

The following version of the ML Manager LLC Operating Agreement is the Alternate Version of the Operating Agreement in the event that Section 4.14 of the Plan is invoked.

**OPERATING AGREEMENT
OF
ML MANAGER LLC**

This Operating Agreement of ML Manager LLC (“Company”) is entered into effective as of _____, 2009, by and among the Managers listed on Exhibit B attached hereto, as Managers, and each of the Persons listed on Exhibit A attached hereto as Members.

RECITALS

A. Pursuant to an approved plan of reorganization in the Chapter 11 Proceedings in In re: Mortgages Ltd., Debtor, Case No. 2:08-bk-07465-RJH (“Approved Plan”), the Approved Plan has approved the formation of the Company and the issuance of Interests in the Company to Persons (“Holders”) holding fractional interests (“Fractional Interests”) in loans (each a “Loan” and collectively the “Loans”) made by Mortgages Ltd., an Arizona corporation (“ML”) to various borrowers (“Borrowers”).

B. The Holders approved the formation of the Company and such Holders becoming Members of the Company, and the Company becoming the Manager of certain existing ML Mortgage Pool funds (“ML Pool Funds”) listed on Exhibit C, and approved the form of this Agreement, authorized the Manager to become the manager of the ML Pool Funds and to cause the ML Pool Funds to become the Members of the Company, all of which shall occur on the Effective Date of the Approved Plan

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS; THE COMPANY

1.1 **Definitions.** Capitalized words and phrases used in this Agreement shall have the meanings set forth in Section 11.

1.2 **Formation.** The Company has been formed as an Arizona limited liability company pursuant to the provisions of the Act. The Company shall operate its business upon the terms and conditions set forth in this Agreement and the Articles of Organization.

1.3 **Name.** The name of the Company is ML Manager LLC.

1.4 **Purpose.** The purpose of the Company is to acquire by transfer from Mortgages Ltd. all Servicing Agent Agreements with all Borrowers, any Agency Agreement or other servicing agreement or subscription agreement (however denominated) with the Holders or the ML Pool Funds pursuant to which Mortgages Ltd. had rights to act as agent or manager for the Holders and ML Pool Funds, and to cause the Company to oversee and manage on behalf of the Loan LLCs the administration of the Loans, collection of principal and interest and other

payments on the Loans, to sell the Loans if approved by the Holders of the specific Loan, to take all actions necessary to enforce the Loans and realize on the collateral for the Loans, to manage the resale of any collateral realized and pending such resale to manage for the Holders the holding and operation of the collateral for a reasonable period of time, where appropriate to enter into settlement agreements with the Borrowers including loan modifications or conversion of principal or interest or both to equity in a project under a joint venture or other form of entity. In addition, the Company as Manager of the ML Pool Funds and on behalf of the Holders will enter into the Master Servicing Agreement and become a joint borrower under the Exit Financing Loan and the Company will receive any ML Charges and utilize such funds as set forth in Section 2.6 hereof. The Company shall have the power to undertake any and all acts necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of such purpose. The foregoing are "Permitted Activities" of the Company.

1.5 **Office.** The registered office of the Company in Arizona shall be maintained at _____, _____ Arizona 85000, or at such other location as the Manager may from time to time designate by written notice to all Members.

1.6 **Statutory Agent.** The name and address of the initial statutory agent for service of legal process on the Company in Arizona are _____, _____, Arizona 85____. The Company's agent for service of legal process may be changed by the Manager upon written notice to all Members.

1.7 **Term.** The term of the Company commenced when Articles of Organization (the "Articles") were filed on behalf of the Company with the Arizona Corporation Commission) and shall continue until the Company is dissolved as set forth in this Agreement.

1.8 **Filings.** The Manager shall file any amendments to the Articles deemed necessary by the Manager to reflect amendments to this Agreement adopted in accordance with the terms hereof and to file any other documents which may be required to be filed by the Company with any governmental agency.

1.9 **Independent Activities.**

(a) **General Scope of Independent Activities.** The Members hereby expressly agree and acknowledge that each of the Members, either directly or through the Member's Affiliates, is involved in transactions, investments and business ventures and undertakings of every nature, which include, without limitation, activities which are associated or involve real estate or loans, and the Manager will act as the manager of the ML Pool Funds (all such investments and activities being referred to hereinafter as the "Independent Activities"), all of which may be conducted independently from the Company, as more particularly described in Section 1.9(b).

(b) **Waiver of Rights with Respect to Independent Activities.** Nothing in this Agreement shall be construed to: (i) prohibit the Manager, any Member or the Member's Affiliates from continuing, acquiring, owning or otherwise participating in any Independent Activity that is not owned or operated by the Company, even if such Independent Activity is or may be in

competition with the Company; or (ii) require the Manager, any Member or the Member's Affiliates to allow the Company or any other Member to participate in the ownership or profits of any such Independent Activity. To the extent any Member would have any rights or claims against the Manager or any other Member to share in the ownership or profits of the Independent Activities of such Manager, the Member or such Member's Affiliates, whether arising by statute, common law or in equity, the same are hereby waived

(c) **Acknowledgment of Reasonableness.** The Members hereby expressly acknowledge, represent and warrant that they are sophisticated investors, they understand the terms, conditions and waivers set forth in this Section 1.9 and that the provisions of this Section 1.9 are reasonable, taking into account the relative sophistication and bargaining position of the Members.

SECTION 2. MEMBERS; MANAGERS; CAPITAL CONTRIBUTIONS

2.1 **Managers.** Subject to the terms of this Section 2, the right to manage, control and conduct the business and affairs of the Company shall be vested in the Managers. The Managers shall each make a Capital Contribution to the Company in the amount of One Dollar which shall be repaid to each Manager upon liquidation of the Company.

(a) **Board of Managers**

(1) **Establishment.** The Members hereby establish a Board of Managers (the "Board"), which shall consist of five Managers (individually, a "Manager" and collectively the "Managers"), to act on behalf of the Company on all matters that are subject to the authority of the Board under this Agreement. The Board shall always consist of an odd number of Managers.

(2) **Appointment of Initial Managers.** As of the date of this Agreement, the individuals listed on Exhibit B shall serve as Managers for so long as they are not deceased, incapacitated or otherwise unable to reasonably serve in that capacity. If any Manager shall resign, become deceased, incapacitated, fail to perform his duties or fail to attend meetings of the Board or otherwise be unable to, or fail to, reasonably serve as determined by the other Managers ("Departing Manager"), the remaining Managers may declare a vacancy and appoint a new Manager to serve in the place of the Departing Manager without the consent of the Members.

