FENNEMORE CRAIG, P.C.
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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 OBJECTION TO THE REV-OP GROUP'S REQUEST FOR AN EMERGENCY HEARING ON ITS MOTION FOR ENTRY OF ORDER: (I) CONFIRMING WILLIAM HAWKINS REMAINS ON THE ML BOARD; (II) REQUIRING THE ML MANAGER TO: (1) RECTIFY ITS CORPORATE IRREGULARITIES; (2) PROVIDE AN ACCOUNTING; (3) ACKNOWLEDGE THE TRANSFERS OF NON TRANSFERRING INVESTORS' INTERESTS IN NOTES; AND (III) GRANT OTHER RELATED RELIEF**
	Hearing Date: Not Yet Set Hearing Time: Not Yet Set

The request by the Rev-Op Group's for an "Emergency" hearing should be denied. Simply stated, there is no emergency. Moreover, the Rev-Op Group's Motion is essentially seeking equitable relief in the form of injunctive relief, an accounting, specific performance, and a declaratory judgment all resolving state law corporate governance issues. Consideration of these state law matters on an "emergency" basis without opportunity for discovery and an evidentiary hearing is improper, unwarranted and

fundamentally unfair. Contrary to Mr. Hawkins' belief, this is not a dispute between Mr. Hawkins and Ms. Reece or Mr. Pollack. That viewpoint and personal belief by Mr. Hawkins is a disservice to the Board and to the 1700 investors in the MP Funds and other investors who have invested almost $900 million. The Board members made up of reasonable and experienced business people voted using their business judgment to remove him from the Board for valid and sustainable business reasons based upon Mr. Hawkins' recent conduct, actions and positions. Exercising their valid business judgment, the Board pursuant to the terms of the ML Manager LLC Operating Agreement and with careful and rational deliberation voted that Mr. Hawkins should be removed. As such, the Court should deny the Rev-Op Group's request to consider these matters on an expedited or emergency basis, and either deny the underlying motion outright, or set a briefing schedule for the procedural issues associated with the underlying motion (including whether these matters belong in state court and standing) and, at the very least, a discovery schedule and evidentiary hearing for the merits of the underlying motion.

I. THERE IS NO EMERGENCY

The only assertion in the Rev-Op Group's "Emergency" Motion that there is actually an "emergency" is the singular conclusory allegation:

> This Motion has been filed on an emergency basis primarily because a majority of the ML Manager board members has taken it upon themselves (once again) to try and remove William Hawkins from the board – this time without seeking a court order approving same.

(Emergency Motion at p., 2) The Rev-Op Group does not cite to any authority or standard that justifies the shortening of time required under the Rules for a response to a motion, or granting relief on an expedited basis. Moreover, on its face, the Rev-Op Group does not even attempt to explain why the removal of Mr. Hawkins creates an "emergency."[1] Mr.

[1] As the Court will recall, when ML Manager sought the Court's consideration of Mr. Hawkins service on the Board on an emergency basis, the Court denied ML Manager's motion presumably finding that no emergency existed and set the hearing on the

Hawkins is but one vote on the Board. There has been no showing made that Mr. Hawkins' participation on the Board will or will not change any issue in consideration. Indeed, Mr. Hawkins' position in the Motion is that he is in the minority or a solitary voice on the Board on the issues where he complains. On the other hand, the attached resolution that the Board adopted to remove Mr. Hawkins demonstrates significant and serious issues, including many recent issues that have just arisen, that demonstrate the harm created by Mr. Hawkins' presence on the Board. For example, the resolution demonstrates that the Board has determined that Mr. Hawkins is actively working against the very interests of the investors and the Board's actions through means that are demonstrably damaging the Company's business. In other words, there is no assertion in any form that an "emergency" exists when viewed from the Rev-Op Group's point of view. On the other hand, there are valid reasons why the Board determined in its business judgment that it must take action. Court review of the business judgment of the Board should not be lightly undertaken. Moreover, without a showing of an emergency, there is no basis or cause under Rule 9006(c) or (d) for reducing the time to respond to the Rev-Op Group's Motion.

