

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

5 MOYES SELLERS & HENDRICKS
Keith L. Hendricks (012750)
6 1850 N. Central Ave., Suite 1100
Phoenix, Arizona 85004
7 Telephone: (602) 604-2120
Email: khendricks@law-msh.com

8 Attorneys for ML Manager LLC

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

11 In re
12 MORTGAGES LTD.,
13 Debtor.

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

14 **REPLY TO OBJECTION TO MOTION TO
SELL REAL PROPERTY**

15 **Real Property located at Northern Avenue and
Cotton Lane, in Maricopa County, Arizona**

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

18
19 ML Manager LLC (“ML Manager”), as the manager for Nocit Loan LLC and the
20 agent for certain Pass-Through Investors on Loan No. 849206 (known as Northern 120
21 loan) and as the manager of Citno Loan LLC and the agent for certain Pass-Through
22 Investors on Loan No. 849306 (known as Citrus 278 loan), hereby files this Reply in
23 support of its Motion to Sell (Docket No. 3374) and its Supplement and Correction to
24 Motion to Sell (Docket No. 3381) their adjoining real property with a total acreage of
25 approximately 392.5 acres located at the northwest corner of Northern Avenue and Cotton
26 Lane in Maricopa County, Arizona, as more specifically described in the Sale Agreement

1 (“Property”), to Wayne Smith (“Purchaser”) for the price of approximately \$5,789,375
2 (“Purchase Price”)¹ and on the terms set forth in the proposed Agreement of Sale and
3 Purchase (“Sale Agreement”) which is attached to the Motion or upon better terms to
4 another party as determined by ML Manager in its sole discretion.

5 As discussed below, both the Citno Loan LLC and Nocit Loan LLC agreed to
6 approve the sale by a majority of the dollars voted in each Loan LLC. No objections were
7 filed by the 10 Pass-Through Investors in the Citno Loan (known as the Citrus 278 loan)
8 or 21 of the 22 Pass-Through Investors in the Nocit Loan (known as the Northern 120
9 loan). Only one objection was received. An Objection was filed by Bruce Dennis Buckley
10 and Alivia Virginia Buckley, Trustees of the Bruce Dennis Buckley and Alivia Virginia
11 Buckley Revocable Trust dated June 4, 1985, and amended December 7, 1994 (the
12 Buckley Trust) and The Bruce D. Buckley IRA (Equity Trust as Custodian) (“Buckley
13 Objection”)(Docket No. 3382). As discussed below, the Court overruled the same
14 objections by Mr. Buckley on at least 2 other occasions when the same arguments were
15 raised as to other sales. The issues raised are already determined as Law of the Case and
16 are binding on the parties. Accordingly, ML Manager requests that the Court overrule the
17 Buckley Objection and grant the Motion.

18 **I. THE RESULTS OF BOTH LOAN LLC VOTES**

19
20 ML Manager asked the investors in Nocit Loan LLC and the MP Funds in that
21 Loan LLC which own 63.401% of the interests in the real property known as the Northern
22 120 loan to vote on this Major Decision. A vote was conducted by ML Manager of the
23 members in the Nocit Loan LLC and the applicable MP Funds. Based on the voting
24 results, 85.49% of the dollars which voted approved the sale. ML Manager asserts it is

25
26 ¹ The Purchase Price will be allocated between the two loans based on the price of
\$14,750 per acre and the respective acreage for each loan.

1 authorized to go forward with the sale on behalf of the Loan LLC.

2 In addition, ML Manager asked the investors in Citno Loan LLC and the MP
3 Funds in that Loan LLC which own 91.602% of the interests in the real property known as
4 Citrus 278 to vote on this Major Decision. A vote was conducted by ML Manager of the
5 members in the Citno Loan LLC and the applicable MP Funds. Based on the voting
6 results, 85.49% of the dollars which voted approved the sale. ML Manager asserts it is
7 authorized to go forward with the sale on behalf of the Loan LLC.

8
9 **II. RIGHT TO COMPETE BY THE EXIT FINANCIER**

10 One of the contingencies of the Sale Agreement concerns the Exit Financier. The
11 Exit Financier has indicated it does not intend to exercise its right to compete on either
12 property. This contingency has been satisfied.

