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

MOYES SELLERS & HENDRICKS
Keith L. Hendricks (012750)
1850 N. Central Ave., Suite 1100
Phoenix, Arizona 85004
Telephone: (602) 604-2120
Email: khendricks@law-msh.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.	**MOTION TO APPROVE SETTLEMENT WITH MORTGAGES LTD 401K PLAN**
	Hearing Date: December 11, 2012 **Hearing Time: 11:00 a.m.**

ML Manager LLC ("ML Manager"), as manager for the Loan LLCs (Bison Loan LLC and VF I Loan LLC) and as agent for the non-transferring pass-through investors who are undivided fractional note and deed of trust holders in the loans in which the Mortgages Ltd. 401k Plan ("401k Plan") holds undivided fractional interests ("401k Plan Loans")[1] and on behalf of all other Investors for which it is the manager or agent, requests that the Court enter an order approving the global settlement and authorizing ML Manager to enter into and implement the settlement with the 401k Plan as presented in the draft

[1] The 401k Plan Loans in which the 401k Plan hold an undivided fractional interest with other investors are Bisontown (Loan 852806), 43rd Avenue and Olney (Loan 854706), Hurst (Loan 861005), Vanderbilt Farms (Loan 859606) and GP Properties (Loan 860206). The 401k Plan Loans in which the 401k Plan are the sole interest holder are CDIG (Loan 861405), Ecco Holdings (Loan 859705) and Downtown Community (Loan 860306).

Settlement Agreement ("Settlement Agreement") that is attached hereto as Exhibit 1. The final version is being preposed and is still subject to change. The signed Settlement Agreement will be filed with the Court as soon as possible.

The Settlement Agreement provides for a global settlement with the 401k Plan. Among other things, the Settlement Agreement provides for an assignment to ML Manager by the 401k Plan of the 401k Plan's interests in the Wolfswinkel Guarantees and pending Deficiency Action and a partial assignment of the 401k Plan's interest in the Peloquin Judgment and Peloquin Guarantees. The recovery under these guarantees and actions, if any, will be applied to what ML Manager has asserted is the 401k Plan's share of the Exit Financing and General Costs. The Settlement provides for the release of any and all claims the parties have against each other, including that the 401k Plan will not be responsible for any other General Costs or Exit Financing Costs provided for under the Allocation Model on any of the 401k Plan Loans. The 401k Plan has agreed to be responsible for the Loan Specific Costs allocated to the 401k Plan Loans as set forth on Exhibits B and C to be attached to the final Settlement Agreement and for certain future expenses that they agree to concerning to the 401k Plan Loans as set forth in the Settlement Agreement. The Settlement Agreement provides that ML Manager is not the agent for the 401k Plan and that the 401k Plan will act on its own account. The 401k Plan agrees to take the lead to manage the Bisontown property, the Hurst property, the Olney property, and the three Solely Owned Loans of the 401k Plan. As to the Vanderbilt property the parties will be Tenants in Common and all decisions shall be mutual. The Settlement Agreement also sets up a mediation procedure for the division of the Vanderbilt property prior to any court action. Also the litigation brought by the 401k Plan, Case No. 2:11-ap-2053, will be dismissed with prejudice with each party to pay its own costs and fees.

The contingencies include approval by the investors in the two Loan LLCs (Bison

Loan LLC and VF I Loan LLC) by a majority of dollars voted in each Loan LLC. The vote of the investors in the Loan LLCs and the applicable MP Funds will be conducted and the results will be reported to the Court at the hearing. Another contingency is Bankruptcy Court approval of the Settlement Agreement. The Closing would be 15 days after the satisfaction of the contingencies which is anticipated to be end of December 2012.