II. THE NATURE OF THE RELIEF REQUESTED MAKES EMERGENCY RELIEF PARTICULARLY INAPPROPRIATE.

The Rev-Op Group is essentially asking this Court to enter injunctive and other equitable relief based on state law principals. Moreover, the Rev-Op Group is seeking this equitable relief without procedural safeguards such as an evidentiary hearing, bond or any other protection. The Plan of Reorganization adopted by this Court authorized the

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underlying motion for 6 weeks later. Significantly, ML Manager supported its Emergency Motion with the issues that it believed created an immediate and urgent need for Court resolution. The Rev-Op Group did not even attempt to assert the same sort of arguments here. ML Manager respectfully asserts that if the Court did not believe that an emergency existed based on the record presented by ML Manager where specific arguments as to the exigency of the situation were addressed, there clearly is not a sufficient record to find an emergency here when the Rev-Op Group has not even attempted to demonstrate that an emergency exists.

creation and operation of ML Manager LLC. This entity, however, was organized and operates under state law, not federal law or the bankruptcy code or rules. The efficacy of the Board's actions in terms of corporate governance, and the procedural legitimacy of the Board's actions are subject to state law. There is no special nexus to this Court's Order confirming the Plan of Reorganization that controls the issue of whether the Board's actions exceed or fail to meet its legal authority. Those corporate governance issues are state law issues.

The Rev-Op Group is asking that the Court, without an evidentiary hearing or a monetary bond, overturn a decision by the Board. This is essentially asking for injunctive relief. Moreover, the Rev-Op Group is asking the Court to order the equitable relief of an accounting, specific performance, and a declaratory judgment as to proper corporate governance matters even though no adversary action has been filed, and they have not even sought an evidentiary hearing as a contested matter. The propriety of the relief sought in the underlying motion will be more fully addressed in the ML Manager's response to the underlying motion, however, the type of relief sought is also germane to the issue of whether the Court should shorten deadlines for response times, and consider relief on an emergency basis. ML Manager disputes the underlying relief sought and attached hereto is the Keith Hendricks's response to Robert Miller's letter of February 9, 2010 addressing item by item each point raised by Mr. Miller.

The Rev-Op Group is improperly seeking equitable relief through an emergency motion practice. The request that the Court overturn the decision of the Board is akin to the issuance of an injunction. *See In re Smith*, 142 B.R. 348, 348-50 (Bankr. W.D. Mo. 1992) (where the debtor filed a motion directing a college to release credit hours, the court held that the debtor was essentially seeking injunctive relief which "must be filed as an adversary action and comply with the requirements of Part VII of the Bankruptcy Rules"); *In re Geotel, Inc.*, 145 B.R. 763, 764 & 766 (Bankr. E.D.N.Y. 1992) (where the trustee

filed a motion "seeking a court order to compel [the insurance carrier] 'to provide benefits and indemnification to the Debtor's employees[,]'" the court held that the trustee was essentially seeking "a mandatory injunction to compel the payment of ... claims" which must be brought pursuant to an adversary proceeding under Bankruptcy Rule 7001(7)). The Code is clear. Bankruptcy Rule 7001(7), provides that an adversary proceeding must be brought with regard to "a proceeding to obtain an injunction ***or other equitable relief***, except when a ... chapter 11 ... plan provides for the relief." Fed. R. Bankr. P. 7001(7) (emphasis added). The Motion does not provide a statutory predicate for the relief sought therein; therefore, it is assumed that the Rev-Op Group is moving under Section 105(a) of the Bankruptcy Code, which allows the Court to provide for equitable relief. However, Section 105(a) does not allow the parties to simply ignore Rule 7001.

