

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(BALTIMORE DIVISION)**

In re:	*	(Chapter 11)
<b>LUMINENT MORTGAGE CAPITAL, INC.,</b>	*	Case No. 08-21389-DK
<b>LUMINENT CAPITAL MANAGEMENT, INC.,</b>		Case No. 08-21390-DK
<b>MAIA MORTGAGE FINANCE STATUTORY</b>	*	
<b>TRUST,</b>		Case No. 08-21391-DK
<b>MERCURY MORTGAGE FINANCE</b>	*	
<b>STATUTORY TRUST,</b>		Case No. 08-21392-DK
<b>MINERVA CDO DELAWARE SPV LLC,</b>	*	Case No. 08-21393-DK
<b>MINERVA MORTGAGE FINANCE</b>		
<b>CORPORATION,</b>	*	Case No. 08-21394-DK
<b>OT REALTY TRUST,</b>		Case No. 08-21395-DK
<b>PANTHEON HOLDING COMPANY, INC.,</b>	*	Case No. 08-21396-DK
<b>PROSERPINE, LLC,</b>		Case No. 08-21397-DK
<b>SATURN PORTFOLIO MANAGEMENT, INC.,</b>	*	Case No. 08-21398-DK
Debtors.	*	(Jointly Administered Under Case No. 08-21389-DK)
*   *   *   *   *   *   *	*	*   *   *   *

**FIRST AMENDED JOINT PLAN OF REORGANIZATION OF LUMINENT  
MORTGAGE CAPITAL, INC. AND ITS AFFILIATED DEBTORS**

Dated: December 31, 2008

**HUNTON & WILLIAMS LLP**

Peter S. Partee (*admitted Pro Hac Vice*)  
Richard P. Norton (*admitted Pro Hac Vice*)  
Scott H. Bernstein (*admitted Pro Hac Vice*)  
200 Park Avenue, 53<sup>rd</sup> Floor  
New York, NY 10166-0136

**SHAPIRO SHER GUINOT & SANDLER**

Joel I. Sher, Bar No. 00719  
36 South Charles Street  
20<sup>th</sup> Floor  
Baltimore, Maryland 21201-3147

-and-

Michael G. Wilson (*admitted Pro Hac Vice*)  
Thomas N. Jamerson (*admitted Pro Hac Vice*)  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074

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Exhibit A Plan Support and Forbearance Agreement

Exhibit B Settlement and Amendment Agreement

## **ARTICLE I**

### **INTRODUCTION**

Luminent Mortgage Capital, Inc., Luminent Capital Management, Inc., Maia Mortgage Finance Statutory Trust, Mercury Mortgage Finance Statutory Trust, Minerva CDO Delaware SPV, LLC, Minerva Mortgage Finance Corporation, OT Realty Trust, Pantheon Holding Company, Inc., Proserpine, LLC, and Saturn Portfolio Management, Inc., all debtors and debtors-in-possession under chapter 11 of title 11 of the United States Code, hereby propose this *First Amended Joint Plan of Reorganization for Luminent Mortgage Capital, Inc., and its Affiliated Debtors*, dated as of the first date set forth above (the “Plan”). Any agreements and/or other documents that are referenced in the Plan, but which are not attached as exhibits to the Plan, are available upon reasonable written request to counsel for the Debtors indicated on the first page of the Plan.

## **ARTICLE II**

### **DEFINITIONS**

**2.1 Defined Terms.** Terms herein with an initial capital not required by standard capitalization rules are defined terms, and each such term shall have the meaning assigned to it below.

(a) **ACC Parties.** Arco and GGRE together shall be the ACC Parties.

(b) **ACC Released Parties.** The ACC Parties and their affiliates, and each of their respective officers, directors, managers, shareholders, investors, employees, attorneys, consultants, agents, advisors, service providers and any person acting on its or their behalf and the successors and assigns of any of them.

(c) **Administrative Claim.** All Claims for the costs and expenses of administering the Cases having priority under section 507(a)(2) of the Bankruptcy Code, including without limitation costs and expenses allowed under section 503(b) of the Bankruptcy Code, the actual and necessary costs and expenses of preserving the Debtors’ bankruptcy Estates and operating the business of the Debtors, any fees or charges assessed against the Estates under 28 U.S.C. § 1930, Professional Fee Claims, any Cure Claims, the Senior Indenture Trustee Fees Claim, and any Claims allowed pursuant to section 507(b) of the Bankruptcy Code.

(d) **Allowed Claim.** Any Claim or Administrative Claim if and to the extent that (1) such Claim or Administrative Claim has not been withdrawn, paid or otherwise satisfied; (2) (A) a Proof of Claim for such Claim was filed or deemed filed on or before the applicable Claims Bar Date, (B) if no Proof of Claim was filed on or before the applicable Claims Bar Date, the Debtor against whom such Claim is asserted listed such Claim in its Schedules and did not list such Claim as disputed, contingent, or unliquidated, or (C) if such Claim is an Administrative Claim, an application or request for payment of such Administrative Claim was filed on or before the applicable Claims Bar Date, unless the Administrative Claim is for goods or non-professional services

provided to the Debtors during the Cases in the ordinary course of business; and (3) (A) no objection to the allowance of such Claim has been filed or (B) the order allowing such Claim has become a Final Order. Notwithstanding the foregoing sentence, a Claim or an Administrative Claim is an Allowed Claim to the extent it has been allowed by a Final Order of the Bankruptcy Court or allowed in the Plan. The Senior Indenture Trustee Fees Claim is an Allowed Administrative Claim and shall be paid in accordance with Section 4.1 of this Plan.

(e) **Arco.** Arco Capital Corporation Ltd., a Cayman Islands exempted company.

(f) **Assets.** All of the right, title and interest of the Debtors in, to and under any and all assets and property, whether tangible, intangible, real or personal, that constitute property of the Debtors' Estates within the meaning of section 541 of the Bankruptcy Code.

(g) **Ballot.** The ballot distributed to each eligible Holder of a Claim or Interest, on which ballot such Holder may, among other things, vote to accept or reject the Plan and/or make the Convenience Class Election.

(h) **Bankruptcy Code.** The United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as it may be amended from time to time.

(i) **Bankruptcy Court.** The United States Bankruptcy Court for the District of Maryland, Baltimore Division, or any other court of competent jurisdiction exercising jurisdiction over these Cases.

(j) **Bankruptcy Rules.** The Federal Rules of Bankruptcy Procedure, as amended and promulgated under 28 U.S.C. § 2075, and the Local Rules of the Bankruptcy Court, as the same shall be applicable to these Cases.

(k) **Business Day.** A day other than Saturday, Sunday or a "legal holiday" within the meaning of Bankruptcy Rule 9006(a).

(l) **Cases.** The Chapter 11 bankruptcy cases commenced by the Debtors filing their Voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code on September 5, 2008.

(m) **Causes of Action.** Any and all actions, causes of action, controversies, liabilities, obligations, rights, suits, damages, judgments, claims, and demands whatsoever, whether reduced to judgment, disputed or undisputed, secured or unsecured, existing or hereafter arising, in law, equity, or otherwise.

(n) **Claim.** Shall have the meaning assigned to that term in section 101(5) of the Bankruptcy Code.

(o) **Claims Bar Date.** The last date for a Person to file any Proof of Claim as established by the Bankruptcy Court pursuant to a Final Order. The Claims Bar Date for

applications or requests for payment of Administrative Claims arising after the administrative bar date previously established by the Court and prior to the Confirmation Date—other than Cure Claims and Administrative Claims for goods or non-professional services provided to the Debtors during the Cases in the ordinary course of business—shall be the first Business Day that is twenty (20) days after the Confirmation Date. The Claims Bar Date for Rejection Claims, other than Claims arising as a result of the rejection of an Executory Contract pursuant to a Final Order of the Court entered prior to the Confirmation Date, shall be the date established pursuant to Section 7.3 of the Plan. The Claims Bar Date for Proofs of Claim filed in with respect to an amendment to the Schedules shall be the first Business Day that is twenty (20) days after the date on which such amended Schedules are filed with the Bankruptcy Court.

(p) **Class.** A category of Claims or Interests as specified in Article III of the Plan.

