

**Prepared Testimony of
Stuart Miller – Chief Executive Officer
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Committee on Financial Services

Before the Subcommittee on Oversight and Investigations

**“The Federal Deposit Insurance Corporation’s
Structured Transaction Program”**

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INTRODUCTION

Chairman Neugebauer, Ranking Member Capuano, members of the Subcommittee, thank you for the opportunity to testify on the important issue of FDIC structured transactions.

My name is Stuart Miller, and I am the Chief Executive Officer of Lennar Corporation. Lennar is a public company founded in 1954 and traded on the NYSE under the symbol LEN. We are one of the nation's leading builders of quality homes with operations across the country.

In addition to homebuilding activities, we engage in other business lines, and Lennar's Rialto segment is one of those. Rialto Capital Management, LLC, a 100% owned subsidiary of Lennar, is a leading real estate investment and asset management company focused on distressed and value-add investments and asset management, workout and turnaround strategies.

Lennar first entered into the business of managing distressed assets in the 1970s and distressed loans in the early 1990s. Lennar's subsidiary at that time, LNR Property Corporation, was formed and managed by myself and Jeffrey Krasnoff, the current CEO of Rialto, who is here with me today. Since 2007, Rialto and its affiliated entities have underwritten and/or invested in or commenced the workout and/or oversight of billions of dollars of real estate assets, including distressed commercial and residential real estate loans and properties, as well as mortgage backed securities. These investments and management responsibilities include partnerships in structured transactions with the Federal Deposit Insurance Corporation, and Rialto and is a sub-advisor to one of the eight managers of a Fund under the U.S. Department of Treasury's Public Private Investment Partnership Program.

THE FDIC STRUCTURED TRANSACTION PROGRAM

As it has in many past downward real estate cycles, the FDIC faces the challenge of accomplishing its mission of protecting bank depositors who made deposits in failed financial institutions without passing the cost of that protection on to taxpayers. The FDIC states on its website that it has the following responsibility:

- The FDIC, as receiver for a failed institution, has a legal responsibility to maximize recovery on assets.

To fulfill that responsibility, the FDIC has created the structured transaction program, based upon its past successes with public/private partnerships, which the FDIC describes as follows:

- The structured transactions allow the FDIC to retain an interest in the assets, while transferring day-to-day management responsibility to expert private sector

professionals who also have a financial interest in the assets and share in the costs and risks associated with ownership.

- Bidders must be pre-qualified, have demonstrated financial capacity and the expertise to manage and dispose of the asset portfolio, and have certified eligibility to purchase FDIC receivership assets.
- The Private Owner acting as the managing partner must adhere to stringent monthly, semiannual, and annual reporting requirements. The FDIC conducts compliance monitoring of the transactions on a regular basis in addition to an annual agreed upon procedures review of entity operations.

THE RIALTO/FDIC TRANSACTION

Rialto is proud to have the opportunity, as one of the successful bidders in a competitive bidding process, to partner with the FDIC in its structured transaction program. Rialto has partnered with the FDIC to maximize the value of a portfolio of loans acquired from failed financial institutions. The loans in this portfolio consist primarily of loans made in commercial transactions with sophisticated business borrowers and real estate investors. Rialto, with the benefit of Mr. Krasnoff's twenty years of experience in these types of transactions, is uniquely capable of assisting the FDIC in accomplishing its mission. Rialto's experience offers the following specific benefits:

- Collection of amounts owed by these sophisticated business borrowers is essential to allow the FDIC to protect bank customer deposits after bank failures, reduce losses to the FDIC's Deposit Insurance Fund and to help prevent losses from being passed along to taxpayers. The failure of a financial institution in no way excuses performance by the borrowers who accepted money to fund business ventures in exchange for a promise to repay that money.
- Rialto operates in accordance with the loan documents negotiated, approved and signed by these sophisticated business borrowers, applicable laws, and the rules of the court system, both in the spirit and the letter of the law. Rialto's experience assures that borrowers and guarantors are treated fairly as required by law, and further assures that borrowers and guarantors receive the benefits and protections afforded them by the loan documents that they negotiated, in most cases with the assistance of legal counsel, with the financial institutions that agreed to extend them credit.
- The process of recovering amounts owed by sophisticated business borrowers who defaulted on their loans is actually helping to stimulate the economy. For example, Rialto often brings current significant deficiencies in property tax payments to often struggling local municipalities and communities, and its collection and foreclosure efforts place unused or underutilized property in the hands of owners who have the financial wherewithal and willingness to put properties to their highest and best economic uses.

- Rialto, because of its extensive experience in this business, is able to respond to and deal effectively with sophisticated business borrowers and loan guarantors who in some cases try to hide their ability to pay debts they legitimately owe through frivolous litigation tactics and by concealing their assets.
- Rialto effectively uses the judicial discovery process, which is often the only mechanism available to lenders to determine the truth of borrower claims and to achieve the collection allowed by law, particularly with sophisticated business borrowers who were well represented by counsel and negotiated transactions with risks and rewards they knowingly undertook.

