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6 IN THE UNITED STATES BANKRUPTCY COURT
7 FOR THE DISTRICT OF ARIZONA

8 In re
9 MORTGAGES LTD.,
10 Debtor.

Chapter 11

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

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

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

**Hearing Date: December 11, 2012
Hearing Time: 11:00 a.m.**

15 ML Manager LLC (“ML Manager”), as the manager for FP IV Loan LLC and the
16 agent for certain Pass-Through Investors, hereby files this Reply in support of its Motion
17 to Sell (Docket No. 3646) real property and improvements of approximately 291 acres
18 located at the northwest corner of Crismon Road and Germann Road in Mesa, Arizona
19 known as the Foothills property, as more specifically described in the Sale Agreement
20 (“Property”), to Emerson Investments LLC, an Arizona limited liability company,
21 (“Purchaser”) for the price of approximately \$6,547,500 (“Purchase Price”) based on a
22 price of \$22,500 per acre and on the terms set forth in the Agreement of Sale and Purchase
23 (“Sale Agreement”) which is attached as Exhibit A¹ to the Motion or upon better terms to
24

25 ¹ As the Court is aware, the Court approved a sale and exchange of approximately
26 20.506288 acres to Sternberg on October 2, 2012 (Docket No. 3600) which has now
closed. This sale addresses the remaining approximate 291 acres at this location and is the
same price of \$22,500 per acre as the Sternberg sale. The references in the Sale

1 this or another buyer as determined by ML Manager in its sole discretion. The Sale
2 Agreement has a contemplated closing of January 28, 2013.

3 A short Objection (Docket No. 3666) was filed by three Rev Op Investors which
4 incorporates 21 other objections to sales and the arguments in those pleadings, all of
5 which were previously responded to by ML Manager and overruled by this Court. Further
6 this Court's rulings on the prior objections have been affirmed on appeal by the District
7 Court in the four sale appeals filed by the Rev Op Group. It does not appear that there are
8 any new arguments being raised by the Rev Op Investors. ML Manager requests that the
9 Court overrule the Objection and grant the Motion. ML Manager incorporates by
10 reference all of its replies and responses to the previous arguments raised by the
11 Objection, including but not limited to, that the Court retained jurisdiction to enter an
12 order approving the sale, that the Court has already ruled on the agent's authority and
13 found the agency to be enforceable, that the agency is irrevocable and any termination of
14 the agency is null and void, that the decision to sell and to enter into the sale agreement is
15 a valid exercise of the business judgment of ML Manager consistent with its fiduciary
16 duty, among other arguments.

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

18 The investors in FP IV Loan LLC and the 9 MP Funds who own 58.8% of the
19 interest in the Property were asked to vote on this Major Decision. As the Court will
20 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
21 selling the property) must be voted on by the members of the applicable limited liability
22 company and the investors in the MP Funds and must be approved by a majority in dollars
23 of those who vote. A vote has been conducted by ML Manager of the members in the FP
24 IV Loan LLC and MP Funds. Based on the voting results, 97.39% of the dollars which

25 _____
26 Agreement about the Out Parcel and the Sternberg Agreement have already been satisfied
and occurred.

1 were voted approved the sale. ML Manager asserts it is authorized to go forward with the
2 sale on behalf of the Loan LLC.

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

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

7 **III. EXERCISE OF VALID BUSINESS JUDGMENT**

8 ML Manager, in the exercise of its business judgment, has decided it is in the best
9 interest of the Investors in the loan to sell the Property at this time for \$6,547,500 to the
10 Purchaser on the terms set forth in the Sale Agreement. ML Manager has had the Property
11 exposed to the market for over two years. As the Court is aware, the prior sales that were
12 attempted by ML Manager were terminated by the buyers and the sales fell through. BLC
13 Realty Advisors has widely marketed the Property for sale. ML Manager believes that it
14 has sufficiently marketed the Property to maximize the price and expose it to the market
15 place. BLC Realty Advisors obtained an offer from the Purchaser and ML Manager and
16 the Purchaser finalized the Sale Agreement. The Purchaser has deposited a Deposit of
17 \$300,000 and has opened escrow at Thomas Title & Escrow. The Feasibility Period has
18 expired and the Deposit is nonrefundable. The balance of the Purchase Price will be
19 payable at close in cash. The sale is anticipated to close January 28, 2013. The Purchaser
20 is a non-related third party with no connections to ML Manager, the Board members, the
21 investors or the exit financier.

22 The Rev Op Investors also object because ML Manager has failed to explore
23 partition. Yet the Rev Op Investors have not suggested partition for this property nor have
24 they made an offer for all or a portion of the Property. Also this is not grounds for
25 objection to a sale. ML Manager is not under an obligation to pursue partition, especially
26 in light of the Confirmed Plan, Confirmation Order, the Operating Agreements, and the

1 Agency Agreements that provide for liquidation of the properties and the distribution of
2 cash. ML Manager asserts that the sale of the property is in the best interest of the
3 Investors.

4 FP IV Loan LLC who owns 58.8% of the interests in the Property approved the
5 sale. There are 65 Pass-Through Investors and only three objected. None of the other 62
6 Pass-Through Investors with the remaining interests in the Property objected to the sale.
7 ML Manager asserts that the sale at this time, for this price and to the Purchaser under the
8 terms of the Sale Agreement and Motion is in the best interest of the Investors and is a
9 valid exercise of its business judgment consistent with its fiduciary duties and should be
10 approved.

11 WHEREFORE, ML Manager requests that the Court enter an order authorizing and
12 approving the sale as requested by ML Manager, overrule the Objection and grant such
13 other and further relief as is just and proper under the circumstances.

14 DATED: December 10, 2012

15 FENNEMORE CRAIG, P.C.

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

19 Copy of the foregoing sent this
20 10th day of December, 2012 by email to:

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