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11
12 **IN THE UNITED STATES BANKRUPTCY COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 In re:
15 MORTGAGES LTD.,
16 Debtor.

In Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH

**APPLICATION FOR ORDER
REQUIRING JENNINGS STROUSS TO
PRODUCE DOCUMENTS PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2004**

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20 Pursuant to Federal Rule of Bankruptcy Procedure 2004, the ML Liquidating Trust (the
21 “**ML Trust**” or “**Movant**”) hereby requests this Court to issue an order requiring Jennings,
22 Strouss & Salmon, PLC, (“**Jennings Strouss**”):
23

24 To produce the documents requested in the attached Exhibit “A” for inspection
and copying by the Movant on a date and time agreeable to the parties or, if upon
25 notice, after not less than 10 days’ notice.

26 This Application is further explained in the following Memorandum.

27 ///

28 ///

1 Memorandum

2 The ML Trust is the successor to Mortgages Ltd. (“ML”) under the confirmed plan of
3 reorganization in this case. The ML Trust seeks information concerning services performed by
4 Jennings Strouss on behalf of ML and ML’s affiliates, subsidiaries, or otherwise related entities.
5 The ML Trust seeks this information to assist in the collection and investigation of ML’s assets
6 and liabilities.

7 The requested discovery from Jennings Strouss is well within the scope of examination
8 permitted under Federal Rule of Bankruptcy Procedure 2004, which includes:

9 [t]he acts, conduct, or property or . . . the liabilities and financial condition of the
10 debtor, or . . . any matter which may affect the administration of the debtor’s estate,
11 or to the debtor’s right to a discharge. In a . . . reorganization case under chapter
12 11 of the Code, . . . the examination may also relate to the operation of any
13 business and the desirability of its continuance, the source of any money or
14 property acquired or to be acquired by the debtor for purposes of consummating a
15 plan and the consideration given or offered therefore, and any other matter relevant
16 to the case or to the formulation of a plan.¹

17 Conclusion

18 Accordingly, the ML Trust requests that this Court enter the form of order submitted with
19 this Motion.

20 Dated: September 30, 2009.

DIAMOND MCCARTHY LLP

/s/ Eric D. Madden

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-and-

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¹ FED. R. BANKR. P. 2004(b).

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1 ORIGINAL of the foregoing electronically
2 filed this 30th day of September 2009, with:

3 Clerk, United States Bankruptcy Court
4 District of Arizona
5 230 North First Avenue, Suite 101
6 Phoenix, AZ 85003-1706
7 <https://ecf.azb.uscourts.gov>

8 COPY of the foregoing e-mailed
9 this 30th day of September 2009, to the
10 parties on the attached Service List

11 /s/ Samanta Rivera

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EXHIBIT A

I. DEFINITIONS

As used herein, unless otherwise indicated:

1. “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.

2. “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.

3. “Delayed-Funding Borrowers” means all of 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 Delayed-Funding Borrowers, including any attorneys, advisors, or consultants:

- Tempe Land Co., L.L.C.
- Rightpath Ltd. Development Group
- Central and Monroe, L.L.C.
- Northern 120, L.L.C.
- Cottonwood Parking, Inc.
- Central PHX Partners, L.L.C.
- The Zacher Development Company, L.L.C.
- Maryland Way Partners, L.L.C.
- University and Ash, L.L.C.
- PDG Los Arcos, L.L.C.
- Ecco Holdings, L.L.C.
- National Retail Development Partners, L.L.C.

- All State Associates of Pinal IX, L.L.C

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, LLC
- Mortgages Ltd. Securities, LLC
- Mortgages Ltd. Title Agency, LLC
- Mortgages Ltd. 401K Plan
- Realty Ltd.
- SM Revocable Trust
- SM Coles LLC
- 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
- Radical Bunny, LLC
- Tempe Land Co.
- Rightpath Ltd. Development Group

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. “Funds” includes all of 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 Funds, including any attorneys, advisors, or consultants:

- 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

8. “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.

