

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In Re

Chapter

Case No.

Adv. No.

Debtor(s)

Appellant(s)

v.

Appellee(s)

**TRANSMITTAL OF APPEAL TO  
DISTRICT COURT**

TO: RICHARD H. WEARE  
CLERK, U.S. DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Transmitted herewith is:

A Notice of Appeal filed on \_\_\_\_\_, a copy of the order of judgment appealed, and the election of appellant to have appeal transferred to the District Court pursuant to 28 U.S.C. Section 158(c)(1).

The Notice of Appeal Filing Fee \_\_\_\_\_ has been paid, \_\_\_\_\_ has not been paid, or \_\_\_\_\_ waived by order pursuant to 28 USC 1930(f).

Dated:

CLERK OF COURT  
U.S. BANKRUPTCY COURT

By: \_\_\_\_\_  
Deputy Clerk

Copies to be mailed to attorneys for interested parties and pro se parties to the appeal by the BNC.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In Re

Chapter

Case No.

Adv. No.

Debtor(s)

Appellant(s)

v.

Appellee(s)

**NOTICE OF FILING OF APPEAL  
AND NOTICE OF REFERRAL OF  
APPEAL TO THE DISTRICT COURT**

YOU ARE HEREBY NOTIFIED that a Notice of Appeal has been filed on \_\_\_\_\_ with the Clerk of the U.S. Bankruptcy Court. The appellant has filed an election to have the appeal transferred to the District Court. Pursuant to 28 USC Section 158(c), the Appeal is referred to the District Court.

NOTICE IS GIVEN TO THE APPELLANT that the appellant shall, within 14 days of the filing of the Notice of Appeal, file with the Clerk of the U.S. Bankruptcy Court, 230 N. 1st Ave, #101, Phoenix, Arizona, 85003 the following:

1. A designation of the items to be included in the record on appeal and serve a copy upon the appellee;
2. A statement of the issues to be presented and serve a copy upon the appellee; and
3. A written request for the transcript and deliver a copy to the court reporter where the record designated includes a transcript of any proceeding or a part thereof.

Dated:

CLERK OF COURT

By: \_\_\_\_\_  
Deputy Clerk

Copies to be mailed to attorneys for parties and pro se parties to the appeal by the BNC

**United States Bankruptcy Court  
District of Arizona**

**APPEALS**

**ORDERING AN OFFICIAL TRANSCRIPT**

An official transcript is a transcript that has been prepared by a designee of the Bankruptcy Court. (For appeal purposes, a tape cassette is not acceptable as a part of the Designation of Record.)

If you have designated a transcript of a Court proceeding in your Appeal documents, **it is your responsibility to order it** from the Bankruptcy Court ECR Operator (see list below). The order should be placed at the time you file your Statement of Issues and Designation of Record.

If you have filed an appeal and need a transcript of a hearing, please follow the steps below to obtain an "OFFICIAL" transcript:

1. Determine the date of the hearing.
2. Determine what portion of the hearing is needed. Do you need the entire hearing or only a specific portion of the hearing, (i.e., the judge's ruling).
3. Determine if the transcript is already on file with the Court. Any ECR Operator can advise you of this. If the transcript is already on file, the Court will determine if your check should be made payable to the Bankruptcy Court. If it is not on file, the ECR Operator can tell you who to contact to obtain one.
4. Each transcript ordered requires a deposit. This deposit varies and is dependent upon the estimated length of the transcript. If the transcript needs to be ordered, the ECR Operator will advise you of the correct way to issue your check and where to make payment.
5. Place your request for the transcript. File a "Notice of Request for Transcript" with the Bankruptcy Court. Be sure to indicate if the transcript was requested from the Court or the Court Reporting Agency.

A courtesy copy of every transcript ordered is sent to the Court; therefore, it is not necessary for you to file a copy with the Court.

