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

11 In re  
12 MORTGAGES LTD.,  
an Arizona corporation,  
13 Debtor.

Chapter 11

Case No. 2-08-07465-RJH

**PREHEARING MEMORANDUM IN  
SUPPORT OF FIRST AND FINAL  
APPLICATION FOR ALLOWANCE  
AND PAYMENT OF FEES FOR  
SERVICES RENDERED AND  
EXPENSES INCURRED**

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16  
17 **Introduction**

18 DLA Piper, LLP (US) (hereinafter, "DLA Piper") respectfully submits this Prehearing  
19 Memorandum to assist the Court in its consideration of the evidence that will be presented,  
20 and the issues that may arise, in connection with the evidentiary hearing scheduled for  
21 November 25, 2009, regarding DLA Piper's First and Final Application for Allowance and  
22 Payment of Fees for Services Rendered and Expenses Incurred (Docket No. 1873).  
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1 **I. THE SCOPE OF THE ENGAGEMENT OF DLA PIPER**

2 **A. The Debtor Sought, and Obtained, Bankruptcy Court Approval to**  
3 **Utilize DLA Piper as the Debtor’s Management Deemed Appropriate**  
4 **to (1) Negotiate and Litigate With Problem Borrowers, Guarantors,**  
5 **and Others (2) to Supervise Routine Foreclosure Matters and Work**  
6 **with Debtor’s Foreclosure Counsel, (3) to Investigate the Sources and**  
7 **Causes of Debtor’s Losses and Damages, and (4) to Represent the**  
8 **Debtor in Other Litigation Matters as Requested.**

9 1. The scope of legal services to be provided to the Debtor, Mortgages Ltd., by  
10 DLA was quite broad. The Application seeking authorization to employ DLA Piper [Docket  
11 No. 864] provided:

12 The Debtor seeks to retain DLA Piper to represent Mortgages, Ltd.  
13 on behalf of itself and as Agent on behalf of various persons and  
14 entities in connection with this Chapter 11 case and other matters,  
15 *nunc pro tunc* to October 8, 2008, as follows:

16 (a) Negotiate with, collect from and litigate with problem  
17 borrowers, any guarantors of loans and other parties implicated in  
18 the shortfall of funds in the estate or the failure to repay the estate.  
19 Routine foreclosure matters will continue to be handled by  
20 foreclosure counsel, subject to such supervision by and involvement  
21 of DLA Piper as the Debtor’s management may deem appropriate  
22 under the circumstances pertaining to specific loans or pools of  
23 loans.

24 (b) Investigate the sources and causes of the Debtor’s losses and  
25 damages to its business and assets, and pursue avenues of recovery,  
26 including litigation, against appropriate parties.

(c) Represent the Debtor in other litigation matters as requested,  
including in the National Retail Litigation and the PDG Litigation.

2. The Order authorizing the employment of DLA Piper [Docket No. 873]  
specifically authorized the retention of DLA Piper “in accordance with the terms and  
conditions described in the Application.”

1 **II. THE STANDARDS FOR JUDGING FEE APPLICATIONS**

2 **A. The Debtor Sought and Obtained Court Approval to Retain DLA**  
3 **Piper Pursuant to 11 U.S.C. § 328(a) at the Hourly Rates Set Forth in**  
4 **the Fee Application.**

5 1. Paragraph 18 of Debtor’s Application for an Order Authorizing Employment  
6 and Retention of DLA Piper, LLP (US) as Special Real Estate Counsel for the Debtor *Nunc*  
7 *Pro Tunc* to October 8, 2008 [Docket No. 864] specifically sought approval of the retention  
8 pursuant to 11 U.S.C. § 328(a) on terms and conditions that included hourly rates of \$225.00  
9 to \$725.00 per hour.

10 2. The Application incorporated the concurrently filed Affidavit of Mark Nadeau  
11 [Docket No. 865] (the “Nadeau Affidavit”) which included a preliminary list of the  
12 paralegals, associates and partners who would work on the matters referred to in the  
13 Application and Order. The Nadeau Affidavit specifically listed partner rates of \$690.00 to  
14 \$725.00 per hour; associate rates of \$385.00 to \$465.00 per hour; and paralegal rates of  
15 \$220.00 to \$250.00 per hour. The Nadeau Affidavit also disclosed that, as needed and  
16 appropriate, other DLP Piper professionals would render services on behalf of the Debtor at  
17 their standard hourly rates.

18 3. As noted above, the Order Authorizing Employment and Retention of DLA  
19 Piper, LLP (US) as Special Real Estate Counsel for the Debtor *Nunc Pro Tunc* to October 8,  
20 2008 [Docket No. 873] specifically authorized the retention of DLA Piper “in accordance  
21 with the terms and conditions described in the Application” -- including the stated hourly  
22 rates.

23 4. DLA Piper is an international law firm. The Debtor’s representatives were fully  
24 informed at the outset of the engagement that attorneys from other states would be assisting in  
25 the representation of the Debtor and that such attorneys would charge their standard hourly  
26 rates.



1 pursuant to § 328 its professional fees will be reviewed for reasonableness under § 330,  
2 To ensure that § 328 governs the review of a professional's fees, a professional must  
3 invoke the section explicitly in the retention application. Preferably, the retention order  
4 would specify that section as well.” (emphasis added.) In In re Circle K, the court  
5 determined that a professional (the Houlihan, Lokey investment banking firm) that had not  
6 explicitly invoked § 328 would have its fees reviewed for reasonableness under § 330, but  
7 specifically noted that another professional (Merrill Lynch), that had specifically invoked §  
8 328, was entitled to be compensated in accordance with the terms and conditions of its  
9 retention application. Id. at 673.

10 4. To the same effect is In re Texas Securities, Inc., 218 F.3d 443 (5<sup>th</sup> Cir. 2000)  
11 (reversing reduction in award based on lodestar formula where bankruptcy court had  
12 previously approved terms of compensation) where the Court observed, in language equally  
13 applicable to this case: “**Section 328 applies when the bankruptcy court approves a**  
14 **particular rate or means of payment, and § 330 applies when the court does not do so....**  
15 **Once the bankruptcy court has approved a rate or means of payment, such as a**  
16 **contingent fee, the court cannot on the submission of the final fee application instead**  
17 **approve a ‘reasonable’ fee under § 330(c), unless the bankruptcy court finds that the**  
18 **original arrangement was improvident due to unanticipated circumstances as required**  
19 **by § 328(a).” Id. at 445-46. (emphasis added)**

20 5. Just as the application for retention of Merrill Lynch differed from other  
21 applications in In re Circle K, the application for retention of DLA Piper differed from the  
22 applications for retention of other professionals in this case. While DLA Piper specifically  
23 sought approval of its application pursuant to § 328, other professionals sought approval of  
24 their compensation pursuant to § 330(a) of the Bankruptcy Code. The Application for an  
25 Order Authorizing and Approving Employment of Fennemore Craig, P.C. as of August 1,  
26 2008 as Attorneys for the Official Committee of Investors [Docket No. 331] specifically

1 provided in paragraph 10 “Subject to approval in accordance with § 330(a) of the Bankruptcy  
2 Code, compensation shall be paid to the Firm on an hourly basis, plus reimbursement of  
3 actual, necessary expenses and other charges incurred by the Firm as agreed to between the  
4 Firm and the Investor Committee.” The Application for Order Authorizing and Approving  
5 the Employment of Jennings, Strouss & Salmon, PLC as Attorneys for the Debtor [Docket  
6 No. 115] also provided: “Subject to Court approval and in accordance with Bankruptcy Code  
7 § 330(a) compensation will be payable to the Firm on an hourly rate basis, plus  
8 reimbursement of actual, necessary expenses and other charges incurred by the Firm as  
9 agreed to between the Firm and the Debtor.” Paragraph 20 of the Application for an Order  
10 Under 11 U.S.C. § 327(A) Authorizing the Employment of Greenberg Traurig LLP as  
11 General Counsel to the Debtor [Docket No. 21] provided: “GT has informed the Debtor that it  
12 will hold the retainer in trust during the pendency of this case to be applied toward the  
13 payment of GT’s final compensation and expenses awarded in the case pursuant to 11 U.S.C.  
14 § 330(a)(1).”

