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for Management Solutions, Inc., Wendell  
A. Jacobson and Allen R. Jacobson*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a  
Texas Corporation; WENDELL A.  
JACOBSON; ALLEN R. JACOBSON,

Defendants.

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**SECOND LIQUIDATION PLAN OF  
RECEIVER**

Civil Action No. 2:11-cv-01165  
Judge Bruce S. Jenkins

John A. Beckstead, Receiver for Defendants Management Solutions, Inc., the assets of Wendell A. Jacobson, Allen R. Jacobson, and related entities, submits this Second Liquidation Plan of Receiver (the "Plan"). The Plan replaces the Liquidation Plan of Receiver dated March 3, 2012, Doc. 223, and the Supplemental Liquidation Plan of Receiver dated September 7, 2012, Doc. 494 (collectively, the "Prior Plan").

The Prior Plan was based on a bulk sale of almost all of the real property in the receivership estate to a single purchaser. The Court was previously advised that developments since filing the Prior Plan have led the Receiver to the conclusion that the bulk sale is no longer feasible. This new Plan replaces the proposed bulk sale and reflects developments in the receivership estate since filing the Prior Plan.<sup>1</sup>

### **The Receiver's Mandate**

Paragraph 54 of the Order Appointing Receiver, Freezing Assets and Other Relief dated December 15, 2011, Doc. 4 (the "Appointment Order") directs the Receiver to "plan for the fair, reasonable and efficient recovery and liquidation of all remaining, recovered and recoverable Receivership Property". Appointment Order, ¶ 54. In furtherance of this direction, the Receiver is authorized to sell or lease all real property (*Id.*, ¶ 39), manage, maintain and/or wind down business operations (*Id.*, ¶ 41), investigate, prosecute, defend, intervene in and/or participate in, compromise and/or adjust actions advisable or proper to recover and/or conserve Receivership Property (as defined in the Appointment Order) (*Id.*, ¶ 43), investigate the manner in which the financial and business affairs of the Receivership Defendants (as defined in the Appointment Order) were conducted and institute actions and legal proceedings for the benefit of the receivership estate (*Id.*, ¶ 44).

### **Plan**

This Plan sets forth the Receiver's plan for liquidation of the remaining assets in the receivership estate. Circumstances in the receivership change frequently as new facts continue to

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<sup>1</sup> The Receiver is advised that the Investor Group is continuing to develop an alternative proposal which it expects to file shortly.

be discovered and circumstances change. The Plan should not be viewed as creating commitments but as more of a strategic plan that will require adjustments and modifications as over the course of its execution.

**I. Identification and Definition of Receivership Assets**

**A. Categories of Assets**

The most current summary of the assets of the receivership estate is in the Receiver's Fourth Quarterly Status Report as of December 31, 2012, dated January 30, 2013, Doc. 887 (the "4QSR").<sup>2</sup> The assets are listed on Exhibit A – Claims of Receiver Against Third Parties and Exhibit G - Material Assets of Receivership, to the 4QSR.

Since filing of the 4QSR, the following assets have been sold or abandoned, or will be abandoned, by the Receiver:

- Hondo Encinito Apartments
- Clear Creek I & II Apartments
- 104 condominium units of Summerwind Apartments
- Haynes/Sunset Shopping Center
- Alpine Court Shopping Center
- Plum Tree Shopping Center
- Commerce Green Office Building
- Escena Park Apartments (in development)
- Discovery Point II (undeveloped land)
- Bailey Home
- Lovell Home
- 2008 GMC Sierra Truck
- 2007 Cadillac Escalade
- Furniture of Starwood Management
- Limited partnership interest in Green Oaks Plaza, LP
- Membership interest in Appalachian Self Storage, LLC

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<sup>2</sup> The Fifth Quarterly Status Report ("5QSR") is due April 30, 2013. The 5QSR will provide further updates on the assets of the receivership.

