FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
Keith L. Hendricks (012750)
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012
Telephone: (602) 916-5343
Facsimile: (602) 916-5543
Email: creece@fclaw.com

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
MORTGAGES LTD.,	Case No. 2:08-bk-07465-RJH
Debtor.	**ML MANAGER'S REPLY TO THE RESPONSE TO ITS MOTION FOR ORDER CONCERNING REMOVAL OF WILLIAM HAWKINS FROM THE BOARD OF MANAGERS**
	Hearing Date: January 11, 2010 **Hearing Time: 3:00 p.m.**

ML Manager LLC ("ML Manager") hereby files its Reply in support of its Motion ("Motion")(Docket No. 2461) to the Response to Its Motion for Order Concerning Removal of William Hawkins From the Board of Managers ("Response")(Docket No. 2547), filed by 18 of the Rev Op Investors ("Rev Op Group") and Sternberg Enterprises Profit Sharing Plan ("Sternberg")(collectively, the "Objectors").[1]

In Reply to the arguments raised by the Objectors questioning the Motion, ML

[1] Curious that this Response is filed by the Rev Op Group and Mr. Sternberg as though they have standing to take a position and file the Response. They probably do not. None of them transferred their interests into a Loan LLC, they are not investors in any of the MP Funds for which ML Manager is the manager and they also seem to be taking the position that ML Manager is not their agent. There is a question then if they have standing to file this Response concerning a corporate governance act of ML Manager. It is also curious that Bryan Cave did not file this on behalf of Mr. Hawkins personally. Bryan Cave has made an appearance for his 7 entities along with the other 11 Rev Op Group members, but not him personally. If the Objectors have no standing then the Court should overrule and deny the Response accordingly.

Manager makes the following points.[2] Contrary to the allegations in the Response, ML Manager in the Motion sets forth the bases of fact and law to support the ML Manager Board's position.[3]

In sum and in a nutshell, the Operating Agreement allows the Board to exercise its State corporate governance mechanism to remove a manager. The Board asserts that there is a disqualifying conflict because Mr. Hawkins is acting for is own personal gain contrary to the duties he owes to investors as a Manager. Court approval is not required to remove him. However because Mr. Hawkins said he would not recognize such a Board action and would only recognize a Court order, ML Manager seeks a decision from the Court that State corporate governance applies and the Operating Agreement handles this type of action and so the Board can act as it deems appropriate without Court approval.

1. What should the Court's role be in this matter?

The Motion is stated in the alternative out of an abundance of caution. ML Manager is not asking for an advisory ruling of this Court. Mr. Hawkins has created the case and controversy by stating that he would not accept the ruling of the Board to remove him and that only the Court that appointed him could remove him. Mr. Hawkins asserts that only the Court can remove him thus setting up the controversy. The ML Manager Board believes that the Board can remove a manager as set forth in the Operating

---

[2] ML Manager does not waive any attorney-client privilege or other privileges by filing its Reply or other pleadings or by responding to them and reserves any all such arguments.

[3] The Response takes a unwarranted shot about the motives of the Motion and what they call the motion for sanctions. In its defense ML Manager did file a request for attorneys fees based on the agency agreement, state contract law, the legal theory that the plan is a contract and the federal malicious prosecution statute. The Court denied it on these theories but also said rule 9011 had not been complied with. However, ML Manager did not bring it as a rule 9011 motion and did not have time to comply with that rule to begin with due to the original emergency nature of the motion to clarify. Nevertheless, the Objectors in the Response bring it up now to try and taint this Motion. This is a red herring and this Court should ignore that argument. ML Manager in good faith filed a request for attorneys fees after the Motion to Clarify was denied in part and granted in part. It was not retaliatory but was an effort to try to recover for the investors the costs of what it thought was unnecessary litigation. The request was denied and that is that.

Agreement, however in an abundance of caution ML Manager asks either (1) that the Court act to remove Mr. Hawkins because the Court thinks that this ruling is required or (2) that the Court state that the Board can act as it deems appropriate under the Operating Agreement and State corporate governance law to remove a manager.

The Court does have jurisdiction to answer this question for ML Manager under the Plan. Article 9 of the Plan provides that the Court retains jurisdiction pursuant to and for the purposes of Sections 105(a) and 1127 of the Code and for the stated purposes in Article 9, which included but was not limited to, in Article 9(e) "to determine all controversies and disputes arising under, or in connection with, the Plan and all agreements or releases referred to in the Plan". Given Mr. Hawkins' position that he cannot be removed from the Board, there is clearly a controversy and dispute arising in connection with the implementation of the Plan.