(3) **Vote Required for Approval.** All matters that are subject to the approval of the Board or actions to be taken by the Managers under this Agreement shall require the consent of a majority of the Board, except for the following decisions, which require unanimous consent of the Board:

- (i) modify the Company's Permitted Activities, as set forth in Section 1.9; and
- (ii) elect to dissolve the Company pursuant to Section 9.1(A);

(4) **Procedural Matters.** Unless approved by the Managers, meetings of the Board shall be held on regularly scheduled dates not less frequently than quarterly, and any Manager may call for additional meetings of the Board upon not less than five business days prior notice to all Managers. Unless otherwise agreed upon by the Board, all meetings of the Board shall be held in the principal office of the Company in Arizona. Any business may be transacted and any decisions of the Board may be made at any meetings of the Board at which at least three Managers are present (in person or telephonically), so long as each Manager has received notice of such meeting, as provided above, or has received a schedule of the applicable quarterly meeting at least five business days prior to the date of any applicable meeting. Decisions required to be made by the Board need not occur at a formal meeting, but may be made in writing, electronically or otherwise. Managers may attend meetings in person or telephonically. Any decision with respect to matters submitted for approval of the Board shall be made by the Managers as promptly as reasonably possible given the complexity of the issue and the urgency of the required decision. The Managers shall cooperate in good faith in making all decisions submitted for the approval of the Board. Where any matter is required to be approved unanimously by the Board, such approval shall require the affirmative vote of five Managers

2.2 Members and Percentage Participation. Each of the Persons listed on Exhibit A are admitted as Members of the Company and each Member's Participation Percentage are also set forth on Exhibit A. Each Member shall be deemed to have contributed One Thousand Dollars to the Company as a Capital Contribution by virtue of releasing an amount of such Members claim against Mortgages Ltd. as provided in the Approved Plan.

2.3 Additional Capital Contributions. Except as provided in Section 2.2, no Member shall be required to make Capital Contributions to the Company. Without limiting the generality of the foregoing, no Member shall have any obligation to restore any negative balance standing at any time in such Person's Capital Account, whether during the term of the Company, upon liquidation of the Company or otherwise. Notwithstanding the foregoing, upon the written request of the Manager stating that additional Capital Contributions ("Additional Capital Contributions") are required in a specified amount for the Company's business, then each Member may elect to make Additional Capital Contributions in an amount equal to its then Participation Percentage of the total requested Additional Capital Contributions, and if less than all Members elect to make such Additional Capital Contributions, the Member electing to make Additional Capital Contributions may make the entire Additional Capital Contribution in the ratio of their Participation Percentages or as they may otherwise agree. The making of Additional Capital Contributions shall not change a Member's Participation Percentage.

2.4 Member Loans. Any Member may, with the approval of the Board, lend or advance money to the Company. If a Member makes any loan or loans to the Company or advances money on its behalf, the amount of the loan or advance shall not be treated as a Capital Contribution to the Company but shall be an indebtedness of the Company payable to the Member. The amount of the loan or advance shall be repayable out of the Company's cash and shall bear interest at a rate agreed upon by the Board during the period that the loan is outstanding, and may be secured by a lien on the Company property

2.5 Exit Financing Loan. The Company is authorized as Manager to cause the Company to become joint borrowers with the Liquidating Trust on the Exit Financing Loan, to pledge the Loans and Loan Documents held by the Holders to secure the Exit Financing Loan and to enter into the Inter-Borrower Agreement approved by the Approved Plan regulating the borrowing and repayment of the Exit Financing Loan between the parties thereto. The Company is authorized to draw under the Exit Financing Loan on behalf of all of the Holders and to use the proceeds from such loan to pay operating expenses, including servicing costs, litigation costs and other liabilities of the Holders of the Loans and to allocate the repayment obligations among the Holders of the Loans based upon the specific usage of loan proceeds by Holders of specific Loans and a reasonable allocation of funds which are spent for purposes which benefit the Holders of all of the Loans as determined by the Company. To the extent that one or more of the Holders of specific Loans do not recover by final recovery on such Loans sufficient funds under such specific Loan to repay in full its allocated share of the Exit Financing Loan, the Company shall reallocate the deficiency among the other Holders of the other Loans based upon the Loan Ratio of each such other Holders of Loans.

2.6 Holding and Uses of ML Charges. The ML Charges, which are amounts and items which originally were to be paid to solely to Mortgages Ltd. under the Loan Documents rather than to the holders of the Fractional Interests, will hereafter be payable to the Company to be held for the Holders of the Loan under which such ML Charges are payable, but each of such Holders shall advance to the Company such Holder's ML charges to be pooled with ML Charges advanced to the Manager by other Holders. The Manager shall be entitled to use such pooled funds to pay and to establish reserves for the future payment of principal and interest on the Exit Financing; servicing costs of the Loans, litigation costs and other costs and expenses of the Holders for which funds are required and for repayment purposes to allocate all such payments among the Holders based upon the specific usage of ML Charges by individual Holders of specific Loans and a reasonable allocation of ML Charges which are spent for purposes which benefit all Holders as determined by the Company. To the extent that one or more of the Holders of a specific Loan do not recover by final recovery on their Loan sufficient funds under their Loan to repay in full its allocated share of the ML Charges allocated to them, the Company shall reallocate the deficiency among the other Loans based upon the Loan Ratio of each such other Loans.

2.7 Other Loans. Subject to any restrictions contained in Section 6 of this Agreement, if additional capital is required to conduct the Company's business, the Board shall determine whether it is possible or advisable to obtain a loan for the required amount from a Member, a commercial lender or any other third party. Any such loan shall be upon such terms as the Board agrees and may be secured by any Company property

2.8 Guaranties. No Member shall have any obligation to guaranty any liability or obligation of the Company. If a Member enters into a guaranty and is called upon to make any payments thereunder, then the amount paid by such Member on account of its guaranty shall be treated as a Member Loan.

2.9 Limitations Pertaining to Capital Contributions.

(a) **Return of Capital.** Except as otherwise provided in this Agreement, no Member shall withdraw any Capital Contributions or any money or other property from the Company. Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive property other than cash.

(b) **No Interest.** Except as otherwise expressly provided in this Agreement (i) no Member shall receive any interest or draw with respect to its Capital Contributions or its Capital Account.

(c) **Liability of Members and Manager.** No Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as set forth in Section 2.1, the Managers shall have no obligation to make Capital Contributions or loans to the Company and shall not be liable for the debts, liabilities, contracts or any other obligations of the Company. No Member or Manager shall have any personal liability for the repayment of the Capital Contributions or loans of any Member.

(d) **No Third Party Rights.** Nothing contained in this Agreement is intended or will be deemed to benefit any creditor of the Company, and no creditor of the Company will be entitled to require the Manager or any Member to solicit or demand Capital Contributions from the Members, whether Mandatory Contributions, Supplemental Contributions or otherwise.