(q) **Confirmation.** The entry by the Bankruptcy Court of the Confirmation Order confirming the Plan under the provisions of Chapter 11.

(r) **Confirmation Date.** The date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

(s) **Confirmation Hearing.** The hearing at which the Bankruptcy Court considers Confirmation of the Plan, as such hearing may be adjourned from time to time.

(t) **Confirmation Order.** An order entered by the Bankruptcy Court confirming the Plan, which order is in form and substance reasonably acceptable to the Debtors and the ACC Parties.

(u) **Convenience Claim.** Any Unsecured Claim against Luminent (i) that has an aggregate face amount of \$75,000.00 or less, or (ii) for which the Holder has properly made the Convenience Class Election on a properly cast Ballot.

(v) **Convenience Class Election.** The election available to a Holder of one or more Unsecured Claims against Luminent with aggregate face amounts in excess of \$75,000.00 to opt into Class 5 and have such Claim(s) treated as a single Convenience Claim; provided, however, that in making such election, the Holder of Such Unsecured Claim(s) (i) has agreed to reduce the face amount of such Claim(s) for purposes of voting and distributions under the Plan to a single Claim against Luminent in an amount equal to \$75,000.00, (ii) has made the Creditor Release Election, and (iii) has voted all Claims held by such Holder in favor of the Plan.

(w) **Convenience Class Fund.** The fund to be established and funded in accordance with the Plan Support Agreement and Section 6.1 of the Plan in the amount of \$300,000, which shall be available to make distributions to Holders of Allowed Convenience Class Claims.

(x) **Creditors' Committee.** The Official Committee of Unsecured Creditors of Luminent Mortgage Capital, Inc. and its Affiliated Debtors appointed by the Office of the United States Trustee pursuant to section 1102 of the Bankruptcy Code.

(y) **Creditor Release Election:** The election available to the Holder of an Unsecured Claim against Luminent to elect to grant the releases provided for under Section 9.3 of the Plan and participate in the Unsecured Distribution Fund or the Convenience Class Fund, as applicable, provided that the Holder of such Unsecured Claim (i) has properly made the Creditor Release Election in accordance with the instructions on the Ballot, and (ii) voted all Claims held by such Holder in favor of the Plan.

(z) **Creditor Released Parties.** The Senior Indenture Trustee and the Senior Noteholders and their affiliates, and each of their respective officers, directors, managers, shareholders, investors, employees, attorneys, consultants, agents, advisors, service providers and any person acting on its or their behalf and the successors and assigns of any of them, and WAMU.

(aa) **Cure Claim.** A Claim based upon the Debtors' defaults under an Executory Contract at the time the contract or lease is assumed by the Debtors under section 365 of the Bankruptcy Code.

(bb) **Cure Payment Objection.** A written pleading filed by the Holder of a Cure Claim that objects to the proposed cure amount set forth in the Cure Payment Schedule with respect to such Cure Claim and includes the legal and factual basis for such objection.

(cc) **Cure Payment Objection Deadline.** The first Business Day that is twenty (20) days after the date on which the Cure Payment Schedule is filed and served by the Debtors.

(dd) **Cure Payment Schedule.** The document that shall be filed with the Bankruptcy Court by no later than thirty (30) days prior to the date on which the Confirmation Hearing is scheduled to be conducted, and served upon Persons entitled to notice pursuant to Bankruptcy Rule 2002, which indicates the amounts proposed by the Debtors to satisfy Cure Claims.

(ee) **Debtors.** The Debtors are Luminent and the Subsidiary Debtors.

(ff) **DIP Facility.** That certain Post-Petition Loan and Security Agreement, by and among the Debtors, as borrowers, and Arco, as lender, pursuant to which Arco provided post-petition financing.

(gg) **Disallowed Claim.** A Claim that has been disallowed pursuant to a Final Order or a provision of the Plan that provides that a Disputed Claim or Interest, as the case may be, shall not be an Allowed Claim.



(hh) **Disputed Claim.** Any Claim (1) that the Debtors listed in their Schedules as disputed, contingent or unliquidated, (2) that the Debtors did not list in their Schedules, or (3) to which a timely objection has been filed, which objection has not been withdrawn and has not been overruled or denied by a Final Order. For purposes of this provision, any application, motion, complaint or other pleading or paper filed with the Bankruptcy Court seeking to subordinate or dismiss a Claim or an Administrative Claim shall be deemed an objection thereto.

(ii) **Disputed Claims Reserve.** A segregated account to be established and maintained by the Reorganized Debtors or their duly appointed disbursing agent into which account the Reorganized Debtors shall deposit all amounts reserved for the Holders of Disputed Claims in each Class under the Plan in accordance with Section 6.6 hereof. All amounts on deposit from time to time in the Disputed Claims Reserve and all dividends, interest, and other earnings thereon, net of any applicable taxes and expenses, shall be held in trust for the exclusive benefit of Holders of Disputed Claims that subsequently become Allowed Claims and the Holders of Allowed Claims, until such time as all Allowed Claims have been paid the distributions to which such Holders are entitled under the terms of the Plan.

(jj) **Distribution Date.** The first Business Day after the Effective Date.

(kk) **Effective Date.** If no stay of the Confirmation Order is in effect, the first Business Day after the date all of the conditions required to consummate (i) the transactions contemplated by the Exit Financing Agreement and (ii) the other transactions contemplated by the Plan Support Agreement have been satisfied or waived, or such earlier or later date as may reasonably be determined by the Debtors and the ACC Parties.

(ll) **Estates.** The estates created under Section 541 of the Bankruptcy Code in the Cases.

(mm) **Executory Contract.** Any executory contract or unexpired lease, subject to section 365 of the Bankruptcy Code, between the Debtors and any other Person or Persons, but specifically excluding all of the contracts and agreements entered into after the Petition Date and/or pursuant to the Plan.

(nn) **Exit Financing Agreement.** An agreement by and among the Debtors and Arco that will provide for the extension of a senior, secured revolving credit facility by Arco to the Debtors on substantially the terms and conditions identified on Exhibit D to the Plan Support Agreement, and all exhibits, schedules, agreements, certificates, financing statements, and other documents executed by the Debtors and delivered by the Debtors to Lender in connection with the foregoing.

(oo) **Final Order.** An order or judgment entered by the Bankruptcy Court that (1) has not been reversed, stayed, modified or amended, (2) is not the subject of a pending appeal or motion for review or reconsideration, (3) has not been and may no longer be appealed from or otherwise reviewed or reconsidered, other than under Bankruptcy Rule 9024 and/or Federal Rule of Civil Procedure 60, and (4) is final and

non-appealable in accordance with Bankruptcy Rule 8002 or any other applicable law or rule.

(pp) **Financings.** (i) The Prepetition Financing Documents, (ii) that certain Credit Agreement dated as of June 16, 2008, by and between Arco, Saturn Portfolio Management, Inc. and Minerva Mortgage Finance Corporation as borrowers, Sovereign Bank, NA, as lender, and Luminent as guarantor, (iii) the Senior Note Indenture, and (iv) that certain Promissory Note, dated May 15, 2008, made by Mercury Mortgage Finance Statutory Trust, Minerva Mortgage Finance Corporation and Luminent in the original principal amount of \$13 million.

(qq) **GGRE.** GGRE, LLC, a Delaware limited liability company.

(rr) **Holder.** The beneficial holder of a Claim or Interest and, when used in conjunction with a Class or type of Claim or Interest, means a beneficial holder of a Claim or Interest in such Class or of such type.

(ss) **Indentures.** The Senior Note Indenture and the Subordinated TRUPS Indentures.

(tt) **Indenture Trustees.** The Senior Note Trustee and the trustees under the Subordinated TRUPS Indentures.

(uu) **Indenture Trustee Charging Lien:** Any Lien or other priority in payment or right available to the Indenture Trustees pursuant to the Indentures or applicable law related to the payment of the fees and expenses of the Indenture Trustees that are compensable under the Indentures.

(vv) **Interest.** Any stock or other equity ownership interest in one or more of the Debtors and all dividends and distributions with respect to such stock or interest and all rights, options, warrants, or other rights to acquire any stock or other equity ownership interest in the Debtors as of the Petition Date.

