



2. **Cost Estimate.** As a general matter, the estimated yearly cost of \$184,000 (plus a 3% fee) set forth in Exhibit A is an amount that is less than other vendors have quoted. However, it will be important to understand precisely what is being provided for this amount as such figures can easily rise for *a la carte* services that are necessary and not included in the quoted figures. The Receiver has not received, but requests, information from the proposed vendor and the Institutional Lenders that will allow the Receiver, the SEC, and the Court to conduct an apples-to-apples comparison to proposals received from other vendors.

3. **Base Cost Sharing.** The Receiver objects to the suggestion that he should pay for 25% of the cost of the establishment of this library, for an annual cost of approximately \$46,000 based on the annualized cost of \$184,000 set forth in Exhibit A. Such a figure is significantly more than the payment of a \$200 or \$300 monthly fee for access that was discussed during the various hearings on this subject. (*See* 9/23/20 Tr. at 15-18) If a cost of this nature is imposed on the Receivership, the imposition of a concomitant receiver's lien would be necessary. (*See, e.g.*, 8/13/20 Tr. at 18-19)

4. **Cost of Additional Users.** The Receiver has concerns in regards to the estimate costs for additional users. Once again, the figure provided of \$700 for the first month of access, with an additional charge of \$400 for every month thereafter, is significantly greater than previously discussed. No one-time fee for access was discussed, and the monthly \$400 fee is itself higher than previously suggested, which may pose hardships for many claimants. During previous hearings the Court had indicated its view that monthly costs of between \$125 and \$300 per month, per user, would be reasonable. (8/15/20 Tr. at 19-20 (discussing \$125 monthly fee); 9/23/20 Tr. at 14-15 (discussing \$200-\$300 monthly fee)) The Receiver also requests an opportunity to discuss with the vendor how this proposed figure was arrived upon, as well as its underlying

assumptions and potential alternatives for establishing, structuring, managing, and delivering the database that could impact and reduce costs.

5. **Database Privacy.** The Receiver agrees that this feature is appropriate and necessary. As previously mentioned, it will also be helpful to have some capability to shield privileged documents that may also be included in documents that will be loaded into the database. Again, the Receiver requests the opportunity to speak with the vendor to determine and evaluate the functionality of this feature, its efficacy, and any limitations or impact on costs.

6. **Database Open Period.** The Receiver has concerns in regards to the suggested open period of six months. The claims dispute resolution process will last longer than six months once it is initiated, and many claimants who will not have their tranche open and subject to review in that period. As such, many claimants will not be in position of having obtained, studied, and reviewed materials for the tranche or participated in discovery, all of which may impact the information that they would seek by review of the database. Put differently, having a limited time period may well prejudice claimants who may not be in as a good position to understand and review available information, and who would then not be in a position to obtain such information when the individual tranche/property is being reviewed.

7. **Training.** The Receiver agrees that multiple training sessions are appropriate and necessary. However, clarification is needed as to why the Institutional Lenders note that “CloudNine has agreed that it will conduct more than one training session for users” when Exhibit A references “unlimited training.” It will be helpful to understand how and when training will be conducted (*e.g.*, one-on-one or group sessions) and what resources are available to users, such as help desks, online support, and the like.

8. **Timing.** Based on prior discussions with vendors, the Receiver believes that two weeks to download all information may be unduly optimistic, but the Receiver will work with any such vendor approved by the Court such that downloading of information may occur as quickly as practicable. The Receiver also agrees with the suggestion that a group from the Institutional Lenders and Receiver can work on culling the documents, but also believe that it is appropriate for the SEC as the Plaintiff in the matter to have the opportunity to participate, as well as lead counsel for any investor lenders who wishes to participate in the process. As to the length of time associated with such a process, the Receiver believes that the Institutional Lenders' estimate of approximately two months may be the lower end of the range given the volume and other logistical and practical limitations, such as the length of time it will take a vendor to deliver the claims documentation to claimants once the Court approves the process. Additionally, there are and continue to be ongoing activities in the Receivership that demand significant time and attention and therefore may impact the timing, including efforts to conclude the sales of properties, other related filings and responding to the various motions and objections raised by the Institutional Lenders.

Dated: October 27, 2020

Kevin B. Duff, Receiver

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2020, I electronically filed the foregoing **Receiver's Response to Mortgagees' Proposal for Access to EquityBuild Documents** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. A copy of the foregoing was served upon counsel of record via the CM/ECF system.

I further certify that I caused true and correct copy of the foregoing **Response**, to be served upon the following individuals or entities by electronic mail:

- Defendant Jerome Cohen (jerryc@reagan.com);
- All known EquityBuild investors; and
- All known individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form).

I further certify that the **Response** will be posted to the Receivership webpage at: <http://rdaplawnet/receivership-for-equitybuild>

/s/ Michael Rachlis \_\_\_\_\_

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