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8 ATTORNEYS FOR THE LEWIS AND

9 UNDERWOOD TRUSTS

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF ARIZONA**

12 In re:

13 MORTGAGES LTD., an Arizona  
14 corporation,

15 Debtor.

Chapter 11

Case No. 2:08-bk-07465-PHX-RJH

**THE LEWIS AND UNDERWOOD  
TRUSTS' JOINDER IN EMERGENCY  
MOTION FOR ENTRY OF ORDER  
CLARIFYING CHAPTER 11 PLAN,  
CONFIRMATION ORDER, AND  
OTHER MATTERS RELEVANT TO  
TRANSFER DECISION OF PASS-  
THROUGH INVESTORS**

**Hearing Date: October 8, 2009**

**Hearing Time: 11:00 a.m.**

**Location: Courtroom 603**

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20 William C. Lewis, as trustee of the William C. Lewis Trust dated August 1, 1989,  
21 as amended (the "**Lewis Trust**") and Richard K. Underwood, as trustee of the Richard K.  
22 Underwood Revocable Trust dated October 31, 1995, as amended (the "**Underwood**  
23 **Trust**"), hereby join with the Rev Op Group in requesting that the court clarify the Plan  
24 and Confirmation Order. The Rev Op Group has requested that the court clarify certain  
25 provisions relating to the ongoing viability of the agency agreements, the extent of the

1 agent's authority under those agreements, whether certain expenses may be allocated to  
2 the Non-Transferring Investors, and whether the Inter-Borrower Agreement has or will be  
3 modified. These are important issues that affect all investors and need to be resolved  
4 before the pass-through investors are required to choose whether to opt-in to the Loan  
5 LLC's.

6 One of the most important issues raised by the Rev Op Group is whether any of  
7 the costs associated with the exit financing may be assessed against the Non-Transferring  
8 Investors. This issue arises, at least in part, from the point blank statement, on page 7 of  
9 the Disclosure Statement, that "the use of the Exit Financing will not be available to" the  
10 Non-Transferring Investors. If that is true, then they should not be forced to share in the  
11 costs of that financing? If, as seems more likely, they will enjoy at least some of the  
12 benefit of the exit financing, then the issue is how their fair share of the costs is to be  
13 determined, and by whom? The plan documents are silent on these issues.

14 According to the Disclosure Statement, the Non-Transferring Investors will remain  
15 liable, under the existing subscription and agency agreements, for the costs and expenses  
16 of enforcing and collecting the ML Loans. (Disclosure Statement, p. 7). This is  
17 reinforced by the language of Paragraph U of the Confirmation Order, which provides  
18 that, before any distributions are made, the Non-Transferring Investors will be "assessed  
19 their proportionate share of costs and expenses of serving [*sic*] and collecting the ML  
20 Loan in a fair, equitable and nondiscriminatory manner . . . ." (Confirmation Order, ¶  
21 U(3), p. 12). These provisions do not address the costs of the exit financing, however,  
22 with the possible exception of those relating to borrowed funds that are used to service or  
23 collect ML Loans.

24 The plan proponent has suggested that the Non-Transferring Investors' share of  
25 exit financing expenses may be recovered from certain fees, charges and interest that ML  
Manager, as agent, is authorized to retain under the agency agreements. (Disclosure

1 Statement, p. 7). The Plan, however, as amended by the confirmation order, provides that  
2 “the Debtor’s alleged right and title to the interest spread, default rates, extension fees and  
3 other similar fees, charges and interest” are transferred to the Loan LLC’s and the Non-  
4 Transferring Investors. (Plan, Section 4.6, p. 36; Confirmation Order, ¶ U(2), p. 12). ML  
5 Manager may retain and use these fees, charges and interest only by treating them as  
6 loans from the Loan LLC’s and Non-Transferring Investors. (Plan, Section 4.12, p. 38;  
7 Confirmation Order, ¶ X, p. 15). Thus, these items do not provide a source of payment  
8 from the Non-Transferring Investors.

9 Because of these ambiguities, if the court determines that the Non-Transferring  
10 Investors are obligated to pay a portion of the costs of the Exit Financing, it should also  
11 determine how that allocation is to be made, and by whom.

12 DATED this 2nd day of October, 2009.

13 FORRESTER & WORTH, PLLC

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16 SCF 006342

17 S. Cary Forrester

18 Attorneys for the Lewis and Underwood  
19 Trusts

20 COPY of the foregoing served via e-mail  
21 this 2nd day of October, 2009, upon:

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