

1 FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
2 Keith L. Hendricks (012750)
3003 N. Central Ave., Suite 2600
3 Phoenix, Arizona 85012
Telephone: (602) 916-5343
4 Facsimile: (602) 916-5543
Email: creece@fclaw.com
5 khendric@fclaw.com
Attorneys for ML Manager LLC

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

11 **MOTION TO APPROVE SETTLEMENTS
WITH GRACE ENTITIES**

12 **Hearing Date: TBD**
13 **Hearing Time: TBD**

14 ML Manager LLC ("ML Manager"), as manager for six Loan LLCs¹ and as agent
15 for the non-transferring pass-through investors who are fractional note and deed of trust
16 holders in the six Grace Entity loans, requests that the Court enter an order approving the
17 settlements and authorizing ML Manager to enter into and implement the settlements with
18 the Grace Entities² borrowers as presented in the attached Settlement Agreements that are
19 marked collectively as Exhibit "A" hereto. ³

20 ¹ The entities described herein as the "6 Loan LLCs" are C&M Loan LLC; Osborn III
21 Loan LLC; PPP Loan LLC; 70 SP Loan LLC; 44 CP Loan I LLC; and 44 CP Loan II
LLC.

22 ² The entities described herein as the "Grace Entities" are Central & Monroe, LLC;
Osborn III Partners, LLC; Portales Place Property, LLC; 70th Street Property, LLC; and
23 44th & Camelback Property, LLC

24 ³ All of the statements in this Motion and the Motion itself are being presented purely for
the purpose of settlement. If the settlement is not approved by the Court and/or the other
25 conditions and contingencies are not satisfied, nothing contained in the Motion or
Settlement Agreements can or may be used against any party and nothing therein shall
26 have any admissive or evidentiary effect. ML Manager and the Grace Entities reserve all
of their arguments and positions in the event the settlement is not approved or the
conditions and contingencies are not satisfied.

1 **Jurisdiction and Reason for Court Involvement**

2 As the Court may recall, pursuant to paragraph V of the Plan Confirmation Order
3 entered by the Court on May 20, 2009 (Docket No. 1755), the Grace Entities and
4 ML Manager were required under the confirmed plan herein to mediate, and if mediation
5 failed, to arbitrate all legal issues⁴ that existed between the Grace Entities, the Grace
6 Guarantors⁵ and the ML Investors⁶, including but not limited to lender liability claims,
7 offsets against the notes and deeds of trust, foreclosure of the deeds of trust, deficiencies
8 on the notes, liability of the guarantors, among other issues. As a result of mediation that
9 formally began on August 26, 2009, with the assistance of mediator Gary L. Birnbaum of
10 Mariscal, Weeks, McIntyre & Friedlander, P.C., the Grace Entities and ML Manager
11 reached a settlement eight months later on all six of the loans, as documented in the five

12
13 _____
14 ⁴ Specifically, the Plan Confirmation Order defined the scope of the “Grace Dispute” to be
mediated by the Grace Entities and ML Manager as follows:

15 5. **“Grace Dispute”** means all Claims and Causes of
16 Action against ML held by one or more of the Grace Entities,
17 and all Claims and Causes of Action against the Grace
18 Entities and/or the Grace Guarantors held by ML or the ML
19 Investors, including but not limited to any and all Claims and
20 Causes of Action that have been or may be asserted by and
21 between the aforementioned parties, all Claims and Causes of
Action arising under the loan documents entered into by and
between ML and the Grace Entities, all guarantees in
connection therewith, all counterclaims in connection
therewith, any Claims or Causes of Action arising out of or
related in any way to ML’s failure to timely and fully fund its
loans to the Grace Entities, and all Claims and Causes of
Action arising out of ML’s conduct regarding these loans.

22 Plan Confirmation Order, ¶ V at 13:7-12.

23 ⁵ The Plan Confirmation Order defined the “Grace Guarantors” as “all guarantors of any
24 loan made by ML to any one of the Grace Entities.” Plan Confirmation Order, ¶ V at
13:2-3.