According to *Collier*, actions for "accounting" and "specific performance" are actions for equitable relief. *See* 10 *Collier on Bankruptcy* 7001.08 (15th ed. rev. 2005) ("'Other equitable relief' as used in Rule 7001(7) should include relief other than injunctions, traditionally granted only by courts of equity[,]" such as accountings and specific performance.). *See also In re Stacy*, 99 B.R. 142, 146-48 (D. Mass. 1989) (finding that an action for specific performance is an equitable proceeding which must be brought under Bankruptcy Rule 7001(7)); *In re Mitchell*, 44 B.R. 485, 491 (Bankr. N.D. Ala. 1984) ("Bankruptcy Rule 7001 also provides that a proceeding in a bankruptcy court 'to obtain ... other equitable relief is an adversary proceeding.' A proceeding to obtain an accounting is generally an equitable proceeding."). The Motion clearly seeks an accounting and also implicates the remedies of injunctive relief and specific performance (e.g. requiring the ML Manager to provide minutes, budget, and reinstitute Hawkins as a board member). The fact that the Rev-Op Group should proceed in Bankruptcy Court, if at all, through an adversary proceeding, is sufficient justification, by itself, to deny the Emergency Motion seeking to shorten the time for consideration of the underlying

Motion.

Even if the issues from the underlying Motion were considered as part of a motion practice as opposed to an adversary proceeding, ML Manager would still be entitled to an evidentiary hearing under Local Bankruptcy Rule 9014-2(b). This again demonstrates why this matter should not be considered on an emergency basis. At a minimum ML Manager should be given sufficient time to provide counter Declarations by the Board members, such as Scott Summer, an Executive Vice President of National Bank of Arizona, and David Fieler, a successful business person who owns Louis XV Jewelers, and the Consultant for the Company, Mark Winkleman, the former Arizona State Land Commissioner, among others.

In addition, there is a legal question of standing. The underlying Motion, and this Emergency Motion challenging the decisions and practices of ML Manager were brought by the so-called Rev-Op Group, not by Mr. Hawkins. Signficiatnly, the Rev-Op Group are not members of the ML Manager LLC or any of the Loan LLCs or the MP Fund limited liability companies. They opted not to become members of any Loan LLC. They then at best are principals of an agent with a power of attorney coupled with an interest that has significant sole discretion. ML Manager LLC is an entity that serves in a legal capacity but the Rev-Op Group has no legal right to make demands or control the entity itself. The Rev-Op Group also claims that ML Manager is not their agent because they have allegedly terminated their agency agreements or deny that they ever were bound by an agency agreement. In short, even if this matter is not dismissed because of the predominance of state law questions, the procedural safeguards of an adversary proceeding or contested matter cannot be ignored by an unsupported, conclusory statement that an emergency exists.

III. CONCLUSION

The Rev-Op Group has not even attempted to establish that an emergency exists,

and one does not. Because the Rev-Op Group is asserting state law challenges to corporate governance issues seeking extraordinary relief, including injunctive, accounting, specific performance, and declaratory relief, the motion to shorten time and consider these issues on an emergency basis should be denied.

DATED: February 23, 2010

FENNEMORE CRAIG, P.C.

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

COPY of the foregoing emailed to the following parties:

Robert J. Miller
Bryce A. Suzuki
BRYAN CAVE LLP
Two North Central Ave., Suite 2200
Phoenix, Arizona 85004
rjmiller@bryancave.com
bryce.suzuki@bryancave.com

/s/ Keith L. Hendricks

EXHIBIT

A

RESOLUTION OF THE BOARD OF MANAGERS OF
ML MANAGER LLC

At a duly called meeting of the Board of Managers of ML Manager LLC ("Company") held on February 17, 2010, three of the Managers signing below, constituting a majority of the Managers, with Manager Bruce Buckley dissenting and with Manager William Hawkins recused from the decision, and after substantial and careful discussion and deliberation and after consulting with counsel, adopted the following Resolution:

Whereas, Mr. Hawkins continues to contact and talk with borrowers or their counsel on various matters concerning the loans of borrowers despite the agreement of the Managers that no Manager will engage in such conduct because it interferes with the normal negotiations and dealings of the Company and its professionals with borrowers or their counsel;

Whereas, Mr. Hawkins' email of January 25, 2010 concerning the requested transfers of Mr. Murphy's interests which was being handled by the staff of the Company, which told the other Rev Op Group members to bury the staff with requests was inappropriate conduct for a Board member and caused consternation and disruption with the staff and reflected his inability to separate his personal interests from the interests of the Company;

Whereas, in one of the discussions of settlement terms on the MK Custom loans, Mr. Hawkins during the Board meeting threatened to sue the other Board members if they did not approve the settlement that he wanted which was advantageous to him on the second position lien at the expense of the investors in the first position lien;

Whereas, the issues regarding the conflicts and conduct of Mr. Hawkins have dominated the business of the Board and require the Board to have additional deliberations and votes without Mr. Hawkins and otherwise interfere with and disrupt the Board's ability to conduct its normal business in an efficient manner and cause substantial dysfunction;

Whereas, Mr. Hawkins, for himself and/or for entities that he controls has filed, caused to be filed, or allowed to be filed on his behalf, several pleadings that have taken legal positions in public pleadings and copied third parties on correspondence which are fundamentally contrary to positions taken by the Company for the investors the Company represents and which are a fundamental act of disloyalty to the purposes for the formation of the Company and to its objectives, and which are detrimental to the other investors, including but not limited to, (1) having his counsel send a letter to the counsel for the Board threatening to sue the Board Managers for claiming the Company had authority to act on behalf of his entities as their agent while approving or acquiescing in the Board meetings to trustee sales and other collection actions and sending a copy of such letter to the Exit Financer; (2) filing a pleading on behalf of one of his entities in the MK Custom bankruptcy case opposing the stay relief motion filed by the Company on behalf of the investors and challenging the authority of the Company to act on his behalf even though as a Board member he did not object to the trustee sale pursued on the property; (3) notwithstanding that he voted in the Board meeting in favor of the sale and authorized Mark Winkleman to sign the purchase agreement, filing a pleading opposing the sale of the AZCL property, challenging the authority of the Company to sell his interest and disputing and delaying the distribution of the sale proceeds to all investors until his fair share of the costs and expenses to be deducted or charged back from his distribution was determined; and (4) filing the Motion to Clarify, the Motion to Reconsider and the appeal of the Court's decisions;

Whereas, Mr. Hawkins on behalf of his seven entities along with the other 11 Rev Op Group investors has filed an appeal from the Court's orders concerning the Motion to Clarify and

such appeal increases the costs, expenses and fees of the Company, and causes delays and concerns to title companies in issuing title insurance and trustee sale guarantee reports, and continues to be used by borrowers as an excuse to delay collections, foreclosures and proceedings, and delays closings of potential sales, all to the continued detriment of the investors for which the Company is responsible;

Whereas, because Mr. Hawkins holds an ownership interests in 33 of the 48 borrower loans managed by ML Manager on behalf of the Loan LLCs and other non-transferring pass-through investors, and because Mr. Hawkins has protested paying a fair share of the costs and expenses as required by the Confirmation Order, and because he has proven a lack of ability to act in a manner independent from his personal interest, the Board feels it will need to excuse him from the decisions on the 39 loans;

Whereas, Mr. Hawkins continues to share confidences, deliberations and discussions of the Board with counsel for the Rev Op Group (18 Rev Op investors of which Mr. Hawkins' entities make up 7 such investors) as reflected at a minimum in the February 9, 2010 letter from the Rev Op Group counsel (that was copied to the US Trustee and other investors counsel), notwithstanding the agreement of the Managers to maintain the confidential information of the Company; and

Whereas, based on all of the preceding events and conduct, the Managers have decided that Mr. Hawkins has demonstrated to the Board that he is not able to and has failed to reasonably serve in the position of a Manager of the Company as determined by the Managers;

Resolved that, pursuant to the authority granted to the Managers under Section 2.1(a) of the Operating Agreement of ML Manager LLC, William Hawkins be removed as a Manager of the Company effective immediately and that his position as a Manager be vacated immediately and a new Manager be selected to serve.