(e) **Withdrawal Event.** Except as set forth in Section 2.9(f), no Member may voluntarily or involuntarily withdraw from the Company or terminate its interest therein. Any Member who withdraws from the Company in breach of this Section 2.9(e):

(i) shall be treated as an assignee of a Member's interest, as provided in the Act;

(ii) shall not be relieved from any obligations under this Agreement, including, but not limited to, the obligation to make any required Capital Contributions to the Company;

(iii) shall have no right to participate in the business and affairs of the Company or to exercise any rights of a Member under this Agreement or the Act, including, without limitation, the right to vote on Major Decisions; and

(iv) shall continue to share in distributions from the Company, on the same basis as if such Member had not withdrawn; provided that any damages to the Company as a result of such withdrawal shall be offset against amounts that would otherwise be distributed or paid by the Company to such Member.

(f) **Automatic Withdrawal.** In the event that the Holders of a specific Loan shall remove the Company as the manager of such Loan, then such Holders shall be deemed to have withdrawn as Members from the Company (“Withdrawing Members”) and to have relinquished any right to repayment of any Capital Contribution made under Section 2.2 of this Agreement and such Withdrawing Members shall be repaid any Additional Capital Contributions made under Section 2.3 and Unpaid Preference thereon at the same time and in the same manner as the other Members who have made Additional Capital Contributions are repaid under Section 3.1(a)(1) and (2). No such automatic withdrawal shall cause a liquidation of the Company. The Participation Percentage of the Withdrawing Member shall be divided among the remaining Members of the Company in the ratio of the Participation Percentages of such remaining Members.

SECTION 3. DISTRIBUTIONS

3.1 Cash Available for Distribution.

(a) **Times of Distribution.** To the extent permitted by the Exit Financing Loan, the Company will distribute Cash Available for Distribution to the Members who are the Holders of the Loans which generated the Cash Available for Distribution on a monthly basis in the manner described in this Agreement. Except as otherwise provided in Section 10 hereof, Cash Available for Distribution, if any, shall be available for distribution to the Members, at such times as the Manager may determine in its sole discretion. Cash Available for Distribution shall be distributed to the Members in accordance with the following order:

(1) First, to the Members in proportion to their respective Unpaid Preference, if any, until the Unpaid Preference of each Member is reduced to zero;

(2) Next, to the Members in proportion to their respective Unreturned Additional Capital Contributions, if any, until the Unreturned Additional Capital Contributions of each Member are reduced to zero;

(3) Next to repay the Holders of Loans whose payments of principal and/or interest from Borrowers have been utilized to make payments on the Exit Financing Loan until such amounts have been repaid, and if the Holders of more than one Loan are so entitled, then in the ratio of the amounts so used and unrepaid to such Holders of each such Loan and then divided between the Holders of each such individual Loan in the ratio of their Participation Percentages in the Loan;

(4) Next to repay the Holders of Loans who payments of principal an/or interest from Borrowers have been utilized to make payment under Section 3.1(a)(1) and then (2) in above in that order until such amounts have been repaid, and if the Holders of more than one Loan are so entitled, then in the ratio of the amounts so used and unrepaid to such Holders of each such Loan and then divided between the Holders of each such individual Loan in the ratio of their Participation Percentages in the Loan; and

(5) Next to the Holders of the Loan or Loans which generated the Cash Available for Distribution in accordance with the ratio of the Participation Percentages in such Loans of such Holders.

(b) **Limitation on Distributions.** The Company shall make no distributions to the Members unless the assets of the Company following such distribution will exceed the total liabilities of the Company, excluding liabilities to Members based on their contributions.

(c) **Termination and Dissolution of the Company.** Upon the termination and dissolution of the Company, the Cash Available for Distribution shall be distributed in accordance with Section 3.1.

(d) **Distribution upon Resignation.** Except as otherwise provided in Section 2.9(f), no resigning or withdrawing Member shall be entitled to receive any distribution or the value of such Member's Interest in the Company from the Company as a result of resignation or Event of Withdrawal prior to the liquidation of the Company, except as specifically provided in this Agreement.

(e) **Return of Capital.** No Member shall be entitled to the return of, or interest on, that Member's Capital Contributions except as provided herein.

SECTION 4. [Intentionally Omitted]

SECTION 5. MANAGEMENT AND MEMBERS

5.1 **Manager-Managed.** The Members agree that the management of the Company shall be vested in the Managers acting through the Board.

5.2 Rights and Powers of the Managers.

(a) **Exclusive Rights in the Board.** Except as provided in Section 5.4 hereof or elsewhere in this Agreement, the Board shall have full, exclusive, and complete power to manage and control the business and affairs of the Company and shall have all of the rights and powers provided to a manager of a limited liability company by law, including the power to execute instruments and documents, to dispose of any property held in the name of the Company, and to take any other actions on behalf of the Company. Except upon specific authorization of the or as provided in this Agreement, no Member is authorized or empowered to execute, deliver, or perform any agreements, acts, transactions, or matters contemplated in this Agreement on behalf of the Company as agent for the Company, notwithstanding any applicable law, rule, or regulation to the contrary.

(b) **Reliance by Third Parties.** Any third party shall be entitled to rely on all actions of the Managers and shall be entitled to deal with the Managers as if they were the sole party in interest therein, both legally and beneficially. The Board may appoint one or more of the Managers or Persons as officers or agents for the Board, and every instrument purporting to be

the action of the Company and executed by a Manager designated by the Board or an officer appointed by the Board shall be conclusive evidence in favor of any person relying thereon or claiming thereunder that, at the time of delivery thereof, this Agreement was in full force and effect and that the execution and delivery of that instrument is duly authorized by the Board and the Company.

(c) **Banking Resolution.** The Members hereby unanimously authorize the Board to open all banking accounts, as it deems necessary and to enter into any deposit agreements as are required by the financial institution at which such accounts are opened. The Managers or officers or agents designed by the Board shall have signing authority with respect to such banking accounts. Funds deposited into such accounts shall be used only for the business of the Company.

5.3 **Duties and Responsibilities of the Managers.** The Managers shall devote to the Company such time as may be necessary for the proper performance of the Managers' duties hereunder, but shall not be required to devote full time to the performance of such duties. The Company may also act as the manager of each of the ML Pool Funds, and each Member hereto agrees and consents to such activities, even though there may be conflicts of interest inherent therein. The Managers shall be responsible for implementing or causing to be implemented the following:

(a) Performing all normal business functions and otherwise operating and managing the business and affairs of the Company, the Loans and each of the ML Pool Funds in accordance with and as limited by this Agreement and the Operating Agreement of the ML Pool Funds, including but not limited to engagement of accountants, attorneys and other professionals to assist in managing the such business;

(b) Protecting the interests of the Holders in the Loans and taking any actions to enforce the Loans and the loan documents, enforcing guaranties, foreclosing upon the collateral for the Loans, engaging asset managers to assist in plans and valuation of collateral sale value, to enhance the value of collateral and to manage any collateral which has been foreclosed up by the Holders of a Loan, and, subject to the vote of the Holders of a specific Loan on items which are Major Decisions under this Agreement, negotiating settlement agreements with the Borrowers or conversion of principal or interest or both on the Loans to equity in a joint venture project; subordinating the Loan to additional financing obtained by a Borrower; negotiating the sale of the Loan and other actions necessary to realize upon the Loan and the collateral for the Loan;