25 ⁶ The Official Committee of Investors’ First Amended Plan of Reorganization Dated
26 March 12, 2009 (the “Plan”) defined “Investors” as “all Persons holding fractional or
participating interest in the ML Loans or in the MP Funds which hold fractional or
participating interests in the ML Loans, whether as a pass-through investor or an investor
under the MP Funds, excluding the Debtor.” Plan, Article 2.40 at 8:17-20.

1 settlement agreements attached as Exhibit A hereto.⁷

2 The Bankruptcy Court specifically retained jurisdiction over the mediation process
3 between the Grace Entities and ML Manager. Further, ML Manager asserts that the
4 Bankruptcy Court retained jurisdiction to approve this Motion pursuant to Article 9.1(j)⁸
5 of the Plan, among other sections, and Section 105 of the Bankruptcy Code, among other
6 sections, as an order in aid of implementation of the Plan.

7 **Procedure being Followed**

8 ML Manager has filed this Motion and will serve it along with the Notice of
9 Hearing on the parties on the electronic service list and will mail a copy to each of the
10 non-transferring Pass-Through Investors in each of the six Grace Entity loans.

11 For the investors and the nine MP Funds investors in those six loans, these
12 settlements constitute a “Major Decision”, as defined in each Loan LLC’s operating
13 agreement. Therefore, ML Manager will be sending out a ballot to each investor in the
14 Loan LLCs and the MP Funds asking them to agree or disagree with the ML Manager’s
15 recommendation to approve the settlements. Approval of the investors in the Loan LLCs
16 of the settlement must be obtained by a majority of the investors dollars voting. If the
17 Settlement hearing is accelerated to May 27, 2010 as requested, the voting process will be
18 completed after the hearing on this Motion. The results of the voting will not be known to

19 ⁷ The reason this Motion references six loans and six Loan LLCs but only five Grace
20 Entities is because one of the Grace Entities, 44th & Camelback Property LLC, obtained
21 two separate loans from Mortgages Ltd., resulting in two Loan LLCs (44 CP Loan I LLC
and 44 CP Loan II LLC) associated with that borrower and its loans.

⁸ Article 9.1(j) of the Plan provides:

22 **9.1 Jurisdiction of the Bankruptcy Court.** After the
23 Effective Date, the Bankruptcy Court shall retain jurisdiction
24 of the Chapter 11 Case pursuant to and for the purposes of
§§105(a) and 1127 of the Bankruptcy Code and for the
following purposes, among others:

25 (j) To determine the Borrowers’ Claims against the
26 Debtor, the Estate, the Investors, RBLLC and the Loan LLCs;

1 ML Manager at the time of the Settlement hearing. ML manager will file a notice with
2 the Court once the vote is conducted indicating the results. So long as the settlements are
3 subsequently approved by the Loan LLCs and MP Fund investors, ML Manager asserts it
4 has the authority and ability to go forward with the settlements.

5 ML Manager asserts that the non-transferring Pass-Through Investors are subject to
6 the Mortgages Ltd. Agency Agreement that has been assigned to ML Manager. Some of
7 the non-transferring Pass-Through Investors are part of the Rev Op Group and some of
8 them have asserted or attempted to terminate their Agency Agreement. It is not known at
9 this time whether they will object to this Motion and the settlements. ML Manager will
10 give notice to the non-transferring Pass-Through Investors of this Motion and the hearing
11 hereon. Once they have had a chance to study the terms of the five settlement agreement,
12 they may not have any objection to this Motion.

13 As an agent with power of attorney coupled with an interest to do so, ML Manager
14 has the sole discretion to make this decision concerning the settlement agreements on
15 behalf of the non-transferring Pass-Through Investors, and intends to execute the
16 settlement documents (and any other documents necessary to effectuate the settlements'
17 terms) on their behalf. Due to certain allegations made by other Pass-Through Investors
18 about the Agency Agreement, the title company *may* request that the non-transferring
19 Pass-Through Investors be required to execute documents necessary to effectuate the
20 Court's order and the settlement. In that event, ML Manager will request that the Order of
21 the Court approving this Motion include such directive to the non-transferring Pass-
22 Through Investors, and/or that the Order include such other language required by the title
23 company authorizing ML Manager to execute any and all such documents on behalf of the
24 non-transferring Pass-Through Investors.