(ww) **Interested Party Professionals.** Those professionals retained by the Debtors and the Creditors' Committee pursuant to sections 327 or 328 of the Bankruptcy Code and an order of the Bankruptcy Court.

(xx) **Lien.** Shall have the meaning assigned to that term in section 101(37) of the Bankruptcy Code.

(yy) **Luminent.** Debtor Luminent Mortgage Capital, Inc., a Maryland corporation.

(zz) **OT Put Agreement.** That certain Put Agreement dated as of January 22, 2008, by and among Arco and Luminent as purchasers, Debtor OT Realty Trust, the preferred shareholders party thereto, REIT Administration, LLC and Charles B. Harrison.

(aaa) **Other Secured Claims.** Any Secured Claim that is not an Arco Secured Claim.

(bbb) **Person.** An individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a joint venture, an estate, a trust, an unincorporated organization, a government or any political subdivision thereof or other entity.

(ccc) **Petition Date.** September 5, 2008, the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

(ddd) **Plan.** This First Amended Joint Plan of Reorganization of Luminent Mortgage Capital, Inc. and its Affiliated Debtors, dated as of the date on the cover page hereof, filed and proposed by the Debtors, as the same may be amended or modified from time to time in accordance with the Plan Support Agreement, including all exhibits and schedules hereto.

(eee) **Plan Support Agreement.** That certain Plan Support and Forbearance Agreement, dated September 4, 2008, by and among the Debtors, the ACC Parties, the Senior Noteholders, the Senior Indenture Trustee and WAMU, as the same may have been amended from time to time. A true and correct copy of the Plan Support Agreement is attached hereto as Exhibit A.

(fff) **Prepetition Arco Loan Agreements.** That certain Amended and Restated Credit Agreement dated as of September 26, 2007 as amended by the First Amendment to the Amended and Restated Credit Agreement dated as of December 7, 2007, the Second Amendment to the Amended and Restated Credit Agreement dated as of May 9, 2008, the Third Amendment to the Amended and Restated Credit Agreement dated as of June 16, 2008, by and among Luminent as borrower, each of the other Debtors as guarantors, and Arco as the lender, and those certain documents defined therein as "Related Documents."

(ggg) **Prepetition GGRE Repo Agreements.** (i) That certain Master Repurchase Agreement dated as of August 14, 2007 between Saturn Portfolio Management, Inc., as seller, and GGRE, as buyer; (b) that certain Master Repurchase Agreement dated as of August 14, 2007 between Mercury Mortgage Finance Statutory Trust, Inc., as seller, and GGRE, as buyer; (c) that certain Master Repurchase Agreement dated as of August 14, 2007 between Minerva Mortgage Finance Corporation, as seller, and GGRE, as buyer; and (d) that certain Master Repurchase Agreement dated as of December 6, 2007 between Minerva CDO Delaware SPV LLC, as seller, and GGRE, as buyer, in each case with respect to the foregoing, including all amendments and confirmations with respect thereto.

(hhh) **Prepetition Financing Documents.** The Prepetition Arco Loan Agreements, the Prepetition GGRE Repo Agreements and the OT Put Agreement.

(iii) **Priority Claims.** All Priority Non-Tax Claims and all Priority Tax Claims.

(jjj) **Priority Non-Tax Claims.** All Claims that are entitled to priority pursuant to section 507(a) of the Bankruptcy Code and that are not Administrative Claims or Priority Tax Claims.

(kkk) **Priority Tax Claim.** Any Claim for an amount entitled to priority under section 507(a)(8) of the Bankruptcy Code.

(lll) **Professional Fee Claim.** Any Claim for compensation or reimbursement of expenses arising pursuant to sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code in connection with the Cases for services provided or expenses incurred on or before the Effective Date.

(mmm) **Proof of Claim.** Any written statement filed under oath in the Cases by the Holder of a Claim, other than an Administrative Claim, which statement (1) conforms substantially to Official Form 10, (2) states the amount and basis of such Holder's Claim, and (3) attaches or sufficiently identifies all documentation evidencing or otherwise supporting the Claim.

(nnn) **Ratable Portion.** With reference to any distribution on account of any Allowed Claim in any Class, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of Allowed Claims in such Class.

(ooo) **Rejection Claim.** Any Claim for damages arising as a proximate result of the rejection of an Executory Contract under section 365 of the Bankruptcy Code.

(ppp) **Released Parties:** The ACC Released Parties, the Creditor Released Parties, the Debtors, and any officer, director or employee of, or attorney or other professional for, the Debtors if such officer, director, employee or professional served in such capacity on or after the Petition Date.

(qqq) **Reorganized Debtor(s).** The Debtors, or each of them individually, on or after the Effective Date.

(rrr) **Reorganized Equity Units.** The common shares, membership interests or other common equity interests of Luminent after it becomes a Reorganized Debtor.

(sss) **Reorganized Preferred Equity Units.** The preferred equity interests issued by Luminent after it becomes a Reorganized Debtor and converts to a private entity. The Preferred Equity Units shall be perpetual and shall have an aggregate liquidation preference in the amount of \$2.75 million. Dividends on the Preferred Equity Units shall not be payable in cash, but rather, shall accrete until redemption or liquidation at the rate of 9.0% per annum during the first year after the Effective Date, 10.0% per annum during the second year after the Effective Date, and 11.0% per annum thereafter. The Reorganized Preferred Equity Units (i) may be redeemed at any time at Reorganized

Luminent's sole election upon payment of the aggregate liquidation preference plus all accreted and unpaid dividends, and (ii) shall be redeemed upon any change of control of Luminent (including by means of dispositions of assets) upon payment of the aggregate liquidation preference plus all accreted and unpaid dividends.

(ttt) **Schedules.** The schedules of assets and liabilities filed by the Debtors pursuant to Bankruptcy Rule 1007(b), as they may be amended by the Debtors from time to time.

(uuu) **Secured Claim.** Any Claim against a Debtor (1) to the extent such Claim is reflected in the Schedules or upon a Proof of Claim as a secured claim, and which is secured by a Lien on any Assets to the extent of the value of such Assets, as determined in accordance with section 506(a) of the Bankruptcy Code, or (2) to the extent the Holder of such Claim has a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

(vvv) **Senior Indenture Trustee.** Wells Fargo Bank, N.A., solely in its capacity as trustee with respect to the Senior Note Indenture.

(www) **Senior Indenture Trustee Fees Claim.** The reasonable fees, costs, expenses and indemnity claims of the Senior Indenture Trustee and the fees and expenses of its counsel and financial advisors, if any.

(xxx) **Senior Indenture Trustee Released Parties.** The Senior Indenture Trustee and its respective officers, directors, managers, employees, attorneys, consultants, agents and advisors, and any person acting on its or their behalf and the successors and assigns of any of them

(yyy) **Senior Note Claims.** The Claims held by the Senior Noteholders under the Senior Note Indenture. Any distribution on account of the Senior Note Claims made pursuant to the Plan shall be made to the Senior Indenture Trustee pursuant to the Senior Note Indenture and remain subject to the Indenture Trustee Charging Lien of the Senior Indenture Trustee. As of the Effective Date, the Senior Note Claims shall be Allowed Claims in an amount to be agreed upon by the Debtors prior to the Effective Date.

(zzz) **Senior Note Indenture.** That certain Indenture dated as of June 5, 2007, by and between Luminent as issuer, Maia Mortgage Finance Statutory Trust,, Mercury Mortgage Finance Corporation, and Saturn Portfolio Management, Inc., each as guarantors, and the Senior Indenture Trustee, pursuant to which Luminent issued its 8.125% Convertible Senior Notes.

(aaaa) **Senior Noteholders.** The Holders of Senior Note Claims who are party to the Plan Support Agreement, other than the ACC Parties.

(bbbb) **Subordinated TRUPS Claim.** Any Claim against one or more of the Debtors based upon any of the debt instruments or securities issued pursuant to, or in conjunction with, either of the Subordinated TRUPS Indentures.

