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UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re:	Chapter 11
MORTGAGES, LTD.,	Case No. 2:08-bk-07465-RJH
Debtor.	**MOTION FOR APPROVAL OF SETTLEMENT BETWEEN ML MANAGER AND JEFFREY C. STONE, INC., DBA SUMMIT BUILDERS (PROCEEDS FROM SALE OF OSBORN III/TEN LOFTS)**
	Hearing Date: May 31, 2011 Hearing Time: 11:00 a.m. Location: Ctrm 603 230 N. First Avenue Phoenix, AZ

ML Manager, LLC, as the manager for Osborn III Loan, LLC ("Osborn III"), and the agent for 31 Pass-Through Investors ("ML Manager"), by and through undersigned counsel, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, hereby moves for approval of a settlement reached with Jeffrey C. Stone, Inc., dba Summit Builders ("Summit"), regarding competing claims to and disposition of the escrowed sales proceeds (the "Escrowed Sale Proceeds"), received and escrowed in connection with the prior sale of the project known as Osborn III/Ten Lofts Condominiums, located at 7116 and 7126 East Osborn Road, Phoenix, Arizona (the "Project"). A true and correct copy of the subject

settlement agreement (the "Agreement") is attached hereto as Exhibit "A" and incorporated herein by reference.

This Settlement is based upon ML Manager's business judgment and is in the best interests of the estate and its creditors. Accordingly, ML Manager respectfully requests that the Court enter its order approving the settlements set forth in the Agreement, and as provided for herein. This motion is based upon the pleadings on file in this matter and the attached memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to this Court's order approving the sale of the Project (the "Sale Order") [DE 2976], this Court approved the sale of the Project over the objections of various parties, subject to the requirement that the Escrowed Sale Proceeds, in the amount of $3,445,095.79, be deposited and held in escrow for the sole benefit of ML Manager and Summit, "free from any other claims or interests other than the undivided ownership interests of Osborn III Loan, LLC and the pass-through investors, with the alleged liens and interests of Summit Builders and ML Manager to attach to the Escrowed Sale Proceeds in the same manner, extent and priority that such liens and interests held in the Property as they existed immediately prior to the sale of the Property . . . ." A true and correct copy of the Sale Order is attached hereto as Exhibit "B" and incorporated herein by reference. The Escrowed Sale Proceeds were duly deposited into escrow where they continue to be held.

Summit, ML Manager, and various other parties, are parties to certain consolidated cases pending in Maricopa County Superior Court at CV2008-0033080 (Consolidated) (the "State Court Litigation"). In the State Court Litigation, Summit and various other sub-contractors, materialmen, and suppliers, have contended that they hold liens against the Project that are senior in priority to the lien held by ML Manager against the Project, and that ML Manager's prior trustee's sale of the Project had no effect on such liens.

It appears that, on April 24, 2006, Summit and Osborn III (the owner of the Project)

entered into an agreement pursuant to which Summit was to provide labor and materials to the Project (the "Construction Contract"). According to Summit, it began work on the Project pursuant to the Construction Contract on July 21, 2006. Summit recorded a Notice and Claim of Mechanic's and Materialmen's Lien on July 3, 2008, as well as subsequent amendments to that Notice of Claim.

On or about August 14, 2006, Obsorn III obtained a loan from Mortgages, Ltd. ("ML") in the amount of $41,400,000.00, which was secured by a deed of trust recorded on August 22, 2006 as Instrument No. 2006-1116307 in the records of Maricopa County, Arizona (the "Second ML Deed of Trust"). Some of the proceeds from that loan were used to pay off a pre-existing loan from ML to Osborn III that pre-dated the date of the Construction Contract, and was secured by a prior deed of trust against the Project (the "First ML Deed of Trust"). However, no document was recorded in connection with the August, 2006 transaction evidencing any agreement or intent between the parties to subrogate the Second ML Deed of Trust into the position or priority of the First ML Deed of Trust, with regard to the intervening mechanics' lien claims, or for any other purpose. ML Manager is the successor-in-interest to ML for purposes of that loan transaction, and is the holder of the note secured by the Second ML Deed of Trust.

ML obtained a policy of title insurance from Lawyers Title Insurance Corporation (the "Title Policy") insuring the priority of the Second ML Deed of Trust as against third parties, which contains no exclusion for the liens of Summit or the other mechanic's lien claimants against the Project. Thereafter, Fidelity National Title Insurance Company, successor-by-merger to Lawyers Title Insurance Corporation ("Fidelity") agreed to pay for the defense of ML Manager's rights in the State Court Litigation.[1] However, Fidelity defended ML Manager subject to a reservation of rights, pursuant to which it attempted to reserve the right to deny coverage under the Title Policy in the event that Summit or the

[1] As discussed in more detail below, Fidelity subsequently terminated its defense of ML Manager in the State Court Litigation.

other mechanic's lien holders were to prevail in establishing the priority of their liens as against the Second ML Deed of Trust or the First ML Deed of Trust. Fidelity's actions placed ML Manager into a situation in which it risks losing the entire Escrowed Sale Proceeds to Summit, if Summit and the other claimants were to prevail in the State Court Litigation, and Fidelity thereafter refused to reimburse ML Manager under the Title Policy for such amounts. ML Manager is informed and believes that Summit's current claim, including principal, interest, and attorneys' fees, exceeds $3,500,000.00.

In the State Court Litigation, ML Manager and Summit filed cross-motions for summary judgment that were fully briefed and scheduled for oral argument on January 28, 2011. In connection with those cross-motions for summary judgment, ML Manager determined that there was a material risk that: (a) Summit would prevail on its motion for summary judgment; (b) even if both motions for summary judgment were denied, Summit and the other mechanic's lien claimants may prevail at trial, after further delay and the accrual of additional interest and attorneys' fees that could be assessed against the Escrowed Sale Proceeds; and (c) Fidelity would deny coverage and fail to fund any amounts to which Summit or the other mechanic's lien claimants may be awarded from the Escrowed Sale Proceeds. In addition, ML Manager is liable for a loan that was made in order to allow ML to emerge from bankruptcy (the "Exit Financing"), under which there will be significant additional charges and fees in the event that amounts (including a portion of the Escrowed Sale Proceeds) are not paid in mid-June, 2011. For all of these reasons, ML Manager entered into settlement negotiations with Summit that resulted in an agreement in principle on the eve of the oral argument in the State Court Litigation regarding the cross-motions for summary judgment. Pursuant to the terms of the Agreement, the Escrowed Sale Proceeds will essentially be split, with Summit receiving $1,750,000, and ML Manager receiving the balance.

