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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 **REQUEST FOR JUDICIAL NOTICE RE: ML MANAGER'S SALE MOTION** **Real Property (1) consisting of approximately 23.248 acres located south of the southwest corner of Loop 101 and Maryland Avenue in Glendale, Arizona (known as Maryland Way property), (2) consisting of 46 acres located in the vicinity of the intersection of 99th Avenue and Maryland Avenue in Glendale, Arizona (known as Rightpath I property), and (3) consisting of 17,000 square feet located in the vicinity of the intersection of 99th Avenue and Maryland Avenue in Glendale, Arizona (known as Rightpath II property)** **Hearing Date: October 17, 2012** **Hearing Time: 11:00 a.m.**

Bear Tooth Mountain Holdings, L.L.P.; Queen Creek XVIII, L.L.C.; Pueblo Sereno Mobile Home Park, L.L.C.; Michael Johnson Investments II, L.L.C.; The Lonnie Joel Krueger Family Trust; LLJ Investments, LLC; Louis B. Murphey; James C. Schneck Rev. Trust; Evertson Oil Company, Inc.; Cornerstone Realty and Development, Inc. Defined Benefit Plan

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and Trust; and/or their successors and assigns (collectively, the "Rev Op Investors")[1] hereby file this Request for Judicial Notice regarding the State Court Complaint attached hereto as Exhibit A.

On September 28, 2012, the above-defined Rev Op Investors and various other pass-through investors filed the State Court Complaint against ML Manager, its board, and Mr. Mark Winkleman. Plaintiffs are in the process of serving the State Court Complaint on each of the defendants. The State Court Complaint was filed when defendants refused to extend a tolling agreement in place among the parties.

The State Court Complaint is pending in Maricopa County Superior Court, the State of Arizona. The Rev Op Investors are making the Court aware of this pending state court litigation because it is relevant to the pending sale motion [DE #3593] and likely will be relevant to other actions taken by ML Manager before this Court.

WHEREFORE, the Rev Op Investors request that the Court take judicial notice of the State Court Complaint and the contents thereof in addressing the pending sale motion filed by ML Manager.

DATED this 17th day of October, 2012.

BRYAN CAVE LLP

By: /s/ JAS, #026359
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[1] Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

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COPY of the foregoing served via email this 17th day of October, 2012 upon:

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EXHIBIT A

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

BEAR TOOTH MOUNTAIN HOLDINGS LIMITED PARTNERSHIP, an Arizona limited liability partnership; AJ CHANDLER 25 ACRES, LLC, an Arizona limited liability company, CORNERSTONE REALTY & DEVELOPMENT, INC., an Arizona corporation; CORNERSTONE REALTY & DEVELOPMENT, INC. DEFINED BENEFIT PLAN AND TRUST, an Arizona trust; EVERTSON OIL COMPANY, INC., a Utah corporation; JAMES C. SCHNECK REVOCABLE TRUST DATED OCTOBER 1, 1999, a Wisconsin trust, James C. Schneck, trustee; LONNIE JOEL KRUEGER FAMILY TRUST, an Arizona trust, Lonnie J. Krueger, trustee; BRETT MICHAEL McFADDEN an unmarried man; MICHAEL JOHNSON INVESTMENTS II, L.L.C., an Arizona limited liability company; LOUIS B. MURPHEY, an unmarried man; MORLEY ROSENFIELD, M.D. P.C. RESTATED PROFIT SHARING PLAN, an Arizona trust, Morley Rosenfield, trustee; PUEBLO SERENO MOBILE HOME PARK L.L.C., an Arizona limited liability company; QUEEN CREEK XVIII, L.L.C., an Arizona limited liability company; WILLIAM L. HAWKINS FAMILY L.L.P., an Arizona limited liability partnership; L.L.J. INVESTMENTS, LLC, an Arizona limited liability company,

No. CV2012-014457

COMPLAINT

(Jury Trial Demanded)

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Plaintiffs,

vs.

ML MANAGER LLC, an Arizona limited liability company; MARK WINKLEMAN; BRUCE EDKIN and TAYLOR EDKIN; DAVID FIELER and JANE DOE FIELER; ELLIOTT POLLACK and CATHY POLLACK; KAREN EPSTEIN and SHELDON EPSTEIN; SCOTT SUMMERS and JANE DOE SUMMERS,

Defendants.

Plaintiffs BEAR TOOTH MOUNTAIN HOLDINGS LIMITED PARTNERSHIP, an Arizona limited liability partnership; AJ CHANDLER 25 ACRES L.L.C., an Arizona limited liability company, CORNERSTONE REALTY & DEVELOPMENT, INC., an Arizona corporation; CORNERSTONE REALTY & DEVELOPMENT, INC. DEFINED BENEFIT PLAN AND TRUST, an Arizona trust; EVERTSON OIL COMPANY, INC., a Utah corporation; JAMES C. SCHNECK REVOCABLE TRUST DATED OCTOBER 1, 1999, a Wisconsin trust, James C. Schneck, trustee; LONNIE JOEL KRUEGER FAMILY TRUST, an Arizona trust, Lonnie J. Krueger, trustee; BRETT MICHAEL McFADDEN, an unmarried man; MICHAEL JOHNSON INVESTMENTS II, L.L.C., an Arizona limited liability company; LOUIS B. MURPHEY, an unmarried man; MORLEY ROSENFIELD, M.D. P.C. RESTATED PROFIT SHARING PLAN, an Arizona trust, Morley Rosenfield, trustee; PUEBLO SERENO MOBILE HOME PARK L.L.C., an Arizona limited liability company; QUEEN CREEK XVIII, L.L.C., an Arizona limited liability company; WILLIAM L. HAWKINS FAMILY L.L.P., an Arizona limited liability partnership; and L.L.J. INVESTMENTS, LLC, an Arizona limited liability company, for their complaint, assert as follows:

PARTIES, JURISDICTION, AND VENUE

1. This lawsuit arises out of the massive business failure of Mortgages Ltd. (hereinafter, "Mortgages Ltd." or the "Company") and its aftermath as perpetuated by Defendants. Mortgages Ltd. is not a party to this lawsuit.

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2. Defendant ML Manager LLC ("ML Manager") is a limited liability company organized under the laws of the State of Arizona and conducts business in the State of Arizona.

3. Defendant Mark Winkleman ("Winkleman"), an unmarried man, is a citizen of and resides in Maricopa County, Arizona.

4. Defendants Bruce Edkin ("Edkin") and Taylor Edkin are husband and wife, and are citizens of and reside in Maricopa County, Arizona. All actions taken by Edkin were on behalf of and for the benefit of the marital community.

5. Defendants David Fieler ("Fieler") and Jane Doe Fieler are husband and wife, and are citizens of and reside in Maricopa County, Arizona. All actions taken by Fieler were on behalf of and for the benefit of the marital community.

6. Defendants Elliott Pollack ("Pollack") and Cathy Pollack are husband and wife, and are citizens of and reside in Maricopa County, Arizona. All actions taken by Pollack were on behalf of and for the benefit of the marital community.

7. Defendants Karen Epstein ("Epstein") and Sheldon Epstein are wife and husband, and are citizens of and reside in Maricopa County, Arizona. All actions taken by Epstein were on behalf of and for the benefit of the marital community.

8. Defendants Scott Summers ("Summers") and Jane Doe Summers are husband and wife, and are citizens of and reside in Maricopa County, Arizona. All actions taken by Summers were on behalf of and for the benefit of the marital community.

9. Defendants John/Jane Does are individuals whose true names, identities, and relationships are not yet known to Plaintiffs. Plaintiffs will amend this complaint, or request leave to do so if required, if and when those identities become known.

10. The following persons or entities purchased fractional, undivided interests in various promissory notes and deeds of trust from Mortgages Ltd. and are plaintiffs (collectively, "Plaintiffs") in this lawsuit:

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Person's/Entity's Name	Amount of Purchases
AJ Chandler 25 Acres, L.L.C., an Arizona limited liability company	$5,243,336.88
Bear Tooth Mountain Holdings Limited Partnership, an Arizona limited liability partnership ("Bear Tooth")	5,578,906.39
Cornerstone Realty & Development, Inc., an Arizona corporation	75,000.00
Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust, an Arizona trust	525,000.00
Evertson Oil Company, Inc., a Utah corporation, doing business in Kimball County, Nebraska	1,000,000.00
Lonnie Joel Krueger Family Trust, an Arizona trust, Lonnie J. Krueger, trustee	400,000.00
Brett Michael McFadden, an Arizona citizen and resident	1,000,000.00
Michael Johnson Investments II, L.L.C., an Arizona limited liability company	1,000,000.00
Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan, an Arizona trust, Morley Rosenfield, trustee ("MR Plan")	1,845,357.49
Pueblo Sereno Mobile Home Park L.L.C., an Arizona limited liability company ("Pueblo Sereno")	6,907,963.58
Queen Creek XVIII, L.L.C., an Arizona limited liability company ("Queen Creek")	6,546,458.49
William L. Hawkins Family L.L.P., an Arizona limited liability partnership	3,165,922.43
L.L.J. Investments, LLC, an Arizona limited liability partnership[1]	15,000,000.00

Total Amount of Purchased Assets **$48,287,945.26**

[1] Prior to its bankruptcy filing, Mortgages Ltd. sometimes booked the value of the notes and deeds of trust of L.L.J. Investments, LLC as three separate entries: (i) $6,000,000 for Louis B. Murphey, an unmarried Arizona citizen and resident; (ii) $2,180,000.00 for Lonnie Joel Krueger Family Trust, an Arizona trust, Lonnie J. Krueger, trustee; and (iii) $6,820,000.00 for James C. Schneck Revocable Trust dated October 1, 1999, a Wisconsin trust, Manitowoc County, Wisconsin, James C. Schneck, trustee. The claims and allegations herein relating to L.L.J. Investments, LLC should be construed accordingly.

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11. Plaintiffs' claims and the amount of damages suffered by each of the Plaintiffs are as a direct and consequential result of Defendants' wrongful acts.

12. All of the acts alleged herein occurred in Arizona. Therefore, jurisdiction and venue are proper in this Court.

GENERAL INTRODUCTION

13. ML Manager is an entity formed pursuant to a chapter 11 plan ("Plan") confirmed in the bankruptcy case of Mortgages Ltd., Case No. 2:08-bk-07465-RJH (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court").

14. Pollack, Edkin, Epstein, Fieler, and Summers are board members of ML Manager (collectively, the "ML Board").

15. On information and belief, the actions taken by the married members of the ML Board were taken for the benefit of their respective marital communities.

16. For all time periods relevant to this complaint, Winkleman has been the chief operating officer of ML Manager.

17. AJ Chandler 25 Acres, LLC purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around November 8, 2007 in the amount of $5,243,336.88.

18. Bear Tooth purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around March 5, 2007 in the amount of $5,578,906.39.

19. Cornerstone Realty & Development, Inc. purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around July 7, 2007 in the amount of $75,000.00.

20. Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around November 8, 2006 in the amount of $525,000.00

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21. Evertson Oil Company, Inc. purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around October 29, 2007 in the amount of $1,000,000.00.

22. The Lonnie Joel Krueger Family Trust purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around September 25, 2007 in the amount of $400,000.00.

23. Brett Michael McFadden purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around November 24, 2005 in the amount of $1,000,000.00.

24. Michael Johnson Investments II, L.L.C. purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around November 8, 2007 in the amount of $1,000,000.00.

25. MR Plan purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around March 30, 2007 in the amount of $1,845,357.49.

26. Pueblo Sereno purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around November 8, 2007 in the amount of $6,907,963.58.

27. Queen Creek purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around November 8, 2007 in the amount of $6,546,458.49.

28. William L. Hawkins Family, L.L.P. purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around January 20, 2007 in the amount of $3,165,922.43

29. The members of L.L.J. Investments, LLC purchased fractional, undivided interests in promissory notes and deeds of trust from Mortgages Ltd. on or around September 20, 2007 in the aggregate amount of $15,000,000.

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30. On May 20, 2009, the Bankruptcy Court entered an order in the Bankruptcy Case confirming the Plan (the "Confirmation Order").

31. The Plan was proposed by the Official Committee of Investors (the "Committee") and prepared by its legal counsel.

32. From the inception of ML Manager, and for all time periods relevant to this complaint, the same legal counsel for the Committee has served as legal counsel for ML Manager.

33. At the outset of the bankruptcy case, Pollack was a member of the unofficial committee of investors.

34. For all time periods relevant to this complaint, Pollack has been the chairman of the ML Board.

35. Plaintiffs and Defendants entered into an agreement to toll the running of any applicable statute of limitations, statute of repose, or other rule, defense, or principle relating to the passage of time with respect to claims between the parties from August 24, 2012 through September 28, 2012.

MORTGAGES LTD. AND ITS LENDING OPERATIONS

36. Mortgages Ltd. was founded in 1964 by Charles J. Coles. In 1997, Scott M. Coles ("Coles"), the son of Charles J. Coles, became the chief executive officer and chairman of the board of Mortgages Ltd.

37. For all time periods relevant to this complaint, Mortgages Ltd. was in the business of providing loans to commercial real estate developers and other borrowers.

38. On June 20, 2008 (the "Filing Date"), Mortgages Ltd. was placed into an involuntary bankruptcy by certain of its creditors as a result of its wrongful business practices and a major downturn in the commercial real estate market in the State of Arizona.

39. The involuntary bankruptcy filing followed closely on the heels of the death of Coles on June 2, 2008. The Medical Examiner for Maricopa County, Arizona determined Coles' death was by suicide.

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40. Mortgages Ltd.'s primary method for accessing capital was by raising money from private parties. Mortgages Ltd. raised money from two primary kinds of parties: (i) "fund" investors ("Fund Investors") who took membership interests (*i.e.*, securities) in certain limited liability companies (the "MP Funds") that held fractional interests in notes and deeds of trust; and (ii) "pass-through" purchasers of fractional interests in notes and deeds of trusts ("Pass-Through Purchasers").

41. Mortgages Ltd.'s primary enticement for these parties were the high yields promised by Mortgages Ltd. and its affiliates.

42. At the time of Coles' death, Mortgages Ltd. was a fairy large operation.

43. Mortgages Ltd. received funds from Fund Investors and Pass-Through Purchasers and then loaned those funds to various commercial borrowers. These borrowers, in turn, provided promissory notes, deeds of trust, and other forms of security (*e.g.*, guaranties) to secure the borrowed funds (hereinafter, the "Notes and Deeds of Trust"). Mortgages Ltd. arranged for these loans to be made to a wide range of developers and other commercial operators in the State of Arizona.

44. As of the Filing Date, Mortgages Ltd. had relationships with over 1,800 parties who, directly or indirectly, owned undivided interests in the Notes and Deeds of Trust with an aggregate face value in excess of $700 million.

45. Mortgages Ltd. usually was not itself the owner of the Notes and Deeds of Trust.

46. As of the Filing Date, Mortgages Ltd. maintained eight MP Funds, through which Mortgages Ltd. raised money from the Fund Investors in exchange for indirect interests in the Notes and Deeds of Trust owned by the various MP Funds.

47. In contrast to the Pass-Through Purchasers, Fund Investors did not acquire a direct ownership interest in any of the Notes and Deeds of Trust. Rather, in exchange for their cash investment, Fund Investors received an ownership interest in one or more limited liability companies set up in a traditional "fund" or "pooling" arrangement.

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48. The Fund Investors owned membership interests in these various limited liability companies. These limited liability company MP Funds held title to the applicable Notes and Deeds of Trust.

49. In addition to Fund Investors, Mortgages Ltd. also raised money by offering to sell a direct ownership interest in one or more of the Notes and Deeds of Trust. Pass-Through Purchasers purchased an actual ownership interest in the applicable Notes and Deeds of Trust.

50. Plaintiffs are informed and believe that Mortgages Ltd. offered to sell pass-through interests in Notes and Deeds of Trust, such that the ownership interests acquired by Pass-Through Purchasers were in the nature of undivided, tenant-in-common interests in the actual Notes and Deeds of Trust.

51. To the extent the real property that was the subject of the Notes and Deeds of Trust was foreclosed upon, the Pass-Through Purchasers ended up owning an undivided, tenant-in-common interest in that real property.

52. Through the years, Mortgages Ltd. and its affiliates promoted several kinds of pass-through programs for purchasers to acquire undivided ownership interests in Notes and Deeds of Trust.

53. The Revolving Opportunity Loan Program, or the so-called "Rev Op Program," was a pass-through offering of Mortgages Ltd. Each of the Plaintiffs purchased fractional, undivided interests in the Notes and Deeds of Trust from Mortgages Ltd. through the offering known loosely as the Revolving Opportunity Loan Program.

54. In reality, each of the Plaintiffs had a unique agreement with Mortgages Ltd. These agreements were structured and negotiated by Coles and each Plaintiff.

55. In addition to the Rev Op Program, Mortgages Ltd. offered other pass-through programs with varying business and economic terms, which programs went by different names such as the Capital Opportunity Loan Program, the Annual Opportunity Loan Program, the Opportunity Plus Loan Program, and the Performance Plus Loan Program.

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THE REV OP PASS-THROUGH PURCHASERS

56. At the time of its bankruptcy filing, Mortgages Ltd. controlled a very large, distressed commercial real-property loan portfolio. Plaintiffs are informed and believe that Mortgages Ltd. asserted control of substantially all direct and indirect interests in the Notes and Deeds of Trust, which had outstanding principal balances of approximately $700,000,000 in the aggregate.

57. Plaintiffs are further informed and believe that as of the Filing Date: (i) Pass-Through Purchasers directly owned undivided interests in Notes and Deeds of Trust with aggregate principal balances of approximately $300,000,000; and (ii) Fund Investors indirectly owned undivided interests in Notes and Deeds of Trust with aggregate principal balances of approximately $400,000,000.

58. Plaintiffs are further informed and believe that as of the Filing Date: (i) those Pass-Through Purchasers categorized by Mortgages Ltd. as Rev Op Program purchasers ("Rev Op Purchasers") directly owned undivided interests in Notes and Deeds of Trust with aggregate principal balances of $124,202,784; and (ii) Pass-Through Purchasers *other than* Rev Op Purchasers directly owned undivided interests in Notes and Deeds of Trust with aggregate principal balances of $183,694,378.

59. As of the Filing Date, Plaintiffs owned direct, undivided interests in Notes and Deeds of Trust with aggregate principal balances of approximately $50 million.

60. The programs through which Pass-Through Purchasers acquired their interests varied through the years and on a program-by-program basis. Generally, the Rev Op Program was significantly different in a number of ways from the other pass-through offerings.

61. The Rev Op Program generally was geared towards high net-worth persons or well-funded entities, and required higher minimum purchase amounts. The Rev Op Program was touted by Mortgages Ltd. through Coles and in its solicitation materials as providing preferred positions, higher rates of return, better security, and more liquidity than other pass-through offerings.

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62. Although every deal was different, Mortgages Ltd. generally guaranteed it would pay the Rev Op Purchasers interest on a monthly basis. Mortgages Ltd. also guaranteed it would repay each of the Rev Op Purchasers the full amount invested in their purchases at the end of a specific period, generally within 90-120 days.

63. At the end of this period, Mortgages Ltd. had the obligation to repay or redeem all of the Rev Op Purchasers' funds paid plus any outstanding interest. In lieu of such repayments or redemptions, the Rev Op Purchasers had the option to roll over their purchase money into other Notes and Deeds of Trust.

64. Other offerings required lower minimum purchase prices, did not have a guaranteed repayment or redemption from Mortgages Ltd., and generally attracted more passive purchasers who would defer to Coles with respect to which Notes and Deeds of Trust would be purchased.

65. Plaintiffs were more "hands on" than many of the other Pass-Through Purchasers and *certainly* more "hands on" than Fund Investors, which typically invested in significantly smaller sums than Plaintiffs.

66. Both before and after Mortgages Ltd. was forced into bankruptcy, Plaintiffs were more vigilant regarding their interests in the Notes and Deeds of Trust than the typical Fund Investor or Pass-Through Purchaser. This was especially true for William Hawkins ("Hawkins") and Louis B. Murphey ("Murphey") who, collectively, were the business representatives of Plaintiffs controlling direct ownership interests with principal balances of more than $40,000,000 in the aggregate.

67. Prior to Coles' suicide, Hawkins and Murphey had known Coles and his operation well. They became increasingly active as Mortgages Ltd. begin to falter as an organization. Upon the bankruptcy filing, Hawkins and Murphey became deeply involved in the Bankruptcy Case and regularly communicated with the major players and with various members of the Committee and their legal counsel.

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THE INVESTORS COMMITTEE FIGHTS FOR CONTROL OF THE BANKRUPTCY CASE

68. After the bankruptcy filing, Mortgages Ltd. converted its involuntary case to a voluntary chapter 11 proceeding. Mortgages Ltd.'s management team decided to attempt to reorganize the Company and continue its business operations.

69. The Pass-Through Purchasers and Fund Investors quickly mobilized. Early in the bankruptcy case, the Committee was formed and retained legal counsel.

70. From the onset, the Committee and Mortgages Ltd.'s management devoted a massive amount of time, money, and energy to fighting over control issues and who was "in charge" of Mortgages Ltd.'s estate and the portfolio of Notes and Deeds of Trust.

71. The Mortgages Ltd. loan portfolio was comprised almost exclusively of distressed commercial real estate loans and properties that had been, or later were, foreclosed upon by Mortgages Ltd. on behalf of the owners of the fractional interests in the Notes and Deeds of Trust secured by such properties. These properties are known in the industry as "real estate owned" or "REO" properties.

72. Historically, Mortgages Ltd.'s management and staff had been managing the loan portfolio and served as servicing and collection agent with respect to the entire the loan portfolio. This topic became a major issue of contention between Mortgages Ltd. and the Committee early in the Bankruptcy Case.

73. Mortgages Ltd. fought over a number of control issues like who had the ability to make which decisions with respect to the Notes and Deeds of Trust and REO Properties, who had the right to reach settlements with the various borrowers under the Notes and Deeds of Trust, and who had the power to incur debt on behalf of Mortgages Ltd. with the right to encumber (among other things) the Notes and Deeds of Trust owned by Pass-Through Purchasers.

74. An initial battle involved a fight between Mortgages Ltd. and the Committee over the so-called "agency agreements" Mortgages Ltd. purported to have with various

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Pass-Through Purchasers. This dispute arose in connection with a number of settlements reached by Mortgages Ltd. with certain borrowers that were opposed by the Committee.

75. In the fall of 2008, Mortgages Ltd. and the Committee litigated the extent to which the Company had the authority, if any, to bind Pass-Through Purchasers pursuant to the agency agreements that Mortgages Ltd. claimed to have.

76. In this litigation, the Committee argued that Mortgages Ltd. had little to no authority to act on behalf of Pass-Through Purchasers and, at best, was merely a servicing and collection agent for them. The Committee also told the Bankruptcy Court that Pass-Through Purchasers had the "absolute right" to terminate their agency agreements and other contractual arrangements with Mortgages Ltd., to the extent they existed.

77. As noted below, the ML Board and its counsel—the same lawyers who urged the Committee's positions—would later argue the exact opposite position against Plaintiffs.

78. A second battle between Mortgages Ltd. and the Committee took place in the spring and summer of 2009. This battle was for control of the entire case and played out in the context of plan confirmation litigation.

79. On January 21, 2009, the Committee filed its initial chapter 11 plan. Months passed as parties fought about other issues and negotiated about the terms of a plan. On March 13, 2009, the Committee filed the Plan, which the Bankruptcy Court eventually confirmed.

80. Plaintiffs are informed and believe that the Committee felt compelled to race ahead with its global plan for these cases so that the Bankruptcy Court would not give serious consideration to a competing plan being proposed by Mortgages Ltd.

81. Under the Plan, the Committee proposed forming 47 to 60 separate limited liability companies, all to be managed by ML Manager. On the effective date of the Plan, the Committee wanted all parties to transfer their interests in the various Notes and Deeds of Trust to these limited liability companies (the "Loan LLCs"), so that each Loan LLC would own 100% of the fractional interests of a particular Note and Deed of Trust.

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82. The Committee arranged for the formation of ML Manager as an Arizona limited liability company on the effective date of the Plan. ML Manager was designated under the Plan as the manager of each Loan LLC. If approved by the Bankruptcy Court, the Committee's proposed structure would have one entity (ML Manager) controlling each of the Loan LLCs, subject only to certain voting rights of the members of the Loan LLCs.

83. The Plan provided that the MP Funds' interests in the Notes and Deeds of Trust and REO Properties would be transferred to the appropriate Loan LLC. That left the Committee trying to devise a mechanism for having Pass-Through Purchasers transfer their fractional interests in the Notes and Deeds of Trust to the various Loan LLCs.

84. In its initial plan, the Committee tried to force all Pass-Through Purchasers to transfer their ownership interests to the Loan LLCs. In the context of discussions with Plaintiffs and other constituencies in the Bankruptcy Case, however, the Committee discovered that a number of Pass-Through Purchasers (including Plaintiffs) found the forced transfer of their ownership interests highly objectionable.

85. The Committee changed this aspect in the Plan, so that Pass-Through Purchasers would need to "check the box" in the context of voting on the Plan to affirmatively indicate their decision to transfer their ownership interests to the appropriate Loan LLCs.

86. The Plan provided little to no information as to how this would work or how ML Manager would deal with Pass-Through Purchasers who elected to "opt out" of the Plan.

87. Prior to plan confirmation, the Committee told Pass-Through Purchasers that they would have the protection of the Loan LLCs, appropriate management, and access to the Exit Financing (discussed below) if they agreed to transfer their interests to the Loan LLCs.[2]

[2] Pass-Through Purchasers who did not "check the box" when voting on the Plan are referred to hereinafter as "Opt-Out Pass-Through Purchasers."

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88. Prior to plan confirmation, the Committee told Pass-Through Purchasers that they would continue to own the undivided interests in their Notes and Deeds of Trust and title to their applicable REO Property if they decided to remain outside of the Loan LLCs and become an Opt-Out Pass-Through Purchaser.

89. The Plan was designed so that, upon confirmation of the Plan, Mortgages Ltd.'s existing management would be stripped of control over Mortgages Ltd., the Notes and Deeds of Trust, and the REO Properties.

90. The Committee provided for the ML Board to oversee the officers in charge of ML Manager. As noted below, the Committee hand-picked a majority of the five members of the ML Board. On the effective date of the Plan, the Committee would be dissolved and effectively would be replaced by ML Manager and the ML Board.

91. The Committee also provided for a liquidating trust (the "Liquidating Trust") to be formed on the effective date of the Plan. The Liquidating Trust would hold certain litigation claims that the Committee intended to have pursued to recover funds for the benefit of the windup and investors.

92. Finally, the last major structural piece of the Plan was the financing obtained by the Committee. Mortgages Ltd. borrowed money during the Bankruptcy Case that needed to be repaid. Professional fees and costs in the Bankruptcy Case were exorbitant, and the professionals sought payment through the Bankruptcy Court.

93. The Committee obtained a commitment for a loan from third-party financiers—Strategic Capital Partners, LLC and Universal Equity Group (collectively, the "Exit Financier")—that was designed by the Committee to fund Mortgage Ltd.'s exit from chapter 11 pursuant to the Plan (the "Exit Financing"). The Exit Financing was enormously expensive money.

94. The Committee insisted, however, that the Exit Financing was necessary and that the Plan could be successfully implemented by borrowing these funds and moving ahead with the structure as proposed by the Committee.

