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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 and Personal
Property located at 2269 Hwy 260, Overgaard,
Arizona, known as Bison Retreat Center**

**Hearing Date: June 15, 2011
Hearing Time: 1:30 p.m.**

15 ML Manager LLC (“ML Manager”), requests that the Court enter an order
16 authorizing ML Manager as the manager for Bison Loan LLC and the agent for certain
17 Pass-Through Investors to sell the real property and improvements and personal property
18 located at 2269 Hwy 260, Overgaard, Arizona, known as Bison Retreat Center as more
19 specifically described in the Sale Agreement (“Property”), to North Valley Romanian
20 Pentecostal Church, Inc. (“Purchaser”) for the price of \$450,000 (“Purchase Price”) and
21 on the terms set forth in the Sale Agreement which is attached as Exhibit A. The sale is
22 expected to close on or about June 30, 2011. Not all the collateral for the loan to the
23 Borrower Bisontown, LLC is being sold. That unsold collateral will continue to be held by
24 the Owners.

25 Borrower, Bisontown, LLC, defaulted on its loan with Mortgages Ltd. The unpaid
26 principal balance on the loan (Loan No. 852806) is about \$1.5 million. Interest and fees

1 also are due. The Trustee under the Deed of Trust held a deed of trust sale and foreclosed
2 on the Property. Pursuant to the Official Investors' Committee's First Amended Plan
3 confirmed by the Court, Bison Loan LLC was formed on the effective date and the
4 fractional interests in the note and deed of trust which were held by the MP Funds were
5 transferred into Bison Loan LLC. Subsequently some of the pass-through investors
6 transferred their interests into Bison Loan LLC. At the time of the trustee sale, 3 Pass-
7 Through Investors had not transferred their fractional interests ("Pass-Through
8 Investors"). As a result, 32.470% of the interest in Property is owned by Bison Loan LLC,
9 63.995% is owned by the Mortgages Ltd. 401(k) Plan and the rest is owned by 3 Pass-
10 Through Investors in the loan (the Pass-Through Investors, the Bison Loan LLC and the
11 Mortgages Ltd. 401(k) Plan, collectively the "Owners").¹

12 A broker was hired to market the Property for sale. The Mortgages Ltd. 401(k)
13 Plan has taken the lead in marketing the Property and negotiating with the Purchaser.
14 After completing substantial marketing efforts, Purchaser made an offer of \$450,000 for
15 the Property which is agreeable to both the Mortgages Ltd. 401(k) Plan and ML Manager
16 in the exercise of its independent business judgment. The parties entered into the Sale
17 Agreement with Purchaser for that price, subject to the approval of the ML Manager
18 Board, among other things. The contingencies for ML Manager's Board approval of the
19 sale include approval by the investors in the Loan LLC and the applicable MP Fund,
20 Bankruptcy Court approval, and the waiver or the exercise of the right to compete by the
21 exit financier. ML Manager has informed the Mortgages Ltd. 401(k) Plan that ML
22 Manager is filing this Motion to seek approval for the ML Manager Board to approve the
23 sale.

24 ¹ As the Court is aware, there is a dispute between the Mortgages Ltd. 401(k) Plan and
25 ML Manager over the Agency Agreement, among other things, and there is a pending
26 lawsuit before the United States District Court for the District of Arizona. Both ML
Manager and the Mortgages Ltd. 401(k) Plan reserve any and all arguments and rights
they have as to any and all issues.

1 The Purchase Price of \$450,000 is to be paid \$225,000 in cash at closing and the
2 rest will be a Seller Carryback with a \$225,000 Promissory Note secured by a Deed of
3 Trust. Purchaser has or will shortly deposit \$5,000 and open escrow at Lawyers Title in
4 Heber, Arizona. This is an arms-length, negotiated sale between unrelated parties. The
5 Purchaser is not connected with the investors, ML Manager or the exit financier. The
6 anticipated closing will be on or about June 30, 2011.

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

12 ML Manager believes that it is prudent to seek Bankruptcy Court approval of the
13 sale. An order approving the sale and authorizing the sale by ML Manager will insure a
14 smooth closing and will aid in the implementation of the Plan.

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

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

1 any and all such documents on behalf of the Pass-Through Investors. The interests of the
2 Pass-Through investors will attach to and be paid from the net sales 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 have the closing costs, real property
16 taxes, other property related expenses and any commission as set forth in the Sale
17 Agreement paid at the closing out of the gross sale proceeds. ML Manager also proposes
18 to pay the exit financier from the Loan LLC's portion of the sale proceeds pursuant to the
19 Loan Agreement and the Interborrower Agreement and to create and use the Permitted
20 Reserves from the Loan LLCs portion pursuant to the Loan Agreement.

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

1 Interborrower Agreement.

2 The Mortgages Ltd. 401(k) Plan is the owner of 63.995% of the Property. As the
3 Court is aware, there is a dispute between ML Manager and the Mortgages Ltd. 401(k)
4 Plan over the Agency Agreement, among other things, which is the subject of a pending
5 action before the United States District Court for the District of Arizona. At the closing
6 and from the proceeds of the Seller Carryback thereafter, ML Manager and the Mortgages
7 Ltd. 401(k) Plan have agreed the Mortgages Ltd. 401(k) will receive its portion of the net
8 sale proceeds after establishment of an escrow for the benefit of ML Manager and the
9 Mortgages Ltd. 401(k) Plan which provides sufficient funds for the alleged Total
10 Estimated Costs for which the Mortgages Ltd. 401(k) Plan might be responsible
11 depending on the outcome of the District Court action. ML Manager and the Mortgages
12 Ltd. 401(k) Plan will enter into a mutually agreed upon escrow agreement at closing and
13 both parties reserve any and all rights and arguments that they may have on these issues.

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

17 DATED: May 27, 2011

18 FENNEMORE CRAIG, P.C.

19 By /s/ Cathy L. Reece
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