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8 Attorneys for ML Manager LLC

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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

**MOTION TO APPROVE SETTLEMENT
CONCERNING METROPOLITAN LOFTS
LLC BANKRUPTCY**

**Hearing Date: December 19, 2011
Hearing Time: 11:30 a.m.**

ML Manager LLC (“ML Manager”) requests that the Court enter an order authorizing ML Manager as the manager for Metro Loan LLC and the agent for certain Pass-Through Investors to settle litigation which has been brought against the investors through ML Manager by the Bankruptcy Trustee in the Metropolitan Lofts, LLC bankruptcy case. The primary issue in the Adversary Proceeding is the validity of the deed of trust because of an alleged defect by the notary. The Bankruptcy Trustee in the Adversary Proceeding seeks to avoid the deed of trust of ML Manager for the benefit of the Bankruptcy Estate. Among other things, this settlement would (1) settle those issues, (2) provide \$150,000 in settlement for the Bankruptcy Trustee and Estate which would be due and payable in one year and secured by a deed of trust from Metro Loan LLC, and (3) allow ML Manager in its sole discretion to obtain title to the Property by lifting the stay and completing its foreclosure on the Deed of Trust or by obtaining a special warranty

1 deed from the Bankruptcy Estate transferring title to the Property to the Metro Loan LLC
2 and the pass-through investors free and clear of liens, claims and encumbrances (except
3 for the \$150,000 deed of trust to be given to the Bankruptcy Trustee and Estate).

4 One of Mortgages Ltd.'s borrowers, Metropolitan Lofts, LLC, filed a Chapter 11
5 proceeding, Case No. 2:09-bk-31907-EWH, which was converted to a Chapter 7
6 ("Estate"). Roger Brown is the Chapter 7 trustee for the Estate ("Bankruptcy Trustee").
7 ML Manager filed a secured proof of claim for over \$38 million and a Motion for Stay
8 Relief to allow it, among other things, to foreclose on the real property and improvements.
9 The Bankruptcy Trustee filed an adversary proceeding, Case No. 2:10-ap-01876-EWH
10 ("Adversary Proceeding"), against ML Manager seeking to avoid the deed of trust on the
11 real property because of an alleged defect by the notary. The Bankruptcy Trustee listed
12 the Property for sale and in the Metropolitan Lofts Bankruptcy Case tried to obtain
13 approval of a sale of the Property at a Section 363 sale hearing. The sale was cancelled as
14 the bid amounts were insufficient and not acceptable to ML Manager and the Trustee.

15 ML Manager and the Bankruptcy Trustee have reached a settlement of the issues
16 concerning the Adversary Proceeding, the claim of ML Manager in the Estate and the
17 transfer of title to the Property to ML Manager. The "*Stipulated Application To*
18 *Compromise Adversary Proceeding and Transfer Real Property Free and Clear of*
19 *Certain Liens, Claims and Encumbrances*" which was filed in the Metropolitan Lofts
20 bankruptcy case is attached hereto as Exhibit A and incorporated by reference and
21 includes the terms of the settlement (the "Settlement"). The Bankruptcy Trustee will be
22 seeking Court approval in the Metropolitan Lofts case conditioned upon the approval of
23 the Metro Loan LLC investors and the Bankruptcy Court in the Mortgages Ltd. case and
24 the Exit Financier. Besides filing this Motion ML Manager is also seeking the vote of the
25 investors in the Metro Loan LLC simultaneously. Metro Loan LLC owns 94.3679% of the
26 loan. The rest is held by non-transferring pass-through investors.

1 Pursuant to the proposed Settlement set forth in Exhibit A with the Bankruptcy
2 Trustee, among other things, this Settlement would (1) settle the dispute in the Adversary
3 Proceeding and the claims of ML Manager, (2) provide \$150,000 in settlement to the
4 Bankruptcy Trustee and Estate which would be due and payable in one year and secured
5 by a deed of trust from Metro Loan LLC, and (3) allow ML Manager in its sole discretion
6 to obtain possession of and title to the Property by lifting the stay and completing its
7 foreclosure on the Deed of Trust or by obtaining a special warranty deed from the
8 Bankruptcy Estate transferring title to the Property to the Metro Loan LLC and the pass-
9 through investors free and clear of liens, claims and encumbrances (except for the
10 \$150,000 deed of trust to be given to the Bankruptcy Trustee and Estate). The Bankruptcy
11 Trustee will use a portion of the Settlement Proceeds to pay the claims of the mechanics
12 and materialmen lien holders and obtain releases of their alleged liens. ML Manager also
13 proposes and seeks approval in the Settlement to have Metro Loan LLC issue a note and
14 grant a deed of trust on its portion of the Property for \$150,000 to the Bankruptcy Trustee
15 and Estate. A copy of those documents are attached as exhibits to Exhibit A.

