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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re Mortgages Ltd., Debtor.	Chapter 11 Case No. 2-08-BK-07465-RJH **ML MANAGER LLC'S RESPONSE AND OBJECTION TO REV-OP GROUP'S EMERGENCY MOTION FOR ENTRY OF ORDER: (I) CLARIFYING CHAPTER 11 PLAN, CONFIRMATION ORDER, AND OTHER MATTERS RELEVANT TO TRANSFER DECISION OF PASS-THROUGH INVESTORS; AND (II) EXTENDING THE TRANSFER DECISION** Hearing Date: October 8, 2009 Hearing Time: 11:00 a.m.

ML Manager LLC ("ML Manager") hereby files its response and objection to the Rev-Op Group's Emergency Motion for Entry of Order (I) Clarifying Chapter 11 Plan, Confirmation Order, and Other Matters Relevant to Transfer Decision of Pass-Through Investors: and (II) Extending the Transfer Decision ("Emergency Motion"). The Emergency Motion is procedurally improper in many aspects, barred by principles of res judicata and equitable estoppel, and is substantively without merit. The Emergency Motion should be denied as an attempt to circumvent the Plan and Confirmation Order.

I. THE PLAN PROCESS AND CONSENSUAL RESOLUTIONS

As the Court will remember, the Investors Committee worked from January 21, 2009 (when it filed its Plan) to May 20, 2009 (when the Court confirmed the Plan) to

build a consensual Plan. The Ballot Report (Docket No. 1677) filed on May 8, 2009 and the oral presentation at the start of the May 13, 2009 hearing demonstrated the overwhelming support of the Plan by the Investors. As reflected, over 1500 MP Fund and Pass-Through Investors voted. As reflected in the May 8, 1009 Ballot Report, the MP Fund Investors voted about 89% in favor of the Plan and the Non Rev Op Pass-Through Investors voted about 87% in favor of the Plan. After withdrawing their Objections and changing their votes on May 13, 2009, the Rev Op Pass-Through Investors voted 100% in favor of the Plan. All in all, Mr. McDonough testified that about 90% of the Investors who were entitled to vote, actually voted, excluding the Debtor's 401k Plan. To top it off, 100% of the Unsecured Creditors voted in favor of the Plan. As the Court commented at the conclusion of the four day confirmation hearing, the Court had never seen a Plan obtain such a strong vote but also with such a large amount of creditors and investors voting. (Docket No. 1750 and May 19, 2009 Transcript at p. 80:24 – 82:1)

Further, prior to the confirmation hearings, there were 16 objections to confirmation, but by May 11, 2009 when the Investors Committee's response was filed, many of the objections were resolved by compromises and changes. (Docket No. 1696). By the beginning of the confirmation hearing on May 13, 2009 additional compromises had been reached and the objections resolved. (May 13, 2009 Transcript at 63-72) Then each day thereafter there were more resolutions and withdrawal of objections. Each was read onto the record by the parties and eventually included in the Confirmation Order which was signed by the Court on May 20, 2009. (Docket No. 1755).

The Court specifically expressed at the end of the Confirmation hearing, and had counsel include in the Confirmation Order, that the modifications and changes made in the order and on the record were not materially adverse to the any party in interest. By the end of the hearing on May 19, 2009, all the objections had been settled, resolved or withdrawn, except for NRD and PDG Los Arcos, which were overruled, and the Debtor's objections (Docket No. 1641) required at the end of the hearing for the Court to enter his ruling about the MP Funds, but eventually even the Debtor withdrew its objections and

the Court confirmed the consensual Plan. (Docket No. 1755 and May 19, 2009 Transcript at 81:21-22.) As the Court is well aware, the process of reaching a consensual Plan required compromise, finality and a fair resolution that could get all parties on board.

As the Court will also remember, there was a group of 18 Rev Op Investors, who call themselves the "Rev Op Group" and were represented by Bryan Cave, and 2 Rev Op Investors represented by Cary Forrester, who actively participated in the Confirmation hearings. This is the same 18 Rev Op Investors which have filed the Emergency Motion and who are still represented by Bryan Cave. This group of 18 Rev Op Investors represented by Bryan Cave along with the additional 2 Rev Op Investors represented by Cary Forrester initially filed an Objection to confirmation (Docket No. 1691)[1] and then by the beginning of the Confirmation hearing on May 13, 2009 announced in open court that they had resolved their objections, were withdrawing their objections and were changing their votes to accept the Plan. That meant that the vote of the Rev Op Investors was changed to 100% in favor of the Plan.

There were a few individual investors that raised objections, such as Sheldon Sternberg (Docket No. 1662), Dick Dijkman (Docket No. 1645), and Marc Goldblatt (Docket No. 1616), but they too eventually resolved their concerns through language in the Confirmation Order. Mr. Sternberg even cross examined Mr. McDonough and resolved his objections by the express language included in the record and in the Confirmation Order in paragraph U. (Docket No. 1755, May 18, 2009 transcript at 5:9 – 8:18).

As a part of the Plan process, the operative documents were drafted and either attached to the Disclosure Statement or circulated among the parties. Even the draft of the Loan Agreement to be used with the Exit Financer and the draft of the Interborrower Agreement[2] were circulated during this confirmation process, were used in the deposition

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[1] A copy of the Objection to Confirmation filed by the 18 Rev Op Investors represented by Bryan Cave is attached as Exhibit 1. This Objection was withdrawn by the 18 Rev Ops at the hearing on May 13, 2009 and they changed their vote to votes in favor of the Plan.

[2] The Interborrower Agreement that was executed and effective on June 15, 2009 is attached as Exhibit 2.

of Mr. McDonough and were vetted among the parties. According to the Substantial Contribution fee application filed by Bryan Cave in this case (Docket No. 1885), Mr. Miller spent about 17 hours during this time reviewing, editing and negotiating the Interborrower Agreement prior to the end of the Confirmation hearings.

As for the Agency Agreements, they had been the subject of many of the hearings during the Rule 9019 settlement process and the Statement of Authority hearings. See the discussion below. The Agency Agreements to which the 18 Rev Op Investors are bound were attached as an Exhibit to the Bryan Cave Objection to the Radical Bunny Motion which was heard and argued on May 14, 2009 at the confirmation hearing (Docket No. 1671) and were well known to the Debtor, the Investors Committee and the Investors in the process, including the 18 Rev Op Investors.[3]

No appeals were filed and no motions to alter or amend the Confirmation Order were filed. The Confirmation Order and Plan are therefore final and pursuant to Section 1141 of the Bankruptcy Code are binding on all the parties, including the 18 Rev Op Investors.

II. IMPLEMENTATION OF THE PLAN

On June 15, 2009 pursuant to the terms of the Confirmation Order and Plan, the Plan became effective. Pursuant to the express terms of the Plan and the Confirmation Order, without further approval of any of the Boards, the Plan started to be implemented and carried out. The new ML Manager LLC was formed, the 48 Loan LLCs were formed, and the ML Liquidating Trust was formed. ML Manager LLC became the new manager for the Loan LLCs and the MP Funds. The articles and bylaws of Mortgages Ltd were amended, the old stock was cancelled and the new stock issued to the ML Liquidating Trust.

On June 15, 2009 the Exit Financing was closed and the money was advanced by the Exit Financer. The loan documents, organizational documents and transfer documents

[3] That Agency Agreements which were an exhibit to the 18 Rev Op Investors pleadings at the Confirmation hearing and which are the Agency Agreements assigned to ML Manager are attached hereto as Exhibit 3 for the Court's convenience (collectively, "Agency Agreement").

were executed by the Debtor, the ML Liquidating Trustee and the ML Manager LLC pursuant to the authorization in the Confirmation Order. Pursuant to the terms of the Plan and Confirmation Order, the interests of the MP Funds and Mortgages Ltd were transferred into the Loan LLCs and the Non Loan Assets were transferred to the ML Liquidating Trust. Also pursuant to the terms of the Plan and Confirmation Order, the Agency Agreements were assigned to ML Manager LLC and ML Manager LLC became the Agent thereunder.[4] Further the Interborrower Agreement was executed. At that time, the exit financing was drawn to pay off the two Stratera DIP financing loans and to pay the administrative rent claim to SM Coles LLC. The new Liquidating Trustee stepped up to assume his responsibilities and the new ML Liquidating Trust Board did the same. Similarly the ML Manager LLC Board assumed its responsibilities.

As the Court will remember, Investors Committee's counsel had a problem getting the Debtor to execute and provide the title company with the documents required for the closing. At the hearing on June 11, 2009, counsel for the Debtor indicated the documents had been signed by the Debtor's officer but the Debtor's Board of Directors would not provide the Resolution to the title company and allow the documents to be released until certain assurances were made. The Court ordered the Debtor to turn them over to the title company and stated that a Board Resolution was not needed since the Court had expressly authorized the Debtor to sign the documents. Attached as Exhibit 4 are the June 11, 2009 Minute Entry and the June 11, 2009 Order entered by the Court. (Docket No. 1797 and 1798). The Assignment of Service and Agency Agreements which is attached as Exhibit 4 is one of those documents executed and turned over by the Debtor.

Since that date the Administrative Bar Date came and went and the parties and the Court have been processing the administrative fee applications and the objections thereto. Some significant savings have been reached by settlements of fees. To date, all but 4 of the approximate 25 fee applications have been resolved and are paid or in the process of

[4] The Agency Agreements were assigned to the ML Manager LLC pursuant to an assignment document executed June 11 but which became effective on June 15, 2009 at the closing. A copy of the assignment is attached as Exhibit 4 hereto.

payment. The other 4 are set for evidentiary hearing.

Similarly, the ML Manager has been working with borrowers on the loans, gathering financial information, seeking opinions of value and meeting with borrowers. About 20 some deed of trust sales are pending. The Grace Entities and ML Manager are still in mediation and are attempting to reach a consensual resolution of the 6 loans. Further, ML Manager has filed a stay relief motion in the Tempe Land Company chapter 7 proceeding so it can foreclose and take control of that project. There are also a couple of note sales or property sales in the works. It is also possible that one of the Rightpath loans might be paid off in the near future through bond financing. Progress is being made although it is still slow in today's difficult economic environment.

In addition, the 19 mechanics lien lawsuits are being responded to and defended. The title company has accepted tender of defense with a reservation of rights, and discussions are open with some of the parties to find a consensual basis to resolve the priority disputes. Claims objections are due to be filed October 13, 2009, and at least 4 of the borrowers asserting lender liability claims have had their claims objected to.

Further, the ML Liquidating Trust has been reviewing the volumes of records and has engaged counsel to advise them on the various claims and causes of action against third parties. The ML Liquidating Trust is about ready to hire contingent fee counsel and commence the law suits in earnest.

In addition, as specifically provided for in the Plan, the Pass-Through Investors have been asked to make their decision about transferring their fractional interests into the Loan LLCs. The date for pass-throughs to transfer their interests into the Loan LLCs, which initially was August 18, 2009, was extended, with the consent of the Securities and Exchange Commission, for an additional time to September 28 and then to October 16, 2009. During that time at least 12 meetings and 5 telephone conferences have been held with the Pass-Through Investors. To date, over 350 Pass-Through Investors, which represents about 65 percent in number, have signed and notarized their transfer documents or are in the process of returning their notarized documents. Others are still making their

decision. The transfer documents have not been recorded yet and ML Manager has informed the Pass-Through Investors that it will wait until the Court has considered the Emergency Motion before it will record anything, and if any Pass-Through Investor wants to change their mind before recording, they can so notify ML Manager of their change.

During this time, ML Manager has kept the Arizona Department of Financial Institutions ("DFI") and the Securities and Exchange Commission ("SEC") informed of the progress and decisions. The two regulatory agencies continue to monitor and watch out for the investors and the public. The DFI revoked the Mortgages Ltd. license pursuant to a consent order in the end of July. After the Emergency Motion was filed, counsel spoke with Sandra Lavigna, counsel for the SEC, on September 17, 2009. In the discussion ML Manager's counsel was reminded that the disclosures in the Disclosure Statement, Plan Confirmation Order and documents are not to be expanded upon or elaborated upon. Rather, the Court approved documents should be adhered to. As the Court may remember, the issuance of the Loan LLC interests are pursuant to the Plan which has the safe harbor of Section 1145 and the language in the Loan LLC operating agreements was required to satisfy the SEC's concerns.

III. THE EMERGENCY MOTION

In this frame work and background, and given the many rulings by the Court in this year long case, the 18 Rev Op Investors, represented again by Bryan Cave, filed their Emergency Motion. They framed the pleading as an attempt to clarify the Plan and Confirmation Order for the Rev Op and other Pass-Through Investors, but at the same time it appears that they are really asking the Court to determine that the 18 Rev Ops are have a veto over the decisions on their loans by the Agent and that the 18 Rev Ops are not responsible to pay their fair share of the operating and financing costs and expenses incurred as a part of the Plan. Sadly, while they couch it as seeking clarification, they really, four months after the fact, are seeking to have the Plan be changed despite the fact that they withdrew their objections and voted in favor of the Plan. To make matters even worse, their attorneys spent hours negotiating the operating agreements for the Loan LLCs

and the Interborrower Agreement during the confirmation and withdrew their Objections and concerns and now seek to have them determined to be just the opposite of what was agreed to under the Plan. Curiously, they also seek to obtain a substantial contribution for the benefit they provided during the Plan process and have filed an Application for Administrative Expense for Substantial Contribution (Docket No. 1885) which is set for hearing.

