

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](mailto: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](mailto: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

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

17 **Real Property located on the northeast corner of**  
18 **Main Street and 10<sup>th</sup> Street, Cottonwood,**  
**Arizona**

**Hearing Date: February 28, 2012**  
**Hearing Time: 10:30 a.m.**

19 ML Manager LLC (“ML Manager”), as the manager for CP 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. 3432) the real property and improvements located on the northeast  
22 corner of Main Street and 10<sup>th</sup> Street, Cottonwood, Arizona, as more specifically  
23 described in the Sale Agreement (“Property”), to Verde Valley Medical Center  
24 (“Purchaser”) for the price of \$2.85 million (“Purchase Price”) and on the terms set forth  
25 in the proposed Agreement of Sale and Purchase (“Sale Agreement”) which is attached to  
26 the Motion or upon the same or better terms to another party as determined by ML

1 Manager in its sole discretion.

2 As discussed below, the CP Loan LLC, which owns 85.439% of the property,  
3 approved the sale by a majority of the dollars which voted in the Loan LLC. No  
4 objections were filed by the other 7 Pass-Through Investors in the CP Loan. Only one  
5 objection was received. An Objection was filed by Soteria, LLC, as the transferee to  
6 Bruce Dennis Buckley and Alivia Virginia Buckley, Trustees of the Bruce Dennis  
7 Buckley and Alivia Virginia Buckley Revocable Trust dated June 4, 1985, and amended  
8 December 7, 1994 (the Buckley Trust)(“Buckley Objection”)(Docket No. 3353). As  
9 discussed below, the Court overruled the same objections by Mr. Buckley on at least 3  
10 other occasions when the same arguments were raised as to other sales. The issues raised  
11 are already determined as Law of the Case and are binding on the parties. Accordingly,  
12 ML Manager requests that the Court overrule the Buckley Objection and grant the  
13 Motion.

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

16 ML Manager asked the investors in CP Loan LLC and the MP Funds in that Loan  
17 LLC which own 85.439% of the interest in the Property to vote on this Major Decision. A  
18 vote was conducted by ML Manager of the members in the CP Loan LLC and the  
19 applicable MP Funds. Based on the voting results, 97.58% of the dollars which voted  
20 approved the sale. ML Manager asserts it is authorized to go forward with the sale on  
21 behalf of the CP Loan LLC.

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

23 One of the contingencies of the Sale Agreement concerns the Exit Financier. The  
24 Exit Financier has indicated it does not intend to exercise its right to compete on either  
25 property. This contingency has been satisfied.  
26

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

2 ML Manager, in the exercise of its business judgment, has decided it is in the best  
3 interest of the investors in the loan to sell the Property. ML Manager solicited offers for  
4 the sale of the Property and negotiated with various parties. Purchaser made an offer of  
5 \$2.85 million which was higher than the other offers and was acceptable to ML Manager.  
6 ML Manager believes that the Purchase Price is fair consideration and represents the  
7 current fair market value for the Property.

8 The Property consists of buildings, other improvements and a parking lot in a  
9 commercial center. One of the buildings is not complete and cannot be rented until certain  
10 completions are made. The Property continues to accrue ongoing holding costs for real  
11 property taxes, security, maintenance, insurance, utilities, and the interest costs of 17.5%  
12 per annum on the replacement loans, among other things. The real property taxes on the  
13 Property were not paid by the Borrower prior to the foreclosure, continue to accrue  
14 interest and will be paid from the sale proceeds. The Purchase Price is to be paid in cash at  
15 closing. This sale would close the end of April, 2012. This is not a Section 363 sale. This  
16 is not proposed to be an auction and no higher and better bids are being solicited. The  
17 Purchaser is a non-related third party with no connections to ML Manager, the Board  
18 members, the investors or the exit financier.

19 CP Loan LLC which owns 85.439% of the Property approved the sale and 7 of the  
20 8 Pass-Through Investors in the CP Loan do not object to the sale. ML Manager asserts  
21 that the sale of the Property at this time for this price to this Purchaser under the terms in  
22 the Sale Agreement and in the Motion is in the best interest of the investors and is a valid  
23 exercise of its business judgment consistent with its fiduciary duties and should be  
24 approved.

