

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE 14D-9/A-2  
(Amendment No. 2)

SOLICITATION/RECOMMENDATION STATEMENT  
PURSUANT TO SECTION 14(d)(4) OF THE  
SECURITIES EXCHANGE ACT OF 1934

CHATEAU PROPERTIES, INC.  
(NAME OF SUBJECT COMPANY)  
CHATEAU PROPERTIES, INC.  
(NAME OF PERSON(S) FILING STATEMENT)

COMMON STOCK, \$.01 PAR VALUE PER SHARE  
(TITLE OF CLASS OF SECURITIES)

161739 10  
(CUSIP NUMBER OF CLASS SECURITIES)

C. G. Kellogg  
President and Chief Executive Officer  
Chateau Properties, Inc.  
19500 Hall Road  
Clinton Township, MI 48038

(NAME, ADDRESS AND TELEPHONE NUMBER OF PERSON AUTHORIZED  
TO RECEIVE NOTICES AND COMMUNICATIONS ON BEHALF OF THE  
PERSON(S) FILING STATEMENT)

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This Amendment No. 2 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 (as amended, the "Schedule 14D-9") originally filed with the Securities and Exchange Commission (the "SEC") on September 18, 1996 by Chateau Properties, Inc., a Maryland corporation (the "Company"), relating to the offer by MHC Operating Limited Partnership, an Illinois limited partnership ("MHC OP"), the sole general partner of which is Manufactured Home Communities, Inc., a Maryland corporation ("MHC"), to purchase all outstanding shares of common stock, \$.01 par value per share (the "Shares"), of the Company, at a price of \$26.00 per Share, net to the seller in cash. Capitalized terms used but not defined herein have the meanings previously set forth in the Schedule 14D-9.

1. ITEM 8. ADDITIONAL INFORMATION TO BE FURNISHED

Item 8 is hereby amended and supplemented by adding the following to the end of the "Litigation" section:

On September 25, 1996, MHC OP and MHC filed an answer and verified counterclaims and third party complaint to the complaint filed on September 17, 1996 by the Company in the United States District Court for the District of Maryland, Northern Division. The verified counterclaims name as counterclaim defendants, the Company, ROC Communities, Inc., and the directors of the Company (the "Director Defendants") and allege that, among other things:

(i) the Company violated Section 14(e) of the Securities Exchange Act of 1934 (the "Exchange Act") by falsely stating that the Excess Stock provisions in the Company's Articles of

Amendment and Restatement (the "Articles") would apply to the Offer;

(ii) the Company violated Section 14(e) of the Exchange Act by failing to disclose the full, negative tax implications from transferring unrecognized gain from OP Unitholders to the Company;

(iii) the Company violated Section 14(d) of the Exchange Act by making an unauthorized solicitation designed to discourage stockholders from tendering their Shares;

(iv) the Company violated Section 14(e) of the Exchange Act by falsely stating that the Company was prohibited from negotiating with other parties by the terms of the Chateau/ROC merger agreement;

(v) the directors of the Company breached their fiduciary duties of good faith and prudence by self-dealing and pursuing their own financial interest to the detriment of the Company's stockholders; and

(vi) ROC knowingly participated in and aided and abetted the directors' breaches and self dealing.

The counterclaims seek, among other things, an order from

the Court:

(a) enjoining the Company and the Director Defendants from carrying out the Company's announced repurchase program;

(b) enjoining ROC from purchasing up to 350,000 shares of the Company's common stock;

(c) enjoining the counterclaim defendants from consummating or proceeding with the proposed Chateau/ROC merger;

(d) enjoining the Company and the Director Defendants from making any false statements or engaging in any fraudulent or deceptive conduct;

(e) directing the Company to issue public statements correcting any previously made false statements;

(f) declaring that stock purchased by MHC pursuant to its tender offer would not be deemed "Excess Stock" under the terms of Chateau's Articles;

(g) directing the Director Defendants to exempt MHC from the Maryland Business Combination Law; and

(h) awarding MHC compensatory damages and its costs and expenses.

In addition, on the same date, MHC OP and MHC filed a motion for a temporary restraining order, together with a memorandum in support of the motion. The temporary restraining order requests the court to enjoin the Company from purchasing or selling any Shares or from taking any other actions to alter the status quo.

On September 26, 1996, the United States District Court for the District of Maryland, Northern Division, denied MHC's motion for a temporary restraining order.

## 2. ITEM 9. MATERIALS TO BE FILED AS EXHIBITS

Item 9 is hereby amended and supplemented by amending and restating Exhibit 99.4 as attached hereto and by adding the following exhibits:

- |              |   |
|--------------|---|
| Exhibit 99.8 | Answer and Verified Counterclaims in Chateau Properties, Inc. v. Manufactured Home Communities, Inc. and MHC Operating Limited Partnership v. Chateau Properties, Inc., ROC Communities, Inc., John A. Boll, C.G. Kellogg, Jay G. Rudolph, Gebran S. Anton, Jr., James M. Lane, Kenneth E. Myers and Edward R. Allen. |
| Exhibit 99.9 | Memorandum of the MHC Parties in support of their Motion for a Temporary Restraining Order in   |

Chateau Properties, Inc. v. Manufactured Home  
Communities, Inc. and MHC Operating Limited  
Partnership v. Chateau Properties, Inc., ROC  
Communities, Inc., John A. Boll, C.G. Kellogg,  
Jay G. Rudolph, Gebran S. Anton, Jr., James M.  
Lane, Kenneth E. Myers and Edward R. Allen.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

By: /s/ C.G. Kellogg  
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Name: C.G. Kellogg  
Title: President and Chief Executive Officer

Dated: September 27, 1996

EXHIBIT INDEX

- Exhibit 99.4            Employment Agreement, dated October 27, 1993, between the Company and C.G. Kellogg, as amended
- Exhibit 99.8            Answer and Verified Counterclaims in Chateau Properties, Inc. v. Manufactured Home Communities, Inc. and MHC Operating Limited Partnership v. Chateau Properties, Inc., ROC Communities, Inc., John A. Boll, C.G. Kellogg, Jay G. Rudolph, Gebran S. Anton, Jr., James M. Lane, Kenneth E. Myers and Edward R. Allen.
- Exhibit 99.9            Memorandum of the MHC Parties in support of their Motion for a Temporary Restraining Order in Chateau Properties, Inc. v. Manufactured Home Communities, Inc. and MHC Operating Limited Partnership v. Chateau Properties, Inc., ROC Communities, Inc., John A. Boll, C.G. Kellogg, Jay G. Rudolph, Gebran S. Anton, Jr., James M. Lane, Kenneth E. Myers and Edward R. Allen.

