

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE:	)	
	)	Case No. 10-22319
Sterling Estates (Delaware) LLC, a	)	Chapter 11
Delaware Limited Liability Company,	)	Judge Jack B. Schmetterer
	)	
Debtor/Debtor-in-Possession.	)	

**DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT**

**DEBTOR'S COUNSEL:**

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**DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT**

Sterling Estates (Delaware) LLC, a Delaware Limited Liability Company, Debtor and Debtor-in-Possession herein ("Debtor"), by and through its Attorneys, submits its First Amended Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code and in conjunction with its Amended Plan of Reorganization ("Plan"). A copy of the Plan is attached to this First Amended Disclosure Statement as **Exhibit A**.<sup>1</sup>

**INTRODUCTION**

The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on May 17, 2010 ("Petition Date"). The Debtor is operating its business and managing its financial affairs as Debtor-in-Possession pursuant to Sections 1101, 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or committee of unsecured creditors has been appointed to serve in this Chapter 11 Case. The Plan was filed within the exclusive periods established under Sections 1121(b) and 1121(d) of the Bankruptcy Code and the prior Orders of the Bankruptcy Court. The Debtor is the owner of a manufactured home community, currently consisting of 743

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<sup>1</sup>Capitalized terms not defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

sites<sup>2</sup> situated on an 80.77 acre roughly triangular lot, located at 9300 West 79<sup>th</sup> Street, Justice, Illinois, 60458 (the “Real Estate”).

The Debtor is the proponent of the Plan. The Plan provides for distributions to the holders of Allowed Claims from funds realized from the continued operation of the Debtor’s business as well as from existing cash deposits and cash resources of the Debtor. To the extent necessary, the balloon payments to ORIX Capital Markets, LLC, as special servicer for Wells Fargo Bank, N.A., not individually but solely as Trustee for the registered holders of Banc of America Commercial Mortgage Inc., Commercial Mortgage Pass-Through Certificates, Series 2003-2 (“ORIX”), as well as other secured and unsecured creditors, required under the Plan, may be made from the proceeds of the refinancing or sale of the Real Estate.

**SUMMARY OF TREATMENT OF CLAIMS  
AND INTERESTS UNDER THE PLAN**

The Plan has one (1) category of Administrative Claims, one (1) category of Tax Claims, 5 Classes of creditors (Classes 1 through 5) and one (1) Class of Interests (Class 6). These Claims and Interests, and the treatment thereof, under the Plan consist of the following:<sup>3</sup>

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<sup>2</sup>The sites will be reduced to 736 once the Debtor’s reconfiguration plan is complete.

<sup>3</sup>This chart is intended to provide the information required by Rule 3016-1 of the Local Rules of this Court.

**Administrative Claims**<sup>4</sup>

Administrative Claims are provided for in Article IV, Section 4.1 of the Plan, are unimpaired under the Plan and primarily consist of Allowed Claims comprised of fees and expenses of the various professionals employed pursuant to Orders entered by the Bankruptcy Court. These fees and expenses are projected as follows:

<u>Professional</u>	<u>Amount</u> <sup>5</sup>
Crane, Heyman, Simon, Welch & Clar Debtor's Counsel	\$75,000.00
Wolin Kelter & Rosen, Ltd. (Debtor's Special Counsel)	\$25,000.00 <sup>6</sup>

The amounts projected to professionals holding Allowed Administrative Claims are in addition to amounts previously paid as retainers to such professionals. The retainers previously allowed and paid to these professionals are as follows:

<u>Professional</u>	<u>Retainer</u>
Crane, Heyman, Simon, Welch & Clar Debtor's Counsel	\$75,000.00

<sup>4</sup>Since the Debtor's Chapter 11 Case was commenced as a voluntary proceeding, no claims under Sections 507(a)(3) and 502(f) of the Bankruptcy Code exist.

<sup>5</sup> All of these amounts are merely the Debtor's estimates and are, therefore, subject to change. Furthermore, in projecting these amounts, the Debtor does not expect a contested Confirmation hearing. In the event of a contested Confirmation hearing, Administrative Claims of professionals will significantly increase.

<sup>6</sup>In addition to this amount, the Debtor has filed a Motion to Pay Interim Compensation and reimbursement of expenses to Wolin, Kelter and Rosen, Ltd. in the amounts of \$46,048.50 and \$11,326.50, respectively, which is pending before the Bankruptcy Court.

