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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

**ML MANAGER'S MOTION TO AUTHORIZE
A SECOND DISTRIBUTION OF PROCEEDS
IN ACCORDANCE WITH ALLOCATION
MODEL AND TO APPROVE TREATMENT
OF DISTRIBUTION OF DISPUTED
PROCEEDS**

**Hearing Date: July 19, 2011
Hearing Time: 10:00 a.m.**

16 ML Manager has now sold several additional properties and recovered or is in the
17 process of recovering other money. Accordingly, ML Manager is prepared to make a
18 second distribution pursuant to the Allocation Model approved by this Court. ML
19 Manager has resolved or liquidated some or all of the loans, collateral, claims, or the
20 properties (the "Loans") associated with several of the loans defined in the Plan of
21 Reorganization as "ML Loans." These Loans include (1) Centerpoint¹; (2) University &
22 Ash (*see* Sale Order, Docket No. 3180); (3), the two Roosevelt & Gateway loans (*see* Sale
23 Order, Docket No. 3016); (4) Zacher Rio Salado²; (5) All State IX (*see* Sale Order,

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25 ¹ There was no sale order with the Centerpoint loan as there were only a few pass-through
investors and each of them signed the conveyance documents.

26 ² There was no sale order with the Zacher Rio Salado loan as there were only a few pass-
through investors and each of them signed the conveyance documents.

1 Docket No. 3088); (6) two of the houses constructed at Rodeo Ranch³; (7) partial recovery
2 from the trustee in the Tempe Land Company bankruptcy (*see* Docket No. 779 in the TLC
3 bankruptcy 2:08-bk-17587-JMM), and (8) Bison Retreat Center (*see* Sale Order, Docket
4 No. 3252). ML Manager has also reached a settlement with Summit Construction that
5 will release additional funds from the escrow created after the sale of the Osborne III
6 project (sometimes known as Ten Wine Lofts). ML Manager does not intend, at this time,
7 to distribute the money from the Summit settlement until a state court has determined that
8 the settlement is reasonable, however, ML Manager would like the Court's authorization
9 to distribute the money if and when such an order from the state court is obtained.

10 Collectively, these Loans have generated over \$49 million in gross proceeds,
11 payments or recovery. From this, settlement costs were deducted including mechanic
12 liens (that were paid or reserved), property taxes, closing costs, title, escrow broker fess
13 and other property specific expenses.⁴ The total amount of settlement costs are
14 approximately \$21 million. Pursuant to the obligations under the Exit Financing Loan
15 agreement, ML Manager paid the Exit Lender from these Loans approximately \$10
16 million.⁵ After expenses and the Exit Lender payments are deducted, there is or will be
17 approximately \$9 million in net proceeds at this time. Where applicable, the "Permitted
18 Reserve" will be taken by ML Manager to pay costs and operations and to create
19 sufficient operating reserves going forward. Additionally, pursuant to the Allocation
20 Model approved by the Court, the "Total Estimated Costs" that are not included in the
21 payments to the Exit Lender will be deducted. The balance will be available for
22 distribution to investors.

23 ³ There was no sale order with the Rodeo Ranch sales as there were only a couple of pass-
24 through investors and each of them signed the conveyance documents.

24 ⁴ This includes \$13.5 million that was used to purchase the mechanic liens on the
25 Centerpoint project.

25 ⁵ This does not include almost \$5.9 million that was paid to an affiliate of the Exit Lender
26 to purchase the ownership interest of VRCP, which had made an additional loan on the
Centerpoint project.

1 Through this Motion, ML Manager seeks authorization to cause the third-party
2 servicer, Canyon State Servicing Co., L.L.C., to distribute the “undisputed” portion of the
3 distributions set forth above pursuant to the Allocation Model approved by the Court. As
4 with the first distribution, however, there are a few distributions that have been disputed,
5 where a dispute exists as to the right to receive distributions, or claims have been asserted
6 against an investor who would otherwise receive a distribution (the “Disputed
7 Distributions”). As to these Disputed Distributions, ML Managers requests that the Court
8 approve the recommended treatment set forth herein.

9 **I. PROCEDURAL HISTORY**

10 The procedural history of the distribution was thoroughly set forth in prior briefing
11 on the Allocation Model (*see* Docket No. 2913 and 2951), among others, and the first
12 Distribution Motion (*see* Docket No. 3017 and 3037), among others. That procedural
13 history is incorporated herein.

14 Briefly, this matter arises out of the Mortgages Ltd. bankruptcy that was filed in
15 June, 2008. At the time of the bankruptcy, Mortgages Ltd. owned, managed, was the
16 agent for, or otherwise controlled a loan portfolio of approximately \$900 million in loans
17 comprising the aforementioned “ML Loans.” The plan of reorganization confirmed by
18 this Court created ML Manager to manage and resolve the ML Loans. New entities,
19 known as Loan LLCs, were created for most, but not all of the ML Loans. Pass-Through
20 Investors who did not contribute their interests in the ML Loans to the respective Loan
21 LLCs retained their fractional ownership of the ML Loans and, as this Court has
22 determined, are subject to an irrevocable “Agency Agreement” with ML Manager acting
23 as an agent coupled with an interest. Prior litigation has established that ML Manager
24 has the authority to manage and resolve the ML Loans, and that all investors, including
25 pass-through investors who did not contribute their interests to the respective Loan LLCs
26 must pay their share of all the costs associated with the Plan.

