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11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

14 In re:

15 MORTGAGES LTD.,

16 Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

JOINT PRETRIAL STATEMENT

DATE: January 27, 2010
TIME: 8:30 a.m.
LOCATION: 230 North First Avenue
Phoenix, Arizona
Courtroom 603, 6th Floor

21 FTI Consulting Inc ("FTI"), ML Manager LLC ("ML Manager"), ML Liquidating Trust
22 ("Liquidating Trust"), and G. Grant Lyon, in his capacity as duly appointed Chapter 11 Trustee
23 ("RBLLC Trustee") for Radical Bunny, L.L.C. ("RBLLC")(collectively, the "Parties"), through their
24 respective counsel, hereby file this Joint Pretrial Statement for the evidentiary hearing (the "Hearing")
25 on the First and Final Fee Application for Allowance and Payment of Fees for Services Rendered and
26 Expenses Incurred by FTI Consulting, Inc. (the "Fee Application").

1 **A. NATURE OF THE CASE**

2 This Hearing concerns the allowance and approval of the Fee Application and the
3 objections to the Fee Application filed by ML Manager, the Liquidating Trust and the RBLLC Trustee
4 (collectively, the "Objectors"). From October 7, 2008 through July 20, 2009 ("Application Period"), FTI
5 rendered time and services to the Debtor as financial advisors. FTI is seeking fees in the amount
6 \$2,425,862.50 and an expense payment of \$5,089.09.

7 **B. UNCONTESTED FACTS DEEMED MATERIAL**

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

9 1. After the filing of the bankruptcy, the Debtor sought to employ FTI as financial
10 advisors to the Debtor.

11 2. The Court approved FTI's employment application *nunc pro tunc* to October 7,
12 2008.

13 3. FTI received an interim payment of \$400,000 on September 28, 2009.

14 4. FTI seeks payment for 5,646.8 hours incurred on behalf of the Debtor from
15 October 7, 2008 to July 6, 2009. Based on FTI's claimed rates, the total amount of compensation
16 claimed by FTI is \$2,425,682.50.

17 5. The Court confirmed the Investors Committee's First Amended Plan of
18 Reorganization Dated March 12, 2009 (the "Plan") on May 20, 2009. The Plan became effective June
19 15, 2009. ML Manager became the new manager of all 9 MP Funds, the new manager of the 48 newly
20 formed Loan LLCs and the new agent for the pass-through investors.

21 **C. CONTESTED FACTS DEEMED MATERIAL BY FTI**

22 1. On June 20, 2008, Central and Monroe, LLC, Osborn III Partners, LLC and KGM
23 Builders, Inc. filed an Involuntary Petition against the Debtor under Chapter 7 of the United States
24 Bankruptcy Code.

25 2. On June 23, 2008, the Debtor filed a motion to convert the Involuntary 7 case to a
26 case under Chapter 11.

1 3. On June 24, 2008, the Court entered the Order converting the case to a case under
2 Chapter 11.

3 4. On October 15, 2008, the Debtor filed its *Application Pursuant to Fed. R. Bankr.*
4 *P. 2014(a) for Order Under Section 327(a) of the Bankruptcy Code Authorizing the Employment and*
5 *Retention of FTI Consulting, Inc. as Financial Advisor to the Debtor and Debtor in Possession* (the
6 "Application") [DE 750].

7 5. The Application was approved by the Court *nunc pro tunc* to October 7, 2008
8 [DE 793].

9 6. FTI's rates, which were subject to periodic adjustment, were disclosed and
10 approved by the Court.

11 7. On May 20, 2009, the Bankruptcy Court confirmed the OIC's First Amended Plan
12 and Disclosure Statement.

13 8. On June 8, 2009, Jennings Strouss & Salmon, P.L.S. ("JSS") provided a
14 Mortgages Ltd. Transition Memo, prepared by JSS and FTI, to Fennemore Craig, P.C.

15 9. On June 15, 2009, the OIC's First Amended Plan and Disclosure Statement
16 became effective.

17 10. On June 17, 2009, a newsletter was sent to Mortgages Ltd. investors stating that
18 due to the competition of potential exit financiers, the interest rate change, among other items, will save
19 the investors an estimated \$2.5 million.

20 11. FTI filed its *First and Final Fee Application of FTI Consulting, Inc. as Financial*
21 *Advisors to the Debtor and Debtor in Possession for Allowance of Compensation and Reimbursement of*
22 *Expenses* (the "Fee Application") [DE 1896] on July 7, 2009, which covered the period from October 7,
23 2008 through July 6, 2009.