15 6. In sum, DLA Piper specifically invoked § 328 to ensure that its fees would be  
16 reviewed under that Section and that its approved rates would not be subject to later challenge  
17 as “unreasonable.” Other professionals did not do so.

18 **C. The Ninth Circuit Standard for Determining Whether Services Were**  
19 **Beneficial Does Not Focus on Actual Results Obtained, but Rather on**  
20 **Whether the Services Rendered Were Reasonably Likely to Benefit the**  
21 **Estate at the Time the Services Were Performed.**

22 1. The United States Bankruptcy Appellate Panel for the Ninth Circuit has rejected  
23 the Fifth Circuit test that requires that services rendered by professionals, including special  
24 counsel, result in identifiable, tangible and material benefit to the estate. Instead, the United  
25 States Bankruptcy Appellate Panel for the Ninth Circuit properly and understandably requires  
26 that the services performed must have been reasonably likely to benefit the estate at the time  
when the services were rendered. In re Mednet, 251 B.R. 103, 108 (B.A.P. 9<sup>th</sup> Cir. 2000)

1 (“The statute does not require that the services result in a material benefit to the estate in  
2 order for the professional to be compensated; the applicant must demonstrate only that the  
3 services were ‘reasonably likely’ to benefit the estate at the time the services were rendered.”)

4 **D. In Any Event, The Rates Charged by DLP Piper Are Reasonable Given**  
5 **That DLA Piper Could Charge and Collect Comparable Hourly Rates**  
6 **on Non-Bankruptcy Matters.**

7 1. The rates charged and collected by DLA Piper when performing similar  
8 services for non-bankruptcy clients are persuasive evidence of the reasonableness of the fee  
9 award sought. In re Farley, 156 B.R. 203, 212 (N.D. Ill. 1993) (awarding New York rates for  
10 a Chicago proceeding and observing that: “In determining that hourly rates requested here by  
11 Kaye Scholer are reasonable, it was first found that the firm’s attorneys could charge and  
12 collect comparable hourly rates on comparable non-bankruptcy projects. Kaye Scholer could  
13 have charged and did ordinarily charge and collect its rates from paying clients on such  
14 engagements.”)

15 2. DLA Piper could not only collect its stated rates performing other work, but Mr.  
16 Nadeau specifically noted this fact at the time of his engagement discussions. For this reason,  
17 he specifically requested a contingent or partially contingent fee. The Debtor declined to  
18 enter into such an arrangement, insisting upon an hourly fee on DLA Piper’s standard hourly  
19 rates.

20 **E. The Rates Charged by DLA Piper Are Reasonable Given That They**  
21 **Were Negotiated at Arms Length.**

22 1. At the time of the engagement, the Debtor, seeking reorganization, had every  
23 incentive to undertake a cost-benefit calculation with regard to legal services. The Debtor  
24 made an informed and calculated decision to retain DLA Piper. Actual market forces were at  
25 work and set the value of the services. In re Farley, 156 B.R. 203, 212-213 (N.D. Ill. 1993)  
26 (best approach to determining reasonable value of services is to ascertain whether actual  
market forces were at work with regard to retention; a strong presumption exists that rates

1 agreed to by a debtor are reasonable as the reorganized debtor “has the incentive to make the  
2 same cost-benefit calculation that any client has to make in the market for legal services. . . .  
3 [and the Debtor] knew what it was getting into when it retained Kaye Scholer.”)

4 2. This is precisely the same principle applied generally in the Arizona legal  
5 community:

6 **The beginning point in a development of a reasonable fee is the**  
7 **determination of the actual billing rate which the lawyer**  
8 **charged in the particular matter. . . . Unlike public rights**  
9 **litigation and contingent fee litigation, for example, in corporate**  
10 **or commercial litigation between fee paying clients, there is no**  
11 **need to determine the reasonable hourly rate prevailing in the**  
12 **community for similar work because the rate charged by the**  
13 **lawyer to the client is the best indication of what is reasonable**  
14 **under the circumstances of the particular case.**

15 *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 187-88, 673 P.2d 927, 931-21 (App.  
16 1983). (emphasis added)

17 **F. Under Any Standard, The Fees Sought by DLA Piper are Reasonable**  
18 **Given the Extreme Time Pressures Presented, Resources Required, the**  
19 **Complexity of the Matters, and Recognition that Most Other Local**  
20 **Law Firms with Substantial Relevant Experience and Resources Were**  
21 **Committed to Other Clients.**

22 1. In any event, rates higher than average local rates are justified and “reasonable”  
23 where a firm is retained in complex bankruptcy proceedings to undertake a representation  
24 under severe time pressures, most other local counsel have been committed to other clients,  
25 the firm’s resources are needed, and the firm is charging its standard rates. In re Frontier  
26 Airlines, 74 B.R. 973, 976-977 (D. Colo. 1987) (awarding New York rates for Colorado  
proceeding where most other local counsel were committed to other clients, firm’s resources  
were needed, and firm worked under extreme time constraints).

**G. The Fees Charged by DLA Piper Were Commensurate With the Fees**  
**Charged by Other Prominent Litigators who the Debtor Considered**  
**for Utilization as Special Counsel.**

1. Among the other lawyers that Mortgages Ltd. considered for engagement  
besides Mr. Nadeau and the DLA Piper firm was Leo Beus, Esq. Mr. Beus’ hourly rate, on



1 the limited matters for which he bills hourly, as opposed to a contingent basis, is \$675 per  
2 hour.

3 2. A Declaration recently filed in an unrelated action, further indicates that rates of  
4 \$1,000 per hour in the Phoenix legal market-- while certainly rare -- are not unprecedented.

5 **III. THE FEES SOUGHT BY DLA PIPER AMOUNT TO A 28% REDUCTION**  
6 **FROM THE COURT APPROVED RATES**

7 **A. Following the Initial Month of Work, DLA Piper Provided the Debtor**  
8 **With a Significant Discount From Total Fees Incurred.**

9 1. Pursuant to meetings with the Debtor and its general counsel, after the initial  
10 month of retention, DLA Piper agreed to a significant discount on its total fees. From  
11 November 2008 forward, DLA Piper agreed to bill the Debtor at 2008 rates and to provide a  
12 continuing 15% discount off all future fees through calendar year 2009.

13 2. For November and December 2008 and January and February 2009 additional  
14 discounts were provided consisting of the complete write-off of time for certain timekeepers  
15 no longer employed by DLA Piper, a write-off of all time for any lawyer working on a file  
16 that had to be "brought up to speed," a 15% discount (as noted) off the entire fee, an  
17 additional 10% discount off time allocated to time incurred in the Case Administration  
18 category, and an additional 20% discount off the professional Retention and Fee Application  
19 category beyond any discount previously applied.

20 3. The result of these adjustments was a substantial overall reduction in DLA  
21 Piper's fees and its overall realization rate – even assuming collection in full, and without  
22 dispute, of the discounted fees. By way of example, these discounts resulted in reductions of  
23 Mr. Nadeau's and Mr. Odson's hourly court-approved rates of \$690 to hourly rates of \$590.

24 **B. Realization Issues.**

25 1. Using the rates that were set forth in the Court-approved Application for  
26 employment of DLA Piper, DLA Piper actually incurred approximately \$1.95 million dollars  
in fees for services rendered in connection with this engagement. DLA Piper generally

1 experiences a 93% realization rate.

2 2. DLA Piper's realization rate is entirely consistent with realization rates  
3 experienced at national firms with more than 150 lawyers. (DLA Piper is an international  
4 firm with more than 3000 attorneys.) For 2008, Altman Weil reports that the overall  
5 realization rates for national firms of 150 lawyers or more were approximately 92.8% (with a  
6 billing realization rate of 94.7% and a collection realization rate of 98%).

