

December 18, 2009

## ML MANAGER LOAN PORTFOLIO NEWSLETTER #6

It is our goal to provide you with as much information as possible about the actions being taken with regard to each of the loans. In order to accomplish this goal we have attached a Loan Status Report to this newsletter that details the status of each of the loans for which ML Manager is responsible. Please keep in mind that many of the loans are the subject of legal proceedings or sensitive negotiations and it is not possible or advisable to provide complete details of the ongoing activities. We believe, however, that the attached report will provide enough information to allow you to have some understanding of the status of each of the loans. We intend to update the Loan Status Report from time to time.

### **Investor Voting Process**

As you are aware, the Loan LLC operating agreements require that certain “major decisions” be approved by a majority in dollar of the members voting in the Loan LLC. We have recently asked the members of two Loan LLCs to vote on certain major decisions.

Arizona Commercial Land Acquisitions I, LLC (Loan #856206) By way of a foreclosure on November 5, 2009, AZCL Loan LLC acquired ownership of approximately 35 acres near 50<sup>th</sup> Street and Chandler Blvd in Phoenix. The ML Manager Board recommended the approval of a Sale Agreement to sell the property to Medical Investment Group, LLC at a discount. To conduct a vote on this major decision, ballots were emailed to the members of the AZCL Loan LLC members, including the members in the 8 MP Funds involved in the loan, using a zoomerang survey and the votes were cast by merely clicking on a button. The investors overwhelmingly approved the sale of the property. We are pleased that the system worked well and we have corrected the few minor glitches that occurred. Hard copies of the ballots were mailed to those members that do not use email. We anticipate using this system on an ongoing basis as major decisions are required on other loans.

MK Custom Residential Construction, LLC (Loan # 839506) An affiliate of the borrower made an offer to pay off this loan at a discount and the ML Manager Board has asked the members of MK I Loan LLC to determine whether or not they were willing to accept the discounted payoff. Since there are only seven investors in the MK I Loan LLC who are eligible to vote, the zoomerang survey was not used but instead a simple email vote was conducted. The discounted payoff offer also extends to the MK Custom Loan #845006, which is in second position to the other loan. The members of MK I Loan LLC rejected the discounted payoff offer.

As other votes on major decisions are made, investors in the Loan LLCs will be contacted.

### **Foreclosures**

We have foreclosed on several properties since the last newsletter was issued.

Arizona Commercial Land Acquisitions I, LLC (Loan #856206) This loan was foreclosed upon on November 5<sup>th</sup>. The guarantors have filed for personal bankruptcy and it is unlikely that substantial funds will be recovered from the guarantors. As indicated above, a purchase offer at a discounted amount has been obtained and the AZCL Loan LLC members voted to accept the offer. The bankruptcy court approved the sale at a hearing on December 16, 2009.

VCB Properties, LLC (Loan #856805) This loan was also foreclosed upon on November 5<sup>th</sup>. We will instigate the appropriate legal proceedings against the guarantors.

Zacher Development Company, LLC (Rio Salado) (Loan #855102) This loan was foreclosed upon on November 20<sup>th</sup>. A legal action to pursue the personal guarantees has previously been commenced. It is uncertain at this time whether it will be possible to collect proceeds from the guarantors.

Northern 120, LLC (Loan #849206) and Citrus 278, LLC (Loan #849306) These loans were scheduled to be foreclosed upon on November 5<sup>th</sup>, however, both entities filed Chapter 11 bankruptcies, which halted the foreclosures. We have filed for the right to proceed with the foreclosures with the bankruptcy court. We have also retained Leo Beus to sue to collect on the personal guarantees.

All State Associates of Pinal IX, LLC (Loan #861506) The loan was foreclosed upon on December 16<sup>th</sup>. The guarantors have filed for personal bankruptcy and it is unlikely that substantial funds will be recovered from the guarantors.

MK Custom Residential Construction, LLC (Loans #839506 and #845006), 4633 Van Buren, LLC (Loan #860506), McKinley Lofts, LLC (Loan #860606), Metropolitan Lofts, LLC (Loan #860706), City Lofts, LLC (Loan #860806) These loans were scheduled to be foreclosed upon on December 11<sup>th</sup>; however, each of these entities filed Chapter 11 bankruptcies, which halted the foreclosures. We will be filing for the right to proceed with the foreclosures with the Bankruptcy Court and will proceed to attempt to collect on the personal guarantees.

### **Next Wave of Foreclosures**

Settlement discussions and/or analysis of financial conditions continue with respect to several borrowers. Notwithstanding this work, we are proceeding to schedule trustee's sales with respect to the following loans: CS 11 Maricopa, LLC (Loan #832705), Roosevelt Gateway LLC (Loan #856605) and Roosevelt Gateway II LLC (Loan #859205), SOJAC I, LLC (Loan #857106), Zacher Development Company, LLC (Loan #857502) (Missouri) and (Loan #857802) (Maryland), Tempe Land Company, LLC (Loan #857605 and Loan # 861905), HH 20, LLC (Loan #858305), University & Ash , LLC (Loan #858905), PDG Los Arcos, LLC (Loan #859305), National Retail Development Partners I, LLC (Loan #860905), CGSR, LLC (Loan #861105) and Town Lake Development Partners, LLC (Loan #861305). The title companies are performing the necessary work to commence the trustee's sales and it is at least 90 days thereafter before the foreclosure can be completed.

