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5 Pro Per

FILED  
2010 APR 22 PM 3:30

CLERK  
U.S. BANKRUPTCY  
DISTRICT OF ARIZONA

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

<p>8 In re:</p> <p>9 MORTGAGES LTD.,</p> <p>10 an Arizona corporation,</p> <p>11 Debtor.</p>	<p>) In Proceedings Under Chapter 11</p> <p>) Case No. 2:08-bk-07465-RJH</p> <p>) <b>ROBERT FURST'S MOTION FOR</b></p> <p>) <b>ENTRY OF ORDER CONFIRMING</b></p> <p>) <b>THAT ALL INVESTORS IN THE GP</b></p> <p>) <b>PROPERTIES LOAN ORIGINATED BY</b></p> <p>) <b>THE MORTGAGES LTD. 401(K) PLAN</b></p> <p>) <b>HAVE TERMINATED THEIR AGENCY</b></p> <p>) <b>AGREEMENTS WITH ML MANAGER</b></p>
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16 Robert G. Furst files this Motion for Entry of Order Confirming that All Investors in the GP  
17 Properties Carefree Cave Creek Loan Originated by the Mortgages Ltd. 401(k) Plan Have  
18 Terminated Their Agency Agreements with ML Manager. Robert G. Furst is filing this Motion on  
19 behalf of the Robert G. Furst & Associates Ltd. Defined Benefit Pension Plan, which is an investor in  
20 this loan.

21  
22 The GP Properties Carefree Cave Creek loan (the "GP Loan" or "Loan") was a loan in the  
23 principal amount of \$4,550,000, which was *originated by the Mortgages Ltd. 401(k) Plan* (the  
24 "401(k) Plan"), not Mortgages Ltd. The 401(k) Plan owned 46.86% of the GP Loan, and individual  
25 investors owned the remaining 53.14%. None of the MP Funds owned any interest.

26  
27 Because the GP Loan was originated by the 401(k) Plan rather than Mortgages Ltd., a Loan  
28 LLC was not formed, pursuant to the Chapter 11 Plan, to consolidate the individual investors'

1 fractional interests in the Loan into a single entity. Correspondingly, none of the individual investors  
2 in the GP Loan was required to pledge his/her fractional interest in the GP Loan to secure the Exit  
3 Financing necessary to consummate the Chapter 11 Plan.

4 After the Chapter 11 Plan was confirmed by the Court, the 401(k) Plan and the individual  
5 investors initiated foreclosure proceedings on the defaulted GP Loan. A trustee's sale occurred, and  
6 the 401(k) Plan and the individual investors now own, as tenants in common, the real property (the  
7 "GP Property") which previously secured the Loan.

8  
9 On January 6, 2010, all but one of the individual investors, together with a trustee of the  
10 401(k) Plan, met to discuss the ownership, management and marketing of the GP Property. Notably,  
11 among the attending investors was Scott Summers, who is a member of the ML Manager Board, and  
12 Jan Sterling, who is a member of the ML Liquidating Trust Board. At the end of the meeting, the  
13 attending individual investors unanimously agreed that they would terminate their Agency  
14 Agreements with ML Manager and independently manage the GP Property, together with the 401(k)  
15 Plan, going forward. (Later, the only absent investor indicated that he also supported this course of  
16 action.)  
17  
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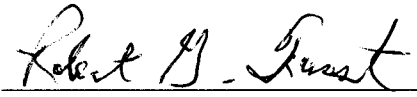
19 On February 1, 2010, Robert Furst notified ML Manager that the Agency Agreements had  
20 been terminated and that the individual investors, together with the 401(k) Plan, would independently  
21 hold, manage and market the GP Property (a copy of the notice is attached hereto as Exhibit A).  
22 Mark Winkleman responded by stating that "we will be happy to discuss the ML Manager Board's  
23 thoughts on this subject as soon as they are developed." Unfortunately, Mr. Furst never heard  
24 anything more from Mark Winkleman in the intervening months.  
25

26 The individual investors are ready to move forward, and further delay is unnecessary and  
27 unproductive. Importantly, the Agency Agreements, in Paragraph 3(b), expressly state that a  
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1 “[p]articipant may terminate this Agreement after it becomes the sole owner of the Trust property.”  
2 In the case at hand, 100% of the investors desire to terminate the Agency Agreements and work  
3 cooperatively to hold, manage and market their own GP Property. This is functionally the exact same  
4 situation as one investor becoming the “sole owner” of the property, and there is no reason to wait  
5 any longer for “the ML Manager Boards’ thoughts on the subject.”  
6

7 Accordingly, the undersigned requests that the Court issue an order confirming that the  
8 Agency Agreements have been terminated by all of the investors in the GP Properties Carefree Cave  
9 Creek Loan, effective February 1, 2010, and that ML Manager shall have no further authority over  
10 the GP Property in any respect.

11 DATED: April 22, 2010  
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**From:** RGFURST@aol.com [mailto:RGFURST@aol.com]  
**Sent:** Monday, February 01, 2010 11:43 PM  
**To:** Elliott Pollack  
**Subject:** GP Carefree/Cave Creek Property

Dear Elliott:

On January 6, 2010, I was invited to a meeting for the investors in the GP Carefree-Cave Creek property, which was acquired in a non-judicial foreclosure on October 21, 2009. The meeting took place at Walter Clarke's office, and all of the investors, except Kevin Goff, were either present or represented. These attending investors own approximately 99.6% of the GP Carefree-Cave Creek property.

To briefly summarize the history of this investment, the GP Carefree-Cave Creek loan was originated by the Mortgages Ltd. 401(k) Plan (the "401(k) Plan"), not Mortgages Ltd. On the date of Scott Coles' death, the 401(k) Plan was the largest investor in the loan, owning approximately 47% of the loan. The remaining investors were all Pass-Through Investors (but no Mortgage Funds). Shortly after Scott Coles' death, the borrower defaulted on the loan; the loan was foreclosed upon; and the 401(k) Plan and the Pass-Through Investors now own the property which secured the loan.

At the investor meeting, the attending Pass-Through Investors unanimously agreed that they would like to manage their interests in the GP Carefree-Cave Creek property independent of ML Manager and, accordingly, they voted to terminate their respective Agency Agreements with ML Manager. The Pass-Through Investors trust that you and the rest of the ML Board will concur with this action. (It should be noted that the 401(k) Plan has no Agency Agreement with ML Manager, and it is already acting on its on behalf and independent of ML Manager.)

The Pass-Through Investors in the GP Carefree-Cave Creek property recognize that ML Manager has incurred certain expenses in connection with this property and want to reimburse ML Manager for these expenses. An Investor Committee was chosen (of which I am a member) to work cooperatively with you to ascertain the amount owed and to resolve any other open issues.

It is my understanding that the investors in the Tim Hurst loan, which was also originated by the Plan, have already embarked on the same self-reliant course of action. The current owners of the Tim Hurst property are the Plan, and three Pass-Through Investors, who cooperatively manage the property without any continuing involvement by ML Manager.

The Pass-Through Investors in the GP Carefree-Cave Creek property are anxious to move forward and look forward to the Board's response. You may reach me at (602) 377-3702 or at [rgfurst@aol.com](mailto:rgfurst@aol.com). As always, I am more than willing to come to your office to meet with you at any time.

Finally, I want to thank you for your prompt response to my voicemail on this matter. I am sending you this letter so that you can formally present this matter to the other Board members at your next meeting.

Best regards.

Bob Furst

EXHIBIT A