

1 FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
2 3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012
3 Telephone: (602) 916-5343
Facsimile: (602) 916-5543
4 Email: creece@fclaw.com

5 Attorneys for ML Manager LLC

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

9 In re
10 MORTGAGES LTD.,
11 Debtor.

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

**SUPPLEMENT TO ML MANAGER'S
MOTION TO APPROVE SETTLEMENT OF
WOLFSWINKEL LOANS**

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

14
15 ML Manager LLC ("ML Manager"), as the manager for six Loan LLCs and as
16 agent for the non-transferring Pass-Through Investors, hereby files this Supplement in
17 support of its Motion to Approve Settlement of Wolfswinkel Loans (Docket No. 3652)
18 and the Notice of Filing Signed Settlement Agreement (Docket No. 3664). No objection
19 or response to the Motion was filed or received so any and all objections are waived. ML
20 Manager asserts that the decision to enter into and implement the Settlement Agreement is
21 a valid exercise of the business judgment of ML Manager consistent with its fiduciary
22 duty and requests that the Court approve the Motion and the Settlement Agreement.

23 **I. THE RESULTS OF THE LOAN LLC VOTES**

24 The investors in all six Loan LLCs and the applicable MP Funds were asked to
25 vote on this Major Decision. As the Court will recall, the operating agreement for the
26 Loan LLC requires that Major Decisions (such as selling the property) must be voted on

1 by the members of the applicable limited liability company and the investors in the
2 applicable MP Funds and must be approved by a majority in dollars of those who vote. A
3 vote has been conducted by ML Manager of the members in all six Loan LLCs and the
4 applicable MP Funds.

5 Based on the voting results, all six Loan LLCs approved the Settlement by a
6 majority of dollars voted. (1) ABCDW I Loan LLC which holds 61.055% of its Loan
7 approved the Settlement by 91.44% of the dollars voted. (2) ABCDW II Loan LLC which
8 holds 79.677% of its Loan approved the Settlement by 97.31% of the dollars voted. (3)
9 ABCDW III Loan LLC which holds 80.261% of its Loan approved the Settlement by
10 97.11% of the dollars voted. (4) VP I Loan LLC which holds 54.011% of its Loan
11 approved the Settlement by 98.51% of the dollars voted. (5) VP II Loan LLC which holds
12 71.221% of its Loan approved the Settlement by 85.95% of the dollars voted. (6) VF I
13 Loan LLC which holds 12.180% of its Loan approved the Settlement by 99.16% of the
14 dollars voted. ML Manager asserts it is authorized to go forward with the Settlement on
15 behalf of the six Loan LLCs.

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

17 One of the contingencies of the Settlement Agreement concerns the Exit Financier.
18 The Exit Financier has indicated it does not intend to exercise its right to compete. This
19 contingency has been satisfied.

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

21 As explained in the Motion, ML Manager, in the exercise of its business judgment,
22 has decided it is in the best interest of the Investors in the loans to enter into and
23 implement the Settlement with the Wolfswinkel Borrowers and Guarantors on the terms
24 set forth in the Settlement Agreement.

25 The Settlement Agreement provides for a global settlement with the Wolfswinkel
26 Borrowers and Guarantors. Among other things, the primary terms permit the immediate

1 foreclosure upon and/or sale of each of the properties which are secured by deeds of trust
2 in the Wolfswinkel Loans. The Borrowers and Guarantors are to pay all past due real
3 property taxes. The Borrowers and Guarantors will stipulate to Deficiency Judgments in
4 the collective amount of \$100 million as is broken down and itemized per loan in Section
5 9 of the Settlement Agreement. The Borrowers and Guarantors will be given 18 months
6 to pay off the Deficiency Judgments at a reduced rate (the "Settlement Amount") which is
7 broken down and itemized per loan on Exhibit F to the Settlement Agreement. The
8 Settlement Amounts vary over time but the maximum amount if paid at 18 months would
9 be \$10.3 million which would release the remaining amount of the Deficiency Judgments.
10 The obligations of the Borrowers and Guarantors would be secured by the pledge of
11 ownership interests in entities that have ownership rights to properties west of the White
12 Tank Mountains and in the Harquahala Valley. In the event that the Settlement Amount is
13 not timely paid in 18 months then ML Manger may pursue the full amount of the
14 Deficiency Judgments. ML Manager, the Loan LLCs and the Pass-Through Investors will
15 receive full releases from the Borrowers and Guarantors.

16 ML Manager spent a significant amount of time receiving and reviewing
17 information, understanding the transactions and the properties, and meeting with and
18 negotiating with the Borrowers and Guarantors and their professionals. ML Manager
19 requested and received significant financial information about the Borrowers and
20 Guarantors and hired a financial advisor, Simon Consulting, LLC, which spent a
21 significant amount of time and resources inspecting and analyzing the financial records
22 and information provided by the Borrowers and Guarantors, among other information.
23 The negotiations were extensive and conducted over a significant amount of time. The
24 result is an arms length agreement based on extensive negotiations that is well thought out
25 and thorough. Among other things, the settlement takes into account the likelihood of
26 success, the collectability of the judgments, the cost and expense of pursuing the

1 alternatives to the settlement and the economics of a swift and certain resolution of the
2 issues. It gives ML Manager the immediate ability to complete the trustee sale and take
3 possession of the properties without interference by Borrower bankruptcies. It provides
4 stipulated Deficiency Judgments against the Borrowers and the Guarantors in sufficient
5 amounts to reflect the likely results if litigation were pursued absent a settlement.
6 However, such Deficiency Judgments were obtained in the settlement without the cost and
7 expense and delay of litigation. Additionally, new security will be pledged as collateral
8 for the Deficiency Judgments. It takes into account the difficulty in collecting any
9 judgments against the Borrowers and Guarantors in light of their assets and other
10 creditors. It provides for the voluntary payment of cash by Borrowers and Guarantors
11 within a reasonable period of time without the cost, expense or time of collection
12 litigation. Based on all the facts the Court should easily conclude that this settlement is in
13 the best interest of the investors, is fair and equitable, and is within the range of what is
14 reasonable in light of all the circumstances. ML Manager believes that the Wolfswinkel
15 Settlement is in the best interest of the Investors, is a valid exercise of its business
16 judgment consistent with its fiduciary duties and should be approved.

17 WHEREFORE, ML Manager requests that the Court enter an order authorizing and
18 approving the Settlement as requested by ML Manager and grant such other and further
19 relief as is just and proper under the circumstances.

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21 DATED: December 10, 2012

22 FENNEMORE CRAIG, P.C.

23 By /s/ Cathy L. Reece
24 Cathy L. Reece
25 Attorneys for ML Manager LLC
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