

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

5 Attorneys for ML Manager LLC

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

8 In re
9 MORTGAGES LTD.,
10 Debtor.

Chapter 11

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

**REPLY TO OBJECTION RE: MOTION TO
APPROVE SHORT SALE**

**Real Property consisting of approximately 26
acres located in Oro Valley, Pima County,
Arizona, known as Rancho Vistoso**

**Hearing Date: December 11, 2012
Hearing Time: 11 a.m.**

15
16 ML Manager LLC (“ML Manager”), as the manager for VP I Loan LLC and the
17 agent for certain Pass-Through Investors, hereby files its Reply in support of its Motion to
18 Approve Short Sale (Docket No.3648) by its Borrower which would pay ML Manager net
19 sale proceeds from the sale of certain real property and personal property. The Property
20 consists of approximately 26 acres which is zoned for single family residences located in
21 Oro Valley, Pima County, Arizona in the Master Planned Community known as Rancho
22 Vistoso, as more specifically described in the Agreement of Sale and Purchase
23 (“Property”). Borrower wants to sell the Property to True Life Communities, LLC, a
24 California limited liability company (“Purchaser”), for the price of approximately \$3.38
25 million (“Purchase Price”) which is \$130,000 per acre and on substantially the terms set
26 forth in the Agreement of Sale and Purchase (“Sale Agreement”) which is attached as

1 Exhibit A to the Motion or upon better terms to another party as determined by ML
2 Manager in its sole discretion. ML Manager would receive the net sale proceeds and
3 would release the lien on only the subject 26 acres (“Short Sale”). The lien on the
4 remaining approximate 26 acres which is zoned for multi family use which is also subject
5 to the deed of trust held by the investors will not be released. The Sale is contemplated to
6 close January 21, 2013.

7 A short Objection (Docket No. 3666) (“Objection”) was filed by one Rev Op
8 Investor which incorporates 21 other objections to sales and the arguments in those
9 pleadings, all of which were previously responded to by ML Manager and overruled by
10 this Court. Further this Court’s rulings on the prior objections have been affirmed on
11 appeal by the District Court in the four sale appeals filed by the Rev Op Group. It does not
12 appear that there are any new arguments being raised by the Rev Op Investor. ML
13 Manager requests that the Court overrule the Objection and grant the Motion. ML
14 Manager incorporates by reference all of its replies and responses to the previous
15 arguments raised by the Objection, including but not limited to, that the Court retained
16 jurisdiction to enter an order approving the sale, that the Court has already ruled on the
17 agent’s authority and found the agency to be enforceable, that the agency is irrevocable
18 and any termination of the agency is null and void, that the decision to sell and to enter
19 into the sale agreement is a valid exercise of the business judgment of ML Manager
20 consistent with its fiduciary duty, among other arguments. As indicated below, the Court
21 should overrule the Objection and approve the Short Sale as requested by ML Manager.

22 Mr. Furst filed a Response (Docket No. 3674) (“Response”) but is not objecting to
23 the Short Sale. He states that he approves the Short Sale and agrees that it can be entered
24 into and implemented by ML Manager. As the Plaintiff Mr. Furst may delete the first
25 parcel from the partition action and choose to proceed only with the second parcel. ML
26 Manager has no objection to this amendment to the Complaint in the partition action to

1 reflect this. His Response is briefly addressed below and because it is not an objection to
2 the Short Sale the Court can grant the Motion as proposed by ML Manager.

3 **I. THE RESULTS OF THE LOAN LLC VOTE**

4 The investors in VP I Loan LLC and the 9 MP Funds who own 54.010% of the
5 interest in the Property were asked to vote on this Major Decision. As the Court will
6 recall, the operating agreement for the Loan LLC requires that Major Decisions (such as
7 selling the property) must be voted on by the members of the applicable limited liability
8 company and the investors in the MP Funds and must be approved by a majority in dollars
9 of those who vote. A vote has been conducted by ML Manager of the members in the VP
10 I Loan LLC and MP Funds. Based on the voting results, 99.05% of the dollars which were
11 voted approved the sale. ML Manager asserts it is authorized to go forward with the sale
12 on behalf of the Loan LLC.

13 **II. RIGHT TO COMPETE BY THE EXIT FINANCIER**

14 One of the contingencies of the Sale Agreement concerns the Exit Financier. The
15 Exit Financier has indicated it does not intend to exercise its right to compete. This
16 contingency has been satisfied.

