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7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **FOR THE DISTRICT OF ARIZONA**

10 Robert Facciola, *et al.*,

CIV 10-1025-PHX-FJM

11 Plaintiffs,

12 v.

**ML LIQUIDATING TRUST AND  
 ML SERVICING CO., INC.’S  
 MOTION AND MEMORANDUM  
 IN SUPPORT OF ORDER TO  
 QUASH OR MODIFY  
 SUBPOENAS**

13 Greenberg Traurig, LLP, a New York  
 14 limited liability partnership, *et al.*,

15 Defendants.

16  
 17 Pursuant to Federal Rule of Civil Procedure (“Rule”) 45(c), ML Servicing Co., Inc.  
 18 and ML Liquidating Trust (collectively referred to herein as the “Trust”), non-parties to  
 19 this case, move the Court for an order quashing Defendant Greenberg Traurig, LLP’s  
 20 (“Greenberg”) subpoenas duces tecum.<sup>1</sup> *See* Exhibit A. On June 27, 2011, Greenberg  
 21 served substantively identical subpoenas on both ML Servicing Co., Inc. and ML  
 22 Liquidating Trust.<sup>2</sup> Greenberg established an extremely short return date of July 8, 2011,  
 23 particularly given the intervening weekend and holiday, to object, seek other relief, and  
 24 evaluate, respond to, or provide information relating to *at least* 103 categories of  
 25 documents, the scope of which appears to encompass nearly everything in the possession

26 <sup>1</sup> ML Servicing Co., Inc. is the successor in interest to Mortgages, Ltd. ML  
 Liquidating Trust is a liquidating trust and the owner of ML Servicing Co., Inc.

27 <sup>2</sup> Both subpoenas are referenced herein collectively as the “subpoenas.” The Trust  
 28 does not know if notice of the subpoenas was provided to counsel for the Plaintiffs prior to  
 their service pursuant to the requirements of Fed. R. Civ. P. 45(b)(1).

1 of or relating to Mortgages Ltd. or the Trust. Consequently, the Trust sought from  
2 Greenberg's counsel an extension of time in which to respond, object, or seek such other  
3 relief as it deemed necessary, and Greenberg gave the Trust until July 21, 2011, to do so.

4 The Trust objects to and seeks an order quashing the subpoenas in their entirety.  
5 The subpoenas, on their face, are overly broad, vague, and ambiguous, and seek  
6 information and documents that are confidential, privileged, and/or otherwise subject to  
7 protective orders entered in other cases. Moreover, Greenberg has completely failed in its  
8 duty to tailor its requests to the Trust in a manner that avoids imposing undue burden or  
9 expense on it in complying with the subpoenas.<sup>3</sup>

10 Greenberg's failure to exercise its duty under Rule 45 is particularly troublesome  
11 given that it seeks materials that Greenberg likely already has or had access to and/or  
12 possession of during its pre-bankruptcy and bankruptcy representation of Mortgages, Ltd.,  
13 or which it obtained from other sources. The Trust, unlike other business subpoena  
14 recipients, is neither an ongoing business with an income stream which would help defray  
15 the costs that it would incur in responding to the subpoenas, nor a business with resources  
16 sufficient to respond them. In fact, the Trust is tasked with maximizing and liquidating its  
17 assets pursuant to a bankruptcy court order. The Trust is responsible for salvaging what is  
18 left from those who participated in the mismanagement and improprieties that resulted in  
19 Mortgages, Ltd.'s ultimate demise. The subpoenas, therefore, should be quashed to  
20 prevent further dissipation of its assets.

21 Alternatively, the Trust requests that the Court enter an appropriate order which  
22 includes safeguards to prevent the disclosure of confidential and/or privileged documents,  
23 and the dissipation of the Trust's assets. The Trust respectfully requests that the expenses  
24 of this production, including its electronic discovery costs, privilege review, and  
25 confidentiality review be borne by Greenberg. To require the Trust to comply with the

26 \_\_\_\_\_  
27 <sup>3</sup> The Trust is willing to and invites Greenberg to meet and confer with it regarding  
28 appropriately tailored subpoenas and associated protections afforded to the Trust to avoid  
the costs and burden associated with compliance.

1 subpoenas, without an associated order reimbursing the Trust for its compliance, will  
2 result in further dissipation of the Trust's limited assets contrary to the Trust's express  
3 purpose and Rule 45.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION.**

6 For more than 40 years prior to its bankruptcy, Mortgages, Ltd. was a private  
7 mortgage broker and lender. Between 2004 and 2008, the company raised more than \$741  
8 million dollars from approximately 2,700 investors, and Greenberg authored at least 11  
9 Private Placement Memoranda for Mortgages, Ltd. that were used to solicit investments  
10 from the public. The ultimate demise of Mortgages, Ltd., in 2008, and its then-owner  
11 Scott Coles, has been well publicized. The collapse of Mortgages, Ltd. has spawned  
12 substantial litigation, including an involuntary bankruptcy filing, subsequent bankruptcy  
13 proceedings, and various and numerous other litigation. Greenberg represented  
14 Mortgages, Ltd. both before and during the bankruptcy. It had access to information,  
15 documents, and many of the then principals of the entity who had specific knowledge  
16 about the business operations of the company – a luxury not currently shared by the Trust.

17 Against that backdrop, Greenberg seeks to require the Trust to engage in an  
18 extensive document production, at substantial cost, to provide literally millions of pages of  
19 documents spanning the life of Mortgages, Ltd. in this class action suit. Compliance with  
20 the subpoenas will substantially dissipate the remaining assets of the Trust, and saddle it  
21 with extensive expense associated with that compliance.

22 The overly broad scope of the subpoenas is self-evident. The first numbered  
23 paragraph seeks “[a]ll documents relating to Mortgages Ltd. Investments.” “Mortgages  
24 Ltd. Investments” is defined by the subpoenas as “all investments offered by or through  
25 Mortgages Ltd. or Mortgages Ltd. Securities, including, by way of example only,  
26 participations in deeds of trust or various investment programs such as MP Funds, the Rev  
27 Op program, the Cap Op Program, or other Pass-Through programs.” In turn, the term  
28

1 “document” is broadly defined. Likewise, the broadly defined term “Communication”  
2 includes every conceivable form of the exchange of information. *See* Definitions, Ex. A.

3 After Greenberg’s request for “all” documents related to “Mortgages Ltd. Investments,”  
4 it demands in 44 additional individually numbered paragraphs the production of at least 103  
5 separate categories of documents. These categories encompass virtually every other type of  
6 information possessed by the Trust, including, *inter alia*: “[a]ll documents relating to Private  
7 Offering Memoranda prepared for Mortgages Ltd.” (¶ 3); “[a]ll documents relating to financial  
8 statements of Mortgages Ltd., Mortgages Ltd. Securities, or any of their funds or affiliates” (¶  
9 5); “[a]ll documents discussing or relating to Mortgages Ltd.’s solvency, insolvency, or  
10 financial condition, including balance sheets, cash flow statements, and bank statements” (¶6);  
11 “[a]ll documents relating to any finished or unfinished valuations of Mortgages Ltd. or  
12 Mortgages Ltd, Securities” (¶ 7); “[a]ll documents relating to prospective broker/dealers of  
13 Mortgages Ltd. Investments” (¶ 11); “[a]ll documents relating to the Allocation Model” (¶  
14 15); “[a]ll documents relating to or reflecting communications with investors or prospective  
15 investors in Mortgages Ltd. Investments” (¶ 16); “[a]ll draft and final sales and promotional  
16 materials used by Mortgages Ltd. or Mortgages Ltd. Securities, and any communications  
17 relating to the content or distribution of such materials” (¶ 17); “[a]ll documents relating to  
18 requests for and redemptions of investors’ interests in their Mortgages Ltd. Investments” (¶  
19 18); “[a]ll databases containing information about investors in Mortgages Ltd.  
20 Investments” (¶ 19); “[a]ll documents relating to payments and receipts to and from investors  
21 in Mortgages Ltd. Investments, including payments made following Mortgages Ltd.’s  
22 bankruptcy” (¶ 20); “[a]ll databases used by Mortgages Ltd. or Mortgages Ltd. Securities  
23 relating to financial reporting, projecting or tracking of cash flow, projecting or tracking of  
24 payments and receipts to and from investors, projecting or tracking payments and receipts to  
25 and from borrowers, and/or projecting or tracking of payments and receipts to and from vendors  
26 for Mortgages Ltd. or Mortgages Ltd. Securities” (¶ 21); “[a]ll documents relating to  
27 Mortgages Ltd. or Mortgages Ltd. Securities’ regulatory compliance issues or efforts” (¶ 22);  
28

