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8
9 **UNITED STATES BANKRUPTCY COURT**
10 **DISTRICT OF ARIZONA**

11 In re

12 MORTGAGES LTD., an Arizona
13 corporation,

14 Debtor.

Chapter 11

Case No. 2-08-07465-RJH

**MOTION OF DLA PIPER LLP (US)
FOR AUTHORITY TO FILE A
UNILATERAL PRETRIAL
STATEMENT**

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17 The Court has set an evidentiary hearing on DLA Piper LLP (US)'s First And Final
18 Fee Application For Allowance And Payment Of Fees for November 25, 2009. Pursuant to
19 Rule 7016-1(c), Local Rules of Bankruptcy Procedure for the District of Arizona, DLA Piper
20 LLP (US) moves the Court for authority to file a unilateral pretrial statement on the grounds
21 that it has not received reasonable cooperation from ML Manager, LLC ("ML Manager"),
22 ML Liquidating Trust ("Liquidating Trust"), and G. Grant Lyon, in his capacity as duly
23 appointed chapter 11 trustee ("RBLLC Trustee") for Radical Bunny, L.L.C. (collectively "the
24 Objectors"). The Joint Pretrial Statement is due this date pursuant to the Court's Order dated
25 October 22, 2009. [Docket No. 2329]
26

1 The evidentiary hearing was originally set for August 31, 2009. Thereafter, the
2 hearing was reset to October 29, 2009, and subsequently to November 25, 2009. The details
3 regarding the Objectors' lack of cooperation, including the dates when drafts were distributed
4 are as follows:

- 5 • When the matter was set for hearing in August, DLA Piper supplied a draft of
6 the joint pretrial statement more than a week before the then deadline for the
7 filing of the joint pretrial statement. At 2:50 p.m. the day before the pretrial
8 statement was due in August, the Objectors provided multiple pages of changes
9 to the joint pretrial statement which were incorporated into the draft.
- 10 • On October 21, 2009, DLA Piper again circulated the joint pretrial statement for
11 finalization prior to the hearing that was then set for October 29, 2009. An
12 October 21, 2009 e-mail from, DLA Piper's counsel to counsel for the
13 Objectors stated:

14 “If we are proceeding with mediation, please let us know. If
15 we are not proceeding with mediation, then the Joint Pretrial
16 Statement is due to be filed tomorrow. I have attached the
17 nearly completed Joint Pretrial Statement that the parties had
18 exchanged in late August. We have made a few
19 additions/revisions and have filled in missing Docket Nos. in
20 the DLA portions of the pretrial statement. All changes are
21 shown in red-line. There are some blanks in the Objector's
22 exhibits that remain to be filled in.

23 Please provide the missing information by noon
24 tomorrow so that we may finalize the statement and get it on
25 file.

26 Also please advise as to whether you are in a position

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to exchange exhibits tomorrow.

Thank you,
Barry R. Sanders”

No further input to the draft pretrial statement was provided by the Objectors at that time. The parties proceeded to mediation and the date for the evidentiary hearing was continued by stipulation.

- On November 11, 2009, DLA Piper again circulated the draft joint pretrial statement in order to finalize it. A November 11, 2009 e-mail from DLA Piper’s counsel to counsel for the Objectors stated:

“Lastly, I have attached a draft joint pretrial statement in order to finalize it. It is due on November 18, 2009. This is the draft I circulated to the parties on October 21, 2009, with minor amendments to the hearing date on the cover page and the addition of four exhibits for DLA, all of which are shown in redline on the attached draft. Please provide the information for the blanks in Objectors’ exhibits so that we may finalize the pretrial statement. In addition, please advise as to whether you are in a position to exchange exhibits on Monday as the joint pretrial statement requires certification that all exhibits have been exchanged.

Regards,
Barry”

- Having received no response from the Objectors, on Monday, November 16, 2009, DLA Piper delivered its exhibits by hand-delivery to ML Manager and RBLLC Trustee, and by over-night Federal Express delivery to counsel for the Liquidating Trust in Philadelphia. Copies of all of DLA Piper’s declarations

1 identified in the draft pretrial statement were also supplied. No exhibits or
2 declarations were provided by Objectors.

3 • At 6:00 a.m. today, the date that the joint pretrial statement is due, and having
4 received no further response from the Objectors, counsel for DLP Piper e-
5 mailed counsel for the Objectors requesting authority to sign the joint pretrial
6 statement on their behalves in the form provided on November 11, together
7 with minor modifications consisting of the addition of an additional sentence to
8 DLA Piper’s statement of position, a correction in the draft to relate that DLA
9 Piper had delivered copies of exhibits to the Objectors (to replace the sentence
10 in the prior draft which had stated that the parties have identified and exchanged
11 copies of exhibits), and a correction to the signature block to the joint pretrial
12 statement.

13 • At 9:28 a.m., counsel for ML Manager advised by e-mail that they were
14 coordinating with counsel for the Liquidating Trust and RBLLC Trustee and
15 would provide “a final draft” to counsel for DLA Piper “before 4:00 p.m. today.
16 At that point we’ll authorize you to sign on our behalves. We don’t anticipate
17 any but minor revisions and have no objection to the revisions you spelled out
18 below.”

19 • At 4:46 p.m. the Objectors provided another draft of the joint pretrial statement
20 which (1) deletes sentences from previously agreed to uncontested facts without
21 incorporating them in DLA Piper’s statement of facts deemed material, (2)
22 identifies five new witnesses not previously identified, (3) identifies three
23 declarations that have not been provided to DLA Piper in breach of Local Rule
24 7016-1(a)(6), (4) identifies new exhibits generally notwithstanding that no
25 copies of Objectors’ exhibits have been provided to DLA Piper, and (5) leaves
26 several blanks in the Objectors’ description of exhibits.

1 DLA Piper provided the Objectors with the draft joint pretrial statement in August.
2 Since that time DLA Piper has made only minor modifications to the joint pretrial statement
3 and has requested finalization of the joint pretrial statement on multiple occasions (in October
4 and November). The Objectors provided no substantive changes in response to those
5 requests, and waited, until 4:46 p.m. on the date that the joint pretrial statement was due, to
6 substantially revise the joint pretrial statement as outlined above. The Objectors have not
7 reasonably cooperated within the meaning of Local Rule 7016-1.

8 Local Rule 7016-1 directs both parties to provide their substantive input on the pretrial
9 statement in advance of the date that joint pretrial statement is due. The Rule then leaves the
10 date of filing for the orderly filing of the pretrial statement. By waiting until 4:46 p.m. on the
11 due date to provide further substantive revisions, the Objectors not only frustrated the purpose
12 of the Rule, but deprived DLA Piper of the opportunity to make any necessary revisions in
13 response to the further substantive input of the Objectors and then obtain authorization from
14 all signatories to the joint pretrial statement. DLA Piper objects to, and will move to strike,
15 all exhibits, witnesses and declarations of the Objectors not specifically identified within the
16 time provided by the applicable rules, including Local Rule 7016-1(c) and court order.
17 Without limiting the foregoing, DLA Piper objects to the use of any exhibits, witness or
18 declarations that were first identified at 4:46 p.m. on Wednesday, November 18, 2009.

