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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

**OBJECTION TO ORDER LODGED BY
ML MANAGER LLC**

Hearing Date: July 16, 2012

Hearing Time: 2:30 p.m

16 AJ Chandler 25 Acres, L.L.C., Cornerstone Realty and Development, Inc., L.L.J.
17 Investments, LLC (as successor in interest to Louis B. Murphey, James C. Schneck Rev. Trust,
18 and The Lonnie Joel Krueger Family Trust), Morley Rosenfield, M.D. P.C. Restated Profit
19 Sharing Plan, Pueblo Sereno Mobile Home Park, L.L.C., Revocable Living Trust of Melvin L.
20 Dunsworth, Jr., and/or their successors and assigns (collectively, the "Rev Op Investors") hereby
21 object to the proposed order lodged by ML Manager LLC ("ML Manager") regarding the *Motion*
22 *To Sell Real Property* [DE #3516] dated June 26, 2012 (the "Sale Motion"). In support of this
23 Objection, the Rev Op Investors respectfully submits as follows:

24 1. On July 19, 2012, this court held a hearing on the Sale Motion, which proposed to
25 sell raw land located in Eloy, Arizona, for approximately \$1.5 million.

26 2. The property secures a loan with a principal balance of \$30 million, plus interest
27 and fees. In addition, the property is encumbered by statutory liens for unpaid real property
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1 taxes in excess of \$884,000. It became clear at the hearing that ML Manager failed to appeal
2 two years worth of massively inflated tax assessments.

3 3. At the conclusion of the hearing, this Court directed ML Manager not to include
4 any finding regarding its compliance with fiduciary duty. While ML Manager has omitted that
5 express language, the order as lodged seeks to make an end run around the spirit of the Court's
6 directive.

7 4. Specifically, the order suffers from the following objectionable provisions:

8 a. In paragraph (b), the order makes what could be construed as a finding of
9 fact regarding "fair consideration" even though the Court did not take any evidence of market
10 price for the property. This paragraph should be removed.

11 b. Paragraph (c) is without any evidentiary support and should be removed.
12 The Court has accepted ML Manager's counsel's representations on voting issues in the past, but
13 the Rev Op Investors submit that actual evidence should be required if such a finding of fact is
14 included in the order.

15 c. The use of the superlative "best" in paragraph (e) is neither warranted nor
16 necessary. The Court did not examine ML Manager's business judgment on a sliding scale and
17 cannot reasonably make a factual finding that ML Manager has exercised its "best" judgment.
18 While the Rev Op Investors dispute ML Manager's business judgment, to the extent any finding
19 without evidence is appropriate (which the Rev Op Investors dispute), ML Manager should be
20 found to have exercised "reasonable business judgment."

21 d. In paragraph (3), the costs of sale provisions have been approved in the
22 past and, while the Rev Op Investors reserve all rights to appeal the order, they are not
23 objectionable here. However, the balance of paragraph (3) exceeds the bounds of the allocation
24 process, which requires proceeds to be preserved by ML Manager, allocated in principle, and
25 then brought before this Court on a duly noticed motion before they are actually used. The
26 objectionable portions of paragraph (3) should be stricken.

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1 e. Paragraph (4) is duplicative of paragraph (c), and both are improper. This
2 Court cannot possibly conclude as a matter of fact or law that the purchase price is “fair
3 consideration for the Property” without a proper evidentiary basis.

4 f. Paragraph (5) suffers from the same defect as paragraph (3). The proceeds
5 may not be “used and distributed” except as approved by this Court on approval of a separate,
6 properly noticed motion for distribution.

7 g. Paragraph (6) is perhaps the most egregious attempt by ML Manager to
8 make an end run around its fiduciary duties. Given the time between the hearing and the lodging
9 of the order, the Rev Op Investors have significant doubts that the sale proposed in the Motion
10 will close. It is distinctly possible that the sale has fallen through and that ML Manager seeks to
11 find an alternative buyer. After bringing a proposed sale for approval by motion, ML Manager
12 seeks unfettered, prospective authority to enter into a sale without further order of this Court in
13 ML Manager’s sole discretion. This relief was not requested in the Sale Motion nor approved by
14 this Court. Paragraph (6) should be stricken in its entirety.