The assets listed in the 4QSR, less the foregoing properties that are identified as sold, abandoned or to be abandoned, are referred to collectively in this Plan as the “Receivership Estate”.

For purposes of this Plan, the Receivership Estate will be placed in the following categories:

Multi-Family Property Assets: This consists of the assets in the Multi-Family Apartments category of the 4QSR.

Office Property Assets:

Discovery Point Office Building  
Lehi, Utah

Discovery Grove Office Building  
Pleasant Grove, Utah

Other Real Property Assets: This consists of (i) the 0.5% general partnership interest and 69.5% limited partnership interest owned by Council Properties, Inc., a receivership company, in Escena Properties, L.P., a Texas limited partnership (the “70% Escena Properties Interest”), which owns a development project in Irving, Dallas County, Texas, in which lots are being sold on a build out basis to David Weekly Homes; (ii) the remaining assets in the Undeveloped Land category in the 4QSR; (iii) the assets in the Sanpete County, Utah Properties category in the 4QSR; (iv) the assets in the Other Properties category in the 4QSR; (v) the assets in the Water Rights category in the 4QSR; and (vi) any mineral rights interests in the properties (the Receiver is investigating whether any such mineral rights interests exist).

Interests in Businesses: This consists of the assets in the Interests in Businesses category in the 4QSR. Additional information recently developed by the Receiver, which will be reported in the 5QSR, will add additional interests to this category

Receivables: This consists of the assets in the Bank Accounts, Notes and other Receivables category in the 4QSR.

Other Assets: This consists of the assets in the Potential Vehicles and Other Tangible Assets category in the 4QSR.

Third Party Claims: This consists of the claims set forth in Exhibit A - Claims of Receiver Against Third Parties to the 4QSR.

**B. Scope of and Limitations on Receiver's Interests in Assets**

Some of the assets in the Receivership Estate are not owned outright by the Receiver. There are also issues with some of the properties that must be resolved before the properties can be liquidated. These items are:

1. Liens and Encumbrances. Many of the real properties are subject to mortgages or deeds of trust in favor of lenders. Some of the properties have not generated sufficient income to keep taxes current and are therefore subject to tax liens. Allowed liens and encumbrances will be paid at closing of the sale of each property from the sale proceeds.

The mortgages or deeds of trust on the following properties also contain provisions for prepayment fees, yield maintenance clauses or other defeasance provisions (the "Prepayment Provisions"):

Brooksedge  
Cleburne Terrace  
Dezavala Oaks  
Jefferson Chase

Lake Ridge  
Meadow Walk  
Oak Hill  
Providence Estates  
Retema Ranch  
Stonebridge  
Stonebrook Idaho  
Stonebrook Idaho Phase 2/Tetonian  
Stonebrook Phase 1  
Stonebrook Phase 2  
Sunbury Ridge  
The Charlestonian  
Toscana  
WyndSOR Court

The loans on each of these properties are assumable and the Receiver projects that there is sufficient equity in these properties to require the buyer to pay the required fees for assumption of the loans to avoid the Prepayment Provisions, or to pay the amounts owing under the Prepayment Provisions, and still yield a return to the Receiver. These properties will be marketed with the requirement that the purchaser assume the loan, or pay the amounts owing under the Prepayment Provisions, at the buyer's cost, in addition to the purchase price.

