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7

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

10 In re

11 MORTGAGES LTD.,

12 Debtor.

Chapter 11

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

**LIMITED OBJECTION TO JOINT  
MOTION TO SELL REAL PROPERTY  
FREE AND CLEAR OF LIENS,  
CLAIMS, ENCUMBRANCES AND  
INTERESTS**

**(Real Property Known as Chateaux on  
Central)**

**Hearing Date: 2/25/2010  
Hearing Time: 11:00 a.m.**

19  
20 Gold Creek, Inc. ("Gold Creek") files this *Limited Objection to Joint Motion to Sell*  
21 *Real Property Free and Clear of Liens, Claims, Encumbrances and Interests* ("Response")  
22 to ML Manager, LLC's Joint Motion to Sell Real Property Free and Clear of Liens, Claims,  
23 Encumbrances and Interests [Docket No. 2619] ("Motion").

24 Gold Creek was the general contractor for a 21-unit residential condominium project  
25 located at the northwest corner of Central Avenue and Palm Lane in Phoenix, Arizona,  
26 known as the Chateaux on Central (the "Chateaux"). When Gold Creek was not paid for its

1 construction services, on June 30, 2008, it recorded its Mechanics' and Materialmen's Lien  
2 in the amount of \$3,046,126.71 in the Office of the Maricopa County, Arizona, Recorder as  
3 Document No. 2008-0574197 (the "Mechanics' Lien"). Thereafter, Gold Creek filed its  
4 Proof of Claim on September 19, 2008, Claim No. 113 ("Gold Creek Claim) asserting a  
5 secured claim relating to the Chateaux; a copy of the Mechanics' Lien is attached to the Gold  
6 Creek Claim.

7 The Motion acknowledges at page 3 thereof that Gold Creek is a mechanics' lien  
8 claimant and that there is a specific provision in the Confirmation Order (Docket 1755)  
9 which provides the mechanism to resolve the Gold Creek Claim. Paragraph P. of the  
10 Confirmation Order (page 10 thereof) which provides:

11 P. Pursuant to the agreement of the Plan Proponent and Gold Creek, the  
12 general contractor on the Chateaux on Central, which is owned by the  
13 Debtor, page 21 of the Plan is modified to reflect that (1) the Liquidating  
14 Trust will have 60 days after the Effective Date to review the validity of the  
15 mechanics liens of Gold Creek. If the Liquidating Trust agrees or does not  
16 object then the liens will be deemed valid. If the Liquidating Trust objects  
17 then the parties agree to binding arbitration of the validity of the liens. (2) If  
18 the liens are valid then Gold Creek retains its lien for \$3,046,126.71 and  
19 interest will accrue on that amount from the Effective Date of the Plan at  
20 7.5% per annum. (3) The Trust will pay the debt on the sale or refinance of  
21 the Chateaux or the maturity date of 2 years from the Effective Date, which  
22 ever is earlier. (4) In the event that the debt has not been paid by the  
23 maturity date then Gold Creek may file a foreclosure action and the  
24 Liquidating Trust will not oppose such action.

25 Gold Creek does not object to the sale of the Chateaux as described in the Motion, provided  
26 that Gold Creek Claim attaches to the sale proceeds and that an appropriate amount is  
sequestered for the benefit of Gold Creek as contemplated in the Motion and as provided for  
in 11 U.S.C. § 363(f).

This Limited Objection relates to the amount that should be set aside to which the  
Gold Creek Claim attaches. For the purpose of this Limited Objection, the Court must  
assume that the Gold Creek Claim is valid and allowed in the principal amount of  
\$3,046,126.71. In addition, as set forth in paragraph P.(2) of the Confirmation Order,

1 interest accrues on the Gold Creek Claim at the rate of 7.5% per annum from the Effective  
2 Date of the Plan (June 15, 2009) until paid. In addition, as an over-secured creditor, as that  
3 term is used and defined in 11 U.S.C. § 506(b), Gold Creek is entitled to receive its  
4 attorneys' fees and costs, all of which must be sequestered from the sale proceeds. A.R.S. §  
5 33-998(B) provides that a successful lien claimant is entitled to recover against the collateral  
6 property its reasonable attorneys' fees.

7 Gold Creek believes that the amount to be sequestered and held by the title company  
8 in an interest-bearing account:

9	\$3,046,126.71	(principal of Mechanics' Lien)
10	\$ 228,459.50	(7.5% interest from 6/15/09-12/15/10 – Confirmation Order, §P)
11	\$ 150,000.00	(attorneys' fees and costs – 11 USC § 506(b) and A.R.S. § 33-998.B.)
	<u>\$3,424,586.20</u>	

12 The pending transaction requires the use of First American Title Company as the  
13 escrow agent. Gold Creek requests that the sequestered sums be required to be retained at  
14 First American Title Company, in an interest-bearing account, pending the resolution and  
15 payment of the Gold Creek Claim, either by negotiation and settlement or pursuant to the  
16 resolution procedure set forth in the Confirmation Order, paragraph P. Gold Creek further  
17 requests that it be permitted to participate in the preparation and approval of the sale order.

18 RESPECTUFLY SUBMITTED THIS 17<sup>th</sup> day of February, 2010.

19 MARISCAL, WEEKS, MCINTYRE  
20 & FRIEDLANDER, P.A.

21  
22 By: 

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1 COPY of the foregoing transmitted  
Electronically using the Court's ECF  
2 System this 17 day of February, 2010,  
and mailed or emailed to the parties on the  
3 Service List and to the following parties:

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11 Attorneys for ML Manager, LLC

12 Robert M. Adams, Trustree,  
Schedule B Property, under the  
13 R and C Adams Family Trust  
Dated December 27, 1994  
14 181 Paramount  
Sedona, AZ 86336

15 Dorothy Jeanne Davis, Trustee of the  
16 Dorothy Jeanne Davis Revocable Trust  
Dated July 27, 2004  
17 2107 E. Aspen  
Tempe, AZ 85282

18 Jerry S. Feigen  
19 2800 N. Lake Shore Drive #1406  
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20 Air Specialty Products, Inc.  
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Mesa, AZ 85202

22 Riggs Contracting, Inc.  
23 7537 W. Mountain View Road  
Peoria, AZ 85345

24 Riggs Engineering, Inc.  
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12 Progressive Services, Inc.  
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23 N. 35<sup>th</sup> Avenue  
13 Phoenix, AZ 85009\  
c/o Van Rylin Associates, Inc. (Limited Agent)  
14 P. O. Box 36953  
Tucson, AZ 85740

15  
16 Old World Tile & Marble Co., Inc.  
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Scottsdale, AZ 85260  
17 c/o James L. Csontos, Esq.  
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21 RCS Equipment Rental, Inc.  
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Gilbert, AZ 85233

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23 Safeguard security & Communications, Inc.  
P. O. Box 5870  
Scottsdale, AZ 85261

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25 Safeguard Security & Communications, Inc.  
16117 N. 76<sup>th</sup> Street  
Scottsdale, AZ 85260

26

American Contractor Supply  
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Tempe, AZ 85282

*Ann Burgess*

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