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

8 In re
9 MORTGAGES LTD.,
10 Debtor.

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

**ML MANAGER'S MOTION (1) FOR ORDER
TO ALLOW FILING OF CONFIDENTIAL
BACK-UP TO ALLOCATION MODEL
UNDER SEAL, (2) TO SET UP PROCEDURE
FOR AN *IN CAMERA* INSPECTION OF
CONFIDENTIAL DOCUMENTS, AND (3)
FOR A PROTECTIVE ORDER**

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16 Pursuant to the schedule set forth by the Court, ML Manager has filed its brief and
17 detailed explanation of the "Allocation Model" for the assessment of costs and expenses
18 associated with the distributions to the Investors. Significantly, this Allocation Model
19 necessarily includes projections, assumptions and forecasts of revenue that the loans and
20 assets at issue may generate (the "Revenue Assumptions"). Although the Revenue
21 Assumptions are necessary for the Allocation Model, they are confidential and
22 proprietary. At the present time, ML Manager is negotiating with various buyers,
23 borrowers and other third parties for the most favorable disposition of the loans and assets
24 at issue. It would be extremely prejudicial to this process if these Revenue Assumptions
25 and the other confidential information in the Allocation Model were publicly available. It
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1 would chill offers and otherwise damage the process of attempting to maximize the value
2 of the ML Loans. Moreover, much of the other information regarding costs and expenses
3 is also confidential and proprietary. Accordingly, ML Manager hereby requests that the
4 Court issue an Order (1) allowing ML Manager to file the back-up information and
5 schedules for the Allocation Model (the “Schedules”) under seal, (2) setting a procedure
6 for consideration of the Schedules in an *in camera* context, or a non-public forum where
7 only parties with standing to consider the issues are present, and (3) entering a protective
8 Order to protect the distribution and dissemination of all the confidential information in
9 the Schedules. This Motion is supported by the following Memorandum of Points and
10 Authorities and the entire record in this matter.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 In compliance with the Court’s scheduling Orders, ML Manager has adopted a
13 specific methodology to allocate all the costs and expenses associated with the
14 management of the ML Loans and the repayment of the Exit Financing (the “Allocation
15 Model”). ML Manager has filed a brief describing in detail the methodology in the
16 Allocation Model, however, the Schedules that support the Allocation Model contain
17 significant confidential and proprietary information that would be extremely prejudicial to
18 the Investors and to ML Manager if it generally known. Accordingly, ML Manager
19 hereby moves for an Order to establish a procedure to allowing the filing of the Schedules
20 under seal, an *in camera* or non-public forum for consideration of the Schedules, and a
21 general Protective Order to protect the confidential nature of the Schedules.

22 **I. THE STANDARD FOR ISSUING PROTECTIVE PROCEDURES**

23 Rule 7026(c), Federal Rules of Bankruptcy Procedure, made applicable to this
24 dispute by Rule 9014, Federal Rules of Bankruptcy Procedure, permits any party to seek a
25 protective order. Pursuant to Rule 7026(c), in its protective order the Court may specify
26 all of the terms related to the disclosure of confidential commercial information, including

1 the manner, time and place of the disclosure.¹ Fed. R. Bank. P. 7026(c)(G). A party
2 seeking a protective order must show good cause for the issuance of the protective order.
3 Fed. R. Bank. P. 7026(c)(G); *In re Texaco, Inc.*, 84 B.R. 14, 17 (S.D.N.Y. 1988) (party
4 seeking protective order must show good cause for such order); *San Antonio Express-
5 News v. Blackwell (In re Blackwell)*, 263 B.R. 505, 509 (W.D. Tex. 2000) (holding that
6 the court must balance the presumption of openness with the privacy interests of the
7 moving party). To show good cause, the movant must show that it has significant
8 interests in confidentiality that would be harmed by disclosure. *In re Texaco, Inc.*, 84
9 B.R.at 17 (“In order for a party to sustain its burden for the issuance of a protective order,
10 it must show specifically that it will indeed be harmed by disclosure”); *In re Astri Invest.*,
11 88 B.R. 730, 735 (D. Md. 1988) (party attempting to overcome presumption of openness
12 must show that a “significant interest” outweighs that presumption).