13
14 **III. EXERCISE OF VALID BUSINESS JUDGMENT**

15 ML Manager, in the exercise of its business judgment, has decided it is in the best
16 interest of the investors in both loans to sell the Property. ML Manager retained the
17 services of Land Advisors Organization, a leading real estate brokerage firm, to widely
18 market the Property for sale. The two properties were offered as separate properties for
19 sale and offered together. The marketing materials expressly stated that offers would be
20 entertained in part or in whole. No offers were received on the separate properties but
21 several offers were received on the combined properties.

22 After completing substantial marketing efforts, Purchaser made an offer of
23 \$5,789,375 which is \$14,750 per acre which was acceptable to ML Manager. The real
24 property taxes on both properties were not paid by the Borrowers prior to the foreclosure,
25 continue to accrue interest and will be paid from the sale proceeds. Purchaser has
26 deposited \$50,000 and opened escrow at Thomas Title & Escrow. An additional \$200,000

1 will be deposited on or prior to the expiration of the Feasibility Period which expires
2 January 4, 2012. Because the properties have already been fully marketed, this is not
3 proposed to be an auction and no higher and better bids are being solicited. The Purchase
4 Price is to be paid in cash at closing. The anticipated closing is early January 2012. The
5 Purchaser is a non-related third party with no connections to ML Manager, the Board
6 members, the investors or the exit financier. Citno Loan LLC which owns 91.602% of the
7 Citrus 278 property approved the sale and Nocit Loan LLC which owns 63.401% of the
8 Northern 120 property approved the sale. 21 of 22 Pass-Through Investors in the Northern
9 120 property and all 10 of the Pass-Through Investors in the Citrus 278 property do not
10 object to the sale. ML Manager asserts that the sale of both properties at this time for this
11 price to this Purchaser under the terms in the Sale Agreement and in the Motion is in the
12 best interest of the investors and is a valid exercise of its business judgment consistent
13 with its fiduciary duties and should be approved.

14 The Buckley Objection assumes that the Northern 120 property would sell for more
15 if sold separately. ML Manager did offer the Northern 120 property separately from the
16 Citrus 278 property. The marketing materials used by the Broker stated that the properties
17 would be sold in whole or in part and that all offers would be entertained. While the
18 Brokers did receive one inquiry about the only the Northern 120 property, the Broker and
19 ML Manager did not receive any offers for the Northern 120 property separately. Instead
20 all offers made by parties were for both properties. The price is the same per acre between
21 the two properties. This Purchaser expressly wants the total property consisting of
22 approximate 392.5 acres. ML Manager wants to maximize the value for all investors and
23 has no reason to believe that holding out for a separate sale for the Northern 120 property
24 would result in any more money per acre. Plus the properties continue to accrue holding
25 costs, including the real property taxes and the exit financing costs and the replacement
26 loans plus interest owed to the other Loan LLCs. ML Manager believe that the Purchase

1 Price consists fair consideration and represents the current fair market value for both
2 properties.

3 **IV. ML MANAGER AS AGENT HAS AUTHORITY TO SELL**

4 The Buckley Objection makes three arguments as to why ML Manager has no
5 authority to sell his interests in the Northern 120 property. All three arguments have been
6 raised by Mr. Buckley at prior sale hearings and rejected by the Court and the same
7 arguments have been raised by other investors as well and rejected by this Court. The
8 prior rulings are Law of the Case.

9 Mr. Buckley attached to the Objection a copy of a pleading filed in November
10 2008 on behalf of the Committee. This pleading concerned the agency authority of
11 Mortgages Ltd. under the agency agreements and specifically addressed the University &
12 Ash settlement being proposed by Mortgages Ltd. The Court overruled the position of the
13 Committee and ruled in favor of Mortgages Ltd. on November 25, 2008 upholding its
14 authority. The pleading and attachment filed by Mr. Buckley only serve as a citation to
15 cases and authorities on an argument that the Court has already overruled in a final order.
16 This constitutes Law of the Case. The Court has consistently upheld its ruling in future
17 matters.

