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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re
10 Mortgages Ltd.,
11 Debtor.

Chapter 11

Case No. 2-08-BK-07465-RJH

**MOTION FOR ORDER REQUIRING
PARKWAY BANK ARIZONA TO
PRODUCE DOCUMENTS PURSUANT
TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

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15 Pursuant to Federal Rule of Bankruptcy Procedure 2004, ML Manager LLC (“ML
16 Manager”) hereby requests this Court to issue an Order requiring Parkway Bank and Trust
17 Company (“Parkway Bank”) to produce the documents requested in the attached
18 **Exhibit A** for inspection and copying by ML Manager on a date and time agreeable to the
19 parties or, if upon notice, after not less than 10 days’ notice. This Motion is fully
20 explained in the following Memorandum.

21 **MEMORANDUM**

22 ML Manager is the successor-in-interest to Mortgages Ltd. under the confirmed
23 plan of reorganization in this case. ML Manager seeks information concerning services
24 performed by Parkway Bank on behalf of ML Manager’s affiliates, subsidiaries, or
25 otherwise related entities. ML Manager seeks this information to assist in the collection
26 and investigation of Mortgages Ltd.’s assets and liabilities.

27 . . .

28 . . .

1 The requested discovery from Parkway Bank is well within the scope of
2 examination permitted under Federal Rule of Bankruptcy Procedure 2004, which
3 includes:

4 [t]he acts, conduct, or property or . . . the liabilities and financial condition
5 of the debtor, or . . . any matter which may affect the administration of the
6 debtor's estate, or to the debtor's right to a discharge. In a . . .
7 reorganization case under chapter 11 of the Code, . . . the examination may
8 also relate to the operation of any business and the desirability of its
9 continuance, the source of any money or property acquired or to be
10 acquired by the debtor for purposes of consummating a plan and the
11 consideration given or offered therefore, and any other matter relevant to
12 the case or to the formulation of a plan.

13 Fed. R. Bankr. P. 2004(b).

14 CONCLUSION

15 Accordingly, ML Manager requests that this Court enter the form of Order
16 submitted with this Motion and attached hereto as **Exhibit B**.

17 DATED this 28th day of September, 2009.

18 FENNEMORE CRAIG, P.C.

19 By /s/ Cathy L. Reece

20 Cathy L. Reece
21 Keith L. Hendricks
22 Attorneys for ML Manager LLC

23 COPY of the foregoing mailed or emailed
24 on this 28th day of September, 2009 to the
25 following parties:

26 Parkway Bank and Trust
27 11011 N. Tatum Boulevard
28 Phoenix, AZ 85028

Donald L. Gaffney
Donald F. Ennis
SNELL & WILMER, LLP
One Arizona Center
Phoenix AZ 85004
dgaffney@swlaw.com
dfennis@swlaw.com

By /s/ Stephanie R. Fulk-Higgs

EXHIBIT A

EXHIBIT A

I. INSTRUCTIONS

1. The following document requests are to be responded to fully, by furnishing all information in your possession, custody or control. Your having possession, custody, or control of a document includes your having a right, superior to other parties, to compel the production of such document from a third party, such as your agent, employee, representative, or, unless privileged, attorney.

2. If any document requested herein has been lost, discarded, or destroyed, the document so lost, discarded or destroyed should be identified as completely as possible, including without limitation, the date the document was lost, discarded, or destroyed, the manner in which the document was lost, discarded, or destroyed, the reason(s) the document was lost, discarded, or destroyed, the person who authorized that the document be destroyed or discarded, and the person who lost, discarded, or destroyed the document.

3. If you cannot produce a document because it no longer exists or is no longer in your possession, custody, or control, please identify that document by: (a) its title; (b) its nature (for example, a "letter" or "e-mail"); (c) the date it was created or sent; (d) its author(s) and signator(y/ies); (e) any of its recipient(s); (f) the last place it was known to have been located; (g) the circumstances under which it ceased to exist or passed from your possession, custody, or control; and (h) the identity and last known residence and business address of any person who had knowledge of its existence and location.

