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9 Trustee of the ML Liquidating Trust

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:  
MORTGAGES, Ltd.,  
Debtor.

In Proceedings Under Chapter 11

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

APPLICATION FOR ORDER REQUIRING  
CBIZ, INC. TO PRODUCE DOCUMENTS  
PURSUANT TO RULE 2004, FEDERAL  
RULES OF BANKRUPTCY PROCEDURE

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

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 notice, after not less than 10 days' notice.

This Application is further explained in the following Memorandum.

Memorandum

Pursuant to the terms of *The Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009*, (the "Plan") [Docket No. 1532], which was confirmed by an Order granted by the Court on May 20, 2009 (the "Confirmation Order") [Docket No. 1755], the Non Loan Assets, as defined in the Plan have been transferred to the ML Liquidating Trust. The ML Liquidating Trust seeks information concerning: (1) the communications and transactions involving various individuals and Mortgages Ltd., or Radical Bunny and (2) services

1 provided or facilitated by various individuals and professionals to or in connection with  
2 Mortgages Ltd., Scott Coles and/or Radical Bunny. The ML Liquidating Trust seeks this  
3 information to assist in the collection and investigation of Mortgages Ltd's assets and liabilities.

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

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

15 Conclusion

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

18 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of March, 2010.

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

20 By: /s/William Scott Jenkins  
21 William Scott Jenkins  
22 Jill M. Hulsizer  
23 Attorneys for Kevin T. O'Halloran,  
24 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 15<sup>th</sup> day of March, 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 15<sup>th</sup> day of  
9 March, 2010 to:

10 CBIZ, Inc.  
11 3101 North Central Avenue  
12 Phoenix, AZ 85012-2614

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/s/ Alice Herdrich

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## EXHIBIT A

The ML Liquidating Trust requests that CBIZ, Inc. 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* and SMC Revocable Trust, a family trust established by Scott M. Coles.

6. *Mortgages* means *Debtor*, Mortgages Ltd. Securities, Inc., Mortgages Ltd Commercial Capital, LLC, SM Coles, LLC, MP12209, LLC, MP1062011, LLC, Mortgages Ltd Opportunity Fund MP11, LLC, 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, and any companies affiliated to these companies in any way. This includes, but is not limited to, any predecessor companies and any successor companies. This also includes any other entities or trusts associated with *Coles*, including, but not limited to, the SMC Revocable Trust.

7. *CBIZ* means CBIZ, Inc. and any predecessor companies and any successor companies to CBIZ, Inc.

8. *MHM* means Mayer Hoffman McCann, P.C. and any predecessor companies and any successor companies to Mayer Hoffman McCann, P.C.

9. *CBIZ/MHM* means CBIZ MHM, LLC and any predecessor companies and any successor companies to CBIZ MHM, LLC. This includes, but is not limited to, CBIZ Accounting, Tax & Advisory Services, LLC.

10. *CBIZ/PHOENIX* means CBIZ Accounting, Tax & Advisory of Phoenix, LLC and any predecessor companies and any successor companies to CBIZ Accounting, Tax & Advisory of Phoenix, LLC. This includes, but is not limited to, CBIZ Miller Wagner, LLC.

11. *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 other *person* 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.

12. *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.

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

14. 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. Unless otherwise indicated, the relevant time period is from June 2004 to the present time:

1. All invoices for services provided to *Mortgages* by any of the following companies: *CBIZ*, *MHM*, *CBIZ/MHM* or *CBIZ/PHOENIX*.

2. All workpapers *related to* services provided to *Mortgages* by any of the following companies: *CBIZ*, *MHM*, *CBIZ/MHM* or *CBIZ/PHOENIX*. This request excludes *MHM* audit workpapers.

3. All documents transmitted to and from *Mortgages* by any of the following companies: *CBIZ, MHM, CBIZ/MHM* or *CBIZ/PHOENIX*.

4. All documents generated by *CBIZ, MHM, CBIZ/MHM* or *CBIZ/PHOENIX* related to services provided to *Mortgages*. This includes, but is not limited to, all internal correspondence generated by any of these companies' employees or agents related to services provided to *Mortgages*.

5. All Administrative Service Agreements between *CBIZ* and *MHM*. This includes, but is not limited to, all amendments, extensions, modifications, attachments, and exhibits to these agreements. This also includes, but is not limited to, the Administrative Service Agreement between *CBIZ* and *MHM* mentioned in *CBIZ*'s March 16, 2009 Form 10-K filing with the *SEC* and any amendments or extensions related to the same.

6. All employment agreements between or among *CBIZ, MHM, CBIZ/MHM* or *CBIZ/PHOENIX* and each accountant who participated in or otherwise had any role in the audits conducted for *Mortgages* in 2005-2007.

7. All agreements relating to the lending, sharing or cooperative use of employees by or among the following companies: *CBIZ, MHM, CBIZ/MHM* and *CBIZ/PHOENIX*.

8. All agreements by or among *CBIZ, MHM, CBIZ/MHM* and *CBIZ/PHOENIX* relating to the performance of audits like those done for *Mortgages* by *MHM* in 2005-2007.

9. All documents transmitted to or from the *SEC* relating to the treatment of *CBIZ* and *MHM* as a single entity for certain purposes, as stated in *CBIZ*'s 12/31/08 Form 10-K filed with the *SEC* on March 16, 2009.

10. All contracts for insurance covering work performed by any of the following companies from June 2004 through December 2008: *CBIZ, MHM, CBIZ/MHM* or *CBIZ/PHOENIX*.

11. All peer review reports prepared in connection with any audit of *Mortgages*.
12. *All documents* describing your document retention policies in place since January 1, 2005.
13. *All documents* describing your audit policies and procedures in place since January 1, 2005.