtor, Reorganized Debtor may apply any Utility
11 Deposit that has not been refunded to Reorganized Debtor in satisfaction of any payments
12 due or to become due from Reorganized Debtor to a utility holding such a Utility
13 Deposit.

14 7.9. Event of Default; Remedy. Any material failure by Reorganized Debtor to
15 perform any term of this Plan, which failure continues for a period of five Business Days
16 following receipt by Reorganized Debtor of written notice of such default from the holder
17 of an Allowed Claim to whom performance is due, shall constitute an event of Default.
18 Upon the occurrence of an Event of Default, the holder of an Allowed Claim to whom
19 performance is due shall have all rights and remedies granted by law, this Plan, or any
20 agreement between the holder of such Claim and Debtor or Reorganized Debtor. An
21 Event of Default with respect to one Claim shall not be an Event of Default with respect
22 to any other Claim. With respect to CDO only, in the event Debtor fails within three
23 days of the due date to make an interest payment to CDO as set out in section 5.1.3.
24 above, CDO's sole remedy will be to add default interest and a late charge (at the rates set
25 out in the Loan Documents) in connection with that interest payment to CDO's Allowed
26 Secured Claim. No default will alter, affect or abrogate CDO's obligation to purchase,

1 and Reorganized Debtor's obligation to sell, Midtown on Main pursuant to a purchase
2 and sale agreement in form and content substantially similar to the terms of the purchase
3 and sale agreement attached to this Plan as **Exhibit 1**. The Court shall have and retain
4 exclusive jurisdiction to enter such orders as are necessary or appropriate to ensure the
5 performance by CDO and Reorganized Debtor of their obligations under and pursuant to
6 the purchase and sale agreement.

7 **ARTICLE 8**

8 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

9 8.1. Assumption. Except as may otherwise be provided, all executory
10 contracts and unexpired leases of Debtor which are not otherwise subject to a prior
11 Bankruptcy Court order or pending motion before the Bankruptcy Court are assumed by
12 Reorganized Debtor on the Effective Date. The Confirmation Order shall constitute an
13 order authorizing assumption of all executory contracts and unexpired leases except those
14 otherwise specifically rejected or otherwise provided for, or subject to other Court Order
15 or pending motion. Reorganized Debtor shall promptly pay all amounts required under
16 Section 365 of the Bankruptcy Code to cure any defaults and assume the executory
17 contracts. To the extent necessary, the property management contract with MEB shall be
18 assumed and MEB will remain the property manager at least until the sale of Midtown on
19 Main.

20 8.2. Assignment. To the extent necessary and except as may otherwise be
21 provided, all executory contracts and unexpired leases shall be deemed assigned to
22 Reorganized Debtor as of the Effective Date. The Confirmation Order shall constitute an
23 order authorizing such assignment of executory contracts and unexpired leases, and no
24 further assignment documentation shall be necessary to effectuate such assignment.

25 8.3. Rejection Claims. Rejection Claims must be Filed no later than 30 days
26 after the entry of the order rejecting the executory contract or unexpired lease or 30 days

1 after the Effective Date, whichever is sooner. Any such Rejection Claim not Filed within
2 such time shall be forever barred from assertion against Debtor, Reorganized Debtor, and
3 its property and estates. Each Rejection Claim resulting from such rejection shall
4 constitute a Class 4 Claim.

5 **ARTICLE 9**

6 **EFFECT OF CONFIRMATION**

7 9.1. Injunction. The effect of confirmation shall be as set forth in Section 1141
8 of the Bankruptcy Code. Except as otherwise provided in the Plan or in the Confirmation
9 Order, confirmation of the Plan shall act as a permanent injunction applicable to entities
10 against (a) the commencement or continuation, including the issuance or employment of
11 process, of a judicial, administrative, or other action or proceeding against Reorganized
12 Debtor that was or could have been commenced before the entry of the Confirmation
13 Order; (b) the enforcement against Reorganized Debtor or its assets of a judgment
14 obtained before the Petition Date; and (c) any act to obtain possession of or to exercise
15 control over, or to create, perfect or enforce a lien upon, all or any part of the assets.

16 9.2. Discharge. Except as otherwise expressly provided herein, the
17 confirmation of the Plan shall, provided that the Effective Date shall have occurred,
18 discharge all Claims, and the distributions and rights provided in this Plan and the
19 Confirmation Order shall be in complete satisfaction of all Claims, whether known or
20 unknown, against Debtor that arose prior to the Effective Date.

21 **ARTICLE 10**

22 **RETENTION OF JURISDICTION**

23 10.1. Jurisdiction of the Bankruptcy Court. Notwithstanding the entry of the
24 Confirmation Order, the Court shall retain jurisdiction of this Chapter 11 Case pursuant
25 to and for the purposes set forth in Section 1127(b) of the Bankruptcy Code to:
26

1 10.1.1. classify the Claim or interest of any Creditor or stockholder,
2 reexamine Claims or interests which have been owed for voting purposes and determine any
3 objections that may be Filed to Claims or interests;

4 10.1.2. determine requests for payment of Claims entitled to priority under
5 Section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement of
6 expenses in favor of professionals employed at the expense of the Estate;

7 10.1.3. avoid transfers or obligations to subordinate Claims under Chapter 5
8 of the Bankruptcy Code;

9 10.1.4. approve the assumption, assignment or rejection of an executory
10 contract or an unexpired lease pursuant to this Plan;

11 10.1.5. resolve controversies and disputes regarding the interpretation and
12 implementation of this Plan, including controversies and disputes regarding distributions to
13 Equity Security Holders;

14 10.1.6. implement the provisions of this Plan and enter orders in aid of
15 confirmation;

16 10.1.7. adjudicate adversary proceedings and contested matters pending or
17 hereafter commenced in this Chapter 11 Case; and

18 10.1.8. enter a final decree closing this Chapter 11 proceeding.

19 10.2. Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy
20 Court abstains from exercising or declines to exercise jurisdiction over any matter arising
21 under, arising in or related to the Chapter 11 Case, this Article shall not prohibit or limit
22 the exercise of jurisdiction by any other court having competent jurisdiction with respect
23 to such subject matter.
24
25
26

1 **ARTICLE 11**

2 **ADMINISTRATIVE PROVISIONS**

3 11.1. Modification or Withdrawal of the Plan. Debtor may with the consent of
4 CDO alter, amend or modify the Plan pursuant to Section 1127 of the Bankruptcy Code
5 and Bankruptcy Rule 3019 at any time prior to the time that the Bankruptcy Court has
6 signed the Confirmation Order. After such time, and prior to substantial consummation
7 of the Plan, Debtor may, so long as the treatment of holders of Claims and interests under
8 the Plan is not adversely affected, institute proceedings in Bankruptcy Court to remedy
9 any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure
10 Statement or the Confirmation Order, and any other matters as may be necessary to carry
11 out the purposes and effects of the Plan; provided, however, that prior notice of such
12 proceedings shall be served in accordance with Bankruptcy Rule 2002.

13 11.2. Revocation or Withdrawal of Plan

14 11.2.1. Right to Revoke. Debtor reserves the right to revoke or withdraw the
15 Plan with the consent of CDO at any time prior to the Effective Date.

16 11.2.2. Effect of Withdrawal or Revocation. If Debtor revokes or withdraws
17 the Plan prior to the Effective Date, then the Plan shall be deemed null and void. In such
18 event, nothing contained herein shall be deemed to constitute a waiver or release of any
19 claims by or against Debtor or any other Entity, or to prejudice in any manner the rights of
20 Debtor or any Entity in any further proceeding involving Debtor.

21 11.3. Nonconsensual Confirmation. Debtor shall request that the Bankruptcy
22 Court confirm the Plan pursuant to Section 1129(b) of the Bankruptcy Code if the
23 requirements of all provisions of Section 1129(a) of the Bankruptcy Code, except
24 Subsection 1129(a)(8), are met.

1 **ARTICLE 12**

2 **MISCELLANEOUS PROVISIONS**

3 12.1. Revesting. Except as otherwise expressly provided in this Plan, on the
4 Effective Date, all property and assets of the estate of Debtor shall revest in Reorganized
5 Debtor, free and clear of all claims, liens, encumbrances, charges and other interests of
6 Creditors arising on or before the Effective Date, and Reorganized Debtor may operate,
7 from and after the Effective Date, free of any restrictions imposed by the Bankruptcy
8 Code or the Bankruptcy Court.

9 12.2. Rights of Action. Except as otherwise expressly provided herein, any
10 rights or causes of action (including, without limitation, any and all avoidance actions)
11 accruing to Debtor shall remain assets of Reorganized Debtor. Reorganized Debtor may
12 pursue such rights of action, as appropriate, in accordance with what is in its best
13 interests and for its benefit.

14 12.3. Governing Law. Except to the extent the Bankruptcy Code, the
15 Bankruptcy Rules or other federal laws are applicable, the laws of the State of Oregon
16 shall govern the construction and implementation of the Plan, and all rights and
17 obligations arising under the Plan. However, the laws of the State of Arizona shall apply
18 to issues pertaining to the property located in Arizona.

19 12.4. Withholding and Reporting Requirements. In connection with the Plan
20 and all instruments issued in connection therewith and distributions thereon, Debtor and
21 Reorganized Debtor shall comply with all withholding, reporting, certification and
22 information requirements imposed by any federal, state, local or foreign taxing
23 authorities and all distributions hereunder shall, to the extent applicable, be subject to any
24 such withholding, reporting, certification and information requirements. Entities entitled
25 to receive distributions hereunder shall, as a condition to receiving such distributions,
26 provide such information and take such steps as Reorganized Debtor may reasonably

1 require to ensure compliance with such withholding and reporting requirements, and to
2 enable Reorganized Debtor to obtain the certifications and information as may be
3 necessary or appropriate to satisfy the provisions of any tax law.

4 12.5. Time. Unless otherwise specified herein, in computing any period of time
5 prescribed or allowed by the Plan, the day of the act or event from which the designated
6 period begins to run shall not be included. The last day of the period so computed shall
7 be included, unless it is not a Business Day, in which event the period runs until the end
8 of the next succeeding day which is a Business Day.

9 12.6. Section 1146(c) Exemption. Pursuant to Section 1146(a) of the
10 Bankruptcy Code, the transfer or sale of Midtown on Main pursuant to, in
11 implementation of and as contemplated by the Plan, shall not be taxed under any state or
12 local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent with the
13 foregoing, each recorder of deeds or similar official for any city, county or governmental
14 unit in which any instrument hereunder is to be recorded shall, pursuant to the
15 Confirmation Order, be ordered and directed to accept such instrument without requiring
16 the payment of any documentary stamp tax, deed stamps, transfer tax, intangible tax or
17 similar tax.

