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3 **2929 E. Camelback Rd.**  
4 **Suite 118**  
5 **Phoenix, Arizona 85016**  
6 **(602) 952-5300**  
7 **State Bar No. 004539**

8 **Attorney for Blackeye Capital, L.L.C.**

9 **UNITED STATES BANKRUPTCY COURT**  
10 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

11 **In re:** ) **Chapter 11 Proceeding**  
12 )  
13 **MORTGAGES, LTD.,** ) **No. 2:08-bk-07465-RJH**  
14 )  
15 **Debtor.** ) **RESPONSE TO MOTION TO SELL**  
16 ) **REAL PROPERTY FREE AND**  
17 ) **CLEAR OF LIENS, CLAIMS,**  
18 ) **ENCUMBRANCES AND**  
19 ) **INTERESTS**  
20 )  
21 ) **Real Property located at 802 East**  
22 ) **Missouri Ave. , Phoenix, Arizona**  
23 )  
24 ) **Hearing Date: August 26, 2010**  
25 ) **Hearing Time: 3:30 p.m.**  
26 )  
27 )  
28 )

17 Blackeye Capital, L.L.C., a prospective bidder on the property, hereby files this Response  
18 to the Motion To Sell Real Property and submits a bid to purchase the real property upon the  
19 terms and conditions outlined in this Response.

20 ML Manager, acting as authorized manager of ZDCII,LLC Loan LLC ("ZDC"), purports  
21 to own approximately 75.293% of the real property which is the subject of this motion, and the  
22 balance of approximately 24.707% is owned by several pass-through investors who did not  
23 transfer their interests into the ZDC agreement. Therefore, the property is owned as  
24 tenants-in-common. 11 U.S.C. §363(h) provides the grounds under which the Court may order  
25 the sale of a co-tenant's interest in property without their consent or approval. Blackeye Capital  
26 is informed and believes that a number of the co-tenants on this property do not consent to the  
27 sale of their interests by ML Manager or by the Court. The standards for a 363 sale are set forth

1 in 363(h) which provides that “notwithstanding subsection (f) of this section, the trustee may sell  
2 both the estate’s interest under subsection (b) or (c) of this section, and the interest of any  
3 co-owner in property in which the debtor had, at the time of the commencement of this case, an  
4 interest as a tenant-in-common, joint tenant, or tenant by the entirety, only if – (1) partition in  
5 kind of such property among the estate and such co-owners is impracticable; (2) sale of the  
6 estate’s undivided interest in such property would realize significantly less for the estate than sale  
7 of such property free of the interests of such co-owners; (3) the benefit to the estate of a sale of  
8 such property free of the interests of co-owners outweighs the detriment, if any, to such  
9 co-owners; ...”

10 Blackeye Capital proposes that it will purchase the 75.293% undivided interest owned by  
11 ZDC for a purchase price of \$1,646,446, which purchase price is in excess of the pro-rata share  
12 of the proceeds from the proposed sale that would be available to ZDC. The sale as proposed by  
13 ML Manager (ZDC) is for a sale price of \$2,212,000 for the entire property. Based upon the  
14 75.293% interest, ZDC’s portion of those proceeds would be approximately \$1,526,828.  
15 Blackeye Capital proposes, as an alternative, that it would purchase the entire property for a  
16 purchase price of \$2,200,000 (therefore establishing that the Court should not rubber-stamp ML  
17 Manager’s proposal, but follow the procedures of 11 U.S.C. §363 to have a bid process, which  
18 would be in the best interests of the creditors, the estate and, in particular, the co-owners’  
19 interests, if the Court is to allow the sale of the co-owners’ interests). Alternatively, as outlined  
20 above, Blackeye Capital is willing to, and has proposed that it would purchase, for \$1,656,644,  
21 the 75.293% undivided interest owned by ZDC, which proceeds of sale are in excess of the pro  
22 rata share that CITLO would receive from its proposed sale as noticed to the Court.

