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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

**ML MANAGER'S NOTICE OF LODGING
FORM OF ORDER REGARDING
DISTRIBUTION OF PROCEEDS**

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14 Following the hearing on January 11, 2011 on ML Manager's (1) *Notice of Intent*
15 *to Distribute Proceeds in accordance with Allocation Model*, and (2) *Motion to Approve*
16 *Treatment of Distribution of Disputed Proceeds* (Docket No. 3017) (the "Distribution
17 Motion"), the Court granted "ML Manager's Motion in its Entirety." (1/11/2011 Minute
18 Entry, Docket 3040). At the hearing, the Court requested ML Manager to upload a form
19 of Order, but also requested that ML Manager first provide a draft to the Rev-Op Group,
20 which ML Manager did.

21 Attached as Exhibit A is the form of Order as drafted and uploaded by ML
22 Manager. The Rev-Op Group has proposed certain changes to the form of Order.
23 Attached as Exhibit B is a redline from the Rev-Op Group indicating suggested changes to
24 the form of Order. ML Manager has carefully examined each of the proposed changes
25 and, for the reasons explained below, does not believe that they are warranted. As such,
26 ML Manager requests that the Court enter the form of Order as drafted and uploaded by

1 ML Manager.

2 **I. THE REV-OP GROUP'S PROPOSED REVISIONS ARE UNWARRANTED.**

3 Although the Rev-Op Group did not provide an explanation as to why it seeks
4 changes in the form of Order, most of the proposed changes deal with the Court's prior
5 rulings, findings and orders, or the scope of the proposed Order as it would affect further
6 distributions. ML Manager believes that there are three reasons why it is important for
7 this form of Order to refer to the Court's prior rulings, findings and orders and clearly
8 establish the scope and reach of the Order. First, the Distribution Motion cannot and
9 should not be considered in isolation. It arises out of the course of several events and
10 contested motions. As such, ML Manager believes that it is important that the record be
11 clearly reflected to provide context and clarification to the ultimate ruling with regard to
12 the Distribution Motion. Second, ML Manager believes that it is important to have the
13 Court's rulings on the various issues clearly stated on the record to avoid the need for
14 further argument and briefing on the same issues. For example, as the Court will recall,
15 during the January 11, 2011 hearing, the Court asked if certain issues had been previously
16 ruled on by the Court. ML Manager replied and the Court later agreed that its prior
17 rulings had, indeed, addressed the same issues that were being argued again at the January
18 11, 2011 hearing (*See, e.g.,* 1/11/2011 Minute Entry, Docket 3040)("The Court agrees
19 with ML Manager that ruling was already made on the Motion for Clarification and
20 therefore is on appeal and the court will not revisit that."). Third, there will be many
21 future distributions of proceeds following the resolution of additional loans from the ML
22 Loan portfolio. ML Manager believes that the Court has conclusively approved the
23 treatment of the "General Costs" and several related issues that are applicable to all loans.
24 That is why, back on September 1, 2010, that ML Manager gave notice to all Investors in
25 the Allocation Brief that it believed that the Allocation Model had general application to
26 all investors. (*See* Docket No. 2913)("Notice that Allocation Model has general

1 Applicability to all Investors”). ML Manager understands that there may be some issues
2 with regard to “Loan Specific Costs” going forward as additional loans are resolved, but
3 there is no reason, necessity, or even authority to continue to challenge the “General
4 Costs” and other similarly situated issues that the Court has already considered and ruled
5 on.

6 **II. RESPONSE TO THE SPECIFIC PROPOSED REVISIONS**

7 ML Manager will briefly address each of the proposed revisions from the Rev-Op
8 Group. In paragraph C, the Rev-Op Group seeks the deletion of reference to the Court’s
9 prior determinations with regard to the Plan and the Motion for Clarification Ruling. ML
10 Manager believes that the Court has previously ruled that the Plan does provide that all
11 Investors must pay their proportionate share of “General Costs.” This is not an alteration
12 or modification of prior rulings, and ML Manager believes that it is a correct statement of
13 the Court’s prior rulings. Inasmuch as the Court expressly ruled following the January 11,
14 2011 hearing that it had previously decided this issue and was not going to alter its prior
15 findings, this is an appropriate statement in the proposed form of Order. In addition, the
16 Rev-Op Group seeks the deletion of the sentence that: “ML Manager is responsible for
17 establishing and has established the Allocation Model to allocate the General Costs and
18 the Loan Specific Costs.” This is a correct statement of fact, and an appropriate finding
19 for the proposed form of Order.