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into as of the 27th day of October, 1993 is by and between CHATEAU PROPERTIES, INC., (hereinafter referred to as the "Company"), a Maryland corporation with principal offices located at 19500 Hall Road, Clinton Township, Michigan 48038, and C.G. KELLOGG, an individual residing at 48930 Pointe Lakeview, Chesterfield, Michigan 48047 (hereinafter referred to as the "Executive").

## WITNESSETH:

WHEREAS, the Executive has been previously employed in various capacities by Chateau Estates, a predecessor to the Company; and

WHEREAS, the Company is in the process of making an initial public offering of its common stock ("Public Offering") and, in connection therewith desires to hire the Executive as President and Chief Executive Officer upon the terms and conditions contained herein and the Executive is willing and agrees to accept such employment upon such terms and conditions;

NOW, THEREFORE, in consideration of the premises and covenants set forth herein, the parties hereto agree as follows:

## 1. EMPLOYMENT

A. The Company shall employ the Executive, and the Executive hereby accepts such employment upon the terms and conditions hereinafter set forth.

B. The Executive will be employed by the Company in the capacity of President and Chief Executive Officer and will have such responsibilities as shall be assigned to him by the Board of Directors of the Company from time to time. As used herein, the term "Company" shall mean Chateau Properties, Inc., CP Limited Partnership, a Maryland limited partnership of which the Company is the general partner, and any other entity over which the Company has direct or indirect control.

C. While employed by the Company, the Executive shall devote his full time and exert his best efforts to perform his duties, and shall faithfully, diligently and to the utmost of his ability and to the reasonable satisfaction of the Company, perform all such management duties consistent with his positions at the Company.

## II. TERM

A. The employment of the Executive pursuant to the provisions of this Agreement shall commence as of the date of the Public Offering and shall continue for a period of three (3) years thereafter ("Initial Period"). Thereafter this Agreement shall automatically be renewed for successive one (1) year periods ("Renewal Periods") unless terminated by either party by delivering written notice to the other party at least 120 days prior to the end of the Initial Period or any Renewal Period, or as otherwise provided in paragraph E1 hereof. The Initial Period and each Renewal Period shall collectively be referred to as the "Employment Period."

B. Any termination of this Agreement shall not, however, effect the provisions of paragraphs IV and V which shall survive such termination in accordance with their terms.

## III. COMPENSATION

A. Salary. In consideration of services rendered by the Executive hereunder, the Company shall pay the Executive a salary during the Employment Period at the rate of One Hundred Fifty Thousand (\$150,000) Dollars per year, payable in accordance with the Company's existing payroll practices.

B. Bonus. The Executive shall receive an annual bonus in such amount as shall be determined by the Board of Directors of the Company in its sole discretion.

C. Other Benefits.

1. The Company shall provide the Executive during the

Employment Period with such other fringe benefits as the Company may from time to time provide its executives, including life insurance, health insurance, disability insurance, participation in any pension or profit sharing plan then in effect, and vacation benefits. In addition, the Company shall provide the Executive an automobile which is commensurate with his position in the Company.

2. In addition, the Company will reimburse the Executive for any and all travel and out-of-pocket expenses reasonably incurred by the Executive for the purpose of performing his services hereunder, such reimbursement to be made upon presentation to and approval by the Company of receipts, vouchers and other evidence satisfactory in itemizing such expenses in reasonable detail in accordance with the Company's regular practice.

#### IV. COVENANT NOT TO COMPETE

A. The Executive hereby acknowledges and recognizes the highly competitive nature of the business of the Company and accordingly agrees for the consideration stated above that, during and for the period commencing with the date hereof and ending on the later of the date of the termination of the Employment Period hereunder, or the date on which the Executive shall no longer be a director of the Company, ("Primary Non-Compete Period") he will not other than on behalf of the Company, directly or indirectly, in any state where the Company is then conducting business:

1. Conduct, engage in or have an interest in any person or entity engaging in (whether as an owner, principal, agent, representative, lender, stockholder, partner, employer, consultant, officer, director or otherwise) any business, operation and/or service in any manner similar to or related to the business of owning, acquiring, developing and/or operating manufactured housing communities (except as a passive investor in less than one (1%) percent of the outstanding capital stock of a publicly traded corporation);

2. Directly or indirectly solicit, divert, take away, accept or interfere with any business, customer (including former customers of the Company) trade or patronage of the

2.

Company; or

3. Directly or indirectly employ, attempt to employ or solicit for employment any employee of the Company;

B. It is expressly understood and agreed that although the Executive and the Company consider the restrictions contained above reasonable for the purpose of preserving for the Company its good will and other proprietary rights, if the aforesaid restrictive covenant is found by any court having jurisdiction to be unreasonable because it is too broad in any extent, then the restrictions herein contained shall nevertheless remain effective, but shall be deemed amended as may be considered to be reasonable by such court, and as so amended shall be enforced. If the Executive violates the provisions hereof, the Company shall not, as a result of the time involved in obtaining relief, be deprived of the benefit of the full period of the restrictive covenant. Accordingly, in the event of such a violation, the term of this covenant not to compete shall toll until the date relief is granted.

C. The Company shall have the right to elect to extend the term of the non-compete for a period of one (1) year ("Extension Period") following the end of the Primary Non-Compete Period, by giving written notice to the Executive on or prior to the end of the Primary Non-Compete Period and by paying the Executive an amount equal to the base salary earned by the Executive during the last 12 months of the Employment Period, such amount to be paid in 12 equal consecutive monthly payments, with the first payment due at the end of the first month of the Extension Period. In the event the Company so elects to extend the period of the non-compete, the Executive agrees to be bound by the provisions of that paragraph IV A hereof for such additional 12-month period.