4. Produce the original, as well as all non-identical duplicates or copies and/or drafts, of all requested documents in your possession, in the possession of your agents, attorneys, accountants or employees, or which are otherwise within your custody, control, or access, wherever located. A document with handwritten notes, editing marks, etc., is not

identical to one without such notes or marks and therefore must be produced if within the scope of documents requested.

5. Produce each requested document in its entirety, including all attachments and enclosures, even if only a portion of the document is responsive to the request.

6. If you withhold from production any document (or portion of any document) that is otherwise responsive to a request on the basis of a claim of privilege, work product, or other ground, you must provide sufficient information regarding the withheld document to permit the Court and the parties to evaluate the propriety of your objection. Specifically, you must identify: (a) the name and title of the author(s) of the document; (b) the name and title of each person to whom the document was addressed; (c) the name and title of each person to whom the document was distributed; (d) the name and title of each person to whom the document was disclosed, in whole or in part; (e) the type of document (e.g., "memorandum" or "report"); (f) the subject matter of the document; (g) the purpose(s) of the document; (g) the date on the document and, if different, the date on which the document was created and/or sent; (h) the number of pages of the document; (i) the specific request herein to which the document is responsive; (j) the nature of the privilege(s) asserted as to the document; and (k) a detailed, specific explanation as to why the document is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses.

7. If any requested document cannot be produced in full, produce it to the extent possible, indicating what is being withheld and the reason it is being withheld.

8. Please produce each specified document either (a) in the original file or organizational system in which it is regularly maintained or organized or (b) designate which documents are being produced in response to which of the numbered specifications

below. Produce the requested documents either in their original file folders or appended to a copy of any writing on the file folders from which the documents are taken.

9. Identify each document produced by the paragraph number of this schedule to which it is responsive. If a document is produced in response to more than one request, it is sufficient to identify only the first request to which the document is responsive.

10. All electronically stored information must be produced in the same form or forms in which it is ordinarily maintained. Specifically, all electronically stored information must be produced in its native format, so that the metadata can be accessed.

11. Unless otherwise specified, the relevant time period for this request is from January 1, 2002 through and including the present.

12. This request is a continuing one that calls for the supplemental or additional production of documents if any defendant or its counsel obtains supplemental or additional documents.

13. In responding to the requests below: (a) the disjunctive shall also be read to include the conjunctive and vice versa; (b) "including" shall be read to mean "including without limitation;" (c) the singular shall also be read to include the plural and vice versa; (d) the present shall also be read as if the past tense and vice versa; (e) "any" shall be read to include "all" and vice versa; and (f) "and" shall be read to include "or" and vice versa.

II. DEFINITIONS

As used herein, unless otherwise indicated:

1. "44th and Camelback" means 44th & Camelback Property, LLC and its predecessors and successors, past and present subsidiaries, affiliates, divisions, branches, agents, officers, directors, employees, attorneys, agents, brokers, representatives, servants, and any

and all other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of 44th and Camelback, including any attorneys, advisors, or consultants.

2. "Communication" means any transmittal of information, of any kind, without regard to whether such information was transmitted orally, in writing, electronically, visually, or by any other means.

3. "Debtor" shall mean Mortgages Ltd. and its predecessors and successors, past and present subsidiaries, affiliates, divisions, branches, agents, officers, directors, employees, attorneys, agents, brokers, representatives, servants, and any and all other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of the Debtor, including any attorneys, advisors, or consultants.

