

FDIC Part Two corrected Victim Statements.

March 14, 2011

Ms. Sheila Bair  
Chairman  
FDIC  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

Dear Ms. Bair:

Subject: Rialto Capital Management, Lennar, Multibank

**Summary:**

*The unintended consequence of the Multibank structured loan sale in cooperation with the FDIC is not maximizing the return to the FDIC or tax payers. In addition, it is prolonging the high unemployment rate affecting local communities by bankrupting local entrepreneurs and investors. The big winners from this relationship appear to be Wall Street debt collectors and a Florida land developer.*

*As you will read, Lennar/Rialto is a bad partner and the FDIC needs to be aware of the consequences of the partnership with them. We have done nothing wrong and do not deserve to be treated in this manner. You need to look into this matter.*

**Background:**

For the last 20 years I have been involved in helping small businesses find capital in the Portland Metro Area. Portland Venture Group's members have invested in over 100 companies in the Portland metro area helping small businesses grow and prosper. This is vital to the Portland metro area since entrepreneurship is the key to employment growth throughout this country.

In 2005 I made a significant investment in a real estate project managed by Foundation Real Estate and Development (FRED) to bring commercial condos to the Portland, Oregon, downtown core. The construction loan was with the Bank of Clark County which failed in January of 2009. Although the project had guarantees from the Bank of Clark County to convert that loan from a construction loan to a term loan, neither the FDIC receiver nor the subsequent purchaser of the note, Multibank, agreed to honor that commitment.

In January of 2010 the loan was sold to Lennar/Multibank who have pursued a path of minimizing the value of the property while attempting to bankrupt the entrepreneurs who have created jobs in our community in order to ingratiate themselves.

## **Discussion**

In January 2009 the FDIC placed into Receivership the Bank of Clark County (“BOCC”). BOCC had provided an \$8,160,000 construction loan for the renovation of a historic, seven-story, 35,000 sq.ft. office building located in Portland, Oregon. At the time of the failure the loan was performing. FRED, I and others have invested over \$2.2 million in the building. The renovation generated historic tax credits that were sold through a partnership with The National Trust for Historic Preservation (NTCIC). This provided an additional \$2.4 million that is contingent upon procuring a permanent loan that was originally committed to by BOCC. After the failure, the FDIC continued to withdraw interest payments from the construction loan but funds to finish improvements already underway were unavailable. Working cooperatively with the FDIC we used net rents and additional funds I provided to pay off contractors and remove workman’s liens.

Over the next several months we worked with the FDIC to purchase our note with funding from a new bank. In December 2009 the FDIC agreed to allow us to purchase our note for \$5.6 million – a value \$500,000 greater than the asset value determined by two FDIC appraisals. Given the status of the financial markets in December 2009, we were able to secure only a fraction of the value of the building from new lenders and had to combine our tax credit money to reach the \$5.6M purchase price. It should also be noted at this time the FDIC was making it a policy to accept offers of at least 80% or more of the appraised value. Our offer which was accepted on December 5 was \$500,000 over the appraised value.

Less than 15 days after agreeing to the purchase price, the FDIC placed our note in a pool to be sold to Lennar/Multibank. That sale was consummated by the end of January, way short of the time we needed to close on a new loan.

Upon reading about the purchase in the Wall Street Journal, I contacted Lennar to find out what our options were. They said I needed to talk with Rialto in NYC. April was the earliest they would meet, and prior to the meeting they required us to sign a pre-negotiation agreement as a condition of speaking with them. At my expense I traveled to New York with the Developer and provided a complete financial picture of the asset and our personal financials to senior Rialto management. At this meeting Rialto management stated that it was unfortunate we hadn’t closed the deal with the FDIC, that they would not honor it and that they would seek full payment on the note, plus default interest calculated from a year prior when the loan termed, attorney fees, etc. The FDIC with whom we had been working with prior to Rialto never put our loan into default, clearly seeking to optimize the FDIC’s return. However, Rialto calculated default interest from the time the loan termed out and has indicated the total owed is now in excess of \$9.4M

on an asset worth approximately \$3.5M in an auction. Further, any shortfall from the sale of the asset they said would be made up by pursuing the guarantors.