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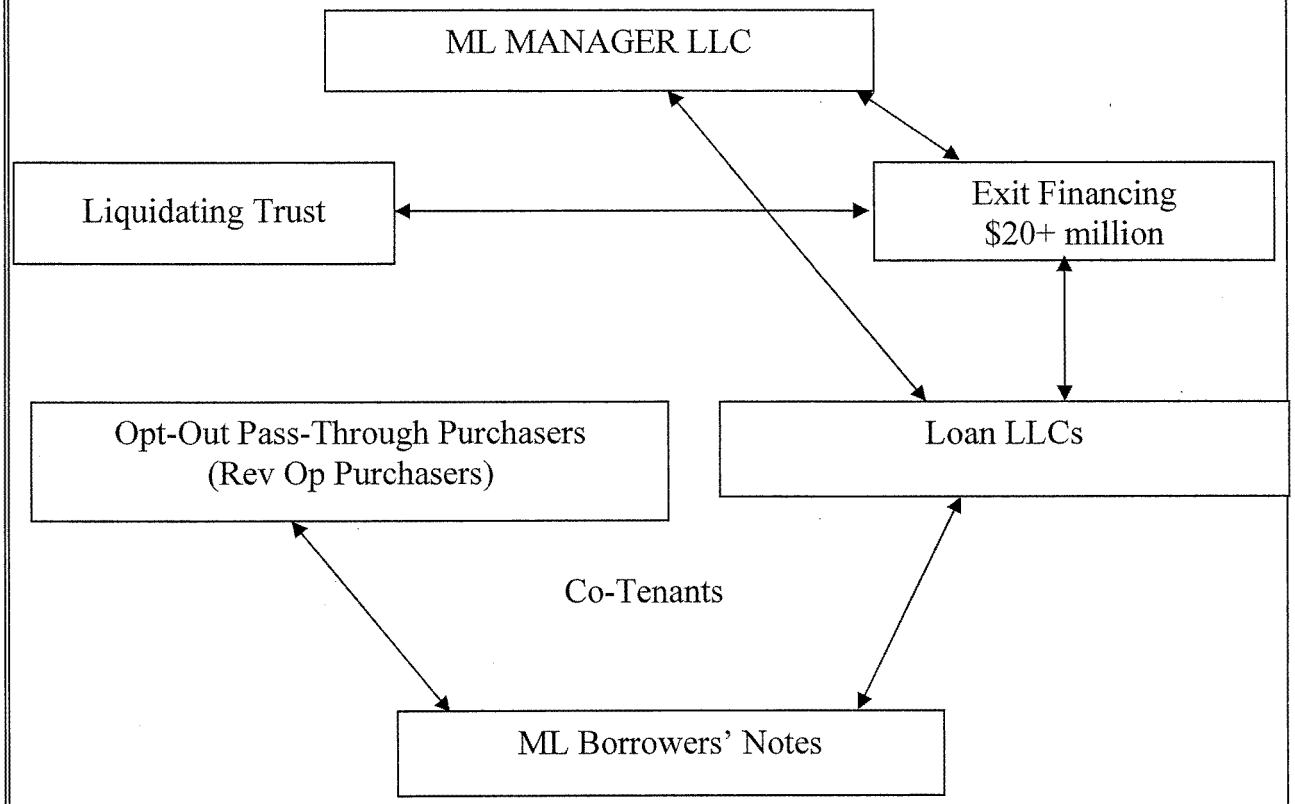
95. Only ML Manager, the Liquidating Trust, and the various Loan LLCs were disclosed as borrowers under the Exit Financing.

96. The Committee forged ahead, intent on obtaining confirmation and continually represented that the Plan was workable and a solid approach for maximizing recovery.

97. The structure of the Plan as proposed by the Committee can be summarized as follows:



98. The Committee decided to obtain a "leveraged loan" to pay off post-petition loans and all of the professional fees, and provided the Exit Financier with liens in the Notes and Deeds of Trust and REO Property of the Loan LLCs. The Committee set up ML Manager (without assets), the Liquidating Trust (without material tangible assets), and the Loan LLCs as borrowers of the Exit Financing.

99. Opt-Out Pass-Through Purchasers were not obligors on the Exit Financing, nor did the Exit Financier have a lien on their undivided, fractional interests in the Notes and Deeds of Trust and REO Properties.

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100. ML Manager had fiduciary duties to Opt-Out Pass-Through Purchasers and management duties to the Loan LLCs.

101. The Plan's structure presented very serious potential conflicts of interest between the Loan LLCs and the Opt-Out Pass-Through Purchasers. The Committee failed to adequately consider and address this issue in formulating and prosecuting its Plan.

102. In May 2009, the Bankruptcy Court held a contested trial on confirmation of the Plan. Many objections were filed to the Plan. A timely plan objection was filed by Plaintiffs and other joining Rev Op Purchasers, who collectively had $78.4 million in purchases through the Rev Op Program.

103. Under the Plan, the Committee placed the Rev Op Purchasers' claims into two separate classes—Classes 10B and 11F. Plaintiffs cast ballots rejecting the Plan. Plaintiffs *did not* "check the box" consenting to the transfer of their ownership interests in the Notes and Deeds and Trusts and REO Properties to the various Loan LLCs.

104. As of May 5, 2009, Plaintiffs had not decided whether they would remain Opt-Out Pass-Through Purchasers. Plaintiffs had significant concerns with the Plan, however, and pending resolution of these issues Plaintiffs had decided to keep their fractional interests in the Notes and Deeds of Trust and REO Properties.

105. Plaintiffs' confirmation objection challenged the general feasibility of the Plan and raised significant concerns regarding the burden of the Exit Financing. Plaintiffs challenged, among other things, the Committee's failure to explain how the Plan was going to work on a loan-by-loan and overall basis, and how the Loan LLCs would address future liquidity problems.

106. Plaintiffs objected to the Plan because the Committee failed to make clear how the corporate governance was going to work between the various Loan LLCs and Opt-Out Pass-Through Purchasers. Plaintiffs also objected on the basis that the Committee needed to show that its proposed structure provided a workable mechanism for servicing and otherwise managing the Notes and Deeds of Trust and the REO Properties.

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107. Plaintiffs also objected that the Committee was so focused on racing ahead that key documents required under the Plan had not been drafted before Plaintiffs' deadline to file an objection.

108. As of May 5, 2009, the Committee had not prepared the inter-borrower agreement required under the Plan (the "Inter-Borrower Agreement"). The Inter-Borrower Agreement was not prepared until after the Bankruptcy Court concluded the confirmation hearing on the Plan.

109. The Inter-Borrower Agreement was critical for a number of reasons, the most important of which was the fact that this agreement was supposed to be the governing document addressing how the $20 million Exit Financing loan would be allocated between and repaid by the various Loan LLCs, ML Manager, and the Liquidating Trust.

110. Plaintiffs are informed and believe that, despite the importance of the Inter-Borrower Agreement and related issues, the Committee decided that these critical issues could be figured out later.

111. Plaintiffs are further informed and believe that the Committee, and later ML Manager, believed that it could entice all investors and purchasers to opt into the Loan LLCs.

112. Rather than provide all investors and purchasers with a proposed form of Inter-Borrower Agreement, the Committee provided the following exceedingly limited disclosures in the Disclosure Statement accompanying the proposed plan:

> The Exit Financing is for $20 million and will be used to take out the Stratera Claims, the Priority Non-Tax Claims and the Administrative Claims and to provide working capital for the operations for the Liquidating Trust, the Reorganized Debtor, the Loan LLCs and the ML Manager LLC. It is possible that Exit Financing will needed (sic) to be entered into by the lender as the lender and by the Liquidating Trust, the ML Manager LLC, the Loan LLCs and/or the Reorganized Debtor as co-Borrowers with joint and several liability. . . . ***It is anticipated that the parties will also enter into an inter-borrower agreement to allocate amongst themselves the use of funds and the repayment of the Exit Financing loan, among other things. The entities shall keep sufficient records of the use of the funds and repayment of the loan so that a proper allocation and accounting may be made.***

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Disclosure Statement, pp.77-78 (emphasis added).

113. While the Committee provided inadequate disclosure of the Inter-Borrower Agreement, the above-referenced disclosures made clear who would and, more importantly for this case, who *would not* be the borrowers of the Exit Financing. Notably, the Opt-Out Pass-Through Purchasers were not disclosed as co-borrowers of the Exit Financing.

114. The Inter-Borrower Agreement was supposed to address which of the borrowers under the Inter-Borrower Agreement would repay which portion of the Exit Financing and "allocate amongst themselves the use of funds" from the Exit Financing.

115. Plaintiffs are informed and believe that the Committee had not focused on this issue at all prior to the confirmation hearing. Instead, the Committee chose to deal with these issues on an *ad hoc* basis.

116. The Committee held a number of meetings in April 2009 to induce parties to support the Committee's plan. With respect to the Exit Financing, in particular, the Committee stated in a newsletter to all investors and purchasers that it would address details regarding the Inter-Borrower Agreement, the allocation of expenses, and the repayment between ML Manager and the Liquidating Trust at in-person meetings at Committee counsel's office.

117. At these meetings, the Committee assured investors and purchasers that the Inter-Borrower Agreement, though not completed, would provide for the allocation and prompt repayment of the Exit Financing.

118. The Committee made other representations at these meetings that turned out to be at odds with how ML Manager eventually decided to implement the Plan. The Committee made it appear, at these meetings, that the economic strain of borrowing the Exit Financing would be removed completely once the Exit Financing was paid off.

119. The Committee failed to disclose that, because the first Loan LLCs paying off the Exit Financing would receive "replacement interest" from the other Loan LLCs that had not yet liquidated their property, the financial pressures associated with the Exit Financing would not be retired until most or all of the properties were liquidated.

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120. The Committee rested its case in the confirmation hearing without having provided a completed Inter-Borrower Agreement, and without truly understanding how these expenses would be addressed when the Plan was implemented by ML Manager.

121. The Committee also did not think through in any meaningful way the ramifications of "opting out" of the transfer of Notes and Deeds of Trust to the Loan LLCs. On information and belief, the Committee wrongfully assumed that all Pass-Through Purchasers would opt into the transfer of their interests under the Plan or that ML Manager could convince all Pass-Through Purchasers to opt into the Loan LLCs.

122. By design, the Plan provided essentially no disclosure on the effect of a Pass-Through Purchaser electing to retain its ownership of the Notes and Deeds of Trust. The Committee disclosed only the following:

> If a Pass-Through Investor decides not to transfer an interest into the applicable Loan LLC for a specific Loan, then the Pass-Through Investor will continue to hold a fractional interest in the Note and Deed of Trust or the title to the property if it has already been foreclosed upon in their name, however the costs of enforcing the Loan and the expenses related to that Loan will be assessed against the Pass-Through Investor as provided for in the existing documents. The benefits and protections of the Loan LLC and the use of the Exit Financing will not be available to such Pass-Through Investor and such Pass-Through Investor will be subject to the existing Subscription and Agency Agreement fees and provisions which will be enforced by the ML Manager LLC and may be subject to lawsuits by Borrowers. The existing Agency Agreements and other contracts to which the Pass-Through Purchasers are parties may be transferred by the Debtor to the ML Manager LLC, at the option of the Plan Proponent depending on the tax consequences.

Disclosure Statement, p.7 (emphasis added).

123. Plaintiffs relied upon these disclosures, which led them to believe that the major ramifications of not opting into the Plan was that Opt-Out Pass-Through Purchasers would not be entitled to access the funding made available under the Exit Financing and would not have the legal protection of the Loan LLCs. This was unsurprising to Plaintiffs, as the Committee also disclosed that Opt-Out Pass-Through Purchasers would not be

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borrowers of the Exit Financing and would not be parties to the Inter-Borrower Agreement.

124. In discussions with the Committee, Plaintiffs explained their concern about how the Committee intended to charge Opt-Out Pass-Through Purchasers for expenses and how that process would work in light of the "opt in/opt out" decision they eventually would have to make under the Plan.

125. The Committee did not specifically address the issue of expenses to be borne by Opt-Out Pass-Through Purchasers or how that allocation might differ depending on the "opt-in/opt-out" decision made by the Pass-Through Purchasers. Paragraph 4.13 of the Plan states in its entirety as follows:

> Each Loan LLC will distribute funds to its members pro rata based upon their respective membership percentages in such Loan LLC as set forth in the operating agreement for each of the Loan LLCs. Any Pass-Through Investor that does not transfer its fractional interests into a Loan LLC will receive its distribution pursuant to the existing Agency Agreement and other contracts which may be assigned to the ML Manager LLC. When the MP Funds receive any distributions from the Loan LLCs, they will distribute such funds to their respective investors, after payment of any MP Fund creditors.

126. Before and during the plan confirmation process, Plaintiffs and their counsel were negotiating with the Committee and its counsel regarding their concerns on all of these issues. These negotiations took place over a period of several days. The parties made some progress, but the Committee was intent on moving at break-neck speed.

127. Plaintiffs are informed and believe that the Committee took the position of (i) conceding what it had to in order to gain consensus, (ii) making as few changes to the proposed plan as possible, and (iii) deferring the details for later.

128. Plaintiffs, however, had millions of dollars at stake and had already been burned by Mortgages Ltd. Plaintiffs rejected this approach, continued to engage the Committee, and insisted on pinning down as many issues as practicably possible before withdrawing their plan confirmation objection.

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129. During the confirmation process, Committee's counsel committed to providing Plaintiffs' counsel with a draft of the Inter-Borrower Agreement. Somewhere along the way that happened, but there was no consensus on that document by the parties, and the document was not remotely close to being finished before the Bankruptcy Court concluded the confirmation trial.

130. Plaintiffs engaged with the Committee on the topic of the Exit Financing and expense allocation among the various borrowers. In the extensive negotiations and written communications with the Committee, Plaintiffs, as co-owners of their Notes and Deeds of Trust and REO Properties, never agreed that they should be surcharged for all of the expenses of the legal battle between Mortgages Ltd. and the Committee.

131. Plaintiffs also communicated to the Committee as early as December 3, 2008, that the Exit Financing and proposed Plan were a "disaster waiting to happen" and that the Committee had created a huge problem for all parties by committing to cash out the post-petition financing and all of the professional fees without having a firm grasp on the prospective cash needs of the various projects secured by the Notes and Deeds of Trust.

132. The Committee had disclosed that the Exit Financing was going to be used mostly "at the ML Manager level and not at the Loan LLC level," which left the Loan LLCs without the ability to fund their projects if it became necessary. The Committee contended that this problem would be addressed by simply asking the members of the particular Loan LLC to make a voluntary capital contribution, member loan, or allow other members to make a capital contribution or consent to third-party financing.

133. Plaintiffs were highly skeptical and communicated their concerns to the Committee.

134. Plaintiffs' representatives and advisors had been through past economic cycles in Arizona. In 2009, the Arizona real estate market was about as bad as it has ever been in modern history. Plaintiffs were sure there were a number of projects that were simply "dead in the water" and were gravely concerned about how this might play out down the road.

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135. In their transactions with Mortgages Ltd., Plaintiffs were selective in the Notes and Deeds of Trust they purchased, and negotiated with Coles for the purchase of fractional ownership of specific Notes and Deeds of Trust based on Plaintiffs' assessment of the strength of the particular project and borrower.

136. Plaintiffs were concerned that liquidity shortfalls at the project or ML Manager level would create a situation where ML Manager would consider using funds that were, or should have been, allocated to stronger projects to cover expenses for weaker projects in which Plaintiffs did not hold any fractional interests.

137. Plaintiffs were also very concerned that the Committee was making vague suggestions in their disclosures to the Bankruptcy Court that ML Manager would reserve the right to argue that the agency agreements and other contracts with Mortgages Ltd. would provide a basis for ML Manager to "enter through the back door" and charge Pass-Through Purchasers for expenses that had little or nothing to do with the actual costs of managing and collecting on the Notes and Deeds of Trust and REO Properties in which they held ownership interests.

138. During a series of meetings between Plaintiffs' representatives and the Committee and numerous related communications, Plaintiffs and the Committee decided on a concept that would resolve the concerns of the Plaintiffs and other Rev Op Purchasers and allow them to withdraw their objections to plan confirmation. As is customary, the parties agreed to incorporate their resolution into the terms of the Confirmation Order so that the agreed upon terms would modify, and become incorporated into, the Plan.

139. Paragraph U of the Confirmation Order provided clarifying language regarding how Opt-Out Pass-Through Purchasers would be assessed for costs and expenses. Pursuant to paragraph U of the Confirmation Order, paragraph 4.13 of the Plan was revised to provide as follows (new language in boldface and italics):

> Before such distributions are made, Pass-Through Purchasers who retain their fractional interests in the ML Loans will receive its distribution pursuant to the existing Agency Agreement and other contracts which may be assigned to the ML Manager LLC. ***Before such distributions are made,***

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> ***Pass-Through Purchasers who retain their fractional interests in the ML Loans shall be assessed their proportionate share of costs and expenses of serving [sic] and collecting the ML Loans in a fair, equitable and nondiscriminatory manner and shall be reimbursed in the same manner as the other Investors.***

140. The new language in paragraph 4.13 of the Plan made it clear that Opt-Out Pass-Through Purchasers would not be subject to the after-the-fact decision-making by ML Manager in terms of what expenses could be deducted from their distributions.

141. The new language contains a typographical error; the word "serving" was intended by the parties to mean "servicing" the Notes and Deeds of Trust.

142. Revised paragraph 4.13 of the Plan contained the agreement between the Committee and Plaintiffs that Opt-Out Pass-Through Purchasers would be required to pay their proportionate share of the expenses of "collecting and servicing" their Notes and Deeds of Trust. Plaintiffs could be assessed for these expenses, but the assessment of these expenses had to be fair and equitable and had to be handled by ML Manager in a nondiscriminatory manner.

143. With this change to the Plan, Plaintiffs agreed to withdraw their plan confirmation objections. Although the resolution was not perfect and Plaintiffs never changed their votes rejecting the Plan, Plaintiffs decided they could live with the Plan, as they were promised that they would not have to pay for all of the expenses associated with the disputes in the Bankruptcy Case that had nothing to do with their Notes and Deeds of Trust and REO Properties.

144. Based on the Inter-Borrower Agreement disclosed by the Committee, Plaintiffs also knew they would not be a borrower of the Exit Financing. Plaintiffs were always ready, willing, and able to pay for any assessments properly presented under paragraph U of the Confirmation Order.

145. Plaintiffs withdrew their plan confirmation objections subject to the confirmation order being entered with the compromise reached between Plaintiffs and the Committee. On May 20, 2009, the Bankruptcy Court entered the Confirmation Order over

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the objection of Mortgages Ltd. The Plan as modified by the Confirmation Order was thereby approved by the Bankruptcy Court.

146. The Committee then prepared to go effective with the Plan so that ML Manager could take over and plan implementation could begin under the direction and control of the ML Board.

147. The Plan went effective on or around June 15, 2009, and ML Manager took control of the Loan LLCs.

148. Under paragraph W of the Confirmation Order, Pass-Through Purchasers were given 60 days after the Plan's effective date to make their "opt-in/opt-out" decisions. In the weeks leading up to this deadline, ML Manager held a series of meetings to explain to affected parties how the Plan was going to work.

149. ML Manager attempted in these meetings to persuade the Pass-Through Purchasers to opt into the transfer provisions of the Plan.

150. Plaintiffs are informed and believe that ML Manager believed that all Pass-Through Purchasers could be persuaded to opt into the Loan LLCs.

151. ML Manager intentionally held meetings with Plaintiffs and other Rev Op Purchasers separately from other Pass-Through Purchasers.

152. On information and belief, ML Manager sought to conceal statements made at other meetings from Plaintiffs, and statements made to Plaintiffs and Rev Op Purchasers at these meetings from other Pass-Through Purchasers.

153. During the meetings with Plaintiffs, ML Board members explained a number of Plan features that appeared to be inconsistent with the Committee's prior representations of how the Plan was supposed to work, including economic treatment on various key issues and control issues.

154. In particular, ML Board members specifically told Plaintiffs' representatives that if they did not opt into the Loan LLCs by transferring their interests in Loans and Deeds of Trust, ML Manager would attempt to enforce the "agency agreements" allegedly made between Plaintiffs and Mortgages Ltd.

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155. ML Manager's representatives decided to employ a "carrot and stick" approach whereby Plaintiffs were told after the Plan had been confirmed that, unless they agreed to opt into the Plan, they would have less decision-making control with respect to their ownership interests than Pass-Through Purchasers who transferred their interests to Loan LLCs and, consequently, would have voting rights on certain major decisions.

156. At the time ML Manager's representatives, including the chairman of the ML Board, made these representations, they knew or had reason to believe that such representations were misleading and inaccurate. Alternatively, these representations were made negligently on a less than reasonably informed basis.

157. At the time ML Manager's representatives, including the chairman of the ML Board and its counsel, made these representations, they had not reviewed any alleged agreements between Plaintiffs and Mortgages Ltd., and did not know whether there were any "existing agreements" between Plaintiffs and Mortgages Ltd.

158. ML Manager and the chairman of the ML Board intended that parties considering opt-in decisions under the Plan rely on their intentional or negligent misrepresentations. ML Manager and the chairman of the ML Board forged ahead with these misrepresentations without regard to their clear conflict of interest as the purported agent for Plaintiffs.

159. Due to this situation, Plaintiffs and other joining Rev Op Purchasers decided to file a motion seeking clarification from the Bankruptcy Court on a number of issues that were critical to their decision-making process relative to the opt-in/opt-out decision.

160. Certain of those issues were resolved prior to the hearing through discussions between movants and ML Manager. Other issues had to be decided by the Bankruptcy Court, however, and the Bankruptcy Court issued a memorandum decision addressing several of the issues in dispute.

161. Litigation regarding a number of those issues continues to this very day. Two appeals relating to such issues are pending with the Ninth Circuit Court of Appeals.

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162. With all of the uncertainty on key issues regarding the Plan and with the adversity that existed between Defendants and Plaintiffs in the various litigation matters pending, Plaintiffs and various other parties did not opt into the Plan. Each of the Plaintiffs is an Opt-Out Pass-Through Purchaser.

DEFENDANTS IMMEDIATELY VIOLATE THE PLAN

163. In June 2009, the ML Board and Winkleman went to work trying to implement the Plan. As discussed more fully below, major problems in plan implementation became apparent immediately.

164. The Plan provided that ML Manager could procure the Exit Financing from another source on more favorable terms. ML Manager, in fact, received several proposals to provide the Exit Financing from alternative lenders.

165. Despite these alternatives, on or around June 12, 2009, Pollack executed the promissory note and related documents for the Exit Financing on behalf of ML Manager without prior notice to, or approval of, the ML Board.

166. On information and belief, Pollack intentionally acted without consulting the ML Board.

167. Alternative financing could have been far more advantageous than the onerous Exit Financing obtained by ML Manager through Pollack.

168. Pollack's act in entering into the Exit Financing documents without exploring alternative, more economical financing arrangements deprived all investors under the Plan from the benefits of less onerous financing.

169. Pollack's actions were particularly egregious because Pollack and the ML Board did not understand how the Exit Financing would be repaid and retired under the Plan.

170. As of September 1, 2009, the ML Board still did not know or understand how the Exit Financing was to be retired under the Plan.

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171. Despite requests to explain how the allocation and repayment of the Exit Financing worked under the Plan and Inter-Borrower Agreement, Pollack and Winkleman continued to avoid addressing these critical issues with the ML Board.

172. On information and belief, ML Manager's counsel completed the Inter-Borrower Agreement shortly after plan confirmation. A true and correct copy of the Inter-Borrower Agreement is attached hereto as Exhibit 1.

173. The Inter-Borrower Agreement provides that the draws taken on the Exit Financing must be allocated between the Loan LLCs and the Liquidating Trust from the date of the first advances. It also provides that draws taken for all of the Loan LLCs should be allocated to them as a group, and that such draws may not be used by ML Manager "for any Loan LLC Separate Costs."

174. These provisions of the Inter-Borrower Agreement are consistent with the idea that each Loan LLC would be in control of its own loan assets—an idea promoted by the Committee in connection with the Plan.

175. The Inter-Borrower Agreement also requires that the "Liquidating Trustee and ML Manager shall jointly file with the Bankruptcy Court a schedule of allocated items which are determined from time to time." To date, ML Manager has never filed a schedule of allocated items.

176. On information and belief, and according to a bankruptcy court filing by a former member of the Liquidating Trust board, the required allocations have never been made at all. Rather, ML Manager drew on the entire available balance of the Exit Financing without making specific allocations as part of the strategy adopted by Defendants to perpetuate ML Manager's lucrative existence by ignoring the requirements of the Plan, the Inter-Borrower Agreement, and other documents.

177. Essentially, when the difficult issues that the Committee had resolved to "deal with later" emerged, Winkleman and the ML Board made the deliberate decision to misinterpret or simply ignore operative documents as necessary to ensure ML Manager's

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ongoing existence in implementing a fatally flawed plan to the substantial economic benefit of Winkleman and the ML Board. This too created a clear conflict of interest.

178. The Plan provided for a five-person board. During the plan confirmation process, the Committee, the Rev Op Purchasers, and other key players negotiated the composition of the ML Board. The ML Board's composition was resolved to be deliberately diverse so that there was representation among the various key constituencies of Mortgage Ltd.

179. The Committee was dominated by non-Rev Op Purchasers. The Committee negotiated the right to designate a majority of the board seats—three of the five board members. The Rev Op Purchasers negotiated with the Committee for the right to designate its own representative as the fifth member on the ML Board.

180. The Committee knew for weeks leading up to the confirmation hearing that the Rev Op Purchasers' designated representative was going to be Hawkins. During the plan confirmation process, however, the Committee tried to interfere with the Rev Op Purchasers' right to have Hawkins serve as a member of the ML Board.

181. During the confirmation process, the Committee took the position that Hawkins could not serve as board representative for the Rev Op Purchasers. The Committee contended that the Rev Op Purchasers had forfeited their right to designate a representative on the ML Board and that the right to designate this board seat was now controlled by the Committee.

182. Plaintiffs and other joining Rev Op Purchasers were forced to file pleadings with the Bankruptcy Court to address this issue. The Bankruptcy Court ruled, over the Committee's objection, that Hawkins was properly designated as the representative of the Rev Op Purchasers to the ML Board.

183. Hawkins was selected for the board by the Rev Op Purchasers for very specific reasons. As of the Filing Date, Hawkins' entities had approximately 66 undivided, fractional ownership interests in 33 Notes and Deeds of Trust and/or REO Properties. Hawkins was and is very knowledgeable regarding many of the commercial properties

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addressed under the Plan. Hawkins also had a long history with Mortgages Ltd. and knew Coles and his organization very well.

184. Hawkins is a respected business person with more than 30 years' experience in handling acquisition and development real estate projects in the State of Arizona. Hawkins also has substantial experience serving on boards.

185. Less than six months after the ML Board was formed, however, Pollack and certain other ML Board members sought to remove Hawkins and take control of his board seat by appointing a person that would be friendly to their agenda.

186. Hawkins was not permitted to participate or even be present in a meeting of the ML Board on November 15, 2009, and was blocked from various other board meetings. Pollack told Hawkins that part of the reason Hawkins was being blocked from board participation was that Hawkins was taking positions adverse to the ML Board in violation of his fiduciary duties of good faith, care, and loyalty to all Opt-Out Pass-Through Purchasers.

187. As discussed below, ML Manager, with knowledge of the ML Board, would later take the position that ML Manager did not owe such duties to Plaintiffs when making decisions to liquidate their valuable property rights.

