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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

12 **MOTION TO SELL REAL PROPERTY FREE**
13 **AND CLEAR OF LIENS, CLAIMS,**
14 **ENCUMBRANCES, AND INTERESTS**

15 **Real Property located in Maricopa County, AZ**
at Hohokam Freeway and Belleview Street,
Phoenix, Arizona

Hearing Date: TBD
Hearing Time: TBD

16 ML Manager LLC (“ML Manager”), requests that the Court enter an order
17 authorizing ML Manager as the manager for CITLO Loan LLC and the agent for 4 Pass-
18 Through Investors, to sell the approximate 6 acres of real property (including the 42
19 apartment units) located in Maricopa County, Arizona, at Hohokam Freeway and
20 Belleview Street, Phoenix, Arizona to Endres, LLC, a Minnesota limited liability
21 company, or its assigns (“Purchaser”) for the price of \$1.925 million (“Purchase Price”)
22 and on the terms set forth in the proposed Agreement of Sale and Purchase and Escrow
23 Instructions (“Sale Agreement”) which is attached as Exhibit A or upon better terms as
24 reasonably determined by ML Manager. ML Manager requests a hearing be held in 21
25 days but no later than the end of August, 2010. The Sale Agreement has a short 15-day
26 Feasibility period and then 30 days to close.

1 Borrower City Lofts, LLC defaulted on its loan with Mortgages Ltd. The unpaid
2 principal balance alone is around \$11.88 million. Interest and fees also are due. ML
3 Manager scheduled a deed of trust sale and foreclosed on the real property. The
4 guarantors are Michael and Kay Peloquin and suit on the guarantors has been commenced.
5 Pursuant to the Official Investors' Committee's First Amended Plan confirmed by the
6 Court, CITLO Loan, LLC ("CITLO Loan LLC") was formed on the effective date and the
7 fractional interests in the note and deed of trust which were held by the MP Funds and
8 Mortgages Ltd. were transferred into CITLO Loan LLC. Subsequently some of the pass-
9 through investors transferred their interests into CITLO Loan LLC. At the current time, 4
10 Pass-Through Investors had not transferred their fractional interests ("4 Pass-Through
11 Investors"). As a result, 86.798% of the interest in the real property is owned by CITLO
12 Loan LLC and 13.202% is owned by the 4 Pass-Through Investors who did not transfer
13 into CITLO Loan LLC.

14 ML Manager retained the services of Hendricks and Partners, a leading apartment
15 real estate brokerage firm, to widely market the property for sale.¹ After completing
16 substantial marketing efforts and receiving several offers, in July 2010, Purchaser made an
17 offer of \$1.925 million and ML Manager entered into the Sale Agreement with Purchaser
18 for that price, subject to the regular contingencies for ML Manager. Purchaser has
19 deposited \$50,000 earnest money and opened escrow at Thomas Title & Escrow. The sale
20 will be free and clear of all liens, claims, encumbrances and interests with liens, claims
21 and interests to attach to the sale proceeds. Because the property has already been fully
22 marketed, this is not proposed to be an auction and no higher and better bids are being
23 solicited. The contingencies include approval by the investors in CITLO Loan LLC and

24 _____
25 ¹ ML Manager entered into negotiations in May 2010 with Vijay Sethi for a sale at
26 \$1,700,000.00. ML Manager filed a Motion Sell but Mr. Sethi subsequently terminated
the sale agreement and ML Manager withdrew the Motion prior to the hearing. Since that
time, ML Manager has continued its efforts through its broker to find an acceptable offer.

1 the applicable MP Funds (which is in process) and Bankruptcy Court approval. One of the
2 contingencies is the waiver of the right to compete by the exit financier and this right has
3 already been waived by exit financier. Purchaser commenced its 15-day Feasibility
4 period upon notification that the exit financier waived its right to compete. The deal could
5 close 30 days thereafter provided the contingencies have been satisfied. The parties
6 anticipate that such closing will occur in early September 2010. The purchase price is to
7 be paid in cash at closing. This is an arms-length, negotiated sale between unrelated
8 parties. The proposed sale order will have a finding of good faith purchaser status for the
9 Purchaser.

10 This property consists of approximately 6 acres and contains of 42 apartment units,
11 known as the Belleview Estates, and approximately 2.6 acres of vacant land located
12 adjacent to the apartment units. The sale will include all the land, buildings, other
13 improvements, personal property, and leases and sublease related to the property, among
14 other things.

