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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re: MORTGAGES LTD., an Arizona corporation, Debtor.	In Proceedings Under Chapter 11 Case No. 2:08-bk-07465-RJH **ROBERT FURST'S RESPONSE TO REV-OP GROUP'S EMERGENCY MOTION FOR ENTRY OF ORDER: (I) CLARIFYING CHAPTER 11 PLAN, CONFIRMATION ORDER, AND OTHER MATTERS RELEVANT TO TRANSFER DECISION OF PASSTHROUGH INVESTORS; AND (II) EXTENDING THE TRANSFER DECISION** **Hearing Date: October 8, 2009** **Hearing Time: 11:00 A.M.**

Robert Furst hereby files his response to the Rev-Op Group's Emergency Motion for Entry of Order (I) Clarifying Chapter 11 Plan, Confirmation Order, and Other Matters Relevant to Transfer Decision of Pass-Through Investors: and (II) Extending the Transfer Decision ("Emergency Motion"). The Emergency Motion should be approved because (1) the Pass-Through Investors have been asked to make a decision about transferring their fractional loan interests into the Loan LLCs, and (2) the Pass-Through Investors cannot make an informed decision whether or not to transfer their fractional loan interests into the Loan LLCs without clarification (not modification) of the relevant documents. The Court should not allow Cathy Reece to unilaterally and retroactively modify the

dispositive documents by repeatedly "interpreting" and "construing" the documents in a manner that is thoroughly unpredictable, arbitrary and punitive to those who question her.

The Pass-Through Investors owns approximately $250 million in fractional loan interests, and it is anticipated that somewhere between $150 million and $200 million in fractional loan interests will not be transferred to the Loan LLCs based upon valid business reasons (and lack of trust), not because they want a "free ride," as Cathy Reece claims. Mr. Furst wants to pay his proper share of all costs and expenses; he just wants the dispositive documents to be interpreted justly and fairly.

For example, Robert Furst owns most of his fractional loan interests in his corporate pension plan account. If his corporate pension plan were to transfer its fractional loan interests to the Loan LLCs and thereby agreed to be a co-borrower for the Exit Financing, a portion of the corporate pension plan income would be deemed to be "debt financed income," which would be taxable to the pension plan in the year of receipt and taxed again when the plan proceeds are ultimately distributed to Mr. Furst upon retirement. To avoid this undesirable "double taxation" problem, Mr. Furst's corporate pension plan will elect to retain its fractional loan interests unencumbered by the Exit Financing, and the pension plan will allow ML Manager to serve as its agent/fiduciary in accordance with the terms of the Agency Agreement.

In so doing, Mr. Furst is not seeking a "free ride" by any means, as will be demonstrated below. Nor is he a troublemaker. Indeed, he has been the staunchest of supporters for the Official Investor Committee and Cathy Reece throughout these proceedings, as even Cathy Reece will attest. Rather, he is simply exercising an option granted to him under the Plan, and he fully expects that the rights and obligations of his corporate pension plan will be fairly governed by the terms of the Plan and the Approved Amended Disclosure Statement In Support of the Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009 (the "Disclosure Statement").

Unfortunately, Cathy Reece openly despises the Rev Op Group, and, in an effort to punish them for not transferring their fractional loan interests to the Loan LLCs (and to coerce them into transferring their interests, if possible), she has substantially mischaracterized what the dispositive documents actually say, and all of the Pass-Through Investors, not just the Rev Op Group, have been caught in the crossfire.

