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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SAN FERNANDO VALLEY DIVISION

In Re:

MERUELO MADDUX PROPERTIES,  
INC., et al.,

Debtors-in-Possession.

Case No.: 1:09-bk-13356-KT

Jointly Administered

Chapter 11

**SECURED CREDITORS' LIST OF ISSUES  
THAT SHOULD BE DETERMINED IN  
ADVANCE OF PLAN CONFIRMATION<sup>1</sup>**

Date: March 19, 2010

Time: 9:30 a.m.

Place: 21041 Burbank Blvd., Courtroom 301  
Woodland Hills, CA

Bank of America, N.A.; Wells Fargo Bank, N.A., successor by consolidation to Wells Fargo Bank Minnesota, N.A. as Trustee for the Registered Certificate holders of GMAC Commercial Mortgage Securities, Inc., Mortgage Pass-Through Certificates 2002-C1 by and through Berkadia Commercial Mortgage, Inc. (as successor to Capmark Finance, Inc.), its special servicer; California Bank & Trust; Cathay Bank, a California

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<sup>1</sup> Each of the Secured Creditors (as defined herein) expressly reserves the right to clarify any of the issues identified herein and raise additional objections to the debtors' amended disclosure statement and plan either in their separate oppositions to the approval of the debtors' amended disclosure statement or at any stage of the disclosure statement approval or plan confirmation process. To be clear, this list is not to be construed to narrow, limit, substitute, replace or waive any of the Secured Creditors' specific objections to the approval of the debtors' amended disclosure statement or the confirmation of the debtors' amended plan.

1 banking corporation; Chinatrust Bank, USA; East West Bank; FNBN CML-ComI, LLC;  
2 and Legendary Investors Group No. 1, L.L.C. (as successor to East West Bank)  
3 (collectively, the Secured Creditors) hereby submit jointly their *List of Issues That Should*  
4 *Be Determined in Advance of Plan Confirmation.*

5 At the January 20, 2010 hearing (the “Disclosure Statement Hearing”) on the  
6 debtors’ original disclosure statement, the Court requested that the Secured Creditors  
7 either individually or jointly file a list of dispositive issues that affect approval of the  
8 debtors’ disclosure statement and confirmation of the debtors’ plan of reorganization.  
9 Rather than submit separate (but perhaps substantially identical) lists, in the spirit of  
10 efficiency, the Secured Creditors hereby submit their joint list for the Court’s  
11 consideration.

12 The Secured Creditors believe the Court should decide the following issues before  
13 considering approval of the debtors’ amended disclosure statement and confirmation of  
14 the debtors’ amended plan of reorganization (the “Amended Plan”).

15 1. The Amended Plan improperly classifies claims with respect to individual  
16 debtor estates. For example, the debtors appear to have arbitrarily assigned unsecured  
17 creditors to debtor entities.

18 2. The Amended Plan does not comply with the requirements of *Bank of*  
19 *America vs. 203 N. LaSalle St. P’shp.*, 526 U.S. 434 (1999).

20 3. The Amended Plan, similar to the earlier plan, is not confirmable due to the  
21 insider releases, discharges and injunctions prohibited by *In re American Hardwoods*, 885  
22 F.2d 621 (9<sup>th</sup> Cir. 1985). Query whether the Court has jurisdiction and authority to re-  
23 write the terms of contracts to which the debtors are not a party.

24 4. The amended disclosure statement and Amended Plan fail to provide or  
25 explain how the proposed unitary plan works in the event that the Amended Plan is not  
26 confirmed by any one or more of the individual debtors.

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1           5.     Neither the amended disclosure statement nor the Amended Plan is  
2 proposed in good faith due to:

- 3                   (a)    the attempted manipulation of balloting in the Amended Plan (see 1  
4                            above);  
5                   (b)    the Amended Plan's failure to comply with *203 N. LaSalle St. P'shp.*;  
6                            and  
7                   (c)    the inclusion of improper insider releases, discharges and injunctions  
8                            in the Amended Plan.

9           6.     The amended disclosure statement fails to include a liquidation analysis on a  
10 debtor by debtor basis as was ordered by the Court at the Disclosure Statement Hearing.<sup>2</sup>  
11 Indeed, the amended disclosure statement does not include a liquidation analysis.