16 There are a number of factors to consider in evaluating the Settlement. ML
17 Manager asserts a first lien position in the Property which is disputed. If the Bankruptcy
18 Trustee were to prevail and to sell the Property ML Manager asserts that it holds
19 unsecured claims for the investors which are 99% of the total unsecured claims. The
20 mechanics and materialmen lien claimants and other unsecured creditors in the Estate hold
21 the other 1% of unsecured claims in the Estate. The Settlement would provide \$150,000 of
22 funds in the future from the sale or refinancing of the Property that would be used to pay
23 the Bankruptcy Trustee and Estate. The Bankruptcy Trustee will use the funds to pay the
24 administrative expenses and provide about \$20,000 for the unsecured claims, excluding
25 ML Manager, in satisfaction of the alleged mechanics' liens and interests on the Property.
26 Chapter 7 administrative claims of the chapter 7 Bankruptcy Trustee plus his attorney

1 among others are estimated to be over \$200,000 but will be reduced as a part of the
2 Settlement to allow the Bankruptcy Trustee to pay at least \$20,000 to the unsecured
3 creditors and mechanics and materialmen lien holders in satisfaction of their alleged liens.
4 Even if ML Manager pursued the litigation and prevailed on the validity of the lien, the
5 Bankruptcy Trustee would try and surcharge the proceeds for his expenses in maintaining
6 and protecting the Property. If ML Manager were to lose on the validity of the lien, it
7 would hold about 99% of the unsecured claims and receive 99% of the remaining funds
8 for unsecured claims after payment of the administrative expenses but the Bankruptcy
9 Trustee would have free reign to sell the Property as he chooses. It will cost additional
10 fees for the Estate and for ML Manager to litigate the Adversary Proceeding, a surcharge
11 motion, and possibly the State Court mechanics lien claims. Settlement will save those
12 fees and costs. There is also a risk that ML Manager could lose any of the three matters
13 although ML Manager makes no admissions in this Settlement and denies that the lien
14 would be invalidated.

15 After taking the different positions into account, the risk of losing the Adversary
16 Proceeding, the potential surcharge motion, the State Court mechanics lien litigation, the
17 cost of litigation, and the time value of money, among other things, the Bankruptcy
18 Trustee and ML Manager have agreed to the settlement which allows the Estate to recover
19 \$150,000 for its administrative and unsecured claims and mechanics and materialmen lien
20 claimants, which ends the Estate's interest in the Property and ends the Estate's ongoing
21 expenses, allows ML Manager to take possession of the Property, allows ML Manager to
22 either complete the foreclosure on the Deed of Trust or to obtain title free and clear of
23 liens, claims and encumbrances from the Bankruptcy Estate.

24 The normal factors used by Bankruptcy Courts in approving settlements requires
25 consideration of the probability of success in the litigation, the difficulties in collecting a
26 judgment, the complexity of the matter, the expense, inconvenience or delay that will

1 result from the litigation, the interests of the parties and the reasonableness of the
2 compromise. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); In re A&C Properties, 784
3 F.2d 1377, 1380-81 (9th Cir. 1986). In reviewing the appropriateness of the settlement,
4 ML Manager believes that the settlement is in the best interest of the investors and is the
5 best exercise of the business judgment of ML Manager consistent with its fiduciary duties.
6 The settlement removes any risk of the litigation and eliminates the continued cost of such
7 litigation. A factual issue exists in the Adversary Proceeding that would require a day long
8 trial before the Court. The potential surcharge motion would also require a hearing and
9 pleadings. By settling, the parties avoid the time and expense of such proceedings.
10 Further, the settlement will allow ML Manager to obtain title for the investors either by
11 foreclosing on the deed of trust or by obtaining a special warranty deed from the
12 Bankruptcy Trustee and Estate.