15 5. The Rev Op Investors have submitted herewith as Exhibit “A” a form of order
16 that does not include such provisions.¹

17 WHEREFORE, the Rev Op Investors (i) object to the order submitted by ML Manager,
18 and (ii) respectfully requests that the Court enter a revised order in the form attached hereto as
19 Exhibit “A.”

20 DATED this 2nd day of August, 2012.

21 BRYAN CAVE LLP

22 By: /s/ BAS, #022721

23 Bryce A. Suzuki
24 Two North Central Avenue, Suite 2200
25 Phoenix, AZ 85004-4406
26 Counsel for Rev Op Investors

27 ¹ Nothing herein shall be deemed a waiver of rights or a consent to ML Manager’s Sale
28 Motion and the relief requested therein. The Rev Op Investors reserve all applicable rights,
including all appellate rights.

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COPY of the foregoing served via email
this 2nd day of August, 2012 upon:

Cathy L. Reece, Esq.
FENNEMORE CRAIG, P.C.
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/s/ Sally Erwin _____

Exhibit "A"

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

In re:
MORTGAGES LTD.,

Debtor.

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

**ORDER APPROVING MOTION TO SELL
REAL PROPERTY**

Real Property located at the Northeast corner of
Tweedy Rd. and Howard Rd. in City of Eloy,
County of Pinal, Arizona

Hearing Date: July 16, 2012
Hearing Time: 2:30 p.m.

ML Manager LLC ("ML Manager") filed a Motion ("Motion") (Docket No.3516) requesting that the Court enter an order authorizing ML Manager as the Manager for CGSR Loan LLC and the Agent for certain non-transferring pass-through investors, to sell the property located at the Northeast corner of Tweedy Rd. and Howard Rd., in City of Eloy, County of Pinal, Arizona, which is more specifically described in the Sale Agreement (the "Property") for the price and on the terms set forth in the Agreement of Sale and Purchase or a backup bidder. Among other things, the Sale Agreement provides for the sale of the Property for \$1,577,720 to Nicholas Farms, LLP ("Purchaser"). A notice to creditors, interested parties and the non-transferring pass-through investors of the Motion and the hearing date was served. An Objection (Docket No. 3524) was filed by certain Rev Op Group Investors. The hearing was held on the

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1 Motion on July 16, 2012 at 2:30 p.m. in Phoenix and the Court at the conclusion of the hearing
2 made findings of fact and conclusions of law on the record.

3 Upon consideration of the Motion, the Objection, the reply and statements and arguments
4 of counsel at the hearing; it appears to the Court and the Court finds that:

5 (a) This Court has jurisdiction over the issues presented in the Motion, and the
6 Motion and the Court's hearing thereon were duly and properly noticed;

7 (b) The ML Manager LLC is authorized to enter into the Sale Agreement, to sell the
8 Property pursuant to the terms of the Sale Agreement, to proceed with this sale and to execute all
9 necessary documents to implement the sale;

10 (c) The decision to sell and enter into the Sale Agreement is supported by the
11 reasonable business judgment of ML Manager.

12 IT IS THEREFORE ORDERED THAT:

13 (1) The Motion is granted and approved.

14 (2) ML Manager, as the Manager of CGSR Loan LLC and as Agent for the pass-
15 through investors, including the Rev-Op Group Investors, has authority and is directed to enter
16 into the Sale Agreement, to consummate the sale, to sell the Property pursuant to the terms of the
17 Sale Agreement, to execute the conveyance deed pursuant to the Sale Agreement and to execute
18 any and all documents needed to consummate the sale.

19 (3) ML Manager is authorized to pay out of the sale proceeds all costs of sale,
20 including real property taxes, assessments, broker's fees, title insurance or other closing costs.
21 The net sale proceeds shall be shall be transferred at closing to ML Manager and shall be subject
22 to allocation and distribution under the Allocation Model upon further order of the Court.

23 **DATED AND ORDERED AS STATED ABOVE**

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