#### V. CONFIDENTIALITY OF INFORMATION

The Executive acknowledges that the Company may have trade secrets and confidential information concerning the operation of their real estate and acquisition strategy which are valuable, special and unique assets of the Company, access to and knowledge of which may be essential to the performance of the Executive's duties hereunder ("Confidential Information"). In recognition of this fact, the Executive agrees that he will not, during or after the Employment Period, disclose any Confidential Information to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, except as necessary in the performance of his duties as an employee of the Company and then only under a written confidentiality agreement in such form and content as requested by the Company from time to time, nor shall the Executive make use of any Confidential Information (other than information in the public domain) for his own purposes or for the benefit of any person, firm, corporation or other entity (except the Company) under any circumstances during or after the Employment Period.

#### VI. REMEDIES

In the event of a breach or threatened breach by the Executive of the provisions of Paragraphs IV or V hereof, the Executive agrees that money damages would be inadequate and that the Company shall be entitled to an injunction restraining him from such breach and, at the election of the Company, upon the failure of the Executive, to cure or correct such breach within thirty days



after written notice thereof has been given to the Executive all rights of the Executive under Paragraph III shall thereupon terminate. Nothing herein contained shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach.

#### VII. MISCELLANEOUS

A. Notices. Any notice required or permitted to be given under this Agreement shall be deemed properly given if in writing and if mailed by registered or certified mail, postage prepaid with return receipt requested, to his residence in the case of the Executive, or, in the case of the Company, to the principal office of the Company, to the attention of its Chairman of the Board, with a copy to Timmis and Inman, 300 Talon Centre, Detroit, Michigan 48207 or to any subsequent address as the parties may hereafter provide.

B. Waiver of Breach. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

C. Assignment. This Agreement is personal in its nature and neither of the parties hereto shall, without the consent of the other, assign or transfer this Agreement or any rights or obligations hereunder, except that the Company may assign or transfer this Agreement to a successor corporation in the event of merger, consolidation or transfer or sale of all or substantially all of the business and assets of the Company; provided that, in the case of any such assignment or transfer, this Agreement shall, subject to the provisions hereof, be binding upon and inure to the benefit of such successor corporation and such successor corporation shall discharge and perform all the obligations of the Company hereunder.

D. Entire Agreement. This Agreement supersedes any and all prior understandings, oral or written, between the parties as to services to be performed by the Executive for the Company, constitutes the entire agreement between the parties and cannot be amended, supplemented, or modified except in writing signed by both parties. Notwithstanding the foregoing, the parties acknowledge that the Deferred Compensation Agreement shall continue in full force and effect with respect to the compensation earned thereunder.

#### E. Termination of Employment.

1. The Executive's employment hereunder may be terminated at any time during the Employment Period, for cause (as hereinafter defined) by action of the Board of Directors of the Company upon giving the Executive notice of such termination, which termination may be effective immediately. As used herein, the term "Cause" shall mean any of the following events:

(a) The Executive's conviction of or plea of guilty or nolo contendere to a crime involving moral turpitude or a crime providing for a term of imprisonment of one year or more;

(b) The Executive's (A) willful gross misconduct, or (B) neglect of or inattention to duties which is not cured within thirty (30) days after written notice thereof by the Company to the Executive; or

(c) The violation by the Executive of any covenant or provisions set forth in this Agreement.

2. If the Executive dies, his employment under Paragraph I hereof shall be deemed to cease as of the date of his death.

3. Notwithstanding the provisions of cause (1) above, if the Executive is incapacitated by accident, sickness or otherwise so as to render him mentally or physically incapable of performing the services required of him under Paragraph I for a period of one hundred eighty (180) days during any twelve month period ("Total Disability"), upon the expiration of such period or at any time thereafter, by action of the Board of Directors of the Company, the Executive's employment under Paragraph I may be terminated immediately upon giving him notice to that effect, without any obligation to pay any severance pay as otherwise provided in Paragraph VII E hereof, other than disability payments made pursuant to any disability insurance policy maintained by the Company.

F. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, the principal place of business of the Company.

G. Headings. The headings of the Paragraphs hereof are for convenience only and shall not control or affect the meaning or construction or limit the scope or intent of any of the provisions of this Agreement.

H. Public Offering. In the event the Public Offering is not consummated on or before December 31, 1993, this Agreement shall be null and void and neither party shall have any liability to the other hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

COMPANY:

CHATEAU PROPERTIES, INC.

/s/ John A. Boll

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By: John A. Boll  
Its: Chairman of the Board

EXECUTIVE:

/s/ C.G. Kellogg

-----  
By: C.G. Kellogg

AMENDMENT AGREEMENT

AMENDMENT AGREEMENT, dated this 17th day of September, 1996 between Chateau Properties, Inc. (the "Company"), a Maryland Corporation and C.G. Kellogg (the "Executive").

WITNESSETH

WHEREAS, on October 27, 1993 the parties entered into an Employment Agreement (the "Agreement") under which the Executive was employed by the Company; and

WHEREAS, the parties desire to amend the Agreement as hereinbelow set forth.

Section VII of the Agreement is hereby amended by adding the following paragraph I, to read in full as follows:

I. Payments Pursuant to Severance Agreements.

In the event that there is a change in control (as defined in the Severance Protection Agreement between the Executive and the Company of September 17, 1996), and Section 3 of the Severance Protection Agreement becomes applicable, this Agreement shall terminate and no longer be in full force or effect.

Except as herein modified, the Agreement remains in full force and effect, unmodified and unamended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Agreement on the day and date first above written.

/s/ C.G. Kellogg

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C.G. KELLOGG

CHATEAU PROPERTIES, INC.

By: /s/ John A. Boll

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Name: John A. Boll

Title: Chairman of the Board

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND, NORTHERN DISTRICT

CHATEAU PROPERTIES, INC.

Plaintiff,

v.

MANUFACTURED HOME COMMUNITIES, INC.,  
MHC OPERATING LIMITED PARTNERSHIP,

Case No. 96-2930

Judge Nickerson

Defendants and Counterclaim-Plaintiffs,

v.