This settlement is reasonable and appropriate. ML Manager respectfully requests the Court to approve the settlement as set forth in the Agreement, and to enter an order

authorizing and approving the Agreement, including findings that the Agreement is fair and reasonable in all respects, is in the best interests of Osborn III, its members, and the pass-through investors represented by ML Manager, that the decision to settle in accordance with the terms of the Agreement is supported by the best exercise of business judgment of ML Manager and is consistent with ML Manager's fiduciary duties and responsibilities, and that nothing in the order approving the Agreement, including, without limitation, the payment to Summit from the Escrowed Sale Proceeds, shall waive, release, or impact the coverage or liability of the Title Policy for payment of the alleged mechanic's liens.

II. BACKGROUND

On September 3, 2010, ML Manager filed its *Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests*, relating to the Project (the "Sale Motion") [DE 2923] in this case. Pursuant to the Sale Motion, ML Manager sought approval to sell the project free and clear of all liens, claims, and encumbrances, including without limitation the alleged liens of Summit and the other mechanic's lien claimants.

On September 21, 2010, Summit filed its *Summit Builder's Objection to ML Manager's Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests* (the "Summit Objection) [DE 2961]. On September 24, 2010, Bear Tooth Mountain Holdings, LLP and others filed a *Response and Reservation of Rights With Respect to ML Manager's Motion to Approve Sale of Real Property (Osborn III/Ten Lofts)* (the "Bear Tooth Objection) [DE 2965]. On September 27, 2010, Carol Mahakian filed her *Joinder in Response and Reservation of Rights With Respect to ML Manager's Motion to Approve Sale of Real Property (Osborn III/Ten Lofts)* in which she joined in the Bear Tooth Response. On September 27, 2010, ML Manager filed its *Reply in Support of Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests* [DE 2970].

On September 28, 2010, this Court conducted a hearing on the Sale Motion. At that hearing, the attorney for ML Manager (who had been retained by Fidelity) advised the Court

that negotiations were underway with Summit to resolve the Summit Objection via the escrowing of a portion of the sales proceeds, but that the amount to be escrowed had not yet been agreed upon. Thereafter, ML Manager and Summit reached an agreement as to the settlement of the Sale Motion and the Summit Objection. On October 1, 2010, the Court entered the Sale Order approving the sale in accordance with the terms of that settlement.

The Sale Order provided, among other things, as follows:

> Nothing in this Order, including, without limitation, the escrowing of the Sale Proceeds, shall waive, release or impact the coverage or liability of the title insurance policy for the payment of the alleged mechanic's liens.

Nonetheless, on March 21, 2011, Fidelity sent a letter to ML Manager advising it that Fidelity would no longer cover ML Manager's defense in the State Court Litigation, on the grounds that the underlying property had been sold. A true and correct copy of that letter is attached hereto as Exhibit "C" and incorporated herein by reference. Thus, any further attorneys' fees and other expenses that would be incurred by ML Manager in asserting or protecting its rights in the State Court Litigation must now be paid directly by ML Manager, which does not, under the present circumstances, have the ability to pay such amounts, or to cover the costs of any bond for a stay pending appeal, in the event that Summit or the other lien claimants were to prevail in the State Court Litigation.

III. ARGUMENT

The proposed settlement between the parties meets the requirements of *Woodson v. Firemen's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610 (9th Cir. 1988) and *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986). *Woodson* declares that the Bankruptcy Court has great latitude in approving compromise agreements. *See Woodson*, 839 F .2d at 620. The function of compromise agreements is to avoid litigation, which by its nature involves expense and delay, unless there appears to be a sound legal basis for the litigation and a likelihood of substantial ultimate benefit to the estate. *See In re General*

Store of Beverly Hills, 11 B.R. 539, 541 (Bank. 9th Cir. 1981); *see also A&C Properties*, 784 F.2d at 1384.

In considering a proposed compromise, the Court should consider: (a) the expense, benefits, hazards, and complexity of the litigation; (b) the time required to litigate the matter; and (c) whether disallowance of the settlement would result in waste of the estate's assets. *In re General Store*, 784 at 541.

Consideration of these factors does not require the Court to decide questions of law or fact raised in the controversy to be settled, or to determine that the compromise presented is the best possible outcome between the parties. Rather, the Court need only canvass the issues to determine whether the settlement falls within a "range of reasonableness with respect to settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d. Cir. 1972). Accordingly, if the Court finds the compromise is within that "range of reasonableness," it should be approved. *See In re Planned Protective Services, Inc*., 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). Further, in considering a proposed compromise and settlement "the bankruptcy judge may give weight to the opinions of the trustee, the parties and their attorneys." *A&C Properties*, 784 F.2d at 1384.

Approval of the Agreement is reasonable and appropriate under the foregoing, or any other standards of reasonableness. First, the State Court Litigation is complicated, involving numerous factual and legal issues, there is a significant risk that Summit or the other lien claimants may prevail as against ML Manager's lien position, and there is significant risk to ML Manager of financial damage in connection with that litigation, particularly since Fidelity has refused to acknowledge its liability under the Title Policy for these claims, and now that Fidelity has withdrawn any financial assistance for the payment of the litigation fees and expenses.

Second, ML Manager believes that there is a significant risk that its Motion for Summary Judgment will not be granted in the State Court Litigation, both because of the issues raised by Summit and because the judge presiding over the State Court Litigation denied ML Manager's Motion for Summary Judgment in a separate lawsuit between ML Manager and competing mechanics' lien claimants with regard to a different project, and that there is, therefore, a strong likelihood that the time required to litigate the matter will be significant (even assuming for purposes of argument that the Summit Motion for Summary Judgment would not be granted).

Third, disallowance of the settlement would likely result in a waste of the estate's assets, because of the significant risk that Summit or the other lien claimants will prevail in the State Court Litigation, which risk is further compounded by Fidelity's refusal to acknowledge its liability under the Title Policy for these claims, and, more recently, by Fidelity's withdrawal of the financial support for the litigation.

As opposed to the settlement reached under the Agreement, continuing litigation will expose ML Manager to the material risk of losing all, or substantially all, of the Escrowed Sale Proceeds. Finally, ML Manager needs to obtain as much as possible from the Escrowed Sale Proceeds prior to June 15, 2011, in order to avoid incurring significant, additional finance charges and other amounts under the Exit Financing. For all of these reasons, the decision by ML Manager to enter into this Settlement is imminently reasonable and appropriate, and the Agreement should be approved according to its terms.

WHEREFORE, ML Manager respectfully requests the Court to enter an order approving the Agreement according to its terms, and further finding that the Agreement is fair and reasonable in all respects, is in the best interests of ML Manager, Osborn III and its members, the pass-through investors represented by ML Manager, that the decision to settle in accordance with the terms of the Agreement is supported by the best exercise of business judgment of ML Manager and is consistent with ML Manager's fiduciary duties and responsibilities, and that nothing in the order approving the Agreement, including, without

limitation, the payment to Summit from the Escrowed Sale Proceeds, shall waive, release, or impact the coverage or liability of the Title Policy for payment of the alleged mechanic's liens, together with such other and further relief as the Court may deem just and proper.

