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

8 In re
9 MORTGAGES LTD.,
10 Debtor.

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

**REPLY IN SUPPORT OF MOTION TO SELL
REAL PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS**

**Real Property located in Pinal County, AZ
known as All States Associates of Pinal IX**

**Hearing Date: May 18, 2010
Hearing Time: 2:30 p.m.**

16
17 ML Manager LLC ("ML Manager"), as manager for the ASA IX Loan LLC and
18 the 9 MP Funds that are members of the ASA IX Loan LLC and as agent for the 7 pass-
19 through investors who hold fractional interests but who did not transfer into the ASA IX
20 Loan LLC ("Non-transferring pass-through investors"), hereby files this Reply in Support
21 of its Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and
22 Interests, and asks that the Court enter an order authorizing and approving the sale as set
23 forth in the Motion.

24 1. **The Results of the Loan LLC Vote.**

25 The ASA IX Loan LLC ("ASA IX Loan LLC"), which was formed in June 2009
26

1 pursuant to the confirmed Plan, owns 97.377% of the interest in the property. The
2 members of the ASA IX Loan LLC include all 9 of the MP Funds (with hundreds of
3 investors), Radical Bunny LLC and the pass-through investors who transferred into ASA
4 IX Loan LLC. Only 2.623% of the interest is owned by the 7 Non-transferring pass-
5 through investors. As the Court will recall, the operating agreement for the ASA IX Loan
6 LLC required that Major Decisions (such as selling the property) must be voted on by the
7 members of the limited liability company and the investors in the MP Funds and must be
8 approved by a majority in dollars of those who vote. A vote has been conducted by the
9 ML Manager of the members of the ASA IX Loan LLC and the MP Fund investors.
10 Based on the voting results, about 95% of the dollars which were voted approved the sale.
11 \$10,239,329 voted to accept the sale (which was cast by 649 investors), while only
12 \$574,986 voted against the sale (which was cast by 25 investors). **In other words, about**
13 **95% of the dollars held by investors who voted in the ASA IX Loan LLC which owns**
14 **97.377% of the property voted to sell the property for the price, to the buyer and at**
15 **the time proposed by ML Manager.**

16 2. **Waiver by the Exit Financier.**

17 One of the contingencies of the Sale Agreement and the Exit Financing Loan
18 Agreement is that (as long as the loan is outstanding) the Exit Financier has the right to
19 compete for the purchase of any property sold. This provision was intended to ensure that
20 the property will not be sold for too low a price. Immediately upon being informed of the
21 sales price and provided with a copy of the Sale Agreement, the Exit Financier provided
22 ML Manager with a written waiver of its right to compete.
23

24 3. **Exercise of Valid Business Judgment.**

25 ML Manager in the exercise of its business judgment has decided it is in the best
26 interest of the investors in the loan to sell the property at this time for \$6.7 million to

1 Resource Land Holdings LLC (an unrelated or unaffiliated entity) on the terms set forth in
2 the Sale Agreement. The buyer has posted \$150,000 earnest money and the escrow has
3 been set up at a local title company. The buyer has demonstrated that it has ample funds to
4 purchase the Property and in fact has recently purchased other agricultural property in
5 Arizona. It is anticipated that if the Court enters the sale order that the sale will close by
6 mid-July 2010. One of the requirements of the buyer was that ML Manager obtain the
7 approval of the investors in the ASA IX Loan LLC and the Bankruptcy Court within 30
8 days of the signing of the Sale Agreement, which period expires May 28, 2010. Delay or
9 continuance is not an option without losing the sale.

10 ML Manager believes the price obtained is the current market price for the
11 property, which consists of approximately 1,675.57 acres of real estate in Pinal County,
12 Arizona. It obtained a Land Advisors Organization broker opinion of value in September
13 of 2009 from one of the leading land brokers in the State, who is experienced with this
14 kind of land and this area of the State. The broker estimated the likely value of the land at
15 between \$3.7 million and \$6.4 million. The sale price of \$6.7 million obtained in this sale
16 is higher than the highest range reflected in the Broker Opinion of Value. ML Manager
17 did not believe it was necessary or good use of funds to obtain a formal appraisal of the
18 Property.