18 12.7. Severability. In the event that any provision of the Plan is determined to
19 be unenforceable, such determination shall not limit or affect the enforceability and
20 operative effect of any other provisions of the Plan. To the extent that any provision of
21 the Plan would, by its inclusion in the Plan, prevent or preclude the Bankruptcy Court
22 from entering the Confirmation Order, the Bankruptcy Court, on the request of Debtor,
23 may modify or amend such provision, in whole or in part, as necessary to cure any defect
24 or remove any impediment to the confirmation of the Plan existing by reason of such
25 provision.
26

12.8. Binding Effect. The provisions of the Plan shall bind Debtor, Reorganized Debtor and all holders of Claims and Equity Securities, and their respective successors, heirs and assigns. With the exception of CDO, any note, agreement, instrument, judgment or other document evidencing a Claim in any Class shall be deemed cancelled, null and void, provided that nothing in this Plan will affect the liability of any entity other than Debtor for any such Claim

12.9. Recordable Order. The Confirmation Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications or other supporting documents.

12.10. Plan Controls. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, or any other instrument or agreement contemplated to be executed pursuant to the Plan, the provisions of the Plan shall control and take precedence.

12.11. Effectuating Documents and Further Transactions. Debtor and Reorganized Debtor shall execute, deliver, file or record such contracts, instruments, assignments, and other agreements or documents, and take or direct such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

DATED this 29th day of August, 2014.

BAY CLUB PARTNERS-472, LLC

By Bay Club Management, LLC, Its Manager

By Residential Equity Partners, LLC,
Its Managing Member

By /s/ David Butler

David Butler, Manager

1 Presented by:

2 TONKON TORP LLP

3
4 By /s/ Albert N. Kennedy

5 Albert N. Kennedy, OSB No. 821429

6 Ava L. Schoen, OSB No. 044072

7 Attorneys for Debtor
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**DEBTOR'S SECOND AMENDED
PLAN OF REORGANIZATION
EXHIBIT 1**

MIDTOWN ON MAIN PURCHASE AND SALE AGREEMENT

=====

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

=====

Between

Bay Club Partners-472, LLC,
an Oregon limited liability company

as Seller

and

Legg Mason Real Estate CDO I, Ltd.,

a _____

as Buyer

TABLE OF CONTENTS

1.	Definitions	2
2.	Purchase and Sale	5
3.	Purchase Price.....	5
4.	Payment of Purchase Price.	6
5.	Condition of Title.....	6
6.	Escrow; Close of Escrow	6
7.	Conditions to the Close of Escrow.	6
8.	Deliveries to Escrow Holder.....	9
9.	Deliveries to Buyer Upon Close of Escrow	10
10.	Title Insurance	11
11.	Costs and Expenses.....	11
12.	Prorations	11
13.	Disbursements and Other Actions by Escrow Holder	13
14.	Seller's Representations and Warranties	14
15.	Seller's Covenants Regarding Operation of the Property Through the Close of Escrow.....	18
16.	Buyer's Representations and Warranties.....	19
17.	Condemnation and Destruction	20
18.	Indemnification	21
19.	Notices	22
20.	Omitted	22
21.	Required Actions of Buyer and Seller	22
22.	Entry	22
23.	Legal and Equitable Enforcement of this Agreement.....	23
24.	Assignment	23
25.	Miscellaneous	23

=====

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

=====

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("**Agreement**"), is made and entered into as of the Execution Date (defined below), by and between Bay Club Partners – 472, LLC, an Oregon limited liability company ("**Seller**"), and Legg Mason Real Estate CDO I, Ltd., or its assignee ("**Buyer**"). The signatures of Seller and Buyer of this Agreement, and if such date is different for Seller and Buyer, then the Execution Date shall be the later of the two dates.

RECITALS:

- A. Seller is the owner of the Real Property located in the City of Mesa, ("**City**"), County of Maricopa ("**County**"), State of Arizona ("**State**") and more particularly described in **Exhibit A** attached hereto.
- B. The Real Property is improved with the Improvements.
- C. The Real Property and Improvements are herein collectively referred to as the "**Project**" which is commonly known as "**Midtown on Main.**"
- D. Capitalized terms shall have the meanings set forth in connection with the use of such terms. If no definition is so set forth such capitalized terms shall have the meanings set forth in **Paragraph 1** of this Agreement.
- E. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Property.

BASIC PROVISIONS

1. Buyer:

Telephone: _____
Facsimile: _____

2. Buyer's Counsel:

Telephone: _____
Facsimile: _____

3. **Seller:** Bay Club Partners-472, LLC

Telephone: _____
Facsimile: _____
4. **Seller's Tax Identification No.:** _____
5. **Seller's Counsel:** Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland, OR 97204
Attn: Albert N. Kennedy
Telephone: 503-802-2013
E-Mail: al.kennedy@tonkon.com
6. **Escrow Holder:** _____

Telephone: _____
Facsimile: _____
7. **Title Company:** _____

Telephone: _____
Facsimile: _____
8. **Purchase Price:** Thirty Million and 00/100 Dollars
(\$30,000,000.00)
9. **Contingency Date:** The date that is twenty (20) days following
the Opening of Escrow.

AGREEMENT

NOW THEREFORE, incorporating the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meaning:

1.1. "Authorities" means any governmental or quasi-governmental body or agency having jurisdiction over the Project and/or Seller including, without limitation, the State, the City and the County.

1.2. "Case" means In re Bay Club Partners 472, LLC, in the United States Bankruptcy court for the District of Oregon, Case No. 14-30394-rld 11.

1.3. "Cash Equivalent" means a wire transfer of funds or a bank cashier's check drawn on a reputable bank licensed to do business in the State.

1.4. "Close of Escrow" means the date the Deed is recorded in the Official Records.

1.5. "Closing Date" means a date that is not later than 30 days after the Trigger Date.

1.6. "Contingency Date" means the date that is twenty (20) days following the Opening of Escrow.

1.7. "Escrow" means the above-referenced escrow opened with Escrow Holder for the consummation of the transaction described in this Agreement.

1.8. "Escrow Holder" means _____.

1.9. "Governmental Regulations" means any laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, toxic or hazardous waste, occupational health and safety, water, earthquake hazard reduction, disabled persons and building and fire codes) of the Authorities bearing on the construction, alteration, rehabilitation, maintenance, use, operation or sale of the Property.

1.10. "Hazardous Material" means any radioactive, hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" or "hazardous substance" under any state or federal law, (ii) asbestos, (iii) lead, (iv) mold and/or (v) petroleum.

1.11. "Improvements" means all buildings, fixtures, structures, parking areas, landscaping and other improvements constructed and located on the Real Property, together with all machinery and mechanical, electrical, HVAC and plumbing systems (other than Personal Property) used in the operation thereof, but excluding any such items owned by Tenants in possession or public or private utilities.

1.12. "Intangible Property" has the meaning ascribed to such term in Exhibit "E" attached hereto.

1.13. "Licenses and Permits" means (A) all licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements issued, approved or granted by Authorities or otherwise in connection with the Project; (B) all right, title and interest of Seller in and to the use of the name "Midtown on Main" and any and all other trade names and logos used by Seller in the operation and identification of the Project; (C) any and all development rights and other intangible rights, titles, interests, privileges and appurtenances owned by Seller and in any way related to or used in connection with the Project and its operation; (D) licenses, permits, maps, certificates of occupancy, building inspection approvals and unrecorded covenants, conditions and restrictions, reciprocal easement agreements, area easement agreements and other common or planned development agreements or documents affecting the Project; and (E) all licenses, consents, easements, rights of way and approvals required from private parties to make use of utilities and to ensure vehicular and pedestrian ingress and egress to the Project.

1.14. "Official Records" means the Official Records of Maricopa County.

1.15. "Opening of Escrow" means the date on which a fully executed copy of this Agreement is delivered to Escrow Holder by Buyer and Seller, which shall occur no later than three (3) business days after the Trigger Date.

1.16. "Personal Property" means all furniture, equipment, appliances, tools, machinery, supplies, building materials and other personal property of every kind and character owned by Seller and attached to, appurtenant to, located in or used in connection with the operation of the Project including, without limitation, all attachments, appliances, fittings, gas and oil burners, automatic stokers, lighting fixtures, doors, cabinets, partitions, mantles, elevators, electric motors, pumps, screens, flag poles, waste disposal or storage equipment, all sprinklers, plumbing, heating, air conditioning, electrical, ventilating, lighting, incinerating, vacuum cleaning, refrigerating and cooling systems, each with its respective furnaces, boilers, engines, motors, dynamos, radiators, pipe, wiring and other apparatus, vaults, safes, fire prevention and extinguishing equipment, carpets, floor covering, kitchen appliances and antenna, and the Records and Plans.

1.17. "Property" means, collectively, the Real Property, the Improvements, the Personal Property, the Intangible Property and all of Seller's right, title and interest in the Tenant Leases, Tenant Deposits and the Service Contracts which are not disapproved by Buyer, together with: (a) all appurtenances, streets, alleys, easements, right-of-way in or to all streets or other interests in, on, across, in front of, abutting or adjoining the Real Property, and (b) all of the rights, title, interests, privileges and appurtenances which are in any way related to or used in connection with the Real Property and Improvements.

1.18. "Real Property" means that certain real property located in the City and County more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all right, title and interest of the Seller in and to all streets, alleys, easements and rights-of-way in, on, across, in front of, abutting or adjoining said real property.

1.19. "Records and Plans" means (A) all financial and other books and records maintained in connection with the operation of the Project (excluding the Operating

Statements), (B) all preliminary, final and proposed building plans and specifications (including "as-built" drawings) respecting the Improvements, (C) all surveys, structural reviews, grading plans, topographical maps, architectural drawings and engineering, soils, seismic, geologic, environmental contamination and architectural reports, studies and certificates and other documents pertaining to the Project.

1.20. "Reorganization Plan" means Debtor's Second Amended Plan of Reorganization (August 29, 2014) filed and confirmed in the Case.

1.21. "Service Contracts" means any and all service contracts, maintenance contracts, laundry operation contracts, operating contracts, management contracts, warranties, guarantees, bonds, listing agreements, parking contracts and like contracts and agreements relating to the Project, together with all supplements, amendments and modifications thereto, relating to the Property.

1.22. "Tenant Deposits" means all security deposits, prepaid rentals, cleaning fees and other deposits, plus any interest accrued thereon, paid by Tenants to Seller or any other person relative to the Project.

1.23. "Tenant Leases" means all leases, licenses, rental agreements or occupancy agreements, and all amendments and supplements thereto, relating to all or any portion of the Project (together with all rents, issues and profits thereunder).

1.24. "Tenant" means any person who is named tenant or lessee under a Tenant Lease.

1.25. "Title Company" means _____.

1.26. "To the best of Seller's knowledge" or other references herein to Seller's knowledge mean the knowledge a party would be expected have by reason of continued involvement with the Property as developer (as to those portions of the Property developed or rehabilitated by Seller), owner, managing agent and leasing agent.

1.27. "Trigger Date" means, in the event that a sale of the Project has not previously closed, the first business day following the Closing Date as that term is used and defined in Section 5.17 of the Reorganization Plan. If a sale of the Project has closed on or before the Closing Date as that term is used and defined in Section 5.17 of the Reorganization Plan, then the Trigger Date will not occur and this Agreement will be null and void.

1.28. "Warranties" means all warranties, indemnities, guarantees and bonds (express or implied) issued in connection with the Property or any portion thereof.

2. Purchase and Sale. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth in this Agreement.

3. Purchase Price. The Purchase Price ("**Purchase Price**") for the Property shall be Thirty Million and 00/100 Dollars (\$30,000,000.00). The Purchase Price shall be paid, adjusted and credited in accordance with **Paragraph 4** below.

