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

9 In re
10 MORTGAGES LTD.,
11 Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

**REPLY IN SUPPORT OF MOTION TO
APPROVE SETTLEMENTS WITH GRACE
ENTITIES**

**Hearing Date: May 27, 2010
Hearing Time: 10:00 a.m.**

14 ML Manager LLC (“ML Manager”), as manager for six Loan LLCs and as agent
15 for the non-transferring pass-through investors who are fractional note and deed of trust
16 holders in the six Grace Entity loans, hereby files its Reply in support of its Motion To
17 Approve Settlement with Grace Entities and requests that the Court enter an order
18 approving the settlements and authorizing ML Manager, subject to resolution of all
19 conditions precedent to the settlement, to enter into and implement the settlements with
20 the Grace Entities borrowers as presented in the Settlement Agreements which are
21 attached to the Motion as Exhibit “A”.

22 No objections have been filed by members of the six Loan LLCs involved, and of
23 the 51 pass through investors who did not contribute their interest into the Loan LLCs, the
24 only objection was filed by the Rev Op Group (as they have been called in these
25 proceedings), which for purposes of this Motion are 15 Rev Op Investors. The Rev-Op
26 Group raise several issues and this Reply will address each.

1 **I. THIS MOTION IS NOT PREMATURE.**

2 This Motion is the culmination of over ten months of negotiations with the Grace
3 Entities after the confirmation of the Plan and over a year of litigation with the Grace
4 Entities before and during the bankruptcy. ML Manager is proceeding in a rational
5 manner through the process set forth in the Paragraph V of the Order Confirming the Plan.
6 That provision required the Grace Entities and ML Manager to go to mediation and
7 arbitration to settle or resolve the issues, including the lender liability claims, the
8 foreclosures and suits on the guaranties, among others.

9 As the Court will recall, the dispute with the Grace Entities has been significant
10 and time consuming. Indeed, it was even the precipitating event leading to the
11 bankruptcy. There was litigation with the Grace Entities prior to bankruptcy, and it was
12 two of the Grace Entities that were the petitioning creditors in the involuntary bankruptcy.
13 Much of the litigation in the bankruptcy, such as the motion to appoint a trustee, involved
14 the Grace Entities. Moreover, the Grace Entities claimed in their objections to the
15 confirmation of the Plan that they were the largest remaining unsecured creditor as a result
16 of their collective proofs of claims. The Grace Entities filed numerous objections to the
17 confirmation of the Plan and other motions with regard to the standing of other parties
18 such as Radical Bunny and the Rev-Op Investors. As a result, of all of this litigation and
19 the Grace Entities' claims, an agreement was reached between the Plan Proponent and the
20 Grace Entities whereby they would withdraw their objections to the Plan in exchange for
21 the adoption of a binding dispute resolution procedure. The Procedure was set forth in
22 Paragraph V to the Confirmation Order entered May 20, 2009. The procedure, which was
23 made binding and enforceable, required mediation and, if unsuccessful, binding
24 arbitration of the Grace Entities' claims.

25 During mediation and with the assistance of Gary Birnbaum, a seasoned mediator,
26

1 the parties reached a settlement of each of the loans.¹ The settlements have several
2 Conditions Precedent that have to be met before the settlements can become final. Failure
3 to satisfy any of the Conditions Precedent will prevent the settlements from becoming
4 final. The outside deadline to satisfy the Conditions Precedent is July 31, 2010.

5 The parties are hopeful and will attempt to satisfy them sooner rather than later.
6 The July 31, 2010 outside deadline was a negotiated date and was driven by Grace
7 Entities' other financial obligations, by the parties desire to end the attorneys fees and
8 costs being incurred, and their desire to move forward on foreclosing on the properties.
9 Two of the properties are incomplete construction projects and are exposed to the
10 elements and continue to require security, insurance and protection. They have stood
11 untouched during much of the last two years and so part of the sense of urgency is driven
12 by the nature and condition of the properties. In order to help manage this process ML
13 Manager started the deed of trust sales on these properties but cannot complete them until
14 the settlements are final and consummated. Several of the trustee sales are scheduled for
15 June.