The Plan at page 38 and the Disclosure Statement at pages 66 through 69 provide that "ML Manager LLC will be operated pursuant to its operating agreement." Exhibit "M" to the Disclosure Statement was the proposed form of the ML Manager LLC Operating Agreement and was the form that was finalized and executed by the Board and the members, including Mr. Hawkins. The fully executed Operating Agreement is attached to the Motion as Exhibit A. Article 2.1 expressly covers the grounds for removal of the initial Managers by the Board. Both provisions are the same in the form attached to the Disclosure Statement as Exhibit "M" and in the fully executed Exhibit A to the Motion.

The Confirmation Order, in paragraph G on page 6, expressly states that Mr. Hawkins was appointed and approved as an "initial" member of the Board of Managers.[4]

[4] At paragraphs 6 through 10 of the Response the Objectors assert that they selected Mr. Hawkins and that this is a second attempt by counsel to prevent Mr. Hawkins from serving on the Board. As the Court will remember, the Disclosure Statement did provide that the 35 Rev Op investors were asked to select 2 proposed board members—one for each board. But there was a time frame involved and they did not timely fulfill their

There is nothing in the Plan or Confirmation Order about removal of a manager by the Court in the subsequent years of operation of ML Manager because it is dealt with in Article 2.1 of the Operating Agreement. The Plan expressly stated that "ML Manager LLC will be operated pursuant to its operating agreement." Article 2.1(a)(2) of the Operating Agreement states that an initial manager may be removed by a majority vote of the Board. The operable provision provides:

> *The individuals listed on Exhibit B shall serve as Managers for so long as they are not deceased, incapacitated, 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 place of the Departing Manager without the consent of the Members.*

Consequently, ML Manager would be satisfied if the Court in ruling upon this Motion would rule that the Court involvement is not required and that ML Manager Board will operate and make its decisions pursuant to the Operating Agreement, including any decisions about removal of Mr. Hawkins, or any other initial member of the Board of Managers.[5]

---

procedure. As the Court can verify, the Rev Op Group filed their initial Objection to Plan Confirmation on May 5, 2009 at Docket No. 1649 and the filed a "Supplemental Plan Objection and Motion to Deem Rev Op Investors Selection of Board Members as Binding on the OIC" on May 11, 2009 at Docket No. 1691. The OIC filed its Brief and Reply to Objections on May 11, 2009 at Docket No. 1696. On page 7 of its Brief the OIC explained in detail what it did to interview and select the 2 board members from the Rev Op investors because they had not timely been proposed by the Rev Op investors themselves. The OIC selected Mr. Hawkins and Ms. Jan Sterling and announced this selection in the Brief filed on May 11, 2009 and attached their resumes to the Brief. At the hearing on May 19, 2009 the parties argued this issue to the Court and the Court upheld the OIC position. Transcript 5/19/09 at 60-74. The OIC had selected Mr. Hawkins and Ms. Jan Sterling, whereas the Rev Op Group wanted Mr. Hawkins and Mr. Louis Murphy. As the Court will remember and the Confirmation Order reflects Mr. Hawkins and Ms. Sterling were appointed and approved. Nonetheless even if they had "selected" Mr. Hawkins, the Operating Agreement provides that any of the initial managers can be removed by the Board.

[5] This may well be a matter of corporate governance where the Court need do nothing

2. Mr. Hawkins has a disqualifying conflict and should be removed.

Mr. Hawkins and his counsel continue to misunderstand and misstate the nature of the conflict. This disqualifying conflict is unique to Mr. Hawkins due to the facts and circumstances. Both the Response and the Declaration also make out the dispute to be a personal fight and they make it seem as though counsel for the ML Manager (that was counsel for the OIC) has been gunning to rob Mr. Hawkins of this position. This is not a personal fight by the Board or its counsel. The majority of the Board asked counsel to bring the Motion because they believe that Mr. Hawkins can no longer serve on the Board due to his disqualifying conflict.[6] He is not a victim here, but has put his own personal financial interests ahead of the interests of all of the investors other than his Rev Op Group, can no longer exercise his duty of loyalty and good faith and is no longer able to reasonably serve in that capacity. Unfortunately Mr. Hawkins and his counsel fail to recognize the direct conflict.

