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

8 In re
9 MORTGAGES LTD.,
10 Debtor.

Chapter 11

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

**REPLY IN SUPPORT OF MOTION TO SELL
REAL PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS**

**Real Property located at 50th Street and
Chandler Blvd., Phoenix, AZ**

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

16 ML Manager LLC (“ML Manager”) hereby files its Reply in support of its Motion
17 for an order authorizing ML Manager as the manager for AZCL Loan LLC and the agent
18 for certain pass-through investors to sell the 35 acres of real property located at 50th Street
19 and Chandler Blvd., Phoenix, Arizona to Medical Investment Group, LLC for the price
20 and on the terms set forth in the Agreement of Sale and Purchase and Escrow Instructions
21 (“Sale Agreement”) which is attached to the Motion as Exhibit A.

22 In its “Response to ML Manager’s Motion to Approve Sale of Real Property” the
23 Objectors indicated that they did not oppose the Sale Motion as long as 4 items could be
24 resolved. First, the Objectors indicated there would need to be an acceptable form of
25 order that will reserve their rights. ML Manager sent to the Objectors’ counsel a proposed
26 form of order with a reservation of rights on Friday and has been working through the
27 language with the Objectors’ counsel for the last two days. The most recent form of order
28 from ML Manager is attached as Exhibit 1. There are several paragraphs concerning the

1 reservation of rights on other deals for both sides and language for the finality of this sale
2 and closing for the buyer and title company. This form of order has been sent to the title
3 company and to the buyer's counsel for their review as well.

4 Second, the Objectors indicated that ML Manager had to obtain approval from the
5 investors in the Loan LLC. Why this would be a requirement of the Objectors who are not
6 in the Loan LLC is a mystery. Nonetheless, it is a requirement of ML Manager and the
7 Purchaser. ML Manager did conduct the vote of the investors in the AZCL Loan LLC and
8 the investors in the 8 MP Funds that are in the AZCL Loan LLC. **The vote and**
9 **acceptance were overwhelming.** This is the first vote taken of this magnitude with the
10 MP Funds and a Loan LLC. ML Manager set up a Zoomerang survey to conduct the vote
11 electronically and ML Manager mailed out approximately 90 ballots as well. ML
12 Manager conducted the vote over a 2 week period and tallied the votes on Monday. There
13 were 949 votes reflecting \$10,330,650.81 cast to accept the proposed Sale Agreement and
14 only 38 votes reflecting \$368,172.79 cast to reject the proposed Sale Agreement. The
15 Operating Agreement for the AZCL Loan LLC requires a majority in dollars of those
16 voting to accept the proposed Sale Agreement. The vote reflects that, **of the dollars**
17 **which were voted, 96.5% voted** in favor of this Sale Agreement. Also impressive is that
18 \$10,698,822 dollars voted, out of an eligible \$12,722,450, which is a vote by 84% of the
19 investors' dollars in the loan. That reflects the same high level of participation and
20 involvement as ML Manager had at the Plan Confirmation. Also noteworthy is that of the
21 6 non-contributing pass-through investors who are not in the AZCL Loan LLC, 3 did not
22 object at all to the proposed Sale Agreement, leaving 3 that did object. However, those 3
23 did not object to the sale, but objected to the process for distributions and reserving their
24 rights with regard to other sales.

25 Third, the Objectors indicated that the Objectors would need to "receive their
26 allocated share of net proceeds directly from escrow upon closing and an accounting
27 regarding same." As ML Manager stated in the Motion, ML Manager proposes to pay the
28 closing costs and commissions as set forth in the Sale Agreement at the closing out of the

1 gross sale proceeds. However, since the closing is possibly 4 to 6 months away, ML
2 Manager did not seek an Order as a part of this Motion to distribute the sale proceeds or
3 determine the amount to be paid to the pass through investors as their fair share of the
4 expenses, including exit financing. In the proposed Order which is attached, ML Manager
5 proposes to provide a schedule of proposed distributions prior to the closing and to give
6 the Objectors and other non-contributing pass-through investors the opportunity to review
7 the schedule and to object. It appears that the Objectors continue to assert that they do not
8 have to pay their fair share of the expenses, including exit financing. As a result, the Order
9 proposes that once identified and provided to the Objectors they could then decide based
10 on the actual dollars involved if they are going to continue to object. If they do continue to
11 object, then the disputed proceeds could be held in escrow pending further Court Order.
12 Undisputed amounts could be paid and the sale would still close and title would be
13 delivered. The mechanics of such a procedure are set forth in paragraphs 6 through 8. The
14 Court would retain jurisdiction over this dispute and motion concerning the disputed
15 amounts would be filed and a hearing would be set to resolve it. This is a fair resolution
16 and will have the parties deal with this issue only if the sale actually closes and also only
17 after actual numbers are used to determine their “fair share.”