No professional shall be paid unless and until the Bankruptcy Court has entered appropriate Orders allowing the compensation and reimbursement of expenses requested by such professionals.

Also included in this category of Administrative Claims are post-petition trade payables. Under the Plan, post-petition trade payables will be paid in the ordinary course of business pursuant to the credit terms existing at the time the Claim was incurred.

Other than post-petition trade payables, all Administrative Claims, to the extent allowed, will be paid in full in cash on the Effective Date or as soon as practicable thereafter (and in the case of professionals, after allowance by the Bankruptcy Court) or as agreed to by the holder of each Allowed Administrative Claim. The source of funds for payment of such Administrative Claims will be the cash resources of the Debtor or such other cash as may be generated by the Debtor from the operation of its business in the ordinary course.

### **Tax Claims**

The Plan has a specific provision for the payment of taxes which are of the type entitled to priority under Section 507(a)(8) of the Bankruptcy Code (Article IV, Section 4.2 of the Plan). The Plan provides that to the extent any Tax Claim is allowed, such Tax Claims shall be paid in full, in cash inclusive of interest at the applicable statutory interest rate on the Effective Date, unless the holder of a Tax Claim agrees to a different treatment. This treatment of Allowed Tax Claims is intended to comply with the requirements of Section 1129(a)(9)(C) of the Bankruptcy Code. The Debtor

believes that there are no Allowed Tax Claims.

**The Allowed Secured Claim of ORIX**

ORIX is the holder of the Allowed Class 1 Claims. The Class 1 Claims are impaired under the Plan and are provided for in Article VI, Section 6.1 of the Plan.

ORIX has filed a proof of claim in this Chapter 11 Case in the principal amount of \$36,265,672.15, unpaid interest in the amount of \$668,195.01, plus costs, expenses and other charges, as of August 12, 2010, with respect to its mortgage indebtedness. The actual allowed amount of the Class 1 Claims may be determined pursuant to further Order of the Bankruptcy Court if the Debtor has objections to the allowance of the Class 1 Claims.

Under the Plan, the Allowed Class 1 Claims are treated in the following manner:

A. **Application of Adequate Protection Payments:** Adequate

Protection Payments received by ORIX during the course of this Chapter 11 case shall be applied in the following priority:

1. Payment of interest due to ORIX on the principal indebtedness due at the non-default interest rate provided for in its loan documents;
2. Payment of any pre-petition unpaid arrearage due to ORIX under its loan documents;
3. Payment of ORIX's professional fees and costs to the extent allowable under its loan documents, and approved by the Court;<sup>7</sup> and,
4. Payment of the balance, if any, to reduce the principal balance due

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<sup>7</sup>The reasonable fees and expenses of ORIX's attorneys and other professionals (to the extent allowed) incurred in connection with the consummation, administration, and enforcement of the Plan shall be considered additional Class 1 Claims.

on the Allowed Class 1 Claim.

5. To the extent that the Adequate Protection Payments received by ORIX are not sufficient to satisfy amounts due under subparagraphs **A1, A2 or A3** above, any deficiency shall be added to the unpaid principal balance due ORIX, and shall be paid in accordance with subparagraph **B1c** below:

B. **Treatment:** In full satisfaction, settlement, release, and discharge

of and in exchange for the Allowed Claims in Class 1:

1. The holder of the Allowed Class 1 Claims shall receive and/or retain:
  - a. Its liens on the real and personal property owned by the Debtor, to the same extent and with the same validity, enforceability, perfection and priority as it had on the Petition Date and as may have been acquired by ORIX during the course of this Chapter 11 Case pursuant to Orders entered by the Bankruptcy Court, until the Allowed Class 1 Claims are paid in full;
  - b. Interest on its Allowed Class 1 Claim until fully paid at the pre-petition, non-default contract rate (4.95%) contained in its loan documents, payable in 48 monthly installments of interest only and thereafter, 23 monthly installments of principal and interest at the original contract amount of \$216,176.85, all payable on the 15<sup>th</sup> day of each month; and,
  - c. Payment of the unpaid balance of the Allowed Class 1 Claim due it on the sixth (6<sup>th</sup>) anniversary of the Effective Date;
2. Payments shall commence on the 15<sup>th</sup> day of the month following the Effective Date;
3. To the extent not otherwise modified by the terms of this Plan, the parties shall continue to be bound by and shall perform the terms and conditions contained in the loan documents between ORIX and the Debtor; and,
4. Payment of the unpaid amount of the Allowed Class 1 Claim may be made in whole or in part, from time to time, without penalty or charge at the sole and exclusive option of the Debtor.