Stated in its most basic language, ML Manager (through its Board of Managers) is tasked with implementing the Plan and Confirmation Order, recovering the assets for the investors, and allocating the costs and expenses among the investors in a fair and equitable manner. Mr. Hawkins and the other Rev Op Group members (of which he is a majority in dollars invested), for their own personal gain and benefit, challenge the

---

more than defer to the reasonable business judgment of the Board. The resolution of disputes involving corporate governance is generally not within the competence and jurisdiction of a Bankruptcy Court even if the corporation is a debtor under Chapter 11 of the Bankruptcy Code. *In re mpX Technology, Inc., 310 B.R. 453 (Bankr.M.D.Fla. 2004)* citing *In re Bush Terminal Co., 78 F.2d 662 (2d Cir.1935); Saxon Industries, Inc., v. KNFW Partners, 488 A.2d 1298 (Sup. Crt. Del. 1985); In re The Lionel Corp., 30 B.R. 327 (Bankr. S.D.N.Y. 1983).*

[6] The Objectors assert in paragraph 11 and elsewhere in the Response that this is a "power grab" by the other Board members. How is this a power grab if the majority of the Board can already out vote Mr. Hawkins on issues? Removing him does not change the outcome of a vote but instead will allow them to choose another Board member who does not have these conflicts and who can fulfill his or her fiduciary responsibilities of the duty of loyalty and good faith without any self dealing.

implementation of the Plan and Confirmation Order, the authority of the ML Manager to act, and the allocation of any of the costs and expenses to Mr. Hawkins and the other Rev Op Group members. This is a direct conflict which goes to the heart of the tasks and job of ML Manager.

The normal conflict resolution mechanism is not enough in this situation. Mr. Hawkins has been asked to excuse himself from Board discussion and vote on occasion when a specific loan was being discussed or voted upon. He left under protest, as he admits in paragraph 17 of the Response. These types of limited conflicts relate to manageable conflicts of interest on a specific loan, which were anticipated in the Disclosure Statement and Operating Agreement of ML Manager. Such limited loan specific conflicts were and remain manageable pursuant to that formation document, applicable law, and the context of this case.

However, because of the larger more pervasive disqualifying conflicts which have arisen where he challenges the Plan, Confirmation Order, authority and allocation for his own personal gain, Mr. Hawkins has been asked to excuse himself from substantial portions of the meetings and a couple of times for the whole meeting because the issues upon which he is conflicted are so broad and pervasive. The Board has needed to be able to discuss the implementation of the Plan and the exit financing and the allocation of expenses and related issues, obtain advice of counsel and vote without his participation on these issues. In fact, the challenges raised by Mr. Hawkins and the Rev Op Group for their own personal gain *impact every single loan, not just a single loan.* Under protest he has excused himself from those meetings and discussions. As discussed below, the actions taken by Mr. Hawkins (and the Rev Op Group of which he holds a majority of the interests) to protect their own financial interests go to the heart of the implementation of the Plan and Confirmation Order and to the fundamentals of the allocation and distributions to the investors.

The Board of Managers, including Mr. Hawkins, has duties and responsibilities.[7] ML Manager was formed under the Plan to manage the portfolio of loans and to implement the Plan. ML Manager is the manager of the 9 MP Funds which have about 1400 members/investors and own about $545 million of notes. ML Manager is also the manager of the 48 Loan LLCs formed under the Plan into which the fractional interests of the MP Fund notes and the Mortgages Ltd. notes (about $167 million of face value) were transferred. Membership interests were issued to the MP Funds and Radical Bunny LLC. Post confirmation over 300 pass-through investors transferred their fractional interests into the Loan LLCs and became members of the Loan LLCs. On the Effective Date the subscription agreements, agency agreements, and other contracts were assigned to ML Manager so that ML Manager would replace Mortgages Ltd. and would serve as the Agent on behalf of the pass-through investors. About 200 pass-through investor accounts still exist and were not transferred into the Loan LLCs, and ML Manager asserts it is the Agent for those pass-through investors.

