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U.S. BANKRUPTCY  
DISTRICT OF ARIZONA

6 **IN THE UNITED STATES BANKRUPTCY COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 In re:  
9 MORTGAGES LTD.,  
10 an Arizona corporation,  
11 Debtor.

) In Proceedings Under Chapter 11  
)  
) Case No. 2:08-bk-07465-RJH  
)  
) **PLAN PARTICIPANT'S OBJECTION TO**  
) **MOTION TO RATIFY 401(K) PLAN**  
) **APPOINTMENTS AND DEFINE THE**  
) **LIQUIDATING TRUSTEE'S ROLE WITH**  
) **RESPECT TO THE 401(K) PLAN**  
)  
) **Hearing Date: September 17, 2009**  
) **Hearing Time: 11:00 A.M.**  
)  
)

15 Robert G. Furst, a plan participant in the Mortgages Ltd. 401(k) Plan, submits this Objection  
16 to Motion to Ratify 401(k) Plan Appointments and Define the Liquidating Trustee's Role With  
17 Respect to the 401(k) Plan. The Motion, to which Robert Furst is objecting, was filed by Christopher  
18 Olson and Ryan Walter, as Co-Trustees of the Mortgages Ltd. 401(k) Plan.

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20 Mr. Furst shares the concerns of Kevin O'Halloran, the Liquidating Trustee, about the prior  
21 administration of the Mortgages Ltd. 401(k) Plan (the "401(k) Plan") and the qualifications of the  
22 two current Co-Trustees, Christopher Olson and Ryan Walter. These concerns are described in the  
23 Liquidating Trust's Objections to Haynes Benefits PC's Application for Allowance of Administrative  
24 Claim for Attorneys' Fees and Costs.

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26 Accordingly, Mr. Furst believes that the best interests of the plan participants would be served  
27 by (1) the removal of Christopher Olson and Ryan Walter as Co-Trustees, (2) the appointment of  
28

1 James Cordello as sole Trustee, and (3) the continued judicial oversight of the administration of the  
2 401(k) Plan by the Bankruptcy Court.

3 **STATEMENT OF FACTS**

4 The Mortgages Ltd. 401(k) Plan presently owns, in whole or in part, eight nonperforming  
5 loans underwritten by Mortgages Ltd. and nothing else (other than cash) The aggregate principal  
6 amount of the eight nonperforming loans is approximately \$23 million; however, the current fair  
7 market value is estimated to be approximately \$10 million or less.

8  
9 When Scott Coles committed suicide on June 2, 2008, Christopher Olson and Scott Coles  
10 were the two Co-Trustees of the 401(k) Plan. Thereafter, Christopher Olson served as sole Trustee  
11 for approximately one year. Then, on June 5, 2009, Christine Zahedi, the outgoing Chief Operating  
12 Officer of Mortgages Ltd., appointed Ryan Walter as Co-Trustee of the 401(k) Plan (to serve together  
13 with Christopher Olson), as one of her final acts in office before the implementation of the Plan of  
14 Reorganization submitted by the Official Investors Committee. Recognizing the questionable timing  
15 and nature of this "lame duck" appointment, Christopher Olson and Ryan Walter now seek the  
16 Bankruptcy Court's ratification of a fiduciary appointment which should have never occurred in the  
17 first place.  
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20 In addition to the ratification of their co-trusteeship appointments, Christopher Olson and  
21 Ryan Walter seek rulings from the Bankruptcy Court (1) appointing the two of them as the Plan  
22 Administrators in replacement of ML Servicing Co. (which is the new name for Mortgages Ltd., the  
23 reorganized Debtor), (2) discharging ML Servicing Co. as Plan Sponsor and thereby completely  
24 eliminating its fiduciary responsibilities to the 401(k) Plan, and (3) eliminating any oversight of the  
25 401(k) Plan by the Bankruptcy Court, ML Servicing Co. or the Liquidating Trust. These rulings, if  
26 granted, would effectively insulate Christopher Olson and Ryan Walter from any oversight by any  
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1 person or entity. Moreover, these rulings, if granted, would wrongfully entrench Christopher Olson  
2 and Ryan Walter in their fiduciary positions because there would no longer be any independent Plan  
3 Sponsor and/or Plan Administrator to remove them as plan trustees in the event they breached their  
4 fiduciary duties (which they have already done repeatedly). This is totally unacceptable and contrary  
5 to the protections afforded by ERISA.  
6