C. **Other Provisions:**

1. The Debtor, at its sole and exclusive option, may accelerate payments to the holder of the Allowed Class 1 Claims. All unaccrued interest shall be deemed waived and no penalty shall be chargeable to the Debtor in the event that the Debtor elects to accelerate payments.
2. The Debtor, at its sole and exclusive option, may purchase, finance, sell and/or rent new or used manufactured homes, regardless of any provision contained in the loan documents of ORIX.
3. Upon completion of the payments under the Plan to ORIX on account of the Allowed Class 1 Claims, all of the liens, security interests and Claims of ORIX shall be deemed released and discharged. To the extent requested by the Debtor, once the Allowed Class 1 Claims are paid in full as required by the Plan, ORIX shall prepare and file any and all documents that may be reasonably necessary to effectuate the termination of such liens and security interests. Any right of any party under Section 506(c) of the Bankruptcy Code as against the holder of the Allowed Class 1 Claims or its collateral shall be preserved and shall survive Confirmation of the Plan.
4. This Plan shall supersede and replace the terms and conditions of the loan documents establishing the Allowed Class 1 Claims to the extent the loan documents are inconsistent with this Plan.
5. The holder of the Allowed Class 1 Claims shall only be entitled to the reimbursement of reasonable attorneys' and professionals' fees and costs arising after Confirmation in the event that the Debtor is in default of the payments required under the Plan on account of the Allowed Class 1 Claims (which default remains uncured after ten (10) days written notice to the Debtor and Debtor's Counsel from the holder of the Allowed Class 1 Claims as required by this Plan) and in the further event that the underlying note provides for such fees.
6. In the event of a default by the Debtor under the Plan with respect to the treatment of the Allowed Class 1 Claims, the holder of the Allowed Class 1 Claims shall provide written notice of such default as required by the underlying loan documents and to the Debtor by transmitting such default notice by first class mail and telefax to the Debtor at its place of business to the attention of Richard Klarchek, and in the same manner to Debtor's Counsel, Eugene Crane, Crane, Heyman, Simon, Welch & Clar, 135 S. LaSalle St., Suite 3705, Chicago, Illinois 60603 ("Default Notice").



### **Real Estate Tax Claims**

The holder of Allowed Class 2 Claims for accrued and unpaid pre-petition Real Estate Tax Claims is the Cook County Treasurer. Under the Plan, Allowed Class 2 Claims are unimpaired and are provided for in Article V, Section 5.1 of the Plan. Either the Debtor or ORIX paid the Allowed Class 2 Claims. To the extent ORIX paid such Allowed Class 2 Claims, ORIX, on information and belief, has added the amount thereof to the balance due to ORIX on account of its Class 1 Claim. As a result, the Debtor believes that there are no Allowed Class 2 Claims.

To the extent any Allowed Class 2 Claim exists, the Plan provides that the holder of the Allowed Class 2 Claim shall receive and/or retain:

- A. Its lien on the real property owned by the Debtor, with the same validity, enforceability, perfection and priority as it had on the Petition Date and as may have been acquired during the course of this Chapter 11 Case pursuant to Orders entered by the Bankruptcy Court, until the Allowed Class 2 Claims are paid in full; and,
- B. Payment of the entire unpaid balance of the Allowed Class 2 Claim, including any accrued statutory interest, shall be paid on the Effective Date.<sup>8</sup>

### **Security Deposit Claims**

Tenants at the Real Estate may have provided security deposits to the Debtor in conjunction with their leases with the Debtor. The Plan has a specific provision relating to these Claims for security deposits (Article V, Section 5.2 of the Plan). These Class 3 Claims are unimpaired under the Plan.

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<sup>8</sup>The Debtor believes that there are no Allowed Class 2 Claims.

Tenants shall be paid 100% of the allowed amount of their Class 3 Claims in cash without interest as required by the terms of the lease between the Debtor and each respective Tenant.