18 On May 26, 2010, Rick Thomas filed an objection on Mr. Buckley's behalf (along
19 with 13 other objectors) (Docket No. 2763). The same arguments of termination of the
20 irrevocable agency, breach of fiduciary duty by Mortgages Ltd. as grounds to suspend or
21 terminate the agency, and the effect of the withholding of discretion clause in the agency
22 agreement on the ability of the agent to sell. At the sale hearing held on May 27, 2010 the
23 Court overruled all three arguments made by Mr. Thomas on behalf of Mr. Buckley. The
24 Sale Order entered by the Court expressly overruled the objections on the merits (Docket
25 No. 2770). No appeal from this Order was filed.

26 Again Mr. Buckley raised the withholding of discretion argument in the Objection

1 he filed on November 15, 2011 (Docket No. 3358) to the Adobe Meadows sale. At the
2 hearing the Court asked if Mr. Buckley knew about the Court's prior ruling on November
3 25, 2008 on this issue and he said yes. However he said he did not agree with the Court's
4 ruling. He did not file an appeal at that time from the University & Ash ruling. This Court
5 overruled his objection on the merits and entered the Sale Order (Docket No. 3367) on
6 November 23, 2011. No appeal from this Order was filed.

7 As for the exhibits attached to the Buckley Objection, they clearly reflect that Mr.
8 Buckley signed the Existing Investor Account Agreement (Exhibit D) which was issued as
9 a part of the July 10, 2006 Private Offering Memorandum and which expressly adopts the
10 Agency Agreement. The signed Existing Investor Account Agreement expressly adopts
11 the Agency Agreement which is attached to the Private Offering Memorandum and
12 clearly states that Mr. Buckley "irrevocably constitutes and appoints Mortgages Ltd. with
13 full power of substitution, as the undersigned's true and lawful attorney and agent, with
14 full power and authority in the undersigned's name, place, and stead,..." The Agency
15 Agreement which is attached to the July 10, 2006 Private Offering Memorandum was an
16 exhibit at the November 2008 hearings on authority of Mortgages Ltd. and was a part of
17 the Declaratory Judgment Action. This Court on numerous occasions has reviewed and
18 interpreted the Agency Agreement and language. The Agency Agreement is attached
19 hereto as Exhibit 1. The Court on numerous occasions has ruled that it is an agency
20 coupled with an interest and is irrevocable. Any attempt to terminate the Agency
21 Agreement is null and void, as this Court has ruled on numerous occasions in this Case.

22 The Master Agency Agreement which Mr. Buckley references is a 2005 agreement
23 and is no longer in effect. It was replaced and superseded by the July 10, 2006 Private
24 Offering Memorandum which Mr. Buckley admits he received and the Existing Investor
25 Account Agreement which he admits he signed and attaches to the Objection. Under the
26 Agency Agreement, which is attached to the July 10, 2006 Private Offering Memorandum

1 and adopted by the signed Existing Investor Account Agreement, paragraph 3(b)
2 expressly states that “Participant may terminate this Agreement after it becomes the sole
3 owner of the Trust Property by written notice to Agent and payment of the fees, costs and
4 expenses incurred by Agent as provided herein.” Mr. Buckley is not the sole owner of the
5 Trust Property. He only owns about 2.326%. As this Court has interpreted this paragrph,
6 Mr. Buckley has no right or ability under this provision to terminate the Agency
7 Agreement and his attempts to do so are null and void.

8 WHEREFORE, ML Manager LLC requests that the Court overrule the Buckley
9 Objection and enter an order authorizing and approving the sale and transfer as set forth
10 above.

11 DATED: December 16, 2011

12 FENNEMORE CRAIG, P.C.

13 By /s/ Cathy L. Reece
14 Cathy L. Reece

15 Attorneys for ML Manager LLC

16 COPY of the foregoing emailed
17 This 16th day of December, 2011 to:

18 Bruce D. Buckley
19 PO Box 1009
20 Carefree, AZ 85377
21 avbuckley@aol.com

22 /s/ Gidget Kelsey-Bacon
23
24
25
26

EXHIBIT

1

AGENCY AGREEMENT

THIS AGENCY AGREEMENT (this "Agreement") dated effective as of _____, 2____, is between Mortgages Ltd. ("Agent") and _____ ("Participant").