## Ordering Transcripts

### **PHOENIX OFFICE CASES**

Judge Baum (RTB)	Team Line	(602) 682-4200
Judge Case (CGC)	Kayla Morgan	(602) 682-4200
Judge Curley (SSC)	Andamo Purvis	(602) 682-4200
Judge Haines (RJH)	Sheri Fletcher	(602) 682-4200
Judge Hollowell (EWH)	Annette Aguilar	(602) 682-4200
Judge Marlar (JMM)	Annette Aguilar	(602) 682-4200
Judge Nielsen (GBN)	Jo-Ann Stawarski	(602) 682-4200

### **TUCSON OFFICE CASES**

Judge Marlar (JMM)	Bev Granillo	(520) 202-7990
Judge Hollowell (EWH)	Alicia Johns	(520) 202-7556

### **YUMA OFFICE CASES**

Judge Hollowell (EWH)	Aida Urbalejo	(928) 783-2288
Judge Marlar (JMM)	Aida Urbalejo	(928) 783-2288
Judge Haines (RJH)	Sheri Fletcher	(602) 682-4200

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

**NOTICE TO PARTIES TO APPEAL TO DISTRICT COURT**

Procedure when an appeal is transmitted to District Court:

1. Upon receipt of an appeal from the Clerk of the Bankruptcy Court or from the Clerk of the Bankruptcy Appellate Panel, the appeal is assigned a civil case number in the District Court. The District Court then sends a “Notice of Receipt of Appeal” to the parties to the appeal advising them of the civil case number assigned in the District Court.
2. The bankruptcy appeal in the District Court is governed by the District Court Local Rules of Bankruptcy Appeal Procedure, as adopted on 12/1/2007. Please refer to those rules, a copy of which are attached.
3. When the statement of issues, designation of record and any designated transcripts are filed with the Bankruptcy Court, the Bankruptcy Court Clerk will transmit to the District Court a certificate that the record is complete. The date of transmittal to the District Court constitutes the date of the entry of the appeal on the docket in District Court.
4. The record is retained in the Bankruptcy Court. Copies of the record are no longer required to be filed with the District Court. Instead, the parties include copies from the record in their Excerpts of Record filed as appendix to their briefs. See Local District Court Rule 8009-2.

**LOCAL DISTRICT COURT RULES OF BANKRUPTCY APPEAL PROCEDURE  
(12/1/2007)**

**LRBankr 8001-1  
NOTICE OF APPEAL**

Order Being Appealed. The appellant shall attach to the notice of appeal filed in bankruptcy court a copy of the entered judgment, order or decree from which the appeal was taken. If a 28 U.S.C. Sec. 158(c) election to have the appeal heard by the district court is filed by the appellant at the time of filing the notice of appeal, the bankruptcy court clerk shall transmit the appeal to the district court clerk. If such an election is filed by any other party with the clerk of the bankruptcy appellate panel within thirty days after service of the notice of appeal, the clerk of the bankruptcy appellate panel shall transfer the appeal to the district court. If the notice of appeal is filed before entry of the order being appealed, it is the appellant's duty to transmit to the district court clerk a copy of the judgment or order immediately upon entry.

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Committee Notes: Generally, the Local Rules of Bankruptcy Appeal Procedure track the content and the numbering of the local rules of the Ninth Circuit Bankruptcy Appellate Panel.

**LRBankr 8001-2  
ELECTION PROCEDURE FOR MOTION FOR LEAVE TO APPEAL**

If the appellant moves for leave to appeal pursuant to FRBP 8003 and fails to file a separate notice of appeal concurrently with filing the motion for leave, the motion for leave will be treated as if it were a notice of appeal for purposes of calculating the time period for filing an election to transfer the appeal to the district court.

**LRBankr 8006-1  
TRANSCRIPTS**

Any party submitting excerpts of the record shall include all transcripts necessary for adequate review in light of the standard of review applicable to the issues before the district court. The district court is required to consider only those portions of the transcript included in the excerpts of the record. If findings of fact and conclusions of law were made orally on the record, a transcript of those findings is mandatory.

