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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'S EMERGENCY MOTION FOR ORDER CONCERNING REMOVAL OF WILLIAM HAWKINS FROM THE BOARD OF MANAGERS**
	Hearing Date: TBD **Hearing Time: TBD**

ML Manager LLC ("ML Manager") requests that the Court enter an order either removing William Hawkins ("Mr. Hawkins") as a Manager from the Board of Managers of the ML Manager LLC or confirming ML Manager has the authority under its Operating Agreement to remove Mr. Hawkins as a Manager from the Board of Managers. More particularly, ML Manager requests that the Court take note of the conflict of interest of Mr. Hawkins and act in its own inherent power, and pursuant to Section 105 of the Code, to remove Mr. Hawkins from the Board of ML Manager. ML Manager requests alternatively and/or additionally (in order to avoid this issue in the future) that the Court issue a finding that Section 2.1 of the Operating Agreement grants the Board the authority to remove Mr. Hawkins (or any other Board Member not complying with his fiduciary duties and responsibilities under the Operating Agreement). Under either scenario, the Court has authority to remove Mr. Hawkins in aid of the implementation of the Plan and

its Orders.

It is a sad day when it becomes necessary for ML Manager to remove one of its Board Members due to his conflicts of interest and counter-productive behavior. It is only following months of tension and dissention that this motion was finally determined necessary to allow ML Manager to carryout its assigned fiduciary role to the Investor groups.

Factual Background and Legal Analysis

Mr. Hawkins, an investor with Mortgages Ltd., was selected as an initial Manager on the Board of Mangers of ML Manager by the Investors Committee and appointed by the Court in the Confirmation Order, Paragraph G. ML Manager LLC was formed soon after confirmation of the Plan. On June 2, 2009, each of the Managers, including Mr. Hawkins, signed the Operating Agreement for ML Manager. A copy of the executed Operating Agreement is attached as Exhibit A.

Under long standing legal principles, managers of a limited liability company, like directors or officers of a corporation, owe duties of good faith, care and loyalty to not only the entity they serve, but others as well. Indeed, Section 2.1(a)(4) of the Operating Agreement provides that the "**Managers shall cooperate in good faith in making all decisions submitted for the approval of the Board.**" (emphasis added"). The purposes of ML Manager make it clear that it has a broad range of responsibilities to many classes of persons and activities related to this case (*See, e.g.,* Operating Agreement at ¶ 1.4). Moreover, this Court has recently clarified that "ML Manager does have authority to deal with the loans and the collateral securing the loans to the extent provided by the governing documents including but not limited to the applicable subscription agreements and agency agreements." (Docket 2323, Memorandum Decision, at p.2)

Here, the Board Members, including Mr. Hawkins, owed duties to a host of investors. The initially named group that ML Manager serves is all of the 48 Loan LLCs.

Thus, Mr. Hawkins and the other Board Members owe those LLCs and their members certain duties. Moreover, because of the extensive scope of ML Manager's stated responsibilities acting as the Manager for each of the MP Funds, Mr. Hawkins' service on the ML Manager Board gives rise to duties owed to the members in the MP Funds. Similarly, because ML Manager is the Agent for all of the Pass-Through Investors, Mr. Hawkins' duties as a Board Member extend to those Investors as well. The fiduciary position Mr. Hawkins holds demands that he place the interests of ML Manager, the Pass-Through Investors, the members of the Loan LLCs, and the members of the MP Funds as a priority. This he has failed to do on repeated occasions, demonstrating that he is unable to set his personal interests aside and comply with his responsibilities with respect to ML Manager.

As the Court may know, Mr. Hawkins is also a member of the "Rev Op Group" and a client represented by the law firm of Bryan Cave. Of the 19 clients identified within the Rev Op Group listed on Exhibit A to Mr. Miller's Motion for Clarification (Docket No. 2168), seven of the entities are owned or controlled by Mr. Hawkins. Those entities are AJ Chandler 25 Acres, LLC, Bear Tooth Mountain Holdings, LLP, Cornerstone Realty & Development, Inc., Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust, Pueblo Sereno Mobile Home Park LLC, Queen Creek XVIII, LLC, and William L. Hawkins Family LLP. Notably, the seven entities owned or controlled by Mr. Hawkins account collectively for over $28 million of the $58 million in investments represented by the Rev Op Group, or almost half.

The Rev Op Group on September 14, 2009 filed its Motion for Clarification (Docket No. 2168) seeking among other things, for the Court to determine that the Rev Op Group was not responsible to pay certain expenses of the Agent (ML Manager), including the exit financing. The Rev Op Group also sought to have the Court hold that ML Manager had no authority to manage the Group members' fractional interests in

loans. As stated in Rev Op Group's Motion on page 3, paragraph 6: "Most of the issues boil down to two things: (i) whether the ML Manager LLC or the Non-Transferring Investor has the right to make key decisions about the Notes; and (ii) the extent to which the ML Manager LLC has authority and power to impose expenses or any other kind of assessments on Non-Transferring Investors." In other words, the Rev Op Group (of which Mr. Hawkins holds by far the largest share in terms of dollars invested) was asking the Court to order that the Rev Op Group has more rights than other investors because the group was not subject to the Agency Agreements, and that the members of that group had to pay substantially less money than the other investors.[1]

The Rev Op Group's motion is a direct attack on ML Manager's authority to conduct necessary business and on ML Manager's ability to assess exit financing expenses to all investors in a fair, equitable and non-discriminatory manner. Mr. Hawkins is on both sides of the attack -- as a member of the attacking Rev Op Group and as a member of the Board of the attacked ML Manager LLC. It was a substantial strain on the Board to deal with such an attack on its authority and its ability to repay the exit financing, particularly so when one of the individuals intent on stripping the Board of certain authority and one with the most to personally benefit by this attack was also a member of the Board. The Motion created a contested action and was an obvious conflict of interest between on the one hand Mr. Hawkins' duty to see that ML Manager is effective and successful, and that all investors are treated fairly, equitably and in a non-discriminatory manner, and on the other his motive of personal gain at the cost of other investors who were the beneficiaries of ML Manager's work. The fact that Mr. Hawkins is on both sides of the turmoil has caused internal turmoil and dissidence, making it

[1] At the time, the Rev Op Group was also asking that the Court award it a "substantial contribution" claim for its work in the case. The incredulity and obvious conflict was manifest when the Court asked counsel for the Rev Op Group if the substantial contribution it was asserting was the negotiation of a "free-ride." The Rev Op Group has now withdrawn its substantial contribution application.

difficult for the Board to be efficient. There is no end in sight until the most recent filings by the Rev Ops Group work their way through the courts, including appeals.

These problems were magnified with regard to borrowers. At the precise time the Board was considering actions with regard to various loans, the Rev Op Group was arguing that the Board did not have authority to take those actions. This was not simply a situation of Board Members disagreeing with or disliking a position of another Board Member, but then voting and moving forward as the majority determined was prudent. Instead, this was a situation where the adversary in a contested action was sitting in the Board meetings attempting to thwart and question the very purposes of the entity he is supposed to serve.

Although it was certainly distressing for the Board to go through the initial contested matter during the deliberation of the Motion for Clarification, the antagonistic atmosphere has only worsened in the recent few weeks. On October 30, 2009 the Rev Op Group filed a Motion for Reconsideration openly and explicitly attacking the Board's authority. (Docket No. 2352) Then on November 13, 2009, the Rev Op Group filed a Notice of Appeal (Docket No. 2401). The positions taken by the Rev Op Group in its pleadings and in open Court reveal Mr. Hawkins' conflicting interests.

The antagonism exposed by Mr. Hawkins' challenges to the Board's authority and to his own obligation to repay the exit financing cannot be understated given the personal stake and significant financial interest Mr. Hawkins has if the Rev Op Group's position is upheld. In sharp contrast to his own personal benefit if the Rev Op Group prevails is that there is almost no question but that all of the other Investors can or will be harmed. It is evident that if the Rev Op Group prevails and all Investors do not share the expenses of the exit financing proportionally, the Investors other than Rev Op Group will be forced to bear more of the burden of that financing. ML Manager represents, through its Board, these other Investors and owes them certain duties. Mr. Hawkins, as a Manager and

member of the Board, also owes those Investors certain duties – duties he cannot possibly fulfill while his actions and position are both openly and directly opposing the Investors' best interests.

There is no question but that the positions taken by the Rev Op Group and Mr. Hawkins are contrary to the interests of the Loan LLCs and the other Pass-Through Investors as a whole. Moreover, at the same time as the Board is attempting to maximize the return to the Investors by requiring the borrowers to pay as much as possible, Mr. Hawkins is asserting that the Board does not have the authority necessary to do so. It is no surprise that many borrowers are now balking at negotiations with the Board out of uncertainly about the Board's authority – an uncertainly directly attributable to Mr. Hawkins and the Rev Op Group. Moreover, title insurance companies are now reluctant or refusing to insure title to property that may be recovered through trustee's sales because of the allegations that the Rev Op Group is making. Mr. Hawkins' current positions – that as fiduciary for ML Manager and the Investors and that as antagonist to those groups – are diametrically opposed and leave him unable to fulfill his responsibilities as a Manager on the Board.

All of the issues set forth above, together with the statements in the various pleadings filed by the Rev Op Group on the "Authority Issue", and the exit financing, demonstrate an inherent, growing, and irreconcilable conflict of interest for Mr. Hawkins' as a Manager on the Board. While things were bad enough, just last week Rev Op Group's counsel ignited a new round of controversy when he sent ML Manager's counsel the letter attached as Exhibit B.

As the Court can see from the letter, it ignores, trivializes and essentially dismisses out-of-hand this Court's prior rulings on what it calls the Authority Issue. More problematic is that the letter goes beyond mere posturing and accuses the other Board Members of intentionally misrepresenting the Board's authority, both ignoring evidence

that incontrovertibly disputes Rev Op Group's assertions and breaching numerous duties and obligations.

While sending such a letter to the Board alone demonstrates Mr. Hawkins' failure of good faith and his conflict of interest and is a sufficiently hostile action to warrant removal of Mr. Hawkins, the letter was not simply circulated to the Board. Rather, the letter was also sent to counsel for the exit financing lender (noted at the end of the letter) and perhaps others of which ML Manager is unaware. These antics ignore all of the Court's prior rulings on this topic. The letter essentially argues that the Court was wrong and if the Board says anything other than the Court was wrong, the Board is lying and culpable. This is incorrect and intolerable.

