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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 and improvements located at the
southeast corner of Central Ave. and Monroe St.
in downtown Phoenix, Arizona**

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

15 ML Manager LLC (“ML Manager”) requests that the Court enter an order
16 authorizing ML Manager as the manager for C&M Loan LLC and the agent for certain
17 Pass-Through Investors to sell the real property and improvements located at the southeast
18 corner of Central Avenue and Monroe Street in downtown Phoenix, Arizona, as more
19 specifically described in the Sale Agreement (“Property”), to Stonebridge Realty
20 Advisors, Inc., a Colorado corporation (“Purchaser”) for the price of \$7,750,000
21 (“Purchase Price”) and on the terms set forth in the proposed Agreement of Sale and
22 Purchase and all amendments (“Sale Agreement”) which is attached as Exhibit A or upon
23 better terms as reasonably determined by ML Manager. The Sale Agreement has a
24 contemplated closing of June 1, 2011.

25 Borrower, Central & Monroe, LLC, defaulted on its loan with Mortgages Ltd. The
26 unpaid principal balance on the loan (Loan No. 858606) is about \$27 million. Interest and

1 fees also are due. Pursuant to the Official Investors' Committee's First Amended Plan
2 confirmed by the Court, C&M Loan LLC was formed on the effective date and the
3 fractional interests in the note and deed of trust which were held by the MP Funds were
4 transferred into C&M Loan LLC. Subsequently some of the pass-through investors
5 transferred their interests into C&M Loan LLC. At the time of the trustee sale, certain
6 Pass-Through Investors had not transferred their fractional interests ("Pass-Through
7 Investors"). As a result, 82.497% of the interest in the real property is owned by C&M
8 Loan LLC and the rest is owned by the Pass-Through Investors in the loan.

9 On July 12, 2010 the Court approved the settlement with the Grace Entities,
10 including Central & Monroe, LLC. The settlement was consummated and closed on July
11 27, 2010 and soon thereafter ML Manager held a deed of trust sale and foreclosed on the
12 Property. ML Manager retained the services of Cassidy Turley/BRE Commercial, a
13 leading real estate brokerage firm, to widely market the property for sale. After
14 completing substantial marketing efforts, Purchaser made an offer of \$7,750,000 and ML
15 Manager entered into the Sale Agreement with Purchaser for that price, subject to the
16 regular contingencies for ML Manager. Purchaser has deposited \$300,000 and opened
17 escrow at Thomas Title & Escrow. Because the property has already been fully marketed,
18 this is not proposed to be an auction and no higher and better bids are being solicited. The
19 contingencies include approval by the investors in the Loan LLC and the applicable MP
20 Funds and Bankruptcy Court approval. One of the contingencies is the waiver or the
21 exercise of the right to compete by the exit financier. The exit financier has informed ML
22 Manager that it will not be exercising its right to compete on the Property. The Purchase
23 Price is to be paid in cash at closing. This is an arms-length, negotiated sale between
24 unrelated parties. The Purchaser is not connected with the investors, ML Manager or the
25 exit financier. The proposed sale order will have a finding of good faith purchaser status
26 for the Purchaser. The anticipated closing is June 1, 2011.

1 Even though the debt will not be paid in full, ML Manager believes that this price
2 reflects the current market value of the Property and that it is unlikely in the foreseeable
3 future to get a higher amount for the Property. As the Court may remember, the Property
4 consists of a partially renovated hotel which requires significant work. Significant funds
5 would be needed to complete the project. Under the Sale Agreement, the Property is being
6 sold in its current partially completed condition “as is”, “where is” and “with all faults”.
7 ML Manager believes that this sale is in the best interest of the investors in the Loan LLC
8 and the Pass-Through Investors and is a valid exercise of its business judgment consistent
9 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 ML Manager also proposes to pay at closing from C&M Loan LLC's portion of the sale
21 proceeds the amount owed under the note and deed of trust in the amount of \$615,000 as a
22 part of the settlement which was approved by the Court and the C&M Loan LLC
23 investors.

24 There are alleged mechanic liens on the Property asserted by Summit Builders
25 which are being released consensually. To the extent any such liens are not released by the
26 time of closing then ML Manager may escrow funds or obtain statutory bonds or

1 otherwise deal with liens that have not been consensually released.

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

9 ML Manager intends to include language in the order consistent with the Plan and
10 Confirmation Order concerning the exemption under Section 1146 of the Bankruptcy
11 Code and Section 105 of the Plan for any transfer taxes due on the transfer, including the
12 speculative builder tax.

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

16 DATED: April 7, 2010

17 FENNEMORE CRAIG, P.C.

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

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