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of Investors

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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re

11 MORTGAGES LTD.,

12 Debtor.

Chapter 11

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

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**DISCLOSURE STATEMENT IN SUPPORT OF
THE OFFICIAL COMMITTEE OF INVESTORS'
PLAN OF REORGANIZATION DATED JANUARY 21, 2009**

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DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT RELATES TO THE INVESTORS COMMITTEE’S PLAN OF REORGANIZATION. IT IS BEING PROVIDED TO CREDITORS, INVESTORS, BORROWERS AND EQUITY INTEREST HOLDER SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN, INCLUDING (FOR THOSE ENTITLED TO VOTE ON THE PLAN) ABOUT WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. ACCORDINGLY, THIS DISCLOSURE STATEMENT MAY NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS, INVESTORS, BORROWERS AND EQUITY INTEREST HOLDER ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, OTHER EXHIBITS ANNEXED OR REFERRED TO IN THE PLAN AND THIS DISCLOSURE STATEMENT AS A WHOLE.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF. ANY ESTIMATES OF CLAIMS SET FORTH HEREIN MAY VARY FROM THE AMOUNT OF CLAIMS ULTIMATELY APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED

1 IN THIS DISCLOSURE STATEMENT, INCLUDING THE HISTORY, BUSINESS,
2 OPERATIONS OF THE DEBTOR, THE DEBTOR'S ASSETS AND LIABILITIES,
3 HISTORICAL FINANCIAL INFORMATION OF THE DEBTOR, AND THE
4 LIQUIDATION ANALYSIS, HAS BEEN DERIVED FROM SEVERAL SOURCES,
5 INCLUDING THE BOOKS AND RECORDS OF THE DEBTOR, THE DEBTOR'S
6 SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENTS OF FINANCIAL
7 AFFAIRS, PROOFS OF CLAIMS, DECLARATIONS OF DEBTOR'S OFFICERS IN
8 VARIOUS PLEADINGS, AND OTHER DOCUMENTS FILED WITH THE
9 BANKRUPTCY COURT. CERTAIN INFORMATION PROVIDED HEREIN HAS
10 BEEN PROVIDED BASED ON THE BEST INFORMATION AND BELIEF OF THE
11 DEBTOR'S OFFICERS.

12 THE INVESTORS COMMITTEE AND ITS PROFESSIONALS CANNOT
13 WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS
14 DISCLOSURE STATEMENT IS WITHOUT INACCURACY. NONE OF THE
15 INVESTORS COMMITTEE MEMBERS OR PROFESSIONALS HAS VERIFIED THE
16 INFORMATION CONTAINED HEREIN ALTHOUGH THEY DO NOT HAVE
17 ACTUAL KNOWLEDGE OF ANY INACCURACIES. IN MAKING A DECISION,
18 THE CREDITORS, INVESTORS, BORROWERS AND EQUITY INTEREST HOLDER
19 MUST RELY ON THEIR OWN EXAMINATION OF THE PLAN, INCLUDING THE
20 MERITS AND RISKS INVOLVED. THE PARTIES SHOULD NOT CONSTRUE THE
21 CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING LEGAL,
22 BUSINESS, FINANCIAL, OR TAX ADVICE. EACH PARTY SHOULD CONSULT
23 WITH THEIR OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS WITH
24 RESPECT TO ANY SUCH MATTERS CONTEMPLATED THEREBY.

25 AS TO CONTESTED MATTERS AND SETTLEMENTS, THE INFORMATION
26 IN THE DISCLOSURE STATEMENT IS NOT TO BE CONSTRUED AS

1 ADMISSIONS OR STIPULATIONS BUT RATHER AS STATEMENTS MADE IN
2 SETTLEMENT NEGOTIATIONS. EXCEPT WHERE SPECIFICALLY NOTED,
3 THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL
4 INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

5 THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN
6 ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE
7 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT
8 NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES
9 LAWS OR OTHER LAWS GOVERNING DISCLOSURE OUTSIDE THE CONTEXT
10 OF CHAPTER 11. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER
11 APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE
12 COMMISSION (THE "SEC") NOR ANY STATE AGENCY, NOR HAS THE SEC
13 NOR ANY STATE AGENCY PASSED UPON THE ACCURACY OR ADEQUACY
14 OF THE STATEMENTS CONTAINED HEREIN.

15 THE APPROVAL OF THE DISCLOSURE STATEMENT BY THE
16 BANKRUPTCY COURT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE
17 BANKRUPTCY COURT OF THE PLAN OR A GUARANTY OF THE ACCURACY
18 AND COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

19 **I. INTRODUCTION**

20 This disclosure statement (defined herein as the "Disclosure Statement," including
21 any modifications hereto), is filed in support of the plan of reorganization (defined herein
22 as the "Plan," including any modifications hereto), pursuant to the provisions of 11 U.S.C.
23 § 1101, *et seq.*, by The Official Committee of Investors ("Investors Committee"), which is
24 a party in interest in the above-entitled Chapter 11 case of Mortgages Ltd. ("ML" or the
25 "Debtor"). The Plan is attached to the Disclosure Statement as Exhibit "A". The purpose
26 of this Disclosure Statement and Exhibits, the accompanying Ballots and related

1 materials, is to solicit acceptances of the Investors Committee's Plan from impaired
2 Creditors, Investors, Borrowers and Equity Interest Holder.

3 The Investors Committee believes the Plan is in the best interests of the Creditors,
4 Investors, Borrowers and Equity Interest Holder and encourages all parties to return your
5 ballot and **vote to accept** the Investors Committee's Plan.

6 **II. SUMMARY OF PLAN**

7 The Investors Committee's Plan accomplishes five major goals.

8 **A. A Liquidating Trust to pursue Causes of Action and Avoidance Actions**
9 **and to Liquidate Debtor's Non-Loan Assets.**

10 Upon the Effective Date of the Plan, a Liquidating Trust is set up and all the
11 Debtor's Non-Loan Assets are transferred to the Liquidating Trust. A Liquidating Trustee
12 will be tasked with selling the Debtor's real estate and collecting two note receivables
13 previously owned by the Debtor which have been transferred to the Liquidating Trust. The
14 Liquidating Trustee will also be tasked with pursuing all of the Debtor's Causes of Action
15 and Avoidance Actions against third parties. The Liquidating Trust may employ counsel
16 to pursue law suits and brokers to sell or refinance the real property. The Creditors,
17 RBLLC and the Investors will have beneficial interests in the Liquidating Trust and shall
18 be entitled to distributions. In addition, the Liquidating Trustee shall be accountable to
19 and must obtain the consent of a Trust Board, which shall be made up of people selected
20 by the Unsecured Creditors Committee, Investors Committee, and RBLLC. The
21 Unsecured Creditors Committee will select one Trust Board member. RBLLC will select
22 one Trust Board member. The Investors Committee will select the remaining three Trust
23 Board members and the Liquidating Trustee. The Investors Committee will set up a
24 selection process to seek out candidates for Trust Board membership and the Liquidating
25 Trustee position and will interview candidates before making decisions.
26

1 **B. Settlement of Major Bankruptcy Issues, Rather than**
2 **Continued Litigation.**

3 The Plan settles, rather than litigates at great time, expense and risk, major issues in
4 the Case. The major issues to be settled include such issues as: (1) the validity of
5 RBLLC's security interest in the Debtor's Loan Assets which will be transferred to
6 RBLLC in satisfaction of a portion of its debt; (2) the acknowledgment of the ownership
7 of the fractional interests in the Notes and Deeds of Trust by the Investors; (3) the
8 allowance of Investor Damages by the Investors and participation of those unsecured
9 claims in the Liquidating Trust; (4) the sharing of RBLLC's Collateral with the Unsecured
10 Creditors (excluding the Investors, Borrowers and RBLLC Claims) to allow a greater
11 recovery for Unsecured Creditors; (5) the settlement of Avoidance Actions and Causes of
12 Action against Investors (excluding Insiders) and RBLLC; and (6) if not already
13 approved, the settlement between the VTL Fund and the MP Funds.

14 **C. The Limited Continued Operations of a Reorganized Debtor.**

15 The Debtor's existing stock will be cancelled and extinguished. New stock will be
16 issued to the Liquidating Trust. The Reorganized Debtor, which will be renamed ML
17 Servicing Co., Inc., will be owned, controlled and operated by the Liquidating Trust, but
18 will continue to provide loan servicing and litigation support to both the Liquidating Trust
19 and the Loan LLCs. The Reorganized Debtor will not make or originate new loans. An
20 operating budget will be adopted and a new servicing agreement will be entered into for
21 2009 whereby the costs of operations of the Reorganized Debtor can be paid on a break
22 even basis. Some of the current employees of Debtor will be retained in the Reorganized
23 Debtor as employees or consultants and may be paid retention bonuses to stay with the
24 Reorganized Debtor. The institutional memory and experience of the current employees
25 such as George Everette and Chris Olson, as well as the up and running computer systems
26 and software programs, will be used to service the Loans, provide litigation support and

1 make claims distributions under the supervision of the Reorganized Debtor and the
2 Liquidating Trust.

3 **D. Investor-controlled and professionally-managed workout and collection**
4 **of the Loans.**

5 The fractional interests in the Notes and Deeds of Trust will be transferred to newly
6 formed Loan LLCs so that 100% of a loan can be owned by and administered by a limited
7 liability company set up just for that loan. Each Pass-Through Investor, the MP Funds and
8 RBLLC (as owner of the Debtor's fractional interest) will transfer their fractional
9 ownership interests in the Note and Deed of Trust to the new applicable Loan LLC set up
10 for that loan (*i.e.*, Centerpoint Loan LLC). There may be as many as 60 Loan LLCs or
11 possible fewer with only 47 Loan LLCs. The manager for each will be a newly formed
12 ML Manager LLC. The Board of Managers will be 5 investors with experience and
13 credentials in lending or real estate or other businesses. One Board member will be
14 selected initially by RBLLC. One Board member will be selected by the Revolving
15 Opportunity investors. Three Board members will be selected initially by the Investors
16 Committee. (Two of the three will initially be MP Fund Investors.) The Investors
17 Committee will establish a process for selection, seeking out and interviewing candidates.
18 In addition to using the Reorganized Debtor for servicing the loans and providing support
19 services, the Board of Managers for the ML Manager LLC may employ one or more
20 professional portfolio or asset managers to provide expertise on workouts of the loans and
21 the collection of the maximum amount from the Borrowers and may hire counsel where
22 needed and appropriate. The Reorganized Debtor will not do the workout or settlements or
23 foreclosures on the Loans but will assist the ML Manager LLC and its portfolio or asset
24 ,managers as requested. All Major Decisions on a Loan (such as the sale of the loan, the
25 refinancing of the loan, any settlements or loan modifications affecting major terms) must
26 be approved by a written vote of a majority in dollar amount of the members of the

1 applicable Loan LLC. There will be investor control but there will also be professional
2 management of the loans and workouts. Borrowers will have one Loan LLC, managed by
3 ML Manager LLC, to work with rather than hundreds of investors.