(c) Causing all books of account and other records of the Company to be kept in accordance with the terms of this Agreement;

(d) Preparing and delivering to each Member all reports required by the terms of this Agreement;

(e) To the extent that funds of the Company are available, paying all obligations of the Company as they come due;

(f) Maintaining all funds of the Company in a Company account in a bank or banks, and being the signatory to such accounts;

(g) Undertaking such actions as are necessary or desirable so that the Company, within reason, promptly complies with all material present and future laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction that may be applicable to the Company, its property, and the operations and management of the Company;

(h) Preparing Business Plans and Budgets for the Company and the overseeing of individual Loans where deemed necessary by the Managers;

(i) Entering into the Exit Financing Loan agreement and other documents required by the lender under the Exit Financing Loan on behalf of the Company and the Holders of the Loans;

(j) Entering into the Inter-Borrower Agreement on behalf of the Company and the Holders of each of the Loans;

(k) Entering into the Master Servicing Agreement with ML Servicing Co., Inc. or another servicers on behalf of Holders of each Loan;

(l) Maintaining the proceeds from the Exit Financing Loan and the advances to the Company by the Holders of each Loan of the ML Charges in bank accounts in the name of the Company or, in the Company's discretion, in trust accounts maintained by the ML Servicing Co., Inc. or other servicer then servicing the Loans for the Holders of the Loans for which the Company is the Manager; and

(m) Performing all other duties required by this Agreement to be performed by the Manager.

5.4 Actions Requiring a Vote. The Board shall not undertake any of the following acts ("Major Decisions") without the affirmative vote of a Majority in Interest of the Members:

(a) Amending this Agreement, except with respect to amendments that (i) are of a ministerial nature, (ii) do not adversely affect the Members in any material respect, or (iii) are necessary or desirable to comply with any applicable law or regulation;

(b) Entering into any contracts between the Company and a Manager except as provided in Section 5.9 hereof;

(c) Changing any of the Company's purposes as set forth in Section 1.4;

(d) Using the Company's funds or capital in any way other than for the business and purpose of the Company as set forth in Section 1.4 hereof;

(e) Commingling any Company funds or capital with the funds of any other Person other than the ML Charges and Exit Financing Loan Proceeds which are to be held by the Company on a pooled basis until disbursed;

(f) Any sale of a Loan for less than 75% of the outstanding principal and interest;

(g) Conversion of the principal, interest or both under a Loan to equity in a development project;

(h) Subordination of the lien of a Loan on the collateral securing the Loan to any lender providing financing to develop the property which is the collateral for a Loan or any other property;

(i) Any modification of a Loan terms which would decrease the principal amount more than 10%, permanently decrease the interest rate by more than 50% , increase the term of the Loan by more than three years; release collateral for the Loan without consideration equal to the fair market value of the collateral released as determined by the Manager or releasing any guaranties; and

(j) Taking any other action that this Agreement specifically requires to be agreed upon by a vote of the Members.

(k) Any action that this Agreement requires be approved by the Majority in Interest of the Members of the Company;

5.5 Consents and Approvals. The Board shall provide timely written notice to each Member which is a Holder of the Loan which is affected by the proposed action requiring the consent or approval of the Members, which notice shall specify with reasonable particularity the decisions to be made by the Members, the recommendation of the Board with respect thereto, and a summary of the reasons supporting the Board's recommendation.

5.6 Business Plan and Budget. As soon as reasonably possible after execution of the Agreement, and thereafter not less frequently than annually, the Board shall adopt an "Business Plan and Budget" for the Company, which shall be a compilation of a general business plan and budget for the Company including current-year budgets for administrating the Loans on behalf of the Holders of each Loan. Subject to the availability of sufficient Company funds for such purposes, the Board shall have the right, power, authority and duty to implement each Business Plan and Budget then in effect and to supervise and carry out the day-to-day affairs of the Company and the Loans, in accordance with the Business Plan and Budget and any applicable terms of this Agreement

5.7 Filing of Documents. The Managers shall file or cause to be filed all certificates or documents as may be determined by the Managers to be necessary or appropriate for the formation, continuation, qualification and operation of a limited liability company in the state of Arizona. To the extent that the Managers determine the action to be necessary or appropriate, the

Managers shall do all things to maintain the Company as a limited liability company under the laws of the State of Arizona.

5.8 Indemnification and Liability.

(a) **Company Indemnification.** The Managers and their Affiliates (each of the foregoing being referred to herein as an “Indemnatee,” and the Affiliate to which each such Indemnatee is related being referred to herein as such Indemnatee’s “Related Person”) shall be indemnified, defended, and held harmless by the Company for, from and against any and all losses, claims, damages, liabilities, expenses (including attorneys’ fees and costs), judgments, fines, settlements, demands, actions, or suits relating to or arising out of the business of the Company, or the exercise by the Managers of any authority conferred on it hereunder or the performance by the Managers of any of its duties and obligations hereunder. Notwithstanding anything contained in this Agreement to the contrary, no Indemnatee shall be entitled to indemnification hereunder with respect to any claim, issue, or matter in respect of which it or its Related Person (or the Company as the result of an act or omission of it or its Related Person) has been adjudged liable for fraud, gross negligence, or willful misconduct.

(b) **Liability.** The Managers shall not be liable, responsible, or accountable in damages or otherwise to the Company or the Members for any act or failure to act in connection with the Company and its business unless the act or omission is attributed to gross negligence, willful misconduct, or fraud.

(c) **Compensation to the Managers; Expenses.** The Managers shall receive such compensation for acting as Managers of the Company as may be set forth in the Approved Plan and any modifications thereafter in such amounts as may be approved by a Majority in Interest of the Members. In addition to any compensation, the Managers shall be entitled to payment of, or reimbursement for, all bona fide business expenses incurred in connection with conducting the Company business. All of the expenses of the Company shall be paid from the pooled ML Charges or Exit Financing Loan proceeds or, if a Manager advances its own funds to pay any such expenses of the Company, and the requirements for reimbursement are satisfied, the Company shall reimburse such Manager for all such advances plus interest at the Stated Rate of Interest from the date the expense is submitted to the Company for reimbursement until it is paid. Any expense specifically related to a particular Loan shall be charged to the Holders of that Loan and any general expenses which are not specifically related to one or more Loans shall be divided among all of the Loans in accordance with their Loan Ratios.