18 The fourth item requires the Court to retain jurisdiction. The proposed Order so
19 provides in paragraph 9.

20 These 4 items should resolve all the concerns expressed by the Objectors. ML
21 Manager requests that the Court approve the Sale and Motion and enter the Order as
22 proposed by ML Manager.

23 As for the other arguments contained in the Objectors’ Response, ML Manager
24 does not agree with the arguments made or the documents used to support their positions
25 for these 3 Objectors and asserts that it is authorized to do this sale. ML Manager also
26 contends that the 3 Objectors will have to pay their fair share however it is too early to
27 determine what that amount is. ML Manager contends that this Court does and can enter
28 the relief requested. ML Manager cited several grounds in its Motion for the Court to

1 approve the transaction. Section 105 of the Bankruptcy Code allows the Court to enter
2 “any order, process or judgment that is necessary or appropriate to carry out the
3 provisions of this title.” Due to the confusion and disruption caused by the Motion for
4 Clarification filed by the Rev Op Group and their subsequent appeal, and due to the
5 threats made by the Rev Op Group counsel, ML Manager believes that it is prudent and
6 necessary to seek court approval of the sale. An order approving the sale and authorizing
7 the sale by ML Manager of 100% of the interest in the real property will insure a smooth
8 closing and will aid in the implementation of the Investors Committee’s Plan.

9 ML Manager cited Section 363 of Bankruptcy Code as additional support for a
10 sale. The email attached to Objectors Supplemental Response is not applicable or relevant
11 to this discussion. One of the proposed exit lenders that the OIC was negotiating with
12 prior to the effective date and prior to the consummation of the exit financing had wanted
13 to have the Plan modified and the 363 mechanism inserted into the Plan and the exit loan
14 agreement to supplement their foreclosure rights as a lender. This was not acceptable to
15 the OIC and as stated would probably have been considered a material modification. That
16 certainly is not what is being done here. Instead, ML Manager on a discreet deal with
17 notice to the 6 investors impacted is asking the Court, after notice and hearing, to allow
18 the sale of the Property. There is no foreclosure of the investors’ interests in the loan but
19 rather an orderly sale of the Property, as expressly provided in the Agency Agreements
20 that control, to maximize the value to all the investors consistent with the goals and
21 mandate of the Plan. To the extent Section 363 might not be applicable then there remain
22 other grounds upon which to proceed.

23 In addition, the documents themselves allow the agent to proceed. If the Stipulated
24 Order is entered ML Manager will not need to address this issue at this time. ML Manager
25 reserves any and all rights to pursue and make these arguments and does not waive any
26 such arguments. Under Section 3(b) of the Agency Agreement, ML Manager as the agent
27 for the Pass-Through Investors has the authority and ability to engage a broker, enter into
28 a sale agreement and to sell the foreclosed real estate on behalf of the principals. ML

1 Manager asserts that the 3 Objectors are subject to the Subscription Agreement and
2 Agency Agreement. The Objectors have now attempted to terminate their “agency” with
3 ML Manager as evidenced by the letter attached by Objectors to their Supplemental
4 Response. ML Manager disputes their ability to revoke the irrevocable agency and are in
5 the process of sending a reply letter to the Objectors. Rather than air this with the Court
6 and public, ML Managers reserves the right to pursue this argument should it need to be
7 pursued at a future hearing on this matter.

8 WHEREFORE, ML Manager LLC requests that the Court enter an order
9 authorizing and approving the sale as set forth in the Motion and in the proposed Order,
10 and for such other and further relief as is just and proper under the circumstances.

11 DATED: December 15, 2009

FENNEMORE CRAIG, P.C.

