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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

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

**Real Property and Improvements located in  
Phoenix, Arizona consisting of approximately  
2.89 acres located at southeast corner of 3<sup>rd</sup>  
Street and Roosevelt**

**Hearing Date: TDB  
Hearing Time: TBD**

16 ML Manager LLC ("ML Manager"), requests that the Court enter an order  
17 authorizing ML Manager as the manager for RG I Loan LLC and RG II Loan LLC and  
18 the agent for Pass-Through Investors in both loans, to sell the real property and  
19 improvements located in Phoenix, Arizona, consisting of 21 individual parcels comprising  
20 approximately 2.89 acres, located at the southeast corner of 3<sup>rd</sup> Street and Roosevelt,  
21 together with all the personal property and improvement, as more specifically described in  
22 the Sale Agreement ("Property"), to Concord Eastridge, Inc., an Arizona corporation,  
23 ("Purchaser") for the price of \$3,085,138 ("Purchase Price") and on the terms set forth in  
24 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  
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1 determined by ML Manager. The Sale Agreement has a contemplated closing 30 days of  
2 after the expiration of the Feasibility Period.

3 Borrower Roosevelt Gateway LLC defaulted on its loan with Mortgages Ltd. The  
4 unpaid principal balance on the loan (Loan No. 856605) is \$7 million. Interest and fees  
5 also are due. ML Manager held a deed of trust sale and foreclosed on the real property and  
6 improvements. The guarantors are Charles A. and Kimberly LaMar and suit on the  
7 guarantors has been or will be commenced. Pursuant to the Official Investors'  
8 Committee's First Amended Plan confirmed by the Court, RG I Loan LLC was formed on  
9 the effective date and the fractional interests in the note and deed of trust which were held  
10 by the MP Funds were transferred into RG I Loan LLC. Subsequently some of the pass-  
11 through investors transferred their interests into RG I Loan LLC. At the current time, 19  
12 Pass-Through Investors had not transferred their fractional interests ("Pass-Through  
13 Investors"). As a result, 57.966% of the interest in the real property is owned by RG I  
14 Loan LLC and rest is owned by the Pass-Through Investors in the loan.

15 Borrower Roosevelt Gateway II LLC defaulted on its loan with Mortgages Ltd.  
16 The unpaid principal balance on the loan (Loan No. 859205) is \$6.1 million. Interest and  
17 fees also are due. ML Manager held a deed of trust sale and foreclosed on the real  
18 property and improvements. The guarantors are Charles A. and Kimberly LaMar and  
19 Justin LaMar and suit on the guarantors has been or will be commenced. Pursuant to the  
20 Official Investors' Committee's First Amended Plan confirmed by the Court, RG II Loan  
21 LLC was formed on the effective date and the fractional interests in the note and deed of  
22 trust which were held by the MP Funds were transferred into RG II Loan LLC.  
23 Subsequently some of the pass-through investors transferred their interests into RG II  
24 Loan LLC. At the current time, 5 Pass-Through Investors had not transferred their  
25 fractional interests (together with the other Roosevelt Gateway loan, "Pass-Through  
26 Investors"). As a result, 82.133% of the interest in the real property is owned by RG II

1 Loan LLC and the rest is owned by the Pass-Through Investors in the loan.

2 ML Manager retained the services of Michael Lieb with Cherokee Development  
3 Ltd., a leading real estate brokerage firm, to widely market the property for sale. After  
4 completing substantial marketing efforts, Purchaser made an offer of \$3,085,138 and ML  
5 Manager entered into the Sale Agreement with Purchaser for that price, subject to the  
6 regular contingencies for ML Manager. Purchaser has deposited \$100,000 earnest money  
7 and opened escrow at North American Title Company. Because the property has already  
8 been fully marketed, this is not proposed to be an auction and no higher and better bids are  
9 being solicited. The contingencies include approval by the investors in both Loan LLCs  
10 and the applicable MP Funds and Bankruptcy Court approval. One of the contingencies is  
11 the waiver or the exercise of the right to compete by the exit financier. The purchase price  
12 is to be paid in cash at closing. This is an arms-length, negotiated sale between unrelated  
13 parties. The proposed sale order will have a finding of good faith purchaser status for the  
14 Purchaser. The Sale Agreement also contains a Feasibility Period for the Purchaser of 90  
15 days, which based on the unique circumstances of the Property and the Purchaser is  
16 acceptable to ML Manager.