Frankly, it is not that the 18 Rev Ops really want anything clarified, instead they don't like the answers and seek to change the answers. However, because they withdrew their Plan Objections and voted in favor of the Plan, they are now bound by res judicata and equitable estoppel. One of the points that was clearly negotiated among the parties to the confirmation and which arose again and again during the confirmation process were that the Agency Agreements for Pass-Through Investors who did not transfer their interests into the Loan LLCs would be assigned to the ML Manager and enforced according to their existing terms without modification. The other issues was that the Pass-Through Investors who did not transfer into the Loan LLCs would not get a "free ride" and would have to pay their "fair share" of the costs and expenses for the exit, along with the MP Fund Investors, Radical Bunny and the Liquidating Trust. The specific language negotiated and put in the Confirmation Order in paragraph U and, thus in the Plan, was that the Pass-Through Investors would have to pay their share of the expenses and costs in a "fair and equitable and nondiscriminatory manner." It would be patently unfair to all the other parties -- including the MP Funds, Radical Bunny, the Unsecured Creditors, and other Pass-Through Investors -- for the 18 Rev Ops to now have it determined that they do not have to pay a fair share and that they have the veto rights over the loans they are in. That, in essence, is exactly what the 18 Rev Ops are asking for the in their Emergency Motion. This "clarification" and change should not be permitted or countenanced.

IV. SPECIFIC ANSWERS

As to the questions raised in the Emergency Motion, ML Manager LLC responds as follows and notes that the answers are straightforward. No "clarification" or

determination is needed.

In paragraph 6 of the Emergency Motion, the 18 Rev Op Investors pose two questions which are their main issues. (1) Does the ML Manager LLC (as Agent) or the 18 Rev Op Investors who do not transfer their interests have the right to make the key decisions about their interests? The answer is clear under the Agency Agreement that the Agent has "sole discretion" to make the decisions. There is no voting or consent mechanism in the Agency Agreement. (2) Does the ML Manager have the authority to impose expenses or any kind of assessments on the 18 Rev Op Investors? The answer again is clear. Under the Agency Agreement the Agent can assess expenses incurred by the Agent and under paragraph U of the Confirmation Order and paragraph 4.11 of the Plan the Pass-Through Investors who retain their fractional interests in the ML Loans shall be assessed their "proportionate share" of costs and expenses of servicing and collecting the ML Loans "in a fair, equitable and nondiscriminatory manner and shall be reimbursed in the same manner as the other Investors." As the record reflects, paragraph U to the Confirmation Order was entered into to resolve the objection of a Pass-Through Investors Sheldon Sternberg and to address the express concern of both MP Fund Investors and Pass-Through Investors that somehow Pass-Through Investors who do not transfer into a Loan LLC might have a free ride or might be stuck with too much of the repayment expense of the exit financing.

As to the executory contract issue raised on page 5 of the Emergency Motion, the answer is clear. Under Article VIII of the Plan on page 51, lines 6-8, it is expressly stated that the Agreements and Contracts between the Debtor and Investors (which includes the Agency Agreement) "shall not be deemed to be an Executory Contract". The 18 Rev Op Investors could have objected to this in the Plan and did not.

As to various forms of the Agency Agreement and any possible confusion over the Agency Agreement raised as a question on page 5-6, as to the 18 Rev Ops Investors, they attached to their Objection to the Radical Bunny Motion (Docket No. 1671) and attached hereto as Exhibit 3 is the Agency Agreement to which they are bound. As for the

mechanism of the assignment to the ML Manager, the Confirmation Order and Plan provided for the assignment and attached as Exhibit 4 is the assignment document signed by Mortgages Ltd. for the closing that assigns the Agency Agreements.

As for the question on page 7 about setoff rights they have against Mortgages Ltd. for their claims, Section 7.5 of the Plan expressly states that "all payments and distributions under the Plan shall be in full and final satisfaction, settlement, release and discharge of all Claims and interests." Under Class 10B, the treatment of the Rev Op Investors included the allowance of the Investor Damages Claim and they received a beneficial interest in the Liquidating Trust for their unsecured claim. They also as additional consideration because of their Loan Repurchase Agreement claim received and Accelerated Recovery of $10 million. Further they received a release of all Avoidance Actions and the settlement of the ownership interest in their Notes and Deeds of Trust. If the 18 Rev Op Investors were trying to hold on to any setoff rights they should have raised and resolved it. The 18 Rev Op Investors withdrew their Objections to confirmation and voted in favor of the Plan.

As for the questions about control and decision making, as answered above, the Agency Agreement reflects the Agent has "sole discretion" to make decisions. The Court numerous times during the Rule 9019 Motions enforced the decision making authority of the Agent Mortgages Ltd. over the objections of various Pass-Through Investors. See October 25, 2008 Transcript at 4-7. Curiously the 18 Rev Op Investors (though represented by Bryan Cave at the time) did not object to any of the Rule 9019 Motions or the alleged authority and decision making asserted by Mortgages Ltd. under the Agency Agreement. In fact, at the Rightpath settlement hearing, Bill Hawkins, whose entities make up 7 of the 18 Rev Op Investors, testified for the Debtor at the hearing in support of the Debtor's settlement. In fact, some of the 18 Rev Op Investors were in each of the settlements approved by the Court in October through December 2008 (such as the CS 11 Maricopa and CGSR Loans, the University and Ash Loans, Rightpath Loans and SOJAC I loan) and did not object to the authority of the Debtor to so bind them. See discussion

below as to the *res judicata* effect. The Court as a part of the University and Ash settlement hearings made specific decisions about the ability of the agent and manager to make the decisions to modify the loan, compromise the amount, etc. While the Investors Committee opposed the Debtor's assertions at the time and appealed the Court's ruling, the appeal was dismissed upon confirmation of the Plan and the Court's order remains a final decision and has *res judicata* and collateral estoppel effect on the parties in the bankruptcy. The Debtor foreclosed on some of the Investor Loans during the bankruptcy, specifically All State Pinal XVI and Rodeo Ranch. The Rev Op Investors are in both of those loans and did not object to the Debtor's ability or decision to do so.

The redline version of the Interborrorwer Agreement is attached as Exhibit 2 hereto. It reflects the few changes made between the confirmation process and the execution around June 15, 2009. The Rev Ops attorneys spent significant time editing and negotiating the Interborrower Agreement drafts and spent hours with Bob Robinson on this process during the confirmation. According to his Substantial Contribution fee application, Mr. Miller spent about 17 hours on this task during this time. As the Court remembers, the parties negotiated for the fair allocation of expenses between all the groups so that no one received a "free ride." There should not be any confusion about the Interborrower Agreement. No changes or amendments have been made, although there has been some discussion between the two Boards about a possible non-material change consistent with the testimony and Plan. There is no reason for the Court to clarify this point.

Regarding Oral Plan Amendments, all changes were made on the record at the Confirmation hearings and were then incorporated into the Confirmation Order. All the changes were determined by the Court to be non-material. There is no reason to clarify this point.

V. RES JUDICATA AND EQUITABLE ESTOPPEL IMPACT OF THE PLAN AND THE COURT'S RULINGS

Section 1141(a) of the Bankruptcy Code provides that the provisions of a

confirmed plan bind the debtor, any entity issuing securities or acquiring property under the plan, and any creditor of, or equity security holder or general partner in, the debtor.

Moreover, the principle of *res judicata* prevents a party from later raising issues that could have been raised during the confirmation of a plan of reorganization. *In re Heritage Hotel Partnership* I, 160 B.R. 374 (B.A.P. 9th Cir. 1993) is on point. *Heritage Hotel*, the debtor obtained a $10.2 million loan for the construction of a hotel and casino in Nevada. After the lender commenced foreclosure proceedings, the bankruptcy petition was filed. A plan of reorganization was confirmed, which provided a timeline for repayment of the secured debt and allowed for foreclosure if the debt was not repaid. The loan was not repaid, however, the debtor filed a state court action seeking injunction and damages arising out of a lender liability theory against the lender. The matter was removed to bankruptcy court. The *Heritage Hotel* Court denied the "preliminary injunction on the ground that Heritage was bound by the confirmation order and that their claims were precluded by the doctrine of *res judicata.*" *Id.* at 375. The bankruptcy court later granted the lender's motion dismiss "on the grounds of *res judicata* and equitable estoppel" and the debtor appealed. *Id.* The BAP denied the appeal stating that "confirmation of a plan of reorganization constitutes a final judgment in bankruptcy proceedings," and "like final judgments, confirmed plans of reorganization are binding on all parties, and issues that could have been raised pertaining to such plans are barred by res judicata". *Id.* at 377. Indeed, the BAP emphasized that "[i]t is now well-settled that a bankruptcy court's confirmation order is a binding, final order, accorded full *res judicata* effect and precludes the raising of issues which could or should have been raised during the pendency of the case…" *Id.*

This principle of strictly applying *res judicata* to preclude litigation of issues that could of or should been litigated prior to plan confirmation is broadly applied. *See, In re Wolfberg*, 255 B.R. 879 (B.A.P. 9th Cir. 2000)(after confirmation of plan without debtor claiming homestead exemption, debtor was barred by *res judicata* from later attempting to claim homestead exemption in sales proceeds); *Eubanks v. F.D.I.C.*, 977 F.2d 166, 171

(5th Cir.1992)("There is little doubt that the bankruptcy court's confirmation order is binding and final, and we accord it the weight of a final judgment for res judicata purposes."); *In re Chattanooga Wholesale Antiques, Inc.*, 930 F.2d 458, 463 (6th Cir.1991) ("Confirmation of a plan of reorganization by the bankruptcy court has the effect of a judgment by the district court and *res judicata* principles bar relitigation of any issues raised or that could have been raised in the confirmation proceedings."); *Sure-Snap Corp. v. State Street Bank and Trust Co.*, 948 F.2d 869, 877 (2nd Cir.1991) ("[W]e rule today, that …claims that could have been brought before a final plan for reorganization was confirmed, but weren't, the prior bankruptcy order was *res judicata* to the later action."); *); Sanders Confectionery Products Inc. v. Heller Financial, Inc.,* 973 F.2d 474, 480-81 (6th Cir.1992), *cert. denied*, 506 U.S. 1079, 113 S.Ct. 1046, 122 L.Ed.2d 355 (1993) ("[T]hese claims ... should have been brought during the bankruptcy proceeding, and *res judicata* prevents them from being raised now."); *Matter of Howe*, 913 F.2d 1138, 1147 (5th Cir.1990) ("[W]hen a confirmed plan discloses and specifically treats the creditor's claim, and the debtor has had a full opportunity to contest the creditor's claim in an adversary proceeding that is, in effect, settled in the plan, the debtor cannot collaterally attack the bankruptcy court's decision five years later in an action based on the same transaction.").

Based on the well-settled principles of the *res judicata* and equitable estoppel effects of plan confirmation, to the extent that the 18 Rev Op Investors wanted to argue that it would not be liable for payment of their share of the exit financing or subject to the Agency Agreement, that they had or should have the right to assert as a set-off against any cost obligation their right to have the Debtor repurchase their interest in the Notes, or the claim that they are not bound by the Agency Agreements, these arguments should have and were required to have been presented prior to confirmation. The 18 Rev Op Investors is precluded from raising those issues now. Further, the 18 Rev Op Investors did file Objections to confirmation raising most of these issues and then withdrew their Objections and changed their vote to accept the Plan. This action reinforces even more the

conclusion that the 18 Rev Op Investors are precluded from raising them now.

VI. RES JUDICATA AND COLLATERAL ESTOPPEL ALSO IMPACT THE AUTHORITY AND CONTROL ISSUES

As the Court will recall, the issue of the enforceability, scope and efficacy of the Agency Agreements was a significant, if not predominate issue during much of the early portion of the case.

The issue of the Debtor's rights under the Agency Agreements came up early and often in the case. For example, at the first evidentiary hearing in this matter, the trial on the initial DIP Financing Motion held on August 6, 2008, there were many questions of regarding the Debtor's authority to collect and distribute money under the Agency Agreement (*See* Docket 411 (Transcript of 8/6/08 hearing), at pp. 93-95). Moreover, at the status hearing held on the same day regarding one of the investor's motion to turn over funds to the investors because they were not part of the bankruptcy estate, the Court insisted that of all of the "governing documents" be provided to all of the parties so they could see the "document that defines what the investor's rights are." (*Id.* at pp.142-43). Indeed, the issue of whether the Agency Agreements constituted "executory agreements" and whether the Notes were property of the estate were raised at that August 6 hearing and the Court indicated that those issues would need to be determined a later time. (*Id.* at pp 144-45, 147-50). The Court then stated: "Thank you for bringing it to the Court's attention and everybody's attention. Because the parties who have these issues need to pay attention to that as well." (*Id.* at p. 152) In other words, from the beginning of this case, the significance and construction of the investors relationship vis-à-vis the Debtor was front and center in the case. As the Court will recall, this was commonly referred to as the "Authority Issue."

After the August 6 hearing, the Authority Issue next arose in two formats. First, a borrower known as SOJAC had filed an interpleader complaint claiming that it wanted to pay money but it claimed it didn't know if the money belonged to the Debtor or to Investors (*See id.,* at pp.159-60). Second, an investor named Mary Price asked that she be

allowed to receive her payments. In both of these matters, the issue of the Debtor's rights regarding the investors began to be fleshed out before the Court. Through these motions, the issue what rights the Debtor had, and what rights it did not have was repeatedly brought before the Court. Significantly, with regard to the Mary Price motion, and the SOJAC interpleader, the Debtor conceded that it did not own the Notes and the loans. Nevertheless, the Debtor also took the position that it had the right to control the Notes and loans.

As the case progressed through the fall of 2008, the significance of the Authority Issue turned from tangential to the primary issue before the Court. Specifically, beginning in September 2008, the Debtor negotiated and sought approval from the Court for many "settlements" it had negotiated between the Debtor and various borrowers. The Debtor was negotiating these settlements even though it did not have a significant ownership interest in most of the loans. Specifically, on September 19, 2008, the Debtor filed a "Statement of Position Regarding the Debtor's Authority to Renegotiate the Terms of Certain Loans and to Enter into Settlement Agreements." (Docket No. 528). In this document, the Debtor took the position that:

> Although the investors invested their money with the Company [Mortgages Ltd.] through any number of investment vehicles, by and large, the investors … obtained a fractionalized interest in a note secured by a deed of trust on real property … **<u>Each investment program required the investor to grant broad authority to the Company to manage the loans and deal with borrowers</u>**. Given this structure, which now involves over 1700 investors – each of whom own a small percentage interest in certain notes …-- one cannot imagine a workable process other than a single entity with the authority to manage, **<u>in every respect</u>**, the loan portfolio.

