

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 Attorneys for ML Manager LLC

6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re
10 MORTGAGES LTD.,
11 Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

**SUPPLEMENT TO ML MANAGER'S
MOTION TO SELL REAL PROPERTY**

**A Portion of the Real Property located at
Merrill Road and Pecos Road in Mesa, Arizona
known as the Foothills property to Sternberg**

**Hearing Date: September 27, 2012
Hearing Time: 2:00 p.m.**

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16 ML Manager LLC ("ML Manager"), as the manager for FP IV Loan LLC and the
17 agent for certain Pass-Through Investors, hereby files this Supplement in support of its
18 Motion to Sell (Docket No. 3581). The Motion provided for the sale and transfer of
19 approximately 20.506288 acres of real property and improvements located at Merrill Road
20 and Pecos Road in Mesa, Arizona known as Foothills and as more specifically described
21 in the Sale Agreement ("Property"), to Sternberg (as defined in the Motion) for the price
22 and on the terms as set forth in the Sale Agreement attached to the Motion or to another
23 purchaser on the same or better terms as determined by ML Manager in its sole discretion.
24 The transaction will only sell and transfer a portion of the acres to Sternberg and will
25 leave about 290.5 acres unsold for the FP IV Loan LLC and the Pass-Through Investors.

26 No objection to the Motion from any of the 65 Pass-Through Investors was filed or

1 received. ML Manager asserts that the decision to sell and transfer and to enter into the
2 Sale Agreement is a valid exercise of the business judgment of ML Manager consistent
3 with its fiduciary duty and requests that the Court approve the Motion.

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

5 The investors in FP IV Loan LLC and the MP Funds who own 58.8% of the
6 interest in the Property were asked to vote on this Major Decision. As the Court will
7 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
8 selling the property) must be voted on by the members of the applicable limited liability
9 company and the investors in the MP Funds and must be approved by a majority in dollars
10 of those who vote. A vote has been conducted by ML Manager of the members in the FP
11 IV Loan LLC and MP Funds. Based on the voting results, 72.99% of the dollars which
12 were voted approved the sale. ML Manager asserts it is authorized to go forward with the
13 sale on behalf of the Loan LLC.

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

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

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

19 As explained in the Motion, ML Manager, in the exercise of its business judgment,
20 has decided it is in the best interest of the Investors in the loan to sell and transfer the
21 approximate 20.506288 acres at this time to Sternberg on the terms set forth in the Sale
22 Agreement. ML Manager has had the Property exposed to the market for over two years.
23 BLC Realty Advisors has widely marketed the Property for sale. Several deals with
24 possible purchasers have been finalized and one or two have been approved by the Court,
25 however, those sales did not close.

26 ML Manager and Sternberg finalized the Sale Agreement of the 20.506288 gross

1 acres. This leaves unsold approximately 290.5 acres to be sold in the future. The sale is
2 anticipated to close mid-October 2012.

3 FP IV Loan LLC who owns 58.8% of the interests in the Property approved the
4 sale and none of the 65 Pass-Through Investors with the remaining interests in the
5 Property objected to the sale. ML Manager asserts that the sale and transfer of the
6 approximate 20.506288 on the terms and for the price set forth in the Sale Agreement at
7 this time is in the best interest of the Investors, is a valid exercise of its business judgment
8 consistent with its fiduciary duties and should be approved.

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

12 DATED: September 26, 2012

13 FENNEMORE CRAIG, P.C.

14 By /s/ Cathy L. Reece
15 Cathy L. Reece
16 Attorneys for ML Manager LLC
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