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12 Counsel for the Rev Op Investors

13 **IN THE UNITED STATES BANKRUPTCY COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 In re:
16 MORTGAGES LTD.,
17 Debtor.

18 Chapter 11

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

20 **OBJECTION TO ML MANAGER'S MOTION**
21 **TO SELL REAL PROPERTY**

22 **Real Property (1) consisting of approximately**
23 **23.248 acres located south of the southwest**
24 **corner of Loop 101 and Maryland Avenue in**
25 **Glendale, Arizona (known as Maryland Way**
26 **property), (2) consisting of 46 acres located in**
27 **the vicinity of the intersection of 99th Avenue**
28 **and Maryland Avenue in Glendale, Arizona**
(known as Rightpath I property), and (3)
consisting of 17,000 square feet located in the
vicinity of the intersection of 99th Avenue and
Maryland Avenue in Glendale, Arizona (known
as Rightpath II property)

Hearing Date: October 17, 2012

Hearing Time: 11:00 a.m.

29 Bear Tooth Mountain Holdings, L.L.P.; Queen Creek XVIII, L.L.C.; Pueblo Sereno
30 Mobile Home Park, L.L.C.; Michael Johnson Investments II, L.L.C.; The Lonnie Joel Krueger
31 Family Trust; LLJ Investments, LLC; Louis B. Murphey; James C. Schneck Rev. Trust;
32 Evertson Oil Company, Inc.; Cornerstone Realty and Development, Inc. Defined Benefit Plan

1 and Trust; and/or their successors and assigns (collectively, the “Rev Op Investors”)¹ hereby file
2 this Objection to ML Manager LLC’s (“ML Manager”) *Motion To Sell Real Property* [DE
3 #3593] dated September 28, 2012 (the “Motion”). In further support of this Objection, the Rev
4 Op Investors submit as follows:

5 1. Pursuant to the Motion, ML Manager seeks a comfort order that it is authorized to
6 sell three separate parcels of property in which the Rev Op Investors hold tenant-in-common
7 ownership interests for the total sales price of \$7 million, which properties secure loans with
8 outstanding balances totaling more than \$108 million. *See* Motion, pp.2–4.

9 2. This is no ordinary sale, however. Rather, ML Manager now concedes that it is
10 beginning to sell properties for amounts insufficient to cover even the
11 “Loan Specific Costs” allocated to such properties under ML Manager’s highly complex and
12 ever-evolving Allocation Model. Under this scenario, ML Manager plans to “reallocate” any
13 uncovered costs associated with these properties to other properties. *Id.* at 5. In other words,
14 ML Manager’s fire-selling of properties has now reached the point where the properties’ sales
15 prices are not even covering the costs allocated to them, and such uncovered costs are now being
16 spread to owners of other loans and properties in ML Manager’s socialized allocation scheme.

17 3. In particular, while ML Manager asserts that the sale of Parcel A and Parcel C
18 will result in sufficient funds to cover their respective allocated costs, the sale of Parcel B will
19 not. With respect to Parcel B, ML Manager seeks allocate \$3,421,000 of the sales proceeds to
20 that property, which funds will then be applied to the more than \$5,370,759 allocated to Parcel B
21 under the Allocation Model. *Id.*, pp.2, 5. The remaining \$1.95 million in uncovered costs
22 allocated to Parcel B will then be “reallocated and become the burden of the other properties.”
23 *Id.*

24 4. This disclosure is significant for at least two reasons. First, as far as the Rev Op
25 Investors can discern, this is the first time ML Manager has expressly acknowledged that

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27 _____
28 ¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the
Motion.

1 properties that cannot cover their own Loan Specific Costs will become the burden of the other
2 loans and investors therein. Second, this disclosure highlights the problem with ML Manager’s
3 “socialized” allocation scheme: The proposed sale affects not only the investors/owners of these
4 properties, but *all* other properties, which will now pick up nearly \$2 million of additional costs.
5 ML Manager has failed to file a certificate of service to date, but it appears that no investors in
6 other loans have been advised of this additional burden that they will have to bear.

7 5. More troubling still, the total costs for Parcel B were previously disclosed to the
8 Rev Op Investors at a fraction of the amount ML Manager now discloses in the Motion.
9 Although the Rev Op Investors submit that such information should be available to all investors
10 (as the costs are being spread to all investors), ML Manager obtained a confidentiality order on
11 an ex parte basis at the time it filed its allocation motion in 2010. Accordingly, the specifics
12 regarding the exponential increase in total costs will be filed under seal or provided to the court
13 at hearing. Suffice it to say that ML Manager’s total costs for the Parcel B property are now
14 nearly *ten times* more than the total costs disclosed in the allocation model as of June 1, 2012.

15 6. In seeking approval of the allocation model, ML Manager repeatedly told the
16 Court and investors that its model was “conservative” and that investors could expect to receive
17 additional funds after the model went through a “true up” process following additional sales.
18 The exact opposite has occurred.