12           7.     The amended disclosure statement fails to disclose or explain the feasibility  
13 of the Amended Plan in light of the debtors' cash flow requirements and the sources of  
14 revenues within the time frames required under the Amended Plan. Of particular note is  
15 the Amended Plan's reliance on \$26.4 million in proceeds from the sale of the 845 S.  
16 Flower property in June 2011 when, as far as is known, any such sale is in doubt and no  
17 disclosure statement has been approved or a plan confirmed in that case. In addition, the  
18 amended disclosure fails to provide an accurate disclosure of cash flows for each debtor  
19 and a consolidated cash flow statement.

20           8.     The 4.0% interest rate proposed in the Amended Plan does not comply with  
21 *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

22           9.     The provisions in the Amended Plan that provide that non-monetary  
23 obligations, such as maintaining insurance and reporting requirements, under the loan  
24 documents need not be performed until the new Maturity Date, which effectively excuses  
25 the reorganized debtors from performing these obligations.

26 ///

27 \_\_\_\_\_  
28 <sup>2</sup> See transcript of Disclosure Statement Hearing, 81:4-5.

1 DATED: March 12, 2010.

SNELL & WILMER, L.L.P.

2

3

By: /s/ Eric S. Pezold (#255657)

4

Donald L. Gaffney

Eric S. Pezold

Jasmin Yang

5

Counsel for Bank of America, N.A.

6

7 DATED: March 12, 2010.

JEFFER, MANGELS, BUTLER &  
MARMARO, LLP

8

9

By: /s/ Thomas M. Geher (#130588)

10

Thomas M. Geher

11

Counsel for Wells Fargo Bank, N.A.,

successor by consolidation to Wells Fargo

12

Bank Minnesota, N.A. as Trustee for the

Registered Certificate holders of GMAC

13

Commercial Mortgage Securities, Inc.,

Mortgage Pass-Through Certificates 2002-

14

C1 by and through Berkadia Commercial

Mortgage, Inc. (as successor to Capmark

15

Finance, Inc.), its special servicer

16

DATED: March 12, 2010.

BUCHALTER NEMER

17

18

By: /s/ Daniel H. Slate (#78173)

19

Daniel H. Slate

Counsel for California Bank & Trust

20

21 DATED: March 12, 2010.

ROUTH, CRABTREE, OLSEN

22

23

By: /s/ Steven K. Linkon (#101056)

24

Steven K. Linkon

Counsel for Chinatrust Bank, USA

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1 DATED: March 12, 2010.

By: /s/ Elmer D. Martin, III (#75517)

2 Elmer D. Martin, III  
3 Counsel for East West Bank

4 DATED: March 12, 2010.

PACHULSKI, STANG, ZIEHL & JONES,  
5 LLP

6  
7 By: /s/ Ian A.W. Nasatir (#148977)

8 Ian A.W. Nasatir  
9 Counsel for Legendary Investors Group No.  
10 1, L.L.C.

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In re: MERUELO MADDUX PROPERTIES, INC., et al.,  Debtor(s).	CHAPTER 11  CASE NUMBER - 1:09-bk-13356-KT
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**NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate a NEF because only orders that have been entered are placed on the CM/ECF docket.

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 350 South Grand Avenue, Suite 2600, Los Angeles, CA 90071 The foregoing documents described as: **SECURED CREDITORS' LIST OF ISSUES THAT SHOULD BE DETERMINED IN ADVANCE OF PLAN CONFIRMATION** will be served or was served in the manner indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 12, 2010** I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served): On **March 12, 2010**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail and/or with an overnight mail service addressed as follows:

The Honorable Kathleen Thompson  
United States Bankruptcy Court - Warner Center  
21041 Burbank Boulevard, Suite 305  
Woodland Hills, CA 91367-6609  
(Overnight Mail)

Service information continued on attached page

**III. SERVED BY FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to Fed. R. Civ. Proc. 5 and/or controlling LBR, on \_\_\_\_\_, I served the following person(s) and/or entity(ies), who consented in writing to such service method, by facsimile transmission and/or email as follows:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 12, 2010	Dana Lewis	/s/ Dana Lewis
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

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