FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
Keith L. Hendricks (012750)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Telephone: (602) 916-5000
Email: creece@fclaw.com

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
Mortgages Ltd.,	Case No. 2-08-BK-07465-RJH
Debtor.	**ML MANAGER LLC'S RESPONSE TO THE JOINDERS FILED BY THE LEWIS TRUST, UNDERWOOD TRUST, AND STERNBERG, AND ML MANAGER'S SUPPLEMENT TO THE RESPONSE TO THE OBJECTION TO REV OP GROUP'S EMERGENCY MOTION**
	Hearing Date: October 8, 2009 Hearing Time: 11:00 a.m.

The Lewis Trust and the Underwood Trust (collectively "Lewis") and Sternberg Enterprises Profit Sharing Plan ("Sternberg") recently filed joinders to the Emergency Motion filed by 18 Rev-Op Investors (the "Emergency Motion"). ML Manager LLC ("ML Manager") hereby responds to the issues raised by Lewis and Sternberg and supplements its Response Emergency Motion.

Sternberg first argues that he is not subject to "res judicata and collateral estoppell principals" [sic] resulting from the Court's prior rulings with regard to the enforceability of the Agency Agreements. (Sternberg Joinder, at p. 1). Sternberg is mistaken. The enforceability of the Agency Agreements (or, in other words, the "Authority Issue") was resolved by final litigation. First, as established in ML Manager's Response to the Emergency Motion, it was resolved in connection with the litigation over the settlement

agreements proposed by the Debtor in the fall of 2008. The Authority Issue was expressly raised in a context that was broader than just the particular loans that were at issue. The Debtor's Statement of Position (Docket No. 528) was not limited to any particular loan and the Court and the parties indicated that the "Authority Issue" was broader than the particular loans.[1] As such, the fact that Sternberg was not involved in the University & Ash loan is irrelevant. He had appeared in Court on several occasions and the broader Authority Issue was conclusively established by the Court. Attached hereto as Exhibit 1 is the Transcript for the November 25, 2008 ruling of the Court on the Authority Issue. It is Docket No. 1090 which was entered on the Docket on December 8, 2008. It had been the law of the case for 6 months prior to the Confirmation hearings. ML Manager mistakenly referred in its original Response to the Emergency Motion to the date of the Transcript as October 25, 2008 thus confusing the record. To avoid confusion about to which hearing and Transcript Counsel was referring, ML Manager hereby attaches the Transcript of the November 25, 2008 ruling for the convenience of the Court and the parties.

More important, the issue of the effect of the Agency Agreement and, for that matter, the issue of whether non-transferring Pass-Through Investors would be responsible for their share of the Exit Financing was the subject of the litigation during the confirmation of the Plan. As established in ML Manager's Response to the Emergency Motion, confirmation of a Plan is res judicata on any issue that was or could have been raised. (Response, at pp. 11-13) The fact that Sternberg has filed a joinder is more than ironic because he was the one who brought those issues to the fore front before he withdrew his objection and accepted the Plan. Attached as Exhibit 2 is the Objection filed by Mr. Sternberg (Docket No. 1662). Notably, Mr. Sternberg's Objection is premised on the assumption that the non-transferring Pass-Through Investors would bear a share of the responsibility for the Exit Financing This is clear because Mr. Sternberg makes it clear

[1] As noted in ML Manager's Response to the Emergency Motion, the Debtor 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 No. 685, at p. 2

that his only interest is that of a Pass-Through Investor and that he does not intend to contribute his interest to the Loan LLCs. Nevertheless, as set forth in paragraph 2 of his Objection, he asserts that the burden of the Exit Financing will not be fair and equitable to the Pass-Through Investors. Obviously, Sternberg understood that the non-transferring Pass-Through Investors were responsible for a portion of the Exit Financing, which is why he raised his Objection. Sternberg did more than just raise the Objection. Before he withdrew his Objection, Sternberg appeared at the Confirmation hearing and cross-examined witnesses, including Ed McDonough. The testimony he elicited makes it clear that the same issues he (and the 18 Rev-Op Investors) now raise with regard to whether the non-transferring Pass-Through Investors would be required to pay their fair share of the Exit Financing were also raised during the Confirmation hearing. Some of the questioning was as follows:

> Q [By Sternberg] Okay. So -- and -- and the reason why they're being assessed is because the people who transferred their interest into the LLCs their -- their interest is subject to the loan which -- can provide funds perhaps to pay for those expenses, or will they be assessed -- **will everybody be assessed for the same thing**?
>
> A [By McDonough] **Well everybody will be assessed the cost. And we believe it's the agency agreement that under our plan this is being transferred to an ML manager. So the agency agreement currently allows the agent to assess fees and costs to reimburse the agent for out-of-pocket costs**. …
>
> * * *
>
> Okay? So under our plan what my view is, is that **there's no free ride, people have to pay their pro rata share of the cost**
>
> Q [By Sternberg] **That's understood**.
>
> A [By McDonough] Okay.
>
> Q [By Sternberg] **That's agreeable, obviously**. The -- is there anything in a plan that says that -- that the assessment for the non-transferring pass-through investors would be on some pro rata proportionate basis?
>
> A [By McDonough] I think there's two things. One, I think the plan talks about the fact that the agency agreement will be

> assigned or assumed by the ML manager, and that agency agreement I think was attached to the plan, has that language in there.
>
> Second thing, the borrower agreement, which has been dealt with, has the specifics on how it's done. So relative to what's in the plan I think there's a reference to the agency agreement
>
> Q [By Sternberg] I didn't catch you, what agreement has this in it?
>
> A [By McDonough] **The agency agreement talks about the ability of the agent to allocate those costs and collect fees and expenses**.
>
> Q [By Sternberg] So --
>
> A [By McDonough] **So that agreement is coming over to ML manager, and that agreement that I think was referenced in the plan, so that's the initial mechanism that allows you to collect and assess**.
>
> Then our borrower agreement, which is being drafted and I think is about done, talks about how then we kind of push the money around so in effect everybody does bear they fair share.
>
> Q [By Sternberg] **So you're saying the intent of the plan is to be nondiscriminatory and not -- and charge on a proportionate basis**?
>
> A [By McDonough] **Yes**. I mean, there's some things that may be an overhead that you have to allocate, but as to -- the only job you can do to allocate the cost on some basis -- rational basis, that's the intend.

(May 13, 2009 Transcript, Docket No. 2229, at pp. 307-08) (emphasis added). This testimony makes it very clear that the Plan includes (1) the fact that the Agency Agreements are assigned to ML Manager, (2) that ML Manager will have the authority under the Agency Agreement to assess all costs "on a proportionate basis" (3) that no Investor will get a free ride, and (4) Sternberg agrees with the concept that no Investor will get a free ride and refers to that as "obvious."

After Sternberg's cross-examination, there were discussions and email exchanges with Sternberg that ultimately led to the modifications in Paragraph U of the Confirmation Order. Attached as Exhibit 3 is the email exchange. This email exchange makes it clear that Sternberg understood and accepted that the non-transferring Pass-Through Investors

would have to pay their proportionate share of all costs. He remained concerned, however, that there be language added to make sure that they would not be hit with anything more than their proportionate share.

The language of paragraph U in the Confirmation Order resolved Mr. Sternberg's Objections to Confirmation, especially his questions about the Exit Financing and the allocation to the Pass-Through Investors. As stated in the Response and as reflected on the Minute Entry, on May 18, 2009 Mr. Sternberg withdrew his objection based upon the three subparts 1, 2 and 3 of paragraph U being inserted as modifications to the Plan. This provision made it clear that the non-transferring Pass-Through Investors would be treated no worse and no better than the Loan LLC members. The Court-approved language was that the assessment of any cost would be "fair, equitable and non-discriminatory." This was confirmed during the colloquy between the Court, counsel for the Investors Committee and Mr. Sternberg when the settlement was put on the record. During this colloquy, the first issue that was addressed was that the non-transferring Pass-Through Investors would receive their share of any fees obtained from the borrowers. The Court asked for an explanation of what the language in the settlement meant and Mr. Sternberg said that "[t]his basically transfers it pro rata to everybody." (May 18, 2009 Transcript, Docket No. 2136, at p. 7) Then Ms. Reece and Mr. Sternberg announced the provision that dealt with the costs and expenses. It was based on the same "pro-rata" agreement that was reached with regard to the sharing of revenue generated from the loans. Ms. Reece stated: "And that, again, was to indicate that the Pass-Through Investors will have some responsibility for expenses, but we're going to try and make sure that we do it so that it is truly a fair reallocation of **everything** that's involved." (*Id.* at p. 8)(emphasis added). There can be no doubt that "everything" included the Exit Financing as that had been Mr. Sternberg's major concern in both his written objection and his cross-examination of Mr. McDonough.

Sternberg's newly asserted position in his joinder that the "consideration for the settlement is that the non-transferring pass-through investors would not be burdened by

the onerous exit financing loan" is simply wrong. If the intent of the Plan and the Court Confirmation Order was that the non-transferring Pass-Through Investors did not have to bear any responsibility for the Exit Financing, there would have been no need for the "fair", "equitable" and "non-discriminatory" language in paragraph U because the non-transferring Pass-Through Investors would have been much better off than all other investors inside of the Loan LLCs. This requirement that the non-transferring Pass-Through Investors be treated "fairly, equitably and in a non-discriminatory manner" only makes sense if there were a potential that they could be treated worse than the Loan LLC members. If the Loan LLC members were the only ones that had this tremendous burden and the non-transferring Pass-Through Investors got a free ride on the Exit Financing, there would be no reason to have any concern that the non-transferring Pass-Through Investors were being discriminated against. If that were the case, every other investor who was paying for the Exit Financing would be able to assert a complaint that they were being treated unfairly, inequitably, and being discriminated against, but not the non-transferring Pass-Through Investors. For that reason, paragraph U in the Confirmation Order only makes sense if all Investors, including the non-transferring Pass-Through Investors, are required to pay their proportionate and fair share of the Exit Financing.