7 3. The \$1.4 million in fees that DLA Piper has applied for amounts to only 72% of  
8 the fees it actually incurred. A 72% realization rate would place this representation in the  
9 lowest decile (i.e., the bottom 10%) for major law firms.

10 **IV. THE INDIVIDUAL MATTERS WITH RESPECT TO WHICH DLA PIPER,**  
11 **LLP WAS ENGAGED**

12 1. DLP Piper was counsel of record in 28 separate litigated matters in which an  
13 aggregate of over \$500 million was at stake.

14 2. DLA Piper's Fee application, if divided equally among all matters, equates to an  
15 average of only \$50,216.31 per litigated matter.

16 3. Set forth immediately below is a synopsis of the time expended by each litigation  
17 matter and a discussion of the services provided by DLA Piper during the Application Period.

18 **A. Loan 859305 PDG Los Arcos LLC (Matter #000002).**

19 1. Mortgages Ltd. made a loan in the amount of \$26,000,000 to PDG Los Arcos  
20 ("PDG"). The loan went into default on July 1, 2008, when PDG failed to make a monthly  
21 payment. PDG initiated suit in state court against Mortgages Ltd. investors for failure to fund the  
22 loan. Mortgages Ltd., in turn, filed a Complaint in Bankruptcy Court against PDG and its  
23 Guarantors (as defined below).

24 2. PDG's counsel contended that it was seeking at least \$100,000,000 in damages  
25 against the Mortgages Ltd. investors ("Mortgages Ltd. Investors") and aggressively litigated  
26 each and every aspect of the case, a strategy that increased the time, energy and fees expended

1 by all parties. Initially, PDG's complaint named scores of defendants and included  
2 unwarranted claims which caused the escalation of attorneys' fees and costs as the Mortgages  
3 Ltd. Investors were forced to file motions to obtain dismissal of certain allegations. As the  
4 case involved much more than routine collection issues, DLA was forced to address complex  
5 bankruptcy issues and how they interrelated with state law, by analyzing and responding to  
6 PDG's motions for non-core determinations, withdrawal of the reference, and motions to  
7 remand.

8         3. This matter includes time related to the prosecution of breach of guaranty, turnover  
9 of assets and declaratory relief action claims PDG and Richard J. Sodja and Molly L. Sodja  
10 ("Guarantors"), and removal to Bankruptcy Court and defense of the action ("State Court Action"  
11 and/or "PDG Complaint") brought by PDG against certain Mortgages Ltd. investors. During the  
12 Application Period, DLA Piper spent time conducting an analysis of the loan documents (fact  
13 gathering/due diligence) and preparation of a loan summary. DLA Piper worked in coordination  
14 with the Debtor, through numerous telephone conferences and e-mail exchanges, to develop a  
15 litigation strategy. DLA Piper spent time communicating with counsel for PDG, communicating  
16 with counsel for the co-defendants, analyzing pleadings and drafting correspondence.

17         4. Services rendered on this file also included legal research on various issues and the  
18 preparation of multiple affirmative and responsive pleadings including, but not limited to, the  
19 complaint against PDG and the Guarantors, the motion to remove the State Court Action to  
20 Bankruptcy Court, a motion to consolidate cases, a motion to dismiss PDG's Complaint, an  
21 answer PDG's Complaint, an opposition to PDG's motion for leave to appeal, an opposition to a  
22 motion to remand, an opposition to a motion to reschedule hearing, an opposition to PDG's  
23 motion for a "non-core" determination, a request for judicial notice, a counter-designation of  
24 record, an opposition to PDG's motion to withdraw reference, a joinder in certain co-defendants  
25 motion to dismiss PDG's Complaint, a motion for writ of attachment, supporting declarations,  
26 stipulations and various replies.

1           5.       DLA Piper was successful in defending against PDG's barrage of tactical filings.  
2 In addition, DLA Piper filed multiple pleadings in connection with PDG's appeal of the dismissal  
3 of the PDG Complaint. DLA Piper also prepared for and attended several meetings, hearings,  
4 pretrial conference and status conferences. In addition, DLA Piper devoted time to discovery --  
5 including responding to and preparing various written discovery requests. The work included  
6 preparation of Rule 26 disclosure statements, requests for production of documents, special  
7 interrogatories, subpoenas and a joint discovery report.

8           6.       In connection with PDG's discovery requests, DLA Piper spent time reviewing and  
9 analyzing thousands of Mortgages Ltd. documents to determine their relevance and to respond to  
10 the discovery requests.

11          7.       In total, DLA Piper expended 365.8 hours in performing services in connection  
12 with this matter. At DLA Piper's discounted rates, total fees charged were \$167,464.88.

13           **B.       Loan 860905 National Retail Development Partners, LLC (Matter**  
14           **#000003).**

15          1.       Mortgages Ltd. loaned \$10,500,000 to National Retail Development Partners  
16 ("NRDP"). NRDP went into default when it failed to pay the loan on its maturity date of August  
17 22, 2008. NRDP filed a complaint in the superior court against various investors for failure to  
18 fund the loan. DLA Piper represented various investor funds ("Opportunity Funds"). Mortgages  
19 Ltd. filed a Complaint in Bankruptcy Court against NRDP and the Guarantors.

20          2.       Here, again, NRDP's counsel contended that it was seeking at least  
21 \$100,000,000 in damages against the Mortgages Ltd. Investors and aggressively litigated each  
22 and every aspect of the case. Once again, DLA Piper was forced to address complex  
23 bankruptcy issues and the interrelationship of those issues to state law.

24          3.       This matter includes time related to the prosecution of a breach of guaranty,  
25 turnover of assets and declaratory relief action against National Retail Development Partners  
26 ("NRDP") and Richard J. Sodja and Molly L. Sodja and Tenton Schelkopf and Amy Schelkopf

1 (“Guarantors”). Also included are services relating to the removal to Bankruptcy Court and  
2 defense of the action (“State Court Action” and/or “NRDP Complaint”) brought by NRDP  
3 against certain Mortgages Ltd. Funds.

4 4. During the Application Period, DLA Piper spent time on this matter conducting an  
5 analysis of the loan documents (fact gathering/due diligence) and preparation of a loan summary.  
6 Here, again, DLA Piper worked in coordination with the Debtor in formulating litigation strategy.  
7 DLA Piper spent considerable time communicating with counsel for NRDP, communicating with  
8 counsel for the co-defendants, analyzing pleadings and drafting correspondence. Services also  
9 included legal research on various issues and the preparation of multiple affirmative and  
10 responsive pleadings including, but not limited to, the complaint against NRDP and the  
11 Guarantors, the motion to remove the State Court Action to Bankruptcy Court, a motion to  
12 consolidate cases, a motion to dismiss NRDP’s Complaint, an answer to NRDP’s Complaint, an  
13 opposition to NRDP’s motion for leave to appeal, an opposition to motion to remand, an  
14 opposition to motion to reschedule hearing, the opposition to NRDP’s motion for “non-core”  
15 determination, a request for judicial notice, a counter-designation of record, the opposition to  
16 NRDP’s motion to withdraw reference, a joinder in certain co-defendants motion to dismiss  
17 NRDP’s Complaint, a motion for writ of attachment, supporting declarations, stipulations and  
18 various replies.

19 5. Again, DLA Piper was successful in defending against all claims of NRDP and the  
20 guarantors and all of their procedural maneuvers.

21 6. In addition, DLA Piper filed multiple pleadings in connection with NRDP’s appeal  
22 of the dismissal of the NRDP Complaint. DLA Piper also prepared for and attended several  
23 meetings, hearings, pretrial conference and status conferences. In addition, DLA Piper responded  
24 to and prepared various discovery pleadings and disclosure statements. In connection with  
25 PDG’s discovery requests, DLA Piper again was required to review and analyze thousands of  
26 Mortgages Ltd. documents.

1           7.       DLA Piper provided 346 hours of legal services in connection with this matter.  
2 Charges totaled \$155,968.64 for legal services rendered.