13 ML Manager asserts that this Court has retained and reserved jurisdiction in the
14 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among
15 others, and has the authority to approve a settlement with a borrower or its bankruptcy
16 estate under Section 105 of the Bankruptcy Code, among other sections, as an order in aid
17 of implementation of the Plan. As the Court has noted at several prior hearings, there is a
18 close nexus between the requests of ML Manager in a settlement motion and the
19 bankruptcy because the relief requested is an important part of the Plan. *See, State of*
20 *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005). The
21 Plan specifically called for the creation of the ML Manager to manage the Loan LLCs and
22 to step into the role as manager of the MP Funds and agent of non-transferring pass
23 through investors. The relief requested by ML Manager affects the amount of money that
24 the investors will receive and the pay down of the Exit Financing. Accordingly, the
25 Bankruptcy Court retains post-confirmation jurisdiction.

26 ML Manager asserts that it has the authority as Manager under the Metro Loan

1 LLC Operating Agreement, among other things, and as agent under the agency documents
2 for the non-transferring pass-through investors to settle this dispute about the loan.
3 Nevertheless, ML Manager seeks Court approval of the Settlement in aid of
4 implementation of the Plan, among other things.

5 WHEREFORE, ML Manager LLC requests that the Court enter an order
6 authorizing and approving the Settlement with the Bankruptcy Trustee in the Metropolitan
7 Loft LLC bankruptcy case, and for such other and further relief as is just and proper under
8 the circumstances.

9 DATED: November 29, 2011

10 FENNEMORE CRAIG, P.C.

11 By /s/ Cathy L. Reece
12 Cathy L. Reece
13 Attorneys for ML Manager LLC

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EXHIBIT

A

1 **LANE & NACH, P.C.**
2 2025 North Third Street
3 The Brookstone - Suite 157
4 Phoenix, Arizona 85004
5 Telephone No.: (602) 258-6000
6 Facsimile No.: (602) 258-6003

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7 Attorneys for Roger W. Brown, Trustee

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

11 In re:
12 METROPOLITAN LOFTS, LLC,
13 Debtor.

(Chapter 7 Case)

No. 2:09-bk-31907-EWH

**STIPULATED APPLICATION TO
COMPROMISE ADVERSARY
PROCEEDING AND TRANSFER REAL
PROPERTY FREE AND CLEAR OF
CERTAIN LIENS, CLAIMS AND
ENCUMBRANCES**

16
17 Roger W. Brown, Chapter 7 Trustee (“Trustee”) and ML Manager LLC, agent and manager for
18 various beneficiaries (“ML Manager”) by and through their counsel undersigned, herein apply to this
19 Court for an Order authorizing the parties to compromise and settle the claims of the Estate set forth in the
20 pending adversary proceeding commenced by the Trustee and to transfer the Estate’s interest in certain
21 real property, all as more particularly described below. In support of this Application, the parties present
22 the following Memorandum of Points and Authorities:

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **A. FACTUAL BACKGROUND**

25
26 1. This case was commenced by Voluntary Petition filed by the Debtor under Chapter 11 on
27 December 10, 2009, which was thereafter converted to Chapter 7 on February 26, 2010.
28

1 2. Roger W. Brown is the duly qualified and acting Chapter 7 Trustee in this case
2 (“Trustee”).

3 3. On January 18, 2010, ML Manager filed its Motion for Relief from the Automatic Stay.
4 On February 3, 2010, Debtor filed its Objection to Motion for Relief from the Automatic Stay.
5

6 4. On or about October 22, 2010, Trustee commenced adversary proceeding no. 10-ap-
7 01876-EWH against ML Manager as defendant (“Adversary Proceeding”). As Plaintiff, the Trustee seeks
8 to avoid the most recent Deed of Trust recorded by ML Manager (the “Deed of Trust”) against certain real
9 property owned by the Debtor and located at 535 West Thomas Road, Phoenix, Maricopa County,
10 Arizona (“Property”). Trustee contends that the Deed of Trust was not properly acknowledged, hence
11 avoidable pursuant to 11 U.S.C. §544 and preserved for the benefit of the Estate pursuant to 11 U.S.C.
12 §550.
13

14 5. ML Manager has filed an Answer to the Adversary Proceeding and Counterclaims
15 disputing the allegations and seeking, among other things, declaratory judgments that the lien(s) is (are)
16 valid and superior in priority, among other things.

17 6. The Property was previously approved by this Court for sale. ML Manager and Trustee
18 had agreed on a distribution of those sales proceeds, which resolved all issues including the Adversary
19 Proceeding. The agreement was approved by the Court; however, the sale was not consummated.
20

21 7. ML Manager filed a Proof of Claim as a secured creditor in the bankruptcy case for the
22 amount of not less than \$38,709,359.83, which amount constitutes approximately 99% of the total amount
23 of claims timely filed in the bankruptcy case (“ML Manager Claim”).