As the manager and agent ML Manager owes a duty of loyalty and good faith to the members in the Loan LLCs, the investor/members in the MP Funds, the pass-through investors who transferred into the Loan LLCs and are members, and the pass-through investors who are principals under the agency agreements. That duty would dictate the managers to act in a manner that does not favor or discriminate between investors and to

[7] Mr. Hawkins asserts that his seat is a "Rev Op seat" on the Board and implies that it has to be filled by a Rev Op investor. While the initial manager was selected by the OIC from the pool of Rev Op investors, there is nothing in the Plan or in the Operating Agreement that requires such a slot to always be preserved for subsequent years for a Rev Op investor. Similarly, there is not a requirement for the Radical Bunny seat either. The most important thing is that the Board member be capable, experienced, and able to make good business decisions free of conflicts. However, even if a Rev Op investor is required for that seat, there are about 17 other Rev Op investors not in the Rev Op Group from which to select. Also, the Operating Agreement in Article 2.1 is clear that the Board replaces the Departing Manager, not the Rev Op Group. Further, the Operating Agreement is clear that the Members (which are the MP Funds) can remove and replace the entire Board after the first anniversary and there is no requirement about how the Members of ML Manager must fill the seats.

not take positions that would let one investor pay all the costs and allow the other investor to not pay any of the costs. That duty would also dictate the managers to act on a uniform basis consistently for all owners of a note and, for example, not allow some to sue on the guaranty when others do not or to not let some take title at a trustee sale when others do not. To do otherwise might cause the managers to breach their duty of loyalty and good faith to the investors in the MP Funds or the pass-through investors who are members of the Loan LLC or the investors that are ML Manager's principals.

As the manager for and the agent for 100% of the ownership interests of the Notes, deeds of trust and properties, ML Manager is attempting to negotiate with borrowers for a restructure of the loans, foreclosing on the deeds of trust, suing on the guarantees, protecting the properties, remarketing and reselling the properties, allocating and assessing the expenses and costs on a fair and equitable and nondiscriminatory manner among the investors, and distributing the proceeds as required. It is also defending the lender liability claims and reviewing the claims and causes of action related to the notes and deeds of trust that can be pursued by ML Manager. To do all of this, ML Manager takes the legal position (as did Mortgages Ltd.) that the MP Funds agreements and the agency agreements with pass-through investors are enforceable and that ML Manager is authorized to do these acts on behalf of 100% of the owners of the notes and deeds of trust and properties and to allocate the costs among 100% of the owners. Under the mandate of the Plan and paragraph U of the Confirmation Order, ML Manager takes the legal position that all investors (whether in MP Funds or pass-through in Loan LLCs or pass-through who did not transfer) will be required to pay their "fair share". ML Manager will be required to allocate costs and expenses in a fair and equitable manner. To do otherwise might cause the managers to breach their duty of loyalty or good faith.

In conflict to that duty of loyalty and good faith to the investors in MP Funds and the pass-through investors in the Loan LLCs and to the other principals, Mr. Hawkins has

and is taking legal positions that are contrary to the best interest of the MP Fund investors, the Loan LLC investors and the other pass-through investors to whom he owes a duty. His positions and actions are contrary to ML Manager's actions and positions and interfere with its ability to act in the best interest of the investors.

Specifically, Mr. Hawkins has taken and continues to take the legal position in pleadings in the Motion to Clarify and the pending appeal that he and the other Rev Op Group members are not responsible for any of the costs of the exit financing. This position is contrary to the interests of the other investors in the Loan LLCs and the MP Funds to whom he owes a duty of loyalty. If he and the other Rev Op Group persist then ultimately they would not pay their "fair share" or any of the costs in a fair and equitable and nondiscriminatory manner and he and the other Rev Ops Group members will have shifted all the allocation to the other investors to their detriment. He and the others also challenge the authority of the ML Manager to act on their behalf in negotiating, foreclosing, suing on guarantees, on reselling, among other things. This would mean that he and the other Rev Op Group members could interfere with the ML Manager's negotiations and actions and seek the chance to negotiate or sue on their own behalf interfering with ML Manager's ability to best protect and represent the investors.

The conflict has actually materialized and is not theoretical. In addition to filing the Motion to Clarify which was filed on September 14, 2009, Mr. Hawkins has filed a motion to reconsider on October 30, 2009, and an appeal of that ruling on November 13, 2009. In the statement of issues on appeal, he appealed all of the rulings as errors and challenges the authority of ML Manager to act and the fair and equitable, nondiscriminatory allocation to him and the other Rev Op Group investors.