A number of factors justify and support the reasonableness of this Settlement Agreement. A Rule 9019 Motion may or may not be applicable for the post-confirmation settlement, but the factors announced in the cases implementing this Rule are illuminating and helpful here. *In re Woodson*, 839 F.2d 610 (9th Cir. 1988); *In re A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), cert. denied, 479 U.S. 854 (1986). As noted in *Woodson*, the Court should analyze the proposed settlement considering the following factors: (1) the probability of success on the merits, (2) the complexity of the litigation involved (3) the likely difficulties in collection, (4) the expense, inconvenience and delay necessarily attendant to the litigation and collection, and (5) the paramount interest to the investors with a proper deference to their reasonable views. The ultimate inquiry is whether the proposed action is reasonable and in the investors' best interest. *In re Walsh Construction, Inc.*, 669 F.2d 1325 (9th Cir. 1982).

ML Manager spent a significant amount of time receiving and reviewing information, understanding the transactions and the properties, and meeting with and negotiating with the 401k Plan Trustees and their counsel. Some discovery was conducted in the litigation. The negotiations were extensive and conducted over a significant amount of time, and included a settlement conference with a Magistrate Judge from the United States District Court. The result is an arms length agreement based on extensive negotiations that is well thought out and thorough. Among other things, the settlement takes into account the likelihood of success, the cost and expense of pursuing the

alternative verses the settlement and the economics of a swift and certain resolution of the issues. It gives ML Manager the ability to recover some of the Exit Financing and General Costs that otherwise would be allocable to all of the other Loans, it ends the disagreement over the management of the properties involved, and it ends the costs and fees and delay of litigation which was scheduled for trial in the Fall of 2013. There are strongly contested issues on both sides of the litigation that justify a compromise. Based on all the facts the Court should easily conclude that this Settlement is in the best interest of the investors, is fair and equitable, and is within the range of what is reasonable in light of all the circumstances. ML Manager believes this settlement is a valid exercise of its business judgment consistent with its fiduciary duties and responsibilities.

Due to the actions pending in the Bankruptcy Court, District Court and Ninth Circuit by certain investors, ML Manager believes that it is prudent to seek Bankruptcy Court approval of the Settlement Agreement. An order approving and authorizing the Settlement Agreement by ML Manager of 100% of the interests in the 401k Plan Loans will insure a smooth closing and will aid in implementation of the Plan.

Since releases and settlements, among other things, are Major Decisions under the Operating Agreements of the two Loan LLCs, ML Manager will seek approval from the investors in each of the two Loan LLCs and the applicable MP Funds. If approved ML Manager asserts it has the authority and ability to go forward with the Settlement Agreement. Further, ML Manager asserts it has the authority as the agent for the Pass-Through Investors to enter into and implement the Settlement Agreement. ML Manager as agent will execute the documents on behalf of the Pass-Through Investors since it holds the irrevocable power of attorney coupled with an interest to do so. ML Manager will include language in the order authorizing ML Manager to execute any and all such documents on behalf of the Pass-Through Investors.

ML Manager asserts that the Court has retained and reserved jurisdiction in the

Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among others, and has the authority to approve the settlement under Section 105 of the Bankruptcy Code, among other sections, as an order in aid of implementation of the Plan. As the Court has noted at several prior sale hearings, there is a close nexus between such a motion and the bankruptcy because the relief requested is an important part of the Plan. *See, State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005). The Plan specifically called for the creation of the ML Manager to manage the Loan LLCs and to step into the role as manager of the MP Funds and agent of non-transferring pass-through investors. The relief requested by ML Manager affects the amount of money that the investors will receive and the pay down of the replacement loans and other expenses authorized and contemplated in the Plan. Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

WHEREFORE, ML Manager requests that the Court enter an order authorizing and approving the Settlement Agreement, authorizing ML Manager to enter into and implement the Settlement Agreement, and for such other and further relief as is just and proper under the circumstances.

DATED: November 30, 2012

FENNEMORE CRAIG, P.C.

By /s/ *Cathy L. Reece*
Cathy L. Reece
Attorneys for ML Manager LLC

EXHIBIT

1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("**Agreement**") is entered into as of the ____ day of November, 2012 by and between James Cordello and Ryan Walter, trustees of the Mortgages Ltd. 401(k) Plan (the "Plan" or the "401(k) Plan") and ML Manager L.L.C. as Manager for the VF I Loan LLC and Bison Loan LLC and as agent for the pass-through investors listed on Exhibit A and as agent or Manager for all of the "Investors" as defined in the POR, which is defined below (collectively "MLM") (the foregoing, each a "**Party**" and collectively the "**Parties**").