Elliott Pollack

Scott Summers

David Fieler

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Whereas, based on all of the preceding events and conduct, the Managers have decided that Mr. Hawkins has demonstrated to the Board that he is not able to and has failed to reasonably serve in the position of a Manager of the Company as determined by the Managers;

Resolved that, pursuant to the authority granted to the Managers under Section 2.1(a) of the Operating Agreement of ML Manager LLC, William Hawkins be removed as a Manager of the Company effective immediately and that his position as a Manager be vacated immediately and a new Manager be selected to serve.

Elliott Pollack

Scott Summers

David Fieler

WHEN RECORDED, RETURN TO:

FENNEMORE CRAIG, P.C.
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attention: J. Christopher Gooch

QUITCLAIM DEED AND RELEASE OF MORTGAGE

EXEMPT FROM THE REQUIREMENT FOR AN AFFIDAVIT OF PROPERTY VALUE PURSUANT TO A.R.S. § 11-1134(A)(4).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, David L. Ellis ("Grantor"), hereby quitclaim unto Philippe Forcioli ("Grantee"), all of Grantor's right, title and interest, if any, in and to the that certain real property located in Maricopa County, Arizona, and more particularly described on **Exhibit A** attached hereto and incorporated herein, including, but not limited to, any interest arising under that certain Mortgage recorded on April 22, 2009 as Instrument No. 2009-0353388 in the official records of Maricopa County, Arizona, which Mortgage is hereby terminated and released.

DATED this _____ day of _____, 20___.

GRANTOR:

DAVID L. ELLIS

_____
David L. Ellis

[ACKNOWLEDGMENTS FOLLOW]

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by DAVID L. ELLIS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and State aforesaid, the day and year first above written.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT "A"

Legal Description

Apartment Unit B, Building II, Royale Gardens, according to Declaration of Horizontal Property Regime recorded October 11, 1963 in Docket 4762, pages 319 to 404, inclusive, including the corresponding patio area and Amended in Docket 6826, page 72 and plat recorded in book 12 of Maps, page 8, records of Maricopa County, Arizona.

Together with an undivided 1/44th interest in and to all the real property covered by said regime as above described; and

Together with an undivided 1/44th interest in and to the general common elements as set forth in said Declaration and as designated on said Plat.

Also known as follows:

A parcel of land situated in the Northwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian;

BEGINNING at a point lying South 692.73 feet and East 375.00 feet of the Northwest corner of the aforesaid Section 23;

Thence South 590.00 feet;

Thence North 89 degrees 59 minutes 50 seconds East 270.00 feet;

Thence 45 degrees 00 minutes 00 seconds East 14.14 feet;

Thence North 590.00 feet;

Thence West 290.00 feet, which line is South right-of-way line of Rancho Vista Drive to the True Point of Beginning.

EXHIBIT B

FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5000

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February 22, 2010

Robert J. Miller
Bryan Cave LLP
Two N. Central Avenue, Suite 2200
Phoenix, AZ 85004-4406

Re: ML Manager LLC

Dear Bob:

We have received your letter of February 9, 2010, and provide this response to the many points that you raise. Your letter contains many misstatements and misinformation which we will try and address in this letter. Contrary to your allegations and warnings of breach of duty and care, the four Board members who you address are acting to fulfill their duties to all investors as provided under the Plan, the operative documents, and the law exercising their reasonable business judgment with loyalty, care, and prudence.

