FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
Keith L. Hendricks (012750)
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012
Telephone: (602) 916-5343
Facsimile: (602) 916-5543
Email: creece@fclaw.com

Attorneys for ML Manager LLC

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
MORTGAGES LTD.,	Case No. 2:08-bk-07465-RJH
Debtor.	**ML MANAGER LLC'S RESPONSE TO ROBERT FURST'S MOTION FOR ENTRY OF ORDER CONFIRMING THAT ALL INVESTORS IN THE GP PROPERTIES LOAN ORIGINATED BY THE MORTGAGES LTD. 401(K) PLAN HAVE TERMINATED THEIR AGENCY AGREEMENTS WITH ML MANAGER** **Hearing Date: May 18, 2010** **Hearing Time: 2:30 p.m.**

ML Manager LLC ("ML Manager") hereby files its Response to "Robert Furst's Motion for Entry of Order Confirming that All Investors in the GP Properties Loan originated by the Mortgages Ltd. 401(k) Plan have Terminated their Agency Agreements with ML Manager" ("Motion"), filed by Robert Furst on April 23, 2010 (Docket No. 2716). ML Manager requests that the Motion be denied for a number of reasons.

First, Mr. Furst purports to bring the Motion for "all investors in the GP Properties Loan". Mr. Furst may be an investor as the trustee of the Robert G. Furst & Assoc. Ltd. Defined Benefit Pension Plan with a .554% fractional interest in the GP Properties loan however he does not represent "all the investors" and has no standing to represent them and to seek relief on their behalf. The Motion as to all other investors should be stricken

and denied for lack of standing. Mr. Furst is a former attorney and knows better than to file such a pleading.[1] He is not their attorney and has no standing to file it for anyone else.

Second, the Motion is not procedurally proper and should be denied without prejudice. Mr. Furst appears to seek a decision of the Court finding that the agency agreement to which he is bound on this loan has been terminated. A Motion is not the forum or vehicle for this determination.

Third, in the Motion, Mr. Furst admits that his Defined Benefit Plan is a party to the Subscription and Agency Agreements that have been assigned to ML Manager under the confirmed Plan and that ML Manager is the Agent for his Defined Benefit Plan. Yet he says he has terminated the Agreement unilaterally for himself and for the other investors. He sent an email to Elliott Pollack which states that the investors have voted to terminate the Agency Agreements. However he seems to acknowledge that it requires the Agent's agreement to do so. He states that he "trusts that you and Board will concur." He asks for ML Manager to get back with him. Thus it does not appear to be a definitive termination at all. The email by one investor alleging to represent all the other investors and acknowledging the Agent must agree to the termination has no force and effect.

Fourth, Mr. Furst cannot terminate the Agency Agreement. Section 1 of the Agency Agreement states that it is "irrevocable" with a power of attorney coupled with an interest and stays in full force and effect until renounced by the Agent. The Agent has not renounced the Agreement. Section 3(b) gives the Agent broad authority after the trustee's sale to take actions to maintain, protect and sell the property. It also states that "Participant may terminate this Agreement after it becomes the sole owner of the Trust Property…" Mr. Furst's Defined Benefit Plan (the "Participant" under the Agreement") is

[1] As the Court will recall, Mr. Furst filed a Motion purportedly for the 401(k) Plan (Docket No. 2700) on March 24, 2010 and the Court on April 5,2010 summarily denied the Motion without hearing based on lack of standing (Docket No. 2704) after ML Manager filed a Motion to Strike (Docket No. 2702).

not the sole owner of the Trust Property. The language is "Participant" singular, not plural as Mr. Furst would have it read. There is nothing in the language that states or would suggest that the investor who owns a small fractional interest can terminate on his own or join with other investors who own fractional interests to terminate the Agent. The language is unambiguous. Any attempted termination was not effective. Section 7(f) of the Agreement requires amendments, modifications or cancellations must be in writing and must be mutual by the Agent and Participant. ML Manager has not agreed to the termination or any modification or amendment to the Agreement.

Fifth, assuming for the sake of argument that the investors in the loan could unilaterally terminate the Agent under Section 3(b), the language is clear that the Participant has to pay the "fees, costs and expenses incurred by Agent as provided herein". Pursuant to Paragraph U of the May 20, 2009 Confirmation Order and language in the October 21, 2009 Order ruling on the Motion to Clarify, the Agent can charge back to the investors their fair, equitable and proportional share of the costs and expenses incurred by the Agent, "including but not limited to the exit financing." In the event the Court were to determine the Agreements were terminated then the ML Manager asserts the right to charge and collect such costs and expenses from each and every Participant.

Sixth, it is inaccurate and misleading to represent to the Court that this loan "was originated by the Mortgages Ltd. 401(k) Plan" and not Mortgages Ltd. Mr. Furst's Defined Benefit Plan obtained its .554% fractional interest in the loan from Mortgages Ltd., not from the Mortgages Ltd. 401(k). Attached as Exhibit "A" is the Assignment of Beneficial Interest which was recorded transferring the fractional interest in the Deed of Trust to his Defined Benefit Plan by Mortgages Ltd. He did not obtain the fractional interest from the Mortgages Ltd. 401(k) Plan. The sale of a fractional interest in the Note is a security under State and Federal securities laws, among other things. Mortgages Ltd., not the Mortgages Ltd. 401(k) Plan, held the mortgage banking license, worked with its

affiliate that held the securities license, issued the private offering memorandums, entered into subscription agreements and agency agreements with investors, employed the employees that did the underlying work with the borrower to make the loan and to work with investors, created and prepared the loan documents and assignment and transfer documents, and was to service the loan as the borrower paid. Contemporaneously with the closing of the loan on July 19, 2007, Mortgages Ltd. obtained an undivided fractional interest of 41.874% in the Note and Deed of Trust and an assignment of the rights under the loan documents. Mortgages Ltd. also held possession of the original Note, guaranties and loan documents. On July 30, 2007, Mortgages Ltd. sold a .554% fractional interest in the loan to Mr. Furst's Defined Benefit Plan. Thereafter Mortgages Ltd. sold other interests to other investors and transferred them in and out of the loan during the next year, including various MP Funds.

Finally, Mr. Furst argues that the loan "was not originated by Mortgages Ltd." and was therefore not put into a Loan LLC and thus he was not required to pledge his interest. His reasoning is faulty. The Pass-Through Investors were not forced to go into a Loan LLC at all. Their decision was voluntary. No Loan LLC was formed because none of the investors indicated that they were willing to transfer their interests into a Loan LLC for that loan. The decision had nothing to do with whether the loan "was originated by" Mortgages Ltd. In addition, none of the Pass-Through Investors in any loans pledged their fractional interests however they are still required to pay their fair, equitable and proportional share of the expenses.

WHEREFORE, ML Manager requests that the Court deny the Motion on the grounds stated above and grant such other and further relief as is proper and just.

DATED: May 11, 2010

FENNEMORE CRAIG, P.C.

By */s/ Cathy L. Reece* (005932)
Cathy L. Reece
Keith L. Hendricks
Attorneys for ML Manager LLC

COPY of the foregoing mailed this
11th day of May, 2010 to the following:

Robert Furst
4201 N. 57th Way
Phoenix, Arizona 85018
ProPer

/s/ *Gidget Kelsey-Bacon*
2313096