RECITALS

A. In currently pending litigation, *Cordello et al. vs. ML Manager*, No. 08-7465, 11-ap-2053 (Bankr. D. Ariz.) (RJH) (the "Action"), the Parties seek declaratory, injunctive and other relief against each other with respect to various matters, including (i) whether the Plan is responsible to pay a share of exit financing, interest and other costs under the Plan of Reorganization (the "POR") confirmed by the Bankruptcy Court in *In re Mortgages Ltd.*, No. 08-7465 (Bankr. D. Ariz.) (*In re Mortgages Ltd.*), and (ii) whether MLM is agent for the Plan.

B. The Parties are desirous of resolving the Action on the basis set forth herein.

AGREEMENT

THEREFORE, the Parties agree:

1. **Dismissal of the Action.** The Action and all claims and counterclaims asserted therein shall be dismissed with prejudice, each Party to bear its own costs and attorney's fees.

2. **Releases.** Except for claims arising under this Agreement, effective upon this Agreement becoming unconditional, each of MLM and the 401(k) Plan hereby releases and forever acquits the other from all claims, demands, or assertions of liability whatsoever, whether known or unknown, at law or in equity, including, without limitation (i) all claims that were asserted in the Action or that arise out of the operative facts from which the claims asserted in the Action arise, including, without limitation, all claims arising out of ERISA, breach of fiduciary duty, and breach of agency obligations of any kind; (ii) any claims that the Plan has any liability for any share of exit financing, interest or other costs under the POR, including, without limitation, those costs set forth in the "Allocation Model" filed by MLM with the Bankruptcy Court in *In re Mortgages Ltd.* (ECF No. 2913 & 2914), or any subsequent version of or amendment to the Allocation Model, regardless of whether it is filed with the Bankruptcy Court; and (iii) that MLM has any agency relationship with the 401(k) Plan or otherwise holds any rights or interest with respect to any property or loan held by the 401(k) Plan, and any claim that the 401(k) has or may have with respect to any action taken by or any inaction alleged against MLM with respect to the loans in which the 401(k) Plan has or had an interest and any proceeds of or collateral for such loans. The Releases provided herein is for the benefit of, includes and is binding on the 401(k) Plan, MLM, ML Servicing, LLC, the ML Liquidating Trust, and their

respective officers, directors, trustees, principals, agents, members, owners, heirs, affiliates, predecessors, successors and assigns.