2. Tenant in Common Interests. The following multi-family properties are subject to claimed tenant in common ("TIC") interests of non-receivership parties as indicated:

Buffalo Run – MJ5 Investments (33.82%)

City View – R.R. Beck (2.475%)

Lake Ridge – L and H Investments, Inc. (10%), Pamela L. Buros (4.65%), John W. Anders (1.0%), Mark F. Larsen (2.381%), Max Jorgensen (6.93%), JTLP Investments, LLC (2.52%), FJL Properties, LLC (25.4%)

Madison Chase – Selene J. Corbridge and Elyce Jones (6.6%), Truman F. Clawson (8.25%), Ande Equipment Ltd. (9.57%), Woods #4, LLC and William L. Woods (6.53%), Ward Lemons and Lisa Lemons (1.62%), Woods #1, LLC and William L. Woods (4.59%), Gordon R. Kimball (5.54%), Mount Olympus Hills, LLC (6.44%)

Oak Hill – Holbrook Farms, LC (24.614%); Holbrook J3, LLC (12.193%), Scott and Michelle Beeville, LLC (12.193%)

Smokey Trail – Carol Thurgood as Trustee of the M&C Thurgood Family Trust (30.04%) as to Lot 1 only

Stonebrook Idaho – Barlow Corp. (49%)

Stonebrook Phase 1 – Boyd Summerhays, L.C. (24.75%), Holbrook Farms, L.C. (24.386%)

Toscana – Adams Bay Lighthouse Investment, LLC (5.928%), Eric D. Bishop, Inc. (9.272%)

In addition, a parcel in Sanpete County, Tax Id. No. 21367X, listed in Exhibit G – Material Assets of Receivership of the 4QSR as Property No. F41, may be subject to tenant-in-common interests. Investigation into title is continuing.

The Receiver intends to seek the consent of the holders of the claimed TIC interests to allow the Receiver to sell 100% of the interests in these properties. With the exception of the City View Apartments (discussed below) and any other TIC interests which the Receiver determines should be challenged, upon closing of the sale of each of these properties, the holders of these TIC interests will each be paid their proportionate share of the net sale proceeds. For any properties on which the holder of the TIC interest will not consent, the Receiver intends to seek Court approval pursuant to the equitable powers of the Court or Utah Code Ann. §70B-6-1206 *et seq.* concerning partition to allow the Receiver to sell the entire property and then distribute the appropriate share of the proceeds to the holders of the TIC interests. If Court approval is not obtained, then the Receiver will sell only the portion of the property held by the Receiver.

3. Special Circumstances.

There are special circumstances concerning the following assets which will be addressed as indicated:

Garden Terrace Apartments: This property is severely distressed and circumstances necessitate that it be sold quickly. It will be sold at public auction on May 10, 2013, pursuant to authorization previously entered by the Court.

City View Apartments: RM Beck Properties, LLC (“Beck”) asserts a 2.475% tenant-in-common interest in the City View Apartments. After investigating the facts, the Receiver has concluded that this claim is not valid. The Receiver intends to seek consent of Beck to sell the properties and withhold 2.475% of the net sale proceeds pending resolution by the Court of the claims of Beck. If Beck will not consent to this action, the Receiver will seek a Court order authorizing this action.

Summerwind Apartments: This is a 184 unit condominium complex in which the units are rented like apartments. Summerwind, LLC, a receivership company, owned 168 of the units. 104 of the Receiver owned units were pledged to Nevada State Bank and have been abandoned due to a lack of equity. 16 of the Receiver owned units were pledged to America First Federal Credit Union (“AFFCU”). The Receiver is investigating the validity of the AFFCU lien. 47 or 48 of the Receiver owned units (the documents are contradictory) were pledged to Far West Bank. The Receiver is investigating the validity of the Far West Bank liens and possible equity in the property. Disposition of these properties and other actions will depend on the outcome of these investigations.



Brooklyn Crossing, Fournery, Texas (undeveloped land): A lawsuit was filed prior to appointment of the Receiver challenging ownership of this property and asserting an interest in this property. The lawsuit has been stayed since appointment of the Receiver. The Receiver will seek consent of the interested parties to sale of this property free of these claims, with claims to attach to the proceeds or, if consent is not obtained, will seek a Court order authorizing this action.

5600 West, Salt Lake County (undeveloped land): This property is subject to a Deed of Trust in favor of Far West Bank. The Receiver has challenged this Deed of Trust as a fraudulent conveyance. The Receiver will seek consent of Far West Bank to sale of this property free of this lien, with claims to attach to the proceeds or, if consent is not obtained, will seek a Court order authorizing this action.