Background

This Agreement is executed in connection with all loans (each a "Loan" and collectively, the "Loans") with respect to which Participant may hold Pass-through Loan Participations pursuant to any program sponsored by Agent, including the Annual Opportunity™ Loan Program, the Capital Opportunity® Loan Program, the Opportunity Plus® Loan Program, the Revolving Opportunity™ Loan Program, and the Performance Plus® Loan Program (collectively, the "Programs"), all as described in the Private Offering Memorandum of Agent relating to the Programs.

Agreement

Participant and Agent (collectively, the "Parties") agree as follows.

1. APPOINTMENT AND AUTHORITY OF AGENT.

Participant appoints Agent to act as Participant's agent with regard to the Loans and the Loan Documents (as defined below). Participant agrees that Agent will be named as the lender/payee/beneficiary (as agent for Participant) under the Loan Documents. Notwithstanding the foregoing, Participant may notify Agent in writing that Participant desires to obtain a separate assignment of the beneficial interest in any of the deeds of trust that are executed in connection with any of the Loans. Upon receipt of such written notice, Agent will comply with Participant's request provided that the Parties agree that all other provisions of this Agreement (including all other rights and powers of Agent) shall remain in full force and effect. >

Participant authorizes Agent to perform all of the tasks described in this Agreement on Participant's behalf, at Agent's sole discretion. Participant irrevocably appoints, with full power of substitution, Agent as its true and lawful attorney-in-fact, with authority to sign and endorse all documents and perform any other task to effectuate the intent of this Agreement. <This power is a power coupled with an interest, and such power is irrevocable and shall remain in full force and effect until renounced by Agent.

a. **Account Servicing.** In order to aid Agent's management of Participant's investment in the Loans, Agent may do any of the following at the sole discretion of Agent:

(1) Request from Participant, Participant's percentage ratio of any delayed fundings to any borrower (each a "Borrower" and collectively, the "Borrowers") under the Loan Documents related to any Loan, which funds Participant shall deliver to Agent within three business days to be held or disbursed by Agent pursuant to the Loan Documents. If Participant fails to deliver the funds to Agent within the specified time period, Agent may, at its option, do the following:

- (a) Divide Participant's total funding of any Loan by the face amount of such Loan to determine Participant's current percentage ratio and transfer to a new investor the difference between Participant's assigned percentage ratio and Participant's current percentage ratio; or
- (b) Liquidate Participant's investment in any Loan and transfer all of Participant's assigned percentage ratio in the Loan to a new participant.
- (2) Hold the originals of the promissory note, deed of trust and all other documents signed by any Borrower or any guarantor in connection with any Loan (collectively, the "Loan Documents").
- (3) Service and administer the Loans in any manner provided by the applicable Loan Documents.
- (4) Process payments with respect to any Loan from any Borrower or any other payor (each a "Borrower Payment") as follows:
- (a) Upon receipt of a Borrower Payment, deposit that Borrower Payment in an account held by Agent, and transmit or deposit the appropriate funds to Participant.
- (b) Agent may delay disbursing funds to Participant from any Borrower Payment until funds from the applicable Borrower or the applicable payor are collected by Agent's financial institution.
- (c) If a Borrower Payment is returned by the financial institution of the Borrower or the applicable payor, Agent may send a notice to the applicable Borrower or the applicable payor requesting payment of the past due amount, together with interest at the default interest rate provided for in the Loan Documents.
- (5) Assess and process all fees and charges set forth in the Loan Documents, including administrative fees, notice fees and late charges.
- (6) Apply any funds received by Agent to the fees and costs incurred or assessed by Agent before applying the funds to the amounts owing under the Loan Documents. These fees and costs include notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (as described herein). Any insurance placed by Agent may be placed with an affiliate of Agent or captive insurance company.
- (7) Retain deposits received under the Loan Documents as impounds for the payment of the following: (a) future payments due; (b) taxes and assessments; (c) construction expenses; (d) insurance premiums; (e) extension fees; (f) administration fees; and (g) any other expenditure required under the Loan Documents.