4 **E. Confirmation of Plan that provides fair and equitable treatment of all**
5 **of the Claims and Classes.**

6 The Plan attempts to classify all the Claims of the Estate and to provide for
7 treatment that is fair and equitable. The Plan divides the Claims and Classes into separate
8 categories and sets forth the treatment for each one. The Claims and Classes are:

9 Administrative Claims

10 Priority Tax Claims

11 Class 1 — Priority Non-Tax Claims

12 Class 2 — Secured Tax Claims

13 Class 3 — Stratera Secured Claims

14 Class 4 — Artemis Secured Claims

15 Class 5 — Arizona Bank Secured Claims

16 Class 6 — Mechanics Lien Claims and Other Miscellaneous Secured Claims

17 Class 7 — RBLLC Secured Claims

18 Class 8 — MP Funds and MP Fund Investors Claims

19 Class 9 — VTL Fund Claims

20 Class 10 — Pass-Through Investors Claims

21 Class 11 — General Unsecured Creditor Claims

22 Class 12 — Borrowers Claims

23 Class 13 — Equity Interest

24 **III. THE CONFIRMATION PROCESS**

25 There are two stages to the Plan approval process. The first stage is the Disclosure
26 Statement process and the second stage is the Plan confirmation process. In the first stage,

1 the Investors Committee prepared and filed a Disclosure Statement. The Bankruptcy
2 Court set a hearing for February __, 2009 at __ o'clock __.m. The Bankruptcy Court also
3 set February __, 2009 as the last date by which objections were to be filed with the Clerk
4 and served on the Attorneys for the Investors Committee. A Notice with these dates was
5 sent out to all parties in interest. At the Disclosure Statement hearing, the Bankruptcy
6 Court looks at the objections and determines whether the Disclosure Statement for the
7 Investor Committee's Plan provides adequate information for the holders of Claims to
8 vote on the Plan. If changes are needed the Bankruptcy Court will instruct the Investors
9 Committee to make changes and additions. Then the Bankruptcy Court approves the
10 adequacy of the Disclosure Statement and allows the Investors Committee to proceed to
11 the second stage.

12 In the second stage the Investors Committee will mail out to all parties in interest
13 the Order Approving the Disclosure Statement, the notice of the hearing on confirmation
14 of the Plan and the deadline for objections, the appropriate ballots and a copy of the
15 Disclosure Statement, Plan and all exhibits. Each holder of a Claim that is entitled to vote
16 may sign and return their Ballot to the attorneys for the Investors Committee. A voting
17 deadline will be set by which all Ballots have to be returned to the attorneys for the
18 Investors Committee. The Investors Committee will tally the Ballots and file a report
19 with the Clerk indicating which Classes accepted or rejected the Plan. There will be a
20 deadline by which objectors must file and serve objections to the Plan. At the
21 Confirmation hearing the Bankruptcy Court will review the objections and determine if he
22 needs to take evidence and if so then a date for the evidentiary hearing will be set. At the
23 conclusion of the confirmation hearing, the Bankruptcy Court will either approve the
24 Investors Committee Plan or not. If it is approved then the Investors Committee intends to
25 try and consummate and implement the Plan fairly promptly. That date is called the
26 Effective Date.

1 **IV. BACKGROUND AND EVENTS LEADING TO THE**
2 **BANKRUPTCY FILING**

3 The facts set forth in this Background and Events Leading to the Bankruptcy Filing
4 are based solely on the pleadings filed by the Debtor and its counsel in the Bankruptcy
5 Case and on other publicly available information and records.

6 In the Declaration of Richard Feldheim, the President of Debtor, (Docket Number
7 315, filed on August 6, 2008), Mr. Feldheim stated that prior to the commencement of the
8 Bankruptcy Debtor's acted as a full service private lender. He stated that through its
9 licensed broker dealer, Mortgages Ltd. Securities, Debtor received money raised from
10 investors for placement into loans secured by real estate located in Arizona. The Debtor
11 also used some of its own funds for loans that it originated. The Debtor underwrote loans
12 for commercial, industrial and residential properties for acquisition, entitlement,
13 development, construction and investment. All of the Debtor's loans were intended to be
14 short term loans secured by real estate, including multifamily, residential projects, office
15 buildings and mixed use projects within Arizona.

16 According to Mr. Feldheim's Declaration, prior to the commencement of the
17 Bankruptcy, the Debtor had been in business for over forty years. Until his death, the
18 Debtor was operated under the direction of Scott M. Coles who served as the Debtor's
19 chairman and chief operating officer from November 1, 1992 until his death on June 2,
20 2008. The sole shareholder of the Debtor is a trust created by Mr. Coles. The trustee of
21 that trust is currently Gerald Smith. The Directors at the time of the Bankruptcy were the
22 principal executive officers, Chris Olson, Laura Martini and George Everette. After the
23 Bankruptcy was filed, Laura Martini resigned as President and was replaced by Mr.
24 Feldheim. She also stepped down as a Director. No one was named to replace her as a
25 Director.

26 According to Mr. Feldheim's Declaration, prior to the commencement of the

1 Bankruptcy Case, the Debtor held a mortgage banking license in the state of Arizona. The
2 license is subject to regulation and oversight by the Arizona Department of Financial
3 Institutions (“ADFI”). ADFI has been reviewing and auditing the Debtor. No public
4 report has been issued. Other regulator investigations were commenced, including one by
5 the Securities and Exchange Commission (“SEC”). No public report has been issued.

6 As of the Petition Date, the Debtor had approximately 66 real estate loans on real
7 property in Arizona for which it was the servicing agent totaling approximately \$894
8 million. According to Mr. Feldheim’s Declaration, a portion of the loans were made
9 directly on behalf of the Debtor and investors, where the Debtor and its investors received
10 direct, “pass-through” fractional loan and lien interests in the real estate collateral
11 securing the loan. As stated by Mr. Feldheim, each pass-through investor acquired an
12 interest in the loan and signed an agency agreement, among other documents, which
13 appointed the Debtor as their agent. The pass-through programs used by the Debtor were
14 the Revolving Opportunity Loan Program, Capital Opportunity Loan Program, Annual
15 Opportunity Loan Program, Opportunity Plus Loan Program, Performance Plus Loan
16 Program, or other similar programs. According to the Debtor’s Books and Records and
17 Financial Statements, the fractional interests of the Pass-Through investors in the loans
18 and liens on real estate collateral belong to and are the property of the Pass-Through
19 investors, not to the Debtor. Debtor may own a fractional interest in some of the same
20 loans in its own name and those are reflected on the Books and Records.

21 In addition, Mr. Feldheim pointed out that fractional interests in loans and lien
22 interests in real estate collateral were also purchased by the MP Funds where investors
23 pooled their money. As stated in his Declaration, at the time of the filing of the
24 Bankruptcy, there were 9 MP Funds—MP122009 LLC (known as MP9), MP062011 LLC
25 (known as MP10), MP 122030 LLC (known as MP11), Mortgages Ltd. Opportunity Fund
26 MP12 LLC (known as MP12), Mortgages Ltd. Opportunity Fund MP13 LLC (known as

1 MP13), Mortgages Ltd. Opportunity Funds MP14 LLC (known as MP14), Mortgages Ltd.
2 Opportunity Fund MP15 LLC (known as MP15), Mortgages Ltd. Opportunity Fund MP16
3 LLC (known as MP16), and Mortgages Ltd. Opportunity Fund MP17 (known as MP17).
4 Each fund is a separate Arizona limited liability company and the Debtor is the sole
5 manager and the investors are holders of membership interests in the MP Funds.
6 According to the Debtor's Books and Records and Financial Statements, the fractional
7 interests of the MP Funds in the loans and liens on real estate collateral belong to and are
8 the property of the MP Funds, not to the Debtor. Debtor may own a fractional interest in
9 some of the same loans in its own name and those are reflected on the Books and Records.

10 Attached as Exhibit "B" is a listing of each of the Borrower's Loans and the
11 amount owned by the Pass-Through Investors, the each of the MP Funds, RBLLC and the
12 Debtor (which is subject to RBLLC's security interest).

13 As stated by Mr. Feldheim in his Declaration, a small number of borrowers alleged
14 that the Debtor had defaulted on its obligations to borrowers on their loan commitments
15 and obligations to fund. They asserted offsets and large lender liability claims against the
16 Debtor. One of the borrowers filed suit in Maricopa County Superior Court which was
17 after the Bankruptcy removed to Bankruptcy Court. Certain of the borrowers filed an
18 involuntary Chapter 7 bankruptcy petition against the Debtor on June 20, 2008. The
19 Debtor then decided to convert the bankruptcy to a voluntary Chapter 11 case on June 24,
20 2008.

21 **V. DESCRIPTION OF THE DEBTOR'S ASSETS AND LIABILITIES**

22 The Debtor's Schedules of Assets and Liabilities (Docket Number 198, filed July
23 18, 2008) (the "Schedules") and Statement of Affairs (Docket Number, 199 filed July 18,
24 2008) (the "Statement of Affairs") are attached to the Disclosure Statement as Exhibit
25 "C". They are signed under penalty of perjury by the Debtor's Chief Financial Officer
26 Chris Olson and Debtor's Vice President and Chief Information Officer George Everette

1 on July 18, 2008. Unless provided otherwise, the basis for the Investors Committee's
2 disclosures herein are the Debtor's pleadings, Schedules, and Statement of Affairs and
3 various proofs of claims.

4 **A. Assets of Debtor**

5 The assets of the Debtor consist primarily of the Debtor's fractional interests in
6 certain loans and liens of real estate collateral and a small interest in 3 MP Funds. The
7 face value of the fractional interest in the loans and in the 2 MP Funds is approximately
8 \$169 million. The itemized list is included in the Schedules which are attached as Exhibit
9 "C".

10 The Debtor also lists real estate owned (which it had foreclosed on prior to the
11 bankruptcy) with a book value of about \$36.4 million. There are 5 pieces of real estate
12 including 21 acres in Fountain Hills, 40 acres in the Troon development in Scottsdale,
13 property at Central and Highland Avenues in Phoenix, a fractional interest in property on
14 Mummy Mountain, and a partial ownership interest in the property entitled Chateaux on
15 Central in Phoenix (which it obtained by deed in lieu of foreclosure).

16 Debtor also lists that it owns the note receivable from SMC Revocable Trust in the
17 face amount of \$5.5 million. The Debtor also subsequently identified a \$5.76 million note
18 receivable and lien on the River Run Golf Course project in Eager, Arizona. At the time of
19 the Bankruptcy these were the assets listed on the audited financial statement or on
20 Debtor's books and records.