16 The Conditions Precedent do not need to be met in any specific order and each
17 requires a certain period of time to accomplish. The parties are working on satisfying all
18 the Conditions Precedent on a parallel track so they can be accomplished by the deadline.
19 One of the Conditions Precedent is Court Approval. If the Court does not approve the
20 settlements then it will not be necessary to proceed in attempting to satisfy the other
21 Conditions Precedent. Frankly, the timing of the hearing and Court approval was driven
22 by the Court's schedule and absence from the bench during the month of June. ML
23 Manager did not think it was wise to wait to have the Court hearing until sometime in
24 July. There is nothing nefarious or untoward in seeking Court approval at this time. ML

25 _____
26 ¹ The terms of the settlement were approved by the ML Manager Board during the time
that Mr. Hawkins, one of the current Rev-Op Group, was a member.

1 Manager is not seeking an “advisory ruling” from the Court. Approval by the Court of
2 this Motion is one of the conditions that must be satisfied. As such, it is a necessary step.
3 On the other hand, even if Court approval is obtained at the May 27 hearing, the other
4 Conditions Precedent have to be satisfied.

5 The other Conditions Precedent include obtaining the approval of the Exit Lender.
6 This is in process and is not expected to be time consuming but naturally the Exit Lender
7 will need to go through its own process. This process is different from the sales process
8 where it can determine if it wants to exercise its right to compete in the purchase of the
9 asset. This process requires the review of the collateral and guaranties because their
10 underlying collateral is being impacted. While ML Manager has no reason to believe
11 approval will not be given, it can understand the time involved and the thoughtful process
12 the Exit Lender has to go through.

13 Another is the satisfaction of the ML Manager with the financial condition of the
14 guarantors. Financial statements and tax returns have been provided to ML Manager who
15 is going through the review process of that information and is working with its accountant
16 on that review. ML Manager has also set up debtors exams of the guarantors so they can
17 be asked questions under oath as a part of the process. It will take the next few weeks to
18 complete this process to allow ML Manager to satisfy itself about the financial condition
19 of the guarantors that are being released.

20 Another Conditions Precedent is the vote of the investors in the Loan LLCs. ML
21 Manager will take two weeks to conduct the balloting and will start the process in June.
22 ML Manager may delay the ballot for a week or two until it has more evidence of the
23 financial condition of the guarantors so that ML Manager can explain it more accurately
24 for the investors.

25 ML Manager is proceeding in a rational manner to satisfy these items and believes
26 its process is appropriate. The spurious comments about desperation or questionable

1 judgment and the comments about the process being driven by ML Manager's need for
2 cash are all red herrings and ignore the reality and solid business reasons for this
3 settlement. The fact that none of the properties at issue in this Motion are even being
4 considered for sale because they are all still in the name of the various Grace Entities
5 shows the spurious nature of these allegations. If the settlements are approved, ML
6 Manager will simply be in a position to proceed with the trustee's sales, except for the
7 Camelback and 44th Street project where the investors and Loan LLCs are in second
8 position. Instead of litigating with the Grace Entities or going through a borrower
9 bankruptcy, such as the Foothills or Tempe Land Company bankruptcies and incurring all
10 of the cost and delay associated with a borrower bankruptcy, this settlement avoids all of
11 that and allows ML Manager to recover the properties in the names of the Loan LLCs and
12 the investors.

13 **II. THE BINDING DISPUTE RESOLUTION PROCEDURE WAS APPROVED**
14 **IN THE CONFIRMATION OF THE PLAN.**

15 This is not a Rule 9019 Motion but a Motion under the reserved jurisdiction of the
16 Plan for the Court to review and approve the settlements between the Grace Entities, the
17 Loan LLCs, and ML Manager. Paragraph V of the Confirmation Order expressly
18 approves a negotiated process that the parties will go through. There was no objection
19 filed to the entry of the Confirmation Order and there was no timely appeal filed. As
20 such, the provisions of the Confirmation Order cannot now be challenged. The disputes
21 are defined in the binding dispute resolution procedure adopted by the Court, and the
22 parties to that dispute are defined as well. More importantly, the binding process was
23 adopted. All ML Manager is doing is seeking to now effectuate the resolution of the
24 dispute for Court approval as contemplated by Paragraph V of the Confirmation Order.