20 In paragraph D, the Rev-Op Group seeks the deletion of the reference to ML
21 Manager’s “agency coupled with an interest.” This issue was previously resolved (*see*,
22 Case 2:10-ap-00430-RJH, Docket No. 105)(Declaratory Judgment, at ¶ 65)), and a key
23 factor in the Court’s determination of the standard of review to be employed. (*See id. at*
24 ¶ 85)(“... ML Manager has the authority, subject to the provisions of the Plan and
25 Confirmation Order and a possible review by the Court under a business judgment
26 standard ...”). As such, it is an appropriate reference in the proposed finding and form of

1 Order.

2 In paragraph E, the Rev-Op Group proposes to delete the statement that the Court's
3 approval of the Allocation Model is reaffirmed. As the Rev-Op Group does not purport to
4 dispute (nor could they) that the Court did approve the Allocation Model, there is no
5 reason to object to the reaffirmation of the prior Order. ML Manager included this
6 language so that there could be no dispute on the record of the Court's prior rulings.

7 In paragraph F and G, the Rev-Op Group seeks the omission of "obligations"
8 following the reference to "ML Manager's business judgment." The point of the finding
9 is that the Court has found that ML Manager has fulfilled its obligations. As such, the
10 omission of the term is inappropriate.

11 The Rev-Op Group seeks the complete omission of paragraphs H and I. These two
12 paragraphs are similar in format to F and G, and simply address additional specific
13 findings that the Court has made with regard to the Allocation Model and the treatment of
14 to the specific issues. Paragraph H deals with "Uncovered Costs," which, as pointed out
15 in ML Manager's Reply in support of the Distribution Motion, the Court specifically
16 addressed at the September 11, 2010 hearing. (*See* 9/21/2010 Transcript, at p. 24 Docket
17 No. 2964)([Court:] "Similarly, I think it's appropriate determination that ML Manager has
18 made as to how uncovered costs shall be shared among the other loans that are able to
19 cover their costs."). The same applies to paragraph I, which addresses "Replacement
20 Loan Interest." (*See id.*)([Court:] "I don't see any problem with the replacement loan
21 interest, and maybe that's not an issue now that everybody understands it a little bit
22 better.").As such, there can be no dispute that the Court has considered and addressed the
23 treatment of these issues, and their inclusion in the form of Order is appropriate.

24 The Rev-Op Group proposes the omission of paragraph J and the reference to the
25 overruling of objections to the Allocation Model in paragraph K. These are important
26 concepts because they make it clear that the parties will not need to re-litigate any issues

1 related to the treatment of “General Costs” when future distributions are made. The only
2 reason to omit paragraph J and eliminate the reference to the overruling of objections to
3 the Allocation Model is if the Rev-Op Group intends to continue to object to the treatment
4 of General Costs in future distributions. If this is their intention, then the inclusion of this
5 paragraph is all the more important.

6 Finally, the Rev-Op Group seek the elimination of paragraph T indicating that as
7 between ML Manager and the Liquidating Trust, the Allocation Model is not res judicata
8 as to the treatment of costs. This paragraph was specifically negotiated between the Trust
9 and ML Manager. It was agreed to by those two parties and should not be disturbed by
10 the Rev-Op Group.

11 **III. CONCLUSION**

12 ML Manager respectfully requests that the Court enter the proposed form of Order
13 granting the Distribution Motion as it has been drafted and uploaded by ML Manager.
14 ML Manager believes that the proposed form of Order accurately reflects the Court’s
15 findings, rulings and Orders, is important to prevent “re-litigation” of the same issues
16 before this Court, and is important to establish the record and findings of the Court that
17 were made in support of the Court’s ruling.

18 DATED: January 18, 2011.

19 FENNEMORE CRAIG, P.C.

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21 By /s/ Keith L. Hendricks (012750)

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25 COPY of the foregoing emailed this
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/s/ L. Carol Smith