25 **IV. ML MANAGER AS AGENT HAS AUTHORITY TO SELL**

26 The Buckley Objection makes three arguments as to why ML Manager has no

1 authority to sell his 3.217% interest in the CP Property. All three arguments have been  
2 raised by Mr. Buckley at prior sale hearings and rejected by the Court and the same  
3 arguments have been raised by other investors as well and rejected by this Court. The  
4 prior rulings are Law of the Case.<sup>1</sup>

5 On May 26, 2010, Rick Thomas filed an objection on Mr. Buckley's behalf (along  
6 with 13 other objectors) (Docket No. 2763). The same arguments of termination of the  
7 irrevocable agency, breach of fiduciary duty by Mortgages Ltd. as grounds to suspend or  
8 terminate the agency, and the effect of the withholding of discretion clause in the agency  
9 agreement on the ability of the agent to sell. At the sale hearing held on May 27, 2010 the  
10 Court overruled all three arguments made by Mr. Thomas on behalf of Mr. Buckley. The  
11 Sale Order entered by the Court expressly overruled the objections on the merits (Docket  
12 No. 2770). No appeal from this Order was filed.

13 Again Mr. Buckley raised the withholding of discretion argument in the Objection  
14 he filed on November 15, 2011 (Docket No. 3358) to the Adobe Meadows sale. At the  
15 hearing the Court asked if Mr. Buckley knew about the Court's prior ruling on November  
16 25, 2008 on this issue and he said yes. However he said he did not agree with the Court's  
17 ruling. He did not file an appeal at that time from the November 2008 ruling. This Court  
18 overruled his objection on the merits and entered the Sale Order (Docket No. 3367) on  
19 November 23, 2011. No appeal from this Order was filed.

20 Again Mr. Buckley raised the same arguments in the Objection he filed on  
21 December 12, 2011 (Docket No. 3382) to the sale of the Citrus and Northern properties.  
22 This Court overruled his objection and entered the Sale Order (Docket No.3397) on  
23 December 20, 2011. No appeal from this Order was filed.

24 As for the exhibits attached to the Buckley Objection, they clearly reflect that Mr.

25 \_\_\_\_\_  
26 <sup>1</sup> ML Manager incorporates by reference the additional pleadings and rulings of the Court  
on these issues and the complete record of the Bankruptcy Case.

1 Buckley signed the Existing Investor Account Agreement (Exhibit D) which was issued as  
2 a part of the July 10, 2006 Private Offering Memorandum and which expressly adopts the  
3 Agency Agreement. The signed Existing Investor Account Agreement expressly adopts  
4 the Agency Agreement which is attached to the Private Offering Memorandum and  
5 clearly states that Mr. Buckley “irrevocably constitutes and appoints Mortgages Ltd. with  
6 full power of substitution, as the undersigned’s true and lawful attorney and agent, with  
7 full power and authority in the undersigned’s name, place, and stead,…” The Agency  
8 Agreement which is attached to the July 10, 2006 Private Offering Memorandum was an  
9 exhibit at the November 2008 hearings on authority of Mortgages Ltd. and was a part of  
10 the Declaratory Judgment Action. This Court on numerous occasions has reviewed and  
11 interpreted the Agency Agreement and language. The Agency Agreement is attached  
12 hereto as Exhibit 1. The Court on numerous occasions has ruled that it is an agency  
13 coupled with an interest and is irrevocable. Any attempt to terminate the Agency  
14 Agreement is null and void, as this Court has ruled on numerous occasions in this Case.

15 The Master Agency Agreement which Mr. Buckley references is a 2005 agreement  
16 and is no longer in effect. It was replaced and superseded by the July 10, 2006 Private  
17 Offering Memorandum which Mr. Buckley admits he received and the Existing Investor  
18 Account Agreement which he admits he signed on January 30, 2007 and attaches to the  
19 Objection. Under the Agency Agreement, which is attached to the July 10, 2006 Private  
20 Offering Memorandum and adopted by the signed Existing Investor Account Agreement,  
21 paragraph 3(b) expressly states that “Participant may terminate this Agreement after it  
22 becomes the sole owner of the Trust Property by written notice to Agent and payment of  
23 the fees, costs and expenses incurred by Agent as provided herein.” Mr. Buckley is not  
24 the sole owner of the Trust Property. He only owns about 3.217%. As this Court has  
25 interpreted this paragraph, Mr. Buckley has no right or ability under this provision to  
26 terminate the Agency Agreement and his attempts to do so are null and void.