3           **C.       Loan 853705 Cottonwood Parking, Inc. (Matter #000004).**

4           1.       Mortgages Ltd. loaned \$7,575,000 to Riverfront Commons, LLC (“Riverfront”) for  
5 the construction of two commercial buildings in Cottonwood, Arizona (the “Riverfront Loan”).  
6 Riverfront leased property from Cottonwood Parking, Inc. (“Cottonwood”) on which it was to  
7 construct the two commercial buildings. Cottonwood signed a Deed of Trust securing the  
8 Riverfront Loan and GLM Enterprises, Inc. (“GLM”) and Glen and Laura Morrison (the  
9 “Guarantors”) guaranteed the Riverfront Loan. Riverfront defaulted on the loan on June 27,  
10 2008.

11          2.       To say the least, this was not a “simple” collection case as it is now sometimes  
12 characterized. During the 6+ months in which DLA Piper was Mortgages Ltd.’s counsel in the  
13 Riverfront bankruptcy matter and the Riverfront Adversary Proceeding in Mortgages Ltd.’s  
14 bankruptcy, at Mortgages Ltd.’s direction or request, DLA Piper drafted more than 15 briefs in  
15 response to court orders or in response to actions taken by Riverfront or the Morrisons. DLA  
16 Piper prepared at Mortgages Ltd.’s direction and requested, DLA Piper prepared for and  
17 participated in more than ten (10) hearings regarding the Riverfront bankruptcy and the  
18 Riverfront Adversary Proceeding.

19          3.       Pursuit of the Riverfront Loan was part of Mortgages Ltd.’s global strategy to  
20 identify a select number of loans to pursue as test cases and it was intended that documents and  
21 briefs in this case were to be used as templates for filings in other matters that DLA Piper was  
22 handling on Mortgages Ltd.’s behalf. Although there were no counterclaims or defenses asserted  
23 to the nonpayment of the loan, counsel for the borrower and guarantors engaged in a number of  
24 tactics designed to delay collection and engaged in tactics that unnecessarily increased the  
25 expense associated with Mortgages Ltd.’s efforts to collect upon the loan. For example, the  
26 borrower waited until the day before the evidentiary hearing was scheduled on Mortgages Ltd.’s

1 receivership motion, and after Mortgages Ltd. had prepared for the evidentiary hearing and  
2 provided the supplemental brief that the Court requested, to file for Chapter 11 bankruptcy  
3 protection in *In re Riverfront Commons, LLC*, Case No. 2:09-bk-00122-RTB, pending in the  
4 United States Bankruptcy Court for the District of Arizona before Judge Baum. Riverfront  
5 ultimately admitted that it filed for bankruptcy protection to avoid the hearing on Mortgages  
6 Ltd.'s receivership motion. Nonetheless, as a result of this bankruptcy filing, the efforts to collect  
7 the loan against Riverfront were stayed while Mortgages Ltd.'s motion to dismiss the bankruptcy,  
8 for bad faith filing, remained pending. When DLA Piper's representation of Mortgages Ltd.  
9 ended, the motion to dismiss was still pending.

10 4. There were a number of issues complicating the collection of the loan arising  
11 from the loan documents. For purposes of this Memorandum, a few illustrations should  
12 suffice.

13 5. Although Riverfront is the named borrower on the Riverfront Loan, Riverfront  
14 was to use the Loan to construct two commercial buildings on land Riverfront leased from  
15 Cottonwood. Cottonwood leased the property to Riverfront (previously named FAE Holdings  
16 376291R, LLC) on April 10, 2006 (the "Lease"). The term of the Lease is 31 years, with an  
17 additional renewal term of 10 years. After the expiration of the Lease, the buildings that  
18 Riverfront constructed on the Property were to become Cottonwood's property. Although  
19 Cottonwood owned the Property securing Riverfront's Loan, Cottonwood never signed a Deed  
20 of Trust. Leases on the Property also were in names other than Riverfront as the Landlord and  
21 instead, in many instances, were in the name of entities that the Morrisons (the Guarantors)  
22 operated. Mortgages Ltd. did not even have copies of all current leases on the Property. Thus,  
23 there were issues related to whether the Riverfront bankruptcy prevented Mortgages Ltd. from  
24 pursuing the Property securing the Riverfront loan (as the Property securing the loan was not  
25 owned by Riverfront). There were also issues related to whether Mortgages Ltd. could collect  
26 rents from the leases that were not in Riverfront's name.

1           6.       The borrowers also contested Mortgages Ltd.’s ability to collect on this Loan,  
2 contending that the individual investors, rather than Mortgages Ltd. were the proper party  
3 plaintiffs. The Morrisons moved to join the Mortgages Ltd.’s investors in the Riverfront  
4 Adversary Proceeding in the Mortgages Ltd. bankruptcy proceeding. There were also  
5 significant discovery disputes on these issues, in part because (1) Mortgages Ltd. was unable  
6 to identify who the investors in the Riverfront Loan were, and (2) some of the investors  
7 disputed Mortgages Ltd.’s right to act as the servicer on some of the loans. There were  
8 numerous discovery disputes related to Mortgages Ltd.’s efforts to take Riverfront’s 2004  
9 examination.

10           7.       DLA Piper filed a motion for summary judgment against the Morrisons as the  
11 Guarantors for the full amount of the unpaid loan (as the Morrisons’ guarantees were ones of  
12 payment and not collection). In April, Judge Baum ruled that no defense on Riverfront’s  
13 default of the Loan had been asserted and that Mortgages Ltd. had “almost established its right  
14 to the requested summary judgment” and requested that the parties file supplemental briefing  
15 regarding Mortgages Ltd.’s right to collect on the Loan on behalf of the investors’ (essentially  
16 requesting the form that the judgment against the Guarantors should take).

17           8.       In addition to issues related to collection, DLA Piper attorneys addressed issues  
18 relating to Riverfront’s inadequate Disclosure Statement and Plan of Reorganization and  
19 subsequent Amended Disclosure Statement and Amended Plan of Reorganization. DLA Piper  
20 also prepared and filed a proof of claim in the amount of \$11,447,041.17 in the Riverfront  
21 bankruptcy on Mortgages Ltd.’s behalf. In the Riverfront bankruptcy matter, Mortgages Ltd.  
22 also filed a Motion for Writ of Attachment. Mortgages Ltd. ultimately was unable to obtain a  
23 writ of attachment because the Court refused to order the writ in the absence of Mortgages Ltd.  
24 posting a bond and Mortgages Ltd. was unable to secure a bond despite its efforts to do so.

25           9.       This file thus includes time related to the prosecution of a complaint for  
26 appointment of a receiver and for injunctive relief, money due under promissory note, specific



1 performance of a deed of trust, breach of a loan agreement, breach of guarantees and turnover of  
2 assets against Riverfront, Cottonwood, GLM and the Guarantors in District Court in Riverfront's  
3 bankruptcy proceeding.

4 10. During the Application Period, DLA Piper spent time on this matter conducting an  
5 analysis of the loan documents (fact gathering/due diligence) and in preparation of a loan  
6 summary. Services rendered included legal research on various issues and the preparation of  
7 multiple pleadings including, but not limited to, the Complaint against Riverfront, Cottonwood  
8 and the Guarantors, a motion for appointment of a receiver, an order appointing receiver, an  
9 amended Complaint, a supplemental memorandum regarding court's authority to appoint a  
10 receiver ex parte, a motion to transfer Riverfront bankruptcy from Judge Baum to Judge Haines, a  
11 motion for relief from stay and/or to dismiss the Riverfront bankruptcy, a motion for summary  
12 judgment, a motion for writ of attachment, a motion to authorize a 2004 examination, a joint  
13 pretrial statement, an opposition to Guarantors' motion for summary judgment, an opposition to  
14 Riverfront's motion to compel production of documents, an opposition to Riverfront's plan and  
15 disclosure statement, a proof of claim in Riverfront's bankruptcy, stipulations and various replies.