Sternberg, as with the other 18 Rev-Op Investors, assert that there is an open question about the effectiveness of the Agency Agreements on particular investors. As indicated before, this issue was resolved during both the University & Ash hearing and the Confirmation hearing. The record for both the Authority Issue as established during the University & Ash settlement hearings and the Confirmation hearings clearly reflect that the relevant forms of the same Subscription Agreements and Agency Agreements were marked and admitted into evidence and testimony was given that the investors were all subject to these agreements. The Minute Entries for both hearings and the index of Debtor's Exhibits are attached hereto as Exhibit 4 to show that the agreements were in evidence and a part of both hearings. The Agency Agreements and Subscription Agreements which concern the 18 Rev-Op Investors are the same ones that were marked

and admitted into evidence and formed the evidentiary basis for the matters. Indeed, it was the Debtor, during its case-in-chief in opposition to the Plan, that introduced all of the relevant agreements. (May 18, 2009 Transcript, Docket No. 2136, at pp. 151-52) To the extent that there was any dispute or objection that any investor was not bound by, a party to, or otherwise not covered by the Agency Agreements and the Subscription Agreement, it could have and should have been raised at that time. Both Sternberg, Mr. Suzuki (counsel for the 18 Rev Op Investors), and Mr. Forrester (counsel for Lewis) were present at the Confirmation hearing (May 18, 2009 Transcript, Docket No. 2136, at pp. 2, 4-5) as well as all the other Confirmation hearings.

In ML Manager's Response to the Emergency Motion, ML Manager indicated that the redline version of the Interborrower Agreement was attached. ML Manager did attach the fully executed Interborrower Agreement but mistakenly left off the redline version which compares version 4 (which was circulated and negotiated as a part of the Confirmation hearing through May 19, 2009) and the final executed version 5 (which was signed at the closing June 11, 2009). Attached hereto as Exhibit 5 is the applicable redline version.

As a supplement to ML Manager's Response to the Emergency Motion, at page 5 and 6 of the Emergency Motion, they refer to a ruling of Judge Baum in the Riverfront bankruptcy case which purports to say that "the ML Manager LLC's ability to represent the interests of the Investors after the Effective Date has already been called into question by at least one Judge." The 18 Rev-Op Investors attach what they say is a ruling "which raises doubts about the ability of the ML Manager LLC to act on behalf of the holders of the Notes." However they misrepresent the May 12, 2009 ruling and the timing which resolved the April 30, 2009 oral argument and fail to include the rest of the May 12, 2009 ruling made that day by the Court. Attached as Exhibit 6 is the ruling to which they refer and the companion ruling by Judge Baum entered the same day at the same hearing on the discovery dispute that DLA Piper (the counsel for Mortgages Ltd. in that case) and Riverfront's counsel were having. This discovery dispute had been going on for a few

months and DLA Piper had not produced copies of any documents to establish the ability of Mortgages Ltd. to pursue the guaranty action. For example, DLA Piper had not produced the Indorsements of the Notes to the investors or MP Funds or the Assignments of Beneficial Interest of the Deed of Trust to the investors or MP Funds or the authority documents (i.e., operating agreement or subscription and agency agreement). Attached as Exhibit 6 are both rulings (Docket No. 92 in the administrative case and Docket No. 59 in the adversary) and the May 12, 2009 Minute Entry (Docket No. 93 in the administrative case) so this Court can read them and weigh the credibility for which they are used. The rulings have nothing to do with the Investors Committee's Plan or the ability of ML Manager to represent the interests of the investors after the Effective Date. The reality is that DLA Piper failed to attach to its summary judgment motion this aspect of its proof (the indorsements, assignment of beneficial interests in the deed of trust, the operating agreements for the MP Funds and subscription and agency agreements for the investors) and because it failed to attach these items the summary judgment was denied. The Court then admonished both sides on their unprofessional conduct and ordered Mortgages Ltd. to produce "all of the transactional documents." That is the extent of it. This does not require any "clarifications" with respect to the Plan. Indeed, it is disingenuous to try to use these Riverfront rulings for anything other than what they are—discovery disputes and the failure of Mortgages Ltd.'s counsel DLA Piper to produce the transactional documents to prove their case.

Finally, the joinder by Lewis relies on an isolated statement in the Amended Disclosure Statement to argue that because they will not have the "benefit" of the Exit Financing they should not be responsible for paying their share of the Exit Financing. For example, Lewis argued in its "Joinder" that the Amended Disclosure Statement says that "the use of the Exit Financing will not be available to" the Non-Transferring Investors. This is similar to an argument advanced by the 18 Rev Op Investors. This reference to the Amended Disclosure Statement is taken out of context. All of the Mortgages Ltd. Investors clearly received the "benefit" of the Exit Financing. The Amended Disclosure

Statement succinctly states at page 77:

> The Exit Financing is for $20 million and will be used to take out the Stratera Claims, the Priority Non-Tax Claims and the Administrative Claims and to provide working capital for the operations for the Liquidating Trust, the Reorganized Debtor, the Loan LLCs and the ML Manager LLC.

See also Amended Disclosure Statement at p. 25 (Administrative claims paid from Exit Financing); p.27 (Priority Non-tax claims paid from Exit Financing); p. 27 (secured tax claims may be pre-paid from Exit Financing); p. 28 (Stratera Claims paid from Exit Financing). This is consistent with Ed McDonough's testimony during the confirmation hearing. (May 13, 2009 Transcript, Docket No. 2226, at p. 226)("Why is the exit financing necessary? … To get out of bankruptcy. There are fees that have to be paid, as we've talked about. The DIP loan has to get paid off. Professionals fees have to get paid.") In other words, the Exit Financing was used to allow the Debtor to exit bankruptcy, pay administrative and priority non-tax claims, including the DIP financing provided by Stratera, and also could be used for some operational expenses.

Sternberg, the 18 Rev-Op Investors, Lewis and all other non-transferring Pass-Through Investors, just like every other group of investors and creditors in this bankruptcy, equally benefited by the Debtor emerging from bankruptcy. It is disingenuous for them to argue that they did not receive a benefit from the Exit Financing and should not have to pay their fair share.

When taken in context, the statement on page 7 of the Amended Disclosure Statement relied upon by Lewis refers to future operating costs, and not to whether any group will or will not receive the benefit of emerging from bankruptcy. The full quote, which Lewis and the 18 Rev Ops Investors neglect to cite, states as follows:

> Once the Plan is confirmed by the Court, the Pass-through investors will receive additional paperwork to fill out to accomplish the transfer in exchange for a membership interest in the applicable Loan LLC. If a Pass-Through Investor decides not to transfer an interest into the applicable Loan LLC for a specific Loan, then the Pass-Through Investor will continue to hold the fractional interest in the Note and Deed of Trust or the title to the property if it has already been foreclosed upon in their name, however the costs of enforcing

> the Loan **and the expenses related to that Loan will be assessed against the Pass-Through Investor as provided for in the existing documents**. The benefits and protections of the Loan LLC and the use of the Exit Financing will not be available to such Pass-Through Investor **and such Pass-Through Investor will be subject to the existing Subscription and Agency Agreement fees and provisions which will be enforced by the ML Manager LLC** and may be subject to lawsuits by Borrowers. The existing Agency Agreements and other contracts to which the Pass-through investors are parties may be transferred by the Debtor to the ML Manager LLC, at the option of the Plan Proponent depending on the tax consequences. (emphasis added).

This passage clearly addresses future operating costs for the management of the loans, and not the Administrative and Priority non-tax claims that were indisputably to be paid from the Exit Financing. The relevant provision clearly states that the "costs of enforcing the Loan **and the expenses related to the Loan will be assessed against the Pass-Through Investor as provided for in existing documents."** (emphasis added). It is in this context enforcing the Loan and future expenses related to the Loan that the use of the Exit Financing may not be available to the non-transferring Pass-Through Investors and they will need to pay their share as required by the Agency Agreements.

As Mr. McDonough testified, the vast majority of the Exit Financing is consumed by the Administrative, the Priority Non-Tax and the DIP financing claims. Mr. McDonough clearly testified that "the whole idea is we want to allocate costs so it's appropriate. So at the end of the day people bear the proportion share of the costs." (May 13, 2009 Transcript, Docket No. 2226, at p. 231) He went on to explain that the Plan "would eliminate all of the people shooting at each other -- all the various investors shooting at each other trying to expand the pie for their -- A Yeah, I mean, the pie doesn't really get any bigger at the end of the day." (*Id.* at p. 246). In other words, the Plan was designed to stop exactly what the 18 Rev-Op Investors, Lewis and Sternberg are trying to do now – obtain more than their proportionate share of the loans at the expense of the other investors.

The fact that the Amended Disclosure Statement asserted that there may be a little bit of money included with the Exit Financing for the future operations of the Loan LLCs

that may not be available to the non-transferring Pass-Through Investors for future expenses associated with a loan because they are required to pay these expenses under the Agency Agreements is irrelevant to the question of whether the non-transferring Pass-Through Investors are required to pay their fair share of the Exit Financing obtained for the purpose of emerging from bankruptcy. Moreover, it is ironic that Lewis and the 18 Rev-Op Investors would parse this language for an argument that they are not responsible for the Exit Financing and ignore it while making the argument that they are not subject to the Agency Agreements when this provision makes it absolutely clear that the non-transferring Pass-Through Investors would be subject to the Agency Agreements and would be charged all of the costs allowed under those agreements. As such, Sternberg, Lewis, and the 18 Rev-Op Investors cannot claim that they did not know, when they withdrew their objections, changed their vote to support the Plan, and entered into the settlement afforded by the Plan, that they would be subjected to the Agency Agreements. The very provision they cite on page 7 of the Amended Disclosure Statement makes it clear that they will be bound by the Agency Agreements.

