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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 **RESPONSE TO REV OP GROUP'S MOTION TO RETURN FUNDS** **Hearing Date: April 28, 2011** **Hearing Time:**

Through what they term as an "emergency" motion, the Rev-Op Group argue they are entitled to a distribution of the money held in the so-called "Offset Escrow" (even though this money was sent several days prior to the Rev-Op Group's motion being filed and the Rev-Op Group were so informed) and approximately $7,000 more in distributions (even though they are defendants under an enforceable unsatisfied judgment and this Court expressly ordered that the judgment could be satisfied from distributions to them). Simply stated, there is no emergency, and the Rev-Op Group's arguments are without merit. Nevertheless, it appears that the Rev-Op Group will not miss any opportunity to continue their attack against ML Manager. This Court should deny the Rev-Op Group's motion for two reasons. First, a majority of the Rev-Op Group's motion is moot as ML Manager had already caused the third-party servicing agent to distribute the majority of the disputed funds, or the so-called "Offset Escrow" to the members on the Rev-Op Group, which it did by mail on March 28, 2011, and ML Manager informed the Rev-Op Group of this fact before they filed their "emergency" motion. Second, the remainder of

the Rev-Op Group's motion is improper as ML Manager holds an unstayed, enforceable judgment against the members of the Rev-Op Group, and this Court expressly authorized ML Manager to satisfy this judgment from distributions to the Rev-Op Group. Moreover, even without this express authorization, pursuant to Arizona law ML Manager can enforce this judgment against any one of the members of the Rev-Op Group as they jointly contributed to the harm. ML Manager has not received satisfaction of the disputed portion of the judgment from anyone. Accordingly, ML Manager cannot be forced to return the disputed portion of the judgment.

I. THE ARGUMENTS WITH REGARD TO THE OFFSET ESCROW ARE MOOT, AND THE REV-OP GROUP KNEW THAT BEFORE THEY FILED THEIR MOTION.

The most significant portion of the Rev-Op Group's Motion, dollar wise, is the claim that the Offset Escrow must be distributed to them. Once this Court ordered the Offset Escrow disbursed, ML Manager began the process of causing the third-party servicer to make the distribution. The third-party servicer ultimately makes the distribution and controls the timing, but ML Manager gave the directions. The process was underway and very nearly completion when the Rev-Op Group complained for the first time, which was on Friday March 25, 2011. By that date, the third-party servicer had processed the checks and they were mailed out the next business day, Monday, March 28, 2011. The Rev-Op Group were contemporaneously notified of these facts, but filed their Motion Tuesday morning March 29, 2011, after the checks were already sent out.[1] Moreover, the Rev-Op Group were also informed that ML Manager's counsel who was primarily involved in these issues, Mr. Hendricks, was going to be in trial before Judge Marlar the last week of March, and then out of the Country on vacation the first two weeks in April. Instead of waiting to see if the Offset Escrow distribution was actually sent when ML Manager said it was, the Rev-Op Group filed their motion on Tuesday morning (just one full business day after first raising the issue with ML Manager). These

[1] *See* Checks dated March 25, 2011, attached hereto as Exhibit A.

facts significantly call into question the propriety and motive behind the Rev-Op Group's assertions. It appears that the Rev-Op Group manufactured this dispute in an attempt to take advantage of counsel for ML Manager's vacation.[2]

In short, the Rev-Op Group wrote to ML Manager on March 25, 2011 and demanded the status of the release of the escrowed funds by no later than 4:00 p.m. on March 28, 2011.[3] Prior to the arbitrary deadline imposed by the Rev-Op Group, ML Manager responded to the Rev-Op Group at 10:00 a.m. on March 28 indicating that the escrowed funds were released and that checks were being mailed to the Rev-Op Group.[4] Nevertheless, despite meeting their own arbitrary deadline, the Rev-Op Group still filed this motion claiming that ML Manager had failed to comply with the Court's order and requested an accelerated hearing when they knew that undersigned counsel was out of the country. In other words, the Rev-Op Group knew that the money had already been distributed by the escrow company as it had received affirmative notice, in compliance with its written demand. Accordingly, the allegations and insinuation that ML Manager was willfully disregarding the Bankruptcy Court's orders by failing to disburse the funds are false. This conduct comes close to, if not straddling the line between proper advocacy and gamesmanship.