(cccc) **Subordinated TRUPS Indentures.** Both (i) that certain Junior Subordinated Indenture between Luminent Mortgage Capital, Inc. and JPMorgan Chase Bank, National Association, as Trustee, dated March 15, 2005, and (ii) that certain Junior Subordinated Indenture between Luminent Mortgage Capital, Inc. and Wilmington Trust Company, as Trustee, dated December 15, 2005.

(dddd) **Subsidiary Debtors.** The Subsidiary Debtors are Luminent Capital Management, Inc., Maia Mortgage Finance Statutory Trust, Mercury Mortgage Finance Statutory Trust, Minerva CDO Delaware SPV, LLC, Minerva Mortgage Finance Corporation, OT Realty Trust, Pantheon Holding Company, Inc., Proserpine, LLC, and Saturn Portfolio Management, Inc.

(eeee) **Unsecured Claim.** Any Claim that is (1) not a Secured Claim, (2) not a Priority Claim, (3) not an Administrative Claim, (4) not a Convenience Claim, (5) not a Subordinated TRUPS Claim, or (6) that is not based in whole or in part on the Holder's purchase or ownership of an Interest in the Debtors.

(ffff) **Unsecured Distribution Fund.** The fund to be established and funded in accordance with the Plan Support Agreement and Section 6.1 of the Plan in the amount of \$2,750,000, which shall be available to make distributions to Holders of Allowed Class 4(a) Claims other than the ACC Parties.

(gggg) **Unclassified Claim.** A Claim that is not classified under the Plan, viz., Administrative Claims and Priority Tax Claims.

(hhhh) **WAMU.** WAMU Capital Corp.

**2.2 Undefined Terms.** Terms used herein but not defined above shall have the meanings assigned to them, if any, in the Bankruptcy Code and/or the Bankruptcy Rules.

**2.3 Exhibits.** All exhibits to the Plan are incorporated by reference and made a part of the Plan as if set forth in full herein.

### **ARTICLE III**

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following Classes. Article IV describes the treatment of Administrative Claims and Priority Tax Claims. For the purposes of the Plan, Holders of Claims against, or Interests in, the Debtors are classified as follows in accordance with section 1122(a) of the Bankruptcy Code:

**3.1 Class 1 – Priority Non-Tax Claims.** Class 1 consists of all Allowed Priority Non-Tax Claims.

**3.2 Class 2 – Secured Claims of ACC Parties.** Class 2 consists of all Allowed Secured Claims held by the ACC Parties that arise under the Prepetition Financing Documents and that



are secured by Liens on any Assets, which Liens were granted under (a) the Prepetition Financing Documents, and/or (b) any other related documents or agreements.

**3.3 Class 3 – Other Secured Claims.** Class 3 consists of all Allowed Other Secured Claims, if any.

**3.4 Class 4(a) – Releasing General Unsecured Claims Against Luminent.** Class 4(a) consists of all Allowed Unsecured Claims against Luminent to the extent the Holders of such Claims have properly made the Creditor Release Election.

**3.5 Class 4(b) – Non-Releasing General Unsecured Claims Against Luminent.** Class 4(b) consists of all Allowed Unsecured Claims against Luminent to the extent the Holders of such Claims have not properly made the Creditor Release Election.

**3.6 Class 5(a) – Releasing Convenience Class Claims.** Class 5(a) consists of all Allowed Convenience Claims against Luminent to the extent the Holders of such Claims have properly made the Creditor Release Election.

**3.7 Class 5(b) – Non-Releasing Convenience Class Claims.** Class 5(b) consists of all Allowed Convenience Claims against Luminent to the extent the Holders of such Claims have not properly made the Creditor Release Election.

**3.8 Class 6 – Subordinated TRUPS Claims.** Class 6 consists of all Allowed Subordinated TRUPS Claims.

**3.9 Class 7 – Subsidiary Debtor Unsecured Claims.** Class 7 consists of all Allowed Claims that are Unsecured Claims against one or more of the Subsidiary Debtors.

**3.10 Class 8 – Interests.** Class 8 consists of all Interests.

#### **ARTICLE IV**

#### **TREATMENT OF ADMINISTRATIVE AND PRIORITY TAX CLAIMS**

**4.1 Administrative Claims.** On the Distribution Date, or as soon thereafter as is reasonably practicable, the Holder of each Administrative Claim that is an Allowed Claim shall receive, in full and final satisfaction of such Holder's Allowed Claim, cash in an amount equal to the unpaid portion of such Allowed Claim, or some other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Administrative Claim; provided, however, that Administrative Claims for goods or non-professional services provided to the Debtors during the Cases in the ordinary course of the Debtors' business shall be paid or performed in accordance with the terms and conditions of the particular transactions and any agreements relating thereto. If Debtors and the Senior Note Trustee cannot agree on the amount of the Senior Indenture Trustee Fees Claim, the reasonableness of any such fees and expenses shall be determined by the Bankruptcy Court. For the avoidance of doubt, any portion of the Senior Indenture Trustee Fees Claim not paid as an Allowed Administrative Claim may be satisfied pursuant to the Indenture Trustee Charging Lien in favor of the Senior Note Trustee from distributions on account of the Senior Note Claims, prior to payment over of any portion of such distribution to the Senior Noteholders.

**4.2 Priority Tax Claims.** Unless a Final Order otherwise provides, on the Distribution Date, or as soon thereafter as is reasonably practicable, each Holder of a Priority Tax Claim that is an Allowed Claim shall receive, at the Debtors' discretion and in full and final satisfaction of such Holder's Allowed Claim, (a) cash in an amount equal to the unpaid portion of such Allowed Claim, (b) payment of such Allowed Claim over a period not to exceed five (5) years with interest, or (c) some other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Priority Tax Claim. Notwithstanding the foregoing, the Holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any Claim or demand for any such penalty (a) will be subject to treatment as an Unsecured Claim or a Convenience Claim, if and to the extent an Allowed Claim, and (b) the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such amounts from the Reorganized Debtor or the Assets.

**4.3 Full Satisfaction, Discharge and Release.** The payments, distributions and other treatment afforded to Holders of Allowed Administrative Claims and Allowed Priority Tax Claims under this Article IV shall be in full and complete satisfaction, discharge and release of such Allowed Claims.

## **ARTICLE V**

### **TREATMENT AND IMPAIRMENT OF CLASSES**

**5.1 Class 1 – Priority Non-Tax Claims.** On the Effective Date, the Holders of Allowed Claims in Class 1 shall receive (x) all amounts to which such Holder is entitled on account of such Allowed Claim on the later of (i) the Distribution Date, or as soon thereafter as is reasonably practicable, and (ii) the date when such Allowed Claim becomes due and payable according to its terms and conditions, or (y) such other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Priority Non-Tax Claim.

Class 1 is an unimpaired Class and conclusively deemed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

**5.2 Class 2 – Secured Claims of the ACC Parties.** On the Distribution Date, Arco or its designee shall receive in full and final satisfaction of the Class 2 Claims held by the ACC Parties (i) 51% of the Reorganized Equity Units, (ii) \$1,300,000, (iii) the Preferred Equity Units, and (iv) such other consideration as is provided for under the terms of the Plan Support Agreement.

Class 2 is an impaired Class and is entitled to vote on the Plan.

**5.3 Class 3 – Other Secured Claims.** On the Effective Date, the Holders of Allowed Claims in Class 3 shall receive (x) all amounts to which such Holder is entitled on account of such Allowed Claim on the later of (i) the Distribution Date, or as soon thereafter as is reasonably practicable, and (ii) the date when such Allowed Claim becomes due and payable according to its terms and conditions, or (y) such other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Class 3 Claim.

Class 3 is an unimpaired Class and conclusively deemed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.



**5.4 Class 4(a) – Releasing General Unsecured Claims.** On the Distribution Date, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Claim in Class 4(a) shall receive (x)(i) its Ratable Portion of the Unsecured Distribution Fund, and (ii) its Ratable Portion of 41% of the Reorganized Equity Units, taking into account the Holders of Allowed Claims in Classes (4)(b) and 5(b) to determine such Ratable Portion of the Reorganized Equity Units, or (y) such other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Claim. For the avoidance of doubt, no distribution shall be made to the ACC Parties on account of their Class 4(a) Claims.

Class 4(a) is an impaired Class and is entitled to vote on the Plan.