19 DLA Piper will, in good faith, continue to work on a joint pretrial statement once it has
20 had a reasonable opportunity to review the new substantive input provided by Objectors,
21 formulate objections thereto, and make any further appropriate revisions to the joint pretrial
22 statement, and obtain the authorization to sign the joint pretrial statement. In the meantime,
23 DLA Piper respectfully requests authority to file the pretrial statement in the form of Exhibit
24 A hereto (the form that existed prior to Objectors' substantive revisions provided for the first
25
26 ...

1 time at 4:46 p.m. on the date that the joint pretrial statement was due) in order to comply with
2 the deadline for the filing of the pretrial statement.

3 **DATED** this 18th day of November, 2009.

4 **MARISCAL, WEEKS, MCINTYRE**
5 **& FRIEDLANDER, P.A.**

6 WN/4239

7 By: _____
8 Gary L. Birnbaum
9 William M. Novotny
10 Barry R. Sanders
11 2901 N. Central Ave., Ste. 200
12 Phoenix, AZ 85012
13 Attorneys for DLA Piper LLP (US)

14 Copy of the foregoing sent by electronic
15 mail on November 18, 2009, to:

16 Cathy Reece, Keith Hendricks and Gerald Shelley, Attorneys for ML Manager, LLC
17 creece@fclaw.com
18 khendric@fclaw.com
19 gshelley@fclaw.com

20 Michael O'Mara and Mark Dorval, Attorneys for Kevin T. O'Halloran, Trustee of the
21 Liquidating Trust of Mortgages Ltd.
22 MO'Mara@stradley.com
23 MDorval@stradley.com

24 Shelton L. Freeman, Attorney for G. Grant Lyon, Chapter 11 Trustee for Radical Bunny,
25 L.L.C.
26 tfreeman@lawdmyl.com

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EXHIBIT A

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:
MORTGAGES LTD., an Arizona
corporation,
Debtor.

)
) Chapter 11
)
) Case No. 2-08-BK-07465-RJH
)
) **JOINT PRETRIAL STATEMENT FOR**
) **EVIDENTIARY HEARING ON DLA**
) **PIPER LLP (US)'S FIRST AND FINAL**
) **FEE APPLICATION FOR ALLOWANCE**
) **AND PAYMENT OF FEES**
)
)
) Date: November 25, 2009
) Time: 10:00, a.m..
) Place: Courtroom 603
) 230 N. First Avenue
) Phoenix, AZ 85003
)

1 Pursuant to this Court’s July 30, 2009 Minute Entry Order [Docket No. 2031] and Local
2 Rule 7016-1, DLA Piper LLP (US) (“DLA”), ML Manager LLC (“ML Manager”), ML
3 Liquidating Trust (“Liquidating Trust”), and G. Grant Lyon, in his capacity as duly appointed
4 Chapter 11 Trustee (“RBLLC Trustee”) for Radical Bunny, L.L.C. (“RBLLC”)(collectively, the
5 “Parties”), through their respective counsel, hereby file this Joint Pretrial Statement for the
6 evidentiary hearing (the “Hearing”) on the First and Final Fee Application for Allowance and
7 Payment of Fees for Services Rendered and Expenses Incurred by DLA Piper LLP (US), as
8 Special Real Estate and Litigation Counsel for Debtor (the “Fee Application”).¹

9 **A. Nature of Case**

10 This Hearing concerns the allowance and approval of the Fee Application and the
11 objections to the Fee Application filed by ML Manager, the Liquidating Trust and the RBLLC
12 Trustee (collectively, the “Objectors”). From October 8, 2008 through July 20, 2009²
13 (“Application Period”), DLA rendered time and legal services to the Debtor as special real estate
14 and litigation counsel. Through the Fee Application, DLA is seeking fees in the amount of
15 \$1,406,056.80 and expenses in the amount of \$83,459.26 for a total of \$1,489,516.06 pursuant to
16 sections 328, 330 and 503(b) of the Bankruptcy Code. After the initial hearing on this matter on
17 July 28, 2009, this Court set the Hearing.

18 **B. Uncontested Material Facts**

19 The parties have agreed to the following uncontested material facts:

20 1. After the filing of the Bankruptcy, the Debtor sought to employ a law firm to
21 pursue recovery of loan proceeds and other assets of the Debtor. This included the prosecution
22 of claims against difficult borrowers and guarantors as well as the defense to counterclaims
23 raised by Borrowers. DLA was selected for these purposes.

24 2. On October 23, 2008, the Debtor filed its Application for an Order Authorizing
25 Employment and Retention of DLA Piper LLP (US) as Special Real Estate and Litigation
26 Counsel (“DLA Retention Application”)(Docket No. 864) together with the Affidavit of Mark

27 _____
28 ¹ Reference to the Fee Application shall include time from June 20, 2009 through July 20, 2009 referenced by the Supplement to the Fee Application filed on July 27, 2009.

1 Nadeau in support thereof (“Nadeau Declaration”)(Docket No. 865).

2 3. The Engagement Letter between the Debtor and DLA was attached to the
3 Retention Application and stated that Mr. Nadeau’s hourly rate was \$690.00 per hour for 2008
4 and that other lawyers who may render services on the Debtor’s behalf may have higher or lower
5 hourly rates.

6 4. The Nadeau Declaration identified 3 partners and 2 associates as the principal
7 attorneys at DLA who were anticipated at the time to render services on behalf of the Debtor
8 with hourly rates between \$385 to \$725 per hour. The principal attorneys identified in the
9 Nadeau Declaration had biographical information published on DLA’s website at
10 www.dlapiper.com and DLA was otherwise readily described in both internet and publically
11 available documents.

12 5. The Nadeau Declaration specifically stated that the Debtor was retaining DLA to,
13 among other things, (a) negotiate with, collect from and litigate with problem borrowers and
14 guarantors of loans (but that routine foreclosure matters would continue to be handled by
15 foreclosure counsel), (b) investigate the sources and causes of Debtor’s losses and pursue
16 avenues of recovery, including litigation, against appropriate parties, and (c) represent the Debtor
17 in the NRDP and PDG litigation matters, and in such other litigation as the Debtor may request.

18 6. This Court entered the Order approving the Debtor’s retention of DLA on October
19 24, 2008. (Docket No. 873). No party had objected to the terms of the DLA Retention
20 Application or the Nadeau Declaration or otherwise sought reconsideration of the Court’s Order
21 from the time the Order was entered.

