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Counsel for the Rev Op Group

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re: MORTGAGES LTD., Debtor.	In Proceedings Under Chapter 11 Case No. 2:08-bk-07465-RJH **NOTICE OF FILING ERRATA TO DECLARATION OF WILLIAM HAWKINS** Hearing Date: 1/11/09 Hearing Time: 3:00 p.m.

NOTICE IS HEREBY GIVEN that the Declaration of William Hawkins was previously filed under seal with this Court. Paragraph 56 thereof refers to two letters between counsel for the ML Manager and the Rev Op Group, which were inadvertently omitted from the filing. Attached hereto as Exhibit 1 are true and correct copies of these letters.

DATED this 11th day of January, 2010.

BRYAN CAVE LLP

By /s/ RJM, #013334
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COPY of the foregoing served this
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EXHIBIT “1”

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November 19, 2009

Robert J. Miller
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Re: ML Manager, LLC / Rev Op Group; Sternberg Plan

Dear Bob:

I received your letter dated November 17, 2009. The letter is unhelpful, unnecessarily provocative, and legally and factually inaccurate. If your letter was merely an additional example of the counter-productive posturing that your clients have often engaged in during the course of this proceeding, we would simply dismiss your letter out-of-hand. However, the public positions that you and your clients are now taking are seriously damaging ML Manager's ability to implement the Plan of Reorganization as confirmed by the Court. More importantly, those positions are threatening the ability to effectively recover money for the Investors. This is unacceptable and is in direct contravention of both applicable law and the Court Orders entered in this case.

You and your clients are making fallacious representations and claims that ML Manager is not the duly authority Agent for all of the Pass-Through Investors, including your clients, and/or that ML Manager is taking actions inconsistent with the confirmed Plan of Reorganization and Court orders. Without waiving the damage claim that already exists and for which ML Manager will seek redress, ML Manager hereby demands that your clients immediately cease and desist from contacting and misinforming borrowers, the exit financier, and all other third parties with representations or claims noted above and/or similar positions. Contrary to your assertions and pursuant to a valid Court Order, ML Manager is the duly authorized agent for all of the Pass-Through Investors, including

your clients, and ML Manager is not taking any action inconsistent with the confirmed Plan of Reorganization.

In addition to other damages caused by the actions of your clients, the fact that your letter was sent to third parties has essentially put a cloud or encumbrance on the property rights that ML Manager possesses by asserting claims that are groundless, contains a material misstatement or false claim, or is otherwise invalid. Pursuant to A.R.S. § 33-420(c), ML Manager hereby demands that you correct such statements. Your clients' actions are also tortious and breach their contractual and legal obligations.

Your client's posturing and tactics have proceeded beyond needless litigation, unfounded threats, and disruptive conduct. Your clients' actions are now causing actual damages and those actions have consequences. ML Manager is prepared to take the legal actions that are necessary to protect its rights and the rights of the Investors who are being damaged by your clients' conduct or on their behalf.

I wish to now respond to specific erroneous legal and factual allegations in your letter. First, I note that what is demonstrably missing from your letter is a citation to or quotation of any specific document, order or finding to support the positions you are taking. The fact that the entire letter is nothing more than self-serving conclusory arguments of counsel speaks volumes about the lack of merit to your argument.

For example, the baldly asserted and completely unsupported allegation that "board members[] surely must know by now that the [ML] 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" is absurd factually and legally. As the Court confirmed when it rejected your prior arguments, ML Manager has the full authority of the Agency Agreements. Moreover, it is beyond dispute that your clients agreed to the Agency Agreements. There can be no dispute that your clients have all executed the Subscription Agreements, that many of them executed Master Agency Agreements, and that all or most executed Rev-Op Agreements. As such, execution of and agreement to the operative documents is not an issue.

Although the letter never comes right out and states the factual or legal basis for the argument and instead relies on rhetoric, insults, and loose characterizations of unidentified documents, your argument appears to rest on two assertions. First, you argue that some of your clients withheld discretion when they signed their Subscription Agreements. Second, you ignore the Subscription Agreements and appear to argue

without basis that the termination of the Rev-Op program somehow also terminated the Agency Agreements. Both arguments are factually and legally incorrect.