Our tax credit structure with the NTCIC is extremely complicated and any change in ownership triggers recapture and loss of the \$2.4 million cash that is ready to fund subject to a permanent loan. It was clear that \$5.6 million was our total resources available to satisfy the debt and was approximately \$2 million higher than the value they would realize through foreclosure. Our financial statements which we had provided also clearly demonstrated that our guarantees have nominal value.

At the end of the meeting, Rialto management said “send us the income based upon a budget we will approve, we won’t move to appoint a receiver and we’ll work toward a resolution”. For the next several months we complied with their requests but at the end of July - in spite of the commitment they made in April and without warning – Rialto moved to foreclose and simultaneously sued the guarantors. They showed neither understanding nor concern with the loss of the tax credit funds. In order to protect the tax credits I retained council and filed Chapter 11. Since August this has cost over \$300K in legal fees. Rather than these funds going to resolve the purchase of the note they are going to attorneys. These legal costs have significantly sapped my resources and that of FRED’s, ruined our credit, complicated our ability to obtain financing, and further reduced the building’s value. I wonder what Rialto’s legal fees have cost the FDIC; my guess they are in excess of \$500K on this case alone.

Rialto obtained two broker opinions of value that estimated the building would sell for no more than \$3.5 million. Furthermore, in a foreclosure Rialto will incur hundreds of thousands of dollars in future tenant improvement costs and leasing commissions. In order to keep the existing tenant/owners they will need to reduce the rents up to 50% to equal rents in similar nearby buildings. Rialto has never even toured the property and appears to be focused on driving towards a foreclosure. Free money makes for strange business decisions.

On my second trip to NYC (at my expense) to try to negotiate a resolution, Rialto made it clear that they pay nothing for capital – it is provided by the FDIC at no charge – and therefore they have no incentive to settle. In addition, their management fees from the partnership and our \$30K a month rent checks to them are more than enough of a return on free money to keep the legal process moving forward at full steam and not negotiate a settlement. Clearly these actions are designed to do nothing more than pressure us to raise more money to purchase a building for much more than it is worth. We have offered \$5M on a building that has a market value of \$3.5 and they still want to continue the legal maneuvering. For Rialto cost is no object and their goal is to extract as much as possible out of the local community at any cost to fill their own coffers.

### **Is Rialto helping the FDIC or US tax Payers?**

Rialto’s tactics discussed in the attachment shows a litigious approach focused on bankrupting the job creation engine of this country. With legal fees in excess of \$500K

on a property that is worth between \$3.5M and \$4.5M, it is hard to see this as a good use of resources, especially when they have been offered \$5M for the asset. The business rational to continue to pursue a legal resolution and not negotiate a settlement is not fathomable.

During the construction and renovation of our building we were employing well over 100 workers for two years. Many of these firms were minority owned and small sole proprietors, others were businesses that have had a long standing in the community. Below is a listing of some of the types of firm and skills we employed during the 24 month construction period including but not limited to: carpenters, plumbers, electricians, painters, installers, appraisers, metal workers, geotechnical engineers, architects, roofers, mechanical HVAC contractors, etc.

Over \$10M of rehabilitation services were spent on this building because of the vision and financial resources of the project owners. Once these entrepreneurs and visionaries, the backbone of the community, are bankrupt who will provide the needed capital and expertise to hire these workers in the future - the debt collectors sitting in the high rise offices in NYC? It will take a long time for the Portland Metro market to recover from the devastation caused by Rialto's scorched earth strategy.

### **What to do and Where to start**

Recently, Senator Cantwell met with several companies currently dealing with Rialto so I have copied her on this letter and spoken personally with Brad Bare on her staff. There needs to be a congressional inquiry for our legislators to better understand the implications of this program:

- Are all communities being impacted by the unintended consequences of this structure?
- Are other managers performing more in the spirit of the structure to solve problems quickly and efficiently to maximize returns to the FDIC?
- What is Rialto spending on legal fees compared to other managers?
- How many loans have been resolved by Rialto vs other managers?
- How has the resolution of these loans effected job creation in the local communities?
- How is Lennar benefiting beyond the financial gain from Rialto?
  - Low cost land for future development?
  - Use of tax payer money to grow their business and improve their balance sheet?

I have also been in contact with Senators Ron Wyden and Jeff Merkley. If you have any questions about this matter, please contact them or if I can offer further insights or assistance of any kind, please do not hesitate to contact me.

