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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

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

Hearing Date: 12/16/09  
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 the Morley Rosenfield, M.D. P.C. Restated Profit  
21 Sharing Plan ("MR Plan") hereby file this Supplement to their Response to the  
22 ML Manager's Motion To Sell Real Property Free And Clear Of Liens, Claims,  
23 Encumbrances, And Interests dated November 23, 2009 (the "**Sale Motion**"). In support  
24 of this Supplement, Bear Tooth, Pueblo, and the MR Plan submit as follows:

25 1. Attached hereto as Exhibit A is a true and correct copy on an email from  
26 ML Manager's counsel, where counsel acknowledges that what ML Manager is  
27 attempting to do pursuant to the sale motion is a material change to the plan and  
28 essentially a modification of the plan.



# **EXHIBIT A**

## Jerry Cochran

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**From:** REECE, CATHY [CREECE@FCLAW.com]  
**Sent:** Friday, June 05, 2009 3:47 PM  
**To:** jcochran@cochranlawfirm.com  
**Cc:** McDonough, Edward; ROBINSON, ROBERT  
**Subject:** Exit Financing Proposal

Jerry--

I received your letter concerning a possible modification of the plan to accommodate a 363 sale of the co-tenancy of a fractional interest in a note and deed of trust. I will be glad to talk with you or your New York counsel about the issues you have raised. Obviously we encountered those issues during the bankruptcy and decided not to proceed in this fashion.

I would view such a modification to be a material change and would be concerned that the court would require us to notice the modification and possibly revote. While on the surface it appears to be merely a procedural or retention of jurisdiction issue, it is not as simple as that. This retention and procedure could have an adverse impact on the approximate \$300 million of pass through investors and could rise to the level of being material. Under the Plan, we have 60 days to meet with and get pass through investors to transfer their interests into the Loan LLCs. We have structured the Plan and Loan LLC agreements to give them an incentive to do so. In the balloting about \$127 million of the non-revolving opportunity pass through investors and about \$40 million of the revolving opportunity pass through investors already indicated that they would transfer in. We will be working to get as many as possible of the remaining number.

At this point the plan proponent does not want to do any modifications that would result in any delay, additional hearings, renoticing or revoting.

As I said I am glad to talk through this issue with you further so give me a call at (602) 916-5343.

Cathy

Cathy Reece  
Fennemore Craig, PC  
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Phoenix, Arizona 85012  
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# **EXHIBIT B**



Robert J. Miller  
 Direct: 602-364-7043  
 rjmiller@bryancave.com

December 11, 2009

**VIA E-MAIL AND U.S. MAIL**

Keith Hendricks, Esq.  
 Fennemore Craig, P.C.  
 3003 North Central Avenue, Suite 2600  
 Phoenix, Arizona 85012-2913

**Re: *Mortgages Ltd. ("ML"); Notice of Termination & Demand for Accounting***

Dear Keith:

As you know, this firm represents Bear Tooth Mountain Holdings, LLP ("Bear Tooth"), Pueblo Sereno Mobile Home Park L.L.C. ("Pueblo"), and Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan (the "Morley Plan"), who each own undivided interests in notes at issue in ML's chapter 11 proceeding (collectively, the "Noteholders").

On October 26, 2009, you delivered to my office various contracts and other documents between ML and my entire client group, including the Noteholders. Your client, the ML Manager LLC (the "ML Manager"), contends it has "sole discretion" to make all decisions on behalf of my clients, including the Noteholders, relative to the ML notes. In the documents you had delivered to my office, you included agency agreements for Bear Tooth and the Morley Plan – not Pueblo Sereno.