1 “[a]ll documents relating to any fees charged to Mortgages Ltd.'s borrowers or any investors in  
2 Mortgages Ltd. Investments” (¶ 24); “[a]ll documents relating to or reflecting  
3 communications with persons or entities that borrowed money from Mortgages Ltd.” (¶ 25);  
4 “[a]ll documents relating to loans made by Mortgages Ltd., including that relate to loan  
5 underwriting, loan applications, appraisals of any real estate or other assets used to secure  
6 the loans, due diligence, and construction progress reports or other monitoring of the  
7 loans” (¶ 26); “[a]ll documents relating to payments and receipts to and from borrowers of  
8 Mortgages Ltd.” (¶ 27); “[a]ll documents relating to foreclosures, recoveries, or potential  
9 recoveries made on loans that Mortgages Ltd. made” (¶ 28); “[a]ll documents relating to any  
10 investigation of or administrative proceeding against Mortgages Ltd., Mortgages Ltd.  
11 Securities, or Radical Bunny by the SEC, Arizona Corporation Commission, or Arizona  
12 Department of Financial Institutions” (¶ 41); “[a]ll documents relating to or reflecting  
13 communications with purchasers or prospective purchasers of properties in which any  
14 Successor Entity to Mortgages Ltd. or Mortgages Ltd. Securities or investors in Mortgages Ltd.  
15 Investments have or had an interest” (¶ 42); “[a]ll work-related call logs, calendar entries, and  
16 message slips found at Mortgages Ltd. or Mortgages Ltd. Securities, dating from prior to  
17 June 20, 2008” (¶ 45). Based on the breadth of the subpoena, Greenberg seemingly wants  
18 and seeks every document in the Trust's possession.

19 Moreover, included within the scope of the request are privileged attorney-client  
20 communications. *See* Ex. A at ¶¶ 10 (requesting “communications with or work  
21 performed by the Chess Law Firm”), 13 (requesting “documents relating to work  
22 performed . . . by Zwillinger Georgelos & Greek”), 14 (requesting documents relating to  
23 “work performed . . . by Mark Svejda”). The subpoenas further instruct the Trust to copy  
24 and/or scan the millions of pages of documents (at the Trust's expense) and mail it to  
25 Greenberg’s counsel.

1 **II. RULE 45(c) MANDATES PROTECTIONS FOR A SUBPOENAED ENTITY,**  
2 **INCLUDING IMPOSITION OF ATTORNEYS' FEES AND COSTS ON A**  
3 **PARTY WHO FAILS TO TAKE STEPS TO AVOID IMPOSING UNDUE**  
4 **BURDEN OR COSTS.**

5 **A. The Trust Is Entitled To Heightened Protections From the Overly**  
6 **Broad Subpoenas.**

7 Fed. R. Civ. P. 45 imposes an express duty on a party or its attorney to take  
8 reasonable steps to avoid imposing undue burden or expense on an entity that is subject to  
9 a subpoena. This duty must be enforced by the issuing court should the serving party fail  
10 in that duty. Fed. R. Civ. P. 45(c)(1). The protections offered to a subpoenaed entity are  
11 mandatory. Rule 45(c)(3)(A)(iii)-(iv) provides that a court “must quash or modify” a  
12 subpoena if it “requires disclosure of privileged or other protected matter” or “subjects a  
13 person to undue burden.” Rule 45 “also afford[s] non-parties special protection against the  
14 time and expense of complying with subpoenas.” *Exxon Shipping Co. v. U.S. Dept. of*  
15 *Interior*, 34 F.3d 774, 779 (9th Cir. 1994); *Mattel Inc. v. Walking Mountain Prods.*, 353  
16 F.3d 792, 813 (9th Cir. 2003) (court must quash or modify a subpoena issued to an entity  
17 if it subjects that entity to undue burden).

18 In analyzing burden, a court must balance the needs of the requesting party with the  
19 burden imposed on the non-party. “The word ‘non-party’ serves as a constant reminder of  
20 the reasons for the limitations that characterize ‘third-party’ discovery.” *Dart Indus. Co.*  
21 *v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980) (internal quotations omitted).  
22 As the practice commentary to Rule 45 makes clear, “the theme of the new subdivision (c)  
23 is sounded in its first paragraph, which imposes on the attorney . . . the obligation of taking  
24 reasonable steps to avoid imposing undue burden or expense on the subpoenaed person.”  
25 *Siegel, Practice Commentary C45-20 (Duty to Avoid “Undue Burden” on Subpoenaed*  
26 *Person; Sanctions for Abuse)*, 28 U.S.C.A., Fed. R. Civ. P. 45, at 384-85).

27 The mandatory requirement to protect subpoenaed entities from significant expense  
28 is a departure from the pre-1991 version of Rule 45, which left cost-shifting to the  
discretion of the court. *Linder v. Calero-Portocarrero*, 251 F.3d 178, 182 (D.C. Cir.

1 2001). “Under the revised Rule 45, the questions before the district court are whether the  
2 subpoena imposes expenses on the non-party, and whether those expenses are  
3 ‘significant.’ If they are, the court *must* protect the [subpoenaed entity] by requiring the  
4 party seeking discovery to bear at least enough of the expense to render the remainder  
5 ‘non-significant.’ The rule is susceptible of no other interpretation.” *Id.* (emphasis  
6 added). “Non-Party witnesses are powerless to control the scope of litigation and  
7 discovery, and should not be forced to subsidize an unreasonable share of the costs of a  
8 litigation to which they are not a party.” *United States v. Columbia Broad. Sys., Inc.*, 666  
9 F.2d 364, 371 (9th Cir. 1982).

10 **B. The Subpoenas Should Be Quashed Because They Are Overbroad.**

11 Overly broad subpoenas must be quashed or modified. *Gonzales v. Google, Inc.*,  
12 234 F.R.D. 674, 680 (N.D. Cal. 2006). “Whether a subpoena imposes an undue burden  
13 upon a [non-party] is a case specific inquiry that turns on ‘such factors as relevance, the  
14 need of the party for the documents, the breadth of the document request, the time period  
15 covered by it, the particularity with which the documents are described and the burden  
16 imposed.’” *Goodyear Tire & Rubber Co. v. Kirk’s Tire & Auto Servicenter of  
17 Haverstraw, Inc.*, 211 F.R.D. 658, 66-632 (D.Kan. 2003). “Courts are required to balance  
18 the need for discovery against the burden imposed on the person ordered to produce  
19 documents, and the status of a person as a non-party is a factor that weighs against  
20 disclosure.” *Id.*

21 Arizona courts have routinely refused to enforce overly broad subpoenas. In *Helge*  
22 *v. Druke*, 666 P.2d 534, 540 (Ariz.App. 1983), the Arizona Court of Appeals stated, “a  
23 blanket request for all written statements, all memoranda and other documents in  
24 defendant’s possession lacks specificity and is too sweeping and un-detailed to comply  
25 with the rule requirements as to designation.” *Helge* further held that when a subpoena  
26 was being used to discover what documents exist, rather than inspect and copy known  
27 documents, the subpoena should be quashed. *Id.*, 666 P.2d at 540-541.