DATED: May 16, 2011

PERKINS COIE LLC

By: /s/ Richard M. Lorenzen (# 006787)
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The 30 Non-Transferring Pass-Through Investors on the attached OSBORN III SERVICE LIST via e-mail.

The Non-Transferring Pass-Through Investor without an e-mail address on the attached OSBORN III SERVICE LIST via First Class Mail.

The MECHANICS' LIEN HOLDERS with email addresses as follows:

pacej@ballardspahr.com; rcc@procopio.com; mdenious@stoopsazlaw.com; jgraif@gbmlawpc.com; kkasarjian@holdenwillits.com; kfrakes@holdenwillits.com; kroyerlaw@aol.com; kpalecek@paleceklaw.com; klane@paleceklaw.com; jon@hammerman-hultgren.com; stan@hammerman-hultgren.com; jromero@omlaw.com; jrogers@omlaw.com; dpv@cimlaw.com; jjs@cimlaw.com; gwinney@gblaw.com

All parties on the ECF SERVICE LIST in this case.

/s/ Kathryn Hardy
LEGAL20853364.1

OSBORNE III SERVICE LIST

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Mr. & Mrs. Yuval Caine 16211 N. Scottsdale Rd. Ste - A6A #606 Scottsdale AZ 85254 ycaine@netvision.net	Mrs. Shirley A. Cannon 808 East Shadow Ridge Rd Casa Grande AZ 85222-1714	Mr. Melvin Dunsworth, Jr. PO Box 481518 Kansas City MO 64148 bigduns@aol.com long@gkbaum.com kacord@acordpa.com jonesk@prairiecapital.com
Evertson Oil Co. c/o Mr. Bruce F. Evertson P.O. Box 397 Kimball, NE 69145 bruce@evertson.com lynn@evertson.com	First Trust Co. of Onaga Oxford Investment Partners FBO Robert M. Facciola 2390 E. Camelback Rd. #202 Phoenix, AZ 85016 walter@oxfordpartners.net cassandra@oxfordpartners.net	Robert M. Facciola 1965 Portola Road Woodside, CA 94062 bfacciola@hughes.net
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Mr. Lonnie J. Krueger Trustee of The Lonnie Joel Krueger Family Trust Agreement 13601 N. 85th St. Scottsdale AZ 85260 ljkrueger@cox.net	Mr. Maurice J. Lazarus 11420 St. Andrews Way Scottsdale AZ 85254 mogq@cox.net	WCL851106 LLC c/o Mr. William C. Lewis 6525 N. 26th St. Phoenix AZ 85016-8936 wclewis@cox.net

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Frederick Thomas SMITH & CRAVEN, P.L.L.C. 4045 E. Union Hills Drive		

2349257

Exhibit "A"

SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement") is entered into as of May ___, 2011, by and between ML Manager, LLC, as the manager for Osborn III Loan, LLC ("Loan LLC") and the agent for those certain 31 non-transferring pass-through investors (collectively "ML Manager"), and Jeffrey C. Stone, Inc. dba Summit Builders ("Summit"). Each of the foregoing parties may individually be referred to herein as a "Party" and, collectively, as the "Parties."

RECITALS

A. Loan LLC is the successor in interest to Mortgages, Ltd. ("ML") in connection with the loan (the "Second ML Loan") from ML to Osborn III Partners, LLC ("Osborn III"), in the original principal amount of $41,400,000.00 which was secured by a deed of trust recorded on August 22, 2006 against certain real property owned by Osborn III (the "Property"), at Instrument No. 2006-1116307 in the records of Maricopa County, Arizona (the "Second ML Deed of Trust"). A portion of the proceeds from that loan was used to pay off a previous loan from ML to Osborn III (the "First ML Loan"), which was also secured by a deed of trust against the Property ("the First ML Deed of Trust") that was released in a Release and Reconveyance recorded at Instrument No. 2006-1212051 on September 12, 2006. No document was recorded that reflected an agreement to subrogate the Second ML Deed of Trust into the position of the First ML Deed of Trust.

B. On April 24, 2006, Summit and Osborn III entered into an agreement pursuant to which Summit was to provide labor and materials in connection with the construction of improvements on the Property, commonly known as the Ten Lofts Condominiums, located at 7126 E. Osborn Road, Scottsdale, Arizona (the "Project"). Summit contends that it began work on the Project on July 21, 2006. Summit recorded a Notice and Claim of Mechanics' and Materialmen's Lien against the Property on July 3, 2008 (the "Summit Lien"). Summit further recorded amendments to that Notice of Claim and Lien on December 12, 2008, December 24, 2008, and December 30, 2008. Additional Mechanics' and Materialmen's Liens were recorded against the Property (the "Additional Liens") by various subcontractors, materialmen, and suppliers who had provided goods and/or services to the Project (the "Additional Lien Claimants").

C. Beginning in 2008, and continuing in 2009, various lawsuits were filed by one or more of the Additional Lien Claimants against ML, Osborn III, Summit, and other Additional Lien Claimants, seeking a determination that the liens held by such parties against the Property were senior and prior to the other liens against the Property, including the Second ML Deed of Trust. Those lawsuits were filed in the Superior Court of the State of Arizona in and for the County of Maricopa, at CV2008-033080, CV2009-002138, CV2009-002641, CV2009-003123, CV2009-050918, and CV2009-019132, all of which were thereafter consolidated under CV2008-033080 (individually and collectively, the "State Court Litigation").

D. On September 3, 2010, ML Manager filed its *Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests* (the "Motion to Sell"), in ML's bankruptcy case, currently pending in the United States Bankruptcy Court for the District of Arizona, at Case No. 08-07465 (the "ML Bankruptcy Case") (DE 2923), pursuant to which ML

Manager sought bankruptcy court approval for a sale of the Property free and clear of all liens, claims, encumbrances, and interests.

E. On September 21, 2010, Summit filed an objection to the Motion to Sell in the ML Bankruptcy Case (DE 2961) (the "Summit Objection"). An additional response to the Motion to Sell and a related joinder were also filed in the ML Bankruptcy Case (DE Nos. 2965, 2969). On September 27, 2010, ML Manager filed its reply to the various objections to the Motion to Sell (DE 2970). A hearing on the Motion to Sell was set by the Court for September 28, 2010 (the "Sale Hearing").