**5.5 Class 4(b) – Non-Releasing General Unsecured Claims.** On the Distribution Date, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Claim in Class 4(b) shall receive (x) its Ratable Portion of 41% of the Reorganized Equity Units, taking into account the Holders of Allowed Claims in Classes (4)(a) and 5(b) to determine such Ratable Portion of the Reorganized Equity Units, or (y) such other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Claim. For the avoidance of doubt, no distribution shall be made to the ACC Parties on account of their Class 4(b) Claims.

Class 4(b) is an impaired Class and is entitled to vote on the Plan.

**5.6 Class 5(a) – Releasing Convenience Claims.** On the Distribution Date, or as soon as reasonably practical thereafter, each Holder of an Allowed Claim in Class 5(a) shall receive (x) its Ratable Portion of the Convenience Class Fund, or (y) such other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Claim.

Class 5(a) is an impaired Class and is entitled to vote on the Plan.

**5.7 Class 5(b) – Non-Releasing Convenience Claims.** On the Distribution Date, or as soon as reasonably practical thereafter, each Holder of an Allowed Claim in Class 5(b) shall receive (x) its Ratable Portion of 41% of the Reorganized Equity Units, taking into account the Holders of Allowed Claims in Classes 4(a) and 4(b) to determine such Ratable Portion of the Reorganized Equity Units, or (y) such other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Claim.

Class 5(b) is an impaired Class and is entitled to vote on the Plan.

**5.8 Class 6 – Subordinated TRUPS Claims.** Holders of Allowed Claims in Class 6 shall receive no property or distribution under the Plan on account of such Allowed Claims.

Class 6 is an impaired Class and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

**5.9 Class 7 – Subsidiary Debtor Unsecured Claims.** Holders of Allowed Claims in Class 7 shall receive no property or distribution under the Plan on account of such Allowed Claims.

Class 7 is an impaired Class and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

5.10 **Class 8 – Interests.** On the Effective Date, Interests in the Debtors shall be cancelled and the Holders of such Interests shall receive no property or distribution under the Plan on account of such Interests.

Class 8 is an impaired Class and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

5.11 **Full Satisfaction, Discharge and Release.** The payments, distributions and other treatment afforded to Holders of Allowed Claims and Interests under this Article V shall be in full and complete satisfaction, discharge and release of such Allowed Claims or Interests.

## **ARTICLE VI**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **6.1 Exit Financing Agreement and Plan Funding.**

(a) On the Effective Date, the Reorganized Debtors shall execute the documents required to close and perform the transactions contemplated by the Exit Financing Agreement. Proceeds from the Exit Financing Agreement will be used to (i) repay the Debtors' obligations to Arco under the DIP Facility, (ii) fund the distribution to the ACC Parties required under the Plan on account of its Allowed Class 2 Claim, and (iii) provide the Reorganized Debtors with working capital for their business operations.

(b) On the Effective Date, the ACC Parties shall fund the (i) Unsecured Distribution Fund and (ii) the Convenience Class Fund, which amounts shall be distributed by the Debtors to the Holders of Allowed Claims in Classes 4(a) and 5(a) under the Plan.

**6.2 Conversion of Luminent to a Private Company, Issuance of Reorganized Equity and Dissolution of Certain Subsidiary Debtors.** Effective as of the Effective Date, the existing Interests of Luminent shall be cancelled and Luminent shall issue both the Reorganized Equity Units and the Reorganized Preferred Equity Units and Luminent shall take such steps as are necessary to memorialize the conversion from a public to a private company. The Reorganized Equity Units shall be distributed as follows: (i) 51% to Arco, or its designee, on account of Arco's Allowed Class 2 Claims; (ii) 41% to Holders of Allowed Unsecured Claims in Classes 4(a), 4(b) and 5(b), or to the Disputed Claims Reserve to the extent that Disputed Unsecured Claims exist; and (iii) 8% to Reorganized Luminent to be distributed in accordance with the employee incentive program described in the Plan Support Agreement. All of the Reorganized Preferred Equity Units shall be distributed to Arco, or its designee, in accordance with the Plan Support Agreement and the Plan.

#### **6.3 Continued Corporate Existence and Vesting of Assets.**

(a) Except as otherwise provided herein, the Debtors will, as the Reorganized Debtors, continue to exist after the Effective Date as separate entities, with all the powers

of a corporation, limited liability company, partnership or limited partnership, as appropriate, under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law. The following will occur and be effective as of the date specified in the documents effectuating the Plan or as of the Effective Date, if no other effective date is specified in the documents, and will be authorized and approved in all respects and for all purposes without any requirement of further action by stockholders or directors of the Debtors: (i) the adoption of new or amended and restated bylaws and certificates of incorporation; (ii) the distribution of cash pursuant to the Plan; (iii) the establishment of the Disputed Claims Reserve; (iv) the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to the Plan, or the Exit Financing Agreement; (v) the issuance of the Reorganized Equity Units and the Reorganized Preferred Equity Units; and (vi) the other matters provided for under the Plan involving the corporate structure of the Debtors or the Reorganized Debtors or any corporate action to be taken by or required of the Debtors or Reorganized Debtors.

(b) Except as otherwise provided herein, on the Confirmation Date, all property of the Estates shall, in accordance with section 1141(c) of the Bankruptcy Code, vest in the Reorganized Debtors, free and clear of all Liens, Claims, and Interests. On and after the Effective Date, the Reorganized Debtors may operate their business and may use, acquire and dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges that it incurs on or after the Effective Date for professionals' fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

**6.4 Amendments to Certificate of Incorporation.** As of the Effective Date and except as otherwise provided herein, the Debtors' certificates of incorporation, or similar governing documents, will be amended to the extent required by section 1123(a)(6) of the Bankruptcy Code and to comply with any other provisions of the Plan.

#### **6.5 Delivery of Distributions; Undeliverable Distributions.**

(a) Subject to Sections 6.5(c) and (d) of the Plan, distributions to Holders of Allowed Claims shall be made (1) at the address set forth on the respective Proofs of Claim filed by such Holders, (2) at the addresses set forth in any written notices of address change delivered to the Debtors or the Reorganized Debtors after the date of any related Proof of Claim, or (3) at the address reflected in the Debtors' Schedules if no Proof of Claim has been filed and the Debtors and the Reorganized Debtors have not received a written notice of a change of address.

(b) If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtors as undeliverable, no further distribution shall be made to such Holder, and the Reorganized Debtors shall have no obligation to make any further distribution to the Holder, unless and until the Reorganized Debtors are notified in

writing of such Holder's then current address. Subject to Section 6.5(d) of the Plan, the Reorganized Debtors shall retain undeliverable distributions until such time as a distribution becomes deliverable.

(c) Notwithstanding any other provision of the Plan, the Debtors shall recognize the Proof of Claims filed by the Indenture Trustees in respect of the Senior Note Claims and the Subordinated TRUPS Claims for all purposes under this Plan. Accordingly, any Proof of Claim filed by the registered or beneficial Holder of such Claims shall be deemed disallowed as duplicative of the Proofs of Claim filed by such Indenture Trustees without the need for any further action or an order of the Bankruptcy Court, except to the extent such Proof of Claim does not include Claims asserted by one or more of the Indenture Trustees. For the avoidance of doubt, any portion of the Senior Indenture Trustee Fees Claim not paid as an Administrative Claim may be satisfied pursuant to the Indenture Trustee Charging Lien in favor of the Senior Note Trustee from distributions on account of the Senior Note Claims prior to payment over of any portion of such distribution to the Senior Noteholders. The Indenture Trustees shall be deemed to be the Holders of all Allowed Senior Note Claims or Subordinated TRUPS Claims, as applicable, for purposes of distributions to be made hereunder, and all distributions on account of such Claims shall be made to or on behalf of the applicable Indenture Trustee, subject to the subordination provisions of the Subordinated TRUPS Indentures. The Senior Indenture Trustee shall be authorized but not required to effect any distribution under the Plan through the book entry transfer facilities of The Depository Trust Company pursuant to the procedures used for effecting distributions thereunder on the date of any such distribution.