4. Payment of Purchase Price.

4.1 No Deposit. No deposit, whether in the nature of “earnest money” or similar deposit, will be required from or paid by Buyer.

4.2. Payment of Purchase Price. On or before the Closing Date, Buyer will deposit into Escrow the amount of the Purchase Price in cash or Cash Equivalent, adjusted and credited as follows (the “**Cash Balance**”):

4.2.1. Buyer shall have a credit against the Purchase Price in the amount the unpaid balance of CDO’s Allowed Secured Claim as defined in the Reorganization Plan (including any accrued and unpaid attorneys’ fees and costs) in the Case.

4.2.2. Buyer shall have a further credit against the Purchase Price in the amount of CDO’s Allowed Unsecured Claim in the Case (such Allowed Unsecured Claim being in the amount of \$167,900.27), together with interest on such Allowed Unsecured Claim at the rate of 3% (three percent) per annum from September 8, 2014.

4.2.3. Buyer shall have further credits against the Purchase Price for adjustments, prorations and the like as more fully described in this Agreement.

5. Condition of Title. At the Close of Escrow, fee simple title to the Project shall be conveyed to Buyer by Seller by the Deed, subject only to the following matters (“**Approved Title Conditions**”): (i) a lien for general real property taxes, not then delinquent; (ii) matters of title respecting the Project as of September 8, 2014; and (iii) matters affecting the condition of title to the Project created by or with the written consent of Buyer.

6. Escrow; Close of Escrow. Following the Trigger Date, Buyer and Seller shall promptly cause the Opening of Escrow by delivering a fully executed copy of this Agreement to Escrow Holder. The Close of Escrow shall occur on the Closing Date.

7. Conditions to the Close of Escrow.

7.1. Buyer’s Acceptance of the Project and Title. The Close of Escrow and Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided), of the following conditions, and the obligations of the parties with respect to such conditions are as follows.

7.1.1. Review and Approval of Documents and Materials. Within five (5) days after the Opening of Escrow, Seller shall deliver to Buyer for Buyer's review the Materials respecting the Property set forth below (collectively, the “**Materials**”). Buyer shall have until the Contingency Date to review the Materials. By the Close of Escrow, Seller shall terminate any Service Contract disapproved by Buyer in writing prior to the Contingency Date, at Seller's sole cost and expense. The Materials shall consist of:

(a) Personal Property Inventory. A detailed list (“**Inventory**”) describing all of the Personal Property owned or leased by Seller and used in connection with the operation of the Property as of the Opening of Escrow.

(b) Rent Roll. A list ("**Rent Roll**") prepared as of the Opening of Escrow and certified by Seller setting forth (1) the name of all Tenants and occupants of the Project and a description of their respective Tenant Leases (including all riders, supplements and amendments), (2) the total number of square feet of such Project covered by each Tenant Lease, (3) the date, commencement date, and expiration date of each Tenant Lease, (4) the current monthly rental payable under each Tenant Lease, (5) the amount of all Tenant Deposits and prepaid rent (if any) paid by each Tenant under the applicable Tenant Lease, less amounts previously applied or returned to such Tenant, (6) whether any rents or other charges are in arrears or prepaid and the period to which such arrearages or prepayments relate, and (7) a detailed list of (i) any delinquencies under Tenant Leases, and (ii) any other monetary and, to the best of Seller's knowledge, nonmonetary defaults of each Tenant, as of the end of the most recent calendar year and calendar month which occurred prior to the Execution Date.

(c) Financial Data for Tenant Leases. All financial data relating to the Tenants in Seller's possession or reasonably available to Seller and copies of all existing Tenant Leases, which Tenant Leases shall be identified on the Rent Roll.

(d) Service Contracts; Other Contracts. A list and complete copies of all Service Contracts and all other contracts or agreements relating to all or any portion of the Property.

(e) Records and Plans; Warranties. A list and complete copies of all Records and Plans and Warranties.

(f) Licenses and Permits. A list and complete copies of all Licenses and Permits.

(g) Insurance Policies. A list and complete copies of all past and present hazard, rent loss, liability, worker's compensation and other insurance policies, and copies of all claims and settlements of Fifty Thousand and 00/100 Dollars (\$50,000.00) or more within the last three (3) years.

(h) Utility and Property Tax Bills. Copies of (1) the bills issued for the three (3) most recent years for all real property taxes and personal property taxes, (2) all notices or documents for any assessments or bonds relating to the Property, and (3) the most recently available utility bills and similar records relating to the Property.

(i) Claims. A list of all pending or threatened claims, proceedings or legal actions instituted against Seller and/or the Property.

7.1.2. Moratorium. At the Closing Date, there shall be no reassessment, reclassification, rezoning or other statute, law, judicial or administrative decision, proceeding, ordinance or regulation (including amendments and modifications of any of the foregoing) pending or proposed to be imposed by the Authorities or any public or private utility having jurisdiction over the Project which could adversely affect the acquisition, development, operations, sale or occupancy of the Project.

7.1.3. Representations, Warranties and Covenants of Seller. Seller shall have duly performed each and every agreement to be performed by Seller hereunder and Seller's representations, warranties and covenants set forth in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date with the same force and effect as if remade by Seller in a separate certificate at that time.

7.1.4. Seller's Deliveries. Seller shall have delivered the items described in **Paragraph 7.1**, **Paragraph 8.1**, and **Paragraph 9**.

7.1.5. No Material Changes. At the Closing Date, there shall have been no material adverse changes in the physical condition of any portion of the Property.

7.1.6. Title Insurance. As of the Close of Escrow, the Title Company shall have issued or shall have committed to issue the Title Policy to Buyer.

7.1.7. The conditions set forth in this **Paragraph 7.1** are solely for the benefit of Buyer and may be waived only by Buyer in writing to Seller. Buyer shall at all times have the right to waive any condition. The waiver by Buyer of any condition shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. All approvals or disapprovals given by Buyer under this **Paragraph 7.1** shall be in Buyer's sole and absolute discretion (for any reason or no reason at all) and in writing and the failure of Buyer to approve any matter requiring its approval under this **Paragraph 7.1** by the time therefor shall be deemed disapproval thereof by Buyer, except as otherwise expressly provided. Neither Seller nor Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent Buyer, in its own discretion, exercises its right to disapprove any such items or matters). Without limiting the foregoing, Buyer shall have the right to terminate the Agreement for any reason on or prior to the Contingency Date.

7.2. Conditions Precedent to Seller's Obligations. The Close of Escrow and Seller's obligations with respect to the transaction contemplated by this Agreement are subject to Buyer's delivery to Escrow Holder on or before the Closing Date, for disbursement as provided herein, of the Cash Balance, and the documents and materials described in **Paragraph 8.2**.

7.3. Failure of Conditions to Close of Escrow. In the event any of the conditions set forth in **Paragraph 7.1** or **Paragraph 7.2** are not timely satisfied or waived:

7.3.1. This Agreement, the Escrow and the rights and obligations of Buyer and Seller shall terminate, except as otherwise provided herein; and

7.3.2. Escrow Holder is hereby instructed to promptly return to Seller and Buyer all funds and documents deposited by them, respectively, into Escrow which are held by Escrow Holder on the date of said termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party).

8. Deliveries to Escrow Holder.

8.1 By Seller. Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following instruments and documents, the delivery of each of which shall be a condition precedent to the Close of Escrow for the benefit of Buyer.

8.1.1. Deed. Seller shall deliver to Escrow Holder the Special Warranty Deed (the "**Deed**") in a form approved by the Title Company, duly executed and acknowledged in recordable form by Seller, conveying Seller's interest in the Real Property to Buyer subject only to the Approved Title Conditions.

8.1.2. Assignment of Leases. Seller shall deliver to Escrow Holder the Assignment of Leases (collectively, "**Tenant Lease Assignment**") duly executed by Seller assigning to Buyer all of Seller's right, title and interest in and to all of the Tenant's Leases and Tenant Deposits, with respect to the Real Property. The Tenant Lease Assignment shall be in the form, and upon the terms contained in, **Exhibit "D"** attached hereto.

8.1.3. General Assignment and Bills of Sale. Seller shall deliver to Escrow Holder assignments and bills of sale (collectively, "**General Assignment**"), duly executed by Seller, assigning to Buyer all of Seller's right, title and interest in and to all Service Contracts which have not been disapproved by Buyer, all Licenses and Permits, Records and Plans, all Personal Property and all Warranties, with respect to the Real Property. The General Assignment shall be in the form of, and upon the terms contained in, **Exhibit "E"** attached hereto.

8.1.4. Non-Foreign Certifications. Seller shall deliver to Escrow Holder certifications duly executed by Seller under penalty of perjury in the form of, and upon the terms set forth in, the Transferor's Certification of Non-Foreign Status attached hereto as **Exhibit "F"** (collectively, "**FIRPTA Certificates**"), setting forth Seller's address and federal tax identification number and certifying that Seller is a "**United States Person**" and that Seller is not a "foreign person" in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

8.1.5. Tenant Notification Letter. Seller shall deliver to Escrow Holder a letter to the Tenants at the Real Property ("**Tenant Notification Letters**"), duly executed by Seller and dated as of the Close of Escrow, notifying each Tenant that: (A) the Project has been sold to Buyer; (B) all of Seller's right, title and interest in and to the Tenant Leases and Tenant Deposits have been assigned to Buyer; and (C) commencing immediately, all rent and other payments and any notices under the Tenant Leases are to be paid and sent to Buyer. The form and content of the Tenant Notification Letters shall be satisfactory to Buyer.

8.1.6. Change of Address. Seller shall deliver to Escrow Holder written notices executed by Seller to third parties to any Service Contracts not disapproved by Buyer, changing the address for service of notice and delivery of statements and bills.

8.1.7. Proof of Authority. Seller shall deliver to Escrow Holder such proof of Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by Title Company.

8.1.8. Lien Affidavits. Seller shall deliver to Escrow Holder any owner's statements, lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Title Company to issue the Title Policy.

8.2. By Buyer. Buyer hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following instruments and documents, the delivery of each of which shall be a condition precedent to the Close of Escrow for the benefit of Seller.