There can be no question that Mr. Hawkins has a conflict of interest. He is involved in active contested matter/litigation and has threatened further litigation against ML Manager and its Board. He is taking positions that potentially would materially benefit himself, and at the same time demonstrably harm other Investors to whom he owes a duty as a Board Member of ML Manager.

The Board has raised the conflict. Mr. Hawkins and his attorney refuse to acknowledge the conflict of interest and Mr. Hawkins refuses to resign from the Board, thereby necessitating this motion. Section 2.1(a)(2) of the Operating Agreement provides that if any member of the Board:

> …shall resign, become deceased, incapacitated, fail to perform his duties or fail to attend meetings of the Board or otherwise be unable to, ***or fail to, reasonably serve as determined by the other Managers*** ("Departing Manager"), the remaining Managers may declare a vacancy and appoint a new Manager to serve in the place of the Departing Manager without the consent of the Members (emphasis added).

If Mr. Hawkins is removed, there are other Investors qualified to serve as a Manager on the Board of Managers who have no such conflict of interest.[2] Even in light of the clear

[2] The Board would interview interested investors and select a replacement Manager, just at it did

provision of the Operating Agreement that permits the other Managers to remove him, Mr. Hawkins has emphatically refused to resign from the Board and he takes the position that the other Managers of the Board of Manager cannot remove him but that only the Bankruptcy Court that appointed him can remove him. That is why ML Manager is forced to raise this issue by motion. Mr. Hawkins has stated that he will not recognize the Board's authority under Section 2.1(a)(2) and will only recognize a removal ordered by this Court or an order stating that the other Board Members have authority to remove a Manager unable to perform his duties in good faith.

In addition to the Operating Agreement governing ML Manager, case law provides ample support that when there is a conflict of interest by a member or director, the member can be removed by the governing board. *See In Newburger, Loeb & Co. Inc. v. Gross, 563 F.2d* 1057 (2nd Cir. 1977)(general partners became involved in a heated dispute over sale of assets and one general partner and other general partners threatened litigation where the court found that "although the use of threats and the assertion of these questionable claims against [partner] Gross may not constitute malicious prosecution, coercion or abuse of process, we find that they were inconsistent with the high standards of loyalty and fair dealing demanded of fiduciaries."); *In Grace v. Grace Institute*, 19 N.Y.2d 307, 311-12 (N.Y. 1967) (legislatively created corporation removed a lifetime member of board of trustees after member instituted several unsuccessful lawsuits against the corporation, holding "[t]he law is settled that a corporation possesses the inherent power to remove a member, officer or director for cause, regardless of the presence of a provision in the charter or by-laws providing for such removal. … "Once he breaches that condition and engages in activities that obstruct and interfere with the operation of the corporation and the purposes for which the Legislature created it, he may be removed.")

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when Grant Lyon chose not to continue to serve on the Board. Section 2.1(a)(2) clearly states that the other Managers on the Board will appoint the new Manager.

According to both case law and the Operating Agreement, the ML Manager Board can take action under corporate governance law to remove Mr. Hawkins. However, having already been informed by Mr. Hawkins that he will not recognize such action and will continue to disrupt the business of ML Manager, the ML Managers seeks Court intervention.

Conclusion

In sum, ML Manager requests that the Court take note of the conflict of interest of Mr. Hawkins and then act on its own inherent power, and pursuant to Section 105 of the Code, to remove Mr. Hawkins from the Board of ML Manager. ML Manager requests alternatively and/or additionally (in order to avoid this issue in the future) that the Court issue a finding that Section 2.1 of the Operating Agreement grants the Board the authority to remove other Managers/Members of the Board, including Mr. Hawkins (or any other Board Member not complying with his fiduciary duties). Either way, the Court has authority to remove Mr. Hawkins in aid of the implementation of the Plan and its Orders.

WHEREFORE, ML Manager LLC requests that the Court enter an order removing Mr. Hawkins from the ML Manager Board and/or confirming that the ML Manager Board has the authority to remove him under normal corporate governance law and the Operating Agreement, and for such other and further relief as is just and proper under the circumstances.

DATED: November 25, 2009

FENNEMORE CRAIG, P.C.

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

COPY of the foregoing emailed
to the parties on the Service List.

/s/ *Gidget Kelsey-Bacon*

2259709

EXHIBIT

A

OPERATING AGREEMENT
OF
ML MANAGER LLC

This Operating Agreement of ML Manager LLC ("Company") is entered into effective as of June 2, 2009, by and among the Managers listed on Exhibit B attached hereto, as Managers, and each of the limited liability companies listed on Exhibit A attached hereto as Members.

RECITALS

A. Pursuant to the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009 in the Chapter 11 Proceedings in In re: Mortgages Ltd., Case No. 2:08-bk-07465-RJH which was confirmed by the Court on May 20, 2009 ("Approved Plan"), the Approved Plan has approved the formation of individual limited liability companies (each a "Loan LLC" and collectively, the "Loan LLCs") to which Persons holding Fractional Interests in a loan (each a "Loan" and collectively the "Loans") made by Mortgages Ltd., an Arizona corporation ("ML") to various borrowers ("Borrowers") could elect to assign and transfer such Fractional Interests to a Loan LLC to consolidate such Fractional Interests to the extent possible in a single Loan LLC.

B. Each of the Members of the Company is one of the Loan LLCs so formed and as part of the Approved Plan, the Persons holding the Fractional Interests also approved the formation of the Company to become the Manager of each Loan LLC and certain existing ML Mortgage Pool funds ("MP Funds") listed on Exhibit C which will become members of the various Loan LLCs, approved the form of this Agreement, authorized the Manager to become the manager of the Loan LLCs and the Loan LLCs to become the Members of the Company, all of which shall occur on the Effective Date of the Approved Plan

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS; THE COMPANY

1.1 **Definitions.** Capitalized words and phrases used in this Agreement shall have the meanings set forth in the Approved Plan or in Section 11 of this Agreement.

1.2 **Formation.** The Company has been formed as an Arizona limited liability company pursuant to the provisions of the Act. The Company shall operate it business upon the terms and conditions set forth in this Agreement and the Articles of Organization.

1.3 **Name.** The name of the Company is ML Manager LLC.

1.4 **Purpose**. The purpose of the Company is act as Manager of the Loan LLCs and the MP Funds and to cause the Company to oversee and manage on behalf of the Loan LLCs the administration of the Loans, collection of principal and interest and other payments on the Loans, to sell the Loans, to take all actions necessary to enforce the Loans and realize on the collateral for the Loans, to manage the resale of any collateral realized and pending such resale to manage for the Loan LLCs the holding and operation of the collateral for a reasonable period of time, where appropriate to enter into settlement agreements with the Borrowers including loan modifications or conversion of principal or interest or both to equity in a project under a joint venture or other form of entity. In addition, the Company as Manager of the Loan LLCs will cause the Loan LLCs to enter into the Servicing Agreement and become a joint borrower under the Exit Financing Loan and the Company will receive advances from the LLCs of any ML Charges and utilize such funds as set forth in Section 2.6 hereof. The Company shall have the power to undertake any and all acts necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of such purpose. The foregoing are "Permitted Activities" of the Company.

1.5 **Intent**. It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes. No Member or Manager shall take any action inconsistent with the intent of the parties set forth in this Section 1.5.

1.6 **Principal Office**. The Principal Office and known place of business of the Company in Arizona shall be maintained at c/o Fennemore Craig, P.C., 3003 N. Central Avenue, Suite 2600, Phoenix, Arizona 85012, or at such other location as the Manager may from time to time designate by written notice to all Members. 1.7 **Statutory Agent**. The name and address of the initial statutory agent for service of legal process on the Company in Arizona are Ct Corporation System, 2394 E. Camelback Road, Phoenix, Arizona 85016. The Company's agent for service of legal process may be changed by the Manager upon written notice to all Members.

1.8 **Term**. The term of the Company commenced when Articles of Organization (the "Articles") were filed on behalf of the Company with the Arizona Corporation Commission) and shall continue until the Company is dissolved as set forth in this Agreement.

1.9 **Filings**. The Manager shall file any amendments to the Articles deemed necessary by the Manager to reflect amendments to this Agreement adopted in accordance with the terms hereof and to file any other documents which may be required to be filed by the Company with any governmental agency.

1.10 **Independent Activities**.

(a) **General Scope of Independent Activities**. The Members hereby expressly agree and acknowledge that each of the Members, either directly or through the Member's Affiliates, is involved in transactions, investments and business ventures and undertakings of every nature, which include, without limitation, activities which are associated or involve real estate or

loans, and the Manager will act as the manager of the Loan LLCs and the MP Funds which will become Members of the Loan LLCs (all such investments and activities being referred to hereinafter as the "Independent Activities"), all of which may be conducted independently from the Company, as more particularly described in Section 1.10(b).

(b) **Waiver of Rights with Respect to Independent Activities.** Nothing in this Agreement shall be construed to: (i) prohibit the Manager, any Member or the Member's Affiliates from continuing, acquiring, owning or otherwise participating in any Independent Activity that is not owned or operated by the Company, even if such Independent Activity is or may be in competition with the Company; or (ii) require the Manager, any Member or the Member's Affiliates to allow the Company or any other Member to participate in the ownership or profits of any such Independent Activity. To the extent any Member would have any rights or claims against the Manager or any other Member to share in the ownership or profits of the Independent Activities of such Manager, the Member or such Member's Affiliates, whether arising by statute, common law or in equity, the same are hereby waived

(c) **Acknowledgment of Reasonableness.** The Members hereby expressly acknowledge, represent and warrant that they are sophisticated investors, they understand the terms, conditions and waivers set forth in this Section 1.10 and that the provisions of this Section 1.10 are reasonable, taking into account the relative sophistication and bargaining position of the Members.

SECTION 2. MEMBERS; MANAGERS; CAPITAL CONTRIBUTIONS

2.1 **Managers.** Subject to the terms of this Section 2, the right to manage, control and conduct the business and affairs of the Company shall be vested in the Managers. The Managers shall each make a Capital Contribution to the Company in the amount of One Dollar which shall be repaid to each Manager upon liquidation of the Company.