188. On November 25, 2009, ML Manager filed a motion with the Bankruptcy Court purporting to act under ML Manager's self-ordained "inherent power" to remove Hawkins. The coup attempt failed. On or around January 10, 2010, deciding a hearing was unnecessary, the Bankruptcy Court entered an order denying the ML Board's request to remove Hawkins.

189. Undaunted, Pollack and Winkleman continued to undermine the board process and Hawkins' right to be involved as a representative of all Rev Op Purchasers. Hawkins was regularly confronted by Pollack and ML Manager's counsel. Hawkins was excluded from board meetings on the basis that he had purported conflicts, even though other board members similarly situated were allowed to remain in the board meetings.

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190. By December 2009, and through at least the first quarter of 2010, ML Manager still had not formulated an operating budget, financial statements, or an allocation of draws on the Exit Financing. Nor had ML Manager provided a budget and business plan as required under the Plan. Hawkins repeatedly communicated these problems to the ML Board.

191. Plaintiffs are informed and believe that Pollack and Winkleman knew that ML Manager was running out of operational cash and was in imminent danger of defaulting on the Exit Financing, and that they intentionally concealed this information from Hawkins and others.

192. Plaintiffs are informed and believe that in early 2010, Pollack and Winkleman knowingly and willfully conspired to block Hawkins' participation on the ML Board altogether to ensure that no dissenting voice would stand in the way of the improper implementation of the Plan envisioned by Pollack and Winkleman and supported by the ML Board.

193. The ML Board became increasingly secretive in early 2010. Pollack refused to conduct any board business or have any communications unless counsel was present or copied, under the erroneous theory that all board activity and communications would be insulated from disclosure through the attorney-client privilege.

194. On February 9, 2010, Plaintiffs made formal written demand that the ML Board address several deficiencies in board practices. Plaintiffs demanded, among other things, less secrecy and more transparency, the keeping of board meeting minutes (which, shockingly, was not being done and, on information and belief, is still not being done), and that Hawkins not be excluded from board discussions, voting, and meetings. Attached hereto as Exhibit 2 is a true and correct copy of the demand letter sent by Plaintiffs' counsel to ML Manager's counsel.

195. On February 9, 2010, shortly after the demand letter was tendered to ML Manager's counsel, Pollack suddenly cancelled the board meeting scheduled for February 10, 2010.

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196. As of February 9, 2010, ML Manager was facing a serious cash shortage and, on information and belief, was insolvent from an operational perspective. Plaintiffs are informed and believe that Pollack and Winkleman conspired to conceal this information from Hawkins and others.

197. As of February 9, 2010, ML Manager, Winkleman, and the ML Board still did not have an operating budget or a developed plan for allocating and repaying (i) the Exit Financing, (ii) millions of dollars in accrued and accruing professional fees, and (ii) significant operating expenses.

198. On information and belief, ML Manager, Winkleman, and the ML Board knowingly conspired to block Hawkins' participation from all board activities and meetings so that they could conceal their intentions of disregarding the Inter-Borrower Agreement and various Plan provisions to ensure the ongoing operations of ML Manager.

199. On or around February 10, 2010, Pollack decided that the ML Board should simply take the position that Hawkins was no longer on the ML Board. On information and belief, Pollack, Winkleman, and ML Manager's counsel prepared a resolution removing Hawkins from the board and persuaded board members Summers and Fieler to sign it and to believe that no approval was required by the Bankruptcy Court.

200. After enduring months of these kinds of tactics at the hands of Pollack, Hawkins reached the conclusion that he could no longer continue to serve on the ML Board. After spending months battling Pollack, Hawkins tendered his resignation letter on March 16, 2010.

201. Plaintiffs are informed and believe that Pollack and the other Defendants conspired to remove Hawkins from the ML Board for improper purposes, with actual intent to damage Plaintiffs' pecuniary and property interests, in violation of Defendants' fiduciary duties to Plaintiffs, and despite a clear conflict of interest, all as discussed more fully below.

202. Plaintiffs are further informed and believe that Pollack, Winkleman, and the ML Board took action to remove Hawkins for the purpose of intentionally concealing from

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Plaintiffs and other Opt-Out Pass-Through Purchasers the dire financial condition of ML Manager, the Plan's imminent failure, and an imminent default of the Exit Financing, all of which are discussed more fully below.

203. By removing Hawkins from the ML Board, Pollack and the rest of the ML Board removed a basic right and "safety check" built into the Plan to protect the Rev Op Purchasers.

204. These acts also resulted in ML Manager and Defendants being able to proceed with actions directly adverse to Plaintiffs while intentionally concealing relevant information from Plaintiffs, other Rev Op Purchasers, and the Bankruptcy Court, all in violation of ML Manager's and the ML Board's most basic fiduciary duties and obligations of disclosure and notice.

205. If Hawkins had not been removed, Hawkins could have alerted the Bankruptcy Court or otherwise prevented Defendants' subsequent wrongful conduct, as described herein.

DEFENDANTS' DIFFICULTIES IN IMPLEMENTING THE PLAN

206. At the time Defendants conspired to block information from Plaintiffs and remove Hawkins from the ML Board, Defendants knew, but intentionally concealed from Plaintiffs, that their efforts to implement the Plan and perform at the level promised by the Committee were failing.

207. Shortly after Hawkins' removal from the ML Board, Defendants knew that their problems were so severe that they needed to disclose at least some of these issues to the Loan LLC members and Opt-Out Pass-Through Purchasers.

208. On information and belief, Defendants knowingly conspired to "spin" the news of this dire financial situation in such a way that Defendants could continue to implement the Plan, which was to their economic and reputational benefit but to the detriment of the Loan LLC members and Opt-Out Pass-Through Purchasers and which created further conflicts of interest.

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209. On or around March 1, 2010, nearly eight months after the Plan's effective date, the ML Board finally provided parties with a summary of how loan proceeds were used from the Exit Financing. Attached hereto as Exhibit 3 is a true and correct copy of *Newsletter #8*, which ML Manager disseminated to all Loan LLC members and Opt-Out Pass-Through Purchasers. *Newsletter #8* is dated March 1, 2010 and bears Pollock's name in the signature block.

210. Shockingly, *Newsletter #8* disclosed that most of the Exit Financing was used to pay the professional fees and loans incurred during the Bankruptcy Case and to pay the exorbitant origination fees and other expenses to the Exit Financier. ML Manager disclosed the following chart, which showed how the Exit Financing was used by ML Manager:

Total Financing Available		**$20,000,000**
Expenses:		
Loan Origination Fee		1,600,000
Lender Costs		254,745
Interest		1,968,666
Foreclosure, REO, Legal		940,584
D&O Insurance		335,642
Operations		1,138,704
Repayment of Bankruptcy Financing		5,809,213
Pre-Confirmation Professional Fee Claims		7,199,249
Total Expenses		**$19,246,802**

211. Significantly, ML Manager used virtually none of the loan proceeds to implement the Plan or to pay post-confirmation expenses. The Exit Financing was just that: financing the Committee had obtained for the purpose of allowing the Committee to fund the pre-confirmation expenses and Exit Financing-related expenses. Out of $20 million committed by the Exit Financier, ML Manager only used $1.14 million to assist in operations necessary to implement the Plan.

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212. ML Manager also disclosed in *Newsletter #8* that $1.2 million in ***pre-confirmation*** bankruptcy expenses remained unpaid, which under the Plan were to be repaid in full on the Plan's effective date or upon allowance of such expenses.

213. In addition, a staggering $1.7 million in accrued post-confirmation professional fees remained unpaid. Finally, the operations necessary to continue to implement the Plan also had no apparent funding.

214. Pollack told all interested parties in *Newsletter #8* "***we require additional funds to continue our business through 2010***." (Emphasis added). Pollack openly admitted ML Manager had effectively run out of cash less than nine months after ML Manager took control of the Loan LLCs.

215. In an apparent attempt to distance the ML Board from potential blame, Pollack provided discussion regarding why ML Manager's problems allegedly were not his fault or the fault of anyone else acting on behalf of ML Manager.

216. Plaintiffs are informed and believe that Pollack significantly underplayed and misrepresented the problems being confronted by the ML Board in March 2010. On information and belief, Defendants knew or should have known at that time that the Plan was a failure and could not be implemented pursuant to its terms.

217. On information and belief, Pollack, with the full knowledge and support of Winkleman and the ML Board, intentionally omitted from *Newsletter #8* material facts, including, without limitation, the ML Board's knowledge that ML Manager was in default of, or in imminent threat of defaulting on, the Exit Financing.

218. Pollack admitted ML Manager's revenues were lower and expenses had been higher than those budgeted under the Plan. Pollack stated, however: "This budget was prepared before ML Manager LLC came into existence and ***our Board had nothing to do with its preparation . . .***" (emphasis added) even though (i) every member of the ML Board participated in the Bankruptcy Case, (ii) ML Manager's counsel served as counsel for the plan proponent, and (iii) ML Manager's counsel extensively argued at plan

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confirmation that those budgets and projections were sufficiently reliable to fulfill the legal requirement that a plan be financially feasible to be confirmed.

219. Pollack, with the full knowledge of Winkleman and the ML Board, also stated in *Newsletter #8* that Plaintiffs were the cause of at least part of ML Manager's dire financial situation.

220. Pollack and Defendants intended that parties rely on his statements, even though Pollack and Defendants knew or should have known that such statements were false or materially misleading.

221. These willful or negligent misrepresentations and material omissions directly and proximately damaged Plaintiffs.

222. Pollack threatened in *Newsletter #8* that the situation was so dire that the ML Board possibly would begin "fire sales" of REO properties unless ML Manager found a way to borrow an additional $6 million, beyond the $20 million in Exit Financing already borrowed: "We now require substantial additional funds to continue our efforts to deal with the non-performing loans, the borrowers, and guarantors. We believe that our work will generate substantial cash and it is critical that we obtain this additional funding. If this is not secured, we could find ourselves in a situation where we would need to liquidate properties in a 'Fire Sale' type of atmosphere."

223. Pollack's Newsletter warned of the possibility that "we will run out of money and may be forced to go back into bankruptcy . . . ." He also warned that there was a significant risk that REO properties would be "sold off into a terrible real estate market at prices below market which would not maximize the returns to investors."

224. A mere nine months after the Committee assured parties that the Plan was sound and in everyone's best interests, Pollack disavowed those statements and advocated that ML Manager borrow another $6 million for him and the other Defendants to spend.

225. Pollack also represented in *Newsletter #8* that ML Manager was negotiating with the Exit Financier to borrow these additional funds. Pollack intentionally omitted

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from *Newsletter #8* the fact that ML Manager was already, or was dangerously close to being, in default of its loan obligations to the Exit Financier.

226. On information and belief, ML Manager's discussions with the Exit Financier as of March 1, 2010 were in reality modification, forbearance, or workout discussions. As discussed below, ML Manager, the Liquidating Trust, and the Loan LLCs secretly entered into a forbearance agreement with the Exit Financier due to balance overage and payment defaults in July 2010.

227. Pollack and Defendants had a duty to Plaintiffs to provide accurate, complete, and truthful information regarding facts and events that affected their undivided, fractional ownership interests, over which ML Manager asserted control.

228. As of March 1, 2010, Defendants knew the Exit Financing was in default or would soon be in default, ML Manager was running out of cash, and it would be necessary to borrow millions more or "fire sale" properties to prevent a total meltdown.

229. To avoid this meltdown, however, Defendants needed to disregard the divergent interests of the Opt-Out Pass-Through Purchasers, who were not obligated to repay the Exit Financing, were only obligated to pay their fair share of the expenses required to service and collect their Notes and Deeds of Trust, and had the ability to pay for any assessments required to protect their interests without resorting to liquidation.

230. The concealment and material omissions regarding ML Manager's imminent default of the Exit Financing and the true nature of its discussions with the Exit Financier directly and proximately damaged Plaintiffs.

231. Plaintiffs' counsel responded to *Newsletter #8* indicating how inappropriate it was for the ML Board's chairman to blame Plaintiffs for ML Manager's financial situation and to request to borrow millions more. Attached hereto as Exhibit 4 is a true and correct copy of the Letter from Robert J. Miller to Cathy Reece dated March 16, 2010.

232. At the time, Plaintiffs did not know or have any reason to know that ML Manager was in default, or dangerously close to being in default, of the Exit Financing,

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that it was having secret discussions with the Exit Financier, or that the ML Board was actually targeting Plaintiffs' properties for "fire sale" liquidations.

233. The letter to ML Manager's counsel demanded that ML Manager retain an independent law firm to advise the board on a going forward basis.

234. The letter also referenced Plaintiffs' previous demand that the ML Board formulate and disclose an operating budget. *Newsletter #8* disclosed that as of March 1, 2010, the ML Board was still operating ML Manager without a budget.

235. Operating without an established budget constitutes reckless, grossly negligent, or negligent conduct by Defendants that violates the most basic notions of fiduciary duty.

236. Had Defendants formulated an operating budget, tracked expenses properly, and allocated all draws on the Exit Financing, Defendants could have identified ML Manager's operating deficiencies earlier and not engaged in additional borrowing or forced "fire sales" of Plaintiffs' property.

237. Defendants refused to obtain independent legal counsel. Defendants' refusal to retain independent legal counsel, other than the same counsel that urged confirmation of the Plan based on budgets and projections disavowed by the ML Board, constitutes reckless, grossly negligent, or negligent conduct that violates the most basic notions of fiduciary duty, and also exacerbated Defendants' conflict of interest.

238. Furthermore, ML Manager's counsel has failed to provide independent, disinterested advice to ML Manager and the Board.

239. On information and belief, ML Manager's counsel—the same lawyers that represented the Committee through confirmation of the Plan—is and has been highly motivated professionally to ensure that the Plan was not perceived as a failure and economically to ensure continued representation in this matter.

240. In this case, Defendants' refusal to obtain independent legal counsel also formed part of Defendants' conspiracy to implement the Plan in violation of its terms and the requirements of the Inter-Borrower Agreement.

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241. On or around June 29, 2010, ML Manager distributed *Newsletter #10* to all Loan LLCs members and Opt-Out Pass-Through Purchasers. It again bore Pollack's signature. A true and correct copy of *Newsletter #10* is attached hereto as Exhibit 5.

242. By June 29, 2010, at the time Pollack and ML Manager disseminated *Newsletter #10*, ML Manager was in default of the Exit Financing as a result of interest accruing above the maximum loan balance for the periods ending May 15, 2010 and June 15, 2010, and as a result of ML Manager's failure to make a required payment on June 16, 2010.

243. Pollack and the other Defendants knowingly concealed these material facts from investors in *Newsletter #10* and subsequently.

244. During this time, however, ML Manager's professionals were reaping professional benefits from their already lucrative employment with ML Manager.

245. On or around June 2, 2010, Winkleman appeared on the PBS series "Horizon" as ML Manager's chief operating officer.

246. In his interview, Winkleman made inaccurate and misleading statements, including a statement to the effect that the Bankruptcy Court conducted an open auction on the sale of a parcel of real property to obtain the highest and best price.

247. In reality, ML Manager, under the control and direction of Defendants, has taken the position that property sales in Bankruptcy Court are not subject to higher and better offers. On at least two occasions, ML Manager has expressly rejected higher purchase offers submitted at the Bankruptcy Court, on the basis that the sales are not part of an auction process but can be consummated by ML Manager in its sole and absolute discretion.

248. On or around July 15, 2010, ML Manager entered into the secret Forbearance Agreement with the Exit Financier.

249. According to the Forbearance Agreement, a true and correct copy of which is attached hereto as Exhibit 6, the Exit Financier declared the Exit Financing in default due to interest accruing above the maximum loan balance for the periods ending May 15, 2010

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and June 15, 2010. ML Manager purported to dispute this default. ML Manager expressly acknowledged, however, that it had failed to make a required payment by June 16, 2010.

250. On or around August 26, 2010, Pollack again issued a newsletter to all investors. *Newsletter #11* is dated August 26, 2010, and bears Pollack's signature. A true and correct copy of *Newsletter #11* is attached hereto as Exhibit 7.

251. Pollack opened *Newsletter #11* by stating: "Dear Investors: I would like to update you on the significant events since our last newsletter."

252. Absent from *Newsletter #11* was any discussion or disclosure of the Forbearance Agreement, ML Manager's default of the Exit Financing, or ML Manager's precarious financial position. Plaintiffs are informed and believe that Pollack and the other Defendants conspired to conceal, and did intentionally conceal, this information from investors/purchasers.

253. Plaintiffs relied on Pollack's representation that *Newsletter #11* disclosed all of the "significant events" that had occurred between June 29 and August 26, 2010. Plaintiffs had no way of reasonably knowing, other than being informed by Defendants, that ML Manager had defaulted on the Exit Financing, entered into the secret Forbearance Agreement, and was operationally insolvent.

254. ML Manager's default of the Exit Financing, financial state, and entering into the Forbearance Agreement were significant events about which any reasonable investor/purchaser would want to know.

255. Pollack also disclosed in *Newsletter #11* that ML Manager would not be seeking appraisals of the real property assets. In keeping with Defendants' strategy of suppressing information and selling properties as needed to keep ML Manager afloat, Pollack stated: "The only way to accurately know what the properties are worth is to widely expose them to the market place and to obtain an accept offers from qualified buyers."

256. On information and belief, Pollack made this statement, with the knowledge and support of the other Defendants, for the purpose of persuading the investors/purchasers

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to trust and support ML Manager's decisions to sell real property, even though Defendants knew that such sales would not maximize the return to the investors/purchasers.

257. Defendants' true motivations were to keep ML Manager operational and pay down the Exit Financing under the secret Forbearance Agreement, all to their substantial economic and professional benefit and despite a clear conflict of interest.

258. Plaintiffs are informed and believe that Defendants made these statements in order to advance Defendants' interests and/or the interests of the Loan LLCs, which interests have been repeatedly in conflict with the interests of Plaintiffs.

259. Pollack and the other Defendants caused at least two additional newsletters to be disseminated to all investors. Each subsequent newsletter began with Pollack's greeting: "Dear Investors: I would like to update you on the significant events since our last newsletter," and each newsletter omitted any discussion or disclosure of the Forbearance Agreement, ML Manager's default of the Exit Financing, and ML Manager's precarious financial position.

260. Plaintiffs are informed and believe that Pollack and the other Defendants conspired to conceal, and did intentionally conceal, this information from the investors/purchasers in each of the subsequent newsletters.

261. Plaintiffs relied on Pollack's representation that these newsletters disclosed all of the "significant events" that had occurred in their applicable time period. ML Manager's default of the Exit Financing, financial state, and entering into the Forbearance Agreement were significant events about which any reasonable investor/purchaser would want to know.

262. Each of the newsletters continued to depict Plaintiffs as rogue investors and characterized Bankruptcy Court proceedings inaccurately to portray ML Manager as the constantly prevailing party.

263. In *Newsletter #10*, for example, Pollack again villainized Plaintiffs by mischaracterizing the declaratory judgment action (discussed below). Pollack stated: "The Bankruptcy Court recently granted ML Manager LLC a partial summary judgment

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declaring that the agency agreements previously signed by the members of the Rev-Op Group are coupled with an interest and therefore cannot be terminated without the consent of ML Manager LLC."

264. Pollack, with support and approval of the other Defendants, knew or should have known that this statement was false, as (i) ML Manager had never moved for partial summary judgment, let alone been granted partial summary judgment, (ii) the Bankruptcy Court did enter any declaratory judgment or grant partial summary judgment to anyone, and (iii) it was (and is) undisputed that none of the Plaintiffs ever signed an agency agreement.

265. In *Newsletter #11*, Pollack stated that ML Manager was working on its allocation model, as follows: "ML Manager LLC agreed to a September 1, 2010 date for making a net distribution to the investors in the Newman Loans, which were paid off by the borrower, and for providing an accounting of the allocated costs and the methodology for determining the allocated costs."

266. In reality, the Bankruptcy Court ordered ML Manager to make a distribution on what was referred to as the "Newman Loan" after one of the Plaintiffs filed a motion to compel distribution of his undisputed sale proceeds. ML Manager actively opposed the motion to compel and did not "agree" to anything. Rather, the Bankruptcy Court granted the motion to compel over ML Manager's objection.

267. Similar mischaracterizations are contained in several subsequent newsletters.

268. Pollack also took pains in his newsletters to list the individual Plaintiffs by name after mischaracterizing their efforts and the proceedings before the Bankruptcy Court.

269. Plaintiffs are informed and believe that Defendants intentionally and unfairly villainized Plaintiffs to all other investors and purchasers as part of Defendants' overall strategy of concealing the true facts from investors/purchasers to ensure ML Manager's ongoing operation to Defendants' benefit and despite a clear conflict of interest.

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270. Defendants' false characterizations of Plaintiffs and the proceedings in the Bankruptcy Court resulted in other parties being unwilling to work with Plaintiffs on issues affecting their valuable property interests, and prejudiced and damaged Plaintiffs.

271. The false information and concealed information were material, in that they were sufficiently important to influence Plaintiffs' actions in deciding to take or refrain from taking action, including in the Bankruptcy Court, to adequately protect their interests.

272. Defendants knew that the information was false, and that the concealed information was material.

273. The concealment by Defendants is tantamount to an affirmative statement of the nonexistence of the matter and thus constitutes a false representation of material fact that Defendants new was false when made.

274. Defendants intended that Plaintiffs act or refrain from acting based on the false information, and/or the concealment of material information, in the manner contemplated by Defendants.

275. Defendants' conduct directly and proximately damaged Plaintiffs.

THE "FIRE SALES" OF REO PROPERTIES AND DEFAULT OF THE EXIT FINANCING

276. ML Manager did not borrow the additional $6 million as proposed in *Newsletter #8*. On information and belief, by no later than May 2010, Defendants conspired to salvage the failed Plan by quickly selling REO Properties as necessary to pay down the Exit Financing in order to cure the defaults thereon, or to avoid imminent defaults, and thereby ensure the ongoing existence of ML Manager.

277. As stated in *Newsletter #8*, Defendants began the process of selling REO Property, in which Plaintiffs held tenant-in-common ownership interests, "into a terrible real estate market at prices below market which would not maximize the returns."

278. The Plan does not provide a mechanism for having property sales conducted through or approved by the Bankruptcy Court. Yet, Defendants decided to have ML Manager seek approval of the Bankruptcy Court for a series of real property sales.

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279. Plaintiffs are informed and believe that Defendants directed ML Manager to proceed in this manner with full knowledge that Defendants had a fiduciary duty to Plaintiffs and that most if not all of the Disputed Sales (defined below) were at prices that were at or below "fire sale" prices and did not maximize recoveries for Plaintiffs.

280. On information and belief, Defendants deliberately brought the Disputed Sales before the Bankruptcy Court knowing that taking such action was directly adverse to the Plaintiffs and despite a clear conflict of interest on the hope the Bankruptcy Court would overrule the objections of Plaintiffs.

281. In so doing, Defendants intentionally damaged Plaintiffs, and Defendants breached their fiduciary duty to Plaintiffs.

282. ML Manager, under the control of Defendants, filed sale motions and sought "comfort orders" from the Bankruptcy Court to facilitate these sales. Plaintiffs are informed and believe that Defendants proceeded in this manner specifically so they could present orders to the Bankruptcy Court that might insulate them from liability if later it turned out Plaintiffs or any other investors/purchasers challenged the appropriateness of the transactions pursued by ML Manager.

283. The first of these transactions pursued by Defendants through ML Manager was the sale of 35 acres of land which had been previously foreclosed upon and pre-foreclosure had been owned by Arizona Commercial Land Acquisitions I, LLC and certain Opt-Out Pass-Through Purchasers, including certain of the Plaintiffs (the "AZ Commercial Sale"). On November 23, 2009, ML Manager filed a motion to approve the AZ Commercial Sale.

284. Plaintiffs Bear Tooth, Pueblo, and MR Plan objected to the AZ Commercial Sale for a number of reasons, including the fact that ML Manager did not have the authority to sell the subject real property without the consent of Bear Tooth, Pueblo, and MR Plan as co-owners of the real property. ML Manager claimed the absolute right to sell the property without their consent and over the affirmative objection of Bear Tooth, Pueblo, and MR Plan.

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285. Bear Tooth, Pueblo, and MR Plan did not oppose the business terms of the AZ Commercial Sale. Accordingly, Bear Tooth, Pueblo, and MR consented to the AZ Commercial Sale under a reservation of rights on all disputed issues and the Bankruptcy Court approved the AZ Commercial Sale subject to the reservation of rights by order dated December 21, 2009.

286. Because the relevant Plaintiffs consented to the AZ Commercial Sale, the sale itself did not prove problematic. The sale motion and approval process, however, provided a template that Defendants thereafter used over and over again despite the objection of Plaintiffs. Defendants, through ML Manager, moved forward to liquidate several REO properties in which various of the Plaintiffs had ownership interests without consulting with the Plaintiffs, as co-owners, despite their objection to such sales, and despite a clear conflict of interest.

287. Plaintiffs are informed and believe that Defendants proceeded to liquidate these properties in order to advance Defendants' interests and/or the interests of the Loan LLCs, which interests have been repeatedly in conflict with the interests of Plaintiffs.

288. The chart set forth below summarizes the liquidation sales that Defendants pursued and consummated over the express written objection of Plaintiffs with a direct ownership interest in the underlying real property (collectively, the "Disputed Sales"), which chart shows: (i) the date the sale motion was filed with the Bankruptcy Court; (ii) the name of the sale; (iii) the initial sale price; and (iv) the outstanding principal balance of the loan according to ML Manager.

Date	Name	Sale Price	Principal Balance
11/23/09	AZ Commercial Land Sale	$9,637,650	$15,392,000
07/30/10	CITLO Sale	1,925,000	11,880,000
08/05/10	ZDC/Zacher (Missouri) Sale	2,112,000	11,897,435
09/03/10	Osborn III Sale	19,500,000	40,288,602
11/09/10	Roosevelt Gateway and Roosevelt Gateway II Sales	3,085,138	13,100,000
03/21/11	University & Ash Sale	3,240,000	30,278,365

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04/05/11	Portales Place Sale	14,500,000	32,000,000
07/19/11	PDG Los Arcos Sale	6,400,000	23,900,000
08/31/11	MK I and MK II Sales	2,900,000	10,000,000
09/20/11	Foothills Plaza Sale	5,922,644	25,740,000
10/11/11	ZDC III (Maryland) Sale	2,160,000	11,160,641
11/30/11	Dysart Road Sale	2,300,000	5,201,962
01/23/12	Hunt Highway Sale	300,000	3,670,732
01/25/12	SOJAC Sale	4,750,000	23,970,000
02/10/12	Cottonwood Parking Sale	2,850,000	7,516,373
02/13/12	ABCDW I (Pearce Farm) Sale	5,500,000	40,000,000
02/22/12	CS 11 Maricopa Sale	3,600,000	16,000,000
02/22/12	Metropolitan Lofts Sale	2,700,000	20,324,600
02/20/12	Central & Monroe Sale	7,000,000	27,000,000
06/26/12	CGSR Sale	1,577,720	30,000,000
08/12/12	70th Street Sale	875,000	11,300,000
08/12/12	McKinley Lofts Sale	1,121,670	16,800,000
08/12/12	Van Buren Sale	1,100,000	10,000,000

289. As of July 30, 2010, when ML Manager filed the CITLO Sale motion at the direction of and with approval of all other Defendants, Defendants knew that ML Manager was in default of the Exit Financing.

290. On information and belief, Defendants conspired to conceal the default of the Exit Financing and the fact that ML Manager had entered into the Forbearance Agreement from the Opt-Out Pass-Through Purchasers, the Fund Investors in the Loan LLCs, and the Bankruptcy Court.