22 7. On January 21, 2009 the Court held a hearing on the October Cover Sheet
23 Application and the objections. The Court on January 27, 2009 entered its memorandum decision
24 allowing \$100,000 to be paid on an interim basis. (Docket No. 1320). DLA was never paid the
25 \$100,000 as provided in the memorandum decision.

26 8. DLA filed its Cover Sheet Applications for October 2008 through April 2009 on
27 November 20, 2008, April 27, 2009, May 21, 2009 and June 4, 2009. (Docket Nos. 1039,
28 1603,1604,1605, 1606, 1756, and 1772).

1 9. In the OIC’s objection to the October Cover Sheet Application, the OIC had
2 reserved its objections for the final fee application process. The OIC never made any other
3 objections and did not file objections to any other fee statements.

4 10. The OIC’s First Amended Plan of Reorganization was confirmed by the Court on
5 May 20, 2009(“Plan”) (Docket No. 1755) and became effective June 15, 2009 (“Effective Date”)
6 (Docket No.). Pursuant to the Plan, all professionals were to file their final fee applications on
7 or before July 6, 2009 (20 days after the Effective Date). Section VII (b)(2) of the Disclosure
8 Statement describing the Plan stated that Allowed Administrative Claims would be paid from the
9 Exit Financing.

10 11. DLA filed its Fee Application on July 2, 2009 (Docket No. 1873) and filed its
11 Supplement on July 27, 2009 (Docket No. 2023). DLA is seeking payment of fees in the amount
12 of \$1,406,056 and expenses in the amount of \$83,459.26. This amount includes the
13 supplemental fees and expenses incurred because of delay in substitution of counsel in the
14 pending civil actions and for fees incurred in prosecuting its administrative claim for payment in
15 light of the OIC, Liquidating Trust, and ML Manager’s failure to engage in settlement
16 negotiations regarding the Fee Application.

17 **C. Contested Material Facts and Issues of Law**

18 1. **Contested Material Facts**

19 The following are contested material facts by DLA and the Objectors.

20 **a. DLA Contested Material Facts**

21 12. In or about August, 2008, the Debtor had a number of significant and complex
22 litigation claims against borrowers and guarantors, was served with several lawsuits filed by
23 borrowers against loan investors (including funds managed by Debtor) and was seeking counsel
24 to represent the Debtor in such matters.

25 13. In August 2008, Mark Nadeau (“Mr. Nadeau”) was invited to a meeting at the
26 Debtor’s offices among certain members of the Official Committee of Investors (“OIC”), other
27 members of an unofficial investor group and the Debtor’s CEO and Board of Directors.

28 14. The Debtor was seeking counsel to prosecute claims concerning substantial loan

1 and guaranty defaults and also to defend it against a number of actual and potential litigation
2 matters related to the Debtor's lending activities.

3 15. During the August meeting, Mr. Nadeau informed the Debtor and the investors
4 about the range of DLA's fees and the legal team he would construct to work on the Debtor's
5 litigation matters, which potentially included attorneys from outside of Phoenix.

6 16. DLA is the largest law firm in the world with a sophisticated finance and real
7 estate practice.

8 17. DLA was ranked in the top 5 of national real estate firms and has a sophisticated
9 government affairs practice.

10 18. During many telephonic conferences in late August and during September 2008,
11 the Debtor and others representing the OIC urged Mr. Nadeau to become counsel to the Debtor.
12 At a second meeting in early October 2008, the Debtor informed DLA that it wanted DLA to be
13 the lead advisor on all key litigation matters and that it would be assigned the majority of the
14 Debtor's troubled \$800 million loan portfolio.

15 19. DLA provided regular status reports to the Debtor on the matters assigned to it.

16 20. Counsel to the OIC was offered opportunities in December and January to meet
17 with DLA to discuss litigation strategies and declined to meet.

18 21. Following receipt of objections to the first fee statement of DLA, the law firm and
19 Debtor commenced discussions about a reduction in fees and/or scope of the engagement to ease
20 concerns raised by the objecting parties.

21 22. After lengthy internal meetings with the Debtor and its counsel, DLA agreed to
22 give a significant discount on total fees. The initial discount for November and December 2008
23 and January and February 2009 represented the complete write off of time for certain
24 timekeepers no longer employed by DLA, a write off of all time for any lawyer working on a file
25 that is "brought up to speed", a 15% discount off the entire fees, an additional 10% discount off
26 the Case Administration category beyond earlier agreements, and an additional 20% discount off
27 the Professional Retention and Fee Application category beyond earlier agreements
28 ("Discount"). In addition to the Discount, DLA agreed to bill the Debtor at 2008 rates and

1 provide a continuing 15% discount off all future fees through calendar year 2009. After the
2 Debtor and DLA agreed on the Discount, DLA filed its monthly fee statements for November
3 2008 through April 2009 and neither the OIC or Radical Bunny objected.

4 23. The litigation between the Debtor and the borrowers/guarantors was complex with
5 loan files that were sometimes incomplete and loans that had not been fully funded. The loan
6 defaults included both developed and undeveloped land as security for borrowing in the tens of
7 millions of dollars in value.

8 24. DLA also provided consultation on existing claims against the Debtor and advised
9 on settlement tactics intended to achieve loan modifications for a loan portfolio that was non-
10 performing.

11 25. The Debtor and DLA suffered constant interference from the OIC who
12 independently met with borrowers and advised certain borrowers that the Debtor had no
13 authority to modify loans, and any settlement would only work if it was originated and approved
14 by the OIC.

15 26. The Debtor's bankruptcy case ("Bankruptcy Case") was one of the largest
16 bankruptcy cases in Arizona history, including 2,800 investors, 61 borrowers, 3 Court-Appointed
17 Committees, one unofficial committee and 91 mechanics liens holders.

18 27. The Debtor's case consistently received national media attention, and interested
19 investors were nationally and internationally based.

20 28. The Debtor and its counsel approved the involvement of DLA lawyers and
21 partners outside of Arizona.

22 29. Time related to general administrative categories was necessary and reasonable at
23 the time they were rendered.

24 30. Substantial administrative time for work associated with the Plan of
25 Reorganization, substitution of counsel, and the fee statements and Fee Application has been
26 incurred by Mr. Nadeau and his staff in Phoenix without charge to the Debtor. Mr. Nadeau has
27 incurred substantial administrative time related to this reorganization from March to the date of
28 the first hearing on the Fee Application and has billed none to the estate.

1 31. Time billed to the TARP matter was considered necessary and critical to
2 prospects for a Debtor sponsored Plan of Reorganization and work performed by DLA was at the
3 specific request of Debtor, its chief officers, the Board of Directors, and its counsel (JSS).

4 32. The Debtor was informed that DLA was a busy law firm and Mr. Nadeau and
5 others assigned to the case would have to forego other work in order to focus on the difficult
6 issues presented.

7 33. DLA's blended hourly rate in this case, including paraprofessionals is \$387.00 per
8 hour.

