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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES SECURITIES AND
12 EXCHANGE COMMISSION,

13 Plaintiff,

14 v.

15 EMVEST MORTGAGE FUND, LLC;
16 EMVEST, INC.; AND MILTON LYLE
BROCK,

17 Defendants.
18
19
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CASE NO.: 04CV2295-DMS(RBB)

JUDGE: Hon. Dana M. Sabraw

**RECEIVER'S 23RD VERIFIED
REPORT AND REQUEST FOR
INSTRUCTIONS**

CTRM: 10
DATE: Not Applicable
TIME: Not Applicable

DISC. CUT-OFF: Nov. 10, 2005
MOTION CUT-OFF: Nov. 10, 2005
TRIAL DATE: JAN. 3, 2006

21 This "Receiver's Twenty-Third Verified Report and Petition for Instructions" is
22 filed on behalf of Emvest Mortgage Fund, LLC ("the Fund") in compliance with
23 reporting requirements for Receivers under Civil Rule 66.1 (Receivers). This twenty-
24 third report covers the period from July 1, 2011 to December 23, 2011.

25 **1. Summary of Operations of Receiver:**

26 The Receiver has continued to focus on expeditiously liquidating the Fund's
27 remaining few assets, while making prudent business decisions in a very difficult
28 financial environment. The Receiver has also continued to be focused on preserving

1 the Fund's cash so that the liquidation process could be fully supported. The
2 overwhelming constraint has continued to be an almost total lack of liquidity in the
3 marketplace; this has hindered transactions of every type and has greatly slowed the
4 liquidation process. The Receiver had hoped to have liquidated the portfolio by now,
5 but this did not happen. It has been difficult even to predict with any certainty an
6 achievable planning target for liquidating the Fund, but now the Receiver strongly
7 believes the end is finally in sight since only two assets remain to be liquidated (and
8 one of those assets is in a sale escrow).

9 Accurate and timely financial reports continue to be prepared, solid financial
10 controls are in place, information is posted on the Fund's web site for all to see, and
11 the Receiver continues to run the business on a daily basis.

12 Here is a summary of operations related matters:

13 1.1 Continued Moratorium on Monthly Distributions to Members: The
14 Court Order entered on March 2, 2005 allowed the Receiver, at his discretion, to
15 "resume making monthly distributions to the Members of up to 6% annually, as long
16 as justified by the Fund's revenue". The Receiver resumed making regular monthly
17 distributions in March, 2005, at an annual rate of 6%, and this policy continued
18 through the March, 2010, distribution. However, since revenue dropped substantially
19 as the portfolio of loans has been reduced, regular monthly distributions were halted
20 as a conservative and prudent business decision to preserve the Fund's cash for such
21 things as repairs to Real Estate Owned ("REO"), and for payment of REO utilities,
22 insurance, and property taxes. It is anticipated that no further regular monthly
23 distributions shall be made.

24 1.2 Continued Moratorium on Emergency Hardship Refunds to Members:
25 The Receiver initially received permission under the Court Order entered on March 2,
26 2005 to "make distributions to Members based on a showing of extreme hardship or
27 emergency, not to exceed 20% of those Members' original capital". The Court
28 subsequently gave permission to the Receiver in extreme cases to refund up to 75% of

1 a Member's original capital. Most recently, in its Order entered on August 8, 2006,
2 the Court granted the Receiver's request to be able "to disburse up to the book value
3 of a Member's equity for Members of not more than \$15,000.00 who face extreme
4 hardship, in order to provide additional help". This policy continued successfully for
5 an extended period of time, but the Receiver has now halted making hardship
6 disbursements to Members in order to preserve cash. It is anticipated that no further
7 emergency distributions shall be made.

