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**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF ARIZONA**

| | |
|---|---|
| In re: | Chapter 11 |
| FIRST MAGNUS FINANCIAL CORPORATION, | Case No. 4:07-bk-01578 |
| Debtor. | |

**SECOND AMENDED DISCLOSURE STATEMENT IN SUPPORT OF SECOND AMENDED PLAN OF LIQUIDATION FILED BY FIRST MAGNUS FINANCIAL CORPORATION DATED JANUARY 4, 2008**

Date: January 4, 2008

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## I.
## INTRODUCTION

FIRST MAGNUS FINANCIAL CORPORATION ("First Magnus" or the "Debtor"), the debtor in the above-referenced bankruptcy case, hereby submits its *Second Amended Disclosure Statement In Support Of Second Amended Plan Of Liquidation Filed By First Magnus Financial Corporation Dated January 4, 2008*, pursuant to 11 U.S.C. § 1125 (the "Disclosure Statement"). The purpose of this Disclosure Statement is to provide adequate information to the holders of claims or interests in this matter so that they may make an informed judgment in exercising their right to vote for acceptance or rejection of the *Second Amended Plan of Liquidation Filed by First Magnus Financial Corporation dated January 4, 2008* (the "Plan"), a copy of which is attached hereto as Exhibit "1" and is incorporated herein by reference. **THE DEBTOR RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN IN ORDER TO MAXIMIZE THE RECOVERY OF YOUR CLAIM, HOWEVER, CREDITORS ALSO HAVE THE OPTION OF VOTING AGAINST OR REJECTING THE PLAN.**

Capitalized terms used in this Disclosure Statement will correspond to terms defined in the Plan and the Bankruptcy Code. Terms used in this Disclosure Statement that are also defined in the Plan are defined solely for convenience; and, the Debtor does not intend to change the definitions of those terms from the Plan. If there is any inconsistency between the Plan and this Disclosure Statement, the Plan is, and will be, controlling.

## II.
## OVERVIEW OF CHAPTER 11

### A. Information Regarding the Plan and Disclosure Statement.

The objective of a Chapter 11 case is the confirmation (*i.e.*, approval by the Bankruptcy Court) of a plan of reorganization or liquidation. A Chapter 11 plan describes in detail (and in language appropriate for a legal contract) the means for satisfying the claims against and equity interests in a debtor. After a plan has been filed, the holders of claims and equity interests are permitted to vote to accept or reject the plan. Before a debtor can solicit acceptances of its plan, however, Section 1125 of the Bankruptcy Code requires the debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable those parties entitled to vote on the plan to make an informed judgment about the plan and about whether they should accept or reject the plan.

The purpose of this Disclosure Statement is to provide sufficient information about the Debtor and the Plan to enable you to make an informed decision in exercising your right to accept or reject the Plan. Therefore, this Disclosure Statement provides relevant information about the Debtor, its property and financial condition, and the Plan.

This Disclosure Statement will be used to solicit acceptances of the Plan only after the Bankruptcy Court has entered an order approving this Disclosure Statement. Approval by the Bankruptcy Court of this Disclosure Statement means only that the Bankruptcy Court has

found that this Disclosure Statement contains sufficient information for the Debtor to transmit the Plan and Disclosure Statement to Creditors and to solicit votes to accept or reject the Plan.

After the Bankruptcy Court has granted approval of this Disclosure Statement and there has been voting on the Plan, the Bankruptcy Court will conduct a Confirmation Hearing concerning whether the Plan should be approved. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code. The Bankruptcy Court also will receive and consider a ballot report prepared by the Debtor that will present a tally of the votes accepting or rejecting the Plan cast by those entitled to vote. Accordingly, all votes are important because they can determine whether the Plan will be confirmed. Once confirmed, the Plan is essentially a new contract between the Debtor and its Creditors and is binding on all Creditors and other parties-in-interest in the Debtor's Bankruptcy Case regardless of whether any particular Creditor voted to accept the Plan.

**THIS DISCLOSURE STATEMENT IS NOT THE PLAN. FOR THE CONVENIENCE OF CREDITORS AND HOLDERS OF EQUITY INTERESTS, THE PLAN IS SUMMARIZED IN THIS DISCLOSURE STATEMENT. ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN WILL CONTROL.**

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**B. Representations.**

This Disclosure Statement has not been subjected to a certified audit; however, it has been prepared in part from information compiled by the Debtor from records maintained by it in the ordinary course of its businesses or from information received by the Debtor from third parties. Every effort has been made to be as accurate as possible in the preparation of this Disclosure Statement. Nevertheless, the inclusion of financial information in this Disclosure Statement and exhibits is subject to adjustment, and the Debtor reserves all rights to object to or challenge any Claims that are filed or asserted in the Case.

This is a solicitation by the Debtor only and is not a solicitation by its affiliates, attorneys, agents, financial advisors, or accountants.

## III.
## BACKGROUND & EVENTS LEADING TO FILING

First Magnus is headquartered in Tucson, Arizona. Prior to the commencement of the Bankruptcy Case, First Magnus successfully engaged in the business of originating, purchasing and selling primarily prime and Alt-A mortgage loans secured by one-to-four unit residences. First Magnus did very little sub-prime mortgage lending. Since its inception in October 1996 with twelve employees, First Magnus grew to become one of the nation's largest privately held

mortgage companies through the recruitment of both strong loan originators and wholesale representatives while building a best-in-class processing platform. At the end of 2006, the audited financial statements for First Magnus reflected assets of approximately $1,106,690,011 and shareholder equity of approximately $121,886,617. As of 2007, First Magnus had grown to over 5,500 employees, with a total of 335 branches, comprised of 277 retail and 58 wholesale locations nationwide.

As previously described in the *Declaration of Gupreet S. Jaggi in Support of the Debtor's Chapter 11 Petition and First Day Motions* (Docket No. 6), the mortgage industry in the United States has suffered an unprecedented liquidity crisis that has crippled many of the country's largest mortgage companies. The secondary mortgage markets have seen a similarly severe contraction in liquidity. The rapid and severe devaluation of mortgage backed securities and mortgage loan holdings was caused, in part, by a weakened housing market, falling real estate prices, homebuilder construction defaults, and a spike in consumer defaults and delinquencies on mortgage loan obligations.

The effects of this liquidity crisis have been sudden, catastrophic, and widespread. According to an October 4, 2007 report of the employment firm, Challenger, Gray & Christmas, mortgage lenders eliminated 69,664 jobs in 2007, which accounts for more than half of the 130,000 jobs that were cut in 2007 in the entire financial industry. In September 2007, Countrywide, the nation's largest mortgage lender, laid off 12,000 employees (or 20% of its work force). Similar layoffs have been announced by other mortgage industry participants, including Citigroup (up to 45,000 jobs) and WaMu (more than 3,000 jobs). WaMu has since announced that it has discontinued its mortgage warehouse lending operations.

Mortgage lenders, investors, and warehouse lenders across the country (including the Warehouse Lenders involved in this case) are suffering massive losses as a result of the liquidity crisis that has paralyzed the mortgage industry. During the past several months, financial firms have announced more than $80 billion in write downs on mortgage-related assets. This includes a $9.4 billion write down by Morgan Stanley, a $13.7 billion write down by UBS AG, and a $7.9 billion write down by Merrill Lynch, with more write downs expected. Similarly, earnings of mortgage lenders have been severely impacted by the turmoil in the mortgage industry. WaMu's 2007 Q3 earnings were down 75% from last year. Mortgage loan originations have also declined, with Countrywide announcing declines of over 40% in November 2007 compared with a year earlier. For 2007 Q3, Countrywide posted a loss of $1.2 billion, compared to earnings of over $650 million in 2006 Q3. .

Many of these financial institutions have had to seek outside infusions of capital to bolster their balance sheets, comply with statutory liquidity requirements, and otherwise continue their normal business operations. Countrywide received a $2 billion investment from Bank of America, while Morgan Stanley, Citigroup and UBS have collectively raised $24 billion from Sovereign Wealth Funds in Abu Dhabi, China and Singapore.

First Magnus had been profitable through the date of its most recent financial statements, June 30, 2007, and was generally current on its debt obligations with creditors (and

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employees) as of the Petition Date. However, like many other mortgage lenders nationwide, the liquidity crisis required unprecedented use of First Magnus' working capital and prevented First Magnus from securing additional financing for continued operations. In the month prior to the filing of the Bankruptcy Case, shareholders of First Magnus Capital, Inc. ("FMC") made approximately $13 million in cash available to First Magnus in an unsuccessful attempt to sustain the company. Despite the cash infusion from the shareholders, First Magnus could not weather the liquidity crisis that has crippled the mortgage lending industry, and was forced to cease its mortgage origination business, close hundreds of retail and wholesale offices around the country, and terminate the vast majority of its 5,500 employees.

Joining the ranks of over 200 mortgage companies that have ceased operations in the last year, First Magnus filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Arizona on August 21, 2007. Since its Chapter 11 filing, the Debtor has been winding down its affairs, initially, with approximately 157 Retained Employees. As of the filing of this Disclosure Statement, the number of Retained Employees has been reduced to thirty-three (33) full-time Retained Employees, and five (5) part-time Retained Employees.

As disclosed in paragraph 3(c) of the Bankruptcy Statement of Financial Affairs filed by the Debtor, First Magnus made the following payments to shareholders, officers and directors in the one (1) year immediately preceding the Chapter 11 filing:[1]

| NAME | SALARY AND BONUS | TAX DISTRIBUTIONS OR INTEREST PAYMENTS | TOTAL |
|---|---|---|---|
| Gurpreet Jaggi | $8,472,926.57 | $5,642,613.59 | $14,115,540.16 |
| Gary Malis | $1,190,826.94 | $449,199.95 | $1,640,026.89 |
| Karl Young | $1,598,189.16 | $2,605,998.72 | $4,204,187.88 |
| Dominick Marchetti | $825,080.61 | $81,939.96 | $907,020.57 |
| Thomas Sullivan, Sr./ Thomas W. Sullivan, Sr. Revocable Trust | $4,294,843.28 | $6,675,811.12 | $10,970,654.40 |
| Thomas Sullivan, Jr. | $4,562,315.58 | $5,841,074.96 | $10,403,390.54 |

[1] In addition to the tax distributions to Officers and Directors set forth on this table, First Magnus also directly paid a total of $756,840.83 in taxes to various tax jurisdictions on behalf of shareholders within one year of the filing date. The tax jurisdictions are specified on Exhibit 3(c)(3) to the Bankruptcy Statement of Financial Affairs.

| NAME | SALARY AND BONUS | TAX DISTRIBUTIONS OR INTEREST PAYMENTS | TOTAL |
|---|---|---|---|
| Clinton W. Gaylord | $384,353.48 | $2,439,407.88 | $2,823,761.36 |
| TOTAL | $21,328,535.62 | $23,736,046.18 | $45,064,581.80 |

As is the case with many large financial institutions, compensation of the officers and directors of First Magnus was tied to the financial performance of the company. All of the shareholders were founding members of First Magnus who held senior management positions within the company since its inception in 1996. Officers and directors were paid a fixed salary, as determined by the Board of Directors. However, the bulk of their compensation was paid in the form of bonuses that were based on First Magnus' profitability. Typically, an officer or director received a fixed percentage of the Debtor's profits as a bonus. In many cases, the percentage bonus was established at the inception of First Magnus, and did not fluctuate throughout the eleven (11) year history of the company. For example, the bonus percentages of Thomas Sullivan, Sr. and Thomas Sullivan, Jr. were established in a Pre-incorporation Agreement, dated July 15, 1996. Under the terms of the Pre-incorporation Agreement, Messrs. Sullivan, Sr. and Sullivan, Jr. each received a bonus of five percent (5%) of First Magnus' profits, if any. Similarly, the bonus percentage of Gurpreet Jaggi was established by an Employment Agreement dated July 15, 1996. Under the terms of the Employment Agreement, Mr. Jaggi received a bonus of ten percent (10%) of First Magnus' profits, if any. The compensation of the other officers was established by the Board of Directors and believed to be commensurate with their individual performance, and the overall performance of First Magnus.

In addition to their regular compensation, First Magnus shareholders also received distributions for the purpose of paying estimated imputed income taxes. Such distributions are frequently made by subchapter "S" corporations, limited liability companies, and other "flow-through" entities where owners have imputed income tax liability. First Magnus converted from a subchapter "C" corporation to a subchapter "S" corporation ("S-Corp") on January 1, 2005, therefore shareholders had imputed income from First Magnus for fiscal years 2006 and 2007. As an S-Corp, First Magnus was not taxed as a corporate entity. Rather, First Magnus was treated like a limited liability company in that income "flowed through" and was imputed to the shareholders on a pro rata basis. Accordingly, if First Magnus had taxable income of $100 million, a twenty-five percent (25%) shareholder would have imputed personal income of $25 million. The shareholder would owe personal income taxes on $25 million even though the shareholder may have only received $2 million in compensation. To remedy this discrepancy, First Magnus, like other "flow through" entities, made distributions to shareholders in amounts necessary to cover each shareholder's imputed income tax liability.

Except for distributions for imputed income taxes in fiscal years 2006 and 2007, the shareholders did not receive any other dividends in the eleven (11) year history of First

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Magnus. During that time, shareholder equity grew from approximately $500,000 at inception, to over $121 million as of December 31, 2006 (audited), to more than $164 million as of March 31, 2007 (unaudited).

As disclosed in paragraph 10 of the Bankruptcy Statement of Financial Affairs filed by the Debtor, First Magnus made certain transfers to insiders in the two years immediately preceding the Chapter 11 filing. The Debtor has identified at least the following transfers to insiders:

| NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR | DATE | DESCRIBE PROPERTY TRANSFERRED |
|---|---|---|
| Transfer of 100% ownership interest in First Magnus Reinsurance Limited, a Turks and Caicos Company, to First Magnus Capital, Inc. | July 1, 2006 | Ownership Interest |
| Transfer of 100% ownership interest in FMFC Lender Services LLC, to First Magnus Capital, Inc.(which owned 100% of Charter Insurance Group, Inc.)[2] | July 1, 2006 | Ownership Interest |
| Transfer of 596,154 ordinary shares of WNS (Holdings) Limited, par value 10 pence, to First Magnus Capital, Inc. | July 1, 2006 | Shares |
| Transfer of Receivable from Magnus Corporation to First Magnus Capital, Inc. | December 31, 2006 | Receivable |
| Transfer of 50% ownership interest in Hawker 125-700A aircraft to First Magnus Capital, Inc. | June 22, 2006 | Interest in Aircraft |

[2] The Bankruptcy Statement of Financial Affairs filed by the Debtor incorrectly listed transfers of a 100% ownership interest in "Trinity Partners" and "FMLS Corporate" to FMC. The Debtor's interest in "Trinity Partners" was sold to WNS Holdings, Ltd. on November 8, 2005; it was never transferred to FMC. "FMLS Corporate" is simply another name for FMFC Lender Services, LLC.

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By 2004, First Magnus had grown to become one of the nation's largest privately-owned mortgage lenders. As a growing and maturing mortgage company, First Magnus not only originated and funded mortgage loans, but also directly or indirectly held ownership interests in a variety of other business entities, including without limitation, (i) FMFC Lender Services LLC, a vendor management company for lender support services which provided consumer credit report services, flood plain determination services and residential appraisals for the customers of First Magnus, (ii) Charter Insurance Group, Inc., a general insurance company licensed in most states which offered property, life and casualty insurance as an agent, and (iii) Trinity Partners, Inc., a corporation that provided business process management services (e.g., document management, information verification and data processing) for financial services firms. Understanding the cyclical nature of the mortgage lending industry, in 2004, the shareholders of First Magnus sought to further diversify by beginning their attempt to form a de novo federal savings bank (the "Bank"). The Bank was to engage in the deposit taking and lending activities of a federal savings bank, including offering a variety of consumer loan products to customers from its branch offices, such as first and second mortgage loans, home equity loans and lines of credit, automobile and other installment loans, and credit cards.

Based upon the growing complexity of its corporate structure and to provide First Magnus' shareholders with maximum flexibility to sell certain entities or to make non-mortgage related investments, it was determined that the most advantageous way to structure the ownership of the Bank, First Magnus, and their direct and indirect subsidiaries was to create a savings and loan holding company. As such, on June 30, 2005, the shareholders of First Magnus filed applications with the OTS and the FDIC asking permission to organize a federal savings bank and a savings and loan holding company. On June 21, 2006, the seven individuals who constituted all of the direct shareholders of First Magnus exchanged all of their shares of capital stock of First Magnus for all of the shares of capital stock of the FMC on a *pro rata* basis. This share exchange resulted in FMC directly owning one hundred percent (100%) of the issued and outstanding shares of First Magnus and the seven individual shareholders directly owning one hundred percent (100%) of the issued and outstanding shares of FMC.