5.9 **Transactions with Manager or its Affiliates.** The Manager shall have the right to contract or otherwise deal with the Company in connection with the sale of goods or services by the Manager to the Company in the following circumstances: (a) where the Members have voted to give consent, or (b) if (i) the compensation paid or promised for such goods or services is reasonable and is paid only for goods or services actually furnished to the Company; (ii) the goods or services to be furnished are reasonable for and necessary to the Company; and (iii) the terms for the furnishing of such goods or services are at least as favorable to the Company as would be attainable in an arms’-length transaction with third parties.

5.10 **Right to Remove Manager.** The Managers may be removed as manager of the Company only by the Members as provided in Section 6.3 hereof.

SECTION 6-MEMBERS

6.1 **Meetings of the Members.** Meetings of the Members shall be held on the call of the Managers or by Members having at least Participation Percentages of 20% of all Participation Percentages then held by all Members entitled to vote; provided that at least 21 days' notice shall be given to all Members with respect to any meeting; and further provided that any Member may require that such meeting be held by telephone. No regular annual meetings will be held but the Board shall submit an annual report to the Members containing information on the activities of the Company which the Board deems appropriate. A waiver of any required notice shall be equivalent to the giving of such notice if such waiver is in writing and signed by the Member entitled to such notice, whether before, at or after the time stated therein. The Members may make use of telephones and other electronic devices to hold meetings, provided that each Member may simultaneously participate with the other Members with respect to all discussions and votes of the Members. Notwithstanding, the foregoing, a vote on a Major Decision with respect to a specific Loan by the Holders of that Loan or to remove the Board of the Company under Section 6.3 hereof shall be done by written ballot signed by each Member voting. A ballot to vote on the removal of the then Board of the Company may be combined on the same ballot with a vote to elect a successor Board of Managers for the Company in the event the then Board is removed. The Members may act without a meeting if the action taken is reduced to writing (either prior to or thereafter) and approved and signed by the vote of Members in accordance with the other voting provisions of this Agreement. Written minutes shall be taken at each formal meeting of the Members; however, any action taken or matter agreed upon by the Members shall be deemed final, whether or not written minutes are prepared or finalized.

6.2 **Voting of the Members.** Unless the specific language herein expressly states otherwise, all votes, actions, approvals, elections and consents required in this Agreement to be made by "the Members" shall be effective upon receiving the required vote of approval of the Members.

6.3 **Voting with Respect to the Manager.** Upon the affirmative vote of a Majority in Interest of the Members, the Members may:

(a) remove the Board for "cause" (for purposes of this Section 6.3 "cause" shall be deemed to exist if the Managers has engaged in willful misconduct or fraud to the Company, and elect a successor Board; or

(b) at any time after one year from the date hereof, remove the Board for any reason and elect a successor Board.

6.4 **Rights and Obligations of Members.**

(a) **Limitation of Liability.** Each Member's liability for the debts and obligations of the Company shall be limited as set forth in the Act and other applicable law.

(b) **List of Members.** Upon written request of any Member, the Manager shall provide a list showing the names, last known addresses, and Interests of all Members in the Company.

(c) **Company Records.** Upon written request, each Member shall have the right, during ordinary business hours, to inspect and copy the Company records required to be maintained by the Manager at the Company's registered office as set forth in Section 1.5 hereof

6.5 **Defaulting Member.**

(a) **Events of Default.** The occurrence of any of the following events with respect to a Member shall constitute an event of default and such Member (herein referred to as the Defaulting Member) shall (except as otherwise provided in Section 6.5(a)(v) hereof) thereafter be deemed to be in default without any further action whatsoever on the part of the Company or any other party: (i) attempted dissolution of the Company by such Member other than pursuant to the provisions contained elsewhere in this Agreement; (ii) a Bankruptcy occurs as to such Member; or (iii) failure of such Member to perform any obligation, act or acts required of that Member by the provisions of this Agreement, (iv) a Member attempts to transfer his Interest in the Company in violation of Section 8, or (v) such Member violates or breaches any of the other terms or provisions of this Agreement; provided, however, that such Member shall not be deemed to be in default of this Section 6.5(a)(v) until after 15 days' written notice thereof and if such default is a nonmonetary default and cannot reasonably and with due diligence and in good faith be cured within said 15-day period, and if the Defaulting Member immediately commences and proceeds to complete the cure of such default with due diligence and in good faith, the 15-day period with respect to such default shall be extended to include such additional period of time as may be reasonably necessary to cure such default.

(b) **Effect of Default.** Notwithstanding any provision of this Agreement to the contrary, a Defaulting Member shall not have any voting rights as a Member with respect to any matters set forth in this Agreement, including but not limited to all approval rights set forth in Section 5.4 and Section 6.

(c) **Remedies on Default.** Upon the occurrence of a default by a Member, the Manager shall have all rights and remedies available under this Agreement and at law and in equity and may institute legal proceedings on behalf of the Company against the Defaulting Member with respect to any damages or losses incurred by the Company or the other Members. The Company and the other Members shall be entitled to reasonable attorneys' fees and expenses incurred in connection with the collection of such amounts, together with interest thereon at the Prime Rate compounded annually, for the period from when such damages or losses were incurred until recovered.

SECTION 7. BOOKS, RECORDS, REPORTS AND ACCOUNTING

7.1 **Records.** The Managers shall keep or cause to be kept at the Principal Office of the Company the following: a current list of the full name and last known business, residence or mailing address of each Member, a copy of the initial Articles of Organization and all amendments thereto, copies of all written Operating Agreements and all amendments to the agreements, including any prior written Operating Agreements no longer in effect, copies of any written and signed promises by a Member to make Capital Contributions to the Company, copies of any tax returns and reports, if any, for the three most recent years, copies of any prepared financial statements of the Company for the three most recent years, and minutes of every meeting of the Members as well as any written consents of Members or actions taken by Members without a meeting. Any such records maintained by the Company may be kept on or be in the form of any information storage device, provided that the records so kept are convertible into legible written form within a reasonable period of time.

7.2 **Fiscal Year and Accounting.** The Fiscal Year of the Company shall be the calendar year. All amounts computed for the purposes of this Agreement and all applicable questions concerning the rights of Members shall be determined using the method of accounting used for federal income tax purposes. All decisions as to other accounting matters, except as specifically provided to the contrary herein, shall be made by the Managers.

7.3 **Preparation of Tax Returns.** The Managers shall arrange for the preparation and timely filing of any required returns of the Company income, gains, deductions, losses and other items necessary for income tax purposes and shall cause to be furnished to the Members the tax information reasonably required for federal and state income tax reporting purposes.

7.4 **Tax Elections.** To the extent applicable to the Company, the Managers may, in its reasonable discretion, determine whether to make any available elections pursuant to the Code.

7.5 **Tax Controversies.** To the extent applicable to the company, and subject to the provisions hereof, the Managers shall designate one of the Managers as the Tax Matters Member, and is authorized and required to represent the Members in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend the Company funds for professional services and costs associated therewith.

