

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 MOYES SELLERS & HENDRICKS
Keith L. Hendricks (012750)
6 1850 N. Central Ave., Suite 1100
Phoenix, Arizona 85004
7 Telephone: (602) 604-2120
Email: khendricks@law-msh.com

8 Attorneys for ML Manager LLC
9

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 on Hunt Highway, Pinal
County, Arizona**

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

15
16
17
18
19 ML Manager LLC (“ML Manager”), as the manager for HH 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. 3413) approximately 5 acres of real property located on Hunt
22 Highway, Pinal County, Arizona, as more specifically described in the Sale Agreement
23 (“Property”), to Sun Life Family Health Centers, Inc., an Arizona non-profit corporation
24 (“Purchaser”) for the price of \$300,000 (“Purchase Price”) and on the terms set forth in
25 the Agreement of Sale and Purchase (“Sale Agreement”) which was attached as Exhibit A
26 to the Motion or upon better terms to a different buyer as determined by ML Manager in

1 is sole discretion. An Objection (Docket No. 3429) was filed by 1 Rev Op Investor
2 (“Objection”) wherein he incorporates by reference several pleadings and the arguments
3 in those pleadings, all of which were previously responded to by ML Manager and
4 overruled by this Court. Almost all of the arguments are the same arguments being raised
5 by the Rev Op Investors to other sales. The new arguments specific to this sale will be
6 addressed below. ML Manager requests that the Court overrule the Objection and grant
7 the Motion. ML Manager incorporates by reference all of its replies and responses to the
8 previous arguments raised by the Rev Op Investor, including but not limited to, that the
9 Court retained jurisdiction to enter an order approving the sale, that the Court has already
10 ruled on the agent’s authority and found the agency to be enforceable, that the agency is
11 irrevocable and any termination of the agency is null and void, that the decision to sell and
12 to enter into the sale agreement is a valid exercise of the business judgment of ML
13 Manager consistent with its fiduciary duty, among other arguments.

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

15 The investors in HH Loan LLC and the MP Funds who own 60.936% of the
16 interest in the Property were asked to vote on this Major Decision. As the Court will
17 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
18 selling the property) must be voted on by the members of the applicable limited liability
19 company and the investors in the MP Funds and must be approved by a majority in dollars
20 of those who vote. A vote has been conducted by ML Manager of the members in the HH
21 Loan LLC and MP Funds. Based on the voting results, 90.69% of the dollars which were
22 voted approved the sale. ML Manager asserts it is authorized to go forward with the sale
23 on behalf of the Loan LLC.

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

25 One of the contingencies of the Sale Agreement concerns the Exit Financier. The
26 Exit Financier has indicated it does not intend to exercise its right to compete. This

1 contingency has been satisfied.

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

3 ML Manager, in the exercise of its business judgment, has decided it is in the best
4 interest of the investors in the loan to sell the Property at this time for \$300,000 for 5 acres
5 to the Purchaser on the terms set forth in the Sale Agreement or upon better terms to a
6 different buyer in its sole discretion. This sale does not dispose of all the real property
7 owned by the investors at that location, only a portion of it. There are 15 remaining acres
8 which ML Manager will continue to market. This sale would result in the building of a
9 medical center on the 5 acres. ML Manager believes that this may make the remaining
10 acreage more marketable to other purchasers.

11 ML Manager has had the Property exposed to the market for a significant period of
12 time and listed the Property with a nationally known broker who has actively marketed the
13 Property for sale. The Purchaser has posted a Deposit of \$25,000 and has opened escrow
14 at Thomas Title & Escrow. The balance of the Purchase Price will be payable at close in
15 cash. The sale is anticipated to close in mid April 2012. The Purchaser is a non-related
16 third party with no connections to ML Manager, the Board members, the investors or the
17 exit financier. The Purchaser still has additional time to complete its due diligence but has
18 already spent significant time on that process and should be able to timely complete that
19 process. This sale will pay some of the holding costs of the 20 acres, including some
20 property taxes, insurance, some exit financing to the extent it is not already paid off and
21 some of the interest and principal on the replacement loans to the other Loan LLCs.

22 Contrary to the argument on page 2, paragraph 4 of the Objection that the Sale
23 Agreement does not provide any meaningful information regarding the actual portion of
24 the Property to be sold, the Sale Agreement does have a map attached which marks the 5
25 acres to be sold with cross-hatching showing the location of the 5 acres to be sold. The
26 only thing left to do is for the Title Company to provide the legal description which the

1 parties need to approve prior to closing. The map shows where the remaining 15 acres are
2 located that will not be sold. This type of term and the attached map are not unusual and
3 provide sufficient detail to identify the Property being sold.

4 Further, contrary to the argument on page 2, paragraph 5 of the Objection, the
5 desire of 1 Rev Op investor to partition the property is an insufficient basis to deny the
6 Motion to Sell. ML Manager has listed the entire 20 acres for sale and received a cash
7 offer that was acceptable for 5 acres. ML Manager in its business judgment believes that
8 the offer does not diminish the value of the remaining acreage and may improve the
9 chances to sell the remaining 15 acres for the benefit of all the investors. In addition,
10 raising the issue in a few sentences in an objection to a sale is hardly the appropriate
11 procedure to resolve such an issue if it were practical or legally permissible to even
12 consider it.

13 HH Loan LLC who owns 60.936% of the interests in the Property approved the
14 sale and 5 of the 6 Pass-Through Investors with the remaining interests in the Property do
15 not object to the sale. ML Manager asserts that the sale of 5 acres at this time, for this
16 price and to the Purchaser under the terms of the Sale Agreement and Motion or to a
17 different buyer on the same or better terms in the sole discretion of ML Manager is in the
18 best interest of the investors and is a valid exercise of its business judgment consistent
19 with its fiduciary duties and should be approved.

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

23 DATED: February 10, 2012

24 FENNEMORE CRAIG, P.C.

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

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

2 Robert J. Miller
3 Bryce A. Suzuki
4 BRYAN CAVE LLP
5 Two North Central Ave., Suite 2200
6 Phoenix, Arizona 85004
7 rjmiller@bryancave.com
8 bryce.suzuki@bryancave.com

9 _____
10 */s/ Nikki Nolund*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26