DATED this 7th day of October, 2009.

FENNEMORE CRAIG, P.C.

By s/ Keith L. Hendricks
Cathy L. Reece
Keith L. Hendricks
Attorneys for ML Manager LLC

COPY of the foregoing transmitted electronically using the Court's ECF System this 7th day of October, 2009, to the following party and to the parties on the attached service list:

Robert Miller
Bryce Suzuki
BRYAN CAVE, LLP
Two North Central Ave., Suite 2200
Phoenix, AZ 85004
rjmiller@bryancave.com
bryce.suzuki@bryancave.com

S. Cary Forrester
FORRESTER & WORTH PLLC
3636 N. Central Ave. 700
Phoenix, AZ 85012
scf@fwlawaz.com

Sheldon Sternberg
Sternberg Enterprises Profit Sharing Plan
5730 N. Echo Canyon Dr.
Phoenix, AZ 85018
ssternberg@q.com

By s/ Carol Smith

Exhibit 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:	
MORTGAGES LTD. CH: 11	2:08-bk-07465-RJH
1) EVIDENTIARY SETTLEMENT HEARING RE: UNIVERSITY & ASH	
2) DEBTOR'S MOTION TO APPROVE COMPROMISE/SETTLEMENT WITH CDIG	
3) DEBTOR'S MOTION TO APPROVE COMPROMISE/SETTLEMENT WITH CGSR LLC	
4) DEBTOR'S MOTION TO APPROVE COMPROMISE/SETTLEMENT WITH CS 11 MARICOPA LLC	
5) MOTION TO APPROVE DIP FINANCING RE: CENTERPOINT	

U.S. Bankruptcy Court
230 N. First Avenue, Ste. 101
Phoenix, AZ 85003-1706

November 25, 2008
2:13 p.m.

BEFORE THE HONORABLE RANDOLPH J. HAINES, Judge
(Designation of Record)

APPEARANCES:

For Mortgages Ltd.: Carolyn J. Johnsen
Bradley Stevens
Todd Tuggle
JENNINGS, STROUSS
& SALMON, P.L.C.
The Collier Center, 11th Floor
201 E. Washington Street
Phoenix, AZ 85004-2385

APPEARANCES: (Continued)

For Official Committee of Investors in the Value-to-Loan Opportunity Fund I, LLC:	Dale Schian SCHIAN WALKER, PLC 3550 N. Central Ave., Ste. 1700 Phoenix, AZ 85012
For The Lewis Trust:	S. Cary Forrester FORRESTER & WORTH, PLLC 3636 N. Central Ave., Ste. 700 Phoenix, AZ 85012
For Mahakian, et al:	Allen B. Bickart ALLEN B. BICKART PC 312 Clubhouse Dr. Prescott, AZ 86303
For Unofficial Investor Committee, Official Committee of Investors:	Keith Hendricks Cathy Reece FENNEMORE CRAIG 3003 N. Central Ave., Ste. 2600 Phoenix, AZ 85012-2913
For Eva Sperber-Porter:	Richard Thomas THOMAS SCHERN RICHARDSON 1640 S. Stapley Dr., Ste. 205 Mesa, AZ 85204
For University & Ash, L.L.C., Roosevelt Gateway, L.L.C., Roosevelt Gateway II, L.L.C.:	Dean Waldt Brian Schulman Rebecca Winthrop BALLARD SPAHR ANDEWS & INGERSOLL, LLP 2029 Century Park East, Ste. 800 Los Angeles, CA 90067
For William H. Parker Family Trust; Susan Hoffland; Timothy Hoffland; William B. Parker:	Lindsi Webber GALLAGHER & KENNEDY, PA 2575 E. Camelback Rd. Phoenix, AZ 85016
For Grace Entities:	Don Ennis SNELL & WILMER LLP One Arizona Center 400 E. Van Buren Phoenix, AZ 85004-2202

APPEARANCES: (Continued)

For Jeffrey S. Kaufman; Kaufman Family Living Trust dated July 7, 1997; Marcy L. Kaufman; The Samuel W. Kaufman Living Trust:

Jeffrey Kaufman
JEFFREY S. KAUFMAN, LTD.
5725 N. Scottsdale Rd., Ste. 190
Scottsdale, AZ 85250

Proceedings recorded by electronic sound technician, Sheri Fletcher; transcript produced by A/V Tronics, Inc.

(2:13 p.m.)

THE COURT: Well, I have some findings of fact and conclusions of law to make, but I won't hold you in suspense and go right to the bottom line. I'm going to approve this settlement as to University & Ash and deny it as to Roosevelt Gateway I and II.

First of all, let me note that I find no evidence that the debtor negotiated this deal or agreed to it with its own interests paramount, or indeed even that its own interests were even considered. There is simply no evidence to suggest that the debtor negotiated this deal with anything other than its investors' interests in mind.

Let me go to the authority issue. First of all, I agree that the authority must have been given in the agency agreement or subscription agreement, not at least alone in the loan documents, unless they are expressly incorporated in the agreements the debtor made with its investors. But I find that the authority existed at least with respect to most investors in agency paragraph 1(b)(7) and 1(b)(9). I also find it rather clearly in paragraph 5 of the investor subscription agreement that was culled from Exhibit 5. Pardon me, Exhibit A, paragraph 5.

Almost no discussion about, but it looks pretty clearly that it gives the authority to modify the loan terms and that the limitation on authority was only on the kinds of

loans in which Mortgages Ltd. could put the investor. That was the primary limitation on authority that was imposed there.

What if some investor did expressly withhold the authority to modify loan terms after they were made? I have to conclude that that, at most, could give rise to a right of rescission, a right to be bought out of that loan. I don't see how it possibly could have been in contemplation of the parties; that is, Mortgages Ltd. and the investor; that by one investor checking a box saying I don't give you that discretion, that investor understood that gave him a veto power as to Mortgages Ltd.'s ability to deal with its loans with respect to all of the other investors. And yet that's what the argument would have to -- seems to me that's what the argument would have to lead to that conclusion, that if Mortgages Ltd. just had one investor said I'm withholding that authority, both parties had to have understood that well, that means Mortgages can't deal with its own loans. And I simply don't think that was in the contemplation of either of the parties.

Indeed, it's kind of contrary to the very premise of some of the objectors that this was in fact a security under the Howey standards, because I believe most investors were investing in Mortgages' ability to manage these loans. And to suggest that in fact it was nothing more than an agency agreement like, for example, if you went out and hired TransAmerica to act as escrow agent to collect the loan

payments, that may not have been the security, but the parties here knew they were investing in Mortgages Ltd.'s ability.

And to suggest that one or a handful of investors could say you have no authority to exercise your ability because I withheld it even with respect to other investors, I just don't think that could have been the intent. It must have meant, as in fact the testimony was, in actual practice it gives rise to a right to be bought out. Which as I noted and I asked specifically for argument on this point, doesn't that merely give rise to a claim in the bankruptcy case by that investor, a claim that in effect they already have? Perhaps the issue of authority should have been addressed more up front, perhaps under the context of the knotty issue of whether it's a 365(c)(1) or 365(e)(2) issue. But that hasn't been done, and unless and until it is done I think the authority continues to exist in the debtor once it files.

And indeed in that regard I think the agency argument really proves too much. Under common law, certainly for powers of attorney, but I think most agency of powers would terminate upon at least the filing of bankruptcy by the agency, by the agent. Maybe upon insolvency even without a bankruptcy. But if that were the case, then no debtor in possession could ever exercise agency authority. And in fact no debtor in possession whose job it is to be an agent could be a debtor in possession. And if that were the case, I would think we would either find

them excluded from being able to file a Chapter 11 and qualify as a debtor in possession, or at least there would have been substantial case law on why such entities cannot function as debtor in possession.

Those are my reasons why I believe the authority exists -- existed and continues to exist in the debtor in possession. I do agree, of course, it has to be exercised with the interest of investors and creditors primarily in mind, because there is also that fiduciary duty.

As to the business judgment standard, first of all, I find that this deal in effect is a hope certificate. But maybe all the counsel here don't realize that that's a technical term of art. It's one of those you do not find in the bankruptcy code, but is well known to bankruptcy lawyers. What is a hope certificate? That's what a debtor in possession offers his secured creditors as to how they're going to get paid under the debtor's plan, only we kind of got to reverse roles here. For that analogy to apply here we have to say if University & Ash were in bankruptcy, sort of the ordinary circumstance, it's the debtor in bankruptcy, not the lender.

If University & Ash were the debtor here and University & Ash proposed a plan for its secured creditor, Citibank, you've got a deed of trust on my land and here's how I'm going to pay you. First of all, nothing for four years. Then after that, if I can develop it, you will get some

payment. That's what a hope certificate is. And I certainly believe it would not be confirmed, at least over the objection of the lender. The term hope certificate is intended to be a pejorative. So if that were the issue before me, could this deal be approved under a University & Ash plan of reorganization? I think the answer clearly is no. So why isn't that dispositive here? It's because this is not just a proposal to settle University & Ash's secured debt. It is also settlement of substantial litigation.

I do believe and find that neither Mortgages Ltd. nor its pass-thru investors or pool investors would be able to foreclose against this property in the foreseeable future given the substantial litigation exposure arising from Mortgages' failure to fund. And even if they did, I believe their recovery could very well be zero after taking into account the kind of damages University & Ash could prove as a setoff.

What the settlement is about is is it a reasonable settlement to avoid that litigation. And I conclude that it is reasonable to settle that potential litigation while preserving a very substantial portion of the debt and the security interest, but entirely avoiding that litigation risk, even though to a relatively small extent the security interest could be subordinated without either the investors' consent or a ruling by an arbitrator.

