

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 Attorneys for ML Manager LLC

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

**MOTION TO SELL REAL PROPERTY**

**Real Property located at 5116 North Dysart  
Road, Litchfield Park, Arizona known as  
National Retail Development property**

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

15 ML Manager LLC (“ML Manager”), requests that the Court enter an order  
16 authorizing ML Manager as the manager for NRDP Loan LLC and the agent for certain  
17 Pass-Through Investors to sell the real property located at 5116 North Dysart Road,  
18 Litchfield Park, Arizona, consisting of the real property, improvements and personal  
19 property which was known as the National Retail Development property, as more  
20 specifically described in the Sale Agreement (“Property”), to JLJ Investments, LLC, an  
21 Arizona limited liability company (“Purchaser”) for the price of \$2,812,500 (“Purchase  
22 Price”) and on the terms set forth in the proposed Agreement of Sale and Purchase (“Sale  
23 Agreement”) which is attached as Exhibit A or upon better terms as reasonably  
24 determined by ML Manager. The Sale Agreement has a contemplated closing of  
25 approximately March 17, 2011.

26 Borrower National Retail Development Partners I, LLC defaulted on its loan with

1 Mortgages Ltd. The unpaid principal balance on the loan (Loan No. 860905) is about  
2 \$5,201,962. Interest and fees also are due. ML Manager held a deed of trust sale and  
3 foreclosed on the Property. The guarantors are Rick and Mollie Sodja and Trent and Amy  
4 Schelkopf. Guaranty actions have been filed against them and are pending. Pursuant to  
5 the Official Investors' Committee's First Amended Plan confirmed by the Court, NRDP  
6 Loan LLC was formed on the effective date and the fractional interests in the note and  
7 deed of trust which were held by the MP Funds were transferred into NRDP Loan LLC.  
8 Subsequently some of the pass-through investors transferred their interests into NRDP  
9 Loan LLC. At the time of the trustee sale, 12 Pass-Through Investors had not transferred  
10 their fractional interests ("Pass-Through Investors"). As a result, 73.872% of the interest  
11 in the real property is owned by NRDP Loan LLC and the rest is owned by the Pass-  
12 Through Investors in the loan.

13 ML Manager retained the services of CB Richard Ellis, Inc., a leading real estate  
14 brokerage firm, to widely market the property for sale. After completing substantial  
15 marketing efforts, Purchaser made an offer of \$2,812,500 and ML Manager entered into  
16 the Sale Agreement with Purchaser for that price, subject to the regular contingencies for  
17 ML Manager. Purchaser has deposited \$100,000 earnest money and opened escrow at  
18 Thomas Title & Escrow Company. Because the property has already been fully marketed,  
19 this is not proposed to be an auction and no higher and better bids are being solicited. The  
20 contingencies include approval by the investors in the Loan LLC and the applicable MP  
21 Funds and Bankruptcy Court approval. One of the contingencies is the waiver or the  
22 exercise of the right to compete by the exit financier. The Purchase Price is to be paid in  
23 cash at closing. This is an arms-length, negotiated sale between unrelated parties. The  
24 anticipated closing is March 17, 2011.

25 Even though the debt will not be paid in full, ML Manager believes that this price  
26 reflects the current market value of the Property and that it is unlikely in the foreseeable

1 future to get a higher amount for the Property. ML Manager believes that this sale is in the  
2 best interest of the investors in the Loan LLC and the Pass-Through Investors and is a  
3 valid exercise of its business judgment consistent with any fiduciary responsibilities.

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

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

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

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

1 Court has noted at several prior sale hearings, there is a close nexus between the sale  
2 motion and the bankruptcy because the relief requested is an important part of the Plan.  
3 *See, State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th  
4 Cir. 2005). The Plan specifically called for the creation of the ML Manager to manage the  
5 Loan LLCs and to step into the role as manager of the MP Funds and agent of non-  
6 transferring pass through investors. The relief requested by ML Manager affects the  
7 amount of money that the investors will receive and the pay down of the exit financing.  
8 Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

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

14 Pursuant to the Allocation Model which has been approved by this Court, ML  
15 Manager will disburse the net sale proceeds attributable to the Pass-Through Investors  
16 subject to what amount should be charged back or allocated to the Pass-Through Investors  
17 as their fair share of the expenses, including exit financing. Also pursuant to the  
18 Allocation Model, ML Manager will distribute net sale proceeds attributable to the  
19 ownership interest to the Loan LLC pursuant to its agreements, the Plan, Confirmation  
20 Order, and Interborrower Agreement.

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

24  
25  
26

1 DATED: February 2, 2011

2

FENNEMORE CRAIG, P.C.

3

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

4

5

6

7

2391514

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26