25 As the Court may recall, pursuant to paragraph V of the Plan Confirmation Order
26 entered by the Court on May 20, 2009 (Docket No. 1755), the Grace Entities and

1 ML Manager were required under the confirmed plan herein to mediate, and if mediation
2 failed, to enter into binding arbitration to finally resolve all legal issues² that existed
3 between the Grace Entities, the Grace Guarantors³ and the ML Investors⁴, including but
4 not limited to lender liability claims, offsets against the notes and deeds of trust,
5 foreclosure of the deeds of trust, deficiencies on the notes, liability of the guarantors,
6 among other issues. The parties began negotiations shortly after the effective date of Plan,
7 and then proceeded to mediation. As a result of mediation that formally began on August
8 26, 2009, with the assistance of mediator Gary L. Birnbaum, the Grace Entities and ML
9 Manager reached a settlement. The business terms of the settlement were reached in at
10 the end of 2009 and approved by the ML Manager Board at that time.⁵ Because of the
11 comprehensive nature of the settlements, however, it took many months to document all

12 ² Specifically, the Plan Confirmation Order defined the scope of the “Grace Dispute” to be
13 mediated by the Grace Entities and ML Manager as follows:

14 5. **“Grace Dispute”** means all Claims and Causes of
15 Action against ML held by one or more of the Grace Entities,
16 and all Claims and Causes of Action against the Grace
17 Entities and/or the Grace Guarantors held by ML or the ML
18 Investors, including but not limited to any and all Claims and
19 Causes of Action that have been or may be asserted by and
20 between the aforementioned parties, all Claims and Causes of
21 Action arising under the loan documents entered into by and
22 between ML and the Grace Entities, all guarantees in
23 connection therewith, all counterclaims in connection
24 therewith, any Claims or Causes of Action arising out of or
25 related in any way to ML’s failure to timely and fully fund its
26 loans to the Grace Entities, and all Claims and Causes of
Action arising out of ML’s conduct regarding these loans.

21 Plan Confirmation Order, ¶ V at 13:7-12.

22 ³ The Plan Confirmation Order defined the “Grace Guarantors” as “all guarantors of any
23 loan made by ML to any one of the Grace Entities.” Plan Confirmation Order, ¶ V at
24 13:2-3.

25 ⁴ The Official Committee of Investors’ First Amended Plan of Reorganization Dated
26 March 12, 2009 (the “Plan”) defined “Investors” as “all Persons holding fractional or
participating interest in the ML Loans or in the MP Funds which hold fractional or
participating interests in the ML Loans, whether as a pass-through investor or an investor
under the MP Funds, excluding the Debtor.” Plan, Article 2.40 at 8:17-20.

⁵ As the Court will recall, Mr. Hawkins, one of the current Rev-Op Group, was a member
of the ML Manager board at that time.

1 the agreements. Numerous drafts were sent back and forth to ensure that there was a
2 meeting of the minds on all key issues.

3 The Bankruptcy Court specifically retained jurisdiction over the binding dispute
4 resolution process confirmed in the Plan. Further, ML Manager asserts that the
5 Bankruptcy Court retained jurisdiction to approve this Motion pursuant to Paragraph V of
6 the Confirmation Order, Article 9.1(j) of the Plan, among other sections, and Section 105
7 of the Bankruptcy Code, among other sections, as an order in aid of implementation of the
8 Plan.

9 **III. PLAN SETTLEMENTS ARE IN THE BEST INTEREST OF THE**
10 **INVESTORS AND ARE SUPPORTED BY VALID BUSINESS JUDGMENT.**

11 The Court should look at the business judgment of the ML Manager and confirm it
12 as valid and reasonable. Each settlement should be taken on its own merits.

13 For Mortgages Ltd. loan number 868606, the Grace Entity borrower is Central &
14 Monroe, LLC. The principal owed is \$27,313,178.50 plus accrued interest and fees. The
15 loan is in default. The collateral for this loan is a historical high rise building in
16 downtown Phoenix which was being renovated by the borrower into a hotel to be known
17 as the “Hotel Monroe.” The loan was a construction loan to refurbish the building. The
18 building is not complete and there are alleged mechanics liens by unpaid contractors, and
19 suppliers. The Grace Entities contend that Mortgages Ltd. defaulted by underfunding the
20 loan by more than \$40,000,000, therefore preventing the project from being completed
21 and giving rise to damages. The Borrower filed a proof of claim on this loan for over
22 \$110 million. ML Manager has disputed this allegation and disagrees with the alleged
23 claim amount. Under the proposed settlement, ML Manager will settle the alleged \$110
24 million claim for a payment of \$615,000 when the property is sold or refinanced and the
25 release of the guarantors. ML Manager will be permitted to conduct a deed of trust sale to
26 foreclose on the property which is what it bargained for in the loan agreement. The