19 ML Manager employed a different broker, Nathan & Associates, to list and market
20 the property. The broker marketed the property widely to buyers of this type of property
21 and over a four-month period received and reviewed several offers for the property. ML
22 Manager reviewed all the offers and accepted the highest offer from a buyer that it
23 thought would close. The Sale Agreement used is the standard form agreement which is
24 being used by ML Manager, and which in fact has been used on multiple occasions
25 already. Nathan and Associates will receive a 3% commission upon closing.
26

1 As for **timing**, 11 months after the Effective Date of the Plan, only 5 loans have
2 remained current. All other loans are in default. To date ML Manager has foreclosed on
3 about 15 of the loans in the loan portfolio. Virtually all of the foreclosed properties are or
4 have been listed for sale with a broker, including the largest one Tempe Land Company
5 condo project which it foreclosed in April 2010. ML Manager has another 18 trustee sales
6 on defaulted loans scheduled to take place this summer. By about mid-August 2010
7 (which is almost 14 months after the Plan become effective) it will have foreclosed on
8 more than half of the loans. ML Manager has indicated to the investors in its newsletters
9 that properties will be put up for sale after foreclosure so that the exit financing can be
10 repaid and investors can receive distributions.

11 This property does generate some income from 4 agricultural leases, however, the
12 income is not sufficient to cover the expenses, such as taxes, insurance, interest expenses
13 and other exit financing costs. It is the business judgment of the ML Manager that the
14 price is unlikely to increase substantially in the foreseeable future and that if not sold
15 these holding expenses will continue to burden the property and are not likely to be
16 recoverable in the future. This sale if approved is anticipated to close by mid-July 2010
17 and will end such holding costs. Then as reflected in the Interborrower Agreement and
18 Loan Agreement, 70% of the net sale proceeds will be paid to the Exit Financier. The
19 other 47 Loan LLCs and the Liquidating Trust will be obligated to repay ASA IX Loan
20 LLC for their proportionate share of the Exit Financing (plus interest) as their properties
21 are sold. ASA IX Loan LLC will receive interest on their funds that are being used to pay
22 exit financing costs. It is anticipated that the investors will receive a distribution from this
23 sale as well as upon subsequent sales as other Loan LLCs dispose of their properties.

24 While 5 Non-Transferring Pass-Through Investors have filed a response objecting
25 to the sale (as to price, timing, and the buyer, among other things), second guessing the
26

1 business judgment of their Agent and seeking to delay the sale and risking the termination
2 of the Sale Agreement, the business judgment of the ML Manager is supported and
3 buttressed by the overwhelming vote of the investors in the ASA IX Loan LLC (who own
4 97.377% of the interest in the property) that agreed (by about 95% of the dollars voted)
5 with the price, timing and buyer as recommended by the ML Manager.

6 4. Agent has Sole Discretion on Sale as to the Non-transferring Pass-
7 Through Investors.

8 As the Court will recall, the ML Manager received an assignment of the
9 irrevocable Agency Agreements which contains a power of attorney coupled with an
10 interest and became the Agent for all the Pass-Through Investors. The Pass-Through
11 Investors were given until October 31, 2009 to decide whether to transfer into the
12 applicable Loan LLCs and receive a membership interest.

13 On this loan, 7 Pass-Through Investors decided not to transfer and as a result
14 2.623% is managed by ML Manager as the Agent while 97.377% is managed by ML
15 Manager as the manager for the ASA IX Loan LLC. Only members of the ASA IX Loan
16 LLC and the investors in the MP Funds in the Loan LLC are allowed to vote and to
17 control the Major Decisions of ML Manager on the management of the property¹.
18 Pursuant to the Agency Agreement, the Agent has sole discretion on the decisions to be
19 made about the management of the property after foreclosure.

20 Paragraph 3(b) of the Agency Agreement states: “If ownership of any Trust
21 Property becomes vested in Participant, either in whole or in part, by trustee’s sale,
22 judicial foreclosure or otherwise, Agent may enter into one or more real estate broker’s
23

24 ¹ The 5 Non-transferring Pass-Through Investors who call themselves the Oxford
25 Investors mistake notice of a proceeding with the right to control or vote. They have no
26 right to instruct the Agent or to control the decision. Their objection to the sale and the
request to delay is noted, but the Agent in the exercise of its business judgment and in
exercise of its discretion has decided to proceed with the sale.

1 agreement on Participant's behalf for the sale of the applicable Trust Property, enter into a
2 management and/or maintenance agreements for management or maintenance of the
3 applicable Trust Property, if applicable, may acquire insurance for the applicable Trust
4 Property, and may take such other actions and enter into such other agreements for the
5 protection and sale of the applicable Trust Property, **all as Agent deems appropriate in**
6 **its sole discretion.**"

7 This sole discretion in the Agent remains necessary so that the property can be
8 managed in a way to maximize the value for all the investors in the property and to ensure
9 that no one investor could hold the others hostage. The vote of the Loan LLC investors
10 was intended to be a check and balance of the discretion of the Agent/ Manager on Major
11 Decisions. The Non-transferring Pass-Through investors were not given the same vote or
12 control.