F. Prior to the Sale Hearing, Summit and ML Manager negotiated a tentative resolution of the issues raised in the Summit Objection that would permit the sale of the Property to go forward as requested, subject to the escrowing of sufficient funds to protect the claimed interests of Summit and the Additional Lien Claimants. Following the Sale Hearing, the Parties negotiated and agreed upon the amount of $3,445,095.79 as the amount to be deposited and held in escrow (the "Escrowed Sale Proceeds") for the sole benefit of Summit and ML, with the alleged liens and interests of Summit and ML Manager to attach to the Escrowed Sale Proceeds in the same manner, extent and priority that such liens and interests existed prior to the sale of the Property. All of the negotiations regarding the resolution of the Summit Objection and the escrowing of the Escrowed Sale Proceeds were conducted by and through Scott Malm and the firm of Gust Rosenfeld, PLC, who had appeared on behalf of ML Manager in the State Court Litigation.

G. On October 1, 2010, the bankruptcy court entered its *Order Approving Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests* in the ML Bankruptcy Case (the "Sale Order") (DE 2976), which approved, among other things, the sale of the Property free and clear of all liens, claims, encumbrances, and interests, but subject to the escrowing of the Escrowed Sale Proceeds, as described above.

H. Following entry of the Sale Order, the Property was sold, and, on October 25, 2010, the Escrowed Sale Proceeds were deposited into Escrow No. 104322 at Thomas Title & Escrow, LLC, 16435 N. Scottsdale Road, Suite 405, Scottsdale, Arizona 85254 (the "Escrow").

I. On October 8, 2010, ML Manager filed a *Motion for Summary Judgment* in the State Court Litigation, seeking entry of a judgment to the effect that the Second ML Deed of Trust was senior in priority to the Summit Lien and the Additional Liens under various theories, including a claim based upon the use of a portion of the proceeds from the Second ML Loan to pay off the First ML Loan, and various statutory theories (the "ML MSJ").

J. Summit opposed the granting of the ML MSJ, and, in addition, on November 24, 2010, Summit filed its *Cross-Motion for Summary Judgment* seeking entry of a judgment that the Summit Lien was senior and prior to the Second ML Deed of Trust under various theories, including claims that the Trustee's Deed failed to convey to ML a superior interest in the Property (the "Summit MSJ"). .

K. ML responded to and opposed the Summit MSJ, and all briefing and other filings relating to the ML MSJ and the Summit MSJ were completed and filed in the State Court Litigation.

L. The Court set a hearing on January 28, 2011 for oral argument on the ML MSJ and the Summit MSJ in the State Court Litigation. Prior to the commencement of that hearing, the Parties reached the settlement set forth in this Agreement, and the hearing was vacated subject to the consummation of that settlement as set forth herein.

M. The Parties having reviewed the relevant facts and legal issues in the State Court Litigation, the risks and potential outcomes of such litigation, and having engaged in good faith, arms-length negotiations concerning the disposition of the Escrowed Sale Proceeds and the settlement of the State Court Litigation, and having reached agreement as to the terms for such disposition and resolution set forth herein, which terms are fair and reasonable under all of the facts and circumstances, desire to settle their respective claims to the Escrowed Sale Proceeds and in the State Court Litigation, in accordance with the terms and provisions hereof.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

AGREEMENT

1. **Recitals**. The foregoing recitals are incorporated herein by reference as though set forth in full herein.

2. **Subject to Bankruptcy Court Approval**. This Agreement is subject in all respects to entry of a final order (the "Approval Order") in the ML Bankruptcy Case that: 1) approves the Agreement according to its terms; 2) includes findings that the Agreement is fair and reasonable in all respects, is in the best interests of Loan LLC, its members, and the pass-through investors represented by ML Manager, that the decision to settle in accordance with the terms hereof is supported by the best exercise of business judgment of ML Manager and is consistent with ML Manager's fiduciary duties and responsibilities; and 3) is either: a) nonappealable; or b) for which a stay order is not entered in the ML Bankruptcy Case. ML Manager agrees to prepare a form of Approval Order that complies with the requirements of this Agreement.

3. **Effective Date**. The first business day after which: (a) the Approval Order has become final and non-appealable; and (b) Summit has delivered to ML Manager the properly executed and notarized assignment in the form attached hereto as Exhibit "A" (the "Assignment"); shall hereinafter be referred to as the "Effective Date." In the event that the Approval Order is not entered in the ML Bankruptcy Case within a reasonable time after ML Manager Requests Bankruptcy Court Approval of this Agreement, this Agreement shall be null and void, and shall not be admissible in the State Court Litigation for any purpose.

4. **Disposition of Net Sale Proceeds**. Upon the Effective Date: (a) ML Manager shall unconditionally be entitled to receive all Escrowed Sale Proceeds, together with any other

interest or funds in the Escrow, in excess of $1,750,000.00 (the "Lien Settlement Amount"), free and clear of all liens, claims, encumbrances, and/or interests of Summit, Additional Lien Claimants, or any other person or party; and (b) Summit shall unconditionally be entitled to receive the Lien Settlement Amount from Escrowed Sale proceeds.

5. **State Court Litigation**. Following the Effective Date, subject to request by ML Manager, but not as a condition precedent to its right to payment under this Agreement, Summit will voluntarily cooperate and proceed in good faith with ML Manager to the extent that any approval of this Agreement is requested in connection with the State Court Litigation.

6. **Indemnity**. Upon receipt of the full Lien Settlement Amount to be paid to Summit from the Escrowed Sale proceeds, Summit agrees to indemnify, defend and hold harmless ML Manager for, from and against any all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees) that may be imposed on, incurred by, or asserted against ML Manager in any manner relating to or arising out of the Additional Liens, or otherwise asserted by the Additional Lien Claimants (the "Indemnified Liabilities"). To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Summit shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by ML Manager.

7. **Assignment of Summit's Mechanics' Lien Claims**. Summit shall assign to ML Manager its claims and rights pursuant to the Assignment.

8. **Release of Claims Against Summit**. Upon the Effective Date and except for the covenants, promises, and obligations of the Parties arising hereunder, and under the Escrow Instructions, and in consideration of the promises made by Summit hereunder, including but not limited to Summit's assignment of its Mechanics' Lien claims against the Property, ML Manager does hereby release and forever discharge Summit, its respective past and present parents, subsidiaries, and affiliates, if any, and their respective past and present members, employees, officers, agents, representatives, directors, attorneys, successors, and assigns from any and all claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action, of every nature, character or description, known and unknown, that ML Manager now owns or holds, or has at anytime heretofore, owned or held, whether based in contract, tort, statutory or other legal or equitable theory of relief. ML Manager and Summit shall bear their own respective attorneys' fees and costs relating to the negotiation and documentation of this Agreement, the State Court Litigation, and the actions contemplated hereby.

