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7 Counsel for the Rev Op Investors

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

11 MORTGAGES LTD.,

12 Debtor.

In Proceedings Under Chapter 11

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

13 **OBJECTION TO ML MANAGER'S**
14 **MOTION TO APPROVE SALE OF REAL**
15 **PROPERTY (ROOSEVELT GATEWAY)**

Hearing Date: 12/6/10

Hearing Time: 10:00 a.m.

16 BMM Roosevelt Gateway, LLC as successor in interest to Brett McFadden; WLH
17 Roosevelt Gateway, LLC as successor in interest to William L. Hawkins Family LLP; and QC
18 Roosevelt Gateway, LLC and QC Roosevelt Gateway II, LLC as successors in interest to Queen
19 Creek XVIII, L.L.C. (collectively, the "Rev Op Investors") hereby file this Objection to the ML
20 Manager's *Motion To Sell Real Property Free And Clear Of Liens, Claims, Encumbrances, And*
21 *Interests* dated November 9, 2010 (the "Sale Motion"). In support of this Objection, the Rev Op
22 Investors hereby submit as follows:

23 1. According to the Sale Motion, RG I Loan LLC, RG II Loan LLC, and various
24 pass-through investors co-own the property at issue (the "Property"). The Rev Op Investors are
25 among the pass-through investors referenced in the Sale Motion.

26 2. The Rev Op Investors collectively have interests of 15.892% in Loan No. 856605
27 ("RG I Loan") and 8.197% in Loan No. 859205 ("RG II Loan").

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1 3. According to the Motion, the outstanding principal amounts on the two loans total
2 \$13.1 million in the aggregate – \$7 million on the RG I Loan and \$6.1 million on the RGI II
3 Loan. The loans were secured by the Property, which, according to the Sale Motion, consists of
4 21 individual parcels comprising approximately 2.89 acres in the aggregate, located at 3rd Street
5 and Roosevelt in Phoenix, Arizona.

6 4. ML Manager states that it has foreclosed on the Property and improvements
7 thereon at trustee sales. Accordingly, the Rev Op Investors are co-owners of the Property as
8 tenants in common with the relevant Loan LLCs and other non-transferring pass-through
9 investors.

10 5. The proposed sale price for the Property is \$3,085,138, with 67% of the sale price
11 to be allocated to the RG I Loan and 33% to the RG II Loan. Such sale price will likely result in
12 a net recovery for investors of less than 20% of their original investment dollars. The return to
13 the Rev Op Investors, who have a total investment in the two loans of \$1,612,500, will be less
14 than \$270,236, representing a loss of at least \$1,342,264.

15 6. The Rev Op Investors object to the Sale Motion on the basis that: (i) a “sale free
16 and clear” mechanism is not provided for in the plan confirmed by the Court (the “Plan”) and no
17 applicable non-bankruptcy law allows for such mechanism; (ii) the Court lacks jurisdiction to
18 approve such sale; and (iii) the sale is neither consistent with ML Manager’s fiduciary duties nor
19 a proper exercise of ML Manager’s business judgment.

20 7. First, ML Manager has failed to cite any provision of the Plan or any applicable
21 non-bankruptcy law that provides for a “free and clear” sale as proposed in the Sale Motion.
22 Assuming, *arguendo*, that section 363 were applicable here, the ML Manager has not made any
23 effort to make a showing under subsections 363(f) or (h) of the Bankruptcy Code.

24 8. Second, ML Manager claims the Plan provides for retained jurisdiction under
25 section 105 of the Bankruptcy Code and/or under sections 9.1(e), (g), and (h) of the Plan. These
26 sections of the Plan do not provide a basis for retained jurisdiction with respect to ML Manager’s
27 request for relief under the Sale Motion. *See In re Johns-Manville Corp.*, 7 F.3d 32, 34 (2d Cir.
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1 1993); *CCM Pathfinder Pompano Bay, LLC v. Compass Fin. Partners LLC*, 396 B.R. 602, 605
2 (Bankr. S.D.N.Y. 2008); *see also In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005).

3 9. Although the Court has ruled with respect to other sale motions that a close nexus
4 exists between such sales and the Debtor's bankruptcy case, the Rev Op Investors continue to
5 dispute such conclusion, have appealed relevant sale orders, and reserve all applicable rights
6 with respect to such matters. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
7 (1982) ("The filing of a notice of appeal . . . confers jurisdiction on the court of appeals and
8 divests the district court of its control over those aspects of the case involved in the appeal."); *In*
9 *re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000); *In re Mirzai*, 236 B.R. 8, 10 (B.A.P. 9th Cir.
10 1999); *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731,
11 734-35 (9th Cir. 1982) (a court "may not finally adjudicate substantial rights directly involved in
12 the appeal").