291. Pursuant to the Forbearance Agreement, ML Manager agreed that the missed payment due on June 16, 2010 would be added to the Exit Financing loan balance as a "curative advance" calculated at 4% of the maximum loan balance—or $800,000. The default based on the accrued and unpaid interest in excess of the maximum loan balance was also "cured" by adding such amounts to the Exit Financing loan balance as "curative advances," and the entire loan balance, including all of the new curative advances, would accrue default interest at 29.5% for one month.

292. Pursuant to the Forbearance Agreement, the Exit Financier also agreed to forbear from exercising its remedies until October 31, 2010, by which date ML Manager

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was required to pay down the outstanding loan balance to less than $20 million. On information and belief, ML Manager required no less than $2.5 million to accomplish this pay down.

293. The Forbearance Agreement also required legal counsel for ML Manager to provide a legal opinion, in form and substance satisfactory to the Exit Financier, to the effect that the Forbearance Agreement did not require Bankruptcy Court approval. ML Manager and Defendants have never disclosed this legal opinion to investors or purchasers, and Defendants have refused to produce a copy of this legal opinion to Plaintiffs despite due demand.

294. Defendants intentionally concealed and prevented Plaintiffs from learning of material facts, including, without limitation, ML Manager's default of the Exit Financing, the existence and terms of the Forbearance Agreement, and ML Manager's desperate need to sell Plaintiffs' property by no later than the termination of the forbearance period.

295. Defendants' intentional concealment prevented Plaintiffs from being able to oppose the sale motions before the Bankruptcy Court with knowledge of all material facts, and prevented the Bankruptcy Court from considering all material facts, including ML Manager's motives, in approving such sales.

296. Defendants also had a duty to Plaintiffs to provide accurate, complete, and truthful information regarding facts and events that affected their undivided, fractional ownership interests, over which ML Manager asserted control.

297. Defendants breached their duty of disclosure by knowingly and intentionally concealing from Plaintiffs facts regarding the default of the Exit Financing, the existence of the Forbearance Agreement, and all other information relevant to the effects of these circumstances on Plaintiffs' ownership interests.

298. Based on the exigencies of the Forbearance Agreement and Defendants' desperate need to pay down the Exit Financing, Defendants aggressively sought approval of the CITLO Sale by filing a motion with the Bankruptcy Court on July 30, 2010, within

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fifteen days after the effective date of the Forbearance Agreement. Less than a week later, Plaintiffs filed a motion to approve the ZDC/Zacher Sale.

299. At no time prior to approval of the CITLO and ZDC/Zacher Sales did Defendants disclose to Plaintiffs or the Bankruptcy Court the existence of the Forbearance Agreement or that they desperately needed the proceeds of the sales to pay down the Exit Financing.

300. Defendants did not disclose the default of the Exit Financing, the existence of the Forbearance Agreement, and related facts to anyone until Defendants released *Newsletter #11* on or around November 11, 2010, ***after*** Defendants had closed sufficient fire sales to pay the balance of the Exit Financing back down to $20 million. A discussion of these significant events was buried in the final paragraphs of the newsletter.

301. Defendants, however, did even more than conceal these facts and proceed with the CITLO Sale and other Disputed Sales over the express objection of Plaintiffs with an ownership interest in the subject property. Defendants also instructed counsel for ML Manager to draft and present orders approving these sales which had language specifically designed to insulate them from any kind of liability that might have been caused by their actions even though the parties who were objecting to these sales were Plaintiffs to whom each of the Defendants owed a fiduciary duty.

302. Each and every order approving a Disputed Sale was drafted and lodged by ML Manager's counsel. Each and every order approving a Disputed Sale contained the following language, or substantially similar language, and was entered over the express objection of Plaintiffs: "***The decision to sell and enter into the Sale Agreement is supported by the best exercise of business judgment of ML Manager and is consistent with ML Manager's fiduciary duties and responsibilities***." (Emphasis added).

303. Defendants never actually litigated these issues in the Bankruptcy Court. Rather, ML Manager was able to obtain favorable orders without presenting a shred of evidence and with very limited oral presentation by counsel at hearing.

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304. In connection with these Disputed Sales, Defendants rejected proposals and even the very concept of partitioning the REO Property in which Plaintiffs held tenant-in-common ownership interests, with Plaintiffs paying their fair share of the expenses related to their interests.

305. ML Manager and Defendants specifically rejected offers by Plaintiffs to fund their fair share of these actual and direct costs. ML Manager and Defendants deliberately disregarded the fact that Plaintiffs were willing and able to pay a fair share of the actual and direct costs associated with the real property in which they have an ownership interest.

306. Plaintiffs also learned that ML Manager, while under the supervision and control of the other Defendants, had failed without justification to appeal the substantially inflated real property tax assessments on various of the REO Properties in which Plaintiffs held ownership interests. These failures occurred while ML Manager, under Defendants' control and direction, asserted exclusive control of Plaintiffs' valuable property interests.

307. Defendants' failure to appeal such tax assessments was a clear violation of their fiduciary duties to Plaintiffs and even the most basic standard of care, and resulted in first-position statutory liens securing the inflated tax assessments to attach to the REO Properties.

308. Plaintiffs have been damaged by Defendants as a result of the foregoing breaches of duty relating to the real property tax assessments.

309. Defendants' actions in pursuing and consummating the Disputed Sales of REO properties in which Plaintiffs have direct ownership interest have caused direct, proximate, and significant damage to Plaintiffs.

310. Defendants took these actions in conscious disregard of the fact that Plaintiffs' ownership interests are not owned by ML Manager, Defendants, or any of the Loan LLCs.

311. Defendants pursued the Disputed Sales based on ML Manager's repayment obligations on the Exit Financing and the interests of Defendants and the Loan LLCs rather than the best interests of Plaintiffs and despite their clear conflict of interest.

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312. Upon information and belief, Defendants pursued the Disputed Sales with knowledge that the real estate market was unfavorable and that the purchase price obtained did not maximize value for Plaintiffs.

313. ML Manager and Defendants breached their fiduciary duty to Plaintiffs by deciding to sell these properties and Plaintiffs' ownership interest in these properties to assist ML Manager in addressing its liquidity crunch. ML Manager's liquidity problems are not a legitimate reason for Defendants to have ML Manager liquidate Plaintiffs' ownership interests in these properties, and their conduct in so selling these properties gave rise to a clear conflict of interest.

314. ML Manager and Defendants breached their fiduciary duty to Plaintiffs by deciding to sell these properties and Plaintiffs' ownership interest in these properties to address the defaults under the Exit Financing and their desire to either cure those defaults or pay off the Exit Financing.

315. ML Manager and Defendants breached their fiduciary duties owed to Plaintiffs by selling certain of these properties without considering workout or restructuring alternatives that would have allowed Plaintiffs to retain their ownership interest in real property on economic terms materially better than what was achieved by ML Manager through the sale process.

316. Defendants sought to liquidate Plaintiffs' valuable property rights as part of a deliberate strategy and secret agreement among the Defendants to prolong ML Manager's operations to the substantial benefit of Defendants and the substantial detriment of Plaintiffs, and despite their clear conflict of interest.

317. Defendants' conduct damaged Plaintiffs.

318. Defendants' conduct was willful and outrageous, and subjects Defendants to punitive damages.

319. Upon information and belief, Defendants are pursuing pending sales and will be pursuing future sales based on ML Manager's cash flow needs and the need for Loan LLCs to repay one another, rather than the best interests of Plaintiffs.

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DEFENDANTS SEEK AN IMPROPER DECLARATORY JUDGMENT TO FURTHER INSULATE THEMSELVES FROM LIABILITY

320. At all relevant times, Defendants have contended ML Manager has full and absolute authority to act on behalf of Plaintiffs, including (without limitation) the authority to: (i) sue to enforce the Notes and Deeds of Trust on behalf of Plaintiffs; (ii) foreclose Plaintiffs' interests in the Notes and Deed of Trust; and (iii) sell Plaintiffs' interests in the REO property after foreclosure on the Notes and Deeds of Trust.

321. At all relevant times, Plaintiffs have disputed Defendants' contention that ML Manager has absolute authority to act on behalf of Plaintiffs, which is based on Defendants' flawed premise that each Plaintiff is party to a written agency agreement with Mortgages, Ltd. and that ML Manager is the assignee of such agency agreements.

322. At various times prior to Hawkins' removal from the ML Board, Defendants sought a summary adjudication from the Bankruptcy Court that ML Manager had such absolute authority. The Bankruptcy Court declined to provide such adjudication to Defendants.

323. On information and belief, at or before the time Defendants disseminated *Newsletter #8*, Defendants resolved to obtain an adjudication affirming ML Manager's asserted agency authority over Plaintiffs' ownership interests.

324. On information and belief, Defendants conspired and made the knowing decision to conceal from Plaintiffs and the Bankruptcy Court the following facts and circumstances, all while attempting to obtain said adjudication against Plaintiffs from the Bankruptcy Court: (i) the default of the Exit Financing; (ii) ML Manager's need to borrow an additional $6 million; (iii) ML Manager's stated need to "fire sell" assets in the event it could not obtain additional financing; (iv) ML Manager's failure to pay more than $1 million in ***pre-confirmation*** administrative expenses; and (v) and other facts regarding the dire financial situation facing ML Manager.

325. On March 18, 2010, ML Manager commenced an action in the Bankruptcy Court, Adversary Proceeding No. 2:10-ap-00430-RJH, against Plaintiffs and other Rev Op

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Purchasers in a desperate attempt to gain control of and the power to liquidate Plaintiffs' assets in order to provide Defendants with cash and to pay operating expenses and/or to pay down the Exit Financing.

326. In addition to the complaint, Defendants caused, or authorized, ML Manager to file, on an ex parte basis, its *Application for Order to Show Cause Requiring Defendants to Appear and Show Cause Why Declaratory Judgment Should Not Be Entered Against Them on the Issue of the Enforceability of the Agency Agreements*. The Bankruptcy Court entered the ex parte order as a matter of course, but quashed the order on motion by the Plaintiffs.

327. Seeking an order to show cause why a judgment on the merits should not be entered was procedurally and substantively improper and constitutes another breach of fiduciary duty by Defendants.

328. Rebuffed in their attempt to obtain a quick judgment on an improper order to show cause, Defendants caused or authorized ML Manager to file a *Motion for Judgment on the Pleadings*.

329. Defendants maintained that ML Manager had decision-making authority over Plaintiffs despite the fact that Plaintiffs repeatedly informed Defendants that ML Manager did not have the contractual right to proceed on their behalf and that, even if ML Manager had such authority, it had been terminated in a variety of different ways.

330. In the context of litigating the clarification motion many months earlier, Plaintiffs presented Defendants with proof that Mortgages Ltd. itself did not have such authority, such that ML Manager could not contend that it had such authority as assignee of Mortgages Ltd.

331. Plaintiffs are informed and believe that Mortgages Ltd. sent all Rev Op Purchasers letters informing them that their "Revolving Opportunity contract will expire on September 20, 2008 . . . [and] [u]pon expiration of your contract, prepaid interest will no longer be available ***and the terms of your contract will no longer exist***." (Emphasis added).

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332. Most or all of the Plaintiffs also received a letter from Mortgages Ltd. executed by Coles himself in or around March 2008, wherein Rev Op Purchasers were told that they needed to sign a new subscription agreement. In that letter, Coles stated "[a]s servicing agent we need your discretion to modify loan documents or enter into agreements with borrowers [and] [i]t is extremely important for you to give us the discretion to act in your best interest to protect your investment."

333. Pursuant to his declaration dated October 30, 2009, Louis B. Murphey provided Defendants with sworn testimony that he never signed a new subscription agreement after receiving this letter from Coles. Yet, Defendants continued to exercise control over the undivided interests in the relevant Notes and Deed of Trust and REO properties over his objection.

334. Murphey also provided Defendants with copies of signed documents (an agency agreement and a subscription agreement) and declaration testimony proving Murphey never gave Mortgages Ltd. power of attorney on his behalf or on behalf of L.L.J. Investments, LLC, nor was Mortgages Ltd. given full discretion under the applicable subscription agreement with Mortgages Ltd.

335. As representative of his entities, Hawkins previously served written notice on Mortgages Ltd. that Hawkins' entities had terminated their agency agreements with Mortgages Ltd.

336. Hawkins provided Defendants with copies of these termination letters in an effort to make Defendants understand that Mortgages Ltd. had no authority over Hawkins' entities because Mortgages Ltd.'s contracts and agency authority had been properly terminated. Despite receiving these documents, Defendants caused ML Manager to proceed to act on behalf of Hawkins' entities over their express objections.

337. Finally, Plaintiffs have repeatedly told Defendants that, to the extent ML Manager had or has any agency or other authority over the affairs of Plaintiffs, Plaintiffs terminated such authority.

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338. Despite Plaintiffs' repeated efforts to make Defendants understand that ML Manager has no authority to act on behalf of Plaintiffs, by contract or otherwise, Defendants have refused to acknowledge this lack of authority in breach of their fiduciary duties owed to Plaintiffs.

339. Plaintiffs are informed and believe that Defendants have proceeded on the basis that they have authority over Plaintiffs in order to advance Defendants' interests and/or the interests of the Loan LLCs, which Loan LLCs' interests have been repeatedly in conflict with the interests of Plaintiffs.

340. Notably, the Committee took the exact opposite position with respect to these agency issues when the Committee argued that Mortgages Ltd. did not have the absolute authority to act on behalf of Pass-Through Purchasers.

341. With full knowledge that Plaintiffs objected to ML Manager making decisions on behalf of Plaintiffs, Defendants knowingly conspired to obtain a declaratory judgment adverse to Plaintiffs' interest, on false pretenses and contrary to the facts known to ML Manager.

342. Defendants were successful in obtaining a judgment on the pleadings, which judgment is not final and is the subject of a pending appeal before the Ninth Circuit Court of Appeals.[3]

343. Even if such judgment is allowed to stand, ML Manager has acted in bad faith under the agreements that ML Manager contends are binding on Plaintiffs and that were allegedly assigned to ML Manager.

344. Defendants engaged in a systematic strategy designed to conceal material information from Plaintiffs and the Bankruptcy Court and to keep ML Manager alive until

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[3] Plaintiffs requested that Defendants agree to toll any applicable statute of limitations pending the outcome of the relevant appeals pending before the Ninth Circuit Court of Appeals, but Defendants refused this request. Plaintiffs reserve their rights to seek to vacate the judgment as invalid and a fraud on the Bankruptcy Court, and/or to amend this Complaint to assert additional causes of action to the extent the judgment is reversed by the Ninth Circuit Court of Appeals.

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after sufficient proceeds of "fire sales" could be raised to pay down the Exit Financing under the secret Forbearance Agreement.

345. Armed with the declaratory judgment, ML Manager proceeded in bad faith under its asserted agreements by proceeding with full knowledge that Plaintiffs would be unaware of ML Manager's true financial condition and motive for engaging in "fire sales" of Plaintiffs' assets until it was too late to undo the damage inflicted by ML Manager's bad-faith property sales and enforcement of such agreements.

346. Defendants enforced the agreements under the declaratory judgment knowing and intending that the Plaintiffs would be harmed through the forced liquidation of their property, thereby diminishing recoveries on their valuable property rights and thereby benefiting ML Manager, who is a borrower of the Exit Financing, and the other Defendants, who are financial beneficiaries of the ongoing operations of ML Manager.

347. Even assuming the agreements are applicable (which they are not), Defendants enforced the agreements in bad faith with knowledge that the real estate market was unfavorable and that the purchase price obtained did not maximize value for Plaintiffs.

348. At a minimum, Defendants were required by the covenant of good faith and fair dealing to have discussed sales prospects or workout alternatives with Plaintiffs that would have allowed Plaintiffs to retain their ownership interest in the subject property on economic terms materially better than what was achieved by ML Manager through the "fire sale" process.

349. ML Manager and Defendants proceeded to enforce the agreements (to the extent they are applicable) in bad faith based on ML Manager's defaults under the Exit Financing and their desire to either cure those defaults or pay down the Exit Financing.

350. The acts of ML Manager were inconsistent with Plaintiffs' justifiable expectations under the agreements (to the extent they are applicable).

351. ML Manager acted in bad faith and breached the implied covenant of good faith and fair dealing by committing acts to prevent Plaintiffs from receiving the benefits

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and entitlements of their agreements (to the extent they are applicable) with Mortgages Ltd. that were allegedly assigned to ML Manager.

352. Winkleman and the ML Board knowingly aided and abetted ML Manager in committing these acts of bad faith and in breaching the implied covenant of good faith and fair dealing, by approving and carrying out these actions on behalf of ML Manager, or by ratifying or otherwise supporting ML Manager's actions after Pollack or Winkleman approved or carried out ML Manager's actions without a board vote.

353. Plaintiffs are informed and believe that Defendants committed these acts in order to advance Defendants' interests and/or the interests of the Loan LLCs, which interests have been repeatedly in conflict with the interests of Plaintiffs.

DEFENDANTS' EXPENSE ALLOCATION AND DISTRIBUTION STRATEGY

354. While Defendants continue to liquidate the interests of Plaintiffs along with the interests of the Loan LLCs to the detriment of Plaintiffs, Defendants have also been allocating cash proceeds and expenses in a way that has caused significant additional damage to Defendants.

355. Plaintiffs are informed and believe that Defendants are attempting to distribute as much money as they can to pay outstanding expenses, professional fees, and disbursements to the Loan LLCs by using a flawed allocation and accounting model that surcharges Plaintiffs for costs unrelated to their ownership interests in a deliberate strategy to deprive Plaintiffs of the ability to recover these funds from ML Manager.

356. Defendants' secretive manner of accounting for money and expenses and the disputes between Plaintiffs regarding same has been well-chronicled in Bankruptcy Court. In summary, Defendants deliberately refused to make distributions on a repaid loan to MR Plan and was ordered to provide an accounting to MR Plan. After much delay, Defendants seized on this opportunity to present an allocation model that it wanted to impose on all parties under the Plan.

357. Much like the approach taken in the REO sale process, Defendants sought approval of its allocations of payments and expenses and sought orders from the

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Bankruptcy Court to approve the same. Defendants also drafted self-serving orders and presented them to the Bankruptcy, often on an ex-parte basis, in a deliberate attempt to insulate Defendants from legal claims of Plaintiffs to whom they owe a fiduciary duty.

358. Also, as in the approach taken in the REO sale process, the issues identified by the Plaintiffs were never actually litigated in the Bankruptcy Court. Rather, ML Manager was able to obtain favorable orders without presenting a shred of evidence and with very limited oral presentation by counsel at hearing.

359. Defendants obtained, for example, an ex parte protective order and refused to produce unredacted copies of key financial documents in order to proceed through the allocation and distribution process without providing the kind of transparency owed to Plaintiffs as their fiduciaries. Litigation regarding the first distribution made by ML Manager is presently on appeal to the Ninth Circuit Court of Appeals.[4]

360. Defendants used Plaintiffs' money to repay the Exit Financing debt and related economic costs (e.g., points, incentive fees). Defendants used Plaintiffs' money to repay a pre-confirmation loan taken by Mortgages Ltd. in bankruptcy specifically for the preservation of a project in which Plaintiffs had (and have) no economic interest of any kind.

361. Plaintiffs are in informed and believe that Defendants disbursed a significant amount of money rightfully belonging to Plaintiffs in order to pay a wide range of expenses for which Plaintiffs are not responsible under the Plan or otherwise.

362. In addition to improperly allocating expenses to Plaintiffs and improperly paying expenses with money owned by Plaintiffs, Defendants through ML Manager also have been distributing money to other parties that rightfully belongs to Plaintiffs.

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[4] Plaintiffs requested that Defendants agree to toll any applicable statute of limitations pending the outcome of the relevant appeals pending before the Ninth Circuit Court of Appeals, but Defendants refused this request. Plaintiffs reserve their rights to seek to vacate the judgment as invalid, and/or to amend this Complaint to assert additional causes of action to the extent the judgment is reversed by the Ninth Circuit Court of Appeals.

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363. In addition, ML Manager has issued 1099 tax forms for certain distributions, but not others, made to Plaintiffs.

364. Plaintiffs are informed and believe that ML Manager's failures to provide consistent tax forms and information has resulted in potential tax liabilities and damages to Plaintiffs.

365. Defendants conspired to conceal, and did intentionally conceal, the existence of defaults of the Exit Financing and ML Manager's financial insolvency in part so that they could extract money from the Loan LLCs and Opt-Out Pass-Through Purchasers, including Plaintiffs, on a consolidated basis, because several loans, in which Plaintiffs have no ownership, cannot pay their share of the staggering fees and expenses incurred by ML Manager under the direction of Defendants.

366. On information and belief, Pollack canceled the board meeting at the last minute on January 9, 2010, in part to exclude Hawkins from any discussions regarding Defendants' then-nascent scheme to re-allocate the surcharges for ML Manager's staggering expenses, which directly benefited Defendants, from valueless properties to valuable properties.

367. Pollack, Winkleman, and the other Defendants knew that Plaintiffs had ownership interests in many of the most valuable properties in the Mortgages Ltd. portfolio, and deliberately sought to conceal from Hawkins and Plaintiffs how the allocation model would adversely affect their interests.

368. On information and belief, Defendants knew in March 2010, when ML Manager was operationally insolvent and had defaulted, or was in imminent threat of defaulting, on the Exit Financing, that ML Manager would attempt to allocate the surcharge of various expenses from valueless properties to Plaintiffs' valuable properties.

369. Defendants were motivated financially and professionally to conceal the true nature of ML Manager's financial situation, operational insolvency, and allocation scheme in order to perpetuate the operations of ML Manager and pay themselves and their professionals.

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370. Plaintiffs are informed and believe that Defendants sought to conceal this information in order to advance Defendants' interests and/or the interests of the Loan LLCs, which interests have been repeatedly in conflict with the interests of Plaintiffs.

371. The allocation model implemented by ML Manager results in a shell game, in which ML Manager's debts and expenses, including millions of dollars in professional fees, are spread among all the Loan LLCs but are never fully retired because the first Loan LLCs who pay a portion of the Exit Financing are owed, with 17.5% interest, a share from other Loan LLCs, whose properties are liquidated later.

372. Because ML Manager will not allow Plaintiffs to pay their share of expenses and extract, by partition or otherwise, their tenant-in-common interests, Plaintiffs are forced to accept ML Manager's fire-sale decisions and are effectively forced to pay 17.5% interest to the Loan LLCs, even though Plaintiffs are not borrowers of the Exit Financing.

373. ML Manager's staggering attorney and professional fees continue to accrue and are paid with each "fire sale." Plaintiffs are informed and believe that a portion of ML Manager's counsel fees are now being paid directly out of escrow at closing of each property liquidated by ML Manager.

374. On information and belief, Winkleman has made more than $1 million in fees to date from ML Manager, and ML Manager's counsel has made more than $5 million in fees to date from ML Manager. ML Board members are paid an annual salary essentially for attending a monthly board meeting and faithfully supporting and implementing the decisions of Pollack and Winkleman.

375. But for their wrongful conduct and breaches of duty to Plaintiffs, Defendants would not have been able to realize their substantial economic benefits.

376. Because Defendants intentionally concealed material facts, Plaintiffs were unable to take actions with all material information to oppose ML Manager and Defendants' wrongful conduct.

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377. While any one act or motion, in isolation, may appear unremarkable, taken together, they establish a pattern of Defendants' carefully designed strategy to satisfy their economic and business motives to the detriment of Plaintiffs.

378. Defendants are trying to make further distributions, and the parties presently are litigating certain issues related to that process in Bankruptcy Court. In this litigation, Defendants continue to forge ahead taking numerous positions that are directly adverse to the interests of Plaintiffs notwithstanding the fact that they are fiduciaries of Plaintiffs.

379. Defendants have either directly, or have caused ML Manager to, intentionally and willfully exercise dominion or control over the property and funds belonging to Plaintiffs. Defendants' exercise of dominion or control over the property and funds belonging to Plaintiffs is wrongful and has interfered with Plaintiffs' ability to possess the property and funds to which they are entitled.

380. Plaintiffs are informed and believe that Defendants have committed these acts in order to advance Defendants' interests and/or the interests of the Loan LLCs, which interests have been repeatedly in conflict with the interests of Plaintiffs.

381. Plaintiffs have been directly and proximately damaged by Defendants conduct.

COUNT ONE

BREACH OF FIDUCIARY DUTY

(All Defendants)

382. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

383. Defendants at all relevant times had (and have) a fiduciary duty to each of the Plaintiffs with respect to each of the decisions and matters set forth above.

384. Defendants' fiduciary duty includes the obligations to act with care and loyalty in connection with ML Manager's asserted agency relationship with Plaintiffs.

385. Defendants violated their duty of care by failing to implement the Plan according to its terms and for the benefit of Plaintiffs, including, without limitation,

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breaches for failing to maintain and provide a proper accounting, failing to file an allocation of the Exit Financing with the Bankruptcy Court, failing to operate pursuant to a budget, permitting a default of the Exit Financing to occur, failing to disclose such default and other financial information, failing to appeal real property tax assessments in a timely manner, failing to obtain independent legal counsel, and failing to keep board minutes and observe other reasonable formalities to ensure that Plaintiffs' interests were protected, all as set forth above.

386. Defendants violated their duties of loyalty by putting their own interests and the interests of others, such as the Loan LLCs, above those of Plaintiffs, including, without limitation, breaches for not allowing Plaintiffs to have any input with respect to the control their assets, not allowing Plaintiffs to collect the revenues from the improper liquidation of such assets, implementing a surcharge allocation scheme that put Defendants' and the Loan LLCs' interests above those of Plaintiffs, and concealing material information from Plaintiffs, all as set forth above.

387. Each of the Defendants breached his or her fiduciary duties owed to each of the Plaintiffs and such breaches caused egregious and extensive damage to each of the Plaintiffs.

388. The breaches of fiduciary duties by Defendants all were a result of Defendants' intentional, knowing, reckless, negligent, or wrongful conduct.

389. Various breaches of fiduciary duties were committed knowingly and intentionally by Defendants, including with intent to deprive Plaintiffs of their respective interests in their property and otherwise cause injury, and constitute despicable conduct which subjected Plaintiffs to unjust hardship in conscious disregard of their rights, so as to justify an award of exemplary and punitive damages against Defendants.

390. Defendants are jointly and severally liable for all damages for these breaches to the full extent permitted by law.

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COUNT TWO

NEGLIGENCE

(All Defendants)

391. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

392. Defendants at all relevant times had (and have) a duty to each of the Plaintiffs to exercise reasonable prudence and care in implementing the Plan.

393. Defendants violated their duty of care by failing to implement the Plan according to its terms and for the benefit of Plaintiffs, including, without limitation, breaches for failing to maintain and provide a proper accounting, failing to file an allocation of the Exit Financing with the Bankruptcy Court, failing to operate pursuant to a budget, permitting a default of the Exit Financing to occur, failing to disclose such default and other financial information, failing to appeal real property tax assessments in a timely manner, failing to obtain independent legal counsel, and failing to keep board minutes and observe other reasonable formalities to ensure that Plaintiffs' interests were protected, all as set forth above.

394. The breaches of the duty of care by Defendants all were a result of Defendants' negligent conduct.

395. Each of the Defendants breached his or her fiduciary duties owed to each of the Plaintiffs and such breaches caused egregious and extensive damage to each of the Plaintiffs.

396. Defendants are jointly and severally liable for all damages to the full extent permitted by law.

COUNT THREE

CONVERSION

(All Defendants)

397. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

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398. Defendants have either directly, or have caused ML Manager to, intentionally and willfully exercise dominion or control over the undivided interests in REO Property and the funds belonging to Plaintiffs.

