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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 consisting of approximately 9.7 acres located west of the northwest corner of Goldwater Drive and Scottsdale Road in Scottsdale, Arizona, known as the northwest quadrant of Portales Place

Hearing Date: May 2, 2011
Hearing Time: 2:30 p.m.

16 ML Manager LLC (“ML Manager”), requests that the Court enter an order
17 authorizing ML Manager as the manager for PPP Loan LLC and the agent for certain
18 Pass-Through Investors to sell the real property consisting of approximately 9.7 acres
19 located west of the northwest corner of Goldwater Drive and Scottsdale Road in
20 Scottsdale, Arizona, known as the northwest quadrant of Portales Place, as more
21 specifically described in the Sale Agreement (“Property”), to JLB Realty LLC, a Texas
22 limited liability company (“Purchaser”) for the price of \$14.5 million (“Purchase Price”) and on the terms set forth in the proposed Agreement of Sale and Purchase (“Sale Agreement”) which is attached as Exhibit A or upon better terms as reasonably
23 determined by ML Manager. The Sale Agreement has a contemplated closing of June 14,
24 2011.
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1 Borrower, Portales Place Property LLC, defaulted on its loan with Mortgages Ltd.
2 The unpaid principal balance on the loan (Loan No. 852606) is about \$32 million. Interest
3 and fees also are due. On July 12, 2010 the Court approved the settlement with the Grace
4 Entities, including Portales Place Property LLC. Soon thereafter ML Manager held a deed
5 of trust sale and foreclosed on the Property. Pursuant to the Official Investors'
6 Committee's First Amended Plan confirmed by the Court, PPP Loan LLC was formed on
7 the effective date and the fractional interests in the note and deed of trust which were held
8 by the MP Funds were transferred into PPP Loan LLC. Subsequently some of the pass-
9 through investors transferred their interests into PPP Loan LLC. At the time of the trustee
10 sale, certain Pass-Through Investors had not transferred their fractional interests ("Pass-
11 Through Investors"). As a result, 68.7109% of the interest in the real property is owned by
12 PPP Loan LLC and the rest is owned by the Pass-Through Investors in the loan.

13 ML Manager retained the services of Cassidy Truly/BRE Commercial, a leading
14 real estate brokerage firm, to widely market the property for sale. After completing
15 substantial marketing efforts, Purchaser made an offer of \$14.5 million and ML Manager
16 entered into the Sale Agreement with Purchaser for that price, subject to the regular
17 contingencies for ML Manager. Purchaser has deposited \$2 million and opened escrow at
18 Thomas Title & Escrow. Because the property has already been fully marketed, this is not
19 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 Purchaser has until June 10,
23 2011 to complete its analysis of the Property and elect to consummate the sale. The
24 Purchase Price is to be paid in cash at closing. This is an arms-length, negotiated sale
25 between unrelated parties. The Purchaser is not connected with the investors, ML
26 Manager or the exit financier. The proposed sale order will have a finding of good faith

1 purchaser status for the Purchaser. The anticipated closing is June 14, 2011.

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

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

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

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

26 ML Manager asserts that the Court has retained and reserved jurisdiction in the

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

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

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

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.

1 DATED: April 5, 2011

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FENNEMORE CRAIG, P.C.

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By /s/ Cathy L. Reece
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