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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 at 802 East Missouri
16 Avenue, Phoenix, Arizona**

17 **Hearing Date: TBD
18 Hearing Time: TBD**

19 ML Manager LLC (“ML Manager”), requests that the Court enter an order
20 authorizing ML Manager as the manager for ZDCII Loan LLC and the agent for certain
21 Pass-Through Investors, to sell the 66 partially developed lots located at 802 East
22 Missouri Avenue, Phoenix, Arizona to WESCAP Investments, Inc., an Arizona
23 corporation (“Purchaser”) for the price of \$2,112,000 (“Purchase Price”) and on the terms
24 set forth in the proposed Agreement of Sale and Purchase and Escrow Instructions (“Sale
25 Agreement”) which is attached as Exhibit A or upon better terms as reasonably
26 determined by ML Manager. ML Manager requests a hearing be held in 21 days but no
later than the end of August, 2010. The Sale Agreement has a 30-day Feasibility period
and then a 15-day close thereafter.

Borrower Zacher Development Company, LLC defaulted on its loan with

1 Mortgages Ltd. The unpaid principal balance alone is around \$11,897,435. Interest and
2 fees also are due. ML Manager scheduled a deed of trust sale and foreclosed on the real
3 property. The guarantors are Richard C. and Kristin C. Zacher have been sued. Pursuant
4 to the Official Investors' Committee's First Amended Plan confirmed by the Court, ZDC
5 II Loan, LLC ("ZDC II Loan LLC") was formed on the effective date and the fractional
6 interests in the note and deed of trust which were held by the MP Funds and Mortgages
7 Ltd. were transferred into ZDC II Loan LLC. Subsequently some of the pass-through
8 investors transferred their interests into ZDC II Loan LLC. At the current time, 9 Pass-
9 Through Investors had not transferred their fractional interests ("Pass-Through
10 Investors"). As a result, 75.293% of the interest in the real property is owned by ZDC II
11 Loan LLC and 24.707% is owned by the Pass-Through Investors who did not transfer into
12 ZDC II Loan LLC.

13 ML Manager retained the services of Cherokee Development, Ltd., a leading
14 brokerage firm experience with this local area and market, to widely market the property
15 for sale. After completing substantial marketing efforts and receiving several offers,
16 Purchaser made an offer and ML Manager entered into the Sale Agreement with
17 Purchaser for that price, subject to the regular contingencies for ML Manager. Purchaser
18 will deposit \$50,000 earnest money and open escrow at Pioneer Title Agency, Inc. and
19 will deposit and additional \$100,000 upon expiration of the Feasibility period. The sale
20 will be free and clear of all liens, claims, encumbrances and interests with all liens to
21 attach to the proceeds. Because the property has already been fully marketed, this is not
22 proposed to be an auction and no higher and better bids are being solicited. The
23 contingencies include approval by the investors in ZDC II Loan LLC and the applicable
24 MP Funds (which is in process), Bankruptcy Court approval, and waiver of the right to
25 compete by the exit financier. Purchaser will commence its 30-day Feasibility period and
26 the deal could close 15 days thereafter provided the contingencies have been satisfied. The

1 parties anticipate that such closing will occur about September 14, 2010. The purchase
2 price is to be paid in cash at closing. This is an arms-length, negotiated sale between
3 unrelated parties. The proposed sale order will have a finding of good faith purchaser
4 status for the Purchaser.

5 Even though the debt will not be paid in full, ML Manager believes that this price
6 reflects the current market value of the property and that it is unlikely in the foreseeable
7 future to get a higher amount for the property. ML Manager believes that this sale is in the
8 best interest of the investors in ZDC II Loan LLC and the Pass-Through Investors and is a
9 valid exercise of its business judgment consistent with any fiduciary responsibilities.

10 Due to the actions pending in the Bankruptcy Court and District Court by certain
11 investors, ML Manager believes that it is prudent and necessary to seek Bankruptcy Court
12 approval of the sale. An order approving the sale and authorizing the sale by ML Manager
13 of 100% of the interest in the real property will insure a smooth closing and will aid in the
14 implementation of the Plan.

15 Under the Operating Agreement of ZDC II Loan LLC, since this event is a Major
16 Decision, ML Manager must seek approval of the sale from the investors in the ZDC II
17 Loan LLC entity and the MP Funds investors. Approval must be obtained by a majority of
18 the investors' dollars voting. The voting process is the works and by the time the parties
19 get to a sale hearing the results will be known to ML Manager. If approved ML Manager
20 asserts it has the authority and ability to go forward with the sale of ZDC II Loan LLC's
21 interests.

22 ML Manager as the agent for the Pass-Through Investors has the authority and
23 ability to engage a broker, enter into a sale agreement and to sell the foreclosed real estate
24 on behalf of the principals. Two of the Pass-Through Investors are part of the Rev Op
25 Group, however, it is not clear if they will object to this Motion and sale. They may not
26 have any objection to this sale once they have a chance to study the Sale Agreement

1 terms. Normally ML Manager as the agent would execute the documents on behalf of the
2 Pass-Through Investors since it holds the irrevocable power of attorney coupled with an
3 interest to do so. Due to certain allegations made by other Pass-Through Investors about
4 the Agency Agreement, the title company may request that the Pass-Through Investors be
5 required to execute documents effectuating the Court's order and the sale. ML Manager
6 will request that the sale order include such direction to the Pass-Through Investors but
7 also that the sale order will include other language authorizing ML Manager to execute
8 any and all such documents on behalf of the Pass-Through Investors.

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

13 As is customary ML Manager does propose to pay the closing costs, real property
14 or other taxes and any commission as set forth in the Sale Agreement at the closing out of
15 the gross sale proceeds. ML Manager also proposes to pay the exit financier from the
16 ZDC II Loan LLC portion of the sale proceeds pursuant to the Loan Agreement and the
17 Interborrower Agreement and to create and use the Permitted Reserves pursuant to the
18 Loan Agreement.

19 ML Manager does not seek an order as a part of this Motion to disburse the net sale
20 proceeds attributable to the ownership interests of the Pass-Through Investors or to
21 determine what amount should be charged back or allocated to the Pass-Through Investors
22 as their fair share of the expenses, including exit financing. ML Manager anticipates that
23 any decisions with regard to the distribution of proceeds to the Pass-Through Investors
24 will be made at a later date if and when the sale closes and the money becomes available
25 for distribution. ML Manager will seek and include in the sale order language so as to
26 allow it in its discretion to distribute net sale proceeds attributable to the ownership

1 interest for ZDC II Loan LLC pursuant to its agreements, the Plan, the Confirmation
2 Order, and Interborrower Agreement.

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

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

9 DATED: August 5, 2010

10 FENNEMORE CRAIG, P.C.

11 By /s/ Cathy L. Reece
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13 Keith L. Hendricks
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15 Copy of the foregoing emailed and/or
16 mailed to the following:

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