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7 Counsel for the Rev Op Group

8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

11 MORTGAGES LTD.,

12 Debtor.

In Proceedings Under Chapter 11

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

**OBJECTION TO ML MANAGER'S  
PROPOSED FORM OF ORDER  
REGARDING DISTRIBUTION OF  
PROCEEDS**

Hearing Date: Not Yet Set

Hearing Time: Not Yet Set

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17 The Rev Op Investors,<sup>1</sup> and/or their successors and assigns, by and through undersigned  
18 counsel, hereby file this Objection to ML Manager's proposed form of *Order Regarding*  
19 *Distribution of Proceeds* [DE #3046] dated January 18, 2011 (the "Form of Order"). The Rev  
20 Op Group submits that the form of Order is overreaching and inappropriate, exceeding what this  
21 Court ordered at hearing on January 11, 2011. Attached hereto as Exhibit B is a revised order  
22 that is acceptable to the Rev Op Investors, and Exhibit C is a redline comparing ML Manager's  
23 proposed order and the Rev Op Investors' proposed order. In further support of this Objection,  
24 the Rev Op Investors respectfully submit as follows:

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28 <sup>1</sup> The Rev Op Investors are set forth on Exhibit A attached hereto.

1           1.       At hearing on January 11, 2011, the Court approved the proposed allocation and  
2 distribution of loan proceeds for six loans, subject to a final determination of ML Manager’s  
3 asserted right of setoff.

4           2.       Previously, this Court had approved, in principle, the “Allocation Model”  
5 submitted by ML Manager. In connection with the Allocation Model, the Court stated that its  
6 approval thereof was similar to a grant of partial summary judgment and that, absent consent by  
7 the investors in such loans, final approval of any specific loan allocations would be subject to  
8 further proceedings before the Court.

9           3.       At hearing on January 11, 2011, the Court heard argument from counsel regarding  
10 various aspects of the proposed disbursement of specific loan proceeds. The Court did not take  
11 evidence.

12           4.       The Court heard very little if any argument, and took no evidence, regarding the  
13 treatment of what is described in the Allocation Model as “Uncovered Costs” and “Replacement  
14 Loan Interest.” Of particular concern, the Court did not hear argument or take any evidence  
15 regarding the treatment of “General Costs for the *entire portfolio* of ML Loans.” *See* Proposed  
16 Order ¶ J.

17           5.       Despite the limited scope of the hearing on January 11, 2011, ML Manager has  
18 presented this Court with an order that obviously is intended to preclude any future hearings on  
19 other loans. This is not the process established by the Court and was not the purpose of the  
20 hearing.

21           6.       Moreover, when the Rev Op Investors presented these issues to ML Manager, ML  
22 Manager refused to consider any of the suggested revisions, stating simply that it “disagreed”  
23 with these points, and chose to lodge its order without any dialogue or negotiation. Contrary to  
24 ML Manager’s assertions, the Rev Op Investors did then provide an explanation of the revisions,  
25 but ML Manager again simply stated that it disagreed and lodged the order. The Rev Op  
26 Investors submit that such unilateral action is not what the Court envisioned when it required ML  
27 Manager to “run the order by” counsel for the Rev Op Investors.  
28

1           7.       The Rev Op Investors have the following specific objections to the form of order  
2 proposed by ML Manager:

- 3           •       ¶ T: There is absolutely no justification for the order not to be binding on the Trust  
4 and ML Manager, particularly with respect to the allocation of costs and expenses as  
5 between the Trust and ML Manager. The proposed disbursements for the six loans  
6 at issue were sold to the Court largely on ML Manager’s representations that costs  
7 allocated to the Liquidating Trust under the Interborrower Agreement but paid by  
8 investors will eventually be reimbursed by the Trust “if and when the Trust recovers  
9 sufficient money.” Paragraph T of the Order gives the Trust and ML Manager an  
10 “out” based on some undisclosed private arrangement, and vitiates other aspects of  
11 the proposed order, such as Paragraph G thereof. Simply stated, there is no reason or  
12 justification for the inclusion of Paragraph T in the order.
- 13           •       ¶ C: The Plan and the Order on Motion for Clarification do **NOT** provide that “all  
14 Investors in the ML Loans where there is a distribution must pay their proportionate  
15 share of ‘General Costs’ including pre-confirmation expenses, and post confirmation  
16 general expenses, as well as ‘Loan Specific Costs’ incurred after the confirmation of  
17 the plan of reorganization.” These concepts were the creation of ML Manager under  
18 the Allocation Model. To draft such provisions into the plan and prior orders is  
19 misleading at best and obfuscates the record.
- 20           •       ¶ E: There is no need to revisit, reinterpret, or reaffirm prior rulings. To do so  
21 clouds the record and potentially creates issues with respect to pending appeals and  
22 any subsequent appeals. To the extent the Court is inclined to reaffirm its ruling on  
23 the Allocation Model, that reaffirmation obviates the need for the specific findings  
24 addressed below.
- 25           •       ¶¶ H, I: These issues were not the subject of any evidence and little or no argument  
26 before the Court at hearing on January 11, 2011. Indeed, ML Manager  
27 acknowledges that the Court considered such issues at the initial hearing on the  
28 Allocation Model, when such concepts were approved in principle. Specific findings

1 with respect to these issues have potential impacts on the record with respect to  
2 pending appeals and any subsequent appeals. The Court should decline the  
3 invitation by ML Manager to cloud the record this way.

- 4 • ¶ J: The proposed order should not deal with the treatment of “the entire portfolio of  
5 ML Loans.” The hearing and the allocation notice dealt with six specific loans only.

6 8. The other suggested revisions were intended to provide clarity to the proposed  
7 form of order. Rather than engage in dialogue and negotiation regarding such revisions, ML  
8 Manager has again chosen to “bully” an investor group that dares to attempt working with ML  
9 Manager toward an acceptable resolution of disputed matters.

10 9. Contrary to ML Manager’s contentions, the Rev Op Investors seek to preserve a  
11 clear record going forward. The form of order attached hereto as Exhibit “B” accomplishes that  
12 result without negatively impacting ML Manager in any material respect.

13 WHEREFORE, the Rev Op Group requests that the Court:

- 14 A. Sustain the objections set forth herein;
- 15 B. Refuse to enter the form of order submitted by ML Manager;
- 16 C. Enter the form of order attached hereto as Exhibit B; and
- 17 D. Grant to the Rev Op Investors such other relief as the Court deems just and  
18 appropriate under the circumstances.

19 DATED this 18<sup>th</sup> day of January, 2011.

20 BRYAN CAVE LLP

21  
22 By           /s/ BAS, #022721            
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27 Counsel for the Rev Op Group  
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COPY of the foregoing served via email  
this 18<sup>th</sup> day of January, 2011:

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/s/ Sally Erwin

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EXHIBIT A

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- AJ Chandler 25 Acres, LLC
- Bear Tooth Mountain Holdings, LLP
- Cornerstone Realty & Development, Inc.
- Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust
- Evertson Oil Company, Inc.
- Brett M. McFadden
- LLJ Investments, L.L.C.
- Michael Johnson Investments II, L.L.C.
- Pueblo Sereno Mobile Home Park L.L.C.
- Queen Creek XVIII, L.L.C.
- Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan
- William L. Hawkins Family L.L.P.