### **Other Secured Claims**

Class 4 Under the Plan, Other Secured Claims are in Class 4, and are impaired under the Plan and are provided for in Article VI, Section 6.2 of the Plan. The holders of the Class 4 Claims known to the Debtor are (1) L.H. Block Electric Co., Inc., with a Class 4 Claim in the amount of \$60,470.48, purportedly, pursuant to an alleged mechanic's lien against the Real Estate; (2) Climate Control, with a Class 4 Claim in the amount of \$14,637.47, purportedly, pursuant to an alleged mechanic's lien against the Real Estate; and (3) Allpro, with a Class 4 Claim in the amount of \$4,249.84, purportedly, pursuant to an alleged mechanic's lien against the Real Estate.

In full satisfaction, settlement, release and discharge of each and every Allowed Claim in Class 4, each holder of an Allowed Class 4 Claim shall be paid in full in cash with interest at 4.95% per annum, no later than 6 months after the Effective Date of the Plan.

### **Unsecured Creditors**

Unsecured Creditors, in the estimated amount of \$717,266.53, are the holders of Allowed Class 5 Claims and are impaired under the Plan. The treatment of the Allowed Class 5 Claims is set forth in Article VI, Section 6.3 of the Plan. The holders of Allowed Class 5 Claims shall receive 100% of the allowed amount of their Class 5 Claims with interest at 4.95% per annum ("Unsecured Dividend"). The Unsecured Dividend shall be

payable in equal quarterly installments as follows:

- A. Interest on its unpaid indebtedness until fully paid, at 4.95% per annum;
- B. Accrued interest only shall be paid in quarterly installments for four quarters, commencing 90 days after the Effective Date for year 1 and then thereafter in quarterly principal and interest payments based on a 15 year amortization with a balloon payment of the balance due on the sixth (6<sup>th</sup>) anniversary of the Effective Date; and,
- C. Payment of the unpaid indebtedness may be made in whole or in part, from time to time, without penalty or charge at the sole and exclusive option of the Debtor.

The payments to the holders of Allowed Class 5 Claims under the Plan shall be made in full and complete satisfaction of such Claims.

### **Equity Interests**

The Debtor's sole managing member, Sterling Estates Ltd. Partnership is the holder of the Allowed Class 6 Interests. Under the Plan, Sterling Estates Ltd. Partnership shall retain its equity interest in the Debtor after Confirmation of the Plan.

### **Claims Objections**

Except as otherwise ordered by the Bankruptcy Court<sup>9</sup> or as otherwise provided in the Plan, the Debtor shall file any and all objections to the allowance of Claims or Interests on or within one hundred and twenty (120) days of Confirmation of this Plan unless extended by Order of the Bankruptcy Court. Cause shall not be a requirement for an extension of this deadline.

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<sup>9</sup>The Bankruptcy Court has established November 30, 2010 as the last date to file objections to the allowance of claims. Said date may be extended.

### **PURPOSE OF DISCLOSURE STATEMENT**

This Disclosure Statement is provided to all of the known holders of Claims against and Interests in the Debtor who are entitled to vote their acceptance or rejection of the Plan. This Disclosure Statement is disseminated in connection with the solicitation of acceptances of the Plan filed by the Debtor. The purpose of this Disclosure Statement is to provide such information as would enable a hypothetical, reasonable investor, typical of the holder of Claims and Interests which are impaired under the Plan, to make an informed judgment about the Plan. The Debtor's exclusive period to solicit acceptances of the Plan under Section 1121(d) expires on November 29, 2010.<sup>10</sup>

The information contained in this Disclosure Statement has been submitted by the Debtor unless specifically stated to be from other sources. No representations concerning the Debtor or this Plan, other than those set forth in this Disclosure Statement, have been authorized by the Debtor. The Debtor believes that all of the information contained in this Disclosure Statement is accurate. However, the Debtor is unable to warrant that there are no inaccuracies.

**Under the Bankruptcy Code, a Class of Claims is considered to have accepted the Plan if both a majority in number and two-thirds (2/3) of the dollar amount of those actually voting vote to accept the Plan. The Claims of those who do not vote are not counted in determining whether the requisite statutory majority in number and dollar amount have voted for acceptance. Acceptance by**

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<sup>10</sup>The Debtor has presented a motion to extend that date, which motion is pending before the Bankruptcy Court.