Before responding to each specific argument, I will make a couple of general observations. First, you cite to no any actual language from any document – likely because, as John Adams said, "facts are stubborn things." Second, your argument is internally inconsistent because you rely on the Subscription Agreement to make the withholding of discretion argument, but then conveniently ignore it you rely on the termination of the Rev-Op program.

A. Withholding of Discretion.

The withholding of discretion argument is based on the Subscription Agreement that each of your clients signed.[1] The Subscription Agreements have many relevant provisions regarding the "Authority Issue" including Section 4, "Adoption of the Agency Agreement." This section provides: "By executing this Subscription Agreement, ***the undersigned accepts and agrees to be bound by the Agency Agreement*** ... The undersigned further hereby ***irrevocably*** constitutes and appoints Mortgages Ltd., with full power of substitution, as the undersigned's true and lawful attorney and agent, with full power and authority ..." (emphasis added). Many versions of the Subscription Agreements have additional relevant provisions such as Section 5 Actions to Protect Investors providing that ML will have authority to take actions with regard to the Loans.

Of note, the Agency Agreements expressly provide that the Agent has the authority in its sole discretion to take specific actions with regard to existing Loans including those actions listed in Section 1(b) and (d). This concentration of all of the authority to service and collect the loans was a fundamental part of the entire Mortgages Ltd. operation. As Judge Haines found, Investors were investing in Mortgages Ltd.'s management of the loans. Although there could be lots of individual considerations taken into account when Investors were decided which loans to go into, or changes in their investments as it relates to Mortgages Ltd., that is a completely different issue from whether the Investors had the ability to service and collect on the loans by dealing with the borrowers themselves. The Agency Agreement clearly dealt with the relationship between the parties when it came to servicing, collecting and liquidating the loans. It is

[1] Although the names of the various documents vary slightly, the relevant substance is essentially the same. Some of the Agreements are called an "Existing Investor Account Agreement" and others are called a "New Investor Account Agreement". As the relevant substance of the agreements is the same, they shall be collectively referred to as the "Subscription Agreements."

only the specific grants of authority with regard to servicing, collecting and dealing with the loans on a global basis that ML Managers has undertaken and is contemplating undertaking as it negotiates with borrowers. ML Manager is not contemplating undertaking unauthorized actions or actions outside of the Agency Agreements such as making new loans to new borrowers, or moving Investors interests around between loans.

There are two provisions in some of the Subscription Agreements where an investor was provided the opportunity to grant or withhold discretion from Mortgages Ltd. However, neither provision is nearly as broad as your conclusory and unsupported arguments assert. Moreover, those two provisions must be harmonized with the express grants of authority in the Subscription Agreement and in the Agency Agreement. Specifically, the first provision, which is typically in Section 4(e) of some of the Subscription Agreements, applies to the issue of whether Mortgages Ltd will be named for the investor in the deed of trust. There are other similar provisions in the Agency Agreement. These provisions let the Investor decide if they want to be on the Loan individually. This provision only impacts how the Loan is held, or, in other words, in whose name the Loan is held, but does not impact the ability to service the Loan by the Agent.

The second provision is found in Section 7 of some of the Subscription Agreements or Section 6 in other versions and it applies to the question of whether Mortgages Ltd can "select for purchase and sale the Loan or Loans with respect to which the undersigned ***acquires Participations.***" (emphasis added). Because the Agency Agreement and the Subscription Agreement make it extremely clear elsewhere that Mortgages Ltd. is appointed to act as the Agent to service the existing loans, and to take express actions with regard to the existing loans, it is obvious that the discretion discussed in these provisions pertains to discretion in choosing the loans in the first instance, or managing investment decisions; not servicing and liquidating an existing loan once the investment decision has been made. This is consistent with operations. The Court has heard substantial testimony about how some Investors allowed Mortgages Ltd. to chose which loans to put them into. Other Investors selected the loans themselves. Consistent with the Court prior ruling, this provision dealt with investment decisions on the front end, or changing investment decisions. It was not intended to alter the entire structure of the investment where Investors were really investing on Mortgages Ltd. ability to service the loans. Once the investment decision had been made, either my the Investor or by Mortgages Ltd if the Investor allowed Mortgages Ltd to make that decision, all Investors were subject to the Agency Agreement with regard to loan servicing, collection, enforcement and liquidation issues. As noted above, this was

necessary otherwise there would be chaos and an inability to collect the notes if tens or hundreds of Investors were all dealing with the borrowers. All of the documents, the Subscription Agreement and the Agency Agreement, make it clear that there is one Agent that services and collects the loans and the Investors cannot and do not have the right to individually deal with the borrowers. You have not provided any legal or factual analysis to refute this position.