CHATEAU PROPERTIES, INC., ROC COMMUNITIES,  
INC., JOHN A. BOLL, C.G. KELLOGG, JAY G.  
RUDOLPH, GEBRAN S. ANTON, JR., JAMES M.  
LANE, KENNETH E. MYERS and EDWARD R. ALLEN,

Counterclaim-Defendants.

ANSWER AND VERIFIED COUNTERCLAIMS  
AND THEIR PARTY COMPLAIN

ANSWER

Defendants Manufactured Home Communities, Inc. ("MHC") and MHC  
Operating Limited Partnership ("MHC OP") hereby answer the Complain as  
follows:

- 1. Denied.
- 2. Without knowledge and therefore denied.
- 3. Admitted.
- 4. Admitted.
- 5. Legal conclusions that do not require a response. Denied that  
Counts I through IX state claims.

6. Venue is admitted. To the extent the plaintiff characterizes  
MHC's conduct and requests relief, denied.

7. Without knowledge and therefore denied.

8. Without knowledge and therefore denied.

9. Admitted.

10-20. Without knowledge and therefore denied.

21. MHC admits that on August 16, 1996, it made a merger proposal  
to Chateau. Because the proposal is contained in a document that speaks for  
itself, the remaining characterizations and allegations are denied.

22-23. Denied

24. Defendants admit to participating in a conference call and  
providing a written outline to MHC shareholders and analysts. The remaining  
allegations and characterizations are denied.

25-29. Denied.

30. Without knowledge and therefore denied.

31-32. MHC's tender offer speaks for itself. The remaining characterizations and allegations are denied.

33-34. Without knowledge and therefore denied.

35-36. Denied.

37. Previous answers are reincorporated.

38-39. These legal conclusions and characterizations require no response.

40-41. Denied.

42. Previous answers are reincorporated.

43. Admitted.

44-47. Denied.

48. Previous answers are reincorporated.

49-54. Denied.

55. Previous answers are reincorporated.

56. Denied.

57. Previous answers are reincorporated.

58. Defendants admit that MHC OP has made an offer. The terms of that offer are set forth in documents that speak for themselves. The remainder of the allegation is denied.

59-61. The allegations purport to characterize a document which speaks for itself, and are therefore denied.

62. Vague and ambiguous and therefore denied.

63-64. Denied.

65. To the extent the allegation characterizes the document which speaks for itself, it is denied. The remainder of the allegation is denied.

66-67. Denied.

68. Previous answers are reincorporated.

69-71. Denied.

72. Previous answers are reincorporated.

73. Admitted.

74. The allegation summarizes a document that speaks for itself and is therefore denied.

75. Denied.

76. No response required.

77. Denied.

78. Previous answers are reincorporated.

79. The initial three sentences of the allegation purport to summarize a document that speaks for itself and are therefore denied. The remaining allegations are denied.

80-81. The allegations purport to summarize a statute; accordingly, no response is required.

82. Without knowledge and therefore denied.

83. The allegations purport to summarize a statute; accordingly, no response is required. In addition, the final sentence is vague and ambiguous and therefore denied.

84-85. To the extent the allegation purports to characterize a statute that speaks for itself, it is denied. The legal conclusions contained in the allegation do not require a response. In all other respects, the allegation is denied.

86-88. Denied.

89. Previous answers are reincorporated.

90. MHC admits that it has made an Offer containing conditions. Because the document speaks for itself, the remaining characterizations are denied.

91. MHC admits that it has requested Chateau's Board of Directors to adopt a resolution. Because that request is contained in a document that speaks for itself, the remaining allegations and characterizations of paragraph 91 are denied.

92. Denied.

93. No response required.

94. The first sentence is denied. It is further denied that plaintiff is entitled to any of its requested relief. The remaining allegations of paragraph 94 are denied.

\* \* \*

#### AFFIRMATIVE DEFENSES

##### First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

##### Second Affirmative Defense

Plaintiff's claims are barred because plaintiff and its board of directors have breached their fiduciary duties to Chateau's shareholders, including MHC.

##### Third Affirmative Defense

Plaintiff's claims are barred by the equitable doctrine of unclean hands.

##### Fourth Affirmative Defense

Plaintiff's claims are barred by the equitable doctrine of estoppel.

##### Fifth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrine of comparative fault.

##### Sixth Affirmative Defense



Plaintiff's claims are barred, in whole or in part, by the doctrine of contributory negligence.

Seventh Affirmative Defense

Plaintiff's claims are barred because plaintiff's alleged damages were not caused by anything done, on not done, by the defendants.

Eighth Affirmative Defense

Plaintiff's claims are barred because plaintiff failed to mitigate its alleged damages.

Ninth Affirmative Defense

Plaintiff's claims are barred by the equitable doctrine of laches.

Tenth Affirmative Defense

Plaintiff's claims are barred by the equitable doctrine of waiver.

Eleventh Affirmative Defense

Plaintiff's claims are barred because of plaintiff's failure to comply with the requirements of the Federal securities laws.

Twelfth Affirmative Defense

Plaintiff's claims are barred because of plaintiff's failure to comply with the requirements of the Maryland Business Corporation Statute.

Plaintiff's claims may be subject to additional defenses. Defendants reserve the right to add such defenses upon completion of discovery.

\* \* \*

## COUNTERCLAIMS

MHC and MHC OP, as Counterclaim-Plaintiffs, hereby sue Chateau Properties, Inc., ("Chateau"), ROC Communities, Inc., ("ROC"), John A. Boll, C.G. Kellogg, Jay G. Rudolph, Gebran S. Anton, Jr., James M. Lane, Kenneth E. Myers and Edward R. Allen (the aforesaid individuals comprising Chateau's Board of Directors) for injunctive, declaratory and compensatory relief and say as follows:

### INTRODUCTION

1. The Insiders' attempt to sacrifice the shareholders' best interests in favor of the Insiders' selfish desire to entrench themselves and avoid millions of dollars in personal tax liability is a breach of their fiduciary duties to the shareholders. In a desperate effort to prevent Chateau's shareholders from accepting MRC's alternative Tender Offer, Chateau's Insiders have undertaken an unprecedented effort to rig the corporate voting process by diluting the non-insider shareholders' collective voting power.