(a) **Board of Managers**

(1) **Establishment.** The Members hereby establish a Board of Managers (the "Board"), which shall consist of five Managers (individually, a "Manager" and collectively the "Managers"), to act on behalf of the Company on all matters that are subject to the authority of the Board under this Agreement. The Board shall always consist of an odd number of Managers.

(2) **Appointment of Initial Managers.** As of the date of this Agreement, the individuals listed on Exhibit B shall serve as Managers for so long as they are not deceased, incapacitated or otherwise unable to reasonably serve in that capacity. If any Manager shall resign, become deceased, incapacitated, fail to perform his duties or fail to attend meetings of the Board or otherwise be unable to, or fail to, reasonably serve as determined by the other Managers ("Departing Manager"), the remaining Managers may declare a vacancy and appoint a new Manager to serve in the place of the Departing Manager without the consent of the Members.

(3) **Vote Required for Approval.** All matters that are subject to the approval of the Board or actions to be taken by the Managers under this Agreement shall require the consent of a majority of the Board, except for the following decisions, which require unanimous consent of the Board:

(i) modify the Company's Permitted Activities, as set forth in Section 1.10; and

(ii) elect to dissolve the Company pursuant to Section 9.1(A);

(4) **Procedural Matters.** Unless approved by the Managers, meetings of the Board shall be held on regularly scheduled dates not less frequently than quarterly, and any Manager may call for additional meetings of the Board upon not less than five business days prior notice to all Managers. Unless otherwise agreed upon by the Board, all meetings of the Board shall be held in the principal office of the Company in Arizona. Any business may be transacted and any decisions of the Board may be made at any meetings of the Board at which at least three Managers are present (in person or telephonically), so long as each Manager has received notice of such meeting, as provided above, or has received a schedule of the applicable quarterly meeting at least five business days prior to the date of any applicable meeting. Decisions required to be made by the Board need not occur at a formal meeting, but may be made in writing, electronically or otherwise. Managers may attend meetings in person or telephonically. Any decision with respect to matters submitted for approval of the Board shall be made by the Managers as promptly as reasonably possible given the complexity of the issue and the urgency of the required decision. The Managers shall cooperate in good faith in making all decisions submitted for the approval of the Board. Where any matter is required to be approved unanimously by the Board, such approval shall require the affirmative vote of all Managers then serving as Managers.

2.2 **Members and Percentage Participation.** Each of the Loan LLCs listed on Exhibit A are admitted as Members of the Company and the Agreed Capital Contribution to such Loan LLC of its members, and based upon such Agreed Capital Contribution such Loan LLC's Participation Percentage in the Company are also set forth on Exhibit A. Upon written call from the Board, each Member shall contribute One Dollar to the Company as a Capital Contribution. To the extent that the Agreed Capital Contributions of a Loan LLC shall increase during the Additional Time Period provided for in each Loan LLC for additional members to join such Loan LLC and make additional Agreed Capital Contributions, the Manager shall be entitled to amend Exhibit A to reflect the revised total Agreed Capital Contributions for each Loan LLC and its Percentage Participation in the Company without any vote or consent of the Members.

2.3 **Additional Capital Contributions.** Except as provided in Section 2.2, no Member shall be required to make Capital Contributions to the Company. Without limiting the generality of the foregoing, no Member shall have any obligation to restore any negative balance standing at any time in such Person's Capital Account, whether during the term of the Company, upon liquidation of the Company or otherwise. Notwithstanding the foregoing, upon the written request of the Manager stating that additional Capital Contributions ("Additional Capital

Contributions") are required in a specified amount for the Company's business, then each Member may elect to make Additional Capital Contributions in an amount equal to its then Participation Percentage of the total requested Additional Capital Contributions, and if less than all Members elect to make such Additional Capital Contributions, the Member electing to make Additional Capital Contributions may make the entire Additional Capital Contribution in the ratio of their Participation Percentages or as they may otherwise agree. The making of Additional Capital Contributions shall not change a Member's Participation Percentage.

2.4 **Member Loans.** Any Member may, with the approval of the Board, lend or advance money to the Company. If a Member makes any loan or loans to the Company or advances money on its behalf, the amount of the loan or advance shall not be treated as a Capital Contribution to the Company but shall be an indebtedness of the Company payable to the Member. The amount of the loan or advance shall be repayable out of the Company's cash and shall bear interest at a rate agreed upon by the Board during the period that the loan is outstanding, and may be secured by a lien on the Company property

2.5 **Exit Financing Loan.** The Company is authorized as Manager to cause the Manager and the Loan LLCs to become joint borrowers with the Liquidating Trust on the Exit Financing Loan and to enter into the Inter-Borrower Agreement regulating the borrowing and repayment of the Exit Financing Loan between the parties thereto. The Company is authorized to draw under the Exit Financing Loan on behalf of all of the Loan LLCs and to use the proceeds from such loan to pay operating expenses, including servicing costs, and other liabilities of the Loan LLCs to the extent permitted by the Inter-Borrower Agreement and to allocate the repayment obligations among the Loan LLCs based upon the specific usage of loan proceeds by individual Loan LLCs and a reasonable allocation of funds which are spent for purposes which benefit all Loan LLCs as determined by the Manager under the Inter-Borrower Agreement. To the extent that one or more of the Loan LLCs does not recover by its termination sufficient funds under its Loan to repay in full its allocated share of the Exit Financing Loan, the Company shall reallocate the deficiency among the other Loan LLCs based upon the provisions of the Inter-Borrower Agreement.

2.6 **Holding and Uses of ML Charges.** The ML Charges, which are amounts and items which originally were to be paid to solely to Mortgages Ltd. under the Loan Documents rather than to the holders of the Fractional Interests, will hereafter be payable to the each Loan LLC which owns the Loan under which such ML Charges are payable to be held for the benefit of the Members of the Loan LLC, and other Non-Member Fractional Interest Holders, which own Fractional Interests in the Loan, but each Loan LLC shall advance to the Company such Loan LLC's ML charges to be held with ML Charges advanced to the Manager by other Loan LLCs. The Manager shall be entitled to use such funds to the extent provided in the Inter-Borrower Agreement to pay principal and interest on the Exit Financing; servicing costs of the Loan LLCs, and other costs and expenses of Loan LLCs for which funds are required, and for repayment purposes to allocate all such payments among the Loan LLCs based upon the specific usage of ML Charges by individual Loan LLCs and a reasonable allocation of ML Charges which are spent for purposes which benefit all Loan LLCs, all as provided in the Inter-Borrower Agreement. To the extent that one or more of the Loan LLCs does not recover by its termination

sufficient funds under its Loan to repay in full its allocated share of the ML Charges allocated to it, the Company shall reallocate the deficiency among the other Loan LLCs based upon the provisions of the Inter-Borrower Agreement.

2.7 **Other Loans.** Subject to any restrictions contained in Section 6 of this Agreement, if additional capital is required to conduct the Company's business, the Board shall determine whether it is possible or advisable to obtain a loan for the required amount from a Member, a commercial lender or any other third party. Any such loan shall be upon such terms as the Board agrees and may be secured by any Company property

2.8 **Guaranties.** No Member shall have any obligation to guaranty any liability or obligation of the Company. If a Member enters into a guaranty and is called upon to make any payments thereunder, then the amount paid by such Member on account of its guaranty shall be treated as a Member Loan.

2.9 **Limitations Pertaining to Capital Contributions.**

(a) **Return of Capital.** Except as otherwise provided in this Agreement, no Member shall withdraw any Capital Contributions or any money or other property from the Company. Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive property other than cash.

(b) **No Interest.** Except as otherwise expressly provided in this Agreement (i) no Member shall receive any interest or draw with respect to its Capital Contributions or its Capital Account.

(c) **Liability of Members and Manager.** No Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as set forth in Section 2.1, the Managers shall have no obligation to make Capital Contributions or loans to the Company and shall not be liable for the debts, liabilities, contracts or any other obligations of the Company. No Member or Manager shall have any personal liability for the repayment of the Capital Contributions or loans of any Member.

(d) **No Third Party Rights.** Nothing contained in this Agreement is intended or will be deemed to benefit any creditor of the Company, and no creditor of the Company will be entitled to require the Manager or any Member to solicit or demand Capital Contributions from the Members, whether Mandatory Contributions, Supplemental Contributions or otherwise.

(e) **Withdrawal Event.** Except as set forth in Section 2.9(f), no Member may voluntarily or involuntarily withdraw from the Company or terminate its interest therein. Any Member who withdraws from the Company in breach of this Section 2.9(e):

(i) shall be treated as an assignee of a Member's interest, as provided in the Act;

(ii) shall not be relieved from any obligations under this Agreement, including, but not limited to, the obligation to make any required Capital Contributions to the Company;

(iii) shall have no right to participate in the business and affairs of the Company or to exercise any rights of a Member under this Agreement or the Act, including, without limitation, the right to vote on Major Decisions; and

(iv) shall continue to share in distributions from the Company, on the same basis as if such Member had not withdrawn; provided that any damages to the Company as a result of such withdrawal shall be offset against amounts that would otherwise be distributed or paid by the Company to such Member.

(f) **Automatic Withdrawal.** In the event that the members of a Loan LLC shall remove the Company as the manager of the Loan LLC, then such Loan LLC shall be deemed to have withdrawn as a Member from the Company ("Withdrawing Member") and to have relinquished any right to repayment of any Capital Contribution made under Section 2.2 of this Agreement and such Withdrawing Member shall be repaid any Additional Capital Contributions made under Section 2.3 and Unpaid Preference thereon at the same time and in the same manner as the other Members who have made Additional Capital Contributions are repaid under Section 3.1(a)(1) and (2). No such automatic withdrawal shall cause a liquidation of the Company. The Participation Percentage of the Withdrawing Member shall be divided among the remaining Members of the Company in the ratio of the Participation Percentages of such remaining Members.