8.2.1. Cash Balance. Buyer shall deliver to Escrow Holder the Cash Balance in accordance with **Paragraph 4(c).**

8.2.2. Tenant Lease Assignment. Buyer shall deliver to Escrow Holder the Tenant Lease Assignment duly executed by Buyer.

8.2.3. General Assignment. Buyer shall deliver to Escrow Holder the General Assignment duly executed by Buyer.

8.2.4. Prorations. Buyer shall deliver to Escrow Holder the amount due to Seller, if any, after the prorations are computed in accordance with **Paragraph 12.**

9. Deliveries to Buyer Upon Close of Escrow. Seller shall deliver possession of the Property to Buyer upon the Close of Escrow (unless otherwise provided). Further, Seller hereby covenants and agrees to deliver to Buyer, on or prior to the Closing Date, the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under the terms of this Agreement:

9.1. Tenant Leases. Seller shall deliver to Buyer originals of all the Tenant Leases or, to the extent an original Tenant Lease is unavailable, a duplicate original thereof with a certificate executed by Seller warranting the completeness and authenticity of such duplicate original;

9.2. Rent Roll. Seller shall deliver to Buyer the Rent Roll with respect to the Real Property, updated as of the Closing Date, certified as to its accuracy and executed by Seller, together with a detailed list of any delinquencies under Tenant Leases as of the Close of Escrow and a list of any other monetary and, to the best of Seller's knowledge, nonmonetary defaults of each Tenant;

9.3. Service Contracts. Seller shall deliver to Buyer originals of all Service Contracts which have not been disapproved by Buyer, or, to the extent an original Service Contract is unavailable, a duplicate original thereof with a certificate executed by Seller warranting the authenticity of such duplicate original;

9.4. Records, Plans and Warranties. Seller shall deliver to Buyer originals of the Records, Plans and Warranties. Seller shall, at its expense, obtain the consents to the assignment to Buyer of all Warranties to the extent that Buyer requires the same.

9.5. Keys. Seller shall deliver to Buyer keys to all entrance doors to the Improvements, which keys shall be properly tagged for identification;

9.6. Licenses and Permits. Seller shall deliver to Buyer originals of all Licenses and Permits or, to the extent an original of a License or Permit is unavailable, a duplicate original thereof with a certificate executed by Seller warranting the authenticity of such duplicate original; and

9.7. Operating Expenses Statement. Seller shall deliver to Buyer a certified statement setting forth the operating expenses incurred by Seller with respect to the Real Property for the year in which this Agreement is executed; provided, however, if such information is not reasonably available on the Close of Escrow, Seller shall deliver same to Buyer as soon as practicable after the Close of Escrow.

10. Title Insurance. At the Close of Escrow, Seller shall cause the Title Company to issue to Buyer an ALTA Owner's Policy of Title Insurance, 10/17/70 (Form B) in the amount of the Purchase Price for the Property showing fee simple title to the Property vested in Buyer, together with such endorsements as are reasonably requested by Buyer, all subject only to the Approved Title Conditions (the "**Title Policy**"). The Title Policy shall be issued with liability in an amount equal to the Purchase Price.

11. Costs and Expenses. If the transaction contemplated by this Agreement is consummated, then upon the Closing Seller shall pay (A) the premium for the Title Policy (including customary endorsements such as zoning and comprehensive endorsement), (B) any required documentary transfer taxes, stamp taxes and transfer taxes, (C) one-half (1/2) of all escrow fees and costs, (D) all sales and gross receipts taxes, (E) Seller's share of prorations, and (F) all document recording charges. If the transaction contemplated by this Agreement is consummated, then upon the Closing, Buyer shall pay (X) one-half (1/2) of all escrow fees and costs, and (Y) Buyer's share of prorations. Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in the County.

12. Prorations

12.1. General. Rentals, revenues, and other income, if any, from the Property, and real property taxes and operating expenses, if any, affecting the Property shall be prorated as of 11:59 p.m. on the day preceding the Close of Escrow. For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day of the Close of Escrow.Delinquent Rentals. Delinquent rentals shall be prorated between Buyer and Seller as of the Close of Escrow but not until they are actually collected by Buyer. Rentals for the month in which the Close of Escrow occurs shall be deemed to have been received by Seller. Buyer shall have the

right to collect any delinquent rentals, but shall not have the obligation to do so. Seller shall not have the right to sue Tenants to collect delinquent amounts. Seller shall not be entitled to any rentals received from Tenants after the Close of Escrow unless such Tenants are current in their rental obligations for periods occurring from and after the Close of Escrow. Delinquent rentals collected by Buyer, net of the costs of collection (including attorneys' fees), shall be applied first to amounts currently due and then to amounts most recently overdue.

12.3. Prepaid Rentals. Rentals received by Seller prior to the Close of Escrow attributable to periods after the Close of Escrow and the amount of any other credits due Tenants shall be credited to Buyer and debited to Seller at the Close of Escrow.

12.4. Taxes and Assessments. All non-delinquent general real property taxes on the Property shall be prorated as of the Close of Escrow based on the latest real estate tax assessment value then available and shall be reconciled following the closing upon receipt of the tax bill applicable for the period in which the Closing occurs. Notwithstanding the foregoing, all special assessments (and any liens therefore) shall not be prorated but will be fully paid and discharged by Seller prior to the Close of Escrow.

12.5. Operating Expenses. All utility service charges for electricity, heat and air conditioning service, other utilities, common area maintenance, taxes (other than real estate taxes) such as rental taxes, other expenses incurred in operating the Property that Seller customarily pays, and any other costs incurred in the ordinary course of business or the management and operation of the Project and not covered elsewhere in this **Paragraph 12** shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to the Close of Escrow and Buyer shall pay all such expenses accruing on the Close of Escrow and thereafter. To the extent possible, Seller and Buyer shall obtain billings and meter readings as of the Close of Escrow to aid in such prorations.

12.6. Free Rent Concessions. Seller shall be responsible for, and shall either pay at Closing or (if not immediately payable) shall provide a credit against the Purchase Price to the account of Buyer, any and all free rent concessions that are payable under any Tenant Leases with respect to periods on or after the Closing.

12.7. Tenant Deposits. Buyer shall be credited and Seller shall be debited with an amount equal to all Tenant Deposits (and any interest accrued thereon for the benefit of a Tenant) paid by Tenants that are transferred to Buyer. Seller shall be credited and Buyer shall be debited with an amount equal to all Tenant Deposits that are shown to have been paid to Seller but are not transferred to Buyer.

12.8. Capital Expenditures. All capital and other improvements (including labor and materials) which are performed or contracted for by Seller at or prior to the Close of Escrow will be paid by the Seller, without contribution or proration from Buyer.

12.9. Service Contracts. Amounts payable under Service Contracts not disapproved by Buyer shall be prorated on an accrual basis. Seller shall pay all amounts due thereunder which accrue prior to the Close of Escrow and Buyer shall pay all amounts accruing

on the Close of Escrow and thereafter. Seller shall pay in full all Service Contracts disapproved by Buyer.

12.10. Method of Proration. All prorations shall be made in accordance with customary practice in the County, except as expressly provided herein. Buyer and Seller agree to cause their accountants to prepare a schedule of tentative prorations prior to the Closing Date. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid by Buyer to Seller (if the prorations result in a net credit to the Seller) or by Seller to Buyer (if the prorations result in a net credit to the Buyer) by increasing or reducing the cash to be paid by Buyer at the Close of Escrow. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as practicable following the Close of Escrow. A copy of the schedule of prorations as agreed upon by Buyer and Seller shall be delivered to Escrow Holder at least three (3) business days prior to the Closing Date.

13. Disbursements and Other Actions by Escrow Holder. At the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated below.

13.1. Funds. Escrow Holder shall disburse all funds deposited with Escrow Holder by Buyer in payment of the Purchase Price as follows:

13.1.1. deduct all items chargeable to the account of Seller pursuant to

Paragraph 11;

13.1.2. if, as the result of the prorations and credits pursuant to Paragraph 12, amounts are to be charged to account of Seller, deduct the total amount of such charges;

13.1.3. disburse the balance of the Purchase Price to Seller (or as otherwise required in the Case) promptly upon the Close of Escrow; and

13.1.4. disburse the remaining balance of the funds, if any, to Buyer promptly upon the Close of Escrow.

13.2. Recording. Escrow Holder shall cause the Deed (with documentary transfer tax information to be affixed after recording) and any other documents which the parties hereto may mutually direct to be recorded in the Official Records and obtain conformed copies thereof for distribution to Buyer and Seller.

13.3. Title Policy. Escrow Holder shall direct the Title Company to issue the Title Policy to Buyer.

13.4. Disbursement of Documents to Buyer. Escrow Holder shall disburse to Buyer the Tenant Lease Assignment, the General Assignment, the FIRPTA Certificates, the Tenant Notification Letters, and change of address notices duly executed by Seller and any other documents (or copies thereof) deposited into Escrow by Seller pursuant hereto.

13.5. Disbursement of Documents to Seller. Escrow Holder Shall disburse to Seller the Tenant Lease Assignment and the General Assignment.

14. Seller's Representations and Warranties. In addition to any express agreements of Seller contained herein, the following constitute representations and warranties of Seller to Buyer:

14.1. Representations Regarding Seller's Authority.

14.1.1. Power. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

14.1.2. Requisite Action. All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transaction contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

14.1.3. Individual Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller and the partners, officers or trustees of Seller, if any, have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof.

14.1.4. Validity. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principals affecting or limiting the rights of contracting parties generally.

14.1.5. Case. Buyer is authorized in the Case to enter into this Agreement and has acquired, or will acquire, all necessary judicial consents and approvals to consummate the transaction consummated by this Agreement.

14.2. Representations and Warranties Pertaining to Real Estate and Legal Matters.

14.2.1. Recitals. The information contained in the Recitals is true and correct.

14.2.2. Adverse Claims. To the best of Seller's knowledge, there are no pending, threatened or contemplated actions, suits, arbitrations, claims or proceedings, at law or in equity, affecting the Property or in which Seller is, or will be, a party by reason of Seller's ownership of the Property, including, but not limited to, judicial, municipal or administrative proceedings in eminent domain, unlawful detainer or tenant evictions, collections, alleged building code, health and safety or zoning violations, employment discrimination or unfair labor practices, or worker's compensation, personal injuries or property damages alleged to have

occurred at the Project or by reason of the condition or use of the Property, or any violation of the Arizona Residential Landlord-Tenant Act, A.R.S. §§ 33-1301 et seq.

14.2.3. Insolvency. Except for the Case, no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Seller or, to the best of Seller's knowledge, any general partners of Seller, nor are any of such proceedings contemplated by Seller or, to the best of Seller's knowledge, any general partner of Seller.

14.2.4. Governmental Regulations. To the best of Seller's knowledge, there are no violations of Governmental Regulations relating to the Property. To the best of Seller's knowledge, the Improvements are permitted, conforming structures under applicable zoning and building laws and ordinances and the present uses thereof are permitted conforming uses under applicable zoning and building laws and ordinances. To the best of Seller's knowledge, the conveyance of the Property to Buyer will not violate any Governmental Regulations and will include all rights necessary to permit continued compliance by the Project with all Governmental Regulations.

14.2.5. Approvals. To the best of Seller's knowledge, all licenses, approvals, permits and certificates from the Authorities and private parties necessary for the construction, development, alteration or rehabilitation of the Improvements, or for the use and operation of the Project as it is currently being used and operated were obtained prior to such construction, development, alteration, rehabilitation, use and operation, and are currently possessed by Seller, and the Project has been constructed, completed or modified in accordance with (A) all such approvals, licenses, permits and certificates, (B) all Governmental Regulations, (C) all covenants, conditions, restrictions, easements and agreements of any kind or nature affecting the Property, and (D) the plans and specifications delivered by Seller to Buyer.

14.2.6. Assessments. Other than the amounts disclosed by the tax bills delivered to Buyer by Seller and possible supplemental or escape assessments which may be levied by the County Assessor after the date hereof, Seller has no knowledge of any other real property taxes or special assessments which have been or will be assessed against the Property for the current tax year. Seller has no knowledge of any special assessments or charges which have been levied against the Project or which will result from work, activities or improvements done to the Property.