Once the holding company had been formed and the share exchange was completed, First Magnus transferred certain ownership interests and other assets to FMC, including the transfer of (i) a fifty percent (50%) ownership interest in the Hawker 125-700A aircraft on June 22, 2006, (ii) a one hundred percent (100%) ownership interest in First Magnus Reinsurance Limited on July 1, 2006, (iii) a one hundred percent (100%) ownership interest in FMFC Lender Services LLC on July 1, 2006, (iv) 596,154 ordinary shares of WNS (Holdings) Limited on July 1, 2006, and (v) a receivable from Magnus Corporation on December 31, 2006. Such transfers, coupled with the holding company structure, effectively allowed the shareholders more flexibility by allowing First Magnus to segregate its corporate assets into different categories, such as mortgage banking, banking, insurance, vendor management, and the like. At no time did any of the above transfers impair First Magnus' ability to meet its financial covenants under any Warehouse Agreement or other loan agreement. Furthermore, such transfers did not impact the ability of First Magnus to meet its obligations in the normal course of business.

As disclosed in paragraph 14 of the Bankruptcy Statement of Financial Affairs filed by the Debtor, as of the Petition Date, First Magnus was holding the following property owned by another person or entity:

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| NAME AND ADDRESS OF OWNER | DESCRIPTION AND VALUE OF PROPERTY | LOCATION OF PROPERTY |
|---|---|---|
| First Magnus Capital, Inc.<br>603 North Wilmot Road<br>Tucson, Arizona 85711<br>(99% Owner) | Dassault-Breguet model Falcon 50 aircraft bearing manufacturer's serial number 28 and United States registration number N800FM, together with two (2) installed Honeywell a/k/a Allied Signal model TFE 731-3D-1C aircraft engines bearing manufacture's serial numbers P76352C, P77416C and P76346C (collectively, the "Falcon 50")<br><br>Value: Approx. $9.5 Million | Tucson International Airport<br><br>Note: The Falcon 50 was sold by First Magnus Capital, Inc. to an independent third-party purchaser on November 14, 2007 for $8.5 million |
| First Magnus Capital, Inc.<br>603 North Wilmot Road<br>Tucson, Arizona 85711<br>(50% Owner)<br><br>Magnus Corporation<br>6390 East Tanque Verde<br>Tucson, Arizona 85732<br>(50% Owner) | Raytheon Hawker 125-700A (commonly known as Hawker 125-700A) aircraft, bearing manufacturers serial number NA0280 and United States registration number N500FM, together with two (2) installed Garrett TFE 731-3R-1H engines, bearing manufacturer's serial numbers P84227 and P84236 (collectively, the "Hawker") | Tucson International Airport<br><br>Note: First Magnus Capital, Inc. is in the process of giving a deed in lieu to Chase Equipment Leasing |
| Executive Nonqualified Excess Plan of First Magnus Financial Corporation (Rabbi Trust) Plan #5947 | Value of Employee owned Deferred Compensation Trust<br><br>Value: $643,508 (at June 30, 2007) | Principal Trust Company<br>P.O. Box 8704<br>Wilmington, DE 19899 |
| Various Borrowers and Lenders | Various payoffs and loan pass-throughs<br><br>Value: $5,275,055 (at Petition Date) | First Magnus depository accounts |

FMC was the registered owner of a ninety-nine percent (99%) interest in the above described Falcon 50, and is currently the registered owner of a fifty percent (50%) interest in the above described Hawker. Magnus Corporation, an Arizona corporation wholly-owned by Thomas W. Sullivan, Sr. and Thomas W. Sullivan, Jr., was the registered owner of the remaining one percent (1%) of the Falcon 50, and is currently the registered owner of fifty percent (50%) of the Hawker.

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Prior to the Petition Date, the Debtor operated and managed the Falcon 50 and the Hawker (collectively, the "Aircraft") on behalf of FMC and Magnus Corporation. Since the Petition Date the Aircraft have been grounded, with the exception of a test flight by the purchaser of the Falcon 50, and the delivery flight by the same. FMC sold the Falcon 50 on November 14, 2007 for $8.5 million. After paying off the financing and associated closing expenses, FMC netted approximately $285,000 from the sale.

FMC is currently working with Chase Equipment Leasing to deed the Hawker in exchange for a release from the Hawker financing obligation, which at this time is over $1.5 million.

As disclosed in paragraph 23 of the Bankruptcy Statement of Financial Affairs filed by the Debtor, the following withdrawals or distributions were credited or given to insiders during the one (1) year immediately preceding the Petition Date (compensation, distributions, and taxes paid are duplicative of amounts disclosed in paragraph 3(c) of the Statement of Financial Affairs discussed above):

| NAME AND ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR | DATE AND PURPOSE OF WITHDRAWAL | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|
| Thomas W. Sullivan, Sr., as Trustee of The Thomas W. Sullivan, Sr. (FMCI) Revocable Trust<br>603 North Wilmot Road<br>Tucson, Arizona 85711<br><br>Thomas W. Sullivan Sr. was Chairman and Director of the Debtor, and is a shareholder of Debtor's parent company, First Magnus Capital, Inc. | August 24, 2006<br><br>Mandatory redemption of stock pursuant to the Shareholders' Agreement of First Magnus Capital, Inc. | $54,224,793<br><br>Note: The proceeds used in the redemption was a dividend from the Debtor to its parent company, which in turn, was used to repurchase the shares from the shareholder |
| Clinton W. Gaylord<br>603 North Wilmot Road<br>Tucson, Arizona 85711<br><br>Clinton W. Gaylord was Division Vice President of the Debtor, and is a shareholder of Debtor's parent company, First Magnus Capital, Inc. | January 5, 2007<br><br>Optional redemption | $5,528,570<br><br>Note: The proceeds used in the redemption was a dividend from the Debtor to its parent company, which in turn, was used to repurchase the shares from the shareholder |

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| NAME AND ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR | DATE AND PURPOSE OF WITHDRAWAL | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|
| | | |
| See Exhibit 3c (1) for list of compensation related payments | | $27,698,368<br><br>Note: Distributions for salaries and bonuses of officers and directors are described above |
| See Exhibit 3c (2) for list of distributions and other payments | | $23,736,046<br><br>Note: Distributions for income tax payments of shareholders are described above |
| See Exhibit 3c (3) for list of taxes paid on behalf of Officers and Directors | | $756,841<br><br>Note: Tax payments by the Debtor on behalf of shareholders are described above |

On August 24, 2006, FMC, completed a repurchase of 950,000 shares of common stock, par value $0.01 per share ("Common Stock"), from Thomas W. Sullivan, Sr., as Trustee of the Thomas W. Sullivan, Sr. (FMCI) Revocable Trust. At the time of the repurchase, Thomas W. Sullivan, Sr. was the Chairman and a Director of both FMC and the Debtor, and owned approximately forty-five percent (45%) of FMC. The repurchase price for Mr. Sullivan's shares was $54,224,793, or approximately $57.08 per share. The repurchase price was based upon the net asset value, or "book value," of the Debtor as of June 30, 2006. The repurchase was a mutual obligation of the Debtor and Mr. Sullivan, as set forth in the above-mentioned Pre-incorporation Agreement dated July 15, 1996. The Pre-incorporation Agreement required the Debtor to repurchase, and Mr. Sullivan to sell, the shares from within one hundred eighty (180) days of the tenth anniversary of the Pre-incorporation Agreement, for a price based upon the Debtor's book value. Upon formation of FMC in June 2006, the repurchase obligation was memorialized in the FMC Shareholders' Agreement and became an obligation of FMC. Consummation of the repurchase decreased Mr. Sullivan's ownership of FMC from approximately forty-five percent (45%) to approximately twenty-five percent (25%).

FMC similarly repurchased Common Stock from Clinton W. Gaylord on January 5, 2007. The repurchase from Mr. Gaylord was not required by the Pre-incorporation Agreement, but was rather done with the consent of the shareholders and Board of Directors of FMC. At

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the time of the repurchase, Mr. Gaylord was a divisional vice president of the Debtor, and owned approximately eleven percent (11%) of FMC. FMC repurchased 49,000 shares of Common Stock for a repurchase price of $5,528,570, or approximately $117.93 per share. The repurchase price was based upon an independent third-party appraisal that concluded the Debtor's fair market value was $290 million as of December 31, 2004. Upon completion of the repurchase, Mr. Gaylord's ownership of FMC decreased from approximately eleven percent (11%) to less than ten percent (10%).

At the time of the repurchases, the Debtor was in excellent financial condition. When Mr. Sullivan's repurchase closed, the Debtor's net asset value was almost $200 million and it had recently completed fiscal year 2005 in which it originated more than $27 billion of mortgage loans for net income of $82 million. First Magnus closed fiscal year 2006 with more than $30 billion in mortgage loan origination, net income of $67 million, and net asset value of over $122 million. As mentioned above, an independent third-party appraiser valued the Debtor at $290 million as of December 31, 2004. The Debtor's management was projecting continued growth in 2007; at the end of 2007 Q2 the Debtor was on pace to originate more than $33 billion in mortgage loans and achieve net income of $100 million.

The repurchases did not have a material effect on the business operations of the Debtor, nor did they impair the Debtor's ability to meet its ordinary course financial obligations. When the repurchases closed in August 2006 and January 2007, the Debtor was current with all of its financial obligations, and was in compliance with the myriad of financial covenants contained in the various warehouse lines of credit, loans and other credit facilities to which the Debtor was a party. The Debtor was able to finance a portion of repurchase from Mr. Sullivan by issuing trust preferred securities in the amount of $25 million. This allowed the Debtor to complete the repurchase without having a material effect on the balance sheet. Moreover, of the $54 million paid out in Mr. Sullivan's repurchase, $20 million was re-contributed to the Debtor by Mr. Sullivan in the form of a thirty (30) month loan. The Debtor remained current and in compliance with all of its financial obligations until shortly before closing its doors on August 16, 2007. Even in the summer of 2007, the Debtor's financial condition was such that it was able to negotiate a new warehouse line of credit with WaMu, its largest warehouse lender, with more advantageous terms and pricing than it had received in the past.

The Committee has not yet investigated any pre-petition transfers and other transactions with insiders, any and all of which, including, but not limited to the transfers and transactions disclosed above, may be the subject of avoidance or other actions by the Litigation Trust after the Effective Date under the Plan. IN PARTICULAR, THE COMMITTEE HAS NOT INVESTIGATED NOR HAS THE COURT DETERMINED THE COMPLETENESS OR VERACITY OF ANY OF THE STATEMENTS MADE IN THIS SECTION III WITH RESPECT TO INSIDERS, WAREHOUSE LENDERS, REPO PARTICIPANTS OR ANY OTHER PRE-PETITION TRANSACTION INVOLVING THE DEBTOR AS A PARTY TO THE TRANSACTION. NOR HAS THE COMMITTEE INVESTIGATED WHETHER THESE STATEMENTS ARE A DEFENSE TO ANY CLAIMS OR CAUSES OF ACTION. Nothing contained in the disclosures above limits the claims and causes of action that the Liquidating Trust and/or the Litigation Trust may pursue against the individuals and entities

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listed above or against any other individuals or entities. Additional transfers not listed above may, after further review and investigation, be discovered, and as appropriate, pursued and recovered by the Liquidating Trust and/or the Litigation Trust.

## IV.
## POST-PETITION PROCEEDINGS AND EVENTS

### A. Summary of Key Events Related to the Bankruptcy Case.

While more detailed information related to the events in the Bankruptcy Case can be obtained by assessing the Bankruptcy Court's CM/ECF filing system and reviewing the pleadings filed in Case No. 4:07-bk-01578, the following is a summary of certain key bankruptcy-related proceedings and events associated with this Bankruptcy Case:

**1. Filing of Bankruptcy Petition.** On August 21, 2007 (the "Petition Date"), First Magnus filed a voluntary Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the District of Arizona. This bankruptcy case is currently being administered under Bankruptcy Case No. 4:07-bk-01578.

**2. First Day Motions.** The following Motions were filed by First Magnus on the Petition Date, and were heard by the Bankruptcy Court on August 29, 2007:

**(a) Wage Motion.** On August 21, 2007, the Debtor filed the *Motion for Order Authorizing the Payment of Pre-Petition Employee Wages, Salary, and Other Compensation and Authorizing Banks to Honor Checks for Employee Obligations* (Docket No. 7), pursuant to which the Debtor sought authorization: (i) to immediately pay all unpaid pre-petition Employee Obligations up to $10,000 per Retained Employee; (ii) to pay up to $10,000 of pre-petition Employee Obligations for the each Former Employee when adequate funds become available; and (iii) to pay prepetition Employee Obligations of approximately $8,333 each to five officers who are also Retained Employees. Pursuant to an Amended Order dated September 7, 2007 (Docket No. 136), the court granted the motion in part and denied the motion in part. The court authorized the Payment of Pre-Petition Employee Wages for the Retained Employees, subject to certain exclusions, with unencumbered funds or with the cash collateral of Washington Mutual. The Wage Motion was denied as to payment of Former Employees outside of the context of a plan of reorganization. To assist Former Employees in the Tucson area in coping with the hardship that was caused by the unexpected and abrupt need of the Debtor to cease operations, several of the Debtor's insiders and management team created a $1.2 million fund which provided $2,000 stipends to each of the local Former Employees.

**(b) Utilities Motion.** On August 21, 2007, the Debtor filed the *Motion for Order (I) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Service (II) Deeming Utility Companies Adequately Assured, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* (Docket No. 8) to ensure uninterrupted utility services as the company continues its business operations and the winding-

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down of its affairs. The motion was granted pursuant to an Order issued on September 7, 2007 (Docket No. 132).

(c) **Retention of Debtor's Financial Advisor**. On August 21, 2007, the Debtor filed the *Application for an Order Under 11 U.S.C. § 327(A) Authorizing the Retention and Employment of MCA Financial Group, Ltd. as Financial Advisor to First Magnus Financial Corporation* (Docket No. 9) to assist with an orderly liquidation of the company's assets. On or about September 7, 2007, Debtor was authorized on an interim basis to retain MCA Financial Group, Ltd. ("MCA"), subject to a monthly cap of $75,000 (Docket No. 131). The employment of MCA thereafter was approved on a final basis by the Bankruptcy Court. The fees and expenses for MCA Financial Group, Ltd. are subject to the approval of the Bankruptcy Court.

(d) **Retention of Debtor's Counsel.** On August 21, 2007, the Debtor filed the *Application for an Order Under 11 U.S.C. § 327(A) Authorizing the Retention and Employment of Greenberg Traurig, LLP as General Counsel to First Magnus Financial Corporation* (Docket No. 11) to perform legal services for the Debtor which may be necessary and proper in these proceedings, including provide legal advice with respect to the powers and duties of a debtor-in-possession; to prepare necessary legal papers; to appear in court and to assist with any disposition of assets by sale or otherwise. On or about September 7, 2007, Debtor was authorized on an interim basis to retain Greenberg Traurig, LLP ("GT") as its general counsel in connection with the bankruptcy case (Docket No. 133). The employment of GT thereafter was approved on a final basis by the Bankruptcy Court. The fees and expenses for GT are subject to the approval of the Bankruptcy Court.

(e) **Knudsen Motion**. On August 21, 2007, the Debtor filed the *Motion for Order Establishing Interim Fee Application and Expense Reimbursement Procedures* (Docket No. 13, the "Knudsen Motion") seeking the court's authorization to establish billing and payment procedures for retained professionals and notification procedures for creditors regarding billing and payment. The Bankruptcy Court denied the Knudsen Motion.

**3. Appointment of Creditors' Committee and Retention of Committee Counsel.** Pursuant to an Order dated August 30, 2007 (Docket No. 67) and an Amended Order dated September 14, 2007 (Docket No. 173), the United States Trustee appointed a committee of the unsecured creditors of First Magnus. Michael D. Warner and his firm Warner Stevens, LLP were retained and approved by the Bankruptcy Court as the attorney for the Official Committee of Unsecured Creditors.