At this point in time, ML Manager has no intention of selecting new loans for your clients. The only issues that remain are the servicing and liquidation of the existing loans. Those are the activities expressly covered by, among others Sections 1(b) and (d) of the Agency Agreement. Your clients' interference with those activities constitutes a breach of the Agency Agreement and subjects your clients to claims for damages. ML Manager is acting as the Agent with specific rights under the Agency Agreement that were irrevocably delegated to the Agent, and such power was coupled with an interest.

B. Termination of the Rev-Op Program

The termination of the Rev-Op program did not terminate the Agent's rights under the Agency Agreement with regard to existing loans. First, in addition to the Rev-Op Purchase Agreement, each of your clients also executed the Subscription Agreement as noted above. The Subscription Agreement expressly incorporates and adopts the Agency Agreements. So the termination of the Rev-Op Program did not terminate the Agency Agreement. Second, the Rev-Op Purchase Agreements, themselves, also specifically incorporate and adopt the Agency Agreements. Section 8 of the Rev-Op Purchase Agreements provide that "[b]y executing this Agreement, Investor accepts and agrees to be bound by the Agency Agreement ..." It even specifically states that this "power of attorney granted hereby shall be deemed to be a power coupled with an interest, shall survive the death, legal incapacity, bankruptcy ... of Investor ..." Again, the Agency Agreement provides that it is irrevocable, and a power coupled with an interest until renounced by Agent.

Accordingly, the fact that the Rev-Op Program for new investments was terminated been terminated does not change the fact that Mortgages Ltd. was removed as the Agent for the servicing and liquidation of the loans that your clients held when bankruptcy was filed. In fact, Mortgages Ltd. created and terminated many different types of programs over the years, and the Rev-Op Agreements themselves expire according to their own terms. The one thing that remained constant during this time despite the fact that programs for new investments were terminated, modified, or

otherwise changed is the fact that the Agent performed all of the loan servicing, enforcement and liquidation services because there were so many investors involved in each of the loans.[2] Simply stated, your clients are not entitled to argue that they own their loans, but somehow avoid the Agency Agreement. In that regard, your clients are in no different position as to any other investor.

C. Law of the Case

In addition to failing as a matter of contract law and contract construction, the Court has considered and rejected the very arguments you claim now are beyond dispute. So, obviously, you are simply wrong when you assume there is no position other than those asserted in your letter. You, yourself, have repeatedly raised these issues with the Court, and they have always been rejected. You first raised the Authority Issue on behalf of your clients over a year ago when you objected to the Statement of Position advanced by the Debtor in connection with the issue of the title insurance. Shortly after that, the Court expressly considered the effect of the Agency Agreement and the withholding of the discretion arguments. As you know, in the University and Ash litigation, there were pass-through Investors who had opposed the University and Ash settlement who had withheld their discretion in their Subscription Agreements. The Court considered the same arguments you are making now and rejected them -- approving the settlement. The fact that you personally were not in the Courtroom is of no import, particularly when the record reflects that there was representation from your office at most of the hearings at issue.

Again, you have not cited any case that says that a creditor can ostracize itself from litigation during the course of a case administration even though the issues being litigated impact the creditors rights and claims, wait to see what happens, wait until after a Plan is confirmed to "keep your powder dry" (to use a phrase you used with me the other day), and then get a second, third, or fourth bite at the apple. In the University and Ash litigation, the Court rejected the agency arguments you are now making. You and your clients had appeared in the case. Many or all of your clients had interests in the loans that were the subject of the litigation. They had standing to participate. They did not appeal the Court's ruling.

[2] If your clients want to renounce the Subscription Agreement and Agency Agreements and any ownership interest in their specific loans to become an unsecured creditors, that is something that could probably be discussed. Absent that, they simply do not have right to renounce the Agency Agreements, defy the obligation to pay exit financing, and get preferred returns on the recovery of the loans.