399. Defendants' exercise of dominion or control over funds belonging to Plaintiffs is wrongful and has interfered with Plaintiffs' ability to possess the undivided interests in REO Property and the funds to which they are entitled.

400. Plaintiffs have been directly and proximately damaged by Defendants' conduct in an amount to be proven at trial.

401. Defendants' wrongful acts described herein were committed knowingly and intentionally by Defendants, including with intent to deprive Plaintiffs of their respective interests in their property rights and otherwise cause injury, and constitute despicable conduct which subjected Plaintiffs to unjust hardship in conscious disregard of their rights, so as to justify an award of exemplary and punitive damages against Defendants.

402. Defendants are jointly and severally liable for all damages to the full extent permitted by law.

COUNT FOUR

INTENTIONAL MISREPRESENTATION/CONCEALMENT

(All Defendants)

403. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

404. In or around March 2010, Defendants knowingly provided Plaintiffs with false information, or knowingly concealed information from Plaintiffs, including, without limitation, in *Newsletter #8*, all as set forth above.

405. In or around June 2010, Defendants knowingly concealed the defaults of the Exit Financing, the existence of the Forbearance Agreement, and ML Manager's dire financial situation from Plaintiffs, all as set forth above.

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406. The false information and concealed information were material, in that they were sufficiently important to influence Plaintiffs' actions in deciding to take or refrain from taking action, including in the Bankruptcy Court, to adequately protect their interests.

407. Defendants knew that the information was false, and that the concealed information was material.

408. The concealment by these Defendants is tantamount to an affirmative statement of the nonexistence of the matter and thus constitutes a false representation of material fact that Defendants new was false when made.

409. Defendants intended that Plaintiffs act or refrain from acting based on the false information, and/or the concealment of material information, in the manner contemplated by Defendants.

410. Plaintiffs did not know the information was false nor that Defendants concealed material information.

411. Plaintiffs relied on the truth of the information, and/or took or refrained from taking certain actions and positions based on the concealment of material information.

412. Plaintiffs were justified in relying on the truth of the information and in taking or refraining from taking certain actions and positions based on the concealment of material information.

413. As a result, Plaintiffs were damaged.

414. Defendants' wrongful acts described herein were committed knowingly and intentionally by Defendants, including with intent to deprive Plaintiffs of their respective interests in their property rights and otherwise cause injury, and constitute despicable conduct which subjected Plaintiffs to unjust hardship in conscious disregard of their rights, so as to justify an award of exemplary and punitive damages against Defendants

415. Defendants are jointly and severally liable for all damages to the full extent permitted by law.

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COUNT FIVE

NEGLIGENT MISREPRESENTATION

(All Defendants)

416. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

417. In the alternative to Count Four, Defendants made negligent misrepresentations or omissions.

418. Defendants provided Plaintiffs with false, incorrect, or materially misleading information, or omitted or failed to disclose material information to Plaintiffs, including, without limitation, in *Newsletter #8*, all as set forth above.

419. Defendants intended that Plaintiffs rely on the false, incorrect, or materially misleading information, and/or that Plaintiffs take or refrain from taking certain actions and positions based on the material omissions of, or failure to disclose, relevant information.

420. Defendants provided the false, incorrect, or materially misleading information, or omitted or failed to disclose material information to Plaintiffs, for these improper purposes.

421. Defendants failed to exercise reasonable care or competence in obtaining or communicating the information, and/or in making material omissions or failing to disclose relevant information.

422. Plaintiffs relied on the information, and/or took or refrained from taking certain actions and positions based on the material omissions of, or failure to disclose, relevant information.

423. Plaintiffs were justified in relying on the information, and/or taking or refraining from taking certain actions and positions based on the material omissions of, or failure to disclose, relevant information.

424. As a result, Plaintiffs were damaged.

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425. Defendants are jointly and severally liable for all damages to the full extent permitted by law.

COUNT SIX

NONDISCLOSURE

(All Defendants)

426. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

427. Defendants had a duty to disclose all material facts and information relevant to Plaintiffs' property interests, over which ML Manager asserted exclusive control by virtue of its asserted agency power.

428. Despite such duty, Defendants failed to disclose the default of the Exit Financing, the existence of the Forbearance Agreement, ML Manager's dire financial situation, and Defendants' motives in seeking sales of Plaintiffs' properties.

429. As a result, Plaintiffs were damaged.

430. Defendants are jointly and severally liable for all damages to the full extent permitted by law.

COUNT SEVEN

CIVIL CONSPIRACY

(All Defendants)

431. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

432. Defendants agreed to a systematic strategy designed to conceal material information from Plaintiffs and the Bankruptcy Court and to keep ML Manager financially viable until after sufficient proceeds of "fire sales" could be raised to repay the Exit Financing under the secret Forbearance Agreement.

433. Defendants agreed to make false representations, fraudulently conceal material information, fail to disclose material information, and seek to convert Plaintiffs' property for their economic and professional benefit.

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434. Defendants' agreements were for an unlawful purpose or sought to accomplish a lawful purpose by unlawful means, all as set forth above.

435. As a result, Plaintiffs were damaged.

436. Defendants are jointly and severally liable for all damages to the full extent permitted by law.

COUNT EIGHT

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(ML Manager)

437. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

438. ML Manager acted in bad faith under the agreements that ML Manager contends are binding on Plaintiffs and that were allegedly assigned to ML Manager.

439. Armed with the declaratory judgment, ML Manager proceeded in bad faith under its asserted agreements by knowing that Plaintiffs would be deprived of knowledge of ML Manager's true financial condition and motive for engaging in "fire sales."

440. Defendants enforced the relevant agreements (to the extent they are applicable) knowing and intending that the Plaintiffs would be harmed through the forced liquidation of their property, thereby diminishing recoveries on their valuable property rights and thereby benefiting ML Manager, who is a borrower of the Exit Financing, and the other Defendants, who are financial beneficiaries of the ongoing operations of ML Manager.

441. Defendants enforced the agreements (to the extent they are applicable) in bad faith with knowledge that the real estate market was unfavorable and that the purchase price obtained did not maximize value for Plaintiffs.

442. ML Manager and Defendants proceeded to enforce the agreements (to the extent they are applicable) in bad faith based on ML Manager's undisclosed defaults under the Exit Financing and ML Manager's desire to either cure those defaults or repay the Exit Financing.

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443. Defendants failed to explore workout or restructuring alternatives with Plaintiffs that would have allowed Plaintiffs to retain their ownership interest in the subject property on economic terms materially better than what was achieved by ML Manager through the "fire sale" process.

444. The acts of ML Manager were inconsistent with Plaintiffs' justifiable expectations under the agreements (to the extent they are applicable).

445. ML Manager breached the implied covenant of good faith and fair dealing by committing acts to prevent Plaintiffs from receiving the benefits and entitlements of their agreements (to the extent they are applicable) with Mortgages Ltd. that were allegedly assigned to ML Manager.

446. As a result, Plaintiffs were damaged.

447. ML Manager is liable for all damages to the full extent permitted by law.

COUNT NINE

AIDING AND ABETTING

(All Defendants except ML Manager)

448. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

449. Defendants, and each of them, aided and abetted ML Manager in committing the same breaches and wrongful conduct described in Counts One, Three, Four, and Eight, above.

450. ML Manager breached its fiduciary duties to Plaintiffs and caused injury to Plaintiffs.

451. ML Manager wrongfully exercised dominion or control over funds belonging to Plaintiffs and interfered with Plaintiffs' ability to possess the undivided interests in REO Property and the funds to which they are entitled.

452. ML Manager knowingly provided Plaintiffs with false information, or knowingly concealed information from Plaintiffs, including, without limitation, in *Newsletter #8*, all as set forth above. ML Manger also knowingly concealed the defaults of

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the Exit Financing, the existence of the Forbearance Agreement, and ML Manager's dire financial situation from Plaintiffs, all as set forth above.

453. Defendants knew the conduct of ML Manager was wrongful.

454. Defendants substantially assisted or encouraged ML Manager in the achievement of its breaches of fiduciary duty.

455. Defendants, and each of them, aided and abetted ML Manager in committing the same breaches of fiduciary duty, misrepresentation, fraudulent concealment, conversion, and wrongful conduct described above.

456. Defendants are jointly and severally liable for aiding and abetting ML Manager to the full extent permitted by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that they be awarded judgment against Defendants, jointly and severally, as follows:

(a) that judgment be rendered for Plaintiffs against Defendants for compensatory damages in such amounts as are shown at the time of trial or hearing of the case;

(b) that judgment be rendered for Plaintiffs and against Defendants for punitive damages in such amounts as are determined at trial or hearing of the case;

(c) that judgment be rendered for the Plaintiffs and against Defendants for pre-judgment interest and post-judgment interest as allowed by law;

(d) that judgment be rendered for the Plaintiffs and against Defendants for attorneys' fees and costs as allowed by law; and

(e) that Plaintiffs have all other and further relief as the Court deems just and equitable.

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. . .

. . .

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues.

DATED this 28th day of September, 2012.

BRYAN CAVE LLP

By _____

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Robert J. Miller
Bryce A. Suzuki
Two N. Central Avenue, Suite 2200
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Attorneys for Plaintiffs

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EXHIBIT "1"

INTER-BORROWER AGREEMENT

This Agreement (the "Agreement") is made and entered into as of June 11, 2009, by and between: (i) Kevin O'Halloran, not individually but solely as trustee ("Liquidating Trustee") of the ML Liquidating Trust established under the ML Liquidating Trust Agreement dated June 11, 2009 ("Liquidating Trust Agreement"); (ii) ML Manager, LLC, an Arizona limited liability company ("ML Manager"); and (iii) each of the Loan LLCs (defined herein) who have executed this Agreement below (individually, a "Borrower" and collectively the "Borrowers").

RECITALS

A. Debtor was the debtor in a Chapter 11 Proceeding ("Chapter 11 Case") entitled In re: Mortgages Ltd., Debtor, Case No. 2:08-bk-07465-RJH ("Bankruptcy Court") and pursuant to the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009, in the Chapter 11 Case which was confirmed by the Court on May 20, 2009 ("Plan") and became effective on June __, 2009 ("Effective Date"), the Debtor was (i) reorganized with the Liquidating Trustee as the sole shareholder; (ii) renamed as ML Servicing Co., Inc.; (iii) required to execute and deliver the Liquidating Trust Agreement; and (iv) transfer certain Non-Loan Assets to the Trustee to be held and administered in accordance with the terms of Liquidating Trust (or if the Liquidating Trustee so elects with respect to the Debtor's REO or other assets to have the Debtor continue to be hold such assets for the sole benefit of the Trust and which respect to which the Liquidating Trustee will cause the Debtor to execute any documents required to sell, transfer or encumber such assets).

B. Under the Plan, each of the Loan LLCs executing this Agreement is (i) authorized to be formed and to own and hold through transfers approved by the Plan the fractional interests in the ML Loans and ML Loan Documents to be transferred to them under the Plan and (ii) to become a member of ML Manager, which is the sole manager of each of the Loan LLCs.

C. The Plan contemplates Exit Financing by a lender ("Lender") to consummate the Plan through a multiple advance loan in an aggregate amount of up to $20,000,000 ("Loan") to pay: (i) for certain Allowed Claims in accordance with the Plan; (ii) for certain operating expenses and costs of the Liquidating Trustee in selling or pursuing the Non-Loan Assets; and (iii) certain expenses of the Loan LLCs and the ML Manager in servicing the ML Loans held by the Loan LLCs; and

D. The Borrowers have entered into the Loan with Lender, and have executed the Loan Documents to Lender. Notwithstanding any term or provision to the contrary in this Agreement, each Borrower is, and shall remain, jointly and severally liable to the Lender for repayment of the Loan and all other obligations under the Loan Documents.

E. Each Borrower will borrow differing amounts under the Loan at different times and repay its share of the Loan from different sources. This Agreement is the Inter-

Borrower Agreement contemplated under the Plan. Pursuant to this Agreement, the Borrowers are agreeing to (among other things) the manner in which (i) Advances will be requested and made under the Loan; and (ii) all obligations due to Lender under the Loan will be allocated among and paid by, the various Borrowers so that each Borrower is only paying its Allocated Loan Share.

F. The Bankruptcy Court has approved this Agreement, and each of the Borrowers is, and shall be bound, by the terms of this Agreement upon execution of this Agreement by all of the Parties hereto.

OPERATIVE PROVISIONS

1. Definitions. The following capitalized terms shall have the meanings set forth below, with any capitalized terms used but not defined herein to have the meanings set forth in the Plan.

"Advance" means any advance of funds made by Lender under the Loan.

"Advance Request" means any request for an Advance under the Loan..

"Agency Agreements" means the existing Servicing Agent Agreements or other written agreements between (i) the Debtor and the holders of fractional interests in the ML Loans for the servicing of such ML Loans; (ii) the Debtor, the ML Borrowers and Mortgages, Ltd., as lender, for the servicing of the ML Loans with the ML Borrower.

"Allocated Loan Costs" means those Loan Costs which are not paid from an Advance of Loan proceeds and included in the Allocated Loan Shares which are to be allocated among the Members in accordance with Section 2.3 of this Agreement.

"Allocated Loan Share" at any point in time means the ratio of the amount of the aggregate cumulative borrowings under the Loan allocated to (i) the Liquidating Trustee minus any repayments made on the Loan from funds provided by the Liquidating Trustee and (ii) the Loan LLC Group minus any repayments made on the Loan from funds provided by the Loan LLC Group to (iii) the then total outstanding balance under the Loan. To the extent that the Non-Conveying ML Note Holders are required under the Agency Agreements or otherwise to pay a share of the Loan or costs funded by the Loan proceeds and such amounts are actually collected the amount thereof shall be deducted from the Allocated Loan Share of the Loan LLC Group.

"Allowed" with respect to Claims shall have the meaning set forth in Paragraph 2.4 of the Plan.

"Borrowers" shall mean the Liquidating Trustee, the ML Manager and each of the Loan LLCs, jointly and severally.

"Borrower Causes of Action" shall mean those Causes of Action and Avoidance Actions which relate to the ML Notes and are transferred to the Loan LLCs under the Plan.

"Causes of Action" shall mean the Causes of Action as defined in Paragraph 2.17 of the Plan.

"Claim" shall have the meaning set forth in Paragraph 2.19 of the Plan.

"Claims Required to be Paid" means Allowed Claims under Class 1 (Priority Non-Tax Claims), Class 2 (Secured Tax Claims), Class 3 (Stratera Claims), Class 4 (Artemis Secured Claim), Class 5 (Arizona Bank Secured Claim); and Allowed Administrative Claims and Priority Tax Claims and other items required to be paid by the Plan.

"Disposition Incentive Payment" means incentive payments as defined under the Loan Agreement.

"Effective Date" means the effective date of the Plan.

"Extension Fee" means any extension fee due to the Lender under the Loan Agreement.

"Final Settlement" means the date after the Loan has been paid in full upon which the Liquidating Trustee and the ML Manager determine that the Liquidating Trust and the Loan LLCs have completed practical realization on their respective assets, but not later than the termination date of the Liquidating Trust, at which time the Liquidating Trust and the Loan LLCs should settle up any Overpayment or Underpayment of their Allocated Loan Share or Allocated Loan Costs..

"Liquidating Trust" shall mean the trust defined in Paragraph 2.45 of the Plan.

"Liquidating Trust Agreement" means the trust agreement defined in Paragraph 2.47 of the Plan.

"Liquidating Trustee" means Kevin O'Halloran or any properly appointed successor trustee serving under the Liquidating Trust Agreement.

"Liquidating Trust Beneficiary" means any beneficiary of the Liquidating Trust.

"Liquidating Trustee Costs and Expenses" means the sum of any and all costs and expenses incurred by the Liquidating Trust in administering the Liquidating Trust, including, without limitation: (i) the costs and expenses to administer the Liquidating Trust and Trust Board, including legal, accounting and consultant costs, salaries and employee costs, insurance costs for liability insurance and property insurance on the REO Property owned by the Liquidating Trust, property taxes, repairs and maintenance costs with respect to the REO Property, net costs of operating the ML Servicing Co., Inc., and all other costs incurred in administering the tangible property owned by the liquidating Trust; (ii) all costs and expenses incurred by the Liquidating Trust in conducting

investigations of potential Causes of Action and Avoidance Actions owned by the Liquidating Trust and prosecuting actions against potential defendants at the trial level, in bankruptcy court proceedings and on appeal and costs and expenses incurred in achieving settlements and attempting to collect upon any judgments obtained; (iii) Servicer charges incurred in providing litigation support services to the Liquidating Trust and counsel employed by the Liquidating Trust; and (iv) litigation costs and expenses to defend the Loan LLCs and Members of Loan LLCs who are sued by ML Borrowers under the ML Loans for damages for failure of ML to fund commitments or other breaches of commitments to such ML Borrowers.

"Liquidating Trustee Deed of Trust" shall mean the Deed of Trust, Assignment of Rents and Security Agreement executed and delivered by the Debtor at the direction of the Liquidating Trustee in favor of Lender creating a lien or security interest in all REO Property owned by the Debtor.

"Liquidating Trustee Reserves" shall mean amounts determined in the reasonable discretion of the Liquidating Trustee to be withheld from amounts otherwise available for distribution to beneficiaries of the Liquidating Trust to ensure that the Liquidating Trust will be in a position to pay its Allocable Loan Share and other costs and expenses at Final Settlement.

"Loan" means the Exit Financing approved by the Bankruptcy Court pursuant to the Confirmation Order.

"Loan Agreement" means the Loan Agreement enter into between the Borrowers and the Lender.

"Loan Costs" means amounts paid to Lender for Origination Fees, Extension Fees, Disposition Incentive Payments, and Repayment Incentive Fees as those terms are defined in the Loan Agreement.

"Loan Documents" means the following documents to be entered into with the Lender by the Borrowers: the Loan Agreement; the Multiple Advance Promissory Note; the Collateral Assignment by the Loan LLCs of their interest in each ML Note and the ML Deed of Trust securing the ML Notes, a Control Agreement with the servicer holding the ML Notes, a Collateral Assignment of Borrower Causes of Action and ML Charges owned by the Loan LLCs, the Liquidating Trustee Deed of Trust, the Collateral Assignment by the Liquidating Trust of the Causes of Action which belong to the Liquidating Trustee and all other instruments, documents and agreements executed in connection herewith, referred to herein, or contemplated hereby.

"Loan LLC" means a Loan LLC formed under the Plan and "Loan LLCs" mean collectively all of the Loan LLCs from under the Plan.

"Loan LLC Group" means the Loan LLCs and the ML Manager.

"Loan LLC Reserves" shall mean amounts determined in the reasonable discretion of the ML Manager to be withheld from amounts otherwise available for distribution to Members of a Loan LLC to ensure that the Loan LLC will be in a position to pay its Allocable Loan Share and other costs and expenses at Final Settlement.

"Loan LLC Separate Costs" means costs and expenses which may be incurred by a Loan LLC other than Servicing Costs, Allocated Loan Costs and allocated portions of the Allowed Claims, which costs and expenses may include, without limitation, payment of real property taxes and insurance; repair and maintenance expenses on REO Property owned by a Loan LLC, fees of asset managers and consultants engaged for the Loan LLC, foreclosure costs on REO Property, costs and expenses incurred by the Loan LLC in conducting investigations of potential Causes of Action and Avoidance Actions owned by the Loan LLC and prosecuting actions against potential defendants at the trial level, in bankruptcy court proceeding and on appeal and costs incurred in achieving settlements and attempting to collect upon any judgments obtained, and litigation costs with a ML Borrower under an ML Note owned by the Loan LLC other than defending claims made by such ML Borrowers against individual members of a Loan LLC, and all other costs and expenses not specifically agreed to be paid from Loan Proceeds.

"Member" means each person admitted as a member of a Loan LLC.

"ML Charges" means interest spread, fees, extension fees, default interest and other interest, fees and charges arising out of or related to the ML Loans or ML Loan Documents or the servicing rights or Agency Agreements or Operating Agreements of the MP Funds, which had formerly been collected by the Debtor but which are transferred to the Loan LLCs under the Plan.

"ML Note(s)" means the promissory notes defined in Paragraph 2.54 of the Plan which will be transferred to separate Loan LLCs on the Effective Date pursuant to the Plan.

"ML Deed of Trust(s)" means the deeds of trust and other security documents securing the ML Notes defined under Paragraph 2.50 of the Plan, which will be transferred to the respective separate Loan LLCs on the Effective Date pursuant to the Plan.

"ML Loan Documents" means all loan documents defined in Paragraph 2.51 of the Plan.

"Net Disposition Proceeds" means: (i) the gross sale price from a sale of all or a part of an ML Note, REO Property, or any real or tangible personal property owned by the Liquidating Trust (each, a Disposition") less in the case of such sale: (a) all costs and expenses, including, without limitation, commissions, legal fees, title costs, appraisal fees and other fees and costs, incurred in connection with such sale or preparing the property for sale; (b) any encumbrances or liens on the property sold which are required to be paid off as part of the sale or which are assumed by the buyer and deducted from the sales

price; (c) any other items which under the sales agreement are to be deducted from or netted against the gross sales price , including, without limitation, pro rations, security deposits, reserves to be held by the buyer, title company or other third party for repairs or to provide a fund for damages in the event of any misrepresentations; and (d) the face amount of any promissory note, deferred payment amount or other evidence of indebtedness accepted by the seller in connection with the sale until such amounts are actually received by seller; (ii) amounts received in full or partial payment of principal on an ML Note or in connection with a modification or settlement of all or portions of the principal of an ML Note, less any costs, deductions or liens paid by Borrower in order to clear title and release the Loan Documents; and (iii) amounts received by the Liquidating Trust or Loan LLC from a Recovery by settlement or judgment collection (excluding interest on such judgment amount paid at the same time) on Liquidating Trustee Causes of Action and Loan LLC Causes of Action, respectively, less all unrecovered out –of-pocket costs and expenses not paid with proceeds from an Advance under the Loan and, incurred or accrued, in the aggregate, by the entity making the Recovery of pursuing all Causes of Action then being pursued by such entity at the time such Recovery is obtained and all attorneys fees (regular or contingent), court costs, expert witness fees, accountant's fees, costs of appeal, costs incurred in collecting a judgment, costs and fees incurred in any bankruptcy of a defendant in any such Cause of Action resulting in such Recovery, and in the case of either (i) or (ii) above a deduction for Permitted Reserves as determined by the ML Manager, and in the case of the Liquidating Trustee or Loan LLC under (iii) above, Permitted Reserves to be held to pay anticipated futures costs and expenses until released from such reserves, and any Repayment Incentive Fees which are payable within the next sixty days after receipt of such funds. In no event will the exclusions from the gross sale price described in section (i)(a) above, exceed the reasonable, customary, commercially typical amount payable by a seller of similar property in the county were the property is located, or be payable to Borrower or an affiliate of Borrower without Lender's prior, express consent.

"Non-Conveying ML Note Holders" shall mean those holders of fractional interests in ML Notes who have elected not to transfer their fractional interest in the ML Notes and ML Loan Documents to a Loan LLC, as provided in the Plan.

"Non-Loan Assets" means the assets as defined in Paragraph 2.58 of the Plan.

"Permitted Reserves" shall mean amounts to be deducted in arriving at Net Disposition Proceeds which shall be no more than ten percent (10%) of the gross sale price or Recovery on a particular Disposition and shall not exceed a cumulative, aggregate, non-revolving total of Five Million Dollars ($5,000,000), which reserve total may be allocated among dispositions by the Liquidating Trustee and the Loan LLCs as they may determine.

"Professional Fees" are the Professional Fees as defined under Paragraph 2.73 of the Plan..

"Recovery" means the gross cash or non-cash consideration received by the Liquidating Trust or the Loan LLC by settlement or judgment collection, on Liquidating Trustee Causes of Action and Loan LLC Causes of Action, respectively.

"REO Property" means any real property to which the Liquidating Trust presently has title or to which a Loan LLC receives title by reason of a judicial or non-judicial foreclosure of a ML Deed of Trust, a deed-in-lieu of foreclosure under a ML Deed of Trust or payment on an ML Note in kind consisting of real or personal property.

"Servicer" shall mean ML Servicing Co., Inc (formerly Mortgages, Ltd) or any other entity engaged to service the ML Loans.

"Servicing Expenses" means the actual expenses of engaging a servicer to service the ML Loans from and after the Effective Date, including all normal and customary services that are normally by loan servicers, including but not limited to collecting payments, fees and other charges from ML Borrowers, maintaining accounting records with respect to the ML Loans, sending notices to ML Borrowers, paying taxes and insurance from impounds; confirming insurance coverage; making distributions of principal and interest to holders of interest in the ML Notes, providing custody services to hold the ML Notes and ML Loan Documents as agent for the benefit of the holders of the interests in the ML Notes, providing accountings and year end tax statements to holders of the ML Notes, answering inquiries from holders of the ML Notes or from ML Borrowers with respect to the ML Loans, and other services reasonable requested by the ML Manager to be provided to the holders of the ML Notes but excluding from Servicing Expenses those amounts charged to and collected from the Non-Conveying ML Note Holders for servicing under the Agency Agreements.

2. Advances under the Loan.

2.1 Advances. All Advances under the Loan will be initiated by a Advance Request signed by the Liquidating Trustee on behalf of the Liquidating Trust and the ML Manager on behalf of the Loan LLCs, and the Advance Request will request disbursement of a specific sum to each of the Liquidating Trustee and the ML Manager on behalf of the Loan LLCs.

2.2 Allocation of Loan Advances. Each Loan Advance will be specifically allocated and documented between the Liquidating Trustee and Loan LLC Group at the time advanced or as soon thereafter as possible based upon the purpose for which the money is drawn. The funds allocated to each will be deposited in accounts held by the Liquidating Trustee and the ML Manager on behalf of the Loan LLC Group. Advances under the Loan may be made to the Liquidating Trustee solely for the purpose of paying Claims Required to be Paid and Liquidating Trustee Costs and Expenses and such amounts advanced will be allocated to and become part of the Liquidating Trustee's Allocated Loan Share. Advances under the Loan may be made to the Loan LLC Group solely to pay for Servicing Costs and the Loan LLC Group's allocated portion of

Professional Fees and Allocated Loan Costs, operating costs of the ML Manager and such amounts will be allocated to and become part of the Loan LLC Group's Allocated Loan Share. No amounts will be borrowed by the Loan LLC Group to pay any Loan LLC Separate Costs.

2.3 Allocation of Certain Costs and Expenses. The Liquidating Trustee and the ML Manager shall agree upon a (i) preliminary dollar allocation of all Professional Fees between the Liquidating Trustee and Loan LLC Group, with the Loan LLC Group's dollar share being based upon best estimates of Professional Fees that were expended solely to defend the holders of Fractional Interests from suits and other actions by ML Borrowers based upon breaches by ML of the obligation to fund under ML's loan commitments or ML Loan Documents, which preliminary allocation will be revised when the Professional Fees are approved by the Bankruptcy Court, and (ii) a percentage allocation of Origination Fees and other Loan closing costs based upon the amount of funds borrowed by each on the date of the first Advance. Interest payments, Extension Fees, Repayment Incentive Payments and Disposition Incentive Payments payment made under the Loan will be allocated between the Liquidating Trustee and the LLC Group in accordance with their then Allocated Loan Share at the time of such payment. To the extent that the Non-Conveying ML Note Holders are required to pay and do pay their fair share of the Loan Costs and other costs funded with Loan proceeds under the Agency Agreements, the amount so paid shall reduce the amount to be allocated among the Loan LLCs for repayment purposes. The Liquidating Trustee and the ML Manager shall jointly file with the Bankruptcy Court a schedule of allocated items which are determined from time to time.