**4. The DIP Financing Motion.** The Debtor sought permission from the Bankruptcy Court to borrow up to $15,000,000 in order to continue limited operations and wind-down the affairs of the company. Pursuant to an Order dated September 7, 2007 (Docket No. 137), the Bankruptcy Court denied the DIP Financing Motion, but allowed the Debtor to use up to $1,300,000 in cash on hand, some of which was subject to lien and related claims asserted by Secured Creditors and Repo Participants in the case.

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5. **The real property and personal property lease rejection motion.** On or about August 31, 2007, the Debtor filed the *Emergency Motion for an Order: (A) Terminating Month-to-Month Real Property Leases; (B) Rejecting Non-Residential Real Property Leases; and (C) Establishing Procedures for Rejection, Sale or Abandonment of Personal Property* (Docket No. 72, the "Lease Rejection/Abandonment Motion"). Through the Lease Rejection/Abandonment Motion, the Debtor sought to shed itself of hundreds of real property and personal property leases that cost the Debtor over $2,200,000 per month in rental charges, and the Debtor sought to abandon owned personal property, which has inconsequential value in light of the $6 million Secured Claim asserted by JP Morgan Chase. The Bankruptcy Court granted the Lease Rejection/Abandonment Motion pursuant to an Order dated September 8, 2007 (Docket No. 142).

6. **Proposed Sale of Certain Assets.**

**(a) The sale of certain unencumbered loans and REO properties to Summit.** On or about September 13, 2007, the Debtor filed the *Emergency Motion of First Magnus Financial Corporation for an Order Authorizing and Approving Sale of Loan and REO Real Estate Assets Free and Clear of all Interests* (Docket No. 169, the "Summit Sale Motion"), pursuant to which the Debtor proposed to sell certain construction loans with a total principal amount outstanding of approximately $8,483,760 and continued funding obligations, if any, as well as certain real estate owned ("REO") by First Magnus, to Summit Investment Management, LLC, a Colorado limited liability company or its assigns ("Summit"). The initial purchase price of $6,413,000 was reduced to approximately $5,723,500 based on the sale of five (5) REO properties prior to the hearing on the Summit Sale Motion. Summit will also assume and perform all of First Magnus' obligations under the construction loans. The Summit Sale Motion subject to higher and better offers, was heard by the Bankruptcy Court on October 2, 2007. In a Memorandum Decision Re: Sale of Assets dated October 3, 2007 (Docket # 298), the Bankruptcy Court approved the Summit Sale Motion.

**(b) The sale of the unencumbered commercial lot in Tucson.** On November 7, 2007, the Debtor filed the *Motion to* Approve *Sale Of Real Property Free And Clear Of All Interests Pursuant To 11 U.S.C. Sections 363 And 1146 And Bankruptcy Rules 2002, 4001, 6004, And 9014; And Motion To Approve Employment Of Broker And Payment Of Sale Commission Pursuant To 11 U.S.C. Sections 327 And 330* (the "Commercial Lot Sale Motion"), pursuant to which Debtor proposed a sale of approximately 105,979 square feet of real property located in Tucson, Arizona, together with any improvements thereon and all rights relating thereto (as more particularly described in the *Commercial and Industrial Real Estate Sale Contract*, attached to the Sale Motion as Exhibit "A," the "Property) on the terms and conditions stated in the *Commercial and Industrial Real Estate Sale Contract*, as modified by the *First Amendment To Commercial and Industrial Real Estate Sale Contract dated December 14, 2007*, attached as Exhibit "A" to the *Notice Of Filing First Amendment To Commercial And Industrial Real Estate Sale Contract* filed by First Magnus on December 12, 2007 (Docket No. 863) (the "Sale Contract"). First Magnus asked the Court to approve the sale of the Property free and clear of all liens, claims, and interests, to Rynoke, LLC or its assignee (the "Purchaser") for $1,600,000 subject to any higher and better bids. First Magnus also asked

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the Court to approve the employment of the real estate broker and the payment of a six percent (6%) sales commission at closing, in accordance with 11 U.S.C. §§ 327 and 330. Objections to the Sale Motion were filed by the Committee (Docket No. 860) and Pima County, Arizona (Docket No. 719). The Court held duly noticed hearings on the Sale Motion on December 7, 2007 and December 17, 2007, at which time the Court solicited higher and better bids for the Property. The Court approved the sale with certain modifications to address the objections by Pima County and the Committee. The Debtor lodged a proposed form of order approving the sale on December 19, 2007.

7. **The Decision By WaMu To Retain Its Loans, To Relieve The Estate Of Any Deficiency Liability, And To Return To The Estate Free And Clear Of Liens And Interests Loans With A Book Value Of $3.15 Million**. Pursuant to the WaMu EPA Agreement and the WaMu Commercial Paper Agreement with First Magnus, effective as of September 27, 2007, WaMu provided notice that it intended to keep for its own account of all of its warehoused loans that were originated by the Debtor. In relation to the notice, WaMu waived it right to assert any claim against the Debtor, if WaMu is not able to obtain a full repayment of its warehouse facilities through a commercially reasonable sale of the loans, and WaMu returned to the Debtor approximately $3,150,000 in estate loans that WaMu was holding. As a consequence, approximately $1,100,000,000 in claims asserted by WaMu have been resolved, and WaMu will not assert any Claims in the Bankruptcy Case with respect to its Early Purchase and Commercial Paper facilities.

8. **Motions by First Magnus to Retain Professionals and to Sell Assets in the Ordinary Course of its Business.** On September 21, 2007, the Debtor filed its *Motion to Employ Ordinary Course Professionals and Establish Procedures for Employment of Ordinary Course Professionals* (Docket # 211, the "Ordinary Course Professionals Motion"). Through the Ordinary Course Professionals Motion, the Debtor sought authority to employ and pay professionals (mostly attorneys and accountants) that provide ordinary and necessary legal services (primary foreclosure and eviction assistance) tax services (including a needed audit of the 401K program maintained by the Debtor for its employees). The Ordinary Course Professional Motion was approved in part and denied in part by the Bankruptcy Court following a hearing on October 2, 2007.

9. **Stay Relief and Turnover Motions Filed by or against Creditors in the Bankruptcy Case.** Countrywide has filed a spate of stay relief motions aimed at foreclosing on properties subject to loans now in default that were originated by First Magnus prior to the Petition Date. The Debtor does not believe that it has any current interest in the loans that are the subject of the stay relief motions, and the Debtor and Countrywide are negotiating appropriate resolutions of the motions. Bank of America ("BofA") filed a motion recently seeking a turnover of loans that it claims to have purchased from the Debtor, and the Debtor has reached an agreement to obtain a turn over of cash that has been deposited post-petition in an account maintained by National Bank of Arizona ("NBA"). The BofA and NBA matters are being handled by conflicts counsel for the Debtor (the Osborn Maledon firm), and resolution of the matters is expected shortly.

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B. **Summary of Pre-Petition and Post-Petition Litigation.**

1. **Pre-Petition Litigation.** Prior to the Petition Date, First Magnus was involved in various pieces of litigation, both as a defendant and as a plaintiff. A summary of the pre-petition litigation involving First Magnus is attached hereto as Exhibit 6 . Litigation involving First Magnus as a defendant has been stayed, and to date no party has requested stay relief to continue its litigation against the Company. Litigation involving First Magnus as a plaintiff will be pursued by the Liquidating Trustee in its discretion.

2. **Post-Petition Litigation.**

(a) **WARN Act Complaint.** On or about August 30, 2007, a complaint was filed by several former employees of First Magnus seeking class certification and damages (60 days' of wages) under the WARN Act (29 U.S.C. §2104). The WARN Act litigation filed in the First Magnus case (Adversary No. 4-07-ap-60) is functionally identical to litigation filed in the case of another mortgage lender who was crippled by the mortgage industry liquidity crisis, American Home Mortgage (by the same plaintiff's law firm that filed the WARN Act complaint against First Magnus). A pleading responsive to the WARN Act complaint was filed, and First Magnus has contested the claims raised in the WARN Act complaint.

(b) **Certain Regulatory Matters.** Prior to and since the commencement of the Bankruptcy Case, First Magnus has been the subject of a few regulatory and investigative proceedings. In response to prepetition and post-petition regulatory proceedings, and in light of its inability to continue operating, First Magnus has surrendered nearly all of its mortgage broker and banking licenses to the appropriate state regulatory agencies. First Magnus believes that ceasing business operations and surrendering the licenses will in large part curtail the regulatory and investigative proceedings. To the extent that such is not the case, First Magnus or the Liquidating Trustee will engage counsel to assist in any such regulatory and investigative matters that may require attention in the effort to minimize any impact upon the assets of First Magnus.

## V.
## DESCRIPTION OF ASSETS AND LIABILITIES.

A. **The First Magnus Warehouse Loan Portfolio and Warehouse Debt**. To finance its mortgage loan production business, First Magnus used several warehouse financing arrangements that primarily took the form of master repurchase agreements (collectively, the "Purchase Agreements") with certain lenders (collectively, the "Warehouse Lenders"). Typically, First Magnus would fund a mortgage loan through a combination of funds provided by Warehouse Lenders along with its own funds (which in the mortgage industry is known as a "haircut"). Warehouse Lenders required First Magnus to contribute a haircut to fund loans in order to protect the Warehouse Lenders from loan defects, loan defaults, and other credit risks, including market swings. The table below summarizes the obligations of First Magnus to its Warehouse Lenders under Purchase Agreements or other credit facilities as of the Petition Date:

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| FACILITY | TOTAL OUTSTANDING (Funded Loans) | WAREHOUSE COMPONENT | HAIRCUT |
|---|---|---|---|
| Washington Mutual Syndicated Agreement | $225,277,093 | $194,227,684 | $31,049,409 |
| Washington Mutual Early Purchase Agreement | $70,896,971 | $55,248,061 | $15,648,910 |
| Washington Mutual Commercial Paper Agreement | $1,059,877,632 | $1,040,889,850 | $18,987,782 |
| Countrywide Revolving Line of Credit | $41,960,957 | $28,998,347 | $12,962,610 |
| UBS Agreement | $211,569,314 | $198,515,177 | $13,054,137 |
| Merrill Lynch Agreement | $61,123,420 | $42,313,002 | $18,810,418 |
| **Totals** | **$1,670,705,387.00** | **$1,560,192,121.00** | **$110,513,266.00** |

As discussed above, pursuant to the WaMu EPA Agreement and the WaMu Commercial Paper Agreement with First Magnus, effective as of September 27, 2007, WaMu provided notice that it intended to keep for its own account of all of its warehoused loans that were originated by the Debtor. In relation to the notice, WaMu waived it right to assert any claim against the Debtor, if WaMu is not able to obtain a full repayment of its warehouse facilities through a commercially reasonable sale of the loans, and WaMu returned to the Debtor approximately $3,150,000 in estate loans that WaMu was holding. As a consequence, approximately $1,100,000,000 in claims asserted by WaMu have been resolved, and WaMu will not assert any Claims in the Bankruptcy Case with respect to its Early Purchase and Commercial Paper facilities. *See* Class 5 of the Plan.

The Claims of UBS, Merrill Lynch, and WaMu, to the extent they are Repo Participants, will be treated under Class 6 of the Plan, and if applicable, Class 3. The Claims of Countrywide will be treated under Class 2 of the Plan, and, if applicable, Class 3. The treatment of all Classes under the Plan are discussed in more detail below.

UBS Real Estate Securities Inc. ("UBS RES") contends that, as of the petition date, UBS RES owned approximately 965 mortgage loans that First Magnus had sold to it under an Amended and Restated Mortgage Loan Purchase Agreement dated June 1, 2006 (the "Purchase Agreement"). UBS RES also contends that, as of the Petition Date, UBS RES owned approximately 7 mortgage loans that First Magnus had sold to it under an Amended and Restated Mortgage Loan Repurchase Agreement dated June 1, 2006 (the "Repurchase Agreement) (together with the Purchase Agreement, the "Agreements"). UBS RES contends that, as of August 20, 2007, UBS RES's total basis in the foregoing mortgage loans (the "Relevant Mortgage Loans") stood at $198,655,357.50. UBS RES further contends that, under the Agreements, it purchased the Relevant Mortgage Loans, and, as set forth in the Agreements and many other related documents, owns those loans. UBS RES also contends that First Magnus breached the Agreements and is liable for any ultimate net loss incurred by UBS RES on the Relevant Mortgage Loans. Neither the Debtor, nor the Committee, adopt, ratify, or

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necessarily agree with the contentions by UBS RES, all of which remain subject to further review, investigation, and litigation, if necessary.

**B. The Scratch and Dent Assets**. A small percentage of First Magnus' loans contained defective documentation or other problems (e.g., a missing HUD statement, a document that is not notarized or some other documentary defect) and historically could be sold immediately like other loans originated by First Magnus. These defective loans are known in the mortgage lending industry as "scratch and dent loans." Historically, First Magnus was able to sell scratch and dent loans for a price close to par (i.e., 100% of the principal amount outstanding under the loan), but with the liquidity crisis, First Magnus was and is forced to sell the scratch and dent loans at prices substantially below par, often to the point where the company could not absorb the loss on the scratch and dent loans or generate enough liquidity from their sales to continue operating. A very small percentage of First Magnus' historical originations have been scratch and dent loans. Additionally a certain amount of loans originated and sold by First Magnus are returned (or put back) to First Magnus based on an EPD (Early Payment Default) or some other defect or breach of a representation or warranty specified in their Loan Purchase Agreements with their investors/loan purchasers. Certain EPDs, scratch and dent loans, or other loans that First Magnus has not been able to sell occasionally wind up in foreclosure and become real estate owned ("REO") holdings for First Magnus. Scratch and dent loans, EPDs, REO, and certain other assets (collectively, the "Scratch and Dent Assets") owned by First Magnus at some point became ineligible for financing provided by the Warehouse Lenders under Purchase Agreements and other financing devices described above. As of the Petition Date, First Magnus had on its books approximately $51 million of the Scratch and Dent Assets. As of the Petition Date, the Scratch and Dent Assets were financed by FMC under a facility that had approximately $35 million advanced.

It was originally the Debtor's intention to liquidate the Scratch and Dent Assets entirely through the sale of the existing loans/REO to investors that specialize in purchasing these types of assets. However when put to bid, the proposed prices came in far below the expectations of the Debtor. For example, one bidder offered a price of 55% of the unpaid principal balance for performing first mortgages. Other bidders offered prices of 25-50% for other pieces of the Scratch and Dent Assets. After reviewing these bids and the underlying assets it was determined that the Debtor would attempt to achieve a higher return on these assets by: 1) offering discounted pay-offs to borrowers with the ability to refinance; 2) offering a lower pay-off for borrowers looking to sell the property themselves; and 3) offering to accept deeds-in-lieu of foreclosure to borrowers. List prices on REO are also being dropped in order to solicit greater interest. This process was started in mid November and has shown good progress garnering up to 100% of the amount owed, though 80-90% is more typical of the recovery on first mortgages by refinancing the loans with other lenders.

During the pendency of the Bankruptcy Case, the Debtor realized approximately $5,394,000 from the sale of REO and Construction loans with an original note amount of $16,777,000 to Summit Capital. Additionally the Debtor has realized approximately $5,323,000 from the resolution of Scratch and Dent Assets, with an original note amount of $8,042,000 through work-outs and short sales of such assets as described above. Under the

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Plan, the Liquidating Trustee will continue to attempt to realize maximum value for the Scratch and Dent Assets either through borrower work-outs or sales of such assets. All sales of Scratch and Dent Assets will be at or above the then prevailing market rates for such assets. At this time, the Debtor is unable to forecast with certainty the total net recovery to creditors from the Scratch and Dent Assets.

**C. Cash and Other Assets Owned by First Magnus**. In addition to the Warehouse Loan Portfolio and the Scratch and Dent Assets, First Magnus held as of the Petition Date: (i) cash on hand in the approximate amount of $3.8 million, a certain percentage of which was (and is) subject to claims of the company's Warehouse Lenders; (ii) a relatively small amount of income from loans currently owned by First Magnus (under $70,000 per month); (iii) intellectual property rights in mortgage processing software that has been bid upon by prospective buyers; (iv) the commercial lot referenced in §IV(A)(6) above; and (v) miscellaneous litigation claims referenced in §IV(B) above.

**D. The Secured Claim of Chase.** Chase has asserted a $2,815,122.72 Claim under two loan facilities secured by a lien on certain furniture, fixtures, and equipment (collectively, the "Chase Equipment"). The Chase Equipment is located at approximately 90 leased sites. The Debtor has provided (and continues to provide) reasonable assistance to Chase with respect to the retrieval of the Chase Equipment, including a list of the sites where Chase Equipment was located, pursuant to an Order dated September 8, 2007 (Docket No. 142). Chase is responsible for the retrieval of the Chase Equipment. It is unknown whether or not Chase will assert a deficiency Claim.