1 payment to be paid when the property is sold so that the investors would not need to come
2 up with any new money was a negotiated term. Given the amount of the claim, the length
3 and costs of litigation, the mediator recommended this settlement as reasonable and
4 appropriate. It was the result of compromise and negotiation on all sides. The objection
5 expresses its concern about the \$615,000 being paid from the proceeds of this property.
6 Yet it is this payment to this Borrower which is allowing the settlement of the huge claim
7 asserted by the Borrower against the investors in this loan for the failure to fund this loan.
8 What the Borrower uses the money for is irrelevant—such as payment of its own
9 attorneys or its other creditors. In fact, the “earmarking” of this amount for the benefit of
10 certain of the Grace Entities’ creditors was a very recent change. As it does not matter to
11 the ML Parties who receives the agreed upon payment, this “earmarking” is irrelevant to
12 the determination of the business judgment involved with the settlement. This negotiated
13 settlement amount will satisfy and settle the lawsuit with this Borrower and end the
14 attorneys’ fees that will have to be spent on this claim in the arbitration. Further the
15 settlement will allow ML Manager to foreclose on the property sooner rather than later
16 without offsets or deductions.

17 For Mortgages Ltd. loan number 851106, the Grace Entity borrower is Osborn III
18 Partners, LLC. The principal owed is \$40,288,601 plus accrued interest and fees. The
19 loan is in default. The collateral for the loan is a 4-story luxury condominium project in
20 downtown Scottsdale. The building is near completion and there are alleged mechanics
21 liens by unpaid contractors and suppliers. The Grace Entities contend that Mortgages Ltd.
22 defaulted by failing to fully and timely fund the loan. They filed a proof of claim asserting
23 about \$25,400,000 in damages on this loan. ML Manager has disputed this allegation and
24 disagrees with the alleged claim amount. Under the proposed settlement, ML Manager
25 will settle the alleged \$25,400,000 claim for a payment of \$875,000 when the property is
26 sold or refinanced and the release of the guarantors. ML Manager will be permitted to

1 conduct a deed of trust sale to foreclose on the property which is what it bargained for in
2 the loan agreement. The objection expresses its concern about the \$875,000 being paid
3 from the proceeds of this property. Yet it is this payment to this Borrower which is
4 allowing the settlement of the huge claim asserted by the Borrower against the investors in
5 this loan for the failure to fund this loan. What the Borrower uses the money for is
6 irrelevant—such as payment of its own other creditors. The amount will satisfy and settle
7 the lawsuit with this Borrower and end the attorneys fees that will have to be spent on this
8 claim in the arbitration. Further the settlement will allow ML Manager to foreclose on the
9 property sooner rather than later without offsets and deductions.

10 For Mortgages Ltd. loan number 852606, the Grace Entity borrower is Portales
11 Place Property, LLC, and the associated Loan LLC is PPP Loan LLC. The principal owed
12 is \$32,000,000 plus accrued interest and fees. The loan is in default. The collateral for
13 the loan is approximately 9.7 net acres of land directly north of Scottsdale Fashion Square.
14 The property is zoned for condominiums with a condominium plat overlay but no
15 construction is underway. The Grace Entities contend that Mortgages Ltd. defaulted by
16 failing to fully and timely fund the other loans which impacted all the loans together.
17 Borrower filed a proof of claim for \$24,400,000. ML Manager has disputed this
18 allegation and disagrees with the alleged claim amount. Under the proposed settlement,
19 ML Manager will give up the guarantees but will be permitted to conduct a deed of trust
20 sale to foreclose on the property and will be released on liability without any payment. It
21 will end the incurring of attorneys fees and allow the property to be foreclosed on sooner
22 rather than later without offset or deduction.

23 For Mortgages Ltd. loan number 861706, the Grace Entity borrower is 70th Street
24 Property, LLC, and the associated Loan LLC is 70 SP Loan LLC. The principal owed is
25 \$10,870,000 plus accrued interest and fees. The loan is in default. The collateral for the
26 loan is an approximately 1.58-acre assemblage of vacant land and residential acreage,

1 located on 70th Street in downtown Scottsdale between Goldwater Blvd. and Osborn Rd.
2 There are no known mechanics lien claims on the property. The Grace Entities contend
3 that Mortgages Ltd. defaulted by failing to fully and timely fund the loan. They filed a
4 proof of claim for \$3,100,000. ML Manager has disputed this allegation and disagrees
5 with the alleged claim amount. Under the proposed settlement, ML Manager releases the
6 guarantors and makes no payment but ML Manager is able to obtain a deed-in-lieu or
7 foreclosure, or conduct a deed of trust sale to foreclose on the property and will obtain a
8 release of liability without any payment. It will end the incurring of attorneys fees and
9 allow the property to be foreclosed on sooner rather than later without offset or deduction.