9. **Preservation of Claims**. Nothing contained in this Agreement or the Escrow Instructions shall prejudice, impair, or affect in any way any claims that ML Manager may hold arising under any policy of title or other insurance, whether based in contract, tort, statutory or other legal or equitable theory of relief, all of which claims are specifically preserved for the benefit of ML Manager. No such claims, or interest in such claims have been transferred or assigned by ML Manager to Summit, and Summit has no right or interest therein, or to any recoveries thereon.

10. **Entire Agreement/Voluntary Execution**. This Agreement and the Escrow Instructions (collectively, the "Closing Documents") contain the entire agreement between and among the Parties hereto and constitute the complete, final, and exclusive embodiment of their agreements with respect to the subject matters hereof. The terms of the Closing Documents are contractual and not a mere recital. The Closing Documents have been executed without reliance upon any promise, warranty, or representation by any Party or any representative of any Party other than those expressly contained herein and therein, and each Party has carefully read this Agreement, has been advised of its meaning and consequences by his or its own attorney, and has executed the Closing Documents of its or his own free will, without coercion.

11. **Equal Participation and Drafting**. The Parties hereto have participated in and have had an equal opportunity to participate in drafting the Closing Documents. No ambiguity shall be construed against any Party based on an assertion that the Party drafted any language.

12. **Binding Effect**. The Closing Documents shall bind the agents, representatives, successors, and assigns of each Party, and shall inure to the benefit of each Party, its agents, representatives, successors, and assigns, and may not be modified or amended except in a writing executed by all Parties.

13. **Governing Law**. This Agreement is made under and shall be interpreted, construed and enforced in accordance with the laws of the State of Arizona, regardless of any principles of conflicts of law or choice of laws of any jurisdiction.

14. **Costs and Attorneys' Fees**. If any legal or equitable action is necessary to enforce the terms of this Agreement, then in addition to any other relief to which they are entitled, the prevailing party shall be entitled to a reasonable sum of their attorneys' fees and costs incurred and paid.

15. **Counterparts/Facsimile**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same document. A facsimile or electronic copy of the signature pages of this Agreement shall be effective and binding upon the parties as if such signatures were original signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below:

ML MANAGER, LLC, as Manager of Osborn III Loan, LLC, and agent for 31 Pass-Through Investors	**JEFFREY C. STONE, INC. dba SUMMIT BUILDERS, LLC**
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____

786558

Exhibit "A"

WHEN RECORDED MAIL TO:

Perkins Coie LLP
2901 N. Central Avenue
Phoenix, Arizona 85012
Attention: Richard M. Lorenzen

For Recorder's Use

ASSIGNMENT OF MECHANIC'S OR MATERIALMEN'S LIEN

THIS ASSIGNMENT OF MECHANIC'S OR MATERIALMEN'S LIEN (the "Assignment"), dated as of _____, 2011, is made by **JEFFREY C. STONE, INC., DBA SUMMIT BUILDERS**, a(n) Arizona limited liability company ("Assignor") for the benefit of **ML MANAGER, LLC**, as the manager for Osborn III Loan, LLC, and the agent for those certain 31 non-transferring pass-through investors ("Assignee").

Recitals

A. Assignor has recorded a lien(s) in the principal amount of $2,044,250.70, plus interest and attorneys' fees and costs, in the official records of Maricopa County, Arizona, as Instrument No(s). 2008-0588970, as amended 2008-1054737, 2008-1085021, and 2008-1993926 respectively (collectively, the "Lien"), in connection with labor, materials, equipment, or service provided to the real property commonly known as Osborn III/Ten Lofts located in Scottsdale, Arizona, as more particularly described in the legal description attached hereto as Exhibit "A" (the "Property").

B. The prior owner of the Property was Osborn III Partners, LLC, an Arizona limited liability company ("Osborn").

C. Assignor desires to assign to Assignee all of Assignor's right, title, and interest in the Lien, claims against the Property, and claims against Mortgages Ltd., Assignee, and/or their respective principals, guarantors, subsidiaries, or affiliates.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor hereby agrees as follows:

Agreement

1. The above Recitals are hereby acknowledged and incorporated by this reference.

2. Assignor hereby assigns to Assignee all right, title, and interest it has in the Lien, and any and all claims that Assignor has against or related to the Property, Mortgages, Ltd., Assignee, or their respective principals, guarantors, subsidiaries or affiliates as such claims relate to the Property (collectively, the "Claims"). Assignee shall, as of this date, hold all rights incident to the Lien and Claims, including all rights of collection, foreclosure and rights to receive payment under the Lien or the Claims.

3. Assignee may bring an action in Assignee's name; or, if required by law or procedure, may file such action in the name of Assignor or in the names of both Assignor and Assignee; however, all rights to payment under such foreclosure or any other action shall belong solely to Assignee.

4. This Agreement shall be governed by the laws of the state of Arizona. This Agreement shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the parties hereto.

Dated as of the date set forth above.

ASSIGNOR:

JEFFREY C. STONE, INC.,
dba SUMMIT BUILDERS,
a(n) Arizona Limited Liability Company

By _____
Name: _____
Title: _____

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on this ____ day of _____, 2011, by _____, the _____of **JEFFREY C. STONE, INC., dba SUMMIT BUILDERS**, a(n) Arizona limited liability company on behalf of said entity.

_____
Notary Public

My Commission Expires:

_____

Exhibit "A"
[Legal Description]

Exhibit "B"

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: October 01, 2010

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

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

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
MORTGAGES LTD.,	Case No. 2:08-bk-07465-RJH
Debtor.	**ORDER APPROVING MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**
	Real Property and improvements located in Scottsdale, Arizona in the development known as Osborn III/Ten Wine Lofts located at 7116 and 7126 E. Osborn Rd.
	Hearing Date: September 28, 2010 **Hearing Time: 2:30 p.m.**

ML Manager LLC ("ML Manager") filed a Motion ("Motion") (Docket No. 2923) requesting that the Court enter an order authorizing ML Manager, as the manager for Osborn III Loan LLC and the agent for certain non-transferring pass-through investors (the "Agent"), to sell the partially completed 4-story luxury condominium project located in Scottsdale, Arizona in the development known as Osborn III/Ten Wine Lofts located at 7116 and 7126 E. Osborn Rd. (the "Property") for the price and on the terms set forth in the Agreement of Sale and Purchase and Escrow Instructions ("Sale Agreement") which was attached to the Notice of Filing Sale Agreement (Docket No. 2966). Among other things, the Sale Agreement provides for the sale of the Property for approximately $19,500,000 to Connell Real Estate and Development Company ("Purchaser"). A notice

to creditors, interested parties and the non-transferring pass-through investors of the Motion and the hearing date was served. Jeffrey C. Stone, Inc. d/b/a Summit Builders ("Summit Builders") filed a Response (Docket No. 2961) (the "Summit Objection") and certain Rev-Op Group Investors filed a Response (Docket No. 2965) (the "Rev-Op Group Objection") and Allen Bickart filed a Joinder in the Rev-Op Group Objection (Docket No. 2969) (the "Bickart Joinder") (all three collectively, the "Objections"). ML Manager filed a Reply (Docket No. 2970). No other party filed a response or objection. The hearing was held on the Motion on September 28, 2010 at 2:30 p.m. in Phoenix.

