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consolidation to Wells Fargo Bank Minnesota, National
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GMAC Commercial Mortgage Securities, Inc., Mortgage Pass-
8 Through Certificates, Series 2002-C1 acting by and through
Berkadia Commercial Mortgage, Inc., Its Special Servicer
9

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SAN FERNANDO VALLEY DIVISION

JMBM
Jeffery Mangels
Butler & Marmaro LLP

14 In re
15 MERUELO MADDUX PROPERTIES, INC.,
et al.,
16
17 Debtors.

CASE NO. 1:09-bk-13356 KT

Chapter 11
(Jointly Administered)

**BERKADIA'S¹ OBJECTION TO DEBTORS'
FIRST AMENDED DISCLOSURE
STATEMENT PURSUANT TO SECTION
1125 OF THE BANKRUPTCY CODE
ACCOMPANYING FIRST AMENDED
JOINT CHAPTER 11 PLAN OF MERUELO
MADDUX PROPERTIES, INC., ET AL.**

Date: March 19, 2010
Time: 9:30 a.m.
Place: Courtroom 301
21041 Burbank Boulevard
Woodland Hills, California

27 _____
28 ¹ Berkadia Commercial Mortgage, Inc. is the successor to Capmark Finance Inc.

I

INTRODUCTION

Wells Fargo Bank, N.A. successor by consolidation to Wells Fargo Bank Minnesota, National Association as Trustee for the Registered Certificateholders of GMAC Commercial Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 2002-C1 acting by and through Berkadia Commercial Mortgage, Inc., its Special Servicer ("Berkadia ") is the holder of a valid and perfected first priority Deed of Trust against the real property commonly known as Crown Commerce Center, an income producing industrial property owned by Santa Fe Commerce Center, Inc. ("Santa Fe"), a debtor and debtor-in-possession herein. Berkadia's Deed of Trust against Crown Commerce Center secures Santa Fe's debt to Berkadia, which is, as of October 31, 2009, in a sum of not less than \$12,738,391.70.² Pursuant to that appraisal report of Bradley E. Lofgren, MAI, which Berkadia filed in connection with the cash collateral proceedings, the value of Crown Commerce Center is \$14,750,000.³

In a second attempt to reorganize and cure the defects in its original Disclosure Statement and Plan of Reorganization, Meruelo Maddux Properties, Inc. and its jointly administered bankrupt affiliates (collectively, "MMPI" or "Debtors"), including Santa Fe, filed that (i) *First Amended Disclosure Statement* (the "Disclosure Statement") and (ii) *First Amended Joint Chapter 11 Plan of*

² See, Declaration of Jackie Brome Re Accounting of Secured Debt (As Of October 31, 2009) Owed By Santa Fe Commerce Center, Inc., filed on October 13, 2009 in connection with the cash collateral proceedings and designated as Docket No. 730. Berkadia requests that this Court take judicial notice of such declaration.

³ For adequate protection purposes, the Court found the value of Crown Commerce Center to be \$15,500,000. However, Santa Fe contends, based solely on the opinion of Richard Meruelo, that the value of the real property and improvements comprising Crown Commerce Center is \$23,250,000. See, First Amended Plan, page 130, line 8. The values of real property provided by all debtors herein, which are based on the opinion of Mr. Meruelo, are not reliable or accurate. In fact, on March 9, 2010, this Court's own real estate valuation expert, Michael Shustak of Grubb & Ellis Company, provided his appraisal report for the real property commonly known as 5707-5715 S. Alameda/5716 Alba Street and NWC 57th Street and Bandera Street, Los Angeles (the "Alameda Property"). Mr. Shustak valued the Alameda Property at \$3,100,000, as of February 1, 2010. See, Docket No. 1154. In contrast, Debtors and Mr. Meruelo valued the Alameda Property at \$5,034,320 or approximately 66% higher than Mr. Shustak's value. See, Exhibit 7, Ex "s" to Supplemental Declaration of Richard Meruelo and Declaration of Fred Skaggs in Support of Motions for Authority to Use Cash Collateral and Maintain Cash Management System (Docket No. 95). Mr. Shustak, who is completely disinterested and not employed by any party herein, supports what the secured creditors have been saying from Day 1 - Debtor and Mr. Meruelo's valuations are fantasy and not based in reality.