Id. at p. 2. (emphasis added). The Debtor went on to argue that the Court must allow this to continue, and to make loan modifications, enter into financing arrangement and settlements, and take "central authority with the ability to take actions in the best interests of investors." *Id.* at p. 3. The Debtor further argued that investor consent is not required under the Agency Agreements, and could not be required. *Id.* The Debtor then made it

clear that it would be seeking settlements and loan modifications with the borrowers based on this authority. *Id. at pp. 4-5.* The Debtor argued that the issue of whether the proposed settlement constituted "commercially reasonable business judgment" could be debated, but that the Debtor's right and authority to act on the investor's behalf "could not be disputed." *Id.* The Debtor then set forth a 21 page argument as to why it had authority under the relevant governing documents. *Id.* at pp. 5-26. These arguments were based, in large part, on the operation of the Agency Agreements.

As a result of the Debtor's position, it became clear and inescapable that the Court's determination of the propriety of the proposed settlements would require a resolution of the Authority Issue and, among other things, a determination of the scope, enforceability and efficacy of the Agency Agreements. As such, the litigation over the settlement agreements "teed up" the issue of whether the Debtor as the Agent had the right to act on the investor's behalf and whether the investors were bound by the Agency Agreements.

As initially proposed to the Court, these settlements were all premised on the Debtor's authority in its sole discretion to act for the investors to modify and change the loans. Clearly, the agreements that the Debtor entered into with the various borrowers to modify their loans and submitted to the Court for approval under Rule 9019 Motions included a broad array of actions loan extensions, forgiveness of (sometimes) substantial principal and interest, release of personal guarantees, changing the character of a loan from a short term construction or acquisition loan to a long term development loan, converting a secured loan to an equity participation in the development, subordinating loans that already lacked adequate security to new loans, and many other actions. Indeed, the Court noted that one of the proposals, the University & Ash proposal was essentially a proposal to exchange a secured loan for a "hope certificate."

These settlements were generally opposed by the Official Committee of Investors (Docket # 1692 and 1689) the Official Committee of VTL Investors, the Official Committee of Unsecured Creditors (Docket # 1698), and by most of the groups of

individual investors who were represented by counsel (such as the Kaufman group (Docket # 876), the Mahakian group (Docket # 953), the Eva Sperber-Porter group (Docket # 1681), the Robert Furst group (Docket # 760), and 123 separate objections filed by unrepresented individual investors.[5] Even though the 18 Rev Ops Investors were in most of these loans and were represented by counsel, they did not object to the Debtor's broad assertion of authority and enforceability of the Agency Agreements. Because the Debtor was not asserting that it had a significant ownership interest in most of these loans,[6] its argument as to why it had the right to take these actions was based on the Agency Agreement. Indeed, most if not all the Motions to approve the various settlements include a statement that Notes have been assigned to the investors and that:

> The interests of the Investors are subject to one or more Agency Agreements, Operating Agreements and powers of attorney which empower the Debtor to take actions to protect the interest of the Investors as more fully described in the Debtor's "Statement of Position Regarding the Debtor's Authority …"

Debtor even told the Court and the parties that it intended "to have the Court decide the authority and agency issues **for all purposes**" at the initial hearing on the 9019 motions. *See* Docket 685, at p. 2

Nevertheless, other groups, including the Investors Committee did raise these issues. Moreover, there were several partial or complete settlements reached between various parties so that the Court was not initially required to rule entire scope of the Authority Issue. For example, settlements were reached between the Investors Committee, the Debtor and the Rightpath, Bisontown, and SOJAC borrowers to allow those settlements to go forward while reserving, as to those parties, the resolution of the Authority Issue. Neverthless, there were still some interested parties that continued to object to those settlements, and testimony and argument was considered at least as to the Rightpath and SOJAC settlements.

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[5] *See* Docket 597-612, 617-24, 626-29, 640-47, 653-57, 659-62, 666-79, 691-708, 732, 763-80, 800-01, 803, 805-09, 811-24, 828, 833-34, 839-40.

[6] The only loan where the Debtor had claimed that it had a significant ownership interest was the Tempe Centerpoint loan.

In addition to opposing most of the settlements, the represented parties and many of the investors contested the Debtor's Statement of Authority and its position as to the scope, enforceability and efficacy of the Agency Agreements.

The attorneys for the 18 Rev Op Investors first filed a notice of appearance in this matter on September 23, 2008, (see Docket No. 540). As such, the Rev Op Group were parties to and had notice of all of the settlement motions that the Debtor was filing based on the assertion that it had authority under the Agency Agreements to modify the loans in the manner proposed. Although the Authority Issue was implicated by every settlement proposed by the Debtor, it is notable that the Rev-Op Group never objected to any of the proposed settlements or challenged the Debtor's authority to act under the Agency Agreements in connection with the proposed settlements.

The Authority Issue and the implications of the Agency Agreements were considered further in connection with the settlements proposed for the SOJAC loan and the Rightpath and Maryland Way loans. Among others, both Bob Furst and the Mahakian parties continued to present their objections. Specifically, Mr. Furst, who was a former employee for Mortgages Ltd. and had first hand knowledge of the negotiation of and intent behind the Agency Agreements filed an objection (Docket 760) and testified at some length regarding intended operation and effect of the Agreements. (Docket 837, Robert Furst Testimony Transcript, at pp. 8, 11-12, 15-21, 23-24, 26-32, 37-39, 48-50) Mr. Furst testified, for example, that for all Pass-Through Investors had an Agency Agreement attached to their subscription agreements and that "all your past [sic] thru investments are governed by this agency agreement." *Id*. at p. 19 He testified (and argued) however, that changes to the Agency Agreements and provisions where investors withheld discretion indicated that the Agency Agreements could not be as broadly construed as argued by the Debtor. *Id.* at pp. 30-31. Mr. Furst conceded however, that the Debtor had modified loans in the past, including subordination of existing loans to new third party loans. *Id.* at pp. 49-50. Mr. Furst testified and essentially argued that the Agency Agreements were void or voidable because of the Debtor's conduct. *Id.* at pp. 55.

Despite the objections and arguments that were asserted, the Court overruled the objections and approved the settlements for both SOJAC and Rightpath. In doing so, the Court indicated that there were still issues with regard to the Authority Issue that needed to be litigated. Nevertheless, the Court considered the testimony, arguments and overruled the objections.

The Authority Issue finally came to a head, was fully briefed, argued and the subject of a bench trial in connection with the proposed settlement with the two projects, and the three Notes. The borrowers involved were University & Ash, Roosevelt Gateway, and Roosevelt Gateway II, collectively known as the University & Ash Entities. As a result of negotiations, primarily with the Investors Committee, the proposal was modified twice. Despite substantial negotiations, the proposal was never agreed to by the Investors Committee and it ultimately was considered in the course of a three-day evidentiary hearing. The final determination of the Authority Issue, and the rights under the Agency Agreement was a primary focus of this briefing and trial. In all, hundreds of pages of briefing and extensive argument were presented to the Court in connection with the Authority Issue and the Agency Agreements. (*See, e.g.,* Docket 658, 680, 779, 788, 796, 810). At the hearing, all three Official Committees participated and objected to the settlement, and many individual investor or investor groups were represented and argued against the settlement. These included the Radical Bunny (represented by Tony Freeman), Eva Sperber Porter entities (represented by Rick Thomas), the Mahakian parties (represented by Mr. Allan Bickart), William Lewis (represented by Cary Forrester), Jeff Kaufman, Robert Furst, and several of the other parties. This was the proceeding where the full scope, effect, continuing efficacy, and intent of the Agency Agreements were litigated.

In connection with this proceeding, the Court was provided with extensive briefs, three days of live testimony, and 5 or 6 volumes of exhibits, including what was represented by the Debtor as being a copy of every form of the Agency Agreements that existed between the Debtor and the Pass-Through Investors. The Agency Agreements

were challenged on their face, or as being void or voidable based on the Debtor's conduct and the bankruptcy filing, and as being executory contracts. The fact that some of the investors had withheld their authority for the Debtor to take certain actions under the Agency Agreement was even briefed and argued to the Court.

Following all of the briefing, evidence, and oral argument, the Court set forth on the record its findings of fact, conclusions of law and ruling. October 25, 2008 Transcript at 4-7. The Court found that although the investors owned fractionalized interests in the Notes and Deeds of Trust, what the investors really invested their money in was the common management of the loans by the Debtor. Therefore, the rights and obligations under the Agency Agreement were central to the investment, and therefore central to the bankruptcy case. Even in cases where an investor withheld authority for the Debtor to take certain actions, the Court found that this could not have been and was not intended to give the investor "veto" power over the decisions of the Debtor as the agent. Instead, it provided the investor with an unsecured claim in the bankruptcy against the Debtor. As a result, the Debtor's right to act under the Agency Agreement on behalf of all of the investors was not restricted by any individual investors' contracts or rights.

As demonstrated above, there is no question that the issue of the scope, enforceability, and efficacy of the Agency Agreements was fully litigated. Many, if not all possible challenges to the Agency Agreements were raised, briefed and argued to the Court. These included all of the current issues that the 18 Rev Op Investors now raise such as the executory contract nature of the Agreements, the rights certain investors allegedly had to withhold consent to actions, whether the authority under the Agency Agreements could be severed from investors' rights to withhold their consent to modification, and whether all investors are bound by the Agency Agreements. To the extent that any issues were not resolved by the litigation, it certainly could have been. Most of the 18 Rev Op Investors had interests in the loans at issue with the University & Ash settlement. It was clear to all parties that resolution of the settlement proposal would include litigation on all claims with regard to the scope of the Agency Agreements. The

18 Rev Op Investors had the opportunity to present any evidence and argument that they wanted to, but did not do so. Moreover, the 18 Rev Op Investors did not pursue an appeal of the Court's decision, and the appeals that were filed have been dismissed. As such, the Court's decision on the Authority Issue is final and non-appealable.

VII. THE EMERGENCY MOTION IS PROCEDURALLY IMPROPER

The 18 Rev Op Investors purport to raise many issues, but they assert most in such a way as to not overtly take a position on them. Many other issues are not ripe as there is no actual controversy, and there may never be one. The law is clear. The Court should not consider issues that are not yet ripe. *See Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 773 (9th Cir. 2006) (stating that the ripeness requirement aims to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements."); *see also In re Howes*, 89 B.R. 77, 79 (B.A.P. 9th Cir. 1988) (stating that "[t]he central concern of the ripeness doctrine is that the case involves uncertain and contingent future events that may not occur as anticipated, or indeed, may not occur at all.").

Further, it is improper for the 18 Rev Op Investors to merely ask for an advisory opinion, and belated and untimely Plan objections are procedurally improper. Because many of the issues are not ripe, or the 18 Rev Op Group has not even articulated the side it is taking on many issues, the Emergency Motion is essentially asking the Court to give an advisory opinion before the fact. This is improper. *See Rhoades v. Avon Products, Inc.*, 504 F.3d 1151, 1157 (9th Cir.2007) (stating that courts may adjudicate only actual cases or controversies; otherwise, a judgment would be an unconstitutional advisory opinion).

VIII. CONCLUSION

In sum, ML Manager LLC requests that the Court deny the Emergency Motion for all the reasons stated above and requests that the Court award ML Manager its attorneys fees and costs incurred in responding to this Emergency Motion.

1 DATED this 2nd day of October, 2009.

2 FENNEMORE CRAIG, P.C.

3 By s/ Cathy Reece

4 Cathy L. Reece
Keith L. Hendricks
5 Attorneys for ML Manager LLC

6 COPY of the foregoing transmitted
electronically using the Court's ECF System
7 this 2nd day of October, 2009, to the
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Exhibit 1

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Attorneys for the Lewis and Underwood Trusts

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re:

MORTGAGES LTD.,

Debtor.

In Proceedings Under Chapter 11

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

JOINT OBJECTION TO OIC CHAPTER 11 PLAN OF LIQUIDATION

Hearing Date: May 13, 2009
Hearing Time: 10:00 a.m.

This Objection to The Official Committee Of Investors' First Amended Plan Of Reorganization Dated March 12, 2009 (the "**Plan**") is filed by two groups of investors: (i) a group of nineteen Rev Op Investors represented by Bryan Cave LLP, who collectively hold approximately $58.4 million in Rev Op investments; and (ii) two additional investors represented by Forrester & Worth, PLLC, who collectively hold approximately $15 million in Rev Op investments, and one of whom holds an additional $10 million in non-Rev Op Pass-through investments. The objecting parties are more fully identified in Exhibit "A," and are referred to collectively as the "Rev Op Group."

The Rev Op Group has been involved in extensive negotiations with the Official Committee of Investors (the "**OIC**"), and is generally supportive of the Plan it has filed in

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the Chapter 11 case of Mortgages Ltd. (the "**Debtor**"). However, two large issues, and a number of smaller ones, remain unresolved. The Rev Op Group expects that all of these issues will be resolved in the near future, and that it will then be in a position to withdraw this objection and its members will then change their votes. However, until that occurs, and for the reasons set forth below, the Rev Op Group respectfully requests that the Court deny confirmation of the Plan proposed by the OIC. This Objection is more fully supported by the accompanying memorandum of points and authorities, and the entire record in this Chapter 11 case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND.