23 This proposal is to purchase just the undivided interest owned by ZDC, and then the  
24 buyer, Blackeye Capital (or its nominee) would independently work with its other co-owners of  
25 the property (the other 24.707% interest). Blackeye Capital has reached a preliminary  
26 understanding with the 24.707% interest holders who do not wish to sell their interest in the  
27

1 property at this time, but continue in a participation interest. Such a proposal is in the best  
2 interests of this estate and the creditors, and relieves the moving party, ML Manager, from the  
3 burden of establishing the elements it must meet to sell co-owners' property over their  
4 objections, and further, eliminates the need for this Court to delve into the disputed agency  
5 authority that ML Manager asserts it has to sell this property over the objections of the co-owners  
6 pursuant to various agency agreements, and for which the co-owners are currently in litigation  
7 with ML Manager regarding the extent and scope of this authority.

8 This offer presents a simple solution to the Court to simply allow ZDC, which wishes to  
9 sell its interest, to do so and to receive an amount equal to or in excess of what it would have  
10 received from the proposal to sell the co-owners interests.

11 By this proposal, the Court does not need to address whether it is impracticable to  
12 partition this property [it is respectfully submitted that, based upon the co-ownership of 75.293%  
13 and 24.707%, this property, which is largely vacant land, could effectively and practicably be  
14 partitioned], and clearly this offer completely eliminates ML Manager's ability to establish the  
15 second prong of 363(h)(2), that the sale of the estate's undivided interest in such property would  
16 realize significantly less for the estate than the sale of such property free of the interests of such  
17 co-owners. In this instance, Blackeye Capital and/or nominee, the prospective buyer, is willing  
18 to purchase the interests of ZDC, the co-owner, for slightly in excess of, or at par with what it  
19 would receive by a forced sale of the co-tenants' interest. The Court, under any circumstance,  
20 should not allow such an unjust result in forcing the sale of a person's property against their  
21 wishes when an alternative is readily available as the statutes so provide.

22 For the foregoing reasons, it is respectfully requested that the Court deny the request for  
23 ML Manager/ZDC to sell the property as outlined in its motion free and clear of encumbrances  
24 and sell the entire interest, and approve the offer of Blackeye Capital, L.L.C. for ZDC to sell just  
25 its undivided interest or, alternatively, open up the process to bids where a higher and better bid  
26 can be achieved for both the estate and the co-tenants' interests if the Court were to elect to move  
27

1 forward to approve the sale as requested by ML Manager.

2 Buyer has a commitment to fund the purchase of this property from RBC Wealth  
3 Management, a copy of which is attached hereto as Exhibit A.

4 RESPECTIVELY submitted this 26<sup>th</sup> day of August, 2010.

5 COCHRAN LAW FIRM, P.C.

6

7

By: JLC 004539  
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2929 E. Camelback Rd., Suite 118  
Phoenix, AZ 85016  
Attorneys for  
Metropolitan Lofts, L.L.C.

8

9

10

11 Copy e-mailed this 26<sup>th</sup> day of  
August, 2010 to:

12

U.S. Trustee  
Office of the U.S. Trustee  
230 North First Ave.  
Suite 204  
Phoenix, AZ 85003

13

14

15

Cathy L. Reece  
Keith L. Hendricks  
Fennemore Craig PC  
3003 N. Central Avenue, Suite 2600  
Phoenix, AZ 85012  
Attorneys for ML Manager LLC

16

17

18

19

By email to all parties listed on the ECF  
List

20

21

Ben L. Ganados

22

23

24

25

26

27

28

**EXHIBIT A**



RBC Wealth Management®

Jerry L. Nichols, CIMA®  
Senior Vice President -  
Financial Consultant  
2398 East Camelback Road  
Suite 700  
Phoenix, AZ 85016-9005

Phone: 602-381-5318  
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August 24, 2010