1 *Meruelo Maddux Properties, Inc. et al.* (the "Plan"). Unfortunately, MMPI has ignored certain
2 rulings and directives of this Court concerning MMPI's contemplated reorganization. As one
3 example only, MMPI has again ignored the holding of the United States Supreme Court in *Bank of*
4 *America National Trust and Savings Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434
5 (1999). Contrary to, and in conflict with, the holding of the Supreme Court, MMPI, while still
6 enjoying the protections of the "plan exclusivity period," has offered the new equity interests in the
7 reorganized debtor exclusively to the existing shareholders without such new equity interests being
8 marketed or auctioned to ensure that the \$10,000,000 new value contribution for the new equity
9 interests in the reorganized debtor is fair value. Accordingly, pursuant to the explicit holding in
10 *Bank of America*, MMPI's Plan is unconfirmable on its face and, therefore, the Disclosure Statement
11 should not be approved.

12 For all of the reasons set forth below, Berkadia contends that the Disclosure Statement
13 should not be approved because (i) the Disclosure Statement does not contain "adequate
14 information" and (ii) the Plan is unconfirmable on its face.

15 II

16 THE DISCLOSURE STATEMENT DOES NOT CONTAIN 17 ADEQUATE INFORMATION AND, THEREFORE, 18 SHOULD NOT BE APPROVED 19

20 A. General Standards for the Evaluation of a Disclosure Statement.

21 Pursuant to § 1125(b) of the Bankruptcy Code, an acceptance or rejection of a chapter 11
22 plan of reorganization may not be solicited after the commencement of a bankruptcy case from a
23 holder of a claim or interest unless, at the time of such solicitation, there is transmitted to such
24 holder the plan or a summary of the plan and a written disclosure statement approved, after notice
25 and a hearing, by the court as containing "adequate information." 11 U.S.C. § 1125(b). *See also,*
26 *United States Brass Corporation*, 194 B.R. 420 (Bankr. E.D. TX 1996).

27 The term "adequate information" is defined by Bankruptcy Code § 1125(a)(1) as
28

1 information of a kind, and in sufficient detail, as far as is reasonably
2 practicable in light of the nature and history of the debtor and the
3 condition of the debtor's books and records, including a discussion of the
4 potential material Federal tax consequences of the plan to the debtor ...
5 and a hypothetical investor typical of the holders of claims or interests in
6 the case, that would enable such a hypothetical investor of the relevant
7 class to make an informed judgment about the plan ...

8 The Court has an independent obligation to determine whether a disclosure statement
9 contains "adequate information." See, *In re Eastern Maine Electric Cooperative, Inc.*, 125 B.R.
10 329, 333 (Bankr. ME 1991) and *In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio
11 1990).

12 Further, the Ninth Circuit Court of Appeals has held that every creditor has standing to
13 object to (i) any portion of a disclosure statement or (ii) any "disclosure" contained in or excluded
14 from a disclosure statement. See, *In re Perez*, 30 F.3d 1209, 1217 (9th Cir. 1994).

15 Finally, a disclosure statement must be examined to determine whether it describes a plan
16 that is so "fatally flawed" that confirmation is "impossible." *In re Eastern Maine Electric
17 Cooperative, Inc.*, 125 B.R. at 333. See also, *In re Cardinal Congregate I*, 121 B.R. at 764 and *In
18 re Monroe Well Service, Inc.*, 80 B.R. 324 (Bankr. E.D. PA 1987). A disclosure statement should
19 be disapproved at the threshold where the plan it describes displays fatal facial deficiencies or the
20 stark absence of good faith. *In re Dakota Rail, Inc.*, 104 B.R. 138, 144 (Bankr. D. Minn. 1989) and
21 *In re Unichem Corp.*, 72 B.R. 95, 98 (Bankr. N.D. IL 1987).