21 The Debtor also lists the Mortgage Servicing Rights with a value of about \$11
22 million. Attached as Exhibit "D" to the Disclosure Statement is the November 2008
23 Monthly Operating Report filed by the Debtor in the Chapter 11 Case which shows their
24 balance sheet as of that date (Docket Number 1229, filed January 7, 2009).

25 The Debtor also has various Causes of Action and Avoidance Actions which can
26 be pursued against third parties. The Statement of Affairs does have a list of transactions

1 which will provide the basis for some of these Causes of Action and Avoidance Actions,
2 including preference claims and fraudulent transfer claims against each person or entity
3 listed on the attached Exhibit "C" or Exhibit "E". Any non-insider receiving a check or
4 payment during the 90 days prior to the Bankruptcy, any insider receiving payments or
5 transfers or property during the 2 years prior to Bankruptcy, and any person or entity that
6 received a transfer during the 2 years prior to Bankruptcy for less than reasonable
7 equivalent value will be a potential target by the Liquidating Trust for an Avoidance
8 Action, including a preference claim or fraudulent transfer claim. Avoidance Actions
9 include all statutory causes of actions preserved for the Debtor under Sections 510, 542,
10 543, 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code.

11 In addition, all Borrowers with Loans serviced by the Debtor including the Loans
12 and Borrowers listed on Exhibit "B" and on the attached Schedules on Exhibit "C", along
13 with all guarantors, will be targets for law suits of the ML Manager LLC and Loan LLCs
14 as the Loans are collected. In addition, the Investors Committee has attempted to list
15 potential defendants for other types of law suits on the attached Exhibit "E", including
16 Debtor's accountants, law firms, former and current officers and directors, affiliates of
17 Debtor, shareholder, etc. Causes of Action will include all rights, claims, torts, liens,
18 liabilities, obligations, actions, causes of action, avoiding powers, proceedings, debts,
19 contracts, judgments, offsets, damages and demands whatsoever in law or equity, whether
20 known or unknown, contingent or otherwise, that the Debtor and its Bankruptcy Estate
21 may have against any Person, including but not limited to any state or federal cause of
22 action or claim against the Scott Coles estate and trusts, SM Coles LLC, Mortgages Ltd.
23 Securities, LLC, Greenberg Traurig, LLP, Mayer Hoffman McCann P.C., and other
24 parties. Causes of Action do not include Avoidance Actions. Failure to list a Cause of
25 Action or Avoidance Action in the Plan or Disclosure Statement does not constitute a
26

1 waiver or release by the Debtor or the Liquidating Trustee of such Cause of Action or
2 Avoidance Action.

3 The Debtor has not provided the Investors Committee with any list or analysis of
4 possible Causes of Action or Avoidance Actions and the Investors Committee has tried to
5 provide enough information on the possible Causes of Action and Avoidance Actions to
6 give potential defendants who are also Creditors or Parties in Interest notice that they may
7 be sued by the Liquidating Trust or the ML Manager LLC or Loans LLCs.

8 **B. Liabilities of Debtor**

9 The Schedules also reflect the liabilities of the Debtor. There are several secured
10 creditors with alleged security interests or liens in the Debtor's collateral. Arizona Bank &
11 Trust asserts it is owed approximately \$6.45 million which it alleges is secured by 21
12 acres in Fountain Hills and the 40 acres in the Troon development in Scottsdale. Artemis
13 Realty Capital alleges it is owed about \$2,070,000 which it alleges is secured by the
14 Central & Highland property in Phoenix. The Artemis loan was sold post petition to
15 Secured Capital Management Co. LLC, an affiliate of Stratera Portfolio Advisors (the DIP
16 financing lender). At the time of the Bankruptcy additional money was also owed to
17 Southwest Value Partners of \$500,000 and which was secured by certain real property and
18 personal property. That amount was paid off under the DIP financing loan.

19 Radical Bunny LLC ("RBLLC") asserts it is owed about \$197 million and asserts it
20 has a security interest in basically all of the Debtor's assets. Most notable is that RBLLC
21 claims a first position lien in the Debtor's fractional interests in the \$167 million of loans
22 and lien collateral. It also asserts that it has a lien in the owned real estate junior to the
23 other secured claims and the note receivables. The Debtor's books and records pre-
24 petition and its audited financial statement list RBLLC as secured. However from time to
25 time in this Bankruptcy case, the Debtor has expressed that it might challenge and
26 disputed the validity of such secured claim and assert that it is unperfected. This dispute is

1 being settled under this Plan.

2 The general unsecured creditors are listed at about \$2,600,000 in the Schedules. A
3 proof of claim bar date was extended to November 21, 2008 for general unsecured claims.
4 The estimated and filed general unsecured claims (excluding RBLLC and the Investors
5 and MP Funds) appear to be approximately \$3 to \$4 million.

6 The deadline for filing claims by Investors, MP Fund and VTL Fund was
7 subsequently extended to January 6, 2009. Investors and the MP Funds have filed proofs
8 of claim as a precaution to preserve any damage claims or deficiency claims they may
9 have against Debtor for breach of fiduciary duty, breach of agency, breach of contract,
10 negligence, gross negligence, misrepresentations, intentional misrepresentations, fraud,
11 etc.

12 Borrowers with unfunded or underfunded loan commitments have filed proofs of
13 claims. They assert an alleged right to setoff the amount of their lender liability claim
14 against the amounts owed by them on their loans with the excess claim being asserted as
15 an unsecured claim against the Debtor. The Borrower's claim in excess of any amount
16 they might offset against the principal and interest owed on their Notes is estimated at
17 zero.

18 A post petition lender to whom the Debtor owes money is Stratera Portfolio
19 Advisors LLC for two post petition debtor in possession financing loans. One debt is a
20 line of credit which currently appears to be approximately \$2.5 million and is a working
21 capital line of credit. This debt is secured by a first lien on the Chateaux property (subject
22 to the valid mechanics liens) and Mummy Mountain lot and junior liens on Troon,
23 Fountain Hills, and Central & Highland properties. It also has a first lien on the River Run
24 Note and the Debtor's interest in one of the Zacher Development Notes. It also has a
25 superpriority administrative expense. The second debt was a loan for advances under the
26 Centerpoint loan to Tempe Land Company. This is secured by the Debtor's interest in the

1 fractional interest in the notes and deed of trust on the Centerpoint Project and a
2 superpriority administrative expense in the approximate amount of \$2.8 million.

3 The Debtor also owes money post petition as an administrative expense to the
4 professionals employed post petition by the Debtor and the Committees. The Investors
5 Committee estimates this number at the confirmation of the Plan to be less than \$7
6 million. A list of the known professional fees is attached as Exhibit "F" to the Disclosure
7 Statement.

8 **VI. EVENTS DURING THE BANKRUPTCY CASE**

9 **A. Involuntary Chapter 7 Petition and Conversion to**
10 **Voluntary Chapter 11**

11 Certain Borrowers filed a chapter 7 involuntary petition against Debtor on June 20,
12 3008. The Debtor made the decision to convert to a voluntary chapter 11 case and on June
13 24, 2008, upon request of the Debtor, the Bankruptcy Court entered an order of
14 conversion to a chapter 11. The Debtor is a debtor and a debtor-in-possession under the
15 Bankruptcy Code and continues to operate its business.

16 **B. Motion to Appoint Trustee or Convert to Chapter 7**

17 Certain Borrowers also filed or joined in a Motion to Appoint a Trustee or to
18 Convert to a Chapter 7 on June 20, 2008 and renewed it on August 12, 2008. Various
19 evidentiary hearings were set that were continued from time to time. The Debtor and the
20 Investors Committee opposed the Motion. Finally after settlements were reached the
21 Borrowers withdrew their Motions.

22 **C. Post Petition Financing Motions**

23 The Debtor filed and withdrew its initial DIP Financing Motion with Southwest
24 Value Partners for \$200 million in the face of significant opposition from the various
25 groups in the Bankruptcy Case. Finally, the Debtor obtained the consent of the objectors
26 and requested and obtained a \$5 million working capital line from Stratera Portfolio

1 Advisors LLC on August 28, 2008. The Order (Docket Number 459, filed August 28,
2 2008) is attached as Exhibit “G” to the Disclosure Statement and contains the terms of the
3 financing and identifies the collateral.

4 In addition, the Debtor requested and obtained a loan from Stratera Portfolio
5 Advisors LLC on an interim basis for \$2.8 million of financing on the Centerpoint project
6 for Tempe Land Company LLC. The financing was secured by a lien on the Debtor’s
7 interest in the Notes and Deed of Trust on the project. The Final hearing and Order were
8 not held and so no Final Order has been entered. The Interim Order (Docket Number 483,
9 filed September 3, 2008) is also attached as Exhibit “G” to the Disclosure Statement and
10 contains the terms of the interim financing.

11 **D. Interim Order Allowing Payment of Interest to Investors**

12 The Bankruptcy Court approved an Amended Interim Order (Docket Number 458,
13 filed on August 28, 2008) which was a compromise by the various parties in the
14 Bankruptcy Case to allow the interest being collected from Borrowers to be paid to the
15 Investors and MP Funds with fractional interests in those Notes and Deeds of Trust. It was
16 subsequently amended to include interest payments to the VTL Investors.

17 **E. Settlements with Certain Borrowers**

18 The Debtor entered into settlements with certain Borrowers which were then
19 noticed out to the Creditors, Investors and Parties in Interest in the Bankruptcy Case. Most
20 of the settlements faced opposition from multiple parties, including the Investors
21 Committee. The settlements which were consented to by the Investors Committee and
22 approved by the Bankruptcy Court involved the following loans: Bisontown, SOJAC,
23 Rightpath Limited Development, Maryland Way Partners, CS 11 Maricopa, CGSR, and
24 CDIG. Motions to approve settlements with Centerpoint (Tempe Land Company) and the
25 Grace Entities were taken off calendar by the Debtor.

26 The Debtor also sought approval of a settlement with University & Ash LLC,

1 Roosevelt Gateway LLC and Roosevelt Gateway II LLC. Various parties opposed the
2 settlement including the Investors Committee, objecting to the settlement because it was
3 unreasonable and not a valid exercise of the Debtor's business judgment and objecting to
4 the scope of the authority of the Debtor under the Agency Agreement and Operating
5 Agreement and Subscription Agreements to exercise such broad authority. After many
6 days of hearing evidence, the Bankruptcy Court entered its order approving the University
7 & Ash settlement as reasonable and a valid exercise of business judgment in light of the
8 lender liability claims against Debtor and ruling that the Debtor was authorized to modify
9 the loan and the terms as requested. However, the Bankruptcy Court did not approve the
10 two Roosevelt Gateway entity settlements, finding them unreasonable and not a valid
11 exercise of business judgment. The Investors Committee and others filed a Notice of
12 Appeal before the United States District Court. The University & Ash settlement has not
13 been consummated and has not close. University & Ash's counsel has expressed an
14 unwillingness of their clients to settle only one matter.