**E. Summary of Unsecured Claims against First Magnus**. In addition to the amounts owing to Warehouse Lenders, First Magnus has scheduled approximately $93 million of unsecured debt, including approximately: (i) $13.5 million of accrued payroll and related costs; (ii) $24.4 million of accounts and notes payable; (iii) $35 million claimed to be owed to FMC; and (iv) $20 million of subordinated unsecured debt owed to insiders. All such Claims and debts are subject to review and objection by the Debtor, the Committee, the Liquidating Trust, and the Litigating Trust, and such Claims may be reduced, disallowed, subordinated, and/or recharacterized.

## VI.
## FINANCIAL CONDITION AND ANALYSIS

### A. Present Operations.

The Debtor has ceased its business operations, with the exception of the operations directly related to the liquidation and wrapping up of the company. The number of employees retained after the Petition Date has been reduced, as follows: 154 retained as of 8/31/07; 135 retained as of 9/7/07; 125 retained as of 9/14/07; 110 retained as of 9/21/07; 88 retained as of 9/28/07; 74 retained as of 10/5/07; 66 retained as of 10/12/07; and 33 full-time and 5 part-time retained as of 1/2/08. Future reductions in force are planned as the liquidation of First Magnus is accomplished.

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**B. Future Performance.**

**1. Liquidation of Loan Portfolios, REO Properties, miscellaneous personal property, and litigation claims.** The Debtor anticipates a distribution of $28-44 million to Unsecured Creditors net of liquidation expenses. Additional recoveries for Unsecured Creditors may be provided through the capture of equity following the sale of the remaining portions of the Warehouse Loan Portfolio, the sale of certain intellectual property, and litigation recoveries obtained by First Magnus. Any sales of loans in the ordinary course of business will be at or above the then prevailing market rates for such assets. The Debtor is insolvent. Therefore, the Debtor does not expect the liquidation contemplated by the Plan to pay all Allowed Claims against the Debtor in full.

**2. Potential Surcharge Reimbursement Claims Against Warehouse Lenders, Chase, and Other Creditors.** Since the Petition Date, thousands of loans and a considerable amount of personal property have been stored, processed, protected and preserved by First Magnus for the benefit of Warehouse Lenders and Chase. Attached as Exhibit "2" are selected pictures of the loan and file storage, preservation, and processing that continues to be performed by First Magnus for the benefit of Warehouse Lenders. The Debtor estimates that over 7,000 warehoused loans have been stored, preserved, and processed at the First Magnus headquarters in Tucson post-petition by employees of the Debtor (and in the case of WaMu, by approximately 40 former First Magnus employees who were hired by WaMu to complement the Debtor's employees). The chart below summarizes some of the results of efforts undertaken post-petition by the Debtor with respect to the protection, preservation, and disposition of collateral or assets of the Warehouse Lenders:

| WAREHOUSE FACILITY | PREPETITION OUTSTANDING | POST-PETITION LOANS SOLD/ PAID OFF | POST-PETITION LOAN SALE COMMITMENTS RETENTIONS[3] | REMAINING BALANCE |
|---|---|---|---|---|
| UBS Repo | $198,695,626 | $33,718,309 | $140,720,068 | $24,257,248 |
| Countrywide EPP | $16,219,921 | $6,220,017 | $0 | $9,999,904 |
| Countrywide Hosp | $28,496,747 | $183,876 | $28,312,871 | $0 |
| WaMu EPA | $55,248,061 | $763,333 | $54,484,728 | $0 |
| WaMu CP | $1,038,993,070 | $0 | $1,038,993,070 | $0 |
| WaMu Syndicate | $194,227,684 | $0 | $0 | $194,227,684 |
| Merrill Lynch | $42,313,002 | $6,266,667 | $0 | $36,046,335 |
| | | | | |
| **Totals** | **$1,574,194,111.00** | **$47,152,202.00** | **$1,262,510,737.00** | **$264,531,171.00** |

The Debtor maintains that benefits have been bestowed by First Magnus post-petition for each of its Warehouse Lenders and Chase, who should be responsible for shouldering a portion of the cost of the First Magnus bankruptcy case until such time as the loan portfolios and the

[3] All claims of WaMu under the WaMu EPA Agreement and the WaMu Commercial Paper Agreement are resolved, and there will be no Claim asserted against the Estate with respect to those warehouse facilities.

personal property are removed from the First Magnus premises by each Warehouse Lender, Chase, and any other creditor that claims an interest in property that is being protected, preserved, and disposed of by the Debtor. The Warehouse Lenders and other creditors dispute that there is any legal or equitable grounds for a surcharge of their respective collateral. Countrywide contends that the applicable facts and law do not support a surcharge against its collateral because (a) First Magnus is contractually obligated to perform the servicing of the loans, (b) First Magnus is already compensated for the servicing of the loans, (c) Countrywide has repeatedly offered to assume the servicing of the loans, and (d) First Magnus has been unable to consummate a sale of the loans to date. UBS RES contends that it has significant claims against the Estate, claims that UBS RES estimates at approximately $20 million. First Magnus disputes the contentions by UBS RES and Countrywide. The Debtor and the Committee also contend that other legal and/or equitable grounds may exist for pursuing claims against the Warehouse Lenders, Chase, and others for benefits provided by First Magnus. Such claims may be asserted either before or after confirmation of the Plan or after the Effective Date of the Plan by one of the Trusts.

## VII.
## SOURCES OF INFORMATION

The financial information contained in this Disclosure Statement is derived from a number of sources. Values ascribed to First Magnus' Assets were provided by the Debtor. The Projection was prepared by MCA based on information received from the Debtor. Information on Claims of Creditors was obtained from the financial records of the Debtor, the monthly operating reports, the statements and schedules on file in the Bankruptcy Case, proofs of claims filed by Creditors in the Bankruptcy Case, and loan documents evidencing the Claims of Secured Creditors.

The information contained in this Disclosure Statement represents the Debtor's best estimate in light of current market conditions and past experience. Other information obtained by the Debtor represents informal opinions or appraisals as to value. All the information provided is subject to change and represents the best information available at the time. The actual results may differ.

## VIII.
## SUMMARY OF THE PLAN

The following provides a summary of the overall structure and classification of claims against or interests of or in the Debtor and is qualified in its entirety by reference to the Plan, which is attached hereto as Exhibit "1" and is incorporated herein by reference. The statements in this Disclosure Statement include summaries of the provisions contained in the Plan and the documents referred to therein. This summary does not purport to be a precise or complete statement of all terms in the Plan or documents referred to therein, and reference is made to the Plan for the full and complete statement of such terms. The Plan and documents referred to therein control the treatment of Claims against and Equity Interests of and in the Debtor and other parties-in-interest. Certain of the documents referred to in the Plan are not executed, with

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execution to occur upon Confirmation of the Plan or upon the Effective Date. The final form of such documents may therefore vary. **IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN WILL CONTROL.**

Under the Plan, the liquidation and distribution of Estate assets for the benefit of Creditors will be implemented through the creation of a Liquidating Trust, a Litigation Trust, and a single Advisory Board to provide general oversight over both trusts. Under the Plan, the Bankruptcy Court will retain jurisdiction over a broad range of matters, including claims administration. The respective rights, duties, and obligations of the Liquidating Trust, the Litigation Trust and the Advisory Board are summarized below and are more fully set forth in the Plan, and in the Liquidating Trust Agreement and Litigation Trust Agreement. However, generally speaking, the Liquidating Trust will be responsible for claims administration, the prosecution of Estate Claims (which, as defined under the Plan, does not include Claims against insiders of the Debtor), and the distribution of payments to Creditors in accordance with the Plan. The Liquidating Trustee, Morris C. Aaron, was selected by the Debtor with the approval of the Committee.

The Litigation Trust generally will be responsible for the prosecution of Estate Tort and Other Claims, which includes the investigation of all Claims and causes of action, including avoidance actions against insiders of the Debtor, and certain claims against the Warehouse Lenders and Repo Participants. The Litigation Trustee, Larry Lattig, was selected by the Committee with no input from the Debtor.

The Advisory Board will consist of three (3) members, all of whom will be former members of the Committee. During the period of time from the date that the Order confirming that Plan is entered and the Effective Date, the Debtor will continue to make decisions for the Estate in consultation with the Committee. However, from and after the Effective Date of the Plan, the Debtor will make no decisions on behalf of the Estate, instead, all authority shall be vested in the Liquidating Trust, the Litigation Trust, and the Advisory Board, as more fully described and set forth in the Plan, the Liquidating Trust Agreement, and the Litigation Trust Agreement.

As noted above, the Litigation Trustee, on behalf of the Litigation Trust, will be investigating and pursuing all Claims and causes of action against insiders of the Debtor, the Warehouse Lenders and Repo Participants. Such Claims and causes of action will be pursued, as appropriate, using professionals chosen by the Litigation Trustee. Such professionals will be chosen based upon a series of factors, including, but not limited to, compensation structures. The Litigation Trustee will consider contingency, hourly, and/or hybrid arrangements. All such employment will be subject to review of the Advisory Board.

**A. <u>Classification and Treatment of Claims and Interests</u>.**

**1. <u>Administrative Claims</u>.** Administrative Claims are not classified under the Plan. Nevertheless, pursuant to Bankruptcy Code §1129(a)(9), all Allowed Administrative

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Expense Claims will be paid on the Effective Date. Most of the Debtor's post-petition operating expenses have been paid on a current basis. Thus, Administrative Expenses Claims largely will consist of the Fee Claims of Estate Professionals. As of December 31, 2007, the following fees and costs had been incurred by estate Professionals: (i) Greenberg Traurig, general bankruptcy counsel for the Debtor: approximately $1,057,475.96; (ii) Osborn Maledon, conflicts counsel for the Debtor: approximately $127,549.77; (iii) MCA, financial advisors for the Debtor: approximately $358,000.00; (iv) Warner Stevens, counsel for the Creditors Committee: approximately $437,405.81.

The Bankruptcy Court must approve all requests for the payment of professional compensation and expenses to the extent incurred on or before the Confirmation Date. Each Professional Person requesting compensation or reimbursement of expenses in the Proceedings pursuant to Sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code shall file an application for allowance of final compensation and reimbursement of expenses not later than twenty (20) days after the Confirmation Date. Nothing herein shall prohibit each Professional Person from requesting interim compensation during the course of these cases pending Confirmation of this Plan. No motion or application is required to fix fees payable to the Clerk's Office or the Office of the United States Trustee, as those fees are determined by statute. All fees, costs and disbursements of Professional Persons not heretofore paid through the Effective Date of the Plan, shall be paid out of the Dividend Fund following entry of an order of the Bankruptcy Court authorizing and allowing same pursuant to Sections 327, 330 and 331 of the Bankruptcy Code.[4] Fees, costs and disbursements of Professional Persons shall be the subject matter of applications to the Court for allowance or award in the manner prescribed by the Code. Notwithstanding the foregoing, any Professional Person may apply to the Bankruptcy Court in the manner prescribed by the Code for interim allowance of fees, costs and disbursements at any time and from time to time before payment in full of such fees, costs and disbursements. If the Effective Date occurs within thirty (30) days after the Confirmation Date, the Liquidating Trustee may pay all fees and costs of Professional Persons not previously considered by the Bankruptcy Court, without approval of the Bankruptcy Court.

**2. Priority Tax Claims.** Priority Tax Claims are not classified under the Plan. Priority Tax Claims are certain pre-Petition Date unsecured income, employment and other taxes described by Section 507(a)(8) of the Bankruptcy Code. The Bankruptcy Code requires, and thus the Plan provides, that each holder of a Section 507(a)(8) Priority Tax Claim receives regular installment payments in cash of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the

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[4] Under the Plan, the "Dividend Fund" will consist of all sums held by the Liquidating Trust from the liquidation of Assets (net of liquidation expenses) by the Liquidating Trust and the Litigation Trust for distribution to holders of Allowed Claims pursuant to the Plan on or after the Effective Date of the Plan. The costs and expenses of the Liquidating Trust, the Advisory Board and the Litigation Trust (to the extent the Litigation Trust has insufficient cash to pay its costs and expenses) shall be paid out of the Dividend Fund.

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Petition Date, in a manner not less favorable than non-priority, unsecured claims. The Debtor believes that there will be no Priority Tax Claims on the Confirmation Date. To the extent Priority Tax Claims exist on the Confirmation Date, those holders of Priority Tax Claims will be (a) paid out of the Dividend Fund created by the sale of the Debtor's Assets by the Liquidating Trust on the Effective Date, or (b) over a period not exceeding five (5) years after the Petition Date, in the sole and absolute discretion of the Liquidating Trustee. Except as expressly set forth in this Plan, neither the Debtor, the Liquidating Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee nor the Liquidating Trustee, nor their designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of Priority Tax Claims such that the holders of Allowed Priority Tax Claims shall have recourse only against the Dividend Fund and their claims shall be paid solely out of the Dividend Fund.

**3. Pre-petition Employee Wage Claims, Commissions, and Flex Account Payments.** Certain non-tax claims that are referred to in Sections 507(a)(3), (4), (5), (6) and (7) of the Bankruptcy Code are entitled to priority treatment. Class 1 of the Plan consists of Priority Non-Tax Claims asserted against the Debtor. For the most part, Class 1 will consist of the Claims of former employees for: (i) wages and commissions that are entitled to priority under Bankruptcy Code §507(a)(4) (estimated in an aggregate amount of approximately $11,534,000); and (ii) employee benefits and related claims, including medical and dependent care flex payment deposits (estimated in an aggregate amount of approximately $903,000).

Allowed Priority Non-Tax Claims will be paid by the Liquidating Trust in full on the Effective Date of the Plan out of the Dividend Fund in the event there are sufficient funds in the Dividend Fund to pay such Allowed Priority Non-Tax Claims in full, in the sole and absolute discretion of the Debtor, after consultation with the Committee. To the extent there are not sufficient funds in the Dividend Fund to pay Priority Non-Tax Claims in full on the Effective Date, the Liquidating Trust shall pay such claims with interest at the rate of 5% per annum from the Effective Date to such date or dates as it is determined by the Liquidating Trustee that sufficient cash is available to make such payments; provided that the Liquidating Trustee, in its discretion, may make partial payments after the Effective Date to the holders of Priority Non-Tax Claims. Neither the Debtor, the Liquidating Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee nor the Liquidating Trustee, nor their respective designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of such Priority Non-Tax Claims such that the holders of Allowed Priority Non-Tax Claims shall have recourse only against the Dividend Fund, and their claims shall be paid solely out of the Dividend Fund.

All Class 1 Claims are subject to review and objection by the Debtor, the Committee, the Liquidating Trust, and the Litigation Trust, and such Claims may be reduced, disallowed, subordinated, and/or recharacterized. Class 1 is impaired under the Plan and is entitled to vote on the Plan.

**4. Secured Claims.** Class 2 of the Plan consists of the Claims of Secured Creditors, including Countrywide, Chase, the Maricopa County Treasurer, DocuSafe of

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Phoenix, Inc., and other Creditors holding Secured Claims against the Debtor. Each Creditor holding a Secured Claim shall be placed in a separate subclass of Class 2. The holders of Allowed Class 2 Claims will be satisfied through: (a) abandonment or transfer of all right, title and interest of the Debtor and its Estate in the Assets in which a secured creditor has a Lien (as of the Petition Date and/or thereafter) to the secured creditor, or (b) before or after the Effective Date, the sale and/or other disposition of the Asset in which the secured creditor has a Lien (as of the Petition Date and/or thereafter). Any Lien on a Sold Asset will attach to the proceeds of sale, which shall be transferred to and paid to the holder of the Allowed Secured Claim. The transfer of the proceeds of a Sold Asset will occur on the later of the Effective Date of the Plan or within five (5) Business Days of the sale of the Asset, in full or partial satisfaction of the Creditor's Allowed Secured Claim. Except as otherwise agreed, holders of Allowed Class 2 Claims will have the right to assert a deficiency Claim which, as and when it becomes an Allowed Claim, shall be treated as a Class 3 Unsecured Claim.

All Class 2 Claims are subject to review and objection by the Debtor, the Committee, the Liquidating Trust, and the Litigation Trust, and such Claims may be reduced, disallowed, subordinated, and/or recharacterized. Class 2 is impaired under the Plan and entitled to vote on the Plan. Each subclass of Class 2 shall be treated as a separate class of Claims for balloting purposes.