22 B. Berkadia's Specific Objections to Debtors' Disclosure Statement and Plan.⁴

23 Berkadia hereby makes the following objections to Debtors' Disclosure Statement and Plan:

24 1. The Plan is Unconfirmable on its Face Because the Plan Violates the Holding of the
25 United States Supreme Court in *Bank of America National Trust and Savings Ass'n v. 203 North*
26 *LaSalle Street Partnership*.

27 Presently, pursuant to orders of this Court, Debtors have the exclusive right to propose a

28 ⁴ Berkadia also joins in the objections of the remaining secured creditors to Debtors' Disclosure Statement.

1 plan of reorganization and seek acceptances of a plan. The Plan of MMPI is a "new value plan."
2 The Plan provides that the existing shareholders' equity interests in the parent debtor, Meruelo
3 Maddux Properties, Inc., shall be cancelled and the new equity interests in the reorganized Meruelo
4 Maddux Properties, Inc. shall be offered for sale exclusively to certain existing shareholders of
5 Meruelo Maddux Properties, Inc., including Richard Meruelo, the largest present shareholder of
6 Meruelo Maddux Properties, Inc.⁵ See, Plan at pages 133 through 140. The new equity interests in
7 the reorganized Meruelo Maddux Properties, Inc. are not being exposed, marketed, offered or
8 auctioned to anyone other than the existing shareholders of Meruelo Maddux Properties, Inc.

9 In *Bank of America*, the United States Supreme Court rejected, as unconfirmable on its face,
10 a proposed plan of reorganization, filed during debtor's "plan exclusivity period," where the new
11 equity interests in the reorganized debtor partnership were to be purchased by debtor's existing
12 partners. In *Bank of America*, the Supreme Court held as follows concerning new value plans filed
13 during the "plan exclusivity period" which provide only existing equityholders with the exclusive
14 opportunity to purchase the equity in the reorganized debtor

15 Whether a market test would require an opportunity to offer competing
16 plans or would be satisfied by a right to bid for the same [new equity]
17 interest sought by old equity is a question we do not decide here. It is
18 enough to say, assuming a new value corollary, that plans providing for
19 junior interest holders], i.e. existing shareholders,] with exclusive
20 opportunities free from competition and without benefit of market
21 valuation fall within the prohibition of § 1129(b)(2)(B)(ii).

22 *Bank of America*, 526 U.S. at 458.

23 Based on the clear and explicit directive of the United States Supreme Court, which this
24 Court must follow, MMPI's "new value" plan is unconfirmable on its face and, therefore, this Court

25 ⁵ Meruelo Maddux Properties, Inc., in turn, owns and/or controls all the equity interests in all of the
26 subsidiaries, including those entities which own real property. None of the equity interests held by Meruelo
27 Maddux Properties, Inc. in the subsidiaries are being cancelled.

28 Additionally, by offering the new equity to only to the top 200 record holders, Debtors are unfairly
discriminating in the treatment afforded to class of equity holders. Why should only some, as opposed to all,
existing equityholders have a right to buy the new equity. It appears that Mr. Meruelo wants to ensure that
he can either buy or control the new equity by limiting the pool of potential purchasers of the new equity.

1 must deny approval of the Disclosure Statement.

2

3 2. The Financial Wherewithal of the "Backstop Party" Should be Disclosed.

4 In order to implement the Plan, if confirmed, MMPI will need and rely upon a "new value"
5 investment by its existing shareholders of \$10,000,000. If the existing shareholders, other than
6 Richard Meruelo, do not purchase all of the new equity interests in Meruelo Maddux Properties,
7 Inc., such new equity will be purchased by "Richard Meruelo, or any entity controlled or designated
8 by Richard Meruelo." See, Plan, pages 134-135. However, absolutely no information is provided
9 by the Disclosure Statement for a creditor to determine whether the "Backstop Party," i.e., Richard
10 Meruelo, has the financial ability to pay \$10,000,000 on the Effective Date. As the "new value"
11 contribution of \$10,000,000 is necessary to implement the Plan and allow MMPI to operate post-
12 confirmation, creditors should be provided with adequate information relating to the ability of the
13 "Backstop Party"/Richard Meruelo to make the required \$10,000,000 cash contribution.