24 8. Trustee asserts that in the event ML Manager’s Deed of Trust is avoided and preserved for
25 the benefit of the Estate, ML Manager’s Claim would be treated as a general, unsecured claim in the
26 bankruptcy case. In the event the Trustee succeeds in avoiding ML Manager’s Deed of Trust, the ML
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1 Manager Claim, though unsecured, would still constitute approximately 99% of the total amount of
2 allowed claims filed in the bankruptcy case.

3 9. By Order dated April 25, 2011, Trustee was authorized to sell the Property, free and clear
4 of, among other things, ML Manager's asserted lien for the purchase price of \$3,315,000.00. Pursuant to
5 the Order, ML Manager's asserted lien attached to the net sale proceeds in the order of its relative priority,
6 subject to further Court Order. However, the buyer terminated and the sale failed to close.

8 10. Since that time and for approximately six months, the Property was marketed by Cassidy-
9 Turley, without result. ML Manager and the Trustee continue to prosecute the adversary.

10 11. The Property is deteriorating. Break-ins and theft of copper and materials continue. The
11 Estate has no funds to further insure or secure the Property.

12 12. Desiring to rid the Estate of the deteriorating asset, the Trustee noticed an all-cash, AS/IS
13 sale at an opening bid of \$1,500,000.00. ML Manager indicated its intention to object to the sale.
14 Continued litigation over the sale and the lien validity is in no party's best interest. The Trustee has
15 withdrawn the proposed sale and the Court has vacated the hearing.

16 13. To bring closure to the Estate, the Trustee has agreed to compromise the Estate's lien
17 avoidance Adversary Proceeding and the Estate's interest in the Property.

18 **B. AGREEMENT BETWEEN THE PARTIES**

19 1. As described below, the parties hereby stipulate and agree to settle and compromise any and all
20 of the claims of and disputes with ML Manager including but not limited to (i) the allegations of the
21 Adversary Proceeding; (ii) ML Manager's Claim; and (iii) ownership of the Property.

22 a. Trustee will transfer the Estate's interest in the Property to the beneficiaries of the
23 Deed of Trust. The transfer will be in accordance with 11 U.S.C. §363(f), free and
24 clear of all liens, claims and encumbrances, including, without limitation, all recorded
25 mechanics or materialmen's liens and excepting only the senior priority real property
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1 tax liens for Maricopa County. ML Manager will take subject to the real property
2 taxes and will not pay or be required to pay such taxes at closing. At the option of ML
3 Manager, ML Manager may elect to foreclose on the Deed of Trust and the automatic
4 stay of 11 U.S.C. §362(a) is hereby vacated without further order of the Court to allow
5 such foreclosure if it determines in its sole discretion that foreclosure is necessary,
6 rather than a transfer under 11 U.S.C. §363(f).

7
8 b. Upon taking title to the Property, whether by 11 U.S.C. §363(f) transfer or foreclosure,
9 ML Manager will cause a Promissory Note (Exhibit "A") to be issued by Metro Loan
10 LLC to the Estate in the principal sum of One Hundred Fifty Thousand Dollars
11 (\$150,000.00). The Promissory Note will bear interest at the rate of Six Percent (6%)
12 per annum and be all due and payable upon the sale or refinancing of the Property or
13 one (1) year from execution of the Promissory Note. The Promissory Note will be
14 secured by a Deed of Trust (Exhibit "B") granted by Metro Loan LLC against the
15 Property, junior only to real property taxes.

16
17 c. Upon receipt of the Promissory Note payoff, Trustee will distribute funds as follows:
18
19 i. \$650.00 to the Office of the United States Trustee as and for satisfaction of
20 Claim No. 1;
21 ii. \$20,000.00 to be distributed pro rata to other timely filed claims, as set forth in
22 Exhibit "C";
23 iii. \$67,000.00 to Lane & Nach, P.C. for Trustee's attorneys' fees and costs; and,
24 iv. \$62,350.00 (plus interest accrued on the Promissory Note) to Roger W. Brown,
25 as and for Trustee's fees and costs.

26
27 d. The Trustee shall dismiss the Adversary Proceeding with prejudice upon entry of the
28 order approving the settlement and compromise.