15 **F. Appointment of Committees and Employment of Professionals**

16 The Debtor initially employed Greenberg Traurig LLP as its Bankruptcy Counsel
17 and MCA Consulting LLC as its Financial Advisors. In face of strenuous objection, both
18 firms stepped down. Greenberg Traurig was subsequently employed as Special Counsel
19 for the Debtor on certain matters.

20 Debtor employed and the Court approved employment of Jennings Strouss &
21 Salmon PLC as Bankruptcy counsel for Debtors on July 16, 2008. The Debtor
22 subsequently sought employment of FTI Consulting as its Financial Advisor and the Court
23 approved it on October 15, 2008. The Court also approved employment of Ordinary
24 Course Professionals by the Debtor. The applications to employ various attorneys for
25 employees are pending and have not been approved.

26 On July 10, 2008, the United States Trustee appointed the Unsecured Creditors

1 Committee. The Court approved employment of Nussbaum & Gillis as counsel for the
2 Unsecured Creditors Committee on July 30, 2008 and Sierra Consulting Group as its
3 Financial Advisors.

4 On July 31, 2008, the United States Trustee appointed the Official
5 Committee of Investors. The Court then approved Fennemore Craig as counsel for the
6 Investors Committee and Alvarez and Marsal as Financial Advisors for the Investors
7 Committee.

8 On October 7, 2008, the United States Trustee appointed a Value-to-Loan Fund
9 Committee. The Court then approved Schian Walker PLC as its counsel.

10 **G. Ending of Exclusivity**

11 The Debtor filed several motions to extend exclusivity beyond the original date of
12 October 24, 2008. RBLLC and the Investors Committee filed a motion to end exclusivity
13 and to be allowed to file their own joint plan. Several months of meetings and negotiations
14 took place on a consensual plan. Finally, on January 6, 2008, the Court denied any further
15 extensions of exclusivity and ended the Debtor's exclusive right to file a plan. As a result
16 any party in interest may file a plan of reorganization.

17 **VII. OVERVIEW OF THE PLAN**

18 **A. Definitions**

19 Except as otherwise provided herein, capitalized terms not otherwise defined in this
20 Disclosure Statement have the meanings ascribed to them in the Plan. Any capitalized
21 term used but not otherwise defined in the Plan shall have the meaning given to that term
22 in the Bankruptcy Code. Whenever the context requires, such terms include the plural as
23 well as the singular, the masculine gender includes the feminine gender, and the feminine
24 gender includes the masculine gender.

25 **B. Classification and Treatment of Claims and Interests**

26 **1. No Classification of Administrative Claims and Priority Tax Claims. As**

1 provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and
2 Priority Tax Claims shall not be classified for purposes of voting on, or receiving
3 distributions under, the Plan. All such Claims shall be treated separately as unclassified
4 Claims on the terms set forth herein.

5 **2. Treatment of Administrative Claims.** Allowed Administrative Claims will be
6 paid, in full satisfaction of such Claim: (a) a single Cash payment in the Allowed amount
7 of the Claim on the Effective Date or as soon thereafter as practical from the sale or
8 refinancing of the Debtor's Non-Loan Assets; (b) in the ordinary course of business as
9 said Claim matures; or (c) upon such other less favorable terms as may be agreed upon in
10 writing by the holder of such Claim and the Plan Proponent, or as ordered by the
11 Bankruptcy Court. To the extent not otherwise paid on or before the Effective Date,
12 Allowed Administrative Claims may be paid from the Liquidation Fund as funds become
13 available from the sale or refinancing of the Non-Loan Assets. The Administrative
14 Expenses are estimated to be under \$7 million.

15 **3. Treatment of Priority Tax Claims.** Each holder of an Allowed Priority Tax
16 Claim will be paid, consistent with § 1129(a)(9)(C) of the Bankruptcy Code and in full
17 satisfaction of such holder's Priority Tax Claim: (i) the amount of such holder's Priority
18 Tax Claim, with simple interest at the rate of six percent (6%) per annum (or such other
19 rate as the Bankruptcy Court may determine at the Confirmation Hearing is appropriate),
20 in deferred Cash payments over a period of five (5) years from the Order for Relief Date,
21 to be paid in equal quarterly installments of principal and interest from the Liquidation
22 Fund, provided that: (a) the Liquidating Trust may prepay the balance of any such
23 Priority Tax Claim at any time without penalty; and (b) the treatment of Priority Tax
24 Claims shall not be less favorable than the most favored nonpriority unsecured claim
25 provided for by the Plan; or (ii) such other treatment as may be agreed upon in writing by
26 such holder and the Plan Proponent, as appropriate or ordered by the Bankruptcy Court.

1 The Priority Tax Claims are estimated at zero.

2 **4. Elimination of Claim.** To the extent there are no amounts owing on the
3 Effective Date for any Priority Non-Tax Claims and/or any Priority Tax Claims, such
4 treatment as set forth above will be deemed automatically eliminated from the Plan.

5 **5. Classification and Treatment of Claims and Interests That Are Classified.**
6 For purposes of voting, distributions, and all confirmation matters, except as otherwise
7 provided herein, all Allowed Claims and Interests shall be classified and treated as
8 follows:

9 (a) *Class 1: Priority Non-Tax Claims.* Each holder of a Priority Non-
10 Tax Claim that is an Allowed Claim shall be paid by the Liquidating Trust in full
11 within sixty (60) days after the Effective Date of the Plan out of the Liquidation
12 Fund as funds become available from the sale or refinancing of the Non-Loan
13 Assets. Class 1 is unimpaired under the Plan and, therefore, holders of Allowed
14 Priority Non-Tax Claims shall not be entitled to vote on the Plan and, instead, shall
15 be deemed to have accepted the Plan. The Priority Non-Tax Claims are estimated
16 to be less than \$150,000.

17 (b) *Class 2: Secured Tax Claims.* Each holder of an Allowed Secured
18 Tax Claims will be paid, consistent with § 1129(a)(9)(D) of the Bankruptcy Code
19 and in full satisfaction of such holder's Secured Tax Claims: (i) the amount of such
20 holder's Secured Tax Claims, with simple interest at the rate of six percent (6%)
21 per annum (or such other rate as the Bankruptcy Court may determine at the
22 Confirmation Hearing is appropriate), in deferred Cash payments over a period of
23 five (5) years from the Order for Relief Date, to be paid in equal quarterly
24 installments of principal and interest from the Liquidation Fund, provided that: (a)
25 the Liquidating Trust may prepay the balance of any such Secured Tax Claims at
26 any time without penalty; and (b) the treatment of Secured Tax Claims shall not be

1 less favorable than the most favored nonpriority unsecured claim provided for by
2 the Plan; or (ii) such other treatment as may be agreed upon in writing by such
3 holder and the Plan Proponent, as appropriate or ordered by the Bankruptcy Court.
4 Class 2 is unimpaired by the Plan; consequently, all holders of Allowed Claims in
5 Class 2 are deemed to have accepted the Plan and are not entitled to vote on the
6 Plan. The Secured Tax Claims are estimated to be less than \$100,000.

7 (c) *Class 3: Stratera Secured Claims.* The holder of the Class 3 Stratera
8 Secured Claims will be paid in full on the Effective Date from the proceeds of
9 refinancing or sale of the Debtor's Non-Loan Assets and the refinancing of the
10 Debtor's interest in the Centerpoint Notes and Deed of Trust. Accordingly, the
11 Class 3 Stratera Secured Claims are unimpaired by the Plan, are deemed to have
12 accepted the Plan and are not entitled to vote on the Plan. The Stratera Working
13 Capital Loan is estimated to be \$2.5 million and the Stratera Centerpoint Loan is
14 estimated to be \$2.3 million.

15 (d) *Class 4: Artemis Secured Claim.* The Class 4 Artemis Secured Claim
16 will be Cured, Reinstated and paid in full on the Effective Date from the proceeds
17 of refinancing or sale of the collateral. Accordingly, the Class 4 Artemis Secured
18 Claim is unimpaired by the Plan, is deemed to have accepted the Plan and is not
19 entitled to vote on the Plan. The Artemis Secured Claim is estimated to be
20 \$2,070,000.

21 In the alternative, the Class 4 Artemis Secured Claim will retain its lien
22 against its collateral. From the Effective Date interest will accrue at the non-default
23 contract rate of interest set forth in the Artemis note and will be added to the
24 principal balance. No default interest, late fees or other charges because of the
25 default that occurred prior to the Effective Date shall be allowed. The Class 4
26 Artemis Secured Claim will be paid solely from and to the extent of the proceeds

1 of the sale of the collateral or from the proceeds of refinancing, or if not paid
2 sooner on the maturity date which shall be 10 years from the Effective Date.
3 Accordingly, if not paid on the Effective Date, the Class 4 Artemis Secured Claim
4 is impaired pursuant to the Plan. A vote will be solicited from this Class but
5 counted only if impaired.

6 (e) *Class 5: Arizona Bank Secured Claim.* The Class 5 Arizona Bank
7 Secured Claim will be Cured, Reinstated and paid in full on the Effective Date
8 from the proceeds of refinancing or sale of the collateral. Accordingly, the Class 5
9 Arizona Bank Secured Claim is unimpaired by the Plan, is deemed to have
10 accepted the Plan and is not entitled to vote on the Plan. The Arizona Bank Secured
11 Claim is estimated to be \$6.4 million.

12 In the alternative, the Class 5 Arizona Bank Secured Claim will retain its
13 lien against its collateral. From the Effective Date interest will accrue at the non-
14 default contract rate of interest set forth in the Arizona Bank note and will be added
15 to the principal balance. No default interest, late fees or other charges because of
16 the default that occurred prior to the Effective Date shall be allowed. The Class 5
17 Arizona Bank Secured Claim will be paid solely from and to the extent of the
18 proceeds of the sale of the collateral or from the proceeds of refinancing, or if not
19 paid sooner on the maturity date which shall be 10 years from the Effective Date.
20 Accordingly, if not paid on the Effective Date, the Class 5 Arizona Bank Secured
21 Claim is impaired pursuant to the Plan. A vote will be solicited from this Class but
22 counted only if impaired.