Michael J. Peloquin  
P.O. Box 15195  
Phoenix, AZ 85060

RE: Mortgages, Ltd. Land Parcels (2)

1. 8<sup>th</sup> Place & Missouri - 5 Acres – 66 Improved Town House Lots - \$2,200,000
2. 46<sup>th</sup> Street & Bellview – 5.4 Acres for Phased Development of 600 Apartments - \$2,200,000

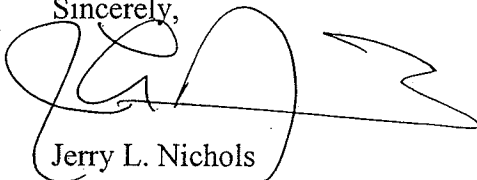
Dear Michael:

We have received your information concerning the above referenced properties. We can offer two distinct facilities for each property as follows:

1. Premier Line of Credit amount of \$2,200,000 with interest only at LIBOR plus 100-125bps with security based lending collateralization ratios AND/OR
2. dfd
3. Long-term financing up to \$2,200,000 with a maximum of 25 year amortization and 5 year LIBOR fixed rate through our strategic partner Capital Advisors, Inc.

Please see the enclosed information for a quick introduction to the features and benefits of our Premier Line of Credit and partnership with Capital Advisors. Should you have any questions, please give me a call.

Sincerely,



Jerry L. Nichols

# RBC Premier Line of Credit

*Meeting Your Liquidity Objectives and Cash Management Needs*

Adhering to a disciplined investment strategy is important. Yet, if you ever encounter cash-flow issues, or want to make a major purchase, you might be forced to dip into your investments — a move which, if repeated often or executed at the “wrong” time in the market, could slow your progress toward your key financial objectives.

To maintain your investment portfolio while meeting your cash-management needs, you may want to take advantage of the RBC Premier Line of Credit. This is available through our affiliated company, the U.S. branch of Royal Bank of Canada (the international division of RBC Wealth Management). Your Investment Professional, working with a dedicated Credit Specialist, can help you evaluate your cash flow and credit needs and provide you with appropriate lending solutions.

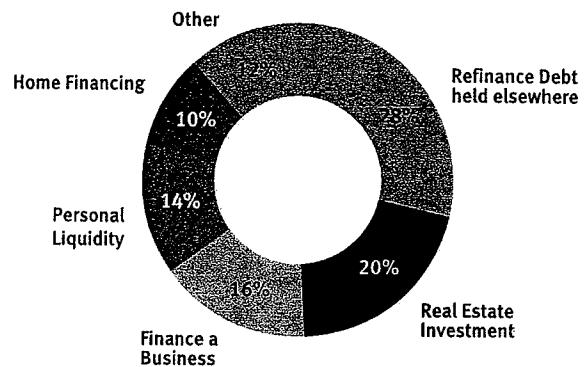
## USING THE RBC PREMIER LINE OF CREDIT

The RBC Premier Line of Credit is a revolving line of credit secured by one or more of your eligible investment accounts. The value and type of your eligible securities portfolio determines the amount of your RBC Premier Line of Credit. You may elect to lock-in your loan rate for periods ranging from one month to one year.

One of the key benefits of loans funded through the RBC Premier Line of Credit is the ability to offer you competitive interest rates which are LIBOR-based. LIBOR is the interest rate that the world's largest international banks charge each other for loans. Historically, the LIBOR rate has been lower than the “prime” rate, the interest rate that U.S. banks charge to their most creditworthy customers.



## Why Clients are Borrowing



Based on new RBC Premier Line of Credit borrowings

Because of Royal Bank of Canada's strong balance sheet and solid credit rating, it can borrow in global markets — and, in turn, offer you lower-than-average rates on your personal financing.

