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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re MORTGAGES LTD., Debtor.	Chapter 11 Case No. 2:08-bk-07465-RJH **REPLY TO OBJECTION TO MOTION TO SELL REAL PROPERTY (1) CONSISTING OF APPROXIMATELY 23.248 ACRES LOCATED SOUTH OF THE SOUTHWEST CORNER OF LOOP 101 AND MARYLAND AVENUE IN GLENDALE, ARIZONA (KNOWN AS MARYLAND WAY PROPERTY) , (2) CONSISTING OF 46 ACRES LOCATED IN THE VICINITY OF THE INTERSECTION OF 99TH AVENUE 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.**

ML Manager LLC ("ML Manager"), as the manager for MWP Loan LLC, RLD I Loan LLC and RLD II Loan and the agent for certain Pass-Through Investors, hereby files this Reply in support of its Motion to Sell (Docket No. 3593) real property and improvements located in Glendale, Arizona specifically described in the Sale Agreement ("Property"), to BYPG Holdings, LLC, an Arizona limited liability company

("Purchaser") for the price of $7 million ("Purchase Price") and on the terms set forth in the Agreement of Sale and Purchase ("Sale Agreement") which is attached to the Motion as Exhibit A or to another purchaser on the same or better terms as determined by ML Manager in its sole discretion. The $7 million Purchase Price has been allocated by the Purchaser as follows: $3,550,000 to Parcel A, $3,421,000 to Parcel B, and $29,000 to Parcel C as more specifically described in the Motion and Sale Agreement.

An Objection (Docket No. 3613) was filed by certain Rev Op Investors ("Objection") wherein it incorporates by reference about 19 other objections to sales and the arguments in those pleadings, all of which were previously responded to by ML Manager and overruled by this Court. Further this Court's rulings on the prior objections have been affirmed on appeal by the District Court in the four sale appeals filed by the Rev Op Group. ML Manager requests that the Court overrule the Objection and grant the Motion. ML Manager incorporates by reference all of its replies and responses to the previous arguments raised by the Objection, including but not limited to, that the Court retained jurisdiction to enter an order approving the sale, that the Court has already ruled on the agent's authority and found the agency to be enforceable, that the agency is irrevocable and any termination of the agency is null and void, that the decision to sell and to enter into the sale agreement is a valid exercise of the business judgment of ML Manager consistent with its fiduciary duty, among other arguments. There is a specific argument being raised by the Rev Op Investors as to Parcel B. That Objection will be discussed below.

I. THE RESULTS OF THE LOAN LLC VOTES

As to Parcel A, the investors in MWP Loan LLC and the 9 MP Funds who own 88.717% of the interest in the Property were asked to vote on this Major Decision. As the Court will recall, the operating agreement for the Loan LLC requires that Major Decisions (such as selling the property) must be voted on by the members of the applicable limited

liability company and the investors in the MP Funds and must be approved by a majority in dollars of those who vote. A vote has been conducted by ML Manager of the members in the MWP Loan LLC and MP Funds. Based on the voting results, 76.35% of the dollars which were voted approved the sale. ML Manager asserts it is authorized to go forward with the sale on behalf of the MWP Loan LLC.

As to Parcel B, the investors in RLD I Loan LLC and the 9 MP Funds who own 67.911% of the interest in the Property were asked to vote on this Major Decision. As the Court will recall, the operating agreement for the Loan LLC requires that Major Decisions (such as selling the property) must be voted on by the members of the applicable limited liability company and the investors in the MP Funds and must be approved by a majority in dollars of those who vote. A vote has been conducted by ML Manager of the members in the RLD I Loan LLC and MP Funds. Based on the voting results, 76.52% of the dollars which were voted approved the sale. ML Manager asserts it is authorized to go forward with the sale on behalf of the RLD I Loan LLC.

As to Parcel C, the investors in RLD II Loan LLC and the 9 MP Funds who own 72.978% of the interest in the Property were asked to vote on this Major Decision. As the Court will recall, the operating agreement for the Loan LLC requires that Major Decisions (such as selling the property) must be voted on by the members of the applicable limited liability company and the investors in the MP Funds and must be approved by a majority in dollars of those who vote. A vote has been conducted by ML Manager of the members in the RLD II Loan LLC and MP Funds. Based on the voting results, 76.45% of the dollars which were voted approved the sale. ML Manager asserts it is authorized to go forward with the sale on behalf of the RLD II Loan LLC.