Falcon Head, Burneyville, Oklahoma (undeveloped lots and land): This property has complicated problems with title, subdivision, boundaries, survey, home owners association assessments, and tax assessments. Investigation is continuing. A quiet title action may be necessary before the property can be sold in order to accurately identify the interests owned by the Receiver.

Parcels 7 & 54, Irving, Texas (undeveloped land): Prior to appointment of the Receiver, contracts were entered into for sale of these parcels. A motion by the Receiver to reject these executory contracts is pending. If denied, the parcels will be sold pursuant to those contracts. If granted, the properties will then be sold by the Receiver.

Lakeshore Village Apartments (Goodfellow Housing): The Receiver owns a 59% limited partnership interest in the partnership that owns this property. The Receiver also asserts

ownership of the general partner, which is disputed by Evan Jacobson and others. After substantial investigation and negotiation, the Receiver has presented an offer for the other limited partners to purchase the Receiver's limited partnership interest and resolve the other disputes. If the offer is not accepted and not approved by the Court, the Receiver will then ask the Court to determine ownership of the general partner interest. This dispute must be resolved before the property can be sold.

D&D Farms: Prior to appointment of the Receiver, Jacobsons entered into a contract to purchase 1000 acres of ranch land in Sanpete County, Utah from D&D Farms. The contract provided for installment payments with incremental conveyances of portions of the land. 600 acres had been conveyed at the time of appointment of the Receiver. The contract for this transaction is not of public record and the Receiver only recently became aware of this contract. As a result, payments on the contract have not been timely made. The Receiver is investigating the matter. The 600 acres that have been acquired appear to be landlocked without acquisition of the remaining acres or obtaining an easement. These matters need to be resolved before the property can be sold.

Circle J Turkey Farm: This property is an operating turkey farm and also grows hay. The Receiver recently entered into a second one-year contract for operation of the farm to preserve its value pending sale. It will be sold as an operating business rather than simply as real property.

Jaron Davis Residence: This is a residence located in Salt Lake County, Utah, owned by Bridge Point Capital, LLC, a receivership company, and occupied by Mr. Davis. Investigation into the nature of the interest of Bridge Point and the right of Mr. Davis is

continuing. An arrangement was made with Mr. Davis prior to appointment of the Receiver concerning this property. Apparently, Mr. Davis owned the home but lost it to foreclosure where it was purchased by the lender, Red Bridge Capital. Bridge Point made an arrangement with the lender in which Bridge Point acquired the property in exchange for a payment to the lender (which was apparently paid by Bridge Point but funded by Mr. Davis) and the mortgage was reinstated. Mr. Davis occupies the property and makes the mortgage payment. Resolution of the interest of Bridge Point and the rights of Mr. Davis will be required before the property can be sold.

4. Sales Free and Clear of Liens

In the event other disputes develop which will delay or prevent sale of a property, the Receiver may seek an order authorizing sale of the particular property free and clear of any liens or interests, with those liens and interests to attach to the proceeds.

**II. Methods of Sale**

**A. Multi-Family Property Assets**

With Court approval, the Receiver had an analysis of possible marketing strategies for the multi-family apartment properties performed by Alvarez & Marsal Real Estate Advisory Services, LLC (“A&M”). This analysis included consideration of various sale methodologies to determine which approach would yield the best return. The A&M report has been provided to the Court for *in camera* inspection and made available to the Investor Group on a confidential basis. The Multi-Family Property Assets will be liquidated in a structure consistent with the recommendations of the A&M report.

