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5 Pro Per

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CLERK
U.S. BANKRUPTCY
DISTRICT OF ARIZONA

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

<p>9 In re:</p> <p>10 MORTGAGES LTD.,</p> <p>11 an Arizona corporation,</p> <p>12</p> <p>13</p> <p>14 Debtor.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p>	<p>) In Proceedings Under Chapter 11</p> <p>) Case No. 2:08-bk-07465-RJH</p> <p>) ROBERT FURST'S RESPONSE TO</p> <p>) MOTION TO APPROVE SHORT</p> <p>) SALE</p> <p>)</p> <p>) Real property consisting of</p> <p>) approximately 26 acres located in</p> <p>) Oro Valley, Pima County, Arizona,</p> <p>) known as Rancho Vistoso</p> <p>)</p> <p>) Hearing Date: December 11, 2012</p> <p>) Hearing Time: 11:00 a.m.</p>
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20 Robert G. Furst hereby files his Response to Motion to Approve Short Sale in relation to the

21 short sale of a 26-acre parcel in the masterplanned community of Rancho Vistoso. The subject

22 property is one of two non-contiguous parcels that secures a defaulted real estate loan to Ashton and

23 Brandon Wolfswinkel. The two parcels are currently the subject of a partition action filed by Mr.

24 Furst with this Court. However, Mr. Furst approves this short sale, so long as the partition action

25 proceeds in relation to the second parcel.

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1 A few months ago, the Court ruled, over the objections of ML Manager, that Mr. Furst and
2 the other pass-through investors in the Rancho Vistoso loan, have the **right to partition** the Rancho
3 Vistoso loan/properties, if some investors want to hold and some want to sell. As a result, Mr. Furst
4 filed a partition action as an adversary proceeding with this Court. Mr. Furst filed the partition
5 action with this Court, rather than in state court, at the suggestion of Judge Haines.

7 The Court's ruling that Mr. Furst and the pass-through investors have these inherent partition
8 rights (just like all other co-owners of properties) has had an immediate and positive effect for all of
9 the investors in the Rancho Vistoso loan because it has indirectly forced ML Manager to afford Mr.
10 Furst and other pass-through investors an opportunity to "match" existing offers from third-party
11 purchasers/vultures, which is all that Mr. Furst really wanted in the first place. That small step has
12 led to competitive bidding among prospective purchasers and a more purposeful evaluation of
13 market values by ML Manager. To illustrate, at one point early on, ML Manager was prepared to
14 sell the 26-acre parcel for \$60,000 per acre. When ML Manager contacted Mr. Furst to determine
15 whether he was interested in acquiring this parcel at this price in a partition or sale, Mr. Furst jumped
16 at the opportunity to acquire the parcel at \$60,000 per acre. Mr. Furst's strong interest in acquiring
17 the parcel at that price made ML Manager re-think the situation. As a result, ML Manager slowed
18 down the process; it consulted with others (including Conley Wolfswinkel) about valuations; and
19 eventually it was able to obtain increased offers of \$100,000 per acre and then \$130,000 per acre
20 from the same purchaser (together competing offers from Lennar Homes). Judge Haines' partition
21 ruling made ML Manager "play fair" with Mr. Furst and the pass-through investors, and the result is
22 that **all** of the investors in the Rancho Vistoso loan have benefitted greatly.