23 (f) *Class 6: Mechanics Liens Claims and Other Miscellaneous Secured*
24 *Claims.* The holder of the Class 6 Mechanics Liens Claims and Other
25 Miscellaneous Secured Claims will retain their liens in the same order of priority as
26 existed on the Petition Date and will be paid from the proceeds of the sale of their

1 collateral or from refinancing as the collateral is sold or refinanced. Accordingly,
2 the Class 6 Mechanics Liens Claims and Other Miscellaneous Secured Claims are
3 unimpaired by the Plan, are deemed to have accepted the Plan and are not entitled
4 to vote on the Plan. The Mechanics Lien Claims against the Debtor's Assets are
5 estimated at \$3 million.

6 (g) *Class 7: RBLLC Secured Claims.* RBLLC will be deemed to be a
7 secured creditor with valid and perfected security interests and Liens in the RBLLC
8 Collateral for the amount of the unpaid principal and interest as of the Petition
9 Date. As of the Effective Date, the RBLLC Notes will be exchanged dollar for
10 dollar for a *pro rata* membership interest in each of the Loan LLCs proportional to
11 the fractional interest of the Debtor in each of the ML Loans. RBLLC will be
12 deemed to have existing liens in the RBLLC Non-Loan Collateral subject to other
13 Secured Claims. On the Effective Date, the Non-Loan Collateral will be transferred
14 to the Liquidation Trust free and clear of any liens of RBLLC. Any potential
15 Avoidance Actions or Causes of Action held by the Estate against RBLLC shall be
16 deemed settled and resolved upon confirmation of the Plan. RBLLC will also have
17 a Class 11 General Unsecured Claim, and will be a beneficiary of the Liquidating
18 Trust to the extent that the unpaid obligations under the RBLLC Notes are not
19 exchanged for a membership interest in a Loan LLC and for the amount of
20 principal owed on the ML Loans (plus accrued and unpaid interest through the
21 Petition Date) that RBLLC does not receive from the Loan LLC after the ML
22 Notes are paid in full or after reasonable collection efforts have been exhausted by
23 the Loan LLC. The Class 7 RBLLC Secured Claims are impaired pursuant to the
24 Plan.

25 As a part of the settlement of the validity of RBLLC security interest,
26 RBLCC shall share with the General Unsecured Creditors (excluding the unsecured

1 claims of any Investors, Borrowers or RBLLC) a pro rata share based on the
2 RBLLC Secured Claim for principal plus accrued unpaid contract interest through
3 the Petition Date (excluding default interest and late fees) of its recovery from its
4 Loan LLC distributions, up to a maximum of five million dollars (\$5,000,000),
5 provided however, that the percentage of recovery of the General Unsecured
6 Creditors from the RBLLC Collateral shall not exceed the percentage of recovery
7 of RBLLC from the RBLLC Collateral.

8 (h) *Class 8: MP Funds and MP Funds Investors' Claims.* The MP Funds
9 will receive new interests under the Plan as follows:

10 On the Effective Date, each of the MP Funds will relinquish its fractional
11 interests in each of the ML Loans and exchange those interests for membership
12 interests in the applicable Loan LLC that holds the applicable ML Loan. The new
13 membership interests given to the MP Fund shall be proportional to the fractional
14 interest of the MP Funds in each of the ML Loans. The MP Funds will continue to
15 exist after the Effective Date and the MP Fund Investors shall continue to hold
16 their membership interests in the MP Funds. The Operating Agreement for each
17 MP Fund will be amended and restated as described in Article VI below and the
18 Manager for each MP Fund will be replaced with a new Manager, the ML Manager
19 LLC. Each MP Fund shall distribute proceeds of the principal and interest
20 payments which it received from the Loan LLC's to the MP Fund Investors.

21 MP Funds will also have a Class 11 General Unsecured Claim, and will be
22 beneficiaries of the Liquidating Trust to the extent of the Investors Damages. The
23 MP Fund Investors shall receive and be paid their Investors Damages through the
24 MP Fund Claim in the Liquidating Trust and shall not have an individual Claim in
25 the Liquidating Trust. Any distribution which the MP Funds receive as
26

1 beneficiaries of the Liquidating Trust shall be distributed by the MP Funds to their
2 MP Fund Investors.

3 Any potential Avoidance Action or Cause of Action held by the Estate
4 against MP Funds or any MP Fund Investor (excluding Insiders) shall be deemed
5 settled and resolved upon confirmation of the Plan. Also the ownership of the
6 fractional interests in ML Notes by the MP Funds shall be deemed settled and
7 resolved upon confirmation of the Plan.

8 The Class 8 MP Funds and MP Fund Investors Claims are impaired under
9 the Plan.

10 (i) *Class 9: VTL Claims.* The VTL Fund will retain its lien in the MP
11 Funds but the repayment of the obligations will be modified and resolved by the
12 VTL Committee and the Investors Committee pursuant to a settlement which shall
13 be filed with and approved by the Court pursuant to the Plan or separately. At the
14 election of the members of Class 9, the VTL Fund may stay in place, in which case
15 the VTL Committee would be permitted to elect a new manager of the VTL Fund
16 and amend and restate their Operating Agreement. The VTL Fund and its members
17 or investors shall not have any Class 11 General Unsecured Claims, and will not be
18 beneficiaries of the Liquidating Trust but shall be paid solely by the MP Funds as
19 modified by the settlement. Any potential Avoidance Action or Cause of Action
20 held by the Estate against the VTL Fund or any of its members or investors
21 (excluding Insiders) shall be deemed settled and resolved upon confirmation of the
22 Plan as a part of the settlement process.

23 The Class 9 VTL Claims are impaired under the Plan.

24 (j) *Class 10: Pass-Through Investors Claims.* On the Effective Date,
25 holders of Class 10 Pass-Through Investors Claims will relinquish their respective
26 fractional interests in each of the ML Loans and exchange those interests for

1 membership interests in the applicable Loan LLC that holds the applicable ML
2 Loan. The new membership interests in the applicable Loan LLC shall be
3 proportional to the fractional interest in the related ML Loan. Holder of Class 10
4 Pass-Through Investors Claims will also have a Class 11 General Unsecured
5 Claim, and will be beneficiaries of the Liquidating Trust to the extent of their
6 Investors Damages as long as they do not exercise the Opt-Out Election. Any
7 potential Avoidance Action and Cause of Actions held by the Estate against the
8 Pass-Through Investors, excluding Insiders, shall be deemed settled and resolved
9 upon confirmation of the Plan as long as they do not exercise the Opt-Out Election
10 for the Liquidating Trust. The Class 10 Pass-Through Investors Claims are
11 impaired under the Plan.

12 (k) *Class 11: General Unsecured Claims.* Holders of Class 11 General
13 Unsecured Claims will be beneficiaries of the Liquidating Trust to be established
14 on the Effective Date of the Plan in accordance with the Plan. Claims and portions
15 thereof that are treated in Class 11 and are beneficiaries of the Liquidating Trust
16 become Channeled Claims unless they choose the Opt-Out Provision under the
17 Plan. The Class 11 General Unsecured Claims are impaired under the Plan.

18 (l) *Class 12: Borrowers' Claims.* The holders of Class 12 Borrowers'
19 Claims, which have been timely asserted in this Bankruptcy Case through an
20 adversary proceeding initiated before the Bankruptcy Court and which has been
21 determined by a Final Order, shall be entitled to setoff the amount of its Allowed
22 Claim against the principal, interest and fees owed on its respective ML Loan. If
23 the Borrower is not determined to have a right of setoff against the ML Loan but is
24 determined to have a Claim then such Claim shall receive and be paid as a Class 11
25 General Unsecured Claim. The Class 12 Borrowers' Claims are unimpaired by the
26 Plan, are deemed to have accepted the Plan and are not entitled to vote on the Plan

1 as Class 12 Claims. Class 12 Borrowers may be divided into separate subclasses in
2 Class 12. The Class 12 Borrower Claims are estimated to be zero.

3 (m) *Class 13: Equity Interests.* As of the Effective Date, all Equity
4 Interests in the Debtor will be canceled and extinguished. Holders of Equity
5 Interests will receive nothing under the Plan and they are deemed to have rejected
6 the Plan.

7 **VIII. MEANS FOR IMPLEMENTATION OF PLAN**

8 **A. The Liquidating Trust.**

9 **1. Creation of Liquidating Trust.** The Debtor’s interest in the Non-Loan Assets
10 will be transferred to the Liquidating Trust as of the Effective Date. The Liquidating
11 Trust is more fully described in Article VI of the Plan and in the Liquidating Trust
12 Agreement. The name of the Liquidating Trust will be the ML Liquidating Trust. A copy
13 of the ML Liquidating Trust Agreement is attached to the Disclosure Statement as Exhibit
14 “H”.

15 **2. Distributions to General Unsecured Creditors.** Distributions to General
16 Unsecured Creditors, including RBLLC, MP Funds and Investors to the extent of their
17 Investors Damages, and other holders of Unsecured Claims will be made by the
18 Liquidating Trust out of the Liquidation Fund in accordance with the terms of the Plan
19 and the Liquidating Trust Agreement. Sufficient reserves and reasonable estimations of
20 Claims shall be established and maintained for each distribution so as to protect the
21 Investors, the MP Funds and RBLLC.

22 General Unsecured Creditors who choose to participate in the Liquidating Trust
23 will waive their right to pursue and will be estopped from pursuing the same targets of
24 Causes of Action and Avoidance Actions as the Liquidating Trust. General Unsecured
25 Creditors who do not want to waive such actions may elect to opt-out of the Liquidating
26

1 Trust by so indicating on their Ballot. See the discussion below under Channeled Claims
2 and Opt-Out Election.

3 **3. Preservation of Debtor's Claims, Demands, Avoidance Actions And Causes**
4 **Of Action.** All claims, demand, Avoidance Actions and Causes of Action held by,
5 through or on behalf of the Debtor and/or the Estate are hereby preserved in full unless
6 otherwise provided by the Plan; and no provision of the Plan shall impair the rights of the
7 Liquidating Trustee with respect to any such claims, demands, Avoidance Actions and
8 Causes of Action, to prosecute or defend against any such preserved claims, demands,
9 Avoidance Actions and Causes of Action.

10 **4. Appointment of Liquidating Trustee.** Prior to the Confirmation Hearing the
11 Plan Proponent will select and disclose the name of the Liquidating Trustee and the
12 Bankruptcy Court will approve the appointment in the Confirmation Order. On the
13 Effective Date, the Liquidating Trustee will be authorized to administer the Liquidating
14 Trust and to take all necessary actions on behalf of the Liquidating Trust in accordance
15 with the Plan and the Liquidating Trust Agreement. The Investors Committee will set up a
16 selection process to seek out candidates for the Liquidating Trustee position and will
17 interview candidates before making a decision.