1 Similarly, in *Fenton v. Howard*, 575 P.2d 318 (Ariz. 1978), the plaintiff  
2 subpoenaed a nonparty to bring to his deposition, “any and all documents, records, reports,  
3 and/or notes concerning counseling services rendered to the above named Plaintiff.” The  
4 *Fenton* Court ruled that the subpoena was overly broad and refused to enforce the same.  
5 *Id.*, 575 P.2d at 320. Likewise, in *Kirkpatrick v. Industrial Commission*, 460 P.2d 670,  
6 676 (Ariz.App. 1969), the defendant served a subpoena on the custodian for the Industrial  
7 Commission that commanded the custodian to produce certain materials and “all other  
8 documents which are part of the claim file or investigation file of the claim of  
9 [Plaintiff]...” The *Kirkpatrick* Court ruled that the defendant had failed to designate the  
10 documents sought to be discovered with sufficient particularity. And, in *Industrial*  
11 *Commission v. Holohan*, 397 P.2d 624, 628 (Ariz. 1964), the Arizona Supreme Court  
12 ruled that a subpoena requesting the defendant to produce an entire claim file failed to  
13 sufficiently designate the requested materials as to satisfy the specificity requirements of  
14 the rule. Consistently, in *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637-38 (C.D. Cal.  
15 2005), the district court held that requests seeking “any and all documents over a ten year  
16 or greater period relating to defendant and nonparty . . . are overbroad on their face and  
17 exceed the bounds of fair discovery”) (internal citations and modification omitted).

18 In this case, Greenberg seeks more than 40 years worth of documents, regardless of  
19 their format, from a company that did more than a billion dollars worth of business.  
20 Greenberg’s lack of specificity in simply requesting “[a]ll documents relating to  
21 Mortgages Ltd. Investments,” together with 103 additional categories of documents, reeks  
22 of the fishing expedition in which Greenberg is engaging.<sup>4</sup> Moreover, the subpoenas  
23 provide no protections for the costs associated with either the review or production of this  
24 information. The instructions for the subpoenas are demonstrative of Greenberg’s utter  
25 failure to comply with its duty to avoid imposing undue burden or expense. After  
26 requesting virtually all documents relating to Mortgages, Ltd., and at least 103 categories

27 <sup>4</sup> Upon information and belief, Greenberg has issued a number of subpoenas on other  
28 entities seeking the same or similar information.



1 of additional documents, Greenberg further commands the Trust to provide an extensive  
2 log of information, the scope of which exceeds the mandates of Rule 45. The creation of  
3 this log would in and of itself require the Trust to use additional resources and incur  
4 additional costs. More specifically Greenberg commands:

5 If you withhold any documents on grounds of privilege, a privilege log shall  
6 be created and served as required by Fed. R. Civ. P. 26(b)(5) and any  
7 applicable local rules of the United States District Court identified on the  
8 face of the subpoena. For each requested document that is sought to be  
9 withheld or redacted on a claim of privilege, state: (1) the basis of the claim  
10 of privilege; (2) the type of document or communication; (3) the general  
11 subject matter of the document or communication; (4) the date of the  
12 document or communication; (5) the author or speaker; (6) whether or not  
13 the author or speaker is a lawyer; and (7) each recipient and whether the  
14 recipient is a lawyer.

15 In paper form, the Trust has possession of approximately 1,100 boxes, which  
16 contain approximately 305,555 documents, stored in a warehouse.<sup>5</sup> Additionally, the  
17 Trust has approximately 1,024 gigabytes (1 terabyte) of electronic information, which  
18 equates to at least 5,120,000 additional documents, using very conservative pages per  
19 document estimates. Degnan, 12 Minn. J.L. Sci. & Tech. at 160. Because of their broad  
20 nature, a substantial amount of this information has been requested by the subpoenas.  
21 Given the quantity of documents and data in the possession of the Trust, and the time it  
22 will take to gather, review and produce these materials, compliance with the subpoenas  
23 will be very costly.

24 Applying commonly accepted standards and estimates, the Trust has approximately  
25 5.4 million documents. As the Court is aware, there are a variety of options available to  
26 amass, review and produce voluminous materials in the context of litigation. Regardless  
27 of the processes implemented, commentators agree that production of the volume of  
28 documents similar to that which is the subject of Greenberg's subpoenas will cost millions

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<sup>5</sup> Industry standards estimate there to be 2,500 pages in a banker's box. See [www.archivebuilders.com/whitepapers/22030v003p.pdf](http://www.archivebuilders.com/whitepapers/22030v003p.pdf). On average, a document consists of 9 pages. See David Degnan, ACCOUNTING FOR THE COSTS OF ELECTRONIC DISCOVERY, 12 Minn. J.L. Sci. & Tech. 151, 163 (2011). Copying/scanning costs alone for these paper documents would exceed one quarter of a million dollars at 10¢ per page.

1 of dollars. *See e.g.*, Degnan, 12 Minn. J.L. Sci. & Tech. at 160 (5,425,555 documents ÷  
 2 review rate of 50 documents per hour x mid-range review rate of \$52.00 an hour =  
 3 **\$5,642,577**); Clearwell Cost Savings Calculator, [http://www.clearwellsystems.com/e-](http://www.clearwellsystems.com/e-discovery-customers/eDiscovery-cost-savings-calculator.php)  
 4 [discovery-customers/eDiscovery-cost-savings-calculator.php](http://www.clearwellsystems.com/e-discovery-customers/eDiscovery-cost-savings-calculator.php) (1024 gigabytes de-duped,  
 5 culled, processed and reviewed at a rate of \$45.00 per hour = **\$949,527- \$3,481,600**);<sup>6</sup>  
 6 Steven Harber, Fixed Per Unit Pricing Revolutionizes E-Discovery Review, Executive  
 7 Counsel, November 2007 (5,425,555 documents reviewed at a rate ranging between 95¢  
 8 and \$2.50 per document = **\$5,154,277 - \$13,563,887**).

9 In light of the quantity of the data maintained by the Trust, it is indisputable that  
 10 requiring the Trust to comply with Greenberg's subpoenas would subject it to undue  
 11 burden and cost and, therefore, the subpoenas should be quashed.

12 **C. Alternatively, The Court Should Enforce Greenberg's Duty to Avoid**  
 13 **Undue Cost to the Trust by Entering An Order Reimbursing the Trust**  
 14 **For Its Fees and Expenses in Complying with the Broad Subpoenas.**

15 Should the Court determine not to quash the subpoenas in their entirety, the Trust  
 16 seeks entry of an order that will reimburse the Trust for its fees and expenses in complying  
 17 with the broad subpoenas. Courts often hold that the cost-shifting required by Rule 45  
 18 includes the reasonable cost of the labor expended to gather and review documents for  
 19 production. "[A] narrow reading of Rule 45(c)(2)(B) . . . that distinguishes between the  
 20 cost of production as opposed to costs of 'inspection and copying' such that only the latter  
 21 are protected runs afoul of the spirit and purpose of the Rule." *In re First Am. Corp.*, 184  
 22 F.R.D. 234, 241 (S.D.N.Y. 1998); *see also In re Letters Rogatory Issued by the Nat'l*  
 23 *Court of the First Instance in Comm. Matters N. 23 of the Federal Capital of the*  
 24 *Argentinean Republic*, 144 F.R.D. 272, 278-79 (E.D. Pa. 1992) (mandating an award of all  
 25 expenses of production including attorney's fees for document review); *Linder v. Calero-*  
 26 *Portocarrero*, 180 F.R.D. 168, 177 (D.D.C. 1998) (shifting "reasonable copying and labor

27 <sup>6</sup> This figure is for review of the Trust's electronically stored data and does not  
 28 include the costs of the review or production of the materials kept in paper form.

1 costs”); *In re Exxon Valdez*, 142 F.R.D. 380, 384 (D.D.C. 1992) (addressing “reasonable  
2 costs of compliance, including the costs of producing, inspecting, and photocopying the  
3 requested documents”); *Williams v. City of Dallas*, 178 F.R.D. 103, 112-14 (N.D. Tex  
4 1998) (ordering production for documents by non-parties subject to their right to recover  
5 expenses including attorneys’ fees).