On November 17, 2009, Mr. Hawkins' counsel sent a letter to the ML Manager Board threatening to sue the Board if it represented to anyone, including borrowers, title companies, buyers, or other third parties that ML Manager had authority to act on their

behalf. A copy of that letter is attached hereto as Exhibit B and was attached to the Motion as Exhibit B as well. As noted on the cc at the bottom of the letter, Mr. Miller also sent a copy of that letter directly to the exit lender's counsel, Larry McCormley.

The ML Manager on November 19, 2009 filed a motion to sell the Arizona Commercial property which had previously been foreclosed upon. The potential buyer wanted a Court order because of the appeal filed by the Rev Op Group. Mr. Hawkins and the other Rev Op investor in that loan objected to the sale on December 11, 2009. In order to resolve the objection, ML Manager agreed to set aside the sale proceeds to be distributed that are disputed and agreed to litigate before the Court on the proper allocation of the proceeds. Mr. Hawkins and the other Rev Op investor in that loan take the position that no costs can be allocated to them and that will not pay their share of expenses, requiring the other investors to pay it all. While the sale to the third party will close, the ML Manager (on behalf of the MP Fund investors in that Loan LLC and the pass-through investors in that loan) on the one hand and Mr. Hawkins and the other Rev Op investor for their personal gain on the other hand will have to litigate over the proceeds. The sale order was entered on December 21, 2009.

On December 11, 2009, Mr. Hawkins had his counsel send a letter terminating the agency agreement for his entities in that loan. His ability to terminate is disputed by ML Manager. The letter of termination dated December 11, 2009 is attached as an exhibit to the Response to the Sale Motion and for convenience is attached hereto as Exhibit A.

Further, Mr. Hawkins also is now taking the legal position that he terminated the agency agreement prior to the filing of the bankruptcy in June of 2008 so that Mortgages Ltd. was not his agent as of the bankruptcy filing.[8]

[8] This may raise a question as to whether Mr. Hawkins should withdraw as a Board member for another reason. If ML Manager is not his agent and he personally makes all the decisions on his factional interests in loans, then his personal interests will always be in conflict with the other investors in the loans. Because he is in 39 or more loans of the 48 loans in Loan LLCs, this will be an issue and put him at odds with the other investors

Further, ML Manager has recently been informed by two of the City's title companies that they will not be insuring any trustee's sales because of the appeal and the pending agency issue with the Rev Op Group.

Mr. Hawkins has gone well beyond manageable conflicts and entered into the territory of disabling conflicts. Mr. Hawkins may as an individual investor take action and protect his interests, but here it is of such a magnitude and so pervasive and of such a consequence, that he should not be on the Board of Manager while he is taking those actions. By doing so he is acting against the best interest of the investors and taking personal actions for his own personal gain that if successful will negatively impact the investors. By doing so he is acting contrary to his duty of loyalty and good faith to the investors. Such actions constitute a disabling conflict of interest and allow Mr. Hawkins' removal from the Board. Once removed, he is free to use his time and resources to litigate against the Board and attempt to influence third parties favorable to his self-interest. But to do so with the current Board imprimatur is improper and disabling and interferes with the performance of his duties to the investors.

Mr. Hawkins has done, is currently doing, and undoubtedly will continue to do all of these actions and more if left on the Board. Plan and simple, these disabling conflicts of interest are the reason why the Board seeks to remove Mr. Hawkins.

Mr. Hawkins, in his capacity as a member of the Board of Managers, owes, as do the other members of the Board, a fiduciary duty to all those investors. See *In Re Consolidated Pioneer Mortgage Entities v. United States Trustee, 248 B.R. 368, (9th Cir. BAP 2000)* which states at page 6:

> *If, on the other hand, the plan creates a trust or a vehicle for the exclusive benefit of the creditors, then the trust has a fiduciary duty to those for whose benefit it was created. See Hollywell Corp. v. Smith, 503 U.S. 47, 5354, 221 S. Ct. 1021, 1025, 117 Led.2d 196, 204 (1992) (Trustee appointed pursuant to Chapter 11 plan to liquidate and distribute debtors property, which had*

---

to whom he has a duty of loyalty and care.

been transferred to a trust, was a fiduciary under the IRC and was required to file tax returns). As an entity created for the investors' benefit, PLC's fiduciary responsibilities included, implicitly, the accountability associated with its origins...

Here there can be no dispute that Mr. Hawkins owes a fiduciary duty to all of those represented by the Board of Managers. Mr. Hawkins personal interests as one such party may lead to manageable conflicts of interest as a member of the Board and he is certainly entitled to vote how he may with respect to any matter brought before the Board. To then actively work against the determination of the Board, clearly crosses the line, breaches his fiduciary duty, renders him unable to reasonably serve, and provides a basis for Board members to remove him under the Operating Agreement.

