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8 Trustee of the ML Liquidating Trust

9 IN THE UNITED STATES BANKRUPTCY COURT

10 FOR THE DISTRICT OF ARIZONA

11 In re:  
12 MORTGAGES, Ltd.,  
13 Debtor.

In Proceedings Under Chapter 11

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

APPLICATION FOR ORDER REQUIRING  
TOM HIRSCH TO PRODUCE  
DOCUMENTS PURSUANT TO RULE 2004,  
FEDERAL RULES OF BANKRUPTCY  
PROCEDURE

14 Pursuant to Rule 2004 Federal Rules of Bankruptcy Procedure, Kevin T. O'Halloran,  
15 ("Liquidating Trustee"), as Trustee of the ML Liquidating Trust, hereby applies to this Court for  
16 an Order requiring Tom Hirsch ("Hirsch"):  
17

18 To produce the documents requested in the attached Exhibit "A" for inspection  
19 and copying by the Movant on a date and time agreeable to the parties or, if upon  
20 notice, after not less than 10 days' notice.

This Application is further explained in the following Memorandum.

21 Memorandum

22 Pursuant to the terms of *The Official Committee of Investors' First Amended Plan of*  
23 *Reorganization Dated March 12, 2009*, (the "Plan") [Docket No. 1532], which was confirmed by  
24 an Order granted by the Court on May 20, 2009 (the "Confirmation Order") [Docket No. 1755],  
25 the Non Loan Assets, as defined in the Plan have been transferred to the ML Liquidating Trust.  
26 The ML Liquidating Trust seeks information concerning: (1) the communications and  
27 transactions involving Hirsch and Mortgages Ltd., its affiliates, subsidiaries and otherwise related  
28

1 entities (collectively “Mortgages Ltd.”), and/or its past President and CEO, Scott Coles; and (2)  
2 funding and services provided or facilitated by Hirsch to or in connection with Mortgages Ltd.  
3 and/or Coles. The ML Liquidating Trust seeks this information to assist in the collection and  
4 investigation of Mortgages Ltd’s assets and liabilities.

5 The requested discovery from Hirsch is well within the scope of examination permitted  
6 under Rule 2004 Federal Rules of Bankruptcy Procedure, which includes:

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

16 Conclusion

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

19 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of February, 2010.

20 **MYERS & JENKINS, P.C.**

21 By: /s/William Scott Jenkins  
22 William Scott Jenkins  
23 Jill M. Hulsizer  
24 Attorneys for Kevin T. O’Halloran,  
25 Trustee of the ML Liquidating Trust

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<sup>1</sup> Fed.R.BankR.P. 2004(b).  
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1 ORIGINAL of the foregoing electronically  
2 filed this 9<sup>th</sup> day of February, 2010, 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 mailed this 9<sup>th</sup> day of  
9 February, 2010 to:

10 Tom Hirsch  
11 8636 North Via La Serena  
12 Paradise Valley, AZ 85253

13 /s/ Alice Herdrich  
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## EXHIBIT A

The ML Liquidating Trust requests that Tom Hirsch produce the following described documents pursuant to Rule 2004, Federal Rules of Bankruptcy Procedure, (the “Discovery Requests”):

### **I. DEFINITIONS**

The following definitions apply to each of the Discovery Requests set forth herein, unless otherwise indicated, and are deemed to be incorporated in each of the Discovery Requests.

1. *All documents* means every *document*, whether an original or copy, as defined above, known to you and every document or writing that you can locate or discover by reasonably diligent efforts.

2. *Document* or *documents* refers to original documents and is used in the broadest sense and means, without limitation, any written, printed, typed, Photostatted, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, pictures, sounds, or symbols. Document or documents includes, but is not limited to, all those items mentioned and defined in Rule 1001 of the Federal Rules of Evidence, as well as those items described in Rule 34 of the Federal Rules of Civil Procedure. Document or documents also includes tapes, discs, metadata, data cells, electronic mail, computer files or manager systems, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by you through detection devices into usable form) including, without limitation, electromagnetically sensitive stored media like floppy discs, hard discs, magnetic tapes or other electromagnetic media. Any draft, preliminary version, alteration, modification, change, markup, or amendment and any comment or notation appearing on any document that is not part of the original

text is to be considered a separate writing or document and is to be included in the term *document*.

3. *Relating, related, or relate* means mentioning, discussing, including, summarizing, describing, reflecting, supporting, containing, referring to, relating to, depicting, connected with, embodying, evidencing, constituting, concerning, reporting or pertaining to, in whole or in part.

4. *Communication(s)* means and includes, without limitation, oral communications, including, without limitation, face-to-face conversations, written and computerized communications and correspondence, conferences and telephone conversations, e-mails, and the delivery or furnishing of documents.

5. *Coles* means Scott M. Coles, the now-deceased, former owner, operator, and manager of Mortgages Ltd. and SMC Revocable Trust, a family trust established by Scott M. Coles.

6. *Mortgages* means Mortgages Ltd., Mortgages Ltd. Securities, Inc., and any companies affiliated to these companies in any way. This includes, but is not limited to, any predecessor companies and any successor companies.

7. *Radical Bunny* means Radical Bunny, LLC, an Arizona-based limited liability company.

8. *SEC* means the United States Securities and Exchange Commission.

9. *ACC* means the Arizona Corporation Commission and any of its divisions (e.g., the Securities Division).

10. *SEC Civil Actions* means the civil action pending before Judge Bolton in the United States District Court for the District of Arizona, Case No. 2:09-cv-01560-SRB, and any other civil or enforcement actions involving the *SEC* that are *related to Coles, Mortgages, Radical Bunny*, or the officers, directors, or managers of *Mortgages* or *Radical Bunny*.