8 1.3 Further Voluntary Reduction of Receiver's Fees to Zero as of January 1,
9 2012: With Court approval, to conserve Fund assets, the Receiver voluntarily reduced
10 his fixed Fund management fee from \$12,500.00 per month down to \$9,000.00 per
11 month starting in January, 2008. With Court approval, as of January, 2010, the
12 Receiver voluntarily further reduced that monthly fee down to \$5,000.00. As of
13 February 1, 2011, the Receiver voluntarily reduced his fixed Fund management fee
14 down to \$2,000.00 per month. As of July 1, 2011, the Receiver voluntarily reduced
15 his fixed Fund management fee down to \$1,000.00 per month. As of January 1, 2012,
16 the Receiver requests Court approval to reduce the monthly management fee down to
17 zero. This continued reduction in the fixed-fee has continued to yield savings to the
18 Fund. Non-operations fees continue to be excluded from this fixed fee.

19 1.4 Loan Portfolio Status: The Fund's loan portfolio has been negatively
20 affected by very weak market conditions, and fund management continues to require
21 substantial close attention. Slow but steady progress has been made towards
22 liquidation of the portfolio, as shown on the attached financial statements. The
23 portfolio principal balance was \$14,968,831.00 as of December 31, 2006; it has been
24 reduced to one Note valued at \$85,000.00 as of November 30, 2011, plus one Real
25 Estate Owned ("REO") asset of \$644,846.00. The REO property is currently in a sale
26 escrow, the buyer has obtained an SBA financing commitment, and it is scheduled to
27 close in January of 2012. The Receiver has been working with the borrower to
28 refinance the loan on the one final Note held by the Fund, but it has not been

1 successful in this difficult market. Hence, the Receiver proposes to sell the remaining
2 Note when the remaining REO property sells.

3 1.5 “Member’s Equity to Buy REO” Plan: In the “Order Re: Receiver’s
4 Thirteenth Report”, the Receiver obtained Court approval for a new plan by which
5 Members could use their current equity towards the purchase of any of the Fund’s
6 Real Estate Owned (“REO”). The Receiver’s Fifteenth Report describes the details of
7 this plan. One property was successfully sold to a Member under this plan. Although
8 this offer theoretically remains in effect (since it would not diminish the Fund’s cash
9 reserves), there has been no interest in it recently. At this stage, it is not anticipated
10 that any further transactions of this type shall be made.

11 1.6 Continued Moratorium on “Discounted Cash-Out” Plan: In the “Order
12 Re: Receiver’s Fourteenth Report”, the Receiver obtained Court approval for a new
13 plan by which Members could cash-out their equity at a discount. This plan has been
14 halted since it would diminish the Fund’s cash reserves, and it is anticipated that no
15 further discounted cash-out payments shall be made.

16 **2. Financial Statements:**

17 Monthly financial statements which conform to Generally Accepted
18 Accounting Principles (“GAAP”) continue to be prepared on a timely basis, and
19 continue to be posted regularly on the Fund’s web site (<http://emvest.info>). In
20 addition, these financial statements are included with the Receiver’s periodic reports
21 sent to Members. Attached as Exhibit #1 are Financial Statements as of 11/30/11 for
22 the Fund, including a Balance Sheet, Income Statement, Recap of Members’ Equity,
23 and a Schedule of Accrued Interest.

24 Since the size of the Fund’s loan portfolio has been reduced from about \$15
25 million on 12/31/06 to about \$85,000 on 11/30/11 (plus about \$645,000 of Real Estate
26 Owned), and since more than \$8 million has been paid to withdrawing Members since
27 the start of 2007, simply comparing current net income to historical net income is no
28 longer a meaningful approach to assessing the Fund’s performance. As discussed

1 below, even the approach of tracking the Book Value of a \$10,000 Investment is no
2 longer a reliable metric.

3 As a continued reminder, since this is an accrual (rather than cash based)
4 Income Statement, the net income also includes expenses for 100% of the fees billed
5 by the Receiver and his attorney although they were not actually paid. The accrued
6 unpaid fees are shown as Current Liabilities on the Balance Sheet.

7 2.1. Income Statement: For the eleven months ended 11/30/11, the Fund
8 recorded negative net income of \$98,164 which includes REO Costs of \$56,923.

9 2.2. Balance Sheet: For the period ending 11/30/11, the one remaining loan has
10 been written down to a value of \$85,000 and the amount of "Real Estate Owned"
11 ("REO") of \$644,846 reflects the one remaining piece of real estate which has been
12 taken back by the Fund through foreclosure.