I do think it's fair, the deal terms that allow for

equity investor to come in or subordination for a significant, more than $100,000 mezzanine loan or construction loan, with the consent feature that is built into the plan. And I do think that any arbitrator or arbitrators would find if you're being asked to walk away from your security interest with yet another hope certificate, no arbitrator would approve that as being commercially reasonable.

So in other words, it's only going to be if you have a very realistic and concrete plan on the table that you're asked to subordinate is an arbitrator going to find its commercially reasonable. And in light of that and the avoidance of the litigation risk, I think that is well within the zone of reasonableness under the case law interpreting when settlements can be approved in bankruptcy.

However, that same litigation threat does not exist as to Roosevelt I and II. I do not find any evidence of such a litigation risk as to Roosevelt I and II. As I understand it, those loans were fully funded. I question whether Roosevelt I and II would even have standing to raise in some litigation attempting to preclude foreclosure the fact that the University & Ash loan was not funded. Consequently, I find no litigation threat as to Roosevelt I and II. And because of that, and because the term is even more of a hope certificate as to them, I don't think this settlement can be approved as to the debtor's asset in Roosevelt I and II or the investors in

Roosevelt I and II.

I do recognize that, from the perspective of the -- let me call them the University & Ash principals -- this is a business deal. And the business deal relies on, to some extent, all three parcels. And I do understand their position at least that they wouldn't do the deal for University & Ash unless Roosevelt I and II were included in it. And that may be the case. They may, when I'm done here today, say well, he didn't approve the deal we had, we're walking. And that may be. But as to whether I can approve it as to Roosevelt I and II, I don't think I can because I don't see the litigation risk there. Moreover, I don't understand that there is any imminent Fry's deal as to Roosevelt I and II that would require any such settlement to be done now. In other words, no need for a settlement as to Roosevelt I and II being done prior to a plan of reorganization in this case.

And in fact, I even question whether, in any sense, University & Ash doesn't get the full benefit of its bargain, both the original bargain and the settlement part, because simply because I approve the settlement only as to University & Ash does not preclude this deal from being done as to Roosevelt I and II. And since the Roosevelt I and II loans were fully funded, those entities got their original benefit of the bargain.

They borrowed money and they acquired land with it,

and they've still got the land and they have other options. They can pay off the deed of trust, they can refinance, or they can renegotiate the terms of their loans with the debtor. And simply because the settlement today is not approved as to them, and Frys isn't walking away as to them, I don't see any reason why those further negotiations can't go on. But whatever deal has to be made, has to be fair in light of the investors in Roosevelt I and II. And when you take out the litigation risk and all you have left is a hope certificate, I don't think it's fair it could be approved.

And that's why I come to my conclusion that if it can be done, the settlement is approved as to University & Ash and not as to Roosevelt I and II. And that's my ruling and concludes this hearing.

(End of Portion Designated for Transcription)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: December 8, 2008

Erin Goold

A/V Tronics, Inc.
365 E. Coronado Road
Suite #100
Phoenix, AZ 85004-1525

Exhibit 2

Sternberg Enterprises Profit Sharing Plan
Sheldon H. Sternberg, Trustee
5730 N. Echo Canyon Drive
Phoenix, Arizona 85018
Telephone: 602-808-9884
Facsimile: 602-808-9074
Email: ssternberg@q.com

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In Re:	In Proceedings Under Chapter 11
MORTGAGES, LTD., an Arizona corporation	Case No. 2-08-bk-07465 RJH
Debtor(s).	OBJECTION TO CONFIRMATION OF OFFICIAL INVESTORS' COMMITTEE'S PLAN OF REORGANIZATION

Sternberg Enterprises Profit Sharing Plan, ("Sternberg") objects to the confirmation of the Official Investors' Committee's ("Proponent") Plan of Reorganization ("Plan") because the Plan does not meet the requirements of Sections 1129(a) (7) (A) (ii) and 1129 (9) (b) (1) of the Bankruptcy Code. Sternberg and other Pass Through Investors as defined in the Plan ("PTI"), will not receive or retain under the plan on account of its' claim or interest property of a value, as of the effective date of the plan, that is not less than the amount such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Code. The plan does discriminate unfairly and is not fair and equitable with respect to Sternberg and other PTI's impaired interest under the plan.

1. Sternberg, as a PTI, holds three interests. A 2.42% interest in loan number 849206, identified as Northern 120 L.L.C., a .952% interest in loan number 849306 identified as Citrus 278 L.L.C. and a 1.36% interest in loan number 853106 identified as Foothills Plaza IV L.L.C. Sternberg will not voluntarily transfer its' interests to any Loan LLC as described in the Plan and for the purpose of this objection describes itself as a non- transferring Pass Through Investor ("NTPTI"). None of the above loans are subject to borrower non-funding claims and all loan borrowers executed loan extension agreements waiving claims related to the loans.

2. The terms of the Plan's proposed exit financing loan are very onerous. The proposed exit loan for $20,000,000 is subject to a $2,000,000 origination fee and bears interest at 20% per annum compounded monthly. Without default, this could total in excess of $16,000,000. After the deduction for the origination fee and the retention of an 18 month interest reserve the actual amount funded is approximately $14,000,000. The loan is for 36 months and allows 4 six month extensions costing $500,000 for each of the first two extensions and $250,000 for each of the last two. This totals $1,500,000. The lender will collect a repayment incentive fee of 3% of the maximum allowed loan balance each six months. That could total $3,000,000. In addition, the lender will receive up to $8,000,000 in disposition incentive payments. To summarize, **the lender will invest $14,000,000 and may collect in excess of $30,000,000 in non default interest and fees on this loan and the repayment amount could exceed $44,000,000.** Each Loan LLC is responsible to pay the entire debt. Required collateral includes both, the assets of the Liquidating Trust and all investors' interests in the loans. Lender is to receive 70% of all cash flow from collections and sale of such collateral. The pass through investors who were fortunate enough to select the best loans would bear this severe repayment burden. Lender requires a permanent, onerous first right to purchase the assets constituting its' collateral, and that materially impairs the value of each ML loan and the Liquidating Trust's assets. This indirect cost to ML loan investors and to the creditors of the Bankruptcy estate could be $50,000,000 to $200,000,000. Relying on such financing, the Plan can not be fair and equitable to Sternberg, PTI, Fund Investors or Debtor's other creditors.

3. With the requirement that the exit financing lender receive all MLloans as collateral and the knowledge that a number of investors will not transfer their interests into LLC's, does an exit financing commitment really exist?

4. Recognizing the severe adverse consequences to those investors who receive the earliest loan payoffs and those who are among the first to sell their loans, Proponent refers to an inter-borrower agreement, to be prepared in the future, but does not include its' provisions as part of the Plan. The court review and approval of such document, and its' incorporation into the Plan is essential for this Plan to be fair and equitable. Among the issues to be resolved are:

(1) who is primarily responsible for the repayment of the exit financing? (2) Is such responsibility allocated among the Liquidation Trust and some or all of the Loan LLCs? (3) What is the formula for making such allocation? (4) If a Loan LLC has primary responsibility what are the payment requirements to assure that there is no default in the exit financing loan? (5) To the extent that each Loan LLC does not have primary responsibility and is therefore an accommodation borrower ("Accommodation Borrower"), how is such LLC reimbursed for amounts it was required to pay the exit financing lender or for such amounts it was required to pay to another Accommodation Borrower after the exit financing lender has been paid (Reimbursement")? (6) The amount of interest that should be earned on such Reimbursement? (7) Should Reimbursement rights be collateralized with secondary liens on the same collateral received by the exit lender or could there be a subrogation to exit lender's rights after it has been paid in full? (8) After the exit lender is paid in full, should the payment provisions of the exit financing loan remain in effect and continue for the benefit of the Accommodation Borrowers to complete the Reimbursement to those Accommodation Borrowers who paid the exit lender and the Reimbursement those Accommodation Borrowers who subsequently paid other Accommodation Borrowers, (9) After the exit financing lender is paid in full, does the Reimbursement formula and payment schedule change for those having primary responsibility? (10) After the exit financing lender is paid how is the Reimbursement obligation formula changed among Accommodation Borrowers to effectuate equitable and proportional sharing of the burden, when additional Accommodation Borrowers make Reimbursements because they receive funds from collections, payoffs and sales of collateral? (11) How are Reimbursement and collateral rights redistributed when Accommodation Borrowers who pay Reimbursement obligations become among those who are entitled to participate in collecting the next Reimbursements.

5. In the Plan, distributions from the Liquidation Trust to creditors may be made only after the exit financing obligation is paid in full. However, the exit financing obligation will be paid at least partially with Accommodation Borrower funds and the exit financing obligation would be extinguished. The language of the Plan should be modified to make it clear that there

will be no creditor distributions until Accommodation Borrowers are reimbursed in full as well.

6. Proponent agreed with Debtor's objection to Proponent's initial Disclosure Statement that provided for the automatic transfer of all factional interests in Notes and Deeds of Trust to each respective Loan LLC. Proponent amended its Disclosure Statement and Plan to provide for the voluntary transfer of such fractional interests. Authority was cited on page 3 of Debtor's objection, that because the fractional interests were not "property of the estate" fractional interest holders rights could not be altered within the Bankruptcy. Nevertheless, Proponent's Amended Plan proposes to make such an alteration. Proponent relies on the assignment of servicing and agency agreements to Manager LLC for the administration of each loan interest that is not transferred to an applicable LLC. Language in section 4.11 of the Amended Disclosure provides for "existing agencies, powers of attorney, servicing and related contracts between investors and ML to be transferred to ML Manager LLC and will be deemed modified to conform with the terms of the operating agreements of ML manager and each Loan LLC." The operating agreements provide for pledging of assets, subordination of lien rights, selling the notes at a discount, and other maters not authorized in existing agreements. Such language should be modified to make it clear that there shall be no unilateral modification to an agreement with any NTPTI and that no pledge or subordination of an NTPTI interest is authorized.

