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9 **IN THE UNITED STATES BANKRUPTCY COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 In re:
12 MORTGAGES LTD.,

13 Debtor.

In Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH

**RESPONSE TO ML MANAGER'S
MOTION TO APPROVE SALE OF
REAL PROPERTY (ZDCII LOAN)**

Hearing Date: 8/25/10
Hearing Time: 10:30 a.m.

17 Queen Creek XVIII, L.L.C. ("**Queen Creek**") and Pueblo Sereno Mobile Home
18 Park L.L.C. ("**Pueblo Sereno**") hereby file this Response to the ML Manager's *Motion*
19 *To Sell Real Property Free And Clear Of Liens, Claims, Encumbrances, And Interests*
20 dated August 5, 2010 (the "**Sale Motion**"). In support of this Response, Queen Creek
21 and Pueblo Sereno submit as follows:

22 1. Pursuant to the Sale Motion, the ML Manager states that ZDCII Loan, LLC
23 and certain pass-through investors co-own the property at issue in the Sale Motion (the
24 "**Property**"). Queen Creek and Pueblo Sereno are two of the pass-through investors
25 referenced in the Sale Motion.

26 2. Queen Creek and Pueblo Sereno object to the Sale Motion on the basis that
27 a "sale free and clear" mechanism is not provided for in the plan confirmed by the Court
28 (the "**Plan**"). Section 363 of the Bankruptcy Code and its "free and clear" mechanism

1 have no application here. There is no longer a debtor in possession nor is there any
2 property of the estate since a chapter 11 plan was confirmed by the Court in June 2009.
3 Assuming, *arguendo*, section 363 was applicable here, the ML Manager has not made
4 any effort to make a showing under subsections 363(f) or (h) of the Bankruptcy Code.

5 3. ML Manager claims the Plan provides for retained jurisdiction under
6 section 105 of the Bankruptcy Code and/or under sections 9.1(e), (g), and (h) of the Plan.
7 These sections of the Plan do not provide a basis for retained jurisdiction with respect to
8 the ML Manager's requests for relief under the Sale Motion.

9 4. It is black-letter law that post-confirmation jurisdiction is necessarily more
10 limited than pre-confirmation jurisdiction. In determining whether a bankruptcy court
11 has retained post-confirmation jurisdiction, courts look to whether: (i) the matter has a
12 close nexus to the bankruptcy plan or proceeding; and (ii) the bankruptcy plan provides
13 for the retention of jurisdiction over the particular matter. *In re Johns-Manville Corp.*, 7
14 F.3d 32, 34 (2d Cir. 1993); *CCM Pathfinder Pompano Bay, LLC v. Compass Fin.*
15 *Partners LLC*, 396 B.R. 602, 605 (Bankr. S.D.N.Y. 2008); *see also In re Pegasus Gold*
16 *Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005).

17 5. It is beyond dispute the Plan does not provide for retained jurisdiction with
18 respect to the matters addressed in the Sale Motion. The ML Manager also does not even
19 attempt to explain how it satisfies the "close nexus" requirement for post-confirmation
20 retention of jurisdiction by the Court.

21 6. The ML Manager has not produced Queen Creek nor Pueblo Sereno with
22 any master agency agreement that has been signed by a duly authorized representative of
23 Queen Creek or Pueblo Sereno. Queen Creek and Pueblo Sereno reserve all of their
24 rights on authority issues including, without limitation, the right to terminate the asserted
25 agency of ML Manager.

26 7. On page 4 of the Sale Motion, the ML Manager makes a reference to
27 perhaps seeking an order providing for the distribution of proceeds at a later date but then
28 states the sale order, a proposed copy of which is not attached to the Sale Motion, "will

1 seek” to provide for certain distributions. As the Court will recall, the ML Manager is
2 under a court order to provide an accounting. *See* Minute Entry dated June 30, 2010.
3 Under these circumstances, assuming the Court grants the Sale Motion, Queen Creek and
4 Pueblo Sereno believe it is inappropriate, and therefore object, to having any funds (other
5 than direct closing costs) paid out of gross sale proceeds absent a proper accounting,
6 including expense allocations, and an opportunity to be heard before additional amounts
7 are disbursed by the ML Manager.¹

8 8. The ML Manager’s Sale Motion basically can be read to say it is going to
9 distribute money to the investors who agreed to transfer their interests to a Loan LLC
10 (ZDCII Loan LLC), but that it will withhold making any distributions to non-transferring
11 investors. Having waited more than a year for any kind of recovery from these cases, in
12 the event the Court grants the Sale Motion, equity should result in the Court entering an
13 order that requires an accounting and distributions to be made within the same general
14 timeframe to both kinds of investors.

15 9. ML Manager suggests the Sale Order will order the non-transferring
16 investors to execute documents effectuating the Court’s order and sale. The ML Manager
17 cites no authority for this request for relief, which is obviously objectionable to Queen
18 Creek and Pueblo Sereno.

19 10. ML Manager requests the waiver of the stay provided in Bankruptcy Rule
20 6004(h). Queen Creek and Pueblo Sereno object to this request because it might have an
21 adverse impact on their ability to seek appellate review of any relief that may be granted
22 by the Court pursuant to the Sale Motion.

25 ¹ This is particularly important since the ML Manager references the fact that it
26 wants to pay the exit financier funds after the closing. Neither Queen Creek nor Pueblo
27 Sereno are obligors on the debts to the exit financier and their interests have not been
28 encumbered by the exit financier.

1 WHEREFORE, Queen Creek and Pueblo Sereno request that the Court enter an
2 order sustaining the objections set forth above.

3 DATED this 19th day of August, 2010.

4 BRYAN CAVE LLP

5 By /s/ BAS, #022721

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/s/ Sally Erwin