(d) Any Holder of an Allowed Claim who does not assert a Claim for an undeliverable distribution within one (1) year after the Distribution Date on account of such Claim shall no longer have any claim to or interest in such undeliverable distribution and shall be forever barred from receiving any distribution under the Plan and such amount shall be distributed in accordance with the terms of the Plan or, if all other Holders of Allowed Claims have received all property to which they are entitled under the Plan, retained by the Reorganized Debtors.

#### **6.6 Disputed Claims.**

(a) No payment or other distribution or treatment shall be made on account of a Disputed Claim, even if a portion of the Claim is not disputed, unless and until such Disputed Claim becomes an Allowed Claim and the amount of such Allowed Claim is determined by a Final Order or by stipulation between the Debtors and the Holder of the Claim. No distribution or other payment or treatment shall be made on account of a Disallowed Claim at any time.

(b) On the Distribution Date, the Debtors shall establish the Disputed Claims Reserve and the Debtors shall deposit into the Disputed Claims Reserve the amount of cash or other consideration to be provided under the Plan to the Holder of a Disputed Claim as if such Holder's Claim were an Allowed Claim in its face amount.

(c) The Debtors (prior to the Effective Date) or Reorganized Debtors (after the Effective Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to such objection. Any Final Order of the Bankruptcy Court that estimates a Disputed Claim pursuant to this Section 6.6(c) irrevocably shall constitute and be a conclusive and final determination of the maximum allowable amount of the Claim of such Creditor, should it become an Allowed Claim. Accordingly, the Holder of a Disputed Claim that is estimated by the Bankruptcy Court pursuant to this Section 6.6(c) shall not be entitled to any subsequent reconsideration or upward adjustment of the maximum allowable amount of such Claim as a result of any subsequent adjudication or actual determination of the allowed amount of such Disputed Claim or otherwise, and the Holder of such Claim shall not have recourse to the Debtors, the Reorganized Debtors, or any Assets of the foregoing in the event the allowed amount of the Holder's Claim is at any time later determined to exceed the estimated maximum allowable amount. As soon as practicable after entry of an order estimating a Disputed Claim under section 502(c) of the Bankruptcy Code, the Debtors shall deposit into the Disputed Claims Reserve the amount of cash or other consideration to be provided under the Plan to the Holder of the Disputed Claim as if the Disputed Claim were an Allowed Claim in its maximum allowable amount. In all circumstances, the Holder's sole recourse for the payment of a Disputed Claim, should it become an Allowed Claim, shall be to the funds or other consideration maintained in the Disputed Claims Reserve.

(d) Following the date on which a Disputed Claim becomes an Allowed Claim after the Distribution Date, the Reorganized Debtors shall pay directly to the Holder of such Allowed Claim the amount provided for under Articles IV or V of the Plan, as applicable. Conversely, following the date a Disputed Claim becomes a Disallowed Claim, the Reorganized Debtors shall transfer the entire amount on reserve in the Disputed Claims Reserve with respect to such Disputed Claim pursuant to Section 6.6(a) of the Plan to the Reorganized Debtors unless, after such transfer, the amounts remaining in the Disputed Claim Reserve would be insufficient to satisfy the obligations established under this Plan.

**6.7 Disbursement of Funds.** The Reorganized Debtors or their duly appointed disbursing agent shall make all distributions of cash or other property required under the Plan, unless the Plan specifically provides otherwise. All cash and other property held by the Reorganized Debtors for distribution under the Plan shall be held by them in trust for the exclusive benefit of the Holders of Allowed Claims, shall not be commingled with the general assets of the Reorganized Debtors, and shall not be subject to any claim by any Person except as provided under the Plan.

**6.8 Direction to Parties.** From and after the Effective Date, the Debtors or the Reorganized Debtors may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver, or to join in the execution or delivery, of any instrument required to



effect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any Lien, that is necessary for the consummation of the Plan, pursuant to section 1142(b) of the Bankruptcy Code, provided that such direction is in accordance with the Plan Support Agreement.

**6.9 Setoffs.** The Debtors or the Reorganized Debtors may, to the extent permitted under applicable law, setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature (other than claims arising under Chapter 5 of the Bankruptcy Code) that the Debtors may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; provided, however, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such claims, rights and causes of action that the Debtors possess against such Holder.

## **ARTICLE VII**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**7.1 Rejection of Certain Executory Contracts.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into in connection with the Plan, on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the Debtors will reject each of the Executory Contracts listed on Schedule 7.1; provided, however, that the Debtors reserve the right, at any time prior to the Effective Date, to amend Schedule 7.1 to (a) delete any Executory Contract listed therein, thus providing for its assumption pursuant to Section 7.2 or (b) add any Executory Contract thereto, thus providing for its rejection pursuant to this Section 7.1. The Debtors will file Schedule 7.1 with the Bankruptcy Court prior to the Confirmation Hearing and will provide notice of Schedule 7.1 to the non-Debtor parties to the Executory Contracts affected thereby and to those parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors will provide notice of any amendments to Schedule 7.1 to the non-Debtor parties to the Executory Contracts affected thereby and to those parties entitled to notice pursuant to Bankruptcy Rule 2002. Each contract and lease listed on Schedule 7.1 will be rejected only to the extent that such contract or lease constitutes an Executory Contract. Listing a contract or lease on Schedule 7.1 will not constitute an admission by the Debtors or the Reorganized Debtors that the contract or lease is an Executory Contract or that the Debtors or Reorganized Debtors have any liability thereunder.

**7.2 Executory Contracts Assumed if Not Rejected.** On the Effective Date, except for an Executory Contract that was previously assumed, assumed and assigned or rejected by an order of the Bankruptcy Court or that is rejected pursuant to Section 7.1 above, each Executory Contract of every kind and nature entered into by the Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms prior to the Effective Date will be assumed pursuant to section 365 of the Bankruptcy Code, except: (i) any Executory Contract that is the subject of a separate motion to reject filed pursuant to section 365 of the Bankruptcy Code by the Debtors before the entry of the Confirmation Order, provided, however, that upon denial or withdrawal of any such motion, such executory contract or unexpired lease shall automatically be deemed assumed as of the Effective Date; and (ii) any agreement, obligation, security interest, transaction or similar undertaking that the Debtors believe is not an Executory Contract that is later determined by the Bankruptcy Court to be an Executory Contract that is

subject to assumption or rejection under section 365 of the Bankruptcy Code, which agreements shall be subject to assumption or rejection within 30 days of any such determination. Any order entered after the Confirmation Date by the Bankruptcy Court, after notice and hearing, authorizing the rejection of an Executory Contract shall cause such rejection to be a prepetition breach under sections 365(g) and 502(g) of the Bankruptcy Code, as if such relief were granted and such order were entered prior to the Confirmation Date. The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumption of the Executory Contracts as provided for by this Section 7.2, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

**7.3 Bar Date for Rejection Claims.** If the rejection of any Executory Contract under this Plan gives rise to a Claim by the non-Debtor party or parties to such Executory Contract, such Claim, to the extent that it is timely filed and is an Allowed Claim, shall be classified in Class 4 or Class 7, as appropriate; provided, however, that the Unsecured Claim arising from such rejection shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, their successors or properties, unless a proof of such Claim is filed and served on the Reorganized Debtors within twenty (20) days after the date of notice of the entry of the order of the Court rejecting the Executory Contract, which may include, if applicable, the Confirmation Order. To the extent Rejection Claims initially are Disputed Claims, but subsequently become Allowed Claims, the Reorganized Debtors shall pay such Rejection Claims in accordance with the Plan, but nothing herein shall constitute a determination that any such rejection gives rise to or results in a Claim or constitutes a waiver of any objections to such Claim by the Debtors, the Reorganized Debtors or any party in interest.

**7.4 Cancellation of Securities, Instruments, and Agreements Evidencing Claims and Interests.** Except as otherwise provided in this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan, the promissory notes, share certificates (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such Interests shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be discharged; provided, however, that the Senior Note Indenture shall continue in effect solely for the purposes of allowing the Senior Note Trustee to enforce the indemnity provisions of the Senior Note Indenture; allowing Senior Noteholders to receive their distributions hereunder and on account of the subordination provisions of the TRUPS Indentures; allowing the Senior Note Trustee to make the distributions to be made on account of Senior Note Claims under the Plan; and, to the extent necessary, allowing the Senior Note Trustee to enforce its Indenture Trustee Charging Lien, after which point the Senior Note Indenture shall be cancelled and discharged; provided further, however, that the subordination provisions of the Subordinated TRUPS Indentures shall survive the cancellation and discharge of the Subordinated TRUPS Indentures. The Holders of or parties to such canceled notes, share certificates, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, and other agreements and instruments, or the cancellation thereof, except the rights provided pursuant to the Plan.