- 1 e. ML Manager will waive any further claim against the Estate.
2 f. ML Manager will not be responsible for any commissions or brokerage fees.
3 g. This settlement and compromise and the issuance of the Promissory Note and Deed of
4 Trust are contingent upon the following:

- 5 (1) approval of the settlement and compromise by the Court in Metropolitan Lofts
6 LLC case;
7 (2) approval of the settlement and compromise by the Court in the Mortgages Ltd.
8 case;
9 (3) approval of the investors in the Metro Loan LLC by the appropriate vote
10 required for Major Decisions; and
11 (4) approval of the Exit Lender of ML Manager of the subordination of their first
12 lien.
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15 2. The settlement and compromise is the most practical resolution of this case. Continued
16 litigation further depletes the Estate without meaningful benefit. The Trustee could prevail; however, the
17 only beneficiaries of the victory would be the Trustee and his professionals due to increased fees. Not a
18 common sense goal!

19 3. The Parties believe the settlement and compromise is appropriate after due consideration of all
20 of the relevant circumstances.

21
22 C. LEGAL ARGUMENT

23 The requested relief is authorized by Rule 9019(a) of the Federal Rules of Bankruptcy Procedure
24 which provides as follows:

25 On motion by the trustee and after notice and a hearing, the court may approve a
26 compromise or settlement. Notice shall be given to creditors, the United States
27 Trustee, the debtor, the indenture trustee as provided in Rule 2002 and to any other
28 entity as the court may direct.

1 The Trustee, in the exercise of his best business judgment and in consideration of the requirements
2 of A & C Properties, 784 F.2d 1377 (9th Cir. 1986), In re Woodson, 839, F.2d 610 (9th Cir. 1988), and In
3 re Schmitt, 215 B.R. 417 (9th Cir. BAP 1997), believes that the proposed compromise and settlement is an
4 appropriate resolution of this matter.

5
6 Bankruptcy courts have broad discretion in approving compromise agreements. In re Woodson
7 839 F.2d at 620. The Court may approve a compromise if it is fair and equitable. Id. In determining the
8 fairness and adequacy of a proposed compromise agreement, the Court should consider the following four
9 factors: (1) the probability of success in litigation; (2) the difficulties, if any, to be encountered in
10 collection; (3) the complexity of the litigation involved as well as the expense, inconvenience and delay
11 necessarily attendant to the litigation; and (4) the paramount interest of creditors and a proper deference to
12 their reasonable views.

13
14 Consideration of these factors does not require the Court to decide questions of law or fact raised
15 in the controversies sought to be settled, or determine that the compromise presented is the best possible
16 outcome. Rather, the Court need only canvass the issues to determine whether the settlement falls “below
17 the lowest point in the zone of reasonableness”. Newman v. Stein, 464 F.2d 689, 698 (2nd Cir. 1972). cert.
18 denied. 409 U.S. 1039 (1972); see also In re Pennsylvania Truck Lines, Inc., 150 B.R. 595, 598 (Bankr.
19 E.D. Pa. 1992) (holding that a bankruptcy court must consider these factors to see whether the settlement
20 falls below the lowest point in the range of reasonableness.) Accordingly, if the court finds the
21 compromise does not fall below the threshold of reasonableness, the compromise should be approved. In
22 re Planned Protective Services, Inc., 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).

23
24 The Trustee believes the proposed settlement and compromise is in the best interest of the
25 creditors and parties-in-interest of this Estate. The settlement does not affect the percentage distribution to
26 creditors of the net sale proceeds which would otherwise be generated from the sale of the Property. The
27 settlement resolves the pending Adversary Proceeding while avoiding additional administrative costs,
28

1 fees and the uncertainty associated with the litigation, which would only reduce the amount of net sale
2 proceeds available for distribution to the creditors of this Estate. Additionally, with ML Manager holding
3 the overwhelming percentage of allowed claims, it is appropriate to resolve the matter as herein proposed.
4

5 WHEREFORE, Trustee and ML Manager jointly pray for an Order of this Court approving this
6 Stipulated Application and the relief sought therein under the terms and conditions set forth above; and,
7 for such other and further relief as this Court deems just and proper.

8
9 RESPECTFULLY SUBMITTED this 22nd day of November, 2011.

