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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

**LIMITED OBJECTION OF OFFICIAL
COMMITTEE OF INVESTORS TO
PROVISIONS OF DIP LOAN
DOCUMENTS AND BUDGET**

Hearing: August 21, 2008
Time: 11:00 a.m.

The Official Committee of Investors (“Investors Committee”) hereby expresses its limited objection to certain provisions in the Stratera Loan Documents and the Budget which were filed with the Court last night by the Debtor. The Investors Committee does support the Debtor in obtaining financing but has objections to three items related to the loan documents and the budget. Due to the shortness of time the Investors Committee has not had the chance to negotiate these points with Stratera or Debtor and hopes to resolve these issues prior to the hearing. However, in the event a resolution cannot be reached, then the Investors Committee objects to approval as proposed.

Possession Of Original Notes For Perfection

First, Stratera is requiring that the original Notes being pledged are to be turned over to Alliance Bank as a method of perfection of their security interest in the Debtor’s

1 undivided fractional interest in the Notes. To the extent that the Debtor does not own
2 100% interest of those Notes, there is a significant problem for the Investors who hold the
3 remaining undivided fractional interests. For example, the Zacher Note is owned by
4 multiple investors. Right now pursuant to express agency agreements the Debtor as the
5 agent for the Investors holds the original Zacher Note for the Investors in their ownership
6 capacity. When the Note was sold indorsements were executed and attached to the
7 original Note and the original Note with the indorsements is held in the loan vault at the
8 Debtor's place of business in a secure and fire-proof vault. In other words, Debtor cannot
9 give up possession of the Note and indorsements without interfering with the rights of the
10 owners of the Note and the owners of the Note do not consent to having someone else
11 hold the Note and the indorsements, especially to the exclusion of the other undivided
12 fractional interest holders.

13 The Investor Committee proposes that instead of turning over the original Note and
14 all the indorsements to Alliance Bank, as required in the Loan documents, that the Court
15 merely provide in the Order that the Stratera is automatically perfected in the Debtor's
16 interest in the Note without taking possession, that Debtor is authorized and required to
17 continue to hold the original Note with the indorsements in its possession as perfection for
18 Stratera's security interest in the Debtor's undivided fractional interest, and that this
19 perfection is without prejudice to the Investors for whom Debtor already holds the Note
20 and indorsements as agent.

21 In addition, the pledge or assignment of the Note needs to clearly reflect that
22 Stratera only will have a security interest in the Debtor's portion of the undivided
23 fractional interest, not in the Investors' interest. There is some ambiguity in the language
24 of the loan documents and the Order needs to reflect and clarify that, notwithstanding any
25 representation, warranty or agreement in any of the loan documents to the contrary, the
26 Startera lien will only attach to the Debtor's undivided fractional interest in the Notes, not

1 in any Investors' interest.

2 Further complicating the question is a provision in the Loan documents that allows
3 Stratera to be able to assign all or a portion of its rights under the Note to another party.
4 The issues of possession could easily get out of control. The Note and its indorsements are
5 too valuable to be out of the control of the Investors and its agent the Debtor.

6 **Payment Of Other Secured Claims**

7 Second, the Loan documents provide that Stratera "in its sole discretion" can
8 decide to have the Debtor use the working capital line to pay off the \$500,000 Southwest
9 Value Partners claim and the \$2,070,000 Artemis claim. The budget proposes that this
10 could be done in September. That means that half of the working capital line will be
11 drawn as replacement for other debt, as opposed to the cash flow needs of the Debtor. The
12 Debtor's explanation is that the interest on the Stratera loan is less than the interest on the
13 other loans and this will save money for the Debtor and estate, especially given the default
14 rates on the loans.

15 The Investor Committee questions the business rationale of paying them off at this
16 time even if there were a savings on the interest rate. The working capital line is to
17 provide working capital for the Debtor so that it can pay its bills and administrative
18 claims. The budget filed last night shows that if the \$2,070,000 and \$500,000 are paid and
19 drawn on the working line the Debtor will be out of money at the end of the year unless
20 additional assets are sold or collected. This does not seem prudent. To further aggravate
21 this problem, under the Loan documents, Stratera will make this decision in its sole
22 discretion. It will not even be the Debtor's decision. The Debtor might find itself in a
23 position that it has fully drawn the working capital line and has no more cash flow by year
24 end. The Investors Committee requests that the budget be amended to delete the payment
25 of these two items under the budget or that the Court establish a procedure so that the
26 parties will need to come back to the Court before they can be paid.

1 Further, the Investors Committee has not had the chance to look at the validity of
2 the security interests in either of those loans and the defenses which the estate might have.
3 If there are defenses then it would not be appropriate for those secured claims to be paid at
4 this time. The Investors Committee requests that before payment is made on these claims
5 that the Investor Committee be allowed to review and if appropriate object to such
6 payment.

7 **Lease Disclosure**

8 Finally, the budget provides for the payment of rent to an insider. No disclosure is
9 made to whom the rent is owing and the extent of any offsets against the landlord. This
10 disclosure is appropriate and could impact whether Debtor should be allowed to pay such
11 rental expense.

12 DATED: August 15, 2008

13 FENNEMORE CRAIG, P.C.

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15 By /s/Cathy L. Reece
16 Cathy L. Reece
Attorneys for Official Committee of Investors

17 COPY of the foregoing emailed or mailed
18 This 15th day of August, 2008 to the parties
19 on the attached Service List.

20 /s/ Susan Stanczak-Ingram

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