This ruling cannot be ignored. It was a primary factor that caused the OIC to change direction. Because the Court had ruled that the Agent had sole discretion, the OIC set out to change the Agent. That is the Plan your clients, after initially opposing (and again raising some of the same arguments), changed their vote to support. There are consequences for asserting objections, reaching a settlement and then withdrawing the objections, changing a vote to support the Plan. A creditor is not entitled to "keep its powder dry" until after a Plan is confirmed and then go back and challenge a major tenant of the Plan as if the issue had never arisen. In any event, if your clients had wanted to get out from under the Agency Agreements, they should have litigated that issue during the Plan confirmation process. They did not.

Of course, the Court has now dealt with the arguments a third and fourth time when the Court rejected your argument on the Authority Issue in the Motion for Clarification, and denied, *sua sponte*, the Motion for Reconsideration.

Given this record, it is simply egregious for your clients to accuse ML Manager of willfully making misrepresentations, or intentionally ignoring the governing documents. To the contrary, the position ML Manager is taking is exactly consistent with all of the prior Court rulings, the governing documents, and the confirmation of the Plan. ML Manager's position is also consistent with the Court's recent rulings rejecting the precise claims that you are now raising. Indeed, your letter is simply a rehash of the Motion for Reconsideration that the Court, sua sponte, rejected out of hand before ML Manager even had a chance to respond. In other words, ML Manager's position is supported by the Court's rulings during the bankruptcy case, the confirmation of the Plan, and the Court's express rejection of your arguments in the past few weeks. Your clients' baseless accusations of intentional misconduct on the part of ML Manager and its board is supported by nothing more than continued argument of counsel based on rhetoric, insults, and loose characterizations of unidentified documents. In this environment, it is disingenuous and borderline frivolous to accuse ML Manager and its Board of intentional misconduct or bad faith.

D. Conclusion

As stated above, if the current conduct were simply additional examples of unwarranted posturing from your clients, it could be deemed a nuisance or inconsequential. However, it has now gone way past that. In fact, your clients' actions are threatening the entire operation of the Plan of Reorganization, and more importantly, the recovery of money by the Investors who have already been deprived of hundreds of

millions of dollars. Some borrowers are now questioning the ability of ML Manager to enforce loan documents. Others are refusing to do anything while they wait to see how your clients' allegations are resolved. Title insurance companies are questioning whether they will insure title. Settlements are being delayed. Your actions have even threatened pending trustee's sales. You have asserted that Board members have personal liability apparently attempting to chill the Board member's fulfillment of their duties. You even copied your letter to counsel for the exit financier in a transparent attempt to deprive ML Manager from additional financing. Not only is all of this action reckless, it is inconceivable to the Board that your clients would be playing such a game of chicken where the consequence is the destruction of the ability of the Investors to recover their money. ***This must stop***.

Your clients are in breach of their obligations, are violating provisions of the Plan, pursuing baseless claims and accusations, and wrongfully interfering with ML Manager's rights, contracts and expectancies. Given the unfounded allegations in your letter, the fact that it has been copied to third parties, and the damage that is now escalating by the day, ML Manager is prepared to take the legal action necessary to protect its rights. Please let me know if you are authorized to accept service of process on your clients' behalf so we know where to serve the legal papers filed to address the recent activities.

Sincerely,

FENNEMORE CRAIG, P.C.

Keith L. Hendricks

KLH/lcs

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November 20, 2009

VIA E-MAIL AND U.S. MAIL

Keith Hendricks, Esq.
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Re: Mortgages Ltd.

Dear Keith:

We are unsurprised that your response is long on threats and short on substance. Bullying ahead is the obvious approach that the ML Manager board chairman and your firm has committed to taking in this matter. We think your position has about as much merit as your recent sanctions motion -- none.

The bottom line is that your client has been formally warned to cease from this conduct. If your client, apparently on your recommendation, refuses to cease from that conduct and -- equally important -- refuses to consider reasonable solutions to certain of these problems (like the foreclosure consent we discussed), that is certainly your choice. My clients reserve all of their rights and claims against everyone involved in this situation.

P.S. I am not authorized to accept service on unfiled litigation. I'll not ask you the same question for obvious reasons.

Sincerely,

Robert J. Miller
FOR THE FIRM

RJM:se

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