1. This Chapter 11 case was commenced over ten months ago, when an involuntary petition was filed against the Debtor on June 20, 2008. The Debtor's case largely involves how to address the rights of the Debtor's investors, RBLLC (an alleged secured creditor also in bankruptcy), and various other parties.

2. The Rev Op Group is informed and believes that, in total, over 1,800 individuals or entities invested nearly $1.0 billion in the Debtor through various kinds of investment programs, substantially all of which involved the sale of fractional interests of promissory notes. The Revolving Opportunity Investors, as defined under the Plan,[1] invested approximately $114 million in the Debtor.

3. The Rev Op Group holds approximately $73.4 million of the $114 million invested by Revolving Opportunity Investors. Thus, the Rev Op Group represents approximately sixty-four percent (64%) of the dollars in this class of creditors.

4. Under the Plan, the OIC placed the claims of Revolving Opportunity Investors into two classes – Classes 10B and 11F. The Plan and Disclosure Statement are

[1] Unless otherwise defined herein, all capitalized terms set forth in this Objection shall be given the same meaning as ascribed to such terms in the Plan and accompanying disclosure statement (the "Disclosure Statement").

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not clear as to which claims of Revolving Opportunity Investors "fit" within Classes 10B versus 11F of the Plan.

5. Class 11F of the Plan is somewhat clearer than Class 10B, since it is entitled "Revolving Opportunity Pass-Through Investors Unsecured Claims." Plan, p.29. Thus, Class 11F appears to contain any general unsecured claims of Revolving Opportunity Investors.[2]

6. These subtleties aside, the Rev Op Group represents approximately sixty-four percent (64%) of the dollars invested by Revolving Opportunity Investors in the Debtor. Thus, the Rev Op Group's vote on the Plan should control whether Classes 10B and 11F accept or reject the Plan due to the "amount" requirement of Section 1126(c) of the Bankruptcy Code.[3]

7. For the reasons discussed more fully below, the Rev Op Group has ***rejected*** the Plan, and has not "checked the box" to indicate they are willing to transfer their fractional loan interests to the Loan LLCs at this time.

8. Until now, the Rev Op Group has not been particularly active in matters before this Court. However, the Rev Op Group has been ***very active*** behind the scenes in this Chapter 11 case.

9. The Rev Op Group engaged separate counsel early in this Chapter 11 case.[4]

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[2] The Rev Op Group has a wide range of contract and tort claims against the Debtor. A key distinction between the MP Funds Investors and the Revolving Opportunity Investors is that the Revolving Opportunity Investors invested money pursuant to private placement memoranda and supporting documents wherein the Debtor agreed to repurchase their notes "at par" if any investor was not paid in full at the end of term, and agreed to pay in full any unpaid and accrued interest. Thus, the Revolving Opportunity Investors have a contractual claim against the Debtors.

[3] As the Court is well aware, Section 1126(c) provides that a class of claims accepts a plan if at least two-thirds in amount and more than one-half in number of the allowed claims of such class casts acceptance votes.

[4] One of the reasons the Rev Op Group engaged separate counsel is that they have been, at best, underrepresented on the OIC. The OIC is dominated by individuals and

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To date, Rev Op Group members and their counsel have devoted literally hundreds of hours to key issues in this Chapter 11 case.

10. They have had extensive involvement with representatives of the Debtor, the OIC and RBLLC. Most of the Rev Op Group's efforts has been directed at trying to get these major "warring parties" to focus on an efficient, effective exit to this Chapter 11 case pursuant to a fully consensual plan, since it has been apparent for many months that the Debtor is accruing a massive amount of administrative claims, running out of cash, and neglecting its loan portfolio while the various parties jockey for position in this case.

11. The Rev Op Group was heavily involved in negotiations leading up to the filing of the Plan. The Plan incorporates certain key features which were suggested by the Rev Op Group.[5] The Rev Op Group would have preferred ***not*** to vote against the Plan,[6] but the Plan still contains major defects and "analytical gaps" that preclude acceptance by the Rev Op Group at this time.

II. LEGAL ARGUMENT.

As plan proponent, the OIC has the burden of proof on all plan confirmation issues. As the Court is well aware, Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. Section 1129(a) provides that a court

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entities who invested money through one or more of the MP Funds. The Rev Op Group is informed and believes that only one committee member (Joseph Baldino) is an investor in a Revolving Opportunity Fund. Thus, the Revolving Opportunity Investors have not had a real voice in this Chapter 11 case through the OIC or the Unsecured Creditor Committee.

[5] For example, the corporate governance structure is a compromise between what was originally proposed by the OIC – approximately 60 separate limited liability companies each with its own board of managers – and what is now embodied in the Plan.

[6] With respect to this Objection, the Rev Op Group requested that the OIC grant them an extension through May 8, so that the parties could continue negotiating changes which would allow the Rev Op Group to change their votes and support the Plan. The OIC refused to grant this extension, so the Rev Op Group had no choice but to file this Objection.

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shall confirm a plan only if all of the requirements contained in Sections 1129(a)(1) through (13) are met. 11 U.S.C. § 1129(a).

The OIC's Plan is unconfirmable in its current form. For the reasons set forth below, the Plan cannot be confirmed because it fails to meet the requirements contained in Sections 1129(a)(1), (a)(3), (a)(7)(A), (a)(8), and (a)(11); and Section 1129(b).

A. The Plan Fails To Comply With Section 1129(a)(11).

Section 1129(a)(11) requires that a plan be "feasible" – i.e., that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor . . . ." 11 U.S.C. §1129(a)(11). "Feasibility has been defined as whether the things which are to be done after confirmation can be done as a practical matter under the facts." *In re Jorgensen*, 66 B.R. 104, 108 (9th Cir. B.A.P. 1986) (citing *In re Clarkson*, 767 F.2d 417 (8th Cir. 1985)); *see also In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985). The Rev Op Group believes the Plan may not be feasible for several reasons.

First, the Rev Op Group is concerned about the status of the exit financing purportedly being provided by Strategic Capital Partners, LLC and Universal Equity Group (collectively, "**Strategic Universal**"). Setting aside the fact that the Strategic Universal exit financing proposal is extraordinarily expensive money, it is unclear whether Strategic Universal has the funds needed to make the loan addressed in its letter of intent ***and*** whether Strategic Universal is committed to lending the funds.[7]

A second, related issue is that Strategic Universal's letter of intent appears to require the lender to have a lien on ***all*** of the investor notes as a condition to the lender's willingness to provide the financing. *See* Disclosure Statement, Ex. O, p.2. As noted above, the Rev Op Group controls a significant portion of the notes and presently is not

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[7] By its own terms, Strategic Universal's letter of intent "[does] not constitute a legally binding agreement" and is not "a legally enforceable obligation . . ." Clearly, the OIC must show that Strategic Universal is contractually obligated to loan the required funds ***and*** has the money to fund the loan.

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willing to subject their interests in the notes to Strategic Universal's lien. Other parties presumably will take the same position (e.g., RBLLC). Thus, the OIC needs to establish that Strategic Universal is willing to go forward and lend without receiving a lien on all of the notes.

A third, related issue is that the OIC has created a corporate governance mechanism that uses between 47 and 60 Loan LLCs, which is a cumbersome structure. What the OIC has not explained, however, is how – if at all – this structure will actually work, especially when many parties have decided to retain their ownership interests in the notes outside of the Loan LLCs.

As a threshold matter, the OIC needs to actually show how the Plan will work with the benefit and burden of the Strategic Universal financing. This analysis needs to be provided on a loan-by-loan basis and on an overall basis. The OIC also must show how it anticipates the Loan LLCs will address any shortfalls in funding they might experience due to litigation expenses and other extraordinary items.

Separate and apart from this analysis, the OIC must explain how the corporate governance will work when the parties attempt to operate under the various Loan LLCs ***and*** with a significant number of investors, including the Rev Op Group, outside of the Loan LLCs. This essentially means these parties will be operating as "tenants in common."[8] At the evidentiary hearing on plan confirmation, the OIC must show this structure provides a workable mechanism for servicing and otherwise managing the notes.

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[8] In the Disclosure Statement, the OIC briefly mentions that the ML Manager LLC will attempt to enforce "the existing Subscription and Agency Agreement fees and provisions" on those investors who do not agree to transfer their interests into the Loan LLCs. Disclosure Statement, p.7. This issue obviously must be sorted out as part of the confirmation process. However, this issue does not address how RBLLC's interests will be managed after the effective date of the Plan.

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In summary, the OIC believes it has built a structure that will allow the various notes to be managed and liquidated for the benefit of all creditors and other interested parties. At confirmation, the OIC must present evidence that this structure is actually feasible. The Rev Op Group has serious doubts that the Plan satisfies the feasibility requirements of Section 1129(a)(11).

B. The Plan Fails To Comply With Section 1129(a)(8).

Under Section 1129(a)(8), a plan proponent must prove that, with respect to each class of claims or interests, "such class has accepted the plan, or . . . such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8). As noted above, Classes 10B and 11F will reject the Plan due to the rejection votes of the Rev Op Group. Thus, the OIC cannot satisfy the requirements of Section 1129(a)(8), and confirmation of the Plan may only be achieved by utilizing the "cramdown" provisions contained in Section 1129(b).

Section 1129(b) permits a court to confirm a plan, notwithstanding the nonacceptance of such plan by an impaired class of claims or interests, only if the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each nonaccepting impaired class.

The Plan cannot be confirmed pursuant to Section 1129(b) because it does not meet these requirements with respect to the claims of the Rev Op Group. In particular, the Plan violates the requirements of Section 1129(b) when the treatment provided to the Revolving Opportunity Investors is compared to the preferential treatment of the claims asserted by RBLLC and the General Unsecured Creditors.

C. The Plan Fails To Comply With Section 1129(a)(7)(A).

Section 1129(a)(7)(A) of the Bankruptcy Code (commonly referred to as the "best interest of creditors" test) focuses on individual dissenting creditors (rather than classes of claims). *See Bank of America Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle Street Partnership*, 526 U.S. 434, 441 n. 13 (1999). Because the Rev Op Group has voted to reject the Plan, the Court must find that the Rev Op Group:

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> will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that [the Rev Op Group] would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1129(a)(7)(A)(ii) (emphasis added).

The OIC's liquidation analysis is cursory at best. The OIC's analysis fails to address what it believes the Rev Op Group would receive in Chapter 7, as an alternative to recoveries pursuant to the Plan. This analysis totally fails to account for how Section 1129(a)(7)(A)(ii) may be satisfied in light of the preferred recovery provided to RBLLC and General Unsecured Creditors. Thus, the Rev Op Group contests that the OIC will be able to prove the best interests of creditors test has been satisfied relative to the Rev Op Group.

D. The Plan Fails To Comply With Section 1129(a)(3).

Section 1129(a)(3) requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). While the Bankruptcy Code does not define "good faith," a court must inquire into the proponent's conduct as a whole in determining whether the plan was filed in good faith. *See Matter of Jasik*, 727 F.2d 1379, 1383 (5th Cir. 1984); *In re Jorgensen*, 66 B.R. at 108-09.

The OIC's manner of trying to settle with RBLLC pursuant to the Plan also raises a serious question regarding good faith. For many months, the "elephant in the room" in this case has been the RBLLC claim and to what extent, if any, it is secured by property of the Debtor's estate. Pursuant to the Plan, the OIC gives RBLLC the benefit of an allowed claim ***and*** a valid security interest in all of notes owned by the Debtor. RBLLC's trustee, however, has refused to accept the proposal offered by the OIC in the Plan.

In the Disclosure Statement, the OIC states, with no analytical support whatsoever, that the treatment of RBLLC "reaches the right balance." What the OIC has failed to do, however, is explain the details of a balancing act that involves making massive concessions to RBLLC.

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Thus, the Rev Op Group challenges the good faith aspects of the Plan and holds the OIC to its burden of proof under Section 1129(a)(3).

E. The Plan Fails To Comply With Section 1129(a)(1).

Pursuant to Section 1129(a)(1), a chapter 11 plan cannot be confirmed unless it complies with all applicable provisions of the Bankruptcy Code. *In re Lowenschuss,* 67 F.3d 1394, 1401 (9th Cir. 1995), *cert denied*, 517 U.S. 1243 (1996). In this case, the Plan fails to comply with Section 1123(a)(5) of the Bankruptcy Code.

Section 1123(a)(5) requires a chapter 11 plan to provide adequate means for its implementation. The OIC clearly has failed to provide an adequate means of implementation of its Plan.

The Plan is designed to create a framework through which hundreds of millions of dollars eventually will flow from the Debtor's borrowers to investors who will be inside and outside the Loan LLCs. According to the OIC, there will be between 47 and 60 Loan LLCs. Disclosure Statement, p.7. The OIC's exit financier will require a lien on all investor notes ***and*** will require seventy percent (70%) of all borrower payments on such notes to be used to repay its indebtedness.

It is a virtual certainty that one or more of the Loan LLCs will have serious liquidity problems. The OIC believes that this issue may be resolved through an "inter-borrower agreement." Disclosure Statement, p.78. This inter-borrower agreement is supposed to allow the various Loan LLCs to "allocate among themselves the use of funds and the repayment of the [exit financing], among other things." *Id.*

The problem, however, is that the OIC has not disseminated an inter-borrower agreement, although it has indicated that it will do so later today. To this point, the only provision for dealing with inter-borrower issues has been the statement in the Plan that

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the Loan LLCs "shall keep sufficient records of the use of funds and repayment of the [exit financing] loan so that a proper allocation and accounting may be made." *Id.*[9]

It would be one thing to take this "trust me" approach if the OIC was managing a modest amount of money through a liquidating trust. Given that the Plan contemplates as many as 60 different Loan LLCs, each of which will be a borrower on the exit financing, and that *hundreds of millions of dollars* will flow through and among these entities, this kind of omission constitutes a failure to prove feasibility and a failure to properly implement the Plan.