2.4 Responsibility to Repay Lender. The Liquidating Trustee and Loan LLC Group will be responsible, as between themselves, to repay to the Lender its then Allocable Loan Share at each point in time.

2.5 Overpayments and Repayments. To the extent that either of the Liquidating Trustee or the Loan LLC Group shall pay more than their Allocable Loan Share, or their share of Allocated Loan Costs, to Lender ("Overpaying Party") because of the requirements of the Loan Documents or otherwise, the overpayment ("Overpayment") shall be accounted for as a debt due to the Overpaying Party for underpayment ("Underpayment") from the other party ("Underpaying Party") which shall bear interest until repaid at the same rate of interest then borne by the Loan. To the extent that the Loan LLC Group is the Underpaying Party, the Loan LLCs will allocate the underpayment among the Loan LLCs in the ratio of their then Allocated Loan Shares to the total Allocated Loan Share of all Loan LLCs. or in the case of Underpayment of Allocated Loan Costs which are not paid from an Advance of Loan proceeds on the basis of the ratio of their Allocated Loan Costs under Section 2.3 or other method deemed fair by the ML Manager. In the event that the Underpaying Party is the Liquidating Trust or the Loan LLC Group, to the extent that funds are available to the Liquidating Trust if the Underpaying Party or from a Loan LLC if the Loan LLC Group is the Underpaying Party, from Net Proceeds from Disposition by such Underpaying Party, the funds shall first be used to pay off such Underpaying Party's share of the Underpayment owed based

upon the Liquidating Trust or Loan LLC's Allocable Loan Share of Overpayment debt at the time the Overpayment was made, or in the case of Allocated Loan Costs in accordance with the ratio of Allocated Loan Costs under Section 2.3 or other method deemed fair by the ML Manager, prior to making any distributions under the Liquidating Trust to a Liquidating Trust Beneficiary or to the Members of the Loan LLC.

2.6 Accounting for ML Charges. The ML Charges received by the ML Manager shall be accounted for as belonging to the Loan LLC which owns the ML Loan which generated the ML Charge but the ML Manager may collect the ML Charges and use such funds to pay for Servicing Costs to the Servicer, to repay the Loan LLC Group's Allocated Loan Share and the other Loan LLCs shall repay their portion of the ML Charges so used to the Loan LLC generating the ML Charges based upon the ratio of such other Loan LLCs Allocable Loan Shares at the time of such payments of funds from such ML Charges.

3. Allocations Among the Loan LLCs.

3.1 Allocations of Certain Costs and Fees. Allocated Loan Costs and allocated portions of Professional Fees to be borne by the Loan LLCs will be allocated among them in the ratio of the principal amounts of their ML Notes on the date of filling of the bankruptcy by the Debtor. Loan proceeds drawn by the Loan LLCs will only be used for the purposes specified under Section 2.3 above and will not be used for Loan LLC Separate Costs.

3.2 Allocation of Servicing Costs. Servicing Costs will be allocated among the Loan LLCs by the ML Manager on a basis which it considers fair and reasonable taking into account which loans require more or less servicing services. A Loan LLC that has foreclosed upon a property and now has no ML Loan to service shall not be allocated full Servicing Costs from and after the date of foreclosure but shall pay a fair amount as determined by the ML Manager for ongoing remaining duties like tax payments, insurance payments, year end accounting and tax statement preparation and any distributions on funds to the members.

3.3 Uses of ML Charges and Repayment Allocation. Any ML Charges shall be allocated to the Loan LLC which generates the ML Charges but may be used to pay Servicing Costs or to pay the Loan LLC Group's Allocated Loan Share. To the extent used to pay Servicing Costs, such payments will be allocated for repayment among the other Loan LLCs on a basis that the ML Manager considers fair taking into account which ML Loans require more or less servicing services, and to the extent used to pay the Loan LLC Group's Allocated Loan Share, the amount will be considered an Overpayment to be allocated for repayment purposes among all of the other Loan LLCs on the basis of the ratio of their individual Allocated Loan Share to the total Allocated Loan Shares of all other Loan LLCs on the payment date, and in each case repaid to the Loan LLC making the Overpayment first prior to distributions to Members of the other Loan LLCs when funds are available for distribution to members of each of the Loan LLCs obligated to made such repayment.

3.4 Liability for Overpayments. Liability for repayment to one Loan LLC from the other Loan LLCs for any Net Proceeds from Dispositions paid to the Lender on a disposition by a Loan LLC, which shall be an Overpayment shall be allocated among all of the other LLCs in the ratio of their individual Allocated Loan Shares on date of the payment to the Lender to the total of the Allocated Loan Shares of all of the other Loan LLCs on the date of payment. Each Loan LLC shall hold back Loan LLC Reserves prior to distribution to its Members of an amount estimated to be sufficient in the ML Manager's judgment to repay any repayment obligations of such Loan LLC to the other Loan LLCs or the Liquidating Trust when the Final Settlement is made between the Loan LLCs and the Liquidating Trust, and to pay such Loan LLCs other costs and expenses.

3.5 Inability of Loan LLC to Repay Obligations. In the event that one or more Loan LLCs are not able, in the reasonable judgment of the ML Manager, to recover from their ML Notes or ML Charges sufficient funds to repay their obligations to other Loan LLCs for repayment of Overpayments under Section 3.4, or other amounts owed to other Loan LLCs or to repay their portion of the Allocated Loan Costs and Allocated Professional Fees under Section 3.1 above or to pay their allocated Servicing Costs under Section 3.2 above, the ML Manager shall reallocate such amounts which cannot be repaid to the other Loan LLCs using the other Loan LLCs ratio of the principal amounts of the ML Notes which they held on the date of filing of the bankruptcy by Debtor in the case of items in Sections 3.1 and 3.4 above, and in the case of Section 3.2 above in a fashion that the ML Manager considers reasonable taking into account the servicing needs of each Loan LLCs as indicated in Section 3.2 above.

4. Representations and Warranties. Each Borrower represents and warranties on its behalf only as follows.

4.1 The execution and delivery of the this Agreement and the Loan Documents by such Borrower and the consummation of all the transactions contemplated hereby create legal, valid and binding obligations of such Borrower subject to bankruptcy or other similar laws affecting creditor's rights generally and to general principles of equity.

4.2 Such Borrower is not required pursuant to any law, regulation or contractual or other obligation, to obtain the consent, approval or authorization of any person or entity, including any governmental authority, to validly enter into, execute and deliver this Agreement and the Loan Documents and perform the acts and obligations required or contemplated thereby.

4.3 Each such Borrower has been duly organized and is validly existing under the law of the jurisdiction of its organization. Such Borrower entity has the full power and authority to own the Collateral owned by it and conduct its business as now being conducted and to enter into and consummate the transactions contemplated by this Agreement.

5. Covenants. Each Borrower covenants on its behalf only as follows.

5.1 Such Borrower shall expend the Loan proceeds for the purposes set forth in this Agreement.

5.2 Such Borrower shall at all times preserve and keep in full force and effect its existence as a Arizona trust in the case of the Liquidating Trust and as a limited liability company in the case of the Loan LLCs, and shall not allow or permit the dissolution and winding up of such Borrower entity prior to the Final Settlement of Allocated Loan Shares are required by this Agreement.

5.3 Such Borrower shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, noncompliance with which would materially adversely affect the business, properties, assets, operations or condition (financial or otherwise) of such Borrower.

5.4 Such Borrower shall comply with all of the covenants and other requirements of it under the Loan and Loan Documents.

6. Default. In the event of a default by a Borrower entity under this Agreement:

6.1 Default by Liquidating Trust. In the case of a default by the Liquidating Trustee or Liquidating Trust, the ML Manager may take such action as it may deem appropriate with the consent of its Board of Managers to cause the Liquidating Trustee or Liquidating Trust to comply with the terms of this Agreement.

6.2 Default by the Loan LLC Group or a Loan LLC. In the case of a default by the Loan LLC Group or an individual Loan LLC, the Liquidating Trustee in the case of the Loan LLC Group and the ML Manager in the case of an individual Loan LLC may take such action as it may deem appropriate with the consent of the Trust Board in the case of the Liquidating Trustee and the Board of Managers in the case of an individual Loan LLC.

6.3 Default by ML Manager. In the case of a default by the ML Manager, the Liquidating Trustee may take such action as it may deem appropriate with the consent of the Trust Board to cause the ML Manager to comply with the terms of this Agreement.

7. Jurisdiction; Venue; Service of Process.

Subject to the provisions of Section 8.4 hereof, each Borrower hereby irrevocably submits to the jurisdiction of any Arizona or United States Federal court sitting in Arizona over any action or proceeding arising out of or relating to this Agreement and the Loan Documents, and each Borrower hereby irrevocably agrees that all claims in respect of such

action or proceeding may be heard and determined in such Arizona or Federal court. Each Borrower irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Borrower at Borrower's address specified herein. Each Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Borrower further waives any objection to venue in such Arizona on the basis of forum non conveniens. Each Borrower further agrees that any action or proceeding brought against the other shall be brought only in Arizona or United States Federal court sitting in Maricopa County. Nothing contained herein shall affect the right of a Borrower entity to serve legal process in any other manner permitted by law.

8. Miscellaneous.

8.1 Loan Documents Part of the Agreement. The Loan Documents shall be deemed to incorporated into this Agreement. In the event of a conflict between any of the provisions of this Agreement and any provision of any of the Loan Documents, the provisions of this Agreement shall control. In the even of a conflict between this Agreement and the Plan, the Provisions of this Agreement shall control as between the parties to this Agreement.

8.2 No Other Parties to Benefit. This Agreement is made for the sole benefit of Borrower who are parties hereto and their successors and assigns, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiary or otherwise.

8.3 Notices. All notices provided for herein shall be hand-delivered or sent by certified or registered mail, return receipt requested, addressed to all parties hereto at the address designated for each party below or at such other address as the party who is to receive such notice may designate in writing:

Kevin O'Halloran, Liquidating Trustee
100 Peachtree Street, Suite 1475
Atlanta, Georgia 30303

Each Loan LLC and ML Manager
c/o Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

Notice shall be deemed completed upon: (i) such hand delivery or (ii) two (2) days after the deposit of same in a letter box or other means provided for the posting of mail, addressed to the party and with the proper amount of postage affixed thereto. Except as otherwise herein provided, actual receipt of notice shall not be required to effect notice hereunder.

8.4 Governing Law; Construction. This Agreement and the rights and duties of the parties hereunder will be governed by and construed, enforced and performed in accordance with the law of the State of Arizona, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction. The Bankruptcy Court shall have the exclusive jurisdiction over this Agreement and that any disputes arising out of or related in any manner to this Agreement shall be properly brought only before the Bankruptcy Court. If and to the extent that the Debtor's bankruptcy case is closed or dismissed or the Bankruptcy Court abstains from or otherwise declines jurisdiction, then the courts of the State of Arizona and the United States District Court, Arizona (located in Phoenix, Arizona) shall have exclusive jurisdiction over this Agreement and any such disputes. Each party to this Agreement irrevocably waives any and all right to trial by jury in any proceeding arising out of or relating to this Agreement.

8.5 Modification and Waiver. No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the parties hereto.

8.6 Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of any of this Agreement until all of Borrower's obligations under this Agreement and the Loan Documents have been paid in full and the Liquidating Trust and each of the Loan LLCs have been dissolved in accordance with non-bankruptcy law..

8.7 Headings. All sections and descriptive headings of sections in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

8.8 Severability; Integration; Time of the Essence. Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement supersedes all prior agreements and constitute the entire agreement between the parties with respect to the subject matter hereof. Time is of the essence hereof.

8.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

8.10 Assignability. No Borrower entity shall assign this Agreement or any part of any payment to be made hereunder without the consent of the Liquidating Trustee and the ML Manager which may be given or withheld in their sole and absolute discretion.

8.11 No Joint Venture. It is expressly understood and agreed by each Borrower that by becoming joint borrowers under the Loan that such Borrower does not become partners or joint ventures with each other. It is the express intention of the parties hereto that for all purposes the relationship between such Borrowers be deemed to be that of

joint debtors under the Loan. In this regard, the parties acknowledge that it is not now, nor has it ever been, their intent to be partners or joint venturers as a result of the Loan or this Agreement.

8.12 Costs and Expenses. Should any proceedings or litigation be commenced between any of the parties hereto concerning any dispute under this Agreement, or the rights and duties of the parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees and costs.

8.13 Exhibits. All Exhibits attached to this Agreement are fully incorporated herein and are made part of the covenants of this Agreement whether or not the Exhibits are executed by any or all of the parties.

8.14 Incorporation of Recitals. The prefatory language and Recitals made and stated hereinabove are hereby incorporated by reference into, and made a part of, this Agreement.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Each of the Arizona limited liability companies listed on Exhibit A attached hereto And incorporated herein by reference.

By: ML Manager, LLC, an Arizona corporation, its Manager

By: _____
Its: Authorized Manager

ML Manager, LLC, an
Arizona limited liability company
By: _____
Its: Authorized Manager

_____
Kevin O'Halloran, not individually but solely as Trustee of the ML Liquidating Trust under Liquidating Trust Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Each of the Arizona limited liability companies listed on Exhibit A attached hereto And incorporated herein by reference.

By: ML Manager, LLC, an Arizona corporation, its Manager

By:_____
Its: Authorized Manager

ML Manager, LLC, an
Arizona limited liability company

By: _____
Its: Authorized Manager

Kevin O'Halloran, not individually but solely as Trustee of the ML Liquidating Trust under Liquidating Trust Agreement

Exhibit A
List of Loan LLCs

300 EC Loan LLC
CS Loan LLC
MK I Loan LLC
MK II Loan LLC
Nocit Loan LLC
Citno Loan LLC
44 CP I Loan LLC
ABCDW I Loan LLC
Osborn III Loan LLC
44 CP II Loan LLC
PPP Loan LLC
Bison Loan LLC
FP IV Loan LLC
CP Loan LLC
ZDC I Loan LLC
AZ CL Loan LLC
RG I Loan LLC
VCB Loan LLC
SOJ Loan LLC
ABCDW II Loan LLC
VP I Loan LLC
ZDC II Loan LLC
Centerpoint II Loan LLC
ZDC III Loan LLC
RRE I Loan LLC
VP II Loan LLC
HH Loan LLC
RLD I Loan LLC

MWP Loan LLC

C&M Loan LLC

U&A Loan LLC

RG II Loan LLC

PDG LA Loan LLC

ASA XVI Loan LLC

VF I Loan LLC

RLD II Loan LLC

4633 VB Loan LLC

MCKIN Loan LLC

Metro Loan LLC

Citlo Loan LLC

NRDP Loan LLC

CGSR Loan LLC

ABCDW III Loan LLC

TLDP Loan LLC

ASA IX Loan LLC

70 SP Loan LLC

ZDC IV Loan LLC

Centerpoint I Loan LLC

EXHIBIT "2"

Robert J. Miller
Direct: 602-364-7043
rjmiller@bryancave.com

February 9, 2010

VIA E-MAIL AND U.S. MAIL

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

Re: Mortgages Ltd. ("ML")

Dear Keith:

As you know, this firm represents the group of investors commonly referred to as the Rev Op Group. Your firm's client is the ML Manager LLC ("ML Manager"). Now that the dust has settled on the ML Manager's attempt to remove Bill Hawkins, the Rev Op Group's designee, from the board of the ML Manager, the Rev Op Group needs to make progress on the issues set forth in this letter. Frankly, our hope is that the ML board members and its counsel are willing to put the past behind them so that these issues can be handled in a business-like and productive manner.

As a threshold matter, given the way the ML Manager has attacked both the Rev Op Group members and its board designee, Mr. Hawkins, in pleadings filed with the Court, we believe it is important to pause and reinforce key legal principles the ML Manager and its counsel need to keep in mind in the future. The ML Manager contends it is the agent of the Rev Op Group members. As you know, we disagree with that contention.

Given that the ML Manager takes the position it is the agent of my clients, however, the ML Manager needs to abide by its fiduciary duty to my clients with respect to any decision it makes that impacts my clients – through either action or inaction, directly or indirectly. As you know, the law is very clear in this area.

By definition, agency "is the fiduciary relationship" between principal and agent. Restatement (Third) of Agency § 1.01 (2006). Agents have a fiduciary duty to the principal to act loyally "in all matters connected with the agency relationship." *Id.* § 8.01. *See Musselman v. Southwinds Realty, Inc.*, 704 P.2d 814, 816, 146 Ariz. 173, 175 (Ariz. App. Div. 2 1984). Equally, agents have a fiduciary duty "to act with the care, competence, and diligence normally exercised by agents in similar circumstances." *Id.* § 8.08. Chapter 8 of the Restatement outlines other fiduciary duties, such as the duty of good conduct, duty to provide accounting, and duty to provide information. *See id.* §§ 8.10, 8.11, 8.12.

With these legal principles in mind, the Rev Op Group requests that the ML Manager address all of the issues set forth below. Hopefully, the ML Manager and your firm

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Washington, DC
St. Louis

will address these issues in a prompt and fair fashion that will result in less heartburn and litigation expense for everyone.

Demand For An Accounting And Information

As noted above, the ML Manager contends it is the agent of the Rev Op Group. While my clients respectfully disagree with this position, the law is very clear that an agent has a wide range of duties to its principal including, without limitation, the duty to provide information and to provide an accounting. *See* Restatement (Third) of Agency §§ 8.11, 8.12. The chapter 11 plan went effective in June 2009. We understand that the Strategic exit financing has been fully advanced, millions of dollars have been expended by the ML Manager; and there are millions of dollars of obligations that eventually will have to be addressed in the context of providing a return to all investors. Thus, the Rev Op Group respectfully demands that the ML Manager provide them with a full accounting of the following:

1. All costs and expenses incurred by the ML Manager since the effective date of the plan, the ML Manager's proposed allocations of such costs and expenses, and the basis of such allocation in sufficient detail so that the Rev Op Group may understand the justification of all such allocations.

2. Without limiting the generality of the preceding demand, ML Manager is further instructed to provide the Rev Op Group with the following: (a) an accounting of all bankruptcy exit costs paid and unpaid, and the ML Manager's proposed allocations of such costs among the Loan LLCs and investors who did not transfer their interests into such Loan LLCs (the "Non-Transferring Investors"); (b) the same information for all other expenses, costs, fees and other amounts through the date hereof charged or intended to be charged by the ML Manager; and (c) any and all assumptions, analyses, calculations, and other appropriate data which support ML Manager's response to items (a) and (b) of this paragraph.

3. Without limiting the generality of the demand in paragraph 1 above, the ML Manager is also instructed to provide the following: (a) a reconciliation showing all exit financing draws received and the dates thereof, the amount of the exit financing loan not drawn upon and available for future draws, the amount of exit financing proceeds received by the liquidating trust, and the amount of exit financing proceeds received by the ML Manager; (b) the allocation of the exit loan draws received by the ML Manager among the applicable Loan LLCs and Non-Transferring Investors; and (c) any and all assumptions, analyses, calculations, and other appropriate data which support the ML Manager's response to items (a) and (b) of this paragraph.

While the Rev Op Group needs this information as soon as possible, the ML Manager needs to produce this information by no later than ***thirty (30) days*** from the date of this letter. Setting aside the fact that the Rev Op Group is legally entitled to this information given the position taken by the ML Manager, there are at least two practical reasons why my clients need this information. First, the Rev Op Group – and all investors, for that matter – are entitled to know the current financial condition of the ML Manager since the status thereof is crucial to their ability to know if and when they will receive any distributions. Second, we have repeatedly told ML Manager representatives that my clients are willing to pay their "fair share" of the expenses related to this matter. Paragraph U of the confirmation order contains an assessment provision and the Rev Op Group is entitled to know

the ML Manger's position of what amounts are to be assessed and the details behind those assessments.

This last concept is critical. As you know, the Rev Op Group has repeatedly told representatives of the ML Manager and its counsel that it makes no sense to incur exorbitant interest expense payable to Strategic to cover expenses my clients are willing to pay. The only time we had a settlement discussion on this topic was on October 5, 2009, and at that time Mark Winkleman, the liquidating trustee, and Cathy Reece were told we were willing to pay our fair share. We were told at the time to make an offer and we said it was impossible to make an offer without knowing how much we were being asked to pay. So this issue has come back full circle – either through the conclusion of litigation or in the context of settlement, the Rev Op Group is entitled to this information.

Finally on this topic, while we hope that the above-referenced information is provided for reasons set forth herein, the ML Manager is hereby notified that its failure to timely provide such information, in light of the fact that the ML Manager considers itself to be the agent of the Rev Op Group, will be a breach of its fiduciary duty as well as a breach of any contract to which the ML Manager and the Rev Op Group are a party. The Rev Op Group needs to know within ***five (5) business days*** whether the ML Manager will provide all of the information on the timeline set forth herein.

Demand Regarding Formal Board Minutes And Budgets For the ML Manager

Through the Rev Op Group's board designee, Mr. Hawkins, the Rev Op Group has learned of a number of troubling board irregularities that need to be immediately rectified. We understand the ML Manager board has not been keeping formal minutes of board meetings. Instead, the ML Manager has been relying on informal note-taking by Mr. Winkleman. Likewise, we understand the ML Manager does not have operating budgets in place at a board level.

The ML Manager must have formal minutes prepared for each of its board meetings and the draft minutes must be approved by vote of the full board. Likewise, the ML Manager must adopt an operating budget at least for the calendar year 2010, and the budget must be approved by the full board. Frankly, we were shocked to learn that these standard procedures were not put into place from the very beginning. We were likewise dismayed that Mr. Hawkins' repeated requests to fix these irregularities have fallen on deaf ears, especially since the board is making decisions involving hundreds of millions of dollars. But the bottom line is that the ML Manager must agree to invoke these procedures immediately or the Rev Op Group will file a motion with the Bankruptcy Court seeking entry of an order requiring same. Please advise within ***five (5) business days*** whether or not the board is going to rectify these deficiencies.

Other Board Governance Deficiencies

The ML board and its legal counsel must address additional corporate governance issues that are important to the Rev Op Group and all other investors. We are raising these issues on the hope that the ML board and its counsel will take these issues to heart and make appropriate adjustments to board governance. Simply put, our goal is to try and avoid fighting about these issues if at all possible.

The Rev Op Group is very troubled by the bias towards secrecy and the lack of transparency on the ML board. Mr. Hawkins has confirmed repeated instances where certain ML board members and/or legal counsel have suggested that board discussions need to be treated as confidential (i.e., the information must be maintained in secrecy). Obviously, the ML Manager and its counsel will maintain privilege when it is appropriate – e.g., if the ML board was receiving advice from legal counsel about a particular legal matter. Likewise, the ML board will need to maintain confidentiality, for example, when dealing with borrower negotiations.

The Rev Op Group rejects the basic notion, however, that what is being done in the boardroom is presumptively a secret or that nothing said in the boardroom can be repeated outside its confines simply because a lawyer is sitting in the board meetings. Every board member is the designee of a major constituency in this case by design. The board members should be able to report back to their constituencies and otherwise have dialogue with other investors – it is part of job contemplated under the plan in their roles as board designees. So long as it does not result in truly privileged or sensitive commercial information being leaked, the Rev Op Group respectfully suggests that the board act with ***less secrecy*** and ***more transparency***.

The ML board also needs to change the way it handles alleged board conflicts and its agenda process. We know that the ML board members supporting the removal motion and its counsel acted to exclude Mr. Hawkins from ***board discussions***, in addition to barring him from voting on issues where he was alleged to be in conflict with the ML Manager. We also know that the board agendas used prior to the hearing date on the removal motion were getting shorter and more vague, and that the board was using less formality and side-discussions to handle certain affairs of the ML Manager. With due respect, these kinds of actions need to cease immediately.

Please confirm within ***five (5) business days*** that: (i) Mr. Hawkins will no longer be excluded from board discussions regarding any topic other than the pending appeal by the Rev Op Group; (ii) the board will revert back to using detailed agendas of all business to be conducted in board meetings; and (iii) the board will no longer conduct business other than in properly conducted board meetings ***or*** pursuant to proper unanimous written consents. Otherwise, the Rev Op Group will seek an appropriate order of the Court to address these deficiencies.

There must be a level of transparency and accountability by the board. Now that the removal motion is behind us, we are simply asking the ML Manager and its counsel to conduct the boardroom affairs in a more regular, constructive and transparent way. For the sake of all investors, minutes need to be taken, agendas need to be circulated, and matters need to be brought to the board for decision (vote) in a more regular manner. With all due respect to board members who appear to be overworked and undercompensated, we will not hesitate to take these issues to the Court if they continue to be a problem, and we have specifically requested that Mr. Hawkins keep us apprised of any situations that appear to be irregular from a corporate governance perspective.

Rev Op Group Members Transfers Of Note Interests

The Rev Op Group members did not transfer any of their interests into the Loan LLCs – they are all Non-Transferring Investors. As I believe you are aware, a number of my clients have transferred, or are in the process of transferring, their note interests to other entities. They are the Lonnie Joel

Krueger Family Trust, Louis B. Murphey, Queen Creek XVIII, L.L.C., and the James C. Schneck Revocable Trust. A number of my other firm clients also wish to transfer their interests.

Recently, the ML servicer representative told one of my clients (Mr. Murphey) that the transfers would not be acknowledged until the investor reaffirmed its agency arrangement and an opinion letter from securities counsel was provided to the servicer. This topic needs to be addressed immediately. While my clients wish to transfer their interests for reasons that are private, there are legitimate reasons why they may want to do so (e.g., tax reasons). If the ML Manager does not cooperate in this process it will be exposing my clients to damage and itself to liability.

I have reviewed the plan and its exhibits in their entirety. I can find no language in those documents that in any way limits or conditions a Non-Transferring Investor's ability to transfer their note interests. Unlike other investors who transferred their note interests to the Loan LLCs (who have to provide an opinion letter and otherwise abide by certain procedures under the plan), there are no such constraints on Non-Transferring Investors. If I am wrong, please correct me.