Other features of securities-based loans include:

- *Choice of Fixed Interest Rate Periods* — Choose a borrowing interest rate that is reset monthly, quarterly, annually or every two months — and have the flexibility to change the term as needed.
- *The Option to Borrow in Major Currencies* — Allows you to take advantage of favorable differences in interest rates among major global currencies exchange rates through loans denominated in U.S. or Canadian dollars, Euros, Japanese yen, British pounds, or Swiss francs.
- *No Set Up Fee.*
- *Interest-Only Loans* — Pay interest on a quarterly or monthly basis.

# RBC Premier Line of Credit

*Meeting Your Liquidity Objectives and Cash Management Needs*

- *Flexible Repayment Options* — The option to pay off the loan in whole or in part without prepayment fees on any date in the future when an interest rate reset occurs.
- *Lines of credit starting from \$500,000.*

## MEET A VARIETY OF GOALS WITH THE RBC PREMIER LINE OF CREDIT

You'll find that the RBC Premier Line of Credit is a flexible cash-management tool that you can use to help meet virtually any financial goal.

- *Refinance High-Interest Debt* — Increase your cash flow by consolidating your high-interest debts.
- *Invest in a Business* — Gain short-term working capital to invest or expand your business, fund capital expenditures or finance a partner buyout.
- *Finance a Major Purchase* — Acquire artwork, a pleasure boat or even a private aircraft.
- *Satisfy Tax Obligations* — Pay off a tax bill quickly without having to sell investments.
- *Meet Real Estate Financing Needs* — Purchase or remodel a home, or purchase investment property.

## ABOUT THE INTERNATIONAL DIVISION OF RBC WEALTH MANAGEMENT

The international division of RBC Wealth Management serves high net worth and niche institutional clients in select markets around the world. Client solutions include private banking and credit, international trust services, discretionary investment management, international full-service brokerage and global custody and fund administration. With over 30 offices worldwide, the international division is among the top 20 global private banks in the world.



## WHAT YOU SHOULD KNOW ABOUT THE RBC PREMIER LINE OF CREDIT

RBC Premier Line of Credit may not be suitable for all investors. Before using any of these products, you should read the literature and the regulatory disclosures that will be provided, and ensure you understand the risks involved. These securities-based loans are demand loans and are subject to minimum collateral requirements. You must maintain sufficient collateral to support your outstanding borrowings under the credit line.

## FOR MORE INFORMATION

The RBC Premier Line of Credit can be an important element in your overall wealth planning strategy. To learn more about the RBC Premier Line of Credit, please contact your Investment Professional.

*This information has been provided by affiliated corporate entities consisting of Royal Bank of Canada and RBC Capital Markets Corporation, a wholly owned subsidiary of Royal Bank of Canada. Royal Bank of Canada is regulated by the Office of the Superintendent of Financial Institutions in Canada and the Office of the Comptroller of the Currency in the United States. Credit services are provided by Royal Bank of Canada and are subject to their terms and conditions, including credit approval. Credit Specialists are employees of Royal Bank of Canada. RBC Capital Markets Corporation may receive compensation in connection with these services.*

*RBC Premier Line of Credit facilities are repayable upon demand of the lender. You will be responsible for the cost of breaking the underlying interest contract before the end of the contract term if any loan amount is repaid in whole or in part (voluntarily or involuntarily).*

*Loans issued in foreign currencies may involve risk not typically associated with U.S. dollar denominated loans; including, but not limited to, differing valuations, currency fluctuations, political and economic instability, foreign taxation and different accounting methods.*

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# RBC Commercial Real Estate

*Powered by Capital Advisors*

If you have ever owned or considered purchasing commercial real estate, you know that the way you finance it can significantly impact both your immediate and long-term investment strategies. And if you have tried to sort through all the options available — such as bank or mezzanine financing, short term or long term debt, or fixed rate or variable rate loans — you know your choices can be overwhelming.

At RBC Wealth Management, we understand that the best way to finance your commercial real estate is the way that meets your individualized financing needs and your personal and business investment goals. To get the most appropriate solution for your overall financial welfare, we invite you to take advantage of the services provided by Capital Advisors, Inc.

