

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: January 20, 2011



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Handwritten signature of Randolph J. Haines in black ink.

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
MORTGAGES LTD.,
Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

**ORDER REGARDING DISTRIBUTION OF
PROCEEDS**

On January 11, 2011, the Court heard argument on ML Manager's (1) *Notice of Intent to Distribute Proceeds in accordance with Allocation Model*, and (2) *Motion to Approve Treatment of Distribution of Disputed Proceeds* (Docket No. 3017) (the "Distribution Motion"). The Distribution Motion is related to or based on the implementation of the "Allocation Model" as referenced this Court's minute entry (Docket 2959) "approving the allocation formula proposed by ML Manager in the Allocation Brief filed on September 1, 2010 [Docket No. 2913]." ML Manager has now resolved or liquidated six of the loans, collateral, or the properties (collectively, the "Loans") included in the loans defined as "ML Loans" in the Plan of Reorganization confirmed in this matter (the "Plan"). These six Loans include (1) Chateaux on Central (see Sale Order, Docket No. 2676); (2) the Newman I Loan, (3) the Newman II Loan,¹ (4)

¹ There were no sale orders with the two Newman loans as the borrower paid them in full.

1 Zacher Missouri (*see* Sale Order, Docket No. 2892), (5) City Lofts (*see* Sale Order,
2 Docket No. 2887), and (6) Osborne III (sometimes known as Ten Wine Lofts) (*see* Sale
3 Order, Docket No. 2976).

4 Two Objections to the Distribution Motion were filed. The Rev-Op Group
5 (defined below) filed an Objection to the Distribution Motion and requested, among other
6 things, that the Motion be denied. (Docket No. 3028). The ML Liquidating Trust (the
7 “Trust”) filed an Objection, but only requested that distributions to individuals who were
8 the subject of pending litigation, preference claims, or avoidance actions be escrowed
9 pending final resolution of those claims. (Docket No. 3030). Having considered all
10 briefing of the Parties, oral argument, prior rulings and briefings, and for good cause
11 appearing,

12 THE COURT CONCLUDES, FINDS, AJUDICATES AND ORDERS AS
13 FOLLOWS:

14 A. The Distribution Motion is granted and ML Manager is authorized to
15 make the distributions contemplated therein except as otherwise provided herein.

16 B. The Court has already ruled with regard to the obligation that all Investors
17 must pay their proportionate share of costs from distributions from the proceeds of the
18 ML Loans. (*See* Docket No. 2323) (the “Motion for Clarification Ruling”). That ruling
19 is currently pending an appeal to the United States District Court for the District of
20 Arizona. This Court does not have jurisdiction to modify or reconsider the Motion for
21 Clarification Ruling, nor does it find any reason to do so.

22 C. The Allocation Model provides, among other things, that all Investors in
23 the ML Loans where there is a distribution must pay their proportionate share of
24 “General Costs” including pre-confirmation expenses, and post confirmation general
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1 expenses, as well as “Loan Specific Costs” incurred after the confirmation of the plan of
2 reorganization in this matter.²

3 D. The appropriate standard of review to consider ML Manager’s allocation
4 decisions is the business judgment standard. The treatment set forth in the Allocation
5 Model is consistent with and fulfills ML Manager’s duty under the business judgment
6 rule as well as any fiduciary duty and ML Manager’s role as contemplated and
7 established by the confirmed Plan.

8 E. At the hearing on September 21, 2010, the Court approved the allocation
9 formula proposed by ML Manager in the Allocation Brief filed on September 1, 2010
10 [Docket No. 2913] (the “Allocation Model”).

11 F. The treatment in the Allocation Model of the obligations incurred by the
12 Debtor, Mortgages Ltd., the administrative expenses, and other pre-confirmation costs
13 and expenses as General Costs is approved, appropriate, and consistent with ML
14 Manager’s business judgment and consistent with and in fulfillment of its fiduciary
15 duties.

16 G. The treatment of costs that will be reimbursed by the Trust pursuant to the
17 terms of the Plan if and when the Trust recovers sufficient money is approved,
18 appropriate, and consistent with ML Manager’s business judgment and consistent with
19 and in fulfillment of its fiduciary duties.

20 H. All of the objections to the distribution of proceeds under the six Loans,
21 except any objections that have been specifically reserved by this Court, have been
22 overruled.

23 I. With regard to the six Loans at issue, the determination, allocation and
24 proposed distribution of costs, expenses and proceeds under the Allocation Model is

25 ² All capitalized terms in this Order shall have the same meaning as set forth in the
26 operative documents including the Plan, the Allocation Model and the Interborrower
Agreement, which was attached as an Exhibit to the Distribution Motion.

1 approved. This includes, without limitation, the determination that the total amount of
2 settlement costs were \$7,393,841.58 and were properly treated, accounted for and
3 disbursed. Pursuant to the obligations under the Exit Financing Loan agreement, the
4 payment to the Exit Lender from these six loans of collectively \$8,770,523.50 was
5 properly treated, accounted for and disbursed. ML Manager was entitled to and
6 properly treated, accounted for and disbursed a “Permitted Reserve” of \$2,836,944.90.
7 Pursuant to the Allocation Model, the “Total Estimated Costs” (as provided in the
8 Allocation Model) of the “Pass-Through Investors” that were not included in the
9 payments to the Exit Lender were \$1,160,931.75, and they have been properly treated
10 and accounted for. Based on the operation of the Allocation Model, \$8,521,443.22 is
11 available to distribute to investors, subject to the provisions set forth below. This
12 includes \$4,758,799.88 to the “Pass-Through Investors” and \$3,762,639.58 to the Loan
13 LLCs or MP Funds.