**5. General Unsecured Claims (Other than Rejection Claims).** Class 3 of the Plan consists of the Claims of holders of General Unsecured Claims against the Debtor's Estate, except Class 4 Claims, Class 7 Claims, and Class 8 Claims. The Debtor estimates that holders of Class 3 Unsecured Claims will consist primarily of: (i) $24.4 million of accounts and notes payable; and (ii) $35 million to FMC, to the extent the Claim of FMC is not subordinated or recharacterized. After payment in full to the holders of Allowed Administrative Expense Claims, Allowed Priority Claims, and Allowed Class 8 Claims pursuant to this Plan, and upon the Liquidating Trustee's determination that sufficient cash is available to make such payments, each holder of an Allowed Unsecured Claim in Class 3 shall receive its Pro Rata share of the Dividend Fund. Neither the Debtor, the Liquidating Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee, nor the Liquidating Trustee, nor their respective designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of such Allowed Unsecured Claims such that the holders of Allowed Unsecured Claims in Class 3 shall have recourse against the Debtor and Reorganized Debtor only from the Dividend Fund, and their claims against the Debtor and Reorganized Debtor shall be paid solely out of the Dividend Fund. Based on current Projections, the Debtor estimates that $16-32 million from the Dividend Fund will be available for payment of Class 3 and Class 4 Allowed Claims on a pro rata basis.

All Class 3 Claims are subject to review and objection by the Debtor, the Committee, the Liquidating Trust, the Litigation Trust, and such Claims may be reduced, disallowed, subordinated, and/or recharacterized. Class 3 is impaired under the Plan and entitled to vote on the Plan, except that the votes, if any, of FMC and other insiders of the Debtor shall not be counted when tabulating votes for or against the Plan to the extent they are in connection with Class 3 Claims that are disputed or subordinated.

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6. **General Unsecured Claims Arising Out of the Rejection of Executory Contracts and Unexpired Leases.** Class 4 of the Plan consists of the Claims of holders of General Unsecured Claims that arise out of the rejection of executory contracts or unexpired leases of the Debtor, except Class 3 Claims and Class 8 Claims. Presently, the Debtor is not capable of determining the amount of Unsecured Claims that will arise out of the rejection of executory contracts or unexpired leases of the Debtor. Claims arising out of the Rejection of executory contracts and unexpired leases are classified separately from other General Unsecured Claims because the Debtor anticipates that all such claims will be the subject of substantial litigation. For example, WNS of North America ("WNS") has stated that it expects to have a rejection damages claim of approximately $15,000,000. The Debtor disputes that WNS will have a rejection damages claim any where near the $15,000,000 quoted by WNS, and cause may exist to subordinate any claim of WNS because it likely arises out of an agreement to purchase a security of an affiliate of the Debtor. WNS disputes the Debtor's contentions.

After payment in full to the holders of Allowed Administrative Expense Claims, Allowed Priority Claims, and Allowed Class 8 Claims pursuant to this Plan, and upon the Liquidating Trustee's determination that sufficient cash is available to make such payments, each holder of an Allowed Claim arising from rejection of an executory contract or unexpired lease in Class 4 shall receive its Pro Rata share of the Dividend Fund. Neither the Debtor, the Liquidating Trust, the Litigation Trust, the Advisory Board, the Litigation Trustee nor the Liquidating Trustee, nor their respective designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of such Allowed Unsecured Claims such that the holders of Allowed Unsecured Claims in Class 4 shall have recourse only against the Dividend Fund, and their claims shall be paid solely out of the Dividend Fund. Based on current Projections, the Debtor estimates that $16-32 million from the Dividend Fund will be available for payment of Class 3 and Class 4 Allowed Claims on a pro rata basis.

All Class 4 Claims are subject to review and objection by the Debtor, the Committee, the Liquidating Trust, and the Litigation Trust, and such Claims may be reduced, disallowed, subordinated, and/or recharacterized. Class 4 is impaired under the Plan, and entitled to vote on the Plan.

7. **Claims of WaMu under the WaMu EPA Agreement and the WaMu Commercial Paper Agreement.** Class 5 of the Plan consists of the Claims of WaMu under the WaMu EPA Agreement and the WaMu Commercial Paper Agreement. In full satisfaction of its approximately $1.1 billion Class 5 Claim, WaMu will keep for its own account all of the loans purchased by WaMu pursuant to the WaMu EPA Agreement and the WaMu Commercial Paper Agreement, which were owned by WaMu on the Effective Date, WaMu will return to the Debtor approximately $3,150,000 in loans identified in the letter dated September 12, 2007 from WaMu to the Debtor, and WaMu will not assert any Claims in the Bankruptcy Case with respect to the WaMu EPA Agreement and the WaMu Commercial Paper Agreement. WaMu may still hold or assert Claims against the Debtor under the Washington Mutual Syndicated

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Agreement, discussed above, which Claims, if any, shall be treated in accordance with Class 6 of the Plan to the extent that WaMu is a Repo Participant.

Class 5 is impaired under the Plan and entitled to vote on the Plan.

**8. Claims of Repo Participants under Repurchase Agreements.** Class 6 of the Plan consists of the Claims of Repo Participants under Repurchase Agreements (including UBS, Merrill Lynch, and WaMu, to the extent they are Repo Participants) (collectively, the "Class 6 Repo Participants"). Under the Plan, Class 6 Repo Participants shall have the right to liquidate the Mortgage Loans that they purchased from the Debtor under Repurchase Agreements and shall deliver any excess of the market prices received on liquidation of such Mortgage Loans over the sum of the repurchase price provided for in the applicable Repurchase Agreement and all reasonable expenses incurred in connection with the liquidation of Mortgage Loans. The Repo Participants will provide the Debtor or the Liquidating Trustee with such information reasonably required to determine the interest of the Estate or the Liquidating Trust in Mortgage Loans liquidated pursuant to Class 6 of the Plan. Repo Participants may assert Class 3 general unsecured claims against the Estate to the extent the amount received on liquidation of Mortgage Loans is less than the sum of the repurchase price provided for in the applicable Repurchase Agreement subject to the right of the Liquidating Trustee or the Litigation Trustee to object to such claim.

All Class 6 Claims are subject to review and objection by the Debtor, the Committee, the Liquidating Trust, and the Litigation Trust, and such Claims may be reduced, disallowed, subordinated, and/or recharacterized. Class 6 is impaired under the Plan and entitled to vote on the Plan.

**9. Claims of Subordinated Creditors.** Class 7 consists of any Creditors whose Claims are subordinated pursuant to Section 510 of the Bankruptcy Code or otherwise pursuant to an Order of the Bankruptcy Court. The Debtor believes that the following Claims may be subject to subordination: (i) $20 million of subordinated unsecured debt owed to insiders of the Debtor; (ii) any Claim asserted by WNS; and (iii) other Claims asserted by insiders or affiliates of the Debtor, including, but not limited to shareholders and/or First Magnus Financial Corporation. No Claim will be placed in Class 7 unless and until the Bankruptcy Court enters an Order subordinating such Claim. No distribution will be made in respect of the Class 7 subordinated Claims. Therefore, Class 7 is impaired under the Plan, and is deemed to have rejected the Plan.

**10. Credit Borrowers.** Class 8 of the Plan consists of the Claims of Credit Borrowers. Credit Borrowers are those Persons, listed on Exhibit 9 to the Disclosure Statement, who are borrowers under the corresponding mortgage loans, listed on Exhibit 9 to the Disclosure Statement who either overpaid when paying off their mortgage, are owed escrow funds after paying off their mortgage, or were listed as joint payees with First Magnus on checks from insurance companies for reimbursement of property damage claims to collateral under First Magnus mortgages. Class 8 (consisting of certain claims of Credit Borrowers) is impaired under the Plan and is entitled to vote on the Plan. In the event Class 8 votes to accept

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the Plan, each holder of an Allowed Class 8 Claim shall receive the lesser of (i) its Pro Rata share of $50,000 after payment in full to the holders of Allowed Administrative Expense Claims and Allowed Priority Claims pursuant to this Plan and (ii) the amount of its Allowed Class 8 Claim. In the event Class 8 does not vote to accept this Plan, each Allowed Class 8 Claim shall be treated as an Allowed Class 3 Claim.

**11. Equity Security Interests.** Class 9 of the Plan consists of the holders of Equity Security Interests in the Debtor. The holders of Equity Security Interests in the Debtor will not receive any distribution under the Plan. Therefore, Class 9 is impaired under the Plan, and is deemed to have rejected the Plan.

## IX.
## OVERVIEW OF ADDITIONAL PLAN PROVISIONS

The following description of the Plan is for informational purposes only and does not purport to change or supersede any of the specific contractual language of the Plan. Each holder of a Claim or Equity Interest is urged to read the Plan carefully with respect to the Debtor's proposed treatment of their respective Claim or Equity Interest, and, if necessary, to consult with legal counsel to understand the Plan fully. The Plan, if confirmed, will be binding upon the Debtor, its Creditors, and the holders of Equity Interests. **IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN WILL CONTROL.**

### A. Implementation of the Plan & Conditions to Effectiveness.

The means of execution of the Plan are and will be as follows:

**1. Effective Date of the Plan.** The Effective Date of the Plan is the date designated in writing by the Debtor, after consultation with the Committee, which is after the date upon which the Debtor has sufficient funds on hand to make all contemplated distributions in accordance with this Plan to holders of all Allowed Administrative Expense Claims (in such amounts and in accordance with and subject to the terms of the Plan), and the Confirmation Order shall have become a Final Order, provided, that to the extent Class 1 does not vote to accept the Plan, then the Effective Date shall mean the date designated in writing by the Debtor which is not later than thirty (30) days (unless such thirty day period is extended by the Debtor with the consent of the Committee) after the date upon which the Debtor has sufficient funds on hand to make all contemplated distributions in accordance with this Plan to holders of all Allowed Administrative Expense Claims and Allowed Priority Non-Tax Claims in Class 1 (in such amounts and in accordance with and subject to the terms of the Plan), and the Confirmation Order shall have become a Final Order; provided however, that if the Confirmation Order is not a Final Order, the Debtor, after consultation with the Committee, may waive the requirement that the Confirmation Order shall have become a Final Order.

**2. Liquidating Trust and Litigation Trust.** The Plan is to be implemented in a manner consistent with Section 1123 of the Bankruptcy Code. The Plan will be consummated and distributions will be made by the Liquidating Trust out of the Dividend Fund in accordance

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with the terms of the Plan and the Liquidating Trust Agreement; provided however that if the Liquidating Trust has liquidated all of its Remaining Assets, and the Litigation Trust is still in existence, the Liquidating Trust can, with the consent of the Advisory Committee, transfer the Dividend Fund to the Litigation Trust and the Litigation Trust will responsible for distributions to creditors.

Pursuant to Bankruptcy Code sections 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the Bankruptcy Code, the Confirmation Order shall approve the Liquidating Trust Agreement, the establishment of the Liquidating Trust and appointment of the Liquidating Trustee and authorize and direct the Debtor to take all actions necessary to consummate the terms of the Liquidating Trust Agreement and to establish the Liquidating Trust, including the transfer of the Remaining Assets to the Liquidating Trust. The Liquidating Trust shall be deemed established, and the Liquidating Trustee shall be deemed appointed, as of the Effective Date. The Liquidating Trust shall be created and administered solely to implement the Plan. The powers, responsibilities and compensation for the Liquidating Trustee shall be set forth herein and in the Liquidating Trust Agreement. From the Effective Date, the Liquidating Trustee shall be a representative of the Estate, pursuant to Bankruptcy Code section 1123, appointed for the purposes of, among other things, pursuing the Estate Claims on behalf of the Debtor's Estate. In furtherance of that objective, the Liquidating Trustee shall have the rights of a trustee appointed under Bankruptcy Code section 1106 as it relates to the Remaining Assets. The Liquidating Trust shall have the full power and authority, either in its name or the Debtor's name, to commence, if not already commenced, prosecute, settle and abandon any action related to the Estate Claims and or object to Claims as specified below. The Liquidating Trust shall be authorized to retain professionals (which may include Professional Persons) with the reasonable professional fees, expenses and costs to be paid out of the assets of the Liquidating Trust.

The transfer of Remaining Assets to the Liquidating Trust shall be treated for federal income tax purposes and any applicable state or local income franchise or gross receipts tax purposes, and for all purposes of the Internal Revenue Code of 1986, as amended (the "Tax Code") (e.g., sections 61(a)(12), 483, 1001, 1012 and 1274) as a transfer to creditors to the extent creditors are beneficiaries of the Liquidating Trust, followed by a deemed transfer from the creditors to the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be treated as the grantors and deemed owners of the Liquidating Trust for federal income tax purposes and any applicable state or local income, franchise or gross receipt tax purposes, and it is intended that the Liquidating Trust be classified as a liquidating trust under Section 301-7701-4 of the Treasury Regulations, as more particularly described in Revenue Procedure 94-45, 1994-2 C.B. 684. The Liquidating Trustee and the Beneficiaries of the Liquidating Trust shall value the assets of the Liquidating Trust on a consistent basis and use such valuation for all federal and state tax purposes.

The Net Proceeds of any and all sales (private or public) of the Assets collected by the Liquidating Trust (or its designee or agent), the recoveries from the Estate Claims and the recoveries generated by the Litigation Trust shall be placed by the Liquidating Trustee (or by the Litigation Trustee, as the case may be) in the Dividend Fund to the extent necessary to pay

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the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Class 1 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims as is provided by the Plan.

On and after the Effective Date, the Liquidating Trust, by and through the Liquidating Trustee, shall be fully empowered and authorized (without further order of the Bankruptcy Court), to market for sale and/or to sell and/or dispose of the Remaining Assets, and shall have the power and authority (without the need for a further hearing or order of the Bankruptcy Court) to execute all contracts of sale and other documents necessary to effectuate the sale or disposition of the Remaining Assets.

Immediately upon the Effective Date, the Liquidating Trust shall receive an assignment of all the Debtor's rights, title and interest in the Remaining Assets, free and clear of all Claims, Liens, encumbrances and other interests, except as otherwise specifically provided in the Plan. The Liquidating Trust shall be granted and shall have exclusive control and possession of the Remaining Assets, and the Debtor (and its directors, officers, employees, shareholders and agents) shall, on the Effective Date, or immediately thereafter as is practical, (without further hearing or Order of the Bankruptcy Court) peaceably turnover exclusive possession of the Remaining Assets to the Liquidating Trust, including all books and records related to the Remaining Assets and claims. The Liquidating Trust shall obtain such possession on the Effective Date for the sole purpose of effectuating and/or consummating the Plan. The Liquidating Trust shall be established for the sole purpose of liquidating the Remaining Assets, including prosecuting, settling or abandoning the Estate Claims, and making disbursements from the Dividend Fund for payment of Allowed Claims in accordance with the terms of the Plan. Neither the Liquidating Trust nor the Liquidating Trustee shall have an obligation of any kind to continue operating the business of the Debtor.

The Liquidating Trust shall not have a term greater than five years from its date of creation, unless extended from time to time pursuant to the terms of the Liquidating Trust Agreement, with the approval of the Bankruptcy Court, solely to implement the Plan; provided, however, that the Liquidating Trust shall not terminate if the Litigation Trust has not terminated and the Liquidating Trustee believes that additional assets will be distributed from the Litigation Trust to the Liquidating Trust Estate. At least twice a year, but only if permitted by the other terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall distribute the net income of the Liquidating Trust plus all net proceeds and recoveries from the Remaining Assets to the Creditors holding Allowed Claims in accordance with the terms of the Plan, provided that the Liquidating Trustee shall not be required to make a distribution if the administrative time, costs and expenses in doing so is greater than the benefit to the beneficiaries of such distribution as determined by the Liquidating Trustee and the Liquidating Trustee may retain a sufficient amount of net income and net proceeds in the Liquidating Trust that the Liquidating Trustee reasonably believes are necessary to maintain the value of the assets, to pay the costs and expenses of the Liquidating Trust (and the costs and expenses of the Litigation Trust, to the extent necessary), including the compensation of the Liquidating Trustee and the reasonable fees, expenses and costs of professionals retained by the Liquidating Trust, or to meet claims and contingent liabilities (including Disputed Claims). The Liquidating Trustee shall make continuing, reasonable efforts to dispose of the assets of

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the Liquidating Trust, make timely distributions and not unduly prolong the duration of the Liquidating Trust.