4. "Document" means all originals, drafts and modifications of originals, as well as copies, duplicates, and counterparts of originals, of written, printed, typed, graphic, recorded, and visually or orally reproduced material of any kind, whether or not privileged, and includes, but is not limited to, correspondence, business records, telephone records and notations, diaries, calendars, minutes, contracts, agreements, orders, receipts, invoices, bills, pictures, drawings or sketches, blueprints, designs, notebooks, advertising and commercial literature, promotional literature of any kind, cables, telexes, telegrams, recordings, patents, lists, charts, pamphlets, appendices, exhibits, summaries, outlines, logs, journals, agreements, work papers, statements, records of inventory, financial and/or accounting records, catalogues, trade journals, and any other documented or recorded information. The term "document" also includes every other manner by which information is recorded or transmitted, including but not limited to, microfilms, punch cards, disks, tapes, computer programs, printouts, all recordings made through data processing techniques, and instructions and directions for use of the data

processing equipment to obtain the information recorded by that method. The term "document" refers to copies, duplicates, and/or counterparts only where (i) the copy, duplicate, or counterpart is not exactly identical to the original or (ii) your records only contain a copy, duplicate, or counterpart of the original and not the original itself.

5. "Entity" or "Entities" shall mean the following entities, their predecessors and successors, past and present subsidiaries, affiliates, divisions, branches, agents, officers, directors, employees, attorneys, agents, brokers, representatives, servants, and any and all other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of any of the Entities, including any attorneys, advisors, or consultants:

- Mortgages Ltd. Commercial Capital, LLC
- Mortgages Ltd. Insurance, LLC
- Mortgages Ltd. Investments, I,LC
- Mortgages Ltd. Securities, LLC
- Mortgages Ltd. Title Agency, LLC
- Mortgages Ltd. 401K Plan
- Mortgages Ltd. Opportunity Fund MP11, LLC, f/k/a MP122030 L.L.C., f/k/a MP052008 L.L.C.
- Mortgages Ltd. Opportunity Fund MP12, LLC
- Mortgages Ltd. Opportunity Fund MP13, LLC
- Mortgages Ltd. Opportunity Fund MP14, LLC
- Mortgages Ltd. Opportunity Fund MP15, LLC
- Mortgages Ltd. Opportunity Fund MP16, LLC
- Mortgages Ltd. Opportunity Fund MP17, LLC
- Value-to-Loan Opportunity Fund 1, LLC
- MP022000 LLC
- MP102000 LLC
- MP052001 LLC
- MP012002 LLC
- MP092004 LLC
- MP062003 LLC
- MP032004 LLC
- MP052005 LLC

6. "Evidencing" means constituting, mentioning, describing, concerning, referring to, relating to, supplementing, amending, superseding, replacing, modifying, or pertaining to, in whole or in part, the subject matter of the particular requests.

7. "Identify" or "identity" with respect to a natural person requires that the following information be provided for each such person:

- (a) the name of the person;
- (b) the last known home address, business address and/or telephone number of each person.

8. "Identify" or "identity" with respect to a person other than a natural person (e.g., corporation, partnership, unincorporated joint venture, sole proprietorship, subchapter S corporation) requires that the following information be provided for each such person:

- (a) the name of the person;
- (b) the last known address and telephone number of that person's headquarters or principal place of business.

9. "Identify" or "identity" with respect to a document means to state the date and author of the document, the type of document (e.g., letter, memorandum, telegram, chart), the addressee or intended recipient, a summary of its contents or other means of identifying the document, and the present location and custodian of the document. Alternatively, in lieu of the foregoing identification, the document may be produced along with an identification of the interrogatory to which it is responsive. If any such document was, but is no longer, in the possession, custody, or control of Parkway or Parkway's attorneys or agents, state what disposition was made of it and the date of such disposition. With respect to document identification, documents prepared subsequent to or prior to the time period specified in these interrogatories but which relate or refer to such time or period are to be included in your response.

10. "Identify" or "identity" with respect to a communication, written or oral conversation, conference or meeting, means to identify all persons participating in or in attendance at the communication, conversation, conference or meeting, and to identify all documents recording, summarizing or otherwise arising from the communication, conversation, conference or meeting in accordance with the definitions stated above. In addition, "identify" or "identity" with respect to a communication, conversation, conference or meeting means to state in detail its purpose, all subjects discussed, the method(s) of communication.