7 At the present time, the most important issue confronting the 401(k) Plan is the need for the  
8 current plan fiduciaries to file, on behalf of the plan participants, a breach of fiduciary duty lawsuit  
9 against Christopher Olson and Scott Coles, as prior Co-Trustees, for their gross mismanagement of  
10 the plan assets. Under the stewardship of Christopher Olson and Scott Coles, the retirement assets of  
11 the plan participants were systematically decimated by imprudent investment decisions, the complete  
12 lack of diversification of plan assets, negligent bookkeeping practices, negligent supervision of plan  
13 assets, and the improper utilization of plan assets for the benefit of the Debtor rather than for the  
14 “exclusive benefit” of the plan participants (as specifically required by ERISA).  
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16 Initially, when Christopher Olson was confronted with this issue, it was understood that he  
17 would immediately resign as Co-Trustee because of the clear conflict of interest which he faced (i.e.,  
18 he could not participate in a lawsuit against himself) and that Ryan Walter would then spearhead the  
19 litigation against the two former fiduciaries.<sup>1</sup> Recently, however, it has become abundantly clear that  
20 (1) Christopher Olson is no longer willing to voluntarily resign as Co-Trustee, (2) Ryan Walter wants  
21 to serve as Co-Trustee simply to protect his friend, Christopher Olson, and (3) Christopher Olson and  
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24 <sup>1</sup> Approximately two months ago, at a meeting in which Christopher Olson, Ryan Walter and  
25 numerous plan participants were in attendance, it was collectively decided that Robert Furst and  
26 James Cordello, as plan participants, would meet with James Polese, Esq., a senior partner at  
27 Gammage & Burnham, a prominent Phoenix law firm, to evaluate the potential breach of fiduciary  
28 duty claims against Christopher Olson and Scott Coles. Based on that initial discussion, Mr. Polese  
and his law partners expressed a strong interest in representing the plan participants in asserting their  
breach of fiduciary duty claims.

1 Ryan Walter, as Co-Trustees, have absolutely no intention of ever filing the breach of fiduciary duty  
2 lawsuit on behalf of the plan participants. Unfortunately, Ryan Walter, as the newly appointed Co-  
3 Trustee, is merely "running interference" for Christopher Olson to the detriment of the plan  
4 participants.  
5

### 6 ANALYSIS

7 To maximize the retirement benefits for the plan participants in the 401(k) Plan, the three  
8 primary objectives of the new plan trustee will be (1) the successful prosecution of the breach of  
9 fiduciary claims against Christopher Olson and Scott Coles, (2) the collection of insurance proceeds  
10 from liability insurance carriers insuring the plan trustees, and (3) the recoupment of the plan's prior  
11 investments through loan modification agreements with the borrowers (or loan foreclosures followed  
12 by sales of the collateralized property). To accomplish these objectives, the 401(k) Plan will need  
13 qualified trustees unencumbered by conflicts of interest, full transparency and independent oversight,  
14 none of which is being offered by the ruling requests of Christopher Olson and Ryan Walter.  
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16 Consequently, Robert Furst respectfully requests that the Bankruptcy Court deny the Motion  
17 filed by Christopher Olson and Ryan Walter and instead make the following rulings:  
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- 19 1. Removal of Christopher Olson as Co-Trustee: Rather than ratifying the continued  
20 appointment of Christopher Olson as Co-Trustee, the Bankruptcy Court should  
21 remove Mr. Olson as Co-Trustee based on his lack of qualifications, prior and current  
22 misconduct and unavoidable conflicts of interest. Hopefully, in the interim, Mr. Olson  
23 will recognize that it is in the best interests of the plan participants for him to  
24 voluntarily resign as Co-Trustee as quickly as possible.
- 25 2. Removal of Ryan Walter as Co-Trustee: The Bankruptcy Court should also remove  
26 Ryan Walter as Co-Trustee, based on his lack of qualifications, the questionable  
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1 circumstances regarding his fiduciary appointment and his total lack of independence  
2 from Christopher Olson (which was notably also of concern to Kevin O'Halloran, the  
3 Liquidating Trustee).

4  
5 3. Appointment of James Cordello as Trustee: The Bankruptcy Court should appoint  
6 James Cordello as the sole Trustee of the 401(k) Plan. James Cordello was the former  
7 No. 2 executive at Mortgages Ltd. from the early 1980's through 1995, and he was  
8 also a Co-Trustee of the 401(k) Plan during that period. He has the confidence and  
9 admiration of the plan participants, together with the integrity and professionalism  
10 necessary to work cooperatively with (but independent from) ML Manager, ML  
11 Servicing Co. and the Liquidating Trustee, in the event the ML Servicing Co. remains  
12 the Plan Sponsor and/or Plan Administrator (see section 5 below).<sup>2</sup>

13  
14 4. Trustee Compensation: The Bankruptcy Court should also rule on the appropriate  
15 level of trustee compensation. Historically, the Trustees of the 401(k) Plan were also  
16 employees of Mortgages Ltd., and they were not separately compensated for their  
17 fiduciary functions. However, this circumstance has now changed, and trustee  
18 compensation is warranted.

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21 <sup>2</sup> In the event that another individual is selected as Trustee, it is imperative that the new Trustee is  
22 independent from ML Servicing Co., ML Manager and the Liquidating Board because the interests of  
23 the plan participants are very different from the other investors. To illustrate, the 401(k) Plan owns a  
24 majority of the Vanderbilt Farms loan, with the minority interest owned by several Pass-Through  
25 Investors. The plan participants, for the most part, want to hold their mortgage investments for the  
26 long term, to give themselves the greatest chance of recovering their endangered retirement nest eggs.  
27 The Pass-Through Investors, on the other hand, may be less patient than the plan participants and  
28 more willing to accept a "low-ball" offer. In such a case, the plan participants want a Trustee who  
will represent their interests completely independent of any pressures from the Pass-Through  
Investors (who will be represented by ML Manager in all major decisions). Notably, the Plan of  
Reorganization confirmed by the Bankruptcy Court provides for the independent management of the  
mortgage loans owned by the 401(k) Plan solely by the plan trustee, and this independence must be  
preserved by the selection of a plan trustee who is indeed independent of the ML Board.

