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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

MOTION TO SELL REAL PROPERTY

**Real Property located at the northwest corner of
University Dr. and Ash Ave. in Tempe, Arizona**

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

14 ML Manager LLC (“ML Manager”), requests that the Court enter an order
15 authorizing ML Manager as the manager for U&A Loan LLC and the agent for certain
16 Pass-Through Investors to sell the real property located at the northwest corner of
17 University Dr. and Ash Ave., in Tempe, Arizona (“Property”), to a buyer who ML
18 Manager anticipates to be BREOF Investors LLC or assignee (“Purchaser”) for the price
19 of \$3.24 million (“Purchase Price”) and on the terms set forth in the standard Agreement
20 of Sale and Purchase and Escrow Instructions used by ML Manager (“Sale Agreement”)
21 which will be filed before the hearing, with a closing promptly after entry of the Sale
22 Order. In the event that some of the contingencies are not satisfied with the Purchaser,
23 ML Manager, in its sole discretion, reserves the right to sell to a different buyer (who also
24 is not connected with the investors, ML Manager or the Exit Financier) for a minimum
25 price of \$3 million with a closing in the next few months.
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1 Borrower University & Ash, LLC defaulted on its loan with Mortgages Ltd. The
2 unpaid principal balance on the loan (Loan No. 858905) is about \$30,278,365. Interest
3 and fees also are due. ML Manager held a deed of trust sale and foreclosed on the
4 Property. The guarantors are Charles and Kimberly LaMar and Justin LaMar and suit has
5 been brought on the guaranty and on the deficiency. Pursuant to the Official Investors'
6 Committee's First Amended Plan confirmed by the Court, U&A Loan LLC was formed
7 on the effective date and the fractional interests in the note and deed of trust which were
8 held by the MP Funds were transferred into U&A Loan LLC. Subsequently some of the
9 pass-through investors transferred their interests into U&A Loan LLC. At the time of the
10 trustee sale, certain Pass-Through Investors had not transferred their fractional interests
11 ("Pass-Through Investors"). As a result, 77.119% of the interest in the real property is
12 owned by U&A Loan LLC and the rest is owned by the Pass-Through Investors in the
13 loan.

14 ML Manager retained the services of CB Richard Ellis, a leading real estate
15 brokerage firm, to widely market the property for sale. After completing substantial
16 marketing efforts, ML Manager has received offers from three potential buyers but is still
17 working on the contingencies with them. Initially ML Manager has decided to proceed
18 with the offer Purchaser made of \$3.24 million and ML Manager may enter into the Sale
19 Agreement with Purchaser for that price, subject to certain contingencies, and for a
20 prompt closing. Purchaser will deposit \$300,000 and open escrow at Thomas Title &
21 Escrow. The Purchaser is not connected with the investors, ML Manager or the exit
22 financier. The Purchase Price is to be paid in cash at closing. The proposed sale order will
23 have a finding of good faith purchaser status for the Purchaser.

24 Because the Property has already been fully marketed, this is not proposed to be an
25 auction and no higher and better bids are being solicited. However, since some of the
26 contingencies might not be satisfied with this Purchaser, ML Manager reserves the right in

1 its sole discretion to sell to a different buyer (with no connection with the investors, ML
2 Manager or the Exit Financier) for a minimum price of \$3 million which would close in
3 the next few months and to request this provision in the Sale Order. ML Manager will use
4 its business judgment to select the best offer with which to proceed.

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 the 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 to seek Bankruptcy Court approval of
12 the sale. An order approving the sale and authorizing the sale by ML Manager of 100% of
13 the interest in the real properties will insure a smooth closing and will aid in the
14 implementation of the Plan.

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

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

1 The interests of the Pass-Through investors will attach to and be paid from the net sales
2 proceeds.

3 ML Manager asserts that the Court has retained and reserved jurisdiction in the
4 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among
5 others, and has the authority to approve the sale under Section 105 of the Bankruptcy
6 Code, among other sections, as an order in aid of implementation of the Plan. As the
7 Court has noted at several prior sale hearings, there is a close nexus between the sale
8 motion and the bankruptcy because the relief requested is an important part of the Plan.
9 *See, State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th
10 Cir. 2005). The Plan specifically called for the creation of the ML Manager to manage the
11 Loan LLCs and to step into the role as manager of the MP Funds and agent of non-
12 transferring pass through investors. The relief requested by ML Manager affects the
13 amount of money that the investors will receive and the pay down of the exit financing.
14 Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

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

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

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

DATED: March 21, 2010

FENNEMORE CRAIG, P.C.
By /s/ Cathy L. Reece
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