9. “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.

10. “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 Jennings or Jennings'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.

11. "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.

12. "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

13. “Jennings” shall refer to Jennings Strouss 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 Jennings, including any attorneys, advisors, or consultants.

14. “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.

15. “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.

16. “You” or “your” refers to Jennings (as defined below) 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.

II. 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.

III. DOCUMENTS

YOU ARE REQUESTED to produce the documents set forth below:

1. All engagement letters and other documents and communications referring or relating to any engagement letters between You and the Debtor.

2. All engagement letters and other documents and communications referring or relating to any engagement letters between You and any of the Entities.

3. All engagement letters and other documents and communications referring or relating to any engagement letters between You and any of the Individuals.

4. All documents and communications referring or relating to any services or work performed by You for the Debtor.

5. All documents and communications referring or relating to any services or work performed by You for any of the Entities.

6. All documents and communications referring or relating to any services or work performed by You for any of the Individuals.

7. All documents referring or relating to any services or work performed by You that was billed to or paid for by of the Debtor.

8. All documents referring or relating to any services or work performed by You that was billed to or paid for by any of the Entities.

9. All documents referring or relating to any services or work performed by You that was billed to or paid for by any of the Individuals.

10. All documents and communications referring or relating to payment for any services or work performed by You for the Debtor, including but not limited to all timekeeping records, bills, invoices, and records of payments.

11. All documents and communications referring or relating to payment for any services or work performed by You for any of the Entities, including but not limited to all timekeeping records, bills, invoices, and records of payments.

12. All documents and communications referring or relating to payment for any services or work performed by You for any of the Individuals, including but not limited to all timekeeping records, bills, invoices, and records of payments.

13. All documents and communications referring or relating to any transactions entered into by the Debtor, including but not limited to:

- (a) Communications to and from any of the Entities, attorneys representing the Entities, or any other representatives of any of the Entities;
- (b) Communications to and from the Debtor, attorneys representing the Debtor, or any other representatives of the Debtor;
- (c) Communications to and from any of the Individuals, attorneys representing any of the Individuals, or any other representatives of any of the Individuals;
- (d) Communications to and from any potential or actual investors, lenders, or other individuals or entities (collectively, the “Third Parties”), attorneys representing any of the Third Parties, or any other representatives of any of the Third Parties;
- (e) Communications to and from any potential or actual appraisal firms;
- (f) Any and all documents and communications referring or relating to the valuation or appraisal of any and all real property interests involved in the transaction;
- (g) Communications to and from any and all potential or actual title companies;
- (h) Any and all documents and communications referring or relating to the title of any real property interests involved in the transaction;
- (i) Communications to and from any and all potential or actual accountants, auditors, accounting firms, and auditing firms;
- (j) Any and all documents and communications referring or relating to the financial condition, valuation, or financial records of any and all Entities and Debtor involved in the transaction; and
- (k) Any and all documents or communications referring or relating to any legal opinion or analysis on or regarding the legality of the transaction.

14. All documents and communications referring or relating to any transactions entered into by any of the Entities, including but not limited to:

- (a) Communications to and from any of the Entities, attorneys representing the Entities, or any other representatives of any of the Entities;
- (b) Communications to and from the Debtor, attorneys representing the Debtor, or any other representatives of the Debtor;
- (c) Communications to and from any of the Individuals, attorneys representing any of the Individuals, or any other representatives of any of the Individuals;
- (d) Communications to and from any potential or actual investors, lenders, or other individuals or entities (collectively, the "Third Parties"), attorneys representing any of the Third Parties, or any other representatives of any of the Third Parties;
- (e) Communications to and from any potential or actual appraisal firms;
- (f) Any and all documents and communications referring or relating to the valuation or appraisal of any and all real property interests involved in the transaction;
- (g) Communications to and from any and all potential or actual title companies;
- (h) Any and all documents and communications referring or relating to the title of any real property interests involved in the transaction;
- (i) Communications to and from any and all potential or actual accountants, auditors, accounting firms, and auditing firms;
- (j) Any and all documents and communications referring or relating to the financial condition, valuation, or financial records of any and all Entities and Debtor involved in the transaction; and
- (k) Any and all documents or communications referring or relating to any legal opinion or analysis on or regarding the legality of the transaction.