16 11. DLA Piper prepared for and attended several meetings, hearings, status  
17 conferences, the 341(a) meeting of creditors and a meet and confer conference. In addition, DLA  
18 Piper devoted time to responding to and preparing various discovery including but not limited to  
19 requests for production of documents.

20 12. In total, DLA Piper expended 781.9 hours in connection with this matter;  
21 generating a total fee claim of \$271,288.14 at the agreed-upon, discounted rates (which rates are  
22 less than the court approved rates).

23 **D. Loan 852606 Portales Place Property, LLC (Matter #000005).**

24 1. Mortgages Ltd. loaned \$32,000,000 to Portales Place Property, LLC ("Portales")  
25 (the "Portales Loan"). Portales defaulted on the loan in June 2008.

26 2. This file includes time related to the prosecution of a breach of guaranty and claim

1 objection (“Complaint”) against Jonathan and Lori Vento, the Vento Family Trust Dated April  
2 25, 2003, Donald and Shirley Zeleznak and the Zeleznak Revocable Trust Dated December 6,  
3 2001 and Amended February 6, 2004 (collectively, the “Guarantors”), as well as an objection to  
4 the claim filed by the borrower, Portales, in the Bankruptcy Case. During the Application Period  
5 DLA Piper spent time on this matter conducting an analysis of the loan documents (fact  
6 gathering/due diligence) and preparation of a loan summary. DLA Piper worked in coordination  
7 with Debtor in formulating litigation strategy and in analyzing a settlement offer. Legal research  
8 on various issues and the preparation of various pleadings including, but not limited to, the  
9 Complaint against the Guarantors and Portales, an opposition to Guarantors’ motion to dismiss  
10 the Complaint, an opposition to Portales motion to dismiss the Complaint, a motion for writ of  
11 attachment and the drafting of a joint pretrial conference statement.

12 3. DLA Piper expended only 61.7 hours in connection with this matter, resulting in an  
13 attorneys’ fee claim of \$22,858.20.

14 **E. Loan 861706 70th Street Property, LLC (Matter #0000010).**

15 1. Mortgages Ltd. loaned 70<sup>th</sup> Street Property, LLC (“70<sup>th</sup> Street”) \$11,395,000. In  
16 connection with the loan four separate guaranties were executed.

17 2. This file includes time related to the prosecution of breach of guaranty claims  
18 (“Complaint”) against Jonathan and Lori Vento, the Vento Family Trust Dated April 25, 2003,  
19 Donald and Shirley Zeleznak and the Zeleznak Revocable Trust Dated December 6, 2001 and  
20 Amended February 6, 2004 (collectively, the “Guarantors”) as well as an objection to the claim  
21 filed by the borrower, 70th Street, in the Bankruptcy Case. During the Application Period, DLA  
22 Piper, among other things, conducted an analysis the loan documents (fact gathering/due  
23 diligence), prepared of a loan summary and worked with the Debtor to develop a litigation  
24 strategy. Legal services included preparation of various pleadings including, without limitation,  
25 the Complaint against the Guarantors and 70th Street, preparation of the opposition to  
26 Guarantors’ motion to dismiss Complaint, the opposition to 70th Street’s motion to dismiss

1 complaint, and the opposition to the motion to dismiss proof of claim.

2 3. Nevertheless, DLA Piper expended and billed only 38.3 hours for services  
3 performed, at a cost to the estate of \$14,674.83 based upon the agreed-upon, discounted rates.

4 **F. Loan 856206 Arizona Commercial Land Acquisition (Matter #000011);**  
5 **Loan 859506 All State Associates of Pinal XVI, L (Matter #000027);**  
6 **and Loan 861506 All State Associates of Pinal IX, LL (Matter**  
**#000028).**

7 1. DLA Piper spent time on these three (3) files principally performing pre-litigation  
8 analysis and assessment. During the Application Period, DLA Piper conducted an analysis of the  
9 loan documents (fact gathering/due diligence) for each loan and a review of the All State  
10 Associates of Pinal XVI, L and All State Associates of Pinal IX, LL petitions. DLA Piper  
11 worked in coordination with Debtor via numerous telephone conferences and e-mail exchanges.

12 2. With respect to Loan 856206, Arizona Commercial Land Acquisition (Matter  
13 #000011), DLA Piper expended only 0.3 total hours, and billed the estate \$108.37.

14 3. With respect to Loan 859506, All State Associates of Pinal XVI, L (Matter  
15 #000027), DLA Piper expended only .6 total and billed the estate of \$216.75.

16 4. With respect to Loan 861506 All State Associates of Pinal IX, LL (Matter  
17 #000028), DLA Piper expended 4.3 hours, and billed the estate of \$826.63.

18 **G. Loan 857605 Tempe Land Company, LLC (Matter #000014); and**  
19 **Loan 861905 Tempe Land Company, LLC (Matter #000032).**

20 1. DLA Piper spent time on these (2) matters performing a potential litigation analysis  
21 with respect to Tempe Land Company, LLC (“Tempe”), Centerpoint and Kenneth K. Losch.  
22 During the Application Period, DLA Piper again conducted an analysis of the loan documents  
23 (fact gathering/due diligence) and a review of Tempe’s bankruptcy proceeding. DLA Piper  
24 worked in coordination with Debtor in developing a potential litigation and bankruptcy strategy.  
25 Time charged to these matters also includes the preparation of various pleadings, including the  
26 preparation of a joinder in Tempe’s bankruptcy trustee’s motion to convert the pending case from

1 Chapter 11 to Chapter 7. DLA Piper also prepared for and attended the Order to Show Cause  
2 hearing concerning Tempe’s alleged diversion of emergency funds.

3 2. With respect to Loan 857605, Tempe Land Company, LLC (Matter #000014),  
4 DLA Piper expended 11.7 hours and charged the estate \$3,882.89.

5 3. With respect to Loan 861905, Tempe Land Company, LLC (Matter #000032),  
6 DLA Piper expended 10.4 hours, and charges the estate \$3,144.57.

7 **H. Loan 858305 HH 20, LLC (Matter #000015).**

8 1. During the Application Period, DLA Piper conducted an analysis of the loan  
9 documents (fact gathering/due diligence) and prepared the necessary loan summary relating to  
10 this file. DLA Piper consulted with the Debtor (via telephone conferences, meetings and e-mail  
11 exchanges) regarding the status of the loan. DLA Piper’s work also included research and the  
12 preparation of a deed-in-lieu of foreclosure agreement.

13 2. In total, DLA Piper expended 20 hours on this matter, and billed the estate  
14 \$10,458.83.

15 **I. Loan 857406 Vistoso Partners LLC (Matter #000006);**  
16 **Loan 859606 Vanderbilt Farms, LLC (Matter #000016);**  
17 **Loan 858006 Vistoso Partners LLC (Matter #000017);**  
18 **Loan 857306 ABCDW, LLC (Matter #000018);**  
**Loan 850206 ABCDW, LLC (Matter #000019); and**  
**Loan 861206 ABCDW, LLC (Matter #000026).**

19 1. Mortgages Ltd. loaned an aggregate of approximately \$69,000,000 to various  
20 limited liability companies whose loans were guaranteed by the Wolfswinkel family.

21 2. The above-referenced matters involved potential litigation against ABCDW,  
22 LLC (“ABCDW”), Ellsworth Road 160, LLC (“Ellsworth Road 160”), Riggs/Queen Creek  
23 480, LLC (“Riggs/Queen Creek 480”), Torrey Pines Development, LLC (“Torrey Pines”),  
24 Vanderbilt Farms, LLC (“Vanderbilt”), and Vistoso Partners LLC (“Vistoso”), and Brandon  
25 D. Wolfswinkel, Ashton A. Wolfswinkel and Conley D. Wolfswinkel (collectively the  
26 “Guarantors”). During the Application Period, DLA Piper again analyzed the loan documents

1 (fact gathering/due diligence) and worked with the Debtor (via numerous telephone  
2 conferences and e-mail exchanges) to formulate a strategy for litigation and settlement  
3 negotiations. The law firm's work included preparation of various pleadings including the  
4 drafting of complaints, drafting of *pro hac vice* applications, the preparation of writs of  
5 attachment for each loan, and the identification and assembly of appropriate exhibits and the  
6 drafting of initial discovery requests.