25 **The 6 Grace Entities Loans**

26 For Mortgages Ltd. loan number 868606, the Grace Entity borrower is Central &

1 Monroe, LLC, and the associated Loan LLC is C&M Loan LLC. The principal owed is
2 \$27,313,178.50 plus accrued interest and fees. The loan is in default. The collateral for
3 this loan is a historical high rise building in downtown Phoenix which was being
4 renovated by the borrower into a hotel to be known as the "Hotel Monroe." The address
5 is 15 E. Monroe, Phoenix, Arizona. The loan was a construction loan to refurbish the
6 building. The building is not complete and there are alleged mechanics liens by unpaid
7 contractors, and suppliers. The Grace Entities contend that Mortgages Ltd. defaulted by
8 underfunding the loan by more than \$40,000,000, therefore preventing the project from
9 being completed and giving rise to damages. ML Manager has disputed this allegation and
10 disagrees with the alleged claim amount. Under the proposed settlement, ML Manager
11 will be permitted to conduct a deed of trust sale to foreclose on the property, among other
12 things outlined below.

13 For Mortgages Ltd. loan number 851106, the Grace Entity borrower is Osborn III
14 Partners, LLC, and the associated Loan LLC is Osborn III Loan LLC. The principal owed
15 is \$40,288,601 plus accrued interest and fees. The loan is in default. The collateral for
16 the loan is a 4-story luxury condominium project in downtown Scottsdale. The property
17 is located west of Scottsdale Road on Osborn Rd., with a street address of 7116 and 7126
18 E. Osborn Rd, Scottsdale, Arizona. The building is near completion and there are alleged
19 mechanics liens by unpaid contractors and suppliers. The Grace Entities contend that
20 Mortgages Ltd. defaulted by failing to fully and timely fund the loan. ML Manager has
21 disputed this allegation and disagrees with the alleged claim amount. Under the proposed
22 settlement, ML Manager will be permitted to conduct a deed of trust sale to foreclose on
23 the property, among other things outlined below.

24 For Mortgages Ltd. loan number 852606, the Grace Entity borrower is Portales
25 Place Property, LLC, and the associated Loan LLC is PPP Loan LLC. The principal owed
26 is \$32,000,000 plus accrued interest and fees. The loan is in default. The collateral for

1 the loan is approximately 9.7 net acres of land directly north of Scottsdale Fashion Square.
2 The property is zoned for condominiums with a condominium plat overlay but no
3 construction is underway. The Grace Entities contend that Mortgages Ltd. defaulted by
4 failing to fully and timely fund the loan. ML Manager has disputed this allegation and
5 disagrees with the alleged claim amount. Under the proposed settlement, ML Manager
6 will be permitted to conduct a deed of trust sale to foreclose on the property, among other
7 things outlined below.

8 For Mortgages Ltd. loan number 861706, the Grace Entity borrower is 70th Street
9 Property, LLC, and the associated Loan LLC is 70 SP Loan LLC. The principal owed is
10 \$10,870,000 plus accrued interest and fees. The loan is in default. The collateral for the
11 loan is an approximately 1.58-acre assemblage of vacant land and residential acreage,
12 located on 70th Street in downtown Scottsdale between Goldwater Blvd. and Osborn Rd.
13 There are no known mechanics lien claims on the property. The Grace Entities contend
14 that Mortgages Ltd. defaulted by failing to fully and timely fund the loan. ML Manager
15 has disputed this allegation and disagrees with the alleged claim amount. Under the
16 proposed settlement, ML Manager can either request that 70th Street Property LLC
17 provide it with a deed-in-lieu or foreclosure, or conduct a deed of trust sale to foreclose on
18 the property, among other things outlined below.