Thus, the Rev Op Group holds the OIC to its burden of proof under Section 1123(a)(5) of the Bankruptcy Code.

F. The RBLLC Settlement Incorporated Into The Plan, Assuming It Was Acceptable To the RBLLC Trustee, Fails To Meet The *Woodson* Standards.

As noted above, the Plan basically gives RBLLC the benefit of a settlement even though the RBLLC trustee has rejected that settlement. Even assuming the RBLLC trustee accepted the settlement, the Court must evaluate this settlement in light of the *Woodson* standards to decide whether the settlement is "fair and equitable." *In re Woodson*, 839 F.2d 610 (9th Cir. 1988). As the Court is well aware, in evaluating a settlement, this Court is required to consider the following elements: (1) probability of success in the pending litigation; (2) difficulties of collection; (3) the complexity of the litigation; (4) the expense, inconvenience and delay of the litigation; and (5) the best interests of creditors. *Id.*

The Rev Op Group contests whether the RBLLC settlement incorporated into the Plan meets the *Woodson* standards. Absent a showing that the *Woodson* standards are satisfied, the Court should not confirm the Plan.

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[9] Last week, the OIC gave the Rev Op Group a hastily prepared term sheet of the inter-borrower agreement when the Rev Op Group demanded to see a draft thereof in plan negotiations.

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III. CONCLUSION.

For all of the foregoing reasons, the Rev Op Group requests that the Court deny confirmation of the Plan at this time, and enter any other and further orders as may be just and proper under the circumstances of this Chapter 11 case.

DATED this 5th day of May, 2009.

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5th day of May, 2009:

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Exhibit "A"

Bryan Cave Clients.

The Rev Op investors represented by Bryan Cave LLP include the following persons and entities: AJ Chandler 25 Acres, L.L.C.; Bear Tooth Mountain Holdings, L.L.P.; Brett M. McFadden; Cornerstone Realty and Development, Inc.; Cornerstone Realty and Development, Inc. Defined Benefit Plan and Trust; Evertson Oil Company, Inc.; James C. Schneck Rev. Trust; Louis B. Murphey; Michael Johnson Investments II, L.L.C.; Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan; Pueblo Sereno Mobile Home Park, L.L.C.; Queen Creek XVIII, L.L.C.; Revocable Living Trust of Melvin L. Dunsworth, Jr.; Ronald Kohner; The Lonnie Joel Krueger Family Trust; Trine Holdings, L.L.C.; Weksler-Casselman Investments; William L. Hawkins Family L.L.P.; and Yuval Caine and Mirit Caine.

Forrester & Worth Clients.

William C. Lewis, as trustee of the William C. Lewis Trust dated August 1, 1989, as amended; and, Richard K. Underwood, as trustee of the Richard K. Underwood Revocable Trust dated October 31, 1995, as amended.

Exhibit 2

INTER-BORROWER AGREEMENT

This Agreement (the "Agreement") is made and entered into as of June 11, 2009, by and between: (i) Kevin O'Halloran, not individually but solely as trustee ("Liquidating Trustee") of the ML Liquidating Trust established under the ML Liquidating Trust Agreement dated June 11, 2009 ("Liquidating Trust Agreement"); (ii) ML Manager, LLC, an Arizona limited liability company ("ML Manager"); and (iii) each of the Loan LLCs (defined herein) who have executed this Agreement below (individually, a "Borrower" and collectively the "Borrowers").

RECITALS

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

B. Under the Plan, each of the Loan LLCs executing this Agreement is (i) authorized to be formed and to own and hold through transfers approved by the Plan the fractional interests in the ML Loans and ML Loan Documents to be transferred to them under the Plan and (ii) to become a member of ML Manager, which is the sole manager of each of the Loan LLCs.

C. The Plan contemplates Exit Financing by a lender ("Lender") to consummate the Plan through a multiple advance loan in an aggregate amount of up to $20,000,000 ("Loan") to pay: (i) for certain Allowed Claims in accordance with the Plan; (ii) for certain operating expenses and costs of the Liquidating Trustee in selling or pursuing the Non-Loan Assets; and (iii) certain expenses of the Loan LLCs and the ML Manager in servicing the ML Loans held by the Loan LLCs; and

D. The Borrowers have entered into the Loan with Lender, and have executed the Loan Documents to Lender. Notwithstanding any term or provision to the contrary in this Agreement, each Borrower is, and shall remain, jointly and severally liable to the Lender for repayment of the Loan and all other obligations under the Loan Documents.

E. Each Borrower will borrow differing amounts under the Loan at different times and repay its share of the Loan from different sources. This Agreement is the Inter-

Borrower Agreement contemplated under the Plan. Pursuant to this Agreement, the Borrowers are agreeing to (among other things) the manner in which (i) Advances will be requested and made under the Loan; and (ii) all obligations due to Lender under the Loan will be allocated among and paid by, the various Borrowers so that each Borrower is only paying its Allocated Loan Share.

F. The Bankruptcy Court has approved this Agreement, and each of the Borrowers is, and shall be bound, by the terms of this Agreement upon execution of this Agreement by all of the Parties hereto.

OPERATIVE PROVISIONS

1. Definitions. The following capitalized terms shall have the meanings set forth below, with any capitalized terms used but not defined herein to have the meanings set forth in the Plan.

"Advance" means any advance of funds made by Lender under the Loan.

"Advance Request" means any request for an Advance under the Loan..

"Agency Agreements" means the existing Servicing Agent Agreements or other written agreements between (i) the Debtor and the holders of fractional interests in the ML Loans for the servicing of such ML Loans; (ii) the Debtor, the ML Borrowers and Mortgages, Ltd., as lender, for the servicing of the ML Loans with the ML Borrower.

"Allocated Loan Costs" means those Loan Costs which are not paid from an Advance of Loan proceeds and included in the Allocated Loan Shares which are to be allocated among the Members in accordance with Section 2.3 of this Agreement.

"Allocated Loan Share" at any point in time means the ratio of the amount of the aggregate cumulative borrowings under the Loan allocated to (i) the Liquidating Trustee minus any repayments made on the Loan from funds provided by the Liquidating Trustee and (ii) the Loan LLC Group minus any repayments made on the Loan from funds provided by the Loan LLC Group to (iii) the then total outstanding balance under the Loan. To the extent that the Non-Conveying ML Note Holders are required under the Agency Agreements or otherwise to pay a share of the Loan or costs funded by the Loan proceeds and such amounts are actually collected the amount thereof shall be deducted from the Allocated Loan Share of the Loan LLC Group.

"Allowed" with respect to Claims shall have the meaning set forth in Paragraph 2.4 of the Plan.

"Borrowers" shall mean the Liquidating Trustee, the ML Manager and each of the Loan LLCs, jointly and severally.

"Borrower Causes of Action" shall mean those Causes of Action and Avoidance Actions which relate to the ML Notes and are transferred to the Loan LLCs under the Plan.

"Causes of Action" shall mean the Causes of Action as defined in Paragraph 2.17 of the Plan.

"Claim" shall have the meaning set forth in Paragraph 2.19 of the Plan.

"Claims Required to be Paid" means Allowed Claims under Class 1 (Priority Non-Tax Claims), Class 2 (Secured Tax Claims), Class 3 (Stratera Claims), Class 4 (Artemis Secured Claim), Class 5 (Arizona Bank Secured Claim); and Allowed Administrative Claims and Priority Tax Claims and other items required to be paid by the Plan.

"Disposition Incentive Payment" means incentive payments as defined under the Loan Agreement.

"Effective Date" means the effective date of the Plan.

"Extension Fee" means any extension fee due to the Lender under the Loan Agreement.

"Final Settlement" means the date after the Loan has been paid in full upon which the Liquidating Trustee and the ML Manager determine that the Liquidating Trust and the Loan LLCs have completed practical realization on their respective assets, but not later than the termination date of the Liquidating Trust, at which time the Liquidating Trust and the Loan LLCs should settle up any Overpayment or Underpayment of their Allocated Loan Share or Allocated Loan Costs..

"Liquidating Trust" shall mean the trust defined in Paragraph 2.45 of the Plan.

"Liquidating Trust Agreement" means the trust agreement defined in Paragraph 2.47 of the Plan.

"Liquidating Trustee" means Kevin O'Halloran or any properly appointed successor trustee serving under the Liquidating Trust Agreement.

"Liquidating Trust Beneficiary" means any beneficiary of the Liquidating Trust.

"Liquidating Trustee Costs and Expenses" means the sum of any and all costs and expenses incurred by the Liquidating Trust in administering the Liquidating Trust, including, without limitation: (i) the costs and expenses to administer the Liquidating Trust and Trust Board, including legal, accounting and consultant costs, salaries and employee costs, insurance costs for liability insurance and property insurance on the REO Property owned by the Liquidating Trust, property taxes, repairs and maintenance costs with respect to the REO Property, net costs of operating the ML Servicing Co., Inc., and all other costs incurred in administering the tangible property owned by the liquidating Trust; (ii) all costs and expenses incurred by the Liquidating Trust in conducting

investigations of potential Causes of Action and Avoidance Actions owned by the Liquidating Trust and prosecuting actions against potential defendants at the trial level, in bankruptcy court proceedings and on appeal and costs and expenses incurred in achieving settlements and attempting to collect upon any judgments obtained; (iii) Servicer charges incurred in providing litigation support services to the Liquidating Trust and counsel employed by the Liquidating Trust; and (iv) litigation costs and expenses to defend the Loan LLCs and Members of Loan LLCs who are sued by ML Borrowers under the ML Loans for damages for failure of ML to fund commitments or other breaches of commitments to such ML Borrowers.

"Liquidating Trustee Deed of Trust" shall mean the Deed of Trust, Assignment of Rents and Security Agreement executed and delivered by the Debtor at the direction of the Liquidating Trustee in favor of Lender creating a lien or security interest in all REO Property owned by the Debtor.

"Liquidating Trustee Reserves" shall mean amounts determined in the reasonable discretion of the Liquidating Trustee to be withheld from amounts otherwise available for distribution to beneficiaries of the Liquidating Trust to ensure that the Liquidating Trust will be in a position to pay its Allocable Loan Share and other costs and expenses at Final Settlement.

"Loan" means the Exit Financing approved by the Bankruptcy Court pursuant to the Confirmation Order.

"Loan Agreement" means the Loan Agreement enter into between the Borrowers and the Lender.

"Loan Costs" means amounts paid to Lender for Origination Fees, Extension Fees, Disposition Incentive Payments, and Repayment Incentive Fees as those terms are defined in the Loan Agreement.

"Loan Documents" means the following documents to be entered into with the Lender by the Borrowers: the Loan Agreement; the Multiple Advance Promissory Note; the Collateral Assignment by the Loan LLCs of their interest in each ML Note and the ML Deed of Trust securing the ML Notes, a Control Agreement with the servicer holding the ML Notes, a Collateral Assignment of Borrower Causes of Action and ML Charges owned by the Loan LLCs, the Liquidating Trustee Deed of Trust, the Collateral Assignment by the Liquidating Trust of the Causes of Action which belong to the Liquidating Trustee and all other instruments, documents and agreements executed in connection herewith, referred to herein, or contemplated hereby.

"Loan LLC" means a Loan LLC formed under the Plan and "Loan LLCs" mean collectively all of the Loan LLCs from under the Plan.

"Loan LLC Group" means the Loan LLCs and the ML Manager.

"Loan LLC Reserves" shall mean amounts determined in the reasonable discretion of the ML Manager to be withheld from amounts otherwise available for distribution to Members of a Loan LLC to ensure that the Loan LLC will be in a position to pay its Allocable Loan Share and other costs and expenses at Final Settlement.

"Loan LLC Separate Costs" means costs and expenses which may be incurred by a Loan LLC other than Servicing Costs, Allocated Loan Costs and allocated portions of the Allowed Claims, which costs and expenses may include, without limitation, payment of real property taxes and insurance; repair and maintenance expenses on REO Property owned by a Loan LLC, fees of asset managers and consultants engaged for the Loan LLC, foreclosure costs on REO Property, costs and expenses incurred by the Loan LLC in conducting investigations of potential Causes of Action and Avoidance Actions owned by the Loan LLC and prosecuting actions against potential defendants at the trial level, in bankruptcy court proceeding and on appeal and costs incurred in achieving settlements and attempting to collect upon any judgments obtained, and litigation costs with a ML Borrower under an ML Note owned by the Loan LLC other than defending claims made by such ML Borrowers against individual members of a Loan LLC, and all other costs and expenses not specifically agreed to be paid from Loan Proceeds.

"Member" means each person admitted as a member of a Loan LLC.

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

"ML Note(s)" means the promissory notes defined in Paragraph 2.54 of the Plan which will be transferred to separate Loan LLCs on the Effective Date pursuant to the Plan.

"ML Deed of Trust(s)" means the deeds of trust and other security documents securing the ML Notes defined under Paragraph 2.50 of the Plan, which will be transferred to the respective separate Loan LLCs on the Effective Date pursuant to the Plan.

"ML Loan Documents" means all loan documents defined in Paragraph 2.51 of the Plan.

"Net Disposition Proceeds" means: (i) the gross sale price from a sale of all or a part of an ML Note, REO Property, or any real or tangible personal property owned by the Liquidating Trust (each, a Disposition") less in the case of such sale: (a) all costs and expenses, including, without limitation, commissions, legal fees, title costs, appraisal fees and other fees and costs, incurred in connection with such sale or preparing the property for sale; (b) any encumbrances or liens on the property sold which are required to be paid off as part of the sale or which are assumed by the buyer and deducted from the sales

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

"Non-Conveying ML Note Holders" shall mean those holders of fractional interests in ML Notes who have elected not to transfer their fractional interest in the ML Notes and ML Loan Documents to a Loan LLC, as provided in the Plan.

"Non-Loan Assets" means the assets as defined in Paragraph 2.58 of the Plan.

