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7 Counsel for QC MK Custom Residential, L.L.C.

8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

11 MORTGAGES LTD.,

12 Debtor.

In Proceedings Under Chapter 11

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

**OBJECTION TO ORDER LODGED BY  
ML MANAGER LLC**

13  
14 QC MK Custom Residential, L.L.C. ("QCMK"), successor in interest to Queen Creek  
15 XVIII, L.L.C., by and through undersigned counsel, hereby objects to the proposed order lodged  
16 by ML Manager LLC ("ML Manager") regarding the *Motion to Sell Real Property and*  
17 *Improvements Located at 6500 and 6516 N. 64th Place, Paradise Valley, Arizona* [DE #3301].

18 In support of this Objection, QCMK respectfully submits as follows:

19 1. On the afternoon of Wednesday, September 21, 2011, ML Manager's counsel  
20 delivered by email to QCMK's counsel the form of order recently lodged with this Court.

21 2. QCMK provided feedback and proposed revisions to the order the following day,  
22 Thursday, September 22, 2011, even though undersigned counsel was traveling in California on  
23 another matter and had to communicate with QCMK and its bankruptcy counsel from "the road."  
24 Counsel made suggested revisions to the order on a laptop computer in an airport terminal and  
25 undertook every effort to provide comments to the proposed order in a timely manner.

26 3. This morning, September 23, 2011, counsel for ML Manager expressed its  
27 opposition to certain proposed language in the proposed order regarding the timing and  
28 procedures for resolution of the lien dispute on the property. In response, undersigned counsel

1 indicated that QCMK was not “married” to these concepts but believed it would be a good idea  
2 to include procedures for resolution of the lien dispute. Counsel for ML Manager again opposed  
3 their inclusion and inquired whether QCMK would approve the form of order.

4 4. Undersigned counsel then attempted to communicate with QCMK and its  
5 bankruptcy counsel and, accordingly, did not immediately respond to ML Manager’s inquiry.

6 5. At approximately 2:00 p.m. today, counsel for ML Manager lodged the order  
7 without prior notice or further inquiry with counsel for QCMK.

8 6. It is very unfortunate that ML Manager has, once again, taken unilateral action  
9 and an adversarial posture with respect to matters that can and should be resolved professionally  
10 on a cooperative basis.

11 7. QCMK believes that the form of order submitted by ML Manager is generally  
12 acceptable, but that it must be modified slightly, as reflected in Exhibit A hereto. A redline  
13 showing the differences between ML Manager’s proposed order and the form of order submitted  
14 herewith is attached as Exhibit B. QCMK believes the order submitted herewith is consistent  
15 with the Court’s ruling and that ML Manager should not have any substantive objections to it.

16 8. QCMK submits that language providing for the procedures and timing for the lien  
17 dispute is desirable to avoid any confusion going forward, and was hopeful that ML Manager  
18 would be amenable to such provisions. Because this Court did not rule on these issues at  
19 hearing, however, QCMK the order submitted herewith does not include such provisions.

20 WHEREFORE, QCMK (i) objects to the order submitted by ML Manager, and (ii)  
21 respectfully requests that the Court enter the form of order attached hereto.

22 DATED this 23rd day of September, 2011.

23 BRYAN CAVE LLP

24 By: /s/ BAS, #022721

25 Robert J. Miller  
26 Bryce A. Suzuki  
27 Two North Central Avenue, Suite 2200  
28 Phoenix, AZ 85004-4406  
Counsel for QC MK Custom Residential,  
L.L.C.

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COPY of the foregoing served via email  
this 23rd day of September, 2011 upon:

Cathy L. Reece, Esq.  
FENNEMORE CRAIG, P.C.  
3003 N. Central Ave., Suite 2600  
Phoenix, Arizona 85012  
[creece@fclaw.com](mailto:creece@fclaw.com)

/s/ Sally Erwin \_\_\_\_\_

# **EXHIBIT “A”**

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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

14 **ORDER APPROVING MOTION TO SELL  
REAL PROPERTY**

15 **Real Property and Improvements located at  
6500 and 6516 N. 64<sup>th</sup> Place, Paradise Valley,  
16 Arizona**

17 **Hearing Date: September 20, 2011  
Hearing Time: 1:30 p.m.**

18 ML Manager LLC (“ML Manager”) filed a Motion (“Motion”) (Docket No. 3301)  
19 requesting that the Court enter an order authorizing ML Manager as the Manager for MK  
20 I Loan LLC and MK II Loan LLC and the Agent for the non-transferring pass-through  
21 investors to sell the real property and improvements located at 6500 and 6516 N. 64<sup>th</sup>  
22 Place, Paradise Valley, Arizona which is more specifically described in the Sale  
23 Agreement (the “Property”) for the price and on the terms set forth in the Agreement of  
24 Sale and Purchase (“Sale Agreement”). Among other things, the Sale Agreement provides  
25 for the sale of the Property for \$2.9 million to CJ Family Revocable Trust (“Purchaser”).  
26

1 A notice to creditors, interested parties and the non-transferring pass-through investors of  
2 the Motion and the hearing date was served. A Reservation of Rights (Docket No. 3307)  
3 was filed by QC MK Custom Residential, LLC (the “QC MK Reservation”), the alleged  
4 successor to Queen Creek XVIII, LLC, which asserts a 20% interest in the Property (the  
5 “Disputed Interest”).