11. *SEC Enforcement Actions* means Administrative Proceeding File No. 3-13752 initiated by the *SEC* and any other enforcement proceedings *related to Coles, Mortgages, Radical Bunny*, or the officers, directors, members, agents, or managers of *Mortgages* or *Radical Bunny*.

12. *ACC Enforcement Actions* means the administrative action associated with Docket No. S-20660A-09-0107 initiated by the *ACC* and any other enforcement or administrative proceedings *related to Coles, Mortgages, Radical Bunny*, or the officers, directors, members, agents, or managers of *Mortgages* or *Radical Bunny*.

13. *Debtor* means *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.

14. *Person* means any natural person, business, proprietorship, public or private corporation, incorporated or unincorporated association, partnership, company, firm, government or governmental partnership, trusts, joint venture, entity (including any government agency, board, authority, commission, political subdivision or department thereof) or any other form of business or legal entity, organization or arrangement, group or association, whether or not such organization, entity or association has a separate juristic existence in its own right.

15. Unless indicated, other terms used in these Discovery Requests correspond to terms defined or used in the United States Bankruptcy Code (11 U.S.C. 101, et seq.).

## **II. INSTRUCTIONS**

1. The following Discovery 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 lost, 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. If a document has been prepared in several copies, or if additional copies are made that are not identical or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever including, but not limited to, notations on the backs of pages thereto, each non-identical copy is a separate document and must be identified.

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; (h) the date on the document and, if different, the date on which the document was created and/or sent; (i) the number of pages of the document; (j) the specific request herein to which the document is responsive; (k) the nature of the privilege(s) asserted as to the document; and (l) 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 organization 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, 1998 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 but not limited to;” (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) the masculine includes the feminine and the neutral genders; (f) “any” shall be read to include “all” and vice versa; and (g) “and” shall be read to include “or” and vice versa.

14. The phrases following “including” are intended to illustrate the kinds of matter that we believe are responsive to the Discovery Request. Such examples are not intended to be exhaustive of the material sought and shall not in any way be read to limit the scope of the Discovery Request.

### **III. DOCUMENTS REQUESTED**

YOU ARE REQUESTED to produce the documents set forth below:

1. All transcripts of testimony and other *documents* that you received from the *SEC* as formal or informal discovery in the *SEC Civil Actions* or *SEC Enforcement Actions*.

2. All transcripts of testimony and other *documents* that you received from the *ACC* as formal or informal discovery in the *ACC Enforcement Actions*.

3. All witness interviews in any form (e.g., recorded or transcribed), including any exhibits or *documents* shown to the witness, *related* to the *SEC Civil Actions*, the

*SEC Enforcement Actions*, the *ACC Enforcement Actions*, or any other *related* investigations, court proceedings, or enforcement actions.

4. All depositions, transcripts of sworn testimony, and accompanying exhibits *related* to the *SEC Civil Actions*, the *SEC Enforcement Actions*, the *ACC Enforcement Actions*, or any other *related* investigations, court proceedings, or enforcement actions.

5. All transcripts or recordings of testimony *related* to the *SEC Civil Actions*, the *SEC Enforcement Actions*, the *ACC Enforcement Actions*, or any other *related* investigations, court proceedings, or enforcement actions.

6. *All documents that relate* to one or more of the following individuals or entities:

- a. *Coles*;
- b. *Mortgages*;
- c. *Radical Bunny*;
- d. Officers, directors, or managers of *Mortgages*;
- e. Officers, directors, or managers of *Radical Bunny*;
- f. Tom Hirsch;
- g. Berta Walder;
- h. Howard Walder;
- i. Harish P. Shah;
- j. Members of or investors in *Mortgages*; or
- k. Members of or investors in *Radical Bunny*

7. All billing statements and *documents that relate* to legal or other professional services provided by Greenberg Traurig, LLP—to the persons or entities listed in paragraph 6.

8. All billing statements and *documents* that *relate* to legal or other professional services provided by Quarles & Brady, LLP—to the persons or entities listed in paragraph 6.

9. All billing statements and *documents* that *relate* to legal or other professional services provided by Gary R. Zwillinger—to the persons or entities listed in paragraph 6.

10. All billing statements and *documents* that *relate* to legal or other professional services provided by Zwillinger & Greek, PC (and its predecessors including Zwillinger & Georgelos, PC)—to the persons or entities listed in paragraph 6.

11. All billing statements and *documents* that *relate* to legal or other professional services provided by Stinson Morrison Hecker, LLP (and its predecessor firms)—to the persons or entities listed in paragraph 6.

12. All billing statements and *documents* that *relate* to legal or other professional services provided by any attorney(s) (other than those listed in paragraphs 7-11) to the persons or entities listed in paragraph 6

13. All billing statements and *documents* that *relate* to professional services provided by Mayer Hoffman McCann, PC—to the persons or entities listed in paragraph 6.

14. All billing statements and *documents* that *relate* to professional services provided by CBIZ, Inc. and its affiliated companies—to the persons or entities listed in paragraph 6.

15. All privilege logs prepared by or on behalf of any person or entity listed in paragraph 6.

16. All *communications* between the *SEC* or the *ACC* and any party or their representatives in the *SEC Civil Actions*, the *SEC Enforcement Actions*, the *ACC Enforcement Actions*, or any related investigations, court proceedings, or enforcement actions.

17. All *documents* or any other materials in any form provided by the *SEC* or *ACC* to any party or their representatives in the *SEC Civil Actions*, the *SEC Enforcement Actions*, the *ACC Enforcement Actions*, or any related investigations, court proceedings, or enforcement actions.

18. All *communications* to, from, between or among members of or investors in *Mortgages*.

19. All *communications* to, from, between or among members of or investors in *Radical Bunny*.