

**IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.**

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: October 01, 2010



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**RANDOLPH J. HAINES
U.S. Bankruptcy Judge**

Attorneys for ML Manager LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re
MORTGAGES LTD.,
Debtor.

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

**ORDER APPROVING MOTION TO SELL
REAL PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS**

**Real Property and improvements located in
Scottsdale, Arizona in the development known
as Osborn III/Ten Wine Lofts located at 7116
and 7126 E. Osborn Rd.**

**Hearing Date: September 28, 2010
Hearing Time: 2:30 p.m.**

17 ML Manager LLC ("ML Manager") filed a Motion ("Motion") (Docket No. 2923)
18 requesting that the Court enter an order authorizing ML Manager, as the manager for
19 Osborn III Loan LLC and the agent for certain non-transferring pass-through investors
20 (the "Agent"), to sell the partially completed 4-story luxury condominium project located
21 in Scottsdale, Arizona in the development known as Osborn III/Ten Wine Lofts located at
22 7116 and 7126 E. Osborn Rd. (the "Property") for the price and on the terms set forth in
23 the Agreement of Sale and Purchase and Escrow Instructions ("Sale Agreement") which
24 was attached to the Notice of Filing Sale Agreement (Docket No. 2966). Among other
25 things, the Sale Agreement provides for the sale of the Property for approximately
26 \$19,500,000 to Connell Real Estate and Development Company ("Purchaser"). A notice

1 to creditors, interested parties and the non-transferring pass-through investors of the
2 Motion and the hearing date was served. Jeffrey C. Stone, Inc. d/b/a Summit Builders
3 (“Summit Builders”) filed a Response (Docket No. 2961) (the “Summit Objection”) and
4 certain Rev-Op Group Investors filed a Response (Docket No. 2965) (the “Rev-Op Group
5 Objection”) and Allen Bickart filed a Joinder in the Rev-Op Group Objection (Docket No.
6 2969) (the “Bickart Joinder”) (all three collectively, the “Objections”). ML Manager filed
7 a Reply (Docket No. 2970). No other party filed a response or objection. The hearing was
8 held on the Motion on September 28, 2010 at 2:30 p.m. in Phoenix.

9 Upon consideration of the Motion and statements and arguments of counsel at the
10 hearing; it appears to the Court and the Court finds that:

11 (a) This Court has jurisdiction over the issues presented in the Motion and the
12 Motion and the Court’s hearing thereon were duly and properly noticed;

13 (b) The purchase price offered constitutes fair consideration for the Property;

14 (c) The Purchaser is a good faith purchaser;

15 (d) The investors in Osborn III Loan LLC and the applicable MP Funds have
16 agreed by the applicable dollar vote to the sale terms;

17 (e) ML Manager is authorized to enter into the Sale Agreement, to sell the
18 Property pursuant to the terms of the Sale Agreement, to proceed with this sale and to
19 execute all necessary documents to implement the sale;

20 (f) The liens, claims, encumbrances and interests shall attach to the proceeds of
21 the sale as set forth in this Order and the Property shall be transferred free and clear of all
22 liens, claims, encumbrances and interests of any kind;

23 (g) The decision to sell and enter into the Sale Agreement is supported by the
24 best exercise of business judgment of ML Manager and is consistent with ML Manager’s
25 fiduciary duties and responsibilities.

26 IT IS THEREFORE ORDERED THAT:

1 (1) The Motion is granted and approved as set forth in this Order and the
2 Objections and the Summit Objection has been resolved by this Order and the Rev-Op
3 Group Objection and the Bickart Joinder, and any and all other responses or objections,
4 are overruled.

5 (2) ML Manager, as the Manager of Osborn III Loan LLC and Agent, including
6 as agent for the Rev Op Group Investors, has authority and is directed to enter into the
7 Sale Agreement, to consummate the sale, to sell the Property pursuant to the terms of the
8 Sale Agreement, and to execute any and all documents needed to consummate the sale.

9 (3) The sale and transfer of the Property to the Purchaser shall be free and clear
10 of all liens, claims, encumbrances and interests of any kind with such liens claims,
11 encumbrances and interests to attach to the proceeds resulting from the sale of the
12 Property (the "Sale Proceeds") as set forth in this Order.

13 (4) To address the Summit Objection to the extent necessary to permit the sale
14 as provided in this Order, as a condition to the completion of the sale of the Property and
15 prior to any other distribution of Sale Proceeds authorized in this Order, Sale Proceeds, in
16 the sum of \$3,445,095.79 shall be deposited and held in escrow (the "Escrowed Sale
17 Proceeds") for the sole benefit of Summit Builders and ML Manager, free from any other
18 claims or interests other than the undivided ownership interests of Osborn III Loan LLC
19 and the pass-through investors, with the alleged liens and interests of Summit Builders
20 and ML Manager to attach to the Escrowed Sale Proceeds in the same manner, extent and
21 priority that such liens and interests held in the Property as they existed immediately prior
22 to the sale of the Property provided for in this Order. The Escrowed Sale Proceeds shall be
23 deposited in an interest-bearing account with the title company handling the closing, or
24 another escrow company mutually agreeable to ML Manager and Summit Builders, and
25 shall be disbursed only pursuant to further Order of this Court, upon appropriate notice to
26 parties asserting an interest in the Escrowed Sale Proceeds. All disputes, arguments,

1 claims, other lien interests and defenses of and between Summit Builders and ML
2 Manager as the Manager and Agent are preserved. Nothing in this Order, including,
3 without limitation, the escrowing of the Sale Proceeds, shall waive, release or impact the
4 coverage or liability of the title insurance policy for the payment of the alleged
5 mechanic's liens.

6 (5) ML Manager is authorized to pay out of the Sale Proceeds all costs of sale,
7 including real property taxes, assessments, broker's fees, title insurance or other closing
8 costs and to pay out of the Osborn III Loan LLC proceeds any liens or encumbrances on
9 the Property owed to the current exit lender pursuant to the Loan Agreement, and to create
10 and use any Permitted Reserves pursuant to the Loan Agreement. Further ML Manager is
11 authorized and directed to pay off any lien to the Grace Entities or any affiliate thereof.

12 (6) The Purchaser is a good faith purchaser for fair consideration of the
13 Property.

14 (7) The net Sale Proceeds attributable to the ownership percentage for the
15 Osborn III Loan LLC shall be transferred at closing to ML Manager as the Manager for
16 Osborn III Loan LLC and used and distributed pursuant its agreements, the Interborrower
17 Agreement and the Confirmation Order. The net Sale Proceeds attributable to the
18 ownership percentage for the non-transferring pass-through investors, including the Rev
19 Op Group Investors, shall be transferred to ML Manager as Agent and shall be used and
20 distributed pursuant to this Order, the applicable agency agreements and the Confirmation
21 Order.

22 (8) Pursuant to Section 1146(a) of the Bankruptcy Code and Section 10.5 of the
23 confirmed Plan of Reorganization, any and all mortgage recording tax, stamp tax, real
24 estate transfer tax, speculative builder, transaction privilege or other similar tax imposed
25 by federal, state or local law are hereby waived.

26 (9) The stay of Federal Rule of Bankruptcy Procedure Rule 6004(h) may not be

1 applicable and so this Order shall be stayed until 5 p.m. (Arizona time) on October 12,
2 2010 and thereafter shall be enforceable.

3 DATED AND ORDERED AS STATED ABOVE.
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