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

11 In re

12 MORTGAGES LTD.,

14 Debtor

Chapter 11

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

SUN VALLEY MASONRY, INC.'S  
LIMITED OBJECTION AND  
RESERVATION OF RIGHTS WITH  
REGARDS TO NOTICE OF LODGING  
ORDER GRANTING STIPULATED  
ORDER APPROVING THE RELEASE  
OF MONEY FROM CHATEAUX SALE  
ESCROW

Relates to Docket Entry: 2779

19 Sun Valley Masonry, Inc. (“Sun Valley”) was a subcontractor to Gold Creek, Inc.  
20 (“Gold Creek”), on the project commonly known as Chateau on Central (“the Property”).  
21 On June 11, 2010, ML Manager LLC (“ML Manager”) lodged a proposed “Stipulated  
22 Order Approving the Release of Money from Chateaux Sale Escrow” (the “Proposed  
23 Stipulated Order” or “Order”) and filed the Notice of Lodging the Order that appears at  
24 Docket Entry 2779. Upon entry by the Court, the Proposed Stipulated Order will allow  
25 the release of sale proceeds from the Property that are currently escrowed.

26 Sun Valley hereby objects to the Proposed Stipulated Order, to the extent that the  
27 Order could be misconstrued in any way to adversely affect Sun Valley’s rights in its  
28

1 pending litigation against Gold Creek and its payment bond sureties, as described below.  
2 To prevent the Order from being so misconstrued, Sun Valley respectfully requests that  
3 the Order be modified to include a new Paragraph (12) that expressly states as follows:  
4 “This Order shall not be construed in any way to constitute a waiver of, or otherwise  
5 affect, the claims, complaints, causes of action or rights of Sun Valley against Gold Creek  
6 or its payment bond sureties, related to the Property.”

7         Instead, on April 2, 2009, Sun Valley filed a Complaint in Maricopa County  
8 Superior Court, CV2009-010844, by and through which it asserted claims against Gold  
9 Creek and its surety, North American Specialty Insurance Company (“NAS”), for breach  
10 of contract, promissory estoppel and payment under a surety bond related to Sun Valley’s  
11 work on the Property. The sole defense raised by Gold Creek and NAS related to Sun  
12 Valley’s Complaint, causes of action and claims was their assertion that a clause in the  
13 Gold Creek–Sun Valley Subcontract entitled “Progress Statements” constitutes a valid and  
14 enforceable condition precedent affecting their liability to Sun Valley. Sun Valley  
15 disagrees with Gold Creek and NAS on those claims, and all sides have been and continue  
16 to be involved in substantial litigation related to those issues.

17         In this bankruptcy proceeding, Gold Creek asserted a secured claim for well over  
18 \$3.2 million in connection with its work on the Property. ML Manager LLC, after selling  
19 the Property to a third party, placed sufficient funds into an escrow account to pay Gold  
20 Creek’s lien claim in full. Gold Creek has, apparently, agreed to settle its secured claim in  
21 exchange for paying of \$1,600,000.00 out of the escrowed funds, \$77,000.00 of which is  
22 going to its attorneys. Sun Valley is not a party to that settlement, and has never agreed to  
23 waiver or reduce its breach of contract, promissory estoppel or bond claims, to waive or  
24 reduce in any way the amount it is owed, or to waive or modify any rights it may have  
25 against Gold Creek or its payment bond sureties.

26         Out of an abundance of caution, Sun Valley hereby objects to the Order to the  
27 extent that any party can or may argue that Gold Creek’s decision to accept a reduced  
28 payment, rather than seek the full amount due to it, in any way limits or reduces Sun

1 Valley’s ability to recover on or pursue its own claims against Gold Creek or its payment  
2 bond sureties. Indeed, to the extent that Gold Creek has waived any portion of its claim  
3 against Mortgages Ltd. or its successor(s), it did so with full knowledge of the fact that  
4 Sun Valley was not willing to waive or its claims against Gold Creek or its payment bond  
5 sureties.

6 Sun Valley expressly reserves all of its rights, claims, causes of action, and  
7 complaints it has against Gold Creek and its payment bond sureties. Therefore, Sun  
8 Valley respectfully requests that before it is entered by the Court, the Proposed Stipulated  
9 Order be modified to include a new Paragraph (12) that expressly states as follows: “This  
10 Order shall not be construed in any way to constitute a waiver of, or otherwise affect, the  
11 claims, complaint causes of action or rights of Sun Valley against Gold Creek or its  
12 payment bond sureties, related to the Property.

13 DATED this 17th day of June, 2010.

14 SNELL & WILMER L.L.P.  
15 By /s/ DFE (#025986)  
16 James J. Sienicki  
17 Steven Jerome  
18 Joshua Grabel  
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Attorneys for Plaintiff

20 **ORIGINAL** of the foregoing **E-FILED**  
21 this 17th day of June, 2010, to:

22 Clerk of the Court  
23 Maricopa County Superior Court  
201 West Jefferson  
Phoenix, Arizona 85003

24 **COPY** sent via U.S. Mail this 17th  
25 day of June, 2010 to:

26 Honorable J. Kenneth Mangum  
27 Maricopa County Superior Court  
101 West Jefferson - 514  
Phoenix, AZ 85003

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**COPY** of the foregoing e-mailed and mailed this 17th day of June, 2010, to:

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/s/ Deborah Yanazzo