24 12. On July 21, 2009, ML Manager filed its objection to FTI's Fee Application [DE
25 1993].

26 ///

1 13. On July 21, 2009, the Liquidating Trust filed its objection to FTI's Fee
2 Application [DE 1996].

3 14. On July 22, 2009, Lyon filed an untimely joinder in ML Manager's objection to
4 FTI's Fee Application [DE 2002].

5 15. Pursuant to U.S. Trustee Guidelines, FTI established different project billing
6 categories. FTI provided forty-one task codes to ensure there was a detailed breakdown of the services
7 performed.

8 16. FTI documented the hours spent on the case and the hourly rate involved.

9 17. Approximately 3.6% of FTI's fees were incurred in preparing its Fee Application.

10 18. The Debtor maintained a cash flow budget and professional fee schedule. The
11 professional fee schedule prepared on April 13, 2009 estimated FTI's professional fees through June
12 2009 to be \$2,295,000.

13 19. Both the Debtor and OIC worked on plans and attempted to agree on a common
14 plan. When that failed and exclusivity terminated, each worked on competing plans. Both plans faced
15 substantial opposition. Negotiations and litigation over substantial legal and factual issues involving
16 multiple parties continued among the Debtor, the OIC and other parties-in-interest concerning both plans
17 until near the end of the confirmation hearing on the OIC plan.

18 20. After confirmation of the OIC plan, FTI and the Debtor's counsel coordinated
19 contact with lenders offering better terms than the exit financier proposed by the OIC. It was not until
20 after competing financing terms were proposed that the OIC's exit lender improved its terms, including
21 reduction of the interest rate from 20% to 17.5% and lowered the origination fee and other charges.

22 21. Prior to confirmation of the OIC plan, FTI located a lender to provide short-term
23 additional financing until the exit financing closed. This financing proposed was noticed for a hearing
24 by Debtor's counsel in order to have backup financing in place.

25 22. With the assistance of the Debtor, FTI investigated the transactions between the
26 Debtor, S M Coles, L.L.C. and SMC Revocable Trust.

1 The results of FTI's analysis formed the basis of the Debtor's claim in the amount of \$31,958,767 in the
2 S M Coles, L.L.C. estate. The debtor ultimately settled with S M Coles, L.L.C. pursuant to an
3 agreement approved by this Court.

4 **D. CONTESTED FACTS DEEMED MATERIAL BY OBJECTORS**

5 1. Pursuant to the Plan, the Debtor was renamed to ML Servicing Co. and Kevin
6 O'Halloran became the new president effective June 16, 2009.

7 2. Until June 6, 2009 when FTI filed and sent out its first invoice, no person, not
8 even the business people at the Debtor, had approved or even seen an invoice setting forth the scope and
9 amount of work allegedly performed by FTI in this case.

10 3. In February 2009, FTI informed the Debtor that its estimated total fees were
11 \$1,200,000.

12 4. Later, around the time of the confirmation of the Plan and without the knowledge
13 of the Debtor, FTI increased its estimated fees on accounting schedules to \$2.4 million.

14 5. FTI's fees exceeded \$2.4 million for 9 months of services.

15 6. Alvarez and Marsal, the financial advisors for the Investors Committee, incurred
16 about \$770,000 total for 11 months of work.

17 7. Among other things, Alvarez and Marsal reviewed the settlement proposals,
18 testified at hearings on the settlements, reviewed loan proposals, helped negotiate and obtain the exit
19 financing, drafted exhibits for the disclosure statement and the amendments, provided testimony at the
20 confirmation hearing, attended depositions and was deposed, processed the ballots and prepared the
21 ballot report, attended all the investor meetings during the solicitation period, and attended Committee
22 meetings where appropriate.

23 8. Alvarez and Marsal accomplished these services for 1/3 of the FTI fees.

24 9. Alvarez and Marsal sent out regular monthly bills which were reviewed by the
25 Investors Committee and the Debtor.

26 ///

1 10. Sierra Consulting, the financial advisor to the Unsecured Creditor's Committee,
2 incurred about \$60,785.50 total in fees for 7 months of work.

3 11. During FTI's employment the Debtor employed a Chief Financial Officer, a
4 Controller, an accounting staff, kept accurate and complete books and records and employed employees
5 to handle the loan administration and investor relations.

6 12. These employees had significant knowledge of the Debtor's loan portfolio, other
7 assets and business.