### **Personal Guarantees**

As described above, we have commenced actions or filings to collect amounts owed under many of the personal guarantees, including Steven Kohner, Doug Dragoo, Thomas Cummings, Richard Zacher, Rick Sodja and Glen Morrison. We will be aggressively pursuing the guarantors on the balance of the loans and will keep you advised of our progress

### **Properties for Sale**

All State Associates of Pinal XVI, LLC (Loan #859506) We previously foreclosed upon this loan and acquired approximately 511 acres in Pinal County in the vicinity of Eloy. We have just listed this property for sale with Land Advisors Organization. If a major decision needs to be made on this property, the votes of the members of ASA XVI Loan LLC will be solicited.

Chateaux on Central This property is owned jointly by ML Servicing Co, Inc. (which is owned by the ML Liquidating Trust), the MP Funds and certain pass-through investors and was previously taken back with a deed in lieu. The property has been listed for sale with UGL-Equis. No acceptable offers have been received thus far.

### **Appeal by Rev Op Group Investors**

As we have discussed in prior newsletters, on September 14, 2009, 19 investors calling themselves the Rev Op Group investors filed a Motion to Clarify certain issues concerning the First Amended Plan of Reorganization confirmed by the Bankruptcy Court on May 20, 2009. The Motion was granted in part and denied in part by the Bankruptcy Court after briefing and a hearing. The Bankruptcy Court, among other things, explained that as provided in the Confirmation order the ML Manager is permitted “to charge back to the non-opt-in pass-through investors their proportionate share of all of its expenses, including but not limited to the exit financing. This Plan does impose a limitation that such charge back be fair, equitable and proportional, but within those limitations the ML Manager can exercise its business judgment whether to obtain financing to cover exit costs and operational expenses, and when to make the charge back.” The Court also said that the ML Manager “does have authority to deal with the loans and the collateral securing the loans to the extent provided by the governing documents including but not limited to the applicable subscription agreements and agency agreements.” The 19 Rev Op Group investors then filed a Motion to Reconsider which the Bankruptcy Court denied summarily. The 19 Rev Op Group investors plus Sheldon Sternberg have filed an appeal. It will take several months for this appeal to be briefed and heard by the United States District Court. Meanwhile ML Manager will proceed with trying to workout, collect, foreclose and obtain funds from the borrowers and the properties for all the investors.

## **Loan Servicing**

As reported last month, the ML Manager Board has signed an agreement with Canyon State Servicing Co. to service the performing loans. The loans being serviced by Canyon State Servicing are 300 East Camelback Loans #794402 and #794502; Michael and Darlene Newman Loans #7987S2 and #856500; and Maximum Management Loan #7465S6. The monies that have accumulated the past several months were transferred to Canyon State Servicing. Members of the Loan LLCs will receive quarterly disbursements of amounts that are received. We have directed Canyon State Servicing to proceed to make a quarterly distribution and those members will be receiving their payments shortly. Investors that are not members of the Loan LLCs have already received their payments. Members of pool funds will receive disbursements as such time as enough money has accumulated to justify the expense sending out distributions.

## **Mechanic and Materialmen Lien Litigation**

As we have reported before, several of the borrowers did not pay some of their mechanic and materialmen. Those unpaid mechanic and materialmen lien claimants have filed various lawsuits and have been serving the investors in those loans. We have tendered the defense to the title companies involved who have agreed to pay the cost of defending the lawsuits for all of the investors in those loans. They still reserve their rights as to paying the actual mechanic and materialmen liens. The attorney hired by the title companies to defend those lawsuits is Scott Malm at Gust Rosenfeld.

## **Osborn III Partners, 44<sup>th</sup> & Camelback Property, Portales Place, Central & Monroe and 70<sup>th</sup> Street Property—the Grace Entity loans**

The court ordered mediation has proceeded and it appears that a tentative settlement may have been reached. Once the settlement has been reduced to a written agreement that is acceptable to the Board, the members of each of the Loan LLCs that own the above loans will have the opportunity to accept or reject the settlements.

## **Loans Owned By Each MP Fund**

As many of you have requested, within the next few weeks we will be sending a reference list to all individuals in each of the 9 MP Funds separately to outline all of the Loan LLCs in which their MP Fund holds interest.

If you have any questions, do not hesitate to contact Karen Epstein at [kme818@cox.net](mailto:kme818@cox.net) or (480) 948-6777. You may also contact either Dana Wilson or Erica Jacob at 623-234-9560 for further assistance. Thank you for your support of our efforts.

Elliott Pollack  
Chair of the Board of Managers  
ML Manager LLC