Without belaboring the point, Cathy Reece now claims that, for those Pass-Through Investors who elect not to transfer their interests to the Loan LLCs (and, therefore, elect to be governed their Agency Agreements), the terms of the Agency Agreement will be construed in the following arbitrary and punitive manner:

1. ML Manager, as Agent, will not be a "fiduciary" for the Pass-Through Investors going forward, even though, (a) the Agent is a fiduciary as a matter of law, and (b) the Court has already stated on numerous occasions that the Agent's discretionary powers must be exercised in a fiduciary capacity necessitating the highest utmost duty of care and loyalty to the Pass-Through Investors.
2. ML Manager, as Agent, will not be accountable to the Pass-Through Investors for any wrongdoing on its part, even breaches of fiduciary duty, reckless misconduct or fraud.
3. ML Manager, as Agent, will have the unlimited power to impose any cost or expense on the Pass-Through Investors.
4. ML Manager, as Agent, will have the unlimited power to bind the Pass-Through Investors to certain contractual obligations owed by the Loan LLCs under the Exit Financing and Inter-Borrower Agreement (even though the Agency Agreement does not permit the Agent to borrow funds), while at the same time ML Manager will have the right and power to deny the Pass-Through Investors of the rights, privileges and protections

afforded to the Loan LLCs under the same documents. For example, Cathy Reece claims that ML Manager can withhold 70% of the distributable cash proceeds from the Pass-Through Investors to satisfy the contractual obligations of the Loan LLCs under the Exit Financing, but the Pass-Through Investors will not be entitled to interest at the rate of 17-1/2% per annum (as provided in the Inter-Borrower Agreement) when the cash proceeds are subsequently reimbursed by the 51 Loan LLCs over the next ten to fifteen years.

5. ML Manager, as Agent, will have all of the rights and powers previously asserted by Richard Feldheim when he controlled Mortgages Ltd., even though, throughout the course of these bankruptcy proceedings, Cathy Reece steadfastly rejected Mr. Feldheim's assertions of power and repeatedly assured her investor constituency that "her" Plan would honor the Pass-Through Investors, not devour them.

In short, Cathy Reece wants to "pick and choose" which provisions in the dispositive documents will be literally interpreted and which provisions will be liberally construed. The only guiding principle is that the non-transferring Pass-Through Investors will be punished for their decision not to transfer. That is simply not fair.

The real issue confronting the Court is not that the members of the Rev Op Group (and the other non-transferring Pass-Through Investors) want a "free ride." The real issue is that they want to be told exactly what they owe today, and they want to pay their allocable share of these costs out of their own funds immediately. They are substantial investors controlling a disproportionate amount the fractional loan interests, and they rightfully believe that they should be allowed to immediately pay their share of the costs and expenses without regard to the Exit Financing. Notably, the Disclosure Statement (which was prepared by Cathy Reece) makes it crystal clear that what the non-

transferring Pass-Through Investors want to do is not only acceptable, but it is precisely what they are obligated to do.

Specifically, the Disclosure Statement, on page 7, lines 7 through 16, states in relevant part:

> **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. (Emphasis added)

This language demonstrates that there are two separate and distinct issues at play here. The first issue is to determine what costs and expenses can be properly allocated to the non-transferring Pass-Through Investors. The second issue is to determine whether the non-transferring Pass-Through Investors can (or must) use the Exit Financing to pay their share of the costs and expenses (or whether they must pay their share out of their own cash funds). The quoted language answers both questions.

First, according to the quoted language, the Pass-Through Investors can only be charged for their share of "the costs of enforcing the Loan" and "the expenses related to that Loan." There is absolutely no mention that the bankruptcy costs (including the professional fees, the Stratera financing, etc.) will be assessed to the Pass-Through Investors. Based upon the comments of Sheldon Sternberg and others, this appears to be a deliberate omission. However, because Mr. Furst does not want to be accused of seeking a "free ride" (which he is not), he is taking no position on this issue.

Rather, Mr. Furst is more concerned with the second issue. Once the Court determines whether the bankruptcy costs can be properly charged to the Pass-Through Investors, the critical issue

is how will the non-transferring Pass-Through Investors be required to pay for their share of any assessed costs and expenses. Will Pass-Through Investors (including Mr. Furst's corporate pension plan) be permitted to pay for these costs and expenses out of their own funds (which they want to do)? Or will the Pass-Through Investors be required to finance these costs with the Exit Financing (which will create a double taxation problem for Mr. Furst's corporate pension plan)?