II. <u>THE MONEY WITHHELD TO PARTIALLY SATISFY THE OUTSTANDING JUDGMENT.</u>

The only issue that remains is whether ML Manager is entitled to collect the Judgment this Court awarded, which has not been stayed and remains partially unsatisfied, from the Rev-Op Group. When it filed the Distribution Motion and proposed to distribute money to ten of the thirteen members of the Rev-Op Group, ML Manager specifically sought authorization to withhold the "Offset Escrow" and to satisfy the outstanding

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[2] Fortunately, this attempt was thwarted by this Court's wise decision to hold this hearing when it did.
[3] *See* March 25, 2011 Email from Bryce Suzuki to Keith Hendricks, attached to the Rev-Op Group's Motion as Exhibit D.
[4] *See* March 28, 2011 Email from Keith Hendricks to Bryce Suzuki, attached to the Rev-Op Group's Motion as Exhibit D.

judgment against the "**current**" Rev-Op Group from this distribution. ML Manager specifically explained that there were originally 18 members of the Rev-Op Group, but that this number had decreased to the 13 members at issue here. In the Distribution Motion, ML Managers specifically stated:

> Initially, the Group consisted of 18 investors; however, Melvin Dunsworth apparently dropped out of the group early in the process and did not contest or oppose the Declaratory Judgment. Recently, ML Manager reached a settlement with four other members of the Rev-Op Group whereby they each agreed to dismiss with prejudice their participation in any further litigation or pending appeals and pay their pro-rata share of the Offset Claim, or approximately $26,000 that was established as of the date the settlement offer was conveyed. Accordingly, the current Rev-Op Group currently consists of 13 members including (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 Rosenfield, M.D. P.C. Restated Profit Sharing Plan; (12) The James C. Schneck Revocable Trust; (13) William L. Hawkins Family LLP.[5]

(Distribution Motion, Docket #3017, at p.14-15) ML Manager went to the trouble to define the "**current**" Rev-Op Group because the settling Rev-Op Group members were not going to be impacted by the issues raised in the Motion and were essentially out of the case. In other words, ML Manager was open and explicit in highlighting the fact that the "**current**" Rev-Op Group was less than the original group. ML Manager did this expressly to avoid this very argument and so everyone would be aware of the exact individuals or entities who were being asked to pay what amounts. Once defining the "current" Rev-Op Group, ML Manager expressly sought to assert what it called the "Offset Claim" against the "**current**" Rev-Op Group, meaning the 13 remaining entities. ML Manager specifically indicated that the Judgment at issue was part of the "Offset Claim." ML Manager, stated:

[5] Bill Hawkins is the principal of 8 of these entities including AJ Chandler 25, Bear Tooth Mountain Holding, Cornerstone, Cornerstone Benefit Plan, Pueblo Sereno, Queen Creek XVIII and the Hawkins Family LLP. (footnote in original)

> Without prejudice to the assertion of future amounts against future distributions, ML Manager requests that the Court Order approving the treatment of the Disputed Distributions include a provision authorizing ML Manager to deduct approximately $310,000[6] from the distributions of the **current** Rev-Op Group on a pro-rata basis based on first available cash. (emphasis added).

(Id. at p. 15)

As the Court will recall, the Rev-Op Group objected to the Distribution Motion and the withholding of the Offset Escrow, but never raised an issue about the fact that only 13 members were in the defined Rev-Op Group. (*See* Docket 3028) Overruling the Rev-Op Group's objection, the Court granted the Distribution Motion. Accordingly, ML Manager proposed a form of Order granting the Distribution Motion. (Docket, 3046) The form of Order proposed by ML Manager expressly defined the "Rev-Op Group" as the 13 members[7] (*See* Docket 3046, Exhibit A, at ¶ U), and expressly stated that the Judgment at issue was against the "Rev-Op Group, among others." **More important, the form of Order expressly states: "ML Manager is entitled to satisfy the Judgment from distributions that would otherwise be made to the Rev-Op Group"** (which was the defined term meaning the 13 members identified in the prior paragraph) (*Id.* at ¶ W). Notably, the Rev-Op Group went through the proposed form of Order almost line-by-line and asserted a myriad of objections, proposed their own form of Order, but did not object to or alter either of these provisions. (*See* Docket 3047).

The Court entered a final Order adopting most or all of the Rev-Op Group's proposed revisions, but expressly left in tact the provisions that indicated that the "ML Manager is entitled to satisfy the Judgment from distributions that would otherwise be

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[6] In this Motion, ML Manager explained that through the end of October, 2010, the total amount of fees and costs incurred in fighting with the Rev-Op Group was $336,000. (Docket, 3017, at p. This included the $90,000 outstanding judgment and the $263,000 "Offset Escrow." ML expressly indicated that it was seeking to recover $310,000 from the "**current**" Rev-Op Group. In fact, ML Manager even attached a spreadsheet showing the pro-rata distribution of the $310,000 over the thirteen members of the "**current**" Rev-Op Group members. The reduction in the Offset Escrow from $336,000 to $310,000 accounted for the settlement of the Offset Claim with the four prior Rev-Op Members.