6 The ability to shift discovery costs becomes particularly important when non-  
7 parties are requested to bear the financial burden of producing information stored in  
8 electronic form. Cost-shifting, especially with regard to electronic data, serves an  
9 important purpose of counterbalancing the tendency to ask for more information than  
10 economic efficiency would justify because the cost of producing is not being borne by the  
11 party making the request. *See generally Hagemeyer N. Am. Inc.*, 222 F.R.D. 594, 601-03  
12 (E.D. Wis. 2004); *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309 (S.D.N.Y. 2003); *Rowe*  
13 *Entm’t, Inc. v. William Morris Agency, Inc.*, 205 F.R.D. 421 (S.D.N.Y. 2002.); *Simon*  
14 *Property Group L.P. v. mySimon, Inc.*, 194 F.R.D. 639 (S.D.Ind. 2000).

15 In furtherance of this principle, the SEDONA PRINCIPLES, which are routinely relied  
16 upon by courts addressing electronic discovery, provide that:

17 In light of the potentially enormous burdens involved with non-party  
18 discovery involving electronically stored information, parties seeking  
19 information from non-parties have a substantial interest in narrowly tailoring  
20 requests in light of a greater likelihood that a court may impose cost-sharing  
21 or cost-shifting. Indeed, parties seeking information from non-parties should  
be prepared to address these issues at informal meetings to determine if  
disputes can be resolved by agreement instead of rulings on a motion to  
quash or a motion to compel.

22 SEDONA PRINCIPLES, SECOND EDITION, BEST PRACTICES RECOMMENDATIONS &  
23 PRINCIPLES FOR ADDRESSING ELECTRONIC DOCUMENT PRODUCTION, June 2007,  
24 Comment 13.c. The SEDONA PRINCIPLES as well as Rule 45 contemplate shifting the  
25 financial burden of compiling and producing electronic information to the requesting  
26 party. Reimbursement is not limited to the costs associated with searching, collecting, and  
27 processing any responsive information, but also the cost of “reviewing retrieved  
28

1 documents for privilege, confidentiality, and privacy purposes.” The SEDONA PRINCIPLES  
2 *Id.*, at Comment 13.a.

3 Greenberg has failed in its duty to protect against imposing undue burden and cost  
4 on the Trust. As such, the subpoenas should be quashed. Alternatively, the subpoenas  
5 should be modified in a manner to tailor the requests and provide for the payment of costs  
6 and expenses for compiling, conducting a responsiveness, confidentiality, and privilege  
7 review, and processing the information for production, in order to defray any costs  
8 associated with the Trust’s compliance with Greenberg’s requests.

9 **D. The Subpoenas Impermissibly Seek Privileged Communications.**

10 Rule 45(c)(3)(A)(iii) requires the Court to “quash or modify a subpoena that . . .  
11 requires disclosure of privileged or other protected matter . . . .” As many as five of  
12 Greenberg's requests expressly seek communications and work product from lawyers and  
13 law firms who performed work for the Trust, Mortgages, Ltd., or other clients. Moreover,  
14 because of the breadth of the subpoenas, ongoing privileged communications and work  
15 product relating to the liquidation of the Trust’s assets post-confirmation are included in  
16 these requests. This information is commingled in the physical loan and investor files as  
17 well as in the electronic information.

18 To the extent that the subpoenas request communications between Mortgages, Ltd.  
19 and its attorneys, it improperly seeks materials protected by the attorney-client privilege.  
20 This is particularly concerning because of ongoing workout negotiations with borrowers,  
21 and other strategic communications relating to maximizing the Trust’s assets. Disclosure  
22 of these confidential strategies relating to the liquidation of Trust assets could substantially  
23 jeopardize and adversely impact its ultimate recoveries. In addition to material that is  
24 protected by the attorney-client privilege, the Trust's investor files contain bank account  
25 numbers, social security numbers and other private investor information that is not  
26 properly discoverable without the appropriate protections that must be put in place.

1 Finally, Greenberg's subpoenas request documents and information that is or may  
2 be the subject of Protective Orders entered by other courts. As such, production of these  
3 documents will cause the Trust to violate such orders. For example, the subpoenas request  
4 “[a]ll documents relating to the Allocation Model.” *See* Ex. A at ¶ 15. This information is  
5 subject to the Protective Order entered by the bankruptcy court on September 2, 2010,  
6 which protects all backup information, schedules, and all other materials associated with  
7 the Allocation Model. A copy of the protective order is attached hereto as Exhibit B.  
8 Greenberg's subpoenas clearly seek production of information that is in direct  
9 contradiction of this Protective Order. As such, the Trust cannot comply with Greenberg's  
10 subpoenas in the manner requested by Greenberg (assuming it is in possession of this  
11 information) without violating the Protective Order.

### 12 **III. CONCLUSION.**

13 Greenberg's subpoenas seek millions of document from the Trust and command  
14 their production in a very compressed timeframe. These subpoenas are unduly  
15 burdensome, overly broad, and seek the disclosure of confidential and protected  
16 documents. The costs associated with compliance with these subpoenas are extensive.  
17 Greenberg's duty to avoid imposing the burdens and costs relating to the subpoenas should  
18 be enforced by quashing the subpoenas or, alternatively, ensuring that the costs associated  
19 with the Trust's compliance are properly borne by Greenberg. The Trust respectfully  
20 requests the Court to enforce Greenberg's duty by entering an Order protecting the Trust  
21 from the undue burden and expense for its compliance with the subpoenas.

1 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of July, 2011.

2  
3 **STINSON MORRISON HECKER LLP**

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10 Attorneys for ML Servicing Co., Inc. and  
11 ML Liquidating Trust  
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1 I hereby certify that on the 21<sup>st</sup> day of July, 2011, I caused the foregoing document  
2 to be filed electronically with the Clerk of Court through ECF; and that ECF will send an  
e-notice of the electronic filing to the following ECF participants:

3 Martin R. Galbut, Esq.  
4 Michaile J. Berg, Esq.  
5 GALBUT & GALBUT, P.C.  
6 2425 East Camelback Road, Suite 1020  
7 Phoenix, Arizona 85016  
8 Attorneys for Defendant Greenberg Traurig, LLP

9 Courtesy hard copies sent to:

10 Kevin M. Downey, Esq.  
11 Ellen E. Oberwetter, Esq.  
12 Patrick J. Houlihan, Esq.  
13 WILLIAMS & CONNOLLY LLP  
14 725 Twelfth Street, N.W.  
15 Washington, D.C. 20005  
16 Attorneys for Defendant Greenberg Traurig, LLP

17 Andrew S Friedman  
18 Bonnett Fairbourn Friedman & Balint PC  
19 2901 N Central Ave., Ste. 1000  
20 Phoenix, Arizona 85012-3311  
21 Attorneys for Plaintiffs

22 Jeremy James Christian  
23 Richard Glenn Himelrick  
24 Tiffany & Bosco PA  
25 Camelback Esplanade II  
26 2525 E Camelback Rd, 3rd Floor  
27 Phoenix, Arizona 85016  
28 Attorneys for Plaintiffs

Delivered as a courtesy hard copy to:

Judge David G. Campbell  
United States District Court  
Sandra Day O'Connor U.S. Courthouse  
401 West Washington St.,  
Phoenix, AZ 85003-2158

29 /s/ Misty Smith  
30 \_\_\_\_\_  
31  
32  
33  
34  
35

# **EXHIBIT A**



AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona

Robert Facciola, et al.,
Plaintiff
v.
Greenberg Traurig LLP
Defendant
Civil Action No. 2:10-cv-01025-FJM
(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: ML Liquidating Trust c/o Michael C. Manning, Esq.
14050 N. 83rd Avenue, Suite 180, Peoria, AZ 85381

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attachment.

