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

12 In re  
13 MORTGAGES LTD.,  
14 Debtor.

Chapter 11  
Case No. 2:08-bk-07465-RJH

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

**Real Property located at 1<sup>st</sup> Ave and Maryland  
in Phoenix, Arizona known as Residences on  
Maryland**

**Hearing Date: November 1, 2011  
Hearing Time: 3:00 p.m.**

19 ML Manager LLC (“ML Manager”), as the manager for ZDC III Loan LLC and  
20 the agent for certain Pass-Through Investors, hereby files this Reply in support of its  
21 Motion to Sell (Docket No. 3335) the real property located at 1<sup>st</sup> Ave. and Maryland Ave.  
22 in Phoenix, Arizona (“Property”). A short Objection (Docket No. 3343) was filed by 2  
23 Rev Op Investors (“Objection”)<sup>1</sup> wherein they incorporate by reference several pleadings

24  
25 <sup>1</sup> One of the Objectors, L.L.J. Investments, LLC, is an alleged successor-in-interest to 3 prior Rev  
26 Op Group investors listed in the opening paragraph of the Objection. The assignments to this  
entity have not been recognized by ML Manager and are improper under the operative  
documents. As a result the L.L.J. Investments, LLC lacks standing to pursue the Objection.

1 and 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>2</sup>

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

12 The investors in ZDC III Loan LLC and all the MP Funds were asked to vote on  
13 this 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, 92.26% of the dollars which were voted in ZDC III Loan LLC  
19 approved the sale. ML Manager asserts it is authorized to go forward with the sale on  
20 behalf of the Loan LLC.

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

22 One of the contingencies of the Sale Agreement concerns the Exit Financier. The  
23 Exit Financier has indicated it does not intend to exercise its right to compete. This  
24 contingency has been satisfied.

25 <sup>2</sup> Concerning the 13 prior objections cited, all the objections were overruled by the Court and  
26 only 3 sale orders were appealed—University and Ash, ZDC II, and CITLO. All the others sale  
orders were not appealed.

1 **III. COMPLETION OF LEGAL PROCEEDINGS**

2 Another contingency is for ML Manager to complete the legal proceedings on title  
3 to the tracts as set forth in Section 7.7 of the Sale Agreement. That legal proceeding was  
4 completed and an order has been entered by the State Court.

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

6 ML Manager, in the exercise of its business judgment, has decided it is in the best  
7 interest of the investors in the loans to sell the Property at this time for \$2.16 million to  
8 the Purchaser All Saints' Episcopal Church on the terms set forth in the Sale Agreement.  
9 ML Manager has listed the Property with a nationally known broker and has adequately  
10 exposed the Property to the market. The Purchase Price is fair consideration for the  
11 Property and reflects what a ready willing and able buyer would pay for the property after  
12 exposure to the market place. The Purchaser has posted a Deposit of \$50,000 and the  
13 escrow has been set up at a local title company. The Purchaser has demonstrated that it  
14 has ample funds to purchase the Property. The balance of the Purchase Price will be  
15 payable in cash at closing. The sale is anticipated to close early December 2011. The  
16 Purchaser is a non-related third party with no connections to ML Manager, the Board  
17 members, the investors or the exit financier. ML Manager asserts that the sale at this time,  
18 for this price and to the Purchaser under the terms of the Sale Agreement and the Motion  
19 is in the best interest of the investors and is a valid exercise of its business judgment  
20 consistent with its fiduciary duties and should be approved.

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

24 ...

25 ...

26 ...

1 DATED: October 31, 2011

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FENNEMORE CRAIG, P.C.

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

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Copy of the foregoing e-mailed this  
31<sup>st</sup> day of October to:

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/s/ Gidget Kelsey-Bacon

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