**LRBankr 8007-1**

**DOCKETING APPEAL AND APPELLATE RECORD**

As soon as the statement of issues, designation of record, and any designated transcripts are filed with the bankruptcy court, the bankruptcy court clerk, upon exercise of the 28 U.S.C. Sec. 158(c) election to have the appeal heard by the district court, shall transmit to the district court clerk a certificate that the record is complete and shall notify the parties of that transmittal unless the certificate has been filed with the bankruptcy appellate panel. The date the bankruptcy court clerk transmits the certificate that the record is complete shall constitute the date of entry of the appeal on the docket of the district court. The bankruptcy court clerk shall retain the record. The district court clerk may request a copy of the record from the bankruptcy court clerk.

**LRBankr 8009-1**

**BRIEFS - TIME LIMITS AND NUMBER**

(a) **Scheduling Order.** Upon entry of the appeal on the docket, the district court shall issue a scheduling order regarding submission of briefs. Parties shall file briefs within the time limits set forth in the scheduling order rather than the time limits set forth in FRBP 8009(a)(1), (2), and (3).

(b) **Number.** Upon the filing of a brief, a party shall also provide one paper copy for use by the District Judge to whom the case is assigned, bound separately from the excerpts of the record. At the direction of the district court, the parties may be required to provide additional copies.

(c) **Motion for Extension of Time for Filing Brief.**

(1) Requirements. A motion for extension of time to file a brief shall be filed within the time limit prescribed by these rules for the filing of such brief and shall be accompanied by a proof of service. The motion shall be supported by a declaration stating:

1. When the brief was initially due;
2. How many extensions of time, if any, have been granted;
3. Reasons why this extension is necessary;
4. The specific amount of time requested; and
5. The position of the opponent(s) with respect to the motion or why the moving party has been unable to obtain

a statement of such position(s).

(2) Consequences. Appellant's failure to file a brief timely may result in the dismissal of the appeal. A brief received after the due date will not be accepted for filing unless it is accompanied by a motion for an extension of time and the motion is granted. The district court has no obligation to consider a late brief. Sanctions may be imposed, such as the waiver of oral argument, monetary sanctions or dismissal.

#### **LRBankr 8009-2**

##### **BRIEFS AND EXCERPTS OF THE RECORD**

(a) **Number and Form.** Upon the filing of any excerpts of the record, a party shall also provide one paper copy for use by the District Judge to whom the case is assigned, bound separately from the briefs. The copy shall be reproduced on white paper by any duplicating process capable of producing a clearly legible image and be bound with a white cover. The cover of the excerpts shall contain the caption information specified by LRBankr 8010-1(a).

(b) **Organization of Appendix.** Documents in the excerpts shall be divided by tabs in the paper copy provided for use by the Judge. The pages of the excerpts shall be continuously paginated. The excerpts shall contain a complete table of contents listing the documents and identifying both the tab and page number where each document is located. If the excerpts have more than one volume, the table of contents shall also identify the volume in which each document is located.

#### **LRBankr 8010-1**

##### **BRIEFS - FORM AND CERTIFICATION REQUIREMENTS**

(a) **Form.** Briefs shall comply with the form requirements of LRCiv 7.1 and shall contain the following cover information:

Name of Court;  
Case numbers (District Court, Bankruptcy Court, and if applicable, adversary number(s));  
Name of debtor;  
Names of appellant(s) and appellee(s);  
Title of document; and  
Name, address, telephone number, email address, and bar number of counsel filing document.

(b) **Certification as to Interested Parties.** To enable the district judge to evaluate possible disqualification or recusal, all parties, other than



governmental parties, shall attach to the inside back cover of their initial briefs, a list of all persons, associations of persons, firms, partnerships and corporations that have an interest in the outcome of the case. The certification should be in substantially the following form:

**Certification Required by Local Bankruptcy Rule 8010-**

**1(b)**

[DISTRICT COURT CASE NUMBER,  
DEBTOR'S NAME]

The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable the district judge to evaluate possible disqualification or recusal [list the names of all such parties and identify their connection and interest]:

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

(c) **Certification of Related Cases.** The appellant shall attach as the last page of each copy of the opening brief a statement of all known related cases and appeals before the United States Court of Appeals, the BAP, or the district court. Appellee's answering brief shall contain appellee's certification of related cases. A related case is defined as one which involves substantially the same litigants, substantially the same factual pattern or legal issues, or arises from a case previously heard by the district court. The certification should be in substantially the following form:

**Certification Required by Local Bankruptcy Rule 8010-**

**1(c)**

[DISTRICT COURT NUMBER, DEBTOR'S  
NAME]

The undersigned certifies that the following are known related cases and appeals [list the case name, court and status of all related cases and appeals]:

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Committee Notes: Rule 8010-1 tracks 9th Circuit BAP Rule 8010(a)-1, except that the form requirements of LRCiv 7.1 are adopted over the differing form requirements of the BAP Rule, and colored brief covers are not required.

**LRBankr 8010-2**  
**LENGTH OF BRIEFS**

Except with leave of the district court, the appellant's and appellee's initial briefs may not exceed seventeen (17) pages, and reply briefs may not exceed eleven (11) pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials.

\_\_\_\_\_  
Committee Notes: The page limits are those set by LRCiv 7.2(e) for civil motions generally and differ from those in the Ninth Circuit BAP.

**LRBankr 8011-1**  
**EMERGENCY MOTIONS**

(a) **Form and Number.** An emergency motion must have a cover page bearing the legend "Emergency Motion" in large, bold type. Upon filing the motion, one paper copy must be provided for use by the District Judge to whom the case is assigned.

(b) **Contents.** The motion and supporting declaration(s) must set forth the facts showing the existence and nature of the alleged immediate and irreparable harm.

(c) **Appendix.** An emergency motion must be accompanied by an appendix containing: (1) a conformed copy of the notice of appeal, and (2) a copy of the entered judgment, order or decree from which the appeal was taken. If the emergency motion concerns a stay pending appeal, the appendix must also contain: (1) a conformed copy of the bankruptcy court's order denying or granting the stay and any explanation by the bankruptcy court of its ruling, or a declaration explaining why such a copy is unavailable; and (2) copies of all documents regarding the stay filed in bankruptcy court.

(d) **Service.** The motion and appendix must be accompanied by a proof of service showing service on all parties.

**LRBankr 8012-1**

**ORAL ARGUMENT**

Unless otherwise directed by the district court, a party desiring oral argument shall request it by placing "Oral Argument Requested" immediately below the title of the brief. If oral argument is granted, notice will be given in a manner directed by the district court.

**LRBankr 8014-1**

**COSTS**

Costs under FRBP 8014 are taxed by filing a bill of costs with the bankruptcy court clerk.

**LRBankr 8018-1**

**SILENCE OF LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE**

In cases where these Local Rules of Bankruptcy Appeal Procedure and the FRBP are silent as to a particular matter of practice relating to a bankruptcy appeal, the district court may apply the Rules of the United States Court of Appeals for the Ninth Circuit and the Federal Rules of Appellate Procedure.

**LRBankr 8018-2**

**CITATION TO LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE**

Parties shall cite these Local Rules of Bankruptcy Appeal Procedure as:

"LRBankr".

**LRBankr 8019-1**

**SUSPENSION OF LOCAL RULES OF BANKRUPTCY APPEAL PROCEDURE**

Upon application, or upon the district court's own motion, any judge of the district court may suspend any of these Local Rules of Bankruptcy Appeal Procedure for good cause shown.

**LRBankr 8020-1**

**DISMISSAL FOR FAILURE TO PROSECUTE**

When an appellant fails to file an opening brief timely, or otherwise fails to comply with rules or orders regarding processing the appeal, the district court, after notice, may enter an order dismissing the appeal.

1 Robert J. Miller, Esq. (#013334)  
Bryce A. Suzuki, Esq. (#022721)  
2 **BRYAN CAVE LLP**  
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6  
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.