15. All documents and communications referring or relating to any transactions entered into by any of the Individuals, including but not limited to:

- (a) Communications to and from any of the Entities, attorneys representing the Entities, or any other representatives of any of the Entities;
- (b) Communications to and from the Debtor, attorneys representing the Debtor, or any other representatives of the Debtor;
- (c) Communications to and from any of the Individuals, attorneys representing any of the Individuals, or any other representatives of any of the Individuals;
- (d) Communications to and from any potential or actual investors, lenders, or other individuals or entities (collectively, the “Third Parties”), attorneys representing any of the Third Parties, or any other representatives of any of the Third Parties;
- (e) Communications to and from any potential or actual appraisal firms;
- (f) Any and all documents and communications referring or relating to the valuation or appraisal of any and all real property interests involved in the transaction;
- (g) Communications to and from any and all potential or actual title companies;
- (h) Any and all documents and communications referring or relating to the title of any real property interests involved in the transaction;
- (i) Communications to and from any and all potential or actual accountants, auditors, accounting firms, and auditing firms;
- (j) Any and all documents and communications referring or relating to the financial condition, valuation, or financial records of any and all Entities and Debtor involved in the transaction; and
- (k) Any and all documents or communications referring or relating to any legal opinion or analysis on or regarding the legality of the transaction.

16. All documents referring or relating to meetings, minutes of meetings, presentations to, votes, or decisions by the management or boards of directors for the Debtor.

17. All documents referring or relating to meetings, minutes of meetings, presentations to, votes, or decisions by the management or boards of directors for any of the Entities.

18. All personnel files, including any and all performance reviews for Your attorneys who performed any services or work for any of the Entities, Debtor, and/or Individuals.

19. All calendars, diaries, notes, and desk files of Your attorneys who performed any services or work for any of the Entities, Debtor, and/or Individuals.

20. All of Your document retention policies (or any other document setting forth guidelines for the retention, disposal, or destruction of documents) from 2002 through the present time.

21. All documents and communications referring or relating to audited financial statements, audit work papers, appraisals, valuation reports, or any other assessment of the financial condition of Debtor and/or Entities.

22. All documents referring or relating to any audit responses submitted by You to any auditor for the Debtor and/or Entities.

23. All documents referring or relating to any conflict of interest in your simultaneous representation of the Debtor, Entities, and/or Individuals.

24. All documents referring or relating to any transaction between the Debtor and any of the Entities or Individuals.

25. All of your insurance policies, including but not limited to primary, excess, umbrella, errors and omissions or other policies, in effect for the time period between January 1, 2004 through the present.

26. All documents and communications concerning Your knowledge of any actual or potential illegal or fraudulent activity committed or believed to be committed by the Debtor, Entities, or Individuals.

27. All documents and communications concerning the registration of the Funds with the Securities and Exchange Commission or the Arizona Corporation Commission (Securities Division).

28. All documents and communications relating to all loans funded or originated by the Debtor.

29. All documents or communications referring to any transactions between the Debtor and Delayed-Funding Borrowers.

30. All documents or communications referring to any transactions between the Entities and Delayed-Funding Borrowers.

31. All documents or communications referring to any transactions between the Individuals and Delayed-Funding Borrowers.

32. All documents or communications related to the Debtor referring to delayed-funding loans.

33. All documents or communications related to the Entities referring to delayed-funding loans.

34. All documents or communications related to the Individuals referring to delayed-funding loans.

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