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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 on Hunt Highway, Pinal
County, Arizona**

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

15 ML Manager LLC ("ML Manager"), as the manager for HH Loan LLC and the
16 agent for certain Pass-Through Investors, hereby files its Reply in support of its Motion to
17 Sell (Docket No. 3641) approximately 31,616 square feet of the real property located on
18 Hunt Highway, Pinal County, Arizona, as more specifically described in the Purchase
19 Agreement ("Property"), to Pinal County for the Hunt Highway widening project for the
20 price of \$56,000 ("Purchase Price") and on the terms set forth in the Purchase Agreement
21 ("Purchase Agreement") or upon better terms to Purchaser or a different buyer as
22 determined by ML Manager in its sole discretion. A Notice of Filing (Docket No. 3662)
23 was filed with the Purchase Agreement attached as Exhibit A.

24 The Sale Agreement has a contemplated closing of end of December 2012. Pinal
25 County, which is prepared to condemn the Property if a consensual sale is not reached, is
26 willing to purchase the small portion of the property for its Hunt Highway widening

1 project. The consensual sales price is higher than the appraised value obtained by Pinal
2 County in anticipation of bringing a condemnation suit. The sale does not dispose of all of
3 the real property owned by the Investors at that location, only a small portion of it. The
4 Investors will continue to hold and ML Manager will continue to market the remaining
5 portion of the property. ML Manager asserts that the sale is in the best interest of the
6 Investors.

7 A short Objection (Docket No. 3659) was filed by one Rev Op Investor which
8 incorporates 20 other objections to sales and the arguments in those pleadings, all of
9 which were previously responded to by ML Manager and overruled by this Court. Further
10 this Court's rulings on the prior objections have been affirmed on appeal by the District
11 Court in the four sale appeals filed by the Rev Op Group. It does not appear that there are
12 any new arguments being raised by the Rev Op Investor. ML Manager requests that the
13 Court overrule the Objection and grant the Motion. ML Manager incorporates by
14 reference all of its replies and responses to the previous arguments raised by the
15 Objection, including but not limited to, that the Court retained jurisdiction to enter an
16 order approving the sale, that the Court has already ruled on the agent's authority and
17 found the agency to be enforceable, that the agency is irrevocable and any termination of
18 the agency is null and void, that the decision to sell and to enter into the sale agreement is
19 a valid exercise of the business judgment of ML Manager consistent with its fiduciary
20 duty, among other arguments.

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

22 The investors in HH Loan LLC and 8 of the MP Funds who own 60.936% of the
23 interest in the Property were asked to vote on this Major Decision. As the Court will
24 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
25 selling the property) must be voted on by the members of the applicable limited liability
26 company and the investors in the MP Funds and must be approved by a majority in dollars

1 of those who vote. A vote has been conducted by ML Manager of the members in the HH
2 IV Loan LLC and MP Funds. Based on the voting results, 98.4% of the dollars which
3 were voted approved the sale. ML Manager asserts it is authorized to go forward with the
4 sale on behalf of the Loan LLC.

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

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

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

10 ML Manager, in the exercise of its business judgment, has decided it is in
11 the best interest of the Investors in the loan to sell the Property at this time for \$56,000 to
12 Pinal County on the terms set forth in the Purchase Agreement. The sale is anticipated to
13 close by the end of December 2012. Pinal County, which is prepared to condemn the
14 Property if a consensual sale is not reached, is willing to purchase the small portion of the
15 property for its Hunt Highway widening project. The consensual sales price is higher than
16 the appraisal obtained by Pinal County in anticipation of bringing a condemnation suit and
17 is slightly better than the price per acre achieved by ML Manager when it sold 5 acres of
18 this location earlier this year. This piece is frontage and the widening should provide a
19 benefit to the Investors. The sale does not dispose of all of the real property owned by the
20 investors at that location, only a small portion of it. The Investors will continue to hold
21 about 13 acres and ML Manager will continue to market the remaining portion of the
22 property. ML Manager asserts that the sale is in the best interest of the Investors.

23 The Rev Op Investor also objects because ML Manager has failed to explore
24 partition. Yet the Rev Op Investor has not suggested partition for this property nor has it
25 made an offer for all or a portion of the Property. Also this is not grounds for objection to
26 a sale. ML Manager is not under an obligation to pursue partition, especially in light of the

1 Confirmed Plan, Confirmation Order, the Operating Agreements, and the Agency
2 Agreements that provide for liquidation of the properties and the distribution of cash.
3 Further, even if a partition were pursued, Pinal County could still seek condemnation and
4 purchase this 31,616 square feet over the objection of the Investors. ML Manager asserts
5 that the sale of the property is in the best interest of the Investors.

6 HH Loan LLC who owns 60.936% of the interests in the Property approved the
7 sale. There are 6 Pass-Through Investors and only one objected. None of the other 5 Pass-
8 Through Investors with the remaining interests in the Property objected to the sale. ML
9 Manager asserts that the sale at this time, for this price and to Pinal County is in the best
10 interest of the Investors and is a valid exercise of its business judgment consistent with its
11 fiduciary duties and should be approved.

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

15 DATED: December 10, 2012

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 sent this
10th day of December, 2012 by email to:

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/s/ Gidget Kelsey-Bacon

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