10 LANE & NACH, P.C.

11 By 

12 Michael P. Lane
13 Allison M. Lauritson
14 Attorneys for Trustee

15 GUST ROSENFELD, P.L.C.

16 By 

17 Sean P. O'Brien
18 One East Washington Street, Suite 1600
19 Phoenix, AZ 85004-2553
20 Attorneys for ML Manager LLC, agent and manager
21 for various beneficiaries

22 COPY of the foregoing mailed/via electronic notification as follows:

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27 Email: mwinkleman@mtgltd.com

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1 Office of U.S. Trustee
2 230 North First Avenue
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By 

EXHIBIT “A”

PROMISSORY NOTE

\$150,000.00

Phoenix, Arizona

Dated: _____

THIS PROMISSORY NOTE ("Note") is between the undersigned ("Payor") and the Bankruptcy Estate of Metropolitan Lofts LLC (2:09-bk-31907-EWH) ("Payee"). Payor and Payee sometimes may be referred to collectively as the "Parties" or individually as a "Party".

1. **Loan.** FOR VALUE RECEIVED, Payor promises to pay to Payee, or order, the principal sum ("Principal") of One Hundred Fifty Thousand Dollars (\$150,000.00) together with interest thereon at the rate of six percent (6%) per annum payable from the date hereof to, but excluding, the date payment of the Principal and accrued interest is made.

2. **Payment.** Payment will be made of the full Principal and all accrued interest at the Maturity Date ("Maturity Date") which shall be the sooner of (i) the sale or refinancing of the Collateral described in Paragraph 11, infra, or (ii) one year from the date of this Note.

3. **Defaults by Payor.** A default will occur if: (i) Payor fails to pay the principal when due, (ii) Payor is in default other than a default under (i) above, or fails to perform under the terms of this Note or any instrument securing this Note, and such default is not cured within fifteen days after written of such default given by the Payee to Payor, (iii) any foreclosures under any lien or encumbrance having priority over any instrument securing this Note is initiated, or (iv) Borrower becomes a bankrupt or debtor in or under any state or federal insolvency proceeding.

4. **Default Remedies.** If a default occurs, then without notice, at the election of Payee, the entire Principal sum immediately will be due and payable and be declared mature by acceleration. In any event, upon any default occurring or at maturity, the Principal will bear interest at the after-default rate of **six percent (6%)** per annum from the date of default until this Note is paid in full. This Note may be enforced by Payee exercising any remedy available at law or in equity.

5. **Reservation of Rights.** No waiver under this Note is valid unless it is in writing and signed by the Party giving the waiver. A waiver of a particular matter or remedy does not waive a subsequent or similar matter or remedy. No waiver will excuse a Party from the payment or performance of its other obligations under this Note.

6. **Fees and Costs.** If any default should occur, Payor promises to pay all of the following costs and fees if incurred by or on behalf of Payee: (i) reasonable attorneys' fees, (ii) trustee's fees, (iii) all costs and expenses of collection, enforcement, interpretation or any foreclosure, whether or not suit is filed, and (iv) all costs of suit, each of which are to be determined and awarded by a court and not by a jury. "Suit" includes proceedings in courts of original, appellate and bankruptcy jurisdiction.

7. **Prepayment.** This Note may be prepaid in whole or in part at the option of Payor without penalty or premium.

8. **Waivers by Payor.** To the maximum extent allowed by applicable law, Payor expressly waives: (i) diligence, demand, dishonor, protest, presentment, and grace of any kind, and any notice of the foregoing, and any notices of nonpayment, default or acceleration, (ii) any and all rights of homestead and exemption and (iii) any release or discharge arising from any extension of time or change in terms of payment or otherwise in this Note, or from any change, addition to or alteration of any instrument securing this Note, or from any other cause whatsoever other than payment in full.

9. **Parties Bound.** "Payor" means the undersigned as maker of this Note and all co-makers, endorsers, payors, obligors, sureties and guarantors of this Note and anyone who may become liable for payment or performance of the same, and its or their respective successors and assigns, jointly and severally. "Payee" means the original Payee and holder of this Note and its or their respective successors and assigns as owners and holders(s) of this Note.

10. **Choice of Law.** This Note is governed by the laws of the State of Arizona. The parties consent and submit to the nonexclusive jurisdiction of the courts of the State of Arizona and the United States District Court for the District of Arizona, to be venued in Maricopa County, Arizona, concerning any action arising under or on account of this Note.

11. **Collateral.** This Note is secured by a deed of trust and assignment of rents ("Deed of Trust") encumbering real property, any improvements and fixtures located in Maricopa County, Arizona ("Collateral").

12. **Non-Recourse.** Recourse against the Payor under this Note shall be limited to the collateral set forth in the Deed of Trust and the Payor shall have no personal liability for such obligations and no judgment for the payment of money shall be entered against the Payor.