18 **5. Establishment of Liquidating Trust.** Pursuant to Bankruptcy Code sections
19 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the Bankruptcy Code, the Confirmation Order
20 shall approve the Liquidating Trust Agreement, the establishment of the Liquidating Trust
21 and appointment of the Liquidating Trustee and authorize and direct the Debtor to take all
22 actions necessary to consummate the terms of the Liquidating Trust Agreement and to
23 establish the Liquidating Trust, including the transfer of the Non-Loan Assets to the
24 Liquidating Trust and the issuance of the new stock in the Reorganized Debtor to the
25 Liquidating Trust. The Liquidating Trust shall be deemed established, and the
26 Liquidating Trustee shall be deemed appointed, as of the Effective Date. The Liquidating

1 Trust shall be created and administered solely to implement the Plan. From the Effective
2 Date, the Liquidating Trustee shall be a representative of the Estate, pursuant to
3 Bankruptcy Code Section 1123, appointed for the purposes of, among other things,
4 pursuing the Avoidance Actions and Causes of Action on behalf of the Debtor's Estate.
5 In furtherance of that objective, the Liquidating Trustee shall have the rights of a trustee
6 appointed under Bankruptcy Code Section 1106 as it relates to the Non-Loan Assets. The
7 Liquidating Trust shall have the full power and authority, either in its name or the
8 Debtor's name, to commence, prosecute, settle and abandon any action related to the
9 Avoidance Actions and Causes of Action and/or object to Claims. The Liquidating Trust
10 shall be authorized to retain professionals (which may include Professional Persons), with
11 reasonable professional fees, expenses and costs to be paid out of the assets of the
12 Liquidating Trust.

13 **6. Tax Effect of Transfer.** The transfer of the Non-Loan Assets to the
14 Liquidating Trust shall be treated for federal income tax purposes and any applicable state
15 or local income franchise or gross receipts tax purposes, and for all purposes of the
16 Internal Revenue Code of 1986, as amended, as a transfer to creditors to the extent
17 creditors are beneficiaries of the Liquidating Trust, followed by a deemed transfer from
18 the creditors to the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be
19 treated as the grantors and deemed owners of the Liquidating Trust for federal income tax
20 purposes and any applicable state or local income, franchise or gross receipt tax purposes,
21 and it is intended that the Liquidating Trust be classified as a liquidating trust under
22 Section 301-7701-4 of the Treasury Regulations, as more particularly described in
23 Revenue Procedure 94-34, 1994-2 C.B. 684. The Liquidating Trustee and the
24 beneficiaries of the Liquidating Trust shall value the assets of the Liquidating Trust on a
25 consistent basis and use such valuation for all federal and state tax purposes.

26

1 **7. Funding of Trust.** After payment of the Secured Claims related thereto, the net
2 proceeds of any and all sales or refinancing (private or public) of the Non-Loan Assets
3 collected by the Liquidating Trust (or its designee or agent), shall be placed by the
4 Liquidating Trustee in the Liquidation Fund for payment of the Administrative Expense
5 Claims or Priority Non-Tax Claims, and Unsecured Claims as provided by the Plan. The
6 recoveries from the Avoidance Actions and Causes of Action shall be placed by the
7 Liquidating Trustee in the Liquidation Fund for payment of the Unsecured Claims as
8 provided by the Plan.

9 **8. Power of Trustee and Board Approval.** All transfers of the Non-Loan Assets,
10 including the execution of all contracts of sale, deeds, and other documents necessary to
11 effectuate the Plan and to make payments under the Plan, shall be made by the
12 Liquidating Trustee, on behalf of the Liquidating Trust and in accordance with the
13 Liquidating Trust Agreement. Subject to the approval of the Trust Board, the Liquidating
14 Trustee shall have and be granted the power and authority to list and/or market the Non-
15 Loan Assets for sale (at such prices and for such amounts as determined by the
16 Liquidating Trustee), and refinance the Non-Loan Assets, and the Liquidating Trustee
17 shall also have the power and authority to execute any and all documents (including
18 contracts, deeds, and other documents) necessary to effectuate the Plan, refinance, sell or
19 convey title to the Non-Loan Assets, without the need of further order of the Bankruptcy
20 Court, prosecute, settle or abandon Avoidance Actions, Causes of Action and object to
21 Claims. All actions, whether listed above or not, of the Liquidating Trustee shall be
22 subject to the approval of the Trust Board as set forth in the Liquidating Trust Agreement.
23 In the discharge of its duties, the Liquidating Trustee shall regularly meet with the Trust
24 Board. In the event that the Trust Board and Liquidating Trustee do not agree on any
25 action or items of business, the Trust Board shall have final authority and decision making
26 responsibility and its decision shall govern.

1 **9. Transfer of Non-Loan Assets.** Immediately upon the Effective Date, the
2 Liquidating Trustee shall be assigned or deemed to be assigned all of the Debtor's rights,
3 title and interest in the Non-Loan Assets, free and clear of all Claims, liens, encumbrances
4 and other interests, except as provided in the Plan. The Liquidating Trust shall be granted
5 and shall have exclusive control and possession of the Non-Loan Assets, and the Debtor
6 (and its directors, officers, employees, shareholders and agents) shall, on the Effective
7 Date, or immediately thereafter as is practical (without further hearing or Order of the
8 Bankruptcy Court) peaceably turn over exclusive possession of the Non-Loan Assets to
9 the Liquidating Trust, including all books and records related to the Non-Loan Assets and
10 claims. The Liquidating Trust shall obtain such possession on the Effective Date for the
11 sole purpose of effectuating and/or consummating the Plan. The Liquidating Trust shall
12 be established for the sole purpose of liquidating the Non-Loan Assets, including
13 prosecuting, settling or abandoning the Avoidance Actions and Causes of Action, and
14 making disbursements from the Liquidation Fund for payment of Allowed Claims in
15 accordance with the terms of the Plan.

16 **10. Duration of Trust.** The Liquidating Trust shall not have a term greater than
17 five years from its date of creation, unless extended from time to time pursuant to the
18 terms of the Liquidating Trust Agreement, with the approval of the Bankruptcy Court,
19 solely to implement the Plan. At least twice a year, but only if permitted by the other
20 terms of the Plan and the Liquidating Trust Agreement and with Trust Board approval, the
21 Liquidating Trustee shall distribute the net income of the Liquidating Trust plus all net
22 proceeds and recoveries from the Non-Loan Assets to the Creditors holding Allowed
23 Claims in accordance with the terms of the Plan, provided, however, that the Liquidating
24 Trustee may retain a sufficient amount of net income and net proceeds in the Liquidating
25 Trust that the Liquidating Trustee necessary to maintain the value of the Non-Loan
26 Assets, and to pay the costs and expenses of the Liquidating Trust, including

1 compensation to the Liquidating Trustee and his or her professionals, and the costs and
2 expenses of the Trust Board and its professionals. The Liquidating Trust shall be
3 conservative in establishing reserves and prior to any distribution shall estimate the
4 amount of the Class 11 General Unsecured Claims and establish sufficient reserve
5 amounts needed to protect the Investor Damage Claims for the MP Funds and the Pass-
6 Through Investors and for RBLLC's Claim, which are likely to be contingent and
7 unliquidated for a period of time.

8 **11. Trust Board.** On the Effective Date, the Trust Board will be established and
9 will be comprised of one representative selected by the Unsecured Creditors Committee,
10 one selected by RBLLC, and three selected by the Investors Committee. The Investors
11 Committee will set up a selection process to seek out candidates for Board membership
12 and will interview candidates before making its decisions. After the Effective Date, in the
13 event of any vacancy on the Trust Board, the remaining members of the Trust Board shall
14 fill the vacancy with a Person who is a beneficiary under the Liquidating Trust. All
15 actions to be taken by the Liquidating Trustee with respect to the assets of the Liquidating
16 Trust, including distributions to creditors, the refinancing, sale or abandonment of the
17 Non-Loan Assets, the prosecution, compromise, settlement, or abandonment of any Estate
18 Claim, or the prosecution, compromise, settlement, or abandonment of any objection to
19 Claim, shall require Trust Board approval.

20 **12. Retention of Trust Board Professionals.** The Trust Board may retain and
21 compensate professionals (which may include Professional Persons) to assist the Trust
22 Board in performing its duties and obligations under the Plan and the Liquidating Trust
23 Agreement, on such terms as the Trust Board deems appropriate at the expense of the
24 Liquidating Trust, without Bankruptcy Court approval. Members of the Trust Board shall
25 be entitled to the reimbursement of reasonable expenses incurred in performing their
26 duties under the Plan from the Liquidating Trust.

1 **13. Expenses Incurred on or After the Effective Date.** The amount of any
2 reasonable fees and expenses incurred by the Liquidating Trust or the Trust Board on or
3 after the Effective Date (including, without limitation, reasonable attorney and other
4 professional fees and expenses) shall be paid from funds held in the Liquidating Trust.
5 The Liquidating Trustee shall receive compensation as set forth in the Liquidating Trust
6 Agreement for services rendered and expenses incurred on behalf of the Liquidating Trust
7 and in carrying out his or her duties pursuant to the Plan, which compensation shall be
8 subject to Trust Board review and approval.

9 **14. No Liability of the Trust Board and its Members.** To the maximum extent
10 permitted by law, the Trust Board and its members, representatives, or professionals
11 employed or retained by the Trust Board shall not have or incur liability to any Person for
12 an act taken or omission made in good faith in connection with or related to any action
13 taken or omitted by it pursuant to the discretion, power and authority conferred to it by the
14 Plan, the Confirmation Order or the Liquidating Trust Agreement.

15 **15. Compliance With Tax Requirements.** In connection with the Plan, the
16 Liquidating Trustee shall comply with all withholding and reporting requirements
17 imposed by federal, state, local and foreign taxing authorities and all distributions
18 hereunder shall be subject to such withholding and reporting requirements.

19 **B. The Reorganized Debtor**

20 **1. Structure and Role of Reorganized Debtor.** On the Effective Date, the
21 Articles and Bylaws of the Debtor shall be amended and restated as set forth in Exhibit "I"
22 of the Disclosure Statement. The new Reorganized Debtor will be renamed ML Servicing
23 Co., Inc. The Existing stock or shares and Equity Interests shall be extinguished. New
24 stock in Reorganized Debtor shall be issued to the Liquidating Trust. The old Board of
25 Directors and Officers shall be terminated and a new Board of Directors shall be
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1 appointed and composed of the five Trust Board members appointed for the Liquidating
2 Trust Board. The names of the new Board of Directors will be disclosed prior to the
3 Confirmation Hearing and shall be confirmed and approved by the Bankruptcy Court in
4 the Confirmation Order.

5 The Reorganized Debtor shall enter into a new servicing agreement with the ML
6 Manager LLC Board of Managers. The form of servicing agreement and the initial terms
7 are set forth in Exhibit "J" to the Disclosure Statement. Such servicing agreement shall
8 not be assignable, transferable or otherwise sold or disposed of by Reorganized Debtor or
9 the Liquidating Trust. The amount of the servicing fee shall not exceed the cost of
10 operations, which budget and amount shall be approved by the ML Manager LLC Board
11 of Managers and the Trust Board. The initial operating funds for the Reorganized Debtor
12 shall be advanced by the Liquidating Trust from the Liquidation Funds.