Any impound account may be held in the name of Agent for the benefit of Participant and others, and Agent may apply and/or disburse any such deposits in accordance with the Loan Documents.

(8) Evaluate, effectuate and process an assumption of any Loan, and assess and receive an assumption fee and/or an interest rate increase.

(9) Sign, file and record all documents which are reasonable or desirable to facilitate servicing of the Loans and administration of the Programs, including: (a) deeds of release and reconveyance (full and partial); (b) endorsements and assignments of the Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents); (c) corrections, amendments and extensions of the Loan Documents; (d) disclaimers; (e) financing statements; and (f) assumptions and certifications.

(10) To the extent permitted by law, upon Participant's request, hold funds from the full or partial payoff of any Loan in Agent's trust account pending Participant's written direction as to the use of such funds.

b. **Collection.** In order to protect Participant's interests in the Loans, Agent may do any of the following at Agent's sole discretion:

(1) Correspond directly with any Borrower at any time on any matter regarding any Loan or the Loan Documents, including sending notices of delinquency and default, and demands for payment and compliance.

(2) Incur fees, costs and expenses deemed necessary by Agent to protect Participant's interests under the Loan Documents.

(3) Incur fees, costs and expenses deemed necessary by Agent to protect the property securing any Loan (each a "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

(4) Negotiate, accept and/or process partial payments of amounts due and owing under the Loan Documents.

(5) Send the applicable Borrower a request to deposit sufficient funds for delinquent real estate taxes and insurance premiums (including forced placed insurance) relating to the applicable Trust Property.

(6) Obtain forced placed insurance on any portion of the applicable Trust Property if the applicable Borrower fails to maintain insurance as required by the Loan Documents.

(7) Sign, file and record all documents Agent deems necessary to protect Participant's interests and/or pursue Participant's remedies upon default, including a statement of breach or non-performance, a substitution of trustee, a notice of election to foreclose, an affidavit of non-military service, a notice of proposed disposition of collateral and various verifications.

(8) In the event of default, commence foreclosure of the applicable Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the amounts due under the applicable Loan Documents or to enforce any provision therein, including: (a) pursuing an action against the applicable Borrower or any guarantor of the Loan; (b) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment; (c) pursuing claims in bankruptcy court; (d) pursuing an appeal; (e) collecting rents; or (f) taking possession of and/or operating the applicable Trust Property.

(9) Amend the Loan Documents.

(10) Facilitate the sale of Participant's interests in the Loan Documents by communicating with potential purchasers or their agents and by providing information regarding any Loan to third parties, including copies of the Loan Documents and accounting information related to any Loan.

(11) Retain attorneys, trustees and other agents necessary to collect the amounts due under the Loan Documents, to protect the applicable Trust Property and/or to proceed with foreclosure of the applicable Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Agent deems necessary.

(12) Incur and pay such costs, expenses and fees as Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorneys' fees, receiver fees, trustee fees, expert fees, notice fees and any fees, costs and expenses incurred in an effort to collect against a guarantor of any Loan.

(13) Request and receive payments from Borrowers or Participant as advances in order to pay such fees, costs and expenses incurred by Agent in accordance with this Agreement and/or the Loan Documents.

c. **Compensation.** As compensation for the services provided by Agent, Agent may do any of the following in its sole discretion:

(1) Retain fees and charges assessed under the Loan Documents and collected by Agent, including commitment fees, originations fees or points, late charges, maturity late charges, administrative fees, property inspection fees, prepayment penalties or premiums, notice fees and services.

(2) Deduct from payments received by Participant a portion of the interest payments on any Loan in which Participant acquires an interest in an amount determined by Agent at the time of the origination of such Loan and/or a servicing fee.

(3) Collect and retain any interest on the principal balance of any Loan which is over and above the normal rate set forth in the applicable promissory note, including the default interest rate provided for in the applicable Loan Documents.

(4) Collect and retain any interest that accrues on any impound accounts to the extent permitted by applicable law.

(5) Collect and retain any assumption fees and charges.

(6) Collect and retain any extension fees and forbearance fees.

d. **Sale of Interest.** If Participant owns less than 100% interest in any Loan being serviced by Agent under a Servicing Agent Agreement, Agent, in its sole discretion, may liquidate Participant's interest. Upon payment to Participant, Agent will, upon direction of Participant, use commercially reasonable efforts to reinvest any funds received by Participant in a new Loan.