9 34. Although the OIC plan was confirmed on May 20, 2009, DLA was required to
10 perform additional services for the Debtor until July 20, 2009 because counsel for ML Manager
11 delayed in advising DLA which of its litigation matters it would be substituting in for and
12 deadlines for responsive pleadings were approaching.

13 **b. Objectors Contested Material Facts**

14 35. DLA was employed to handle only a few collection and litigation matters at best.
15 At the time of the discussions and employment, Debtor already had Rule 9019 settlement
16 motions on file for approximately \$400 million of the loans, including Tempe Land Company,
17 Grace Entities, Rightpath, and University and Ash entities. Each of these "settlements" was
18 objected to by the OIC and was not closed prior to the retention of DLA. Debtor subsequently
19 filed settlement motions for about another \$70 million of settlements that were also objected to
20 by the OIC, including Sorenson entities, SOJAC and Bisontown. The Rightpath, Sorenson,
21 SOJAC and Bisontown settlements were ultimately approved and implemented by January 2009.
22 The other settlement motions were not withdrawn by Debtor but were taken off calendar after
23 hostile reactions to the same by the OIC although the parties continued to discuss settlement
24 thereafter. All of the loans involved were secured by Arizona real estate, invoked Arizona law,
25 and involved Arizona Borrowers and guarantors. Each of the loans involved multiple structures,
26 some were single asset while some were not, some involved various LLC entities or corporate
27 structures and were often guaranteed by sophisticated developers and others with multiple assets
28 and tiered financial statements.

1 36. Contrary to their Fee Application, DLA was not hired to handle the following
2 loans: (1) Arizona Commercial Land Acquisitions; (2) Tempe Land Company; (3) Central &
3 Monroe; (4) All State Associates XVI; (5) All State Associates IX; (6) Roosevelt Gateway; (7)
4 Roosevelt Gateway II; and (8) University & Ash. Any fees charges for these matters should be
5 disallowed. Objectors estimate those fees to be about \$23,000. Further, the fees charged were
6 unreasonable and unnecessary and duplicative of services rendered by Debtor's other
7 professionals.

8 37. The rates charged by DLA are not reasonable and are not the customary
9 compensation charged by comparably skilled practitioners in cases other than bankruptcy cases.

10 38. DLA asserts it incurred \$156,000 of fees in Case Administration, such as
11 monitoring and reviewing pleadings and docket entries in the Bankruptcy Case. DLA was not
12 employed as bankruptcy counsel and these services were duplicative of Debtor's bankruptcy
13 counsel, were not reasonably likely to benefit the estate and were not necessary to the
14 administration of the case. The fees in this category are not reasonable and should be disallowed.

15 39. DLA asserts it incurred about \$70,000 (between the Fee Application and
16 Supplement) in its Retention and Fee Applications.

17 40. DLA charged the Debtor with \$11,303 of "nonworking travel" time. It brought
18 attorneys from its Chicago and Los Angeles offices for meetings and Court appearances and
19 charged the nonworking travel time to the Debtor. The fees in this category do not reasonably
20 benefit the estate and were unnecessary. These amounts should be disallowed.

21 41. DLA charged \$63,026 in the category it calls "litigation strategy", \$50,483 in the
22 category it calls "loan analysis" and \$39,361 in the category it calls "legal research". None of the
23 fees are identified to any of the files that it has set up for specific loans or borrowers or guarantor
24 litigation. That adds up to \$152,870 of services not tied to specific matters or files.

25 42. DLA charged \$39,489 for "meetings". The fees were not related to specific
26 matters because those were charged to those matters. These are in addition to the meetings
27 needed to perform the work on specific files. These fees for "meetings" are duplicative,
28 unnecessary, unreasonable and to not benefit the estate. The fees \$39,489 should be disallowed.

1 43. DLA incurred fees of \$67,026.03 in rendering services concerning the "TARP
2 Program". The descriptions in this category are vague, i.e. "monitoring" proceedings. While
3 some review and analysis of the TARP program may have been appropriate to determine
4 whether Debtor was eligible for this program, at some point early in the review it was or should
5 have been clear that further work in this area was not going to benefit the estate and was not
6 warranted or necessary. The fees should be reduced to a more reasonable number.

7 44. DLA was asked to handle the Cottonwood/Riverfront loan and bankruptcy matter
8 which involved a \$7.5 million loan. DLA asserts it incurred fees of about \$294,000 in handling
9 the matter. The matter has not been concluded. The fees incurred are excessive and not
10 reasonable.

11 45. Objectors deny any allegations that the OIC counsel interfered in the Riverfront
12 bankruptcy proceeding so as to prevent successful results by DLA.

13 46. Fees sought by the debtor's counsel in the Riverfront bankruptcy according to
14 their first interim fee application are \$75,000. DLA's fees for the same matter are excessive and
15 not reasonable.

16 47. DLA was asked to handle the Foothills bankruptcy and guarantor litigation. The
17 loan is about \$25.7 million. DLA asserts that it has incurred about \$143,000 of fees in that case.
18 The matter has not been concluded. DLA's fees for this matter are excessive and unreasonable.

19 48. Fees sought by the debtor's counsel in the Foothills bankruptcy according to their
20 interim fee application are \$45,000. DLA's fees for the same matter are excessive and
21 unreasonable.

22 49. DLA was asked to defend the litigation brought by National Retail against the MP
23 Funds. DLA incurred fees of about \$170,000 on this \$5.2 million loan. While the motion to
24 dismiss the adversary was successful, Dax Watson incurred only \$80,000 for the same services
25 in this matter and the PDG Los Arcos combined.

26 50. DLA was asked to defend the litigation brought by PDG Los Arcos against the
27 MP Funds. DLA incurred fees of about \$190,000 on this \$23.9 million loan. The issues were
28 identical to the National Retail matter mentioned above. While the motion to dismiss was

1 successful, Dax Watson incurred only \$80,000 for the same services in this matter and the
2 National Retail matters combined. DLA incurred combined fees of \$360,000 on these two
3 matters. The DLA fees are excessive and not reasonable. The DLA fees for these two loans
4 should be significantly reduced.

5 51. The fees incurred on other individual files are not reasonable in light of the
6 services rendered and results achieved.

7 52. The OIC did not agree to the employment of DLA or make a request of the
8 Debtor that the Debtor hire DLA. Mr. Baldino speaking only for himself gave three names to
9 Mr. Feldheim and suggested that the Debtor might need additional counsel to pursue a few of the
10 difficult borrowers or guarantors. Mr. Baldino provided the names of Pat McGroeder of
11 Gallagher & Kennedy, Leo Beus of the Beus law firm and Mark Nadeau. Mr. Baldino did not
12 attend a meeting with Mr. Feldheim and Mark Nadeau.