14

15 3. There Are No Disclosures Concerning the 845 Flower Street Debtor and the Sale of
16 Its Real Property.

17 The Plan is dependant upon MMPI receiving in post-confirmation "Year 1" the sum of
18 \$26,403,000 from the sale of that residential tower known as "845 Flower," which is owed by a
19 debtor that is not included in this jointly administered case and is not a proponent of the Plan. In
20 fact, if MMPI does not receive the sum of \$26,403,000 from the sale of the 845 Flower property,
21 Debtors run out of money by the end of post-confirmation Year 3 and will not be able to meet its
22 obligations under the Plan. See, Exhibit "E," page 12 of the "Exhibits to First Amended Disclosure
23 Statement."

24 Notwithstanding the foregoing, the Disclosure Statement does not contain one word
25 concerning the 845 Flower property or the separate and distinct bankruptcy case concerning the 845
26 Flower property or the risks and issues associated with any proposed sale of the 845 Flower. In the
27 Disclosure Statement, MMPI should provide, at a minimum, an explanation of (a) the value of the
28 845 Flower Property, including the competing valuations offered by the 845 Flower debtor and its

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1 secured creditor Canpartners, (b) the amount and holders of the secured debt against the 845 Flower
2 property, (c) under what conditions the 845 Flower property may be sold, i.e., in bulk v. unit sales,
3 (d) the risks associated with the ability to sell the 845 Flower property and (e) the plan proposed or
4 to be proposed in the bankruptcy case involving the 845 Flower property to allow for the ultimate
5 sale of the 845 Flower property and the distribution of the sales proceeds to Debtors to fund the
6 Plan.

7 It is unbelievable that such a critical component of the Plan like the sale of the 845 Flower
8 property does not merit any discussion in the Disclosure Statement. On this ground alone, the
9 Disclosure Statement does not contain adequate information.

10
11 4. The Injunction Prohibiting Actions Against Third Party Guarantors Causes the Plan
12 to be Unconfirmable on its Face.

13 Notwithstanding that certain guarantors of Debtors' obligations to its numerous secured
14 creditors are not in bankruptcy and are not, as a matter of law, entitled to the protections of the
15 automatic stay and the benefits of Debtors' bankruptcy cases, the Plan and Disclosure Statement
16 provide that, for the life of the Plan, creditors are prohibited from enforcing their rights against such
17 non-debtor guarantors. Further, even if Debtors default under the Plan, the creditors' rights with
18 respect to the non-Debtors' guarantor's obligations are to be altered and eliminated. It is hornbook
19 law that a Plan cannot release any liability of third party non-debtors, yet, the proposed injunction
20 does just that - creditors are prohibited from enforcing its rights against non-debtor guarantors.
21 Thus, pursuant to the Ninth Circuit's holdings of *In re American Hardwoods, Inc.*, 885 F.2d 621
22 (9th Cir. 1989) and *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995), the proposed injunction is
23 improper and the Plan is unconfirmable on its face.

24 Specifically, as to Berkadia, which holds the personal guaranty of Richard Meruelo, the Plan
25 also provides that all "SPE provisions" relating to Santa Fe will be eliminated. However, the
26 guaranty of Mr. Meruelo becomes effective upon Santa Fe's breach of the SPE provisions, which
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1 has occurred.⁶ By (i) eliminating the "SPE provisions," (ii) eliminating certain of Berkadia's rights
2 under its guaranty and (iii) including the proposed "temporary" injunction prohibiting the
3 enforcement of Mr. Meruelo's guaranty, MMPI is causing a permanent taking and elimination of
4 Mr. Meruelo's personal guaranty held by Berkadia. This violates *In re American Hardwoods, Inc.*,
5 885 F.2d 621 (9th Cir. 1989) and *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995).

6
7 5. The Disclosure Statement Fails to Discuss the Impact on the Plan if Only Some, But
8 Not All, of the Debtors Confirm the Plan.