Upon consideration of the Motion and statements and arguments of counsel at the hearing; it appears to the Court and the Court finds that:

(a) This Court has jurisdiction over the issues presented in the Motion and the Motion and the Court's hearing thereon were duly and properly noticed;

(b) The purchase price offered constitutes fair consideration for the Property;

(c) The Purchaser is a good faith purchaser;

(d) The investors in Osborn III Loan LLC and the applicable MP Funds have agreed by the applicable dollar vote to the sale terms;

(e) ML Manager is authorized to enter into the Sale Agreement, to sell the Property pursuant to the terms of the Sale Agreement, to proceed with this sale and to execute all necessary documents to implement the sale;

(f) The liens, claims, encumbrances and interests shall attach to the proceeds of the sale as set forth in this Order and the Property shall be transferred free and clear of all liens, claims, encumbrances and interests of any kind;

(g) The decision to sell and enter into the Sale Agreement is supported by the best exercise of business judgment of ML Manager and is consistent with ML Manager's fiduciary duties and responsibilities.

IT IS THEREFORE ORDERED THAT:

(1) The Motion is granted and approved as set forth in this Order and the Objections and the Summit Objection has been resolved by this Order and the Rev-Op Group Objection and the Bickart Joinder, and any and all other responses or objections, are overruled.

(2) ML Manager, as the Manager of Osborn III Loan LLC and Agent, including as agent for the Rev Op Group Investors, has authority and is directed to enter into the Sale Agreement, to consummate the sale, to sell the Property pursuant to the terms of the Sale Agreement, and to execute any and all documents needed to consummate the sale.

(3) The sale and transfer of the Property to the Purchaser shall be free and clear of all liens, claims, encumbrances and interests of any kind with such liens claims, encumbrances and interests to attach to the proceeds resulting from the sale of the Property (the "Sale Proceeds") as set forth in this Order.

(4) To address the Summit Objection to the extent necessary to permit the sale as provided in this Order, as a condition to the completion of the sale of the Property and prior to any other distribution of Sale Proceeds authorized in this Order, Sale Proceeds, in the sum of $3,445,095.79 shall be deposited and held in escrow (the "Escrowed Sale Proceeds") for the sole benefit of Summit Builders and ML Manager, free from any other claims or interests other than the undivided ownership interests of Osborn III Loan LLC and the pass-through investors, with the alleged liens and interests of Summit Builders and ML Manager to attach to the Escrowed Sale Proceeds in the same manner, extent and priority that such liens and interests held in the Property as they existed immediately prior to the sale of the Property provided for in this Order. The Escrowed Sale Proceeds shall be deposited in an interest-bearing account with the title company handling the closing, or another escrow company mutually agreeable to ML Manager and Summit Builders, and shall be disbursed only pursuant to further Order of this Court, upon appropriate notice to parties asserting an interest in the Escrowed Sale Proceeds. All disputes, arguments,

claims, other lien interests and defenses of and between Summit Builders and ML Manager as the Manager and Agent are preserved. Nothing in this Order, including, without limitation, the escrowing of the Sale Proceeds, shall waive, release or impact the coverage or liability of the title insurance policy for the payment of the alleged mechanic's liens.

(5) ML Manager is authorized to pay out of the Sale Proceeds all costs of sale, including real property taxes, assessments, broker's fees, title insurance or other closing costs and to pay out of the Osborn III Loan LLC proceeds any liens or encumbrances on the Property owed to the current exit lender pursuant to the Loan Agreement, and to create and use any Permitted Reserves pursuant to the Loan Agreement. Further ML Manager is authorized and directed to pay off any lien to the Grace Entities or any affiliate thereof.

(6) The Purchaser is a good faith purchaser for fair consideration of the Property.

(7) The net Sale Proceeds attributable to the ownership percentage for the Osborn III Loan LLC shall be transferred at closing to ML Manager as the Manager for Osborn III Loan LLC and used and distributed pursuant its agreements, the Interborrower Agreement and the Confirmation Order. The net Sale Proceeds attributable to the ownership percentage for the non-transferring pass-through investors, including the Rev Op Group Investors, shall be transferred to ML Manager as Agent and shall be used and distributed pursuant to this Order, the applicable agency agreements and the Confirmation Order.

(8) Pursuant to Section 1146(a) of the Bankruptcy Code and Section 10.5 of the confirmed Plan of Reorganization, any and all mortgage recording tax, stamp tax, real estate transfer tax, speculative builder, transaction privilege or other similar tax imposed by federal, state or local law are hereby waived.

(9) The stay of Federal Rule of Bankruptcy Procedure Rule 6004(h) may not be

applicable and so this Order shall be stayed until 5 p.m. (Arizona time) on October 12, 2010 and thereafter shall be enforceable.

DATED AND ORDERED AS STATED ABOVE.

2354434

Exhibit "C"

Fidelity National Title
INSURANCE COMPANY

March 21, 2011

VIA EMAIL AND U.S. MAIL

Keith L. Hendricks
Fennemore Craig, P.C
3003 North Central Avenue—Suite 2600
Phoenix, Arizona 85012-2913

Re: *Jeffrey C Stone Inc d/b/a Summit Builders v. Osborn III Partners LLC*, Case No CV2008-033080, Maricopa County, Arizona Superior Court (the "Lawsuit")

Policy No. H23-ZO25296 (the "Policy")
Insured: Mortgages, Ltd.
Claim No. 330613

Dear Mr. Hendricks:

In your letter of January 31, 2011, you state as follows:

> As part of the Order from the bankruptcy court that allowed the sale of the Project, Scott Malm (the counsel retained by Fidelity to represent the Investors) negotiated an agreement whereby an escrow would be created and Summit's lien would attach to the escrow.

As a result of the continuing investigation into the above-referenced claim, I recently received the enclosed special warranty deed (the "Deed") conveying the insured lands identified in the above-referenced Policy, which is involved in the above-referenced claim. Fidelity National Title Insurance Company, in its corporate capacity and as successor by merger to Lawyers Title Insurance Corporation (Fidelity National Title Insurance Company in both such capacities is hereinafter referred to as the "Company") provided a defense to the named insured or to other persons or entities alleging to be successor insureds with regard to the

above-referenced claims presented to the Company. Mortgages, Ltd. and any other parties who have asserted they are successor insureds under the policies are collectively referred to as the "ML Parties."