17 **III. EXERCISE OF VALID BUSINESS JUDGMENT**

18 ML Manager, in the exercise of its business judgment, has decided it is in the best
19 interest of the Investors in the loan to sell the Property at this time for \$3.38 million to the
20 Purchaser on the terms set forth in the Sale Agreement. Borrower has had the Property
21 exposed to the market for a period of time. Land Advisors Organization a leading real
22 estate brokerage firm, widely marketed the Property for sale for the Borrower. After
23 significant bidding and negotiations between two aggressive bidders, Purchaser made a
24 final offer for \$3.38 million, which is \$130,000 per acre. ML Manager believes that the
25 Property was sufficiently marketed by the Borrower and broker to maximize the price and
26 expose it to the market place. The Borrower obtained a final offer from the Purchaser and

1 finalized the Sale Agreement. The Purchaser has deposited a Deposit of \$100,000 and has
2 opened escrow at Thomas Title & Escrow. The balance of the Purchase Price will be
3 payable at close in cash. The sale is anticipated to close January 21, 2013. The Purchaser
4 is a non-related third party with no connections to the Borrower, ML Manager, the Board
5 members, the investors or the exit financier.

6 VP I Loan LLC who owns 54.010% of the interests in the Note and Deed of Trust
7 approved the sale. There are 28 Pass-Through Investors and only one objected. None of
8 the other 27 Pass-Through Investors with the remaining interests in the Property objected
9 to the sale or asked that it be denied. ML Manager asserts that the sale at this time, for this
10 price and to the Purchaser under the terms of the Sale Agreement and Motion is in the best
11 interest of the Investors and is a valid exercise of its business judgment consistent with its
12 fiduciary duties and should be approved.

13 **IV. MR. FURST'S RESPONSE**

14 Mr. Furst has filed a Response. It is unclear in what capacity Mr. Furst has filed his
15 Response. He states it is "Pro Per" but he would seem to be filing it on behalf of the
16 Robert G. Furst & Associates, Ltd. Defined Benefit Pension Plan, which is the Plaintiff in
17 the partition action and which he represents as attorney of record. (Case No. 2-12-ap-
18 1870) Further, he also seems to argue on behalf of the other non-transferring pass-through
19 investors in the Ranch Vistoso loan. However, he does not represent any other investors.
20 Only one investor objected asserting the same objections as in previous motions which are
21 unrelated to Mr. Furst's positions.

22 In the Response Mr. Furst states that he "approves" the Short Sale and is not
23 objecting. Mr. Furst indicated his approval was "so long as the partition action proceeds
24 in relation to the second parcel." As Plaintiff he can choose to make this change to the
25 partition action and delete the first parcel and continue with the second parcel. ML
26 Manager has no objection to his amendment to the pleadings in the partition action to

1 reflect this. However, ML Manager does not agree with the facts asserted or that any
2 partition action is appropriate for the second parcel and does not waive any of its
3 arguments or defenses.

4 Further, to date, the Court has not ruled that “Mr. Furst and the other pass-through
5 investors in the Rancho Vistoso loan have the right to partition the Rancho Vistoso
6 loan/properties, if some investors want to hold and some want to sell.” Response page 2,
7 lines 1-3. To the contrary, as reflected in the Minute Entry for the September 4, 2012
8 hearing (Docket No. 3578) , the Court granted the Motion “to the same extent rights were
9 extended to the Sternberg Group and provided it is without damage or injury to other
10 investors. The Court notes this is an advisory opinion that does not give Mr. Furst any
11 rights today to partition in anyway.” Mr. Sternberg did not partition the notes or the
12 properties, rather his transactions involved the purchase of property for cash and the
13 exchange of limited acres for his undivided interest in the rest of the property. Mr. Furst
14 was given the opportunity to make an offer on the Property but indicated he was not
15 interested in bidding.

16 In conclusion, Mr. Furst’s assertions that his actions and the pressure of the
17 partition action were responsible “indirectly” for the increase in the price is incorrect. The
18 reality is that the broker was able to find the right two bidders that had a strategic interest
19 in the Property who aggressively bid against each other. That is what drove the price up.
20 The active bidding of buyers in the market place and the participation of an experienced
21 broker were the reasons for obtaining a price of \$130,000 an acre.

22 WHEREFORE, ML Manager LLC requests that the Court enter an order
23 authorizing and approving the Short Sale and release of a part of the deed of trust
24 collateral as set forth in the Motion, overrule the Objection and grant such other and
25 further relief as is just and proper under the circumstances.

26 . . .

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

DATED: December 10, 2012

FENNEMORE CRAIG, P.C.

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

Copy of the foregoing sent this
10th day of December, 2012 by email to:

Robert J. Miller
Bryce A. Suzuki
Justin A. Sabin
BRYAN CAVE LLP
Two North Central Ave., Suite 2200
Phoenix, Arizona 85004
rjmiller@bryancave.com
bryce.suzuki@bryancave.com
Justin.sabin@bryancave.com

Robert G. Furst
4201 North 57th Way
Phoenix, AZ 85018
rgfurst@aol.com

/s/ Gidget Kelsey-Bacon