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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:
MORTGAGES, Ltd.
Debtor.

Chapter 11

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

**RESPONSE AND LIMITED
OBJECTION TO ML LIQUIDATING
TRUST'S AND ML MANAGER,
LLC'S JOINT MOTION TO SELL
REAL PROPERTY FREE AND
CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS**

(Real Property known as
Chateaux on Central)

Hearing Date: February 25, 2010
Time: 11:00 a.m.
Location: Courtroom #603
230 N. First Ave.
Phoenix, Arizona

KCG, Inc. dba Rew Materials ("KCG"), a creditor in this case and the holder of a mechanic's and materialmen's lien on Chateaux on Central (the "Property"), the property which is the subject of the proposed sale, files its Response and Limited Objection to ML Liquidating Trust's and ML Manager, LLC's Joint Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances and Interests. As further set forth in the Proof of Claim filed by KCG on October 7, 2008, which is listed on the claims register as Claim No. 183-1, KCG furnished certain materials, including drywall and/or acoustical and related products, in the construction, alteration or repair of the structures on the Property. The amount of KCG's claim as set forth in the Proof of Claim is not

1 less than \$90,330.42. KCG recorded its Arizona Notice to Claim of Materialman's Lien
2 on June 6, 2008 in the Office of the Recorder, Maricopa County, Arizona as Document
3 No. 2008-0501290. KCG's claim is fully secured by an interest in the Property.

4 Gold Creek, Inc. ("Gold Creek"), the general contractor for the construction of
5 the project on the Property, filed a Proof of Claim on September 11, 2008 in the amount
6 of \$3,046,126.71, which is listed on the claims register as Claim No. 113-1. Gold
7 Creek's claim also is secured by a Mechanic's and Materialmen's Lien in the Property.
8 Gold Creek's claim includes the amounts of the claims of its subcontractors and vendors
9 on the project, including the claim of KCG. The Proof of Claim filed by Gold Creek
10 lists the claim of KCG as being in the amount of \$85,071.43, which is less than the
11 amount set forth in KCG's Proof of Claim.

12 The Official Committee of Investors' First Amended Plan of Reorganization
13 Dated March 12, 2009 (the "Plan") expressly preserves mechanic's lien claims. The
14 following treatment was provided to the holders of claims in Class 6, which includes
15 mechanic's lien claims:

16 (f) *Class 6: Mechanics Liens Claims and Other*
17 *Miscellaneous Secured Claims.* The holder of the Class 6
18 Mechanics Liens Claims against Debtor's assets and Other
19 Miscellaneous Secured Claims will retain their liens on the
20 collateral in the same order of priority as existed on the
21 Petition Date and will be paid from the proceeds of the sale
of their collateral or from refinancing as the collateral is sold
or refinanced. Accordingly, the Class 6 Mechanics Liens
Claims and Other Miscellaneous Secured Claims are
unimpaired by the Plan, are deemed to have accepted the
Plan and are not entitled to vote on the Plan. . . .

22 See Plan at p. 21.

23 The Plan was confirmed pursuant to an Order Confirming Investors Committee's
24 First Amended Plan of Reorganization Dated March 12, 2009 entered on May 20, 2009
25 (the "Confirmation Order"). The Confirmation Order incorporated additional terms
26 regarding the treatment of Class 6 claims to address an objection to the Plan filed by
27 Gold Creek. No evidence has been provided to date to indicate that KCG does not hold
28 a valid mechanic's lien secured by an interest in the Property.

1 As a condition of the sale, KCG's claim must be paid in full from the sales
2 proceeds. In this regard, it is unnecessary to provide that the sale be free and clear of
3 KCG's lien, as it will be satisfied upon closing. As such, with respect to the interest
4 held by KCG, relief permitting a sale free and clear of liens is unwarranted and exposes
5 KCG to unnecessary risk.

6 Alternatively, provided that some specific good-faith objection to KCG's claim is
7 set forth, any portion that is not disputed must be paid upon closing with the unpaid
8 disputed balance of the claim to attach to the sale proceeds to be held in a segregated
9 account acceptable and approved by KCG until any disputes regarding KCG's claim are
10 resolved. The amount sequestered must be sufficient to pay KCG's claim in full along
11 with accruing interest and any additional costs and attorney's fees to which it might be
12 entitled. The amounts paid to KCG can be deducted from the claim of Gold Creek,
13 which includes the claim of KCG and other mechanic's lien holders. To the extent
14 consistent with the foregoing, KCG adopts and incorporates the Limited Objection to
15 Joint Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances and
16 Interests filed by Gold Creek on February 17, 2010.

17 KCG further requests the proponent establish the bases under which a sale free
18 and clear of liens is permitted and that the proceeds of the sale are sufficient to fully
19 protect the interest of KCG. In addition, if such relief is requested, KCG requests
20 evidence be provided that the purchaser is purchaser in good faith entitled to the
21 benefits under § 363(m). KCG also requests that it be afforded the opportunity to
22 review, comment upon and approve any form of Order that may be submitted in
23 connection with this matter.

24 WHEREFORE, KCG requests the Court to:

- 25 1. Deny the request to sell the Property free and clear of the lien of KCG and
26 direct that the full amount of KCG's claim be paid to KCG at closing from the sale
27 proceeds;
- 28 2. In the event all or a portion of KCG's claim is subject to a specifically

1 articulated good-faith objection, direct that the undisputed portion of KCG's claim be
2 paid at close of escrow, with the unpaid balance to attached to proceeds from the sale in
3 an amount sufficient to pay such disputed portion, along with accruing interest and any
4 cost or attorney's fees to which KCG might become entitled, with such proceeds to be
5 held in a segregated account acceptable and approved by KCG for its benefit until
6 disputes regarding the claim are resolved;

7 3. Require the proponent of the sale to establish the bases under which a sale
8 free and clear of liens is permitted and that the proceeds of the sale are sufficient to fully
9 protect the interest of KCG, and, if such relief is requested, establish that the purchaser
10 is purchaser in good faith entitled to the benefits provided under § 363(m);

11 4. Afford KCG the opportunity to review, comment upon and approve any
12 form of Order that may be submitted in connection with this matter; and

13 5. Award other and further relief as the Court deems just and proper.

14 DATED: February 18, 2010

15 SHERMAN & HOWARD L.L.C.

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22 COPY of the foregoing e-mailed
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