19 For Mortgages Ltd. loan numbers 849606 and 852406, the Borrower is 44th &
20 Camelback Property, LLC, and the associated Loan LLCs are 44 CP Loan I LLC and 44
21 CP Loan II LLC. The principal due on the loans, respectively, is \$5,828,477.31 and
22 \$5,031,791.58, plus accrued interest and fees. The loans are in default. The loans share
23 the same collateral which is an assemblage of properties consisting of approximately
24 3.03 acres of commercial and residential property located at 44th Street and Camelback in
25 Phoenix, Arizona. There is a senior lien in favor of Parkway Bank for \$18 million on the
26 properties. There are no known mechanics lien claims on the properties. However,

1 because of Parkway Bank's senior lien, there may be no equity left to secure or pay the
2 two loans held by 44 CP Loan I LLC and 44 CP Loan II LLC. Under the proposed
3 settlement, 44th & Camelback Property, LLC will retain the properties, and ML Manager
4 will continue to hold the liens on the properties with their current priority and retain its
5 rights under the loan documents subject to the terms of the settlement agreement, among
6 other things outlined below.

7 Limited guaranties were obtained by Mortgages Ltd. on each of the six loans from
8 Jonathon and Lori Vento, Donald and Shirley Zeleznak, and each of their respective
9 family trusts. The guaranties are crossed between the loans and in some cases are limited
10 and capped in dollar amount. Under the terms of the proposed settlements, ML Manager
11 will receive updated certified personal financial statements from each of the guarantors,
12 and will engage a forensic accountant to review them. ML Manager will need to
13 determine in its sole and absolute discretion whether ML Manager is satisfied with the
14 financial condition of the Guarantors. The details are outlined below.

15 **The Dispute with the Grace Entities**

16 The Grace Entities are a related group of separate entities whose principals are
17 Jonathon Vento and Donald Zeleznak, among others. At the time of those filings, there
18 were six outstanding loans to the Grace Entities on five separate projects.

19 Prior to the bankruptcy, a dispute had arisen between the Grace Entities and
20 Mortgages Ltd. arising out of, among other things, Mortgages Ltd's alleged failure to
21 timely and fully fund the loans to Osborn III Partners and Central & Monroe, LLC.
22 Mortgages Ltd. disputed these allegations of failure to fund asserted by the Grace Entities.
23 Indeed, those Grace Entities were two of the three petitioning creditors of the involuntary
24 Chapter 7 bankruptcy petitions that were filed on June 20, 2008, commencing this
25 bankruptcy case which Mortgages Ltd. converted to a voluntary Chapter 11 case four days
26 later on June 24, 2008.

1 At the time of the bankruptcy, the loans to 70th Street Property, LLC, Portales
2 Place Property, LLC and 44th & Camelback Property, LLC were fully funded.

3 All five Grace Entities alleged that Mortgages Ltd. engaged in conduct prior to the
4 bankruptcy cases that gave rise to significant damages. During the bankruptcy
5 proceedings, the Grace Entities filed amended proofs of claims against Mortgages Ltd.
6 arising out of those lender liability-type allegations and asserted offsets on behalf of
7 Central & Monroe, LLC for approximately \$110,266,000; on behalf of Osborn III
8 Partners, LLC for approximately \$25,400,00; on behalf of 44th & Camelback Property,
9 LLC for approximately \$4,650,000; on behalf of 70th Street Property, LLC for
10 approximately \$3,100,000; and on behalf of Portales Place Property, LLC for
11 approximately \$24,400,000. Objections to the claims were filed by the Investors
12 Committee. ML Manager disputes these claims in the mediation and arbitration.

13 The Grace Entities have consistently taken the position from the outset of
14 Mortgages Ltd.'s bankruptcy case that the six loans were part of a common development
15 scheme or business and that Mortgages Ltd. treated them as such. Specifically, the Grace
16 Entities have alleged that Mortgages Ltd. and its former principal routinely took money
17 out of impound accounts for one Grace Entity project in order to fund draws on other
18 Grace Entity projects, and conditioned Mortgages Ltd.'s release of funding it was
19 obligated to make on one Grace Entity project upon receipt of payment from a different
20 Grace Entity on its loan. The Grace Entities also alleged that Mortgages Ltd.'s default
21 and underfunding of Central & Monroe, LLC's "Hotel Monroe" project and Osborn III
22 Partners, LLC's "Ten Wine Lofts" project, in particular, damaged the Grace Entities and
23 their principals' ability to develop and complete all of the projects. For these and other
24 reasons, they asserted substantial "lender liability" claims against Mortgages Ltd., and
25 took the position that the six loans and the five Grace Entities were interrelated and
26 inseparable from one another. On the other hand, ML Manager disputes the Grace