The Multi-Family Property Assets will be grouped into the following portfolios, as recommended by A&M:

Portfolio A, consisting of properties of relatively high quality and/or located in attractive markets<sup>3</sup>:

Cleborne Terrace  
Cleborne, Texas

Dezavala Oaks  
San Antonio, Texas

Oak Hill  
Beeville, Texas

Providence Estates  
San Antonio, Texas

Pryor Creek  
Pryor, Oklahoma

Reese Road  
Bartlett, Tennessee

Retema Ranch  
Universal City, Texas

Retreat at Stonebridge Ranch  
McKinney, Texas

Stonebrook Idaho  
Rexburg, Idaho

Stonebrook Idaho/Tetonian  
Rexburg, Idaho

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<sup>3</sup> The owners of tenant-in-common interests in Stonebrook Idaho and in Tuscana have expressed interest in purchasing the Receiver's interests in these properties and the Receiver is negotiating with those owners. If those negotiations are successful, these properties will be removed from the Portfolio.

Stonebrook I  
Baytown, Texas

Stonebrook II  
Baytown, Texas

The Charlestonian  
Lake Charles, Louisiana

Toscana  
Lewisville, Texas

WyndSOR Court  
Allen, Texas

Portfolio B, consisting of properties in the Columbus, Ohio area that do not have limited marketability due to age or location:

Abbie Lakes  
Columbus, Ohio

Brooksedge  
Reynoldsburg, Ohio

Jefferson Chase  
Blacklick, Ohio

Reserve at Abbie Lakes  
Canal Winchester, Ohio

Stonebridge  
Blacklick, Ohio

Portfolio C, consisting of properties with limited marketability due to age, location or other factors:

Buffalo Run  
Oelwein, Iowa

City View  
Red Oak, Iowa

Garden Terrace  
Gadsden, Alabama

Lake Ridge  
Hilliard, Ohio

Lakes Edge  
Pickerington, Ohio

Lakeshore Village (Goodfellow Housing)  
San Angelo, Texas

Madison Chase  
Childress, Texas

Meadow Walk  
Arkansas City, Kansas

Seneca Place  
Storm Lake, Iowa

Smokey Trail  
Limon, Colorado

Summerwind  
Mesquite, Nevada

Sunbury Ridge  
Columbus, Ohio

Town Plaza  
Beeville, Texas

Valley View  
Shenandoah, Iowa

The properties in Portfolio A and in Portfolio B will be offered for sale only as a portfolio, not individually. A&M recommends this structure to insure the best overall price by preventing “cherry picking” of the best properties and leaving the less desirable properties to be sold at a distressed price. A&M also advises that this strategy will yield higher proceeds than

selling the properties individually, has lower execution risk, lower transaction costs, and likely a shorter marketing period. The Portfolio C properties will be offered individually.

According to A&M, the profile of the likely buyer for Portfolio A is an institutional or private client or a REIT and therefore this property should be marketed nationally. Portfolio B is expected to attract institutional and private clients with a regional and/or local focus. These buyers will have an intimate knowledge of the market and A&M recommends using a broker in the Columbus market with a significant base of clients (both regionally and nationally) that have expressed interest in the Columbus or Ohio markets. The sales and marketing efforts for the properties in Portfolio C will be more locally driven due to both the projected buyer profile as well as the quality of the assets and the markets. Buyers of these properties are expected to be smaller, local or regional players and range from individuals to small family operations.

The Receiver intends to engage real estate brokers to assist in marketing the Multi-Family Property Assets consistent with the A&M recommendations. Because of the size and value of Portfolio A, the Receiver intends to seek Court approval of the engagement of the broker who will market this portfolio. The Receiver considers engagement of the brokers for Portfolio B and the individual properties in Portfolio C as ordinary course of business and will not seek Court approval of these engagements, unless directed to do so by the Court. There has been substantial interest in the Multi-Family Property Assets during the receivership and the Receiver will notify these potential purchasers of this process and provide their names and contact information to the applicable brokers.

