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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re
10 Mortgages Ltd.,
11 Debtor.

Chapter 11

Case No. 2-08-BK-07465-RJH

**ML MANAGER LLC'S EMERGENCY
MOTION TO AMEND THE COURT'S
OCTOBER 21, 2009 MEMORANDUM
DECISION**

14 The Court's Memorandum Decision dated October 21, 2009 appropriately resolves
15 the issues raised by the Rev Op Group's Motion for Clarification with one possible
16 exception. There is one internal inconsistency or potential inconsistency in the Decision
17 that may leave one open issue. As ML Manager does not believe that it was the Court's
18 intent to leave this issue unresolved, ML Manager LLC ("ML Manager") hereby requests
19 that the Court slightly amend the October 21, 2009 Memorandum Decision (the
20 "Decision") to resolve the issue by deleting the words "sell or" on page 2, line 5.

21 The issue is whether ML Manager has the right, under the Agency Agreement, to
22 sell the interest of a Pass-Through Investor along with the rest of the interests held by
23 other investors in a Note. The Decision at page 2, lines 6-9 states that ML Manager has
24 all of the authority and right of the "Agent" set forth in the Agency Agreement.
25 Significantly, the Agency Agreements in section 1(d) expressly and clearly grants the
26 "Agent" the right to liquidate a fractionalized interest in a Loan, however, the Decision
27 also states at page 2, line 5 that ML Manager does not have the right "to sell" a
28

1 fractionalized interest. As such, these two findings appear or may be inconsistent.

2 The October 21, 2009 Memorandum Decision states:

3 The ML Manager does have the authority to deal with the
4 loans and the collateral securing the loans to the extent
5 provided by the governing documents including but not
6 limited to the applicable subscription agreements and Agency
7 Agreements.

8 This language makes it very clear that ML Manager has all of the rights provided to the
9 agent under the subscription and Agency Agreements. Section 1 of the Agency
10 Agreements provides for the appointment and authority of the agent. (A copy of the form
11 of the Agency Agreement that has been consistently used by the Parties and submitted to
12 the Court is attached as Exhibit A) This Section consists of a general description of this
13 authority granted to the Agent followed by several specific grants of authority. The
14 general description of authority in Section 1 provides:

15 Participant appoints Agent to act as Participant's agent
16 with regard to the Loans and the Loan Documents

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

27 As noted, following this general description of the Appointment and Authority of the
28 Agent, the Agency Agreement sets forth several specific grants of authority including (a)
29 Account Servicing, (b) Collection, (c) Compensation, and (d) Sale of Interest. With
30 regard to Account Servicing and Collection as set forth in Section 1 there are provisions
31 that authorize a sale of a loan or an interest in a loan, but Section 1(d) makes it absolutely
32 clear. Section 1(d) provides:

33 **Sale of Interest.** If Participant owns less than 100%
34 interest in any Loan being serviced by Agency under a
35 Servicing Agreement, Agent, in its sole discretion, may
36 liquidate Participant's interest. Upon payment to
37 Participant, Agent will, upon direction of Participant, use

1 commercially reasonable efforts to reinvest any funds
2 received by Participant in a new Loan. (emphasis added).

3 In other words, Section 1(d) clearly provides that the Agent, which is now ML Manager,
4 can “liquidate” or sell a fractionalized interest in a loan when the Participant does not own
5 100% of the Note. Further, Section 1(b)(10) of the Agency Agreements provides that the
6 Agent may at Agent’s sole discretion “facilitate the sale of the Participant’s interests in the
7 Loan Documents by communicating with potential purchasers or their agents and by
8 providing information regarding any Loan to third parties, including copies of the Loan
9 Documents and accounting information to any Loan.”

10 In addition to the authority discussed in Section 1, Section 3(b) provides additional
11 authority with regard to the foreclosure and sale of the Trust Property. For example,
12 Section 3(b) contemplates that the Agent will foreclose on the Trust Property in the name
13 of the Participants, but that the Agent will continue to manage the property and have the
14 authority to even enter into a “sale of the applicable Trust Property, all as Agent deems
15 appropriate in its sole discretion.”