7.6 Withholding and Tax Advances.

(a) **Authority to Withhold.** To the extent the Company is required by law to withhold or to make tax payments on behalf of or with respect to a Member (e.g., (i) backup withholding, (ii) withholding with respect to Members that are neither citizens nor residents of the United States, or (iii) withholding with required by any state) ("Tax Advances"), the Company may withhold such amounts and make such tax payments as may be required.

(b) **Repayment of Tax Advances.** All Tax Advances made on behalf of a Member will, at the option of the Manager, either be (i) promptly paid to the Company by that Member, or (ii) repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to that Member (or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to that Member). Whenever the Manager selects option (ii) pursuant to the preceding sentence for repayment of a Tax Advance by a Member, for all other purposes of this Agreement, such Member will be treated as having received all distributions (whether before or upon liquidation) unreduced by the amount of such Tax Advance.

(c) **Indemnification.** Each Member hereby agrees to indemnify and hold harmless the Company for, from and against any liability with respect to Tax Advances made on behalf of or with respect to such Member.

(d) **Certification.** Each Member will promptly give the Company any certification or affidavit that the Manager may request in connection with this Section 7.6.

SECTION 8. TRANSFERS

8.1 **Restrictions on Transfers.** MEMBER'S INTERESTS ARE NOT FREELY TRADEABLE. Except as provided in Section 8.2 below, no Member shall Transfer all or any portion of such Member's Interests. In the event that any Member pledges or otherwise encumbers all or any part of such Member's Interests to a lender ("Secured Lender") as security for the payment of a debt, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all of the terms and conditions of this Section 8.

8.2 **Permitted Transfers.** Notwithstanding the provisions of Section 8.1, subject to the conditions and restrictions set forth in Section 8.3 hereof, a Member may at any time Transfer all or any portion of the Member's Interests to (a) a Family Member, (b) a trust created for the benefit of the Member or a Family Member, (c) to the transferor's administrator or trustee to whom such Interests are transferred upon death or involuntarily by operation of law, (d) to a Secured Lender upon foreclosure of a loan to such Member by the Secured Lender, or (e) to other Members of the Company or ML Pool Funds managed by Manager (any such Transfer being referred to in this Agreement as a "Permitted Transfer"). Once a Permitted Transfer has occurred, the transferred membership Interest and the transferee shall once again become subject the provisions of Section 8.1.

8.3 **Conditions to Permitted Transfers.** A Transfer shall not be treated as a Permitted Transfer under Section 8.2 hereof unless and until the following conditions are satisfied:

(a) Except in the case of a Transfer involuntarily by operation of law, the transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer. In the case of a Transfer of Interests upon death or

involuntarily by operation of law including a foreclosure by a Secured Lender, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. In all cases, the Company shall be reimbursed by the transferor and/or transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.

(b) The transferor and transferee shall furnish the Company with the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the Interests transferred, and any other information reasonably necessary to permit the Company to file any required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Interests until it has received such information.

(c) Except in the case of a Transfer of Interests upon death or involuntarily by operation of law, either (i) such Interests shall be registered under all applicable federal and state securities laws, or (ii) unless waived by the Manager, the transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Manager, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

8.4 Prohibited Transfers. Any purported Transfer of Interests that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer that is not a Permitted Transfer, or in the case of a Secured Lender who upon foreclosure elects not to become a Member, the Interests transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Interests, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of such Interests may have to the Company. In the case of a Transfer or attempted Transfer of Interests that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company, the Manager and the other Members for, from and against all costs, liabilities, and damages that the Company, the Manager or any of such other Members may incur (including, without limitation, incremental tax liabilities, attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

8.5 Rights of Unadmitted Assignees. A Person who acquires Interests but who is not admitted as a Substituted Member pursuant to Section 8.6 hereof shall be entitled only to allocations and distributions with respect to such Interests in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement, including the right to vote on any matters.

8.6 Admission of Substituted Members. Subject to the other provisions of this Article VIII, a transferee of Interests may be admitted to the Company as a substituted Member (“Substituted Member”) only upon satisfaction of the conditions set forth in this Section 8.6:

(a) The Company consents to such admission, which consent may be given or withheld in the sole and absolute discretion of the Manager, except that a Secured Lender who has foreclosed upon a Member’s Interest shall be admitted if such Lender so elects subject to the balance of the provisions of this Section 8.6;

(b) The Interests with respect to which the transferee is being admitted were acquired by means of a Permitted Transfer;

(c) The transferee of Interests (other than, with respect to clauses (i) and (ii) below, a transferee that was a Member prior to the Transfer) shall, by written instrument in form and substance reasonably satisfactory to the Manager (and, in the case of clause (ii) below, the transferor Member), (i) accept and adopt the terms and provisions of this Agreement, including this Article VIII, and (ii) assume the obligations of the transferor Member under this Agreement with respect to the transferred Interests. The transferor Member shall be released from all such assumed obligations except (y) those obligations or liabilities of the transferor Member arising out of a breach of this Agreement, and (z) those obligations or liabilities of the transferor Member based on events occurring, arising or maturing prior to the date of Transfer;

(d) The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the transferred Interests; and

(e) Except in the case of a Transfer involuntarily by operation of law (other than a foreclosure by a Secured Lender), if required by the Manager, the transferee shall deliver to the Company evidence of the authority of such Person to become a Member and to be bound by all of the terms and conditions of this Agreement, and the transferee and transferor shall each execute and deliver such other instruments as the Manager reasonably deems necessary or appropriate to effect, and as a condition to, such Transfer.

8.7 Distributions and Allocations in respect of Transferred Interests. If any Interests are Transferred during any Fiscal Year in compliance with the provisions of this Section 8, all items attributable to the transferred Interests for such Fiscal Year shall be divided and allocated between the transferor and the transferee by taking into account their varying percentage interests during the Fiscal Year using any conventions permitted by law and selected by the Manager. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least 10 business days prior to the Transfer, the Company shall recognize such Transfer as of the date of such Transfer, and provided further that if the Company does not receive a notice stating the date such Interests were transferred and such other information as the Manager may reasonably require within 30 days after the end of the

Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Interests on the last day of such Fiscal Year. Neither the Company nor the Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 8.7, whether or not the Manager or the Company has knowledge of any Transfer of ownership of any Interests.

8.8 Notice Requirement. Within 30 days of the Bankruptcy of a Member, that Member (or its successor) shall be required to give notice to the Company of such event. Failure to give notice shall be deemed to be a default under this Agreement.

SECTION 9. LIQUIDATION AND WINDING UP

9.1 Dissolution. The Company shall dissolve only upon the occurrence of one or more of the following events:

- (a) the election of the Managers after the Company has liquidated its assets and liabilities and made distributions to the Members;
- (b) the occurrence of any event which makes it unlawful for the business of the Company to be carried on; or
- (c) January 31, 2030.

The Company shall not dissolve as a result of a Withdrawal Event as defined in the Act with respect to any Member, and shall continue in full force and effect in accordance with this Agreement until an event described in Section 9.1(a) through (c) occurs.

