

1 **BRITT LAW GROUP, P.C.**
Edward H. Britt, #021689
2 6263 N. Scottsdale Rd., Ste. 144
Scottsdale, Arizona 85250
3 Tele.: (602) 258-7474
Fax: (602) 258-7479
4 EBritt@brittlawgroup.com
Attorney for Ceco Concrete Construction, LLC.
5

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

Hearing Date: September 28, 2010
Hearing Time: 2:30 p.m.

11
12
13 **RESPONSE TO MOTION TO SELL**
14 **REAL PROPERTY FREE AND CLEAR**
15 **OF LIENS, CLAIMS, ENCUMBRANCES,**
16 **AND INTERESTS**

(Assn. to the Honorable Edward O. Burke)

17 Ceco Concrete Construction, LLC (hereinafter, "CECO"), by and through undersigned
18 counsel, hereby submits the following response to ML MANAGER, LLC's ("ML MANAGER")
19 Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests. This
20 Response is supported by the following Memorandum of Points and Authorities:
21

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. Brief Background**

24 The project that is the focus of ML MANAGER'S Motion is the Tempe Centerpoint
25 Condominium Towers Project located at 111-121 West 6th Street, Tempe, Arizona (the "Project/Real
26 Property"). CECO provided labor and materials to the Project. Due to non-payment and pursuant
27 to A.R.S. § 33-981(A), CECO recorded a mechanic's lien and an amendment thereto ("Lien") with
28 the Maricopa County Recorder' Office.

1 **II. Argument**

2 ML MANAGER’S Motion should be denied. *Arizona Revised Statutes* § 33-1004 provides
3 the sole remedy for discharging CECO’S Lien, which is by recording with the Maricopa County
4 Recorder’s Office what is commonly called a lien discharge bond. *See Theatre Corp. v. Superior*
5 *Court*, 79 Ariz. 396, 400 291 P.2d 213, 215 (1955)(“When a statute creates a right and also provides
6 a complete and valid remedy for the right created, the remedy thereby given is exclusive.”); *See also*
7 *Hunnicut Construction v. Stewart Title & Trust*, 187 Ariz. 301, 304-305, 928 P.2d 725, 728-729
8 (App. 1996)(“[W]here a legal remedy such as a statutory lien exists, but has not been utilized, a
9 claimant should not be permitted to substitute an equitable remedy.”).

10 In this case, A.R.S. § 33-981 granted CECO a Lien on the Property. ML MANAGER can
11 discharge CECO’S Lien, but in order to do so it must utilize the statutory remedy set forth in A.R.S.
12 § 33-1004. ML Manager has not done so, and has not provided the Court with any other legal basis
13 for ignoring the requirements of the Mechanics’ Lien Statutes. The Motion should therefore be
14 denied.

15 RESPECTFULLY SUBMITTED this 17th day of September, 2010.

16 **BRITT LAW GROUP, P.C.**

17
18 By: /s/ Edward H. Britt #021689
19 Edward H. Britt
20 Attorney for Ceco Concrete Construction, LLC
21
22
23
24
25
26
27
28

1 Copy of the foregoing e-mailed or mailed
2 this day to the parties on the ECF distribution
3 list, the mechanics lien claimants, and the
4 following Pass-Through investors:

5 RobertL. Barnes, Jr.
6 4040 E. Camelback Rd., #200
7 Phoenix AZ 85018
8 barnes0823@aol.com

9 Harold J. Christ, Ltd
10 c/o Harold J. Christ
11 10612 E. Palm Way
12 Gold Canyon AZ 85219
13 hchrist@paladindevco.com

14 Penny Hardaway Investments, L.L.C.,
15 c/o Richard P. Edelman, CPA
16 Edelman & Company CPAs, PC
17 5333 N. 7th St. Ste C-222
18 Phoenix AZ 85014
19 rich@edelmancpas.com

20 Morris A. Kaplan, Trustee of
21 Goldman and Kaplan Ltd., Defined Benefit Plan
22 c/o Morris A. Kaplan
23 2930 N. 7th Street
24 Phoenix AZ 85014
25 mak3800@aol.com

26 Sarah A. Lisa-Petrauschke & Brian M. Petrauschke,
27 16161 W. Lisbon Ln.
28 Surprise AZ 85379
salisaaz@yahoo.com

Kimberly K. Roberts
17510 W. Desert Sage Dr.
Goodyear AZ 85338
sedona1103@yahoo.com

Lorinda S. McMullen and Laura Martini,
as joint tenants
c/o Lori McMullen or Laura Martini
6518 S. 64th Ave
Laveen AZ 85339
lmcmullen@hughes.net

Charles Goldstein, M.D., Trustee
Charles Goldstein Emergency Services, P.C.
Section 401(k) Profit Sharing Plan and Trust Agreement
4478 E. Mockingbird Ln.
Scottsdale AZ 85253
gold15@cox.net

By: Alison Bolstad