1 Entities' contentions. Throughout Mortgages Ltd.'s bankruptcy case, with respect to the
2 Grace Entities, this was referred to as the "Bundling Issue." Had the disputes not been
3 settled during mediation on the terms set forth in the attached settlement agreements, and
4 the disputes proceeded to arbitration, the first stage of that bifurcated arbitration would
5 have been devoted to resolving the "Bundling Issue."⁹

6 The validity and priority of Mortgages Ltd.'s notes and deeds of trust, and the
7 validity of the Grace Entities' claims and defenses were not litigated during the
8 bankruptcy or determined as part of the Plan that was confirmed by the Bankruptcy Court
9 through the Plan Confirmation Order entered on May 20, 2009. Prior to confirmation, the
10 Grace Entities had objected to confirmation of the Plan. However, through negotiations
11 with the Official Committee of Investors (the "Investors Committee"), the Grace Entities
12 and the Investors Committee agreed to the *process* of mediation (and if necessary,
13 arbitration) to resolve the competing claims. Consequently, the Grace Entities agreed to
14 withdraw their objection to confirmation of the Plan conditioned expressly upon the
15 inclusion of Paragraph V in the Plan Confirmation Order which set forth the terms of the
16 alternative dispute resolution through which the proposed settlements were reached. Had
17 the parties not agreed to a mediated settlement, the Plan Confirmation Order obligated the
18 parties to proceed to binding arbitration. The proposed settlements will obviate the need
19 for that settlement, and eliminate the costs and uncertainty that would have been

20 ⁹ In this regard, the Plan Confirmation Order provides as follows:

21 The first stage of arbitration shall be devoted to the issue of
22 whether ML's loans to the Grace Entities and the parties'
23 intent and conduct was such that the dispute between ML and
24 all of the Grace Entities should be arbitrated in a single
25 arbitration in which the Grace Entities are entitled to assert
26 claims or defenses from one loan in connection with other
loans or claims, or whether each of the Grace Entities and
their loans are separate and distinct, and thus should be
arbitrated separately. The parties have referred to this as the
issue of whether the loans are bundled together (the
"Bundling Issue").

1 associated therewith.

2 Pursuant to the Plan Confirmation Order, ML Manager and representatives of the
3 Grace Entities, along with their respective counsel, participated in several mediation
4 sessions, both collectively and separately, with Gary L. Birnbaum, a well-respected real
5 estate litigator with the law firm of Mariscal, Weeks, Weeks, McIntyre & Friedlander,
6 P.C. In addition to those sessions, counsel for ML Manager and the Grace Entities spent
7 hours negotiating the terms contained in the attached settlement agreements. As part of
8 these negotiations, the Grace Entities represented to ML Manager that other than the
9 property securing the six loans, none of the entities, nor any of their principals, had any
10 money or assets to satisfy any judgment that might be obtained due to the Grace Entities'
11 and their guarantors' alleged defaults on their loans and guarantees. Accordingly, the
12 only source of money to repay the loans are the five properties at issue. The Grace
13 Entities had also incurred substantial obligations to third parties in connection with their
14 developments, which they contend was a result of Mortgages Ltd.'s conduct and breach of
15 its obligations under the loan documents. In order to reach a settlement of these lender
16 liability-type claims and allow the properties to be recovered for the benefit of the
17 investors, ML Manager has agreed to permit a relatively small amount (compared to the
18 amount of the loans and alleged damages) to be paid to some of the Grace Entities'
19 creditors out of the proceeds of Central & Monroe, LLC's and Osborn III Partners, LLC's
20 collateral when those properties are sold after foreclosure.