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

"Professional Fees" are the Professional Fees as defined under Paragraph 2.73 of the Plan..

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

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

"Servicer" shall mean ML Servicing Co., Inc (formerly Mortgages, Ltd) or any other entity engaged to service the ML Loans.

"Servicing Expenses" means the actual expenses of engaging a servicer to service the ML Loans from and after the Effective Date, including all normal and customary services that are normally by loan servicers, including but not limited to collecting payments, fees and other charges from ML Borrowers, maintaining accounting records with respect to the ML Loans, sending notices to ML Borrowers, paying taxes and insurance from impounds; confirming insurance coverage; making distributions of principal and interest to holders of interest in the ML Notes, providing custody services to hold the ML Notes and ML Loan Documents as agent for the benefit of the holders of the interests in the ML Notes, providing accountings and year end tax statements to holders of the ML Notes, answering inquiries from holders of the ML Notes or from ML Borrowers with respect to the ML Loans, and other services reasonable requested by the ML Manager to be provided to the holders of the ML Notes but excluding from Servicing Expenses those amounts charged to and collected from the Non-Conveying ML Note Holders for servicing under the Agency Agreements.

2. Advances under the Loan.

2.1 Advances. All Advances under the Loan will be initiated by a Advance Request signed by the Liquidating Trustee on behalf of the Liquidating Trust and the ML Manager on behalf of the Loan LLCs, and the Advance Request will request disbursement of a specific sum to each of the Liquidating Trustee and the ML Manager on behalf of the Loan LLCs.

2.2 Allocation of Loan Advances. Each Loan Advance will be specifically allocated and documented between the Liquidating Trustee and Loan LLC Group at the time advanced or as soon thereafter as possible based upon the purpose for which the money is drawn. The funds allocated to each will be deposited in accounts held by the Liquidating Trustee and the ML Manager on behalf of the Loan LLC Group. Advances under the Loan may be made to the Liquidating Trustee solely for the purpose of paying Claims Required to be Paid and Liquidating Trustee Costs and Expenses and such amounts advanced will be allocated to and become part of the Liquidating Trustee's Allocated Loan Share. Advances under the Loan may be made to the Loan LLC Group solely to pay for Servicing Costs and the Loan LLC Group's allocated portion of

Professional Fees and Allocated Loan Costs, operating costs of the ML Manager and such amounts will be allocated to and become part of the Loan LLC Group's Allocated Loan Share. No amounts will be borrowed by the Loan LLC Group to pay any Loan LLC Separate Costs.

2.3 Allocation of Certain Costs and Expenses. The Liquidating Trustee and the ML Manager shall agree upon a (i) preliminary dollar allocation of all Professional Fees between the Liquidating Trustee and Loan LLC Group, with the Loan LLC Group's dollar share being based upon best estimates of Professional Fees that were expended solely to defend the holders of Fractional Interests from suits and other actions by ML Borrowers based upon breaches by ML of the obligation to fund under ML's loan commitments or ML Loan Documents, which preliminary allocation will be revised when the Professional Fees are approved by the Bankruptcy Court, and (ii) a percentage allocation of Origination Fees and other Loan closing costs based upon the amount of funds borrowed by each on the date of the first Advance. Interest payments, Extension Fees, Repayment Incentive Payments and Disposition Incentive Payments payment made under the Loan will be allocated between the Liquidating Trustee and the LLC Group in accordance with their then Allocated Loan Share at the time of such payment. To the extent that the Non-Conveying ML Note Holders are required to pay and do pay their fair share of the Loan Costs and other costs funded with Loan proceeds under the Agency Agreements, the amount so paid shall reduce the amount to be allocated among the Loan LLCs for repayment purposes. The Liquidating Trustee and the ML Manager shall jointly file with the Bankruptcy Court a schedule of allocated items which are determined from time to time.

2.4 Responsibility to Repay Lender. The Liquidating Trustee and Loan LLC Group will be responsible, as between themselves, to repay to the Lender its then Allocable Loan Share at each point in time.

2.5 Overpayments and Repayments. To the extent that either of the Liquidating Trustee or the Loan LLC Group shall pay more than their Allocable Loan Share, or their share of Allocated Loan Costs, to Lender ("Overpaying Party") because of the requirements of the Loan Documents or otherwise, the overpayment ("Overpayment") shall be accounted for as a debt due to the Overpaying Party for underpayment ("Underpayment") from the other party ("Underpaying Party") which shall bear interest until repaid at the same rate of interest then borne by the Loan. To the extent that the Loan LLC Group is the Underpaying Party, the Loan LLCs will allocate the underpayment among the Loan LLCs in the ratio of their then Allocated Loan Shares to the total Allocated Loan Share of all Loan LLCs. or in the case of Underpayment of Allocated Loan Costs which are not paid from an Advance of Loan proceeds on the basis of the ratio of their Allocated Loan Costs under Section 2.3 or other method deemed fair by the ML Manager. In the event that the Underpaying Party is the Liquidating Trust or the Loan LLC Group, to the extent that funds are available to the Liquidating Trust if the Underpaying Party or from a Loan LLC if the Loan LLC Group is the Underpaying Party, from Net Proceeds from Disposition by such Underpaying Party, the funds shall first be used to pay off such Underpaying Party's share of the Underpayment owed based

upon the Liquidating Trust or Loan LLC's Allocable Loan Share of Overpayment debt at the time the Overpayment was made, or in the case of Allocated Loan Costs in accordance with the ratio of Allocated Loan Costs under Section 2.3 or other method deemed fair by the ML Manager, prior to making any distributions under the Liquidating Trust to a Liquidating Trust Beneficiary or to the Members of the Loan LLC.

2.6 Accounting for ML Charges. The ML Charges received by the ML Manager shall be accounted for as belonging to the Loan LLC which owns the ML Loan which generated the ML Charge but the ML Manager may collect the ML Charges and use such funds to pay for Servicing Costs to the Servicer, to repay the Loan LLC Group's Allocated Loan Share and the other Loan LLCs shall repay their portion of the ML Charges so used to the Loan LLC generating the ML Charges based upon the ratio of such other Loan LLCs Allocable Loan Shares at the time of such payments of funds from such ML Charges.

3. Allocations Among the Loan LLCs.

3.1 Allocations of Certain Costs and Fees. Allocated Loan Costs and allocated portions of Professional Fees to be borne by the Loan LLCs will be allocated among them in the ratio of the principal amounts of their ML Notes on the date of filling of the bankruptcy by the Debtor. Loan proceeds drawn by the Loan LLCs will only be used for the purposes specified under Section 2.3 above and will not be used for Loan LLC Separate Costs.

3.2 Allocation of Servicing Costs. Servicing Costs will be allocated among the Loan LLCs by the ML Manager on a basis which it considers fair and reasonable taking into account which loans require more or less servicing services. A Loan LLC that has foreclosed upon a property and now has no ML Loan to service shall not be allocated full Servicing Costs from and after the date of foreclosure but shall pay a fair amount as determined by the ML Manager for ongoing remaining duties like tax payments, insurance payments, year end accounting and tax statement preparation and any distributions on funds to the members.

3.3 Uses of ML Charges and Repayment Allocation. Any ML Charges shall be allocated to the Loan LLC which generates the ML Charges but may be used to pay Servicing Costs or to pay the Loan LLC Group's Allocated Loan Share. To the extent used to pay Servicing Costs, such payments will be allocated for repayment among the other Loan LLCs on a basis that the ML Manager considers fair taking into account which ML Loans require more or less servicing services, and to the extent used to pay the Loan LLC Group's Allocated Loan Share, the amount will be considered an Overpayment to be allocated for repayment purposes among all of the other Loan LLCs on the basis of the ratio of their individual Allocated Loan Share to the total Allocated Loan Shares of all other Loan LLCs on the payment date, and in each case repaid to the Loan LLC making the Overpayment first prior to distributions to Members of the other Loan LLCs when funds are available for distribution to members of each of the Loan LLCs obligated to made such repayment.

3.4 Liability for Overpayments. Liability for repayment to one Loan LLC from the other Loan LLCs for any Net Proceeds from Dispositions paid to the Lender on a disposition by a Loan LLC, which shall be an Overpayment shall be allocated among all of the other LLCs in the ratio of their individual Allocated Loan Shares on date of the payment to the Lender to the total of the Allocated Loan Shares of all of the other Loan LLCs on the date of payment. Each Loan LLC shall hold back Loan LLC Reserves prior to distribution to its Members of an amount estimated to be sufficient in the ML Manager's judgment to repay any repayment obligations of such Loan LLC to the other Loan LLCs or the Liquidating Trust when the Final Settlement is made between the Loan LLCs and the Liquidating Trust, and to pay such Loan LLCs other costs and expenses.

3.5 Inability of Loan LLC to Repay Obligations. In the event that one or more Loan LLCs are not able, in the reasonable judgment of the ML Manager, to recover from their ML Notes or ML Charges sufficient funds to repay their obligations to other Loan LLCs for repayment of Overpayments under Section 3.4, or other amounts owed to other Loan LLCs or to repay their portion of the Allocated Loan Costs and Allocated Professional Fees under Section 3.1 above or to pay their allocated Servicing Costs under Section 3.2 above, the ML Manager shall reallocate such amounts which cannot be repaid to the other Loan LLCs using the other Loan LLCs ratio of the principal amounts of the ML Notes which they held on the date of filing of the bankruptcy by Debtor in the case of items in Sections 3.1 and 3.4 above, and in the case of Section 3.2 above in a fashion that the ML Manager considers reasonable taking into account the servicing needs of each Loan LLCs as indicated in Section 3.2 above.

4. Representations and Warranties. Each Borrower represents and warranties on its behalf only as follows.

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

4.2 Such Borrower is not required pursuant to any law, regulation or contractual or other obligation, to obtain the consent, approval or authorization of any person or entity, including any governmental authority, to validly enter into, execute and deliver this Agreement and the Loan Documents and perform the acts and obligations required or contemplated thereby.

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

5. Covenants. Each Borrower covenants on its behalf only as follows.

5.1 Such Borrower shall expend the Loan proceeds for the purposes set forth in this Agreement.

5.2 Such Borrower shall at all times preserve and keep in full force and effect its existence as a Arizona trust in the case of the Liquidating Trust and as a limited liability company in the case of the Loan LLCs, and shall not allow or permit the dissolution and winding up of such Borrower entity prior to the Final Settlement of Allocated Loan Shares are required by this Agreement.

5.3 Such Borrower shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, noncompliance with which would materially adversely affect the business, properties, assets, operations or condition (financial or otherwise) of such Borrower.

5.4 Such Borrower shall comply with all of the covenants and other requirements of it under the Loan and Loan Documents.

6. Default. In the event of a default by a Borrower entity under this Agreement:

6.1 Default by Liquidating Trust. In the case of a default by the Liquidating Trustee or Liquidating Trust, the ML Manager may take such action as it may deem appropriate with the consent of its Board of Managers to cause the Liquidating Trustee or Liquidating Trust to comply with the terms of this Agreement.

6.2 Default by the Loan LLC Group or a Loan LLC. In the case of a default by the Loan LLC Group or an individual Loan LLC, the Liquidating Trustee in the case of the Loan LLC Group and the ML Manager in the case of an individual Loan LLC may take such action as it may deem appropriate with the consent of the Trust Board in the case of the Liquidating Trustee and the Board of Managers in the case of an individual Loan LLC.

6.3 Default by ML Manager. In the case of a default by the ML Manager, the Liquidating Trustee may take such action as it may deem appropriate with the consent of the Trust Board to cause the ML Manager to comply with the terms of this Agreement.

7. Jurisdiction; Venue; Service of Process.

Subject to the provisions of Section 8.4 hereof, each Borrower hereby irrevocably submits to the jurisdiction of any Arizona or United States Federal court sitting in Arizona over any action or proceeding arising out of or relating to this Agreement and the Loan Documents, and each Borrower hereby irrevocably agrees that all claims in respect of such

action or proceeding may be heard and determined in such Arizona or Federal court. Each Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Borrower at Borrower's address specified herein. Each Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Borrower further waives any objection to venue in such Arizona on the basis of forum non conveniens. Each Borrower further agrees that any action or proceeding brought against the other shall be brought only in Arizona or United States Federal court sitting in Maricopa County. Nothing contained herein shall affect the right of a Borrower entity to serve legal process in any other manner permitted by law.

8. Miscellaneous.

8.1 Loan Documents Part of the Agreement. The Loan Documents shall be deemed to incorporated into this Agreement. In the event of a conflict between any of the provisions of this Agreement and any provision of any of the Loan Documents, the provisions of this Agreement shall control. In the even of a conflict between this Agreement and the Plan, the Provisions of this Agreement shall control as between the parties to this Agreement.

8.2 No Other Parties to Benefit. This Agreement is made for the sole benefit of Borrower who are parties hereto and their successors and assigns, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiary or otherwise.

8.3 Notices. All notices provided for herein shall be hand-delivered or sent by certified or registered mail, return receipt requested, addressed to all parties hereto at the address designated for each party below or at such other address as the party who is to receive such notice may designate in writing:

: Kevin O'Halloran, Liquidating Trustee
100 Peachtree Street, Suite 1475
Atlanta, Georgia 30303

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

Notice shall be deemed completed upon: (i) such hand delivery or (ii) two (2) days after the deposit of same in a letter box or other means provided for the posting of mail, addressed to the party and with the proper amount of postage affixed thereto. Except as otherwise herein provided, actual receipt of notice shall not be required to effect notice hereunder.

