

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 consisting of approximately
835.41 acres located in the vicinity of Battaglia
Drive and Sunshine Boulevard in the City of
Eloy, Pinal County, Arizona**

**Hearing Date: May 24, 2011
Hearing Time: 11:00 a.m.**

15 ML Manager LLC (“ML Manager”), requests that the Court enter an order
16 authorizing ML Manager as the manager for CS Loan LLC and the agent for certain Pass-
17 Through Investors to sell the real property consisting of approximately 835.41 acres
18 located in the vicinity of Battaglia Drive and Sunshine Boulevard in the City of Eloy,
19 Pinal County, Arizona, as more specifically described in the Sale Agreement (“Property”),
20 to Burruel & Burruel Farms (“Purchaser”) for the price of \$2,922,500 (“Purchase Price”)
21 and on the terms set forth in the proposed Agreement of Sale and Purchase (“Sale
22 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 about June
24 14, 2011.

25 Borrower, CS 11 Maricopa LLC, defaulted on its loan with Mortgages Ltd. The
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1 unpaid principal balance on the loan (Loan No. 832705) is about \$16 million. Interest and
2 fees also are due. ML Manager held a deed of trust sale and foreclosed on the Property.
3 Pursuant to the Official Investors' Committee's First Amended Plan confirmed by the
4 Court, CS Loan LLC was formed on the effective date and the fractional interests in the
5 note and deed of trust which were held by the MP Funds were transferred into CS Loan
6 LLC. Subsequently some of the pass-through investors transferred their interests into CS
7 Loan LLC. At the time of the trustee sale, certain Pass-Through Investors had not
8 transferred their fractional interests ("Pass-Through Investors"). As a result, 82.825% of
9 the interest in the real property is owned by CS Loan LLC and the rest is owned by the
10 Pass-Through Investors in the loan.

11 ML Manager retained the services of Nathan & Associates, a leading real estate
12 brokerage firm, to widely market the property for sale. After completing substantial
13 marketing efforts, Purchaser made an offer of \$2,922,500 and ML Manager entered into
14 the Sale Agreement with Purchaser for that price, subject to the regular contingencies for
15 ML Manager. Purchaser has or will shortly deposit \$25,000 and open escrow at Thomas
16 Title & Escrow. Because the property has already been fully marketed, this is not
17 proposed to be an auction and no higher and better bids are being solicited. The
18 contingencies include approval by the investors in the Loan LLC and the applicable MP
19 Funds and Bankruptcy Court approval. One of the contingencies is the waiver or the
20 exercise of the right to compete by the exit financier. The Purchaser has a certain amount
21 of time under the Sale Agreement to complete its analysis of the Property and elect to
22 consummate the sale. The Purchase Price is to be paid in cash at closing. This is an arms-
23 length, negotiated sale between unrelated parties. The Purchaser is not connected with the
24 investors, ML Manager or the exit financier. The anticipated closing will be about June
25 14, 2011.

26 Even though the debt will not be paid in full, ML Manager believes that this price

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

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

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

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

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

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

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

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

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

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1 DATED: May 9, 2011

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FENNEMORE CRAIG, P.C.

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

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