8 13. FTI was not employed to be a chief restructuring officer, the chief financial
9 officer, or to manage the Debtor. FTI was only authorized by the Court to act as a financial advisor.

10 14. FTI spent significant time on loan collections, \$448,714 and 1,295 hours,
11 duplicating what the staff did or what other professionals (such as DLA Piper, Gust Rosenfeld, Jennings
12 Strouss & Salmon, or Greenberg Traurig) were hired for.

13 15. FTI was hired to be an advisor on specific tasks, not to run the company or redo
14 employees work.

15 16. FTI overstaffed its assignments and undertook significant work that was not
16 necessary or reasonable given the circumstances. FTI spent substantial time on actions that were not
17 approved by the Debtor's board of directors, and the board of directors even resigned, in significant part,
18 because of the counsel and advice given by, among others, FTI.

19 17. In terms of staffing, scope of work, advice given and overall performance, FTI did
20 not keep the best interests of the investors who were the Debtor's major constituency group.

21 18. FTI spent substantial time on matters that did not provide value or reasonable
22 value to the Debtor or the estate.

23 19. Based on the Application, it appears that 4 employees of FTI spent 30 to 40 hours
24 a week over the 9 month employment working on this case.

25 20. Mr. Tucker averaged 31.5 hours a week.

26 21. Mr. Harvick averaged 39.2 hours a week.

1 22. Mr. Stremcha averaged 35.8 hours a week.

2 23. Mr. Brosious averaged 34.5 hours a week.

3 24. The Debtor's professionals incurred about \$9 million of professional fees.
4 Jennings Strouss incurred \$3,636,985.50 in fees, FTI incurred \$2,425,862.50, DLA Piper incurred
5 \$1,363,064.33 and Greenberg incurred \$563,249 (excluding the Gap period fees). With the 8 attorneys
6 hired to represent Debtor's employees and the 5 Debtor's ordinary course professionals and all the costs,
7 the amount applied for is about \$9 million for the Debtor's professionals.

8 25. FTI spent unnecessary and wasteful time pursuing plans of reorganization and
9 exit financing. that had no realistic chance of confirmation, and continued to spend unnecessary and
10 wasteful time even after it became obvious that the Debtor's plan did not have sufficient support to be
11 confirmed.

12 26. There were no unencumbered assets from the start. The Debtor did not manage its
13 cash flow and started running out of cash starting in October, 2008.

14 27. By the end of the case, the Debtor was administratively and cash flow insolvent.
15 The Debtor turned over about \$60,000 of cash on the effective date and a lot of unpaid post petition
16 bills.

17 28. During the bankruptcy, FTI agreed or committed to attempt to coordinate and
18 reduce duplicative and unnecessary services from other professionals. Despite this commitment, FTI
19 failed to do so.

20 29. FTI never testified in any hearings.

21 30. The Debtor's professionals and the Debtor mismanaged the loan portfolio so that
22 by the end of the case there were only 5 performing loans out of 66 loans.

23 31. The Debtor did not file a Plan until March 4, 2009.

24 32. Debtor's Disclosure Statement was never approved by the Court.

25 33. The Board resigned on March 3, 2009 rather than approve the proposed Plan by
26 the professionals and a new Board of Directors had to be hired to obtain approval for the Debtor's Plan.

1 34. The Debtor fought the three official Committees and Radical Bunny on almost
2 every issue in the case. As a result, fees of this amount for the Debtor's professionals are not reasonable
3 and not supported by the value delivered.

4 35. ML Manager LLC disputes about \$2 million of the fees of FTI.

5 36. FTI spent 320 hours and \$87,685.50 on fee application, time keeping, monthly
6 bills (which were never sent), editing and reviewing time, etc.

7 37. FTI provided no notice of its fee burn rate to the Debtor. FTI never filed a
8 monthly cover sheet application or sent a bill to its client the Debtor until July 6, 2009.

9 38. When FTI was employed in October 2008 it stated specific rates to be charged.

10 39. Just three months after being retained, FTI significantly raised its rates without
11 Court approval.

12 40. The Senior Managing Director rate was increased from \$525 an hour to \$595 an
13 hour, a \$70 an hour increase, or 13.3% at time that the Debtor was administratively insolvent.

14 41. The Managing Director rate was increased from \$475 an hour to \$525 an hour, a
15 \$50 an hour increase or 10.5%.

16 42. The Senior Consultant was raised from \$325 to \$395 an hour, a \$70 an hour
17 increase, or 21.5%.