8.4 Governing Law; Construction. This Agreement and the rights and duties of the parties hereunder will be governed by and construed, enforced and performed in accordance with the law of the State of Arizona, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction. The Bankruptcy Court shall have the exclusive jurisdiction over this Agreement and that any disputes arising out of or related in any manner to this Agreement shall be properly brought only before the Bankruptcy Court. If and to the extent that the Debtor's bankruptcy case is closed or dismissed or the Bankruptcy Court abstains from or otherwise declines jurisdiction, then the courts of the State of Arizona and the United States District Court, Arizona (located in Phoenix, Arizona) shall have exclusive jurisdiction over this Agreement and any such disputes. Each party to this Agreement irrevocably waives any and all right to trial by jury in any proceeding arising out of or relating to this Agreement.

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

8.6 Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of any of this Agreement until all of Borrower's obligations under this Agreement and the Loan Documents have been paid in full and the Liquidating Trust and each of the Loan LLCs have been dissolved in accordance with non-bankruptcy law..

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

8.8 Severability; Integration; Time of the Essence. Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement supersedes all prior agreements and constitute the entire agreement between the parties with respect to the subject matter hereof. Time is of the essence hereof.

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

8.10 Assignability. No Borrower entity shall assign this Agreement or any part of any payment to be made hereunder without the consent of the Liquidating Trustee and the ML Manager which may be given or withheld in their sole and absolute discretion.

8.11 No Joint Venture. It is expressly understood and agreed by each Borrower that by becoming joint borrowers under the Loan that such Borrower does not become partners or joint ventures with each other. It is the express intention of the parties hereto that for all purposes the relationship between such Borrowers be deemed to be that of

joint debtors under the Loan. In this regard, the parties acknowledge that it is not now, nor has it ever been, their intent to be partners or joint venturers as a result of the Loan or this Agreement.

8.12 Costs and Expenses. Should any proceedings or litigation be commenced between any of the parties hereto concerning any dispute under this Agreement, or the rights and duties of the parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees and costs.

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

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

[The remainder of this page is intentionally blank]

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

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

By: ML Manager, LLC, an Arizona corporation, its Manager
By: ______________________
Its: Authorized Manager
ML Manager, LLC, an Arizona limited liability company
By: ______________________
Its: Authorized Manager

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

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

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

By: ML Manager, LLC, an Arizona corporation, its Manager

By:____________________________
Its: Authorized Manager

ML Manager, LLC, an Arizona limited liability company

By: ____________________________
Its. Authorized Manager

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

Exhibit A
List of Loan LLCs

300 EC Loan LLC

CS Loan LLC

MK I Loan LLC

MK II Loan LLC

Nocit Loan LLC

Citno Loan LLC

44 CP I Loan LLC

ABCDW I Loan LLC

Osborn III Loan LLC

44 CP II Loan LLC

PPP Loan LLC

Bison Loan LLC

FP IV Loan LLC

CP Loan LLC

ZDC I Loan LLC

AZ CL Loan LLC

RG I Loan LLC

VCB Loan LLC

SOJ Loan LLC

ABCDW II Loan LLC

VP I Loan LLC

ZDC II Loan LLC

Centerpoint II Loan LLC

ZDC III Loan LLC

RRE I Loan LLC

VP II Loan LLC

HH Loan LLC

RLD I Loan LLC

MWP Loan LLC

C&M Loan LLC

U&A Loan LLC

RG II Loan LLC

PDG LA Loan LLC

ASA XVI Loan LLC

VF I Loan LLC

RLD II Loan LLC

4633 VB Loan LLC

MCKIN Loan LLC

Metro Loan LLC

Citlo Loan LLC

NRDP Loan LLC

CGSR Loan LLC

ABCDW III Loan LLC

TLDP Loan LLC

ASA IX Loan LLC

70 SP Loan LLC

ZDC IV Loan LLC

Centerpoint I Loan LLC

Exhibit 3

AGENCY AGREEMENT

THIS AGENCY AGREEMENT (this "Agreement") dated effective as of ________________, 2_____, is between Mortgages Ltd. ("Agent") and ______________________________ ("Participant").

Background

This Agreement is executed in connection with all loans (each a "Loan" and collectively, the "Loans") with respect to which Participant may hold Pass-through Loan Participations pursuant to any program sponsored by Agent, including the Annual Opportunity™ Loan Program, the Capital Opportunity® Loan Program, the Opportunity Plus® Loan Program, the Revolving Opportunity™ Loan Program, and the Performance Plus® Loan Program (collectively, the "Programs"), all as described in the Private Offering Memorandum of Agent relating to the Programs.

Agreement

Participant and Agent (collectively, the "Parties") agree as follows.

1. **APPOINTMENT AND AUTHORITY OF AGENT.**

Participant appoints Agent to act as Participant's agent with regard to the Loans and the Loan Documents (as defined below). Participant agrees that Agent will be named as the lender/payee/beneficiary (as agent for Participant) under the Loan Documents. Notwithstanding the foregoing, Participant may notify Agent in writing that Participant desires to obtain a separate assignment of the beneficial interest in any of the deeds of trust that are executed in connection with any of the Loans. Upon receipt of such written notice, Agent will comply with Participant's request provided that the Parties agree that all other provisions of this Agreement (including all other rights and powers of Agent) shall remain in full force and effect.

Participant authorizes Agent to perform all of the tasks described in this Agreement on Participant's behalf, at Agent's sole discretion. Participant irrevocably appoints, with full power of substitution, Agent as its true and lawful attorney-in-fact, with authority to sign and endorse all documents and perform any other task to effectuate the intent of this Agreement. This power is a power coupled with an interest, and such power is irrevocable and shall remain in full force and effect until renounced by Agent.

a. **Account Servicing.** In order to aid Agent's management of Participant's investment in the Loans, Agent may do any of the following at the sole discretion of Agent:

(1) Request from Participant, Participant's percentage ratio of any delayed fundings to any borrower (each a "Borrower" and collectively, the "Borrowers") under the Loan Documents related to any Loan, which funds Participant shall deliver to Agent within three business days to be held or disbursed by Agent pursuant to the Loan Documents. If Participant fails to deliver the funds to Agent within the specified time period, Agent may, at its option, do the following:

(a) Divide Participant's total funding of any Loan by the face amount of such Loan to determine Participant's current percentage ratio and transfer to a new investor the difference between Participant's assigned percentage ratio and Participant's current percentage ratio; or

(b) Liquidate Participant's investment in any Loan and transfer all of Participant's assigned percentage ratio in the Loan to a new participant.

(2) Hold the originals of the promissory note, deed of trust and all other documents signed by any Borrower or any guarantor in connection with any Loan (collectively, the "Loan Documents").

(3) Service and administer the Loans in any manner provided by the applicable Loan Documents.

(4) Process payments with respect to any Loan from any Borrower or any other payor (each a "Borrower Payment") as follows:

(a) Upon receipt of a Borrower Payment, deposit that Borrower Payment in an account held by Agent, and transmit or deposit the appropriate funds to Participant.

(b) Agent may delay disbursing funds to Participant from any Borrower Payment until funds from the applicable Borrower or the applicable payor are collected by Agent's financial institution.

(c) If a Borrower Payment is returned by the financial institution of the Borrower or the applicable payor, Agent may send a notice to the applicable Borrower or the applicable payor requesting payment of the past due amount, together with interest at the default interest rate provided for in the Loan Documents.

(5) Assess and process all fees and charges set forth in the Loan Documents, including administrative fees, notice fees and late charges.

(6) Apply any funds received by Agent to the fees and costs incurred or assessed by Agent before applying the funds to the amounts owing under the Loan Documents. These fees and costs include notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (as described herein). Any insurance placed by Agent may be placed with an affiliate of Agent or captive insurance company.

(7) Retain deposits received under the Loan Documents as impounds for the payment of the following: (a) future payments due; (b) taxes and assessments; (c) construction expenses; (d) insurance premiums; (e) extension fees; (f) administration fees; and (g) any other expenditure required under the Loan Documents.

Any impound account may be held in the name of Agent for the benefit of Participant and others, and Agent may apply and/or disburse any such deposits in accordance with the Loan Documents.

(8) Evaluate, effectuate and process an assumption of any Loan, and assess and receive an assumption fee and/or an interest rate increase.

(9) Sign, file and record all documents which are reasonable or desirable to facilitate servicing of the Loans and administration of the Programs, including: (a) deeds of release and reconveyance (full and partial); (b) endorsements and assignments of the Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents); (c) corrections, amendments and extensions of the Loan Documents; (d) disclaimers; (e) financing statements; and (f) assumptions and certifications.

(10) To the extent permitted by law, upon Participant's request, hold funds from the full or partial payoff of any Loan in Agent's trust account pending Participant's written direction as to the use of such funds.

b. **Collection.** In order to protect Participant's interests in the Loans, Agent may do any of the following at Agent's sole discretion:

(1) Correspond directly with any Borrower at any time on any matter regarding any Loan or the Loan Documents, including sending notices of delinquency and default, and demands for payment and compliance.

(2) Incur fees, costs and expenses deemed necessary by Agent to protect Participant's interests under the Loan Documents.

(3) Incur fees, costs and expenses deemed necessary by Agent to protect the property securing any Loan (each a "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

(4) Negotiate, accept and/or process partial payments of amounts due and owing under the Loan Documents.

(5) Send the applicable Borrower a request to deposit sufficient funds for delinquent real estate taxes and insurance premiums (including forced placed insurance) relating to the applicable Trust Property.

(6) Obtain forced placed insurance on any portion of the applicable Trust Property if the applicable Borrower fails to maintain insurance as required by the Loan Documents.

(7) Sign, file and record all documents Agent deems necessary to protect Participant's interests and/or pursue Participant's remedies upon default, including a statement of breach or non-performance, a substitution of trustee, a notice of election to foreclose, an affidavit of non-military service, a notice of proposed disposition of collateral and various verifications.

(8) In the event of default, commence foreclosure of the applicable Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the amounts due under the applicable Loan Documents or to enforce any provision therein, including: (a) pursuing an action against the applicable Borrower or any guarantor of the Loan; (b) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment; (c) pursuing claims in bankruptcy court; (d) pursuing an appeal; (e) collecting rents; or (f) taking possession of and/or operating the applicable Trust Property.

(9) Amend the Loan Documents.

(10) Facilitate the sale of Participant's interests in the Loan Documents by communicating with potential purchasers or their agents and by providing information regarding any Loan to third parties, including copies of the Loan Documents and accounting information related to any Loan.

(11) Retain attorneys, trustees and other agents necessary to collect the amounts due under the Loan Documents, to protect the applicable Trust Property and/or to proceed with foreclosure of the applicable Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Agent deems necessary.

(12) Incur and pay such costs, expenses and fees as Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorneys' fees, receiver fees, trustee fees, expert fees, notice fees and any fees, costs and expenses incurred in an effort to collect against a guarantor of any Loan.

(13) Request and receive payments from Borrowers or Participant as advances in order to pay such fees, costs and expenses incurred by Agent in accordance with this Agreement and/or the Loan Documents.

c. **Compensation**. As compensation for the services provided by Agent, Agent may do any of the following in its sole discretion:

(1) Retain fees and charges assessed under the Loan Documents and collected by Agent, including commitment fees, originations fees or points, late charges, maturity late charges, administrative fees, property inspection fees, prepayment penalties or premiums, notice fees and services.

(2) Deduct from payments received by Participant a portion of the interest payments on any Loan in which Participant acquires an interest in an amount determined by Agent at the time of the origination of such Loan and/or a servicing fee.

(3) Collect and retain any interest on the principal balance of any Loan which is over and above the normal rate set forth in the applicable promissory note, including the default interest rate provided for in the applicable Loan Documents.

(4) Collect and retain any interest that accrues on any impound accounts to the extent permitted by applicable law.

(5) Collect and retain any assumption fees and charges.

(6) Collect and retain any extension fees and forbearance fees.

d. **Sale of Interest**. If Participant owns less than 100% interest in any Loan being serviced by Agent under a Servicing Agent Agreement, Agent, in its sole discretion, may liquidate Participant's interest. Upon payment to Participant, Agent will, upon direction of Participant, use commercially reasonable efforts to reinvest any funds received by Participant in a new Loan.

2. ACCOMMODATION.

Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including Borrowers and Participant, for any act or omission by Agent or any person or entity acting for Agent.

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Agent shall have the right to assign the collection account or resign as Agent at any time, provided that Agent notifies Participant of such assignment or resignation in writing.

(1) If Agent assigns the collection account, Agent will deliver all Loan Documents, directions and account records to assignee, at which time Agent will have no further duties or liabilities hereunder.

(2) If Agent resigns, Participant shall have the right to designate a new collection agent and Agent shall deliver to Participant all Loan Documents, directions and account records to Participant or the newly designated collection agent, at which time Agent will have no further duties or liabilities hereunder.

b. If the ownership of any Trust Property becomes vested in Participant, either in whole or in part, by trustee's sale, judicial foreclosure or otherwise, Agent may enter into one or more real estate broker's agreement on Participant's behalf for the sale of the applicable Trust Property, enter into a management and/or maintenance agreements for management or maintenance of the applicable Trust Property, if applicable, may acquire insurance for the applicable Trust Property, and may take such other actions and enter into such other agreements for the protection and sale of the applicable Trust Property, all as Agent deems appropriate in its sole discretion. Any real estate broker engaged by Agent may be an affiliate of Agent. Participant may terminate this Agreement after it becomes the sole owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein.

c. Upon Agent's assignment or resignation, or termination of this Agreement, Participant shall immediately reimburse Agent for all fees, costs and expenses incurred

hereunder and pay Agent all compensation due. After such reimbursement and payment, Participant shall have no further duties to Agent, except indemnification of Agent.

4. **INDEMNITY**

a. Participant shall indemnify, protect, defend and hold Agent harmless for, from and against all liabilities incurred by Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from any Loan or the Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. If Agent requests that Participant pay any amount owed hereunder, Participant shall remit that amount to Agent as soon as possible, but in no event later than five business days of Agent's request.

