

1 FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
2 3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012
3 Telephone: (602) 916-5343
Facsimile: (602) 916-5543
4 Email: creece@fclaw.com

5 MOYES SELLERS & HENDRICKS
Keith L. Hendricks (012750)
6 1850 N. Central Ave., Suite 1100
Phoenix, Arizona 85004
7 Telephone: (602) 604-2120
Email: khendricks@law-msh.com

8 Attorneys for ML Manager LLC

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 SELL REAL PROPERTY

**Real Property located on Hunt Highway, Pinal
County, Arizona**

Hearing Date: December 11, 2012

Hearing Time: 11:00 a.m.

14
15
16
17
18 ML Manager LLC (“ML Manager”), requests that the Court enter an order
19 authorizing ML Manager as the manager for HH Loan LLC and the agent for certain Pass-
20 Through Investors to sell approximately 31,616 square feet of the real property located on
21 Hunt Highway, Pinal County, Arizona, as more specifically described in the Purchase
22 Agreement (“Property”), to Pinal County for the Hunt Highway widening project for the
23 price of \$56,000 (“Purchase Price”) and on the terms set forth in an unexecuted Purchase
24 Agreement (“Sale Agreement”) or upon better terms to Purchaser or a different buyer as
25 determined by ML Manager in its sole discretion. Once the Sale Agreement is finalized
26 and signed, a copy will be filed with the Court. The Sale Agreement has a contemplated

1 closing of end of December 2012. Pinal County wants to purchase the small portion of the
2 property for its Hunt Highway widening project. The sale does not dispose of all of the
3 real property owned by the investors at that location, only a small portion of it. The
4 investors will continue to hold and ML Manager will continue to market the remaining
5 portion of the property.

6 Borrower HH 20, LLC defaulted on its loan with Mortgages Ltd. The unpaid
7 principal balance on the loan (Loan No. 858305) is about \$3,670,732. Interest and fees
8 also are due. ML Manager held a deed of trust sale and foreclosed on the Property. The
9 guarantors are Jason and Kristina Savell and Eric and Cheryl Faas. However, Eric and
10 Cheryl Faas have filed bankruptcy. Pursuant to the Official Investors' Committee's First
11 Amended Plan confirmed by the Court, HH Loan LLC was formed on the effective date
12 and the fractional interests in the note and deed of trust which were held by the MP Funds
13 were transferred into HH Loan LLC. Subsequently some of the pass-through investors
14 transferred their interests into HH Loan LLC. At the time of the trustee sale, 6 Pass-
15 Through Investors had not transferred their fractional interests ("Pass-Through
16 Investors"). As a result, 60.936% of the interest in the real property is owned by HH Loan
17 LLC and the rest is owned by the 6 Pass-Through Investors in the loan.

18 ML Manager previously sold about 5 acres of the property for \$300,000, which
19 sale was approved by the Court and by the HH Loan LLC. ML Manager continues to hold
20 about 15 acres. This sale will transfer about 31,616 square feet and ML Manager will
21 continue to hold approximately 13 acres. The Purchase Price is approximately \$77,156 per
22 acre, which is more than the price per acre of \$60,000 per acre for the previous sale.
23 Additionally, an appraisal of the property was performed by Roger L. Dunlap &
24 Associates, LTD, dated August 14, 2012 which valued the property at \$48,200. This is not
25 proposed to be an auction and no higher and better bids are being solicited. Pinal County
26 has the right to pursue a condemnation action as to this small portion of the property

1 needed for the Hunt Highway widening project. So a sale of this small portion to another
2 party is not workable at this time. ML Manager will seek approval by the investors in HH
3 Loan LLC and the applicable MP Funds and Bankruptcy Court approval. It will also give
4 notice to the exit financier pursuant to the right to compete. The Purchase Price is to be
5 paid in cash at closing. This is an arms-length, negotiated sale between unrelated parties.
6 The anticipated closing is end of December 2012.

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 will continue to market the
10 remaining unsold portion of the property. ML Manager believes that this sale is in the best
11 interest of the investors in the Loan LLC and the Pass-Through Investors and is a valid
12 exercise of its business judgment consistent with any fiduciary responsibilities.

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

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

24 ML Manager, as the agent for the Pass-Through Investors, has the authority and
25 ability to enter into a sale agreement and to sell the real estate on behalf of the principals.
26 ML Manager as the agent will execute the documents on behalf of the Pass-Through

1 Investors since it holds the irrevocable power of attorney coupled with an interest to do so.
2 ML Manager will include language in the Sale order authorizing ML Manager to execute
3 any and all such documents on behalf of the Pass-Through Investors.

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

16 As is customary ML Manager does propose to pay the closing costs, real property
17 taxes if any at the closing out of the gross sale proceeds. ML Manager also proposes to
18 pay the replacement loans to the other Loan LLCs from the Loan LLC's portion of the
19 sale proceeds pursuant to the Loan Agreement and the Inter-borrower Agreement and to
20 create and use any reserves pursuant to the Inter-borrower 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 the ownership interest to the Loan LLC pursuant to its agreements, the Plan, Confirmation

1 Order, and Inter-borrower Agreement.

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

5 DATED: November 20, 2012

6 FENNEMORE CRAIG, P.C.

7 By /s/ Cathy L. Reece
8 Cathy L. Reece

9 Attorneys for ML Manager LLC

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26