6 In addition, in the chapter 11 bankruptcy case of QC MK Custom Residential,  
7 LLC, 2:10-bk-36845-CGC, ML Manager filed a Motion to Ratify the Agent’s Decision to  
8 Sell Property (Docket No. 66). QC MK filed a Limited Objection (Docket No. 70) in that  
9 case which was consensually resolved prior to the September 13, 2011 hearing. An Order  
10 Granting Motion to Ratify Agent’s Decision to Sell Real Property (Docket No. 73)  
11 (“Ratification Order”) was entered by Judge Case.

12 The hearing was held on the Motion on September 20, 2011 at 1:30 p.m. in  
13 Phoenix and the Court at the conclusion of the hearing made findings of fact and  
14 conclusions of law on the record.

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

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

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

20 (c) The investors in MK I Loan LLC, MK II Loan LLC and the applicable MP  
21 Funds have agreed by the applicable dollar vote to the sale terms;

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

25 (e) The decisions to sell and enter into the Sale Agreement as proposed in the  
26 Motion and to establish certain escrows are supported by the best exercise of business

1 judgment of ML Manager which is consistent with ML Manager's fiduciary duties and  
2 responsibilities.

3 IT IS THEREFORE ORDERED THAT:

4 (1) The Motion is granted and approved and the QC MK Reservation is  
5 resolved as set forth in this Order.<sup>1</sup>

6 (2) ML Manager, as the Manager of MK I Loan LLC and MK II Loan LLC and  
7 as Agent for the pass-through investors, including QC MK Custom Residential, LLC or  
8 Queen Creek XVIII, LLC, has authority and is directed to enter into the Sale Agreement,  
9 to consummate the sale, to sell the Property pursuant to the terms of the Sale Agreement,  
10 to execute the conveyance deed to the Purchaser and to execute any and all documents  
11 needed to consummate the sale.

12 (3) ML Manager is authorized to pay out of the sale proceeds the costs of sale,  
13 including real property taxes, assessments, broker's fees, title insurance or other closing  
14 costs, and to reimburse ML Manager for Insurance, Repair/maintenance, Utilities, and  
15 Trustee sale expenses, provided such pay out from the QC MK's Disputed Interest of  
16 approximately \$580,000 shall be a 20% prorata portion of the estimated costs of sale as  
17 follows (which amounts are estimates and will be updated and prorated with the purchaser  
18 at the closing):

19 Real property taxes \$121,414<sup>2</sup>

20 Broker Commission \$174,000

21 <sup>1</sup> Nothing herein shall be deemed to affect any of the pending appeals, any other  
22 contested matters, or any other litigation in which ML Manager and QC MK Custom  
Residential, LLC or Queen Creek XVIII, LLC are involved.

23 <sup>2</sup> Since the tax amount will need to be adjusted at closing, QC MK Custom agrees that ML  
24 Manager shall pay the exact amount of all unpaid real property taxes as of close of escrow  
25 in the amount required by the title company and increase and pay the above estimate  
26 accordingly. ML Manager agrees to provide QC MK Custom with evidence of and an  
itemization of the other expenses. Such amounts shall be paid at closing as long as the  
actual expenses are approved by QC MK Custom or do not exceed the estimated amounts  
by more than 10% in the aggregate.

1 Title fees and insurance and other customary closing costs \$7,500  
2 Insurance \$11,055.02  
3 Repair/maintenance \$7,185.67  
4 Utilities \$9,544.90  
5 Trustee Sale expenses \$6,387.95

6 (4) ML Manager shall escrow the remaining net sale proceeds of QC MK's  
7 Disputed Interest of approximately \$512,000 and hold such escrowed funds at the title  
8 company handling the sale or another mutually acceptable escrow company pending  
9 resolution of the dispute upon further order of the Court over the validity and  
10 enforceability of the MK I deed of trust which MK I lien if valid attaches to the Disputed  
11 Interest in the net sale proceeds. ML Manager and QC MK Custom reserve their rights  
12 and arguments to pursue or dispute reimbursement and payment of other expenses and  
13 additional amounts of the estimated expenses from such escrowed proceeds of the  
14 Disputed Interest.