Place: Galbut & Galbut, P.C.
2425 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
Date and Time: July 5, 2011, 5:00 PM

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: June 21, 2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Ellen Oberwetter

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Greenberg Traurig LLP, who issues or requests this subpoena, are:

Ellen Oberwetter
Williams & Connolly LLP, 725 Twelfth St., NW, Washington, DC 20005
(202) 434-5000 eoberwetter@wc.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:10-cv-01025-FJM

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT "A"

**INSTRUCTIONS**

1. Documents covered by this subpoena should be mailed to:

Galbut & Galbut, P.C.  
2425 East Camelback Road, Suite 1020  
Phoenix, Arizona 85016
2. Documents covered by the subpoena may be mailed in the form of hard copies and printouts, or scanned and placed on a CD or other electronic storage medium and mailed in that form.
3. You may contact the attorney issuing this subpoena with any questions or to discuss its scope.
4. Some of the below document requests may overlap with each other.
5. If you withhold any documents on grounds of privilege, a privilege log shall be created and served as required by Fed. R. Civ. Proc. 26(b)(5) and any applicable local rules of the United States District Court identified on the face of the subpoena. For each requested document that is sought to be withheld or redacted on a claim of privilege, state: (1) the basis of the claim of privilege; (2) the type of document or communication; (3) the general subject matter of the document or communication; (4) the date of the document or communication; (5) the author or speaker; (6) whether or not the author or speaker is a lawyer; and (7) each recipient and whether the recipient is a lawyer.
6. This subpoena is continuing in nature and you must supplement your responses and production of documents to the fullest extent required by the Federal Rules of Civil Procedure if additional documents come into your possession, custody, or control.

**DEFINITIONS**

1. "Document" is a broad term. It means any written, recorded, electronic, or graphic matter, including emails, correspondence, memoranda, notes, telephone slips and logs, diary entries, facsimiles, presentations, brochures, calendars, reports, spreadsheets, investment statements, minutes, videotapes, audio tapes, electronic or digital recordings of any kind, photographs, and any other form of communication or representation. It also includes, without limitation, all information stored in electronic form even if not yet printed out, such as material on computer hard drives, CDs or DVDs, or disks, as well as other material stored or accessed electronically.

2. "Communication" is a broad term. It means any transmission of thoughts, opinions, data, or information, in the form of facts, ideas, inquiries, or otherwise, including, without limitation, correspondence, letters, email, facsimiles, reports, memoranda, contacts, discussions, calculations, presentations and any other written or oral exchanges between any two or more persons.
3. The term "Mortgages Ltd. Investments" refers to all investments offered by or through Mortgages Ltd. or Mortgages Ltd. Securities, including, by way of example only, participations in deeds of trust or various investment programs such as the MP Funds, the Rev Op program, the Cap Op program, or other Pass-Through programs.
4. The term "Radical Bunny Investments" refers to all investments offered by or through Radical Bunny, including, by way of example only, participations in deeds of trust, whole or partial interests in notes, and directions to purchase.
5. "Successor Entities" to Mortgages Ltd. or Mortgages Ltd. Securities refers to ML Liquidating Trust, ML Manager LLC, ML Servicing Co., Inc., and VTL I LLC.

#### **DOCUMENT REQUESTS**

1. All documents relating to Mortgages Ltd. Investments.
2. All documents relating to work GT performed for Mortgages Ltd., Mortgages Ltd. Securities, or any of their affiliates.
3. All documents relating to Private Offering Memoranda prepared for Mortgages Ltd. Investments.
4. All documents relating to work CBIZ/MHM performed for Mortgages Ltd., Mortgages Ltd. Securities, or any of their funds or affiliates.
5. All documents relating to financial statements of Mortgages Ltd., Mortgages Ltd. Securities, or any of their funds or affiliates.
6. All documents discussing or relating to Mortgages Ltd.'s solvency, insolvency, or financial condition, including balance sheets, cash flow statements, and bank statements.
7. All documents relating to any finished or unfinished valuations of Mortgages Ltd. or Mortgages Ltd. Securities, including any draft or final valuation performed by Oracle Capital Advisors, LLC.
8. All documents relating to Oxford Investment Partners or Walter Clarke.
9. All documents relating to an investigation performed by Stinson Morrison Hecker LLP of Mortgages Ltd. and/or Mortgages Ltd. Securities beginning in 2007.

10. All documents relating to communications with or work performed by the Chess Law Firm.
11. All documents relating to prospective broker/dealers of Mortgages Ltd. Investments.
12. All documents relating to Robert Facciola, Honeylou Reznik, Morris Reznik, Sharon Reznik, Adrian Reznik, Steven Reznik, or Randi Reznik.
13. All documents relating to work performed for Mortgages Ltd. by Zwillinger Georgelos & Greek (f/k/a Zwillinger & Georgelos).
14. All documents relating to work performed for Mortgages Ltd. by Mark Svejda.
15. All documents relating to the Allocation Model, including spreadsheets and schedules reflecting the operation of the Allocation Model, including any such documents created or maintained by Peter Davis.
16. All documents relating to or reflecting communications with investors or prospective investors in Mortgages Ltd. Investments.
17. All draft and final sales and promotional materials used by Mortgages Ltd. or Mortgages Ltd. Securities, and any communications relating to the content or distribution of such materials.
18. All documents relating to requests for and redemptions of investors' interests in their Mortgages Ltd. Investments.
19. All databases containing information about investors in Mortgages Ltd. Investments.
20. All documents relating to payments and receipts to and from investors in Mortgages Ltd. Investments, including payments made following Mortgages Ltd.'s bankruptcy.
21. All databases used by Mortgages Ltd. or Mortgages Ltd. Securities relating to financial reporting, projecting or tracking of cashflow, projecting or tracking of payments and receipts to and from investors, projecting or tracking payments and receipts to and from borrowers, and/or projecting or tracking of payments and receipts to and from vendors for Mortgages Ltd. or Mortgages Ltd. Securities.
22. All documents relating to Mortgages Ltd. or Mortgages Ltd. Securities' regulatory compliance issues or efforts.
23. All documents relating to Robert Furst, including his termination, any litigation with him (including preference litigation), and any correspondence with him or his representatives.
24. All documents relating to any fees charged to Mortgages Ltd.'s borrowers or any investors in Mortgages Ltd. Investments.

25. All documents relating to or reflecting communications with persons or entities that borrowed money from Mortgages Ltd.
26. All documents relating to loans made by Mortgages Ltd., including that relate to loan underwriting, loan applications, appraisals of any real estate or other assets used to secure the loans, due diligence, and construction progress reports or other monitoring of the loans.
27. All documents relating to payments and receipts to and from borrowers of Mortgages Ltd.
28. All documents relating to foreclosures, recoveries, or potential recoveries made on loans that Mortgages Ltd. made.
29. All documents relating to Radical Bunny, Horizon Partners, Tom Hirsch, Bunny or Howard Walder, Harish Shah, or Hirsch & Shah CPA's, LLC.
30. All documents relating to Quarles & Brady's representation of Radical Bunny.
31. All documents reflecting or relating to communications between anyone at Mortgages Ltd. or Mortgages Ltd. Securities on the one hand, and anyone at Radical Bunny on the other hand.
32. All documents reflecting or relating to communications with or by members of the ML Liquidating Trust Board and the ML Manager Board.
33. All documents reflecting or relating to communications with VTL I, LLC, including with any representative of VTL I, LLC.
34. All documents that Mortgages Ltd., Mortgages Ltd. Securities, or any of their Successor Entities have produced, formally or informally, in any court proceeding or arbitration from January 1, 2008 through the present.
35. All transcripts of deposition or other testimony relating to: the demise of Mortgages Ltd., Radical Bunny, the bankruptcy of either entity, litigation with borrowers of either entity, or investors who invested in either Mortgages Ltd. or Radical Bunny Investments.
36. All documents relating to SM Coles LLC or SMC Revocable Trust.
37. All documents relating to loans made from Scott Coles, SM Coles LLC, SMC Revocable Trust, or family members of Coles to Mortgages Ltd. or Mortgages Ltd. Securities; and all loans made from Mortgages Ltd. or Mortgages Ltd. Securities to Scott Coles, SM Coles LLC, SMC Revocable Trust, or family members of Coles.