The Deed appears to convey all of the ML Parties' respective interests in and to the lands insured by said Policy. The Company was not previously advised of the conveyance of the insured land, and, in any event, did not consent to the sale of the insured land or the establishment of an escrow of the proceeds thereof.

In Conditions and Stipulations §2 of the Policy provides as follows:

> 2. Continuation of Insurance
>
> (a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal matter which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.
>
> (b) After Conveyance of Title. *The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest.* This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured. *[Emphasis Added]*

As the grantors, the ML Parties, do not appear to have retained an estate or interest in the land, nor do they appear to be the holders of an indebtedness secured

by a purchase money mortgage given by the grantee in the Deed, nor do they appear to have any liability by reason of covenants of warranty contained in the Deed as to matters insured by the policies. Consequently, regardless of whether or not the ML Parties were ever insureds under the policies, they certainly are no longer insureds under the above-referenced policies, and are therefore not entitled to further protection under the terms of the policies. *Gebhardt Family Investment, L.L.C. v. Nations Title Ins. Co.*, 132 Md.App. 457,752 A.2d 1222 (Md.App. 2000); *Resolution Trust Corporation v. American Title Insurance Co.*, 901 F.Supp. 1122 (M.D. La. 1995).

Additionally, we note that to the extent the actual insureds under the Policy entered into a so-called Morris agreement, any such agreement or similar agreement is not effective or enforceable against the Company, as the rights of the actual insureds under the Policy terminated with the granting and delivery of the Deed. Moreover, we have not been given any of the documentation for any such Morris agreement detailing the terms, conditions, provisions and means of entering into such an agreement, especially in light of the fact that the actual insureds were not the owners of the insured lands at the time any such Morris agreement was entered into. We once again demand that we be provided with copies of the settlement documents relating to the purported Morris agreement. Finally, we reassert the other reasons that the Morris agreement is inapplicable and unenforceable that we have made clear in other correspondence, including but not limited to the letter to you from Steve Freeman of Glaser Weil Fink, Jacobs Howard Avchen & Shapiro LLP dated January 25, 2011.

Consequently, the Company does not believe it has an obligation to provide for the continued defense of the ML Parties under the above-referenced Policy. If the ML Parties have any documents or information showing that they: (i) have retained an estate or interest in the lands conveyed; (ii) are the holders of an indebtedness secured by a purchase money mortgage given by the grantee in the Deed; (iii) gave warranties other than those contained in the Deed under which they would retain liability for matters insured by the policies, or (iv) are or continue to be insureds under the above-referenced Policy, please provide that information to the undersigned on behalf of the Company by April 4, 2011.

Nothing contained in this letter is intended or shall be deemed to modify, waive, alter, amend or otherwise affect any other rights, interests, reservations and defenses of the Company in, to and under the above-referenced Policy, whether founded in contract, law or equity.

Very truly yours

FIDELITY NATIONAL TITLE
INSURANCE COMPANY

Homer Duvall, III
Senior Major Claims Counsel

HD/hd

Enc.

cc: Tim Thomason (via e-mail, w/encl.)
Steve Freeman (via e-mail, w/encl.)

OFFICIAL RECORDS OF
Unofficial
Document

THOMAS TITLE & ESCROW

WHEN RECORDED MAIL TO:
Janet G. Betts, Esq.
Holme Roberts & Owen LLP
16427 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85254-1597

104322
7 of 9

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Osborn III Loan LLC, an Arizona limited liability company ("Osborne"); and ML Manager LLC, an Arizona limited liability company as agent ("Agent"), as attorney-in-fact for those individual owners ("Owners") listed on Exhibit "B" attached (Osborne, and Agent as attorney-in-fact for Owners, collectively, "Grantor"), does hereby convey to Connell Wine Lofts LLC, a New Jersey limited liability company registered to transact business in Arizona ("Grantee"), the following real property together with all of Grantor's right, title and interest in and to (i) all buildings, structures and improvements located thereon; (ii) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; and (iv) and any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such property:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

SUBJECT TO all general and special real property taxes and other assessments, reservations in patents, water rights, claims or title to water and all easements, rights of way, covenants, conditions, restrictions, reservations, declarations, encumbrances, liens, obligations, liabilities and other matters as may appear of record, any and all conditions, easements, encroachments, rights of way or restrictions which a physical inspection or accurate ALTA survey of the Property would reveal, any matters arising in connection with any action of the Grantee or its employees, contractors, agents or representatives, any other matter not caused by the act or authorization of Grantor and the applicable municipal, county, state or federal zoning and use regulations affecting the Property.

AND the Grantor hereby binds itself and its successors and assigns to warrant and defend the title in Grantee, its successors and assigns, as against all acts of the Grantor herein and no other, subject to the matters above set forth.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

CAB/10.0174b

DATED this 25 day of October, 2010.

GRANTOR

OSBORN III LOAN LLC, an Arizona limited liability company

By ML MANAGER LLC,
an Arizona limited liability company, its Manager

By: _____
Mark Winkleman,
Chief Operating Officer

ML MANAGER LLC, an Arizona limited liability company as agent ("Agent") for those individual owners ("Owners") listed on Exhibit "B" attached

By: _____
Mark Winkleman, Chief Operating Officer

Unofficial Document

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 22 day of October, 2010, by Mark Winkleman known by me to be the COO of ML Manager LLC, an Arizona limited liability company, the Manager of OSBORN III LOAN LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

KAREN TURPIN
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Exp.: June 19, 2013

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 22 day of October, 2010, by Mark Winkleman known by me to be the COO of ML Manager LLC, an Arizona limited liability company, as agent ("Agent") for those individual owners ("Owners") listed on Exhibit "B" attached.

Unofficial Document

Notary Public

My Commission Expires:

KAREN TURPIN
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Exp.: June 19, 2013

Escrow File No.: 104322

EXHIBIT "A"

Units 1002 through 1015, inclusive; 1017 through 1030, inclusive; 2002 through 2015, inclusive; 2017 through 2030, inclusive; 3001 through 3013, inclusive; 3016; and 3019 through 3030, inclusive, of TEN LOFTS, A CONDOMINIUM, according to Condominium Declaration recorded in Document No. 2007-0049672, First Amendment recorded in Document No. 2007-00055020, re-recorded in Document No. 2007-0067402, and Second Amendment recorded in Document No. 2008-0218278, re-recorded in Document No. 2008-0223471 and re-recorded in Document No. 2008-0287676, and per map recorded in Book 892 of Maps, page 5, and First Amendment recorded in Book 976 of Maps, page 37, in the office of the County Recorder of Maricopa County, Arizona;

TOGETHER WITH Parking Spaces P101 through P271, inclusive, as a Limited Common Element, as set forth in said Condominium Declaration and as shown on said Plat; and

TOGETHER WITH a proportionate interest in and to the Common Elements, as set forth in said Condominium Declaration and as shown on said plat.