14.2.7. Mechanic's Liens. Seller has no knowledge of any liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments or other matters affecting the Property, except as disclosed by the Title Documents.

14.2.8. Defect Notices. Seller has not received any notices from any insurance company or Tenant of any defects or inadequacies in the Property.

14.2.9. Liens. All of Seller's right, title and interest in and to the Personal Property and Intangible Property have been fully paid for and will not be subject to any liens, encumbrances or claims of any kind at the Close of Escrow. The transfer and assignment to Buyer of Seller's right, title and interest in and to the Personal Property, Intangible Property and

Service Contracts not disapproved by Buyer does not require the consent of third parties. Upon the Close of Escrow Seller will deliver to Buyer good and marketable title to the Personal Property and Intangible Property.

14.2.10. Offers to Sell. Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal or options to purchase the Property.

14.2.11. Hazardous Materials. All operations or activities upon, or use or occupancy of, the Real Property and Improvements, or any portion thereof, by Seller, or, to the best of Seller's knowledge, by any prior tenant or occupant or owner of the Real Property and Improvements, or any portion thereof, or any current tenant or occupant of the Real Property and Improvements, or any portion thereof, is in all material respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge, release or disposal (whether accidental or intentional) of any toxic, hazardous or radioactive substances, materials, or waste, including but not limited to, Hazardous Materials, and neither Seller, nor to the best of Seller's knowledge, any prior tenant or occupant or owner of the Real Property and Improvements or any portion thereof, or any current tenant or occupant of the Real Property and Improvements or any portion thereof, has engaged in or permitted any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such toxic, hazardous or radioactive substances, materials or waste, at, on, in, under, or about the Real Property and Improvements, or any portion thereof. To the best of Seller's knowledge, there is no proceeding or inquiry by any Authority with respect to the presence of any toxic, hazardous or radioactive substance, material or waste, including, without limitation, Hazardous Materials, on or under the Real Property and Improvements or any portion thereof or the migration thereof from or to other property. To the best of Seller's knowledge, there has been no production, storage or disposal on the Property of any Hazardous Material. There are not now and, to the Seller's best actual knowledge, have never been any underground storage tanks located on, or complaints regarding mold at the Real Property.

14.2.12. ERISA. With respect to Seller, at least one of the following statements shall be accurate as of the Closing Date: Seller is not (A) an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, or (B) is not a "plan" subject to Section 4975 of the Internal Revenue Code of 1986, as amended ("Code"), or (C) does not constitute "plan assets" as defined in Department of Labor Regulation 2510.3-101, as modified by Section 3(42) of ERISA.

14.2.13. Funds. Seller is involved in, and its funds derive from, only legitimate business activities.

14.2.14. OFAC. Seller is not a person with whom Buyer is prohibited from engaging in this transaction due to any United States government embargos, sanctions, or terrorism or money laundering laws, including, without limitation, due to Seller or any party that has ownership in or control over Seller (each, a "Seller Party") being (1) subject to United States government embargos or sanctions, (2) in violation of terrorism or money laundering laws, or

(3) listed on a published United States government list (e.g., Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control or other lists of similar import).

14.3. Representations and Warranties Pertaining to Documents.

14.3.1. Accuracy of Materials. All instruments, documents, lists, schedules and items delivered to Buyer by Seller pursuant to this Agreement will fairly present the information set forth in a manner that is not misleading and will be true, complete and correct in all respects on the date of delivery and upon the Close of Escrow, as they may be updated, modified or supplemented in accordance with this Agreement.

14.3.2. Occupancy Agreements. There are no leases, subleases, occupancies or tenancies in effect pertaining to the Project, except the Tenant Leases, and Seller has no knowledge of any oral agreements with anyone, including Tenants, with respect to the occupancy of the Project, except as may be shown by the Rent Roll. The Rent Roll is true and complete in all respects.

14.3.3. Service Contracts. There are no service or maintenance contracts, warranties, guarantees, listing agreements, parking agreements or bonds (whether oral or written) which affect or will affect or which are or will be obligations of the Buyer or the Project, other than the Service Contracts delivered to Buyer by Seller pursuant to **Paragraph 7.1.1** and not disapproved by Buyer.

14.3.4. Title Documents. Seller has no knowledge of any current default or breach under the terms and provisions of any of the Title Documents or the Service Contracts not disapproved by Buyer.

14.3.5. Tenant Leases. The Tenant Leases have been duly authorized and executed by the landlord thereunder, and, by the Tenant thereunder. The Tenant Leases are in full force and effect according to the terms set forth therein. There are no uncured monetary defaults under the Tenant Leases and no Tenant has asserted, or has any defense to, offsets or claims against rents payable or monetary obligations under its Tenant Lease, and Seller has no knowledge of any uncured nonmonetary defaults under the Tenant Leases nor that any Tenant has asserted, or has any defense to, offsets or claims against any nonmonetary obligations under its Tenant Lease. All of the landlord's obligations under the Tenant Leases which accrued prior to the date of this Agreement have been performed. Seller has no knowledge that any Tenant is or may become unable or unwilling to perform any or all of the Tenant's obligations under its Tenant Lease. Seller has no claim, controversy, dispute, quarrel or disagreement against or with any Tenant, and Seller has no knowledge that any Tenant has any claim, controversy, dispute, quarrel or disagreement against or with Seller. Seller has not at any time waived any provision under any Tenant Lease, or granted any concessions to any Tenant not disclosed in such Tenant's Tenant Lease.

14.3.6. Prior Encumbrances. Neither Seller's interest in the Tenant Leases nor any of the rentals due or to become due under the Tenant Leases will be assigned, encumbered or subject to any liens at the Close of Escrow.

14.3.7. Records and Plans, Licenses and Permits and Warranties. The Records and Plans, the Licenses and Permits and the Warranties delivered to Buyer by Seller pursuant to **Paragraph 7.1.1** are all of such Licenses and Permits, Records and Plans and Warranties which are in the possession of or reasonably available to Seller.

Seller's representations and warranties made in this **Paragraph 14** shall be continuing and shall be true and correct as of the Close of Escrow with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller's representations and warranties made herein shall constitute a condition for the benefit of Buyer to the Close of Escrow (as elsewhere provided herein) and shall survive and shall not merge into, the Close of Escrow and the recording of the Deed in the Official Records for one (1) year after the Closing Date with the same force and effect as if remade by Seller in a separate certificate at that time.

15. Seller's Covenants Regarding Operation of the Property Through the Close of Escrow Existing Operations. Seller hereby agrees, through and including the Close of Escrow and at the Seller's sole cost and expense, to (A) keep all existing insurance policies affecting the Project in full force and effect, (B) use due diligence and its best efforts to keep in full force and effect and/or renew all Licenses and Permits, (C) provide all services and to continue to operate, manage and maintain the Project (including mechanical equipment of every kind used in the operation thereof) in such condition so that the Project shall be in substantially the same condition on the Close of Escrow as on the date hereof, reasonable wear and tear excepted, (D) use best efforts to comply with all Governmental Regulations, (E) deliver to Buyer copies of any Operating Statements prepared after the date of this Agreement, and (F) keep Buyer timely advised of any repair or improvement required to keep the Project in such condition as aforesaid and which costs in excess of Twenty-Five Thousand Dollars (\$25,000.00).

15.2. New Leases. Seller hereby agrees that after the Contingency Date, Seller will not hereafter modify, extend or otherwise change any of the terms, covenants or conditions of the Tenant Leases or enter into new leases or any other obligations or agreements affecting the Project without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion. Without the prior written consent of Buyer, Seller shall not terminate any of the Tenant Leases. Seller shall not accept from any of the Tenants' payment of rent more than one month in advance or apply any security deposit to rent due from any Tenant.

15.3. Service Contracts. Except as otherwise provided herein, Seller will not extend, renew, modify or replace any of the Service Contracts without the prior written consent of Buyer. If Buyer does not disapprove any request of Seller regarding a Service Contract within five (5) business days after Buyer's receipt of such written request, Buyer shall be deemed to have approved such request.

15.4. Additional Liens. Seller will not, without the prior written consent of Buyer, convey any interest in the Licenses and Permits, the Records or Plans or any of the other Property, and Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the date of this Agreement which will not be eliminated prior to the Close of Escrow.

15.5. Vacant Space. Seller shall cause all vacant space in the Improvements to be delivered to Buyer upon the Closing Date in a "rent-ready" condition. To the extent any vacant rental units are not in "rent-ready" condition as of the Closing Date (each an "**Unready Unit**"), Seller shall provide Buyer with credit to be applied to the payment of the Purchase Price in the amount of Seven Hundred Fifty and 00/100 Dollars (\$750.00) for each Unready Unit. "Rent ready" means the space is made habitable by Seller, subject to ordinary wear and tear, in accordance with Seller's custom and practice.

15.6. Invoices. Seller has paid or will pay in full, prior to the Close of Escrow, all bills and invoices that are received by Seller prior to the Close of Escrow for labor, goods, materials and services of any kind relating to the Property and utility charges relating to the period prior to the Close of Escrow.

15.7. Changes in Circumstances. Seller shall promptly notify Buyer of any change in any condition with respect to the Property or of any event or circumstance which makes any representation or warranty of Seller under this Agreement untrue or misleading in any material respect, or any covenant of Buyer under this Agreement incapable or less likely of being performed, it being understood that the Seller's obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties or covenants under this Agreement.

16. Buyer's Representations and Warranties. In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer to Seller:

16.1. Power. Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

16.2. Requisite Action. All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transaction contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required.

16.3. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

16.4. Validity. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principals affecting or limiting the rights of contracting parties generally.

Buyer's representations and warranties made in this **Paragraph 16** shall be continuing and shall be true and correct as of the Close of Escrow with the same force and effect as if remade by Buyer in a separate certificate at that time. The truth and accuracy of Buyer's representations and

warranties made herein shall constitute a condition for the benefit of Seller to the Close of Escrow and shall survive and shall not merge into the Close of Escrow or the recordation of the Deed in the Official Records for one (1) year after the Closing Date with the same force and effect as if remade by Buyer in a separate certificate at that time.

17. Condemnation and Destruction.

17.1 Eminent Domain or Taking. If, prior to the Close of Escrow, any material portion of the Real Property is taken or if the access thereto or available parking area therefor is materially reduced or restricted or reduced such that the Project as it is currently used is not in compliance with zoning requirements or any Tenant can terminate its Tenant Lease or if any of the rentable square footage of the Improvements is taken, by eminent domain or otherwise (or is the subject of a pending, threatened or contemplated taking which has not been consummated), Seller shall immediately notify Buyer, in writing, of such fact. In such event, Buyer shall have the option, in its sole and absolute discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) days after receipt of Seller's notice. If this Agreement is so terminated, the provisions of **Paragraph 7.3** shall govern. If Buyer does not exercise this option to terminate this Agreement, or if there has not been a material taking by eminent domain or otherwise to give rise to such option, neither party shall have the right to terminate this Agreement, but Seller shall assign and turn over, and the Buyer shall be entitled to receive and keep, all awards for the taking by eminent domain which accrue to Seller and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price. Unless or until this Agreement is terminated, Seller shall take no action with respect to any eminent domain proceeding without the prior written consent of Buyer.