9 The Plan is a joint plan, not a consolidated plan. See, Disclosure Statement, page 4. The
10 Disclosure Statement provides that "votes [on the Plan] will be tabulated and acceptances will be
11 determined on a Debtor by Debtor basis. The Debtors will seek confirmation of the Plan as to each
12 Debtor on an individual basis notwithstanding that the Plan is a joint." See, Disclosure Statement,
13 page 4. Thus, it is very possible that all of the debtors proposing the Plan will not be able to
14 confirm the Plan. Some debtors may be able to confirm the Plan, while others will not. What
15 happens in this event? How does this result effect the projections and cash flow? How can a
16 creditor of one debtor intelligently vote on the Plan when that creditor is not told by Debtors of the
17 impact if only some, but not all, Debtors confirm the Plan.

18
19 6. The Debtors' Five Year Projections Are Insufficient.

20 Under the proposed Plan, the restructured and amended promissory notes to be given to the
21 secured creditors, including Berkadia, shall mature on either the fifth (if the creditor votes for the
22 Plan) or seventh (if the creditor votes against the Plan) anniversary of the Effective Date. Over the
23 course of those five or seven years the secured creditors shall be receiving monthly interest only
24 payments. It is anticipated that numerous secured creditors, including Berkadia, may vote against
25 the Plan.

26
27 ⁶ Presently, Berkadia has an action pending against Mr. Meruelo on his guaranty. This action is
28 pending in the United States District Court for the Central District of California as Case No. CV 10-315
CAS(AJWx).

1 First, the five year projections (see, Exhibit "E," page 12 of the Exhibits to the Disclosure
2 Statement) do not provide any information showing MMPI's ability to pay the balloon payments
3 that would be due at the end of five years if all, half or some of the secured creditors voted for the
4 Plan.

5 Also, notwithstanding that the Debtors will probably be obligated to make monthly
6 payments over the course of seven years with balloon payments due at the end of this seven year
7 period, Debtors have provided projections for only the first five years after the Effective Date. As
8 huge balloon payments will be due in seven years to numerous secured creditors, Debtors should be
9 required to provide projections for the seven year life of the Plan, not just the Plan's first five years.
10 Debtors' projections should provide detailed information concerning Debtors ability or inability to
11 make the required balloon payments seven years after the Effective Date.

12 Third, while the Plan is dependant upon the sale of various undisclosed real property (and
13 the specific and exact amount of sales proceeds generated thereby), MMPI fails to identify the
14 property or properties which would be sold by year to generate the specific and exact projected
15 sales proceeds to be received in a year to fund and implement the Plan. As MMPI sets forth
16 specific and exact amounts it will receive in "sales proceeds" for the five years covered by the
17 projections (see, Exhibit "E," page 12 of Exhibits to Disclosure Statement), MMPI should know
18 what properties are to be, or can be, sold to raise the required specific amount of funds. The
19 Disclosure Statement should identify the properties to be sold, their purported values,⁷ and the
20 secured debt against such properties. How else could a creditor know whether or not the portions of
21 the projections setting forth "sales proceeds" is reliable, reasonable and feasible.

22 Finally, and especially due to the qualifications and assumptions concerning the projections,
23 Debtors should provide actual financial information on an annualized basis from 2005 to present.
24 This will allow creditors to compare past actual results and performance with projected future
25 performance. This information is critical for any "hypothetical investor."

26 _____
27 ⁷ As this Court's own expert has proven that the values ascribed to properties by MMPI and Mr.
28 Meruelo are fantasy, the issue of the value of the properties needed to be sold to fund the Plan is critical.

1 The projections are inadequate.

2
3 7. The Debtors Recent Settlement With the County of Los Angeles Requires that
4 Approval of the Disclosure Statement be Denied.

5 On March 10, 2010, the Debtors and the County of Los Angeles (the "County") informed
6 this Court, in open court and on the Court's record, that they had reached a settlement concerning
7 the claims of the County.

8 The Disclosure Statement and Plan state that the allowed claims of the County, the amounts
9 of which are disputed, shall accrue interest from the Effective Date at the rate of 3.25% and be paid
10 over a period of fifteen equal quarterly installments. However, the recent settlement between
11 Debtors and the County allows for (i) the County's allowed claim to be equal to the (a) amount of
12 the tax due plus (b) interest through the Effective Date at 18% per annum (or 1.5% per month) plus
13 (c) a one-time redemption charge of 8% (the "County's Allowed Claim"). The amount of the
14 County's Allowed Claims will then accrue post-Effective Date interest at the rate of 18% per annum
15 (or 1.5% per month) and be paid in equal quarterly installments over four years, starting with the
16 second post-Effective Date quarter.