14 J. There exists a recorded judgment lien against Robert L. Barnes, Jr.
15 (“Barnes”) by Kathleen Heth (“Heth”), and a recorded judgment lien against the
16 “Barness Investment Limited Partnership, an Arizona Limited Partnership (“Barness”)
17 by the Town of Gilbert (“Gilbert”). The current expected distribution to Barnes and
18 Barness is less than the amount of the recorded judgment liens. The proposed
19 distributions of net proceeds from the six Loans, following the application of their
20 respective share of costs and expenses under the Allocation Model, to their respective
21 judgment creditors, care of the respective judgment creditor counsel, is approved.

22 K. The Trust has filed certain preference actions, avoidance actions or other
23 claims (collectively, the “Insider Claims”) against certain individuals or entities that
24 have been referred to as “Insiders.” The term “Insider” for purposes of this Motion
25 means in the individuals or entities referred to in paragraph O below and has been used
26 in this Order for identification purposes only. There has been no adjudication, finding

1 or determination as to whether any individual or entity was an “Insider” for purposes of
2 any statute or rule.

3 L. ML Manager holds approximately \$241,099.11 from payments received
4 by the Debtor during the bankruptcy prior to confirmation of the Plan. This amount was
5 held by the Debtor pursuant to an Order by the Court, (Docket No. 458) governing
6 distributions to certain investors referred to as insiders (the “Insider Escrow”). Upon
7 confirmation of the Plan, control and management of the Insider Escrow was transferred
8 or assigned to ML Manager.

9 M. Except as indicated herein, amounts in the Insider Escrow and any
10 distributions to Insiders are subject to the Allocation Model. ML Manager is entitled to
11 assess costs and expenses against any distribution or proposed distribution to Insiders,
12 against the proceeds in the Insider Escrow, and against all escrows held on behalf of the
13 Insiders pursuant to the Allocation Model.

14 N. Notwithstanding the foregoing, whether the Mortgages Ltd. 401(k) Plan
15 (the “401(k) Plan”) can be assessed any fees or costs under the Allocation Model has not
16 yet been determined or adjudicated, and that issue, among others, is pending before the
17 United States District Court for the District of Arizona. As such, no judicial
18 determination has yet been made regarding the propriety of allocating costs to the
19 401(k) Plan and no allocation shall be implemented at this time with respect to the
20 401(k) Plan.

21 O. Until further order of this Court, ML Manager, any Loan LLCs (as defined
22 by the Plan) involved with the six Loans, and the MP Funds (as defined by the Plan)
23 shall not make any distributions, pay any payments of principal or interest related to the
24 six Loans or proceeds from any of the ML Loans, or from the Insider Escrow to any of
25 the following Insiders:
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- 1. Julie B. Coles, Defendant John Doe Coles, and Defendant Perry L. Coles, Trustee of the Julie B. Coles Irrevocable Trust, and any amendments thereto;
- 2. Michael Denning and Donna Denning, and the marital community property of Michael Denning and his spouse;
- 3. Lisa A. Katz and John Doe Katz, husband and wife, and Defendant Lisa A. Katz, Trustee of the Lisa A. Katz Trust;
- 4. George A. Everette and Mary J. Everette, husband and wife, and Defendants George A. Everette and Mary J. Everette, Trustees of the GEME Revocable Trust, Dated December 19, 2005;
- 5. Defendant Perry L. Coles, Trustee of the Scott M. Coles Trust, Dated March 28, 2004;
- 6. Defendant Robert G. Furst and Jane Doe First, husband and wife, and Defendant Robert G. Furst, Trustee of The Robert G. Furst & Associates Defined Benefit Pension Plan; and
- 7. Defendants Ryan P. Walter and Jeanne M. Walter, husband and wife.

P. ML Manager shall cause any distribution or other payment that would have otherwise been made to an Insider to be held in a separate escrow or segregated account, or added to the Insider Escrow.

Q. ML Manager has asserted a right to recoup, offset or set-off against distributions, including distributions under the six Loans of at least \$336,000 (the "Offset Claim") against thirteen investors known as the "Rev-Op Group" consisting of (1) AJ Chandler 25 Acres, LLC; (2) Bear Tooth Mountain Holding LLP; (3) Cornerstone Realty & Development Inc.; (4) Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust; (5) Evertson Oil Company, Inc.; (6) The Lonnie Joel Krueger Family Trust; (7) Michael Johnson Investments II, LLC (8) Louis B. Murphey (9) Pueblo Sereno Mobile Home Park LLC (10) Queen Creek XVIII, LLC; (11) Morley

1 Rosenfield, M.D. P.C. Restated Profit Sharing Plan; (12) The James C. Schneck
2 Revocable Trust; (13) William L. Hawkins Family LLP.

3 R. The Offset Claim includes a judgment (Case No. 10-AP-00430, Docket
4 No. 137) that ML Manager that has obtained against the Rev-Op Group, among others,
5 in the amount of \$89,364.26 (the "Judgment"). The Judgment is on appeal to the
6 United States District Court for the District of Arizona, but has not been stayed.

7 S. ML Manager is entitled to satisfy the Judgment from distributions that
8 would otherwise be made to the Rev-Op Group, which ML Manager has indicated that it
9 will do on a pro-rata basis. ML Manager is authorized to satisfy the Judgment in such a
10 manner.

11 T. As for the balance of the Offset Claim, or approximately \$246,000, ML
12 Manager shall deduct that amount from the distributions to the Rev-Op Group on a pro-
13 rata basis and segregate that amount in a separate escrow account pending further order
14 of this Court, or another Court of competent jurisdiction, or agreement of ML Manager
15 and the Rev-Op Group.

16 U. This Order is stayed only until 8 a.m., January 24, 2011. All other stays
17 under the Federal Rule of Bankruptcy Procedure are hereby waived.

18 DATED AND SIGNED ABOVE.

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