2. ACCOMMODATION.

Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including Borrowers and Participant, for any act or omission by Agent or any person or entity acting for Agent.

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Agent shall have the right to assign the collection account or resign as Agent at any time, provided that Agent notifies Participant of such assignment or resignation in writing.

(1) If Agent assigns the collection account, Agent will deliver all Loan Documents, directions and account records to assignee, at which time Agent will have no further duties or liabilities hereunder.

(2) If Agent resigns, Participant shall have the right to designate a new collection agent and Agent shall deliver to Participant all Loan Documents, directions and account records to Participant or the newly designated collection agent, at which time Agent will have no further duties or liabilities hereunder.

(b) If the ownership of any Trust Property becomes vested in Participant, either in whole or in part, by trustee's sale, judicial foreclosure or otherwise, Agent may enter into one or more real estate broker's agreement on Participant's behalf for the sale of the applicable Trust Property, enter into a management and/or maintenance agreements for management or maintenance of the applicable Trust Property, if applicable, may acquire insurance for the applicable Trust Property, and may take such other actions and enter into such other agreements for the protection and sale of the applicable Trust Property, all as Agent deems appropriate in its sole discretion. Any real estate broker engaged by Agent may be an affiliate of Agent. Participant may terminate this Agreement after it becomes the sole owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein.

c. Upon Agent's assignment or resignation, or termination of this Agreement, Participant shall immediately reimburse Agent for all fees, costs and expenses incurred

hereunder and pay Agent all compensation due. After such reimbursement and payment, Participant shall have no further duties to Agent, except indemnification of Agent.

4. INDEMNITY

a. Participant shall indemnify, protect, defend and hold Agent harmless for, from and against all liabilities incurred by Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from any Loan or the Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. If Agent requests that Participant pay any amount owed hereunder, Participant shall remit that amount to Agent as soon as possible, but in no event later than five business days of Agent's request.

5. PARTICIPANT'S OBLIGATIONS

a. **Execution of Documents.** Agent is authorized to sign all documents Agent deems necessary to facilitate loan servicing or collection. However, if it is necessary, Participant shall sign any documents Agent deems necessary to facilitate loan servicing or collection, including deeds of release and reconveyance (full and partial), endorsements and assignments. If Agent requests Participant sign such a document, then Participant shall sign and deliver that document as soon as possible, but in no event later than five business days of Agent's request.

b. **Failure to Execute Documents.** If Participant fails to sign any of the documents described in Section 5.a. above, Agent shall be authorized to sign any such document. If Agent is prevented from executing a document due to circumstances beyond Agent's control, then Agent shall be entitled to seek indemnification from Participant for any liabilities Agent may incur as a result.

c. **Assignment.** Participant shall have the right to assign its rights in this Agreement at any time upon immediate notification to Agent in writing of any assignment of Participant's rights. Upon assignment, Participant shall immediately reimburse Agent for all fees, costs and expenses incurred hereunder and pay Agent all compensation due. After such reimbursement and payment, Participant shall have no further duties to Agent, except indemnification of Agent.

d. **Breach.** If Participant breaches this Agreement by failing to perform or by interfering with Agent's ability to perform under this Agreement, then Participant shall pay Agent, within 30 days of written notice of breach, administrative fees, attorneys' fees, costs, closeout fees and any other fees or charges owed to Agent as compensation hereunder, along with any additional damages incurred by Agent, whether actual, incidental or consequential.

6. CONFIDENTIALITY

a. For the purposes of this Agreement, the term "Confidential Information" as used herein shall include all written and verbal information provided by Agent to Participant in connection with any Loan, whether marked or designated as confidential or not, including information regarding Agent's underwriting criteria or procedures. Except with respect to Agent's underwriting criteria and procedures, which shall in all events constitute Confidential

Information hereunder, the definition of Confidential Information shall not include any information which: (i) is or becomes generally known to third parties through no fault of Participant; or (ii) is already known to Participant prior to its receipt from Agent as shown by prior written records; or (iii) becomes known to Participant by disclosure from a third party who has a lawful right to disclose the information.

b. Participant acknowledges that the Confidential Information is proprietary and valuable to Agent and that any disclosure or unauthorized use thereof may cause irreparable harm and loss to Agent.

c. In consideration of the disclosure to Participant of the Confidential Information and of the services to be performed by Agent on behalf of Participant hereunder, Participant agrees to receive and to treat the Confidential Information on a confidential and restricted basis and to undertake the following additional obligations with respect thereto:

(i) To use the Confidential Information only in connection with the Loans.