17 Based on the settlement between the County and Debtors, it is self-evident that the
18 Disclosure Statement, which (i) does not set forth the above settlement and (ii) contains projections
19 which do not account for the now extremely more expensive treatment of and payments on account
20 of the County's Allowed Claim, is materially misleading, not accurate and does not contain
21 "adequate information." The Disclosure Statement must be amended to describe the above
22 settlement and its financial impact on the Debtors and include new projections which account for
23 the vastly more expensive treatment and payment of the County's Allowed Claim.

24
25 8. The Debtors' Information Concerning the Real Property is Insufficient and
26 Inadequate.

27 In pages 14 through 33 of the Disclosure Statement, MMPI itemizes its real property and
28 attempts to give creditors "adequate information" concerning each parcel of real estate. As much of

1 MMPI's real estate generates income from the collection of tenant rents, all of which is needed to
2 implement the Plan and fund MMPI's post-confirmation operations, the status of the tenants'
3 occupancy is important. However, for each parcel of real estate which generates rents, MMPI has
4 failed to provide current, reliable information concerning the status of the properties' tenants.
5 MMPI merely tells the creditors the number of tenants in each property as of September 30, 2009.
6 The information provided concerning the tenants is inadequate. First, current information
7 concerning the tenants should be provided - information concerning tenants that is approximately
8 six months old is stale, inadequate and not accurate. A company such as MMPI should have current
9 rent rolls at its fingertips (on a computer or otherwise) so that creditors can have current information
10 concerning the tenants.⁸

11 Second, for each property, the Disclosure Statement should provide (i) the names of the
12 tenants, (ii) whether each tenant is a month to month tenant or has a written lease and, if so, the term
13 of that lease, (iii) the monthly amounts paid by each tenant and contractual future rent increases and
14 (iv) any present default(s) of each tenant. Certainly, creditors should know whether tenants are
15 either month to month, thereby increasing the risk of vacancy or loss of future rents, or occupying a
16 property under a written lease with a term for years, and, therefore, a more reliable stream of
17 income. As MMPI's future existence and ability to implement the Plan is dependant on the
18 continued collection of rents at a certain dollar amount, the above information is necessary for
19 creditors to gauge the risks of the continued collection of rents and make an informed decision on
20 voting on the Plan.

21 Finally, the Plan provides "market values" for all of Debtors' real property. Yet, the Plan
22 does not inform creditors how these values were determined.

23
24 ⁸ For example, concerning Crown Commerce Center, Berkadia's collateral, the Disclosure Statement
25 at page 29, paragraph 29, recites that "as of September 30, 2009, the improvements were leased to six tenants
26 occupying approximately 100% of the total rentable area." (Emphasis added.) However, Berkadia has
27 recently learned that (i) one tenant at Crown Commerce Center, a moving company, recently vacated the
28 40,000 square feet that it leased and (ii) the tenant renting the most space at Crown Commerce, AJSE Inc.
which leased 35.75% of Crown Commerce Center at approximately 0.51 per square foot, has now downsized
from approximately 80,000 square feet to 60,000 square feet at a rental rate of approximately 0.31 per square
foot under a new one year lease. Such changed circumstances is material and significant. In fact, Berkadia
has asked MMPI about this change and MMPI has failed to confirm, deny or address this issue.

1 9. Debtors Must Provide the Proposed Loan Modification Agreement to be Forced on
2 Berkadia.

3 In its ruling concerning the Debtors' original disclosure statement, this Court instructed
4 Debtors to provide the secured creditors with any proposed amended or restated loan agreements,
5 promissory notes, deeds of trust, etc. Debtors have continued to fail to do so. The Disclosure
6 Statement states that the secured creditors are to receive amended loan documents but Debtors did
7 not include them in the Disclosure Statement.