7. Article VIII Section C. 5 of the Disclosure Statement describes Proponent's position that Debtor is not entitled to default interest, interest spread, extension fees and other charges. Also Proponent has vigorously opposed Debtor's position that it may legally recover from ML loan Investors, interest and other amounts charged to but not collected from ML Borrowers. Proponent's Plan resolves the issue in favor of the ML Investors in a manner that discriminates against, and is inequitable to NTPTI. The issue is resolved by " the transfer of Debtor's alleged right and title to the interest spread, default rates, extension fees and other similar charges and interest to Loan LLCs", Section 4.6 page 36. No portion thereof is assigned to NTPTI. No waiver of any claim against NTPTI for uncollected ML loan borrower fees and charges is provided. ML Manager is allowed "to collect such revenues and use them in the

operations of Loan LLCs and the ML manager", Section 4.12, page 38 of disclosure. NTPTI will be assessed for subscription and agency fees, loan related expenses and loan enforcement cost, Article II Section D page 7 of the Disclosure. Nowhere in the Disclosure or the Plan is there a provision for a credit, offset or payment for NTPTI's share of such fees. This difference in treatment between NTPTI and those who transfer to LLC's, unfairly discriminates against NTPTI and is not fair or equitable. Further notwithstanding Proponents proposal for the formation of separate Loan LLCs to preserve separately, Investors rights in each loan, neither the Plan nor the Disclosure Statement provide an assurance that all fees and interest collected from a ML Borrower will be utilized exclusively for the benefit of the owners of the specific loan.

8. With the proposed exit financing loan, the Plan does not provide each investor with an interest that is more valuable than if debtor's assets were liquidated in a Chapter 7 proceeding. The contrary is true. The reduction in value of Sternberg's loan interests, resulting from the possibility of litigating the ownership of the fractional interests in Notes and the Deeds of Trust with a Chapter 7 Trustee, is far less than the reduction in value of Sternberg's loan interests if the Proposed Plan is approved. Proponent and others have provided strong arguments as to why the investors own their interests in the loan. Sternberg has no knowledge of a claim that ML oversold interests or that anyone paid for an interest that was not received. The proposed exit financing loan requires each Loan LLC to be fully responsible for the entire amount of the loan and to pay to the exit financing lender 70% of amounts received by collection or sale of its' ML Loan holdings. With a $44,000,000 possible repayment amount, a poor real estate market, the possibility that payment deadlines might not be met, and an onerous first right to purchase requirement, the value of each loan interest is lower under the Plan than the value of such interest under a Chapter 7 liquidation. This is true even though such interest may be subject to note ownership litigation in the Chapter 7 proceedings. It does not help that a NTPTS investor's partial interest in the loan is not encumbered. With the enormous burden of the proposed financing and the possibility of default, foreclosure, and the prospect of having this unfriendly exit financing lender as the major co-interest owner making the decisions, the NTPIS's fractional interests would be worth little.

9. The ML Loan interest held by the Surdakowkis is an example of the inequity of the Plan. Francis P. Surdakowski and Linda M. Surdakowski, hold a 35.155 % interest in ML loan number 7987S2 Michael C. Newman and Darlene Newman borrower. Such loan has a current balance of approximately $222,600 and has three owners. The loan was originated at least four years ago when there was no claim of any improper ML activity. The loan is current and will be among the first to pay off. The Plan is not fair or equitable as to the investors in this loan and other similar loans. It is unlikely that a Chapter 7 Trustee would successfully contend that the Surdakowskis do not own their interests in the loan. As to them the Plan can not meet the requirements of Section 1129 (a) (7) (A) (ii) of the Code. Surdakowski voted in favor of the Plan after receiving assurances from Proponent that it was its' intention is not to have the loan transferred to a Loan LLC. Proponent's good intentions should include something more definitive than a vague statement in the footnote on page 8 of the disclosure. The Plan should provide that such loan not be transferred to a LLC and instead the owners should make their own decisions including who shall service their loan.

DATED this 5th day of May, 2009.

Sheldon Sternberg, Trustee
Sternberg Enterprises Profit Sharing Plan

Copies of the foregoing
are hand delivered to
Cathy L. Reese
Fennemore Craig, P.C.
3003 N. Central Ave.
Suite 2600
Phoenix AZ 85012-2913
and by email to all creditors,
interest holders and others
filing a notice of appearance
or requesting notice, this
5th day of May 2009.

Exhibit 3

HENDRICKS, KEITH

From: Sheldon Sternberg [ssternberg@q.com]
Sent: Friday, May 15, 2009 12:43 AM
To: HENDRICKS, KEITH
Subject: Re: Depositions
Attachments: Plan Modification Language..doc

Keith. Attached is proposed Plan modification language that I sent Bob yesterday. The changes are nominal, are not in conflict with the inter-borrower agreement and confirm Wednesday's testimony. Wording changes have been made for others and you can make these changes with out having to notice the Plan again. I offered to withdraw my objection if the changes are made. If not, I opt for liquidation. Your perception is correct. This should be resolved before the depositions. If you like we can meet before.

----- Original Message -----
From: HENDRICKS, KEITH
To: ssternberg@q.com
Sent: Thursday, May 14, 2009 10:02 PM
Subject: Re: Depositions

Sheldon,

You are certainly entitled to do whatever you want, but I would ask you to think about the very few opions there are left. We cannot start over again. Judge Haines has made that clear. Judge Haines has set a date for objections to the Debtor's disclosure statement and a hearing on the Debtor's disclosure statement for Tuesday. He said that if we don't get our plan approved then we can go straight towards the Debtor's or we can move toward the liquidation in the motion that) said it is going to file. The judge called us today to ask us about discovery. He asked several questions that make I clear to us that he sees this as a choice between our plan and liquidation under RB.

Bottom line is that there are only three choices. The Debtor's plan that takes $200 million off the top of all note payments, borrows more money and imposes mandatory asset management fees. It also limits investor claims in the liquidating trust to just 10% of their deficiency.

Choice two is RB's liquidation motion. We have talked about the consequences. It is the worst of all options.

Finally there is the expensive financing under our plan.

I understand that you don't like our financing, but are you honestly telling me that you would prefer one of the other two options? This is not a situation where debating points are awarded a prize. Anything you do to weaken our plan in the judges eyes simply enhances the chances for the Debtor and RB. It will not result in the judge starting over with our plan or allow us to get better financing.

We cannot make material modifications because that would require us to revote. But if if you some technical revisions, we can consider those.

Like I said, you can do what you want, but I really think you should withdraw your objection. Secure Capital's objection has been resolved by the court's approval of the settlement with SM Coles. So that just leaves the Debtor, RB and you. Your class of creditors overwhelmingly supported the plan. We are very hopeful that the judge will confirm the plan over all objections and had such confidence even when nobody else supported the plan. The fact that he VTL's the Rev Ops, the unsecured committee, and even Grace Entities, all now support the plan shows the moment. I think it is fair to say that all of these groups got on board because they agree the Judge is likely to confirm our plan. We are committed to going forward that means I think you really must ask yourself what you hope to accomplish. I know the Debtor is very happy you are opposing us and are using your opposition as much as they can. Is that what you want. Again, anything you do to poke holes does will only make it more likely that we move toward a liquidation sought by RB. I respect your sharp analysis and quick mind. I just ask that you apply those skills as sharply on the alternatives as you have applied them to our Plan.

Keith

----- Original Message -----
From: Sheldon Sternberg <ssternberg@q.com>
To: Tuggle, Todd <TTuggle@jsslaw.com>; jkroop@ssd.com <jkroop@ssd.com>; bickartlaw@aol.com <bickartlaw@aol.com>; Cary Forrester <SCF@fwlawaz.com>; Dale Schian <dschian@swazlaw.com>; ddinner@nussbaumgillis.com <ddinner@nussbaumgillis.com>; rjmiller@bryancave.com <rjmiller@bryancave.com>; Ennis, Donald <dfennis@swlaw.com>; Gaffney, Don <dgaffney@swlaw.com>
Cc: HENDRICKS, KEITH
Sent: Thu May 14 12:55:12 2009
Subject: Re: Depositions

Thanks. I'll be there.
----- Original Message -----
From: "Tuggle, Todd" <TTuggle@jsslaw.com>
To: <jkroop@ssd.com>; "Sheldon Sternberg" <ssternberg@q.com>; <bickartlaw@aol.com>; "Cary Forrester" <SCF@fwlawaz.com>; "Dale Schian" <dschian@swazlaw.com>; <ddinner@nussbaumgillis.com>; <rjmiller@bryancave.com>; "Ennis, Donald" <dfennis@swlaw.com>; "Gaffney, Don" <dgaffney@swlaw.com>
Cc: "HENDRICKS, KEITH" <KHENDRIC@FCLAW.com>
Sent: Thursday, May 14, 2009 11:41 AM
Subject: Depositions

FYI:

The depositions of the lender Steve Sandholtz and Rob Vaherren (sp?) will be tomorrow morning (Keith is still confirming Rob's availability). Ed McDonough will be tomorrow afternoon. To the extent discovery is needed regarding the inter-borrower agreement, it is my understanding that Bob Robinson of Fennemore Craig will be available.

We will commence tomorrow morning at 9:00 here at JSS.

FENNEMORE CRAIG
ATTORNEYS

DENVER | LAS VEGAS | NOGALES | PHOENIX | TUCSON

-----Original Message-----

From: HENDRICKS, KEITH [mailto:KHENDRIC@FCLAW.com]
Sent: Thursday, May 14, 2009 11:18 AM
To: Tuggle, Todd
Subject: RE: ML Documents

I have confirmed now with both Ed and Steve. They will appear and do not need supboenas. I am still waiting for Rob but have no reason to believe he will not appear. In addition to the deposition, Steve says that he could be available to testify in court on Monday afternoon, but not available in the morning.