Chapter 11

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

**NOTICE OF APPEAL**

13  
14 AJ Chandler 25 Acres, LLC; Bear Tooth Mountain Holdings, LLP; Cornerstone Realty &  
15 Development, Inc.; Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust;  
16 Evertson Oil Company, Inc.; Brett M. McFadden; LLJ Investments, L.L.C.; Michael Johnson  
17 Investments II, L.L.C.; Pueblo Sereno Mobile Home Park L.L.C.; Queen Creek XVIII, L.L.C.;  
18 Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan; William L. Hawkins Family L.L.P.;  
19 and/or their successors and assigns (collectively, the “Rev Op Investors”) hereby appeal,  
20 pursuant to 28 U.S.C. § 158(a) and (b), from the Bankruptcy Court’s *Order Regarding*  
21 *Distribution of Proceeds* [Docket #2887] (the “Distribution Order”) entered in the above-  
22 captioned bankruptcy case and in adversary proceeding 2:10-ap-00430-RJH.<sup>1</sup> A true and correct  
23 copy of the Distribution Order is attached hereto as Exhibit “A” and incorporated by reference  
24 herein.

25 The parties to the matter being appealed and the names, addresses and telephone numbers

26  
27 <sup>1</sup> The Rev Op Investors believe the Distribution Order was entered in the adversary  
28 proceeding in error, as the underlying motion was filed and heard in the main case and was never  
part of the adversary proceeding. Out of an abundance of caution, this Notice of Appeal is being  
filed in both the adversary proceeding and the main case.

1 of their respective attorneys are as follows:

2 **ML Manager, LLC**

3 Cathy Reece, Esq.  
4 Keith Hendricks, Esq.  
5 FENNEMORE CRAIG, P.C.  
6 3003 North Central Avenue, Suite 2600  
7 Phoenix, Arizona 85012-2913  
8 Telephone: (602) 916-5000  
9 [creece@fclaw.com](mailto:creece@fclaw.com)  
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**The Rev Op Investors**

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[bryce.suzuki@bryancave.com](mailto:bryce.suzuki@bryancave.com)

11 If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a  
12 right to have the appeal heard by the district court. The appellant may exercise this right only by  
13 filing a separate statement of election at the time of the filing of this notice of appeal. Any other  
14 party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the  
15 district court.

16 RESPECTFULLY SUBMITTED this 24th day of January, 2011.

17 BRYAN CAVE LLP

18 By: /s/ BAS, #022721

19 Robert J. Miller  
20 Bryce A. Suzuki  
21 Two North Central Avenue, Suite 2200  
22 Phoenix, AZ 85004-4406  
23 Counsel for the Rev Op Group

24 COPY of the foregoing served via email  
25 this 24th day of January, 2011, upon:

26 Cathy Reece, Esq.  
27 Keith Hendricks, Esq.  
28 FENNEMORE CRAIG, P.C.  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
[creece@fclaw.com](mailto:creece@fclaw.com)  
[khendric@fclaw.com](mailto:khendric@fclaw.com)  
Counsel for ML Manager, LLC

/s/ Sally Erwin

# **EXHIBIT “A”**

IT IS HEREBY ADJUDGED  
and DECREED this is SO  
ORDERED.

The party obtaining this order is responsible for  
noticing it pursuant to Local Rule 9022-1.

Dated: January 20, 2011



1 FENNEMORE CRAIG, P.C.  
2 Cathy L. Reece (005932)  
3 Keith L. Hendricks (012750)  
4 3003 N. Central Ave., Suite 2600  
5 Phoenix, Arizona 85012  
6 Telephone: (602) 916-5343  
7 Facsimile: (602) 916-5543  
8 Email: creece@fclaw.com

Handwritten signature of Randolph J. Haines in black ink.

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re  
MORTGAGES LTD.,  
Debtor.

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

**ORDER REGARDING DISTRIBUTION OF  
PROCEEDS**

On January 11, 2011, the Court heard argument on ML Manager's (1) *Notice of Intent to Distribute Proceeds in accordance with Allocation Model*, and (2) *Motion to Approve Treatment of Distribution of Disputed Proceeds* (Docket No. 3017) (the "Distribution Motion"). The Distribution Motion is related to or based on the implementation of the "Allocation Model" as referenced this Court's minute entry (Docket 2959) "approving the allocation formula proposed by ML Manager in the Allocation Brief filed on September 1, 2010 [Docket No. 2913]." ML Manager has now resolved or liquidated six of the loans, collateral, or the properties (collectively, the "Loans") included in the loans defined as "ML Loans" in the Plan of Reorganization confirmed in this matter (the "Plan"). These six Loans include (1) Chateaux on Central (see Sale Order, Docket No. 2676); (2) the Newman I Loan, (3) the Newman II Loan,<sup>1</sup> (4)

<sup>1</sup> There were no sale orders with the two Newman loans as the borrower paid them in full.