11. "Individual" or "Individuals" shall mean the following individuals:

- Scott Coles
- Chris Olsen
- Michael Denning
- Tom Hirsch
- Bob Furst
- Veronica Sas
- Nechelle Wimmer
- Jeff Brandon
- Mitch Adler
- Manny Alemany
- Eva Yang
- Kim Roberts
- Bobby Barnes
- DiEsta Kiesling
- George Everette
- Wendy Levin
- Ryan Walter
- Phil Sollomi
- Laura Martini
- Dana Wilson
- Harish Shah
- Howard Walder
- Berta Walder

12. "Parkway" shall refer to Parkway Bank and Trust Company and its predecessors and successors, past and present subsidiaries, affiliates, divisions, branches,

agents, officers, directors, employees, attorneys, agents, brokers, representatives, servants, and any and all other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of Parkway, including any attorneys, advisors, or consultants.

13. "Person" means an individual, firm, partnership, corporation, incorporated or unincorporated association, and any other legal, commercial, corporate or natural entity. "Person" means the plural as well as the singular.

14. "Relating or referring" and/or "relate or refer" means in whole or in part constituting, containing, concerning, embodying, evaluating, reflecting, describing, discussing, demonstrating, evidencing, supporting, analyzing, identifying, stating, referring to or dealing with, or in any way pertaining to including without limitation documents that relate to the preparation of another document, or documents that are attached to or enclosed with another document.

15. "Vento" means Jonathon Vento, his heirs, agents, employees and all other persons acting, understood to act or purporting to act on his direction or control.

16. "Vento Entities" means any partnership, corporation, limited liability company, association, or other business organization in any form, controlled in part by Vento and/or Zeleznak.

17. "You" or "your" refers to Parkway (as defined above) and its employees, officers, agents, subsidiaries, affiliates and all other persons acting, understood to act, or purporting to act on its behalf or under its direction or control.

18. "Zeleznak" means Donald J. Zeleznak, his heirs, agents, employees and all other persons acting, understood to act or purporting to act on his direction or control.

III. DOCUMENTS

YOU ARE REQUESTED to produce the documents set forth below:

1. All Documents relating to any loans provided by Parkway to Vento, Zeleznak or any Vento Entities.
2. All Documents relating to 44th and Camelback.
3. All Documents or correspondence relating to any Communication between Parkway and the Debtor.
4. All Documents or correspondence relating to any Communication between Parkway and any Entity.
5. All Documents or correspondence relating to any Communication between Parkway and any Individual.

EXHIBIT B

1 Fennemore Craig, P.C.
Cathy L. Reece (005932)
2 Keith L. Hendricks (012750)
3003 North Central Avenue, Suite 2600
3 Phoenix, Arizona 85012-2913
Telephone: (602) 916-5000
4 Email: creece@fclaw.com

5 Attorneys for ML Manager LLC

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Case No. 2-08-BK-07465-RJH

**ORDER ON ML MANAGER LLC'S
MOTION FOR ORDER REQUIRING
PARKWAY BANK ARIZONA TO
PRODUCE DOCUMENTS PURSUANT
TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004**

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15 The Court, having considered ML Manager LLC's Motion for Order Requiring
16 Parkway Bank Arizona to Produce Documents Pursuant to Federal Rules of Bankruptcy
17 Procedure 2004, and finds good cause to grant the Motion. Accordingly,

18 IT IS HEREBY ORDERED:

- 19 1. The Motion is GRANTED.
20 2. Parkway Bank of Arizona shall produce those documents responsive to the
21 document requests listed on Exhibit A to the Motion on or before 10:00 a.m. on
22 October 30, 2009 at the following location:

23 FENNEMORE CRAIG, P.C.
24 3003 North Central Avenue
Suite 2600
25 Phoenix, Arizona 85012-2913
Attention: Keith L. Hendricks
26 Telephone: (602) 916-5000
Facsimile: (602) 916-5999
27 Email: khendricks@fclaw.com

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3. ML Manager LLC may, if it elects, issue and serve a Subpoena as provided in Rule 9016, Federal Rules of Bankruptcy Procedure, to compel the production of documents.

DATED AND SIGNED ABOVE