8 The Disclosure Statement provides that the "terms and conditions of the agreements or
9 instruments between [Berkadia and Santa Fe] shall be restructured and amended as of the Effective
10 Date pursuant to a Loan Modification Agreement." Debtors fail to provide Berkadia with the
11 proposed Loan Modification Agreement. Debtor's promise to file the Loan Modification
12 Agreement five days before the Disclosure Statement hearing and after objections to the Disclosure
13 Statement are due is prejudicial to Berkadia. Debtors have had months to prepare the Loan
14 Modification Agreement and it should have been provided with the filing and service of the
15 Disclosure Statement.

16 Additionally, any restructured and amended loan documents should provide for
17 commercially reasonable non-monetary provisions and the proposed elimination of Debtors' non-
18 monetary obligations is improper.

19
20 10. The Debtors' Failure to Provide a Liquidation Analysis Should Cause this Court to
21 Deny Approval of the Disclosure Statement.

22 The Disclosure Statement fails to provide any liquidation analysis concerning any debtor.
23 As MMPI is cancelling the existing equity in Meruelo Maddux Properties, Inc. and those
24 shareholders are getting nothing under the Plan, a liquidation analysis must be provided to "prove,"
25 if possible, that such interest holders would not receive anything under a chapter 7 liquidation.
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11. The Discharge Provision of the Plan is Too Broad and Unconfirmable.

The Ninth Circuit has long held that a plan of reorganization cannot release third party non-debtors from liability. See, *In re American Hardwoods, Inc.*, 885 F.2d 621 (9th Cir. 1989) and *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995). Notwithstanding, the release, discharge and injunction provisions of the Plan contains language that releases, discharges and enjoins actions against Debtors' and "their respective affiliates, current or former officer, directors, agents, employees and representatives." See, Disclosure Statement, pages 144-145. This portion of the release, discharge and injunction provision is too broad. For example, Richard Meruelo, an officer and director of Debtors, has guaranteed Santa Fe's obligation to Berkadia and Mr. Meruelo should not be released or discharged from this or any other obligation or liability which he personally has.

Thus, the release, discharge and injunction provision is too broad as a matter of law and causes the Plan to be unconfirmable on its face.

12. The Limitation of Liability Provision of the Plan is Too Broad and Unconfirmable.

The "Limitation of Liability" provision (see, Disclosure Statement, page 148) suffers from the same infirmity as the release, discharge and injunction provision. As the "Limitation of Liability" provision seeks to cap or limit the liability of third party non-debtors, this provision is unlawful and the Plan cannot be confirmed.

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III

CONCLUSION

Based on the foregoing, Berkadia contends that Debtors' Disclosure Statement does not contain adequate information and that the Plan proposed by Debtors is unconfirmable on its face. Accordingly, this Court should not approve Debtors' Disclosure Statement.

DATED: March 12, 2010

JEFFER, MANGELS, BUTLER & MARMARO LLP
JOHN A. GRAHAM
THOMAS M. GEHER

By: /s/ Thomas M. Geher
THOMAS M. GEHER, Attorneys for Creditor
Wells Fargo Bank, N.A. Successor by
Consolidation to Wells Fargo Bank Minnesota,
National Association as Trustee for the Registered
Certificateholders of GMAC Commercial
Mortgage Securities, Inc., Mortgage Pass-Through
Certificates, Series 2002-C1 Acting By and
Through Berkadia Commercial Mortgage, Inc., Its
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In re: MERUELO MADDUX PROPERTIES, INC., et al.	CHAPTER 11 Debtor(s). 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 an 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:

1900 Avenue of the Stars, Seventh Floor, Los Angeles, California 90067-4308

A true and correct copy of the foregoing document described BERKADIA'S OBJECTION TO DEBTORS' FIRST AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE ACCOMPANYING FIRST AMENDED JOINT CHAPTER 11 PLAN OF MERUELO MADDUX PROPERTIES, INC., ET AL. will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) 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 in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

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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

Claudean Brandon



Date

Type Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: MERUELO MADDUX PROPERTIES, INC., et al.	Debtor(s).	CHAPTER 11 CASE NUMBER 1:09-bk-13356 KT
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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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