**the statutory majority will bind the minority who dissent and those who fail to vote.**

**The Plan requires that the holders of Allowed Claims in Classes 1, 4 and 5 vote on Confirmation of the Plan.**

### **HISTORY AND BACKGROUND**

\_\_\_\_\_The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on May 17, 2010 (“Petition Date”). The Debtor is an Illinois Limited Liability Company, that is the owner and operator of a residential manufactured home community located in unincorporated Cook County, Illinois, known as “Sterling Estates”. The Debtor’s principal office is care of Capital First Realty, Inc., 875 N. Michigan Avenue, Suite 3800, Chicago, IL 60611. The Debtor is operating its business and managing its financial affairs as Debtor-in-Possession.

The Real Estate was purchased by the Debtor in 1985 for \$10,000,000. In addition to regular maintenance, the Debtor has expended in excess of \$12.2 million in capital improvements at Sterling Estates. This includes construction of the \$3,700,000 plus, 8,500 square foot clubhouse, with an 1,800 square foot main entertaining room with 26 foot ceilings and an oversized fireplace completed in 2006/07. A new \$292,000 playground was completed in 2008, and new \$93,000 centralized mailboxes and a \$92,000 remodeled gatehouse were completed in 2007. Planned capital improvements include a \$264,650 new outdoor pool with pool house at the location of the new clubhouse and the demolition of the old clubhouse and pool at a cost of \$43,500. Other planned capital improvements include resurfacing main roads in

the original section of the property at a cost of \$354,950. The property is currently (as of October 2010) 71% leased. Given the demand for (moderate income) manufactured housing the property should be substantially leased up by the end of year six (6).

The Debtor's problems were due to the inability to obtain refinancing to pay off the ORIX loan at maturity, as well as ORIX's unwillingness to extend the loan term beyond May 1, 2010. Accordingly, on May 3, 2010, ORIX filed a foreclosure proceeding in the Circuit Court of Cook County, Illinois, and sought the appointment of a receiver. In response, the Debtor had no alternative but to file this Chapter 11 case.

The Debtor is in the process of completing a major reconfiguration plan of the original section of the Real Estate, which was constructed in 1960. The original section of the property has been reduced from 527 sites to 461 sites, of which 85% will accommodate multi-sectional homes. The current vacancy level is due to the abandonment of old uninhabitable functionally obsolete physically deteriorated homes. The reconfiguration of the original section of the property to 461 site will result in an upgrading of the original section of the community with new homes, landscaping and concrete curbing, providing the tenants with an atmosphere of a modern residential subdivision in which to reside. When complete, Sterling Estates will have 736 sites, of which 90% will accommodate multi-sectional homes.

The synergy created by the enhanced curb appeal of the property, amenities that surpass those of a AAA institutional grade apartment complex, coupled with its prime location, will position Sterling Estates as the premier manufactured home community within the Chicagoland market for decades.

The Real Estate is located only twenty minutes from downtown Chicago

providing excellent access to a major central business district to a degree that is rare among manufactured home communities. Sterling Estates has excellent visibility with 2,600 linear feet of frontage along Interstate-294.

### **POST-PETITION ACTIVITIES**

The continued administration of this Chapter 11 Case has been primarily predicated upon the entry of a series of Cash Collateral Orders entered by the Bankruptcy Court. These Cash Collateral Orders established the framework for the continued operation of the Debtor's business and the terms under which the Debtor could use the cash and cash equivalents that serve as collateral to ORIX. Notably, under these Cash Collateral Orders, the Debtor has been making contract interest (non-default rate) payments to ORIX.

The Debtor's focus has always been on proposing an exit strategy from this Chapter 11 Case that would provide a mechanism for all creditors to be paid in full, with interest. The Debtor has swiftly filed such a Plan and seeks a successful conclusion of this Chapter 11 case in a rapid fashion.

### **OTHER ASPECTS OF THE PLAN**

The Debtor shall be the disbursing agent charged with making the payments required under the Plan to the holders of Allowed Claims. Management of the Debtor will remain unchanged after Confirmation. At the option of the Debtor, Capital First Realty may continue to serve as the agent of the Debtor with respect to the management and leasing of the Real Estate and if so employed, shall be paid by the Debtor pursuant to the terms and conditions of the Debtor's agreement(s) with Capital First Realty, payable

monthly and reconciled annually, except that Capital First Realty will also be entitled to a management incentive fee payable quarterly and reconciled annually.