13 10. The Rev Op Investors also reserve all of their rights on authority issues. ML
14 Manager has no interest in the Property and therefore its asserted agency power to bind the Rev
15 Op Investors is revocable and has been revoked. ML Manager lacks authority to sell the Rev Op
16 Investors' valuable ownership rights as tenants in common of the Property.

17 11. Finally, the Rev Op Investors submit that the proposed sale is not consistent with
18 ML Manager's fiduciary duties and is not even a proper exercise of business judgment.

19 12. Investors face a loss in the aggregate of 76.45% or \$10,015,000 of their original
20 investment. The gross sales price of approximately \$3 million fails to adequately compensate
21 investors owed \$13.1 million and is not fair market value for the Property.

22 13. The Property is *not* located in an area of flat development without future sales
23 opportunities. This Property is adjacent to a host of positive factors which undoubtedly will
24 positively influence the purchase price of the Property for the benefit of the investors in the near
25 future.

26 14. The Rev Op Investors made the decision to invest in the Roosevelt loans based on
27 significant research regarding the Property. At least two neighboring developments influenced
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1 their investment decision and are expected to have positive impacts on the value Property: (i) the
2 Phoenix Biomedical Campus; and (ii) the Arizona State University Capital Center Campus.

3 15. In addition, the Property is ideally located within walking distance of the Phoenix
4 Convention Center, federal and state government, Chase Field, U.S. Airways Arena, and
5 employment opportunities. Light rail access and the Cityscape development, which will include
6 restaurants, retailers, and entertainment, also positively impact the Property.

7 16. There have been literally billions spent on this area to ensure its eventual success,
8 thereby ensuring the value of the Property. The proposed sales price fails to capture such value.

9 17. The facts as presented by the City of Phoenix indicate that, at build out, the
10 Phoenix Biomedical Campus will exceed 6.5 million square feet. Most significant to the subject
11 Property is the planned location of the clinical and ambulatory uses within the plan which are
12 adjacent to the Property. An aerial image of the Property in relation to the Phoenix Biomedical
13 Campus is attached hereto as Exhibit "A."

14 18. The impact of Arizona State University Capital Center Campus also should be
15 considered. In a study entitled the *Economic and Fiscal Impact of the Arizona State University*
16 *Capital Center Campus*, a true and correct copy of the Executive Summary for which is attached
17 hereto as Exhibit "B," economist and current chairman of the ML Board, Elliott Pollack, details
18 the impact of ASU's downtown location:

19 The study focuses on the economic and fiscal impact of 1) construction of the
20 campus site, 2) university operations once the project is completed, and 3) private
21 sector operations once the project is completed. ***The economic impacts***
22 ***associated with these three distinct project components total nearly \$1.7 Billion***
23 ***in construction related economic output over the 10 year construction phase***
24 ***and nearly \$570 Million in ongoing, annual operations output.*** Approximately
1,300 construction and construction related jobs will be supported annually during
the 10 year construction phase and over 7,700 permanent academic, retail, and
office jobs will be supported annually from on going operations.

25 Exh. B, at i (emphasis in original).

26 19. Moreover, when compared to recent sales of comparable properties, the proposed
27 sale cannot be justified by any standard. The Property consists of approximately 125,888 square
28 feet. Thus, the purchase price is approximately \$24.50 per square foot.

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20. Similar property located at 7th Street and Van Buren, only blocks away from the subject Property, was sold in January 2010 for \$86.31 per square foot. Such a per-square-foot price for the Property would result in a gross increase of \$7,863,376.

21. Similar property located near Arizona State University in Tempe, Arizona was sold in June 2010 for \$72.21 per square foot. Such a per-square-foot price for the Property would result in a gross increase of \$6,129,892.

22. Significantly, the comparable property at 7th and Van Buren has a building height allowance of 158 vertical feet, compared to the subject Property's height allowance of 250 vertical feet. The additional height allowance on the subject Property should translate to greater value and higher per-square-foot price, due to the additional income-generating space that can be built on the Property. Pursuant to the Sale Motion, however, the Property would be sold at a per-square-foot price nearly four times lower than the 7th and Van Buren property.

23. In sum, the Property is one of the premier parcels of collateral in the ML portfolio. Substantial and meaningful development activities surround the Property, and none of this value is captured for the benefit of investors if the Property is sold at the astonishingly low price of \$3 million.

24. ML Manager has failed to establish its compliance with its fiduciary obligations or even reasonable business judgment with respect to the proposed sale. Accordingly, the Sale Motion should be denied.

WHEREFORE, the Rev Op Investors request that the Court enter an order sustaining the objections set forth above and denying the Sale Motion.

1 DATED this 29th day of November, 2010.

2 BRYAN CAVE LLP

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4 By /s/ BAS, #022721
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10 COPY of the foregoing served this
11 29th day of November, 2010:

12 Via Email:

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