3. **Assignment**. In consideration for the release provided for in Paragraph 2 above, effective upon this Agreement becoming unconditional, the Plan hereby assigns to MLM all rights to payment, claims and causes of action under the guarantees dated July 5, 2007 executed by Ashton A. Wolfswinkel and Brandon D. Wolfswinkel (the "Wolfswinkel Guarantees"), and all its rights, claims and causes of action associated with the lawsuit captioned VF I Loan LLC, et al v. Vanderbilt Farms, LLC et al, case no CV2010-027713 pending in Maricopa County Superior Court (the "Deficiency Action"). This assignment is made without recourse to the Plan, and it is acknowledged that MLM assumes all risks of collection with respect to the Wolfswinkel Guarantees and Deficiency Action, and that MLM shall bear all costs of collection with respect to the Wolfswinkel Guarantees and Deficiency Action, which costs, except as provided in section 7 below,shall not be assessed against the 401(k) Plan or any property of the 401(k) Plan, including without limitation, the 401(k) Plan's interest in the Vanderbilt property. It is acknowledged and agreed that (i) MLM plans to submit to the Bankruptcy Court for its approval a proposed settlement agreement (the "Proposed Wolfswinkel Settlement Agreement") pertaining to the Wolfswinkel Guarantees and other guarantees given by members of the Wolfswinkel family to persons other than the 401(k) Plan, (ii) the 401k Plan has not participated in the negotiation of the Proposed Wolfswinkel Settlement Agreement, nor does the 401k Plan consent to the Proposed Wolfswinkel Settlement Agreement, and (iii) the Proposed Wolfswinkel Settlement Agreement shall provide that this Agreement becoming unconditional is a condition precedent to the effectiveness of the Proposed Wolfswinkel Settlement Agreement, and that if this Agreement becomes null and void for any reason (including, without limitation, as a result of the 401(k) Plan or MLM exercising their respective rights set forth in Paragraph 5 below to declare this Agreement null and void in the event an appeal is filed with respect to the Bankruptcy Court's approval of this Agreement), the Proposed Wolfswinkel Settlement Agreement shall automatically become null and void, irrespective of whether the Proposed Wolfswinkel Settlement Agreement has been approved by the Bankruptcy Court. MLM shall not request that the Bankruptcy Court enter an order approving the Proposed Wolfswinkel Settlement Agreement, and shall not execute the Proposed Wolfswinkel Settlement Agreement, until this Agreement has become unconditional. Notwithstanding anything to the contrary, if the Proposed Wolfswinkle Settlement Agreement as submitted to the Bankruptcy Court does not become effective, nothing herein shall prevent either MLM and Wolfswinkle or the 401(k) Plan and Wolfswinkle, among others, from negotiating or agreeing to any modifications to the Proposed Wolfswinkle Settlement Agreement provided that no such modified agreement shall be binding on MLM without its prior written consent or on the 401(k) Plan without the prior written consent of its trustees.

4. **Peloquin Recoveries.** The Plan and MLM, in its capacity as agent for other investors, are judgment creditors under judgments against Michael and Kay Peloquin and certain other parties (the "Peloquin Judgments"). The Peloquin Judgments relate in part to the GP Properties Loan (in the initial amount of $5,652,036.66, as to which the 401(k) Plan holds a 46.864% undivided interest), in part to the Downtown Community Builders Loan (wholly owned by the 401(k) Plan), and in part to certain other loans in which the 401(k) Plan does not hold an interest (the various loans to which the Peloquin Judgment relates are referred to as the "Peloquin Loans"). Effective upon this Agreement becoming unconditional, it is agreed that all

collection activity with respect to the Peloquin Judgments or otherwise to collect on any guaranty of the Peloquin Loans shall hereinafter be controlled by MLM in its discretion and at its sole expense. It is further agreed that in the event amounts are ever recovered from the Peloquin Judgments or are otherwise recovered with respect to any guaranty of the Peloquin Loans, (i) all amounts recovered shall be apportioned among the holders of the Peloquin Loans pro rata in accordance with the amounts of the Peloquin Judgment held by such holders; and (ii) the Plan's share of any such recovery shall be distributed (a) first, to the Plan, until it has recovered $60,000 towards its out of pocket expenses to date incurred in securing or collecting on the Peloquin Judgment; (b) second, MLM until it has recovered one-half of the Plan's pro-rata share of out of pocket expenses incurred by MLM from and after the date hereof in collecting on the Peloquin Judgment, not to exceed $20,000; and (c) third to each of the Plan and MLM in equal shares until each shall have recovered $340,000 under this clause (c), and (d) thereafter, to the Plan. This partial assignment is made without recourse to the Plan

5. **Unconditional.** This Agreement shall become unconditional upon the entry by the Bankruptcy Court of an order approving this Agreement substantially in the form attached hereto as Exhibit B, and the approval of the Agreement by the VF I Loan LLC and the Bison Loan LLC, which Order shall not be subject to stay pending any appeal. MLM shall file a motion for approval hereof by the Bankruptcy Court no later than November 30, 2012, and shall request that the Bankruptcy Court hear such motion on an expedited basis. The Parties agree to seek Bankruptcy Court approval hereof diligently and in good faith. This Agreement shall become null and void (i) at the option of either Party (exercisable by written notice to the other's counsel within three business days of the event giving rise to the option) if (a) it has not become unconditional on or before December 31, 2012, or (b) if a timely appeal is filed with respect to the Bankruptcy Court's approval of this Agreement and a stay of enforcement of such Order is granted; or (ii) if the Bankruptcy Court shall deny MLM's motion for approval hereof, or either of the two Loan LLCs shall fail to approve the Agreement. Nothwithstanding the foregoing, the parties hereby agree that if this Agreement becomes null and void, the existing schedule with respect to the Action established by the Bankruptcy Court shall be modified by stipulation of the parties to extend each date by approximately 60 days, which stipulation was filed with the Bankruptcy Court on November 27, 2012.

