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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

12 **RESPONSE TO OBJECTION OF REV OP**  
13 **GROUP TO ML MANAGER'S FORM OF**  
**ORDER AND OBJECTION TO REV OP**  
**GROUP'S ALTERNATIVE FORM OF**  
**ORDER**

14 ML Manager LLC ("ML Manager") hereby files its Response to the Rev Op Group  
15 Objection to the ML Manager's form of Order and hereby objects to the form of Order  
16 proposed by the Rev Op Group.

17 Although the circumstances are not as represented by the Rev Op Group, to the  
18 extent that there is a perception that ML manager was hasty in uploading the form of  
19 order, ML manager apologizes because it was not the intention to ignore any instruction  
20 of the Court or prejudice any party. The form of order is materially the same as the form  
21 of order that ML manager and the Grace Entities had spent Wednesday night and  
22 Thursday morning discussing with the Rev Op Group, except that the parts that pertained  
23 to a stipulated order were taken out. Other than that the provisions remained the same.

24 Contrary to the rhetoric of the Rev Op Group, the proposed order from ML  
25 Manager (Docket No. 2820) (the "ML Manager Proposed Order") is simple and does  
26 address the issues raised in the Settlements. The ML Manager Proposed Order is only 4

1 pages beginning to end and most of the order recites the pleadings filed and the hearings  
2 held. There are only 5 operative finding/conclusion paragraphs and 5 operative order  
3 paragraphs in the order. For settlements of loans with over \$120 million of face value and  
4 lender liability claims of over \$167 million, and for an order which will probably be  
5 appealed by the Rev Op Group, the ML Manager proposed order is appropriate. Further,  
6 the form of the ML Manager Proposed Order is similar to the format of the prior orders  
7 which counsel has obtained from this Court in many of the other hearings on this case. It  
8 is a simple and straightforward order. ML Manager requests that the Court approve and  
9 enter the ML Manager Proposed Order.

10 Paragraphs (a), (b) and (c) of the findings/conclusion portion provide Court's  
11 jurisdiction and authority rulings which in fact were challenged by the Rev Op Group in  
12 the Joint Pre-Trial Statement and at the hearing. Since there is a threatened appeal these  
13 are appropriate in the ML Manager Proposed Order and in a signed order of the Court.  
14 Same with paragraphs (1), (2) and (3) of the order portion which deal with the granting of  
15 the Motion, the overruling of objections, and the authorization under the Plan and the  
16 Confirmation Order. These are all consistent with the Court's rulings at the two day  
17 hearing and are appropriate in the order to be signed by the Court.

18 Paragraph (d) of the findings/conclusions portion and paragraph (4) of the order  
19 portion deal with implementation of the Settlement. The Court granted the Motion and  
20 approved the Settlements. The Settlement Motion itself (Docket No. 2743) on page 1  
21 specifically asks the Court to "enter an order approving the settlements and authorizing  
22 ML Manager to enter into and implement the settlements with the Grace Entities  
23 borrowers as set forth in the Motion and the Settlement Agreements." The authorization  
24 and implementation are going to be carried out pursuant to the Plan and Confirmation  
25 Order. The original Motion requested it because as the Court may recall the title company  
26 which is handling the trustee sales and other title matters for ML Manager have been

1 skittish (to say the least) about proceeding without Court orders. The implementation  
2 items listed in both paragraph (d) and (4) provide that kind of aid and assistance for the  
3 title company and is appropriate. The language for implementation is appropriate. From  
4 the sounds of the Rev Op Group objection they prefer confusion and lack of clarity  
5 because it may delay or interfere with ML Manager's carrying out the Settlements.

6 Paragraph (5) from the ML Manager Proposed Order deals with the Motion to  
7 Compel and could be removed. However, given the granting of the Motion and the  
8 completion of the contested matter, the Motion to Compel is rendered moot. ML Manager  
9 simply would appreciate being relieved of the expense of preparing a privilege log for a  
10 matter that is over. ML Manager could file a separate order and request for this if the  
11 Court thinks it is appropriate.