The Disclosure Statement (which is cited above) unambiguously answers this question by stating that "the use of the Exit Financing will not be available" to non-transferring Pass-Through Investors. In other words, the Exit Financing is only available to the Loan LLCs, which can defer the payment of their share of the costs and expenses through the use of this financing. However, for all the Pass-Through Investors who decide not to transfer their fractional loan interests into Loan LLCs (including Mr. Furst's pension plan), they must pay their share of these costs and expenses out of their own funds. Mr. Furst fully understands this, and he intends to do so. In accordance with the Agency Agreement, Paragraph 4(b), Mr. Furst's pension plan will "remit that amount to Agent as soon as possible, but in no event later than five business days of Agent's request."

Unfortunately, despite the clear language in her own Disclosure Statement, Cathy Reece asserts that non-transferring Pass-Through Investors (including Mr. Furst's pension plan) cannot pay their share of the costs and expenses out of their own pockets, even if they want to, but instead they must use the onerous Exit Financing to finance those costs and expenses (thereby incurring unnecessary financing costs for a debt they can discharge on their own). However, as the quoted language from the Disclosure Statement clearly indicates, Cathy Reece is just plain wrong on this issue. If "the Exit Financing will not be available" to the non-transferring Pass-Through Investors, how can Cathy Reece now justifiably assert that the costs of the Exit Financing (i.e., the interest and financing charges) will still be allocated to these non-transferring Pass-Through Investors?

Unfortunately, many Pass-Through Investors have been relying upon similar questionable advice from Cathy Reece in making their decisions whether or not to transfer their fractional loan interests to the Loan LLCs. Having previously worked at Mortgages Ltd. as a Senior Managing Director, Mr. Furst feels that he has an ongoing responsibility to continue to keep his former investors fully informed about their investments and their investment choices (especially in light of past misrepresentations made to many of them). Mr. Furst has spoken to many Pass-Through Investors about their concerns, and he has compiled a list of questions which they have raised with him (a copy of which is attached to this Response). Mr. Furst respectfully requests that the Court address these legitimate concerns at the scheduled hearing, so that the Pass-Through Investors can make their investment decisions in an informed manner.

DATED: October 7, 2009

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Points for Clarification

1. The Approved Amended Disclosure Statement In Support of the Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009 (the "Disclosure Statement"), on page 7, lines 7 through 16, reads as follows:

> **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.** (Emphasis added)

With regard to a Pass-Through Investor who decides not to transfer his/her fractional interest in a loan into the applicable Loan LLC, please answer the following questions:

a. If "the use of the Exit Financing will not be available" to the Pass-Through Investors, how can the cost of the Exit Financing be justifiably allocated to the Pass-Through Investors?

b. Since the only costs which can be assessed to the Pass-Through Investors are "the costs of enforcing the Loan and the expenses related to that Loan," please answer the following:

   i. Is the cost of the Exit Financing a cost of "enforcing" the Loan? If the answer is "Yes," please explain.

   ii. Is the cost of the Exit Financing an expense "related" to the Loan? If the answer is "Yes," please explain.

c. Since the Pass-Through Investors "will be subject to the existing Subscription and Agency Agreements," please answer the following:

   i. Will ML Manager LLC continue to be a fiduciary for the Pass-Through Investors? If the answer is "No," please explain.

   ii. Assume that ML Manager wants to modify and/or extend the terms of a loan. Assume further that a Pass-Through Investor, in his/her Subscription Agreement, withheld discretion from his/her Agent to modify and/or extend

loans. What will ML Manager do in that case? If ML Manager does, in fact, modify the loan (in violation of the terms of the Subscription Agreement), will ML Manager be obligated to purchase the fractional interest of the Pass-Through Investor for the full amount then owed by the Borrower (as Mortgages Ltd. always did in the past)?