SECTION 3. DISTRIBUTIONS

3.1 Cash Available for Distribution.

(a) Times of Distribution. The Company will distribute 100% of its Cash Available for Distributions to the Members on a monthly basis in the manner described in this Agreement. Except as otherwise provided in Section 10 hereof, Cash Available for Distribution, if any, shall be available for distribution to the Members, at such times as the Manager may determine in its sole discretion. Cash Available for Distribution shall be distributed to the Members in accordance with the following order:

(1) First, to the Members in proportion to their respective Unpaid Preference, if any, until the Unpaid Preference of each Member is reduced to zero;

(2) Next, to the Members in proportion to their respective Unreturned Additional Capital Contributions, if any, until the Unreturned Additional Capital Contributions of each Member are reduced to zero; and

(3) Next to the Members in accordance with their Participation Percentages.

(b) **Limitation on Distributions.** The Company shall make no distributions to the Members unless the assets of the Company following such distribution will exceed the total liabilities of the Company, excluding liabilities to Members based on their contributions.

(c) Termination and Dissolution of the Company. Upon the termination and dissolution of the Company, the Cash Available for Distribution shall be distributed in accordance with Section 3.1.

(d) **Distribution upon Resignation.** Except as otherwise provided in Section 2.9(f), no resigning or withdrawing Member shall be entitled to receive any distribution or the value of such Member's Interest in the Company from the Company as a result of resignation or Event of Withdrawal prior to the liquidation of the Company, except as specifically provided in this Agreement.

(e) Return of Capital. No Member shall be entitled to the return of, or interest on, that Member's Capital Contributions except as provided herein.

SECTION 4. TAX ALLOCATIONS

4.1 **Profit and Loss Allocations.**

(a) **General Allocation Rule.** For each taxable year of the Company, subject to the application of Section 4.2, Profits and/or Losses shall be allocated to the Members in a manner that causes each Member's Adjusted Capital Account Balance after such allocation to equal the amount that would be distributed to such Member pursuant to Section 9.3(c) upon a hypothetical liquidation of the Company in accordance with Section 4.1(b).

(b) **Hypothetical Liquidation Defined.** In determining the amounts distributable to the Members under Section 9.3(c) upon a hypothetical liquidation, it shall be presumed that (i) all of the Company's assets are sold at their respective carrying values reflected on the books of the Company, determined in accordance with Regulations Section 1.704-1(b) ("Book Value"), (ii) payments to any holder of a nonrecourse debt are limited to the Book Value of the assets securing repayment of such debt, and (iii) the proceeds of such hypothetical sale are applied and distributed (without retention of reserves) in accordance with Section 9.3(c).

(c) **Item Allocations.** To the extent the Board reasonably determines that allocations of Profits and/or Losses over the term of the Company are not likely to produce the Adjusted Capital Account Balances intended under this Section 4.1, then special allocations of items of income, gain, loss and/or deduction shall be made as deemed necessary by the Board to achieve the intended Adjusted Capital Account Balances.

4.2 **Special Allocations.** The allocations set forth in Section 4.1 are intended to comply with the requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the general provisions of Section 4.1, the following provisions shall apply:

(a) **Allocation of Nonrecourse Deductions.** If the Company has "nonrecourse deductions," as defined in Regulations Section 1.704-2(b)(1), such nonrecourse deductions shall be allocated to the Members in proportion to their Participation Percentages.

(b) **Allocation of Partner Nonrecourse Deductions.** If the Company has "partner nonrecourse deductions," as defined in Regulations Section 1.704-2(i) (2), such partner nonrecourse deductions shall be allocated to the Member that bears the economic risk of loss associated with such deductions, as determined in accordance with the Regulations.

(c) **Minimum Gain Chargebacks.** If the Company has a decrease in "minimum gain" or "partner nonrecourse debt minimum gain," as defined and determined in accordance with Regulations Sections 1.704-2(d) and 1.704-2(i)(3), items of income and gain shall be allocated to the Members in the manner and to the extent required under the Regulations to comply with any requirements for a "minimum gain chargeback" under Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

(d) **Qualified Income Offset.** If a Member receives an adjustment, allocation or distribution described in Regulations Section 1.701-1(b)(2)(ii)(d)(4), (5) or (6) and as a result thereof has a negative Adjusted Capital Account Balance (after taking into account the allocations required under the foregoing provisions of this Section 4.2), items of income and gain shall be allocated to such Member in an amount and manner sufficient to constitute a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d).

(e) **Special Tax Allocations.** The Company shall make special allocations of tax items relating to any property that is contributed to the Company or that is revalued on the Company's books of account in accordance with Regulations promulgated under Code Section 704(c), using the "traditional method," as such term is defined in the Regulations.

4.3 **Capital Accounts.** A Capital Account shall be maintained for each Member in accordance with the Regulations under uniform policies adopted by the Board, upon the advice of the Company's tax accountants or attorneys.

SECTION 5. MANAGEMENT AND MEMBERS

5.1 **Manager-Managed.** The Members agree that the management of the Company shall be vested in the Managers acting through the Board.

5.2 **Rights and Powers of the Managers.**

(a) **Exclusive Rights in the Board.** Except as provided in Section 5.4 hereof or elsewhere in this Agreement, the Board shall have full, exclusive, and complete power to manage and control the business and affairs of the Company and shall have all of the rights and powers provided to a manager of a limited liability company by law, including the power to execute instruments and documents, to dispose of any property held in the name of the Company, and to take any other actions on behalf of the Company. Except upon specific authorization of

the or as provided in this Agreement, no Member is authorized or empowered to execute, deliver, or perform any agreements, acts, transactions, or matters contemplated in this Agreement on behalf of the Company as agent for the Company, notwithstanding any applicable law, rule, or regulation to the contrary.

(b) **Reliance by Third Parties.** Any third party shall be entitled to rely on all actions of the Managers and shall be entitled to deal with the Managers as if they were the sole party in interest therein, both legally and beneficially. The Board may appoint one or more of the Managers or Persons as officers or agents for the Board, and every instrument purporting to be the action of the Company and executed by a Manager designated by the Board or an officer appointed by the Board shall be conclusive evidence in favor of any person relying thereon or claiming thereunder that, at the time of delivery thereof, this Agreement was in full force and effect and that the execution and delivery of that instrument is duly authorized by the Board and the Company.

(c) **Banking Resolution.** The Members hereby unanimously authorize the Board to open all banking accounts, as it deems necessary and to enter into any deposit agreements as are required by the financial institution at which such accounts are opened. The Managers or officers or agents designed by the Board shall have signing authority with respect to such banking accounts. Funds deposited into such accounts shall be used only for the business of the Company.

5.3 **Duties and Responsibilities of the Managers.** The Managers shall devote to the Company such time as may be necessary for the proper performance of the Managers' duties hereunder, but shall not be required to devote full time to the performance of such duties. The Company may also act as the manager of each of the other Loan LLC and of the MP Funds, and each Member hereto agrees and consents to such activities, even though there may be conflicts of interest inherent therein. The Managers shall be responsible for implementing or causing to be implemented the following:

(a) Performing all normal business functions and otherwise operating and managing the business and affairs of the Company and each of the Loan LLCs and MP Funds in accordance with and as limited by this Agreement and the Operating Agreement of the Loan LLCs and the MP Funds, including but not limited to engagement of accountants, attorneys and other professionals to assist in managing the such business;

(b) Protecting the interests of the Loan LLCs in the Loans and taking any actions as Managers of the Loan LLCs to enforce the Loans and the Loan Documents, enforcing guaranties, foreclosing upon the collateral for the Loans, engaging asset managers to assist in plans and valuation of collateral sale value, to enhance the value of collateral and to manage any collateral which has been foreclosed up by the Loan LLCs, and, subject to the vote of the Members of a Loan LLCs on items which are Major Decisions under this Agreement or the affected Loan LLC operating agreement, negotiating settlement agreements with the Borrowers or conversion of principal or interest or both on the Loans to equity in a joint venture project; subordinating the Loan to additional financing obtained by a Borrower; negotiating the sale of the Loan and other actions necessary to realize upon the Loan and the collateral for the Loan;

(c) Causing all books of account and other records of the Company to be kept in accordance with the terms of this Agreement;

(d) Preparing and delivering to each Member all reports required by the terms of this Agreement;

(e) To the extent that funds of the Company are available, paying all obligations of the Company as they come due;

(f) Maintaining all funds of the Company in a Company account in a bank or banks, and being the signatory to such accounts;

(g) Undertaking such actions as are necessary or desirable so that the Company, within reason, promptly complies with all material present and future laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction that may be applicable to the Company, its property, and the operations and management of the Company;

(h) Preparing Business Plans and Budgets for the Loan LLCs;

(i) Entering into the Exit Financing Loan agreement and other documents required by the lender under the Exit Financing Loan on behalf of each of the Company and each of the Loan LLCs;

(j) Entering into the Inter-Borrower Agreement on behalf of the Company and each of the Loan LLCs;

(k) Entering into a Servicing Agreement with one or more servicers from time to time on behalf of the Loan LLCs;

(l) Maintaining the proceeds from the Exit Financing Loan and the advances to the Company by the Loan LLCs of the ML Charges in bank accounts in the name of the Company or, in the Company's discretion, in trust accounts maintained by servicer then servicing the Loans for the Loan LLCs for which the Company is the Manager; and

(m) Performing all other duties required by this Agreement to be performed by the Manager.

5.4 **Actions Requiring a Vote.** The Board shall not undertake any of the following acts ("Major Decisions") without the affirmative vote of a Majority in Interest of the Members:

(a) Amending this Agreement, except with respect to amendments that (i) are of a ministerial nature, (ii) do not adversely affect the Members in any material respect, or (iii) are necessary or desirable to comply with any applicable law or regulation;

(b) Entering into any contracts between the Company and a Manager except as provided in Section 5.9 hereof;

(c) Changing any of the Company's purposes as set forth in Section 1.4;

(d) Using the Company's funds or capital in any way other than for the business and purpose of the Company as set forth in Section 1.4 hereof;

(e) Commingling any Company funds or capital with the funds of any other Person other than the ML Charges and Exit Financing Loan Proceeds which are to be held by the Company on a pooled basis until disbursed;

(f) Any action that this Agreement requires be approved by the affirmative vote of the Members of the Company;

5.5 **Consents and Approvals**. The Board shall provide timely written notice to each Member of each proposed action requiring the consent or approval of the Members, which notice shall specify with reasonable particularity the decisions to be made by the Members, the recommendation of the Board with respect thereto, and a summary of the reasons supporting the Board's recommendation.