13 53. The OIC and its counsel did not interfere with the Debtor's negotiations with
14 borrowers and did not tell borrowers to not deal with the Debtor. On the contrary, the OIC meet
15 with Rightpath, University & Ash, Tempe Land Company, and Grace Entities with the express
16 approval of and at the request of the Debtor. These Borrowers were told that only the Debtor had
17 the authority to enter into a settlement and file a settlement motion. Clearly the OIC had the right
18 and ability to object to settlements that it did not believe were reasonable.

19 54. As reflected by emails to and from Cathy Reece and Forrest Lammiman of DLA
20 in December and in emails of Brad Stevens of JSS, Cathy Reece and Keith Hendricks did engage
21 in discussions in December and January with DLA attorneys.

22 2. **Contested Issues of Law**

23 The following are the contested issues of law material to the Hearing:

24 Whether DLA is entitled to fees for services rendered and expenses incurred in the total
25 amount of \$1,489,516.06 pursuant to Sections 328, 330 and 503(b) of the Bankruptcy Code.

26 a. **DLA Position**

27 This Bankruptcy Case was undeniably one of the largest bankruptcy cases in Arizona's
28 history. This case involved over \$950 million in loan assets and consistently received national

1 media attention from publications such as the Wall Street Journal, New York Times, USA
2 Today, Bankruptcy Law 360 and the Daily Deal. The litigation and related issues arising out of
3 this case were very complex with multiple deal structures and very sophisticated borrowers and
4 guarantors. DLA is one of the most highly ranked firms (by the American Lawyer & Chambers)
5 in terms of its Real Estate practice. Likewise, each of the partners engaged on the Debtor's cases
6 has significant experience in the overlapping legal arenas impacting the cases handled by the
7 firm. In real estate lending, bankruptcy and financial litigation matters our litigation team was
8 required to defend and prosecute claims in state, federal, and bankruptcy court, while assuring
9 substantive and procedural issues were handled consistently amongst a variety of cases and in
10 front of a number of judges. In addition, DLA has a prominent government affairs practice
11 group, lead at the time of its retention by the former Senator George Mitchell (also Global Chair
12 of the firm), who is now the Middle East Envoy for our State Department. DLA was specifically
13 considered and chosen by the Debtor based upon these qualifications and its ability to react
14 immediately with a minimum of conflicts in this region. Other major firms in Arizona, where
15 DLA maintains an office doing work for local, regional, national and international clientele, were
16 already conflicted from representing Debtor owing to existing clients adverse to the Debtor, or
17 relationships amongst various investor groups that prohibited oversight of multiple cases.
18 Regardless, the rates charged by DLA are consistent with other work performed by the firm for
19 private clients in Arizona. In fact, despite the accusations raised by ML Manager, the investors
20 themselves, many of whom comprise the ML Trust Board and were members of the OIC
21 interviewed DLA to handle the litigation issues facing the Debtor and encouraged the Debtor,
22 with the assistance of Fennemore Craig and its financial consultants, to retain DLA. At all times
23 prior to and after DLA's retention, the Debtor, its counsel, ML Manager and RBLLC were well
24 aware of DLA's hourly rates and how they compared to those of other professionals employed in
25 this case. Indeed, DLA was retained even after it declined to give an initial discount requested
26 by those who interviewed DLA.

27 From the outset, DLA was required to vigorously defend the Debtor in two prominent
28 cases receiving substantial press coverage and to immediately commence work in several

1 additional loan matters wherein hundreds of millions of dollars were at stake. DLA was told it
2 was to be the lead advisor on all litigation matters involving its loan portfolio. In addition, the
3 work in PDG and NRDP alone consisted of more than collection work, but required responding
4 to motions to remand, non-core determination and other similar pleadings that move beyond that
5 of “simple collection matters.” At the behest of Debtor, DLA located counsel for the investors in
6 cases where claims were made against the investors and worked closely with those attorneys to
7 minimize the expense of said investors in defending claims made against them as individuals.
8 DLA defeated all of PDG and NRDP’s motions in addition to prevailing on its initial motion to
9 dismiss with respect to the asserted tort claims. With respect to Foothills and Riverfront
10 Commons, the attorneys at DLA had to have in-depth knowledge and skill in bankruptcy to
11 respond to the Chapter 11 filings of those borrowers, again, more than just simple “collection
12 work.”

13 The Debtor specifically requested that DLA perform work (whether in the form of
14 litigation or consultation) in all of the matters set forth in the Fee Application and contrary to the
15 objectors, DLA provided status reports to the Debtor on a regular basis. DLA was well on its
16 way to achieving significant results in a majority of the pending litigation when the OIC
17 intervened and progress was stifled. Over objections of the Debtor, the OIC commenced its own
18 independent meetings with borrowers. Such meetings allowed borrowers to constantly argue
19 about “who was on first” and several attorneys for borrowers suggested that there was no point in
20 meeting with Debtor or its counsel because the OIC said they “would control any settlement.”
21 As the OIC gained momentum toward confirming their plan of reorganization, borrowers
22 became unwilling to settle with the Debtor. The borrowers all delighted in the extension of time
23 on their credits and hoped for an economic rebound leading to increased value of real estate
24 assets. Delay in payment or resolution benefitted most borrowers while it was clearly to the
25 disadvantage of the Debtor. The OIC consistently approached borrowers about settlement,
26 stating that the Debtor had no authority to settle. Borrowers became “confused”³ and efforts at
27 settlement or other recoveries were stymied.

28 _____
³ This “confusion” was largely tactical and convenient to borrowers.

1 Despite the interference by the OIC, DLA managed to have two \$100,000,000 cases
2 against the investors dismissed, would have achieved summary judgment against the guarantors
3 in the Cottonwood matter (if it weren't for the last minute tactics of Fennemore Craig to derail
4 the Debtor's progress), and would have successfully dismissed the Foothills bankruptcy (if only
5 the Debtor would have had the funds to pay for a formal appraisal).

6 DLA submits that the appropriate market for considering the reasonableness of DLA's
7 fees is the national legal community. The complex facts of this "mega" bankruptcy and large
8 collateral lawsuits required the special counsel as approved in the original DLA Retention
9 Application. DLA should not have its fees dictated by a less than full view of the local market
10 but rather on the national market articulated by the Arizona Bankruptcy Court in the *In re First*
11 *Magnus Financial Corporation* (2008 WL 2233503) (Bankr. D. Ariz. May 22, 2008) case.
12 When faced with the need for counsel with skill in bankruptcy, real estate, litigation, loan work
13 outs and government affairs, the Debtor chose DLA. The Debtor's case was complex, and one
14 with national significance. Indeed, the investor population was international and many
15 prominent people outside of Arizona were stakeholders in the bankruptcy process. DLA brought
16 in a team approved by Debtor and its counsel (and certain investors) together in an effort to best
17 serve the Debtor and to serve in more than just a "collection" capacity. In doing so, DLA
18 ultimately charged the Debtor a significantly discounted rate, a rate even lower than that earlier
19 approved by this Court without objection. Moreover, the rates charged by DLA were
20 commensurate with the rates charged by the other high profile Phoenix litigators that were
21 considered by the Debtor for utilization as special counsel.