2. Paragraph 4.13 of the Plan of Reorganization, as amended by Paragraph U(1) of the Confirmation Order (which is in bold type), reads as follows:

> 4.13 Distributions from Loan LLCs. Each Loan LLC will distribute funds to its members pro rata based upon their respective membership percentages in such Loan LLC as set forth in the operating agreement for each of the Loan LLCs. Any Pass-Through Investor that does not transfer its fractional interests into a Loan LLC will receive its distribution pursuant to the existing Agency Agreement and other contracts which may be assigned to the ML Manager LLC. **Before each distribution is made, Pass-Through Investors who retain their fractional interests in the ML Loans shall be assessed their proportionate share of costs and expenses of [servicing] and collecting the ML Loans in a fair, equitable and nondiscriminatory manner and shall be reimbursed in the same manner as the other Investors.** When the MP Funds receive any distribution from the Loan LLCs, they will distribute such funds to their respective investors, after payment of any MP Fund creditors. (Emphasis added)

With regard to a Pass-Through Investor who decides not to transfer his/her fractional interest in a loan into the applicable Loan LLC, please answer the following questions:

a. Because the Pass-Through Investors are only responsible for their proportionate share of the "costs and expenses of [servicing] and collecting the ML Loans," please answer the following:

   i. Is the Exit Financing a cost of "servicing" the ML Loans within the meaning of Paragraph 4.13? If the answer is "Yes," please explain.

   ii. Is the Exit Financing a cost of "collecting" the ML Loans within the meaning of Paragraph 4.13? If the answer is "Yes," please explain.

b. What does "fair, equitable and nondiscriminatory" mean?

   i. Will the costs of "collecting" the loans be allocated among all of the Investors in a loan (i.e., the Pass-Though Investors and the Loan LLC), proportionately in accordance with their respective investments in such loan? If the answer is "No," please explain how these costs will be allocated.

ii. How will the costs of "servicing" the ML Loans be allocated among the Investors?

A. Under the Agency Agreement and other preexisting agreements, the only "servicing" cost charged to the Pass-Through Investors is the "interest rate spread." True or False? If the answer is "False," please delineate all other servicing costs to be charged to the Pass-Through Investors.

B. Under the Agency Agreement and other preexisting agreements (and the historic business practices of Mortgages Ltd.), the "interest rate spread" is the amount by which (1) the interest rate paid by the Borrower, exceeds (2) the interest rate paid to each of the respective Pass-Through Investors.

i. To illustrate, assume that a Borrower agreed to pay 14% interest on a ML Loan; and assume further that Mortgages Ltd. agreed to pay one Pass-Through Investor interest at the rate of 7% and another Pass-Through Investor interest at the rate of 12%. In such a case, the first Investor would pay a 7% "interest rate spread" as his/her servicing cost and the second Investor would pay a 2% "interest rate spread" as his/her servicing cost.

ii. Will Pass-Through Investors continue to have their "servicing" costs determined in the foregoing manner? Or will someone be able to assert that such an allocation of servicing costs is <u>not</u> "fair, equitable and nondiscriminatory"?

iii. In the example set forth above, now assume that the ML Board agrees to reduce the Borrower's interest rate from 14% to 8%. Historically, in such a case, Mortgages Ltd. would be entitled to charge the first Pass-Through Investor a 1% "interest rate spread," but it would not be entitled to charge the second Pass-Through Investor any "interest rate spread" (because the interest rate owed to this Pass-Through Investor would now exceed the interest rate to be collected from the Borrower). Will that result remain the same for the Pass-Through Investors going forward? If not, please explain.

3. Section VIII (F) of the Disclosure Statement, on pages 77 through 78, reads as follows:

> In order to consummate the Plan, the Investors Committee has obtained Exit Financing. The terms of the Exit Financing are attached as "Exhibit