The Noteholders' position continues to be that the ML Manager has no authority to make decisions on behalf of any of my clients, including the Noteholders. As you know, however, the ML Manager has a sale motion pending before the Court involving the 50<sup>th</sup> Street and Chandler property (the "Property"). The Noteholders have filed a response to the sale motion and a hearing is set for December 15, 2009. While we are hopeful a consensual resolution is possible to this situation, the ML Manager is hereby notified as follows:

The Noteholders hereby notify the ML Manager that, to the extent the ML Manager is assignee of any agency agreement binding on any of the Noteholders (which is disputed by the Noteholders), any and all such agreements are hereby terminated effective immediately. Without limiting the generality of the preceding sentence, the Bear Tooth and the Morley Plan agency agreements you provided to my office

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Keith Hendricks, Esq.  
December 11, 2009  
Page 2

Bryan Cave LLP

contain the following provision: "Beneficiary may terminate this Agreement after it becomes the owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein . . ." To the extent these agreements are binding on Bear Tooth or the Morley Plan, which is a disputed issue, this termination notice is also being delivered pursuant to the foregoing provision. *See* Agency Agreement, §3(b).

Notice is further given that the Noteholders hereby demand that the ML Manager provide them with an accounting for any and all fees, costs, and expenses that the ML Manager contends are due and payable pursuant to section 3(b) of the agency agreement. Notice is further given that, since you have confirmed in writing to me that the ML Manager believes it is entitled to withhold or offset amounts which otherwise would be due to the Noteholders from the sale of the Property under paragraph U of the confirmation order, the Noteholders hereby demand an accounting of all such withholdings or offsets claimed by the ML Manager.

Lastly, as you know, I have already asked you and your client to inform my clients how much money your client is seeking to charge them in connection with the closing of the sale of the Property. Obviously, a key purpose of this letter is to make a formal demand for an accounting. Pending receipt of this information, we do not think it makes sense to go forward with the hearing on Tuesday, so the Noteholders are formally requesting that the initial hearing on the motion be continued until three business days after the ML Manager provides the accountings as requested herein. Please advise.

Sincerely,



Robert J. Miller  
FOR THE FIRM

RJM:se

# **EXHIBIT C**



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

5 Attorneys for ML Manager LLC

6  
7 IN THE UNITED STATES BANKRUPTCY COURT  
8 FOR THE DISTRICT OF ARIZONA

9 In re  
10 MORTGAGES LTD.,  
11 Debtor.

Chapter 11

Case No. 2:08-bk-07465-RJH

**ORDER APPROVING MOTION TO SELL  
REAL PROPERTY FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES, AND  
INTERESTS**

**Real Property located at 50<sup>th</sup> Street and  
Chandler Blvd., Phoenix, AZ**

**Hearing Date: December 16, 2009  
Hearing Time: 9:00 a.m.**

16 ML Manager LLC (“ML Manager”) filed a Motion (“Motion”) (Docket No. 2444)  
17 requesting that the Court enter an order authorizing ML Manager as the manager for  
18 AZCL Loan LLC and alleged agent for 6 non-contributing pass-through investors to sell  
19 the 35 acres of real property located at 50<sup>th</sup> Street and Chandler Blvd., Phoenix, Arizona  
20 (the “Property”) to Medical Investment Group, LLC for the price and on the terms set  
21 forth in the Agreement of Sale and Purchase and Escrow Instructions (“Sale Agreement”)  
22 which is attached to the Motion as Exhibit A. Among other things, the Sale Agreement  
23 provides for the purchase of the 35 acres for approximately \$9,637,650.00 by Medical  
24 Investment Group, LLC (“Purchaser”). A notice to creditors, interested parties and the 6  
25 non-contributing pass-through investors of the Motion and the hearing date was served. A  
26 response (Docket No. 2498) was filed by Bear Tooth Mountain Holdings, LLP, Pueblo

1 Sereno Mobile Home Park L.L.C., and Morley Rosenfield, M.D. P.C. Restated Profit  
2 Sharing Plan (collectively, the “Rev Op Investors”). The ML Manager and the Rev Op  
3 Investors have agreed upon this form of Order, which has resolved (for the time being) the  
4 concerns of the Rev Op Investors to the Motion. No other party filed a response or  
5 objection. The hearing was held on the Motion on December 16, 2009 at 9:00 a.m. in  
6 Phoenix.