II. RIGHT TO COMPETE BY THE EXIT FINANCIER

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

contingency has been satisfied.

III. EXERCISE OF VALID BUSINESS JUDGMENT

ML Manager, in the exercise of its business judgment, has decided it is in the best interest of the Investors in the loans to sell the Property at this time for $7 Million to the Purchaser on the terms set forth in the Sale Agreement. ML Manager has had the Property exposed to the market for over two years. Nathan & Associates, Inc. has widely marketed the Property for sale. ML Manager and the Purchaser finalized the Sale Agreement in September 2012. The Purchaser has deposited $100,000 and has opened escrow at Thomas Title & Escrow. The balance of the Purchase Price will be payable at close in cash. The sale is anticipated to close around November 2012. The Purchaser is a non-related third party with no connections to ML Manager, the Board members, the investors or the exit financier. This is an arms-length, negotiated sale between unrelated parties. The Property is being sold "As-Is", "Where-Is" and "With All Faults."

Even though the loans will not be paid in full, ML Manager believes that this price reflects the current market value of the Property and that it is unlikely in the foreseeable future to get a higher amount. There are ongoing holding costs, including property taxes, which accrue interest at the rate of 16% per annum, insurance, interest costs on the replacement loans which accrue at the rate of 17.5% per annum, among other costs. ML Manager believes that this sale is in the best interest of the investors in the three Loan LLCs and the Pass-Through Investors and is a valid exercise of its business judgment consistent with any fiduciary responsibilities.

IV. OTHER OBJECTIONS

The Rev Op Investors raise an objection as to Parcel B. First, there may be a misunderstanding by the Rev Op Investors on the numbers. There will be sufficient sale proceeds on Parcel B to pay all the closing costs which are approximately $536,000 and to pay all the Loan Specific Costs of about $74,000. There will not be sufficient net sale

proceeds to pay all the General Costs allocated to the loan. Some of the "uncovered costs" from this loan to the extent not paid will have to reallocated to other loans.

Second, with regard to their allegations that there has never been a disclosure that "uncovered costs" would be borne by the other loans, this is not correct. In numerous paragraphs in the Objection, including paragraphs 2-7, and 10-12, the Rev Op Investors says that this is "no ordinary sale", that this is "the first time" the reallocation of uncovered costs has come up, that ML Manager has not disclosed this previously and that the investors in the other loans have received no notice of this "socialized allocation scheme." This is of course disingenuous and unfounded. The Objection ignores the events, pleadings, orders and rulings of the last three and one-half years.

To the extent it is necessary to even respond to this objection, the concepts and issues of uncovered costs have been discussed and vetted in numerous pleadings and hearings since the confirmation process in May 2009. The Plan itself states at Section 4.15 that it "is anticipated that the parties will also enter into an inter-borrower agreement to allocate amongst themselves the use of funds and the repayment of the Exit Financing loan, among other things. The entities will keep sufficient records of the use of the funds and repayment of the loan so that a proper allocation and accounting may be made." (Docket No. 1532) Mr. McDonough testified on May 18, 2009 to the allocation that would need to be done and that in fact some loans might not have any equity and that cost might have to be borne by other loans. (Docket 2136) The May 20, 2009 Confirmation Order in paragraph H expressly authorized ML Manager to enter into an inter-borrower agreement. (Docket No. 1755) The Interborrower Agreement which was executed on June 11, 2009 expressly provides in Paragraph 3.5 for the reallocation of amounts which cannot be paid by one loan to the other loans. The Interborrower Agreement was negotiated during the confirmation process and became an issue in the Rev Op Group's Motion for Clarification filed September 14, 2009 and ML Manager's response which attached a

copy of the executed Interborrower Agreement. (Docket No. 2168 and 2265)