1 Zacher Missouri (*see* Sale Order, Docket No. 2892), (5) City Lofts (*see* Sale Order,  
2 Docket No. 2887), and (6) Osborne III (sometimes known as Ten Wine Lofts) (*see* Sale  
3 Order, Docket No. 2976).

4 Two Objections to the Distribution Motion were filed. The Rev-Op Group  
5 (defined below) filed an Objection to the Distribution Motion and requested, among other  
6 things, that the Motion be denied. (Docket No. 3028). The ML Liquidating Trust (the  
7 “Trust”) filed an Objection, but only requested that distributions to individuals who were  
8 the subject of pending litigation, preference claims, or avoidance actions be escrowed  
9 pending final resolution of those claims. (Docket No. 3030). Having considered all  
10 briefing of the Parties, oral argument, prior rulings and briefings, and for good cause  
11 appearing,

12 THE COURT CONCLUDES, FINDS, AJUDICATES AND ORDERS AS  
13 FOLLOWS:

14 A. The Distribution Motion is granted and ML Manager is authorized to  
15 make the distributions contemplated therein except as otherwise provided herein.

16 B. The Court has already ruled with regard to the obligation that all Investors  
17 must pay their proportionate share of costs from distributions from the proceeds of the  
18 ML Loans. (*See* Docket No. 2323) (the “Motion for Clarification Ruling”). That ruling  
19 is currently pending an appeal to the United States District Court for the District of  
20 Arizona. This Court does not have jurisdiction to modify or reconsider the Motion for  
21 Clarification Ruling, nor does it find any reason to do so.

22 C. The Allocation Model provides, among other things, that all Investors in  
23 the ML Loans where there is a distribution must pay their proportionate share of  
24 “General Costs” including pre-confirmation expenses, and post confirmation general  
25  
26



1 expenses, as well as “Loan Specific Costs” incurred after the confirmation of the plan of  
2 reorganization in this matter.<sup>2</sup>

3 D. The appropriate standard of review to consider ML Manager’s allocation  
4 decisions is the business judgment standard. The treatment set forth in the Allocation  
5 Model is consistent with and fulfills ML Manager’s duty under the business judgment  
6 rule as well as any fiduciary duty and ML Manager’s role as contemplated and  
7 established by the confirmed Plan.

8 E. At the hearing on September 21, 2010, the Court approved the allocation  
9 formula proposed by ML Manager in the Allocation Brief filed on September 1, 2010  
10 [Docket No. 2913] (the “Allocation Model”).

11 F. The treatment in the Allocation Model of the obligations incurred by the  
12 Debtor, Mortgages Ltd., the administrative expenses, and other pre-confirmation costs  
13 and expenses as General Costs is approved, appropriate, and consistent with ML  
14 Manager’s business judgment and consistent with and in fulfillment of its fiduciary  
15 duties.

16 G. The treatment of costs that will be reimbursed by the Trust pursuant to the  
17 terms of the Plan if and when the Trust recovers sufficient money is approved,  
18 appropriate, and consistent with ML Manager’s business judgment and consistent with  
19 and in fulfillment of its fiduciary duties.

20 H. All of the objections to the distribution of proceeds under the six Loans,  
21 except any objections that have been specifically reserved by this Court, have been  
22 overruled.

23 I. With regard to the six Loans at issue, the determination, allocation and  
24 proposed distribution of costs, expenses and proceeds under the Allocation Model is

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25 <sup>2</sup> All capitalized terms in this Order shall have the same meaning as set forth in the  
26 operative documents including the Plan, the Allocation Model and the Interborrower  
Agreement, which was attached as an Exhibit to the Distribution Motion.