Sincerely,

Glenn Smith PE CFA  
Managing Director  
Portland Venture Group

See Attachment – Rialto Tactics

### **Rialto Tactics**

- 1) Before any discussion takes place Rialto sends a pre-negotiation agreement forcing debtors to sign away all rights before they will talk to them. I am told this is illegal.
- 2) Any meetings are held in NYC at the debtor's expense.
- 3) At our meetings with Rialto they have threatened us with financial ruin.
  - a. They have said that the financial partnership with the FDIC (giving them free money) allows them to take more time and patience so that if necessary they will "never lose" in the courts and we can't win.
- 4) Rialto minimizes any and all communication in order to maximize legal pressure. Rialto has never provided a full accounting of our loan statement or explanation of any kind of how our loan has grown from \$8.16 million to over \$9.4 million. Notwithstanding that we have been sending them approximately \$31,000/month (\$2,000/month more than paid monthly under the construction loan).
- 5) Rialto does not negotiate or deal in good faith. There is no real dialogue with Rialto. They have never offered suggestions or a reasonable compromise. The bankruptcy judge has ordered two settlement conferences. At the end of the first conference the judge quit and said to us "You will never get a deal done with them. Scorched earth to them is the Aleutian Plains." In December Rialto offered to settle for \$5 million and we accepted. They would not postpone the legal pressure nor give us a reasonable time to close. At the urging of the bankruptcy judge we again accepted their December offer. Rialto countered with an offer significantly higher and required us to close within 11 days. It was an offer they knew we couldn't perform.
- 6) Rialto has used predatory strategies to maximize the debt owed and employed the most aggressive legal pressure possible. Their financial structure allows them unlimited legal resources and they have said they will appeal any adverse decisions to the Supreme Court if necessary, since it is important for them to build their brand in the market place. Clearly the implication is they will not lose and we can't win so we should give up now.
- 7) Rialto is trying to foreclose on the property without regard for The City of Portland which will lose a \$700,000 seismic loan. The local investors will lose over \$2.2M. I will

lose my ability to invest, create jobs and continue to be an integral part of the Portland business community.

- 8) Rialto is only concerned with maximizing their own return. They have spent hundreds of thousands of dollars in legal fees. If they are successful in defeating the Chapter 11 plan, they will own an asset worth \$3.5 million for which we have offered to pay \$5 million. They will have significant ongoing litigation expenses and spend hundreds of thousands of dollars to lease the building and cure a tenant allowance default owed to a ground floor tenant. Nothing will be gained from suing the guarantors.

-----

## **Rialto Tactics**

- 9) Before any discussion takes place Rialto sends a pre-negotiation agreement forcing debtors to sign away all rights before they will talk to them. I am told this is illegal.
- 10) Any meetings are held in NYC at the debtor's expense.
- 11) At our meetings with Rialto they have threatened us with financial ruin.
  - a. They have said that the financial partnership with the FDIC (giving them free money) allows them to take more time and patience so that if necessary they will "never lose" in the courts and we can't win.
- 12) Rialto minimizes any and all communication in order to maximize legal pressure. Rialto has never provided a full accounting of our loan statement or explanation of any kind of how our loan has grown from \$8.16 million to over \$9.4 million. Notwithstanding that we have been sending them approximately \$31,000/month (\$2,000/month more than paid monthly under the construction loan).
- 13) Rialto does not negotiate or deal in good faith. There is no real dialogue with Rialto. They have never offered suggestions or a reasonable compromise. The bankruptcy judge has ordered two settlement conferences. At the end of the first conference the judge quit and said to us "You will never get a deal done with them. Scorched earth to them is the Aleutian Plains." In December Rialto offered to settle for \$5 million and we accepted. They would not postpone the legal pressure nor give us a reasonable time to close. At the urging of the bankruptcy judge we again accepted their December offer. Rialto countered with an offer significantly higher and required us to close within 11 days. It was an offer they knew we couldn't perform.
- 14) Rialto has used predatory strategies to maximize the debt owed and employed the most aggressive legal pressure possible. Their financial structure allows them unlimited legal resources and they have said they will appeal any adverse decisions to the Supreme Court if necessary, since it is important for them to build their brand in the market place. Clearly the implication is they will not lose and we can't win so we should give up now.
- 15) Rialto is trying to foreclose on the property without regard for The City of Portland which will lose a \$700,000 seismic loan. The local investors will lose over \$2.2M. I will lose my ability to invest, create jobs and continue to be an integral part of the Portland business community.
- 16) Rialto is only concerned with maximizing their own return. They have spent hundreds of thousands of dollars in legal fees. If they are successful in defeating the Chapter 11 plan, they will own an asset worth \$3.5 million for which we have offered to pay \$5 million. They will have significant ongoing litigation expenses and spend hundreds of thousands of dollars to lease the building and cure a tenant allowance default owed to a ground floor tenant. Nothing will be gained from suing the guarantors.

