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9
10 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

11 In re
12 MORTGAGES LTD.,
13 Debtor.

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

**MOTION TO APPROVE SETTLEMENT
WITH BRADLEY N. AND SARAH YONOVER
ON THEIR GUARANTEES OF THE SOJAC I,
LLC LOAN**

**Hearing Date: February 28, 2012
Hearing Time: 10:30 a.m.**

18 ML Manager LLC (“ML Manager”) requests that the Court enter an order
19 approving the settlement and authorizing ML Manager as the manager for SOJ Loan LLC
20 and the agent for certain Pass-Through Investors to settle the guarantee lawsuit and claims
21 against Bradley N. and Sarah Yonover (the “Yonover”) who guaranteed the loan to
22 SOJAC I, LLC (the “Settlement”). The Settlement does not impact or settle the guarantee
23 lawsuit and claims against Dale and Vicki Jansen or Joseph and Caylee Pinsonneault or
24 any other party who might be liable for those obligations.

25 A lawsuit had been filed by ML Manager against Yonover and various other
26 parties on or about March 29, 2010 in Maricopa County Case No. CV2010-010514

1 seeking damages arising from an alleged breach of a loan made to SOJAC I, LLC in the
2 original amount of \$24,150,000 and against Yonover on the guarantee executed by
3 Yonover of such amount. Yonover has offered to settle the lawsuit and all claims against
4 Yonover for the immediate cash payment of \$61,000 in satisfaction of their obligations.
5 ML Manager has investigated Yonover's personal financial condition and has been
6 satisfied that this sum represents the best it could recover from Yonover even if judgment
7 were obtained and collection efforts were pursued. ML Manager proposes to settle with
8 Yonover for this amount. A written settlement agreement is being finalized and will be
9 filed with the Court as soon as it is executed. The approval of SOJ Loan LLC and MP
10 Fund investors has already been obtained by ballot. Consent or waiver of the exit lender is
11 being sought. This settlement does not impact or settle any other obligations by other
12 guarantors or parties, only Yonover.

13 The normal factors used by Bankruptcy Courts in approving settlements requires
14 consideration of the probability of success in the litigation, the difficulties in collecting a
15 judgment, the complexity of the matter, the expense, inconvenience or delay that will
16 result from the litigation, the interests of the parties and the reasonableness of the
17 compromise. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); In re A&C Properties, 784
18 F.2d 1377, 1380-81 (9th Cir. 1986). In reviewing the appropriateness of the settlement,
19 ML Manager believes that the settlement is in the best interest of the investors and is the
20 best exercise of the business judgment of ML Manager consistent with its fiduciary duties.
21 The settlement removes any risk of the litigation and eliminates the continued cost of such
22 litigation. By settling, the parties avoid the time and expense of such proceedings. ML
23 Manager after investigation has concluded that the settlement amount is reasonable and
24 that it would not be able to collect more even if a judgment and collection were pursued
25 against Yonover. The Settlement would provide \$61,000 of immediate cash funds.
26 Further, the Settlement with Yonover does not impact other claims against other parties.

1 ML Manager asserts that this Court has retained and reserved jurisdiction in the
2 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among
3 others, and has the authority to approve a settlement with a borrower or its bankruptcy
4 estate under Section 105 of the Bankruptcy Code, among other sections, as an order in aid
5 of implementation of the Plan. As the Court has noted at several prior hearings, there is a
6 close nexus between the requests of ML Manager in a settlement motion and the
7 bankruptcy because the relief requested is an important part of the Plan. *See, State of*
8 *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005). The
9 Plan specifically called for the creation of the ML Manager to manage the Loan LLCs and
10 to step into the role as manager of the MP Funds and agent of non-transferring pass
11 through investors. The relief requested by ML Manager affects the amount of money that
12 the investors will receive and the pay down of the Exit Financing. Accordingly, the
13 Bankruptcy Court retains post-confirmation jurisdiction.

14 ML Manager asserts that it has the authority as Manager under the SOJ Loan LLC
15 Operating Agreement, among other things, and as agent under the agency documents for
16 the non-transferring pass-through investors to settle this dispute with a guarantor about the
17 loan. Nevertheless, ML Manager seeks Court approval of the Settlement in aid of
18 implementation of the Plan, among other things.

19 WHEREFORE, ML Manager LLC requests that the Court enter an order
20 authorizing and approving the Settlement with Yonover, and for such other and further
21 relief as is just and proper under the circumstances.

22 DATED: February 13, 2012

23 FENNEMORE CRAIG, P.C.

24 By /s/ Cathy L. Reece
25 Cathy L. Reece
26 Attorneys for ML Manager LLC