15 Even though the debt will not be paid in full, ML Manager believes that this price
16 reflects the current market value of the property and that it is unlikely in the foreseeable
17 future to get a higher amount for the property. The property produces a small amount of
18 cash from its operations, however, the property is in need of several capital improvement
19 projects and the cash flow from the property is substantially insufficient to pay for the cost
20 of these projects. ML Manager believes that this sale is in the best interest of the investors
21 in CITLO Loan LLC and the 4 Pass-Through Investors and is a valid exercise of its
22 business judgment consistent with any fiduciary responsibilities.

23 Due to the actions pending in the Bankruptcy Court and District Court by certain
24 investors, ML Manager believes that it is prudent and necessary to seek Bankruptcy Court
25 approval of the sale. An order approving the sale and authorizing the sale by ML Manager
26 of 100% of the interest in the real property will insure a smooth closing and will aid in the

1 implementation of the Plan.

2 Under the Operating Agreement of CITLO Loan LLC, since this event is a Major
3 Decision, ML Manager must seek approval of the sale from the investors in the CITLO
4 Loan LLC entity and the MP Funds investors. Approval must be obtained by a majority of
5 the investors' dollars voting. The voting process is the works and by the time the parties
6 get to a sale hearing the results will be known to ML Manager. If approved ML Manager
7 asserts it has the authority and ability to go forward with the sale of CITLO Loan LLC's
8 interests.

9 ML Manager as the agent for the 4 Pass-Through Investors has the authority and
10 ability to engage a broker, enter into a sale agreement and to sell the foreclosed real estate
11 on behalf of the principals. Three of the Pass-Through Investors are part of the Rev Op
12 Group, however, it is not clear if they will object to this Motion and sale. They may not
13 have any objection to this sale once they have a chance to study the Sale Agreement
14 terms. Normally ML Manager as the agent would execute the documents on behalf of the
15 Pass-Through Investors since it holds the irrevocable power of attorney coupled with an
16 interest to do so. Due to certain allegations made by other Pass-Through Investors about
17 the Agency Agreement, the title company may request that the 4 Pass-Through Investors
18 be required to execute documents effectuating the Court's order and the sale. ML
19 Manager will request that the sale order include such direction to the 4 Pass-Through
20 Investors but also that the sale order will include other language authorizing ML Manager
21 to execute any and all such documents on behalf of the 4 Pass-Through Investors.

22 ML Manager asserts that the Court has retained and reserved jurisdiction in the
23 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among
24 others, and has the authority to approve the sale under Section 105 of the Bankruptcy
25 Code, among other sections, as an order in aid of implementation of the Plan.

26 As is customary ML Manager does propose to pay the closing costs, real property

1 or other taxes and any commission as set forth in the Sale Agreement at the closing out of
2 the gross sale proceeds. ML Manager also proposes to pay the exit financier from the
3 CITLO Loan LLC portion of the sale proceeds pursuant to the Loan Agreement and the
4 Interborrower Agreement and to create and use the Permitted Reserves pursuant to the
5 Loan Agreement.

6 ML Manager does not seek an order as a part of this Motion to disburse the net sale
7 proceeds attributable to the 4 Pass-Through Investors or to determine what amount should
8 be charged back or allocated to the 4 Pass-Through Investors as their fair share of the
9 expenses, including exit financing. ML Manager anticipates that any decisions with regard
10 to the distribution of proceeds to the 4-Pass-Through Investors will be made at a later date
11 if and when the sale closes and the money becomes available for distribution. ML
12 Manager will seek and include in the sale order language so as to allow it in its discretion
13 to distribute net sale proceeds attributable to the ownership interest to CITLO Loan LLC
14 pursuant to its agreements, the Plan, Confirmation Order, and Interborrower Agreement.

15 Finally, the sale order will seek the waiver of the 14-day stay of an order for the
16 sale of the property under Bankruptcy Rule 6004(h) so that the sale can close within the
17 timeframes set forth in the Sale Agreement.

18 WHEREFORE, ML Manager LLC requests that the Court enter an order
19 authorizing and approving the sale as set forth above, and for such other and further relief
20 as is just and proper under the circumstances.

21 DATED: July 29, 2010

22 FENNEMORE CRAIG, P.C.

23 By /s/ Cathy L. Reece
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