The Board meets almost weekly for 4 to 5 hours, or on occasion holds a subcommittee meeting in its place. Mr. Winkleman, the former State Land Commissioner, was hired as a real estate consultant and chief operating officer. He in turn works with 5 or 6 employees of ML Servicing Co. to carry out the day-to-day operations and perform a lot of the work. Mr. Winkleman also works with various professionals, including five different law firms, two forensic accounting firms, the tax accounting firm, the escrow and servicing company, the title companies and multiple brokers and listing agents, among others. The Board, through Mr. Winkleman, the employees, and professionals, is working on a large number of tasks and projects and is diligently pursuing the tasks needed to conduct the business of ML Manager for the investors. ML Manager is working diligently and is making good progress given that they have only been in control about eight months.

Allocations

As for the specific allocations you have requested, there are two different allocations in the works. When completed, both will be made available to all investors. ML Manager intends that such information will be available and provided to investors when the careful and appropriate analyses and processes are complete.

One allocation will be among the liquidating trust and the Investors allocating the exit financing, operating expenses, and other expenses between the liquidating trust on the one hand and the investors on the other. There are still two major professional fee applications that have not been finalized. The FTI fee application of $2.4 million and the Greenberg fee application of over $600,000 may not be finalized until end of March. There are records for determining the allocations of exit financing, operating costs, and professionals' fees between them. Initially the staff will review the compiled information and assist in the processing of the information. Some discussions have taken place with the liquidating trust. It is anticipated that both sides will start negotiating the allocation in the upcoming months after the numbers for the approved fee applications have been finalized, the breakdown of information is completed, and the staff have reviewed it. While I understand that you would like to have the allocation within 30-days of the letter, it will not be completed by that date.

The other allocation is an allocation of the ML Manager costs and expenses between the Loan LLCs and the non-transferring investors. The Board decided that initially is should be done at a subcommittee level because of its complexity. Counsel and an accounting firm have been asked to work with the subcommittee on the general principals first, then collect the data needed and then apply it using an excel spread sheet. Over 50-hours has been spent on this very complex and complicated allocation. The subcommittee will present its recommendation to the Board when they have finished their work. The Board will then no doubt discuss and review the issues raised by the allocation at several meetings before it is finalized. This allocation is an important project that impacts all investors and should not be rushed by an arbitrary deadline. While you would like to have the allocation proposal within 30-days of the letter, it is more important for ML Manager to get it right. As the Court noted before in its October 21, 2009 order, the timing is within the reasonable business judgment of the Board. Once the Board has finalized the allocations then the information will be made available to investors in detail. Investors will be allowed to review the breakdowns and justifications for the allocations. There has never been a suggestion that such detailed

information will not be available to investors. In fact, it is anticipated that with each distribution to investors there will be a breakdown and explanation as the allocation numbers may change over time and need to be adjusted from time to time. While you would like to have the allocation within 30-days of the letter, it will not be completed by that date.

As for your clients' willingness to pay their "fair share," this statement is rather disingenuous as they apparently cannot come to a consensus, even among themselves, as to what constitutes their "fair share." It is my understanding that at the meeting on October 5, 2009, you and your clients that were present had no consensus on what was acceptable for inclusion in the fair share. You were to discuss it with your clients and come back with a proposal as to what items might be acceptable to include in the total amount to be allocated. We have heard nothing from you. The discussions we have had over the last few months with Sheldon Sternberg, Bob Furst, Cary Forrester and others demonstrate that there is no uniform view on what is the "fair share." Some seem to think they might pay interest through a certain date on the exit financing only but no principal or fees, others refuse to pay any of the bankruptcy professional fees, others refuse to pay any of the future operating costs or any of the $7.5 million disposition fee, among other things. It is the not the dollar amounts for existing costs or expenses that will be a problem, rather it is the decision on what is included in the numerator and denominator, what amounts are included in the total costs, the valuation of the properties and loans, and the reserves needed for the bad loans. We think at this point the best way to proceed is for the subcommittee to finish its careful study of the issues, come up with a recommendation and present it to the Board for refinement and a decision. Then they will discuss it with the liquidating trust board, not because they have to but the trust board has requested such a dialogue. Once there is a consensus at that point, it will be presented to the investors. Using a few of the specific deals, such as AZCL, will help to reduce the theory to concrete numbers.