21 **The Settlement Terms**

22 The proposed settlements resolve all of the six loans described above and are
23 described in five separate settlement agreements, each of which only becomes effective if
24 certain Conditions Precedent occur as described below, at which time the settlement
25 agreements will become effective and binding on the Loan LLCs, ML Manager and the
26 non-transferring Pass-Through Investors in the Loans ("Lender Parties") and on each of

1 the Grace Entities (the “Borrowers”) and their guarantors (the “Guarantors”) (together the
2 Borrowers and the Guarantors are called the “Borrower Parties”) The settlement of the
3 two loans to 44th & Camelback Property, LLC (“44th & Camelback Loans”) is different
4 from the others for the reasons set forth below. The settlements of the other four loans to
5 the other four Grace Entities (Central & Monroe, LLC; Osborn III Partners, LLC; 70th
6 Street Property, LLC; and Portales Place Property, LLC) have the following similar
7 features:

8 1. The settlements do not become effective and binding until the following
9 conditions precedent (“Conditions Precedent”) have been met:

- 10 a. Consent of the Exit Financing Lender has been obtained;
- 11 b. The members of each of the Loan LLCs have approved the
12 settlements as required under the Loan LLC operating agreements;
- 13 c. The Bankruptcy Court (i) approves the settlements and the entry into
14 the settlement agreements by ML Manager acting as Manager of the Loan LLCs and as
15 agent for the non-transferring Pass-Through Investors; and (ii) enters an Order authorizing
16 ML Manager to conduct Trustee’s Sales with respect to the four properties on behalf of
17 the Loan LLCs and their respective non-transferring Pass-Through investors. The Order
18 must be a final non-appealable order, or if an appeal has been filed, no stay pending
19 appeal shall have been ordered;
- 20 d. No Bankruptcy Action has occurred with respect to any of the
21 Borrower Parties (the definition of Bankruptcy Action is quite broad, but essentially
22 means a voluntary or involuntary bankruptcy filing by or against a Borrower Party.);
- 23 e. Borrowers shall have delivered to ML Manager copies of the articles
24 or organization and their operating agreements to confirm their members and authority;
- 25 f. None of the Borrower Parties shall be in default under the particular
26 settlement agreement;

1 g. Each of the Guarantors shall have delivered to ML Manager their tax
2 returns and financial statements, and shall certify that their financial statements are true
3 and correct in all material respects as of the date of the settlement agreement. The
4 Guarantors shall also provide such other financial data as ML Manager may request in
5 order to satisfy ML Manager “in its sole and absolute discretion” as to the Guarantors’
6 financial condition. To this end, ML Manager will engage a forensic accountant to review
7 the information provided by the Guarantors and report their conclusions to ML Manager;
8 and

9 h. All of the foregoing Conditions Precedent shall have occurred by
10 July 31, 2010.

11 2. Assuming that all of the foregoing Conditions Precedent are met, the
12 settlement agreements will become effective and binding on the Lender Parties and the
13 Borrower Parties, and ML Manager will conclude Trustee’s Sales on each of the four
14 properties as quickly as possible (or in the case of 70th Street Property, LLC and Portales
15 Place Property, LLC, request a deed-in-lieu of foreclosure). Trustee’s Sale dates have
16 already been noticed and will be continued from time to time until the Conditions
17 Precedent have been met and the settlement agreements have become effective, at which
18 time the Lender Parties will be released of all liabilities and claims against them. On the
19 Release Date, which is a date 91 days after a Trustee’s Sale has been held on a specific
20 property (or a deed-in-lieu of foreclosure has been provided) without any Bankruptcy
21 Action having occurred as to any Borrower Party, the Borrower Parties will be released
22 under the Loan Documents and the guarantees with respect to the loan on that property.

23 The settlement agreement on the two loans to 44th & Camelback Property, LLC
24 has the same Conditions Precedent to the effectiveness of the settlement agreement on that
25 property but is different from the other four settlements in that the two loans by
26 Mortgages Ltd. were and are subordinated to a senior loan by Parkway Bank (“Parkway