1 As part of the confirmation process, the Loan LLCs and ML Manager, among
2 others, entered into a loan agreement with the “Exit Lender” in order to obtain financing
3 to exit bankruptcy. Among other things, the Allocation Model is the means for
4 calculating each investor’s share of the costs and expenses.

5 The Allocation Model has been approved by the Court, and the Court approved the
6 first Distribution Motion which implemented the Allocation Motion. The only objections
7 to the first Distribution Motion were an objection by the Rev Op Group, and an objection
8 filed by the Liquidating Trust objecting to distribution to certain so-called “insiders.”
9 With regard to the distribution to the so-called “insiders” the Court ordered an escrow be
10 maintained for such distributions. With regard to the Rev Op Group’s objections, the
11 Court overruled those objections. (Docket No. 3051) Specifically, the Rev Op Group
12 objected arguing that (1) the Liquidating Trust’s share of the costs should not be included,
13 (2) the pre-confirmation costs should not all be allocated as a general cost, and (3) they
14 should not be assessed the “Offset Claim.”⁶ The so-called “Offset Claim” is not at issue
15 in this distribution and the other two issues have been considered and ruled on by the
16 Court. Indeed, ML Manager is unaware of any new objections relevant to the pending
17 distribution that has not already been considered and ruled on by the Court.

18 **II. DISPUTED DISTRIBUTIONS**

19 As with the first Distribution Motion, there are some distributions that have been
20 contested. These Disputed Distributions can be grouped into two groups.

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23 ⁶ In the initial Distribution Motion, ML Manager sought authorization to create an escrow
24 for “offsets” that ML Manager was seeking against the Rev Op Group’s distributions.
25 The Court initially allowed the “offset” escrow subject to further briefing and argument of
26 the parties on this escrow. After this subsequent hearing, the offset was disallowed and
the money that was previously escrowed was distributed. ML Manager is not seeking an
offset escrow or seeking to offset against any distributions in connection with this
distribution, so those issues are not present in this motion.

1 **A. Distributions to Investors with Recorded Judgments, or who have filed**
2 **Bankruptcy.**

3 There some Pass-Through Investors who had recorded judgments against them that
4 were discovered through the process of closing the various sales. These investors are,
5 among others, Robert L. Barnes, Jr. (“Barnes”), and the “Barness Investment Limited
6 Partnership, an Arizona Limited Partnership (“Barness”). To the extent there are
7 proceeds, if any, to be distributed to Barnes or other investors who are in their own
8 bankruptcy, ML Manager proposes that the Court approve and order that the distributions
9 for any investor who has filed for bankruptcy, including Barnes, be distributed to the
10 respective trustee for that bankruptcy proceeding or tendered to the bankruptcy estate,
11 subject to any and all arguments and issues which their judgment creditors may have. To
12 the extent there are proceeds, if any, owed to Barnes, ML Manager proposes to distribute
13 them to the judgment creditor.

14 **B. Distributions to Investors Who are the Subject of Preference Claims.**

15 The Liquidating Trust has brought preference or other actions (collectively, the
16 “Preference Claims”) against a number of former insiders (the “Insiders”).⁷ ML Manager
17 is not a party to the Preference Claims.⁸ In the first Distribution Motion, the Court
18 ordered any distributions to the Insiders be escrowed. (*See* Docket No. 3051) As with the
19 first Distribution Motion, absent these Preference Claims, ML Manager would distribute
20 the net proceeds (as determined by the application of the Allocation Model) to all

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⁷ ML Manager does not intend its use of the term to mean that a determination has been
22 made that these investors are or were “Insiders” as that term is defined by the Bankruptcy
23 Code. This is merely a defined term from the Plan and is being used here in the same
24 context.

25 ⁸ ML Manager did assert a claim in the probate estate of Scott Coles, and objects to the
26 distribution of any money to Scott Coles’ estate. Notably, in a settlement reached just
27 prior to confirmation, the interest of SM Coles, LLC in any of the ML Loans was
28 transferred to the Debtor, Mortgages Ltd. Under the confirmed Plan, any interest held by
29 the Debtor was transferred to a Loan LLC, and Radical Bunny was given a corresponding
30 ownership interest in the Loan LLC for that interest. The treatment of Radical Bunny’s
31 ownership interest is not considered a “Disputed Distribution.”

1 investors, including the Insiders, however, because these claims have been asserted, ML
2 Manager asks the Court to apply the same escrow treatment to these distributions.

3 **III. CONCLUSION**

4 ML Manager asks the Court to authorize the second distribution of net proceeds
5 from the Loans described above pursuant to the Allocation Model approved by the Court.
6 Moreover, ML Manager further requests that the Court issue an Order allowing the
7 distribution of the net proceeds to investors with recorded judgment liens to their
8 respective judgment creditors, or bankruptcy trustees, and authorizing escrowing of any
9 distributions to Insiders.

10 DATED: June 27, 2011

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