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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 A SHORT SALE
AND PARTIAL RELEASE OF LIEN TO
ALLOW SALE OF PART OF THE REAL
PROPERTY AND PERSONAL PROPERTY
BY BORROWER**

**Real Property consisting of approximately
316.69 acres located at the northwest corner of
Farrell Road and Warren Road in Pinal County,
Arizona (Anglin Property)**

**Hearing Date: September 27, 2012
Hearing Time: 2:00 p.m.**

20 ML Manager LLC (“ML Manager”), requests that the Court enter an order
21 authorizing ML Manager as the manager for ABCDW II Loan LLC and the agent for
22 certain Pass-Through Investors to accept a short sale by its Borrower which would pay
23 ML Manager net sale proceeds and a partial release of the lien on the real property and
24 personal property consisting of approximately 316.69 acres located at the northwest
25 corner of Farrell Road and Warren Road in Pinal County, Arizona known as the Anglin
26

1 Property, as more specifically described in the Sale Agreement (“Property”). Borrower
2 wants to sell the Property to Robert J. Knorr and/or nominee (“Purchaser”) for the price of
3 \$1,900,140 (“Purchase Price”) and on substantially the terms set forth in the Agreement of
4 Sale and Purchase (“Sale Agreement”) which will be filed with the Court prior to the
5 hearing or upon better terms to another party as determined by ML Manager in its sole
6 discretion. ML Manager would receive the net sales proceed and would release the lien on
7 the 316.69 acres. The Sale is contemplated to close in mid-October 2012.

8 Borrowers ABCDW, LLC (“Borrower”) defaulted on their loan with Mortgages
9 Ltd. The unpaid principal balance on the loan (Loan No. 857306) is about \$11 million.
10 Interest and fees also are due. ML Manager has not foreclosed on the Property and is
11 currently working on a global settlement with the Borrower, other Borrowers and
12 guarantors on what is known as the Wolfswinkel Loans. Pursuant to the Official
13 Investors’ Committee’s First Amended Plan confirmed by the Court, ABCDW II Loan
14 LLC was formed on the effective date and the fractional interests in the note and deed of
15 trust which were held by the MP Funds were transferred into ABCDW II Loan LLC.
16 Subsequently some of the pass-through investors transferred their interests into ABCDW
17 II Loan LLC. Certain Pass-Through Investors have not transferred their fractional
18 interests (“Pass-Through Investors”). As a result, 79.678% of the interest in the loan is
19 owned by ABCDW II Loan LLC and the rest is owned by the Pass-Through Investors in
20 the loan.

21 Borrower retained the services of Land Advisors Organization, a leading real estate
22 brokerage firm, to market the property for sale. After completing substantial marketing
23 efforts, Purchaser made an offer of \$1,900,140 and Borrower and Purchaser are finalizing
24 the Sale Agreement for that price, subject to the agreement of ML Manager and its regular
25 contingencies. Purchaser has deposited \$20,000 and opened escrow at Thomas Title &
26 Escrow. Because the property has already been fully marketed, this is not proposed to be

1 an auction and no higher and better bids are being solicited. The contingencies include
2 approval by the investors in ABCDW II Loan LLC and the applicable MP Funds and
3 Bankruptcy Court approval. One of the contingencies is the waiver of the right to compete
4 by the exit financier. The Purchase Price is to be paid in cash at closing. This is an arms-
5 length, negotiated sale between unrelated parties. The anticipated closing is in mid-
6 October 2012. The Property is being sold “As-Is” “Where-Is” and “With All Faults”.

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. There are ongoing holding costs, including,
10 interest costs on the replacement loan, among other costs. ML Manager believes that this
11 sale is in the best interest of the investors in the Loan LLC and the Pass-Through Investors
12 and is a valid exercise of its business judgment consistent with any fiduciary
13 responsibilities.

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

19 Under the Operating Agreement of ABCDW II Loan LLC, since this event is a
20 Major Decision, ML Manager must seek approval of the release of part of the deed of
21 trust and accept a short sale from the investors in the Loan LLC and the MP Funds
22 investors. Approval must be obtained by a majority of the investors’ dollars voting. The
23 voting process will start shortly and by the time the parties get to a hearing the results will
24 be known to ML Manager. If approved ML Manager asserts it has the authority and
25 ability to go forward with the short sale of the Loan LLC interests as described.

26 ML Manager, as the agent for the Pass-Through Investors, has the authority and

1 ability to enter into a short sale agreement and to release the deed of trust on a part of the
2 real estate on behalf of the principals. ML Manager as the agent will execute the
3 documents on behalf of the Pass-Through Investors since it holds the irrevocable power of
4 attorney coupled with an interest to do so. ML Manager will include language in the Sale
5 order authorizing ML Manager to execute any and all such documents on behalf of the
6 Pass-Through Investors.

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

20 As is customary ML Manager does propose to allow the Borrower to pay the
21 closing costs, real property taxes and any commission as set forth in the Sale Agreement
22 at the closing out of the gross sale proceeds. ML Manager will receive the net sale
23 proceeds and also proposes to repay the replacement loans to the other Loan LLCs, from
24 the Loan LLC's portion of the sale proceeds pursuant to the Loan Agreement and the
25 Inter-borrower Agreement and to create and use any reserves pursuant to the Inter-
26 borrower Agreement.

1 Pursuant to the Allocation Model which has been approved by this Court, ML
2 Manager will propose to disburse the net sale proceeds attributable to the Pass-Through
3 Investors subject to what amount should be charged back or allocated to the Pass-Through
4 Investors as their fair share of the expenses, including exit financing. Also pursuant to the
5 Allocation Model, ML Manager will propose to distribute net sale proceeds attributable to
6 the ownership interest to the Loan LLC pursuant to its agreements, the Plan, Confirmation
7 Order, and Inter-borrower Agreement.

8 WHEREFORE, ML Manager LLC requests that the Court enter an order
9 authorizing and approving the short sale and release of a part of the deed of trust collateral
10 as set forth above, and for such other and further relief as is just and proper under the
11 circumstances.

12 DATED: September 12, 2012

13 FENNEMORE CRAIG, P.C.

14 By /s/ Cathy L. Reece
15 Cathy L. Reece

16 Attorneys for ML Manager LLC

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