15 (5) Further, as provided in the Motion and in addition to the costs and expenses  
16 stated above in paragraph 3 and other reimbursement of expenses to ML Manager, ML  
17 Manager is authorized to pay out of the MK I Loan LLC and MK II Loan LLC proceeds  
18 the liens or encumbrances on the Property owed to the current exit lender pursuant to the  
19 Loan Agreement, and to create and use any Permitted Reserves out of the MK I Loan  
20 LLC and MK II Loan LLC proceeds pursuant to the Loan Agreement As proposed in the  
21 Motion ML Manager shall use a conservative approach and assume initially for purposes  
22 of paying the exit lender and escrowing funds that the MK II investors succeed on the  
23 attack of the first deed of trust held by the MK I investors. After such payment to the exit  
24 lender, the closing costs and reimbursement of expenses and the Permitted Reserve, the  
25 net sale proceeds of the MK I and MK II Loan LLCs of approximately \$477,000 shall be  
26 escrowed and held at the title company handling the sale or another mutually acceptable



1 escrow company pending resolution upon further order of the Court of the dispute over  
2 the validity and enforceability of the MK I deed of trust which MK I lien if valid attaches  
3 to escrowed funds.

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

8 (7) The 14 day stay of an order for the sale of property under Bankruptcy Rule  
9 6004(h) (to the extent it applies) is hereby waived and shall not be applied to this Order.

10 (8) In the event that the sale to the Purchaser does not close and the Sale  
11 Agreement is terminated, ML Manager in its sole discretion shall be authorized to close a  
12 sale of the Property without further order of the Court on the back up offer either to Doug  
13 Barkdull and/or assignee as set forth in the signed Sale Agreement for \$2.995 million or to  
14 Daniel Ahdoot and/or nominee as set forth in the Sale Agreement for \$2.85 million. All of  
15 the provisions of this Order shall be effective and apply to the sale to the back up  
16 purchaser and shall continue to be binding on the parties.

17 DATED AND ORDERED AS STATED ABOVE.

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# **EXHIBIT “B”**

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Attorneys for ML Manager LLC  
IN THE UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF  
ARIZONA In re

MORTGAGES LTD.,

Debtor.

Chapter 11

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

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**Hearing Date: September 20, 2011  
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ML Manager LLC (“ML Manager”) filed a Motion (“Motion”) (Docket No. 3301) requesting that the Court enter an order authorizing ML Manager as the Manager for MK I Loan LLC and MK II Loan LLC and the Agent for the non-transferring pass-through investors to sell the real property and improvements located at 6500 and 6516 N. 64<sup>th</sup> Place, Paradise Valley, Arizona which is more specifically described in the Sale Agreement (the “Property”) for the price and on the terms set forth in the Agreement of Sale and Purchase (“Sale Agreement”). Among other things, the Sale Agreement provides for the sale of the Property for \$2.9 million to CJ Family Revocable Trust (“Purchaser”). A notice to creditors, interested parties and the non-transferring pass-through investors of the Motion and the hearing date was served. A Reservation of Rights (Docket No. 3307) was filed by QC MK Custom Residential, LLC (the “QC MK Reservation”), the alleged

successor to Queen Creek XVIII, LLC, which asserts a 20% interest in the Property (the “Disputed Interest”).

In addition, in the chapter 11 bankruptcy case of QC MK Custom Residential, LLC, 2:10-bk-36845-CGC, ML Manager filed a Motion to Ratify the Agent’s Decision to Sell Property (Docket No. 66). QC MK filed a Limited Objection (Docket No. 70) in that case which was consensually resolved prior to the September 13, 2011 hearing. An Order Granting Motion to Ratify Agent’s Decision to Sell Real Property (Docket No. 73) (“Ratification Order”) was entered by Judge Case.

The hearing was held on the Motion on September 20, 2011 at 1:30 p.m. in Phoenix and the Court at the conclusion of the hearing made findings of fact and conclusions of law on the record.

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

- (a) This Court has jurisdiction over the issues presented in the Motion, and the Motion and the Court’s hearing thereon were duly and properly noticed;
- (b) The purchase price constitutes fair consideration for the Property;
- (c) The investors in MK I Loan LLC, MK II Loan LLC and the applicable MP Funds have agreed by the applicable dollar vote to the sale terms;
- (d) The ML Manager LLC is authorized to enter into the Sale Agreement, to sell the Property pursuant to the terms of the Sale Agreement to Purchaser, to proceed with this sale and to execute all necessary documents to implement the sale;
- (e) The decisions to sell and enter into the Sale Agreement as proposed in the Motion and to establish certain escrows are supported by the best exercise of business judgment of ML Manager which is consistent with ML Manager’s fiduciary duties and responsibilities.