(ii) Not to duplicate, in whole or in part, any Confidential Information.

(iii) Not to disclose Confidential Information to any person or entity, without the prior express written consent of Agent.

(iv) To return all Confidential Information to Agent upon request therefore and to destroy any additional notes or records made from such Confidential Information.

(v) Not to give testimony against Agent in any legal proceeding to which Agent is a party, unless compelled to do so by competent legal authority.

d. The standard of care to be utilized by Participant in the performance of its obligations set forth herein shall be the standard of care utilized by Participant in treating Participant's own information that it does not wish disclosed, except that Agent's underwriting criteria and procedures shall be kept absolutely confidential and privileged regardless of whether such knowledge was previously known to Participant or has been or is in the future disclosed to Consultant by third parties.

e. The restrictions set forth in this Section 6 shall be binding upon Participant, its employees, agents, officers, directors and any others to whom any Confidential Information may be disclosed as part of or in connection with any Loan transaction. Participant shall be responsible for any actions of its employees, agents, officers, directors or others to whom it has provided such information with respect to such information.

f. The restrictions and obligations of this Section 6 shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind Participant, its successors and assigns.

g. Participant agrees and acknowledges that the rights conveyed in this Section 6 are of a unique and special nature and that Agent will not have an adequate remedy at law if Participant or anyone acting on Participant's behalf or for whom Participant acted fails to abide

by the terms and conditions set forth herein, nor will money damages adequately compensate for such injury. It is, therefore, agreed between the Parties that upon a breach by Participant of its agreements in this Section 6, Agent shall have the right, among other rights, to obtain an injunction or decree of specific performance to restrain Participant or anyone acting on Participant's behalf or for whom Participant is acting from continuing such breach, in addition to damages sustained as a result of such breach. Nothing in this Agreement shall in any way limit or exclude any other rights granted by law or equity to either of the Parties.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their agents, personal representatives, heirs, successors, assigns, beneficiaries and trustees.

b. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

c. The Parties waive the right to a jury trial on any matters arising from this Agreement.

d. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the Account Application, the Existing Investor Account Agreement, the New Investor Subscription Agreement, and the Loan Documents.

e. This Agreement replaces and supersedes all prior agency agreements between Participant and Agent relating to any of the Loans. All such prior agency agreements are null and void.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by Agent and Participant. Agent's failure, at any time, to require performance of any provision of this Agreement shall in no manner affect the right of Agent at a later time to enforce the same. No waiver by Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. This Agreement may be signed by the Parties in counterparts. The signature pages may then be attached together constituting an original copy of the Agreement. Copies of signature pages obtained via facsimile shall be effective and binding on the Parties. As used in

this Agreement, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

i. No remedy herein conferred upon or reserved to Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

j. If there is any arbitration or litigation by or among the parties to enforce or interpret any provisions of this Agreement or any rights arising hereunder, the unsuccessful party in such arbitration or litigation, as determined by the arbitrator or the court, shall pay to the successful party, as determined by the arbitrator or the court, all costs and expenses, including attorneys' fees and costs, incurred by the successful party, such costs and expenses to be determined by the arbitrator or court sitting without a jury.

k. Agent is entitled to sign this Agreement on behalf of Participant as the attorney-in-fact of Participant pursuant to the authority granted under the Existing Investor Account Agreement or the New Investor Subscription Agreement executed by Participant.

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date first set forth above.

PARTICIPANT:

MORTGAGES LTD., as attorney-in-fact for Participant

By: **Scott M. Coles, CEO**

AGENT:

MORTGAGES LTD.

By: **Scott M. Coles, CEO**

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