WHEREFORE, ML Manager LLC requests that the Court enter an order 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: January 11, 2010

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*
2272671

EXHIBIT A

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

December 11, 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"); Notice of Termination & Demand for Accounting

Dear Keith:

As you know, this firm represents Bear Tooth Mountain Holdings, LLP ("Bear Tooth"), Pueblo Sereno Mobile Home Park L.L.C. ("Pueblo"), and Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan (the "Morley Plan"), who each own undivided interests in notes at issue in ML's chapter 11 proceeding (collectively, the "Noteholders").

On October 26, 2009, you delivered to my office various contracts and other documents between ML and my entire client group, including the Noteholders. Your client, the ML Manager LLC (the "ML Manager"), contends it has "sole discretion" to make all decisions on behalf of my clients, including the Noteholders, relative to the ML notes. In the documents you had delivered to my office, you included agency agreements for Bear Tooth and the Morley Plan – not Pueblo Sereno.

The Noteholders' position continues to be that the ML Manager has no authority to make decisions on behalf of any of my clients, including the Noteholders. As you know, however, the ML Manager has a sale motion pending before the Court involving the 50th Street and Chandler property (the "Property"). The Noteholders have filed a response to the sale motion and a hearing is set for December 15, 2009. While we are hopeful a consensual resolution is possible to this situation, the ML Manager is hereby notified as follows:

The Noteholders hereby notify the ML Manager that, to the extent the ML Manager is assignee of any agency agreement binding on any of the Noteholders (which is disputed by the Noteholders), any and all such agreements are hereby terminated effective immediately. Without limiting the generality of the preceding sentence, the Bear Tooth and the Morley Plan agency agreements you provided to my office

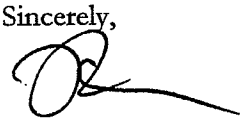
Bryan Cave LLP
One Renaissance Square
Two North Central Avenue
Suite 2200
Phoenix, AZ 85004-4406
Tel (602) 364-7000
Fax (602) 364-7070
www.bryancave.com

contain the following provision: "Beneficiary may terminate this Agreement after it becomes the owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein . . ." To the extent these agreements are binding on Bear Tooth or the Morley Plan, which is a disputed issue, this termination notice is also being delivered pursuant to the foregoing provision. *See* Agency Agreement, §3(b).

Notice is further given that the Noteholders hereby demand that the ML Manager provide them with an accounting for any and all fees, costs, and expenses that the ML Manager contends are due and payable pursuant to section 3(b) of the agency agreement. Notice is further given that, since you have confirmed in writing to me that the ML Manager believes it is entitled to withhold or offset amounts which otherwise would be due to the Noteholders from the sale of the Property under paragraph U of the confirmation order, the Noteholders hereby demand an accounting of all such withholdings or offsets claimed by the ML Manager.

Lastly, as you know, I have already asked you and your client to inform my clients how much money your client is seeking to charge them in connection with the closing of the sale of the Property. Obviously, a key purpose of this letter is to make a formal demand for an accounting. Pending receipt of this information, we do not think it makes sense to go forward with the hearing on Tuesday, so the Noteholders are formally requesting that the initial hearing on the motion be continued until three business days after the ML Manager provides the accountings as requested herein. Please advise.

Sincerely,



Robert J. Miller
FOR THE FIRM

RJM:se

EXHIBIT B

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

Bryan Cave LLP
One Renaissance Square
Two North Central Avenue
Suite 2200
Phoenix, AZ 85004-4406
Tel (602) 364-7000
Fax (602) 364-7070
www.bryancave.com

Chicago
Hamburg
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
London
Los Angeles
Milan
New York
Phoenix
San Francisco
Shanghai
St. Louis
Washington, DC

Bryan Cave International Trade
A TRADE CONSULTING SUBSIDIARY OF NON-LAWYER PROFESSIONALS
www.bryancavetrade.com
Bangkok
Jakarta
Kuala Lumpur
Manila
Shanghai
Singapore
Tokyo

Bryan Cave Strategies
A GOVERNMENT RELATIONS AND POLITICAL AFFAIRS SUBSIDIARY
www.bryancavestrategies.com
Washington, DC
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

---

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.