[7] The proposed form of Order even numbered the members of the Rev-Op Group so that it was obvious that it was just the 13 in the "current" Rev-Op Group and not the 18 original members.

made to the Rev-Op Group" which is expressly defined in the Order as the thirteen entities currently included in the Rev-Op Group. (Docket, 3051, at ¶¶ Q, R and S) A copy of the Court's signed Order is attached as Exhibit A.

After the entry of this Order, at the invitation of the Court, the Rev-Op Group filed a motion and further hearings were then held on the Offset Escrow. Again, nothing was argued by the Rev-Op Group about the fact that ML Manager was seeking payment of the Judgment from them. After the hearing on the Offset Escrow, the Court ordered that ML Manager disburse the Offset Escrow, but expressly stated during the hearing that the Order did not affect its Order that the Judgment could be satisfied from the distributions to the Rev-Op Group members. Thus, as the Court Order indicated that the Judgment could be satisfied from distributions to the 13 members of the Rev-Op Group and ML Manager had told the Court that it intended to satisfy the Judgment from those 13 members on a pro-rata basis, ML Manager withheld, on a pro-rata basis, the proportionate amount of the judgment from the 10 Rev-Op Group members because only 10 of the 13 members were receiving a distribution at the time. This was exactly consistent with ML Manager's prior positions and its statements to the Court and parties.

Only after all of that did the Rev-Op Group argue that the four settling members must pay a share of the Judgment even though they have not yet received any distributions. ML Manager's position has always been that it was entitled to receive payment of the Judgment from first available cash. In fact, this position was expressly argued at the hearing on the Offset Escrow where ML Manager that it did not need to wait until all distributions were received to collect the judgment because it could not wait to pay its obligations to its attorneys. The Court essentially agreed with this proposition when in indicated that the judgment could be satisfied from first available cash. [8]

[8] The payment of the judgment from first available cash has always been the heart of the issue. The settlement with the 4 settling defendants is premised on an agreement that they will only pay their share of the $336,000 Offset Claim, if at all, based as a deduction on a proportionate basis from all of their distributions. One of the arguments that ML Manager made to all Rev-Op members was that a benefit of the settlement is that payments would be limited to a deduction on a proportionate basis from their distributions, but if they didn't settle, then they were subject to garnishments and joint and several obligations.

It is ML Manager's position that the $26,000 settlement with the four settling prior members of the Rev-Op Group was for the entire Offset Claim and may never be collected if there are no disbursements. ML Manager reduced the entire Offset Claim from $336,000 to $310,000 to account for this settlement, but always made it clear that the $90,000 judgment remained a part of the $310,000 and that ML Manager would seek to satisfy this judgment from first available cash. ML Manager further consistently argued that the Judgment was, as a matter of law, a joint and several obligation that ML Manager could enforce it, at its pleasure, from the assets of any of the members of the Rev-Op Group. In other words, ML Manager could have garnished the bank account of any member of the Rev-Op Group and satisfied the judgment without regard for a pro-rata allocation. It is true that ML Manager did agree to collect the judgment from the 13 members of the Rev-Op Group on a pro-rata basis, which is exactly what it did and intends to do, but it never agreed to pro-rate the judgment among the settling defendants, transfer the risk of payment of the judgment to a collection of distribution on all loans, or release the Rev-Op Group, in any fashion, from their obligation to pay the Judgment.

Accordingly, the only issue remaining before this Court is whether the Rev-Op Group is entitled to $7,992.00 representing part of the Fee Judgment that has not yet been paid by any members of the Rev-Op Group. The Rev-Op Group argues that it is entitled to recover this amount because it represents the portion of the Fee Judgment that should be paid at some future time by the settling members of the Rev-Op Group. The Rev-Op Group's argument is flawed, because no party has satisfied the Judgment. ML Manager agrees that it is not permitted to recover the Judgment from two different parties; however, ML Manager has not received any money from any party for the amount of the Judgment at issue. Based on the previous Orders of this Court and common law principles, ML Manager is entitled to do exactly what it did, withhold the amount of the Judgment from each of the Rev-Op Group members on a pro-rata basis.