19 7. The Rev Op Investors are also concerned about the language in the Motion
20 indicating that: “Although a portion of the allocated costs could be paid from the net sale
21 proceeds and possible [*sic.*] a portion of the replacement loan owed by this Loan to other Loan
22 LLCs, no funds will remain for distribution to the investors.” Motion, p.5. Does this mean that
23 ML Manager does not intend to pay a portion of replacement loan interest and allocated costs,
24 even though there may be sufficient proceeds to do so? Such approach would be inconsistent
25 with ML Manager’s own Allocation Model. To the extent ML Manager does intend to pay a
26 portion of the costs and replacement loan interest, parties are entitled to know how much.

27 8. The Rev Op Investors further object to these sales on several grounds. First, ML
28 Manager has clearly failed to establish that it has exercised any reasonable business judgment or

1 that it has complied with its fiduciary duties to the Rev Op Investors and other investors with
2 respect to these proposed sales. Indeed, the sale of Parcel B alone will net *no recovery* for
3 investors, and instead will result in all other unsuspecting investors being charged with costs of a
4 loan for which they hold no interest simply because ML Manager insists on selling the property
5 at an inopportune time and at a greatly depressed price.

6 9. Second, ML Manager supports its request to sell Parcel B in particular on the
7 basis of its statement that “the prospects for [Parcel B] are not good” and that it does not “think
8 there is a likelihood” that Parcel B will appreciate enough to cover its allocated costs for many
9 years. *Id.* ML Manager provides absolutely *no evidence* to support these baseless statements.

10 10. Third, ML Manager asserts that the costs allocated to Parcel B total more than
11 \$5.3 million. ML Manager never disclosed this reallocation to the Rev Op Investors, and now
12 seeks a blessing from the Court for this significant reallocation in the guise of a sale motion. The
13 Rev Op Investors are still reviewing the Allocation Model with respect to the allocations for
14 Parcel A and Parcel B as well. Given this new information, it is imperative that ML Manager
15 provide transparency regarding these allocations for the Court, the Rev Op Investors, and other
16 investors before the Court approves any further sales.

17 11. Fourth, The Rev Op Investors are informed that many, if not all, of the properties
18 that ML Manager has yet to sell will similarly fail to generate sufficient sales proceeds to cover
19 their allocated costs. It appears that ML Manager now has no source of income to cover all of
20 the costs allocated to the remaining properties or to repay the replacement loan owing to the
21 Loan LLCs, and, as was inevitable, this house of cards is collapsing. ML Manager should be
22 required to provide disclosure about its plans to pay the remaining allocated costs and repay and
23 retire the replacement loan before it continues selling properties under these conditions.

24 12. Fifth, ML Manager seeks to effect this reallocation of costs to other unsuspecting
25 investors with no notice. The Motion clearly effects all other investors, as an approval of the
26 sale of Parcel B (and any other property for which the sales proceeds will not cover allocated
27 costs) will result in a significant redistribution of costs to be paid by other investors (all of whom
28

1 have no interest in this loan). Notice should be provided to all parties prior to the Court's
2 consideration of the Motion.

3 13. Sixth, ML Manager has not attempted to demonstrate by admissible evidence or
4 otherwise the efforts undertaken to maximize value for the investors ML Manager purports to
5 serve. This is particularly important where ML Manager seeks to sell property at a price
6 insufficient to cover its allocated costs. In particular, ML Manager has not explored partition
7 with the Rev Op Investors (parties to which it owes fiduciary duties), though it is perfectly
8 willing to sever Parcel C from a larger parcel to sell to a third party.

9 14. Seventh, the Rev Op Investors understand that each of the subject properties is
10 encumbered by statutory liens for unpaid real property taxes. It appears that ML Manager failed
11 to appeal massively inflated tax assessments on these properties and has otherwise failed to
12 protect the these properties and investors. ML Manager's request for a finding of valid exercise
13 of business judgment and compliance with its fiduciary duties is improper given this and the
14 other facts set forth herein.

15 15. Finally, the Rev Op Investors hereby incorporate by reference herein previous
16 sale-motion objections filed by the Rev Op Investors and affiliated parties (and the arguments
17 and authorities set forth therein, including lack of jurisdiction to approve the Motion) at the
18 following Docket Entry numbers: DE #2499; DE #2504; DE #2878; DE #2881; DE #2965;
19 DE #3003; DE #3095; DE #3153; DE #3185; DE #3187; DE #3262; DE #3307; DE #3327;
20 DE #3343; DE #3380; DE #3428; DE #3429; DE #3524; and DE #3555.

21 16. The Rev Op Investors hereby reserve all of their rights with respect to the
22 proposed sale of the subject properties. Various Rev Op Investors previously recorded
23 terminations of agency that put prospective buyers on notice that any sale will be subject to the
24 Rev Op Investors' interests.

25 WHEREFORE, the Rev Op Investors request that the Court enter an order denying the
26 Motion and granting to the Rev Op Investors such other relief as it deems appropriate.

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1 DATED this 15th day of October, 2012.

2 BRYAN CAVE LLP

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11 COPY of the foregoing served via email
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