17.2. Fire or Casualty. Prior to the Close of Escrow, and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by earthquake, flood, landslide, fire or other casualty shall be borne and assumed by Seller, except as otherwise provided in this **Paragraph 17.2**. If, prior to the Close of Escrow, any part of the Improvements is damaged or destroyed by earthquake, flood, landslide, fire or other casualty, Seller shall immediately notify Buyer, in writing, of such fact. If such damage or destruction is "material", Buyer shall have the option to terminate this Agreement upon written notice to the Seller given not later than ten (10) days after receipt of Seller's notice. For purposes hereof, "material" shall be deemed to be (A) any uninsured damage or destruction to the Project or (B) any insured damage or destruction (i) where the cost of repair or replacement is estimated to be Fifty Thousand and 00/100 Dollars (\$50,000.00) or more or shall take more than one hundred twenty (120) days to repair, in Buyer's good faith judgment, or (ii) which allows any Tenant to terminate its Tenant Lease; provided, however, in the case of uninsured damage or destruction, Seller may, at Seller's option, elect to repair such damage and destruction and keep this Agreement in full force and effect so long as such repair can be and is completed by Seller prior to the Closing Date. If this Agreement is terminated pursuant to this **Paragraph 17.2**, the provisions of **Paragraph 7.3** shall govern. If Buyer does not exercise this option to terminate this Agreement, or if the casualty is not material, neither party shall have the right to terminate this Agreement but Seller shall assign and turn over, and Buyer shall be entitled to receive and keep, all insurance proceeds payable to it with respect to such destruction (which shall then be repaired or not at Buyer's option and cost), plus Seller shall pay over to Buyer an amount equal

to all uninsured losses including, without limitation, the deductible amount with respect to the insurance and the parties shall proceed to the Close of Escrow pursuant to the terms hereof without modification of the terms of this Agreement and without any reduction in the Purchase Price. If Buyer does not elect to terminate this Agreement by reason of any casualty, Buyer shall have the right to participate in any adjustment of the insurance claim.

18. Indemnification

18.1. Indemnification of Buyer. Seller hereby agrees to protect, indemnify and defend Buyer against, and to hold Buyer harmless from, all losses, damages, costs and expenses, including without limitation actual legal fees and disbursements, incurred by Buyer relating to the Property which (A) result from acts, occurrences or matters that took place prior to the Close of Escrow; (B) result from acts, occurrences or matters the existence or occurrence of which constitute a violation of one or more representations, warranties or covenants of Seller hereunder, and are not a breach by Buyer of obligations or liabilities expressly assumed by Buyer hereunder; provided, however, nothing contained herein shall obligate Seller with respect to, or negate or modify any liability of Buyer for, any breach of Buyer's representations, warranties and covenants in this Agreement; or (C) arise or result from a breach by Seller of any of its agreements or covenants herein.

18.2. Defense of Claims Against Buyer. With respect to any claim for which Buyer has requested indemnification under **Paragraph 18.1** above, Seller will be entitled to assume the defense of any related litigation, arbitration or other proceeding, provided that Buyer may at its election and expense, participate in such defense, and provided further that in the event of any difference of opinion or strategy with respect to the defense of such action or the assertion of counterclaims to be brought with respect thereto, Seller's counsel will, after consultation with Buyer's counsel, determine the actual strategy, defense and counterclaim to be employed. At Seller's reasonable request, Buyer will cooperate with Seller, at no cost or expense to Buyer, in the preparation of any defense to any such claim. Seller agrees to promptly reimburse Buyer for any expenses or costs incurred by Buyer in connection with such request. If Seller does not elect to assume the defense of any such matter, Seller shall have the right, at its sole expense, to employ separate counsel acceptable to Buyer and participate in such defense, provided that in the event of any difference of opinion or strategy with respect to the defense of such action or the assertion of counterclaims to be brought with respect thereto, Buyer's counsel will, after consultation with Seller's counsel, determine the actual strategy, defense and/or counterclaim to be employed.

18.3. Indemnification of Seller. Buyer hereby agrees to protect, indemnify and defend Seller against, and to hold Seller harmless from, all losses, damages, costs and expenses, including without limitation actual legal fees and disbursements, incurred by Seller relating to the Property which (A) arise or result from acts, occurrences or matters that take place after the Close of Escrow; provided, however, nothing contained herein shall obligate Buyer with respect to, or negate or modify any liability of Seller for, any breach of Seller's representations, warranties and covenants in this Agreement, or (B) arise or result from a breach by Buyer of its agreements, covenants, representations or warranties herein, or (C) arise after the Close of Escrow under Approved Title Conditions or other obligations expressly assumed by Buyer.

18.4. Defense of Claims Against Seller. With respect to any claim for which Seller has requested indemnification under **Paragraph 18.3** above, Buyer will be entitled to assume the defense of any related litigation, arbitration or other proceeding, provided that Seller may at its election and expense, participate in such defense, and provided further that in the event of any difference of opinion or strategy with respect to the defense of such action or the assertion of counterclaims to be brought with respect thereto, Buyer's counsel will, after consultation with Seller's counsel, determine the actual strategy, defense and counterclaim to be employed. At Buyer's reasonable request, Seller will cooperate with Buyer in the preparation of any defense to any such claim, and Buyer will reimburse Seller for any actual expenses incurred in connection with such request. If Buyer does not elect to assume the defense of any such matter, Buyer shall have the right, at its sole expense, to employ separate counsel acceptable to Seller and participate in such defense, provided that in the event of any difference of opinion or strategy with respect to the defense of such action or the assertion of counterclaims to be brought with respect thereto, Seller's counsel will, after consultation with Buyer's counsel, determine the actual strategy, defense and/or counterclaim to be employed.

19. Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (hereafter, the "**Notice**") shall be in writing and shall be validly given or made to another party if served personally or if deposited in the United States mail, certified or registered, postage prepaid or if transmitted by telegraph, telecopy or other electronic written transmission device. If the Notice is served personally, service shall be conclusively deemed made at the time of such personal service. If the Notice is given by mail, the Notice shall be conclusively deemed given seventy-two (72) hours after the deposit thereof in the United States mail. If the Notice is sent by telegraph or if by other carrier service, the Notice shall be deemed given upon confirmation of delivery by the carrier. If the Notice is sent by facsimile service, Notice shall be deemed given upon confirmation of transmission. The Notice shall be addressed to the party to whom such notice, demand or other communication is to be given at the address set forth in the Basic Provisions above. Any party hereto may change its address for the purpose of receiving Notices as herein provided by a written Notice given in the manner aforesaid to the other party or parties hereto.

20. Omitted.

21. Required Actions of Buyer and Seller. Buyer and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions hereof in order to consummate the purchase and sale herein contemplated and shall use their commercially reasonable efforts to accomplish the Close of Escrow in accordance with the provisions hereof. Without limiting the foregoing, Seller agrees to provide Buyer and/or Buyer's lender with any information reasonably requested by Buyer's lender in connection with financing obtained by Buyer in connection with the transactions contemplated by this Agreement.

22. Entry. From and after the Opening of Escrow, Buyer and Buyer's representatives, agents and designees shall have the right, to enter upon the Property, at Buyer's sole cost, for any purpose in connection with its proposed purchase, development or operation of the Property, including, without limitation, the right to examine all books, interview tenants and records and files of Seller relating to the Property and the right to interview tenants and make such

inspections, investigations and tests (including all leased areas and mechanical systems) as Buyer may elect to make or obtain, including without limitation, environmental (Phase I and/or Phase II), soils, seismic, hydrogeologic and engineering tests, analyses and studies. Notwithstanding the foregoing, Buyer will provide Seller with at least 48 hours prior oral or written notice before entering any demised premises leased pursuant to a Tenant Lease. Seller agrees to make all such books, records and files available to Buyer and Buyer's attorneys, accountants and other representatives at any time during business hours upon reasonable notice from Buyer. From and after the Opening of Escrow, Buyer shall be entitled to communicate directly with the Authorities in connection with Buyer's proposed purchase, development or operation of the Property. The exercise by Buyer of any of the preceding or any other act of Buyer shall not negate any representation, warranty or covenant of Seller or modify any of Buyer's rights or Seller's obligations in the event of any breach by Seller of any of its representations, warranties or covenants under this Agreement. Buyer hereby indemnifies Seller from any and all personal injury or damage to tangible personal property and mechanics' liens to the extent caused by such entry by Buyer or its agents, designees or representatives; provided, however, the foregoing indemnity shall not apply with respect to any claims arising out of any preexisting conditions or any acts or omissions of Seller, its officers, directors, shareholders, agents or employees.

23. Legal and Equitable Enforcement of this Agreement. In the event the Close of Escrow and the consummation of the transactions herein contemplated do not occur by reason of any default by either party, the parties shall have the right to pursue any other remedy available to it at law or in equity, including the specific performance of this Agreement.

24. Assignment. Buyer shall have the right to assign its rights and obligations under this Agreement, by giving prior written notice to Seller, to any person or entity related to Buyer and used by Buyer or including Buyer as a partner or to any corporation, provided that such assignee expressly assumes the obligations of Buyer hereunder. Any assignee shall succeed to all the rights and remedies hereunder, including, but not limited to, the specific performance of this Agreement.

25. Miscellaneous.

25.1. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25.2. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

25.3. Survival of Representations. The covenants, agreements, representations and warranties made herein shall survive the Close of Escrow and shall not merge into the Deed and the recordation thereof in the Official Records.

25.4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

25.5. Professional Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, accounting and engineering fees, and any other professional fees resulting therefrom.

25.6. Entire Agreement. The Reorganization Plan and this Agreement (including all Exhibits attached hereto) are the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof. Neither the Reorganization Plan nor this Agreement may be modified, changed, supplemented or terminated, nor may any obligations be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

25.7. Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable default under this Agreement by the party so failing to perform.

25.8. Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement and the Glossary of Terms are attached and incorporated by this reference. In the event the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

25.9. Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State.

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

25.11. No Joint Venture. This Agreement shall not create a partnership or joint venture relationship between Buyer and Seller.

25.12. Confidentiality. Seller shall make no public announcement or disclosure of any information related to this Agreement or provided pursuant to this Agreement to outside brokers or third parties, before or after the Closing Date, without the prior written consent of Buyer. Seller and Buyer are prohibited from disclosing the terms of this Agreement and any documents or information provided pursuant to this Agreement to any third party that or who is unrelated to this transaction. It shall not be a violation of this Section for Seller and Buyer to disclose some or all of the terms hereof to their auditors, accountants, attorneys, officers, directors or employees, the Escrow Holder, the Title Company, the surveyor or any authorized representative of Seller or Buyer.

25.13. Limitation of Liability of Trustee, Shareholders, Advisors, Investment Managers and Officers of Buyer. NOTICE IS HEREBY GIVEN THAT ALL PERSONS DEALING WITH BUYER SHALL LOOK TO THE ASSETS OF BUYER FOR THE ENFORCEMENT OF ANY CLAIM AGAINST BUYER, AS NEITHER THE TRUSTEES, SHAREHOLDERS, OFFICERS, INVESTMENT MANAGERS NOR ADVISORS OF BUYER ASSUME ANY PERSONAL LIABILITY FOR OBLIGATIONS ENTERED INTO BY OR ON BEHALF OF BUYER.