5. **PARTICIPANT'S OBLIGATIONS**

a. **Execution of Documents**. Agent is authorized to sign all documents Agent deems necessary to facilitate loan servicing or collection. However, if it is necessary, Participant shall sign any documents Agent deems necessary to facilitate loan servicing or collection, including deeds of release and reconveyance (full and partial), endorsements and assignments. If Agent requests Participant sign such a document, then Participant shall sign and deliver that document as soon as possible, but in no event later than five business days of Agent's request.

b. **Failure to Execute Documents**. If Participant fails to sign any of the documents described in Section 5.a. above, Agent shall be authorized to sign any such document. If Agent is prevented from executing a document due to circumstances beyond Agent's control, then Agent shall be entitled to seek indemnification from Participant for any liabilities Agent may incur as a result.

c. **Assignment**. Participant shall have the right to assign its rights in this Agreement at any time upon immediate notification to Agent in writing of any assignment of Participant's rights. Upon assignment, Participant shall immediately reimburse Agent for all fees, costs and expenses incurred hereunder and pay Agent all compensation due. After such reimbursement and payment, Participant shall have no further duties to Agent, except indemnification of Agent.

d. **Breach**. If Participant breaches this Agreement by failing to perform or by interfering with Agent's ability to perform under this Agreement, then Participant shall pay Agent, within 30 days of written notice of breach, administrative fees, attorneys' fees, costs, closeout fees and any other fees or charges owed to Agent as compensation hereunder, along with any additional damages incurred by Agent, whether actual, incidental or consequential.

6. **CONFIDENTIALITY**

a. For the purposes of this Agreement, the term "Confidential Information" as used herein shall include all written and verbal information provided by Agent to Participant in connection with any Loan, whether marked or designated as confidential or not, including information regarding Agent's underwriting criteria or procedures. Except with respect to Agent's underwriting criteria and procedures, which shall in all events constitute Confidential

Information hereunder, the definition of Confidential Information shall not include any information which: (i) is or becomes generally known to third parties through no fault of Participant; or (ii) is already known to Participant prior to its receipt from Agent as shown by prior written records; or (iii) becomes known to Participant by disclosure from a third party who has a lawful right to disclose the information.

b. Participant acknowledges that the Confidential Information is proprietary and valuable to Agent and that any disclosure or unauthorized use thereof may cause irreparable harm and loss to Agent.

c. In consideration of the disclosure to Participant of the Confidential Information and of the services to be performed by Agent on behalf of Participant hereunder, Participant agrees to receive and to treat the Confidential Information on a confidential and restricted basis and to undertake the following additional obligations with respect thereto:

(i) To use the Confidential Information only in connection with the Loans.

(ii) Not to duplicate, in whole or in part, any Confidential Information.

(iii) Not to disclose Confidential Information to any person or entity, without the prior express written consent of Agent.

(iv) To return all Confidential Information to Agent upon request therefore and to destroy any additional notes or records made from such Confidential Information.

(v) Not to give testimony against Agent in any legal proceeding to which Agent is a party, unless compelled to do so by competent legal authority.

d. The standard of care to be utilized by Participant in the performance of its obligations set forth herein shall be the standard of care utilized by Participant in treating Participant's own information that it does not wish disclosed, except that Agent's underwriting criteria and procedures shall be kept absolutely confidential and privileged regardless of whether such knowledge was previously known to Participant or has been or is in the future disclosed to Consultant by third parties.

e. The restrictions set forth in this Section 6 shall be binding upon Participant, its employees, agents, officers, directors and any others to whom any Confidential Information may be disclosed as part of or in connection with any Loan transaction. Participant shall be responsible for any actions of its employees, agents, officers, directors or others to whom it has provided such information with respect to such information.

f. The restrictions and obligations of this Section 6 shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind Participant, its successors and assigns.

g. Participant agrees and acknowledges that the rights conveyed in this Section 6 are of a unique and special nature and that Agent will not have an adequate remedy at law if Participant or anyone acting on Participant's behalf or for whom Participant acted fails to abide

by the terms and conditions set forth herein, nor will money damages adequately compensate for such injury. It is, therefore, agreed between the Parties that upon a breach by Participant of its agreements in this Section 6, Agent shall have the right, among other rights, to obtain an injunction or decree of specific performance to restrain Participant or anyone acting on Participant's behalf or for whom Participant is acting from continuing such breach, in addition to damages sustained as a result of such breach. Nothing in this Agreement shall in any way limit or exclude any other rights granted by law or equity to either of the Parties.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their agents, personal representatives, heirs, successors, assigns, beneficiaries and trustees.

b. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

c. The Parties waive the right to a jury trial on any matters arising from this Agreement.

d. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the Account Application, the Existing Investor Account Agreement, the New Investor Subscription Agreement, and the Loan Documents.

e. This Agreement replaces and supersedes all prior agency agreements between Participant and Agent relating to any of the Loans. All such prior agency agreements are null and void.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by Agent and Participant. Agent's failure, at any time, to require performance of any provision of this Agreement shall in no manner affect the right of Agent at a later time to enforce the same. No waiver by Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. This Agreement may be signed by the Parties in counterparts. The signature pages may then be attached together constituting an original copy of the Agreement. Copies of signature pages obtained via facsimile shall be effective and binding on the Parties. As used in

this Agreement, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

i. No remedy herein conferred upon or reserved to Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

j. If there is any arbitration or litigation by or among the parties to enforce or interpret any provisions of this Agreement or any rights arising hereunder, the unsuccessful party in such arbitration or litigation, as determined by the arbitrator or the court, shall pay to the successful party, as determined by the arbitrator or the court, all costs and expenses, including attorneys' fees and costs, incurred by the successful party, such costs and expenses to be determined by the arbitrator or court sitting without a jury.

k. Agent is entitled to sign this Agreement on behalf of Participant as the attorney-in-fact of Participant pursuant to the authority granted under the Existing Investor Account Agreement or the New Investor Subscription Agreement executed by Participant.

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date first set forth above.

PARTICIPANT:

MORTGAGES LTD., as attorney-in-fact for Participant

____
By: **Scott M. Coles, CEO**

AGENT:

MORTGAGES LTD.

____
By: **Scott M. Coles, CEO**

Exhibit 4

ASSIGNMENT OF SERVICE AND AGENCY AGREEMENTS

This Assignment of Service and Agency Agreements is made this 1st day of June, 2009 by Mortgages Ltd,. An Arizona corporation ("Assignor") is favor of ML Manager, LLC, an Arizona limited liability company ("Assignee").

RECITALS

A. Assignor was the debtor in a Chapter 11 Proceeding ("Chapter 11 Case") entitled In re: Mortgages Ltd., Debtor, Case No. 2:08-bk-07465-RJH ("Bankruptcy Court") and pursuant to the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009, in the Chapter 11 Case which was confirmed by the Court on May 20, 2009 ("Plan") and became effective on the date hereof ("Effective Date"), the Assignor was required, among other things, to assign and transfer to Assignee all of the Assignors rights in, to and under the Service and Agency Agreements.

B. The Plan Proponent has elected under the Plan to require a transfer of the Service and Agency Agreements to the ML Manager to implement the Plan.

C. "Service and Agency Agreements" means the existing Servicing Agent Agreements, Agency Agreements or other written agreements between (i) the Assignor, as servicer or agent for the holders of fractional interests in the ML Loans; (ii) the Assignor, the ML Borrowers and Mortgages, Ltd., as lender, for the servicing of the ML Loans with the ML Borrowers.

Now therefore the Assignor hereby:

1. In accordance with the Plan, absolutely assigns and transfers to Assignee all of its right to, in and under the Service and Agency Agreements.

2. Agrees that the Recitals are incorporated herein by reference and that all terms used but not defined herein shall have the meanings set forth in the Plan or Exhibits to the Plan.

Executed as of the date set forth above.

Mortgages Ltd., an
Arizona corporation

By: ____________________
Authorized Person

2205546

SIGNED.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Dated: June 11, 2009

Minute Entry Order

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

Hearing Information:

Debtor:	Mortgages Ltd.
Case Number:	2:08-bk-07465-RJH **Chapter:** 11
Date / Time / Room:	THURSDAY, JUNE 11, 2009 01:30 PM 6TH FLOOR #603
Bankruptcy Judge:	RANDOLPH J. HAINES
Courtroom Clerk:	JANET SMITH
Reporter / ECR:	JO-ANN STAWARSKI

Matters:

1) CONTINUED HEARING ON MOTION FOR APPROVAL OF DIP FINANCING FILED BY DEBTOR
R / M #: 1,736 / 0

2) STATUS HEARING ON EXIT FINANCING
R / M #: 0 / 0

3) PRELIMINARY HEARING ON MOTION FOR RELIEF FROM STAY TO PROCEED WITH ADVERSARY PROCEEDING IN BANKRUPTCY CASE TEMPE LAND COMPANY, LLC, CASE NO. 2:08-bK-17587-JMM
R / M #: 1,678 / 0

4) EXPEDITED HEARING ON THE INVESTOR COMMITTEE'S MOTION TO APPROVE INTERIM PROCEDURES FOR MORTGAGE SERVICING
R / M #: 0 / 0

Appearances:

BRADLEY STEVENS/TODD TUGGLE, ATTORNEYS FOR MORTGAGES LTD.
DALE SCHIAN, ATTORNEY FOR VALUE TO LOAN COMM
TAMALYN LEWIS, ATTORNEY FOR HERITAGE INTERIORS (TEMPE LAND)
CHRIS SIMPSON, ATTORNEY FOR GOULD EVANS GOODMAN ASSOCIATES LC
BRENDA MARTIN, ATTORNEY FOR MECHANICS LIEN HOLDER
JON MUSIAL, ATTORNEY FOR PERFORMANCE CONTRACT
DEAN DINNER, ATTORNEY FOR CREDITORS COMMITTEE
CATHY REECE, ATTORNEY FOR INVESTORS COMMITTEE
STEVE BERGER, ATTORNEY FOR TEMPE LAND
JORDAN KROOP, ATTORNEY FOR RADICAL BUNNY
ANDREW DECKER, ATTORNEY FOR LIEN HOLDER (TEMPE LAND)
JOEL SANDERS, ATTORNEY FOR IES COMMERCIAL
ROBERT SHULL, ATTORNEY FOR GOLD CREEK

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Minute Entry Order

(continue)... 2:08-bk-07465-RJH **THURSDAY, JUNE 11, 2009 01:30 PM**

Proceedings:

ITEM #4

Ms. Reece urged the Motion.

COURT: IT IS ORDERED GRANTING THE MOTION. MS. REECE IS DIRECTED TO UPLOAD A FORM OF ORDER.

ITEM #2

Ms. Reece reviewed the status of the exit financing agreements. She further reviewed the problem they have had with the debtor that is preventing the closing of this matter.

Ms. Johnsen reviewed the debtor's position on the events.

COURT: IT IS ORDERED AUTHORIZING DEBTOR'S MANAGEMENT TO EXECUTE AND PROVIDE TO THE TITLE COMPANY ALL DOCUMENTS NECESSARY TO EFFECTUATE THE IMPLEMENTATION OF THIS PLAN WITHOUT BOARD RESOLUTIONS IF THE BOARD DOES NOT WANT TO PROVIDE THEM. IT IS FURTHER ORDERED THE DEBTOR SHALL NOT RECORD ANY DOCUMENTS BUT RATHER SHALL DELIVER ALL DOCUMENTS FOR RECORDING TO THE TITLE COMPANY. IN THE EVENT ANYONE WISHES TO SEEK SOME RELIEF ON THE GROUND THAT THE PLAN IS IN DEFAULT OR THAT THERE IS A FAILURE TO PAY ADMINISTRATIVE CLAIMS THAT ARE ALLOWED AND REQUIRED TO BE PAID ON THE EFFECTIVE DATE THEY SHOULD BRING A MOTION SEEKING APPROPRIATE RELIEF. MS. REECE IS DIRECTED TO UPLOAD ORDERS.

ITEM #1

The Court notes the debtors motion is moot.

ITEM #3

Ms. Reece responded to the motion advising the stay terminates on the effective date.

COURT: IT IS ORDERED AS TO THE MECHANIC LIEN CLAIMANTS AS TO BORROWERS PROPERTIES PRIORITY DISPUTES THE AUTOMATIC STAY IS TERMINATED EFFECTIVE AS OF THE EFFECTIVE DATE OF THE PLAN WHICH UNDER PRESENT FACTS THE COURT CONTEMPLATES WILL BE MONDAY, JUNE 15, 2009 AT THE LATEST. IT IS FURTHER ORDERED NO AUTOMATIC 10 DAY STAY APPLIES TO THE TERMINATION OF THE AUTOMATIC STAY EFFECTIVE AS OF THE EFFECTIVE DATE.

RANDOLPH J. HAINES
U.S. BANKRUPTCY JUDGE

IT IS HEREBY ADJUDGED and DECREED this is SO ORDERED.

The party obtaining this order is responsible for noticing it pursuant to Local Rule 9022-1.

Dated: June 11, 2009

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re MORTGAGES LTD., Debtor.	Chapter 11 Case No. 2:08-bk-07465-RJH **ORDER IN AID OF CLOSING THE CONFIRMED INVESTORS COMMITTEE'S FIRST AMENDED PLAN OF REORGANIZATION**

The Official Committee of Investors (the "Investors Committee") having requested an order in aid of closing the Investors Committee's confirmed First Amended Plan of Reorganization ("Plan"), and good cause therefore,

IT IS HEREBY ORDERED:

1. That the Christine Zahedi, Nechelle Wimmer and any other employees of Debtor are authorized to execute any and all documents needed to implement the Plan and the Exit Financing without any Board Resolution from the Debtor and this Order and the Confirmation Order dated May 20, 2009 are sufficient authorization for such actions.

2. That Debtor and its employees are instructed not to record or file any documents and shall provide any documents to be recorded to the title company or companies used by the Investors Committee to implement the Plan and the Exit Financing.

DATED AND SIGNED AS ABOVE.

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