5.6 **Business Plan and Budget**. As soon as reasonably possible after execution of the Agreement, and thereafter not less frequently than annually, the Board shall adopt an "Business Plan and Budget" for the Company, which shall be a compilation of a general business plan and budget for the Company including current-year budgets for administrating the Loans on behalf of the Loan LLCs. Subject to the availability of sufficient Company funds for such purposes, the Board shall have the right, power, authority and duty to implement each Business Plan and Budget then in effect and to supervise and carry out the day-to-day affairs of the Company and the Loan LLCs, in accordance with the Business Plan and Budget and any applicable terms of this Agreement

5.7 **Filing of Documents.** The Managers shall file or cause to be filed all certificates or documents as may be determined by the Managers to be necessary or appropriate for the formation, continuation, qualification and operation of a limited liability company in the state of Arizona. To the extent that the Managers determine the action to be necessary or appropriate, the Managers shall do all things to maintain the Company as a limited liability company under the laws of the State of Arizona.

5.8 **Indemnification and Liability.**

(a) **Company Indemnification.** The Managers and their Affiliates (each of the foregoing being referred to herein as an "Indemnitee," and the Affiliate to which each such Indemnitee is related being referred to herein as such Indemnitee's "Related Person") shall be indemnified, defended, and held harmless by the Company for, from and against any and all losses, claims, damages, liabilities, expenses (including attorneys' fees and costs), judgments, fines, settlements, demands, actions, or suits relating to or arising out of the business of the Company, or the exercise by the Managers of any authority conferred on it hereunder or the performance by the Managers of any of its duties and obligations hereunder. Notwithstanding

anything contained in this Agreement to the contrary, no Indemnitee shall be entitled to indemnification hereunder with respect to any claim, issue, or matter in respect of which it or its Related Person (or the Company as the result of an act or omission of it or its Related Person) has been adjudged liable for fraud, gross negligence, or willful misconduct.

(b) **Liability**. The Managers shall not be liable, responsible, or accountable in damages or otherwise to the Company or the Members for any act or failure to act in connection with the Company and its business unless the act or omission is attributed to gross negligence, willful misconduct, or fraud.

(c) **Compensation to the Managers; Expenses**. The Managers shall receive such compensation for acting as Managers of the Company as may be set forth in the Approved Plan and any modifications thereafter in such amounts as may be approved by the Members. In addition to any compensation, the Managers shall be entitled to payment of, or reimbursement for, all bona fide business expenses incurred in connection with conducting the Company business. All of the expenses of the Company shall be paid from the Company funds or, if a Manager advances its own funds to pay any such expenses of the Company, and the requirements for reimbursement are satisfied, the Company shall reimburse such Manager for all such advances plus interest at the "prime rate" of interest reported in the Wall Street Journal from time to time ("Prime Rate") from the date the expense is submitted to the Company for reimbursement until it is paid. The Company may require the Loan LLCs to fund items set forth in the Budget, provided, however, that any expense specifically related to a particular Loan LLC shall be charged to that Loan LLC and any general expenses which are not specifically related to one or more Loan LLCs shall be divided among the Loan LLCs by the Managers in accordance with the provisions of the Inter-Borrower Agreement..

5.9 **Transactions with Manager or its Affiliates**. The Manager shall have the right to contract or otherwise deal with the Company in connection with the sale of goods or services by the Manager to the Company in the following circumstances: (a) where the Members have voted to give consent, or (b) if (i) the compensation paid or promised for such goods or services is reasonable and is paid only for goods or services actually furnished to the Company; (ii) the goods or services to be furnished are reasonable for and necessary to the Company; and (iii) the terms for the furnishing of such goods or services are at least as favorable to the Company as would be attainable in an arms'-length transaction with third parties.

5.10 **Right to Remove Manager**. The Managers may be removed as manager of the Company only by the Members as provided in Section 6.3 hereof.

SECTION 6-MEMBERS

6.1 **Meetings of the Members**. Meetings of the Members shall be held on the call of the Managers or by Members having at least Participation Percentages of 20% of all Participation Percentages then held by all Members entitled to vote; provided that at least 14 days' notice shall be given to all Members with respect to any meeting; and further provided that any Member may require that such meeting be held by telephone. No regular annual meetings will be held but the

Board shall submit an annual report to the Members containing information on the activities of the Company which the Board deems appropriate. A waiver of any required notice shall be equivalent to the giving of such notice if such waiver is in writing and signed by the Member entitled to such notice, whether before, at or after the time stated therein. The Members may make use of telephones and other electronic devices to hold meetings, provided that each Member may simultaneously participate with the other Members with respect to all discussions and votes of the Members. Notwithstanding, the foregoing, a vote to remove the Board of the Company under Section 6.3 hereof shall be done by written ballot signed by each Member voting. A ballot to vote on the removal of the then Board of the Company may be combined on the same ballot with a vote to elect a successor Board of Managers for the Company in the event the then Board is removed. The Members may act without a meeting if the action taken is reduced to writing (either prior to or thereafter) and approved and signed by the vote of Members in accordance with the other voting provisions of this Agreement. Written minutes shall be taken at each formal meeting of the Members; however, any action taken or matter agreed upon by the Members shall be deemed final, whether or not written minutes are prepared or finalized.

6.2 **Voting of the Members**. Unless the specific language herein expressly states otherwise, all votes, actions, approvals, elections and consents required in this Agreement to be made by "the Members" shall be effective upon receiving the required vote of approval of the Members.

6.3 **Voting with Respect to the Manager.** Upon the affirmative vote of a Majority in Interest of the Members, the Members may:

(a) remove the Board for "cause" (for purposes of this Section 6.3 "cause" shall be deemed to exist if the Managers has engaged in willful misconduct or fraud to the Company, and elect a successor Board;

(b) at any time after one year from the date hereof, remove the Board for any reason and elect a successor Board; or

(c) elect an additional Manager or Managers as a member of the Board provided that the Board shall always have an odd number of Managers.

6.4 **Rights and Obligations of Members.**

(a) **Limitation of Liability**. Each Member's liability for the debts and obligations of the Company shall be limited as set forth in the Act and other applicable law.

(b) **List of Members**. Upon written request of any Member, the Manager shall provide a list showing the names, last known addresses, and Interests of all Members in the Company.

(c) **Company Records.** Upon written request, each Member shall have the right, during ordinary business hours, to inspect and copy the Company records required to be maintained by the Manager at the Company's registered office as set forth in Section 1.6 hereof

6.5 **Defaulting Member.**

(a) **Events of Default.** The occurrence of any of the following events with respect to a Member shall constitute an event of default and such Member (herein referred to as the Defaulting Member) shall (except as otherwise provided in Section 6.5(a)(v) hereof) thereafter be deemed to be in default without any further action whatsoever on the part of the Company or any other party: (i) attempted dissolution of the Company by such Member other than pursuant to the provisions contained elsewhere in this Agreement; (ii) a Bankruptcy occurs as to such Member; or (iii) failure of such Member to perform any obligation, act or acts required of that Member by the provisions of this Agreement, (iv) a Member attempts to transfer his Interest in the Company in violation of Section 8, or (v) such Member violates or breaches any of the other terms or provisions of this Agreement; provided, however, that such Member shall not be deemed to be in default of this Section 6.5(a)(v) until after 15 days' written notice thereof and if such default is a nonmonetary default and cannot reasonably and with due diligence and in good faith be cured within said 15-day period, and if the Defaulting Member immediately commences and proceeds to complete the cure of such default with due diligence and in good faith, the 15-day period with respect to such default shall be extended to include such additional period of time as may be reasonably necessary to cure such default.

(b) **Effect of Default.** Notwithstanding any provision of this Agreement to the contrary, a Defaulting Member shall not have any voting rights as a Member with respect to any matters set forth in this Agreement, including but not limited to all approval rights set forth in Section 5.4 and Section 6.

(c) **Remedies on Default.** Upon the occurrence of a default by a Member, the Manager shall have all rights and remedies available under this Agreement and at law and in equity and may institute legal proceedings on behalf of the Company against the Defaulting Member with respect to any damages or losses incurred by the Company or the other Members. The Company and the other Members shall be entitled to reasonable attorneys' fees and expenses incurred in connection with the collection of such amounts, together with interest thereon at the Prime Rate compounded annually, for the period from when such damages or losses were incurred until recovered. Remedies with respect to a default under Section 6.5(a)(ii) shall be limited to those set forth in Section 6.5(b).

SECTION 7. BOOKS, RECORDS, REPORTS AND ACCOUNTING

7.1 **Records.** The Managers shall keep or cause to be kept at the Principal Office of the Company the following: a current list of the full name and last known business, residence or mailing address of each Member, a copy of the initial Articles of Organization and all amendments thereto, copies of all written Operating Agreements and all amendments to the agreements, including any prior written Operating Agreements no longer in effect, copies of any

written and signed promises by a Member to make Capital Contributions to the Company, copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years, copies of any prepared financial statements of the Company for the three most recent years, and minutes of every meeting of the Members as well as any written consents of Members or actions taken by Members without a meeting. Any such records maintained by the Company may be kept on or be in the form of any information storage device, provided that the records so kept are convertible into legible written form within a reasonable period of time.

7.2 **Fiscal Year and Accounting.** The Fiscal Year of the Company shall be the calendar year. All amounts computed for the purposes of this Agreement and all applicable questions concerning the rights of Members shall be determined using the method of accounting used for federal income tax purposes. All decisions as to other accounting matters, except as specifically provided to the contrary herein, shall be made by the Managers.

7.3 **Preparation of Tax Returns.** The Managers shall arrange for the preparation and timely filing of all returns of the Company income, gains, deductions, losses and other items necessary for federal and state income tax purposes and shall cause to be furnished to the Members the tax information reasonably required for federal and state income tax reporting purposes.

7.4 **Tax Elections.** The Managers may, in its reasonable discretion, determine whether to make any available elections pursuant to the Code.