Proposed Plan Modification Language

1. In section 4.11, the words 'and will be deemed modified to conform with the terms of the operating agreements of ML manager and each Loan LLC" should be deleted.
2. In section 4.12 page 38, line 24, after Loan LLCs insert "and to Pass Though Investors retaining their loan interests".
3. In Section 4.06 Page 36 line 6 after Loan LLC's insert "and Pass through Investors retaining their loan interests"
4. In Section 4.13 page 39 line 6, after Manager LLC, add "Pass through investors will be assessed for reimbursement of their proportionate share net applicable costs and expenses calculated in a nondiscriminatory manner".
5. Add to the Plan If (a) a loan is owned by four or fewer Pass Through Investors, (b) who unanimously consent to self administer the loan jointly and (c) such loan has an unpaid balance of less than $300,000, then such loan will not be transferred to a loan LLC, and such investors shall have the right to select a loan servicing agent. (I left out the requirement that no investor can be an MP Fund. If the fund doesn't consent, the requirements are not fulfilled.)

Exhibit 4

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Minute Entry

Hearing Information:

Debtor:	Mortgages Ltd.
Case Number:	2:08-bk-07465-RJH **Chapter:** 11
Date / Time / Room:	MONDAY, MAY 18, 2009 10:00 AM 6TH FLOOR #603
Bankruptcy Judge:	RANDOLPH J. HAINES
Courtroom Clerk:	JANET SMITH
Reporter / ECR:	SHERI FLETCHER

Matters:

1) CONTINUED HEARING ON PLAN CONFIRMATION
R / M #: 1,532 / 0

2) EMERGENCY MOTION FOR DEBTOR-IN-POSSESSION FINANCING FILED BY MORTGAGES LTD.
R / M #: 1,736 / 0

Appearances:

CAROLYN JOHNSEN/BRADLEY STEVENS/TODD TUGGLE, ATTORNEYS FOR DEBTOR
JORDAN KROOP/ANDREW BANAS, ATTORNEYS FOR RADICAL BUNNY CH 11 TRUSTEE GRANT LYON
KEITH HENDRICKS/CATHY REECE, ATTORNEYS FOR INVESTORS COMMITTEE
ALLAN BICKART, MAHAKIAN PARTIES
DEAN DINNER, ATTORNEY FOR UNSECURED CREDITORS COMMITTEE
SCOTT GOLDBERG, ATTORNEY FOR VALUE TO LOAN COMMITTEE
RICHARD THOMAS, ATTORNEY FOR EVA SPERBER-PORTER
BRYCE SUZUKI, ATTORNEY FOR REV OP GROUP
CARY FORRESTER, ATTORNEY FOR LEWIS & UNDERWOOD TRUSTS
ETHAN MINKIN, ATTORNEY FOR AZ BANK & TRUST
DONALD ENNIS, ATTORNEY FOR GRACE ENTITIES

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Minute Entry

Proceedings:

RADICAL BUNNY EXHIBITS A through V were marked for identification.

DEBTOR'S EXHIBITS 1 through 28 were marked for identification. DEBTOR'S EXHIBITS 1 through 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, 27, 28 and 26 were admitted in evidence.

INVESTOR COMMITTEE'S EXHBIIT 7 admitted in evidence.

Ms. Reece reviewed on the record the resolution reached with Sheldon Sternberg.

Mr. Sternberg withdrew his objection.

Ms. Johnsen requested the Court take up Item #2 on the calendar.

Ms. Reece advised she does not believe this is a true emergency, requesting that the plan go forward.

Mr. Forrester and Mr. Ennis joined in Ms. Reece objection.

Mr. Kroop and Mr. Dinner agreed with Ms. Reece position.

COURT: IT IS ORDERED CONTINUING THE DEBTOR'S MOTION FOR DIP FINANCING TO MAY 19, 2009 AT 9:00 AM.

RADICAL BUNNY MOTIONS

COURT: IT IS ORDERED DENYING THE RADICAL BUNNY 510(b) MOTION. IT IS ORDERED DENYING THE RADICAL BUNNY MOTION AS TO THE REV OP INVESTORS.

ROB VERHAAREN, was sworn and cross examined by Mr. Tuggle. Mr. Hendricks redirects and Mr. Tuggle recrossed.

STEVEN SANDHOLTZ, was sworn and cross examined by Mr. Tuggle. Mr. Hendricks redirects and Mr. Tuggle recrossed.

EDWARD MCDONOUGH, was sworn and cross examined by Ms. Johnsen.

CHRISTINE ZAHEDI, was sworn and examined by Mr. Tuggle and cross examined by Mr. Hendricks. Mr. Tuggle redirects.

COURT: IT IS ORDERED CONTINUING THIS MATTER TO 9:00 AM TOMORROW MORNING, MAY 19, 2009.

MORTGAGES LTD.

HEARING ON OIC PLAN
MAY 18, 2009, 10:00 a.m.

MORTGAGES LTD. DOCUMENTS

1. PRIVATE OFFERING MEMORANDUM – MP122009
   A. OPERATING AGREEMENT – MP122009
   B. SUBSCRIPTION AGREEMENT – MP122009

2. PRIVATE OFFERING MEMORANDUM – MP062011
   A. OPERATING AGREEMENT – MP062011
   B. SUBSCRIPTION AGREEMENT – MP062011

3. PRIVATE OFFERING MEMORANDUM – MP122030
   A. OPERATING AGREEMENT – MP122030
   B. SUBSCRIPTION AGREEMENT – MP122030

4. PRIVATE OFFERING MEMORANDUM – MP12
   A. OPERATING AGREEMENT – MP12
   B. SUBSCRIPTION AGREEMENT – MP12

5. PRIVATE OFFERING MEMORANDUM – MP13
   A. OPERATING AGREEMENT – MP13
   B. SUBSCRIPTION AGREEMENT – MP13

6. PRIVATE OFFERING MEMORANDUM – MP14
   A. OPERATING AGREEMENT – MP14
   B. SUBSCRIPTION AGREEMENT – MP14

7. PRIVATE OFFERING MEMORANDUM – MP15
   A. OPERATING AGREEMENT – MP15
   B. SUBSCRIPTION AGREEMENT – MP15

8. PRIVATE OFFERING MEMORANDUM – MP16
   A. OPERATING AGREEMENT – MP16
   B. SUBSCRIPTION AGREEMENT – MP16

9. PRIVATE OFFERING MEMORANDUM – MP17
   A. OPERATING AGREEMENT – MP17
   B. SUBSCRIPTION AGREEMENT – MP17

MORTGAGES LTD.

HEARING ON OIC PLAN
MAY 18, 2009, 10:00 a.m.

MORTGAGES LTD. DOCUMENTS

10. PRIVATE OFFERING MEMORANDUM – VALUE-TO-LOAN FUND
    A. OPERATING AGREEMENT – VALUE-TO-LOAN FUND
    B. SUBSCRIPTION AGREEMENT –VALUE-TO-LOAN FUND

11. PRIVATE OFFERING MEMORANDUM – PASS-THROUGH LOAN (February 11, 2008)
    A. PRIVATE OFFERING MEMORANDUM – PASS-THROUGH LOAN (July 10, 2006)

12. AGENCY AGREEMENT
    A. AGENCY AGREEMENT (version 7)

13. MASTER AGENCY AGREEMENT

14. AUDIT 2005-2006
    A. AUDIT 2007

15. SAMPLE OF LOAN DOCUMENTS – LOAN A AND LOAN B

16. SERVICING AGENT AGREEMENT

17. FINANCIAL STATEMENTS FOR POOLS

18. U.S. BANKRUPTCY COURT – MINUTE ENTRY/ORDER, FILED MAY 12, 2009

19. SAMPLE OF LOAN DOCUMENTS: KOHNER LOANS – LOAN A
    A. KOHNER LOAN B

20. INDEX FOR CD – APPROVED AMENDED DISCLOSURE STATEMENT OF OIC

21. LIST OF INVESTOR REDEMPTIONS (6/24/07 – 6/24/08)

22. EXHIBIT 1 TO OIC'S FIRST AMENDED PLAN DATED MARCH 12, 2009

23. TOTAL CASH SOURCES AND USES

24. TOTAL CASH SOURCES AND USES

MORTGAGES LTD.

HEARING ON OIC PLAN
MAY 18, 2009, 10:00 a.m.

MORTGAGES LTD. DOCUMENTS

25. TOTAL CASH SOURCES AND USES

26. TOTAL CASH SOURCES AND USES

27. RESUME OF MICHAEL A. TUCKER

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Minute Entry

Hearing Information:

Debtor: Mortgages Ltd.
Case Number: 2:08-bk-07465-RJH **Chapter:** 11
Date / Time / Room: TUESDAY, NOVEMBER 18, 2008 11:30 AM 6TH FLOOR #603
Bankruptcy Judge: RANDOLPH J. HAINES
Courtroom Clerk: JANET SMITH
Reporter / ECR: SHERI FLETCHER

Matter:

EVIDENTIARY SETTLEMENT HEARING RE: UNIVERSITY & ASH
R / M #: 0 / 0

Appearances:

CAROLYN JOHNSEN/TODD TUGGLE/BRADLEY STEVENS, ATTORNEYS FOR DEBTOR
ALLEN B. BICKART, ATTORNEY FOR MAHAKIAN ET AL
DEAN M. DINNER, ATTORNEY FOR CREDITORS COMMITTEE
REBECCA WINTHROP/DEAN WALDT/BRIAN SCHULMAN, ATTORNEYS FOR UNIVERSITY & ASH
SHELTON L. FREEMAN, ATTORNEY FOR RADICAL BUNNY
CATHY L. REECE/KEITH HENDRICKS, ATTORNEY FOR INVESTORS COMMITTEE
DALE SCHIAN, ATTORNEY FOR VALUE TO LOAN COMMITTEE
RICHARD THOMAS, ATTORNEY FOR EVA SPERBER-PORTER
JEFFREY KAUFMAN, ATTORNEY FOR MARCY KAUFMAN, BRIAN BUTLER, EARL GELLER
DONALD ENNIS, ATTORNEY FOR GRACE ENTITIES
CARY FORRESTER, ATTORNEY FOR THE WILLIAM C LEWIS TRUST
LINDSI WEBER, ATTORNEY FOR PARKER/HOFFLAND/WILLIAMS

Proceedings:

DEBTOR'S EXHIBITS 1 through 19 and A12, A12A, A12B, A13, A13A, A13B and A13C were marked for identification.
DEBTOR'S EXHIBITS 55 through 62 were marked for identification.