Unofficial Document

EXHIBIT A
Special Warranty Deed

List of Owners

Trine Holdings, L.L.C., an Arizona limited liability company, as to an undivided 1.346% ownership;

Robert L. Barnes, Jr., a single man, as to an undivided 0.148% ownership;

Barness Investment Limited Partnership, an Arizona Limited Partnership, as to an undivided 0.993% ownership;

Osborn III Loan LLC, an Arizona Limited Liability Company, as to an undivided 64.389% ownership;

Yuval Caine and Mirit Caine, husband and wife, as joint tenants with right of survivorship, as to an undivided 0.248% ownership;

Shirley A. Cannon, wife of Arthur E. Cannon, as her sole and separate property as to an undivided 0.248% ownership;

Melvin L. Dunsworth, Jr., Trustee of the Revocable Living Trust of Melvin Dunsworth, Jr., dated December 23, 2003, and any amendments thereto, as to an undivided 4.978% ownership;

Unofficial Document

Evertson Oil Company, Inc., a Utah corporation, as to an undivided 1.241% ownership;

First Trust Company of Onaga, Custodian FBO Robert Facciola IRA #41021XXXXX, as to an undivided 0.993% ownership;

Delery Guillory, married man, as his sole and separate property, as to an undivided 1.018% ownership;

Golden Lending Group, LLC, an Arizona limited liability company formerly known as Penny Hardaway Investments, L.L.C., an Arizona limited liability company, as to an undivided 0.621% ownership;

Bear Tooth Mountain Holdings Limited Partnership, an Arizona limited liability partnership, as to an undivided 1.241% ownership;

William L. Hawkins Family L.L.P., an Arizona limited liability partnership, as to an undivided 0.937% ownership;

Pueblo Sereno Mobile Home Park L.L.C., an Arizona limited liability company, as to an undivided 2.358% ownership;

Michael Johnson Investments II, L.L.C., an Arizona limited liability company, as to an undivided 0.745% ownership;

Ronald L. Kohner, an unmarried man, as to an undivided 0.115% ownership;

L.L.J. Investments, L.L.C., an Arizona limited liability company, as to an undivided 0.695% ownership;

Maurice J. Lazarus, Husband of Marjorie A. Lazarus, as his sole and separate property, as to an undivided 0.125% ownership;

WCL851106 LLC, an Arizona limited liability company, as to an undivided 3.984% ownership;

Leah L. Lewis, Trustee of The Leah L. Lewis Trust dated February 23, 2000, and any amendments thereto, as to an undivided 1.241% ownership;

Carol A. Mahakian, a married woman as her sole and separate property, as to an undivided 0.496% ownership;

Brett M. McFadden, a single man, as to an undivided 0.621% ownership;

Maurice J. Mintzer, a single man, as to an undivided 0.745% ownership;

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L.L.J. Investments, L.L.C, an Arizona limited liability company, as to an undivided 2.482% ownership;

Robert J. Nimmer and Diana M. Nimmer, husband and wife as joint tenants with right of survivorship, as to an undivided 0.372% ownership;

John P. Putnam and Maricele Putnam, husband and wife, as joint tenants with right of survivorship, as to an undivided 0.062% ownership;

Robert K. Rader and Katalin A.V. Rader, Trustees of The Rader Family Trust dated September 6, 2002, and any amendments thereto, as to an undivided 1.241% ownership;

Morley Rosenfield, Trustee of The Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan, as to an undivided 1.055% ownership;

L.L.J. Investments, L.L.C., an Arizona limited liability company, as to an undivided 1.787% ownership;

W. Scott Schirmer, Trustee of The WSS 048 Trust dated September 17, 2004, and any amendments thereto, as to an undivided 0.621% ownership;

Jayesh K. Shah and Vaishali Shah, Trustees of The Jayesh K. & Vaishali Shah Family Trust dated August 16, 2000, and any amendments thereto, as to an undivided 0.248% ownership; and

Verma Kataria Mortgage Investment L.L.C., an Arizona limited liability company, as to an undivided 2.606% ownership.

Unofficial Document

ESCROW NO.: 104322

TRUST DECLARATION
Disclosure of Beneficiaries

Pursuant to ARS 33-404, the names of the beneficiaries of the **REVOCABLE LIVING TRUST OF MELVIN L. DUNSWORTH JR., dated December 23, 2003** are as follows:

Name: Melvin L Dunsworth JR.

Address: 1525 N H/W A1A Unit 706 Indialantic FL 32903

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

REVOCABLE LIVING TRUST OF MELVIN L. DUNSWORTH JR., dated December 23, 2003

By: Melvin L Dunsworth JR.

Its: Trustee

(This document will be recorded at the Close of Escrow attached to the Deed)

Unofficial Document

ESCROW NO.: 104322

TRUST DECLARATION
Disclosure of Beneficiaries

Pursuant to ARS 33-404, the names of the beneficiaries of the **LEAH L. LEWIS TRUST dated February 23, 2000** are as follows:

Name: Leah L. Lewis, trustee of Leah L Lewis Trust
Address: 3436 E. Kachina Dr.
Name: Phoenix, AZ 85044
Address:
Name:
Address:
Name:
Address:
Name:
Address:
Name:
Address:
Name:
Address:

Unofficial Document

LEAH L. LEWIS TRUST dated February 23, 2000
By: Trustee
Name: Leah L. Lewis
Its: Trustee

(This document will be recorded at the Close of Escrow attached to the Deed)

ESCROW NO.: 104322

TRUST DECLARATION
Disclosure of Beneficiaries

Pursuant to ARS 33-404, the names of the beneficiaries of the **RADER FAMILY TRUST dated September 6, 2002** are as follows:

Name: Robert K. Rader and Katalin A.V. Rader

Address: 38 3rd Street Apt. 304, Los Altos, CA 94022

RADER FAMILY TRUST dated September 6, 2002

By: Robert K. Rader

Name: Robert K. Rader

Its: Trustee

(This document will be recorded at the Close of Escrow attached to the Deed)

Unofficial Document

ESCROW NO.: 104322

TRUST DECLARATION
Disclosure of Beneficiaries

Pursuant to ARS 33-404, the names of the beneficiaries of the **JAYESH K. & VAISHALI SHAH FAMILY TRUST date August 16, 2000** are as follows:

Name: Jayesh K. Shah

Address: 27836 Elena Rd. Los Altos Hills CA 94022

Name: Vaishali Shah

Address: 27836 Elena Rd. Los Altos Hills CA 94022

Name: _____

Address: _____

Name: _____

Unofficial Document

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

JAYESH K. & VAISHALI SHAH FAMILY TRUST date August 16, 2000

By: _____

Name: Jayesh K. Shah

Its: Trustee

(This document will be recorded at the Close of Escrow attached to the Deed)