18 43. The paraprofessional was raised from \$95 an hour to \$125 an hour, a \$30 an hour
19 increase, or 32%.

20 44. The Consultant was promoted to Senior Consultant and the rate increased from
21 \$265 an hour to \$350 an hour for an \$85 an hour increase, or 32.9%.

22 45. The total increase of FTI's fees as a result of its change in rates is \$172,467.

23 46. FTI billed a secretary's time for clerical tasks resulting in an increase in \$33,171.

24 47. FTI spent over 274 hours on internal meetings and calls resulting in \$110,031 of
25 fees. No clients or parties were involved in these meetings or calls and FTI has not accounted or justified
26 the necessity of these meetings and calls.

1 48. At least 130 hours or \$57,524.50 were billed in various categories after the May
2 20, 2009 confirmation of the Investors Committee's Plan, exclusive of the fee application time.

3 49. In addition, FTI spent 80.8 hours or \$38,881 on what it calls transition time.
4 However, FTI did not prepare any separate reports, analysis, projects or otherwise provide any
5 information to ML Servicing Co. (the reorganized Debtor) or to the employees reflecting this work.

6 50. The Debtor already had a number of salaried and hourly employees, including
7 Rich Feldheim, Laura Martini, Christine Zahedi, Nechelle Wimmer, Chris Welsh, Sarah Lisa-
8 Petrauschke and others performing the same or similar tasks.

9 51. FTI did not communicate or adequately communicate with the Debtor or its
10 employees the information or reports that it was seeking, and had it done so the Debtor and its
11 employees could have and would have much more efficiently produced the same reports that FTI spent
12 many unnecessary hours producing.

13 52. FTI spent many hours unnecessarily recreating information and reports readily
14 available from the Debtor's systems.

15 53. In addition, the Debtor employed DLA Piper, Gust Rosenfeld, Foster Pepper,
16 Greenberg Traurig and (it appears from the fee applications) Jennings Strouss, to work on loan
17 collections, workouts, and many other issues that FTI also claimed to be working on. FTI unnecessarily
18 spent many hours simply reviewing the work of other professionals.

19 54. FTI spent about 1,295.6 hours or \$448,714.50 on Loan Collections and workouts.
20 This work was duplicative, excessive and unnecessary.

21 55. Many of FTI's time entries are too vague to determine if the Debtor received any
22 value from the service rendered.

23 56. FTI's work was internally duplicative. For example, it was a common practice of
24 FTI to have 2-4 people at many or most meetings or court appearances, even though FTI never testified,
25 and most FTI representatives did not participate in the meetings.

26 ///

1 57. This practice resulted in \$329,689 of fees and is excessive, unreasonable and
2 unnecessary.

3 58. FTI incurred \$693,970 and 1,519.3 hours on the Debtor's Plan and Disclosure
4 Statement and on fighting the Investors Committee's Plan and Disclosure Statement.

5 59. The Court never confirmed the Debtor's Plan and never approved the Debtor's
6 Disclosure Statement.

7 60. This work was excessive, duplicative, unnecessary and unreasonable especially in
8 light of the work of other professionals such as Alvarez and Marsal.

9 61. FTI spent significant sums on administrative costs and document organization.

10 62. FTI billed between \$15,000 - \$20,000.00 for downloading documents in various
11 bankruptcies, organizing documents and updating a workplan.

12 63. FTI charged \$4,631.70 for administrative expenses; including, hiring temporary
13 help to download/printout claims filed, PACER research, purchase of data disks and postage.

14 **E. CONTESTED ISSUES OF FACT AND LAW TO BE TRIED IN THIS MATTER**

15 The following are the contested issues of law material to the hearing: whether FTI is
16 entitled to fees for services rendered and expenses incurred in the total amount of \$2,489,516.06
17 pursuant to Sections 328, 330 and 503(b) of the Bankruptcy Code.

18 **A. FTI's position:**

19 **1. FTI has presented a prima facie case for its requested fees.** FTI has met its
20 burden of proof by documenting the hours spent and the hourly rates in its Fee Application. Almost
21 completely absent from the objections are an identification as to which particular time entries are being
22 objected to. FTI has presented a prima facie case for its requested fees and the objectors have not and
23 cannot rebut the presumption of reasonableness.