ORIX may be asserting Claims for reimbursement of fees and expenses paid to professionals that ORIX retained in this Chapter 11 Case. To the extent that ORIX is asserting a Claim(s) for reimbursement from the Debtor for professionals retained in this Chapter 11 Case which claims remain unresolved, ORIX shall file such Claims with the Clerk of the Bankruptcy Court with a full and complete itemization of services rendered and expenses incurred by each such professional within forty-five (45) days of Confirmation of the Plan. The Debtor shall have the right to object to any such Claim by the deadline set forth in Article XIV, Section 14.1 of the Plan and the Bankruptcy Court expressly reserves jurisdiction to hear any matters relating thereto.

Upon Confirmation of the Plan, the Debtor shall be revested with its assets, subject only to the terms and conditions of the Plan. The Debtor shall be entitled to continue to operate and manage its business and financial affairs without further Order of the Bankruptcy Court, except as hereinafter set forth. Payments to creditors pursuant to the Plan will be made from existing cash deposits and from funds from continued business operations. If necessary, the Debtor may borrow funds sufficient to pay the balloon payment due to ORIX as required by the Plan or such earlier date as the Debtor may elect at its sole and exclusive option.

Upon Confirmation, an injunction under Section 524 of the Bankruptcy Code shall arise to prevent any party from foreclosing its lien or security interest or otherwise enforcing its Claims against the Debtor and its assets in this bankruptcy case except as authorized in the Plan. Such injunction shall not affect any secured creditor's right to



foreclose upon any security interest provided in the Plan in the event of any post-Confirmation default under the Plan. This injunction will remain in effect until all distributions under the Plan have been made.

The Plan is self-executing. The Debtor shall not be required to execute any newly created documents to effectuate the terms of the Plan. Upon payment as required by the Plan, any liens supporting such Claims shall be deemed released and discharged.

All executory contracts and unexpired leases which exist between the Debtor and any other party, whether such executory contract be in writing or oral, which has not been previously assumed, assigned, rejected or otherwise terminated by the Debtor shall be assumed upon Confirmation of the Plan pursuant to Sections 365 and 1123(b)(2) of the Bankruptcy Code. Any and all Claims asserted by any party arising from the rejection of executory contracts and unexpired leases pursuant to the Plan must be filed on or within thirty (30) days following the rejection. Further, with respect to Claims for default relating to any unexpired lease or executory contract that is assumed pursuant to the Plan, any and all such Claims must also be filed on or within thirty (30) days following Confirmation. Allowed Claims emanating from the rejection of unexpired leases and executory contracts will be treated as Class 5 Claims. Allowed Claims for default emanating from the assumption of unexpired leases and executory contracts will be treated as Administrative Claims. Any person failing to file such a Claim within the time provided in the Plan shall be forever barred from asserting such Claim and shall not receive any distribution under the Plan. The provisions for assumption, assignment and rejection shall be equally applicable to executory contracts and unexpired leases of real and personal property.

The Bankruptcy Court shall retain jurisdiction for certain specified purposes. Any distribution under the Plan that remains unclaimed sixty (60) days after the distribution is made will become property of the Debtor, and will not be recouped in subsequent distributions. The Debtor will have the right to make any distribution to creditors earlier than required by the Plan. The Debtor shall have the right, power and authority after Confirmation of the Plan to commence any preference, fraudulent conveyance or other litigation it deems appropriate.<sup>11</sup> The Bankruptcy Court shall retain jurisdiction for such litigation.

The provisions of the Plan shall bind all creditors, Interest holders and parties in interest. Except as expressly provided in the Plan or the Bankruptcy Code, no interest or penalties accruing on or after May 17, 2010, shall be paid on any Claim nor shall any creditor claiming any such interest or penalty be entitled to have its Claim for interest or penalty allowed for payment. To the extent necessary, pursuant to Section 1129(b) of the Bankruptcy Code, the Debtor intends to request that the Bankruptcy Court confirm the Plan if all applicable requirements of Section 1129(a) of the Bankruptcy Code, other than Section 1129(a)(8), are met.

### **LIQUIDATION ANALYSIS**

Failure of the Debtor to obtain Confirmation of the Plan could result in a forced liquidation or a conversion to a case under Chapter 7 of the Bankruptcy Code and immediate termination of the Debtor's business operations. Under the Plan, all creditors are being paid 100% of the allowed amount of their Claims, with interest. With respect to

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<sup>11/</sup> The Debtor has not completed an analysis of potential preference and fraudulent conveyance claims. The Debtor believes that no such litigation claims exist.

