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10 IN THE UNITED STATES BANKRUPTCY COURT
11 FOR THE DISTRICT OF ARIZONA

12 In re

13 MORTGAGES LTD.,

14 Debtor.

Chapter 11

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

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

**Real Property located in the vicinity of
Buchanan Street and 3rd Street, Phoenix,
Arizona, known as the SOJAC property**

**Hearing Date: February 13, 2012
Hearing Time: 1:30 p.m.**

19 ML Manager LLC (“ML Manager”), as the manager for SOJ Loan LLC and the
20 agent for certain Pass-Through Investors, hereby files this Reply in support of its Motion
21 to Sell (Docket No. 3416) real property and improvements located in the vicinity of
22 Buchanan Street and 3rd Street, Phoenix, Arizona, as more specifically described in the
23 Sale Agreement (“Property”), to Granite Capital Investments, LLC, an Arizona limited
24 liability company (“Purchaser”) for the price of \$4.75 million (“Purchase Price”) and on
25 the terms set forth in the Agreement of Sale and Purchase (“Sale Agreement”) which was
26 attached as Exhibit A to the Motion, or to another purchaser as determined by ML

1 Manager in its sole discretion. A short Objection (Docket No. 3428) was filed by 4 Rev
2 Op Investors (“Objection”)¹ wherein they incorporate by reference several pleadings and
3 the arguments in those pleadings, all of which were previously responded to by ML
4 Manager and overruled by this Court. It does not appear that there are any new arguments
5 being raised by the Objection. ML Manager requests that the Court overrule the Objection
6 and grant the Motion. ML Manager incorporates by reference all of its replies and
7 responses to the previous arguments raised by the Objection, including but not limited to,
8 that the Court retained jurisdiction to enter an order approving the sale, that the Court has
9 already ruled on the agent’s authority and found the agency to be enforceable, that the
10 agency is irrevocable and any termination of the agency is null and void, that the decision
11 to sell and to enter into the sale agreement is a valid exercise of the business judgment of
12 ML Manager consistent with its fiduciary duty, among other arguments.

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

14 The investors in SOJ Loan LLC and all the MP Funds who own 57.927% of the
15 interest in the Property were asked to vote on this Major Decision. As the Court will
16 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
17 selling the property) must be voted on by the members of the applicable limited liability
18 company and the investors in the MP Funds and must be approved by a majority in dollars
19 of those who vote. A vote has been conducted by ML Manager of the members in the SOJ
20 Loan LLC and MP Funds. Based on the voting results, 76.93% of the dollars which were
21 voted approved the sale. ML Manager asserts it is authorized to go forward with the sale
22 on behalf of the Loan LLC.

23
24
25 ¹ Some of the objectors claim they are successors to the original interest holders. They
26 may have transferred their interests to another entity but may not have obtained the
approval of ML Manager or executed the necessary documents, and thus may not have
standing to raise the objections. ML Manager objects to standing of certain objectors.

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

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

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

6 ML Manager, in the exercise of its business judgment, has decided it is in the best
7 interest of the investors in the loan to sell the Property at this time for \$4.75 million to the
8 Purchaser on the terms set forth in the Sale Agreement or to a different purchaser for the
9 same or a higher price. ML Manager has had the Property exposed to the market for a
10 significant period of time and listed the Property with a nationally known broker who has
11 actively marketed the Property for sale. The Property has buildings and other
12 improvements on the site. The Property is being sold "As Is, Where Is, With All Faults".
13 There are ongoing holding costs, including real property taxes, insurance, fencing,
14 security, utilities, interest costs of 17.5% per annum on the replacement loan, among other
15 costs. The Purchaser has posted a Deposit of \$100,000 and has opened escrow at Thomas
16 Title & Escrow. An additional deposit of \$100,000 will be posted at the expiration of the
17 Feasibility Period. The Purchaser has demonstrated that it has ample funds to purchase the
18 Property. The balance of the Purchase Price will be payable at close in cash. The sale is
19 anticipated to close mid April 2012. The Purchaser is a non-related third party with no
20 connections to ML Manager, the Board members, the investors or the exit financier. The
21 Purchaser still has additional time to complete its due diligence but has already spent
22 significant time on that process and should be able to timely complete that process. The
23 Loan LLC investors approved the sale and the remaining 50 of the 54 Pass-Through
24 Investors did not object to the sale. ML Manager asserts that the sale at this time, for this
25 price and to the Purchaser under the terms of the Sale Agreement and Motion or to a
26 different purchaser at the same or a higher price is in the best interest of the investors and

1 is a valid exercise of its business judgment consistent with its fiduciary duties and should
2 be approved.

3 WHEREFORE, ML Manager requests that the Court enter an order authorizing and
4 approving the sale as requested by ML Manager and for such other and further relief as is
5 just and proper under the circumstances.

6 DATED: February 10, 2012

7 FENNEMORE CRAIG, P.C.

8 By /s/ Cathy L. Reece
9 Cathy L. Reece
10 Attorneys for ML Manager LLC

11 Copy of the foregoing sent this
12 10th day of February, 2012 by email to:

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