7 3. With respect to Loan 857406, Vistoso Partners LLC (Matter #000006), DLA Piper  
8 devoted 13 total hours to the work performed, and billed the estate \$3,161.57.

9 4. With respect to Loan 859606, Vanderbilt Farms, LLC (Matter #000016), DLA  
10 Piper devoted 20.8 total hours to the work performed, and billed the estate \$7,044.37.

11 5. With respect to Loan 858006, Vistoso Partners LLC (Matter #000017), DLA Piper  
12 devoted 14.8 total hours to the work performed, and billed the estate \$3,563.20.

13 6. With respect to Loan 857306, ABCDW, LLC (Matter #000018), DLA Piper  
14 devoted 41.2 total hours to the work performed, and billed the estate \$19,180.67.

15 7. With respect to Loan 850206 ABCDW, LLC (Matter #000019), DLA Piper  
16 devoted 89.2 total hours to the work performed, and billed the estate \$30,506.07.

17 8. With respect to Loan 861206, ABCDW, LLC (Matter #000026), DLA Piper  
18 expended 16.8 total hours to the work performed, and billed the estate \$5,204.98.

19 **J. Loan 858606 Central & Monroe, LLC (Matter #0000021).**

20 1. This file involved potential litigation against Central & Monroe LLC as borrower,  
21 and Jonathan and Lori Vento, the Vento Family Trust Dated April 25, 2003, Donald and Shirley  
22 Zeleznak and the Zeleznak Revocable Trust Dated December 6, 2001 and Amended February 6,  
23 2004, as guarantors (collectively, the "Guarantors"). During the Application Period, DLA Piper  
24 conducted an analysis of the loan and guaranty documents (fact gathering/due diligence) and a  
25 review of the Ventos' settlement offer. DLA Piper also spent time researching the acquisition  
26 and sale history of the subject property and working with the Debtor to develop a litigation and

1 settlement strategy. DLA Piper also prepared for and attended settlement negotiations with  
2 opposing counsel and meetings with FTI Consulting regarding its claims analysis, among other  
3 matters.

4 2. DLA Piper devoted 11.3 hours to handling this matter, and billed the estate  
5 \$3,610.38 for its work.

6 **K. Loan 856605 Roosevelt Gateway LLC (Matter #000029); and**  
7 **Loan 859205 Roosevelt Gateway II, LLC (Matter #000030).**

8 1. These (2) matters involved conducting an analysis of the loan documents (fact  
9 gathering/due diligence) for each loan and various telephone conferences and e-mail exchanges  
10 with the Debtor regarding potential litigation.

11 2. With respect to Loan 856605, Roosevelt Gateway LLC (Matter #000029), DLA  
12 Piper expended only 3.2 hours, and billed the estate \$1,317.50.

13 3. With respect to Loan 859205, Roosevelt Gateway II, LLC (Matter #000030),  
14 DLA Piper expended 3 hours, and billed the estate \$1,275.00.

15 **L. Loan 858905 University & Ash, LLC (Matter #000031).**

16 1. In this matter as well, DLA Piper performed an analysis of the loan documents  
17 (fact gathering/due diligence) and engaged in settlement negotiations. Communications with  
18 the Debtor included telephone conferences and e-mail exchanges regarding both litigation  
19 strategy and settlement. Communications with counsel for University & Ash LLC consumed  
20 additional attorney time.

21 2. DLA Piper devoted 11.6 hours performing services on this file, and billed the estate  
22 \$6,999.69.

23 **M. Loan 849606 44th Camelback Property, LLC (Matter #000033); and**  
24 **Loan 852405 44th & Camelback Property, LLC (Matter #000034).**

25 1. Mortgages Ltd. loaned in excess of \$20,000,000 to 44<sup>th</sup> & Camelback Property,  
26 LLC (“44<sup>th</sup>”). The loans went into default in September 2008.

1           2.       These (2) matters involved the prosecution of breach of guaranty claims  
2 (“Complaint”) against Jonathan and Lori Vento, the Vento Family Trust Dated April 25, 2003,  
3 Donald and Shirley Zeleznak and the Zeleznak Revocable Trust Dated December 6, 2001 and  
4 Amended February 6, 2004 (collectively, the “Guarantors”). The Complaint also objected to the  
5 proof of claim that the borrower, 44th, had filed in the Bankruptcy Case. During the Application  
6 Period, DLA Piper conducted an analysis of the loan documents (fact gathering/due diligence)  
7 and worked with Debtor in formulating a litigation strategy and seeking to negotiate a settlement  
8 of the pending claims.

9           3.       With respect to Loan 849606, 44th Camelback Property, LLC (Matter #000033),  
10 DLA Piper expended a total of 35.2 hours, and billed the estate \$14,361.60.

11           4.       With respect to Loan 852405 44th & Camelback Property, LLC (Matter #000034),  
12 DLA Piper expended 27.5 hours in performing legal services, and billed the estate of \$9,928.43.

13           **N.    Loan 853106 Foothills Plaza IV, LLC (Matter #000035).**

14           1.       Mortgages Ltd. loaned \$25,740,000 to Foothills Plaza IV, LLC (“Foothills”). The  
15 loan was guaranteed by Douglas A. Dragoo and Elizabeth A. Dragoo (the “Guarantors”). The  
16 loan went into default in June 2008.

17           2.       As soon as Foothills sought Chapter 11 protection under the Bankruptcy Code in  
18 response to Mortgages Ltd.’s foreclosure efforts, the matter became substantially more  
19 complex. In addition to analyzing the breach of guaranty issues to support the claims against  
20 the Guarantors, DLA Piper had to expend significant time and resources analyzing the  
21 prospects of Foothills confirming a plan of reorganization. This task necessarily involved  
22 analyzing the complex bankruptcy issues facing single asset real estate cases, including  
23 valuation; whether the bankruptcy filing was in bad faith; the potential for dismissal;  
24 availability of exit financing; and the viability of any plan of reorganization.

25           3.       This file involved prosecution of a breach of the guaranty claims (“Complaint”)  
26 against Foothills and the Guarantors and objection to claims filed by Foothills and the Guarantors

1 in the Bankruptcy Case. During the Application Period, DLA Piper conducted an analysis of the  
2 loan documents (fact gathering/due diligence), and worked with Debtor (via numerous telephone  
3 conferences and e-mail exchanges) to formulate a litigation and bankruptcy strategy. Services  
4 rendered also included preparation of various pleadings including, but not limited to, preparation  
5 of the Complaint against Foothills and the Guarantors, opposition to Foothills' motion to compel  
6 Mortgages Ltd. to provide addresses of investors who claimed a secured interest, preparation of a  
7 proof of claim in the Foothills bankruptcy and preparation/editing of multiple stipulations. DLA  
8 Piper attorneys also attended various hearings and status conferences. In addition, DLA Piper  
9 responded to various discovery requests and prepared Rule 26 disclosure statements, requests for  
10 production of documents, interrogatories, subpoenas and notices of depositions.

11 4. In total, DLA Piper expended 317.6 hours performing services on this file; the total  
12 bill for legal services (exclusive of costs) charged to the estate was \$139,064.45, at the agreed-  
13 upon discounted rates.

14 **O. Loan 851106 Osborn III Partners, LLC (Matter #000036).**

15 1. This file involved potential litigation against Osborn III Partners, LLC and  
16 guarantors Jonathan and Lori Vento, the Vento Family Trust Dated April 25, 2003, Donald and  
17 Shirley Zeleznak and the Zeleznak Revocable Trust Dated December 6, 2001 and Amended  
18 February 6, 2004 (collectively, the "Guarantors"). During the Application Period, DLA Piper  
19 spent time on this matter conducting an analysis of the loan documents (fact gathering/due  
20 diligence) and a review of Vento's settlement offer. DLA Piper worked with the Debtor (again  
21 via telephone conferences and e-mail exchanges) formulating a strategy for the potential litigation  
22 and possible settlement. In anticipation of litigation, DLA Piper drafted a complaint.