ORIX, ORIX is being paid the allowed amount of its Claims plus the non-default contract rate of interest provided for in its loan documents.

As of November 24, 2010, the Debtor has approximately \$503,376.97 in cash, plus approximately \$351,827.00 in its real estate tax account. This cash and further cash generated after Confirmation are to be used by the Debtor for payment of creditors' Claims under the Plan and for costs of operation of the Debtor's business after Confirmation of the Plan.

In the event of a forced liquidation, such as foreclosure by ORIX on its liens and security interests, any proceeds realized from the liquidation of the Debtor's assets would first be used to pay the costs of collection, which for purposes of this discussion, the Debtor has estimated to be an amount equal to 10% of the gross collection proceeds. Once the costs of collection have been paid, Secured, Administrative and Priority Claims would be paid. Only after making the above disbursements of liquidation proceeds could any distribution be made to general unsecured creditors. Typically, in the event of a foreclosure, no creditor other than the mortgage lender (and perhaps real estate tax claimants) receives funds from the foreclosure. The Debtor asserts that such a result should be expected in a foreclosure of the Real Estate.

Clearly, the dividend (100% plus interest) being paid to unsecured creditors under the Plan represents substantially more than such unsecured creditors would ever receive in a liquidation (which according to the above analysis is nothing). The same is also true for ORIX with respect to its Allowed Class 1 Claims. Furthermore, the existing trade debt to be paid according to ordinary business terms would also be included in the pool of Administrative Claims thereby substantially increasing the total dollar amount due

Administrative Claimants in a liquidation and further reducing the likelihood of any funds being available for unsecured creditors. Also, the projected amount allowable for Administrative Claims, in the event of conversion, would further increase to account for the fees and costs attributable to a Chapter 7 Trustee and his administration or Secured Creditors and the liquidation of their collateral.

Clearly, upon forced liquidation, unsecured creditors would get nothing. In fact, ORIX would also likely receive substantially less than that being paid under the Plan. Accordingly, the Plan offers all creditors substantially more than such creditors would receive in a liquidation.

#### **IMPLEMENTATION OF THE PLAN**

As discussed throughout this Disclosure Statement, distributions under the Plan shall be made from cash deposits existing at the time of Confirmation and from proceeds realized from the continued operation of the Debtor's business by the Debtor. The Debtor does not intend to liquidate any of its assets in order to make the payments required under the Plan. If necessary, at the point of the balloon payment coming due to ORIX as required by the Plan, the Debtor may sell the Real Estate or borrow the funds sufficient to make this balloon payment.

#### **FEASIBILITY AND FAIRNESS OF PLAN**

Attached to this Disclosure Statement as **Exhibits B** is an income statement pertaining to the Debtor's business activity for the period ending June 2010. The purpose of this Exhibit is to provide creditors with historical financial information concerning the Debtor's ability to make the payments required under the Plan. This income statement

was prepared by the Debtor and is based upon an analysis of actual business activity.

Attached to this Disclosure Statement as **Exhibit C** are financial projections pertaining to the Debtor's projected business activity for the six (6) years following Confirmation of the Plan. The purpose of this Exhibit is to provide creditors with projected financial information concerning the Debtor's ability to make the payments required under the Plan. These projections were prepared by Debtor's management and are based upon an analysis of past business results and projected future business activity. These projections, coupled with the Debtor's available cash, establish that the Plan is feasible.

The projections represent reasonable calculations based upon historical progressions of the Debtor's business. These projections clearly reflect the Debtor's ability to perform under the proposed Plan. Furthermore, the Debtor's achievements during the course of this reorganization case further indicate that the Plan is feasible.

The Debtor believes that the Plan represents an opportunity for the holders of Allowed Claims to receive substantially more than such claimants would receive in a forced liquidation. Given the conservative financial projections and the Debtor's past performance, the Plan is also fair.

**RECOMMENDATION**

The Debtor strongly recommends that those persons entitled to vote, vote to accept the Plan.

Respectfully submitted,

Sterling Estates (Delaware) LLC,  
Debtor and Debtor-in-Possession

By: /s/Eugene Crane  
One of Its Attorneys

**DEBTOR'S COUNSEL:**

Eugene Crane  
(Atty. No. 0537039)  
Arthur G. Simon  
(Atty. No. 03124481)  
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