2. The scheme developed by Chateau's Insiders involves a series of complicated maneuvers which will result in irreparable harm, including the following:

- o misrepresenting that the MHC Tender Offer is "illusory";
- o revising the proposed Chateau-ROC merger to allow the Insiders to spend approximately \$35 million of corporate funds to reduce the number of outstanding shares of Chateau and thereby ensure that the Insiders will have the votes necessary to force upon the shareholders the Chateau-ROC merger even if every shareholder would prefer the superior MHC \$26.00 per share offer;

- o transferring more than \$100 million in tax liabilities from the Insiders to the non-insider shareholders so that the Insiders can convert their non-voting partnership units into voting shares of Chateau without having to pay millions of dollars in tax themselves.
- o restructuring the Chateau-ROC merger to avoid the Maryland law requirement that two-thirds of outstanding shares approve the merger.

This elaborate scheme, intended to accomplish a simple goal, -- the disenfranchisement of Chateau's non-insider shareholders for the personal benefit of Chateau's Insiders -- should not be countenanced by this Court.

3. These counterclaims arise out of the refusal of Chateau's Board of Directors to allow its shareholders the opportunity to participate in a voluntary Tender Offer by MHC. Their refusal is intended to protect the conflicting interests of Chateau Insiders, including the Chairman of its Board of Directors and its President and Chief Executive Officer. Rather than permit Chateau's shareholders the opportunity to chose the transaction they favor, Chateau's Insiders have continued to pursue, with the aid of ROC, an inferior plan to cause Chateau to merge with ROC and thereby block the Tender Offer. While the ROC deal is worse for Chateau's non-insider shareholders, it is better for Chateau's Insiders: these Insiders seek to egregiously shift tax liabilities from themselves to the shareholders of the new entity under the proposed Chateau-ROC merger, while at the same time entrenching themselves. By their continuing efforts to block the Tender Offer in favor of a ROC deal that is preferable only to Chateau's Insiders, the members of Chateau's Board

of Directors (aided by ROC) have violated and continue to violate the most fundamental fiduciary duties owed to Chateau's shareholders.

4. In their efforts to minimize the current tax liability of Chateau's Insiders and to maintain their positions, Chateau's directors (aided by ROC) have grossly breached their fiduciary duties to Chateau's shareholders. They have restructured the previously-announced ROC merger plan to effectively deprive non-insider shareholders of the ability to vote down the ROC merger. Furthermore, they have done so by implementing a series of complex maneuvers amounting to a scheme that calls for the expenditure of corporate funds by Chateau to significantly diminish, and thereby effectively void, the voting power of non-Insiders (while delivering definitive, controlling voting power to the Insiders); this same scheme averts Federal income tax liabilities arising from in excess of \$100 million in taxable gains which otherwise would be the personal responsibility of Insiders and transfers the tax burden to the shareholders of the proposed Chateau-ROC entity.

5. Forced to react to the public market's favorable response to MHC's Tender Offer, Chateau has also made numerous false and misleading public statements and omitted material information in connection with the Tender Offer in violation of Sections 14(d) and 14(e) of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules promulgated thereunder. These statements and omissions were calculated to induce Chateau's shareholders not to tender their shares pursuant to the Tender Offer. They include false statements that

certain provisions of Chateau's Articles of Amendment and Restatement (the "Charter") prevent MHC or MHC OP from acquiring more than a 7% interest in Chateau without the Board's approval and a false statement that Chateau cannot negotiate in a "friendly" combination with MHC or any other company under the terms of its merger agreement with ROC.

6. MHC, MHC OP and all of Chateau's shareholders face imminent and irreparable harm as a result of the continuing misconduct of Chateau, members of its Board of Directors and ROC. If such misconduct is allowed to continue, the voting rights of Chateau shareholders will be rendered meaningless. Approximately \$35 million of Chateau's corporate assets will be spent to accomplish the purposes of the Insiders and the shareholders of any resulting Chateau-ROC combination will inherit huge potential tax liability. Accordingly, MHC and MHC OP request, among other relief, that this Court preliminarily and permanently enjoin Chateau, the members of its Board of Directors and ROC from consummating the ROC/Chateau merger, from spending Chateau's corporate funds and taking other action in violation of Chateau's shareholders' rights and from making any further false and misleading statements in connection with the Tender Offer. MHC and MHC OP also seek a preliminary and permanent injunction against Chateau and its Board of Directors from treating the transfer of more than 7% of Chateau's outstanding common shares to MHC or MHC OP as invalid (i.e., resulting in "Excess Stock") under Chateau's Charter. Prompt relief is necessary if Chateau and its Board of Directors are to be prevented from irreversibly sacrificing

Chateau's shareholders' interests for the benefit of Chateau's Insiders and directors.

#### PARTIES

7. MHC is a corporation organized under the laws of Maryland having its principal place of business in Chicago, Illinois. MHC is publicly held, and its stock trades on the New York Stock Exchange ("NYSE").

8. MHC OP is a limited partnership organized under the laws of Illinois having its principal place of business in Chicago, Illinois. The sole general partner of MHC OP is MHC. MHC owns approximately a 90% interest in MHC OP. MHC OP has been a shareholder of Chateau continuously since August 8, 1996.

9. Chateau is a corporation organized under the laws of Maryland having its principal place of business in Clinton Township, Michigan. Chateau is publicly held, and its stock trades on the NYSE.

10. ROC is a corporation organized under the laws of Maryland having its principal place of business in Englewood, Colorado. ROC is publicly held, and its stock trades on the NYSE.

11. John A. Boll is the Chairman of the Board of Directors of Chateau.

12. C.G. Kellogg is the President, Chief Executive Officer, and a member of the Board of Directors of Chateau.

13. Jay G. Rudolph, Gebran S. Anton, Jr., James M. Lane, Kenneth E. Meyers and Edward R. Allen are members of the Board of Directors of Chateau. They and Messrs. Boll and Kellogg will be referred to

collectively hereinafter as the "Individual Defendants." The Chateau Insiders (the "Insiders") are John A. Boll, C. G. Kellogg and Edward R. Allen.