13 **II. PROTECTIVE PROCEDURES ARE APPROPRIATE IN THIS CASE.**

14 It is almost beyond dispute that public disclosure of the Revenue Assumptions and
15 other confidential information would be unduly prejudicial to the Investors in this case
16 and that no third party or non-Investor can claim a legitimate interest in the way costs and
17 expenses are allocated to the Investors. Significantly, this case has attracted substantial
18 attention in both the Press, the borrower community, and with potential buyers, bidders
19 and others. ML Manager is in the process of soliciting offers for various projects and the
20 interest level in some of these projects is strong. On the other hand, interest in other
21 projects is extremely weak with sometimes only one or two interested buyers.
22 Nevertheless, in both situations, disclosure of Revenue Assumptions could have an
23 extremely prejudicial effect, chilling offers, or discouraging buyers. Moreover, many of

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25 ¹ Rule 7026(c) generally requires that a party file a “certification that the movant has in
26 good faith conferred or attempted to confer with other affected parties in an effort to resolve
the dispute without court action.” However, ML Manager requests that the Court waive
this requirement, as consultation with all affected parties is impracticable if not impossible.

1 the existing borrowers have been active in seeking to use any information they can get
2 against ML Manager and the Investors, whether such use is appropriate or not.² In almost
3 all of these situations, disclosure of the Revenue Assumptions and other confidential
4 information in the Schedules is unnecessary and prejudicial.

5 ML Manager is not attempting to keep this information from any party with
6 standing and a legitimate interest in the Allocation Model. However, this information
7 should not be available to individuals or parties who do not have a direct stake in the
8 allocation of costs and expenses to Investors.

9 The procedure the ML Manager proposes is set forth in the Form of Order attached
10 as Exhibit A, which includes as follows:

11 1. ML Manager will file the Schedules or "Confidential Information" under
12 Seal, and provide a Notice generally describing the Confidential Information.

13 2. The Schedules and Confidential Information are only considered in an *in*
14 *camera* or non-public forum. A procedure is adopted to allow for objections to the
15 designation of Confidential Information or participation at any hearing considering the
16 Confidential Information.

17 3. A protective order is to be entered mandating the disclosure of the
18 Confidential Information subject to the execution of a Confidentiality Agreement.

19 Under this Protective Order and Confidentiality Agreement, any Investor or party
20 with standing on the issues presented by the Allocation Model can enter into an
21 Agreement to treat the information in the Schedules as confidential, and receive a bates
22 stamped redacted version of the Schedules. This would include all of the information in
23 the Schedules except for the Revenue Assumptions. ML Manager would also make the

24 ² A clear example of this is the scandalous, improper and even slanderous letters that have
25 been submitted to the Court and placed on the Docket by Mr. Peloquin, a principal of
26 several of the borrowers and a guarantor of several loans, which are all in default.
Providing confidential information relevant only to Investors to such individuals is
unnecessary and prejudicial.

1 Revenue Assumptions available for inspection to any Investor or their counsel but given
2 the extremely prejudicial nature of this information, additional copies would not be
3 produced. A procedure is also established if there are any objections to identity of parties
4 seeking production of the Confidential Information.

5 **III. CONCLUSION**

6 ML Manager believes that this is a fair procedure to deal with this issue and
7 requests that the Court issue the Order in the form attached as Exhibit A.

8 DATED: September 1, 2010

9 FENNEMORE CRAIG, P.C.

10 By /s/ Keith L. Hendricks (012750)

11 Cathy L. Reece

12 Keith L. Hendricks

13 Attorneys for ML Manager LLC

14 COPY of the foregoing emailed to the parties
15 on the ECF service list and the following
16 this 1st day of September, 2010:

17 Tommy D. Crimmins, Trustee
18 or Judith Crimmins, Trustee
19 The Crimmins Family Revocable Trust
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