1 Specifically, since the Court's partition ruling, the following events occurred:

- 2 1. Immediately after the partition ruling, ML Manager informally agreed to work
3 cooperatively with Mr. Furst, by communicating the terms of third-party offers to him
4 and allowing him an opportunity to match the offers, in the hope that a partition could
5 prove unnecessary.
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- 7 2. Soon thereafter, ML Manager received the first offer that it was willing to accept --- a
8 purchase offer from True Life for approximately \$60,000 per acre. Mr. Winkleman
9 immediately informed Mr. Furst of the offer and asked him if he would like to match it.
10 Mr. Furst said yes.
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- 12 3. Mr. Winkleman believed that the offer was a fair price because True Life had recently
13 purchased the adjacent parcel for the same price. In response, Mr. Furst informed Mr.
14 Winkleman that True Life had really paid an effective price of \$100,000 per acre (not
15 \$60,000 per acre) for the adjacent parcel because the purchase of the adjacent parcel had
16 been purchased together with an "open space" parcel with virtually no value (so that even
17 though the entire transaction closed for \$60,000 per acre, the adjacent parcel was actually
18 valued at \$100,000 per acre, while the "open space" parcel was essentially worthless).
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- 20 4. At the conclusion of their discussion, Mr. Furst urged Mr. Winkleman to submit a
21 counteroffer to True Life reflective of its perceived higher value of \$100,000 per acre or
22 more.
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- 24 5. Several days later, Mr. Winkleman called Mr. Furst to inform him that (a) he had spoken
25 to a representative at True Life, and (b) True Life was unwilling to increase its offer
26 beyond perhaps \$61,000 to \$62,000 (but that it would definitely not raise its offer price to
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\$100,000 per acre. Mr. Furst believed that True Life was trying to “low-ball” its offer to ML Manager and suggested that Mr. Winkleman call Conley Wolfswinkel for assistance.

6. Mr. Winkleman followed Mr. Furst’s advice and got Conley Wolfswinkel involved in the negotiations to try to seek a fairer offer for the investors.

7. As Mr. Furst initially believed, True Life ultimately increased its offer from \$60,000 per acre to \$100,000 per acre, even though it had earlier stated that it would not.

8. At the same time, Lennar Homes submitted an even higher offer of \$110,000 per acre. However, ML Manager decided, for unspecified reasons, to accept the lower offer from True Life.¹

9. Communicating with real estate professionals specializing in the Rancho Vistoso area, Mr. Furst realized that it would be in the investors’ best interests for Lennar Homes and True Life to competitively bid against each other.

10. However, Mr. Winkleman and Ms. Reece informed him that ML Manager intended to accept the True Life offer for \$100,000 per acre and submit it to the Court for approval.

11. Fortunately for the ML investors, a friendly party intervened and persuaded ML Manager to be a little more patient and entertain competing bids from Lennar Homes and True Life. That is how the purchase price increased to \$130,000 per acre.

For the record, Mr. Furst approves the short sale for \$130,000 per acre, in the context of the present partition action before the Court. Originally, it was envisioned that the two parcels securing

¹ ML Manager never disclosed the higher offer to Mr. Furst, but Mr. Furst learned about it from another source. In e-mails and telephone discussions, Mr. Furst repeatedly asked Mr. Winkleman and Cathy Reece to disclose all offers to him, but they only disclosed the \$100,000 per acre offer made by True Life.

1 the Rancho Vistoso loan would be partitioned between two investor groups. Now, however, there
2 will be only a single 25-acre parcel to partition. Mr. Furst and the pass-through investors are
3 certainly willing to work cooperatively with ML Manager on an intervening sale of this parcel,
4 assuming a mutually-acceptable offer can be obtained in the interim from a third-party purchaser.
5 While the present partition action proceeds in this Court, ML Manager has, with Mr. Furst's consent,
6 begun marketing this potential apartment site for \$5.75 per square foot. If ML Manager is successful
7 in obtaining an offer in close proximity to the list price, Mr. Furst and the pass-through investors will
8 approve the sale. However, if ML Manager gets impatient and expresses a willingness to accept a
9 substantially lower offer (like, for example, the initial \$60,000 per acre offer made by True Life on
10 the other parcel), Mr. Furst and the pass-through investors fully expect to be afforded an opportunity
11 to match the best third-party best offer, either through an ordinary sale (with credit bids) or partition
12 sale. Because Cathy Reece has recently become increasingly confrontational on this subject, Mr.
13 Furst is continuing to pursue the partition action solely to ensure that he and the other pass-through
14 investors have a fair opportunity to acquire the second parcel.

15 In conclusion, Mr. Furst is satisfied with this offer of \$130,000 per acre and urges the Court
16 to approve the short sale, which would not have occurred without the Court's prior partition ruling.

17 DATED: December 7, 2012

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Robert G. Furst