Corporate Governance Issues

On the corporate governance issues, as a matter of law you are mistaken about most of the issues you raise. Contrary to your statements, none of these are a deficiency or irregularity and your accusations are not accurate and are mistaken. Further, while I do not want to be argumentative, none of your clients are members of the ML Manager or the Loan LLCs and so, therefore, have no right to address these corporate governance issues of the limited liability companies. The relationship between ML Manager and

your clients is defined in an agency agreement which has a power of attorney coupled with an interest. Just because an entity like Arizona Bank & Trust is an agent, does not mean that the principal has the right to ask for the agent's board minutes or agendas or make demands on other corporate governance issues.

As for the minutes, Mr. Winkleman has been charged by the Board with writing the minutes and keeping the records. Mr. Winkleman is keeping sufficient records of all meetings and actions so that his notes can be converted into formal written minutes, which he is in the process of having typed. The Board will review and approve them in due course. Mr. Winkleman has always intended to convert his notes into minutes and will do so within a reasonable period of time. He has never refused to do so or stated that he would not be doing so.

As for agendas, there are usually agendas for the meetings, although there is no requirement in the documents or the law for formal written agendas. From time to time the written agendas are lengthy with as many as 10 items and others have fewer items. As anticipated, since items do not need to be repeated at each meeting as they are decided and as loans are resolved, it is anticipated that future agendas may be short. Some times when there are complex issues to discuss, and the whole meeting has been dedicated to just one issue.

As for the 2010 budget, Mr. Winkleman and the accounting staff have been working on a joint budget for 2010 with the liquidating trust. The Board has not ignored the issue but is pursuing it with the liquidating trustee and the accounting staff in a reasonable fashion. Once the budget is complete the Board intends to send it out to all the investors.

Allegation of Secrecy and Lack of Transparency

As for the allegation of "secrecy and lack of transparency," that is not accurate. It is reasonable and prudent for Mr. Winkleman and the Board to protect the confidences of the entities. A lot of the financial information is sensitive and must be used appropriately. There are over 60 loans and borrowers and even more guarantors. As you know, ML Manager has been negotiating with borrowers and guarantors, and with the bankruptcy professionals with regard to their fee applications, and with third parties interested in buying assets. Board members are required to use discretion about what is said and to whom and should expect the other members of the Board to do the same.

Surely you are not suggesting that ML Manager inform the world, including all of the parties with whom it is negotiating, every detail about and every nuance about the business and the assets when such disclosures could be harmful to the negotiations and to the best interest of the investors. There are several examples where someone divulged financial information to the detriment of negotiations with borrowers and with professionals on their fees. For example, someone released the amount of the appraisal on the MK Custom house to the borrower and his attorney, who then used this information in negotiations against the Board. Further someone released the details about what the Board might be willing to do on terms of the proposals to the borrower and his counsel and the proposal was made by the borrower but changed within 24-hours of being told indiscreetly what the Board would do. While you have labeled the Board's decision and desire for confidentiality as "secrecy" and "lack of transparency," I would label it a wise, reasonable, and prudent stewardship of information to protect the business and the best interest of the investors.

There will be a time for periodic accounting and it will be presented to all the investors in a rational and reasonable manner and timeframe. As for an accounting within 30-days of the letter, ML Manager, as an agent with the power of attorney coupled with an interest, will make such an accounting periodically as it deems necessary and appropriate in its business judgment. ML Manager is not refusing to provide an accounting but rather in its discretion will do so when it is reasonable and prudent to do so, rather than on an arbitrary demand of you or your client.