O" to the Disclosure Statement. It is a Letter of Intent from Universal Equity Group and Strategic Capital Partners LLC. The Letter of Intent has several contingencies, which is not uncommon, including lender's satisfactory review of the Collateral and the borrower(s) under the Exit Financing. 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. **It is possible that Exit Financing will need to be entered into by the lender as the lender and by the Liquidating Trust, the ML Manager LLC, the Loan LLCs and/or the Reorganized Debtor as co-Borrowers with joint and several liability. The lender may require that all of the assets of the entities be pledged, including the Notes and Deeds of Trust in the Loan LLCs. It is anticipated that the parties will also enter into an inter-borrower agreement to allocate amongst themselves the use of funds and the repayment of the Exit Financing loan, among other things.** The entities shall keep sufficient records of the use of funds and repayment of the loan so that a proper allocation and accounting may be made. For example, **the repayment provision requires the Borrowers to repay the Exit Financing out of 70% of all proceeds generated from the Collateral.** This means that if a property in the Liquidating Trust is sold then 70% of the net proceeds will be used to pay down the Exit Financing, but the other Borrowers at some point when sufficient funds become available will need to reimburse the Liquidating Trust for their allocable share of the loan proceeds. Similarly, if a Loan LLC receives principal from a Borrower, then 70% of the proceeds will be used to pay down the Exit Financing, but the other Borrowers at some point when sufficient funds become available will need to reimburse that Loan LLC for their allocable share of the loan proceeds. In the long term this should even out and each Borrower will ultimately be responsible only for its pro rata share, but in the short term the cash flow will be used to pay down the Exit Financing and will be monitored to insure proper accounting and reimbursement.

With regard to a Pass-Through Investor who decides <u>not</u> to transfer his/her fractional interest in a loan into the applicable Loan LLC, please answer the following questions:

a. The Liquidating Trust, the ML Manager LLC, the Loan LLCs and/or the Reorganized Debtor will be "co-Borrowers with joint and several liability." Presumably, the Pass-Through Investors will not be jointly and severally liable. True or False?

b. The Disclosure Statement states that "[t]he 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." Assume that $1 million of the Stratera Claims, the Priority Tax Claims and/or the Administrative Claims is directly attributable to the Centerpoint loan. Will that $1 million expense (plus interest) be specially allocated to

the Loan LLC for the Centerpoint loan? Or will it be allocated to all of the Loan LLCs for all of the ML Loans?

c. The Disclosure Statement states that "the repayment provision requires the Borrowers to repay the Exit Financing out of 70% of all proceeds generated from the Collateral." Presumably, because the Pass-Through Investors' fractional interests in the ML Loans are not collateral for the Exit Financing, no portion of the cash proceeds received by the Pass-Through Investors will be used to pay the Exit Financing. True or False?

d. Presumably, 70% of the cash proceeds distributable to the Pass-Through Investors will not be withheld from them. True or False?

   i. If the answer is "False," please state the legal authority for this conclusion.

   ii. If the answer is "False," will the Pass-Through Investors earn the same interest rate (i.e., 17.5%) as the members of the Loan LLC will earn under the Inter-Borrower Agreement?

e. The Disclosure Statement states that "each Borrower will ultimately be responsible only for its pro rata share" of the Exit Financing. Presumably, because a Pass-Through Investor is not a Borrower in relation to the Exit Financing, he/she will not be responsible for any portion of the Exit Financing. True or False?

4. If there is a default in the timely repayment of the Exit Financing, what are the ramifications for the Pass-Through Investors?

   a. Assume that there is a default in the timely repayment of the Exit Financing, and to cure the default, it is decided that the SOJAC Loan LLC must sell its interest in the SOJAC loan or the SOJAC property, whichever the case may be at the time. Assume further that the SOJAC loan is owned 80% by Pass-Through Investors and 20% by the Loan LLC. In that case, ML Manager would sell only the 20% interest owned by the Loan LLC (but not the 80% interest owned by the Pass-Through Investors). True or False? If the answer is "False," please explain.

   b. In the example above, assume that the SOJAC Loan LLC sells its interest in the SOJAC loan or property for five cents on the dollar. Assume further that the Pass-Through Investors later sell their interest in the SOJAC loan or property for one hundred cents on the dollar (because they were not forced to sell their interest at an inopportune time). In that case, would the Pass-Through Investors be responsible for making any type of equalizing payment (or any other payment) to the Loan LLC.? If the answer is "Yes," please explain.

   c. Paragraph VIII(D)(3) of the Disclosure Statement, on pages 65 through 66, reads as follows