1 approved. This includes, without limitation, the determination that the total amount of  
2 settlement costs were \$7,393,841.58 and were properly treated, accounted for and  
3 disbursed. Pursuant to the obligations under the Exit Financing Loan agreement, the  
4 payment to the Exit Lender from these six loans of collectively \$8,770,523.50 was  
5 properly treated, accounted for and disbursed. ML Manager was entitled to and  
6 properly treated, accounted for and disbursed a “Permitted Reserve” of \$2,836,944.90.  
7 Pursuant to the Allocation Model, the “Total Estimated Costs” (as provided in the  
8 Allocation Model) of the “Pass-Through Investors” that were not included in the  
9 payments to the Exit Lender were \$1,160,931.75, and they have been properly treated  
10 and accounted for. Based on the operation of the Allocation Model, \$8,521,443.22 is  
11 available to distribute to investors, subject to the provisions set forth below. This  
12 includes \$4,758,799.88 to the “Pass-Through Investors” and \$3,762,639.58 to the Loan  
13 LLCs or MP Funds.

14 J. There exists a recorded judgment lien against Robert L. Barnes, Jr.  
15 (“Barnes”) by Kathleen Heth (“Heth”), and a recorded judgment lien against the  
16 “Barness Investment Limited Partnership, an Arizona Limited Partnership (“Barness”)  
17 by the Town of Gilbert (“Gilbert”). The current expected distribution to Barnes and  
18 Barness is less than the amount of the recorded judgment liens. The proposed  
19 distributions of net proceeds from the six Loans, following the application of their  
20 respective share of costs and expenses under the Allocation Model, to their respective  
21 judgment creditors, care of the respective judgment creditor counsel, is approved.

22 K. The Trust has filed certain preference actions, avoidance actions or other  
23 claims (collectively, the “Insider Claims”) against certain individuals or entities that  
24 have been referred to as “Insiders.” The term “Insider” for purposes of this Motion  
25 means in the individuals or entities referred to in paragraph O below and has been used  
26 in this Order for identification purposes only. There has been no adjudication, finding

1 or determination as to whether any individual or entity was an “Insider” for purposes of  
2 any statute or rule.

3 L. ML Manager holds approximately \$241,099.11 from payments received  
4 by the Debtor during the bankruptcy prior to confirmation of the Plan. This amount was  
5 held by the Debtor pursuant to an Order by the Court, (Docket No. 458) governing  
6 distributions to certain investors referred to as insiders (the “Insider Escrow”). Upon  
7 confirmation of the Plan, control and management of the Insider Escrow was transferred  
8 or assigned to ML Manager.

9 M. Except as indicated herein, amounts in the Insider Escrow and any  
10 distributions to Insiders are subject to the Allocation Model. ML Manager is entitled to  
11 assess costs and expenses against any distribution or proposed distribution to Insiders,  
12 against the proceeds in the Insider Escrow, and against all escrows held on behalf of the  
13 Insiders pursuant to the Allocation Model.

14 N. Notwithstanding the foregoing, whether the Mortgages Ltd. 401(k) Plan  
15 (the “401(k) Plan”) can be assessed any fees or costs under the Allocation Model has not  
16 yet been determined or adjudicated, and that issue, among others, is pending before the  
17 United States District Court for the District of Arizona. As such, no judicial  
18 determination has yet been made regarding the propriety of allocating costs to the  
19 401(k) Plan and no allocation shall be implemented at this time with respect to the  
20 401(k) Plan.