9.2 Dissolution. Upon the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the Articles of Termination has been filed as required by the Act or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

9.3 Liquidation. Upon dissolution of the Company, the business and affairs of the Company shall be wound up and liquidated as rapidly as business circumstances permit, the Manager shall act as the liquidating trustee, and the assets of the Company shall be liquidated and the proceeds thereof shall be paid (to the extent permitted by applicable law) in the following order:

- (a) First, to creditors, including Members that are creditors, in the order of priority as required by applicable law and by this Agreement;
- (b) Second, to a reserve for contingent liabilities to be distributed at the time and in the manner as the liquidating trustee determines in its reasonable discretion; and

(c) Thereafter, to the Members as set forth in Section 3.1

If the Manager determines that an immediate sale of the Company's assets and liquidation of the Company would cause undue losses to the Members, it may defer liquidation of any assets, other than those assets necessary to satisfy current obligations, for a reasonable time.

9.4 Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 9.3 in order to minimize any losses otherwise related to that winding up. A reasonable time shall include the time necessary to sell the assets.

9.5 Return of Capital Contribution. Upon Dissolution and liquidation of the Company each Member shall look solely to the assets of the Company for the return of that Member's Capital Contribution. No Member shall be personally liable for a the return of a Capital contribution of any Member, it being expressly understood that the distribution of Liquidation proceeds shall be made solely from existing Company assets.

9.6 Articles of Termination. When all liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to Members, Articles of Termination shall be executed and filed as required by the Act.

SECTION 10. MISCELLANEOUS

10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, without regard to its conflicts of laws principles.

10.2 Notices. Notices may be delivered either by private messenger service, telecopy, electronic mail, or by mail. Any notice or document required or permitted hereunder to a Member shall be in writing and shall be deemed to be given on the date received by the Member; provided, however, that all notices and documents mailed to a Member in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Member at its respective address as shown in the records of the Company, shall be deemed to have been received five days after mailing. The address of each Member shall for all purposes be as set forth on the signature page of the original operating agreement of the Company unless otherwise changed by such Member by written notice to the Company.

10.3 Severability. If any provision of this Agreement shall be conclusively determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby.

10.4 Binding Effect. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and, where permitted, assigns.

10.5 Titles and Captions. All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not a part of the context hereof.

10.6 **Pronouns and Plurals.** All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the appropriate Person(s) may require.

10.7 **No Third Party Rights.** This Agreement is intended to create enforceable rights between the parties hereto only, and creates no rights in, or obligations to, any other Persons whatsoever.

10.8 **Time is of Essence.** Time is of the essence in the performance of each and every obligation herein imposed.

10.9 **Further Assurances.** The parties hereto shall execute all further instruments and perform all acts that are or may become necessary to effectuate and to carry on the business contemplated by this Agreement.

10.10 **Estoppel Certificates.** The Members hereby agree that, at the request of the Manager, they will each execute and deliver an estoppel certificate stating that this Agreement is in full force and effect and that to the best of such Member's knowledge and belief there are no defaults by any Member (or that certain defaults exist), as the case may be, under this Agreement.

10.11 **Schedules Included in Exhibits; Incorporation by Reference.** Any reference to an Exhibit to this Agreement contained herein shall be deemed to include any Schedules to such Exhibit. Each of the Exhibits referred to in this Agreement, and each Schedule to such Exhibits, is hereby incorporated by reference in this Agreement as if such Schedules and Exhibits were set out in full in the text of this Agreement

10.12 **Counterparts.** This Agreement may be executed in counterparts.

10.13 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

10.14 **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter hereof. No oral understandings, oral statements, oral promises or oral inducements exist. No representations, warranties, covenants or conditions, express or implied, whether by statute or otherwise, other than as set forth herein, have been made by the parties hereto.

10.15 **Power of Attorney.** Each Member hereby appoints the Company and each of the Managers as the Member's true and lawful attorney-in-fact to take all actions required to be taken by the Member under this Agreement if the Member fails to do so. The power of attorney so granted does not include the right to vote for the Member on any Major Decisions. The power of attorney granted herein is coupled with an interest, is irrevocable, and shall survive any Transfer or purported Transfer of all or any part of a Member's interest in the Company in violation of this Agreement

SECTION 11 DEFINITIONS

11.1 **Glossary.** For purposes of this Agreement, the following terms shall have the meanings specified in this Section 11.1:

“**Act**” means the Arizona Limited Liability Company Act, as set forth in A.R.S. § 29-601 et seq., as amended from time to time (or any corresponding provisions of succeeding law).

“**Additional Capital Contributions**” shall have the meaning given such term in Section 2.3.

“**Affiliate**” means, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting interests of such Person; (c) any officer, director, manager or general partner of such Person; (d) any Person who is an officer, director, general partner, manager, trustee or holder of 10% or more of the voting interests of any Person described in clauses (a) through (c) of this definition; or (e) any Family Member of any Person described in clauses (a) through (d) above.

“**Agreement**” means this Operating Agreement, as it may be amended from time to time, complete with all exhibits and schedules hereto. Words such as “herein,” “hereinafter,” “hereof,” “hereto” and “hereunder,” refer to this Agreement as a whole, unless the context otherwise requires

“**Articles**” has the meaning given that term in Section 1.8.

“**Bankruptcy**” means, with respect to a Person, the happening of any of the following:

- (a) the making by such Person of a general assignment for the benefit of creditors;
- (b) the filing by such Person of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing an inability to pay debts as they become due;
- (c) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating the Person to be bankrupt or insolvent;
- (d) the filing by such Person of a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (e) the filing by such Person of an answer or other pleading admitting the material allegations of, or consenting to, or defaulting in answering, a bankruptcy petition filed against the Person in any bankruptcy proceeding;
- (f) the filing by such Person of an application or other pleading or any action otherwise seeking, consenting to or acquiescing in the appointment of a liquidating trustee, receiver or other liquidator of all or any substantial part of the Person’s properties;

(g) the commencement against such Person of any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation which has not been quashed or dismissed within 180 days; or

(h) the appointment without the consent or acquiescence of such Person of a liquidating trustee, receiver or other liquidator of all or any substantial part of such Person's properties without such appointment being vacated or stayed within 90 days and, if stayed, without such appointment being vacated within 90 days after the expiration of any such stay.

“Business Plan and Budget” has the meaning given that term in Section 5.6.

“Capital Contribution” means, with respect to any Member, the amount of money and the net fair market value of any property (other than money) contributed to the Company by such Member pursuant to any provision of this Agreement

“Cash Available for Distribution” means with respect to the Holders of a specified Loan the sum of (i) any principal and interest payments received from Borrower for the Holders of specified Loan less any amount that is required to be paid to the lender on the Exit Financing Loan and (ii) any repayment to the Holders of such Loan for ML Charges previously used by the Company for expenses of the Company or repayment of the Exit Financing Loan

“Code” shall mean the Internal Revenue Code of 1986 (or successor thereto), as amended from time to time.