As to Portfolios A and B, subject to recommendations of the brokers that are engaged, the portfolios will be advertised and offers solicited and the potential buyers provided materials on

the properties and allowed to inspect the properties. A deadline will be set to present unconditional binding offers, with earnest money deposits. The Receiver will then select the best potential purchasers for the two portfolios and have further negotiations with them.

On properties encumbered by a loan with a Prepayment Provision, the buyer will be required to assume the loan at the buyer's cost or pay the Prepayment Provision in addition to the purchase price. A&M recommends offering both options because each buyer's motivations and preferred means of dealing with the Prepayment Provision may be different.

Final sale of each portfolio and each individual property will be subject to Court approval and statutory requirements.

The proceeds from sale of the properties in Portfolios A and B will be allocated to the individual properties pro rata based upon the Receiver's appraised values of the properties, with adjustments made for properties subject to Prepayment Provisions to reflect reductions in the purchase price due to Prepayment Provisions, assumption fees, and any "mark to market" for current interest rates ("mark to market" refers to a reduction in the purchase price because the buyer is assuming a loan at an interest rate higher than market rates).

**B. Office Property Assets**

The Office Property Assets will be listed with a real estate broker and sold. The final sale of each property will be subject to Court approval.

**C. Other Real Property Assets**

Sale of the 70% Escena Properties Interest will be pursued by the Receiver with potential buyers that have been identified by the Receiver. The nature of this interest is basically a future cash flow stream resulting from the sale of lots in the development. It is anticipated that this



cash flow stream will pay out in full in about two years, after which the 70% Escena Properties Interest will no longer have any value. Any purchase of this interest will be based on a discount to that future cash flow. If the Receiver is unable to obtain a purchase offer at a reasonable discount rate, the Receiver may elect may hold this asset to maturity in approximately two years. Any final sale terms will be subject to Court approval.

The Receiver has identified potential buyers for a few of the remaining assets in the Undeveloped Land category, which will be pursued by the Receiver. Any properties not sold pursuant to those efforts, and the remaining properties in this category, will be listed for sale with a real estate broker or brokers. The final sale terms will be subject to Court approval.

The assets in the Sanpete County, Utah Properties category and the Other Properties category will be listed with real estate brokers for sale. The final sale terms will be subject to Court approval. The assets in the Water Rights category and any mineral rights interests in the properties will be sold through efforts of the Receiver. The final sale terms will be subject to Court approval.

**D. Interests in Businesses**

The Receiver is continuing to investigate the business interests identified in Exhibit G - Material Assets of Receivership to the 4QSR. The validity of the interests of the Receiver and the value of these interests have not been reliably determined.

**E. Receivables**

The items in the Receivable category which have been determined to likely be enforceable and have some possibility of collection have been transferred to the Third Party Claims category. The items remaining in the Receivable category are still under investigation to

determine if they are likely to be enforceable and have some possibility of collection. Those that are determined to meet this criteria will be moved to the Third Party Claims category and those that do not will not be pursued.

**F. Other Assets**

This category consists of vehicles and equipment. Most of these items have been determined to no longer be owned by a receivership entity or to not have sufficient value to warrant liquidation of the item. These items that are no longer owned or have minimal value will not be pursued and will be deleted from the Quarterly Status Report.

The Caterpillar backhoe/loader is the subject of an ownership dispute with Robert McDermott which is being investigated. It has reportedly been sold by Mr. McDermott. If warranted, a claim against Mr. McDermott for the sale proceeds or other value of the equipment will be pursued.

The other remaining items are being used in operations at the Circle J farm and will be sold in conjunction with farm.

**G. Third Party Claims**

The Third Party Claims will be pursued to resolution by settlement or litigation, unless the Receiver determines the claim is not worth pursuing.

Respectfully submitted this 22nd day of April, 2013.

/s/ John A. Beckstead  
John A. Beckstead  
Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of April, 2013, I caused a true and correct copy of the foregoing to be served in the following manner upon the addressee(s) listed below:

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