

1 Robert J. Miller, Esq. (#013334)
2 Bryce A. Suzuki, Esq. (#022721)
3 **BRYAN CAVE LLP**
4 Two North Central Avenue, Suite 2200
5 Phoenix, Arizona 85004-4406
6 Telephone: (602) 364-7000
7 Facsimile: (602) 364-7070
8 Internet: rjmiller@bryancave.com
9 bryce.suzuki@bryancave.com

7 Counsel for Bear Tooth Mountain
8 Holdings, LLP, Pueblo Sereno Mobile
9 Home Park L.L.C., and Morley Rosenfield,
M.D. P.C. Restated Profit Sharing Plan

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:
13 MORTGAGES LTD.,
14
15 Debtor.

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

**RESPONSE TO ML MANAGER'S
MOTION TO APPROVE SALE OF
REAL PROPERTY**

Hearing Date: 12/15/09
Hearing Time: 9:00 a.m.

19 Bear Tooth Mountain Holdings, LLP (“**Bear Tooth**”), Pueblo Sereno Mobile
20 Home Park L.L.C. (“**Pueblo**”), and Morley Rosenfield, M.D. P.C. Restated Profit
21 Sharing Plan (“**MR Plan**”) hereby file this Response to the ML Manager’s Motion To Sell
22 Real Property Free And Clear Of Liens, Claims, Encumbrances, And Interests dated
23 November 23, 2009 (the “**Sale Motion**”). In support of this Response, Bear Tooth,
24 Pueblo, and the MR Plan submit as follows:

25 1. While it is unclear from the Sale Motion, the ML Manager appears to be
26 stating that AZCL Loan LLC and six pass-through investors co-own the approximately
27 35 acres of real property located at 50th Street and Chandler Boulevard, Phoenix,
28

1 Arizona.¹ If the ML Manager’s number is correct, then Bear Tooth, Pueblo, and the MR
2 Plan are three of the six pass-through investors referenced in the Sale Motion.

3 2. Bear Tooth, Pueblo, and the MR Plan obviously disagree with the ML
4 Manager’s characterizations of the actions taken by the Rev Op Group to protect their
5 legitimate interests in this chapter 11 proceeding. They further disagree that section 363
6 of the Bankruptcy Code has any application here, since there no longer is a trustee or
7 debtor in possession, nor is there any property of the estate since a chapter 11 plan was
8 confirmed by the Court in June 2009.

9 3. The Rev Op Group has already made a fairly thorough record of the defects
10 in the ML Manager’s argument that it has “sole discretion” to make decisions for pass-
11 through investors who did not transfer their interests to the applicable Loan LLCs.
12 Without attaching any particular agency agreement, the ML Manager points to section
13 3(b) of an unidentified agency agreement in support of its position that it has the
14 “authority and ability to engage a broker, enter into a sale agreement, and to sell the
15 foreclosed real estate on behalf of the principals.” Sale Motion, p.3.

16 4. As noted above, Bear Tooth, Pueblo, and the MR Plan dispute that the ML
17 Manager has the discretion to make any decisions on their behalf. Bear Tooth has
18 attached a copy of the agency agreement that the ML Manager recently delivered to its
19 counsel. See Exhibit A. Section 3(b) of this agency agreement specifically provides that
20 “Beneficiary may terminate this Agreement after it becomes the owner of the Trust
21 Property by written notice to Agent and payment of the fees, costs and expenses incurred
22 by Agent as provided herein.” The MR Plan agreement contains an identical provision in
23 section 3(b). The ML Manager has not provided Pueblo with an agency agreement that
24 has been signed by a representative of Pueblo. Bear Tooth, Pueblo, and the MR Plan

25 _____
26 ¹ The Sale Motion states that the ML Manager “scheduled a deed of trust sale and
27 foreclosed on the real property earlier in November 2009 . . .”, which presumably means
28 the foreclosure process was complete; and AZCL Loan LLC and the six pass-through
investors are now co-owners of this property.

1 reserve all of their rights on these authority issues including, without limitation, the right
2 to terminate such agreements under section 3(b) of the agency agreement (if applicable).

3 5. The Sale Motion states that, if the ML Manager has to prove it has
4 authority as to any objecting pass-through investors, “then the ML Manager will do so at
5 the hearing.” Sale Motion, p.3. Bear Tooth, Pueblo, and the MR Plan do not believe it is
6 necessary or appropriate to have a judicial determination of this issue at this time. To the
7 extent it is necessary and appropriate to have these issues decided, however, Bear Tooth,
8 Pueblo, and the MR Plan are entitled to due process and object to having these issues
9 addressed at the initial hearing on the Sale Motion.

10 6. Subject to the foregoing reservation of rights, Bear Tooth, Pueblo, and the
11 MR Plan do not oppose the Sale Motion so long as: (i) the Court grants the Sale Motion
12 pursuant to a form of order agreed upon among the parties, which should address the
13 reservation of rights addressed herein; (ii) the ML Manager receives the approval of the
14 majority of investors in the applicable Loan LLC entitled to approve this transaction; and
15 (iii) Bear Tooth, Pueblo, and the MR Plan receive their allocated share of net proceeds
16 directly from escrow upon closing and an accounting regarding same;² and (iv) the Court
17 retains jurisdiction to resolve any disputes that may arise in connection with this specific
18 transaction and the distribution of funds from escrow.

19
20
21
22
23
24
25 ² The ML Manager’s motion references closing costs and commissions that will
26 need to be paid out of the gross proceeds. Presumably, there are also attorneys’ fees and
27 other normal and customary costs. If the ML Manager believes there are any other
28 “deducts” that Bear Tooth, Pueblo, or the MR Plan need to bear in connection with this
transaction, then the ML Manager should provide notice thereof so they may be
considered prior to the hearing on the Sale Motion.

1 DATED this 8th day of December, 2009.

2 BRYAN CAVE LLP

3 By /s/ RJM, #013334

4 Robert J. Miller
5 Bryce A. Suzuki
6 Two North Central Avenue, Suite 2200
7 Phoenix, AZ 85004-4406
8 Counsel for Bear Tooth Mountain
9 Holdings, LLP, Pueblo Sereno Mobile
10 Home Park L.L.C., and Morley Rosenfield,
11 M.D. P.C. Restated Profit Sharing Plan

12 COPY of the foregoing served this
13 8th day of December, 2009:

14 Via Email:

15 Cathy Reece, Esq.
16 Fennemore Craig, P.C.
17 3003 North Central Avenue, Suite 2600
18 Phoenix, Arizona 85012-2913
19 Counsel for the ML Manager, LLC
20 creece@fclaw.com

21 Larry Watson
22 Office of the United States Trustee
23 230 N. First Avenue, Suite 204
24 Phoenix, Arizona 85003
25 larry.watson@usdoj.gov

26 /s/ Sally Erwin

EXHIBIT “A”