PAYOR

Metro Loan LLC, an Arizona limited liability company

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

By: _____
Its: _____

EXHIBIT “B”

When recorded, mail to:

Adam B. Nach
LANE & NACH, P.C.
2025 N. Third Street, #157
Phoenix, Arizona 85004

DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this ____ day of _____, 2011 between the following parties:

TRUSTOR: Metro Loan LLC, an Arizona limited liability company
c/o ML Manager, LLC
14050 N. 83rd Avenue, Suite 180
Peoria, AZ 85381

TRUSTEE: Adam B. Nach
LANE & NACH, P.C.
2025 North Third Street
The Brookstone, Suite 157
Phoenix, AZ 85004

BENEFICIARY: Bankruptcy Estate of Metropolitan Lofts, LLC
Case No. 2:09-bk-31907-EWH
Roger W. Brown, Trustee
P.O. Box 32967
Phoenix, AZ 85064

WITNESSETH: That Trustor conveys, transfers and assigns to Trustee in Trust, with Power of Sale, the following-described real property in Maricopa County, Arizona ("Property"):

Exhibit "A" attached

TOGETHER WITH rents, issues, profits and income thereof (all of which are hereinafter called "Property Income"), **SUBJECT HOWEVER**, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income.

THIS DEED OF TRUST is given for the purpose of securing: (1) Performance of each agreement of Trustor herein contained. (2) Payment of the indebtedness evidenced by a promissory note of even date herewith and any extension or renewal thereof in the principal sum

of One Hundred Fifty Thousand Dollars (\$150,000.00) executed by Trustor in favor of Beneficiary.

The Bankruptcy Estate of the Beneficiary has sold the Property to the Trustor free and clear of all liens, claims and encumbrances except for real estate taxes ("Real Estate Taxes") pursuant to a Stipulated Application to Compromise Adversary Proceeding and to Transfer Real Estate Free and Clear of Lien, Claims and Encumbrances dated November __, 2011 and the Order of the United States Bankruptcy Court For The District of Arizona, in Chapter 7 Case No. 2:09-bk-31907-EWH dated November __, 2011. The Property is currently a partially completed condominium project ("Project") which the Trustor will acquire and resell without any further work to complete or protect the Project.

To protect the Security of this DEED OF TRUST, it is agreed that:

1. Trustor and Beneficiary agree shall pay when due all claims for labor performed and materials furnished, if any, after the date hereof at the specific request of Trustor, but Trustor shall not be required to other wise take any action to complete or protect the Project or the Property except as set forth in Section 3 below.

2. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or Trustee; and shall pay all costs and expenses, including cost of evidence of title and attorneys fees in a reasonable sum, in such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this DEED OF TRUST.

3. Trustor shall pay, at least ten days before the last day of the thirty days required notice of intent to file a foreclosure action to foreclose the right to redeem any sale of the Property for delinquent taxes and assessments under A.R.S. § 42-18202 but otherwise shall not be required to pay any others taxes, assessments affecting said Property; and shall pay when due, the fees of Trustee for issuance of any DEED OF PARTIAL RELEASE and PARTIAL RECONVEYANCE or DEED OF RELEASE and FULL RECONVEYANCE and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this DEED OF TRUST or the obligations secured hereby.

4. Should Trustor fail to make any payment or to do any act as provided in this DEED OF TRUST, then Beneficiary or Trustee may, but without obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such purposes; pay, purchase, contest or compromise, any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor shall pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the highest interest rate provided for in the promissory note secured by this Deed of Trust.

5. Any award of damages in connection with any condemnation for public use of or injury to said Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys received by him to the indebtedness secured.

6. Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this DEED OF TRUST and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall by DEED OF RELEASE and FULL RECONVEYANCE release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such DEED OF RELEASE and FULL RECONVEYANCE of any matters shall be conclusive proof of the truthfulness thereof.

7. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority during the continuance of this Trust, to collect the Property Income, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable. Upon such default, Beneficiary may, at any time, without notice, either in person or by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured hereby or the solvency of the Trustor; enter upon and take possession of said Property or any part thereof; in his own name sue for or otherwise collect such Property Income, including that past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorneys fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine. The entering upon and taking possession of said Property, the collection of such Property Income and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or Invalidate any act done pursuant to such notice.