Pursuant to Bankruptcy Code sections 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the Bankruptcy Code, the Confirmation Order shall approve the Litigation Trust Agreement, the establishment of the Litigation Trust and the appointment of the Litigation Trustee and authorize and direct the Debtor to take all actions necessary to consummate the terms of the Litigation Trust Agreement and to establish the Litigation Trust, including the transfer of the Estate Tort and Other Claims to the Litigation Trust. The Litigation Trust shall be deemed established, and the Litigation Trustee shall be deemed appointed as of the Effective Date. The Litigation Trust shall be created and administered solely to implement the Plan. The powers, responsibilities and compensation for the Litigation Trustee shall be set forth herein and in the Litigation Trust Agreement. From the Effective Date, the Litigation Trust and the Litigation Trustee shall be a representative of the Estate, pursuant to Bankruptcy Code section 1123, appointed for the purposes of, among other things, pursuing the Estate Tort and Other Claims on behalf of the Estate. In furtherance of that objective, the Litigation Trustee shall have the rights of a trustee appointed under Bankruptcy Code section 1106 as it relates to the Estate Tort and Other Claims. The Litigation Trust shall have the full power and authority, either in its name or the Debtor's name, to commence, if not already commenced, prosecute, settle and abandon any action related to the Estate Tort and Other Claims. The Litigation Trust shall be authorized to retain professionals (which may include Professional Persons) with the reasonable professional fees, expenses and costs to be paid out of the assets of the Litigation Trust, or out of the Liquidating Trust to the extent funds are not available in the Litigation Trust.

The transfer of Estate Tort and Other Claims to the Litigation Trust, and the distributions from the Litigation Trust to the Liquidating Trust, shall be treated for federal income tax purposes and any applicable state or local income, franchise or gross receipt tax purposes, and for all purposes of the Tax Code (e.g., sections 61(a)(12), 483, 1001, 1012 and 1274) as a transfer to creditors to the extent creditors are beneficiaries of the Litigation Trust followed by a deemed transfer from the creditors to the Litigation Trust. The beneficiaries of the Litigation Trust, shall be treated as the grantors and deemed owners of the Litigation Trust for federal income tax purposes, and for all applicable state or local income, franchise or gross receipt tax purposes, and it is intended that the Litigation Trust be classified as a liquidating trust under Section 301.7701-4 of the Treasury Regulations, as more particularly described in Revenue Procedure 94-45, 1994-2 C.B. 684. The Litigation Trustee and the Beneficiaries of the Litigation Trust shall value the assets of the Litigation Trust on a consistent basis and use such valuation for all federal and state tax purposes.

The Litigation Trust shall not have a term greater than five years from its date of creation, unless extended from time to time pursuant to the terms of the Litigation Trust Agreement with the approval of the Bankruptcy Court, solely to implement the Plan. At least twice a year, but only if permitted by the other terms of the Plan and the Litigation Trust Agreement, the Litigation Trustee shall distribute the net income of the Litigation Trust plus all net proceeds and recoveries from the Estate Tort and Other Claims to the Liquidating Trust for

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deposit into the Dividend Fund, provided that the Litigation Trustee may retain a sufficient amount of net income and net proceeds in the Litigation Trust that the Litigation Trustee reasonably believes are necessary to maintain the value of the assets, to pay the costs and expenses of the Litigation Trust, including the compensation of the Litigation Trustee and the reasonable fees, expenses and costs of professionals retained by the Litigation Trust (as described above). The Litigation Trustee shall make continuing, reasonable efforts to dispose of the assets if the Litigation Trust, make timely distributions and not unduly prolong the duration of the Litigation Trust.

Immediately upon the Effective Date, Litigation Trust shall receive an assignment of all the Debtor's rights, title and interest in the Estate Tort and Other Claims and the Litigation Trust Start-Up Cash, free and clear of all Claims, Liens, encumbrances and other interests, except as otherwise specifically provided in the Plan. The Litigation Trust shall be granted and shall have exclusive control and possession of the Estate Tort and Other Claims and the Litigation Trust Start-Up Cash, and the Debtor (and its directors, officers, employees, shareholders and agents) shall, on the Effective Date, or immediately thereafter as is practical, (without further hearing or Order of the Bankruptcy Court) peaceably turnover exclusive possession of the Estate Tort and Other Claims and the Litigation Trust Start-Up Cash to the Litigation Trust. The Litigation Trust shall obtain such possession on the Effective Date for the sole purpose of effectuating and/or consummating the Plan. The Litigation Trust shall be established for the sole purpose of liquidating the Estate Tort and Other Claims the Proceeds of which will be deposited as provided in the Litigation Trust Agreement into and ultimately disbursed out of the Dividend Fund for payment of Allowed Claims in accordance with the terms of the Plan. Neither the Litigation Trust nor the Litigation Trustee shall have an obligation of any kind to continue operating the business of the Debtor.

### 3. Transfer of Estate Claims/Estate Tort and Other Claims.

**(a)** After the Effective Date, the Liquidating Trust is authorized to transfer to the Litigation Trust any claims or cause of action constituting an Estate Claim for any reason whatsoever in the discretion of the Liquidating Trustee, after consultation with the Advisory Board, for prosecution by the Litigation Trust. After the effectiveness of such transfer, which shall be in writing, the Litigation Trust shall have the full power and authority, either in its name, the Liquidating Trust's name or the Debtor's name, to commence, if not already commenced, prosecute, settle and abandon such claim or cause of action as representative of the Estate.

**(b)** After the Effective Date, the Litigation Trust is authorized to transfer to the Liquidating Trust any claims or cause of action constituting an Estate Tort and Other Claim for any reason whatsoever in the discretion of the Litigation Trustee, after consultation with the Advisory Board, for prosecution by the Liquidating Trust. After the effectiveness of such transfer, which shall be in writing, the Liquidating Trust shall have the full power and authority, either in its name, the Litigation Trust's name or the Debtor's name, to commence, if not already commenced, prosecute, settle and abandon such claim or cause of action as representative of the Estate.

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(c) After the Effective Date, the Liquidating Trustee (with respect to Estate Claims) and the Litigation Trustee (with respect to Estate Tort and Other Claims), as duly appointed representatives of the Estate, both shall have the avoiding powers of a statutory trustee appointed under Bankruptcy Code section 1106. *See* 11 U.S.C. § 1123(b)(3)(B); *In re Professional Investment Properties of America (Briggs v. Kent)*, 955 F.2d 623, 625-26 (9th Cir. 1992) (holding that a trustee's strong arm powers are transferable); *In re P.R.T.C., Inc. (Duckor Spradling & Metzger v. Baum Trust)*, 177 F.3d 774, 781 (9th Cir. 1999) ("'[i]t is a well settled principle that avoidance powers may be assigned to someone other than the debtor or trustee pursuant to a plan of reorganization' under 11 U.S.C. § 1123(b)(3)(B)").

**4. Liquidating Trustee and Litigation Trustee.**

**(a) Appointment of Liquidating Trustee.** On the Effective Date, Morris C. Aaron of MCA Financial Group, Ltd. shall be immediately appointed Liquidating Trustee and authorized to administer the Liquidating Trust and to liquidate any and all Remaining Assets on behalf of the Liquidating Trust for distribution in accordance with the Plan and the Liquidating Trust Agreement. As compensation for his services as Liquidating Trustee, and all fees of any affiliate of the Liquidating Trustee under the Liquidating Trust Agreement, the Liquidating Trustee shall be entitled to receive from the Liquidating Trust Estate a fee equal to (i) three percent (3%) of all funds distributed or paid to Beneficiaries; and (ii) one percent (1%) of all funds distributed or paid to individuals or entities, including the Litigation Trust, other than Beneficiaries.

**(b) Powers of the Liquidating Trustee.** All transfers of the Remaining Assets, including the execution of all contracts of sale, deeds, and other documents necessary to effectuate this Plan and to make payments under the Plan, shall be made by the Liquidating Trustee, on behalf of the Liquidating Trust and in accordance with the Liquidating Trust Agreement. The Liquidating Trustee shall have and is hereby granted the power and authority to list and/or market the Remaining Assets for sale (at such prices and for such amounts as determined by the Liquidating Trustee), and the Liquidating Trustee shall also have the power and authority to execute any and all documents (including contracts, deeds, and other documents) necessary to effectuate this Plan, sell or convey title to the Remaining Assets, without the need of further order of the Bankruptcy Court, prosecute, settle or abandon Estate Claims, and object to Claims. In the discharge of its duties, the Liquidating Trustee will also regularly consult with the Advisory Board and be subject to the approval rights set forth in Section 7.15 hereof.

The Liquidating Trustee, on behalf of the Liquidating Trust, shall be further empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan including, without limitation, releases, settlement documents, notices of dismissal, stipulations of dismissal of any and all Estate Claims; (ii) subject to the provisions of this section of the Plan, make all distributions contemplated hereby; (iii) employ professionals to represent the Liquidating Trust in connection with the consummation of the terms of this Plan; and (iv) commence such actions and exercise such other powers as may be vested in the Liquidating Trustee and/or the

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Liquidating Trust by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Liquidating Trustee to be necessary and proper to implement the provisions of the Plan.

(c) **Appointment of Litigation Trustee.** On the Effective Date, Larry Lattig of Mesirow Financial shall be immediately appointed as Litigation Trustee and shall be authorized to administer the Litigation Trust and to liquidate any and all Estate Tort and Other Claims on behalf of the Litigation Trust for distribution in accordance with the Plan and the Litigation Trust Agreement. Mr. Lattig's resume is attached hereto as Exhibit "8". As compensation for his services as Litigation Trustee and all fees of any affiliate of the Litigation Trustee under the Litigation Trust Agreement, the Litigation Trustee shall be entitled to receive from the Litigation Trust Estate, or from the Liquidating Trust to the extent funds are not available in the Litigation Trust, a fee equal to $400 per hour. The Trustee shall be reimbursed out of the Litigation Trust Estate, or from the Liquidating Trust, to the extent funds are not available in the Litigation Trust, for all expenses (including fees and expenses of legal counsel and other advisors) reasonably incurred in accordance with this Agreement.

(d) **Powers of the Litigation Trustee.** The Litigation Trustee shall have and is hereby granted the power and authority to prosecute, settle or abandon Estate Tort and Other Claims (for such amounts as determined by the Litigation Trustee in his reasonable discretion), and the Litigation Trustee shall also have the power and authority to execute any and all documents (including contracts and other documents) necessary to effectuate this Plan and/or liquidate the Estate Tort and Other Claims, without the need of further order of the Bankruptcy Court. In the discharge of its duties, the Litigation Trustee will also regularly consult with the Advisory Board and be subject to the approval rights set forth in Section 7.15 hereof.

The Litigation Trustee, on behalf of the Litigation Trust, shall be further empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan including, without limitation, releases, settlement documents, notices of dismissal, stipulations of dismissal of any and all Estate Tort and Other Claims; (ii) subject to the provisions of this section of the Plan, make all distributions contemplated hereby; (iii) employ professionals to represent the Litigation Trust in connection with the consummation of the terms of this Plan; and (iv) commence such actions and exercise such other powers as may be vested in the Litigation Trustee and/or the Litigation Trust by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Litigation Trustee to be necessary and proper to implement the provisions of the Plan.

5. **Advisory Board.**

(a) **Composition/Duties.** On the Effective Date, the Advisory Board will be established and will be comprised of the following three (3) existing members of the Committee, selected by the Committee: (1) National Bank of Arizona (Kenneth Goldstein), (2) Hilton & Meyers Advertising, Inc. (Doug Meyers), and (3) Pyro Brand Development, LLC (John Beitter). In the event of any vacancy on the Advisory Board, the remaining members shall fill the vacancy with a Person who is a beneficiary under the Liquidating Trust. All

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discretionary actions to be taken by either the Liquidating Trustee or the Litigation Trustee with respect to the assets of the Liquidating Trust or the Litigation Trust, respectively, including distributions to creditors, the sale or abandonment of the Remaining Assets, the prosecution, compromise, settlement, or abandonment of any Estate Claim or Estate Tort and Other Claim, or the prosecution, compromise, settlement, or abandonment of any objection to Claim shall be done in consultation with the Advisory Board. In the event of any disagreement between either the Liquidating Trustee or the Litigation Trustee and the Advisory Board, the decision of the Advisory Board will control. Notwithstanding the foregoing sentence, if the disagreement between the either the Liquidating Trustee or the Litigation Trustee and the Advisory Board addresses (a) a sale transaction, or a series of sale transactions to the same Person, proposed to be undertaken by the Liquidating Trustee that involves consideration to or for the Liquidating Trust of a value of less than $500,000, (b) the Liquidating Trustee's proposed abandonment or settlement of any dispute regarding any Estate Claim or the release of any claim or Estate Claim or settlement of any litigation regarding any claim or Estate Claim which the Liquidating Trustee in good faith believes has a value of less than $250,000, (c) the Liquidating Trustee's proposal to not file or to settle any objection to a Claim that has a face amount that is less than $100,000, (d) the Litigation Trustee's proposed abandonment or settlement of any dispute regarding, or the release of, any Estate Tort and Other Claim or settlement of any litigation regarding any Estate Tort and Other Claim which the Litigation Trustee in good faith believes has a value of less than $250,000 or (e) the Liquidating Trustee or the Litigation Trustee proposes to pay an expense in an amount less than $50,000, then the Liquidating Trustee's or the Litigation Trustee's decision shall control.

**(b) Professionals.** The Advisory Board may retain and compensate professionals (which may include Professional Persons) to assist the Advisory Board in performing its duties and obligations under the Plan and the Trust Agreements, on such terms as the Advisory Board deems appropriate, without Bankruptcy Court approval.

**(c) Compensation.** Members of the Advisory Board shall not be compensated for their service on the Advisory Board, however, Members shall be entitled to the reimbursement of reasonable expenses incurred in performing their duties under the Plan from the Liquidating Trust.

**(d) Standing.** In connection with any and all matters, proceedings, actions and undertakings involving the Liquidating Trust or the Litigation Trust, including, but not limited to, the prosecution or settlement of any Estate Claim, Estate Tort and Other Claim, objection to Claim or claim, motion, proceeding or cause of action brought against the Debtor, whether in the Bankruptcy Court, or any Federal or State Court (collectively, for purposes of this section only, the "Estate Matters"), the Advisory Board shall be automatically deemed, without further order of the Bankruptcy Court or tribunal where such Estate Matter is pending, to be and is hereby granted the status of a party in interest with all rights to appear and be heard, to file pleadings and other papers, and to participate in any such Estate Matters, and may appeal any judgment, order, or decree entered in such Estate Matters. Notwithstanding the forgoing, the Advisory Board shall not be deemed a named party in any Estate Matter, solely by virtue of its status of a party in interest in such Estate Matter.

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6. **Expenses Incurred on or After the Effective Date.** The amount of any reasonable fees and expenses incurred by the Liquidating Trust, the Litigation Trust, or the Advisory Board on or after the Effective Date (including, without limitation, reasonable attorney and other professional fees and expenses) shall be paid from funds held in the Liquidating Trust or the Litigation Trust. The Liquidating Trustee and the Litigation Trustee shall receive compensation as set forth in the Liquidating Trust Agreement and the Litigation Trust Agreement, respectively, for services rendered and expenses incurred on behalf of the Liquidating Trust or the Litigation Trust and in carrying out their duties pursuant to the Plan.

7. **Non-Transferability of Beneficial Interests in the Trusts.** To avoid any possibility that interests under either Trust could be considered securities under any State or Federal law, no Person entitled to a distribution from either Trust under the terms of the Plan may sell, transfer or otherwise assign its right to receive a distribution from either Trust, respectively, except by will, by intestate succession or by operation of law. The right to receive distributions from the Trusts will not be represented by any certificate.

8. **The Hold Account.** The "Hold Account" is the account that was established by the Debtor during the Bankruptcy Case to sequester and hold certain Cash in which Secured Creditors, Repo Participants, or others claim an interest, which shall be transferred to the Liquidating Trust on the Effective Date and held separate and apart from the other Remaining Assets. Cash in the Hold Account shall be held by the Liquidating Trustee in a separate interest-bearing account until the interests of the parties with respect to the Cash held in the Hold Account are (a) agreed upon by the parties asserting interests in the Cash in the Hold Account and the Liquidating Trustee or (b) determined by the Bankruptcy Court. The Cash in the Hold Account shall be distributed in accordance with (a) any agreement among the parties (including the Liquidating Trustee) asserting interests in the Cash held in the Hold Account or (b) an order of the Bankruptcy Court.