23 2. Notwithstanding the scope of services performed, DLA Piper spent only 6.8 hours  
24 on this file, and charged the estate \$1,824.95.

25 **P. Gould Evans Associates (Matter #000038).**

26 1. DLA Piper spent some time researching and reviewing pleadings filed in the Gould



1 Evans action analyzing the relevant loan documents, and communicating with the Debtor (via  
2 telephone conferences and e-mail exchanges) regarding litigation strategy.

3 2. DLA Piper expended 13.3 hours performing the referenced services, and billed the  
4 estate \$4,615.92.

5 **Q. Ronald L. Kohner (Matter #000040).**

6 1. Mortgages Ltd. loaned Northern 120 L.L.C. (“Northern”) \$10,775,000 and Citrus  
7 278 L.L.C. (“Citrus”) \$26,250,000. The loans went into default in June 2008.

8 2. This file involved services relating to potential litigation against Citrus 278, LLC,  
9 Northern 120, LLC, SAK Family Limited Partnership, SAK Investments, LLC and Steven A. and  
10 Patricia L. Kohner. During the Application Period, DLA Piper spent time conducting an analysis  
11 of the loan documents (fact gathering/due diligence). DLA Piper prepared draft complaints with  
12 respect to each loan and worked with Debtor (via numerous telephone conferences and e-mail  
13 exchanges) to formulate a litigation strategy.

14 3. DLA Piper expended 46.6 hours on this matter, and billed the estate \$17,566.52.

15 **R. TARP Program (Matter #000039).**

16 1. Pursuant to the request of the Debtor (who recognized a fiduciary obligation to  
17 explore all potential sources of recovery), DLA Piper devoted time to exploring the potential  
18 availability of financing or recoveries under the various financial rescue plans then being  
19 considered by the United States Congress (including, specifically, under the Troubled Asset  
20 Relief Program (“TARP”)). [Declaration of Andrew D. Eskin in Support of First and Final  
21 Application filed July 27, 2009, Docket No. 2017]<sup>1</sup>

22 2. During the Application Period, DLA Piper attorneys spent time identifying,  
23 analyzing, researching and preparing summaries of the relevant issues, analyzing the  
24

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25 <sup>1</sup> Declarations supporting this Prehearing Memorandum are compiled in a notebook provided  
26 concurrently with this memorandum. All declarations have been previously filed with the  
court, and copies of the notebook containing the declarations were delivered to the objectors  
in advance of the deadline for the filing of the joint pretrial statement.

1 prospective TARP program, provisions of the Emergency Stabilization Act, and the provisions  
2 of other commercial real estate rescue programs that might be adopted by Congress or the  
3 Treasury Department, including the “Financial Stability Plan” which specifically expanded the  
4 existing Term Asset-Backed Securities Loan Facility (TALF) to include commercial real  
5 estate. [*Id.*]

6 3. DLA Piper attorneys (among the best qualified lawyers in the United States in  
7 this area) spent time communicating with legislative directors, representatives and various  
8 other parties regarding various commercial real estate issues and programs. DLA Piper  
9 worked with the Debtor (via numerous telephone conferences and e-mail exchanges) in  
10 exploring the implications of the various programs and potential sources of recovery. DLA  
11 Piper devoted time to preparing for and monitoring multiple Congressional and Committee  
12 hearings. DLA Piper also spent time preparing for and attending various Real Estate  
13 Roundtable Meetings to discuss TARP, TALF and other commercial real estate issues and  
14 programs. The services rendered even included preparation of a press release regarding TARP  
15 funding advocacy. [*Id.*]

16 4. In total, DLA Piper expended 121.2 hours on investigating the various programs  
17 and exploring the potential availability of program benefits for the Debtor. Total fees billed for  
18 services rendered were \$66,994.03, at the agreed-upon, discounted rates.

19 **S. Case Administration (Matter #001001).**

20 1. Certain services rendered by DLA Piper were not classified by specific loan,  
21 litigating or research subject. For example, general administrative tasks, multi-loan planning  
22 meetings, and global strategy discussions were separately catalogued for billing purposes. The  
23 following seven sections of this Memorandum (subsections S-Y) discuss these billing categories.

24 2. DLA Piper performed general administrative tasks necessary to monitor the  
25 Bankruptcy Case and fulfill DLA Piper’s obligations in the multiple-litigation matters listed  
26 above. The administrative tasks performed by DLA Piper included meetings with Debtor’s

1 bankruptcy counsel and the Debtor regarding litigation strategies and tactics for resolution of  
2 certain cases, conferences with Debtor representatives regarding obtaining documents, various  
3 office conferences regarding multiple issues and general case status and strategies, review and  
4 analysis of court dockets and pleadings, review of recent press releases and news articles  
5 regarding Mortgages Ltd., assembly and maintenance of contact lists, organization and  
6 maintenance of databases (including e-rooms and document production databases), assembly and  
7 maintenance of binders and files for each pending and prospective case, establishing  
8 calendaring/docketing procedures, establishing routing procedures, case assessments, document  
9 productions and preparation of weekly status reports for Debtor.

10 3. Over the course of DLA Piper's representation, these services involved 424 hours  
11 and a resultant bill to the estate of \$112,665.76.

12 **T. Litigation Strategy (Matter #001002).**

13 1. This file relates to the formulation of litigation strategies for pending and  
14 prospective litigation matters. During the Application Period, DLA Piper attended meetings with  
15 Debtor and Debtor's bankruptcy counsel regarding litigation strategies and tactics for resolution  
16 of a number of (sometimes interrelated) cases. DLA Piper conducted reviews and analysis of  
17 court dockets and pleadings; conducted online research to locate and identify property  
18 information for potential estate property (including parcel numbers, purchase prices and  
19 instrument numbers.) DLA Piper conducted numerous office conferences regarding litigation  
20 strategies and performed research and prepared analyses of removal, jurisdiction and remand  
21 issues. Preparation of correspondence relating to Mortgages Ltd. Investors regarding pending  
22 and prospective litigation is also included within the scope of this file. In addition, DLA Piper  
23 maintained a work-in-progress report and monitored bankruptcy cases regarding new claims and  
24 filings.

25 2. In total, DLA Piper expended 95.5 hours in performing these services, and billed  
26 the estate \$63,026.59.

1           **U.    Loan Analysis (Matter #001003).**

2           1.       This file includes time related to general loan analysis. During the Application  
3 Period, DLA Piper conducted an analysis and review of case background information, articles  
4 and documents related to the loan portfolios. DLA Piper prepared a loan package analysis for  
5 newly filed cases in state court and analyzed Mortgages Ltd. Investors' objections to various  
6 work-out proposals. DLA Piper conducted a review of numerous loan documents, reviewed loan  
7 issues and structures typically used as well as potential work-out scenarios with applicability to a  
8 number of cases. Time charges on this file also relate to the preparation of master loan databases  
9 and consolidated loan summaries. Based on objections DLA Piper received to its October Fee  
10 Statement (objections heard and resolved in January 2009), no time has been billed to this  
11 category since January 2009.

12           2.       DLA Piper expended 96.9 hours performing services on this file, and billed the  
13 estate \$50,483.55.

14           **V.    Meetings (Matter #001004).**

15           1.       Obviously, individual case files include some case-specific meetings. Time in this  
16 category (file) relates to preparation for and attendance at numerous team meetings at Mortgages  
17 Ltd.'s offices usually to review case background and multiple loan package issues and to discuss  
18 work-out problems and investor committee issues of broad application. DLA Piper personnel  
19 also prepared for and attended multiple meetings to evaluate potential approaches to resolution  
20 and defense of various state court cases. In addition, DLA Piper prepared for and attended  
21 several meetings with Debtor's bankruptcy counsel regarding various potential litigation  
22 strategies. Based on objections DLA Piper received to the October Fee Statement (resolved in  
23 January 2009), no time has been billed to this category/file since January 2009.