12 Paragraph (e) from the ML Manager Proposed Order is consistent with the Court's  
13 rulings and the evidence provided at the hearing and is appropriate in the signed Court  
14 order which is anticipated will be appealed. The Court expressly said the Settlements were  
15 fair and reasonable and that they involved complex issues. The Court said that the  
16 Settlements were in the best interest of the estate (which here means the investors). The  
17 Court expressly stated that the decision was the best exercise of business judgment of ML  
18 Manager.

19 That leaves the last phrase in the sentence-- "are consistent with ML Manager's  
20 fiduciary duties and responsibilities." This was raised in the Joint Pre-Trial Statement by  
21 the Rev Op Group as a Contested Issue of Fact and Law. In paragraph IV.C.3 of the Joint  
22 Pre-Trial Statement, on page 19, the Rev Op Group stated one of their Contested Issues of  
23 Fact and Law was "ML Manager's decision to enter into the five settlement agreements  
24 with the Grace Entities is not a reasonable exercise of its business judgment, consistent  
25 with its fiduciary obligations to the Rev Op Investors." They also raised on page 20 of the  
26 Joint Pre-Trial Statement that "the Motion provides virtually no information sufficient for

1 the Court to determine whether the settlement agreements are in the best interest of  
2 investors, consistent with ML Manager’s fiduciary obligations.” Thus to put the issue to  
3 bed ML Manager has included that conclusion in the ML Manager Proposed Order.  
4 Frankly Rev Op Group has made a big deal over this is and spent about 20 minutes of its  
5 cross examination time asking the questions about this of Mr. Winkleman. ML Manager  
6 does not want to see this issue raised on appeal as an error because the Court failed to rule  
7 on it and does not want to have to spend additional attorneys fees and time dealing with  
8 whether the exercise of business judgment in doing these Settlements was somehow not  
9 fulfilling its fiduciary duties, if any, to the Rev Op Group. In light of the fact that they  
10 raised it in the Joint Pre-Trial Statement and spent significant time at the hearing on the  
11 issue, the inclusion of this conclusion in the ML Proposed order is appropriate.

12 Finally, the Rev Op Group Proposed Order is not “simple” but instead is woefully  
13 inadequate and inappropriate given the size of the Settlements and especially when it is  
14 likely that the decision will be appealed. In addition paragraph 2 about “Nothing in this  
15 order constitutes an adjudication of any of the matters pending in the following  
16 adversaries” is not appropriate. The Rev-Op Group argued in their Objection and in the  
17 Joint Pre-trial that the issues raised here must also be decided in the adversaries.  
18 Although ML Manager agrees that the ruling here that the authority to enter into binding  
19 dispute resolution exist under the Plan and this Order need not implicate the agency  
20 agreements, the converse is also true. ML Manager believe that it is important that the  
21 adversaries not be available to make a back-door attack on the rulings in this Motion.  
22 Accordingly, ML Manager’s form of Order makes it clear that the current ruling about the  
23 authority to enter into and implement the Settlements is pursuant to the Plan and  
24 Confirmation Order. As such, there is nothing in that Order that will prejudice the  
25 adversaries. Nevertheless, it also makes it clear that this Order is final. This Order needs  
26 to be final and these Settlements stand alone and apart from any ruling in the adversaries.

1 Simply stated, because the source of the authority being adjudicated in this Motion is  
2 expressly stated in the ML Manager form of Order, it is unnecessary to add the Rev-Op  
3 Group's proposed language and their language should not be included because it may  
4 leave an inference that somehow the ruling in the adversary could impact this Order.

5 Wherefore, ML Manager requests that the Court enter the ML Manager Proposed  
6 Order, overrule the objection of the Rev Op Group thereto and not enter the order  
7 proposed by the Rev Op Group.

8 DATED: July 9, 2010

9 FENNEMORE CRAIG, P.C.

10  
11 By /s/ Keith L. Hendricks  
12 Cathy L. Reece  
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15 COPY of the foregoing emailed  
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