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9  
10 IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

11 In re  
12 MORTGAGES LTD.,  
13 Debtor.

Chapter 11

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

**REPLY TO OBJECTION TO MOTION TO  
SELL REAL PROPERTY**

**Real Property located at Crismon Road and  
Germann Road in Mesa, Arizona known as  
Foothills property**

**Hearing Date: October 5, 2011  
Hearing Time: 1:30 p.m.**

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18  
19 ML Manager LLC (“ML Manager”), as the manager for FP IV Loan LLC and the  
20 agent for certain Pass-Through Investors, hereby files this Reply in support of its Motion  
21 to Sell (Docket No. 3313) the real property located at Crismon Road and Germann Road  
22 in Mesa, Arizona (“Property”)<sup>1</sup>. A short Objection (Docket No. 3327) was filed by 3 Rev  
23 Op Investors (“Objection”)<sup>2</sup> wherein they incorporate by reference several pleadings and

24 <sup>1</sup> The signed Sale Agreement was filed with the Court on September 28, 2011 pursuant to  
25 a Notice of Filing Executed Purchase Agreement (Docket No. 3323) and is incorporated  
herein.

26 <sup>2</sup> One of the Objectors, L.L.J. Investments, LLC, is an alleged successor-in-interest to 3  
prior Rev Op Group investors listed in the opening paragraph of the Objection. The

1 the arguments in those pleadings, all of which were previously responded to by ML  
2 Manager and overruled by this Court. It does not appear that there are any new arguments  
3 being raised by the Rev Op Investors. ML Manager requests that the Court overrule the  
4 Objection and grant the Motion. ML Manager also incorporates by reference all of its  
5 replies and responses to the previous arguments raised by the Rev Op Investors, including  
6 but not limited to, that the Court retained jurisdiction to enter an order approving the sale,  
7 that the Court has already ruled on the agent's authority and found the agency to be  
8 enforceable, that the agency is irrevocable and any termination of the agency is null and  
9 void, the decision to sell and to enter into the sale agreement is a valid exercise of the  
10 business judgment of ML Manager consistent with its fiduciary duty, among others.<sup>3</sup>

11 **I. THE RESULTS OF THE LOAN LLC VOTE**

12 The investors in FP IV Loan LLC and all the MP Funds were asked to vote on this  
13 Major Decision. As the Court will recall, the operating agreements for the Loan LLC  
14 requires that Major Decisions (such as selling the property) must be voted on by the  
15 members of the applicable limited liability company and the investors in the MP Funds  
16 and must be approved by a majority in dollars of those who vote. A vote has been  
17 conducted by ML Manager of the members in the Loan LLC and MP Funds. Based on  
18 the voting results, 86.98% of the dollars which were voted in FP IV Loan LLC approved  
19 the sale. ML Manager asserts it is authorized to go forward with the sale on behalf of the  
20 Loan LLC.

21 **II. EXERCISE OF RIGHT TO COMPETE BY THE EXIT FINANCIER**

22 One of the contingencies of the Sale Agreement concerns the Exit Financier. The

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24 assignments to this entity have not been recognized by ML Manager and is improper  
25 under the operative documents. As a result the L.L.J. Investments, LLC lacks standing to  
26 pursue the Objection.

<sup>3</sup> Concerning the 12 prior objections cited, all the objections were overruled by the Court  
and only 3 sales were appealed—University and Ash, ZDC II, and CITLO. All the others  
sales were not appealed.

1 Exit Financier has expressed that it does intend to exercise its right to compete. ML  
2 Manager has received an offer from the Exit Financier. As the Court may remember, a  
3 procedure was set up in the Loan Agreement to allow the right to compete to be exercised.  
4 ML Manager has reviewed the offer and has notified Exit Financier that it has rejected the  
5 offer because it was not acceptable to ML Manager. A written statement specifying the  
6 unacceptable items has been sent to the Exit Financier. ML Manager proposes to include a  
7 provision in the Sale Order that allows ML Manager in its sole discretion to sell to either  
8 the Purchaser on the terms as set forth in the Sale Agreement or as modified by the parties  
9 or to the Exit Financier on terms acceptable to ML Manager. ML Manager will make the  
10 decision in its sole discretion.

11 **III. STERNBERG AGREEMENT**

12 As stated in the Motion, ML Manager has been negotiating with Sternberg on the  
13 terms of an agreement that will facilitate the sale. ML Manager does not have a final  
14 signed agreement with Sternberg yet and so the Sale Order will have to address this  
15 situation and will have to be subject to reaching such a consensual agreement with  
16 Sternberg.

17 **IV. EXERCISE OF VALID BUSINESS JUDGMENT**

18 ML Manager, in the exercise of its business judgment, has decided it is in the best  
19 interest of the investors in the loans to sell the Property at this time for at least \$5.9  
20 million to the Purchaser Hibernia Capital Advisors LLC on the terms set forth in the Sale  
21 Agreement. ML Manager has listed the Property with a nationally known broker and has  
22 adequately exposed the Property to the market. The Purchase Price is fair consideration  
23 for the Property and reflects what a ready willing and able buyer would pay for the  
24 property after exposure to the market place. The Purchaser has posted a Deposit of  
25 \$50,000 and the escrow has been set up at a local title company. The Purchaser has  
26 demonstrated that it has ample funds to purchase the Property. The balance of the

1 Purchase Price will be payable in cash at closing. The sale is anticipated to close in early  
2 November 2011. The Purchaser is a non-related third party with no connections to ML  
3 Manager, the Board members, the investors or the exit financier. ML Manager asserts that  
4 the sale at this time, for this price and to the Purchaser under the terms of the Sale  
5 Agreement and the Motion is in the best interest of the investors and is a valid exercise of  
6 its business judgment consistent with its fiduciary duties and should be approved.

7 Further, ML Manager proposes above that it be allowed in its sole discretion to sell  
8 to the Exit Financier if price and the terms as exercised under the right to compete are  
9 acceptable to ML Manager. Exit Financier is not an investor or part of ML Manager or the  
10 Board. The price and terms if acceptable would have to be more favorable in ML  
11 Manager's sole discretion. Any such sale to Exit Financier would be in the best interest of  
12 all investors and would be a valid exercise of its business judgment which would be  
13 consistent with its fiduciary duties and responsibilities.

14 WHEREFORE, ML Manager LLC requests that the Court enter an order  
15 authorizing and approving the sale as requested by ML Manager and for such other and  
16 further relief as is just and proper under the circumstances.

17 DATED: October 5, 2011

18 FENNEMORE CRAIG, P.C.

19 By /s/ Cathy L. Reece  
20 Cathy L. Reece

21 Attorneys for ML Manager LLC

22 Copy of the foregoing emailed this  
23 5th day of October to:  
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