6. 401(k)**Release of Funds.** Upon this Agreement becoming Unconditional, all escrowed funds held with respect to the Bisontown Loan (in the amount of approximately $60,000) shall immediately be released to the 401(k) Plan.

7. **Allocation of Existing Expenses.** MLM, in its capacity as the manager of certain Loan LLCs and as agent for certain other investors and the Plan hold tenant in common interests in real property associated with certain loans commonly referred to as Bisontown (Loan 852806) ("Bisontown"), 43rd Avenue & Olney (Loan 854706) ("Olney"), Hurst (Loan 861005) ("Hurst"), Vanderbilt Farms (Loan 859606) ("Vanderbilt"), and GP Properties (Loan 860206) ("GP") (collectively, the "Tenant-in-Common Loans"). Attached as Exhibit C is a list of all expenses that have been incurred by MLM and the Plan to date with regard to the Tenant-in-Common Loans that the parties have agreed to allocate between themselves, and the agreed upon allocation for such costs ("Existing Cost Allocation"). Attached as Exhibit D is a list of all expenses that have been incurred by MLM to date with regard to properties associated with CDIG, LLC (Loan 861405) ("CDIG"), Ecco Holdings, L.L.C. (Loan 859705) ("Ecco"), and

Downtown Community Builders Ltd Partnership (Loan 860306) ("Downtown") (collectively, the "Solely Owned Loans") that the parties agree will be paid by the Plan to MLM. Any net amount owing by MLM or the Plan shown on Exhibits A or B with respect to any of the Tenant-in-Common Loans or the Solely Owned Loans shall be paid at such time that the associated real property is sold.

8. **Allocation of Future Expenses.** The parties agree that the Plan shall be solely responsible for any and all costs associated with the Solely Owned Loans and MLM will not be required to incur any costs for such property. With regarding to the Tenant-in-Common Loans, the parties agree that all property taxes and insurance shall be paid by them in the respective percentages set forth on Exhibit C. If either party believes that that there are other expenses that should be incurred with respect to any of the real property associated with the Tenant-in-Common Loans, it shall so inform the other party and the parties shall consider such matter in good faith, provided that no party shall have any liability to pay any portion of such expense unless it shall have agreed to do so in writing.

9. **Vanderbilt Property.** The parties agree to attempt to negotiate in good faith a mutually agreeable division of their respective interests in the Vanderbilt Property. Each party agrees that if they are unable to reach a mutual agreement with respect thereto, it will not institute a legal action seeking partition or other remedy without first complying the following procedure. Either party may at any time on or after July 1, 2013, submit to the other a proposed division of the Vanderbilt Property. The other party shall have a period of sixty (60) days within which to accept such division, negotiate modifications thereto in good faith, and/or propose an alternate provision. At the end of such sixty (60) day period, if the parties have been unable to reach agreement, they will each submit a proposed division of the Vanderbilt Property to mutually agreed upon mediator, who shall be a person with at least twenty years experience as a real estate professional in the State of Arizona, knowledgeable with respect to the use, planning, marketing and development of properties similar to the Vanderbilt Property. The expenses of the mediator shall be shared equally by the parties. The parties shall proceed in good faith before such mediator in an effort to reach agreement with respect to a division of the Vanderbilt Property. Any negotiated division must be approved by the VF I Loan LLC and the bankruptcy court. If no agreement has been reached after 90 days has elapsed since the appointment of the mediator, either party may commence legal action in Maricopa County Superior Court seeking a division of the Vanderbilt Property in accordance with their undivided ownership thereof. Each of MLM and the 401(k) Plan agrees that during such time prior to a division of the Vanderbilt Property except with the prior written consent of the other party, it will not convey any interest in the Vanderbilt Property to the original borrower on Vanderbilt, either of the guarantors of Vanderbilt, or any of their affiliates, successors, assigns or familty members, or any entity directly or indirectly owned beneficially or legally by any such person.