10 For Mortgages Ltd. loan numbers 849606 and 852406, the Borrower is 44th &
11 Camelback Property, LLC, and the associated Loan LLCs are 44 CP Loan I LLC and 44
12 CP Loan II LLC. The principal due on the loans, respectively, is \$5,828,477.31 and
13 \$5,031,791.58, plus accrued interest and fees. The loans are in default. The loans share
14 the same collateral which is an assemblage of properties consisting of approximately
15 3.03 acres of commercial and residential property located at 44th Street and Camelback in
16 Phoenix, Arizona. There is a senior lien in favor of Parkway Bank for \$18 million on the
17 properties. There are no known mechanics lien claims on the properties. However,
18 because of Parkway Bank's senior lien, there may be no equity left to secure or pay the
19 two loans held by 44 CP Loan I LLC and 44 CP Loan II LLC. Under the proposed
20 settlement, 44th & Camelback Property, LLC will retain the properties, and ML Manager
21 will continue to hold the liens on the properties with their current priority and retain its
22 rights under the loan documents subject to the terms of the settlement agreement and will
23 obtain the release of liabilities among other things outlined below. The guarantors will be
24 released and no payment will be made, but ML Manager is able to obtain a deed-in-lieu or
25 foreclosure, or conduct a deed of trust sale to foreclose on the property and will obtain a
26 release of liability without any payment. It will end the incurring of attorneys fees and

1 allow the property to be foreclosed on sooner rather than later without offset or deduction.

2 The Grace Entities have consistently taken the position from the outset of
3 Mortgages Ltd.'s bankruptcy case that the six loans were part of a common development
4 scheme or business and that Mortgages Ltd. treated them as such. Specifically, the Grace
5 Entities have alleged that Mortgages Ltd. and its former principal routinely took money
6 out of impound accounts for one Grace Entity project in order to fund draws on other
7 Grace Entity projects, and conditioned Mortgages Ltd.'s release of funding it was
8 obligated to make on one Grace Entity project upon receipt of payment from a different
9 Grace Entity on its loan. The Grace Entities also alleged that Mortgages Ltd.'s default
10 and underfunding of Central & Monroe, LLC's "Hotel Monroe" project and Osborn III
11 Partners, LLC's "Ten Wine Lofts" project, in particular, damaged the Grace Entities and
12 their principals' ability to develop and complete all of the projects. For these and other
13 reasons, they asserted substantial "lender liability" claims against Mortgages Ltd., and
14 took the position that the six loans and the five Grace Entities were interrelated and
15 inseparable from one another. On the other hand, ML Manager disputes the Grace
16 Entities' contentions. Throughout Mortgages Ltd.'s bankruptcy case, with respect to the
17 Grace Entities, this was referred to as the "Bundling Issue." Had the disputes not been
18 settled during mediation on the terms set forth in the attached settlement agreements, and
19 the disputes proceeded to arbitration, the first stage of that bifurcated arbitration would
20 have been devoted to resolving the "Bundling Issue."⁶

21 ⁶ In this regard, the Plan Confirmation Order provides as follows:

22 The first stage of arbitration shall be devoted to the issue of
23 whether ML's loans to the Grace Entities and the parties'
24 intent and conduct was such that the dispute between ML and
25 all of the Grace Entities should be arbitrated in a single
26 arbitration in which the Grace Entities are entitled to assert
claims or defenses from one loan in connection with other
loans or claims, or whether each of the Grace Entities and
their loans are separate and distinct, and thus should be
arbitrated separately. The parties have referred to this as the

1 repay the loans are the five properties at issue. The Grace Entities had also incurred
2 substantial obligations to third parties in connection with their developments, which they
3 contend was a result of Mortgages Ltd.'s conduct and breach of its obligations under the
4 loan documents. In order to reach a settlement of these lender liability-type claims and
5 allow the properties to be recovered for the benefit of the investors, ML Manager has
6 agreed to permit a relatively small amount (compared to the amount of the loans and
7 alleged damages) to be paid to some of the Grace Entities' creditors out of the proceeds of
8 Central & Monroe, LLC's and Osborn III Partners, LLC's collateral when those properties
9 are sold after foreclosure.