#### JURISDICTION AND VENUE

14. This court has jurisdiction over these counterclaims pursuant to Section 27 of the Exchange Act (15 U.S.C. Section 78aa), 28 U.S.C. Section 1331, 28 U.S.C. Section 1367, 28 U.S.C. Section 2201 and 28 U.S.C. Section 2202.

15. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act (15 U.S.C. Section 78aa), 28 U.S.C. Sections 1391(b) and (c), and principles of ancillary and pendent venue.

#### BACKGROUND

16. MHC, through MHC OP, owns and operates manufactured home communities (formerly known as mobile home parks) in nineteen states.

17. Upon information and belief, Chateau, through CP Limited Partnership ("CP OP"), a limited partnership organized under the laws of Maryland having its principal place of business in Clinton Township, Michigan, owns and operates manufactured home communities in five states. Chateau is the sole general partner of CP OP.

18. ROC is also in the business of owning and operating manufactured home communities.

19. MHC, Chateau and ROC are real estate investment trusts, or "REITs," as defined in section 856 of the Internal Revenue Code of 1986, as amended ("Code"). Entities that qualify as REITs under the Code are entitled to certain favorable federal income tax treatment

(i.e., no corporate level tax to the extent income is distributed to shareholders).

#### THE ORIGINAL MERGER PROPOSALS AND THE TENDER OFFER

20. On July 18, 1996, Chateau and ROC announced an agreement to combine the two companies into a new combined entity through an exchange of stock. As initially proposed, the Chateau-ROC merger required the approval of the holder of two-thirds of Chateau's shares.

21. On August 16, 1996, MHC made an offer to Mr. Boll, as Chairman of Chateau's Board of Directors, to merge with Chateau for \$26.00 cash per share or 1.15 shares of MHC common stock per share or a combination of cash and MHC common stock at such ratio. MHC's cash offer of \$26.00 for each common share of Chateau represented a substantial premium over the value of between \$23.00 and \$24.00 per share the market was assigning to the proposed Chateau-ROC combination and a 17% premium over Chateau's closing price of \$22.25 on July 17, 1996 (the day before the proposed merger with ROC was announced).

22. On August 19, 1996, Chateau issued a press release disclosing that it had received an unsolicited offer from MHC. The press release stated that Chateau's "Articles of Incorporation prohibit a person from beneficially owning in excess of 7% of its outstanding shares of common stock without Board approval."

22. On August 21, 1996, Sun Communities, Inc. ("SUN"), another Maryland corporation that owns and operates manufactured home communities, announced that it had offered in a letter to Chateau's Board of Directors dated August 20, 1996, to acquire Chateau through a



stock-for-stock merger. Under Sun's proposal, Chateau's shareholders would receive 0.892 shares of Sun's common stock for each share of Chateau's common stock.

24. In a letter from Mr. Zell to Mr. Boll dated August 23, 1996, Mr. Zell reiterated MHC's offer to merge with Chateau and emphasized that it was a superior offer.

25. On August 23, 1996, Chateau announced that its Board of Directors, at its August 22, 1996 meeting, had begun to consider the proposals of Sun and MHC and "will continue that review." Until September 17, 1996, when it initiated this lawsuit, Chateau never directly responded to MHC's proposal.

26. On September 4, 1996, MHC OP announced the Tender Offer. The Tender Offer expires on October 1, 1996, unless extended. As explained in a letter dated September 4, 1996 from Mr. Zell to Mr. Boll, due to Chateau's non-responsiveness to the MHC offer, "MHC has determined that its offer, which is financially and strategically superior to both the pending transaction with [ROC] and the proposal made by [Sun], should be presented directly to Chateau's shareholders."

27. The Tender Offer is subject to several conditions, including (1) that there be validly tendered pursuant to the Tender Offer and not withdrawn that number of Chateau's common shares which, together with shares owned by MHC OP and its affiliates, constitutes at least two-thirds of Chateau's outstanding common stock; (2) that MHC OP be satisfied that after consummation of the Tender Offer none of the

Chateau shares acquired by MHC OP will be deemed "Excess Stock" (which, if applied by Chateau's Board, would deprive MHC OP of all voting and dividend rights with respect to such shares and possibly result in a severe economic loss to MHC OP or a subsequent sale of such shares) and (3) that consummation of a merger or similar business combination be exempted from Maryland Business Corporation Law by board resolution, or that MHC OP be satisfied that the provisions of the Maryland Business Corporation Law are otherwise inapplicable to the acquisition of shares pursuant to the Tender Offer. Such conditions are typical of conditions routinely used in offering materials and necessitated in a tender offer such as MHC's because of the presence of an entrenched board of directors unwilling to negotiate or cooperate. MHC OP's Schedule 14D-1, setting out the complete terms of the Tender Offer, was filed with the SEC on September 4, 1996; a copy is attached along with MHC OP's Schedule 14D-1/A-1 as Exhibit A.

#### THE MARKET'S REACTION TO MHC'S OFFER AND THE TENDER OFFER

28. On August 16, 1996, the trading day before MHC announced its offer to combine with Chateau at \$26.00 per share, Chateau's stock closed at \$23 1/4. On August 19, 1996, the day of the announcement, Chateau's stock rose \$2 5/8 and closed at \$25 7/8. From August 19 until September 17, 1996 (the day that Chateau announced the Revised Chateau-ROC Agreement and filed this lawsuit) Chateau's stock traded between \$25 1/2 and \$26 7/8.

29. Analysts and investors who follow the REIT industry and have reviewed the competing offers for Chateau have stated that the \$26.00 per share in cash offered by MHC and MHC OP is the better deal for Chateau's shareholders than the Chateau-ROC proposed transaction. According to September 5, 1996 articles in The New York Times and the Chicago Tribune, for example, most analysts and investors believe that the \$26.00 per share cash offer by MHC and MHC OP is better for Chateau's shareholders than either the proposed Chateau-ROC merger or the Sun offer. On September 11, 1996, the New York Times reported that "analysts and investors say the \$26.00 in cash offered by [MHC] is clearly the best deal so far for shareholders."