10. **Bisontown.** The parties agree that the Plan can retain a broker to market and sale the property associated with the Bisontown loan, upon such terms and conditions as shall be mutually agreed upon by the parties.

11. **Olney and Hurst**. The parties agree that the Plan shall take the lead in managing and marketing the properties associated with Olney and Hurst loans, and shall have the right in its discretion to make decisions with respect to the timing or terms of a sale. The 401(k) Plan

will notify MLM of any disposition of any or all of the property associated with the Olney and Hurst loans, and will cooperate reasonably with MLM to provide for the distribution through escrow of the proceeds attributable to the other tenants-in-common in those loans, and MLM will distribute such proceeds pursuant to the terms of the Plan of Reorganization confirmed by the bankruptcy court in the Mortgages Ltd. bankruptcy.

12. Solely Owned Loans. The Plan shall assume all management and operational control, costs and expenses associated with the Solely Owned Loans.

13. No Admission. Neither the entry into this Agreement nor any provision hereof shall be deemed to be an admission by any Party of any matter relevant to any claim or defense in the Action. No Party shall use the existence or terms of this Agreement, or any statement contained herein, as evidence in support of any claim or defense in the Action.

14. Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Facsimile or electronic transmission of any signed original document or retransmission of any signed facsimile or electronic transmission will be deemed the same as delivery of an original. At the request of any Party, the other will confirm facsimile or electronic transmission by signing a duplicate original document.

15. Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement, and shall not be deemed to limit or alter any provision hereof.

16. Construction of Agreement. Each of the Parties had an equal degree of control as to the drafting of this Agreement and the various provisions set forth herein; the rule of construction that an ambiguous document is to be construed against its drafter is accordingly inapplicable to this Agreement. All of the provisions of this Agreement shall be construed in accordance with their plain meaning and without partiality to any of the Parties. To the extent permitted by the context, words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa.

17. Governing Law. This Agreement was made and is to be performed in the State of Arizona. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed entirely within that State.

18. Entire Agreement. This Agreement sets forth the entire agreement between the Parties as to the subject matter of this Agreement, and are subject to no promise, warranty or representation not expressly set forth or referred to herein. This Agreement may not be modified except by an instrument in writing signed by the Party to be bound.

19. Attorneys' Fees. Each Party will bear all of its own costs and expenses in connection with the preparation of this Agreement and the transactions described herein. Subject to the foregoing, in the event of litigation or arbitration proceedings brought by any Party under this Agreement or otherwise relating directly or indirectly to the transactions and agreements reflected in this Agreement, the prevailing Party, in addition to any and all other rights and

remedies, will be entitled to recover all of its costs of litigation or arbitration, including but not limited to reasonable attorneys' fees and taxable costs.

20. Authority. Each person or entity executing this Agreement represents and warrants that he or she has been duly authorize to enter into this Agreement on the terms and conditions set forth herein and on behalf of the various persons and entities identified herein.

SIGNED:

VF I LOAN, LLC, an Arizona limited liability company

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

_____

Mark Winkleman
Chief Operating Officer

BISON LOAN, LLC, an Arizona limited liability company

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

_____

Mark Winkleman
Chief Operating Officer

[include other Loan LLCs and on behalf of Exh A parties]

ML MANAGER, LLC, an Arizona limited liability company, as agent for those individual owners listed on Exhibit A and the "Investors" defined in the POR

_____

Mark Winkleman
Chief Operating Officer

MORTGAGES LTD. 401(k) PLAN

By: _____
James Cordello, Trustee

_____
Ryan Walter, Trustee