

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: March 21, 2012



Randolph J. Haines

Randolph J. Haines, Bankruptcy Judge

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

12 In re
13 MORTGAGES LTD.,
14 Debtor.

Chapter 11

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

**ORDER APPROVING MOTION TO SELL
REAL PROPERTY**

**Real Property located at the Southeast corner of
Central Ave. and Monroe St. in Downtown
Phoenix, Arizona**

**Hearing Date: March 8, 2012
Hearing Time: 11:30 a.m.**

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19 ML Manager LLC ("ML Manager") filed a Motion ("Motion") (Docket No. 3446)
20 requesting that the Court enter an order authorizing ML Manager as the manager for
21 C&M Loan LLC and the agent for certain non-transferring pass-through investors, to sell
22 the property located at the Southeast corner of Central Ave. and Monroe St. in downtown
23 Phoenix, Arizona, which is more specifically described in the Sale Agreement (the
24 "Property") for the price and on the terms set forth in the Agreement of Sale and Purchase
25 or a similar Sale Agreement to another buyer on the same or better terms (collectively,
26 "Sale Agreement"). Among other things, the Sale Agreement provides for the sale of the

1 Property for \$7 million to Evergreen Devco, Inc. (“Purchaser”). A notice to creditors,
2 interested parties and the non-transferring pass-through investors of the Motion and the
3 hearing date was served. An Objection (Docket No. 3469) was filed by KGM Builders,
4 Inc. (“KGM Objection”) and an Objection (Docket No. 3468) was filed by Jeffrey C.
5 Stone, Inc. dba Summit Builders (“Summit Objection”). The hearing was held on the
6 Motion on March 8, 2012 at 11:30 a.m. in Phoenix and the Court at the conclusion of the
7 hearing made findings of fact and conclusions of law on the record.

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

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

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

13 (c) The investors in C&M Loan LLC and the applicable MP Funds have agreed
14 by the applicable dollar vote to the sale terms;

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

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

21 IT IS THEREFORE ORDERED THAT:

22 (1) The Motion is granted and approved and the KGM Objection and Summit
23 Objection are resolved as provided herein.

24 (2) The purchase price is fair consideration for the Property

25 (3) ML Manager, as the Manager of C&M Loan LLC and as Agent for the pass-
26 through investors, has authority and is directed to enter into the Sale Agreement, to

1 consummate the sale, to sell the Property pursuant to the terms of the Sale Agreement, to
2 execute the conveyance deed pursuant to the Sale Agreement, to execute the escrow
3 agreement and to execute any and all documents needed to consummate the sale.

4 (4) ML Manager is authorized to pay out of the gross sale proceeds all costs of
5 sale, including real property taxes, assessments, broker's fees, title insurance, ML
6 Manager expenses and other closing costs.

7 (5) To address the KGM Objection and Summit Objection and to satisfy and
8 release the Settlement Deed of Trust (Maricopa County Recorder No. 2010-0682111) and
9 as set forth in the Motion, the net sale proceeds shall be deposited and held in an interest-
10 bearing Escrow account at Thomas Title or another escrow company selected by ML
11 Manager pursuant to an Escrow Holdback Agreement and this Order ("Escrow"). All
12 alleged liens and claims of record in the Property as of the close of escrow shall be
13 released and shall attach to the net sale proceeds in the same manner, extent and priority
14 that such liens and claims held in the Property as they existed immediately prior to the
15 sale ("the beneficiaries of the Escrow"). The net sale proceeds will not be disbursed from
16 Escrow except upon entry of a final, non-appealable order of this Court pending the
17 outcome of the litigation and determination of the extent and priority of liens or pending a
18 settlement of all the beneficiaries of the Escrow. The beneficiaries of the Escrow will
19 include, but not be limited to, KGM, Summit, the other mechanics or materialmen
20 asserting liens in the Property that are a party to the pending adversary proceeding, the
21 beneficiaries of the Settlement Deed of Trust and ML Manager as Manager for C&M
22 Loan LLC and as Agent for the pass-through investors in this loan. All disputes,
23 arguments, claims, and defenses are preserved. Nothing in this Order, including the
24 escrowing of the proceeds, shall waive, release or impact the coverage or liability of any
25 title insurance policy, including but not limited to any title policy for the payment of the
26 alleged mechanic's liens or for the Settlement Deed of Trust.

1 (6) If and when any net sale proceeds which are attributable to the ownership
2 percentage for the C&M Loan LLC are entitled to be disbursed from the Escrow as
3 provided for in paragraph 5 herein, such funds shall be transferred to the ML Manager as
4 the Manager for the C&M Loan LLC and used and distributed pursuant to its agreements,
5 the Interborrower Agreement, the Confirmation Order and the Allocation Model approved
6 by the Court. If and when any net sale proceeds which are attributable to the ownership
7 percentage for the non-transferring pass-through investors are entitled to be disbursed
8 from the Escrow as provided in paragraph 5 herein, such funds shall be transferred to ML
9 Manager as their Agent and distributed pursuant to the applicable agency agreements, the
10 Plan, Confirmation Order, the Allocation Model and the Motion approved by the Court.

11 (7) If and when any net sale proceeds are determined by a final non-appealable
12 order of this Court to be disburseable to any of the mechanics and materialmen lien
13 holders, including but not limited to Summit and KGM, as provided in paragraph 5 herein,
14 such funds shall be deposited to another escrow account at the title company holding the
15 Escrow and thereafter shall be governed by further order of this Court and a new escrow
16 holdback agreement between those mechanics and materialmen lien holders.

17 (8) In the event that the sale to the Purchaser is not consummated, ML Manager
18 is hereby authorized without coming back to the Court to sell the Property in ML
19 Manager's sole discretion on the same or better terms as set forth in the Sale Agreement to
20 another buyer subject to all the terms and protections of this Order, the Escrow Holdback
21 Agreement and Escrow requirements as set forth in paragraph 5 herein.

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

26 DATED AND ORDERED AS STATED ABOVE.