9. **No Liability Of the Advisory Committee and its Members.** To the maximum extent permitted by law, the Advisory Committee and its members, representatives, or professionals employed or retained by the Advisory Committee (the "Advisory Committee's Agents") shall not have or incur liability to any Person or Governmental Unit for an act taken or omission made in good faith in connection with or related to any action taken or omitted by it pursuant to the discretion, power and authority conferred to it by the Plan, the Confirmation Order or the Trust Agreements. The Advisory Committee and the Advisory Committee's Agents shall in all respects be entitled to reasonably rely on the advice of counsel with respect to its duties and responsibilities under the Plan and the Trust Agreements. Entry of the Confirmation Order constitutes a judicial determination that the exculpation provision contained in this Section is necessary to, inter alia, facilitate Confirmation and feasibility and to minimize potential claims arising after the Confirmation Date for indemnity, reimbursement or contribution from the Trusts, or their respective property. The Confirmation Order's approval of the Plan also constitutes a res judicata determination of the matters included in this exculpation provision of the Plan. The Advisory Committee and the Advisory Committee's Agents shall not be released or exculpated from any liability arising from any act done or action taken in bad faith.

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10. **Indemnification.** The Liquidating Trustee, the Litigation Trustee, the Advisory Board and their respective agents and professionals shall be indemnified as provided in the Trust Agreements.

11. **Quarterly Operational Reports.** The Liquidating Trustee and the Litigation Trustee will be required to provide to all Beneficiaries, a joint quarterly accounting and report of the operations of the Liquidating Trust and the Litigation Trust on the first Business Day of the first full calendar quarter following the Effective Date, and on the first Business Day of each calendar quarter thereafter until both the Liquidating Trust and the Litigation Trust are terminated in accordance with the Plan.

**B. Resolution of Claims, Demands, and Causes of Action.**

1. **Preservation of Debtor's Claims, Demands, and Causes of Action.** Except to the extent any rights, claims, causes of action, defenses, and counterclaims are expressly and specifically released in connection with the Plan or in any settlement agreement approved during the Case: (i) any and all Estate Claims or Estate Tort and Other Claims accruing to the Debtor or the Estate shall remain assets of and vest in the Liquidating Trust or the Litigation Trust (as the case may be), whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Estate Claims or Estate Tort and Other Claims have been listed or referred to in the Plan, the Disclosure Statement, or any other document filed with the Court, and (ii) neither the Debtor, the Estate, the Liquidating Trust, nor the Litigation Trust waive, release, relinquish, forfeit, or abandon (nor shall they be estopped or otherwise precluded or impaired from asserting) any Estate Claims or Estate Tort and Other Claims that constitute property of the Debtor or the Estate: (a) whether or not such Estate Claims or Estate Tort and Other Claims has been listed or referred to in the Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court, (b) whether or not such Estate Claims or Estate Tort and Other Claims is currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to such Estate Claims or Estate Tort and Other Claims filed a proof of claim in the Case, filed a notice of appearance or any other pleading or notice in the Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise applicable principle of law or equity, including, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, analyze or refer to any Estate Claim, Estate Tort and Other Claim, or potential Estate Claim or Estate Tort and Other Claim, in the Plan, the Disclosure Statement, or any other document filed with the Court shall in no manner waive, eliminate, modify, release, or alter the Debtor's, the Liquidating Trust's, or the Litigation Trust's right to commence, prosecute, defend against, settle, recover on account of, and realize upon any Estate Claim or Estate Tort and Other Claim that the Debtor or its Estate have or may have as of the Effective Date.

The Debtor expressly reserves all Estate Claims and Estate Tort and Other Claims for later adjudication by the Liquidating Trust and the Litigation Trust, as the case may be, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel,

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issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Estate Claims and Estate Tort and Other Claims upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order. In addition, the Liquidating Trust and the Litigation Trust expressly reserve the right to pursue or adopt Estate Claims and Estate Tort and Other Claims that are alleged in any lawsuits in which the Debtor is a defendant or an interested party, against any Person or Governmental Entity, including the plaintiffs or co-defendants in such lawsuits. Any Person or Governmental Entity to whom the Debtor has incurred an obligation (whether on account of services, purchase, sale of goods or otherwise), or who has received services from the Debtor, or who has received money or property from the Debtor, or who has transacted business with the Debtor, or who has leased equipment or property from or to the Debtor should assume that such obligation, receipt, transfer or transaction may be reviewed by the Liquidating Trust or the Litigation Trust subsequent to the Effective Date and maybe the subject of an action after the Effective Date, whether or not: (a) such Person or Governmental Unit has Filed a proof of Claim against the Debtor in the Case; (b) such Person's or Governmental Unit's proof of Claim has been objected to by the Debtor; (c) such Person's or Governmental Unit's Claim was included in the Debtor's Schedules; or (d) such Person's or Governmental Unit's scheduled Claim has been objected to by the Debtor or has been identified by the Debtor as contingent, unliquidated or disputed.

2. **No Waiver of Claims.** Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of the Debtor or any other Person to object to any Claim for purposes of voting, the failure of the Debtor or any other Person to object to a Claim or Administrative Expense before Confirmation or the Effective Date, the failure of any Person to assert a claim or cause of action before Confirmation or the Effective Date, the absence of a proof of Claim having been filed with respect to a Claim, nor any action or inaction of the Debtor or any other Person with respect to a Claim, or Administrative Expense, other than a legally effective express waiver or release shall be deemed a waiver or release of the right of the Debtor, the Liquidating Trust or the Litigation Trust, before or after solicitation of votes on the Plan or before or after Confirmation or the Effective Date to (a) object to or examine such Claim or Administrative Expense, in whole or in part or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any claim or cause of action against the holder of any such Claim.

3. **Procedure for Determination of Claims.**

(a) **Objections to Claims.** Only the Liquidating Trustee, and the Litigation Trustee in certain instances, shall be entitled to object to Claims. Any objections to Claims shall be served and filed on or before the later of: (i) one hundred and twenty (120) days after the Confirmation Date; (ii) thirty (30) days after a request for payment or proof of Claim is timely filed and properly served; or (iii) such other date as may be fixed by the Bankruptcy Court, whether before or after the dates specified in subsections (i) and (ii) herein. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Creditor if service is effected in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by

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Bankruptcy Rule 7004; (b) by first class mail, postage prepaid, on any appropriate counsel that has appeared on the Creditor's behalf in the Cases; or (c) by first class mail, postage prepaid, on the signatory on the proof of Claim or other representative identified in the proof of Claim or any attachment thereto.

(b) **Payments and Distributions with Respect to Disputed Claims.** Notwithstanding any other provision hereof, if only a portion of a Claim is a Disputed Claim, if appropriate, in the discretion of the Liquidating Trustee, the undisputed portion of the Disputed Claim may be treated as an Allowed Claim. The Liquidating Trustee will create appropriate reserves in the Dividend Fund to provide for payment of Disputed Claims if ever the Disputed Claims become Allowed Claims.

(c) **Distributions After Allowance.** After such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Liquidating Trustee shall distribute to the holder thereof the distributions, if any, to which such holder is then entitled under the Plan in accordance with the provisions hereof. In respect of Disputed Claims such distributions shall be made within fifteen (15) days after such Disputed Claims become Allowed Claims by Final Order of the Bankruptcy Court.

(d) **No Recourse.** Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Liquidating Trustee, the Litigation Trustee, the Debtor, the Advisory Board, or any of their respective professionals, consultants, attorneys, advisory, officers, directors or members or their successors or assigns, or any of their respective property; provided, however, that nothing in the Plan shall modify any rights of a holder of a Claim in accordance with Section 502(j) of the Bankruptcy Code.

4. **Administrative Claims Bar Date.** Requests for payment of Administrative Expenses must be filed and served pursuant to the procedures set forth in the Confirmation Order or notice of entry of the Confirmation Order, no later than thirty (30) days after the Confirmation Date. Any such Claim that is not served and filed within this time period will be forever barred.

5. **Professional Fee Claims.** The Bankruptcy Court must approve all requests for the payment of professional compensation and expenses to the extent incurred on or before the Confirmation Date. Each Professional Person requesting compensation or reimbursement of expenses in the Proceedings pursuant to Sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code shall file an application for allowance of final compensation and reimbursement of expenses not later than twenty (20) days after the Confirmation Date. Nothing herein shall prohibit each Professional Person from requesting interim compensation during the course of these cases pending Confirmation of this Plan. No motion or application is required to fix fees payable to the Clerk's Office or the Office of the United States Trustee, as

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those fees are determined by statute. All fees, costs and disbursements of Professional Persons not heretofore paid through the Effective Date of the Plan, shall be paid out of the Dividend Fund following entry of an order of the Bankruptcy Court authorizing and allowing same pursuant to Sections 327, 330 and 331 of the Bankruptcy Code. Fees, costs and disbursements of Professional Persons shall be the subject matter of applications to the Court for allowance or award in the manner prescribed by the Code. Notwithstanding the foregoing, any Professional Person may apply to the Bankruptcy Court in the manner prescribed by the Code for interim allowance of fees, costs and disbursements at any time and from time to time before payment in full of such fees, costs and disbursements. If the Effective Date occurs within thirty (30) days after the Confirmation Date, the Liquidating Trustee may pay all fees and costs of Professional Persons not previously considered by the Bankruptcy Court, without approval of the Bankruptcy Court.

C. **Treatment of Executory Contracts.** The Plan provides for the rejection, pursuant to Section 365 of the Bankruptcy Code, of any and all Executory Contracts and Unexpired Leases of the Debtor which are in force on the Confirmation Date, except those Executory Contracts and Unexpired Leases which were specifically assumed pursuant to an order of the Court. Notwithstanding any other provision in the Plan or prior notice of any kind from the clerk of the Bankruptcy Court, any and all Creditors or persons with Claims against the Debtor's Estate arising out of or in connection with or due to the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan shall have thirty (30) days from the Confirmation Date within which to file a proof of claim in the true amount of such Claims. If any such Creditors fail to file such proofs of claim within said thirty (30) day period, then such Creditors shall have no Claims as against the Debtor, its Estate, the Liquidating Trustee, or the Litigation Trustee (and with any of their representatives, agents and employees), which Claims arising out of or in connection with or due to such rejection of such Executory Contract or Unexpired Lease, shall be dismissed, released and null and void. Any Entity whose Claim arises from the rejection of an Executory Contract or Unexpired Lease shall, to the extent such Claim becomes an Allowed Claim, have the rights of a Class 3 Claimant with respect thereto. Any claim filed in accordance with the Plan for the rejection of an Executory Contract or Unexpired Lease shall be treated as a Disputed Claim until the period of time has elapsed within which the Liquidating Trustee may file an objection to such Claim.

D. **Miscellaneous Plan Provisions.**

1. **Retention of Jurisdiction.** As described in detail in the Plan, the Plan provides for the retention of jurisdiction by the Bankruptcy Court over various aspects of the Debtor's Bankruptcy Case from and after the Effective Date.

2. **Exculpation.** Except with respect to obligations under the Plan, neither the Liquidating Trustee, the Liquidating Trust, the Litigation Trust, the Litigation Trustee, the Advisory Board, the Debtor, the Committee nor any of their respective members, officers, directors, employees, agents or professionals, solely in their capacity as such (each an "Exculpated Party"), shall have or incur any liability to the Debtor and/or any holder of any Claim or Equity Security Interest for any act or omission in connection with, or arising out of:

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(i) the Case; (ii) the confirmation of the Plan; (iii) the consummation of the Plan; or (iv) the administration of the Plan or property to be distributed pursuant to the Plan, except for fraud, willful misconduct, recklessness or gross negligence; and, in all respects, the Liquidating Trust, Liquidating Trustee, the Litigation Trust, the Litigation Trustee, the Committee and the Debtor, and each of their respective members, officers, directors, employees, advisors and agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided, however, that the Litigation Trustee shall have a period of ninety (90) days from the Effective Date to investigate and commence a lawsuit against an Exculpated Party for any claims or causes of action arising from any act or omission in connection with, or arising out of, the Case, and after such lawsuit has been commenced, such claim or cause of action shall be preserved for the benefit of the Litigation Trust and not released or otherwise affected by the provisions of this Section 13.17 and the Exculpated Party shall not be relieved of any liability with respect thereto.

3. **Injunction.** Except as otherwise provided in the Plan or the Confirmation Order, and except for any actions timely filed pursuant to Section 523 of the Bankruptcy Code and/or any Claims declared by the Court to be non-dischargeable pursuant to Section 523 of the Bankruptcy Code, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against the Debtor or its Estate are, with respect to any such Claims or Equity Security Interests, permanently enjoined from and after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) with respect to any such Claim against or affecting the Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory Board and its members, the Litigation Trust, and the Litigation Trustee or any of their respective property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment, collecting or otherwise recovering by any manner or means, whether directly or indirectly, with respect to any judgment, award, decree or order against the Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory Board and its members, the Litigation Trust, and the Litigation Trustee or any of their respective property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory Board and its members, the Litigation Trust, and the Litigation Trustee or any of their respective property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; (iv) asserting initially after the Effective Date any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due to the Debtor, its Estate, the Liquidating Trust, the Liquidating Trustee, the Advisory Board and its members, the Litigation Trust, and the Litigation Trustee or any of their respective property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with

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the provisions of the Plan to the full extent permitted by applicable law. By accepting a distribution pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth in this section, and, except as set forth in this Section, waives any and all claims, causes of action and/or remedies and objections of every kind against the Debtor, the Litigation Trustee, and the Liquidating Trustee.

**4. Discharge.** Any liability imposed by the Plan will not be discharged. If Confirmation of the Plan does not occur, the Plan shall be deemed null and void. In such event, nothing contained in this Plan shall be deemed to constitute a waiver or release of any claims against the Debtor or its Estate or any other Persons, or to prejudice in any manner the rights of the Debtor or its Estate or any Person in any further proceeding involving the Debtor or the Estate. The provisions of this Plan shall be binding upon the Debtor, all Creditors and all Equity Security Interest Holders, regardless of whether such Claims or Equity Security Interest Holders are impaired or whether such parties accept this Plan, upon Confirmation thereof.

**5. Payment of Statutory Fees and Filing of Quarterly Reports.** Quarterly fees pursuant to 28 U.S.C. Section 1930(a)(6) continue to be payable to the Office of the United States Trustee by the Liquidating Trustee from funds in the Dividend Fund, and file all necessary reports, post-confirmation until such time as the case is converted, dismissed, or closed pursuant to a final decree.