While it may be too late, I do think it is important to point out a few additional items, specifically the response of the FDIC to my original letter, and the incorrect information contained within your response, as well as an update on my personal financial situation. My final list really sums up everything I have been going through since the Bank of Clark County was closed by the FDIC.

First and foremost – the FDIC response to my letter in early 2010 indicates that I stopped the completion of a sale of one of my properties because I would not agree to a 1099 for the part of the loan that was being forgiven. Nothing could be further from the truth. In fact I agreed wholeheartedly with the 1099 and always said I would. After all, there is no difference between me receiving an offer that would pay off the entire balance of my loan and receiving a short sale offer and a 1099.

Initially I was told the offer I received would be accepted and I would receive a 1099 for the short portion of the sale. The FDIC, through its servicer then came back and was requiring me to carry a note for the difference. That is what I was not agreeable to and why I denied the offer. Ironically, this offer was for just over 65% of the value of the note, more than the FDIC will ever receive with the agreement made with Lennar Homes and RIALTO Corp.

Secondly – in my last letter I shared how I was now trying to work through a loan modification with my bank on my personal residence. While the bank I have my mortgage with has just over \$29B in Federal funds at their disposal, they are currently denying my modification because it does not work within their 4% minimum interest rate guideline... a minimum they previously told me was 2% that I do qualify for. This after 24 months of being told there is a great chance of us receiving a loan modification so we kept down this path, only to ruin our credit and find out they are unwilling to work with us. Now – what at first would have been a simple home sale has turned into me possibly losing my home to foreclosure and ruining my credit, all because I contacted my bank and shared with them the uncertainty of my financial future when the Bank of Clark County was closed.

Thirdly – The length of time this has taken is taking immeasurable tolls on our financial life. What was a successful subdivision with homes being built and profit being made, is now, absent of a different solution from the FDIC, destined for huge losses and failure. Tax burdens that would have been relieved long ago with the properties being disposed of are being increased due to the length of this process. I have had to spend the last 6 months working with the IRS to work out a payment plan on taxes that I will not owe once this is all wrapped up – but until then the law says I do. Ironically – even the IRS has stated to me that what is happening to us in regards to the closure of the Bank of Clark County and the FDIC is terrible, and the sooner I get it wrapped up the sooner I will be relieved of my tax burden.

Fourth – Through this all, one thing has remained constant... none of my clients, subcontractors or suppliers have had to feel the effect of this problem. Their projects have all been completed, their bills paid, and they will work with me long into the future. Our business is growing and has a bright future – my personal financial situation however may take a few bumps and bruises along the way. But I know in the long term that is the only way this will work.

So in a nutshell

- 1) The FDIC shut down my bank and shut off my business as it relates to loans I had with my bank because the bank failed – not me.
- 2) The IRS is asking me for money that I ultimately will not owe them.
- 3) I give this money to the IRS and the Federal Government then gives it to large banks and well-connected corporations.
- 4) The large banks on my home loan has received \$29B in Federal aid (my tax money) that they have not yet paid back, and is unwilling to work with me to keep me in

my home. They would rather see my home taken away from me and foreclosed on than me stay in the home.

5) That same large bank that my mortgage is with contacted me last week because they want to know if they can introduce their products to my clients that may need mortgage loans! That's irony!

6) The corporation that lined the pockets of my government was given a sweetheart deal to go after everything I and others in this community have worked for so many years. A deal that was not available or afforded to me...even if I would have returned more to the FDIC.

7) Through it all, as crazy as it sounds, I will persevere...and this will only slightly change who I am!

And did I mention – this all happened because I chose the wrong bank to take loans with, not because I had defaulted on my loans.