DEBTOR'S EXHIBITS 11, A12, A13, A13C, 18 and 19 were admitted in evidence.

INVESTORS COMMITTEE'S EXHIBITS 1 through 25 were marked for identification.

INVESTORS COMM EXHIBITS 11, 15, 17, 18 and 25 were admitted in evidence.

UNIVERSITY & ASH EXHIBITS 1 through 8 were marked for identification.

UNIVERSITY & ASH EXHIBITS 2 and 5 were admitted in evidence.

KAUFMAN EXHIBITS A through F were marked for identification.

RICHARD FELDHEIM, was sworn and examined by Ms. Johnsen and cross examined by Mr. Hendricks and Mr. Bickart and Mr. Waldt. Ms. Johnsen redirects. Mr. Kaufman cross examined.

JUSTIN CHARLES LAMAR, was sworn and examined by Mr. Shulman.

COURT: IT IS ORDERED CONTINUING THIS HEARING TO WEDNESDAY, NOVEMBER 19, 2008 AT 2:00 PM.

TAB	DOCUMENT GROUP	NAME	DOC. NUMBER
		VOLUME II	
1	MP122009	Private Offering Memorandum CLEAN	3175636
1A	MP122009	Operating Agreement CLEAN	3183429
1B	MP122009	Subscription Agreement CLEAN	3183431
2	MP062011	Private Offering Memorandum CLEAN	3176274
2A	MP062011	Private Offering Memorandum **(Redlined against MP122009)**	3176315
2B	MP062011	Operating Agreement CLEAN	3176287
2C	MP062011	Operating Agreement **(Redlined against MP122009)**	3183444
2D	MP062011	Subscription Agreement CLEAN	3176290
2E	MP062011	Subscription Agreement **(Redlined against MP122009)**	3183447
3	122030	Private Offering Memorandum CLEAN	3175513
3A	122030	Private Offering Memorandum **(Redlined against MP122009)**	3176513
3B	122030	Operating Agreement CLEAN	3175516
3C	122030	Operating Agreement **(Redlined against MP122009)**	3183445
3D	122030	Subscription Agreement CLEAN	3175509
3E	122030	Subscription Agreement **(Redlined against MP122009)**	3183450
		VOLUME III	
4	PASS-THRU	Private Offering Memorandum (2/11/08) CLEAN	3175576
4A	PASS-THRU	Private Offering Memorandum (7/10/06) CLEAN	3175578
4B	PASS-THRU	Private Offering Memorandum **(Redlined 7/10/06 with 2/11/08)**	3175584
5	PASS-THRU	Agency Agreement CLEAN	3175586
5A	PASS-THRU	Agency Agreement (v.7) CLEAN	3175597
5B	PASS-THRU	Agency Agreement **(Redlined)**	3175597

TAB	DOCUMENT GROUP	VOLUME III NAME	DOC. NUMBER
6	PASS-THRU	New Investor Subscription Agreement **(BASE)***	3175615
6A	PASS-THRU	New Investor Sub. Agmt. #2 CLEAN	3186752
6B	PASS-THRU	New Investor Sub. Agmt. #2 **(Redlined to Base)**	3186787
6C	PASS-THRU	New Investor Sub. Agmt. #2 **(Redlined to #3)**	3187083
6D	PASS-THRU	New Investor Sub. Agmt. #2 **(Redlined to #4)**	3187087
6E	PASS-THRU	New Investor Sub. Agmt. #3 CLEAN	3186768
6F	PASS-THRU	New Investor Sub. Agmt. #3 **(Redlined to Base)**	3186790
6G	PASS-THRU	New Investor Sub. Agmt. #3 **(Redlined to #4)**	3187091
6H	PASS-THRU	New Investor Sub. Agmt. #4 CLEAN	3186769
6I	PASS-THRU	New Investor Sub. Agmt. #4 **(Redlined to Base)**	3186791
7	PASS-THRU	Existing Investor Account Agreement **(Redlined to Base)**	3175696
7A	PASS-THRU	Existing Investor Acct. Agmt. #1 CLEAN	3175606
7B	PASS-THRU	Existing Investor Acct. Agmt. #1 **(Redlined to #2)**	3186796
7C	PASS-THRU	Existing Investor Acct. Agmt. #1 **(Redlined to #3)**	3186799
7D	PASS-THRU	Existing Investor Acct. Agmt. #1 **(Redlined to #4)**	3186808
7E	PASS-THRU	Existing Investor Acct. Agmt. #2 CLEAN	3186772
7F	PASS-THRU	Existing Investor Acct. Agmt. #2 **(Redlined to Base)**	3186794
7G	PASS-THRU	Existing Investor Acct. Agmt. #2 **(Redlined to #3)**	3187042
7H	PASS-THRU	Existing Investor Acct. Agmt. #2 **(Redlined to #4)**	3187047
7I	PASS-THRU	Existing Investor Acct. Agmt. #3 CLEAN	3186773
7J	PASS-THRU	Existing Investor Acct. Agmt. #3 **(Redlined to Base)**	3186797
7K	PASS-THRU	Existing Investor Acct. Agmt. #3 **Redlined to #4)**	3187051
7L	PASS-THRU	Existing Investor Acct. Agmt. #4 CLEAN	3186774
7M	PASS-THRU	Existing Investor Acct. Agmt. #4 **(Redlined to Base)**	3186801
8	PASS-THRU	Employee Subscription Agreement **(Redlined to Base)**	3175700
8A	PASS-THRU	Employee Sub. Agmt. #1 CLEAN	3175617
8B	PASS-THRU	Employee Sub. Agmt. #1 **(Redlined to #2)**	3186828
8C	PASS-THRU	Employee Sub. Agmt. #1 **(Redlined to #3)**	3186833
8D	PASS-THRU	Employee Sub. Agmt. #2 CLEAN	3186780
8E	PASS-THRU	Employee Sub. Agmt. #2 **(Redlined to Base)**	3186824
8F	PASS-THRU	Employee Sub. Agmt. #2 **(Redlined to #3)**	3187063
8G	PASS-THRU	Employee Sub. Agmt. #3 CLEAN	3186782
8H	PASS-THRU	Employee Sub. agmt. #3 **(Redlined to Base)**	3186831

TAB	DOCUMENT GROUP	VOLUME III NAME	DOC. NUMBER
9	PASS-THRU	Investor Subscription Agreement **(Redlined to Base)**	3175704
9A	PASS-THRU	Investor Sub. Agmt. #1 CLEAN	3175619
9B	PASS-THRU	Investor Sub. Agmt. #1 **(Redlined to #2)**	3186819
9C	PASS-THRU	Investor Sub. Agmt. #1 **(Redlined to #3)**	3186822
9D	PASS-THRU	Investor Sub. Agmt. #2 CLEAN	3186776
9E	PASS-THRU	Investor Sub. Agmt. #2 **(Redlined to Base)**	3186814
9F	PASS-THRU	Investor Sub. Agmt. #2 **(Redlined to #3)**	3187077
9G	PASS-THRU	Investor Sub. Agmt. #3 CLEAN	3186779
9H	PASS-THRU	Investor Sub. Agmt. #3 **(Redlined to Base)**	3186820
10	PASS-THRU	Master Agency Agreement	3183909

*Each subsequent Redline was compared to the New Investor Subscription Agreement (Base)

EXHIBIT

5

4 v 5

INTER-BORROWER AGREEMENT

This Agreement (the "Agreement") is made and entered into as of ~~_____~~June __, 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 __, 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 ~~a plan of reorganization ("Plan")~~ the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009, in the Chapter 11 Case which was ~~approved~~confirmed by the ~~Bankruptcy~~ Court ~~by Confirmation Order~~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 in the alternative specify which assets shall continue to be held by Debtor~~(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 ~~this Agreement agreeing to~~ any documents required to sell, transfer or encumber such assets ~~in favor of the Lender~~]).

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 ~~described in Exhibit A attached hereto~~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 ~~can be~~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 ~~Liquidating Trustee, not individually but solely as Trustee~~Debtor at the direction of the Liquidating ~~Trust,~~Trustee in favor of Lender creating a lien or security interest in all ~~Non-Loan Assets~~REO Property owned by the ~~Trustee, including the Liquidating Trustee Causes of Action~~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 ~~a~~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 ~~expense~~costs, incurred in connection with such sale or preparing the property for sale; (b) any ~~and all~~ 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 ~~principal~~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 ~~recovered by the Loan LLCs on Causes of Action, including Avoidance Actions, ("Loan LLC Recoveries") relating to the ML Notes transferred to the Loan LLCs by the Plan by settlement or judgment collection (excluding interest on such Judgment paid at the same time) and~~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 ~~from recoveries ("Liquidating Trust Recoveries")~~or Loan LLC from a Recovery by settlement or judgment collection (excluding interest on such judgment amount paid at the same time) on ~~Causes of Action, including Avoidance Actions, owned by the Liquidating Trustee less in the case of Loan LLC Recoveries and Liquidating Trust Recoveries all~~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, ~~paid or to be paid by them (from other than proceeds of Advances on the Loan)~~ in the aggregate, by the entity making the Recovery of pursuing all Causes of Action~~, including Avoidance Actions, owned by them~~ then being pursued by such entity at the time such ~~recovery~~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 ~~or avoidance actions, and in the case of~~ resulting in such Recovery, and in the case of either (i) or (ii) above a deduction for ~~Loan LLC~~Permitted Reserves as determined by the ML Manager ~~under (i) above and a deduction for Liquidating Trustee Reserves as determined by the Liquidating Trustee and Loan LLC Reserves as determined by the ML Manager under (ii) above,~~ 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 ~~(c)~~ 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 ~~Costs~~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. ~~Prior to the first Advance under the Loan, the~~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 ~~can be~~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. ~~Prior to the first Advance, the~~The Liquidating Trustee and the ML Manager shall jointly file with the Bankruptcy Court a schedule of allocated items which ~~can then be~~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 Disposition 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 ~~now hold~~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 ~~Delaware~~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.