**ARTICLE VIII**  
**RETENTION OF JURISDICTION**

**8.1 General Scope of Jurisdiction.** Following the Effective Date, the Bankruptcy Court shall retain jurisdiction over these Cases to the extent legally permissible, including without limitation such jurisdiction as is necessary to ensure that the purposes and intent of the Plan are carried out.

**8.2 Claims and Actions.** The Bankruptcy Court shall retain jurisdiction (a) to classify, resolve objections to, and determine or estimate pursuant to section 502(c) of the Bankruptcy Code all Claims against, and Interests in, the Debtors and (b) to adjudicate and enforce all claims and Causes of Action owned by the Debtors or the Reorganized Debtors.

**8.3 Specific Jurisdiction.** Without in any way limiting the scope of the Bankruptcy Court's retention of jurisdiction over these Cases as otherwise set forth in the Plan, the Bankruptcy Court shall retain jurisdiction for the following specific purposes:

(a) To determine all questions and disputes regarding title to the respective Assets of the Debtors, all causes of action, controversies, disputes or conflicts, whether or not subject to any pending action as of the Effective Date, between the Debtors and any other party, including without limitation any right to recover Assets pursuant to the provisions of the Bankruptcy Code;

(b) To modify the Plan after the Effective Date pursuant to the Bankruptcy Code, the Bankruptcy Rules, and applicable law;

(c) To enforce and interpret the terms and conditions of the Plan or the Confirmation Order;

(d) To enforce and interpret the terms and conditions of the Plan Support Agreement;

(e) To enter such orders, including, but not limited to, such future injunctions as are necessary to enforce the respective title, rights and powers of the Reorganized Debtors, and to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the Bankruptcy Court may deem necessary;

(f) To enter a final decree closing the Cases;

(g) To correct any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary to implement the purposes and intent of the Plan;

(h) To determine any and all objections to the allowance or classification of Claims;

(i) To adjudicate all claims or controversies to a security or ownership interest in any of the Debtors' Assets or in any proceeds thereof;



(j) To determine any and all applications for allowances of compensation and reimbursement of expenses and the reasonableness of any fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code;

(k) To determine any applications or motions pending on the Effective Date for the rejection, assumption or assumption and assignment of any Executory Contract and to hear and determine, and, if need be, to liquidate any and all Claims arising therefrom;

(l) To determine any and all motions, applications, adversary proceedings and contested matters that may be pending on the Effective Date or filed thereafter;

(m) To remedy any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court to the extent authorized by the Plan or the Bankruptcy Court;

(n) To determine all controversies, suits, and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan;

(o) To consider and act on the compromise and settlement of any Claim against or cause of action by or against the Debtors arising under or in connection with the Plan;

(p) To issue such orders in aid of execution of the Plan as may be authorized by section 1142 of the Bankruptcy Code;

(q) To determine such other matters or proceedings as may be provided for under Title 28 or any other title of the United States Code, the Bankruptcy Code, the Bankruptcy Rules, other applicable law, the Plan or in any order or orders of the Bankruptcy Court, including, but not limited to, the Confirmation Order or any order which may arise in connection with the Plan or the Confirmation Order;

(r) To make such orders as are necessary or appropriate to carry out the provisions of the Plan;

(s) To adjudicate all claims of any nature by any person which may be adverse or otherwise affect the value of the property of the Estates dealt with by the Plan;

(t) To determine any other matters not inconsistent with the Bankruptcy Code; and

(u) To make such orders and/or take such action as is necessary to enjoin any interference with the implementation or the consummation of the Plan.

**8.4 Failure of Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising, declines to exercise, or is otherwise without jurisdiction over any matter arising out of the Cases, including the matters set forth in this Article VIII, this Article

VIII shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

**ARTICLE IX**  
**INJUNCTION AGAINST INTERFERENCE WITH PLAN**  
**AND DISCHARGE OF DEBTORS**

**9.1 No Interference.** No Person will be permitted to commence or continue any action or proceeding or perform any act to interfere with the implementation and consummation of the Plan or the payments required to be made hereunder.

**9.2 Releases of ACC Released Parties by Debtors.** As of the Effective Date, the Debtors, their estates, the Reorganized Debtors and the successors and assigns of any of them, and any other person that claims or might claim through, on behalf of, or for the benefit of any of the foregoing, shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged each of the ACC Released Parties from any and all claims, Causes of Action, actions, fees, costs and expenses, of any type whatsoever, direct or derivative, contract or tort, legal or equitable, known or unknown, common law or statutory, contingent or fixed, liquidated or unliquidated, matured or unmatured, that arise out of or relate in any way to any or all of the Debtors and/or the Financings or any claim, act, fact, transaction, occurrence, statement or omission in connection therewith occurring up to and including the Effective Date. Notwithstanding anything contained in this Section 9.2, the foregoing is not intended to release the ACC Parties' obligations under the Plan Support Agreement.

**9.3 Releases by Creditors.** As of the Effective Date, to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Holders of Claims that have made the Creditor Release Election, in consideration for the obligations of the Released Parties under this Plan and the Plan Support Agreement, will be deemed to forever release, waive and discharge each of the Released Parties from any and all claims, Causes of Action, actions, fees, costs and expenses, of any type whatsoever, contract or tort, legal or equitable, known or unknown, common law or statutory, contingent or fixed, liquidated or unliquidated, matured or unmatured, that arise out of or relate in any way to any or all of the Debtors and/or the Financings or any claim, act, fact, transaction, occurrence, statement or omission in connection therewith occurring up to and including the Effective Date.

**9.4 Releases of Creditor Released Parties by Debtors and the ACC Released Parties.** As of the Effective Date, the Debtors, their estates, the Reorganized Debtors, the ACC Released Parties and the successors and assigns of any of them, and any other person that claims or might claim through, on behalf of, or for the benefit of any of the foregoing, shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged each of the Creditor Released Parties from any and all claims, Causes of Action, actions, fees, costs and expenses, of any type whatsoever, direct or derivative, contract or tort, legal or equitable, known or unknown, common law or statutory, contingent or fixed, liquidated or unliquidated, matured or unmatured, that arise out of or relate in any way to any or all of the Debtors and/or the Financings or any claim, act, fact, transaction, occurrence, statement or omission in connection therewith occurring up to and including the Effective Date.

Notwithstanding anything contained in this Section 9.4, the foregoing is not intended to release the Creditor Released Parties' obligations under the Plan Support Agreement.

**9.5 Release of Senior Indenture Trustee Released Parties by Senior Noteholders.** As of the Effective Date, the Senior Noteholders, and the successors and assigns of any of them, and any other person that claims or might claim through, on behalf of, or for the benefit of any of the foregoing, shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the Senior Indenture Trustee Released Parties from any and all claims, Causes of Action, actions, fees, costs and expenses, of any type whatsoever, direct or derivative, contract or tort, legal or equitable, known or unknown, common law or statutory, contingent or fixed, liquidated or unliquidated, matured or unmatured, that arise out of or relate in any way to any or all of the Debtors, the Senior Note Indenture and/or the Cases, or any claim, act, fact, transaction, occurrence, statement or omission in connection therewith occurring up to and including the Effective Date.

**9.6 Injunction.** The Confirmation of the Plan shall serve to satisfy all Claims or causes of action arising out of any Claim addressed by the terms of the Plan and will operate as an injunction against (i) the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the Debtors except as provided in the Plan and (ii) the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of any Released Party on account of any claims, rights or causes of action released pursuant to the Plan.