38. All documents relating to any payments or distributions of funds from Mortgages Ltd. or Mortgages Ltd. Securities to Scott Coles, SM Coles LLC, SMC Revocable Trust, or family members of Coles.
39. All documents relating to any loans applied for or obtained by Scott Coles, SM Coles LLC, SMC Revocable Trust, Mortgages Ltd., or any Successor Entity to Mortgages Ltd. or Mortgages Ltd. Securities, from any source, from 2002-present.
40. All documents relating to litigation over the life insurance policies of Scott Coles.
41. All documents relating to any investigation of or administrative proceeding against Mortgages Ltd., Mortgages Ltd. Securities, or Radical Bunny by the SEC, Arizona Corporation Commission, or Arizona Department of Financial Institutions.
42. All documents relating to or reflecting communications with purchasers or prospective purchasers of properties in which any Successor Entity to Mortgages Ltd. or Mortgages Ltd. Securities or investors in Mortgages Ltd. Investments have or had an interest.
43. All documents relating to tax analysis by PricewaterhouseCoopers LLC of any possible tax treatment of Mortgages Ltd. Investments, including any communications with the IRS or other tax authorities.
44. All documents relating to valuation work performed by Henry & Home, LLP.
45. All work-related call logs, calendar entries, and message slips found at Mortgages Ltd. or Mortgages Ltd. Securities, dating from prior to June 20, 2008.



AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona

Robert Facciola, et al.,

*Plaintiff*

v.

Greenberg Traurig LLP

*Defendant*

Civil Action No. 2:10-cv-01025-FJM

(If the action is pending in another district, state where: )

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: ML Servicing Co., Inc. c/o Michael C. Manning, Esq.  
14050 N. 83rd Avenue, Suite 180, Peoria, AZ 85381

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attachment.

Place: Galbut & Galbut, P.C. 2425 East Camelback Road, Suite 1020 Phoenix, Arizona 85016	Date and Time:  July 5, 2011 5:00 PM
------------------------------------------------------------------------------------------------	--------------------------------------------

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: June 21, 2011

CLERK OF COURT

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

OR

*Ellen Oberwetter*  
\_\_\_\_\_  
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Greenberg Traurig LLP, who issues or requests this subpoena, are:

Ellen Oberwetter  
Williams & Connolly LLP, 725 Twelfth St., NW, Washington, DC 20005  
(202) 434-5000 eoberwetter@wc.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:10-cv-01025-FJM

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

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**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

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(i) disclosing a trade secret or other confidential research, development, or commercial information;

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**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

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**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT "A"

**INSTRUCTIONS**

1. Documents covered by this subpoena should be mailed to:

Galbut & Galbut, P.C.  
2425 East Camelback Road, Suite 1020  
Phoenix, Arizona 85016
2. Documents covered by the subpoena may be mailed in the form of hard copies and printouts, or scanned and placed on a CD or other electronic storage medium and mailed in that form.
3. You may contact the attorney issuing this subpoena with any questions or to discuss its scope.
4. Some of the below document requests may overlap with each other.
5. If you withhold any documents on grounds of privilege, a privilege log shall be created and served as required by Fed. R. Civ. Proc. 26(b)(5) and any applicable local rules of the United States District Court identified on the face of the subpoena. For each requested document that is sought to be withheld or redacted on a claim of privilege, state: (1) the basis of the claim of privilege; (2) the type of document or communication; (3) the general subject matter of the document or communication; (4) the date of the document or communication; (5) the author or speaker; (6) whether or not the author or speaker is a lawyer; and (7) each recipient and whether the recipient is a lawyer.
6. This subpoena is continuing in nature and you must supplement your responses and production of documents to the fullest extent required by the Federal Rules of Civil Procedure if additional documents come into your possession, custody, or control.

**DEFINITIONS**

1. "Document" is a broad term. It means any written, recorded, electronic, or graphic matter, including emails, correspondence, memoranda, notes, telephone slips and logs, diary entries, facsimiles, presentations, brochures, calendars, reports, spreadsheets, investment statements, minutes, videotapes, audio tapes, electronic or digital recordings of any kind, photographs, and any other form of communication or representation. It also includes, without limitation, all information stored in electronic form even if not yet printed out, such as material on computer hard drives, CDs or DVDs, or disks, as well as other material stored or accessed electronically.

2. "Communication" is a broad term. It means any transmission of thoughts, opinions, data, or information, in the form of facts, ideas, inquiries, or otherwise, including, without limitation, correspondence, letters, email, facsimiles, reports, memoranda, contacts, discussions, calculations, presentations and any other written or oral exchanges between any two or more persons.
3. The term "Mortgages Ltd. Investments" refers to all investments offered by or through Mortgages Ltd. or Mortgages Ltd. Securities, including, by way of example only, participations in deeds of trust or various investment programs such as the MP Funds, the Rev Op program, the Cap Op program, or other Pass-Through programs.
4. The term "Radical Bunny Investments" refers to all investments offered by or through Radical Bunny, including, by way of example only, participations in deeds of trust, whole or partial interests in notes, and directions to purchase.
5. "Successor Entities" to Mortgages Ltd. or Mortgages Ltd. Securities refers to ML Liquidating Trust, ML Manager LLC, ML Servicing Co., Inc., and VTL I LLC.

#### **DOCUMENT REQUESTS**

1. All documents relating to Mortgages Ltd. Investments.
2. All documents relating to work GT performed for Mortgages Ltd., Mortgages Ltd. Securities, or any of their affiliates.
3. All documents relating to Private Offering Memoranda prepared for Mortgages Ltd. Investments.
4. All documents relating to work CBIZ/MHM performed for Mortgages Ltd., Mortgages Ltd. Securities, or any of their funds or affiliates.
5. All documents relating to financial statements of Mortgages Ltd., Mortgages Ltd. Securities, or any of their funds or affiliates.
6. All documents discussing or relating to Mortgages Ltd.'s solvency, insolvency, or financial condition, including balance sheets, cash flow statements, and bank statements.
7. All documents relating to any finished or unfinished valuations of Mortgages Ltd. or Mortgages Ltd. Securities, including any draft or final valuation performed by Oracle Capital Advisors, LLC.
8. All documents relating to Oxford Investment Partners or Walter Clarke.
9. All documents relating to an investigation performed by Stinson Morrison Hecker LLP of Mortgages Ltd. and/or Mortgages Ltd. Securities beginning in 2007.

10. All documents relating to communications with or work performed by the Chess Law Firm.
11. All documents relating to prospective broker/dealers of Mortgages Ltd. Investments.
12. All documents relating to Robert Facciola, Honeylou Reznik, Morris Reznik, Sharon Reznik, Adrian Reznik, Steven Reznik, or Randi Reznik.
13. All documents relating to work performed for Mortgages Ltd. by Zwillinger Georgelos & Greek (f/k/a Zwillinger & Georgelos).
14. All documents relating to work performed for Mortgages Ltd. by Mark Svejda.
15. All documents relating to the Allocation Model, including spreadsheets and schedules reflecting the operation of the Allocation Model, including any such documents created or maintained by Peter Davis.
16. All documents relating to or reflecting communications with investors or prospective investors in Mortgages Ltd. Investments.
17. All draft and final sales and promotional materials used by Mortgages Ltd. or Mortgages Ltd. Securities, and any communications relating to the content or distribution of such materials.
18. All documents relating to requests for and redemptions of investors' interests in their Mortgages Ltd. Investments.
19. All databases containing information about investors in Mortgages Ltd. Investments.
20. All documents relating to payments and receipts to and from investors in Mortgages Ltd. Investments, including payments made following Mortgages Ltd.'s bankruptcy.
21. All databases used by Mortgages Ltd. or Mortgages Ltd. Securities relating to financial reporting, projecting or tracking of cashflow, projecting or tracking of payments and receipts to and from investors, projecting or tracking payments and receipts to and from borrowers, and/or projecting or tracking of payments and receipts to and from vendors for Mortgages Ltd. or Mortgages Ltd. Securities.
22. All documents relating to Mortgages Ltd. or Mortgages Ltd. Securities' regulatory compliance issues or efforts.
23. All documents relating to Robert Furst, including his termination, any litigation with him (including preference litigation), and any correspondence with him or his representatives.
24. All documents relating to any fees charged to Mortgages Ltd.'s borrowers or any investors in Mortgages Ltd. Investments.