1 5. Retention of ML Servicing Co. as Plan Sponsor and/or Plan Administrator: The  
2 Bankruptcy Court should determine whether ML Servicing Co. is still the Plan  
3 Sponsor and/or Plan Administrator (or whether the 401(k) Plan is indeed an “orphan  
4 plan” without a Plan Sponsor or Plan Administrator). If ML Servicing Co. remains as  
5 the Plan Sponsor and/or Plan Administrator, then it will be a plan fiduciary with  
6 specific responsibilities delineated by ERISA. (In any event, the Bankruptcy Court  
7 should not appoint Christopher Olson and Ryan Walter to serve as the Plan  
8 Administrators because they are not qualified for this position.)

9  
10 6. Judicial Oversight of the 401(k) Plan by the Bankruptcy Court: The Bankruptcy Court  
11 should retain continued jurisdiction over the administration of the 401(k) Plan. The  
12 plan participants need an accessible forum to voice their concerns, if problems should  
13 arise.

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15 7. Bankruptcy Court Jurisdiction over Breach of Fiduciary Duty Lawsuits: The  
16 Bankruptcy Court should clarify whether it will retain jurisdiction to hear the breach  
17 of fiduciary duty claims soon to be filed against Christopher Olson and Scott Coles.  
18 Traditionally, ERISA lawsuits are filed in the federal district courts; however, if the  
19 Bankruptcy Court would be willing to hear the case, a more expeditious resolution  
20 would likely be achieved.

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22 8. Authority to Hire James Polese, Esq. to File Breach of Fiduciary Duty Lawsuit: The  
23 Bankruptcy Court should authorize the James Cordello, as Trustee of the 401(k) Plan,  
24 to retain James Polese, Esq. (or other appropriate counsel) to evaluate the breach of  
25 fiduciary duty claims against Christopher Olson and Scott Coles and, if it is deemed  
26 warranted, to file a lawsuit against them. Out of an abundance of caution, James  
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1 Cordello (or any other designated Trustee) will most likely want prior judicial  
2 authorization before earmarking a substantial portion of the plan assets to the  
3 prosecution of these claims.

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5 9. Need for Fiduciary Liability Insurance: The Bankruptcy Court should require the  
6 Trustee of the 401(k) Plan to carry appropriate fiduciary liability insurance. The plan  
7 fiduciaries were previously covered by the liability insurance policies owned by  
8 Mortgages Ltd., but presumably that coverage no longer exists.

9 10. Coordination with ML Servicing Co. Regarding Fiduciary Liability Insurance Claims:

10 Historically, the Trustees of the 401(k) Plan have been covered by liability insurance  
11 policies owned by Mortgages Ltd., as Plan Sponsor. At the present time, there is an  
12 urgent need for the plan fiduciaries to immediately notify the liability insurance  
13 carriers about the impending breach of fiduciary duty claims against Christopher  
14 Olson and Scott Coles; however, the insurance policies are in the possession of ML  
15 Servicing Co. and the Liquidating Trustee, not the 401(k) Plan. Consequently, the  
16 Bankruptcy Court should order ML Servicing Co. and the Liquidating Trustee to (1)  
17 provide copies of the policies to the Trustees of the 401(k) Plan, and (2) cooperate  
18 with, and assist, the Trustee of the 401(k) Plan in submitting its insurance claims to the  
19 appropriate liability insurance carriers. Recognizing that the Liquidating Trust and the  
20 401(k) Plan may have competing claims to the liability insurance proceeds, the  
21 Bankruptcy Court should oversee the division of the insurance proceeds between the  
22 Liquidating Trust and the 401(k) Plan to ensure that the allocation is fair and equitable  
23 to all claimants.  
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1 CONCLUSION

2 In conclusion, Robert Furst requests the denial of the Motion filed by Christopher Olson and  
3 Ryan Walter. With regard to the selection of a new trustee, there is a consensus among the plan  
4 participants that they want to avoid the unnecessary expense and time delay that would necessarily  
5 result from the appointment of a disinterested professional fiduciary who is unfamiliar with the  
6 present complex state of affairs surrounding the reorganized Debtor and the 401(k) Plan. They want  
7 one of "their own" to represent them, someone who is familiar with the plan investments, the plan  
8 participants and the plan document. James Cordello is the perfect person for the job. He was  
9 formerly a Co-Trustee of the 401(k) Plan (when it was successfully managed and administered); he is  
10 highly respected and capable of acting independent of ML Manager, ML Servicing Co. and the  
11 Liquidating Trust; and he is ready, willing and most able to serve as Trustee, subject to the continued  
12 oversight of this Court.  
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15 DATED: September 3, 2009  
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