The bottom line is that certain of my clients either have transferred, or wish to transfer, their note interests and the ML servicer and the ML Manager need to cooperate so this is accomplished very quickly. My firm is providing these clients with securities law guidance. We do not believe the ML Manager or the servicer has the right to demand an opinion letter as a condition to acknowledging the notes have been duly transferred. For obvious reasons, my clients also will not be signing any kind of agency agreement, although we are willing to sign a reasonable agreement that maintains status quo on the agency dispute if that is something the ML Manager and/or the servicer needs for its files. But we need to make immediate progress on these issues. Since these issues have been pending for weeks and time is of the essence, we need to know the ML Manager's position in this issue within ***five (5) business days.***

Notice Of Termination Re: Pelouqin Notes

You will recall that a number of my clients sent the ML Manager a termination letter under my signature on December 11, 2009, which was shortly after they learned the ML Manager was proposing to sell the 50th Street and Chandler property. This letter constitutes a similar notice in light of the recently concluded foreclosure sales involving the so-called Pelouqin notes. Specifically, the ML Manager apparently completed the following foreclosure sales on or about January 11, 2010:

Loan Number	Loan Name	Rev Op Ownership	Amount
860806	Citlo Loan LLC	Bear Tooth Mountain Holdings, LP	$572,103.06
AKA:	City Lofts, LLC	Queen Creek XVIII. LLC	$500,000.00
		Morley Rosenfield, Trustee of the Morley Rosenfield, M.D. PC Restated Profit Sharing Plan	$248,740.46

Loan Number	Loan Name	Rev Op Ownership	Amount
860606	MCKIN Loan LLC	AJ Chandler 25 Acres LLC	$500,000.00
AKA:	McKinley Lofts, LLC		

Loan Number	Loan Name	Rev Op Ownership	Amount
860506	4633 VB Loan LLC	Pueblo Sereno Mobile Home Park LLC	$544,921.88
AKA:	4633 Van Buren LLC		

As noted above, several of my clients own undivided interests in the notes at issue in these foreclosure sales. The underlying agency agreements to which the ML Manager contends it serves as agent contain the following provision: "Beneficiary may terminate this Agreement after it becomes the owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein . . ." To the extent these agreements are binding on any of the above-referenced noteholders, which is a disputed issue, this termination notice is being delivered pursuant to the foregoing provision. *See* Agency Agreement, §3(b). Notice is further given on behalf of the above-referenced noteholders that they hereby demand the ML Manager provide them with an accounting for any and all fees, costs, and expenses that the ML Manager contends are due and payable pursuant to section 3(b) of the agency agreement. This particular accounting needs to be provided within ***thirty (30) business days.***

Kohner Litigation

Several weeks ago, you and I exchanged a number of emails addressing this litigation. Last time we talked, Beus Gilbert had been conflicted out of this matter. One of the Rev Op Group Members, the Lonnie Joel Krueger Family Trust (the "Krueger Trust"), is a real party in interest in this litigation. By now, I assume the ML Manager has hired a law firm to handle this matter. The Krueger Trust does not consent to having the ML Manager named as party plaintiff on behalf of the trust in this litigation. Please promptly notify the law firm handling this matter of this concern by the Krueger Trust; the trust would like to discuss entering into an appropriate engagement letter with that firm.

Informal Document Request

In your email to me dated January 5, 2010, you requested that my clients produce all of their contracts and other documents related to ML (except for account statements) on the basis that "the agency matter may be litigated at some point . . ." My clients' contracts with ML were filed with the Court and served on your firm in September 2009. *See* Docket No. 2219. Answering your question, I am not authorized to accept a subpoena on behalf of any of my clients. To be perfectly frank, my clients consider this request to be basic harassment – the old "you asked for documents so now we ask you for documents" approach.

It is one thing to ask the party who holds itself out as agent to provide copies of documents from its files to the alleged principal. But the ML Manager, as alleged successor to ML, should have all of the documents my clients might have in their files. It is not reasonable for the ML Manager to expect all of my clients to rummage through their records digging out everything except account statements. You have the contracts; they were provided months ago. If your client wants to sit down and talk

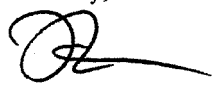
about a consensual resolution to all of these issues, we are happy to do that at a mutually convenient time and provide a reasonable amount of documents that are relevant to those discussions. But I am not authorized to provide you with more documents than have already been provided under these circumstances.

The Sternberg Enterprises Profit Sharing Plan (The "Sternberg Plan")

As a housekeeping item, I am raising this issue and confirming herein what you and I recently discussed regarding the Sternberg Plan. My firm represents the Rev Op Group and the Sternberg Plan in the pending appeal of the Bankruptcy Court's ruling on the clarification motion. For a brief period of time, my firm generally represented the Sternberg Plan in the ML chapter 11 proceeding. However, Mr. Sternberg is a trained lawyer and has decided to continue representing the Sternberg Plan in the ML administrative case. My firm will continue to represent the Sternberg Plan (and the Rev Op Group) in the pending appeal.

Please call or write if you have any questions.

Sincerely,



Robert J. Miller
FOR THE FIRM

RJM:se

cc: The Rev Op Group (via email)
Cary Forrester (via email)
Sheldon Sternberg (via email)
Bryce Suzuki (via email)
Larry Watson (via email)

EXHIBIT "3"

It is critical that you read this notice in it's entirety as it directly impacts your recovery.

ML MANAGER LLC
14050 N.83rd Ave., Suite 180
Peoria, AZ 85381

March 1, 2010

ML MANAGER LLC LOAN PORTFOLIO NEWSLETTER #8

Last month we sent you Newsletter #7 which provided information primarily about our loans and borrowers. In this newsletter we want to update you on the financial details of the operation of ML Manager LLC.

In order for us to emerge from bankruptcy in June 2009, it was necessary to obtain funding to pay the costs of the bankruptcy, replace the temporary bankruptcy financing, and to provide operating capital to allow for the Plan of Reorganization to be carried out. The Plan of Reorganization provided for us to borrow $20,000,000. The proceeds from the $20,000,000 loan have been spent by ML Servicing Co. Inc. and ML Manager LLC as follows:

Total Financing Available		**20,000,000**
Expenses:		
Loan Origination Fee		1,600,000
Lender Costs		254,745
Interest		1,968,666
Foreclosure, REO, Legal		940,584
D&O Insurance		335,642
Operations		1,138,704
Repayment of Bankruptcy Financing		5,809,213
Pre-Confirmation Professional Fee Claims		7,199,249
Total Expenses		**19,246,802**

The bulk of the loan proceeds were used to pay interest and upfront lender costs and fees, repay the bankruptcy financing, and to pay the professional fees incurred during the bankruptcy process, which were mostly legal fees. The expenses do not include an additional $1.2 million in legal and professional fees from the bankruptcy process that we are obligated to pay and another $1.7 million in legal and professional fees incurred, but not yet paid, in connection with the operations of ML Manager LLC and ML Servicing Co, Inc. since confirmation of the Plan.

While most of the money spent to date relates to financing and pre-confirmation expenses, the ongoing business of our operations requires substantial sums. We have and are continuing to minimize our operating expenses as much as possible. We have moved our operations to a small office in Peoria, and are understaffed, with only 8 remaining employees from the approximately 65 Mortgages Ltd. had previously. The work they continue to perform is too vast to list in this newsletter, but some of their more significant tasks have included handling the massive amount of paperwork related to the transferring of interests into Loan LLC's, carefully reviewing the timesheets and files of the professional fee applications sought to be paid for their work during the bankruptcy process, responding to constant questions by investors and their professional advisors, and working with the title companies and lawyers as we deal with our numerous loans, borrowers, and guarantors.

Our primary business is dealing with our numerous non-performing loans, foreclosing on properties, and pursuing borrowers and guarantors. Most of this work requires the use of lawyers and the costs are substantial. Unfortunately, many borrowers and guarantors are using inefficiencies and delays inherent in our legal system to cost us significant time

and money. We continue to be cost effective in pursuing our remedies against borrowers and guarantors while aggressively asserting our rights in collecting the amounts owed.

We require additional funds to continue our business through 2010. The Plan of Reorganization included a budget based upon assumptions made from information available at the time that indicated that the $20,000,000 loan would provide sufficient funds to implement the Plan. This budget was prepared before ML Manager LLC came into existence and our Board had nothing to do with its preparation. Unfortunately, the revenues projected in the original budget have been lower than expected and the expenses have been higher than anticipated. For example, the budget provided for the payment of professional fees in the amount of $7,000,000, but the professionals in the bankruptcy applied for over $13,000,000 in fees. Over the past 8 months we have been successful in reducing the amount of professional fees down to approximately $9,500,000. While this amount represents a substantial reduction, it is $2,500,000 more than was originally budgeted. These unbudgeted expenses have seriously reduced the amount of money available for operations.

Additionally, the original budget assumed that 37 loans would be extended and that extension fees in the amount of over $3.3 million would be paid to ML Manager LLC by the borrowers over time. Unfortunately, due to the borrowers' declining financial positions and the depressed real estate market, borrowers are not paying extension fees or making any other payments. Only one borrower negotiated for loan extensions on two very small loans and no extension fees were paid. The original budget also assumed that some of the borrowers would start making payments or the ML Manager LLC would be able to start recovering funds on the sales of property within 6 months. This has not happened and the workouts and sales have been delayed.

Also, no one contemplated that a group of investors in the Revolving Opportunity Fund Loan Program ("Rev Op Group") would file legal actions in the Bankruptcy Court attempting to avoid paying their fair share of the expenses and challenging the authority of ML Manager LLC to act on their behalf under existing agency agreements. The bankruptcy judge has ruled against the Rev Op Group, but subsequently they filed an appeal that will not be heard for many months. Because of this legal action by the Rev Op Group we have been forced to delay specific foreclosures and actions relating to our loans, borrowers and guarantors.

Furthermore, many of the attorneys representing our borrowers and guarantors are using the Rev Op Group's actions to delay or oppose our efforts to take actions. This has caused a substantial increase in our expenses and has delayed our ability to generate revenue to provide funds for our operations and to pay down our financing.

We now require substantial additional funds to continue our efforts to deal with the non-performing loans, the borrowers, and guarantors. We believe that our work will generate substantial cash and it is critical that we obtain this additional funding. If this is not secured, we could find ourselves in a situation where we would need to liquidate properties in a "Fire Sale" type of atmosphere. This could significantly reduce everyone's recovery.

The sale of Chateaux on Central was approved last week by the Bankruptcy Court and will be consummated during the middle of March. We are in the process of closing the sale of the AZCL property at 50th Street, which has been approved by the investors and the court.

We currently have 5 properties listed for sale and are reviewing offers. Trustee's sales scheduled for Centerpoint, Hotel Monroe, Ten Wine Lofts (also known as the Osborn III loan), Zacher-Missouri and Zacher-Maryland, National Retail Development, and 70th Street Property in April and May. The subsequent sale of some of these properties should produce substantial revenues which the ML Manager LLC Board believes can resolve the current lack of funds for operations. Rest assured that none of these properties will be sold unless we first obtain the required approvals of the members of the Loan LLC's

While we anticipate substantial revenues in the coming months, we are experiencing a near term shortfall of cash. The ML Manager LLC Board has spent a great deal of time analyzing the various options to bridge this problem and has concluded the only viable option is to borrow additional funds. Our current lender is willing to provide the additional funds necessary until some of our properties are sold.

The ML Manager Board is currently working on a joint budget for 2010 with ML Servicing Co. Inc. It is likely that based on the joint 2010 budget we will need approximately $6 million dollars in additional funds in order to operate through the end of 2010. Much of this amount is for expenses that will not be reoccurring and includes approximately $2.7 million of professional fees that have already been incurred. This also includes funds for ML Servicing Co. Inc.'s operating costs. We intend to provide this money through a combination of selling properties, suing the professionals that provided advice to Mortgages, Ltd before the bankruptcy and borrowing additional funds.

Be assured that our goal is to return as much money as possible to the investors. It is important to keep in mind that the amount of additional borrowing would be a relatively small percentage of the value of the loans and properties. ML Manager LLC Board believes that the funds would likely be repaid in a relatively short period of time. We also believe that access to these additional funds could greatly increase our ultimate recovery.

We are currently negotiating the right to borrow more funds from our existing lender. The ML Manager LLC Board hopes to be able to exercise discretion during the course of 2010 and only borrow enough money to offset any deficiencies arising due to delays in selling properties. The Board very much hopes that substantial additional borrowing will not be necessary and, in fact, that the revenues produced by the sales of the foreclosed properties will allow us to pay down or off the existing financing. There are, however, no guarantees that these revenues will occur at the time we need them and the Board has no choice but to arrange for another alternative to secure the funds it needs to conduct its business.

While we are aware of the cost of borrowing additional funds, there does not appear to be a better option. If we don't come up with a source of capital, we will run out of money and may be forced to go back into bankruptcy, which could potentially result in a liquidation. The ML Manager LLC Board believes that is a terrible result for several reasons.

First, as we experienced the first time around, bankruptcy is a very expensive process and the only parties that truly benefit are the attorneys. Second, with the Rev Op Group's legal actions and other dynamics it is likely that the approval of a modified plan would take a long time and would be appealed. Third, there is a significant risk that the result would be a liquidation, which would result in all of the loans and properties being sold off into a terrible real estate market at prices below market which would not maximize the returns to the investors.

We trust this information will be helpful to you in understanding our current financial challenges and we will request the approval of the Loan LLC members as soon as we are able to reach a satisfactory agreement with our existing lender. Our over-riding goal is to return as much money as possible to the investors, but we need to be able to fund the operations necessary to do so. We will continue to adhere to the processes prescribed in the Operating Agreements for each of the 48 Loan LLC's, including the voting processes. You should be hearing from us again shortly. In the meantime, if you have any questions, please address them to Mark Winkleman at mwinkleman@mtgltd.com.

Sincerely,

Elliott Pollack, Chair
ML Manager LLC

EXHIBIT "4"

BRYAN CAVE

Robert J. Miller
Direct: 602-364-7043
rjmiller@bryancave.com

March 16, 2010

VIA E-MAIL AND U.S. MAIL

Cathy L. Reece, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012-2913

Re: Mortgages Limited ("ML")

Dear Cathy:

As you know, this firm represents the Rev Op Group. We have received and reviewed Newsletter #8. We assume it was written by someone at your firm and then sent out under the chairman's signature. Newsletter #8 is only the most recent iteration of the unfortunate obfuscation of facts by the ML board and its professionals.

It is offensive to the Rev Op Group -- and should be offensive to all of the investors -- that the ML board and its professionals are not being more candid and accepting responsibility for this situation. Much like other communications that have gone out to investors since the beginning of this mess, Newsletter #8 contains a host of mistruths, half truths, and misleading statements all of which have been shrouded with an immense lack of proper disclosure.

Despite the fact that the OIC and your firm engineered the plan, the chairman tries to distance himself, the ML board, and your firm from the present situation by claiming in Newsletter #8 that they were not around when the old budget or plan was approved. It should have been obvious to the OIC, your firm, and the ML board that the plan was flawed and the structure and size of the exit financing were inadequate. Indeed, as early as December 2008, my clients and I told the OIC and you in writing that the manner in which the OIC and its professionals were proceeding with the financing process was highly problematic. We told you the process was defective and ineffective.

We tried to help. Our assistance was essentially rejected with hostility that has continued to this very day. As you know, Bill Hawkins was a strong voice on the ML board trying to get the chairman and you to understand the error of the ways being adopted by the ML board with respect to the exit financing and other key areas.

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Rather than address his legitimate concerns, the ML board tried to toss Mr. Hawkins from the board (twice). This level of disfunctionality also cost the ML board another well-intended board member (Bruce Buckley) who, as you know, has resigned from the board.

It is also disappointing that, in an effort to shift accountability away from the ML board and your firm, the chairman continues to play the "blame game" with the Rev Op Group. Failing to mention that the ML board has twice lost in court in its effort to attack the Rev Op Group (the ill-fated motion to remove Mr. Hawkins and the baseless attempt to recover fees against my clients and my firm), the chairman's email falsely characterizes the "fair share" issue and is flat out wrong in stating the Rev Op Group lost the authority issue.

Again, the Rev Op Group realizes there is a sentiment within the ML board and your firm that you need to try and blame someone for this situation, rather than accepting responsibility. Trying to shift the blame to the Rev Op Group, however, will not improve the decision-making within the ML board. Until that changes, the Rev Op Group believes the future recovery for all investors is in grave jeopardy.

We also take issue with the chairman's statement that the Rev Op Group's actions are being used by the ML borrowers and guarantors to delay enforcement action, thus, causing "a substantial increase in . . . expenses and has delayed our ability . . . to pay down our financing." With all due respect, this is ridiculous.

For months, we have told you we were willing to discuss mechanisms to resolve the disputed agency issue. For months, you and your client have ignored us so, assuming there was any problem created by this situation, you would have nobody but yourselves to blame. Moreover, you also know that, despite the fact the ML board continues to misrepresent to various third parties it has full authority with respect to all of my clients, whenever this issue has become ripe, we have figured out a way to resolve the problem with little to no expense. Bottom line: The suggestion that the disputed agency issue is why the ML board has burned through $20 million or cannot pay back $20 million in exit financing is a blatant misrepresentation of fact that must be corrected by the ML board.

My clients continue to believe that, so long as the ML board and your firm try to defend a defective plan, rather than fix the plan and the ML board's defective decision-making process, this case is only going to get worse. We noted with interest that the ML board chairman tries to distance himself and the ML board from this terrible situation by claiming the ML board was not around when the budget was approved, but the reality of the situation is that the OIC worked with your firm to engineer this plan. While it is a tough message to deliver, the ML board was very foolish to reject Mr. Hawkins' continued request that the board retain ***independent professionals*** to address this situation. This email constitutes a formal demand by the Rev Op Group that the ML board retain an independent law firm to advise the board on a going forward basis. Please advise within five (5) business days as to whether the ML board will abide by this demand.

Finally, as to the ML board's desire to borrow even more money as identified in Newsletter #8, the Rev Op Group's position is that any such additional financing would, at best, need to be approved by the Court and, at worst, may be an impermissible modification of the plan.

As you know, the Rev Op Group has already demanded that the ML board put in place an annual budget and that demand has been ignored. Conspicuously absent from the chairman's email is whether the ML board is intending on borrowing millions more without even having a budget in place. The chairman's email also left out a key fact that both the exit financing lender and all other investors need to know -- the Rev Op Group's position is that the ML Manager has no authority to bind the Rev Op Group on any additional financing obligations. This same position should hold true for all non-opt-in investors. There is no way the ML board, under the current plan or under any legal theory, has the right to obligate non-opt-in investors to more indebtedness.

As always, the Rev Op Group remains willing to cover its fair share of expenses in accordance with Paragraph U of the confirmation order. The Rev Op Group does not, however, consent to the ML Manager attempting to obligate the Rev Op Group to repay even more debt than has already been incurred in this case. Please make sure the exit financier and all investors know the Rev Op Group's position on this issue, as it is a material fact relevant to any voting decision that may be made with respect to additional borrowings.

Sincerely,

Robert J. Miller
FOR THE FIRM

RJM:se

cc: The Rev Op Group (via email)
Carry Forrester, Esq. (via email)
Larry Watson, Esq. (via email)

EXHIBIT "5"

ML MANAGER LLC
14050 N.83rd Ave., Suite 180
Peoria, AZ 85381

June 29, 2010

ML MANAGER LOAN PORTFOLIO NEWSLETTER #10

Dear Investors:

Overall Plan for the Properties

We are making good progress in gaining control of the properties. I would like to take this opportunity to inform you of the ML Manager LLC Board's intentions as we proceed.

In order to emerge from bankruptcy it was necessary to obtain exit financing. The amount of the financing was $20 million, which included a $1.6M upfront fee. The loan accrues interest at a rate of 17.5% and there is a disposition fee that is capped at $7.5 million. In prior newsletters we have given you a breakdown of how the $20 million was used by the Liquidating Trust and ML Manager. The interests in each of the Loan LLCs were pledged, as outlined in the confirmed plan of reorganization, as security for the repayment of this financing. The cost of this financing is substantial and it is the desire of the Board to pay off this financing as soon as is practical.

It has become our practice to retain expert real estate companies to widely market each of our properties for sale promptly after foreclosures with the goal of obtaining the best prices possible in the current market. In those instances when the ML Manager LLC Board believes that good offers are received from capable buyers, the Board will recommend the sale of the properties. It is our hope that the sales in the next several months will produce enough revenue to pay off the exit financing. Once the exit financing is paid off, the interests in the Loan LLCs will no longer be pledged as security for the repayment of the exit financing. The investors whose sales proceeds are used to pay of the exit financing will receive interest to compensate them for the use of their funds.

The ML Manager LLC Board has been working for the past few months to develop a process to fairly allocate the costs of the bankruptcy and operations to all investors in each of the loans in accordance with the Plan of Reorganization, the Bankruptcy Court's Order Confirming the Plan and the other applicable legal documents. We expect to be able to inform you of the details of the cost allocation procedure in the near future. You will undoubtedly have many questions about the cost allocation procedure and we ask that you wait to ask your questions until we announce the details of the procedure.

Once the Exit Financing is repaid we expect that each loan will be given the opportunity to determine whether or not the investors desire to attempt to find a way to pay the allocated share of the costs of the bankruptcy and operating costs for the loan. Some of the loans that were not transferred into LLCs may be able to take advantage of this in the near term, however, we believe that it will be impractical for any of the Loan LLCs to consider alternatives for paying their share of costs until the exit financing is paid off. Once the interests of the Loan LLCs in the properties/loans are held free and clear we intend to ask each of the loans whether or not they would desire to attempt to find a way to pay their allocated share of the costs of the bankruptcy

and operating costs without selling the properties/loans. This decision will be up to each of the Loan LLCs and will be made in accordance with the provisions of the Operating Agreements of the Loan LLCs and the Plan of Reorganization. Be advised that the Operating Agreements specifically provide that no member of an LLC is obligated to contribute additional moneys to any of the Loan LLCs.

Once the exit financing is paid off and the interests of the Loan LLCs are owned free and clear we will provide each of the loans the opportunity to determine their desired course of action. If the investors in a particular loan desire to raise money to pay their share of the allocated costs, they will be given the opportunity to do so. If the investors do not desire to attempt to obtain funds to pay off their share of the allocated costs or are unable to do so, the ML Manager LLC Board will continue to attempt to sell the property and the allocated costs will be deducted from the sales proceeds and the remaining balance will be paid to the investors.

This decision is undoubtedly several months away and many more details will be provided before such decisions will have to be made. We felt, however, it would be helpful at this time to make you aware of the intentions of the Board.

Much activity has occurred since our last newsletter and we would like to update you on some of the more significant events.

Centerpoint (Loans 861905 and 857605)

As soon as we foreclosed on the two towers, we immediately began to market the property for sale. The response to our marketing efforts has been tremendous. Over 300 groups signed our confidentiality agreements and requested the marketing information. We have just received a substantial number of written offers, which we are in the process of evaluating. We anticipate selecting a group of qualified potential buyers to complete the analysis of the project and submit binding offers. At the appropriate time we will seek the approval of the members of the two Centerpoint Loan LLC's and the bankruptcy court to sell the property.

Recently, Mark Winkleman, the Chief Operating Officer of ML Manager LLC, appeared on the television program ***Horizon*** and discussed the marketing of Centerpoint and the sale of Chateaux on Central. If you would like to view this program, you may do so by going on the internet and clicking the following link: http://www.azpbs.org/horizon/detailvid.php?id=2441

We recently made significant progress on the surface parking lots adjacent to the Centerpoint towers and we are working to resolve the remaining legal issues. Additionally, we asked the members of the two Centerpoint Loan LLC's to approve borrowing funds to acquire rights in the two surface lots and in the potential Tempe Land Company bankruptcy claims against our investors and to prevent the guarantors from avoiding their personal guarantees. The members overwhelmingly approved the borrowing and we were the successful bidder at the sales.

Zacher Missouri and Maryland (Loans 857502, 857802, and 861805)

We successfully foreclosed upon these properties last month. Both properties were widely marketed and we received substantial interest from a significant number of qualified purchasers. We have received offers on both properties that we desire to accept and are working on finalizing sale agreements. The sales would be subject to the approval of the members of the appropriate Loan LLC's and the Bankruptcy Court.

VCB (Loan 856805)

We also proposed a sale of the VCB property, which is sometimes referred to as Adobe Meadows. We asked the members of VCB Loan LLC to vote to approve the sale on relatively short notice due to the pending extended vacation of the bankruptcy judge. We realize the short time frame created some anxiety amongst some investors and we hope that we do not have to similarly shorten the voting periods in the future. The recommendation of the ML Manager LLC Board to sell the property was approved by members holding 71.7% of the dollars that voted. A group of non-transferring pass through investors attempted to stop the sale at the Bankruptcy Court hearing arguing that their agency agreements were no longer valid and that ML Manager LLC does not have the right to represent their interests. The Bankruptcy Court rejected these arguments and approved the sale of the property. We anticipate closing that sale in July.

All State IX (Loan 861506)

The sale agreement for this property was finalized and the investors in the ASA IX Loan LLC were asked to vote to approve the sale. The recommendation of the ML Manager LLC Board to sell the property was approved by the investors holding 95% of the voting dollars. Five of the non-transferring pass-through investors attempted to stop the sale at the bankruptcy court hearing, but the Court overruled their objections and approved the sale. The sale was scheduled to close on July 16th, however, we just received notification from the buyer terminating the sale agreement and indicating that the price was too high. We intend to immediately resume efforts to market the property for sale.

Arizona Commercial Land Acquisitions (Loan 856206)

As you will recall, a sale agreement for this property was signed and approved several months ago. The buyer recently approached the ML Manager LLC Board and requested an extension of time to consummate the sale. In granting the extension, the Board required the buyer to deposit the remaining earnest money and to agree that it was non-refundable. We are now holding $250,000 in non-refundable money. The sale is scheduled to close on October 22nd.

City Lofts (Loan 860806)

The ML Manager LLC Board signed a Sale Agreement for the City Lofts property, also known as the Bellevue Estates apartments. Ballots were sent to the investors in the Citlo Loan LLC and investors holding 81.4% of the voting dollars approved the sale. Unfortunately, shortly before we were scheduled to appear in the Bankruptcy Court for approval, the buyer elected to cancel the agreement. A leading real estate company, Hendricks and Partners, has been retained by ML Manager LLC to continue to market the property for sale and we have received additional offers that we are currently evaluating.

Rev-Op Lawsuit

As you also may recall, a group of investors in the so called "Rev-Op Group" sent various demands and took positions in various borrower bankruptcies, among other things, claiming that ML Manager LLC does not have the legal right to represent them and that they do not have to share in the cost of certain expenses. In order to address these issues, a lawsuit was filed asking the Bankruptcy Court to resolve the issues. These legal proceedings have caused delays in our efforts to deal with our loans and properties and have increased our legal fees. The Bankruptcy Court recently granted ML Manager LLC a partial summary judgment declaring that the agency agreements previously signed by the members of the Rev-Op Group are coupled with an interest and therefore cannot be terminated without the consent of ML Manager LLC. The Rev-Op Group had previously sent letters of termination, which the Court ruled were unenforceable. This is an important first step to finally resolve these issues. Other issues about the agency agreements will be heard in the Bankruptcy Court on July 15th and we hope the ruling from this hearing will resolve all the remaining issues raised by the Rev-Op Group.

In addition, last fall the Rev-Op Group and a few others filed a motion with the Bankruptcy Court asking it to rule that they did not have to pay their fair share of the exit financing. The Bankruptcy Court rejected their argument and indicated that ML Manager could assess them their fair share or proportional share of the exit financing and other expenses just like all the investors. The Rev-Op Group has appealed that ruling. Briefs on that issue are now being filed with the United States District Court. A hearing has not yet been sent, but we are hopeful that the hearing will be set soon and that this issue will also be finally resolved.

The filings of the Rev-Op Group are a matter of public record as is the make up of the group. The Rev-Op Group includes the following persons and entities: William L. Hawkins Family LLP; AJ Chandler 25 Acres, LLC, Bear Tooth Mountain Holdings, LLP, Cornerstone Realty & Development Inc., Cornerstone Realty & Development Inc. Defined Benefit Plan and Trust, Pueblo Sereno Mobile Home Park LLC; Queen Creek XVIII,LLC; Yuval and Mirit Caine; Evertson Oil Company, Inc.; Ronald Kohner; The Lonnie Joel Krueger Family Trust; Brett McFadden; Michael Johnson Investments II, LLC; Louis B. Murphey; Morley Rosenfield, MD PC Restated Profit Sharing Plan; The James C. Schneck Revocable Trust; Trine Holdings LLC; and Weksler-Casselman Investments.

Vento/Grace Communities Properties (Loans 849606, 851106, 852406, 852606, 858606, and 861706)

As reported previously we have entered into settlement agreements with the Grace entities for their 6 loans. The Rev-Op Group objected to the settlement agreements and an evidentiary hearing has been scheduled in the Bankruptcy Court for July 7, 2010. The settlement agreements allow us to analyze the financial condition of the borrowers and guarantors and we are in the process of doing so. The settlement agreements are subject to the approval of the members of the affected Loan LLCs and as the process continues, we anticipate requesting the vote of the investors to approve the settlement agreements.