25. All documents relating to or reflecting communications with persons or entities that borrowed money from Mortgages Ltd.
26. All documents relating to loans made by Mortgages Ltd., including that relate to loan underwriting, loan applications, appraisals of any real estate or other assets used to secure the loans, due diligence, and construction progress reports or other monitoring of the loans.
27. All documents relating to payments and receipts to and from borrowers of Mortgages Ltd.
28. All documents relating to foreclosures, recoveries, or potential recoveries made on loans that Mortgages Ltd. made.
29. All documents relating to Radical Bunny, Horizon Partners, Tom Hirsch, Bunny or Howard Walder, Harish Shah, or Hirsch & Shah CPA's, LLC.
30. All documents relating to Quarles & Brady's representation of Radical Bunny.
31. All documents reflecting or relating to communications between anyone at Mortgages Ltd. or Mortgages Ltd. Securities on the one hand, and anyone at Radical Bunny on the other hand.
32. All documents reflecting or relating to communications with or by members of the ML Liquidating Trust Board and the ML Manager Board.
33. All documents reflecting or relating to communications with VTL I, LLC, including with any representative of VTL I, LLC.
34. All documents that Mortgages Ltd., Mortgages Ltd. Securities, or any of their Successor Entities have produced, formally or informally, in any court proceeding or arbitration from January 1, 2008 through the present.
35. All transcripts of deposition or other testimony relating to: the demise of Mortgages Ltd., Radical Bunny, the bankruptcy of either entity, litigation with borrowers of either entity, or investors who invested in either Mortgages Ltd. or Radical Bunny Investments.
36. All documents relating to SM Coles LLC or SMC Revocable Trust.
37. All documents relating to loans made from Scott Coles, SM Coles LLC, SMC Revocable Trust, or family members of Coles to Mortgages Ltd. or Mortgages Ltd. Securities; and all loans made from Mortgages Ltd. or Mortgages Ltd. Securities to Scott Coles, SM Coles LLC, SMC Revocable Trust, or family members of Coles.

38. All documents relating to any payments or distributions of funds from Mortgages Ltd. or Mortgages Ltd. Securities to Scott Coles, SM Coles LLC, SMC Revocable Trust, or family members of Coles.
39. All documents relating to any loans applied for or obtained by Scott Coles, SM Coles LLC, SMC Revocable Trust, Mortgages Ltd., or any Successor Entity to Mortgages Ltd. or Mortgages Ltd. Securities, from any source, from 2002-present.
40. All documents relating to litigation over the life insurance policies of Scott Coles.
41. All documents relating to any investigation of or administrative proceeding against Mortgages Ltd., Mortgages Ltd. Securities, or Radical Bunny by the SEC, Arizona Corporation Commission, or Arizona Department of Financial Institutions.
42. All documents relating to or reflecting communications with purchasers or prospective purchasers of properties in which any Successor Entity to Mortgages Ltd. or Mortgages Ltd. Securities or investors in Mortgages Ltd. Investments have or had an interest.
43. All documents relating to tax analysis by PricewaterhouseCoopers LLC of any possible tax treatment of Mortgages Ltd. Investments, including any communications with the IRS or other tax authorities.
44. All documents relating to valuation work performed by Henry & Horne, LLP.
45. All work-related call logs, calendar entries, and message slips found at Mortgages Ltd. or Mortgages Ltd. Securities, dating from prior to June 20, 2008.



## **EXHIBIT B**

IT IS HEREBY ADJUDGED  
and DECREEED this is SO  
ORDERED.

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

Dated: September 02, 2010



FENNEMORE CRAIG, P.C.  
Cathy L. Reece (005932)  
Keith L. Hendricks (012750)  
3003 N. Central Ave., Suite 2600  
Phoenix, Arizona 85012  
Telephone: (602) 916-5343  
Facsimile: (602) 916-5543  
Email: [creece@fclaw.com](mailto:creece@fclaw.com)

RAN OLPH J. HAINES  
U.S. Bankruptcy Judge

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re Chapter 11  
MORTGAGES LTD., Case No. 2:08-bk-07465-RJH  
Debtor.

**ORDER TO ALLOW FILING OF  
CONFIDENTIAL BACK-UP TO  
ALLOCATION MODEL UNDER SEAL, TO  
SET UP PROCEDURE FOR AN *IN CAMERA*  
INSPECTION OF CONFIDENTIAL  
DOCUMENTS, AND FOR A PROTECTIVE  
ORDER**

Pursuant to ML Manager's Motion (1) For Order To Allow Filing Of Confidential  
Back-Up To Allocation Model Under Seal, (2) To Set Up Procedure For An In Camera  
Inspection Of Confidential Documents, and (3) For A Protective Order, and for good  
cause appearing,

The Court Finds as follows:

A. ML Manager has demonstrated good cause for the Court to establish  
procedures for filing of documents under seal, the establishment of an *in camera* or non-  
public forum for consideration of certain evidence, and the issuance of a protective order  
to protect the confidential and proprietary nature of certain back-up information, including  
the associated Schedules (the "Confidential Information"), for the Allocation Model  
submitted by ML Manager.

2 B. ML Manager and the Investors, as defined by the Plan of Reorganization as  
3 confirmed in this matter, have significant interests in the Confidential Information that  
4 would be harmed and unduly and unnecessarily prejudiced by the public disclosure of the  
5 Confidential Information.

6 C. The prejudice created by the public disclosure of the Confidential  
7 Information outweighs any interests in public disclosure.

8 D. This Order creates an adequate procedure to allow an objection or challenge  
9 to identification of any information as Confidential Information and further Court order on  
10 the disclosure of such information.

11 Accordingly, the Court hereby ORDERS, ADJUDICATES AND DECREES:

12 1. ML Manager shall be entitled to file under seal any back-up information,  
13 schedules or other materials associated with its Allocation Model that it determines to be  
14 of confidential or proprietary nature (the "Confidential Information").

15 2. In any such filing, each page of the Confidential Information shall be clearly  
16 stamped or marked "Confidential."

17 3. ML, Manager shall file a Notice in connection with any filing under seal  
18 generally identifying the nature of the Confidential Information. Any party wishing to  
19 object to the designation of the Confidential Information may do so within three (3)  
20 business days of the filing of such Notice (the "Objection"). The Court will consider such  
21 Objection and, if necessary or appropriate, issue a Minute Entry with a briefing schedule  
22 and hearing date to consider the Objection. No further briefing or argument on the  
23 Objection will be necessary or allowed unless ordered by the Court.

24 4. Any consideration of the Confidential Information at a hearing shall be done  
25 *in camera* or in a non-public forum. Only parties who have demonstrated that they have  
26 standing to address an issue raised by the Confidential Information and a legitimate need  
27 to consider such Confidential Information that outweighs the prejudice to ML, Manager

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1 and/or the Investors shall be parties to such a hearing and permitted to attend. The  
2 transcript from any such hearing shall be designated as "Confidential" and shall be sealed  
3 pending further order of the Court.

4 5. This Order shall constitute a Protective Order and the production of  
5 Confidential Information shall only be available to Investors who execute the  
6 Confidentiality Agreement attached hereto. Violation of the Confidentiality Agreement  
7 shall constitute a violation of this Order.

8 6. Any Investor or counsel representing an Investor desiring to receive a  
9 redacted copy of the Confidential Information may do so by agreeing in writing to be  
10 bound by the Confidentiality Agreement following which, ML Manager shall provide the  
11 a copy of the Confidential Information without any information related to projections,  
12 assumptions and forecasts of revenue that the loans and assets at issue may generate (the  
13 "Revenue Assumptions"). Any Investor or counsel representing an Investor who execute  
14 the Confidentiality Agreement may inspect the Revenue Assumptions at the office of  
15 counsel for ML Manager, or during a hearing, but copies of the Revenue Assumptions  
16 will not be disbursed.