14 It is contemplated that the Reorganized Debtor will hire former employees of
15 Debtor, however all such terms of employment, salaries and retention bonuses shall be
16 disclosed prior to the Confirmation Hearing, and shall be approved by the Plan Proponent
17 prior to the Effective Date, and by the Trust Board after the Effective Date. Since all Non-
18 Loan Assets will be transferred to the Liquidating Trust on the Effective Date, the
19 Liquidating Trust may license or lease the necessary assets for the Reorganized Debtor as
20 the Liquidating Trust deems appropriate to perform the servicing agreement. To the
21 extent the Reorganized Debtor seeks to provide loan services to third parties using such
22 assets and employees, such decision must be approved jointly by the Trust Board and the
23 ML Manager LLC Board of Managers.

25 **2. Post-Confirmation Officers and Directors.** The senior executive officers and
26 directors of the Debtor that have served prior to the Effective Date shall not continue to

1 serve from and after the Effective Date, however, certain officers and directors may
2 continued to be employed by the Reorganized Debtor as employees or consultants to
3 operate the Reorganized Debtor and might be titled as officers of the Reorganized Debtor.
4 The list of such employees, their titles and compensation with the Reorganized Debtor
5 shall be filed with the Bankruptcy Court prior to the Confirmation Hearing.

6 **C. The Settlements**

7 **1. Settlements Effectuated by the Plan Confirmation.** Confirmation of the Plan
8 shall effectuate and approve the settlement of all causes of actions and disputes and legal
9 issues as contained herein, including but not limited to, (1) the validity of the security
10 interest of RBLLC in the RBLLC Collateral, (2) the acknowledgment of the ownership of
11 the ML Notes and ML Deeds of Trust by the MP Funds and Pass-Through Investors, (3)
12 the settlement of the Avoidance Actions and Causes of Action as against RBLLC and the
13 Investors (excluding Insiders), (4) the sharing of RBLLC Collateral with the non-RBLLC,
14 non-Borrower, and non-Investor General Unsecured Claimants, as set forth in Section
15 3.6(g) of the Plan, (5) if not already approved, the settlement between the VTL Fund and
16 the MP Funds, and (6) the allowance of Investor Damages by the Investors as unsecured
17 Allowed Claims in the Liquidating Trust. Such settlements shall be consummated and
18 effective on the Effective Date.

19 **D. The Loan LLCs and ML Manager LLC**

20 **1. Creation of Loan LLCs.** Pursuant to sections 1123, 1141 and 1145 of the
21 Bankruptcy Code, prior to the Effective Date, a separate Loan LLC will be formed to hold
22 each of the ML Loans and the ML Loan Documents associated with that ML Loan,
23 including the ML Note and ML Deed of Trust. On the Effective Date, 100% of the
24 fractional interests of each of the ML Loans, including all ML Loan Documents related to
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1 such ML Loan, will be transferred to the respective Loan LLC. Upon such transfer, each
2 Loan LLC shall own such ML Loan Documents free and clear of all claims of any
3 Persons, except for certain setoff Claims (if any) of the Borrower under such ML Loan as
4 Allowed and determined by the Bankruptcy Court and as provided for as a Class 12
5 Borrowers' Claim.

6 **2. Membership Interest in Loan LLCs.** On the Effective Date membership
7 interests in each applicable Loan LLC will be issued to RBLLC, the Pass-Through
8 Investors and the MP Funds, in proportion to their respective fractional interests in a
9 particular ML Loan and related ML Loan Documents, including the ML Deed of Trust.

10 **3. Governance of Loan LLCs.** Each Loan LLC will operate pursuant to a
11 separate operating agreement in the form of Exhibit "K" to the Disclosure Statement. The
12 Manager of each Loan LLC shall be the ML Manager LLC

13 **4. Governance of MP Funds.** On the Effective Date, the form of the Operating
14 Agreement of each MP Funds shall be amended and restated as provided in Exhibit "L" to
15 the Disclosure Statement and ML Manager LLC shall become the new Manager for each
16 MP Fund.

17 **5. Investor and MP Fund Agreements and Contracts.** Upon the occurrence of
18 the Effective Date and after establishment of the Loan LLCs and upon the transfer of ML
19 Loans to those Loan LLCs, all existing agencies, powers of attorney, servicing, and
20 related contracts between Investors or the MP Funds and ML will be terminated or
21 pursuant to a Court Order shall be transferred and deemed assigned to the ML Manager
22 LLC, and unless assigned and transferred, all rights and obligations associated with such
23 contracts will be extinguished or transferred. Possession of the original ML Notes,
24 endorsements, ML Deeds of Trust and all other ML Loan Documents shall be transferred
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1 to the ML Manager LLC as the Manager for the Loan LLCs. ML Manager may allow the
2 Reorganized Debtor as the initial servicing agent to hold the ML Loan Documents on its
3 behalf.

4 **6. Creation and Governance of ML Manager LLC.** Prior to the Effective Date,
5 ML Manager LLC will be formed to be the Manager of each Loan LLC and each MP
6 Fund, pursuant to an operating agreement in the form of Exhibit "M" to the Disclosure
7 Statement. The Confirmation Order shall confirm and appoint the five-member Board of
8 Managers for ML Manager LLC, who shall all be Investors. One Board member shall be
9 selected by RBLLC, one shall be selected by the Revolving Opportunity Investors and
10 three shall be selected by the Investors Committee (two of whom shall be MP Fund
11 Investors). The Board of Manager members' names will be disclosed prior to the
12 Disclosure Statement Hearing. ML Manager LLC will be operated pursuant to its
13 operating agreement. In order to service and manage the Loan LLC Loans it is anticipated
14 that ML Manager LLC will enter into independent contracts, hire one or more
15 professional asset managers or companies, contract with the servicing agent, employ
16 counsel and other professionals, among other things. On the Effective Date, all servicing
17 fees, interest spread, default interest, impounds, extension fees and other moneys which
18 were to be received by the Debtor relating to the ML Loans, shall be transferred to the
19 applicable Loan LLCs from which the fees or interest derived. For the year 2009, the
20 initial servicing agent shall be the Reorganized Debtor as set forth in Section 4.4 of the
21 Plan.
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24 **7. Distributions from Loan LLCs.** Each Loan LLC will distribute funds to its
25 members pro rata based upon their respective membership percentages in such Loan LLC
26 as set forth in the operating agreement for each of the Loan LLCs. When the MP Funds

1 receive any distribution from the Loan LLCs, they will distribute such funds to their
2 respective investors.

3 **E. Effect of Confirmation and Injunctions and Other Provisions**

4 **1. Discharge, Injunction and Exculpation.** The Plan provides that, except as
5 may be specifically provided otherwise in the Confirmation Order or in the Plan, the
6 rights afforded under the Plan and the treatment of Claims and Interests under the Plan
7 shall be in exchange for and in complete satisfaction, discharge and release of all Claims
8 and termination of all Claims and Interests, including all principal and any interest
9 accrued on Claims from the Order for Relief Date.

10 Confirmation of the Plan shall (a) discharge the Debtor from all claims or other
11 debts, liabilities or obligations of every kind and nature that arose in whole or in part
12 before the Effective Date, and all debts of the kind specified in Bankruptcy Code §
13 502(g), (h) or (i), whether or not a proof of Claim based on such debt is filed or deemed
14 filed pursuant to Bankruptcy Code § 501, a Claim based on such debt is allowed pursuant
15 to Bankruptcy Code § 502 of the Bankruptcy Code, or the holder of a Claim based on
16 such debt has accepted the Plan; and (b) terminate all Interests and other rights of holders
17 of Interests. The Confirmation Order shall permanently enjoin all persons from taking
18 any actions against the Debtor to enforce or collect any Claim or Interest unless provided
19 for in the Plan.
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21 In addition, pursuant to the Plan, the Debtor, the Committees, the Plan Proponents
22 and any of its respective officers, directors, employees, members, counsel, accountants,
23 consultants, other approved professionals, or agents shall not have or incur any liability,
24 except for liability based upon willful misconduct, to a holder of a Claim or Interest for
25 any act or omission in connection with, or arising out of, the pursuit of confirmation of the
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1 Plan, the consummation of the Plan, the administration of the Plan, the administration of
2 the Estate, or the distribution of property under the Plan, and in all respects shall be
3 entitled to rely upon the advice of counsel with respect to their duties and responsibilities
4 under the Plan.

5 **2. Binding Effect of Plan.** The provisions of this Plan and the attached
6 Agreements shall bind the Debtor, the Reorganized Debtor, the Liquidating Trust, the
7 Committees, RBLLC, Borrowers, Creditors, and any Equity Holder, and shall bind any
8 Person asserting a Claim against the Debtor or an Equity Interest in the Debtor, whether or
9 not the Claim or interest arose before or after the Petition Date or the Effective Date,
10 whether or not the Claim or Interest Is impaired, and whether or not such Person has
11 accepted the Plan. Except as provided for in the Plan, the Non Loan Assets of the Debtor
12 vest in the Liquidating Trust and the Loan Assets of the Debtor vest in RBLLC free and
13 clear of liens, Claims and encumbrances and Equity Interests.

14 **3. Channeling of Claims.** The rights afforded under the Plan and the treatment of
15 all Claims and Interests (including post-Effective Date Claims) as provided for in the Plan
16 shall be the sole and exclusive remedy on account of all Claims and Equity Interests
17 (including post-Effective Date Claims) of any nature whatsoever against the Debtor, the
18 Reorganized Debtor, the Liquidating Trust, the ML Loans, the Investors, and RBLLC.
19 Any and all claims or causes of action asserted against such parties arising out of or
20 related to the Plan, the Reorganized Debtor, RBLLC, Investors, or the Liquidating Trust
21 or the Committees shall be commenced only in the Bankruptcy Court.

22 **4. Opt-out of Liquidating Trust.** Those Claims and portions of Claims that are
23 treated as General Unsecured Claims and beneficiaries of the Liquidating Trust under the
24 Plan that want to pursue their independent and direct claims and causes of action against
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1 third parties that will be targets of the Liquidating Trust may exercise the Opt-Out
2 Election on the Ballot. Holders of General Unsecured Claims will have the option either
3 to be treated under the Plan and be included in the Liquidating Trust, in which case they
4 will be entitled to recovery from the proceeds of the Liquidating Trust, or they may pursue
5 their Claims independently against third parties that are targets of the Liquidating Trust, in
6 which case they must make the Opt-Out Election on the Ballot and will not be entitled to
7 participate in distributions from the Liquidating Trust.