The Allocation Model was filed on September 1, 2010 and was sent out to all investors. The pleading discussed the concept of "uncovered costs" no fewer than 8 times. (Docket 2913) The Allocation Model itself is based on a 10-step process (which come from the Interborrower Agreement). Step 7 in the Model provides that the negative recovery amount of the uncovered costs must be spread to the remaining loans.(Docket No. 2913). In other words, it was expressly disclosed that there would be loans with uncovered costs and that those uncovered costs would include both General Costs and Loan Specific Costs. Then the uncovered costs were discussed at least 5 times in the Omnibus Reply of ML Manager (Docket No. 2948). The Court approved the Allocation Model January 20, 2011 (Docket No. 3051)

In addition, there have been about five motions to sell that have involved loans where there would be uncovered costs that would have to be reallocated and become a burden to other properties, including the sales of the Van Buren property, McKinley property, 70th Street property, ASA XVI property and CGSR property. . (Docket No. 3545, 3544, 3543, 3549 and 3516).The motions to sell each specifically discussed the uncovered costs that would be reallocated to other properties. All of the sales were approved by the Loan LLCs and the Court. The Rev Op investors objected to four of the sales but did not raise this issue at that time. The Court overruled their objections and approved the sales.

Further, the information provided by ML Manager from the Allocation Model is correct. The RLD I loan originally was for over $50 million of undeveloped raw land. The sharing ratio under the Allocation Model is based on the original principal balance of the loan compared to the total of all the original principal loan balances. This loan is the second largest loan in the portfolio with a sharing ration of 5.70347%. Thus it is not surprising that the combination of the closing costs, the loan specific costs, general costs

and the share of the replacement loan interest and costs would be as much as $5.3 million for this loan. The sale for $3.421 million will not cover all those costs. The June 2012 information shared with the Rev Op Investors pursuant to the Confidentiality Order properly showed the costs that would be covered by a sale but the assumptions in the information at that time used a sale estimate of a much lower number and still reflected based on a much lower sale price that the costs would not be covered by the sale price and uncovered costs were reallocated to other loans. As the Court and parties are aware, ML Manager adjusts the information in the Allocation Model each time a sale closes so that the appropriate numbers are then corrected in the Model.

If the Rev Op Investors had wanted to ask questions about this information after the Motion was filed, ML Manager would have been glad to review that information with them. After all ML Manager has meet at least five times with them to go over the information. Nevertheless, the objection concerning the uncovered costs is not a proper objection to the sale itself and should be overruled.

The Rev Op Investors assert in the Objection that ML Manager has failed to appeal the taxes or protect the property from those liens. This is not grounds for objection to the sale. Prior to foreclosure, the Borrowers did not pay the taxes on the Property. The taxes need to be paid. ML Manager hired a tax firm to assist in the review and appeal valuations for tax purposes. Contrary to the unfounded allegations in the Objection, ML Manager has addressed the unpaid taxes and has acted in the best interest of the investors. Regardless, the taxes are owed and will need to be paid from the sale proceeds.

The Rev Op Investors also object because ML Manager has failed to explore partition. Yet the Rev Op Investors have not suggested partition for any of the Property. Also this is not grounds for objection to a sale. ML Manager is not under an obligation to pursue partition, especially in light of the Confirmed Plan, Confirmation Order, the Operating Agreements, and the Agency Agreements that provide for liquidation of the

properties and the distribution of cash. The Purchaser desires to purchase 100% of the three parcels which are contiguous. Thus there is not a portion of the Property which can be partitioned. This sale reflects the best price that ML Manager has received for the Property which has been listed for a significant period of time. ML Manager asserts that the sale of the property is in the best interest of the Investors.

All three of Loan LLCs which own significant interests in the Property approved the sale and none of the other Pass-Through Investors with the remaining interests in the Property objected to the sale. ML Manager asserts that the sale at this time, for this price and to the Purchaser under the terms of the Sale Agreement and Motion is in the best interest of the Investors and is a valid exercise of its business judgment consistent with its fiduciary duties and should be approved.

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

DATED: October 16, 2012

FENNEMORE CRAIG, P.C.

By /s/ *Cathy L. Reece*
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Copy of the foregoing sent this 16th day of October, 2012 by email to:

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