7.5 **Tax Controversies.** Subject to the provisions hereof, the Managers shall designated one of the Managers as the Tax Matters Member, and is authorized and required to represent the Members in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend the Company funds for professional services and costs associated therewith. The Members agree to cooperate with the Tax Matters Member and to do or refrain from doing any or all things reasonably required by the Tax Matters Member to conduct those proceedings. The Tax Matters Member agrees to promptly notify the Members upon the receipt of any correspondence from any federal, state or local tax authorities relating to any examination of the Company's affairs.

7.6 **Withholding and Tax Advances.**

(a) **Authority to Withhold.** To the extent the Company is required by law to withhold or to make tax payments on behalf of or with respect to a Member (e.g., (i) backup withholding, (ii) withholding with respect to Members that are neither citizens nor residents of the United States, or (iii) withholding with required by any state) ("Tax Advances"), the Company may withhold such amounts and make such tax payments as may be required.

(b) **Repayment of Tax Advances.** All Tax Advances made on behalf of a Member will, at the option of the Manager, either be (i) promptly paid to the Company by that Member, or (ii) repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to that Member (or, if such distributions are

not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to that Member). Whenever the Manager selects option (ii) pursuant to the preceding sentence for repayment of a Tax Advance by a Member, for all other purposes of this Agreement, such Member will be treated as having received all distributions (whether before or upon liquidation) unreduced by the amount of such Tax Advance.

(c) **Indemnification.** Each Member hereby agrees to indemnify and hold harmless the Company for, from and against any liability with respect to Tax Advances made on behalf of or with respect to such Member.

(d) **Certification.** Each Member will promptly give the Company any certification or affidavit that the Manager may request in connection with this Section 7.6.

SECTION 8. TRANSFERS

8.1 **Restrictions on Transfers.** No Member shall Transfer all or any portion of such Member's Interests.

8.2 **Transfers Void.** Any purported Transfer of Interests shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer, the Interests transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Interests, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of such Interests may have to the Company. In the case of a Transfer or attempted Transfer of Interests, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company, the Managers and the other Members for, from and against all costs, liabilities, and damages that the Company, the Manager or any of such other Members may incur (including, without limitation, incremental tax liabilities, attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

8.3 **Rights of Unadmitted Assignees.** A Person who acquires Interests in violation of the prohibition on Transfers, or in connection with a Transfer that the Company is required to legally recognize despite the prohibition on Transfers, shall be entitled only to allocations and distributions with respect to such Interests in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

8.4 **Distributions and Allocations in respect of Transferred Interests.** If any Interests are Transferred during any Fiscal Year which the Company is required to legally recognize despite the prohibition on Transfers, Profits, Losses, each item thereof, and all other items attributable to the transferred Interests for such Fiscal Year shall be divided and allocated between the transferor and the transferee by taking into account their varying percentage interests during the Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Managers. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least 10 business days prior to the Transfer, the Company shall recognize such Transfer as of the date of such Transfer, and provided further that if the Company does not receive a notice stating the date such Interests were transferred and such other information as the Manager may reasonably require within 30 days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Interests on the last day of such Fiscal Year.

Neither the Company nor the Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 8.4, whether or not the Manager or the Company has knowledge of any Transfer of ownership of any Interests.

8.5 **Notice Requirement.** Within 30 days of the Bankruptcy of a Member, that Member (or its successor) shall be required to give notice to the Company of such event. Failure to give notice shall be deemed to be a default under this Agreement.

SECTION 9. LIQUIDATIONAND WINDING UP

9.1 **Dissolution.** The Company shall dissolve only upon the occurrence of one or more of the following events:

(a) the election of the Managers after the last Loan LLC and MP Fund for which the Company in then acting as manager has liquidated its assets and made distributions to the Members;

(b) the occurrence of any event which makes it unlawful for the business of the Company to be carried on; or

(c) January 31, 2030.

The Company shall not dissolve as a result of a Withdrawal Event as defined in the Act with respect to any Member, and shall continue in full force and effect in accordance with this Agreement until an event described in Section 9.1(a) through (c) occurs.

9.2 **Dissolution**. Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the Articles of Termination has been filed as required by the Act or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

9.3 **Liquidation**. Upon dissolution of the Company, the business and affairs of the Company shall be wound up and liquidated as rapidly as business circumstances permit, the Manager shall act as the liquidating trustee, and the assets of the Company shall be liquidated and the proceeds thereof shall be paid (to the extent permitted by applicable law) in the following order:

(a) First, to creditors, including Members that are creditors, in the order of priority as required by applicable law and by this Agreement;

(b) Second, to a reserve for contingent liabilities to be distributed at the time and in the manner as the liquidating trustee determines in its reasonable discretion; and

(c) Thereafter, to the Members as set forth in Section 3.1.

If the Manager determines that an immediate sale of the Company's assets and liquidation of the Company would cause undue losses to the Members, it may defer liquidation of any assets, other than those assets necessary to satisfy current obligations, for a reasonable time.

9.4 **Reasonable Time for Winding Up.** A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 9.3 in order to minimize any losses otherwise related to that winding up. A reasonable time shall include the time necessary to sell the assets.

9.5 **Deficit Capital Account.** Upon Dissolution and liquidation of the Company each Member shall look solely to the assets of the Company for the return of that Member's Capital Contribution. No Member shall be personally liable for a Deficit Capital Account balance of that Member, it being expressly understood that the distribution of Liquidation proceeds shall be made solely from existing Company assets.

9.6 **Articles of Termination.** When all liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to Members, Articles of Termination shall be executed and filed as required by the Act.

SECTION 10. MISCELLANEOUS

10.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, without regard to its conflicts of laws principles.

10.2 **Notices.** Notices may be delivered either by private messenger service, telecopy, electronic mail, or by mail. Any notice or document required or permitted hereunder to a Member shall be in writing and shall be deemed to be given on the date received by the Member; provided, however, that all notices and documents mailed to a Member in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Member at its respective address as shown in the records of the Company, shall be deemed to have been received five days after mailing. The Street address and e-mail address of each Member shall for all purposes be as set forth on the signature page of the Agreement of the Company unless otherwise changed by such Member by written notice to the Company.

10.3 **Severability.** If any provision of this Agreement shall be conclusively determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby.

10.4 **Binding Effect.** Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and, where permitted, assigns.

10.5 **Titles and Captions.** All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not a part of the context hereof.

10.6 **Pronouns and Plurals.** All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the appropriate Person(s) may require.

10.7 **No Third Party Rights.** This Agreement is intended to create enforceable rights between the parties hereto only, and creates no rights in, or obligations to, any other Persons whatsoever.

10.8 **Time is of Essence.** Time is of the essence in the performance of each and every obligation herein imposed.

10.9 **Further Assurances.** The parties hereto shall execute all further instruments and perform all acts that are or may become necessary to effectuate and to carry on the business contemplated by this Agreement.

10.10 **Estoppel Certificates.** The Members hereby agree that, at the request of the Manager, they will each execute and deliver an estoppel certificate stating that this Agreement is in full force and effect and that to the best of such Member's knowledge and belief there are no defaults by any Member (or that certain defaults exist), as the case may be, under this Agreement.

10.11 **Schedules Included in Exhibits; Incorporation by Reference.** Any reference to an Exhibit to this Agreement contained herein shall be deemed to include any Schedules to such Exhibit. Each of the Exhibits referred to in this Agreement, and each Schedule to such Exhibits, is hereby incorporated by reference in this Agreement as if such Schedules and Exhibits were set out in full in the text of this Agreement

10.12 **Counterparts.** This Agreement may be executed in counterparts.

10.13 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

10.14 **Entire Agreement.** This Agreement and the Inter-Borrower Agreement contains the entire agreement between the parties hereto and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter hereof. No oral understandings, oral statements, oral promises or oral inducements exist. No representations, warranties, covenants or conditions, express or implied, whether by statute or otherwise, other than as set forth herein, have been made by the parties hereto.

10.15 **Power of Attorney.** Each Member hereby appoints the Company and each of the Managers as the Member's true and lawful attorney-in-fact to take all actions required to be taken by the Member under this Agreement if the Member fails to do so. The power of attorney so granted does not include the right to vote for the Member on any Major Decisions. The power of attorney granted herein is coupled with an interest, is irrevocable, and shall survive any Transfer or purported Transfer of all or any part of a Member's interest in the Company in violation of this Agreement

SECTION 11 DEFINITIONS

11.1 Glossary. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 11.1:

"**Act**" means the Arizona Limited Liability Company Act, as set forth in A.R.S. § 29-601 et seq., as amended from time to time (or any corresponding provisions of succeeding law).

"**Additional Capital Contributions**" shall have the meaning given such term in Section 2.3.

"**Adjusted Capital Account Balance**" means, with respect to each Member, an amount equal to the balance in such Member's Capital Account at the end of the relevant fiscal year, after increasing the balance in such Member's Capital Account by any amount which such Member is deemed to be obligated to restore pursuant to Regulations Sections 1.704-2(g) (1) and 1.704-2(i) (5).

"**Affiliate**" means, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting interests of such Person; (c) any officer, director, manager or general partner of such Person; (d) any Person who is an officer, director, general partner, manager, trustee or holder of 10% or more of the voting interests of any Person described in clauses (a) through (c) of this definition; or (e) any Family Member of any Person described in clauses (a) through (d) above.

"**Agreed Capital Contributions**" means the agreed value of the capital contributions made by the members to each Loan LLC as reflected in the operating agreement of each Loan LLC at the Effective Date and at the end of the Additional Time Period when new members have elected to join a Loan LLC.

"**Agreement**" means this Operating Agreement, as it may be amended from time to time, complete with all exhibits and schedules hereto. Words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder," refer to this Agreement as a whole, unless the context otherwise requires

"**Articles**" has the meaning given that term in Section 1.8.