As for the Exit Financing, the Board has already seen and reviewed the uses of the Exit Financing moneys and intends to include in the next newsletter to all investors the breakdown of the uses of the Exit Financing. Similarly, the liquidating trustee has included some of that information in his Post Confirmation Report on file with the Court and in his newsletters to the creditors and investors.

Transfers of Interests

As for the transfer issue, the staff is merely following the express terms of the subscription agreement signed by your clients. For example, the subscription agreements your clients signed all provide that they understood and agreed that the interests were "subject to substantial restrictions on transfer" and that they agreed that:

> the undersigned will not sell or otherwise transfer or dispose of any Participations or any portion thereof unless such Participations are registered under the Securities Act and any applicable state securities laws or the undersigned obtains an opinion of counsel that it is satisfactory to Mortgages Ltd., and MLS that such Participations may be sold in reliance on an exemption from such registration requirements.

(Subscription Agreement at paragraphs 2(l) and (m).

The requirement of the opinion letter is being uniformly enforced among all investors, whether in the Loan LLCs, MP Funds or the pass-throughs. It is to protect against securities law violations. Plus you can hardly expect the agent to put itself in a position that the agency agreement does not apply to the new transferee. To the extent the agency agreement is valid and binding then the agent is entitled to have the transferee also be bound by it. This is a reasonable and rational position that might be worked out by some additional language. Let us know if you are willing to discuss it.

Additional Issues

There is an issue that I need to address, which is that Bill Hawkins was the "Rev-Op Group's designee" on the ML Manager Board. That is factually incorrect. The "Rev-Op Group" of 18 investors that you represent was never contemplated to have a "designee" of their own on the Board. You represent a minority of all Rev-Op investors. It is true that at one time it was contemplated, as part of a proposed settlement, that all Rev-Op investors be allowed to select an initial member on the Board. However, as you know, many of the Rev-Op investors, including your clients, objected to the Plan and rejected the proposed settlement. Moreover, the Rev-Op investors did not comply with the requirement to timely nominate their choices. As such, the Official Investors Committee chose all of the Board members and the Court approved the OIC's choices as a part of the confirmation process. Although the OIC ultimately chose Mr. Hawkins to serve on the Board, it did so because Mr. Hawkins participated in the selection process instituted by the OIC, and particularly because Mr. Hawkins represented that he could and would represent the interest of all investors on the Board, and not just the interests of your clients. The bottom line is that your small Rev-Op Group does not have a "designee" on the Board, and Mr. Hawkins was chosen by the OIC.

You make many allegations and assertions about "fiduciary duties" to your client and whether your clients have terminated their agreements. As we have discussed on several occasions and in pleadings, the agreements have a power of attorney coupled with an interest and are irrevocable. We have addressed these many times and do not agree with your statements and characterizations. I will not address these issues again in this letter.

With regard to the termination, you are citing from provisions of the Master Agency Agreement. As we have discussed before, all of your clients executed Subscription Agreements or Rev-Op Agreements that expressly incorporated a new version of the Agency Agreement. The Agency Agreement that controls expressly provides that all prior agency agreements are null and void and that the Agency Agreement incorporated into the Subscription Agreements and Rev-Op Agreements supersedes and controls. More to the point, the right to terminate upon a trustee sale does not exist in the Agency Agreement that controls. Significantly, the Agency Agreement that controls provides in paragraph 1 (d) that the agent can sell the investor's interest if the investor owns less than 100% interest in the Loan. And Paragraph 3(b) provides that after a trustee sale, the agent can take such actions "as Agent deems appropriate in its sole discretion." The ability to terminate the Agency Agreement is limited to the situation "after [the investor] becomes the sole owner of the Trust Property." This language was fully litigated before Judge Haines in the University and Ash hearing. After this litigation, Judge Haines expressly found that this ability to manage the entire loan and the trust property was necessary for the protection of all the investors.

Please let me know if you have any questions.

Sincerely,

FENNEMORE CRAIG, P.C.

Keith L. Hendricks

KLH/lcs