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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 5116 N. Dysart Rd.,
Litchfield Park, Arizona**

**Hearing Date: December 19, 2011
Hearing Time: 11:30 a.m.**

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19 ML Manager LLC (“ML Manager”), as the manager for NRDP 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. 3372) real property and improvements located at 5116 N. Dysart Rd.,
22 Litchfield Park, Arizona, as more specifically described in the Sale Agreement
23 (“Property”), to The Southwest Mack Corporation, an Arizona corporation (“Purchaser”)
24 for the price of \$2.3 million (“Purchase Price”) and on the terms set forth in the
25 Agreement of Sale and Purchase (“Sale Agreement”) which is attached as Exhibit A to the
26 Motion or to a back up bidder upon terms as reasonably determined by ML Manager. A

1 short Objection (Docket No. 3380) was filed by 1 Rev Op Investor (“Objection”) wherein
2 he incorporates by reference several pleadings and the arguments in those pleadings, all of
3 which were previously responded to by ML Manager and overruled by this Court. It does
4 not appear that there are any new arguments being raised by the Rev Op Investor. ML
5 Manager requests that the Court overrule the Objection and grant the Motion. ML
6 Manager incorporates by reference all of its replies and responses to the previous
7 arguments raised by the Rev Op Investor, including but not limited to, that the Court
8 retained jurisdiction to enter an order approving the sale, that the Court has already ruled
9 on the agent’s authority and found the agency to be enforceable, that the agency is
10 irrevocable and any termination of the agency is null and void, that the decision to sell and
11 to enter into the sale agreement is a valid exercise of the business judgment of ML
12 Manager consistent with its fiduciary duty, among other arguments.

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

14 The investors in NRDP Loan LLC and all the MP Funds who own 73.872% of the
15 interest in the Property were asked to vote on this Major Decision. As the Court will
16 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
17 selling the property) must be voted on by the members of the applicable limited liability
18 company and the investors in the MP Funds and must be approved by a majority in dollars
19 of those who vote. A vote has been conducted by ML Manager of the members in the
20 NRDP Loan LLC and MP Funds. Based on the voting results, 83.80% of the dollars
21 which were voted approved the sale. ML Manager asserts it is authorized to go forward
22 with the sale on behalf of the Loan LLC.

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

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

1 **III. POSSIBLE BACK UP BID**

2 A third party has contacted ML Manager in the last 10 days and indicated that they
3 are interested in making a bid and that they would be willing to be a back up bid in the
4 event that the Purchaser does not close. ML Manager hopes to have the back up bid
5 placed on the record at the hearing and to have the Sale Order approve a back up bid and
6 procedure. Counsel for the back up bidder has indicated that he will be present at the
7 hearing.

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

9 ML Manager, in the exercise of its business judgment, has decided it is in the best
10 interest of the investors in the loan to sell the Property at this time for \$2.3 million to the
11 Purchaser on the terms set forth in the Sale Agreement and to allow a back up bid. ML
12 Manager has had the Property exposed to the market for a significant period of time and
13 listed the Property with a nationally known broker who has actively marketed the Property
14 for sale. The Property has improvements on the site. The Property is being sold "As Is,
15 Where Is, With All Faults". The real property taxes were not paid by the Borrower prior to
16 foreclosure and will be paid from the sale proceeds. The Purchaser has posted a Deposit of
17 \$50,000 and has opened escrow at Thomas Title & Escrow. The Purchaser has
18 demonstrated that it has ample funds to purchase the Property. The balance of the
19 Purchase Price will be payable at close in cash. The sale is anticipated to close in January
20 2012. The Purchaser is a non-related third party with no connections to ML Manager, the
21 Board members, the investors or the exit financier. The Purchaser still has additional time
22 to complete its due diligence but has already spent significant time on that process and
23 should be able to timely complete that process. NRDP Loan LLC who owns 73.872% of
24 the interests in the Property approved the sale and 11 of the 12 Pass-Through Investors
25 with the remaining interests in the Property do not object to the sale. ML Manager asserts
26 that the sale at this time, for this price and to the Purchaser under the terms of the Sale

1 Agreement and Motion is in the best interest of the investors and is a valid exercise of its
2 business judgment consistent with its fiduciary duties and should be approved.

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

6 DATED: December 16, 2011

7 FENNEMORE CRAIG, P.C.

8 By /s/ Cathy L. Reece
9 Cathy L. Reece

10 Attorneys for ML Manager LLC

11 Copy of the foregoing sent this
12 16th day of December, 2011 by email to:

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