12 By /s/ Cathy L. Reece
13 Cathy L. Reece
Attorneys for ML Manager LLC

14 COPY of the foregoing emailed
15 to the parties on the Service List
and on the following parties:

16 Robert J. Miller, Esq.
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20 /s/ Gidget Kelsey-Bacon

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EXHIBIT

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**ORDER APPROVING MOTION TO SELL
REAL PROPERTY FREE AND CLEAR OF
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INTERESTS**

**Real Property located at 50th Street and
Chandler Blvd., Phoenix, AZ**

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

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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 agent for 6 non-contributing pass-through investors to sell the 35
19 acres of real property located at 50th Street and Chandler Blvd., Phoenix, Arizona (the
20 "Property") to Medical Investment Group, LLC for the price and on the terms set forth in
21 the Agreement of Sale and Purchase and Escrow Instructions ("Sale Agreement") which is
22 attached to the Motion as Exhibit A. Among other things, the Sale Agreement provides for
23 the purchase of the 35 acres for approximately \$9,637,650.00 by Medical Investment
24 Group, LLC ("Purchaser"). A notice to creditors, interested parties and the 6 non-
25 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 stipulated upon this form of Order, which has resolved the concerns of the
4 Rev Op Investors to the Motion for the purpose of this sale and upon the terms and
5 conditions set forth in this Order. No other party filed a response or objection. The
6 hearing was held on the Motion on December 16, 2009 at 9:00 a.m. in Phoenix.

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

8 (a) The Motion and the Court's hearing thereon were duly and properly
9 noticed, 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) On behalf of AZCL Loan LLC, Bear Tooth Mountain Holdings, LLP,
22 Pueblo Sereno Mobile Home Park L.L.C., Morley Rosenfield, M.D. P.C. Restated Profit
23 Sharing Plan, and the other non-contributing pass-through investors, ML Manager is
24 authorized to enter into the Sale Agreement and to consummate the sale, to sell the
25 Property pursuant to the terms of the Sale Agreement and to execute any and all
26 documents needed to consummate the sale of the Property.

1 (3) Effective as of the closing, the sale and transfer of the Property to the
2 Purchaser shall be free and clear of all liens, claims, encumbrances and interests with such
3 liens, claims, encumbrances and interests to attach to the gross sale proceeds. Without
4 limiting the generality of the preceding sentence, effective as of the closing, AZCL Loan
5 LLC, the Rev Op Investors and the other non-contributing pass-through investors who
6 presently have an interest in the Property shall have a percentage interest in the gross sale
7 proceeds from the sale of the Property equal to their existing percentage interest in the
8 Property.

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

11 (5) ML Manager is authorized to pay out of the sale proceeds at closing all costs
12 of sale incurred under the Sale Agreement and escrow, including real property taxes,
13 assessments, broker's fees, title insurance or other closing costs.

14 (6) By no later than two weeks prior to the closing of the sale of the Property,
15 ML Manager will provide the Rev Op Investors and other non-contributing pass-through
16 investors with a written schedule of how ML Manager believes the net sale proceeds (i.e.,
17 gross sales proceeds less costs of sale provided for in paragraph 5 herein) should be
18 distributed after the closing of the sale of the Property. The Rev Op Investors and the
19 other non-contributing pass-through investors shall have five (5) business days after
20 receipt of the written schedule to notify ML Manager of their objection.

21 (7) If the Rev Op Investors agree that ML Manager's schedule of proposed
22 distributions is correct, then the Rev Op Investors shall so notify ML Manager in writing
23 and ML Manager shall be authorized to disburse the net sale proceeds after the closing of
24 the sale.

25 (8) If the Rev Op Investors do not agree that ML Manager's schedule of
26 proposed distributions is correct, then the Rev Op Investors shall so notify ML Manager

1 in writing. ML Manager shall close the sale, pay the costs of sale provided for in
2 paragraph 5 and pay undisputed proposed distributions, however the disputed portions of
3 the proposed distribution of net sale proceeds will be held in escrow pending further order
4 of this Court. The Court will conduct a hearing upon motion by either the Rev Op
5 Investors or ML Manager to determine how the net sale proceeds should be distributed by
6 ML Manager.

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

10 (10) This Order sets forth the stipulation between ML Manager and the Rev Op
11 Investors with respect to this sale and the matters addressed herein. All other disputes,
12 arguments, claims, and defenses between the parties are reserved to the extent not
13 specifically resolved herein. Without limiting the generality of the preceding sentence,
14 the Rev Op Investors dispute that the ML Manager has the authority to enter into any kind
15 of transactions without the prior, express written consent of the Rev Op Investors, and the
16 parties reserve all of their rights on this authority issue. Further ML Manager contends
17 that the non-contributing pass-through investors are subject to the subscription and agency
18 agreements, the Confirmation Order (including paragraph U) and all other orders of this
19 Court. Notwithstanding this reservation by the parties, the authority to and closing of this
20 sale shall not be impacted by the appeal which is pending by the Rev Op Investors
21 (Docket No. 2401) and shall not be impacted by the alleged termination of agency
22 agreement by the Rev Op Investors.

23 DATED AND ORDERED AS STATED ABOVE.

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