

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](mailto:rjmiller@bryancave.com)  
9 [bryce.suzuki@bryancave.com](mailto:bryce.suzuki@bryancave.com)

7 Counsel for Bear Tooth Mountain  
8 Holdings, LLP, Queen Creek XVIII,  
9 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: 8/25/10  
Hearing Time: 10:30 a.m.

16  
17  
18  
19 Bear Tooth Mountain Holdings, LLP ("**Bear Tooth**"), Queen Creek XVIII, L.L.C.  
20 ("**Queen Creek**"), and Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan ("**MR**  
21 **Plan**") hereby file this Response to the ML Manager's *Motion To Sell Real Property*  
22 *Free And Clear Of Liens, Claims, Encumbrances, And Interests* dated July 29, 2010 (the  
23 "**Sale Motion**"). In support of this Response, Bear Tooth, Queen Creek, and the MR  
24 Plan submit as follows:

25 1. Pursuant to the Sale Motion, the ML Manager states that CITLO Loan,  
26 LLC and four pass-through investors co-own the property at issue in the Sale Motion (the  
27 "**Property**"). Bear Tooth, Queen Creek, and the MR Plan are three of the four pass-  
28 through investors referenced in the Sale Motion.

1           2.       Bear Tooth, Queen Creek, and the MR Plan object to the Sale Motion on  
2 the basis that a “sale free and clear” mechanism is not provided for in the plan confirmed  
3 by the Court (the “**Plan**”). Section 363 of the Bankruptcy Code and its “free and clear”  
4 mechanism have no application here. There is no longer a debtor in possession nor is  
5 there any property of the estate since a chapter 11 plan was confirmed by the Court in  
6 June 2009. Assuming, *arguendo*, section 363 was applicable here, the ML Manager has  
7 not made any effort to make a showing under subsections 363(f) or (h) of the Bankruptcy  
8 Code.

9           3.       ML Manager claims the Plan provides for retained jurisdiction under  
10 section 105 of the Bankruptcy Code and/or under sections 9.1(e), (g), and (h) of the Plan.  
11 These sections of the Plan do not provide a basis for retained jurisdiction with respect to  
12 the ML Manager’s requests for relief under the Sale Motion.

13           4.       It is black-letter law that post-confirmation jurisdiction is necessarily more  
14 limited than pre-confirmation jurisdiction. In determining whether a bankruptcy court  
15 has retained post-confirmation jurisdiction, courts look to whether: (i) the matter has a  
16 close nexus to the bankruptcy plan or proceeding; and (ii) the bankruptcy plan provides  
17 for the retention of jurisdiction over the particular matter. *In re Johns-Manville Corp.*, 7  
18 F.3d 32, 34 (2d Cir. 1993); *CCM Pathfinder Pompano Bay, LLC v. Compass Fin.*  
19 *Partners LLC*, 396 B.R. 602, 605 (Bankr. S.D.N.Y. 2008); *see also In re Pegasus Gold*  
20 *Corp.*, 394 F.3d 1189, 1194 (9<sup>th</sup> Cir. 2005).

21           5.       It is beyond dispute the Plan does not provide for retained jurisdiction with  
22 respect to the matters addressed in the Sale Motion. The ML Manager also does not even  
23 attempt to explain how it satisfies the “close nexus” requirement for post-confirmation  
24 retention of jurisdiction by the Court.

25           6.       The Court will also recall this is at least the second time the ML Manager  
26 has come before the Court with a sale motion. *See Motion to Sell Real Property Free*  
27 *And Clear Of Liens, Claims, Encumbrances, And Interests* dated November 23, 2009.  
28 The agency agreements with the ML Manager alleged to be applicable here specifically

1 provide that “Beneficiary may terminate this Agreement after it becomes the owner of the  
2 Trust Property by written notice to Agent and payment of the fees, costs and expenses  
3 incurred by Agent as provided herein.” *See* Master Agency Agreement, §3(b).  
4 Moreover, the ML Manager has not produced an agency agreement that has been signed  
5 by a representative of Queen Creek. Bear Tooth, Queen Creek, and the MR Plan reserve  
6 all of their rights on these authority issues including, without limitation, the right to  
7 terminate such agreements under section 3(b) of the agency agreement (if applicable).

8 7. On page 5 of the Sale Motion, the ML Manager makes a reference to  
9 perhaps seeking an order providing for the distribution of proceeds at a later date but then  
10 states the sale order, a proposed copy of which is not attached to the Sale Motion, “will  
11 seek” to provide for certain distributions. As the Court will recall, the ML Manager is  
12 under a court order to provide an accounting. *See* Minute Entry dated June 30, 2010.  
13 Under these circumstances, assuming the Court grants the Sale Motion, Bear Tooth,  
14 Queen Creek, and the MR Plan believe it is inappropriate, and therefore object, to having  
15 any funds (other than direct closing costs) paid out of gross sale proceeds absent a proper  
16 accounting, including expense allocations, and an opportunity to be heard before  
17 additional amounts are disbursed by the ML Manager.<sup>1</sup>

18 8. The ML Manager’s Sale Motion basically can be read to say it is going to  
19 distribute money to the investors who agreed to transfer their interests to a Loan LLC  
20 (CITLO Loan LLC), but that it will withhold making any distributions to non-transferring  
21 investors. Having waited more than a year for any kind of recovery from these cases, in  
22 the event the Court grants the Sale Motion, equity should result in the Court entering an  
23  
24

---

25 <sup>1</sup> This is particularly important since the ML Manager references the fact that it  
26 wants to pay the exit financier funds after the closing. Neither Bear Tooth, Queen Creek  
27 nor ML Plan are obligors on the debts to the exit financier and their interests have not  
28 been encumbered by the exit financier.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

order that requires an accounting and distributions to be made within the same general timeframe to both kinds of investors.

9. ML Manager suggests the Sale Order will order the non-transferring investors to execute documents effectuating the Court's order and sale. The ML Manager cites no authority for this request for relief, which is obviously objectionable to Bear Tooth, Queen Creek, and the MR Plan.

10. ML Manager requests the waiver of the stay provided in Bankruptcy Rule 6004(h). Bear Tooth, Queen Creek, and the MR Plan object to this request because it might have an adverse impact on their ability to seek appellate review of any relief that may be granted by the Court pursuant to the Sale Motion.

WHEREFORE, Bear Tooth, Queen Creek, and the MR Plan request that the Court enter an order sustaining the objections set forth above.

DATED this 18<sup>th</sup> day of August, 2010.

BRYAN CAVE LLP

By /s/ BAS, #022721

Robert J. Miller  
Bryce A. Suzuki  
Two North Central Avenue, Suite 2200  
Phoenix, AZ 85004-4406  
Counsel for Bear Tooth Mountain  
Holdings, LLP, Queen Greet XVIII,  
L.L.C., and Morley Rosenfield, M.D. P.C.  
Restated Profit Sharing Plan