10 As indicated above, the proposed settlements represent a compromise of the
11 significant and complex claims of both sides, reached only after months of negotiations
12 with the assistance of the mediator. Given the unlikely recovery against the Grace
13 Entities and the Guarantors, ML Manager believes that the settlements are in the best
14 interest of the investors and are a valid exercise of its business judgment.

15 **IV. ML MANAGER CAN PROCEED WITH THESE SETTLEMENTS.**

16 ML Manager asserts that the non-transferring Pass-Through Investors are subject to
17 the Mortgages Ltd. Agency Agreement that has been assigned to ML Manager. Some of
18 the non-transferring Pass-Through Investors are part of the Rev Op Group and some of
19 them have asserted or attempted to terminate their Agency Agreement. As an agent with
20 power of attorney coupled with an interest to do so, ML Manager has the sole discretion
21 to make this decision concerning the settlement agreements on behalf of the non-
22 transferring Pass-Through Investors, and intends to execute the settlement documents (and
23 any other documents necessary to effectuate the settlements' terms) on their behalf. Due
24 to certain allegations made by other Pass-Through Investors about the Agency Agreement,
25 the title company *may* request that the non-transferring Pass-Through Investors be
26 required to execute documents necessary to effectuate the Court's order and the

1 settlement. In that event, ML Manager will request that the Order of the Court approving
2 this Motion include such directive to the non-transferring Pass-Through Investors, and/or
3 that the Order include such other language required by the title company authorizing ML
4 Manager to execute any and all such documents on behalf of the non-transferring Pass-
5 Through Investors.

6 **V. ML MANAGER IS NOT ATTEMPTING TO DO AN END RUN AROUND**
7 **THE ISSUES IN THE ADVERSARY.**

8 With flowing rhetoric, the Rev-Op Group essentially accuses ML Manager of
9 attempting to initiate an “end-run” around the issues currently being litigated in the
10 adversary between the parties. This is simply not true. In fact, ML Manager will stipulate
11 to language in any Order approving the settlements with the Grace Entities that the Order
12 only addresses these loans and is without prejudice to any agency argument being litigated
13 in the Adversary on the other loans. This is what the Rev-Op Group and ML Manager
14 stipulated to in the order approving the sale of the Arizona Commercial Property.

15 Contrary to the assertions by the Rev-Op Group, ML Manager is simply attempting
16 to implement its obligations under the Order confirming the Plan of Confirmation. As
17 noted above, ML Manager was obligated by the Plan to mediate and then litigate the
18 resolution of the Grace Entities’ claims. As the Rev-Op Group knows because of Mr.
19 Hawkins participation on the Board, ML Manager has been negotiating with and working
20 diligently to reach a final, documented settlement with the Grace Entities essentially since
21 the confirmation of the Plan. There were no hidden agendas or convenient timing here.
22 They were hard-fought difficult settlement negotiations with substantial details to resolve
23 and documents to draft. As soon as they were completed, the Motion was filed. Indeed, it
24 was the Grace Entities who insisted on the timing of the filing of the Motion; not ML
25 Manager.

26 Moreover, there is a fundamentally different issue presented by the present Motion

1 than the issues being litigated in the Adversary. As noted above, this Motion is
2 proceeding under the express provisions of the Confirmation Order. If the Rev-Op Group
3 had an objection to the process and binding nature of ML Manager's authority under the
4 Confirmation Order to enter into this settlement, they could have and should have
5 presented those arguments in connection with the confirmation of the Plan. Yet, they did
6 not object to the Confirmation Order, or file any appeal after it was entered. As such, they
7 are bound by its terms, and with regard to the resolution of the Grace Entities, ML
8 Manager was tasked with and given the authority to resolve the claims.

9 **VI. CONCLUSION**

10 Based on the Foregoing, ML Manager requests that the Court enter an order
11 authorizing and approving the settlements described above, authorizing ML Manager to
12 enter into the five settlement agreements, and for such other and further relief as is just
13 and proper under the circumstances.

14 DATED: May 27, 2010

15 FENNEMORE CRAIG, P.C.

16 By /s/ Cathy L. Reece
17 Cathy L. Reece
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19 Copy of the foregoing emailed this day to
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