#### THE CHATEAU INSIDERS' CONFLICT OF INTERESTS

30. Chateau is structured as an umbrella partnership REIT, or "UPREIT." The UPREIT structure allows real estate owners to gain access to the capital markets by contributing their properties to the REIT entity in exchange for equity interests in the entity without triggering any tax liabilities (i.e., with respect to the value of such properties in excess of the tax basis of the contributing real estate owners) on the contributions. In order to accomplish this access to capital and tax deferral under the Code, property owners (including the Chateau Insiders) contributed their properties not for cash or common stock but for non-voting limited partnership units in Chateau's operating partnership, CP OP, of which Chateau is the sole corporate general partner. In return for tax deferral and access to public capital, OP unit holders give up control of their properties to

the publicly-traded REIT and its shareholders. These "CP OP units" do not give their holders voting rights in Chateau, but the CP OP units are convertible into shares of Chateau common stock on a one-for-one basis. Conversion of CP OP units to Chateau common shares, however, ordinarily causes the converting CP OP unit holder to trigger the tax liabilities that holding the CP OP units had allowed the holder to defer. Thus, the conversion of CP OP units would normally result in a significant tax liability for the converting CP OP unit holder resulting from the built-in gain in the contributed asset, an amount in excess of \$100 million. Such conversions would allow the REIT to have a higher basis in the partnership and its assets and to achieve additional depreciation deductions.

31. There are approximately six million shares of Chateau common stock outstanding. There are approximately 8.8 million CP OP units outstanding of which approximately 5 million are immediately exchangeable.

32. Upon information and belief, Mr. Boll owns approximately 3.4 million of the outstanding CP OP units; Mr. Kellogg owns over 50,000 of the outstanding CP OP units; and Mr. Allen owns over 750,000 of the outstanding CP OP units. Upon information and belief, Messrs. Boll, Kellogg and Allen each have a low tax basis in their CP OP units (in comparison with such units' market value).

33. Upon information and belief, if Messrs. Boll, Kellogg or Allen were to convert their CP OP units into shares of Chateau common stock in order to tender pursuant to the Tender Offer or in response

to MHC's offer to combine with Chateau at \$26.00 per share in cash, they would realize large taxable gains that they would otherwise have been able to defer for many years. The realization of these gains would result in substantial tax liabilities to such individuals personally.

34. The Chateau-ROC merger as currently proposed, however, although economically inferior (for Chateau's shareholders) to the \$26.00 per share offered by MHC and MHC OP, would not result in tax liabilities for the CP OP unit holders and thus would be economically superior for Messrs. Boll, Kellogg and Allen. As a result and to the detriment of Chateau shareholders, Messrs. Boll, Kellogg and Allen each have a material, personal financial interest in favoring the merger with ROC over a transaction with MHC.

35. Upon information and belief, by virtue of their positions and holdings in Chateau and CP OP, Messrs. Boll, Kellogg and Allen dominate and effectively control Chateau and its Board of Directors.

#### CHATEAU'S RESPONSE TO THE TENDER OFFER -- CHANGES TO THE ROC DEAL

36. On September 4, 1996, Chateau issued a pres release in which it "announced its awareness that [MHC OP had] commenced a tender offer for \$26.00 a share of [Chateau's] common stock." The press release went on to allege "that [Chateau's] Articles of Incorporation prohibit a person from beneficially owning in excess of 7% of its outstanding shares of common stock without Board approval." Also on September 4, 1996, The Wall Street Journal quoted Mr. Kellogg, Chateau's Chief Executive Officer, as having stated in an interview on

Friday, August 30, 1996 that "[o]ur board has never waived [the 7% ownership limit], and I don't believe they are about to waive it now." The Wall Street Journal also quoted Mr. Kellogg as saying, "'[w]e have signed a definitive merger agreement' with ROC . . . . 'It requires that we don't negotiate with any other company.'"

37. Faced with a negative market response to their proposed merger with ROC, Chateau's Insiders and Board embarked on an unprecedented scheme to maintain their positions by eliminating shareholders' voting power and shifting their personal tax responsibilities to the shareholders.

38. On September 18, 1996, Chateau issued a press release announcing that Chateau and ROC had agreed to revised terms for their merger (the "Revised Agreement"). The text of the press release is reproduced in Chateau's Schedule 14D-9.

39. The Revised Agreement represents part of a plan to prevent the existing shareholders of Chateau from participating in the decision as to whether the Chateau-ROC merger should be consummated or whether they wish to accept MHC's financially superior offer. Among other things, by creating a structure in which Chateau avoids a merger (unlike the original proposal in which Chateau merged into a newly formed entity), the number of outstanding Chateau shares required to be voted in favor of the transaction is lowered from the two-thirds of all such outstanding shares presently required of Chateau under Maryland law to a simple majority of shares actually voted.

40. Furthermore, in connection with the Revised Agreement and as

part of the overall scheme formulated by Chateau, ROC and the Insiders to block a meaningful shareholder vote on the proposed Chateau-ROC merger, Messrs. Boll, Kellogg and Allen, and other CP OP unit holders, may exchange their CP OP units for shares of Chateau common stock on a tax-advantaged basis and thereby effectively diminish shareholder voting power. At the same time, Chateau and ROC intend to use corporate funds to acquire 1.8 million outstanding shares of Chateau's common stock from existing shareholders prior to the shareholder vote. Chateau also intends to permit the converting CP OP unit holders to purchase additional shares of Chateau common stock in addition to the shares they will receive upon conversion. As a result of this scheme, Messrs. Boll, Kellogg and Allen, together with another CP OP unit holder, will be able to collectively acquire, with company funds and without incurring tax liability, majority voting power in Chateau, and thus insuring approval of the Chateau-ROC merger over the objection of non-insider shareholders. Chateau announced that Messrs. Boll, Kellogg and Allen intend to exchange their OP units in connection with this scheme, that "[converting CP OP unit holders] are expected to have sufficient voting power to assure shareholder approval of the ROC Merger" and that "[i]t is also expected that OP Unit holders will vote in favor of the ROC Merger."