22 DLA is entitled to be paid its reasonable attorneys' fees and expenses for its work as
23 special real estate and litigation counsel to the Debtor in the amount of \$1,489,516.06. DLA
24 preserves all rights to seek additional fees and costs incurred since July 20, 2009 in connection
25 with DLA's fee application and objections thereto.

26 **b. Objectors' Positions**

27 The Objectors assert that DLA hourly rates are not reasonable or customary for services
28 they rendered in the matters upon which they were engaged. Even the reduced rates asserted by

1 DLA significantly exceed the hourly rates for other attorneys providing legal services in this
2 case. DLA relies on In re First Magnus Financial Corporation, 2008 WL 2233503 (Bankr. D.
3 Ariz. May 22, 2008) in claiming that excessive hourly rates are justified in this case. In First
4 Magnus, Judge Marlar was addressing a truly national debtor with over 5,500 employees in
5 virtually every state. In this case, the Debtor's assets were about \$200 million and it had only 25
6 employees all located in Phoenix. It managed a loan portfolio of assets located only in Arizona.
7 As reflected in one of the exhibits, the top 10 borrower groups made up 85% of the loans. The
8 loan documents were uniform, invoked Arizona law. The loans were secured by Arizona real
9 estate and were made to Arizona borrowers and guarantors. Judge Marlar recognized that the
10 general rule for appropriate hourly rates is the prevailing market rates in the community where
11 the court sits. The general rule must be applied in this case which is limited to Arizona. DLA
12 also cannot establish that local counsel was unavailable, unwilling or unable to handle the
13 authorized services provided by DLA that could justify an exception to this general rule. The
14 excessive requested rates cannot be awarded because DLA is the world's largest law firm when
15 there are no relevant national or international issues.

16 The Objectors assert that DLA exaggerates both the significance of this bankruptcy case
17 and the significance of DLA's involvement in this case. DLA was not the Debtor's general
18 bankruptcy counsel, but was authorized to be employed to provide discrete services to the Debtor
19 in this case. DLA spent excessive amounts of time reviewing the Debtor's standard loan
20 documentation for many loans, researching general issues and analyzing loans upon which they
21 were not employed. Debtor has other special litigation counsel Greenberg Traurig who was
22 employed to handle most of the largest loans, and had ordinary course counsel Gust Rosenfeld to
23 handle the collections, foreclosures and guarantor law suits.

24 There is no question that this case generated media attention. The circumstances of Scott
25 Coles' death, particularly in light of the ongoing financial challenges to the entire financial
26 system of the United States, generated significant media interest. However media attention does
27 not justify the award of unreasonable and excessive attorney's fees in a bankruptcy case.

28 The unreasonableness of the fees, whether they were necessary, the lack of benefit to the

1 estate, the duplication of services when compared to the other professionals used by Debtor, all
2 dictate that DLA should not be allowed the fees in the amounts requested. The Objectors request
3 that the Court look at the entire record of this case when evaluating the reasonableness of the
4 requested fees.

5 The reasonableness of the expenses is also in question. DLA has not itemized its
6 expenses and has not sustained its burden to show that the expenses were necessary and
7 reasonable.

8 As for unauthorized work, DLA took on and charged for work it was authorized to
9 handle. Those fees should be denied.

10 Duplicative services cannot be approved. DLA has the burden to show either that it was
11 not duplicative or that it was reasonable. DLA has not met its burden.

12 DLA charged additional fees Post Effective Date of June 15, 2009. It charged fees
13 of \$43,242.47 or 140.1 hours. DLA was supposed to stand down and all matters were to be
14 continued. This is what happened by and large. The fees charged for this time were mostly on
15 their fee application (\$9,723.15 or 34.1 hours) and on the pursuit of fees in the PDG Los Arcos
16 (\$14,778.95 or 44.3 hours) and National Retail

17 (\$12,917.88 or 37.8 hours) matters. The fees are excessive for the benefit obtained and
18 unreasonable and should be reduced.

19 55. In its Supplement (Docket No. 2023) DLA requests additional fees of \$43,242.47
20 and expenses of \$2,999.40 for time spent from June 20 through July 20, 2009. It complains that
21 Fennemore Craig "waited almost two months after its plan was confirmed to advise DLA Piper it
22 would indeed be substituting in as counsel of record." Of course the Plan did not become
23 effective until June 15, 2009 and until that Effective Date ML Manager had no authority to
24 replace DLA and Fennemore Craig was not in a position to substitute in of record. Continuances
25 and standstills were suppose to be obtained in all matters until the new ML Manager was up and
26 running and this is exactly what happened. By July 20 almost all the substitution of counsel
27 pleadings had been prepared and signed by the new client. There was no unreasonable delay
28 during this 30 day period. DLA however continued to charge fees. Most of the fees appear to be

1 in pursuit of their own fee application or in pursuit of the fees in the PDG Los Arcos and
2 National Retail matters. While some time for a transition was appropriate, \$43,242.47 is not
3 reasonable and should be reduced.

4 **D. List of Witnesses**

5 1. **DLA's Witnesses**

6 DLA's expected witnesses that it will call are::

- 7 (a) Mark Nadeau, partner of DLA.
8 (b) Rob Odson, partner of DLA.
9 (c) Richard Feldheim, prior President and Chief Executive Officer of the Debtor.
10 (d) C. Taylor Ashworth, expert witness

11 DLA's witnesses that it may call are:

- 12 (e) Christine Zahedi, prior Chief Operating Officer of the Debtor.
13 (f) Joseph Baldino, member of the OIC and a current member of the Liquidating
14 Trust Board.
15 (g) William Hawkins, member of the unofficial large investor committee and is a
16 current member of the Board of Managers of ML Manager LLC.
17 (h) Ed McDonough, member of Alvarez & Marsal which acted as financial advisor to
18 the OIC.
19 (i) Michael Tucker, member of FTI which was retained by the Debtor as financial
20 advisor.
21 (j) Chris Olson, former member of the Board of Directors of Debtor and was the
22 CFO for the Debtor.
23 (k) George Everett is a former member of the Board of Directors of Debtor.
24 (l) Carolyn J. Johnsen, counsel to Debtor.
25 (m) Dax Watson, Mack Drucker & Watson, counsel to the non MLTD investors in the
26 PDG and NRDP litigation matters.

27 2. **Objectors' Witnesses**

- 28 (a) Joseph Baldino

1 (b) Nechelle Wimmer

2 (c) All witnesses listed by DLA.

3 **E. Witness Declarations**

4 **1. DLA Declarations**--DLA offers the following witness declarations as
5 evidence at the Hearing:

6 (a) Declaration of Christine Zahedi filed August 19, 2009 in this case no. 08-07465
7 (Docket No. 2108).