25.14. Joint and Several. The obligations, duties and liabilities of Seller in this Agreement shall be joint and several as to each of the persons, firms or corporations of which Seller may be composed.

25.15. Purchase Price Allocation. The Purchase Price allocation between the Real Property and Improvements, the Personal Property and the Intangible Property shall be as designated by Buyer, in its sole and absolute discretion.

25.16. Jurisdiction. The United States Bankruptcy Court for the District of Oregon shall have exclusive jurisdiction to determine controversies and disputes arising from or relating to this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

Buyer:

Seller:

Legg Mason Real Estate CDO I, Ltd.
a _____

Bay Club Partners – 472, LLC,
an Oregon limited liability company

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION

[TO BE PROVIDED]

EXHIBIT "B"

INTENTIONALLY OMITTED

EXHIBIT "C"

SPECIAL WARRANTY DEED

INTENTIONALLY OMITTED

EXHIBIT "D"

TENANT LEASE ASSIGNMENT

This tenant lease assignment ("**Assignment**") is made this ____ day of ____, 2015 by and between _____, a _____ ("**Assignor**"), and _____, a _____ ("**Assignee**") with respect to the following matters.

WITNESSETH:

Assignor and Assignee entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions, dated as of ____, 2015 ("**Agreement**"), respecting the sale of certain "**Property**" (as defined in the Agreement). Unless otherwise indicated herein, all capitalized terms in this Assignment shall have the meaning ascribed to them in the Agreement.

Under the Agreement, Assignor is obligated to assign to Assignee any and all of its right, title and interest in and to all Tenant Leases and Tenant Deposits, which Tenant Leases and Tenant Deposits are set forth on **Exhibit "1"** attached hereto.

NOW, THEREFORE, incorporating the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Tenant Leases and Tenant Deposits and Assignee hereby accepts such assignment.

Assignor hereby covenants that Assignor will, at any time and from time to time upon written request therefor, execute and deliver to Assignee, Assignee's successors, nominees or assigns, such documents as Assignee or they may reasonably request to fully assign and transfer to and vest in Assignee or Assignee's successors, nominees and assigns, and protect Assignee's or their right, title and interest in and to the Tenant Leases and the Tenant Deposits (including, without limitation, all guaranties executed in connection therewith) and the rights of Assignor intended to be transferred and assigned hereby, or to enable Assignee, Assignee's successors, nominees and assigns to realize upon or to otherwise enjoy such rights in and to the Tenant Leases and the Tenant Deposits.

Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor as landlord under the Tenant Leases first accruing and arising on or after the date of delivery of this Assignment (the "**Assumed Obligations**").

Assignor hereby agrees to indemnify and hold harmless Assignee, Assignee's agents and Assignee's and their successors and assigns from and against any and all claims, losses, liabilities and expenses, including reasonable attorneys' fees, suffered or incurred by Assignee by reason of: (i) any breach by Assignor prior to the date hereof, of any Assignor's obligations under the Tenant Leases or with respect to the Tenant Deposits, or (ii) any leasing commissions, broker's commissions or finder's fees which accrue after the date hereof with respect to the existing Tenant Leases.

Assignee hereby agrees to indemnify and hold harmless Assignor, Assignor's agents and Assignor's and their successors and assigns from and against any and all claims, losses, liabilities and expenses, including reasonable attorneys' fees, suffered or incurred by Assignor by reason of any breach by Assignee from and after the date hereof, of any of Assignee's Assumed Obligations under the Tenant Leases.

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees and costs.

This Assignment may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Arizona.

Assignee:

Assignor:

a _____

a _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**EXHIBIT "1" TENANT TO LEASE ASSIGNMENT
TENANT LEASES AND TENANT DEPOSITS**

[TO BE PROVIDED]

EXHIBIT "E"

GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE ("**Assignment**") is made this ____ day of ____, 2015 by and between ____, a ____ ("**Assignor**"), and ____, a ____, ("**Assignee**"), with respect to the following matters.

WITNESSETH

Assignor and Assignee entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions, dated as of ____, 2015 ("**Agreement**"), respecting the sale of certain "**Property**", including the "Real Property" described in **Exhibit "1"** attached hereto and the "**Improvements**" located thereon (all as defined in the Agreement). Unless otherwise indicated herein, all capitalized terms in this Assignment shall have the meaning ascribed to them in the Agreement.

Under the Agreement, Assignor is obligated to assign to Assignee any and all of its right, title and interest in and to: (i) the Personal Property, (ii) Intangible Property and (iii) the Service Contracts.

NOW, THEREFORE incorporating the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to, and Assignee hereby accepts such assignment, with respect to:

- (i) the Personal Property;
- (ii) Records and Plans;
- (iii) the Licenses and Permits;
- (iv) the Service Contracts listed on **Exhibit "2"** attached hereto;
- (v) the Warranties;
- (vi) all other contracts and agreements relating to all or any portion of the Property; except to the extent Assignee has disapproved of the same; and
- (vii) any other tangible personal property and all intangible rights in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Property, except that owned by any Tenant of the Property ((ii) through (iv) and (vi) and (vii) shall collectively be referred to herein as "**Intangible Property**").

Assignor hereby covenants that Assignor will, at any time and from time to time, upon written request therefor, execute and deliver to Assignee, Assignee's successors, nominees and assigns, any new or confirmatory instruments which Assignee, Assignee's successors, nominees and assigns may reasonably request in order to fully assign and transfer to and vest in Assignee, or Assignee's successor, nominee and assigns, and to protect Assignee's or Assignee's successors', nominees' and assigns' right, title and interest in and to the Records and Plans, Licenses and Permits, Service Contracts, Personal Property and all related warranties, indemnities and guarantees, and all other tangible property and intangible rights in connection with the Property, or to otherwise realize upon or enjoy such rights in such assigned rights and properties.

Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor under the Service Contracts, first accruing and arising on or after the date of this Agreement (the "**Assumed Obligations**").

Assignee hereby agrees to indemnify and hold harmless Assignor, Assignor's agents and Assignor's and their successors and assigns from and against any and all claims, losses, liabilities and expenses, including reasonable attorneys' fees, suffered or incurred by Assignor by reason of any breach by Assignee from and after the date hereof of any of Assignee's Assumed Obligations under the Service Contracts.

Assignor hereby agrees to indemnify and hold harmless Assignee, Assignee's agents and Assignee's and their successors and assigns from and against any and all claims, losses, liabilities and expenses, including reasonable attorneys' fees, suffered or incurred by Assignee by reason of any breach by Assignor prior to the date hereof of any of Assignor's obligations under the Service Contracts.

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees and costs.

This Assignment maybe executed simultaneously in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Arizona.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

Assignee:

Assignor:

a _____ a _____

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

EXHIBIT "1" TO GENERAL ASSIGNMENT AND BILL OF SALE

LEGAL DESCRIPTION

[TO BE PROVIDED]

EXHIBIT "2" TO GENERAL ASSIGNMENT AND BILL OF SALE
LIST OF SERVICE CONTRACTS

EXHIBIT "F"

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

To inform _____, a _____, ("**Transferee**"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("**Code**") will not be required upon the transfer of certain real property to the Transferee by _____, a _____ ("**Transferor**"), the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Transferor's U.S. employer identification/social security number is _____; and

3. The Transferor's office/personal residence address is _____.

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The Transferor understands that the Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

The Transferor hereby agrees to indemnify, defend and hold the Transferee harmless from and against any and all obligations, liabilities, claims, losses, actions, causes of action, rights, demands, damages, costs and expenses of every kind, nature or character whatsoever (including, without limitation, actual attorneys' fees and costs) incurred by the Transferee as a result of: (i) the Transferor's failure to pay U.S. Federal income tax which the Transferor is required to pay under applicable U.S. law; or (ii) any false or misleading statement contained herein.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

037108/00001/5846515v3

**DEBTOR'S SECOND AMENDED
PLAN OF REORGANIZATION
EXHIBIT 2**

LISTING AGREEMENT



EXCLUSIVE LISTING AGREEMENT - SALE

READ CAREFULLY, THIS AGREEMENT AFFECTS YOUR LEGAL RIGHTS

In consideration of the listing for sale by **Colliers International AZ, LLC, a Delaware limited liability company** (hereinafter referred to as "Company"), of the real property described below (the "Property") and Company's promise to attempt with reasonable diligence to locate a purchaser for the Property, the undersigned Owner hereby grants to Company the sole exclusive right to negotiate a sale of the Property for the period commencing August 8 2014 and terminating at midnight December 31, 2014 (the "Listing Period"). The Property is located in the City of Mesa, County of Maricopa, State of Arizona, located at 2121 W Main Street, Mesa, AZ and further described as MidTown on Main Street, a 472 unit apartment complex. The price and terms of the sale shall be as follows: \$34,950,000.00.

Owner agrees to pay to Company a sales commission calculated on the basis of the gross sales price of the Property (see attached Exhibit A). Said commission shall be earned by and paid to Company if any one of the following events occurs: (a) the Property or any portion thereof or any interest therein is sold, transferred or conveyed by Owner or any third party during the Listing Period or any extension thereof; (b) a purchaser is procured by or through Company, Owner or any third party who agrees to purchase the Property or any portion thereof or any interest therein on the terms above stated or other terms reasonably acceptable to Owner during the Listing Period or any extension thereof; ~~(c) title to the Property is transferred by the act or omission of Owner during the Listing Period or any extension thereof for any reason including, without limitation, as a result of a foreclosure, trustee's sale, or deed in lieu of foreclosure with respect to all or any portion of the Property;~~ (d) Owner enters into any agreement for sale or exchange or transfers, conveys or grants a right of first refusal or option with respect to all or any part of the Property during the Listing Period or any extension thereof; or (e) within one hundred eighty (180) days after expiration of the Listing Period or any extension, Owner enters into an agreement for sale or exchange or transfers or conveys the Property or any portion thereof or any interest therein, including, without limitation, the granting of an option or right of first refusal on any terms (even if different than those offered during the Listing Period) with any person or entity with whom Company has negotiated or to whom Company has submitted the Property prior to expiration of the Listing Period and whose name appears on any list of such persons or entities which Company shall have mailed to Owner at the address below stated at any time during the Listing Period or within thirty (30) days following such expiration provided that if Company has submitted a written offer to purchase, it shall not be necessary to include the offeror's name on such list. If Owner is a non-publicly traded partnership, corporation or limited liability company, a transfer of a majority of the (i) partnership interests of a partnership, (ii) capital stock of a corporation, or (iii) membership interests of a limited liability company, shall be deemed a sale of the Property. The commission shall be paid to Company no later than the close of escrow (the "Closing") or if there is no escrow, then upon recordation of the conveyancing instrument provided that if the sale is not consummated for any reason, then the commission shall be paid to Company upon the occurrence of the first of the events enumerated in this paragraph that entitle Company to be paid a commission. The escrow agent under any escrow is hereby authorized, instructed and directed to disburse the commission at the Closing out of the proceeds payable to or for the benefit of Owner. If the transaction for which a commission would otherwise be payable fails to close and, as a result thereof, Owner is entitled to be paid and/or is entitled to retain monies deposited with escrow agent and/or with Owner (the "Deposit"), then and in such event the Deposit shall be divided equally between Owner and Company provided that the amount payable to Company shall not exceed the amount of its commission payable hereunder if the transaction had been consummated. In the event title to the Property is conveyed to a joint venture, partnership (general or limited), limited liability company, corporation, or other form of business association (the "Entity"), the commission shall be calculated on the basis of the value of the Property as determined for the purposes of the agreement creating the Entity as the percentage of interest being conveyed to the new venturers, partners, members, shareholders, or interest-holders. The commission, in such event, shall be paid upon formation of the Entity.