~~Each~~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, ~~not individually but as~~Liquidating Trustee
100 Peachtree Street, Suite 1475
~~Trustee of the ML Liquidating Trust under~~
~~Liquidating Trust Agreement dated~~
~~_____, 2009~~
~~_____~~
~~_____~~
~~_____~~
Atlanta, Georgia 30303

Each Loan LLC and ML Manager
~~c/o ML Manager, LLC~~
~~_____~~
~~_____~~
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.

~~Loan LLCs:~~

~~_____, LLC~~
~~_____, LLC~~
~~_____, LLC~~

~~each an~~Each of the Arizona limited liability ~~company~~ 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 ~~dated~~
_____, ~~2009~~

Exhibit A
List of Loan LLCs

300 EC Loan LLC

CS Loan LLC

MK I Loan LLC

MK II Loan LLC

Nocit Loan LLC

Citno Loan LLC

44 CP I Loan LLC

ABCDW I Loan LLC

Osborn III Loan LLC

44 CP II Loan LLC

PPP Loan LLC

Bison Loan LLC

FP IV Loan LLC

CP Loan LLC

ZDC I Loan LLC

AZ CL Loan LLC

RG I Loan LLC

VCB Loan LLC

SOJ Loan LLC

ABCDW II Loan LLC

VP I Loan LLC

ZDC II Loan LLC

Centerpoint II Loan LLC

ZDC III Loan LLC

RRE I Loan LLC

VP II Loan LLC

HH Loan LLC

RLD I Loan LLC

MWP Loan LLC

C&M Loan LLC

U&A Loan LLC

RG II Loan LLC

PDG LA Loan LLC

ASA XVI Loan LLC

VF I Loan LLC

RLD II Loan LLC

4633 VB Loan LLC

MCKIN Loan LLC

Metro Loan LLC

Citlo Loan LLC

NRDP Loan LLC

CGSR Loan LLC

ABCDW III Loan LLC

TLDP Loan LLC

ASA IX Loan LLC

70 SP Loan LLC

ZDC IV Loan LLC

Centerpoint I Loan LLC

Document comparison done by Workshare Professional on Thursday, October 01, 2009 4:52:56 PM

Input:	
Document 1	pcdocs://phx/2193596/4
Document 2	pcdocs://phx/2193596/5
Rendering set	Fennemore Craig Std

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	110
Deletions	57
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	169

EXHIBIT

6

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Minute Entry

Hearing Information:

Debtor: RIVERFRONT COMMONS, LLC
Case Number: 2:09-bk-00122-RTBP **Chapter:** 11

Date / Time / Room: TUESDAY, MAY 12, 2009 01:30 PM 7TH FLOOR #703

Bankruptcy Judge: REDFIELD T. BAUM
Courtroom Clerk: LORRAINE DAVIS
Reporter / ECR: JUANITA PIERSON-WILLIAMS

Matter:

FINAL HEARING ON MOTION FOR RELIEF FROM STAY AND FOR DISMISSAL OF CASE FILED BY MORTGAGES LTD.
R / M #: 0 / 0

Appearances:

ALLISON KIERMAN, ATTY MTG LTD
ARTURO A. THOMPSON/PHIL RUDD, ATTORNEY FOR RIVERFRONT COMMONS, LLC

Proceedings:

The court shares recent rulings made in this case with regard to the motion for summary judgment and the motion to compel. The rulings should be on the docket within a day or two. The court notes he has a strong sense that there is a lack of professionalism taking place in this case and states that all counsel and their clients are skating close to the line and the court will start issuing sanctions.

Ms. Kierman will produce the documents by Friday.

Mr. Thompson responds and discusses the issues with the court.

COURT: IT IS ORDERED continuing this matter as a status/scheduling hearing for 5/19/09 @ 9:00 a.m. The court
will not set a further hearing until the transactional documents are filed.

3

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

MINUTE ENTRY/ORDER

FOR MATTER TAKEN UNDER ADVISEMENT

Bankruptcy Judge:	Hon. Redfield T. Baum
Case Name:	Riverfront Commons, LLC, Chapter 11
Case No.:	2:09-bk-00122-RTBP
Subject of Hearing:	Expedited Hearing on Debtor's Motion To Compel Production of Documents and for other Relief
Date Matter Taken Under Advisement:	April 30, 2009
Date Ruled Upon:	May 12, 2009

Pending before the court is the chapter 11 debtor's motion to compel production of documents. The situation here is somewhere between a tragic comedy and/or sanctionable conduct.

As noted by Mortgage's LTD. ("ML"), movant filed a motion to compel in the chapter 11 administrative case to compel compliance with a request to produce documents served in the related adversary case. The course of action is procedurally defective and not a good start. Counsel claims to have had the required meet and confer, but the court's review of the various declarations filed here causes the court to wonder if the attorneys were at the same meeting. From its reading of the declarations, the court has serious doubts that all counsel made a good faith effort to resolve the production issue. All counsel are hereby admonished that unless their

collective actions and conduct dramatically improve the court will impose sanctions including but not necessarily limited to monetary sanctions. In the event sanctions are imposed, the court may review these issues in considering what sanctions to impose.

ML and its attorneys are hereby ordered to produce (1) ALL of the transactional documents evidencing the contractual relationship between ML and any party who has any interest in the subject note/debt and (2) the current mailing address for any party who has any interest in the subject note/debt.

Copy of the foregoing
mailed this 13 day of
May, 2009 to:

Arturo A. Thompson
POLSINELLI SHUGHART, P.C.
3636 North Central Avenue, Suite 1200
Phoenix, Arizona 85012

Office of the United States Trustee
230 North First Avenue, Suite 204
Phoenix, Arizona 85003

Cathy L. Reece
Keith L. Hendricks
FENNEMORE CRAIG, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

Shane D. Gosdis
Mark A. Nadeau
DLA PIPER, LLP (US)
2525 East Camelback Road, Suite 1000
Phoenix, Arizona 85016

George U. Winney
GAMMAGE & BURNHAM
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

by _____
Judicial Assistant

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

MINUTE ENTRY/ORDER

FOR MATTER TAKEN UNDER ADVISEMENT

Bankruptcy Judge:	Hon. Redfield T. Baum
Case Name:	Mortgages, LTD., Chapter 11
Case No.:	2:08-bk-07465-RJH
Adversary Name:	Mortgages Ltd., vs. Riverfront Commons, et al..
Adversary No.:	2:08-00906
Subject of Hearing:	Motion For Summary Judgment Filed by Mortgages Ltd (Guaranties)
Date Matter Taken Under Advisement:	May 4, 2009
Date Ruled Upon:	May 12, 2009

Pending before the court is plaintiff's motion for summary judgment against the guarantors of the eight million dollar debt at issue before this court. As the court noted at oral argument, movant has almost established its right to the requested summary judgment.

The issue the court struggles with is plaintiff's status as the real party in interest. The court directed further briefing on this point. Bluntly and candidly, the briefing and particularly the authorities provided were of little aid to the court. It is undisputed that (1) the chapter 11 debtor borrowed approximately eight million dollars and that such debt was evidenced by a promissory note payable to plaintiff, (2) the note is in default, (3) the guarantors unconditionally guaranteed that debt and (4) now there are about thirty individuals or entities that have some

form of interest in that note/debt. The plaintiff holds an admitted .057% ownership interest in that note and debt. What is unknown by all but plaintiff is the precise evidence showing the legal rights held by the approximately 96% interest in that debt/note held by third parties. Particularly what written agreement(s), if any, authorize plaintiff to sue on behalf of those holding a partial interest in the note/debt.

Rule 17 directs that an action must be prosecuted in the name of the real party in interest. The Rule specifically provides that an action may be brought by a party in its own name without joinder of others by " a party with whom or in whose name a contract has been made for another's benefit". Here the contract at issue, the note, is solely in the name of plaintiff; i.e., on its face it is not a contract made for another's benefit. Based on that fact, the court does not consider this term of the Rule applicable here. Although unknown, it is inferred that the transfer of the interests here occurred after the contract/note was entered into by plaintiff. Virtually all of the authorities cited to the court involved different factual scenarios then present here. Therefore, the court is not satisfied that plaintiff is the real party in interest to obtain judgment against the guarantors for the full amount of the debt. It is a basic requirement for summary judgment that the moving party be entitled to judgment as a matter of law. On this record, plaintiff has not established such. Thus, its motion is denied.

Copy of the foregoing
mailed this 13 day of
May, 2009 to:

James F. Polese
George U. Winney
GAMMAGE & BURNHAM
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

Cynthia A. Ricketts
Mark A. Nadeau
DLA PIPER, LLP (US)
2525 East Camelback Road, Suite 1000
Phoenix, Arizona 85016

Office of the United States Trustee
230 North First Avenue, Suite 204
Phoenix, Arizona 85003

by _____
Judicial Assistant