8 (b) Declaration of Richard Feldheim filed August 19, 2009 in this case no. 08-07465
9 (Docket No. 2109).

10 (c) Declaration of Michael Tucker to be filed in this case no. 08-07465 (Docket No.
11 2138).

12 (d) Declaration of Mark A. Nadeau filed July 27, 2009 in case no. 08-07465 (Docket
13 No. 2016).

14 (e) Declaration of Mark A. Nadeau filed October 23, 2008 in case no. 08-07465
15 (Docket No. 865).

16 (e) Declaration of Andrew D. Eskin filed July 27, 2009 in case no. 08-07465 (Docket
17 No. 2017).

18 (f) Declaration of Allison Kierman filed July 27, 2009 in case no. 08-07465 (Docket
19 No. 2018).

20 (g) Declaration of Robert J. Odson filed July 17, 2009 in case no. 08-07465 (Docket
21 No. 1967).

22 (h) Declaration of Jennifer L. Nassiri filed July 17, 2009 in case no. 08-07465
23 (Docket No. 1968).

24 (i) Declaration of Brendan P. Collins filed July 17, 2009 in case no. 08-07465
25 (Docket No. 1969).

26 DLA incorporates the entire record before the Court, including any additional
27 declarations filed on DLA's behalf.

28 DLA is prepared to stipulate to the admissibility of declarations provided that such a

1 stipulation applies equally to both DLA and the Objectors. If the Objectors will not stipulate to
2 the admissibility of declarations, DLA objects to the Objectors' use of the Declaration of Ed
3 McDonough, or any other declarations used by the Objectors, if the declarant is not available in
4 the Courtroom at the Hearing for cross-examination by DLA.

5 **2. Objectors' Declarations**—The Objectors do not anticipate using any
6 Declarations at the Hearing other than the Declaration of Ed McDonough, but reserve the right to
7 use any of the DLA Declarations listed above. However, the Objectors also object to DLA using
8 any of the Declarations listed above if the Declarant is not available in the Courtroom at the
9 Hearing for cross-examination by the Objectors. The Objectors also may use Declarations
10 previously used in the Bankruptcy case for impeachment purposes without listing them in this
11 Joint Pretrial Statement.

12 **F. List of Exhibits**

13 DLA has delivered copies of its exhibits 1-54 to the Objectors. All Parties reserve all
14 objections to the various exhibits listed:

15 **1. DLA's List of Exhibits**

16 DLA intends to introduce the following exhibits at the Hearing.

17 1. DLA's Fee Application.
18 2. DLA's fee statements from October 2008 through April 30, 2009.
19 3. Fee Application Summary in Support of Fee Application.
20 4. Supplement to Fee Application.
21 5. Order dated July 2, 2009 filed in *Liss, et al. v. Excel*
22 *Transportation Services, Inc., et al.*, Case No. CV-04-2001-PHX-SMM, United States District
23 Court for the District of Arizona.

24 **6.** Transcript of Record taken April 30, 2009, *In re Riverfront*
25 *Commons, LLC*, 2:09-BK-00122-RTBP.

26 **7.** Documents and other papers on file in every case in which DLA
27 represented the Debtor in its Bankruptcy Case, including the multiple adversary proceedings in
28 NRDP, PDG, Foothills, Dragoo, Cottonwood, and Riverfront Commons summarized by way of

1 court dockets in those cases.

2 8. Article dated June 26, 2008, from Bloomberg.com entitled
3 *Mortgages Ltd. Files Chapter 11 After CEO Commits Suicide.*

4 9. Article dated June 26, 2008, from Daily Deal/The Deal entitled
5 *Credit Crunch Hits Another Lender.*

6 10. Article dated July 16, 2008, from The Wall Street Journal entitled
7 *Hard Money: Real-Estate Financier's Death Hints At Trouble for Lenders.*

8 11. Article dated July 17, 2008, from The Times (London) entitled
9 *Suicide Suspected in Death of Property Loans Chief.*

10 12. Article dated July 17, 2008, from The Wall Street Journal (Europe)
11 entitled *Real-Estate Financier's Death Hints at Trouble for Lenders --- Mr. Coles' Firm Draws*
12 *Attention to Condition of Commercial Market.*

13 13. Article dated July 24, 2008, from The Wall Street Journal entitled
14 *Coles' Death Ruled a Suicide.*

15 14. Article dated August 6, 2008, from Law 360 entitled *Conversion*
16 *Fight Over Mortgages Ltd. Rages On.*

17 15. Article dated August 7, 2008, from Daily Deal/The Deal entitled
18 *Mortgages Ltd. Gets New DIP.*

19 16. Article dated August 11, 2008, from Daily Deal/The Deal entitled
20 *Mortgages Ltd. Wins DIP.*

21 17. Article dated August 26, 2008, from Source Media, Inc. entitled
22 *Feldheim Joins Mtgs. Ltd.*

23 18. Article dated September 23, 2008, from Law 360 entitled
24 *Mortgages Ltd. Investors Ask to Form Committee.*

25 19. Article dated December 6, 2008, from Wall Street Journal entitled
26 *Tempe Land Files for Chapter 11.*

27 20. Article dated December 6, 2008, from Associated Press entitled
28 *Condo Developer Files for Chapter 11.*

- 1 21. Article dated December 11, 2008, from Daily Deal/The Deal
2 entitled *Tempe Land Creditor Files for Relief*.
- 3 22. Article dated December 12, 2008, from USA Today entitled
4 *Timing Proves Bad For Phoenix; Big Investments Made Just Before Economic Decline*.
- 5 23. Article dated January 7, 2009, from Dow Jones Corporate Filings
6 Alert entitled *Mortgages Ltd Investors Want Permission to File Rival Plan*.
- 7 24. Article dated January 26, 2009, from Business Wire, Inc. entitled
8 *Reeder, Lu & Green, LLP Launch New Law Firm; New Firm, Same Winning Team Offers Broad*
9 *Based, Complex Commercial Litigation Expertise*.
- 10 25. Article dated January 29, 2009, from Daily Deal/The Deal entitled
11 *Mortgages Ltd. To Liquidate*.
- 12 26. Article dated March 3, 2009, from Law 360 entitled *Investors’*
13 *Plan Draws Ire In Mortgages Ltd. Ch. 11*.
- 14 27. Article dated March 30, 2009, from Bloomberg.com entitled
15 *Mortgages Ltd. Plan Faces Motion for Conversion to Chapter 7*.
- 16 28. Article dated April 7, 2009, from Daily Deal/The Deal entitled
17 *Mortgages Moves to Confirmation*.
- 18 29. Article dated April 20, 2009, from Daily Deal/The Deal entitled
19 *Tempe Land Files Plan*.
- 20 30. Article dated May 4, 2009, from Law 360 entitled *Creditors Balk*
21 *At Mortgages Ltd. Ch. 11 Plan*.
- 22 31. Article dated May 6, 2009, from Law 360 entitled *Mortgages Ltd.*
23 *Asks to Sell Land to Pay Off Creditor*.
- 24 32. Article dated May 12, 2009, from Law 360 entitled *Creditors*
25 *Object to Mortgages Ltd.’s Land Sale*.
- 26 33. Article dated May 13, 2009, from Law 360 entitled *Mortgages*
27 *Ltd., Investors Offer Up 3rd Ch. 11 Plan*.
- 28