21 O. Until further order of this Court, ML Manager, any Loan LLCs (as defined  
22 by the Plan) involved with the six Loans, and the MP Funds (as defined by the Plan)  
23 shall not make any distributions, pay any payments of principal or interest related to the  
24 six Loans or proceeds from any of the ML Loans, or from the Insider Escrow to any of  
25 the following Insiders:  
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- 1. Julie B. Coles, Defendant John Doe Coles, and Defendant Perry L. Coles, Trustee of the Julie B. Coles Irrevocable Trust, and any amendments thereto;
- 2. Michael Denning and Donna Denning, and the marital community property of Michael Denning and his spouse;
- 3. Lisa A. Katz and John Doe Katz, husband and wife, and Defendant Lisa A. Katz, Trustee of the Lisa A. Katz Trust;
- 4. George A. Everette and Mary J. Everette, husband and wife, and Defendants George A. Everette and Mary J. Everette, Trustees of the GEME Revocable Trust, Dated December 19, 2005;
- 5. Defendant Perry L. Coles, Trustee of the Scott M. Coles Trust, Dated March 28, 2004;
- 6. Defendant Robert G. Furst and Jane Doe First, husband and wife, and Defendant Robert G. Furst, Trustee of The Robert G. Furst & Associates Defined Benefit Pension Plan; and
- 7. Defendants Ryan P. Walter and Jeanne M. Walter, husband and wife.

P. ML Manager shall cause any distribution or other payment that would have otherwise been made to an Insider to be held in a separate escrow or segregated account, or added to the Insider Escrow.

Q. ML Manager has asserted a right to recoup, offset or set-off against distributions, including distributions under the six Loans of at least \$336,000 (the "Offset Claim") against thirteen investors known as the "Rev-Op Group" consisting of (1) AJ Chandler 25 Acres, LLC; (2) Bear Tooth Mountain Holding LLP; (3) Cornerstone Realty & Development Inc.; (4) Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust; (5) Evertson Oil Company, Inc.; (6) The Lonnie Joel Krueger Family Trust; (7) Michael Johnson Investments II, LLC (8) Louis B. Murphey (9) Pueblo Sereno Mobile Home Park LLC (10) Queen Creek XVIII, LLC; (11) Morley

1 Rosenfield, M.D. P.C. Restated Profit Sharing Plan; (12) The James C. Schneck  
2 Revocable Trust; (13) William L. Hawkins Family LLP.

3 R. The Offset Claim includes a judgment (Case No. 10-AP-00430, Docket  
4 No. 137) that ML Manager that has obtained against the Rev-Op Group, among others,  
5 in the amount of \$89,364.26 (the "Judgment"). The Judgment is on appeal to the  
6 United States District Court for the District of Arizona, but has not been stayed.

7 S. ML Manager is entitled to satisfy the Judgment from distributions that  
8 would otherwise be made to the Rev-Op Group, which ML Manager has indicated that it  
9 will do on a pro-rata basis. ML Manager is authorized to satisfy the Judgment in such a  
10 manner.

11 T. As for the balance of the Offset Claim, or approximately \$246,000, ML  
12 Manager shall deduct that amount from the distributions to the Rev-Op Group on a pro-  
13 rata basis and segregate that amount in a separate escrow account pending further order  
14 of this Court, or another Court of competent jurisdiction, or agreement of ML Manager  
15 and the Rev-Op Group.

16 U. This Order is stayed only until 8 a.m., January 24, 2011. All other stays  
17 under the Federal Rule of Bankruptcy Procedure are hereby waived.

18 DATED AND SIGNED ABOVE.

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5 Attorneys for ML Manager LLC  
6  
7  
8

9 UNITED STATES BANKRUPTCY APPELLATE PANEL  
10 OF THE NINTH CIRCUIT

11 In re

12 MORTGAGES LTD.,

13 Debtor.

Chapter 11

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

**ML MANAGER'S ELECTION TO HAVE  
APPEAL HEARD BY DISTRICT COURT**

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15  
16 ML Manager, LLC through counsel hereby elects pursuant to 28 U.S.C.  
17 §158(c)(1)(B) to have the appeal, filed by the Rev-Op Group as set forth in its Notice of  
18 Appeal filed January 24, 2011 at Doc 3054, heard by the District Court.

19 Respectively submitted this 25th day of January 2011.

20 FENNEMORE CRAIG, P.C.

21  
22 By /s/ Keith L. Hendricks  
Cathy L. Reece  
23 Keith L. Hendricks  
24 Attorneys for ML Manager LLC  
25  
26

1 COPY of the foregoing sent via email  
2 to the following parties:

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*/s/ L. Carol Smith*

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