1 Loan”). Prior to the bankruptcy cases, Mortgages Ltd. entered into a Subordination
2 Agreement with Parkway Bank which granted Parkway Bank senior priority for its lien,
3 and precluded Mortgages Ltd. from foreclosing its interest in the property or taking any
4 enforcement action without Parkway Bank’s consent. ML Manager believes Parkway
5 Bank is owed more money than the properties securing its loan are worth, which
6 effectively means there is no equity in the collateral that secures the two loans Mortgages
7 Ltd. made. As a result, ML Manager has agreed that 44 CP Loan I LLC and 44 CP Loan
8 II LLC shall not request Parkway Bank’s permission to foreclose those two loans (since
9 that would cause Parkway Bank to foreclose its loan, thus wiping out all junior interests),
10 but instead will remain in place behind the Parkway Loan, with all other rights under their
11 loan documents, and will wait to see if 44th & Camelback Property LLC can salvage the
12 project or is foreclosed out by Parkway Bank. If Parkway Bank forecloses on the
13 properties, there will likely be no recovery for the holders of the two loans from 44th &
14 Camelback Property LLC and the Guarantors will be released on the Release Date, which
15 is 91 days after any foreclosure by Parkway Bank is complete. As indicated below, ML
16 Manager believes that the Guarantors are insolvent and no recovery can be obtained from
17 them, so the release of the Guarantors after foreclosure of the project by Parkway Bank,
18 which was required by the Grace Entities in order to obtain a settlement on all matters,
19 will not result in any loss of a possible recovery by the holders of those loans.

20 The settlements with Osborn III Partners, LLC and Central & Monroe, LLC have
21 an additional feature not present in the other three settlements. The settlement agreement
22 with Osborn III Partners, LLC requires payment upon any sale or refinancing of the
23 property of the sums of \$510,000 to the Grace Entities’ counsel, Snell & Wilmer L.L.P.,
24 and an additional \$365,000 to Osborn III Partners, LLC or its designee. Similarly, the
25 settlement agreement with Central & Monroe, LLC requires payment upon any “Capital
26 Event” (as defined in the settlement agreement) of three separate sums in the amounts of

1 \$230,000, \$260,000 and \$125,000 to Central & Monroe, LLC or its designee(s). A
2 Capital Event is, generally, a sale or all or a portion of the property, a refinancing of the
3 property where any proceeds are to be distributed to the holders of CM Loan LLC, or the
4 admission of any new members in CM Loan LLC if any money is contributed which is
5 paid to the existing members of CM Loan LLC. Each of the obligations on both
6 properties is evidenced by a promissory note and secured by a single deed of trust on the
7 associated property.

8 ML Manager believes based on representations made by the Grace Entities during
9 the mediation that such amounts will be use to pay creditors of the Grace Entities and their
10 guarantors to stop them from pursuing the Grace Entities and the guarantors, and
11 potentially forcing them into bankruptcy, which would further delay ML Manager's
12 efforts to realize on the properties for the benefit of the investors. Based upon the
13 Guarantors' financial statements and tax returns, it appears to ML Manager that the
14 Guarantors are totally insolvent. ML Manager however needs to complete its review of
15 their financial condition. If this is accurate, it is the business judgment of ML Manager
16 that holders of these loans are best served by obtaining possession of the properties and
17 obtaining title through trustee's sales (or in the case of 70th Street Property, LLC and
18 Portales Place Property, LLC, deeds-in-lieu of foreclosure) so that the properties may be
19 resold to produce proceeds for investors, rather than pursuing actions against the Grace
20 Entities and/or the Guarantors, all of whom appear to be insolvent. Proceeding against
21 either the Borrowers or the Guarantors without the proposed settlements would, in ML
22 Manager's judgment, likely result in protracted, expensive litigation and/or bankruptcies
23 by the Grace Entities and/or the Guarantors, which would likely tie up the properties for a
24 substantial period of time.

25 As indicated above, the proposed settlements represent a compromise of the
26 significant and complex claims of both sides, reached only after months of negotiations

1 with the assistance of the mediator. Given the unlikely recovery against the Grace
2 Entities and the Guarantors, ML Manager believes that the settlements are in the best
3 interest of the investors and are a valid exercise of its business judgment.

4 WHEREFORE, ML Manager requests that the Court enter an order authorizing and
5 approving the settlements described above, authorizing ML Manager to enter into the five
6 settlement agreements attached collectively as Exhibit A hereto, and for such other and
7 further relief as is just and proper under the circumstances.

8 DATED: May 18, 2010

9 FENNEMORE CRAIG, P.C.

10 By /s/ Cathy L. Reece
11 Cathy L. Reece
12 Keith L. Hendricks
13 Attorneys for ML Manager LLC

14 2314628.2

15
16
17
18
19
20
21
22
23
24
25
26