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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
APPROVE AMENDMENT TO SALE
AGREEMENT PREVIOUSLY APPROVED**

**Real Property located at 3520 North 70th Street,
Scottsdale, Arizona**

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

15 ML Manager LLC (“ML Manager”), as the manager for 70 SP Loan LLC and the
16 agent for certain Pass-Through Investors, hereby files its Reply in support of its Motion
17 To Approve Amendment To Sale Agreement (Docket No. 3647) which requests that the
18 Court approve an Amendment to the Sale Agreement which the Court previously
19 approved in a Sale Order dated September 4, 2012 (Docket No. 3571).

20 Previously the Court approved the sale of the real property located at 3520 North
21 70th Street, Scottsdale, Arizona consisting of approximately 1.58 acres, as more
22 specifically described in the Sale Agreement (“Property”), to RDM Holdings IV, LLC, an
23 Arizona limited liability company, (“Purchaser”) for the price of \$875,000 (“Purchase
24 Price”) and on the terms set forth in the Agreement of Sale and Purchase (“Sale
25 Agreement”) which was attached to the Motion to Sell (Docket No. 3543). A fully
26

1 executed copy of the Second Amendment to the Sale Agreement (“Amendment”)¹ for
2 which approval is sought was attached as Exhibit A to the Notice of Filing (Docket No.
3 3663). The Motion requested the approval of the Amendment which allows the Purchaser
4 to close with \$400,000 cash and with a Note and first position Deed of Trust issued to the
5 Sellers for the balance of \$475,000 payable in 90 days with interest at 8% per annum
6 (“Seller Carryback”). This Amendment allows the sale to go forward with a December 27,
7 2012 close, provides \$400,000 of immediate proceeds and provides a customary method
8 of sale protection for a Seller Carryback, the issuance of a Note and first position Deed of
9 Trust.

10 A short Objection (Docket No. 3668) was filed by two Rev Op Investors which
11 incorporates 21 other objections to sales and the arguments in those pleadings. With the
12 exception of one item, that they misinterpret which will be addressed below, all of the
13 other objections were previously responded to by ML Manager and overruled by this
14 Court. Further this Court’s rulings on the prior objections have been affirmed on appeal
15 by the District Court in the four sale appeals filed by the Rev Op Group. It does not
16 appear that there are any new arguments being raised by the Rev Op Investors. ML
17 Manager requests that the Court overrule the Objection and grant the Motion. ML
18 Manager incorporates by reference all of its replies and responses to the previous
19 arguments raised by the Objection, including but not limited to, that the Court retained
20 jurisdiction to enter an order approving the sale, that the Court has already ruled on the
21 agent’s authority and found the agency to be enforceable, that the agency is irrevocable
22 and any termination of the agency is null and void, that the decision to sell and to enter
23 into the sale agreement is a valid exercise of the business judgment of ML Manager

24 ¹ The Rev Op Investors raise a question asking about the First Amendment to the Sale
25 Agreement. The First Amendment extended the Feasibility Period for the sole purpose of
26 providing Purchaser more time to resolve a specific deed restriction identified in the title
commitment. ML Manager in the exercise of its business judgment did not consider such
a customary issue to be material enough to require Court approval or Loan LLC approval.

1 consistent with its fiduciary duty, among other arguments.

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

3 The investors in 70 SP Loan LLC and the 9 MP Funds who own 71.035% of the
4 interest in the Property were asked to vote on this Amendment as a Major Decision. As
5 the Court will recall, the operating agreement for the Loan LLC requires that Major
6 Decisions (such as selling the property) must be voted on by the members of the
7 applicable limited liability company and the investors in the MP Funds and must be
8 approved by a majority in dollars of those who vote. A vote has been conducted by ML
9 Manager of the members in the 70 SP Loan LLC and MP Funds. Based on the voting
10 results, 94.36% of the dollars which were voted approved the Amendment. ML Manager
11 asserts it is authorized to go forward with the Amendment on behalf of the Loan LLC.

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

13 One of the contingencies of the Amendment concerns the Exit Financier. The Exit
14 Financier has indicated it does not intend to exercise its right to compete. This
15 contingency has been satisfied.

16 **III. SELLER CARRYBACK NOTE AND DEED OF TRUST**

17 ML Manager intends for the Seller Carryback Note and Deed of Trust to be issued
18 to the Sellers in the exact same manner as they held title to the Property. ML Manager
19 had the Trustee's Deed from the foreclosure designate title in the beneficiaries as
20 undivided fractional interests in the exact percentage as held under the Deed of Trust and
21 in the same names as held under the Deed of Trust. ML Manager intends that the new
22 Seller Carryback Note and Deed of Trust be handled in the same manner so that the Loan
23 LLC and the Pass-Through Investors continue to hold their undivided fractional interests
24 in the same manner. ML Manager continues to be the Manager for the Loan LLC and the
25 Agent for the Pass-Through Investors. Contrary to the allegations in the Objection, ML
26 Manager is not in its own capacity financing the transaction, does not fail to give the

1 investors the undivided fractional interests in the Seller Carryback Note and Deed of Trust
2 and is not exceeding the scope of its function as manager of the Loan LLC.

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

4 ML Manager, in the exercise of its business judgment, has decided it is in
5 the best interest of the Investors in the loan to Amend the Sale Agreement. The Court
6 previously approved the Purchase Price and the Sale over the objection of the Rev Op
7 Investors. The material change in the Sale Agreement is that the Purchase Price will not
8 be paid in full in cash at the Closing. Instead the Amendment allows the Buyer to close
9 with \$400,000 cash and with a Note and first position Deed of Trust issued to ML
10 Manager for the balance of \$475,000 payable in 90 days with interest at 8% per annum
11 (“Seller Carryback”). The Feasibility Period has expired. This Amendment allows the sale
12 to go forward with a December 27, 2012 close, provides \$400,000 of immediate proceeds
13 and provides a customary method of sale protection for a Seller Carryback, the issuance of
14 a short term 90-day Note with 8% interest per annum and first position Deed of Trust.
15 ML Manager asserts that the Amendment is in the best interest of the Investors and that
16 the sale should go forward with the Seller Carryback.

17 The Rev Op Investors also object because ML Manager has failed to explore
18 partition. Yet the Rev Op Investors have not suggested partition for this property nor have
19 they made an offer for all or a portion of the Property. Also this is not grounds for
20 objection to a sale. ML Manager is not under an obligation to pursue partition, especially
21 in light of the Confirmed Plan, Confirmation Order, the Operating Agreements, and the
22 Agency Agreements that provide for liquidation of the properties and the distribution of
23 cash. ML Manager asserts that the sale of the property is in the best interest of the
24 Investors.

25 70 SP Loan LLC which owns 71.035% of the interests in the Property approved the
26 Amendment. There are 6 Pass-Through Investors and only two objected. None of the

1 other 4 Pass-Through Investors with the remaining interests in the Property objected to the
2 Amendment. ML Manager asserts that the Amendment is in the best interest of the
3 Investors and is a valid exercise of its business judgment consistent with its fiduciary
4 duties and should be approved.

5 WHEREFORE, ML Manager requests that the Court enter an order authorizing and
6 approving the Amendment as requested by ML Manager, overrule the Objection and grant
7 such other and further relief as is just and proper under the circumstances.

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9 DATED: December 10, 2012

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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 sent this
15 10th day of December, 2012 by email to:

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