## **BROAD RANGE OF SOLUTIONS**

Capital Advisors specializes in providing long-term financing for commercial real estate properties located in the continental United States. With access to more than 50 commercial real estate lenders, Capital Advisors is well positioned to find the mortgage solution that is most appropriate for you.

As a financial intermediary between real estate investors and commercial lending sources, Capital Advisors represents more than 20 life insurance companies and two pension funds. In addition, Capital Advisors places loans with several commercial/investment banks, multiple open life insurance companies, and has access to all of Fannie Mae/Freddie Mac's commercial financing programs. Capital Advisors' broad range of lenders, coupled

with their industry expertise allows them to provide a customized solution that can meet your real estate financing needs.

## **EXCEPTIONAL SERVICE**

Capital Advisors will work with you and your Financial Consultant to understand your real estate financing goals and will then navigate the financing market on your behalf. Through an "open architecture" approach, and as your real estate financing advocate, Capital Advisors will obtain several financing solutions from a variety of different lenders.

Once you have chosen the financing solution that best suits you, Capital Advisors and your RBC Wealth Management Financial Consultant will lead you through the loan closing process to insure your transaction is seamless. In many cases, Capital Advisors will service your loan after it closes.

## **WHY CHOOSE CAPITAL ADVISORS?**

You'll find that working with Capital Advisors to obtain financing has many benefits.

- You may be able to avoid selling some of your investments at an inopportune time to finance a commercial real estate investment by having Capital Advisors assist you in financing your property.
- You may be able to extract significant investable dollars by leveraging your commercial real estate property with debt. This allows you to maximize your return on investment through debt leveraging, while obtaining flexible financing solutions for a complex real estate transaction.



RBC Wealth Management®

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# RBC Commercial Real Estate

*Powered by Capital Advisors*

- Capital Advisors primarily places non-recourse loans (you are only personally liable for the loan in the events of fraud, environmental misuse, or willful misrepresentation). This is an attractive feature because it helps you protect and grow your wealth.
- Commercial real estate financing through Capital Advisors' life insurance lenders, agency lenders (Fannie Mae and Freddie Mac), and other lending sources offer you an attractive, long-term, cost effective alternative that includes a high level of service that is not always delivered in products from other financial institutions.

## **WHAT TYPES OF PROPERTIES CAN WE HELP YOU FINANCE**

Capital Advisors and the lenders they work with can finance almost all types of commercial real estate including retail, multifamily, office, medical, owner-occupied, industrial, hotels, student housing, and senior housing properties located anywhere in the continental United States.

## **TYPES OF FINANCING AVAILABLE**

Capital Advisors can help with acquisition financing, refinancing existing debt, construction financing, mezzanine financing, equity financing, and forward loan commitments.

## **TYPICAL TERMS**

Unlike traditional bank loans, Capital Advisors provides commercial real estate financing solutions that have fixed or floating, long term rates (5-25 years), long amortization periods (10-30 years) and flexible loan terms over an extended period of time. Loan amounts start at \$1,000,000 with no upward maximum.

## **HOW TO START FINANCING YOUR NEXT COMMERCIAL REAL ESTATE PURCHASE OR REFINANCE YOUR EXISTING REAL ESTATE MORTGAGE**

Capital Advisors can play a critical role in meeting your financing needs and investment strategy. To learn more about Capital Advisors and their real estate financing network, please contact your Financial Consultant.

### *About Capital Advisors*

*Capital Advisors has a network of six offices in the continental United States, and provides mortgage banking services to clients located in the United States as well as those that are located internationally.*

### *What you should know about RBC Wealth Management and Capital Advisors*

*These services are provided by Capital Advisors and are subject to the their terms, and the terms of the life insurance companies, agency lenders, and investment/commercial banks including each respective lender's credit approvals and appraisals. RBC Wealth Management may receive compensation in connection with these services.*

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