If negotiations involving the sale of the Property have commenced and are continuing as of the scheduled expiration date of the Listing Period, the Listing Period shall be extended with respect to any transaction which is the subject of such negotiations for a period through the termination of such negotiations or the consummation of such transaction.

Owner agrees to cooperate with Company in effecting a sale of the Property and to refer immediately to Company all inquiries of any party interested in purchasing the Property. Company is authorized to advertise the Property and ~~shall have the exclusive right to place a sign or signs on the Property if in Company's opinion such action would facilitate the sale of the Property.~~ Owner hereby authorizes Company to serve as agent for any prospective purchaser of the Property and waives any conflict of interest that may arise as a result thereof. Owner agrees to ~~pay all customary escrow, title and closing charges and to execute~~ such documents as may be necessary to effect a sale of the Property.

In the event no commission is earned pursuant to the foregoing provisions, but Owner enters into a lease of all or any portion of the Property (a) during the Listing Period or any extension thereof, or (b) during the one hundred eighty (180) days subsequent to the Listing Period or any extension thereof, and the lessee is a party with whom Company negotiated on Owner's behalf with respect to a sale of the Property during the Listing Period or any extension thereof and whose name appears on any list which Company shall have provided to Owner pursuant to the foregoing provisions, then upon execution of such lease, Owner shall pay to Company a commission in accordance with the normal and customary commission payable to Company in connection with leases of like nature.

It is understood that it is illegal for either Owner or Company to refuse to present or sell to any person because of race, color, religion, national origin, sex, marital status or physical disability.

Owner represents and warrants to Company: (a) Owner is the owner of record of the Property or has the legal authority to execute this Agreement; (b) the person(s) executing this Agreement on behalf of Owner are duly authorized to do so and thereby bind Owner hereto; (c) no person or entity has any right to purchase the Property or any portion thereof by virtue of any option, right of first refusal or other agreement; ~~(d) there are no delinquencies or defaults under any deed of trust or other encumbrance on the Property;~~ (e) the Property is not subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding; (f) Owner has been advised by Company to consult with Owner's legal advisors, that neither Company nor any of its salespeople is authorized or qualified to give legal or tax advice and that Owner has consulted with, and will consult with, such legal or tax advisors as Owner deems necessary or appropriate (including, without limitation, with respect to compliance with the Americans With Disabilities Act and laws governing hazardous materials and substances and the disclosure of the existence of such materials and substances on the Property to prospective purchasers); (g) except as otherwise disclosed to Company in writing and the Company has acknowledged receipt thereof in writing, Owner has no knowledge of any hazardous materials or substances on the Property or any portion thereof, including but not limited to the presence or location of asbestos, PCB transformers, underground storage tanks or other toxic, hazardous or contaminated substances; (h) the representations contained in this Agreement are true as of the date hereof and shall be true as of the date of Closing; (i) Owner will comply with the provisions of FIRPTA (Internal Revenue Code § 1445) and regulations promulgated thereunder; and (j) NEITHER COMPANY NOR ANY SALESPERSON AFFILIATED WITH COMPANY HAS MADE ANY PROMISES OR REPRESENTATIONS TO OR AGREEMENTS WITH OWNER NOT CONTAINED HEREIN WHICH IN ANY MANNER AFFECT THE RIGHTS AND OBLIGATIONS OF OWNER AND/OR COMPANY UNDER THIS AGREEMENT.

Owner agrees to indemnify, defend (with counsel reasonably acceptable to the Company), and hold Company, its shareholders, officers, directors, employees and agents harmless from any claims, lawsuits, losses, costs, liabilities or damages (including, without limitation, attorneys' fees, arbitrators' fees, costs and related expenses) incurred by Company relating to, arising out of or in connection with (i) any breach of this Agreement by Owner, including but not limited to the breach of Owner's representations and warranties contained herein, (ii) any incorrect information regarding the Property supplied by Owner or the failure of Owner to supply information regarding all or any portion of the Property, (iii) the use of, or access to, all or any portion of the Property by any person pursuant to this Agreement, and (iv) Company's good faith performance of its obligations under this Agreement. Notwithstanding anything to the contrary, Owner shall not be obligated to defend, indemnify, or hold Company harmless with respect to the gross negligence or intentional misconduct of Company.

If either party shall bring legal proceedings to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs, expenses and fees incurred in connection with the exercise by the prevailing party of its rights and remedies with respect to this Agreement. Such costs, expenses and fees shall include, but not be limited to, reasonable attorneys' fees, reasonable paralegal fees, expert witness fees, costs of tests and analyses, trial and accommodation expenses, deposition and trial transcript copies and costs of court. For purposes of this paragraph, the term "prevailing party" shall mean (a) with respect to the claimant, one who is successful in obtaining substantially all of the relief sought, and (b) with respect to the defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant.

All covenants, agreements, representations and warranties set forth in this Agreement shall survive the Closing and shall not merge into any deed, assignment or other instrument executed or delivered in connection with the transaction contemplated hereby.

All amounts owed to Company hereunder shall bear interest from the due date until paid in full at the prime rate of Bank One, Arizona, NA, or any successor thereof (the "Bank"), which rate shall be as the rate charged by the Bank on ninety (90) day unsecured loans at its main office, plus five percent (5%) per annum; or in the event that the Bank does not then publish a prime rate as described above, interest may be computed hereunder upon the announced prime rate of any other bank doing business in Arizona, as selected by Company.

Neither this Agreement nor any amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by both Owner and designated broker of the Company. Owner hereby acknowledges that salespersons affiliated with Company are not authorized to: (a) make or approve any addition to, deletion from, or alterations of the printed provisions of this Agreement; or (b) make any amendments to or modifications of this Agreement. Owner shall not distribute a copy of this Agreement to third parties without Company's prior written approval. This Agreement is governed by the laws of the State of Arizona. This Agreement may be assigned by Colliers International AZ, LLC to any entity controlled by Colliers International AZ, LLC, its parent, or an entity into which Colliers International AZ, LLC is merged, converted or consolidated or which acquires substantially all of Colliers International AZ, LLC's assets, without Client's/Other Party's consent. This Agreement is binding on the successors, assigns, personal representatives and heirs of the parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. In the event any provision of this Agreement should be determined to be unenforceable, the remainder of this Agreement shall remain in force to the fullest extent permitted by law. Notwithstanding any other provision in this Agreement, in the event of a dispute involving Owner and Company arising in connection with this Agreement

or the services provided by Company hereunder, Company's liability to Owner shall be limited to the amount of the commission paid to Company under this Agreement. Time is of the essence with respect to each provision of this Agreement. This Agreement and each of the terms and provisions hereof have been negotiated between the parties and the language in all parts of this Agreement shall, in all cases, be construed according to its plain meaning and not strictly for or against either party. The undersigned Owner acknowledges receipt of a copy of this Agreement.

ACCEPTED: **COLLIERS INTERNATIONAL AZ, LLC**By: Cindy Cooke
Senior Executive Vice PresidentAddress: 2390 East Camelback Road, Suite 100
Phoenix, AZ 85016

Telephone: (602) 222-5000

Dated: _____

ACCEPTED: **COLLIERS INTERNATIONAL AZ, LLC**By: Robert U. Mulhern
Designated Broker

Its: _____

Dated: 8/8/14

OWNER: **BAY CLUB PARTNERS - 472, LLC, AN
OREGON LIMITED LIABILITY COMPANY**By: 

David L. Butler

Its: 3827 SW Hall Blvd.
Beaverton, OR 97005

Address: _____

Telephone: 503-484-5778

Dated: 8-8-14

Exhibit A
Commission Schedule

1% if final closing price is at agreed listing price or greater.

.85% if final closing price is below listing price

LIST OF INTERESTED PARTIES

In re Bay Club Partners-472, LLC
U.S. Bankruptcy Court Case No. 14-30394-rld11

ECF PARTICIPANTS

- GARY M BULLOCK docket@garymbullock.com
- CAROLYN J JOHNSON cjjohnsen@dickinsonwright.com
- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- AVA L SCHOEN ava.schoen@tonkon.com, larissa.stec@tonkon.com
- US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov
- LAURA J WALKER lwalker@cablehuston.com, cdaugherty@cablehuston.com

NON-ECF PARTICIPANTS

SECURED CREDITOR

LEGG Mason Real Estate CDO I, Ltd.
10880 Wilshire Blvd. #1750
Los Angeles CA 90024

LEGG Mason Real Estate CDO I, Ltd.
c/o Latitude Management Real
Estate Investors, Inc.
Attn: Michael Schlesinger
350 S. Beverly Dr. #300
Beverly Hills CA 90212

TOP 20 UNSECURED CREDITORS

SMD Remodeling LLC
3102 57th Ave.
Phoenix, AZ 85031

HD Supply Facilities
Maintenance, L.T.D.
POB 509058
San Diego, CA 92150-9058

IDT Landscaping LLC
1876 3rd St
Tempe, AZ 85281

J.R. McDade Co. Inc.
1102 N. 21st Ave.
Phoenix, AZ 85009

AZ Partsmaster
POB 23169
Phoenix, AZ 85063

AZ Brite Carpet Care
1602 N Gilbert Rd
Mesa, AZ 85203

Wildcat Fire Protection
2929 Clarendon Ave.
Phoenix, AZ 85017

Apartments Resurfacing
3039 W. Peoria Ave. C102 #115
Phoenix, AZ 85029

P & J's Painting Inc
273 S. Link Creek Rd.
Prescott, AZ 86303

Level One LLC
POB 671476
Dallas, TX 75267-1476

Rainforest Plumbing & Air
127 S. Weber Dr.
Chandler, AZ 85226

Valley Protective Services Inc
POB 11568
Chandler, AZ 85248

Sherwin Williams Co.
2760 E. Main St. #105
Mesa, AZ 85213-9275

Apartment Interior Supply
POB 41570
Mesa, AZ 85274

Maria Gonzales
dba Allshine Cleaning
POB 41253
Mesa, AZ 85274

Burns Pest Elimination Inc
2620 W. Grovers Ave.
Phoenix, AZ 85053

Leslies Poolmart, Inc.
POB 501162
St. Louis, MO 63150

Maintenance Supply Headquarters
POB 301451
Dallas TX 75303

Koglmeier Law Group, PLC
715 Gilbert Rd #2
Mesa AZ 85203

AAA Landlord Services, Inc.
POB 5960
Mesa AZ 85211