16 As the Court wisely stated in dealing with the withholding of discretion argument
17 at a prior hearing when ruling on the Authority Issue in November, 2008, to allow one
18 pass-through investor to have the ability to refuse or withhold its consent would amount to
19 a “veto” by that one pass-through investor when it only holds a fractional interest in a
20 Loan. See November 25, 2008 Transcript pages 5-6 (Docket No. 1090). This would
21 prevent the Agent from maximizing the value of the Loan for all the investors in the same
22 Loan. Such a veto by one pass-through investor was not within the contemplation of the
23 parties and is not evidenced in the Agency Agreements. As the language in Section 1(d)
24 says that if the Participant does not own 100% of the Loan, the Agent in its discretion can
25 “liquidate” or sell it, and the Agent may need to that in order to get the best value for
26 100% of the investors in the loan.

27 Although the October 21, 2009 Memorandum Decision unequivocally states that
28 ML has the authority to deal with the loans to the extent provided for by the Agency

1 Agreements, it also states:

2 ML Manager has no authority to sell or encumber the non-
3 opt-in Pass Through Investors' fractional interest in their
4 notes. (emphasis added)

5 ML Manager agrees (and stated as much at the October 8, 2009 hearing) that ML
6 Manager does not have the authority to encumber the non opt in Pass-Through Investor's
7 interests in their notes, and has no intention of doing so.¹ However, there may come a
8 time when the proper exercise of ML Manager's business judgment in its role as the
9 "Agent" under the Agency Agreements is that a Note (i.e., 100% of the fractionalized
10 interests in a loan) should be sold. ML Manager is concerned if such a situation presents
11 itself then some may argue that the provision of the Decision which says that ML
12 Manager has the authority to take any action authorized by the Agency Agreement is
13 inconsistent with or overruled by the provision that says that ML Manager lacks the
14 authority to sell a fractionalized interest in a loan.

15 Accordingly, ML Manager requests that the October 21, 2009 Memorandum
16 Decision be modified by removing at page 2, line 5 the words "sell or" from the Decision.
17 The Decision would then read:

18 ...The ML Manager has no authority to encumber the non-
19 opt-in Pass Through Investors' fractional interest in their
20 notes. The ML Manager does have authority to deal with the
21 loans and the collateral securing the loans to the extent
22 provided by the governing documents including but not
23 limited to the applicable subscription agreements and Agency
24 Agreements.

25 This change would harmonize all of the findings in the Decision and eliminate any
26 argument that it is internally inconsistent or that one finding trumps another. It would
27 affirm that ML Manager does not have the right to encumber fractional interests in the
28 loans (the right ML Manager does not assert that it does have), but that ML Manager does
have all the rights set forth in the Agency Agreements, such as the right to sell the interest

¹ Because ML Manager does not and did not contest the argument that it could not encumber the fractionalized interest, there may have been some confusion as to whether ML Manager also agreed that it could not sell the fractionalized interest. To the extent that there was any confusion about ML Manager's position on the ability to sell a fractionalized interest under the grant of authority set forth in the Agency Agreement, ML Manager apologizes for this confusion.

1 in the Loan, foreclose on the Trust Property and sell the Trust Property. If the borrowers
2 on the loans do not pay, this is how the money owed to investors is going to get repaid and
3 the “veto” by one pass-through investor would torpedo any ability to get all the other
4 investors paid. As such, ML Manager believes that this modification to delete “sell or” is
5 consistent with the intent and effect of the October 21, 2009 Memorandum Decision and
6 consistent with the express language in the Agency Agreements.

7 If the Court does not modify the language in the Decision, then it is likely that ML
8 Manager will have to bring any such potential Note sales to the Court to provide a forum
9 to resolve the inconsistency and to provide a way to practically handle the “veto” by any
10 non opt in Pass-Through Investors. Of the approximate 60 loans in the portfolio, 15 have
11 over 50 Pass-Through Investors and 2 have over 125 Pass-Through Investors, many of
12 whom will not op in. The practical problem of contacting and obtaining consent to sell
13 the Note from a number of investors in multiple states and in some situations multiple
14 foreign countries will have to be addressed so that ML Manager can maximize the
15 recovery for all the investors in the Loan.