HH 20, L.L.C. (Loan No. 858305)

We successfully foreclosed on this property on June 8th. The property is an approximately 20 acre commercial site located at the entrance to the Hunt Highway area in Pinal County. We are currently determining the appropriate real estate firm to represent us in marketing this property for sale.

SOJAC I, L.L.C. (Loan No. 857106)

This loan was scheduled for foreclosure last week on June 16th, however, the borrower filed for bankruptcy immediately prior to the trustee's sale delaying the foreclosure. We will attempt to obtain the Bankruptcy Court's permission to complete the foreclosure process, but the timing is unknown at this time. In the meantime we are pursuing each of the guarantors of this loan, which are Dale Jensen, Joe Pinsonneault, Brad Yonover and their wives.

Roosevelt Gateway L.L.C. and Roosevelt Gateway II L.L.C. (Loans 856605 and 859205)

These loans were successfully foreclosed upon this morning. The properties are a combination of a few unimproved parcels and a few unoccupied buildings in downtown Phoenix. We intend to determine the appropriate real estate firm to represent us in marketing these properties for sale.

Pending Foreclosures

We continue to work on a significant number of foreclosures. Foreclosures of the loans described below are scheduled as follows:

July 1, 2010
Town Lake Development Partners, L.L.C. (Loan No. 861305, Tod Decker is the principal) is scheduled at 10:00 AM

July 2, 2010
43rd Avenue & Olney, LLC and SH Land Holdings (Loan No. 854706, Randy Suggs is the principal) is scheduled at 10:00 AM

July 9, 2010
CGSR, L.L.C. (Loan No. 861105, Chuck Sorenson and Jeff Lipton are the principals) is scheduled at 10:00 AM

July 20, 2010
Vanderbilt Farms, L.L.C (Loan No. 859606, Ashton and Brandon Wolfswinkel are the principals) is scheduled at 10:00 AM

August 3, 2010
PDG Los Arcos, L.L.C. (Loan No. 859305, Rick Sodja is the principal) is scheduled at 10:00 AM

Foreclosures Delayed Due To Borrower's Bankruptcies:

The borrowers of the following loans have filed for bankruptcy and the foreclosures cannot be completed until permitted by the Bankruptcy Court. The foreclosures are currently scheduled for July 22nd; however, further postponements are likely.

Foothills Plaza IV, L.L.C. (Loan No. 853106, Doug Dragoo is the principal) is presently scheduled at 2:00 PM
Northern 120, L.L.C. (Loan No. 849206, Steve Kohner is the principal) is presently scheduled at 10:00 AM
Citrus 278, L.L.C (Loan No. 849306, Steve Kohner is the principal) is presently scheduled at 10:00 AM
Metropolitan Lofts, L.L.C. (Loan No. 860706, Michael Peloquin is the principal) is scheduled at 10:00 AM
MK Custom Residential Construction, L.LC (Loan No. 845006, Michael Peloquin is the principal) is scheduled at 10:00 AM

Foreclosures Delayed Pending Approval of the Settlement Agreements with the Grace Entities (Jonathon Vento and Donald Zeleznak are the principals):

The following loans are subject to the settlement agreements with the Grace entities and cannot be completed until the settlement agreements are approved by the investors and the Bankruptcy Court:

July 22, 2010
70th Street Property, L.L.C. (Loan No. 861706) is scheduled at 10:00 AM
Central & Monroe, L.L.C. (Loan No. 858606) is scheduled at 10:00 AM

July 27, 2010
Osborn III Partners, L.L.C. (Loan No. 851106) is scheduled at 10:00 AM

August 5, 2010
Portales Place Property, L.L.C. (Loan No. 852606) is scheduled at 10:00 AM

Potential Tax Deduction Due to Fraud
We have retained the international accounting firm of PricewaterhouseCoopers LLC to provide advice regarding potential tax strategies relating to fraudulent activities. They will be interacting directly with the Internal Revenue Service and it is uncertain at this time when they will be in a position to render their advice and opinions. We will make appropriate disclosures upon receiving their final recommendations.

Update on Litigation to be Brought on Behalf of Investors
Pursuant to the Plan of Reorganization, we are cooperating with counsel who may be representing investors in connection with potential claims against several individuals and entities, including the debtor's pre-bankruptcy advisors, professionals, insurance companies and other third parties. In addition, ML Manager LLC has contacted several of these third parties and obtained tolling agreements on behalf of the MP Funds to protect against the expiration of any statute of limitations for claims of the MP Funds.

New Board Member
We are pleased to announce that we have selected Karen Epstein to fill the remaining vacancy on the ML Manager LLC Board. Karen is an investor in Mortgages Ltd and has extensive knowledge of the events of the Mortgages Ltd bankruptcy process and the plan of reorganization. She is known to many of you as she has provided a great deal of assistance to the ML Manager Board in communicating with investors.

We continue to make substantial progress in getting control of the properties and selling them to provide funds to pay off our exit financing and return monies to the investors.

If you have any questions, do not hesitate to contact Erica Jacob at ejacob@mtgltd.com or 623-234-9569 for further assistance. Thank you for your support of our efforts.

Best Regards,

Elliott Pollack
Chairman
ML Manager LLC Board

EXHIBIT "6"

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into as of the 15th day of July, 2010 by and between Universal-SCP 1, L.P., an Arizona limited partnership ("Lender"), and the followings persons and entities (collectively called the "Borrower"): Kevin O'Halloran, not individually but solely as trustee ("Liquidating Trustee") of the ML Liquidating Trust established under the ML Liquidating Trust Agreement dated June 11, 2009 ("Liquidating Trust Agreement"), ML Manager, LLC, an Arizona limited liability company ("ML Manager"), and each of the Loan LLCs ("Loan LLC's") listed on Exhibit A attached hereto and incorporated herein by reference, who have executed this Agreement below.

RECITALS

A. Borrower and Lender entered into that certain Loan Agreement ("Agreement") dated June 11, 2009 pursuant to which Lender has agreed to loan up to $20,000,000 to Borrower ("Loan").

B. Any capitalized term not defined herein shall have the same meaning as in the Agreement.

C. Lender has alleged that Borrower is in default under the Agreement as a result of interest accruing above the Maximum Loan Balance for the statement periods ending May 15, 2010 and June 15, 2010, which accrued interest had not been paid; however, Borrower disputes such allegation.

D. Lender has further alleged that a Repayment Incentive Fee payment was due on June 16, 2010, and because of the other existing Events of Default, the amount due was five percent (5%) of the Maximum Loan Balance and such payment was not made when due. Borrower disagrees that a Repayment Incentive Fee payment was due on June 16, 2010 and believes that the payment was due on July 16, 2010.

E. Borrower made a wire transfer payment of $993,442.08 to Lender on July 15, 2010 ("July 15th Payment"). Lender has rejected the payment and has elected to cure the alleged Events of Default by advancing monies to cure such defaults under Section 8.6 of the Agreement.

F. The Lender and Borrower wish to resolve their disagreements and resolve all Events of Default which exist or are currently alleged to exist.

Now, therefore, the Lender and Borrower agree as follows;

1. July 15th Payment. The parties agree that the Lender has the right to and has rejected the July 15th payment and shall return the same to the Borrower.

2. Repayment Incentive Fee. The parties agree that the date the first Repayment Incentive Fee was due was June 16, 2010, and future Repayment Incentive Fees shall be due on each December 16th and June 16th under the Agreement. As a compromise of their disagreement, the Repayment Incentive Fee due on June 16, 2010 shall be assessed at four percent (4%) of the

Maximum Loan Balance and such payment shall be deemed to have been made by an curative advance by the Lender to cure such Event of Default on June 16, 2010.

3. Interest Rate and Advance. The Lender has elected to cure the accrued but unpaid interest in excess of the Maximum Loan Balance due on May 15, 2010 and June 15, 2010 by a curative advance under Section 8.6 of the Agreement. The entire balance of the Loan, including the curative advances in excess of the Maximum Loan Balance, shall accrue interest from June 16, 2010 to July 15, 2010 at the Default Rate of Interest. Beginning on July 16, 2010 and for the balance of the Forbearance Period (defined below) the entire Outstanding Loan Balance, including the curative advances under Section 8.6, shall bear interest at the agreed rate of seventeen and one-half percent (17.5%) ("Agreed Rate").

4. Future Accrued Interest. To the extent that interest accruing and due on the 15th of August, September and October 2010 is not paid by Borrower, Lender will make a curative advance under Section 8.6 to cure such Event of Default, which will likewise bear interest at the Agreed Rate.

5. Forbearance Period. Borrower shall have until October 31, 2010 ("Forbearance Period") to pay down the Outstanding Loan Balance to less than $20,000,000, and, during such Forbearance Period, Lender shall not elect to exercise any other remedies available to Lender under the Agreement and any documents executed in connection with the Agreement ("Loan Documents") as a result of the Borrower's failure to repay the curative advances under Section 8.6 made by Lender to pay the Repayment Incentive Fee or pay any accrued interest due on or after May 15, 2010 through the end of the Forbearance Period.

6. Exercise of Remedies. At the end of the Forbearance Period, if the amount of the Outstanding Loan Balance exceeds the Maximum Loan Balance, then Lender shall, without further or additional notice to Borrower, be entitled to all the rights and privileges contained in the Agreement and the Loan Documents, including without limitation, the right to immediately impose interest at the default rate of 29.5% on the Outstanding Loan Balance and, in its sole discretion, to enforce or exercise any remedies available to Lender under the Agreement or the Loan Documents.

7. Greenberg Traurig Settlement. During the Forbearance Period, the Lender waives any requirement that the Borrower make a required payment to Lender under the first sentence of Section 2.4 of the Agreement of Net Disposition Proceeds actually received by the Liquidating Trustee as a Recovery of the Liquidating Trustee's claim against Greenberg Traurig, LLP ("Greenberg Recovery"). Notwithstanding the foregoing, any Greenberg Recovery shall be included in the calculation of the Disposition Incentive Payments required to be paid pursuant to Section 2.4 of the Agreement regardless of the timing of the Greenberg Recovery.

8. Consistent with the Plan. Each of the persons or entities that constitute the Borrower, other than and excluding the Liquidating Trustee and the Liquidating Trust, represents and warrants that this Forbearance Agreement is intended to be, and shall be interpreted as, consistent with and permitted by the Plan and does not require approval by the Bankruptcy Court. Legal counsel to the ML Manager and the Loan LLCs shall deliver to the Lender a legal

opinion, in form and substance satisfactory to the Lender, to the effect that this Forbearance Agreement does not require approval by the Bankruptcy Court.

9. No Defense, Claims, Offsets. Borrower acknowledges and agrees that, as of the date of this Forbearance Agreement, (a) Borrower has no defense, counterclaim, right of offset, cross-complaint, claim or demand of any nature whatsoever which can be asserted as a basis to reduce or eliminate all or any part of its liability to repay the Loan or to seek affirmative relief or damages from Lender, (b) Borrower has no claim of any kind against Lender related to any aspect of how the Loan was made or has been administered.

10. Confirmations and Reaffirmations. No Waiver. Borrower confirms and agrees that Lender's liens and security interests in all of the collateral previously assigned, mortgaged or otherwise pledged to Lender pursuant to the Agreement or the Loan Documents shall continue to secure the payment and performance of all of the obligations to Lender. All terms, conditions and provisions of the Agreement and the Loan Documents are hereby reaffirmed, ratified and continue in full force and effect and shall remain unaffected and unchanged and this Forbearance Agreement in no way acts as a waiver of any default of Borrower or as a release or relinquishment of any of the liens, security interests, rights or remedies securing payment and performance of the obligations of Borrower under the Agreement or the Loan Documents except as expressly provided herein. Such liens, security interests, rights and remedies are hereby ratified and confirmed by Borrower in all respects.

11. Complete Agreement. Notwithstanding (i) anything to the contrary contained herein or in any other instrument executed by the parties, and (ii) any other action or conduct undertaken by the parties on or before the date of this Forbearance Agreement, the agreements and provisions contained in this Forbearance Agreement shall constitute the only evidence of Lender's agreement to forbear with respect to any default under the Agreement or the Loan Documents. Accordingly, no express or implied consent to any amendment or further forbearance shall be inferred or implied by Lender's execution of this Forbearance Agreement. This Forbearance Agreement constitutes the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings relating to such subject matter. In entering into this Forbearance Agreement, Borrower acknowledges that it is relying on no statement, representation, warranty, covenant or agreement of any kind made by Lender or any employee or agent of Lender, except for the agreements of Lender set forth herein.

12. Future Forbearance Requirements Lender's Written Approval. Lender's execution of this Forbearance Agreement shall not constitute a waiver (either express or implied) of the requirement that any further forbearance under, or any modification of, the Agreement or any Loan Document shall require the express written approval of Lender. Borrower acknowledges and agrees that no such approval (either express or implied) has been given as of the date of this Forbearance Agreement.

13. Effect of Agreement. This Forbearance Agreement is not intended and shall not be construed to amend or modify the Agreement or the Loan Documents, but only to reflect the terms on which the parties have agreed that Lender will forbear from enforcing those rights and remedies otherwise available to it under the Agreement and the Loan Documents. Except as

expressly provided herein, nothing contained in this Forbearance Agreement is intended to or shall be construed as relieving any person or entity, whether a party to this Forbearance Agreement or not, of any of such person's or entity's obligations to Lender.

14. Facsimile and Counterpart Execution. Any signature delivered by a party to this Forbearance Agreement by electronic or facsimile transmission shall be deemed an original signature, and this Forbearance Agreement may be executed in counterparts, which counterparts may be combined to physically form fully executed documents.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Lender:
Universal-SCP 1, L.P., an Arizona limited partnership

By: Universal-SCP Management, LLC, an Arizona limited liability company, Its Manager

By: Reeb Capital III, LLC
Its: Member
By: [signature] Its. Manager

Borrower:
Each of the Arizona limited liability companies listed on Exhibit A attached hereto and incorporated herein by reference

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

By: [signature]
Its: Authorized Manager

ML Manager, LLC, an Arizona limited liability company

By: [signature]
Its: Authorized Manager

Kevin O'Halloran, not individually but solely as Trustee of the ML Liquidating Trust under the ML Liquidating Trust Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Lender:
Universal-SCP 1, L.P., an Arizona limited partnership

By: Universal-SCP Management, LLC, an Arizona limited liability company,
Its Manager

By:_____
Its:_____

Borrower:
Each of the Arizona limited liability companies listed on Exhibit A attached hereto and incorporated herein by reference

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

By:_____
Its: Authorized Manager

ML Manager, LLC, an Arizona limited liability company

By: _____
Its: Authorized Manager

_____
Kevin O'Halloran, not individually but solely as Trustee of the ML Liquidating Trust under the ML Liquidating Trust Agreement

EXHIBIT "7"

ML MANAGER LLC
14050 N.83rd Ave., Suite 180
Peoria, AZ 85381

August 26, 2010
ML MANAGER LOAN PORTFOLIO NEWSLETTER #11

Dear Investors:
I would like to update you on the significant events since our last newsletter.

Centerpoint (Loans 857605 and 861905)
For the past many weeks we have been marketing the Centerpoint towers in Tempe for sale. We have just requested and received final and binding offers, which we are evaluating. As soon as we have selected the highest and best offer we will proceed to seek the necessary investor and bankruptcy court approvals. We anticipate obtaining approval for and consummating this sale by early October. The sale should provide substantial funds to pay down the Exit Financing Loan.

City Lofts (Loan 860806)
After the initial buyer backed out of the sale agreement, we re-marketed the property and identified a new buyer to purchase the City Lofts property, also known as the Bellevue Estates apartments, at a higher price of $1,925,000. A sale agreement was signed by the buyer and ML Manager LLC. The CITLO Loan LLC investors were asked to vote on the sale and over 94% of the dollars that voted accepted the sale recommendation of ML Manager LLC. Three non-transferring pass-through investors, Queen Creek XVIII, LLC and Bear Tooth Mountain Holdings, LLP (owned by William Hawkins) and Morley Rosenfield, MD PC Restated Profit Sharing Plan filed an objection to the sale. ML Manager LLC will ask the Bankruptcy Court to overrule the objection and approve the sale at a hearing at the Bankruptcy Court at 10:30 a.m. on August 25th. The anticipated closing date of the sale is September 10th.

Zacher Missouri (Loan 857502)
A sale agreement for this property in north central Phoenix has been signed by the ML Manager LLC Board with a purchase price of $2,112,000. The buyer has been performing its due diligence for the past few weeks and its earnest money is scheduled to become non-refundable on August 30th. Ballots were sent to the investors in the ZDC II Loan LLC and 91.66% of the dollars that voted accepted the sale recommendation of the ML Manager LLC. Two of non-transferring pass-through investors, Queen Creek XVIII, LLC and Pueblo Sereno Mobile Home Park LLC (owned by William Hawkins) filed an objection to the sale. We will ask the Bankruptcy Court to overrule the objection at a hearing at the Bankruptcy Court scheduled for 3:30 p.m. on August 26th. The anticipated closing date of the sale is September 14th.

Ten Wine Lofts Condominiums/Osborn III (Loan 851106)
The property was acquired through a foreclosure at the end of July. ML Manager LLC selected Hendricks and Partners to widely market the property. The interest in this project has been substantial and we are calling for offers by August 27th. We anticipate selecting the highest and best offer shortly thereafter and seeking the necessary approvals of the investors and the Bankruptcy Court. It is anticipated that the sale would

occur in late October and provide substantial funds with which to reduce the Exit Financing Loan.

VCB (Loan 856805)
The sale of the VCB property, also known as Adobe Meadows, was previously approved by the members of the VCB Loan LLC and the Bankruptcy Court. Unfortunately, several problems were subsequently discovered, including issues relating to title, construction bonds and additional development costs, and the sale is not proceeding at this time. We are busy addressing those problems and hope to be in a position to sell the property in the coming weeks.

Zacher Maryland (Loans 857802 and 861805)
In the process of marketing the property, an issue with the legal description of the property was identified and ML Manager LLC Board determined that it is necessary to commence a judicial foreclosure to establish ownership of the entire subdivision. Unfortunately, the process could take almost a year to complete and we do not anticipate marketing the property for sale again until the issues are resolved.

Sales of Properties
As reported in previous newsletters, several ballots have been submitted to the appropriate investors during the past few months. We report the results of all of the balloting in our newsletters and several of you have contacted us to ask about the sales that you have been asked to approve. The following is a recap of the current sales activities:

Properties Currently Under Contract to Sell

1. Arizona Commercial Land Acquisitions I, LLC – Loan 856206
2. City Lofts, LLC (Bellevue Estates) – Loan 860806
3. Zacher Development Company (Missouri) – Loan 857502

Properties Listed With a Broker and Being Actively Marketed

1. Tempe Land Company (Centerpoint) – Loans 857605 and 861905
2. Osborn III Partners, LLC (Ten Wine Lofts) – Loan 851106
3. PDG Los Arcos, LLC (Los Arcos Crossing) – Loan 859305
4. Central & Monroe, LLC (Hotel Monroe) – Loan 858606
5. Roosevelt Gateway LLC – Loan 856605
6. Roosevelt Gateway II, LLC – Loan 859205
7. National Retail Development Partners I, LLC (Tutor Time) – Loan 860905
8. All State Associates of Pinal County IX, LLC – Loan 861506
9. HH 20, LLC – Loan 858305
10. All State Associates of Pinal County XVI, LLC – Loan 859506
11. Metropolitan Lofts, LLC – Loan 860706
12. 70th Street Property, LLC – Loan 861706
13. McKinley Lofts, LLC - Loan 860606
14. 4633 Van Buren, LLC – Loan 860506
15. Zacher Development Company (Rio Salado) - 855102
16. Rodeo Ranch Estates, LLC – 857906

Many of you have asked us to tell you how much your properties are worth relative to your original investments. The ML Manager LLC Board determined that it was not

practical or financially advisable to obtain appraisals for each of the properties securing the loans or to otherwise spend time and money attempting to estimate values for each of the properties. The only way to accurately know what the properties are worth is to widely expose them to the market place and to obtain and accept offers from qualified buyers. Thus far, the values of the properties that have either sold, or are under approved contracts to be sold, are as follows:

Property	Sales Price	Original Loan Amount	Percentage
Chateaux on Central	$7,000,000	$37,300,000	18.77%
Arizona Commercial	$9,637,650	$15,392,000	62.61%
City Lofts	$1,925,000	$11,888,000	16.19%
Zacher Missouri	$2,112,000	$11,897,435	17.75%

Each property is unique and has its own conditions and characteristics. We caution you against drawing conclusions about what any particular property may be worth until it is actually sold. We are working hard to obtain the highest prices for each of the properties by choosing the best real estate brokers and widely marketing each of the properties. Additionally, as discussed below we are determining if tax strategies can be adopted due to potential theft loss activities by Mortgages Ltd.

Vento/Grace Communities Properties (Loans 849606, 851106, 852406, 852606, 858606, and 861706)

As you know from prior newsletters, we entered into a settlement agreement with the Grace Entities on their 6 loans. The investors in the applicable Loan LLCs voted to accept the recommendation of the ML Manager to approve the settlements.

95.8% of the dollars voted by investors in PPP Loan LLC accepted the settlement; 95.2% of the dollars voted by investors in 70 SP Loan LLC accepted the settlement; 95.4% of the dollars voted by investors in C&M Loan LLC accepted the settlement; 95.7% of the dollars voted by investors in Osborn III Loan LLC accepted the settlement; 87.8% of the dollars voted by investors in 44 CP I Loan LLC accepted the settlement; and 95.9% of the dollars voted by investors in 44 CP II Loan LLC accepted the settlement.

As for the objection filed by the 13 investors in the Rev Op Group, which we discussed in Newsletter #10, the Bankruptcy Court held hearings on July 7 and 8 and approved the settlements, over the objection of the Rev-Op Group. The Bankruptcy Court entered an order stating that the settlements "reflect a reasonable compromise of the complex issues involved, are in the best interests of the investors in the Grace Entities Loans, are supported by the best exercise of business judgment of ML Manager and are consistent with ML Manager's fiduciary duties and responsibilities." The settlements were closed on July 27, 2010 and the 4 trustee sales were completed, among other things. The Rev-Op Group appealed the judge's decision, but ML Manager LLC filed a motion to dismiss the appeal.

Foreclosures

The following foreclosures have completed since the last newsletter:

43rd Avenue & Olney, LLC and SH Land Holdings (Loan 854706, Randy Suggs is the principal)

CGSR, L.L.C. (Loan 861105, Chuck Sorensen is the principal)
Vanderbilt Farms, L.L.C (Loan 859606, Brandon Wolfswinkel is the principal)

PDG Los Arcos, L.L.C. (Loan 859305, Rick Sodja is the principal)
Osborn III Partners, L.L.C. (Loan 851106, Jonathon Vento and Donald Zeleznak are the principals)

Central & Monroe, L.L.C. (Loan 858606, Jonathon Vento and Donald Zeleznak are the principals)

70th Street Property, L.L.C. (Loan 861706, Jonathon Vento and Donald Zeleznak are the principals)

Portales Place Property, L.L.C. (Loan 852606, Jonathon Vento and Donald Zeleznak are the principals)

Pending Foreclosures

We continue to work on a significant number of foreclosures. Foreclosures of the loans described below are scheduled as follows:

August 30, 2010
Town Lake Development Partners, L.L.C. (Loan 861305, Tod Decker is the principal)

October 26, 2010
MK Custom Residential Construction, LLC (Loan 839506 and 845006, Michael Peloquin is the principal)

University & Ash L.L.C. (Loan 858905, Charles LaMar is the principal)

November 23, 2010
CS 11 Maricopa, LLC fka Panwebster Holdings, LLC (Loan 832705, Chuck Sorensen is the principal)

Additionally, we intend to commence foreclosure actions on the following loans as soon as the title companies resolve a few outstanding issues:

Rightpath Limited Development Group, LLC (Loans 858406 and 859806)
Maryland Way Partners, LLC (Loan 858506)

ABCDW, LLC (Loans 850206, 857306, and 861206)

Vistoso Partners, LLC (Loans 857406 and 858006)

Foreclosures Delayed Due To Borrower's Bankruptcies:

The borrowers of the following loans have filed for bankruptcy and the foreclosures cannot be completed until permitted by the Bankruptcy Courts. The foreclosures are currently scheduled for September 16th; however, further postponements are likely.

Foothills Plaza IV, L.L.C. (Loan 853106, Doug Dragoo is the principal)
Northern 120, L.L.C. (Loan 849206, Steve Kohner is the principal
Citrus 278, L.L.C (Loan 849306, Steve Kohner is the principal)
Metropolitan Lofts, L.L.C. (Loan 860706, Michael Peloquin is the principal)

Allocating Costs to Each Loan

As we have stated in prior newsletters, ML Manager LLC has been working on a process to fairly allocate the costs of the bankruptcy and operations to all investors in each of the loans in accordance with the Plan of Reorganization, the Bankruptcy Court's Order Confirming the Plan and the other applicable legal documents. ML Manager LLC is charged with exercising its business judgment to allocate the costs, including the costs of the Exit Financing, "in a fair, equitable and nondiscriminatory manner." ML Manager

LLC agreed to a September 1, 2010 date for making a net distribution to the investors in the Newman Loans, which were paid off by the borrower, and for providing an accounting of the allocated costs and the methodology for determining the allocated costs. ML Manager LLC plans to provide all investors with the cost allocation methodology on September 1, 2010 by email or mail and will post the methodology on the website (www.mtgltd.com). The Bankruptcy Court has set a hearing for September 21, 2010 at 1:30 p.m. to address the allocation of costs. Any objections must be filed with the Bankruptcy Court by September 10, 2010.

Rev-Op Lawsuit

As you will recall, a lawsuit was pending before the Bankruptcy Court where the Bankruptcy Court was asked to resolve the agency agreement issues. On July 27, 2010, the Bankruptcy Court ruled in favor of ML Manager LLC on the agency issues and entered a Declaratory Judgment against the Rev-Op Group. ML Manager has filed an application for attorneys' fees as the prevailing party against the Rev-Op Group which has been set for hearing for September 28. The Rev-Op Group has filed an appeal of the Declaratory Judgment which is pending. A copy of the Declaratory Judgment is posted on the www.mtgltd.com website.

Potential Tax Deduction Due to Potential Theft Loss

We have retained the international accounting firm of PricewaterhouseCoopers LLC to provide advice regarding potential tax strategies relating to potential theft loss activities. They are interacting directly with the Internal Revenue Service and it is uncertain at this time when they will be in a position to render their advice and opinions. We will make appropriate disclosures upon receiving their final recommendations.

Restated Operating Agreements for the MP Funds

An amended and restated operating agreement has been completed for each of the MP funds. The amendment addresses a necessary update to the Exhibit A attached to each operating agreement. If you wish to receive an amended and restated operating agreement for your records, please contact Erica Jacob at 623-234-9569, or email your request to ejacob@mtgltd.com and indicate whether you prefer to receive your document(s) by email or regular mail.

As you can see from the above report we believe that we are on the verge of producing substantial revenues that will allow us to pay off our expensive exit financing and return monies to the investors.

If you have any questions, do not hesitate to contact Karen Epstein at 480-948-6777 or kme818@cox.net or Erica Jacob at ejacob@mtgltd.com or 623-234-9569 for further assistance. Thank you for your support of our efforts.

Best Regards,

Elliott Pollack
Chairman
ML Manager LLC Board