Four members of the Rev-Op Group took the settlement, but now, all the other members want the benefits of the settlement without accepting any of the compromises.

1 Joint and several liability applies when two or more actors together cause an injury.
2 *See, e.g., Herstam v. Deloitte & Touche, LLP*, 186 Ariz. 110, 114, 919 P.2d 1381, 1385
3 (App. 1996). Here the Rev-Op Group collectively caused ML Manager to incur
4 attorneys' fees that the Court awarded in the Judgment. Thus, at the hearing where this
5 Court awarded ML Manager fees, the Court specifically required that the Fee Judgment
6 not indicate exactly whom the Fee Judgment ran against.[9] Accordingly, the Rev-Op
7 Group is collectively responsible for the Fee Judgment and ML Manager can enforce the
8 Fee Judgment against any member of the Rev-Op Group. The Rev-Op Group argues that
9 Arizona has abrogated joint and several liability, but Arizona has only abrogated joint and
10 several liability in the tort context. This is not a tort case; consequently, the Rev-Op
11 Group's citation to the Uniform Contribution Among Tortfeasors Act is unpersuasive.
12 The Judgment remains unpaid. Until some party satisfies the entire Judgment, ML
13 Manager is entitled to deduct the unpaid amounts from the Rev-Op Group's distributions.

14 **III. CONCLUSION.**

15 ML Manager has acted consistent with this Court's orders as well as its obligations
16 to the Rev-Op Group and every other investor. Accordingly, the Court should deny the
17 Rev-Op Group's motion.

18 DATED this 27th day of April, 2011.

19 FENNEMORE CRAIG, P.C.

20

21 By * /s/ Keith L. Hendricks* (012750)
22 Cathy L. Reece
Keith L. Hendricks
Attorneys for ML Manager LLC

23

24

25 COPY served by mail or e-mail
this 27th day of April, 2010, to:

26 Robert J. Miller

27

28

[9] *See* September 28, 2010 Minute Entry, case 10-ap-0430 [Docket No. 135] ("ML Manager is directed to upload a form of judgment with no recitation as to specifically whom it runs against.")

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/s/ L. Carol Smith

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

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

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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,[1] (4)

[1] There were no sale orders with the two Newman loans as the borrower paid them in full.

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

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

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

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

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

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

1 expenses, as well as "Loan Specific Costs" incurred after the confirmation of the plan of
2 reorganization in this matter.[2]

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

25 [2] 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

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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 Stated 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 1. Julie B. Coles, Defendant John Doe Coles, and Defendant Perry L. Coles,
2 Trustee of the Julie B. Coles Irrevocable Trust, and any amendments thereto;
3 2. Michael Denning and Donna Denning, and the marital community property
4 of Michael Denning and his spouse;
5 3. Lisa A. Katz and John Doe Katz, husband and wife, and Defendant Lisa A.
6 Katz, Trustee of the Lisa A. Katz Trust;
7 4. George A. Everette and Mary J. Everette, husband and wife, and Defendants
8 George A. Everette and Mary J. Everette, Trustees of the GEME Revocable Trust,
9 Dated December 19, 2005;
10 5. Defendant Perry L. Coles, Trustee of the Scott M. Coles Trust, Dated March
11 28, 2004;
12 6. Defendant Robert G. Furst and Jane Doe First, husband and wife, and
13 Defendant Robert G. Furst, Trustee of The Robert G. Furst & Associates Defined
14 Benefit Pension Plan; and
15 7. Defendants Ryan P. Walter and Jeanne M. Walter, husband and wife.
16 P. ML Manager shall cause any distribution or other payment that would
17 have otherwise been made to an Insider to be held in a separate escrow or segregated
18 account, or added to the Insider Escrow.
19 Q. ML Manager has asserted a right to recoup, offset or set-off against
20 distributions, including distributions under the six Loans of at least $336,000 (the
21 "Offset Claim") against thirteen investors known as the "Rev-Op Group" consisting of
22 (1) AJ Chandler 25 Acres, LLC; (2) Bear Tooth Mountain Holding LLP; (3)
23 Cornerstone Realty & Development Inc.; (4) Cornerstone Realty & Development, Inc.
24 Defined Benefit Plan and Trust; (5) Evertson Oil Company, Inc.; (6) The Lonnie Joel
25 Krueger Family Trust; (7) Michael Johnson Investments II, LLC (8) Louis B. Murphey
26 (9) Pueblo Sereno Mobile Home Park LLC (10) Queen Creek XVIII, LLC; (11) Morley

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

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

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

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

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

DATED AND SIGNED ABOVE.