24 **2. The services of FTI were performed within the scope of its employment and**
25 **authorized by the client.** The application to employ FTI was approved by the Court *nunc pro tunc* to
26 October 7, 2008. The application authorized FTI to provide "such consulting and advisory services as

1 FTI and the Debtor deems appropriate and feasible in order to advise the Debtor in the course of this
2 Chapter 11 case, including but not limited to the following:" The application specifically lists 15
3 separate categories in which FTI was to provide services. The application provides FTI with the
4 authority to work with the Debtor wherever it is deemed appropriate and feasible by FTI and the Debtor.
5 No evidence has been presented to support the claim that FTI operated outside the scope of its
6 authority; therefore, the presumption of reasonableness has not been rebutted. FTI worked closely with
7 the Debtor keeping lines of communication open and working as a team to keep the reorganization
8 process moving and the Debtor operating. Work performed by FTI was not only authorized, but was
9 also reviewed and discussed formally and informally with the Debtor's management and Board of
10 Directors on a consistent basis. FTI's services were within the scope of its employment and were
11 authorized by the client as reflected by the declarations submitted by Chris Olson and Christine Zahedi.

12 **3. The services FTI performed were necessary to the administration of and**
13 **beneficial at the time the services were rendered toward completion of the case.** The objectors have
14 erroneously asserted that because the former Debtor was not "successful" in all matters, fees and costs
15 should not be awarded to the Debtor's professionals. This is a vacuous view of the case. FTI's work
16 assisted in keeping the case alive, maintained the integrity of the plan process for all constituents and
17 provided the Debtor's management and board, the committees and other parties-in-interest with timely,
18 accurate information upon which to make case decisions. The primary basis for the objection is that the
19 work was unreasonable and unnecessary because the plan was not confirmed. The services provided to
20 the Debtor, including those in the plan category, were reasonable, necessary and authorized. An
21 objection that it should not be paid because the Debtor's competing plan was not confirmed is untenable
22 and is incorrect as a matter of law and fact.

23 **4. The services of FTI were not duplicative of services performed by other**
24 **professionals, and the Fee Application should not be reduced.** In making their objections, the
25 objectors fail to identify even one time entry in which they contend that this objection applies. Instead,
26 they object to 100% of FTI's time related to litigation and loan collection categorized tasks as

1 presumptively duplicative. The objectors are fully aware that loan collection services encompassed
2 numerous activities that were performed by the Debtor's personnel, the Debtor's counsel, FTI and other
3 professionals as required. The Debtor's management and employees closely monitored collection
4 activities and delegation of collection related tasks to professionals. The services provided by each party
5 were not duplicative and were discussed and clarified in internal meetings and loan status meetings open
6 to third parties (which often included members of the OIC). The loan collection work performed by FTI
7 was complimentary and additive to other professionals and the Debtor's staff.

8 The objectors also complain that there was duplication of work by virtue of multiple
9 personnel in meetings and in court. Again, there are no specific allegations of how and when this
10 unjustifiably occurred (other than three examples cited by the Liquidating Trust where two FTI people
11 attended large loan collection/strategy meetings). The complexity and enormity of the case required and
12 justified more than one FTI representative sometimes attending court and meetings. FTI had a narrow
13 team of professionals providing services to the Debtor. Sometimes it was necessary to have more than
14 one FTI professional in attendance as each person may have performed different functions on the case or
15 had knowledge of different facts and issues.

16 **5. FTI is entitled to be compensated for the time spent in preparation of its Fee**
17 **Application.** The bankruptcy process and U.S. Trustee Guidelines mandate extremely detailed,
18 comprehensive fee applications in order to provide interested parties with adequate information to evaluate
19 the fees of professionals. Approximately 3.6% of FTI's fees were incurred in preparing the Fee Application
20 and other fee related tasks. This is consistent with the comparable time spent on fee applications of
21 Fennemore Craig, DLA Piper, and Jennings Strouss & Salmon, who on average spent approximately 3% of
22 their time on fee applications. FTI provided 41 different task codes to ensure the Debtor, interested parties,
23 and this Court had a detailed breakdown of the many services FTI performed for the Debtor.

24 **6. FTI is entitled to be compensated for the time spent litigating over its fee**
25 **award.** To deny FTI compensation for the time spent and costs incurred would substantially dilute the
26 effective rate for the hours expended on this case.

1 **7. FTI is entitled to adjust its 2008 hourly rates for work performed in 2009.**

2 Annual hourly rate adjustments are common practice and were fully disclosed in FTI's employment
3 application. FTI's hourly rates were disclosed in its employment application and approved. FTI's hourly
4 rates are its customary hourly rates.