"**Bankruptcy**" means, with respect to a Person, the happening of any of the following:

(a) the making by such Person of a general assignment for the benefit of creditors;

(b) the filing by such Person of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing an inability to pay debts as they become due;

(c) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating the Person to be bankrupt or insolvent;

(d) the filing by such Person of a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) the filing by such Person of an answer or other pleading admitting the material allegations of, or consenting to, or defaulting in answering, a bankruptcy petition filed against the Person in any bankruptcy proceeding;

(f) the filing by such Person of an application or other pleading or any action otherwise seeking, consenting to or acquiescing in the appointment of a liquidating trustee, receiver or other liquidator of all or any substantial part of the Person's properties;

(g) the commencement against such Person of any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation which has not been quashed or dismissed within 180 days; or

(h) the appointment without the consent or acquiescence of such Person of a liquidating trustee, receiver or other liquidator of all or any substantial part of such Person's properties without such appointment being vacated or stayed within 90 days and, if stayed, without such appointment being vacated within 90 days after the expiration of any such stay.

"Book Value" has the meaning given that term in Section 4.1(b).

"Business Plan and Budget" has the meaning given that term in Section 5.6.

"**Capital Account**" shall mean the capital account maintained for each Member in accordance with Section 4.3.

"**Capital Contribution**" means, with respect to any Member, the amount of money and the net fair market value of any property (other than money) contributed to the Company by such Member pursuant to any provision of this Agreement

"**Cash Available for Distribution**" means (i) the sum of (a) any payments or reimbursements received from Loan LLCs for expenses of the Company (b) interest from temporary investments, (c) amounts released from working capital or other reserves, (d) proceeds from any other receipts that are classified (whether currently or in a previous Fiscal Year) as income or gain for federal income tax purposes and (e) other miscellaneous items of income , less (ii) the sum of (a) amounts used to pay operating expenses, (b) amounts used to pay debts and liabilities of the Company incurred to pay operating and other expenses, and (c) amounts retained as reserves, as determined by the Manager in its sole discretion. Cash Available for Distributions does not include any proceeds from the Exit Financing Loan held by the Company or any ML Charge advances held by the Company.

"**Code**" shall mean the Internal Revenue Code of 1986 (or successor thereto), as amended from time to time.

"**Company**" means ML Manager LLC, the limited liability company formed pursuant to this Agreement, as such limited liability company may from time to time be constituted.

"**Control**" means to possess and exercise legal and effective control over the business decisions and acts of an entity, without the consent or approval of another Person

"**Defaulting Member**" means a Member that has committed an event of default as described in Section 6.5(a) hereof.

"**Dissolution**" means the occurrence of an event described in Section 9.1.

"**Exit Financing Loan**" means a loan in the amount of up to $20,000,000 approved by the Approved Plan to the Liquidating Trust, the Company and the Loan LLCs jointly as borrowers to be secured by the assets of the Liquidating Trust and a pledge by the Loan LLCs of their interests in the loans held by them and their other assets, which Exit Financing Loan will be used to pay administrative expenses under the Approved Plan, fund operations and litigation expenses of the Liquidating Trust and the Loan LLCs to the extent provided in the Inter-Borrower Agreement.

"**Family Member**" means a Member's spouse, lineal ancestors or descendants by birth or adoption and trust for the benefit of such Member of any of the foregoing individuals.

"**Filing Date**" means June 24, 2008, the date upon which ML filed Bankruptcy.

"**Fiscal Year**" means the year on which the accounting and federal income tax records of the Company are kept.

"**Fractional Interests**" means the percentage on the Filing Date of the original principal amount which has been assigned to and was held by a Person becoming a Member of the Company.

"**Indemnitee**" shall have the meaning set forth in Section 5.8(a).

"**Independent Activities**" has the meaning given that term in Section 1.10(a).

"**Inter-Borrower Agreement**" means an agreement between the Liquidating Trust, the Company and the Loan LLCs who are Members of the Company as the joint borrowers under the Exit Financing Loan, relating to the uses of the funds to be borrowed and the responsibility for repayment as between the joint borrowers for the portion of the borrowed funds utilized by each.

"**Interest**" means the interest of a Member in the Company as a Member representing such Member's rights, powers and privileges as specified in this Agreement.

"**Interest Holder**" shall mean a Person who holds an Interest or Interests.

"**Liquidating Trust**" means the Delaware Liquidating Trust formed under the Approved Plan to hold the non-loan assets of Mortgages Ltd. and to pursue claims and causes of action for the benefit of the Company and the Loan LLCs and their Members

"**Liquidation**" means the acts described in Section 9.3.

"**Loan**" or "**Loans**" shall have the meaning set forth in Recital A hereof.

"**Loan Documents**" " means the promissory note executed a a borrower in connection with a Loan and every other document which secures the payment of the Loan or indemnifies ML as the original lender under the Loan or the Members who acquired interest in the Loan from ML or its successors. By assignment.

"**Major Decisions**" shall have the meaning set forth in Section 5.4 hereof.

"**Majority in Interest of the Members**" means more than 50% of the Participation Percentages of the Members of the Company who are entitled to vote and who actually vote on a particular matter.

"**Managers**" means the individuals appointed as Managers in Section 2.1 or any successor Manager appointed pursuant to Section 2.1.

"**Member**" means any Person identified as a Member on Exhibit A, in each case, until such time as such Person ceases to hold an interest in the Company or otherwise ceases to be a Member of the Company in accordance with this Agreement. "Members" refers collectively to all Persons who are designated as a "Member" pursuant to this definition.

"**Member Loan**" has the meaning given that term in Section 2.4.

"**ML**" means Mortgages Ltd. (called ML Servicing Company, Inc.)

"**ML Charges**" means any amounts required to be paid to ML under each Loan LLC's Loan Documents, any Servicing Agent Agreement between ML and a borrower, any Agency Agreement or other servicing, subscription or other agreement (however denominated) with any of the Persons now Members of a Loan LLC or a borrower on an ML Loan as a fee, late charge, interest rate spread, default interest, default interest rate spread, commitment fees, extension fees, prepayment penalties or charges, servicing fees, defaulted loan processing fees or other fees, costs or charges of whatever nature.

"**Non-Member Fractional Interest Holders**" means the Fractional Interest holders in a Loan, an interest in which is held by a Loan LLC, who have not elected to become a member of the Loan LLC holding the interest in the same Loan.

"**Participation Percentage**" shall mean with respect to a Member, a percentage equal to the ratio of the total of the Agreed Capital Contributions made to such Loan LLC by its members as of the Effective Date and as of the end of the Additional Time Period to the total Agreed Capital Contributions made to all Loan LLCs by their members as of the Effective Date and as of

the end of the Additional Time Period, with the term "Additional Time Period" to have the meaning set forth in the operating agreement of each Loan LLC.

"Permitted Activities" has the meaning given that term in Section 1.4.

"**Person**" means an individual, firm, corporation, partnership, limited partnership, limited liability company, association, estate, trust, pension or profit-sharing plan, or any other entity.

"Preference" means, with respect to each Member, the amount of interest that would have accrued on that Member's Unrecovered Additional Capital Contributions outstanding from time to time, if such Unrecovered Additional Capital Contributions had been advanced to the Company as loans bearing interest at fifteen percent (15%) per annum from the date the applicable Additional Capital Contributions were made

"Principal Office" means the known office of the Company at which the records of the Company are kept as required under the Act.

"Profits" and "Losses" mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a), as adjusted by the Manager as necessary to comply with Regulation Sections 1.704-1(b) and 1.704-2(b), after consultation with the Company's tax advisors.

"Servicing Agreement" means a servicing agreement approved by the Managers and entered into by the Company on behalf of the each Loan LLCs for servicing of the Loan held by each such Loan LLC.

"**Tax Advances**" shall have the meaning set forth in Section 7.6(a).

"**Tax Matters Member**" means the "tax matters partner" as defined in Code Section 6231(a) (7).

"**Transfer**" means to sell, assign, transfer, give, donate, pledge, deposit, alienate, bequeath, devise or otherwise dispose of or encumber to any Person other than the Company.

"**Treasury Regulations**" shall mean pronouncements, as amended from time to time, or their successor pronouncements, which clarify, interpret and apply the provisions of the Code, and which are designated as "Treasury Regulations" by the United States Department of the Treasury.

"Unpaid Preference" means, with respect to each Member, the amount of interest that would accrue on such Member's Unreturned Additional Capital Contributions outstanding from time to time, if the amounts thereof had been advanced as loans to the Company bearing interest at a rate equal to fifteen percent (15%) per annum, compounded quarterly, reduced by distributions to such Member pursuant to Section 3.1(a) (1).

"Unrecovered Additional Capital Contributions" means with respect to a Member, the aggregate Additional Capital Contributions of such Member, reduced by all distributions to such Member pursuant to Section 3.1 (a) (2).

"Withdrawal Event" means those events listed in Section 29-733 of the Act.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MANAGERS:

Name: Elliott Pollack
E-mail Address: _____
Street Address: _____

Name: Scott Summers
E-mail Address: _____
Street Address: _____

Name: Bruce Buckley
E-Mail Address: _____
Street Address: _____

Name: William Hawkins
E-mail Address: _____
Street Address: _____

Name: Grant Lyon
E-Mail Address: _____
Street Address: _____

MEMBERS:

The Members listed on the attached Exhibit A
By: ML Manager LLC, their Manager

By: _____
Name: _____
Its: Authorized Manager
E-Mail Address: _____
Street Address: c/o ML Manager , LLC

EXHIBIT A

Members /Participation Percentages

Member	Agreed Capital Contributions	Participation Percentage
300 EC Loan LLC	$675,310.01	.115%
CS Loan LLC	$8,901,298.30	1.520%
MK I Loan LLC	$6,538,874.39	1.117%
MK II Loan LLC	$1,646,612.03	0.281%
Nocit Loan LLC	$3,899,737.18	0.666%
Citno Loan LLC	$21,456,650.99	3.665%
44 CP I Loan LLC	$2,641,903.37	0.451%
ABCDW I Loan LLC	$20,923,614.67	3.574%
Osborn III Loan LLC	$21,971,302.57	3.752%
44 CP II Loan LLC	$4,118,035.23	0.703%
PPP Loan LLC	$17,915,977.95	3.060%
Bison Loan LLC	$55,000.00	0.009%
FP IV Loan LLC	$9,460,452.56	1.616%
CP Loan LLC	$5,550,236.99	0.948%
ZDC I Loan LLC	$7,609,514.72	1.230%
AZ CL Loan LLC	$10,680,974.20	1.824%
RG I Loan LLC	$2,470,898.82	0.422%
VCB Loan LLC	$2,107,981.05	0.360%
SOJ Loan LLC	$7,979,183.96	1.363%