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14 5. **ML Manager Has Provided More than Sufficient Information.**

15 As the objectors admit, they have known since February 4, 2010 (more than 3
16 months) that ML Manager was intending to sell the ASA IX property and had listed it
17 with a broker. This was announced to all the investors in one of the email newsletters sent
18 out to the investors. Not only was it announced that this property was to be sold, but that
19 ML Manager was going to list properties for sale after foreclosure. After all, the Plan
20 contemplated that investors would be repaid their investments through collection of the
21 loans, foreclosure and sale of properties and suits on guaranties. All of the investment
22 programs originally offered to investors by Mortgages Ltd. were at best 1 year
23 investments. The expectation under the Plan was that the properties and loans would all be
24 collected or sold in three to five years at most. We are now one year into the Plan
25 implementation.

26 The objectors also admit that they requested information Friday night about 6 pm

1 and by Monday their counsel had already talked with the ML Manager's counsel about the
2 information and the details of the sale and process. An extension of time to object was
3 granted in light of the information requested. Frankly, all that was informally requested
4 was provided either orally or in writing. There are no current appraisals, but the Brokers
5 Opinion of Value was provided. Sales and marketing information was provided and
6 copies of other offers were provided. Information about the taxes, insurance, other
7 expenses and agricultural lease income was also provided.

8 The Oxford Investors can't feign too much ignorance. After all some of the
9 Oxford Investors have been intimately involved in the bankruptcy, the Plan process, the
10 exit financing, and the post confirmation implementation. Their attorney may be new to
11 the process, as this is his first appearance, but the Oxford Investors "protest too much".

12 Their objection requests a delay for more time to analyze and evaluate the
13 information and to possibly obtain more information of their own. They do not deal with
14 the deadline contained in the offer that the contingencies must be removed by the Seller
15 within 30 days.

16 ML Manager is not "fire selling" the property. It is being sold at the current market
17 price. There is nothing unusual or nefarious about the ML Manager decision to sell at this
18 time for this price. ML Manager is actively marketing several properties and expects to be
19 in front of the Court seeking the approval of several Sale Agreements in the coming
20 weeks and months. It is the considered business judgment of those given the authority to
21 make the decision and that decision has been supported and buttressed by the vote of the
22 members and investors in the ASA IX Loan LLC. As the Court will remember, the OIC
23 chose the investors for the Board of Managers because of their experience and expertise.
24 The Board is chaired by Elliott Pollack, who is a well known economist and real estate
25 expert. Scott Summers is a senior vice president for a major lender in Arizona with
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1 experience in this real estate market and lending environment. Mark Winkleman, the chief
2 operating officer, for ML Manager, is the former Arizona State Land Commissioner, who
3 has sold billions of dollars of trust lands for the citizens of this State. The other two Board
4 members David Fieler, an experienced business person with a finance background, and
5 Bruce Etkin, an experienced real estate investor, add to the knowledge and expertise of the
6 others. The Board has had the benefit of working with experienced brokers familiar with
7 the property and the market. The property has been exposed to the market place and an
8 acceptable offer was negotiated and accepted from a buyer who has the ability and desire
9 to close.

10 It is clear that delay is the real goal because the sale then goes away. The Oxford
11 Investors want this property to be held and sold later. They argue that there is something
12 wrong with being the first one to be sold. As long as the selling price is the current market
13 price for the property, it should not matter when it is sold. In fact, those that sell first will
14 have the portion of their proceeds used to repay the exit financing accrue and receive
15 17.5% interest on their funds which will be repaid out the sales of all of the other
16 properties. This hardly seems a burden or hardship in today's environment. There are few
17 places to put one's money in today's environment where one can receive that 17.5%
18 return and it is uncertain whether this property if held would increase more than 17.5% in
19 market value in any reasonable amount of time.

20 In any event, ML Manager in the exercise of its business judgment and in its sole
21 discretion has decided to proceed with the sale as presented. The two other contingencies
22 having been met – the accepting vote of the Loan LLC and the waiver by the Exit
23 Financier—ML Manager requests that this Court enter the order requested so that the last
24 contingency can be satisfied for the buyer and the title company.

25 WHEREFORE, ML Manager requests that the Court enter an order as requested by
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1 the ML Manager in the Motion authorizing and approving the sale.

2 DATED: May 17, 2010

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FENNEMORE CRAIG, P.C.

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By /s/ Cathy L. Reece
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8 Copy of the foregoing
9 Sent to the parties on the electronic distribution
List and to:

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