5 **8. FTI is entitled to be compensated for paraprofessional time.** The objecting

6 parties object to what it inappropriately categorizes as secretarial time. The \$33,171 of objected time by
7 the ML Manager is the total paraprofessional time spent by Sandie Smith. As disclosed in the
8 application to employ FTI, the FTI professional with the lowest range of rates is
9 administration/paraprofessional. Ms. Smith provided essential services and in many instances, services
10 that could have been assigned to a consultant at a higher rate. The bulk of Ms. Smith's time was
11 primarily for downloading case filings and e-mailing them to the Debtor's management and numerous
12 parties in the case and preparing and organizing FTI's Fee Application that had 41 separate task codes.

13 **9. FTI is entitled to be compensated for transition work.** The objecting parties

14 object to 100% of FTI's \$38,881 of fees requested in the Transition Work category. This transition work
15 was incurred between May 20, 2009 and July 6, 2009 for the benefit of the Debtor, the Liquidating
16 Trustee and the ML Manager. Specific tasks included in the transition task code include, but are not
17 limited to, meeting with Debtor employees and counsel to discuss transition process, meet with the OIC
18 financial advisor and his staff to prepare and provide requested information, continue to work with
19 potential exit financing prospects, reviewed and added to the transition memo prepared by Debtor's
20 counsel, and prepared various memos regarding work performed by FTI.

21 **10. Radical Bunny is not entitled to participate.** It filed an untimely objection to

22 FTI's Fee Application, thus precluding it from participating in the trial. *See FTI's Response and Motion*
23 *to Strike Joinder of Radical Bunny, L.L.C.* [DE 2180] which has not been ruled on as of yet.

24 **B. Objectors' position:**

25 1. FTI bears the burden of establishing that the work performed was authorized and
26 necessary, that the fees were reasonable and that the services were adequately documented.

1 2. FTI's fees are unreasonable and should not be rewarded. These fees cannot be
2 justified in light of the results and the facts of this case and in light of the total amount of fees requested
3 by the Debtor's professionals.

4 3. FTI's decision to have 4 employees working full time at the Debtor's offices was
5 duplicative, unnecessary and not warranted in light of the Debtor's full-time salaried staff working on
6 the same projects.

7 4. FTI's work on fee applications is excessive and unreasonable considering it
8 prepared 1 bill and 1 fee application and failed to provide the Debtor with monthly totals or reasonable
9 estimates of the total fees.

10 5. FTI's increased rates after only three months of employment were improper and
11 unjustified as FTI failed to inform the Debtor, the Court and any other party of the increase of rates.
12 Moreover the rate increases of the magnitudes proposed by FTI are unjustifiable in the current market.

13 6. The work performed by secretaries constitutes overhead and should be absorbed
14 by FTI.

15 7. FTI's fees for its internal meetings are unreasonable and FTI has failed to justify
16 the need or purpose for these meetings.

17 8. FTI's "transition time" work was unreasonable as FTI failed to provide any work
18 product or relevant information to the Debtor.

19 9. FTI's work was inherently duplicative on at least two levels.

20 10. FTI has not demonstrated why it was necessary or reasonable for the Senior
21 Managing Director and the Managing Director (and often times additional employees) to attend the
22 meetings and court appearances.

23 11. FTI's services were duplicative of services performed by the Debtor or other
24 professionals retained by the Debtor.

25 12. FTI's work on the plan was excessive and unreasonable in comparison with the
26 work performed by Alvarez and Marsal, and Sierra Consulting.

1 13. FTI's administrative and clerical costs are unreasonable, not authorized by the
2 Bankruptcy Code and should be born by FTI.

3 14. Most or all time spent by FTI on the Debtor's plan after at least mid February was
4 unnecessary and unreasonable.

5 **F. LIST OF WITNESSES**¹

6 **1. FTI's witnesses:**

- 7 a) Michael Tucker.
8 b) Chris Olson, by affidavit filed September 16, 2009 [DE 2181].
9 c) Christine Zahedi, by declaration filed September 16, 2009 [DE 2181].
10 d) C. Taylor Ashworth.
11 e) Any witness listed by any other party.

12 **2. Objectors' witnesses:**

- 13 a) Nechelle Wimmer.
14 b) Veronica Sas.
15 c) Sarah Lisa-Petrauschke.
16 d) Edward McDonough.
17 e) Joe Baldino.
18 f) George Everette.
19 g) Kevin O'Halloran.
20 h) Chas Harvick.
21 i) Chris Welsh.
22 j) Barry E. Mukamal.
23 k) Any witness identified by FTI.