RIALTO/FDIC TRANSACTION TERMS

In February 2010, the Rialto Investment Segment of Lennar acquired indirectly 40% managing member equity interests in two limited liability companies (“LLCs”), in partnership with the FDIC, for approximately \$243 million. The LLCs hold performing and non-performing loans formerly owned by 22 failed financial institutions. The two portfolios originally consisted of more than 5,500 distressed commercial and residential acquisition, development and construction real estate loans with an aggregate unpaid principal balance of approximately \$3 billion and an initial total purchase price of approximately \$1.2 billion. The FDIC retained a 60% equity interest in the LLCs and provided \$626.9 million of notes with 0% interest. The notes are secured by the assets held by the LLCs. Additionally, if the LLCs exceed expectations and meet certain internal rate of return and distribution thresholds, our equity interest in the LLCs could be reduced from 40% down to 30%, with a corresponding increase to the FDIC’s equity interest from 60% up to 70%. As of both November 30, 2011 and 2010, the notes payable balance was \$626.9 million; however, as of November 30, 2011 and 2010, \$219.4 million and \$101.3 million, respectively, of cash collections on loans in excess of expenses were deposited in a defeasance account, established for the repayment of the notes payable, under the agreement with the FDIC. The funds in the defeasance account will be used to retire the notes payable upon their maturity. At November 30, 2011, these consolidated LLCs had total combined assets and liabilities of \$1.4 billion and \$0.7 billion, respectively. As specified in the original bid documents, Rialto/Lennar earns a 0.5% fee to offset its operating costs in performing its duties as manager.

SIX POINTS TO REMEMBER

1. Rialto was awarded the partnership with the FDIC in a pure bid program. The FDIC defined the documents, the pool of assets, the structured finance terms, the fees and the relationship with the manager in a comprehensive program, and we evaluated that program and bid on that basis, as did every other bidder. There was no renegotiation. We took it as defined. We were required to give a conforming bid, and the highest bid won.
2. Rialto/Lennar has invested cash of approximately \$250 million in the two FDIC

ventures. Lennar will not receive any money back until the \$627 million loan to the FDIC is paid in full first. After the loan is paid in full, Rialto/Lennar and the FDIC will split net cash flow in a 60/40 FDIC/Lennar proportion until all invested cash is returned. Only then, which we expect to be 4-5 years from now, will Lennar begin to receive a return on its investment.

3. The portfolios are predominantly defaulted loans (over 90%). Borrowers entered into loan agreements with their banks. There was a default. The banks depleted capital, failed and were seized. Twenty-two institutions failed and were seized by regulators. The FDIC packaged a portfolio of loans from these twenty-two institutions that were in FDIC receiverships into structured transactions in which it conducted a bid process to sell 40% interests to qualified buyers/managers. We took over the management of these predominantly defaulted loans. We did not cause the defaults or negotiate the loan terms. It was and remains our job to use our expertise to find resolution.
4. These assets are primarily sophisticated commercial transaction loans. They are not consumer residential loans. These were loans where sophisticated business borrowers negotiated for a loan generally with each side represented by competent counsel, to borrow in many cases millions of dollars in order to generate a business profit. The risks and rewards were clearly allocated within the loan documents negotiated at the time, with both parties clearly understanding that all the rewards would be concentrated in the borrowers' hands, and accordingly, the various risks of business proposition would rest with the borrower as well.
5. Because these were business loans for the benefit of the borrower, and because all of the reward would go to the borrower, the banks carefully negotiated that collateral for most of these loans would be both the business assets or properties as well as absolute personal guarantees. Borrowers, to be able to borrow, readily gave those guarantees to pay back the loan whether the business proposition was successful or not.
6. We have over twenty years experience in managing and resolving defaulted loans. Our process is time tested and well organized. It is crafted around professionalism and decency as we endeavor to work with each borrower individually and with propriety as we seek resolution. By definition, the relationship between a defaulted borrower and a lender seeking resolution is adversarial and sometimes contentious. Simply put, the parties have very different objectives. With that said, our program is to work within the four corners of every loan agreement, each individually considered, and as well within the four corners of the rules and the spirit of our court system and the law.

SUMMARY

Lennar and Rialto appreciate the opportunity to be here today. As CEO, I felt it was important to personally come and speak to you, to answer your questions and to consider your input as our Company always endeavors to always be transparent and responsive in all our interactions. Rialto utilizes its extensive experience in management of loan portfolios to assure that the FDIC receives maximum value for the loans it assumed from failed financial institutions, all while complying with applicable laws and meeting obligations owed to borrowers in the collection process. We are doing what the law requires and what our partner, the FDIC, and Americans expect. Thank you for your consideration.