24           2.       DLA Piper expended 68 hours on services performed and billed to this  
25 file/category. Charges billed to the estate total \$39,489.25.

26

1           **W.    Professional Retention and Fee Applications (Matter #001005).**

2           1.       During the Application Period, DLA Piper spent time preparing and filing its  
3 employment application and related affidavit and proposed order. DLA Piper also prepared and  
4 filed various *pro hac vice* applications of non-resident attorneys to appear in specific cases.  
5 Time charged to this file also includes review of fee statements filed by other professionals;  
6 preparation of a motion for an order approving DLA Piper's October 2008 fee statement; and  
7 numerous communications with Debtor's bankruptcy counsel and various creditors regarding  
8 objections to DLA Piper's October 2008 fee statement. DLA Piper prepared a response to those  
9 objections, negotiated a reduction in fees and rates and attended a hearing regarding these  
10 matters.

11          2.       DLA Piper expended 264.9 hours on services performed in this category, resulting  
12 in charges to the estate of \$61,109.89.

13           **X.    Legal Research (Matter #001006).**

14          1.       In certain circumstances, legal research time and charges were segregated into this  
15 billing file/category. During the Application Period, DLA Piper conducted research and an  
16 analysis and review of background information, articles and documents relating to the loan  
17 portfolio. In connection with that analysis, DLA Piper researched various issues, including issues  
18 relating to the procedural background of the state and bankruptcy actions, the validity of existing  
19 guaranties, "related-to" jurisdiction, core proceedings, withdrawal of reference, removal of state  
20 court litigation to federal district court, factors relating to potential remand of litigation, the  
21 standard for abstention in the Ninth Circuit, the scope of 2004 examinations, preservation of the  
22 right to jury, assignment of rights and implied assumption of obligations, applicable limitations  
23 periods, the existence and enforceability of jury waiver clauses in loan documents, *lis pendens*  
24 notices in Arizona, and election of remedies with respect to judicial and non-judicial foreclosures.  
25 In addition, DLA Piper prepared numerous memoranda regarding the outcome of the legal  
26 research and analyzed case and statutory authorities on many issues.

1           2.       DLA Piper expended 90.6 hours in connection with such research, and billed the  
2 estate \$37,873.73 in connection with that work.

3           **Y.    Nonworking Travel (Matter #001007).**

4           1.       DLA Piper recorded relatively little time in this category (particularly since  
5 October, 2008) despite the involvement of out-of-state attorneys. Nonworking travel time in this  
6 category includes attorney travel between DLA Piper's Chicago office and Arizona to attend  
7 hearings and meetings. After negotiating with Debtor's counsel and various creditors regarding  
8 DLA Piper's October, 2008 fee statement, no additional time was billed to this category.

9           2.       DLA Piper expended 16.4 hours on services in this category, and billed the estate  
10 \$11,303.50.

11           **Z.    Supplemental Application.**

12           In its Supplement to First and Final Application for Allowance and Payment of Fees for  
13 Services Rendered and Expenses Incurred by DLA Piper (US), as Special Real Estate and  
14 Litigation Counsel for Debtor (Docket No. 2023), DLA Piper noted that it had incurred an  
15 additional 140.10 hours of professional services and billed the estate \$43,242.47 in responding  
16 to court-imposed deadlines and filing responsive pleadings pending substitution by Fennemore  
17 Craig, P.C. and for preparation of an extensive transition report.

18           **V.    OUT-OF-POCKET COSTS INCURRED BY DLA PIPER**

19           \$83,459.26 in billed costs represents actual, out-of-pocket expenses incurred by DLA  
20 Piper on behalf of the Debtor and should not be discounted in any event. There is no showing  
21 the costs charged by DLA Piper exceeds local market rates or that they were unnecessary or  
22 are unreasonable in any respect. Indeed, a substantial reduction of charges for computerized  
23 legal research has already been taken.

1 **VI. DLA PIPER HAS PRESENTED A PRIMA FACIE CASE FOR ITS**  
2 **REQUESTED FEES: THE OBJECTORS BEAR THE BURDEN OF PROVING**  
3 **UNREASONABLENESS IN RESPONSE**

4 Once a prima facie case for paying requested fees is made -- as has been done in DLA  
5 Piper's First and Final Fee Application -- the party objecting to the reasonableness of the Fee  
6 Application bears the burden of proving the unreasonableness of the compensation requested.  
7 In Re Blackwood Assoc. LLP, 165 BR. 108, 112 (Bankr. E.D. N.Y. 1994). Absent such  
8 evidence by the objecting party, the opposition must fail.

9 DLA Piper is prepared to further support its Fee Application at the scheduled Hearing,  
10 but notes that the number of purportedly factual matters that have been noted by the objectors  
11 are simply wrong. For example, the objectors incorrectly assert that DLA Piper was hired to  
12 handle "only a few collection and litigation matters." In fact, the Application to employ DLA  
13 Piper that was approved by the Court specifically approved, among other things, DLA Piper's  
14 retention to "collect from and litigate with problem borrowers, any guarantors of loans and  
15 other parties implicated in the shortfall of funds in the estate or the failure to repay the estate."  
16 DLA Piper was also retained to "represent the Debtor in other litigation matters as requested,  
17 including in the National Retail Litigation and PDG litigation." Furthermore, DLA Piper has  
18 previously provided evidence that it was authorized by the Debtor to undertake all work  
19 performed in the Fee Application. [Declaration of Richard M. Feldheim in Support of First  
20 and Final Fee Application dated August 18, 2009, Docket No. 2109 at 5; Declaration of  
21 Christine Zahedi in Support of First and Final Fee Application dated August 18, 2009, Docket  
22 No. 2108 at 3].

23 The objectors also incorrectly assert that the amount incurred by DLA in the Riverfront  
24 and Foothills Plaza matters is disproportionate to the amount that was incurred by Debtor's  
25 counsel. While DLA Piper incurred \$271,228.14 in fees for the Cottonwood matter, only  
26 \$64,235.35 was incurred in responding to the Riverfront bankruptcy (less than the amount  
billed by debtor's counsel in that proceeding). Similarly, of the \$139,064.45 in fees incurred

1 by DLA Piper in the Foothills matters, only \$63,490.87 was incurred in responding to the  
2 bankruptcy issues. DLA Piper's practice was to bill all the time related to a certain loan,  
3 whether in the adversary proceedings against the Guarantor or the resulting bankruptcy of the  
4 borrower to one billing code for that specific loan. DLA Piper's detailed fee statements reflect  
5 that time on specific loans related to both adversary proceedings and bankruptcy litigation.

6 Finally, if the "reasonableness" of an attorneys' fee is questioned, expert attorney  
7 testimony regarding the hours worked and rates charged, is ordinarily required. In assessing  
8 the Fee Application, the Court should look specifically at the nature and content of  
9 independent expert testimony proffered by the Objectors. In the Pretrial Statement, no  
10 independent expert is identified and certainly no expert witness was timely identified by the  
11 Objectors. As a result, Objectors should not be precluded from challenging the reasonableness  
12 of DLA Piper's requested fees and, in any event, they cannot rebut DLA Piper's prima facie  
13 showing.

## 14 **VII. CONCLUSION**

15 DLA Piper is entitled to be paid for its work. Moreover, it is entitled to be paid at the  
16 agreed-upon and court-approved billing rates. If, under any theory, a "discount" in the total  
17 bill is appropriate, it has already been applied. Had DLA Piper billed this matter at the court-  
18 approved rates, and based upon the detailed billing records submitted, DLA Piper would be  
19 entitled to recover \$1.95 million for fees and \$83,459.20 for costs advanced. The firm has  
20 agreed to accept the total sum of \$1,406,056.80 in fees and \$83,459.20 in out-of-pocket  
21 expenses, the amount of the pending Application. No factual or legal basis for a further,  
22 substantial reduction of DLA Piper's request for payment is supported by the record in this  
23 case.

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**DATED** this 24<sup>th</sup> day of November, 2009.

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

WN/4239

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