3. Governance of Loan LLCs. Each Loan LLC will operate pursuant to a separate operating agreement substantially in the form attached as Exhibit "K" to the Disclosure Statement. The Manager of each Loan LLC shall be the ML Manager LLC. As reflected in the form of operating agreement attached as Exhibit "K", **Major Decisions (as defined in the operating agreement) will be made by the members of the Loan LLC based on a vote of the dollar amount of interests. The Exit Financing will be used for some operational [expenses] but mostly at the ML Manager level and not at the Loan LLC level. If additional funds are needed for the operation of a specific Loan LLC or for extraordinary expenses for the Loan LLC (such as for property insurance, taxes, costs to repair or complete a structure for a specific Loan LLC, defending a lawsuit, or prosecuting a lawsuit, etc.), the members of the Loan LLC will be asked to either make a voluntary capital contribution, make a voluntary member loan, allow other members to make a loan or consent to third party financing.** No member will be forced to make a capital contribution but a preferred payment or return or lien may be granted to other members or to third parties that provide such financing or capital. (Emphasis added)

With regard to a Pass-Through Investor who decides not to transfer his/her fractional interest in a loan into the applicable Loan LLC, please answer the following questions:

a. The Disclosure Statement, in the section entitled "Governance of Loan LLCs," states that "Major Decisions (as defined in the operating agreement) will be made by the members of the Loan LLC based on a vote of the dollar amount of interests." This provision only states that major decisions of the Loan LLC will be made by the members of the Loan LLC; it does not state that that the final decision of the members of the Loan LLC is also binding on the Pass-Through Investors in the loan. True or False? If the answer is "False," please explain.

b. The Disclosure Statement states that "[t]he Exit Financing will be used for some operational [expenses] but mostly at the ML Manager level and not at the Loan LLC level."

   i. If funds are needed to prosecute or defend a lawsuit, the members of the Loan LLC are responsible for their share of the expense. True or False? If the answer is "False," please explain.

   ii. If funds are needed to prosecute or defend a lawsuit, the Pass-Through Investors are responsible for their share of the expense. True or False? If the answer is "False," please explain.

   iii. If funds are needed to prosecute or defend a lawsuit, will ML Manager hire the same law firm to represent the Pass-Through Investors and the Loan LLC? If the answer is "No," please explain.

5. Footnote 1 to the Disclosure Statement, on page 7, reads as follows:

> The Loans in which the Mortgages Ltd. 401(k) Plan holds the ownership interest will not be transferred to Loan LLCs. Instead the trustee(s) of the Mortgages Ltd. 401(k) Plan shall make their own decisions and decide who will service their Loans. It is also possible that Loans with only a few investors may, after discussion with the Plan Proponent, not be transferred into a Loan LLC.

a. If a loan owned in part by the 401(k) Plan and in part by Pass-Through Investors, how are major decisions made by the Pass-Through Investors? Does a majority vote control? What happens if the 401(k) Plan and the Pass-Through Investors disagree?

b. If a loan is owned in part by the 401(k) Plan and in part by Pass-Through Investors, will any portion of the Exit Financing costs be allocated to the 401(k) Plan? If the answer is "Yes," please explain. (On October 5, 2009, Cathy Reece acknowledged that the 401(k) Plan will not, under any circumstances, be allocated any share of the Exit Financing.)

c. If a loan is owned in part by the 401(k) Plan and in part by Pass-Through Investors, will any portion of the Exit Financing costs be allocated to the Pass-Through Investors? If the answer is "Yes," please explain.

d. If a loan is owned is wholly owned by the 401(k) Plan, will any portion of the Exit Financing costs be allocated to the 401(k) Plan? If the answer is "Yes," please explain. (On October 5, 2009, Cathy Reece acknowledged that the 401(k) Plan will not, under any circumstances, be allocated any share of the Exit Financing.)

e. If a small loan "with only a few investors" is not transferred to a Loan LLC, will any portion of the Exit Financing costs be allocated to the investors in that loan? If the answer is "Yes," please explain. Can the investors in a small loan elect to manage the small loan without the assistance of ML Manager?