8. Upon default by Trustor in payment of any obligation secured hereby, or in performance of any other agreement hereunder, and the expiration of fifteen days after receipt by Trustor of written notice of such default without a cure of such default, and upon delivery by Beneficiary to Trustee of written declaration of such default, (A) of sums secured hereby shall become immediately due and payable on delivery to Trustee of Beneficiary's written declaration that such sums are immediately due and payable, and (B) the Trustee shall proceed to sell at public auction the Property secured hereby under the Power of Sale contained herein on delivery by Beneficiary to Trustee of written notice of election to have said Property sold and after the giving of notice of sale in the manner provided by law. Beneficiary also shall deposit with Trustee this DEED OF TRUST, said note and all documents evidencing expenditures secured hereby. At a sale of said Property under the Power of Sale contained herein any person, including Trustor, Trustee or Beneficiary as hereafter defined, may purchase at such sale; Trustee shall deliver to purchaser its TRUSTEE'S DEED, without covenant or warranty, express or implied, to the Property so sold. After deducting costs and expenses of exercising the Power of Sale, and of the sale, including, but not limited to, costs of evidence of title, the Trustee's fees and Trustee's attorneys fees, if any, Trustee shall apply the proceeds of the Trustee's sale in the manner provided by law. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property as against the Trustor and shall have a right to the summary proceedings to obtain possession provided In Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and reasonable attorney's fees.

9. Trustee herein may resign by mailing or delivering notice thereof to Beneficiary and to Trustor. Upon such resignation, the Beneficiary may appoint a successor trustee, which appointment shall constitute a substitution of trustee upon the mailing and recording of written notice thereof by the Beneficiary in the manner prescribed by law.

10. This DEED OF TRUST applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgee, of the promissory note secured hereby, whether or not named as Beneficiary herein. In this DEED OF TRUST, whenever the context so requires the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

11. Trustee accepts this trust when this DEED OF TRUST, duly executed and acknowledged, is made public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other DEED OF TRUST or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

12. Time is of the essence of the DEED OF TRUST and each and every provision hereof.

13. Trustor and Beneficiary agree that the trust relationship created by this instrument is strictly limited to the creation and enforcement of a security interest in real property. Thus, all Trustee's duties, fiduciary or otherwise, are strictly limited to those imposed by this document and A.R.S. 33-801 et seq; inclusive, and no additional duties, burdens or responsibilities shall be placed on the Trustee.

14. The Trustor requests that a copy of any Notice of Trustee's Sale hereunder be mailed to him at his address hereinbefore set forth. All notices required hereby shall be sent to the addresses indicated above unless such party shall have recorded a Request for Notice pursuant to A.R.S. 33-809A in the county recorder's office of the county where the Property encumbered hereby is located, indicating a different address.

15. The Parties acknowledge that in the event Trustor sells the Property, that upon the closing of such sale, the entire amount outstanding and secured hereby shall become due and payable and shall be paid out of the proceeds of sale at the close of escrow.

16. Non-Recourse. Trustor shall not be personally liable for the indebtedness and obligation secured by this Deed of Trust and recourse shall be limited to the sale of the Property which secures this Deed of Trust.

[Signature Page Follows]

Executed the date above first written.

TRUSTOR:

Metro Loan LLC, an Arizona limited Liability company

By: ML Manager, LLC, an Arizona Limited Liability Company, Its Manager

By _____
Its _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____, of ML MANAGER, LLC, an Arizona limited Liability Company, the Manager of Metro Loan LLC, an Arizona limited liability company, on behalf of such limited liability company.

Notary Public

My Commission Expires:

EXHIBIT "A"
Legal Description

Units A-1 through I-1, inclusive, Units A-2 through M-2, inclusive, Units A-3 through M-3, inclusive, Units A-4 through M-4, inclusive, Units A-5 through M-5, inclusive
METROPOLITAN LOFTS, according to Declaration of Condominium recorded in Recording No. 2006-0296270 and Amended and Restated in Recording No. 2006-0735272 and plat recorded in Book 814 of Maps, page 28 and Amended in Book 842 of Maps, page 4 and Book 870 of Maps, page 30.

Together with an undivided interest in and to the common elements as set forth in said declaration and designated on said plat.

EXHIBIT “C”

Claim Number	Claimant	Proposed Distribution
3	Arizona Protection Agency 3200 North Hayden Road Suite 235 Scottsdale, AZ 85251	\$1,290.47
4	Summers Group, Inc. c/o Margaret Gillespie Collins, May, Potenza, Baran & Gilliespie 201 North Central Avenue 22 nd Floor Phoenix, AZ 85004	\$2,994.16
5	Parra Dry Wall c/o Dominguez Law Firm, P.C. 2323 North Third Street, Suite 100 Phoenix, AZ 85004	\$15,715.37