Member	Agreed Capital Contributions	Participation Percentage
ABCDW II Loan LLC	$7,921,709.94	1.353%
VP I Loan LLC	$3,912,612.95	0.668%
ZDC II Loan LLC	$8,525,224.46	1.456%
Centerpoint II Loan LLC	$121,968,019.31	20.831%
ZDC III Loan LLC	$7,666,094.99	1.309%
RRE I Loan LLC	$2,744,967.52	0.469%
VP II Loan LLC	$5,310,484.05	0.907%
HH Loan LLC	$1,511,272.50	0.258%
RLD I Loan LLC	$31,091,217.79	5.310%
MWP Loan LLC	$16,424,683.49	2.805%
C&M Loan LLC	$19,908,472.32	3.400%
U&A Loan LLC	$21,373,003.53	3.650%
RG II Loan LLC	$4,777,352.75	0.816%
PDG LA Loan LLC	$17,769,995.03	3.035%
ASA XVI Loan LLC	$17,300,544.13	2.955%
VF I Loan LLC	$926,996.18	0.158%
RLD II Loan LLC	$25,343,863.88	4.328%
4633 VB Loan LLC	$7,151,669.57	1.221%
MCKIN Loan LLC	$9,971,639.33	1.703%
Metro Loan LLC	$18,068,802.99	3.086%
Citlo Loan LLC	$9,958,655.24	1.701%

Member	Agreed Capital Contributions	Participation Percentage
NRDP Loan LLC	$1,551,726.41	0.265%
CGSR Loan LLC	$20,808,363.37	3.554%
ABCDW III Loan LLC	$16,719,669.34	2.856%
TLDP Loan LLC	$5,950,000.00	1.016%
ASA IX Loan LLC	$14,654,117.22	2.503%
70 SP Loan LLC	$7,318,634.72	1.250%
ZDC IV Loan LLC	$682,693.00	0.117%
Centerpoint I Loan LLC	$1,600,000.00	0.273%
TOTAL	**$585,516,045.00**	%100.000

Exhibit B
List of Managers

Elliott Pollack
Scott Summers
Bruce Buckley
William Hawkins
Grant Lyon

EXHIBIT C
List of MP Funds

MP122009 L.L.C., an Arizona limited liability company

MP062011 L.L.C., an Arizona limited liability company

Mortgages, Ltd. Opportunity Fund MP11, L.L.C. (formerly known as MP122030 L.L.C.), an Arizona limited liability company

Mortgages, Ltd. Opportunity Fund MP12, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP13, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP14, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP15, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP16, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP17, L.L.C., an Arizona limited liability company

EXHIBIT B

BRYAN CAVE

Robert J. Miller
Direct: 602-364-7043
rjmiller@bryancave.com

November 17, 2009

VIA E-MAIL AND U.S. MAIL

Keith Hendricks, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Re: Mortgages Ltd. ("**ML**")

Dear Keith:

As you know, this firm represents the Rev Op Group in the ML chapter 11 proceeding. The firm also now represents Sternberg Enterprises Profit Sharing Plan (the "**Sternberg Plan**") in this proceeding. This letter addresses a couple of critical issues pertaining to my firm's clients and your client, the ML Manager, LLC (the "**Manager**").

First, I address herein "authority issues." By that phrase, I mean all issues related to the alleged authority of the Manager make any decisions, or take any kind of action, on behalf of my firm's clients and their ownership interests in ML notes and deeds of trust.

With respect to authority issues, the Manager's representatives, including its board members, surely must know by now that the Manager lacks the authority to make decisions, or take any kind of action, on behalf of all of my clients relative to the ML notes. We assume the Manager's representatives and its counsel only recently reviewed the actual contracts between my clients and ML. So, for example, we assume the Manager's board and Mark Winkleman only recently learned – perhaps as late as when we filed our reconsideration motion and the related declaration of Louis B. Murphey – that neither ML nor the Manager, as alleged assignee, has *any authority, let alone "sole authority,"* to make decisions on behalf of Mr. Murphey relative to his notes and deeds of trust. We further assume that you and your client representatives now have had an opportunity to review all of the documents you delivered to my

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St. Louis

office weeks ago, so you know that the Manager does not have "sole authority" to make decisions for at least several of my clients.[1]

In short, the Manager's current position of record in this chapter 11 case that my clients are somehow bound to a blank form agency agreement allegedly granting it "sole authority," when the actual documents establish that ML had limited to no authority whatsoever with respect to many, if not all, of my clients, is baseless. We are not attempting to engage in a debate on this issue, especially since we believe it is beyond dispute. Our threshold point on these authority issues is that we want to make sure that you advise the Manager, every board member, and Mr. Winkleman of our position on these issues.

Furthermore, we understand that the Manager may be attempting to, among other things: (i) enter into settlements with borrowers on the ML notes where my clients have an ownership interest; (ii) foreclose on deeds of trust in which my clients own an interest; (iii) pursue legal action on behalf of the noteholders; and/or (iv) sell REO property in which my clients have an interest. Please make sure the Manager's representatives, including its board members and Mr. Winkleman know that my clients do not consent to the Manager taking any such actions on their behalf. On this point, I have heard that the Manager is considering the use of "negative notice" letters to obtain indications of non-opposition by investors. For the record, my clients object to the use of any such mechanism. Any such letters should be directed to me, as counsel for my clients.

In summary, my clients hereby demand that the Manager confirm in writing, *by close of business this coming Thursday*, that: (i) the Manager lacks "sole authority" to make decisions relative to the ML notes in which my clients own an interest; and (ii) the Manager's representatives will not represent to any third party that it has "sole authority" to make decisions relative to these notes. To the extent the Manager refuses to provide this written confirmation, please make sure the Manager's board and Mr. Winkleman understand that my clients believe it would be a material misrepresentation of fact for the Manager and any of its board members or other agents to represent to any third party (e.g., any title company, ML borrower's representative, the exit financier (Universal-SCP 1, L.P.)) that the Manager has "sole authority" to make decisions or otherwise bind all of my clients. My clients reserve the right to pursue legal action against any entity or person who represents to any third party that the Manager has such authority.

A final comment on these authority issues: Despite arguments to the contrary advanced by the Manager and its counsel, my clients are not raising the authority issues to have "veto power" with respect to decisions relative to the notes and deeds of trust at issue. As you may or may not know, since you did not attend the October 5 meeting, we are willing to consider reasonable solutions to this

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1 I am setting aside for now the fact that ML apparently sent letters terminating its contracts with all Rev Op investors. Obviously, the legal argument there is that all contracts were terminated; therefore, neither ML nor the Manager, as alleged assignee, had any authority thereafter to make decisions on behalf of my clients. We reserve our rights on this and all other arguments regarding the enforceability of any contracts assigned by ML to the Manager. Whether the Manager lacks authority with respect to all of my clients or just one of them, because the contracts were terminated prepetition or for any other reason, is irrelevant as a practical matter. The simple fact of the matter is that the Manager does not have the unfettered authority to deal with the ML notes without the consent of third parties.

decision-making situation. What my clients are not willing to do, however, is simply allow the Manager to make these decisions without the input or consent of my clients, or to have the Manager's representatives continue representing to the Court or third parties that it has the authority to make these decisions without the input or consent of my clients.

Lastly, Sheldon Sternberg has repeatedly asked the ML Manager's representatives for copies of all documents between ML and the Sternberg Plan, and all such documents which purportedly were assigned by ML to the Manager. (Please make sure to check for amendments as Mr. Sternberg recalls there may have been an amendment to an agency agreement.) For some reason, those documents have not been provided to date. Please provide copies of all such documents within five business days hereof.

Sincerely,

Robert J. Miller
FOR THE FIRM

cc: J. Lawrence McCormley, Esq.

SERVICE LIST
2:08-bk-07465

John R. Clemency, Esq. Todd A. Burgess, Esq. Greenberg Traurig, LLP 2375 E. Camelback Road, #700 Phoenix, AZ 85015 clemencyj@gtlaw.com burgesst@gtlaw.com Atty for: Mortgages Ltd.	Larry Watson Office of the U.S. Trustee 230 N. 1st Avenue, Suite 204 Phoenix, Arizona 85003-1706 Larry.watson@usdoj.gov Atty for: US Trustee	Donald L Gaffney Donald Fredrick Ennis Christopher H. Bayley Snell & Wilmer LLP One Arizona Center Phoenix, Arizona 85004-2202 dgaffney@swlaw.com dfennis@swlaw.com CBayley@swlaw.com Atty for: Central & Monroe; KGM Builders; Osborn III Partners
David Wm. Engelman Steven N. Berger Bradley D. Pack Engelman Berger, P.C. 3636 N. Central Avenue, #700 Phoenix, Arizona 85012 dwe@engelmanberger.com snb@engehnanberger.com bdp@engelmanberger.com Atty for: Tempe Land Company	Robert A. Shull Mariscal, Weeks, Mchityre & Friedlander 2901 N. Central, #200 Phoenix, Arizona 85012-2705 rob.shull@mwmf.com Atty for: Artemus Realty Capital, and Gold Creek, Inc.	Shelton L Freeman Nancy J. March DeConcini McDonald Yetwin & Lacy 7310 North 16th Street Phoenix, Arizona 85020 tfreeman@dmylphx.com nmarch@dmylphx.com Atty for: Radical Bunny, LLC
Sean O'Brien Gust Rosenfeld, PLC 201 E. Washington St., #800 Phoenix, AZ 85004-2327 spobrien@gustlaw.com mcnichol@gustlaw.com Atty for: Larry Lattig, Litigation Trustee	Richard R. Thomas T. Whitney Thomas Sclern Richardson 1640 South Stapley Dr., #205 Mesa, Arizona 85204 rthomas@thomas-schern.com twhitney@thomas-schern.com Atty for: Eva Sperber-Porter, Litchfield Road Associates Limited Partnership, and Baseline & Val Vista Associates Limited Partnership	Daniel P. Collins Collins, May Potenza, Baran & Gillespie 201 North Central Ave., #2210 Phoenix, Arizona 85004-0022 dcollins@cmpbglaw.com Atty for: William Hall
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