“Company” means ML Manager LLC, the limited liability company formed pursuant to this Agreement, as such limited liability company may from time to time be constituted.

“Control” means to possess and exercise legal and effective control over the business decisions and acts of an entity, without the consent or approval of another Person

“Defaulting Member” means a Member that has committed an event of default as described in Section 6.5(a) hereof.

“Dissolution” means the occurrence of an event described in Section 9.1.

“Exit Financing Loan” means a loan in the amount of up to \$20,000,000 or such smaller or greater amount as is approved by the Approved Plan to the Liquidating Trust and the Company or the Holders of the Loans jointly as borrowers to be secured by the assets of the Liquidating Trust and a pledge by the ML Charges and to the extent applicable by a pledge by the Holders of their interest in the promissory notes and loans held by them and their other assets, which Exit Financing Loan will be used to pay administrative expenses under the Approved Plan, fund operations and litigation expenses of the Liquidating Trust and the Loan LLCs.

“Family Member” means a Member's spouse, lineal ancestors or descendants by birth or adoption and trust for the benefit of such Member of any of the foregoing individuals.

“Fiscal Year” means the year on which the accounting and federal income tax records of the Company are kept.

“Indemnitee” shall have the meaning set forth in Section 5.8(a).

“Independent Activities” has the meaning given that term in Section 1.9(a).

“Inter-Borrower Agreement” means an agreement between the Liquidating Trust, the Company and to the extent applicable the Holders of the Loans as the joint borrowers under the Exit Financing Loan, relating to the uses of the funds to be borrowed and the responsibility for repayment as between the joint borrowers for the portion of the borrowed funds utilized by each.

“Interest” means the interest of a Member in the Company as a Member representing such Member’s rights, powers and privileges as specified in this Agreement.

“Interest Holder” shall mean a Person who holds an Interest or Interests.

“Liquidating Trust” means the Delaware Liquidating Trust formed under the Approved Plan to held the non-loan assets of Mortgages Ltd. and to pursue claims and causes of action for the benefit of the Holders of the Loans and other Persons.

“Liquidation” means the acts described in Section 9.3.

“Loan” or **“Loans”** shall have the meaning set forth in Recital A hereof.

“Loan Ratio” means a percentage determined by dividing the initial Loan amount of a particular Loan by the total Loan amounts of all Loans as shown on Exhibit A which are to be included in the calculation.

“Major Decisions” shall have the meaning set forth in Section 5.4 hereof.

“Majority in Interest of the Members” means more than 50% of the Participation Percentages of the Members of the Company who are entitled to vote and who actually vote on a particular matter; provided however that only the Holders of a particular Loan can vote on Major Decision matters affecting such Loan..

“Managers” means the individuals appointed as Managers in Section 2.1 or any successor Manager appointed pursuant to Section 2.1.

“Master Servicing Agreement” means the new servicing agreement to be entered into between the Company acting on behalf of the ML Pool Funds and the Holders for servicing of the Loans through December 31, 2009 subject to the right of the Holders of Loans to terminate such agreement at December 31, 2009 or at the end of any subsequent calendar year.

“Member” means any Person identified as a Member on Exhibit A, in each case, until such time as such Person ceases to hold an interest in the Company or otherwise ceases to be a Member

of the Company in accordance with this Agreement. “Members” refers collectively to all Persons who are designated as a “Member” pursuant to this definition.

“**Member Loan**” has the meaning given that term in Section 2.4.

“**ML Charges**” means any amounts required to be paid to Mortgages Ltd. (now “ML Servicing Co., Inc.”) under each Loan LLC’s Loan Documents, any Servicing Agent Agreement between Mortgages Ltd. and a Borrower, any Agency Agreement or other servicing, subscription or other agreement (however denominated) with any of the persons or entities now Members of a Loan LLC or the Borrower as a fee, late charge, interest rate spread, default interest, default interest rate spread, commitment fees, extension fees, prepayment penalties or charges, servicing fees, defaulted loan processing fees or other fees, costs or charges of whatever nature.

“**Participation Percentage**” shall mean, as the context requires, with respect to all the Loans, a percentage equal to the percentage shown on Exhibit A, as amended from time to time for each Loan to the percentages for all Loans, and in the case of a specified Loan, the ratio of the percentage interest of each Holder in the Loan to the total of the percentage interests of all Holders in such Loan.

“**Permitted Activities**” has the meaning given that term in Section 1.4.

“**Person**” means an individual, firm, corporation, partnership, limited partnership, limited liability company, association, estate, trust, pension or profit-sharing plan, or any other entity.

“**Preference**” means, with respect to each Member, the amount of interest that would have accrued on that Member’s Unrecovered Additional Capital Contributions outstanding from time to time, if such Unrecovered Additional Capital Contributions had been advanced to the Company as loans bearing interest at ___ percent per annum from the date the applicable Additional Capital Contributions were made

“**Principal Office**” means the registered office of the Company at which the records of the Company are kept as required under the Act.

“**Tax Advances**” shall have the meaning set forth in Section 7.6(a).

“**Tax Matters Member**” means the “tax matters partner” as defined in Code Section 6231(a) (7).

“**Transfer**” means to sell, assign, transfer, give, donate, pledge, deposit, alienate, bequeath, devise or otherwise dispose of or encumber to any Person other than the Company.

“**Unpaid Preference**” means, with respect to each Member, the amount of interest that would accrue on such Member’s Unreturned Additional Capital Contributions outstanding from time to time, if the amounts thereof had been advanced as loans to the Company bearing interest at a rate equal to ___ Percent per annum, compounded quarterly, reduced by distributions to such Member pursuant to Section 3.1(a) (1).

“Unrecovered Additional Capital Contributions” means with respect to a Member, the aggregate Additional Capital Contributions of such Member, reduced by all distributions to such Member pursuant to Section 3.1 (a) (2).

“Withdrawal Event” means those events listed in Section 29-733 of the Act.

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MANAGERS:

_____, Manager

_____, Manager

_____, Manager

_____, Manager

_____, Manager

and the Members listed on the attached Exhibit A
by ML Manager LLC as their attorney-in-fact

By: _____

Its: _____

EXHIBIT A

Loan and Members Participation Percentages

EXHIBIT B

List of Managers

EXHIBIT C

Names of ML Pool Funds

MP122009 L.L.C., an Arizona limited liability company

MP062011 L.L.C., an Arizona limited liability company

MP122030 L.L.C., an Arizona limited liability company

Mortgages, Ltd. Opportunity Fund MP12, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP13, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP14, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP15, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP16, L.L.C., an Arizona limited liability company

Mortgages Ltd. Opportunity Fund MP17, L.L.C., an Arizona limited liability company