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9 **5. Exemption from Transfer Taxes.** Pursuant to 11 U.S.C. §1146(a), the
10 issuance, transfer, exchange of notes or equity securities under the Plan, the creation of
11 any mortgage, deed of trust or other security interest, the making or assignment of any
12 lease or sub-lease or the making or delivery of any deed or other instrument of transfer
13 under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale
14 or assignment executed in connection with any of the transactions contemplated under the
15 Plan shall not be subject to any stamp, real estate transfer, speculative builder, transaction
16 privilege, mortgage recording or other similar tax.

17 **6. Exemptions from Securities Laws Registration and Considerations.** Section
18 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of
19 reorganization from registration under section 5 of the Securities Act and state laws if
20 three principal requirements are satisfied: (i) the securities must be offered and sold under
21 a plan of reorganization and must be securities of the debtor, of an affiliate participating in
22 a joint plan with the debtor, or of a successor to the debtor under the plan; (ii) the
23 recipients of the securities must hold Claims against or interests in the debtor; and (iii) the
24 securities must be issued in exchange (or principally in exchange) for the recipient's
25 Claims against or interests in the debtor. The Plan Proponent believes that the offer and
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1 sale of interests in the Loan LLCs under the Plan satisfies the requirements of Section
2 1145(a)(1) of the Bankruptcy Code and the membership interests in the Loan LLCs are,
3 therefore, exempt from registration under the Securities Act and state securities laws.

4 To the extent that the membership interests in the Loan LLCs are issued under the
5 Plan and are covered by Section 1145(a)(1) of the Bankruptcy Code, such membership
6 interest may be resold by the holders thereof without registration unless, as more fully
7 described below, the holder is an “underwriter” with respect to such securities. Section
8 1145(b)(1) of the Bankruptcy Code sets forth the definition of “underwriter”. Whether or
9 not any particular person would be deemed to be an “underwriter” with respect to a
10 membership interest in a Loan LLC to be issued pursuant to the Plan would depend upon
11 various facts and circumstances applicable to that person. Accordingly, the Plan
12 Proponent express no view as to whether any particular person receiving a membership
13 interest in a Loan LLC under the Plan would be an “underwriter” with respect to such
14 membership interest in a Loan LLC. The Plan Proponent therefore recommend that
15 potential recipients of the membership interests in the Loan LLCs consult their own
16 counsel concerning whether they may freely trade their interests without compliance with
17 the Securities Act, the Exchange Act or similar state and federal laws.

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19 **7. Quarterly Fees.** The quarterly fees required by 28 U.S.C. § 1930(a)(6) will be
20 paid by the Liquidating Trust to, and reports will be filed with, the Office of the United
21 States Trustee until application is made for entry of a final decree. Application for a final
22 decree can be made when the Plan has been fully administered, which for purposes of the
23 Plan shall mean when the Plan has been substantially consummated, as that term is
24 defined in § 1101(2) of the Bankruptcy Code.
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1 **F. Financing the Plan and Operations**

2 In order to consummate the Plan, the Investors Committee will obtain exit
3 financing. Prior to the Confirmation Hearing the Investors Committee will disclose the
4 term sheet of the lender providing such financing. The Investors Committee will obtain
5 financing in a sufficient amount to take out the Stratera Secured Claims, the Priority Non-
6 Tax Claims and the Administrative Claims.

7 In addition, the Investors Committee will obtain sufficient financing to provide
8 working capital for the operations of the Reorganized Debtor and the Liquidating Trust
9 for 2009. The collateral to be posted for such financing will include all the Non-Loan
10 Assets. In addition the ML Manager LLC will be looking for financing for the Loan LLCs
11 to fund the servicing and other special needs of the Loan LLCs. Such financing could
12 come in the form of additional capital contributions, loans by members of a Loan LLC to
13 the Loan LLC, use of the interest spread and extensions fees (not the regular principal and
14 interest payable to Investors) which are payable to the Loan LLC for these purposes for
15 the Loan LLC, or from a third-party commercial lender. The collateral and terms for
16 such financing will be disclosed prior to the Confirmation Hearing.

17 The cash needs of the Reorganized Debtor, the Liquidating Trust and Loan LLCs
18 are estimated on the attached Exhibit "N" to the Disclosure Statement. These exhibits are
19 only estimates and are based on the limited information available to the Investors
20 Committee's financial advisor, and may be updated, supplemented or revised prior to the
21 Confirmation hearing.

22 **IX. CERTAIN TAX CONSEQUENCES OF THE PLAN**

23 THE INVESTORS COMMITTEE CANNOT AND DOES NOT GUARANTY
24 THE TAX CONSEQUENCES TO ANY PERSON OR PARTY CAUSED BY THE
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1 TERMS OF THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT
2 CONSTITUTES TAX ADVICE TO ANY PERSON OR PARTY. NO
3 REPRESENTATIONS REGARDING THE EFFECT OF IMPLEMENTATION OF THE
4 PLAN ON INDIVIDUAL CREDITORS OR INVESTORS ARE MADE HEREIN OR
5 OTHERWISE. ALL PARTIES ARE URGED TO CONSULT THEIR OWN TAX
6 ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX
7 CONSEQUENCES OF THE PLAN AND OF THE PROPOSED REORGANIZATION
8 TO THEM, TO THE DEBTOR AND TO THE BANKRUPTCY ESTATE. THIS
9 DISCLOSURE STATEMENT SHALL NOT IN ANYWAY BE CONSTRUED AS
10 MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX
11 CONSEQUENSES OF CONFIRMATION AND CONSUMMATION OF THE PLAN
12 TO THE PARTIES. ALL PERSONS AND PARTIES MUST LOOK SOLELY TO AND
13 RELY SOLELY UPON THEIR OWN ADVISORS AS TO THE TAX
14 CONSEQUENCES OF THIS PLAN.

15 **X. LIQUIDATION ANALYSIS**

16 The Investors Committee believes that confirmation of the Plan is the best way for
17 Creditors and Investors to receive the maximum amount of money. In general, to
18 determine what holders of Allowed Claims in each Class would receive if the Debtor were
19 liquidated, the Bankruptcy Court must determine what funds would be generated from
20 liquidation of the Debtor's assets. Such liquidation funds would be reduced by the costs
21 and expenses of the liquidation and by such Administrative Claims and the use of the
22 Chapter 7 for the purpose of liquidation.

23 Those funds from liquidation would be further reduced by any commission payable
24 to the Chapter 7 trustee and the trustee's attorney's and accounting fees, as well as the
25 costs of the Chapter 11 estate (such as the compensation for Chapter 11 Professionals). In
26 a Chapter 7 case, the Chapter 7 trustee would be entitled to seek a sliding scale

1 commission based upon the funds distributed by the trustee to Creditors. In contrast, the
2 trustee's commission in a Chapter 7 is not paid in a Chapter 11 case.

3 In light of the fact that this is a liquidating plan which creates a Liquidating Trust
4 to reduce all Non-Loan Assets to cash for distribution under the Liquidating Trust to the
5 Creditors and Beneficiaries, settles the major issues in the case as a part of the Plan
6 confirmation, downsizes the operations of the Reorganized Debtor and the business to be
7 conducted to servicing and supporting the Liquidating Trust and the ML Manager LLC
8 on a cost basis, the liquidation analysis here is not as significant as it would be for a
9 chapter 11 case which reorganizes and continues with business as usual.

10 Further the settlements resolve major issues which otherwise in a Chapter 7 could
11 expend significant Chapter 7 administrative expenses. For example, the Plan settles the
12 validity of RBLLC's security interest in the assets of the Debtor. The Debtor's interests in
13 the Loans are turned over to RBLLC as a secured creditor for credit to the debt and the
14 Non-Loan Assets are turned over to the Liquidating Trust free and clear of the RBLLC
15 secured claim. The Unsecured Creditors are given a portion of the proceeds from the
16 Debtor's interests in the Loans as they are received as a part of the settlement of the
17 validity of the RBLLC claim. Under the Plan the Unsecured Creditors because of the
18 settlement would receive more they would in a Chapter 7. Further the ownership of the
19 Notes and Deeds of Trust are settled and not litigated and the agency and management
20 agreements are terminated to allow the Investors to decide who will manage their loans. In
21 a Chapter 7 that issue could be a costly and time consuming battle if any of the parties,
22 including RBLLC, the Unsecured Committee or the Chapter 7 trustee chose to fight the
23 Investors on the issue in a Chapter 7 proceeding.

24 Another issue being settled is the allowance of the Investor Damage Claims in the
25 Liquidating Trust and the release of non-insider Avoidance Actions and Causes of Action
26 against RBLLC and Investors (excluding Insiders). In a Chapter 7 the claims objections of

1 about 1800 claims and pursuit of Avoidance Actions and Causes of Action against
2 Investors and RBLLC would be in the discretion of the Chapter 7 trustee could be costly
3 and time consuming if the Chapter 7 trustee were to decide to object to or prosecute those
4 claims. The Investors Committee believes that the Liquidating Trust and the settlements
5 under the Plan will be more cost effective and efficient than the Chapter 7 liquidation and
6 the liquidation analysis therefore favors confirmation of the Investors Committee's Plan.

7 Pursuant to section 1129(a)(7) of the Bankruptcy Code, for the Plan to be
8 confirmed it must provide that creditors and holders of equity interests will receive at least
9 as much under the Plan as they would receive in a liquidation of the Debtor under Chapter
10 7 of the Bankruptcy Code (the "Best Interest Test"). The Best Interest Test with respect to
11 each impaired class requires that each holder of a claim or equity interest of such class
12 either (a) accepts the plan or (b) receives or retains under the Plan property of a value, as
13 of the Effective Date, that is not less than the value such holder would receive or retain if
14 the Debtor had liquidated under Chapter 7 of the Bankruptcy Code. The Court will
15 determine whether the value received under the Plan by the holders of claims in each class
16 equals or exceeds the value that would be allocated to such holders in liquidation under
17 Chapter 7. The Investors Committee believes that the Plan meets the Best Interest Test
18 and provides value that is not less than the value that would be recovered by each holder
19 in a proceeding under chapter 7 of the Bankruptcy Code.

20 **XI. RECOMMENDATION OF INVESTORS COMMITTEE**

21 The Investors Committee believes in light of all the factors and considerations that
22 the Investors Committee's Plan is in the best interest of all parties and is the most cost
23 effective and timely method of resolving major issues and disputes in the Bankruptcy
24 Case. The Investors Committee recommends that the Plan be approved and that the parties
25 vote to accept the Investors Committee's Plan.

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DATED this 21st day of January, 2009.

The Official Committee of Investors

By /s/ Joseph L. Baldino

Printed Name Joseph L. Baldino

Title Member of Official Committee of Investors

Prepared and submitted by:
FENNEMORE CRAIG, P.C.

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