## X.
## LIQUIDATION ANALYSIS

As illustrated in the Liquidation Analysis, attached hereto as Exhibit "5" (portions of which are summarized below), the Debtor believes that the distributions under the Plan will meet or exceed the recoveries that Creditors would receive in a Chapter 7 liquidation of the Debtor and its Estate. Although the Debtor believes that additional recoveries will be realized from the prosecution of Estate Claims and Estate Tort and Other Claims, at this time, the Debtor is unable to estimate with any certainty the recovery to creditors from such Claims.

| Asset Class: | | 12/31/2007 Estimated Fair | 12/31/2007 Estimated Liquidation |
|---|---|---|---|
| Assets Subject to Repurchase Agreements: | Book Value | Market Value (2) | Value (3) |
| UBS Real Estate Securities, Inc. (1) | $ 4,945,597 | $ - | $ - |
| Washington Mutual Bank - Syndicated Repurchase Line (1) | | | |
| -Permanent/Regular Loans | 17,954,452 | 0 | 0 |
| -Construction Loans | 16,431,225 | 0 | 0 |
| | 34,385,677 | 0 | 0 |

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| | | | |
|---|---|---|---|
| Washington Mutual Bank - Commercial Paper Conduit (1) | | | |
| -Permanent/Regular Loans (4) | 22,677,228 | 0 | 0 |
| -Construction - Regular (4) | 683,645 | 0 | 0 |
| | 23,360,873 | 0 | 0 |
| Washington Mutual Bank - Flex Line (1)(4) | 17,042,697 | 0 | 0 |
| Merrill Lynch Bank USA (1) (13) | 18,417,212 | 880,000 | 880,000 |
| Countrywide Home Loans, Inc. (1) | 3,019,606 | 0 | 0 |
| **Total Assets Subject to Repurchase Agreements:** | 101,171,663 | 880,000 | 880,000 |
| **Assets Subject to Security Agreements:** | | | |
| Countrywide Warehouse Lending (1) | 11,975,796 | 2,079,600 | 1,407,442 |
| **Total Assets Subject to Security Agreements:** | 11,975,796 | 2,079,600 | 1,407,442 |
| **Total Assets Subject to Repurchase/Security Agreements:** | $113,147,459 | $ 2,959,600 | $ 2,287,442 |

| **Assets Not Subject to Security Agreements:** | **Book Value** | **12/31/2007 Estimated Fair Market Value (2)** | **12/31/2007 Estimated Liquidation Value (3)** |
|---|---|---|---|
| -Regular Notes - 1st trust deeds | 16,840,211 | 11,196,975 | 7,578,095 |
| -Regular Notes - 2nd trust deeds | 13,828,289 | 4,008,124 | 1,823,480 |
| -Regular Notes, REO, other | 5,360,900 | 4,824,810 | 2,680,450 |
| | 36,029,400 | 20,029,909 | 12,082,026 |
| -Cash On Hand (7) | 5,663,974 | 5,663,974 | 5,663,974 |
| -Vacant Land (8) | 930,000 | 1,520,000 | 1,520,000 |
| -Nonqualified Investment Trust | 677,129 | 677,129 | 677,129 |
| -Accounts Receivable (9) | 1,000,000 | 600,000 | 200,000 |
| -51% Interest in JV (9) | 0 | 0 | 0 |
| -Loan Tracker & intellectual property (9) | 0 | 0 | 0 |
| -Furniture and Fixtures (9) | 0 | 0 | 0 |
| | 8,271,103 | 8,461,103 | 8,061,103 |

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| | | | |
|---|---|---|---|
| **Total Assets Not Subject to Security Agreements:** | $ 44,300,503 | $ 28,491,011 | $ 20,143,128 |
| Cost associated with liquidation | | (3,477,764) | (1,987,106) |
| Liquidating Trustee Fees | | (854,730) | (604,294) |
| Total | $157,447,962 | $ 27,118,117 | $ 19,839,171 |

**Creditors:**

| Unsecured Priority Claims: (5) | Total Claim Per Class | Estimated Recovery - FMV | Estimated Recovery - LV | Percent Recovery |
|---|---|---|---|---|
| Unpaid Administrative Claims | $ 1,155,014 | $ 1,155,014 | $ 1,155,014 | 100% |
| Priority Wage Claims | 11,324,106 | 11,324,106 | 11,324,106 | 100% |
| Un-cashed Payroll Checks | 210,000 | 210,000 | 210,000 | 100% |
| Employee Benefit Claims | 903,063 | 903,063 | 903,063 | 100% |
| Property Taxes Due Pima County | 5,207 | 5,207 | 5,207 | 100% |
| | 13,597,390 | 13,597,390 | 13,597,390 | 100% |
| Unsecured Non Priority Claims: (5) | | | | |
| Wage Claims Greater Than $10,000 | 998,677 | 224,631 | 103,700 | 10% |
| Un-cashed Payroll Checks Greater Than $10,000 | 90,000 | 20,244 | 9,345 | 10% |
| Accounts and Notes Payable | 21,735,729 | 4,888,986 | 2,256,978 | 10% |
| Notes Payable to Officers (10) | 2,700,000 | 607,307 | 280,360 | 10% |
| First Magnus Capital, Inc (11) | 10,000,000 | 2,249,285 | 1,038,372 | 10% |
| First Magnus Capital, Inc | 24,586,803 | 5,530,274 | 2,553,025 | 10% |
| Unknown deficiency / other claims (12) | - | - | - | - |
| | 60,111,209 | 13,520,727 | 6,241,780 | 10% |
| Subordinated Unsecured Debts: (5) | | | | |
| Thomas W. Sullivan, Sr. Revocable Trust | 20,000,000 | 0 | 0 | 0% |
| **Total Claims / Recoveries:** | $ 93,708,599 | $ 27,118,117 | $ 19,839,171 | 21% |

## XI.
## INCOME TAX CONSEQUENCES

**THE DEBTOR DOES NOT EXPECT THAT ITS LIQUIDATION UNDER THE PLAN WILL RESULT IN ANY SIGNIFICANT TAX CONSEQUENCES.**

**SUBSTANTIAL UNCERTAINTY EXISTS WITH RESPECT TO OTHER TAX CONSEQUENCES ASSOCIATED WITH THE PLAN TO CREDITORS. HOLDERS**

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**OF CLAIMS IN MANY CLASSES ARE UNIMPAIRED, AND HOLDERS OF CLAIMS IN MANY OTHER CLASSES WILL BE PAID IN FULL ON ALL ALLOWED AMOUNTS. NEVERTHELESS, EACH HOLDER OF A CLAIM IS URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES OF THE PLAN. NO RULINGS HAVE BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN.**

## XII.
## VOTING PROCEDURES AND REQUIREMENTS

### A. Parties Entitled to Vote.

If you hold an Allowed Claim that is "impaired" under the Plan, you are entitled to vote to accept or reject the Plan. Accordingly, to be entitled to vote, your Claim must be "allowed" as set forth in Section 502 of the Bankruptcy Code or temporarily allowed as set forth in Bankruptcy Rule 3018(a). Additionally, Section 1126(f) of the Bankruptcy Code permits you to vote to accept or reject the Plan only if your Claim is "impaired."

### B. Procedures for Voting.

1. **Submission of Ballots.** After this Disclosure Statement has been approved by the Bankruptcy Court, all Creditors whose votes are solicited (as explained above) will be sent (a) a ballot, together with instructions for voting (the "Ballot"); (b) a copy of this Disclosure Statement as approved by the Bankruptcy Court; and (c) a copy of the Plan. You should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot sent with this Disclosure Statement. You should complete your Ballot and return it to:

GREENBERG TRAURIG, LLP
Attn: John R. Clemency
SUITE 700
2375 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016
Telephone: (602) 445-8000

**TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED AT THE ADDRESS LISTED ABOVE BY 5:00 P.M., MOUNTAIN STANDARD TIME, ON OR BEFORE FEBRUARY 4, 2007. IF YOUR BALLOT IS NOT TIMELY RECEIVED, IT WILL NOT BE COUNTED IN DETERMINING WHETHER THE PLAN HAS BEEN ACCEPTED OR REJECTED.**

A properly addressed, stamped return envelope will be included with your Ballot.

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2. **Procedures for Vote Tabulation.** In determining whether the Plan has been accepted or rejected, Ballots will be tabulated in accordance with the Court's Order approving this Disclosure Statement.

3. **Withdrawal of Ballots.** A Ballot may not be withdrawn or changed after it is cast unless the Bankruptcy Court permits you to do so after notice and a hearing to determine whether sufficient cause exists to permit the change.

4. **Questions and Lost or Damaged Ballots.** If you have any questions concerning voting procedures, if your Ballot is damaged or lost, or if you believe you should have received a Ballot but did not receive one, you may contact John Clemency at the address and telephone number listed above.

## C. Summary of Voting Requirements.

In order for the Plan to be confirmed, the Plan must be accepted by at least one (1) impaired Class of Claims. For a Class of Claims to accept the Plan, votes representing at least two-thirds in claim amount and a majority in number of the Claims voted in that Class (not including votes of insiders) must be cast to accept the Plan.

**IT IS IMPORTANT THAT HOLDERS OF ALLOWED IMPAIRED CLAIMS EXERCISE THEIR RIGHTS TO VOTE TO ACCEPT OR REJECT THE PLAN. THE DEBTOR ASSERTS THAT THE TREATMENT OF CREDITORS UNDER THE PLAN IS THE BEST ALTERNATIVE FOR CREDITORS, AND THE DEBTOR RECOMMENDS THAT THE HOLDERS OF ALLOWED CLAIMS VOTE IN FAVOR OF THE PLAN.**

The specific treatment of each Class under the Plan is described in the Plan and is summarized in this Disclosure Statement.

# XIII.
# CONFIRMATION OF THE PLAN

## A. Confirmation Hearing.

Section 1128(a) of the Bankruptcy Code provides that the Bankruptcy Court, after notice, will hold a Confirmation Hearing on the Plan. The Confirmation Hearing will be held at the United States Bankruptcy Court located at 38 S. Scott Ave., Tucson, Arizona, on February 7 and 8, 2008 beginning at 9:30 a.m. each day. **THE HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT MADE AT THE HEARING.**

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B. **Objections to Confirmation.**

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan, regardless of whether it is entitled to vote. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. **IF AN OBJECTION TO CONFIRMATION IS NOT TIMELY MADE, THE COURT NEED NOT RECEIVE AND CONSIDER IT.** All objections to confirmation of the Plan must be filed with the Bankruptcy Court and served on the Debtor's counsel at the address set forth herein above, on the United States Trustee, and on any party-in-interest who has requested notice in the Debtor's Bankruptcy Case, by February 4, 2008.

C. **Requirements for Confirmation of the Plan.**

1. **Confirmation Under Section 1129(a) of the Bankruptcy Code.** At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. Such requirements include, among others:

(a) That the Debtor has complied with the applicable provisions of Chapter 11, including the provisions of Sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and interests and contents of a plan of reorganization.

(b) That the Debtor has proposed the Plan in good faith and not by any means forbidden by law.

(c) That any payment made or promised by the Debtor to any Person for services, costs, or expenses in connection with the Bankruptcy Case or the Plan has been approved by or is subject to approval by the Bankruptcy Court as reasonable.

(d) That the Debtor has disclosed the identity and affiliations of Persons proposed to serve as officers after confirmation.

(e) That one or more of the impaired Classes of Claims has voted to accept the Plan.

(f) That the Plan is in the best interests of holders of Claims and Equity Interests; that is, each holder of an Allowed Claim or Allowed Equity Interest either has accepted the Plan or will receive on account of its Claim or Equity Interest property with a value, as of the Effective Date, that is not less than the amount that the holder of such Claim or Equity Interest would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

(g) That the Plan is feasible; that is, confirmation is not likely to be followed by the need for liquidation or further reorganization of the Debtor unless that is provided for in the Plan. The Debtor's Plan so provides; thus, feasibility as described herein is not an issue.

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**2. Debtor Believes the Plan Satisfies Bankruptcy Code Requirements.**

**(a) Best Interests Test and Liquidation Analysis.** Under the best interests test, the Plan is confirmable if, with respect to each impaired Class of Claims or Equity Interests, each holder of an Allowed Claim or Allowed Equity Interest in such Class either: (i) has accepted the Plan; or (ii) will receive or retain under the Plan, on account of its Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.

As set forth above, the Debtor believes the distributions to Creditors under the Plan will meet or exceed the recoveries that Creditors would receive in a Chapter 7 liquidation of the Debtors and their Estates. The Debtor believes that the Plan provides an equal or better return to Creditors than they can otherwise receive under Chapter 7, and therefore the best interests of creditors test is met.

**(b) Feasibility of the Plan.** Section 1129(a)(11) of the Bankruptcy Code includes what is commonly described as the "feasibility" standard. In order for the Plan to be confirmed, the Bankruptcy Court also must determine that the Plan is feasible – that is, that the need for further reorganization or a subsequent liquidation of the Debtors is not likely to result following confirmation of the Plan. As set forth herein and in the Plan, the Debtor believes the Plan is feasible.

**(c) Acceptance by an Impaired Class.** Because the Plan impairs some Classes of Claims, Section 1129(a)(10) of the Bankruptcy Code requires that, for the Plan to be confirmed, at least one impaired Class must accept the Plan by the requisite vote without counting the votes of any "insiders" (as that term is defined in Section 101(31) of the Bankruptcy Code) contained in that Class. The Debtor believes that at least one impaired Class will vote to accept the Plan.

**(d) Confirmation Under Section 1129(b) of the Bankruptcy Code.** Although Section 1129(a)(8) of the Bankruptcy Code requires that the Plan be accepted by each Class that is impaired by the Plan, Section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may still confirm the Plan at the request of the Debtor if all requirements of Section 1129(a) of the Bankruptcy Code are met except for Section 1129(a)(8) and if, with respect to each Class of Claims or Equity Interests that (a) is impaired under the Plan, and (b) has not voted to accept the Plan, the Plan "does not discriminate unfairly" and is "fair and equitable." This provision commonly is referred to as a "cramdown." The Debtor has requested cramdown confirmation of the Plan with respect to any such non-accepting Class of Creditors as well as the deemed rejecting Class of Equity Interests, which Equity Interest Holders will receive nothing. **The Debtor believes that, with respect to such Class or Classes, the Plan meets the requirements of Section 1129(b) of the Bankruptcy Code.**

(1) **Unfair Discrimination.** A plan of reorganization "does not discriminate unfairly" if: (i) the legal rights of a non-accepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are related to those of the non-accepting class; and (ii) no class receives payments in excess of that which it is legally entitled to receive on account of its Claims or Equity Interests. The Debtors assert that under the Plan: (i) all classes of impaired Claims are being treated in a manner that is consistent with the treatment of other similar classes of Claims; and (ii) no Class of Claims will receive payments or property with an aggregate value greater than the sum of the Allowed Claims in the Class. Accordingly, the Debtor believes that the Plan does not discriminate unfairly as to any impaired Class of Claims or Equity Interests.

(2) **Fair and Equitable Test.** The Bankruptcy Code establishes different "fair and equitable" tests for Secured Creditors, Unsecured Creditors, and holders of Equity Interests, as follows:

(i) **Secured Creditors.** With respect to a secured claim, "fair and equitable" means that a plan provides that either (A) the holder of the secured claim in an impaired class retains the liens securing such claim, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the amount of such allowed claim, and that the holder of such claim receives on account of such claim deferred cash payments totaling at least the amount of such allowed claim, of a value, as of the effective date, of at least the value of such holder's interest in the estate's interest in such property; (B) for the sale, subject to Section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claim, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clauses (A) and (C); or (C) the realization by such holder of the "indubitable equivalent" of such claim.

(ii) **Unsecured Creditors.** With respect to an unsecured claim, "fair and equitable" means that a plan provides that either (A) each impaired unsecured creditor receives or retains property of a value, as of the effective date, equal to the amount of its allowed claim; or (B) the holders of claims and equity interests that are junior to the claims of the dissenting class will not receive or retain any property under the plan.

(iii) **Equity Interest Holders.** With respect to holders of equity interests, "fair and equitable" means that a plan provides that either (A) each holder will receive or retain under the plan property of a value, as of the effective date, equal to the greater of: (1) the fixed

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liquidation preference or redemption price, if any, of such interest; or (2) the value of such interest; or (B) the holders of equity interests that are junior to the non-accepting class will not receive any property under the plan.

The Debtor believes the Plan complies with the Claims priority established by the Bankruptcy Code and thus the "fair and equitable" test of the Bankruptcy Code (including the absolute priority rule) is met with respect to the Secured Creditors and the Equity Interest holders under the Plan.

UBS, Countrywide, and WNS all contend that the Plan is unconfirmable, as a matter of law, generally based on either improper classification or treatment of their alleged Claims against the Estate. The Debtor disputes their respective contentions.

## XIV.
## ALTERNATIVES TO THE PLAN

If the Plan is not confirmed, several different events could occur: (1) the Debtor and/or a third party could propose another plan providing for different treatment of certain Creditors; (2) Secured Creditors, if any, could move for relief from the automatic stay to allow them to foreclose their liens against their collateral, which may be granted by the Court if an alternative plan is not confirmed in a reasonable period of time; (3) the Bankruptcy Court (after appropriate notice and hearing) could dismiss the Bankruptcy Case or convert such to a case under Chapter 7 if an alternative plan is not confirmed in a reasonable period of time; and/or (4) the Bankruptcy Court could approve, in all events, a sale of the Debtor's remaining assets to the highest and best bidder an auction sale under Section 363 of the Bankruptcy Code.

## XV.
## RECOMMENDATION AND CONCLUSION

The Debtor believes that the Plan provides the best available alternative for maximizing the recoveries that Creditors will receive from the Debtor's Assets. Therefore, the Debtor recommends that all Creditors that are entitled to vote on the Plan vote to accept the Plan.

Date: January 4, 2008.

By: /s/ Gurpreet S. Jaggi
Gurpreet S. Jaggi
President and CEO

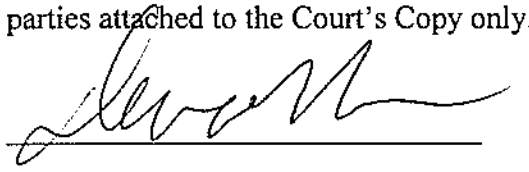
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COPIES of the foregoing was sent via e-mail and/or U.S. Mail on this 4th day of January, 2008 to the parties attached to the Court's Copy only.



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