16 WHEREFORE ML Manager has requested that the Court grant this Emergency
17 Motion and amend the Decision as soon as possible to delete the words “sell or”. As the
18 Court is aware, the deadline for Pass-Through Investors to make their decision is October
19 31, 2009 and in addition borrowers are taking advantage of the pending matter to delay
20 further their obligations to pay. ML Manager is not asking for a hearing but respectfully
21 requests that the Court amend its Decision without further hearing.

22 DATED this 22nd day of October, 2009.

23 FENNEMORE CRAIG, P.C.

24 By s/ Cathy L. Reece

25 Cathy L. Reece
26 Keith L. Hendricks
27 Attorneys for ML Manager LLC

28 COPY of the foregoing transmitted
this 22nd day of October, 2009, to:

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14 By _____ s/ L. Carol Smith

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EXHIBIT

A

AGENCY AGREEMENT

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

Background

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

Agreement

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

1. APPOINTMENT AND AUTHORITY OF AGENT.

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

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

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

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

- (a) Divide Participant's total funding of any Loan by the face amount of such Loan to determine Participant's current percentage ratio and transfer to a new investor the difference between Participant's assigned percentage ratio and Participant's current percentage ratio; or
 - (b) Liquidate Participant's investment in any Loan and transfer all of Participant's assigned percentage ratio in the Loan to a new participant.
- (2) Hold the originals of the promissory note, deed of trust and all other documents signed by any Borrower or any guarantor in connection with any Loan (collectively, the "Loan Documents").
- (3) Service and administer the Loans in any manner provided by the applicable Loan Documents.
- (4) Process payments with respect to any Loan from any Borrower or any other payor (each a "Borrower Payment") as follows:
 - (a) Upon receipt of a Borrower Payment, deposit that Borrower Payment in an account held by Agent, and transmit or deposit the appropriate funds to Participant.
 - (b) Agent may delay disbursing funds to Participant from any Borrower Payment until funds from the applicable Borrower or the applicable payor are collected by Agent's financial institution.
 - (c) If a Borrower Payment is returned by the financial institution of the Borrower or the applicable payor, Agent may send a notice to the applicable Borrower or the applicable payor requesting payment of the past due amount, together with interest at the default interest rate provided for in the Loan Documents.
- (5) Assess and process all fees and charges set forth in the Loan Documents, including administrative fees, notice fees and late charges.
- (6) Apply any funds received by Agent to the fees and costs incurred or assessed by Agent before applying the funds to the amounts owing under the Loan Documents. These fees and costs include notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (as described herein). Any insurance placed by Agent may be placed with an affiliate of Agent or captive insurance company.
- (7) Retain deposits received under the Loan Documents as impounds for the payment of the following: (a) future payments due; (b) taxes and assessments; (c) construction expenses; (d) insurance premiums; (e) extension fees; (f) administration fees; and (g) any other expenditure required under the Loan Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Amend the Loan Documents.

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

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

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

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

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

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

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

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

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

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

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

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

2. ACCOMMODATION.

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

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

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

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

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

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

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

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

4. INDEMNITY

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

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

5. PARTICIPANT'S OBLIGATIONS

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

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

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

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

6. CONFIDENTIALITY

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

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

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

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

- (i) To use the Confidential Information only in connection with the Loans.
- (ii) Not to duplicate, in whole or in part, any Confidential Information.
- (iii) Not to disclose Confidential Information to any person or entity, without the prior express written consent of Agent.
- (iv) To return all Confidential Information to Agent upon request therefore and to destroy any additional notes or records made from such Confidential Information.
- (v) Not to give testimony against Agent in any legal proceeding to which Agent is a party, unless compelled to do so by competent legal authority.

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

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

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

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

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

7. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTICIPANT:

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

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

AGENT:

MORTGAGES LTD.

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