

**IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.**

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: May 09, 2011



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**RANDOLPH J. HAINES
U.S. Bankruptcy Judge**

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
MORTGAGES LTD.,
Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

**ORDER APPROVING 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") filed a Motion ("Motion") (Docket No. 3145)
17 requesting that the Court enter an order authorizing ML Manager as the manager for PPP
18 Loan LLC and the agent for certain non-transferring pass-through investors, to sell the
19 property consisting of approximately 9.7 acres located west of the northwest corner of
20 Goldwater Drive and Scottsdale Road in Scottsdale, Arizona which is more specifically
21 described in the Sale Agreement (the "Property") for the price and on the terms set forth
22 in the Agreement of Sale and Purchase and Escrow Instructions ("Sale Agreement").
23 Among other things, the Sale Agreement provides for the sale of the Property for
24 approximately \$14,500,000 to JLB Realty LLC ("Purchaser"). A notice to creditors,
25 interested parties and the non-transferring pass-through investors of the Motion and the
26

1 hearing date was served. An Objection (Docket No. 3185) was filed by members of the
2 Rev-Op Group Investors or certain of their alleged successors in interest (the “Rev-Op
3 Group Objection”). Super 8 Motel of Clear Lake, Inc. and Kevin Daney (“Lis Pendens
4 Objectors”) also filed an Objection (Docket No. 3188) (“Lis Pendens Objection”). The
5 hearing was held on the Motion on May 2, 2011 at 2:30 p.m. in Phoenix and the Court at
6 the conclusion of the hearing made findings of fact and conclusions of law on the record.

7 Upon consideration of the Motion and statements and arguments of counsel at the
8 hearing; it appears to the Court and the Court finds that:

9 (a) This Court has jurisdiction over the issues presented in the Motion, and the
10 Motion and the Court’s hearing thereon were duly and properly noticed;

11 (b) The purchase price offered constitutes fair consideration for the Property;

12 (c) The investors in PPP Loan LLC and the applicable MP Funds have agreed
13 by the applicable dollar vote to the sale terms;

14 (d) The ML Manager LLC is authorized to enter into the Sale Agreement, to
15 sell the Property pursuant to the terms of the Sale Agreement, to proceed with this sale
16 and to execute all necessary documents to implement the sale;

17 (e) The decision to sell and enter into the Sale Agreement is supported by the
18 best exercise of business judgment of ML Manager which is consistent with ML
19 Manager’s fiduciary duties and responsibilities.

20 **IT IS THEREFORE ORDERED THAT:**

21 (1) The Motion is granted and approved and the Rev-Op Group Objection is
22 overruled.

23 (2) With regard to the alleged claims of the Lis Pendens Objectors, upon the
24 closing of the sale provided for in this Order, an escrow shall be established at Thomas
25 Title or another escrow company handling the closing from the gross sale proceeds
26 (“Escrowed Funds”) in an amount mutually agreed to by ML Manager and the Lis

1 Pendens Objectors in writing. If no agreement is reached, the amount of the Escrowed
2 Funds shall be \$1.1 million of the gross sale proceeds. Any recorded Lis Pendens on the
3 Property shall transfer to and attach to the Escrowed Funds and the recorded Lis Pendens
4 shall be deemed to be released without further action. The alleged lien and interests of the
5 Lis Pendens Objectors and ML Manager as the Manager and Agent shall attach to the
6 Escrowed Funds in the same manner, extent and priority that such liens and interests held
7 in the Property as they existed immediately prior to the sale of the Property provided for
8 in this Order. Such Escrowed Funds shall be disbursed upon further Order of a court
9 having competent jurisdiction or upon mutual agreement of the Lis Pendens Objectors and
10 ML Manager. All disputes, arguments, defenses, and claims between the Lis Pendens
11 Objectors and ML Manager existing as of May 2, 2011 are preserved. Nothing in this
12 Order, including the bond or escrowing of proceeds, shall waive, release or impact the
13 coverage or liability of the title insurance policy for the payment of the alleged lien of the
14 Lis Pendens Objectors or shall determine the appropriate jurisdiction for resolution of the
15 Lis Pendens Objectors' claims. If a court of appropriate jurisdiction quashes the Lis
16 Pendens prior to the closing of the sale provided for in this Order, then ML Manager shall
17 not be required to escrow such Escrowed Funds.

18 (3) ML Manager, as the Manager of PPP Loan LLC and as Agent for the pass-
19 through investors, including the alleged successors in interest to the Rev-Op Group
20 Investors, has authority and is directed to enter into the Sale Agreement, to consummate
21 the sale, to sell the Property pursuant to the terms of the Sale Agreement, to execute the
22 conveyance deed to the Purchaser and to execute any and all documents needed to
23 consummate the sale.

24 (4) ML Manager is authorized to pay out of the sale proceeds all costs of sale,
25 including real property taxes, assessments, broker's fees, title insurance or other closing
26 costs and to pay out of the PPP Loan LLC proceeds any liens or encumbrances on the

1 Property owed to the current exit lender pursuant to the Loan Agreement, and to create
2 and use any Permitted Reserves out of the PPP Loan LLC proceeds pursuant to the Loan
3 Agreement.

4 (5) The purchase price is fair consideration for the Property.

5 (6) The net sale proceeds attributable to the ownership percentage for the PPP
6 Loan LLC shall be transferred at closing to the ML Manager as the Manager for the PPP
7 Loan LLC and used pursuant its agreements, the Interborrower Agreement and the
8 Confirmation Order. The net sale proceeds attributable to the ownership percentage for
9 the non-transferring pass-through investors, including the Rev Op Group Investors, shall
10 be transferred to ML Manager as their Agent and held pending further motion of ML
11 Manager and order of the Court.

12 (7) Pursuant to Section 1146(a) of the Bankruptcy Code and Section 10.5 of the
13 confirmed Plan of Reorganization, any and all mortgage recording tax, stamp tax, real
14 estate transfer tax, speculative builder, transaction privilege or other similar tax imposed
15 by federal, state or local law are hereby waived.

16 DATED AND ORDERED AS STATED ABOVE.

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