17 This property consists of 21 individual parcels comprising approximately 2.89 on a  
18 combined basis, located at the southeast corner of 3<sup>rd</sup> Street and Roosevelt, in Phoenix,  
19 Arizona, together with all the personal property and improvements, as more specifically  
20 set forth in the Sale Agreement. The Purchase Price has been allocated 67% to Roosevelt  
21 Gateway LLC loan (Loan No. 856605) and 33% to the Roosevelt Gateway II loan (Loan  
22 No. 859205) based on the square footage of the properties. Even though the debt will not  
23 be paid in full, ML Manager believes that this price reflects the current market value of  
24 the properties and that it is unlikely in the foreseeable future to get a higher amount for the  
25 properties. ML Manager believes that this sale is in the best interest of the investors in  
26 both of the Loan LLCs and the Pass-Through Investors and is a valid exercise of its

1 business judgment consistent with any fiduciary responsibilities.

2 Due to the actions pending in the Bankruptcy Court and District Court by certain  
3 investors, ML Manager believes that it is prudent to seek Bankruptcy Court approval of  
4 the sale. An order approving the sale and authorizing the sale by ML Manager of 100% of  
5 the interest in the real properties will insure a smooth closing and will aid in the  
6 implementation of the Plan.

7 Under the Operating Agreement of Loan LLCs, since this event is a Major  
8 Decision, ML Manager must seek approval of the sale from the investors in both Loan  
9 LLC entities and the MP Funds investors. Approval must be obtained by a majority of the  
10 investors' dollars voting. The voting process will start shortly and by the time the parties  
11 get to a sale hearing the results will be known to ML Manager. If approved ML Manager  
12 asserts it has the authority and ability to go forward with the sale of both Loan LLCs  
13 interests.

14 ML Manager as the agent for the Pass-Through Investors has the authority and  
15 ability to engage a broker, enter into a sale agreement and to sell the real estate on behalf  
16 of the principals. ML Manager as the agent will execute the documents on behalf of the  
17 Pass-Through Investors since it holds the irrevocable power of attorney coupled with an  
18 interest to do so. ML Manager will include language in the Sale order authorizing ML  
19 Manager to execute any and all such documents on behalf of the Pass-Through Investors.

20 ML Manager asserts that the Court has retained and reserved jurisdiction in the  
21 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among  
22 others, and has the authority to approve the sale under Section 105 of the Bankruptcy  
23 Code, among other sections, as an order in aid of implementation of the Plan. As the  
24 Court has noted at several prior sale hearings, there is a close nexus between the sale  
25 motion and the bankruptcy because the relief requested is an important part of the Plan.  
26 *See State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir.

1 2005). The Plan specifically called for the creation of the ML Manager to manage the  
2 Loan LLCs and to step into the role as manager of the MP Funds and agent of non-  
3 transferring pass through investors. The relief requested by ML Manager affects the  
4 amount of money that the investors will receive and the pay down of the exit financing.  
5 Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

6 As is customary ML Manager does propose to pay the closing costs, real property  
7 and any commission as set forth in the Sale Agreement at the closing out of the gross sale  
8 proceeds. ML Manager also proposes to pay the exit financier from the Loan LLCs'  
9 portion of the sale proceeds pursuant to the Loan Agreement and the Interborrower  
10 Agreement and to create and use the Permitted Reserves pursuant to the Loan Agreement.

11 The sale will be free and clear of all liens, claims, encumbrances and interests with  
12 liens, claims, encumbrances and interests to attach to the sale proceeds.

13 ML Manager does seek an order as a part of this Motion to disburse the net sale  
14 proceeds attributable to the Pass-Through Investors subject to what amount should be  
15 charged back or allocated to the Pass-Through Investors as their fair share of the  
16 expenses, including exit financing. ML Manager will seek and include in the sale order  
17 language so as to allow it in its discretion to distribute net sale proceeds attributable to the  
18 ownership interest to both Loan LLCs pursuant to its agreements (including the  
19 intercreditor agreement between the two notes entered into pre-petition by Mortgages  
20 Ltd.), the Plan, Confirmation Order, and Interborrower Agreement.

21 ML Manager does seek an order as a part of this Motion that includes a provision  
22 for the exemption under Section 1146 of the Bankruptcy Code and Section 10.5 of the  
23 Plan for any transfer taxes due on transfer, including the speculative builder tax.

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

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DATED: November 9, 2010

FENNEMORE CRAIG, P.C.

By     /s/ Cathy L. Reece      
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Attorneys for ML Manager LLC

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