7 Upon consideration of the Motion, the Court hereby finds as follows:

- 8 (a) The Motion and the Court’s hearing thereon was duly and properly noticed,  
9 and the Court has jurisdiction over the issues presented in the Motion;
- 10 (b) The purchase price offered constitutes fair consideration for the Property;
- 11 (c) The Purchaser is a good faith purchaser;
- 12 (d) The investors in the AZCL Loan LLC and the applicable MP Funds have  
13 agreed by the applicable dollar vote to the sale terms;
- 14 (e) The ML Manager LLC is authorized to proceed with this sale pursuant to  
15 the terms and provisions of the Sale Agreement and this Order; and
- 16 (f) The sale is supported by sound business justification, so that the ML  
17 Manager shall be authorized to sell the Property in accordance with the terms and  
18 provisions of the Sale Agreement.

19 IT IS THEREFORE ORDERED THAT:

- 20 (1) The Motion is granted to the extent set forth in this Order.
- 21 (2) ML Manager is authorized to enter into the Sale Agreement and to  
22 consummate the sale, and is authorized to sell the Property pursuant to the terms of the  
23 Sale Agreement. ML Manager is authorized to execute any and all documents needed to  
24 consummate the sale of the Property.
- 25 (3) Effective as of the closing, the sale and transfer of the Property to the  
26 Purchaser shall be free and clear of all liens, claims, encumbrances and interests with such

1 liens claims, encumbrances and interests to attach to the gross sale proceeds. Without  
2 limiting the generality of the preceding sentence, effective as of the closing, AZCL Loan  
3 LLC, the Rev Op Investors and the 3 other pass-through investors who presently have an  
4 undivided ownership interest in the Property shall have an undivided ownership interest in  
5 the gross sale proceeds from the sale of the Property.

6 (4) The Purchaser is a good faith purchaser for fair consideration of the  
7 Property.

8 (5) ML Manager is authorized to pay out of the sale proceeds at closing all  
9 direct costs of sale, including real property taxes, assessments, broker's fees, title  
10 insurance or other closing costs.

11 (5) By no later than two weeks prior to the closing of the sale of the Property,  
12 ML Manager will file with the Court and provide the Rev Op Investors and other pass-  
13 through investors with an accounting of how ML Manager believes the net sale proceeds  
14 (i.e., gross sales proceeds less direct costs of sale) should be distributed upon the closing  
15 of the sale of the Property.

16 (6) If the Rev Op Investors agree that ML Manager's accounting is correct, then  
17 the Rev Op Investors shall so notify ML Manager in writing and ML Manager shall be  
18 authorized to disburse the net sale proceeds in accordance with the accounting filed with  
19 the Court.

20 (7) If the Rev Op Investors do not agree that ML Manager's accounting is  
21 correct, then the Rev Op Investors shall so notify ML Manager and the Court will conduct  
22 a hearing upon motion by either the Rev Op Investors or ML Manager to determine how  
23 the net sale proceeds should be distributed by ML Manager.

24 (8) The Court reserves jurisdiction to resolve any and all disputes that may arise  
25 in connection with this specific transaction and the distribution of net proceeds from this  
26 transaction.

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(9) This Order sets forth an agreement between ML Manager and the Rev Op Investors with respect to the matters addressed herein, and all other disputes, arguments, claims, and defenses between the parties are reserved to the extent not specifically resolved herein. Without limiting the generality of the preceding sentence, the Rev Op Investors dispute that the ML Manager has the authority to enter into any kind of transactions without the prior, express written consent of the Rev Op Investors, and the parties reserve all of their rights on this authority issue.

DATED AND ORDERED AS STATED ABOVE.