24 ¹ The Parties reserve all objections, including, without limitation, the Objectors' objection that
25 declarations are not admissible if the witnesses are not available for cross-examination and FTI's
26 assertion that witnesses not properly and timely identified in response to discovery requests may not be
called at trial.

1 **G. LIST OF EXHIBITS**

2 All Parties reserve all objections to the various exhibits listed.²

3 **1. FTI's exhibits:**

4 a) Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 327(a)
5 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial
6 Advisor to the Debtor and Debtor in Possession.

7 b) Declaration in Support of the Debtor's Application for an Authorizing
8 Employment and Retention of FTI Consulting, Inc. as Financial Advisor for the Debtor and Debtor in
9 Possession.

10 c) Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the
11 Debtor and Debtor in Possession.

12 d) First and Final Fee Application of FTI Consulting, Inc. as Financial Advisors to
13 the Debtor and Debtor in Possession for Allowance of Compensation and Reimbursement of Expenses.

14 e) Affidavit of Chris Olson in Support of FTI Consulting's First and Final Fee
15 Application October 7, 2008 - July 6, 2009.

16 f) Declaration of Christine Zahedi in Support of FTI Consulting's First and Final Fee
17 Application (October 7, 2008 - July 6, 2009).

18 g) November 2008 Monthly Operating Report.

19 h) December 2008 Monthly Operating Report.

20 i) Newsletter of the Official Committee of Investors of Mortgages Ltd., Number 29,
21 dated June 17, 2009.

22
23 ² The Parties have identified and specifically produced to each other the documents that they intend to
24 utilize as exhibits at the trial of this matter. Notwithstanding that specific production, certain of the
25 descriptions set forth herein generically describe other documents that have not been specifically
26 identified and produced as exhibits to be used at the trial in this matter. The Parties' inclusion of generic
descriptions does not constitute any party's agreement that the other Parties may seek to offer as an
exhibit additional documents that, although meeting the generic description, have not been specifically
identified and produced as trial exhibits prior to the submission of this Joint Pretrial Statement.

- 1 j) FTI Index of Hard Copy Documents for Mortgages Ltd. Project.
- 2 k) FTI Index of Electronic Files for Mortgages Ltd. Project.
- 3 l) FTI Professional Fees Budget to Actual.
- 4 m) FTI Summary of Objections to FTI Fee Application.
- 5 n) Expert report and CV of C. Taylor Ashworth.
- 6 o) FTI's final Mortgages fee summary by code per month as of July 6, 2009.
- 7 p) Memorandum dated January 18, 2009 from Rich Feldheim to Gerry Smith.
- 8 q) Memorandum dated February 9, 2009 from Rich Feldheim to Gerry Smith.
- 9 r) E-mail dated March 4, 2009 from Christopher Olson to Carolyn Johnsen, et al.
- 10 s) Letter dated March 17, 2009 from Christopher Olson to FTI.
- 11 t) Mortgages Ltd. Summary of Borrowers Grouped by Individual Borrower Last
12 Name.
- 13 u) Mortgages Ltd. Summary of Investors as of 11/5/2008.
- 14 v) E-mail dated April 9, 2009 from Carolyn Johnsen to Michael Tucker, et al.
- 15 w) E-mail dated April 27, 2009 from Jordan Kroop to Cathy Reece.
- 16 x) E-mail dated November 25, 2008 from Dale Belt to Chas Harvick.
- 17 y) E-mail dated March 10, 2009 from Dale Belt to Chas Harvick.
- 18 z) E-mail dated November 7, 2008 from George Everette to Michael Tucker and
19 Chas Harvick.
- 20 aa) E-mail dated January 19, 2009 from Chas Harvick to Ed McDonough and Dale
21 Belt.
- 22 bb) Mortgaged Ltd. DIP Revenue Detail dated December 2008 to June 2009.
- 23 cc) E-mail dated January 17, 2009 from Chas Harvick to Ed McDonough.
- 24 dd) Any exhibits specifically identified by the Objectors.
- 25 ee) All impeachment exhibits.