- 1 34. Article dated May 21, 2009, from Daily Deal/The Deal entitled
2 *Mortgages Ltd. Wins Plan Confirmation.*
- 3 35. Article dated July 5, 2009, from The New York Times entitled
4 *Ruins of the Second Gilded Age.*
- 5 36. Article dated July 28, 2009, from Market Watch from Dow Jones
6 entitled *SEC Sues Over Alleged \$197 Million Mortgage Fraud.*
- 7 37. Article dated July 29, 2009, from The Wall Street Journal entitled
8 *SEC Sues Four Over Real-Estate Deal --- The Agency Accuses Phoenix Firm's Officers of Fraud*
9 *in Fund Raising.*
- 10 38. Article dated July 29, 2009, from M2 Presswire entitled *US SEC:*
11 *SEC Charges Four Arizona-Based Promoters in \$197 Million Mortgage Lending Scheme.*
- 12 39. Debtors Schedules and Statement of Financial Affairs.
- 13 40. Various e-mails exchanged between DLA and OIC or others
14 concerning requests for meetings and efforts to resolve fee disputes.
- 15 41. Various phone records illustrating calls between DLA and Joseph
16 Baldino regarding the hiring of DLA.
- 17 42. All motions, oppositions and replies filed by DLA in the PDG
18 (2:08-ap-00781-RJH and 2:08-ap-00831-RJH) and NRDP (2:08-ap-00780-RJH and 08-ap-
19 00832-RJH) matters (including the draft motion to dismiss sent to Mack Drucker & Watson).
20 (See, Exhibit 7)
- 21 43. Joinders to DLA's multiple pleadings filed by Mack Drucker &
22 Watson in the PDG and NRDP matters (See Exhibit 7)
- 23 44. Employment Application filed by Fennemore Craig PC.
- 24 45. Employment Application filed by Jennings Strouss & Salmon
25 PLC.
- 26 46. Employment Application filed by Greenberg Traurig LLP.
- 27 47. Chart illustrating breakdown of fees between the Drago adversary
28 proceeding,. 2:08-ap-00881 RJH and Foothills Chapter 11 case, 2-09-bk-02482-RJH.

1 48. Chart illustrating breakdown of fees between Cottonwood
2 adversary proceeding, 2:08-ap-00906-RTB and Riverfront Chapter 11 case, 2-09-bk-00122-
3 RTB.

4 49. Chart illustrating various deadlines in the PDG, NRDP, and
5 Foothills matters requiring DLA to continue to perform work during the Supplemental Fee
6 Period of June 20, 2009 through July 20, 2009.

7 50. Summary chart of DLA write-offs.

8 51. Debtors' Application for an Order Authorizing Employment and
9 Retention of DLA Piper LLP (US) as Special Real Estate and Litigation Counsel for Debtor
10 *Nunc Pro Tunc* to October 8, 2008

11 52. Affidavit of Mark A. Nadeau in Support of Debtor's Application
12 for an Order Authorizing Retention of DLA Piper LLP (US) as Special Real Estate and Litigation
13 Counsel for Debtor *Nunc Pro Tunc* to October 8, 2008

14 53. Order Authorizing Employment and Retention of DLA Piper LLP
15 (US) as Special Real Estate and Litigation Counsel for Debtor *Nunc Pro Tunc* to October 8, 2008

16 54. November 4, 2009 correspondence from Barry R. Sadners to
17 Michael O'Mara et al.

18 55. All exhibits identified by the Objectors.

19 56. All impeachment exhibits.

20 2. **Objectors' List of Exhibits**

21 1. All exhibits listed and used or identified by DLA.

22 2. Debtor's Schedule of Assets and Liabilities and Statement of Affairs
23 and Monthly Operating Reports.

24 3. List of Borrower Loans listing amounts and grouped by related
25 Borrower entities.

26 4. Copies of various Borrower Promissory Notes or Loan Documents.

27 5. Fee Application and Billing Statements of Debtor's Ordinary Course
28 Counsel Gust Rosenfeld PLC ("Gust Rosenfeld"), including fee statements, summaries and

1 supplemental fee applications.

2 6. Summary comparisons of DLA and Gust Rosenfeld rates, attorney
3 years in practice, legal services, fees and matters handled, and results achieved.

4 7. Fee Application of the Debtor's bankruptcy counsel Jennings Strouss
5 & Salmon PLC ("JSS"), including fee statements, summaries and supplemental fee applications.

6 8. Fee Application of the Debtor's special counsel Greenberg Traurig
7 LLP, including fee statements, summaries and supplemental fee applications.

8 9. Fee Application of the Debtor's financial advisor FTI Consulting,
9 including fee statements, summaries and supplemental fee applications.

10 10. Fee Application of the OIC counsel, Fennemore Craig PC, including
11 fee statements, summaries and supplemental fee applications.

12 11. Fee Application of the Unsecured Creditors Committee's counsel,
13 Nussbaum & Gillis PC, including fee statements, summaries and supplemental fee applications.

14 12. Summary comparison of the various fee applications of the Debtor's
15 professionals and the overlap and duplication of services.

16 13. Fee Application of the Mack Drucker & Watson in the Bankruptcy
17 case and Requests for fees in the National Retail adversary proceeding 2:09-ap-___ and the PDG
18 Los Arcos adversary proceeding 2:09-ap-___ and the Court's order awarding fees, including fee
19 statements, summaries and supplemental fee applications.

20 14. Fee applications filed by debtor's counsel Polsinelli Shugart PC in the
21 Riverfront bankruptcy proceeding 2:09-bk-___ and the Foothills bankruptcy proceeding 2:09-
22 bk-___.

23 15. Various Minute Entries and transcripts from the Riverfront bankruptcy
24 proceeding, including minute entries, memorandum decisions and pleadings, including and
25 without limitation, affidavits submitted by DLA.

26 16. Application to Employ DLA (Docket No. __) and Nadeau Declaration
27 and the Engagement Letter (Docket No. ____).

28 17. Various to and from DLA and counsel for OIC about discussions and

1 proposals.

2 18. Various to and from DLA and counsel for ML Manager or Liquidating
3 Trust for turnover or delivery of files and substitution of counsel and copies of various
4 substitutions of counsel.

5 19. All impeachment exhibits.

6 Respectfully submitted this 18th day of November, 2009.

7 WN/4239

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