IT IS THEREFORE ORDERED THAT:

(1) The Motion is granted and approved and the QC MK Reservation is resolved as set forth in this Order.<sup>1</sup>

(2) ML Manager, as the Manager of MK I Loan LLC and MK II Loan LLC and as Agent for the pass-through investors, including QC MK Custom Residential, LLC or Queen Creek XVIII, LLC, has authority and is directed to enter into the Sale Agreement, to consummate the sale, to sell the Property pursuant to the terms of the Sale Agreement, to execute the conveyance deed to the Purchaser and to execute any and all documents needed to consummate the sale.

(3) ML Manager is authorized to pay out of the sale proceeds the costs of sale, including real property taxes, assessments, broker's fees, title insurance or other closing costs, and to reimburse ML Manager for Insurance, Repair/maintenance, Utilities, and Trustee sale expenses, provided such pay out from the QC MK's Disputed Interest of approximately \$580,000 shall be a 20% prorata portion of the estimated costs of sale as follows (which amounts are estimates and will be updated and prorated with the purchaser at the closing):

Real property taxes	\$121,414 <sup>+2</sup>
Broker Commission	\$174,000
Title fees and insurance and other customary closing costs	\$7,500
Insurance	\$11,055.02
Repair/maintenance	\$7,185.67

Nothing herein shall be deemed to affect any of the pending appeals, any other contested matters, or any other litigation in which ML Manager and QC MK Custom Residential, LLC or Queen Creek XVIII, LLC are involved.

<sup>+2</sup> Since the tax amount will need to be adjusted at closing, QC MK Custom agrees that ML Manager shall pay the exact amount of all unpaid real property taxes as of close of escrow in the amount required by the title company and increase and pay the above estimate accordingly. ML Manager agrees to provide QC MK Custom with evidence of and an itemization of the other expenses. Such amounts shall be paid at closing as long as the actual expenses are approved by QC MK Custom or do not exceed the estimated amounts by more than 10% in the aggregate.

Utilities \$9,544.90

Trustee Sale expenses \$6,387.95

(4) ML Manager shall escrow the remaining net sale proceeds of QC MK's Disputed Interest of approximately \$512,000 and hold such escrowed funds at the title company handling the sale or another mutually acceptable escrow company pending resolution of the dispute upon further order of the Court over the validity and enforceability of the MK I deed of trust which MK I lien if valid attaches to the Disputed Interest in the net sale proceeds. ML Manager and QC MK Custom reserve their rights and arguments to pursue or dispute reimbursement and payment of other expenses and additional amounts of the estimated expenses from such escrowed proceeds of the Disputed Interest.

(5) Further, as provided in the Motion and in addition to the costs and expenses stated above in paragraph 3 and other reimbursement of expenses to ML Manager, ML Manager is authorized to pay out of the MK I Loan LLC and MK II Loan LLC proceeds the liens or encumbrances on the Property owed to the current exit lender pursuant to the Loan Agreement, and to create and use any Permitted Reserves out of the MK I Loan LLC and MK II Loan LLC proceeds pursuant to the Loan Agreement As proposed in the Motion ML Manager shall use a conservative approach and assume initially for purposes of paying the exit lender and escrowing funds that the MK II investors succeed on the attack of the first deed of trust held by the MK I investors. After such payment to the exit lender, the closing costs and reimbursement of expenses and the Permitted Reserve, the net sale proceeds of the MK I and MK II Loan LLCs of approximately \$477,000 shall be escrowed and held at the title company handling the sale or another mutually acceptable escrow company pending resolution upon further order of the Court of the dispute over the validity and enforceability of the MK I deed of trust which MK I lien if valid attaches to escrowed funds.

(6) ~~The purchase price is fair consideration for the Property.~~(7) Pursuant to Section 1146(a) of the Bankruptcy Code and Section 10.5 of the confirmed Plan of Reorganization, any and all mortgage recording tax, stamp tax, real estate transfer tax, speculative builder, transaction privilege or other similar tax imposed by federal, state or local law are hereby waived.

(87) The 14 day stay of an order for the sale of property under Bankruptcy Rule 6004(h) (to the extent it applies) is hereby waived and shall not be applied to this Order.

(98) In the event that the sale to the Purchaser does not close and the Sale Agreement is terminated, ML Manager in its sole discretion shall be authorized to close a sale of the Property without further order of the Court on the back up offer either to Doug Barkdull and/or assignee as set forth in the signed Sale Agreement for \$2.995 million or to Daniel Ahdoot and/or nominee as set forth in the Sale Agreement for \$2.85 million. All of the provisions of this Order shall be effective and apply to the sale to the back up purchaser and shall continue to be binding on the parties.

DATED AND ORDERED AS STATED ABOVE.

~~493434~~