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1 **2. Objectors' exhibits:**

- 2 1. All exhibits listed or used by FTI.
- 3 2. Any or all documents produced during discovery.
- 4 3. Debtor's Monthly Operating Reports.
- 5 4. Debtor's Schedule of Assets and Liabilities and Statement of Affairs and
6 amendments thereto.
- 7 5. Fee Application of the Debtor's bankruptcy counsel Jennings Strouss & Salmon
8 PLC ("JSS").
- 9 6. Fee Application and Billing Statements of Debtor's Ordinary Course Counsel
10 Gust Rosenfeld PLC ("Gust Rosenfeld").
- 11 7. Fee Application of the Debtor's special counsel Greenberg Traurig LLP.
- 12 8. Fee Application of the Debtor's special counsel, DLA Piper.
- 13 9. Fee Application of the Alvarez & Marsal Dispute Analysis & Forensic Services,
14 LLC, Financial Advisors for the Official Committee of Investors.
- 15 10. Fee Application of Official Committee of Investors in the Value-to-Loan
16 Opportunity Fund I, LLC's counsel, Schian Walker, P.L.C.
- 17 11. Fee Application of Sierra Consulting Group, LLC, Financial Advisor to the
18 Official Unsecured Creditors Committee.
- 19 12. Debtor's Plan of Reorganization of Mortgages Ltd., dated March 4, 2009.
- 20 13. Mortgages Ltd.'s Disclosure Statement in Support of its Chapter 11, Plan of
21 Reorganization, dated March 4, 2009.
- 22 14. Emails between FTI, counsel for the Debtor, the Debtor, and other parties to the
23 bankruptcy.
- 24 15. Spreadsheets prepared by the Debtor.
- 25 16. Charts prepared by Objectors.

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- 1 17. Transcripts from the University & Ash Evidentiary Hearing dated November 18,
2 2008.
- 3 18. Transcript from the University & Ash Evidentiary Hearing dated November 19,
4 2008.
- 5 19. Transcript from the University & Ash Evidentiary Hearing dated November 24,
6 2008.
- 7 20. Transcript from the University & Ash Evidentiary Hearing dated November 25,
8 2008.
- 9 21. Transcript from the Riverfront/Cottonwood Motion for Summary Judgment
10 Hearing, dated April 14, 2009.
- 11 22. Transcript from the Riverfront/cottonwood Motion to Compel Hearing, dated
12 April 30, 2009.
- 13 23. Transcript from the Confirmation Hearing dated May 13, 2009.
- 14 24. Transcript from the Confirmation Hearing dated May 14, 2009.
- 15 25. Transcript from the Confirmation Hearing dated May 15, 2009.
- 16 26. Transcript from the Confirmation Hearing dated May 18, 2009.
- 17 27. Transcript from the Confirmation Hearing dated May 19, 2009.
- 18 28. All deposition transcripts for Chris Olson.
- 19 29. All deposition transcripts for Christine Zahedi.
- 20 30. Debtor's Plan of Reorganization filed May 2009.
- 21 31. Disclosure Statement in support of Debtor's Plan of Reorganization filed May
22 2009.
- 23 32. All pleadings filed by Schian Walker on behalf of the VTL Committee in the
24 Mortgages Ltd. Bankruptcy.
- 25 33. All declarations from any FTI representative filed with the Court.
- 26 34. FTI's Claims analysis.

- 1 35. Mortgages Ltd. Claims analysis.
2 36. FTI's Guarantor Research Binders.
3 37. All documents relied upon by expert witnesses.
4 38. All deposition exhibits.
5 39. All pleadings filed in connection with FTI's Fee Application.
6 40. Investor Redemption Spreadsheets.
7 41. Statements of Accounts.
8 42. Expert Report of Mr. Barry E. Mukamal, any supplements thereto, and his CV.
9 43. Various electronic correspondence from FTI, yet to be produced.
10 44. FTI's Work File.
11 45. FTI's Electronic Work File.
12 46. Documents to be produced by FTI in response to Liquidating Trust's discovery
13 requests.
14 47. All impeachment exhibits.

15 **H. ESTIMATED LENGTH OF TRIAL**

16 The parties estimate that the trial will require one judicial day.

17 DATED this 29th day of December, 2009.

18 SCHIAN WALKER, P.L.C.

19
20 By /s/ DALE C. SCHIAN, #010445
Dale C. Schian
Michael R. Walker
Attorneys for FTI Consulting, Inc.

21
22 STRADLEY, RONON,
23 STEVENS & YOUNG, LLP

24 By /s/ DALE C. SCHIAN, w/permission by
Mark J. Dorval
25 Attorneys for Kevin T. O'Halloran, Trustee
26 of the Liquidating Trust of Mortgages Ltd.

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FENNEMORE CRAIG, P.C.

By /s/ DALE C. SCHIAN, w/permission by
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Trustee for Radical Bunny, LLC