**9.7 Scope and Effect of Discharge.** Pursuant to sections 524 and 1141(d) of the Bankruptcy Code and except as otherwise provided in Section 9.8 or elsewhere in the Plan or the Confirmation Order, on the Effective Date, each of the Debtors, the Reorganized Debtors, and the Estates shall be discharged and released from any and all Claims, Liens, and Interests that arose before the date the Bankruptcy Court enters the Confirmation Order, and any debts of a kind specified in sections 502(g), (h) or (i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code, or (c) the Holder of a Claim based upon such debt has accepted the Plan. In addition, except as otherwise provided in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Allowed Claims under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Allowed Claims against the Debtors and any of their Assets, including any Allowed Claim for interest accruing after the Petition Date and prior to the Effective Date. On the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, all Holders of Allowed Claims and Interests arising prior to the Effective Date shall be permanently barred and enjoined from asserting against the Reorganized Debtors, their agents, successors or assigns or their assets, any other or further claims, debts, rights, causes of action, liabilities or equity interests arising out of any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

**9.8 Survival of Indemnification and Contribution Obligations.** Notwithstanding anything to the contrary contained in this Plan, the obligations of the Debtors to indemnify and/or provide contribution to its current and former directors, officers and employees pursuant to the Debtors' articles of incorporation, operating agreements, by-laws, applicable statutes or

contractual obligations, as applicable, with respect to all past, present and future actions, suits, proceedings, or claims against any of such directors, officers and employees, based upon any act or omission related to service with, for, or on behalf of the Debtors, whether occurring before or after the Effective Date, shall not be discharged or impaired by Confirmation of this Plan, but rather shall survive unaffected by this Plan and the Confirmation Order and shall become obligations of the Reorganized Debtors.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

**10.1 Creditors' Committee.** On the Confirmation Date, the Creditors' Committee and any other committee appointed in the Cases pursuant to section 1102 of the Bankruptcy Code will be dissolved and the members thereof and the professionals retained by the Creditors' Committee in accordance with section 1103 of the Bankruptcy Code (including, without limitation, attorneys, investment advisors, accountants and other professionals) will be released and discharged from their respective fiduciary obligations, duties and responsibilities, except that the Creditors' Committee shall continue to exist for a period of thirty (30) days after the Effective Date solely for purposes of: (i) asserting, disputing, and participating in the resolution of Professional Fee Claims; (ii) prosecuting or participating in any appeal of the Confirmation Order or any request for reconsideration thereof; and (iii) enforcing compliance with the Plan and Confirmation Order by the Reorganized Debtors.

**10.2 Revocation and Withdrawal of the Plan.** Subject to the terms of the Plan Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan at any time before entry of a Confirmation Order. If the Debtors, or one of the individual Debtors, as the case may be, revoke or withdraw the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur with respect to one or more of the Debtors, then the Plan shall be deemed to be null and void as to that Estate. In such event, nothing contained in the Plan or in any document relating to the Plan shall be deemed to constitute an admission of validity, waiver or release of any Claims by or against the Debtors or any Person or to prejudice in any manner the rights of the Debtors or any Person in any proceeding involving the Debtors.

**10.3 Governing Law.** Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, notwithstanding any conflicts of law principles, rules or laws to the contrary.

**10.4 Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heir, executor, administrator, successor or assign of such Person.

**10.5 Time.** In computing any period of time prescribed or allowed by the Plan, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day or, when the act to be done is the filing of a paper in court, a day on which weather or other

conditions have made the clerk's office for such court inaccessible, in which event the period runs until the end of the next day that is not one of the aforementioned days. When the period of time prescribed or allowed is less than eight (8) calendar days, intermediate days that are not Business Days shall be excluded from the computation.

**10.6 Construction.** The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

**10.7 Amendments.** The Plan may be amended, modified or supplemented by the Debtors before the Effective Date and by the Reorganized Debtors after the Effective Date, in each case only in the manner provided for by section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019 and applicable law.

**10.8 Post-Confirmation Effect of Evidences of Claims or Interests.** From and after the Effective Date, all promissory notes evidencing obligations of the Debtors and other evidences of Claims that arose prior to the Effective Date shall be deemed canceled, null, void, and of no force or effect whatsoever, and shall constitute no more than evidence of the Holder's right to treatment of the Claim so evidenced in accordance with the Plan.

**10.9 Term of Injunctions or Stays.** Unless otherwise provided in accordance with the Plan or an applicable order of the Bankruptcy Court, all injunctions or stays provided for in the Cases pursuant to sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the Effective Date.

**10.10 Officers and Management of the Reorganized Debtors.** The officers and directors of the Debtors on the Confirmation Date shall become the officers and directors of the Reorganized Debtors on the Effective Date. After the Effective Date, the corporate governance and management of the Reorganized Debtors shall be determined by the Board of Directors of the Reorganized Debtors in accordance with the laws of the state of domicile of each Reorganized Debtor and in accordance with the Plan.

**10.11 No Waiver of Discharge.** Except as otherwise specifically provided herein, nothing in the Plan shall be deemed to waive, limit or restrict in any way the discharge granted upon Confirmation of the Plan pursuant to section 1141 of the Bankruptcy Code.

**10.12 Exculpation.** None of the Released Parties shall have or incur any liability to any Person for any act or omission in connection with or arising out of their participation in the Cases, including without limitation in the formulation, confirmation, consummation, and/or administration of the Plan Support Agreement, the Plan or the property to be distributed under the Plan, except if such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct, and in all respects, each of such Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities and shall be fully protected in acting or in refraining from action in accordance with such advice.

**10.13 Section 1145 Exemption.** Pursuant to section 1145(a) of the Bankruptcy Code, neither section 5 of the Securities Act of 1933 nor any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, shall apply with respect to any security being offered, sold or transferred under the

Plan, including without limitation to the Reorganized Equity Interests and the Reorganized Preferred Equity Interests.

**10.14 Section 1146 Exemption.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtors or the Reorganized Debtors pursuant to, in implementation of, or as contemplated by the Plan shall not be taxed under any state or local law imposing a stamp tax, transfer tax or similar tax or fee.

**10.15 Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Debtors, the Reorganized Debtors or any agent thereof making disbursements in accordance with the Plan shall comply with all reporting and withholding requirements imposed on them by any governmental unit.

**10.16 Further Actions.** Each of the Debtors and the Reorganized Debtors shall be authorized to execute, deliver, file or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan.

**10.17 Severability of Plan Provisions.** If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted; provided, however, that any such alteration or interpretation must be in form and substance acceptable to the Debtors. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

## **ARTICLE XI REQUEST FOR CONFIRMATION**

The Debtors request confirmation of the Plan under section 1129(a) or 1129(b) of the Bankruptcy Code, as appropriate.

**LUMINENT MORTGAGE CAPITAL, INC.**

By: /s/ Zachary H. Pashel

Name: Zachary H. Pashel

Title: President and Chief Executive Officer

**MERCURY MORTGAGE FINANCE  
STATUTORY TRUST**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**PANTHEON HOLDING COMPANY**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**MAIA MORTGAGE FINANCE CORP.**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**LUMINENT CAPITAL MANAGEMENT, INC.**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer



**SATURN PORTFOLIO MANAGEMENT, INC.**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**MINERVA MORTGAGE FINANCE CORP.**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**MINERVA CDO DELAWARE SPV LLC**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**OT REALTY TRUST**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer

**PROSPERPINE LLC**

By: /s/ Zachary H. Pashel  
Name: Zachary H. Pashel  
Title: President and Chief Executive Officer



/s/ Joel I. Sher

Joel I. Sher, Maryland No. 00719  
SHAPIRO, SHER, GUINOT, & SANDLER  
36 South Charles Street  
Suite 2000  
Baltimore, Maryland 21201-3147  
Telephone: (410) 385-4277

-and-

Peter S. Partee (admitted *pro hac vice*)  
Richard P. Norton (admitted *pro hac vice*)  
Scott H. Bernstein (admitted *pro hac vice*)  
HUNTON & WILLIAMS LLP  
200 Park Avenue, 53<sup>rd</sup> Floor  
New York, New York 10166-0136  
Telephone: (212) 309-1000

Michael G. Wilson (admitted *Pro Hac Vice*)  
Thomas N. Jamerson (admitted *Pro Hac Vice*)  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074

*Co-Counsel for Debtors  
and Debtors-in-Possession*