17 7. If ML Manager or any other party objects to the presence of any individual  
18 or party at a hearing, or to the disclosure of any Confidential Information to any person or  
19 party, the objector may file an objection in the form set forth above and the procedure set  
20 forth above shall govern, or shall be ruled upon at said hearing. ML Manager shall not  
21 need to produce any Confidential Information until the objection is resolved.

22 ORDERED, SIGNED AND DATED AS STATED ABOVE.  
23  
24  
25  
26

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement"), dated as of \_\_\_\_\_ 2010 (the "Effective Date"), is between ML Manager, LLC ("ML Manager"), and \_\_\_\_\_ (collectively, the "Investor Parties"). ML Manager and the Investor Parties are hereinafter referred to individually as a "party" and collectively as "parties".

WHEREAS ML Manager has filed with the Bankruptcy Court in Case No. 2:08-bk-07465-RJH, In re Mortgage Ltd. (the "Bankruptcy Case") a brief and certain material associated with its "Allocation Model" at Docket that describes the methodology for allocating to Investors certain costs and expenses (the "Allocation Brief);

WHEREAS, the Allocation Brief contains Confidential Information (as defined below) relating to the parties;

WHEREAS the ML Manager desires to cooperate with the Investor Parties yet all parties desire to limit the use and disclosure of such Confidential Information;

WHEREAS the Court in the Bankruptcy Case has ordered that the Confidential Information only be produced to parties who have agreed to this Confidentiality Agreement;

Therefore, in consideration of the covenants hereinafter set forth, and other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. "Confidential Information" means (a) any information, whether communicated or stored in written, electronic, verbal, or other form, identified by ML Manager and stamped with a Legend or otherwise indicating its confidential information, and (b) any Work Product using any of the information described in clause (a) above, but excludes (i) information that was, is or becomes generally available to the public other than as a result of a disclosure by the Investor Parties or any of their Representatives in breach of this Agreement and (ii) information that was within the possession of the Investor Parties or any of their Representatives prior to being furnished by ML Manager or its Representatives pursuant hereto or is lawfully obtained by the Investor Parties or any of their Representatives thereafter from a source that, in each case, as far as ML Manager or such Representatives are aware, is not, by virtue of such disclosure, in breach of any obligation of confidentiality of such source with respect to such information.

ML Manager shall identify and designate each page of the Confidential Information by placing a legend, stamp, or other means that clearly indicates that such information is subject to this Agreement. The Confidential Information shall include,

without limitation, all schedules, back-up information, assumptions, or projections associated with the Allocation Model.

2. Revenue Assumptions

All projections, assumptions and forecasts of revenue that the Loans and other assets may generate as described in the Allocation Model (the "Revenue Assumptions") shall be redacted from the Confidential Information. The Investor Parties may inspect, review and consider the Revenue Assumptions at the offices of Fennemore Craig, 3003 North Central Avenue, Suite 2600, Phoenix AZ, upon reasonable (at least 48 hours) notice, but the Investors Parties may not copy or otherwise take or retain the Revenue Assumptions in any written or electronic form.

3. Restrictions.

(a) All Confidential Information, including the Revenue Assumptions, made available to the Investor Parties will remain the exclusive property of ML Manager. The Investor Parties shall not use any of the Confidential Information or Revenue Assumptions except to evaluate the claims and issues associated with the Allocation Model, and, if the Investor Parties subsequently decide to utilize such information in the Bankruptcy Case, the Investor Parties hereby promises and agrees that any such documents shall be filed under seal and the terms and conditions made the subject of this Agreement shall continue to control. Additionally, the Investor Parties shall not use, quote or disclose in any way the substance of any of the Confidential Information in any pleadings or other documents filed with the Court unless the pleading or the relevant part is also filed under seal and the term and conditions made the subject of this Agreement shall continue to control.

(b) The Investor Parties shall restrict access to Confidential Information to themselves or their attorneys or professionals (collectively referred to herein as the "Representatives") with a need to know the Confidential Information in order to fulfill the purpose of this Agreement. The Investor Parties shall inform their Representatives of the confidential nature of the Confidential Information, shall cause the Representatives to treat the Confidential Information confidentially and shall be responsible for a breach of this Agreement by its Representatives.

(c) The Investor Parties shall not disclose any Confidential Information to third parties without ML Manager's prior written consent, and subject to the third party executing a confidentiality agreement in a format acceptable to ML Manager.

4. Maintenance of Confidentiality. The Investor Parties shall take all reasonable measures to protect the confidentiality of and avoid disclosure or use of the Confidential Information.

5. Legal Disclosure. The Investor Parties shall be permitted to disclose Confidential Information if compelled to so pursuant to a final non-appealable order or subpoena from a court or other government agency of competent jurisdiction or by operation of law, but only provided that the Investor Parties first provide ML Manager with prompt notice of such request so that ML Manager may seek an appropriate protective order. In the absence of a protective order, the Investor Parties shall cooperate with ML Manager to resist or limit the disclosure. The Investor Parties shall disclose only that portion of the Confidential Information that it is advised in writing by counsel that it is obligated to disclose; provided, however, that to the extent permitted by law, ML Manager agrees to provide the Investor Parties written notice of the Confidential Information to be disclosed as far in advance as practicable.

6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". ML MANAGER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION OR THE REVENUE ASSUMPTIONS.

7. Return of Materials. Upon termination or resolution (appeals and all) of the State Court Case, whichever is sooner, the Investor Parties shall return to ML Manager all of the Confidential Information and shall destroy all copies, notes and other writings prepared by the Investor Parties and their advisors and Representatives which relate to the Confidential Information. At ML Manager's, the Investor Parties will furnish a signed certificate certifying that any Confidential Information not returned has been destroyed.

8. No License. Nothing in this agreement is intended to grant the Investor Parties any rights in or to the Confidential Information,

9. Term. The term of this Agreement shall begin to run as of the date executed by the Investor Parties and remain in effect until termination of or resolution (appeals and all) of the Bankruptcy Case, whichever is sooner. The obligations of the Investor Parties shall survive termination of this Agreement until such time as the particular Confidential Information falls within one of the exclusions set forth in Section 4 above.

10. Remedies. In the event of any breach or threatened breach of this Agreement by either party, its advisors or Representatives, each party recognizes that any remedy at law will be inadequate and agrees that the other party shall be entitled to temporary and/or permanent injunction relief for any such breach. Each party hereby consents to the entry of such temporary and/or permanent injunctive relief without requiring the other party to post a bond.

11. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and may not be amended except by a writing signed by both parties. This Agreement may be signed in counterparts, and

delivered by facsimile, and such facsimile counterparts shall be valid and binding on the parties hereto with the same effect as if original signatures had been exchanged.

12. Severability. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

13. Enforcement. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof. If any provision of this Agreement is held invalid or unenforceable in whole or in part by a court of competent jurisdiction, such provision shall be enforced to the maximum extent permitted by law.

14. Notice. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be delivered via overnight air courier or certified mail, return receipt requested to the following addresses or such other address as the party to whom notice is to be given shall have previously notified the other party in writing:

IF TO ML MANAGER: Keith L. Hendricks  
Fennemore Craig, PC  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

IF TO THE  
INVESTOR PARTIES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Law. This agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought exclusively before the Bankruptcy Court, and each party hereto consents to jurisdiction and venue before such court.

<b>ML Manager</b>	<b>Investor Parties</b>
<b>By:</b>	<b>By:</b> _____
<b>Name:</b>	<b>Name:</b> _____
<b>Title:</b>	<b>Title:</b> _____



**Investor Parties**

By:

Name:

Title:

**Investor Parties**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Investor Parties**

By:

Name:

Title:

**Investor Parties**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_