13 2.3. Recap of Members' Equity: As of 12/31/09, the book value of a \$10,000
14 original investment was estimated to be \$3,802 (i.e. about 38.6% of Members'
15 original investment) based on the Receiver's good faith estimate of the "fair market
16 value" of the Fund's remaining assets. As the Fund's portfolio has dropped and as
17 market conditions have become more uncertain, it has become more and more
18 difficult for the Receiver to try to provide an accurate "fair market value" estimate of
19 the Fund's assets. Hence, this metric has no longer been provided since it has become
20 more speculative and could possibly be misleading to the Fund's members.

21 **3. Overview with Estimated Timeline for Fund Liquidation:**

22 In brief, continued progress has been made since the last Receiver's Report, and
23 the status of the remaining two key assets is as follows:

24 1. The one remaining REO is a commercial property in Los Angeles. It is
25 currently in a sale escrow, the buyer has obtained an SBA loan commitment, and the
26 property is scheduled to close in January, 2012.

27 2. The one remaining loan encumbers a residential property in Moreno
28 Valley, California, and it is in foreclosure. The Receiver has worked very closely

1 with the borrower to refinance the loan and to accept a discounted payoff of the Note,
2 but this has not been successful. Hence, after the sale closes on the REO property in
3 January, 2012, the Receiver proposes to sell the Note on the open market.

4 3. There are two judgments that are for sale, but their actual market value is
5 at or close to zero. The Receiver proposes to hold onto those judgments; in the
6 unlikely event that funds are received from either of them, the Receiver would make
7 another distribution to the Fund's Members at that time.

8 The objective now is to fully liquidate the Fund's assets and to close this case
9 by the end of January, 2012. After the REO property and the last Note have been
10 sold, the Receiver would cash in the \$10,000.00 bond, and then make a final
11 distribution to the Fund's Members and to the professionals. The Receiver would also
12 prepare and file income tax returns for both 2011 and a final tax return for 2012.

13 **4. Estimated Valuation of Distributions to Members:**

14 Based on the distributions of \$404,235.00 made to Members in 2011, all current
15 members have received at least 50% of their original investments (with the overall
16 average at about 62%). To ensure the transparency of the distribution process to all
17 Members at the time the distribution was made, the Receiver posted on the Emvest
18 website a complete list of all Members and the percentage of returns that each had
19 received. The Receiver's final distribution would be made to try to equalize the
20 overall percentage received by each Member, since some Members in the past
21 received emergency distributions in excess of what others have received. The goal is
22 that all Members will end up having received the same (or close to the same)
23 percentage return.

24 As a "best guess" projection, after the liquidation of the Fund's remaining
25 assets, the Receiver estimates that Members will have received about 85% of their
26 original investment back in payments (including both interest and return of equity), of
27 their original investment.

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1 **5. Request for Court Approval for Sequence of Actions to Close This**
2 **Matter:**

3 The Receiver hereby requests the Court's guidance and approval for the
4 following sequence of actions to finally close this matter:

5 1. After the sale of the REO property, sell the last Note at the best offer
6 available.

7 2. Make a final distribution to the Fund's Members with the same
8 methodology used in the past (i.e., to equalize the percentage payout to each investor).

9 3. Have the Court approve the accrued fees for both the Receiver and his
10 attorney, as shown on the Fund's Balance Sheet under Current Liabilities. The total
11 amount of accrued fees is \$226,060.00 as of November 30, 2011. The Receiver and
12 his attorney propose that they will voluntarily accept a discount of 20% from the
13 accrued fee amounts. Thus, more than \$45,000.00 of additional funds would be made
14 available for distribution to the Fund's investors.

15 4. The Receiver will then prepare income tax returns for 2011, and a final
16 return for 2012 for the Fund. The Receiver requests a fixed fee of \$5,000.00 for
17 preparation and filing of these two tax returns.

18 5. After this matter is closed, the Receiver will continue to monitor the two
19 judgments, and would make another distribution to the Fund's investors in the
20 unlikely event that any funds are received.

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23 DATED: December 27, 2012

GREENBERG & BASS LLP

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25 By: _____

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