

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](mailto:creece@fclaw.com)

5 Attorneys for ML Manager LLC

6  
7 IN THE UNITED STATES BANKRUPTCY COURT  
8 FOR THE DISTRICT OF ARIZONA

9 In re  
10 MORTGAGES LTD.,  
11 Debtor.

Chapter 11

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

**NOTICE OF FILING ORDER  
APPROVING MOTION TO SELL  
REAL PROPERTY**

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

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

18 Notice is hereby given that ML Manager has lodged a new form of sale order. ML  
19 Manager has reviewed the proposed changes of the objector and has added a new footnote  
20 to paragraph 1 of the proposed order based on the request. ML Manager has worded the  
21 footnote to say "Even though the parties have resolved certain issues so this sale can be  
22 approved and closed, the parties reserve their arguments and rights on the issues that are  
23 pending in current appeals, contested matters and litigation."

24 ML Manager has not included the phrase "upon further order of the Court" which  
25 objector has inserted in paragraph 4 and 5 in different places in the sentence. After  
26 additional thought ML Manager has decided to not include it. It would require the parties

1 to come back to this Court for approval of any distribution of the funds after resolution.  
2 While ML Manager has no problem coming to this Court for approval of the distribution,  
3 if appropriate, it should not be required. Another forum might be more appropriate  
4 depending on where the dispute is in litigation.

5 ML Manager also kept in the ruling on fair consideration in paragraph 6 as it has  
6 been in just about every other sale order and is not inappropriate here.

7 A copy of the proposed order is attached as Exhibit A and the redlined version of  
8 this proposed order comparing it to the original order uploaded by ML Manager is  
9 attached as Exhibit B.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED: September 26, 2011

FENNEMORE CRAIG, P.C.

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

Copy of the foregoing emailed this  
26<sup>th</sup> day of September to:

Bryce Suzuki  
BRYAN CAVE LLP  
Two North Central Ave., Suite 2200  
Phoenix, AZ 85004  
[Bryce.suzuki@bryancave.com](mailto:Bryce.suzuki@bryancave.com)

By /s/ Gidget Kelsey-Bacon

# EXHIBIT

# A

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](mailto:creece@fclaw.com)

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

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.  
11 73)("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>Even though the parties have resolved certain issues so this sale can be approved and  
22 closed, the parties reserve their arguments and rights on the issues that are pending in  
current appeals, contested matters and litigation.

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 over the validity and enforceability of the MK I deed of trust  
10 which MK I lien if valid attaches to the Disputed Interest in the net sale proceeds. ML  
11 Manager and QC MK Custom reserve their rights and arguments to pursue or dispute  
12 reimbursement and payment of other expenses and additional amounts of the estimated  
13 expenses from such escrowed proceeds of the Disputed Interest.

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

1 the MK I deed of trust which MK I lien if valid attaches to escrowed funds.

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

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

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

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

16 DATED AND ORDERED AS STATED ABOVE.

17

18

19

2493434

20

21

22

23

24

25

26



# EXHIBIT B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MOYES SELLER & HENDRICKS  
Keith L. Hendricks (012750)  
1850 North Central Ave., Suite 1100  
Phoenix, Arizona 85004  
Telephone: (602) 604-2120  
Email: [khendricks@law-msh.com](mailto:khendricks@law-msh.com)

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

**ORDER APPROVING MOTION TO SELL  
REAL PROPERTY**

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

(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):

<sup>1</sup>Even though the parties have resolved certain issues so this sale can be approved and closed, the parties reserve their arguments and rights on the issues that are pending in current appeals, contested matters and litigation. □

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Real property taxes \$121,414<sup>42</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  
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 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

<sup>42</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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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 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.

(8) 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.

(9) 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.

2493434

Document comparison by Workshare Professional on Monday, September 26, 2011  
1:14:04 PM

Input:	
Document 1 ID	pcdocs://phx/2493434/3
Description	#2493434 v3 - Sale order for MK Custom house
Document 2 ID	pcdocs://phx/2493434/4
Description	#2493434 v4 - Sale order for MK Custom house
Rendering set	Fennemore Craig Std

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	4
Deletions	2
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	6