41. However, the plan to give Messrs. Boll, Kellogg and Allen voting control over Chateau free of tax liability comes at the expense of Chateau's non-insider shareholders:

- (a) In order for the contemplated exchange of the Insiders' CP OP units for votable shares to be tax free under the Code, the converting CP OP unit holders must end up owning, together with existing ROC shareholders, over 80% of Chateau's outstanding common stock after consummation of the merger. As a part of its complex scheme, Chateau's Board has adopted a program to spend corporate funds to repurchase up to 1.45 million shares of Chateau common stock in order to reduce the amount of outstanding stock and sell shares to insiders. The results of these Board Actions ensures that the 80% requirement for tax-free treatment of the Insiders' conversions will be satisfied. To the same end, ROC, with the agreement of Chateau, intends to purchase 350,000 shares of outstanding Chateau common stock. These repurchases have the dual purpose of allowing the 80% test to be satisfied and to place more than 50% of Chateau's voting power in the converting CP OP unit holders' hands after they exchange their CP OP units for common stock.
- (b) The plan for the tax-free conversion of CP OP units into Chateau common shares will also cause more than \$100 million in deferred tax gains to be transferred from the converting CP OP unit holders to the shareholders of the merged entity, thereby shifting at least \$27 million in deferred tax gains to the present non-insider shareholders of Chateau and shifting an even larger amount to the present shareholders



of ROC. The plan to allow tax-free conversion of CP OP units will impair the value of the merged entity, and thus harm both Chateau's and ROC's shareholders, by not stepping up the company's tax basis in its underlying properties, resulting in greater potential tax liabilities. Significantly, if Chateau today sold any property contributed to the company by Mr. Boll or any of the other CP OP unit holders, the deferred tax liability relating to the sale of that property would be borne personally by Mr. Boll or such other CP OP unit holder alone. If the Insiders' scheme under the Revised Agreement were to prevail, that same tax liability would be borne by shareholders of the proposed merged entity instead of the contributing OP Unit holders.

- (c) In addition, as a result of the planned conversion of CP OP units by the Insiders, a higher proportion of the annual cash dividends that Chateau's shareholders will receive in the future will be taxable income/capital gains rather than a non-taxable return of capital, as compared to the original Chateau-Roc deal or a taxable conversion. The proposed Chateau-ROC merger, as amended, clearly adversely affects Chateau's shareholders while generously benefiting Messrs. Boll, Kellogg, Allen and the other Insiders.

42. Chateau also disclosed in its press release than on September 12, 1996, Chateau's Board of Directors amended Chateau's

1993 Long-Term Incentive Stock Plan so that, among other things, upon a change in control of Chateau (except if preceded by a timely merger with ROC) all outstanding stock options awarded under such Plan not previously exercisable and vested will become fully exercisable and vested. According to Chateau's Notice of Annual Meeting and Proxy Statement dated April 10, 1996, Mr. Kellogg holds 126,000 stock options. Chateau also disclosed that on September 16, 1996, Chateau entered into "severance agreements" with five of its senior executive officers (the "Golden Parachutes"), including Mr. Kellogg. Under the Golden Parachutes, if, within two years of a "'change in control' (which would include the consummation of the MHC offer)," the officer is terminated without "cause" or "terminates his or her employment for 'good reason,'" the officer is entitled to a lump sum payment from Chateau of either two or three times his or her annual salary as well as a one or two-year extension of health benefits.

#### MARKET REACTION TO THE REVISED CHATEAU-ROC MERGER PLAN

43. The stock market's reaction to Chateau's September 17-18 announcements was swift, unequivocal and negative: on September 18, 1996, Chateau's stock closed at \$24-7/8, down \$1-3/4, representing a loss of \$26 million in the company's equity capitalization, and closing at its lowest price since MHC announced its offer to combine with Chateau.

44. On September 19, 1996, The Wall Street Journal reported that the revised deal with ROC was worth between \$23.53 and \$24.21 per share of Chateau. The New York Times reported on the same date that

analysts valued the revised ROC deal "at somewhere between \$24.00 and \$24.50 a share." The New York Times also reported that "investors in Chateau and analysts reacted angrily to the restructured merger agreement." A representative of a major shareholder of Chateau told the New York Times, in regards to Chateau's board, that "[t]heir main objective with this merger seems to be to structure a transaction that is tax-advantaged to the OP unit holders with little regard given to the wishes of the common shareholders." The New York Times reported that "shareholders were particularly exercised by a provision of the merger agreement that would saddle the shareholders of the combined company with \$27 million or more in deferred gains, which serve to reduce the tax burden that John Boll, the chairman and chief executive of Chateau, Edward Allen, a Chateau director, and others would incur in swapping units for stock." The New York Times also noted that analysts "questioned" Chateau's plan to repurchase its own shares and that "shareholders regarded the repurchase as a way to ensure that they could not block the merger." The New York Times observed that as a result of the repurchase plan "Chateau would be virtually certain to achieve the simple majority it needs for approval [of the merger]."

45. On September 19, 1996, Everen Securities, Inc., an independent REIT industry analyst, reacted to the announcement of the revised Chateau-ROC merger agreement as follows:

The revised merger agreement is a disappointment from an economic standpoint and a disaster from a fairness standpoint. . . . When we first heard of the Chateau-ROC merger we were supportive. . . . While there are plenty of synergies to the ROC/Chateau combination, we actually

believed MHC and Chateau were a better fit and perhaps offered more accretion. However, synergies and accretion are really no longer the point here, the point is now management credibility.

Conflicts of Interests: Instead of demonstrating to shareholders the merit of their proposed merger Chateau management has done nothing but highlight their own conflicts of interest -- protecting their tax position, jobs and egos. Chateau has shifted tax liability effectively to the common shareholder, reduced shareholders voting power to assure approval, initiated a share buyback which has absolutely no economic merit relative to the acquisition of property.....

\* \* \*

We recommend investors consider the following: most REITs trade above net asset value, in the case of manufactured home REITs the premium is as much as 20%. The only reason REITs trade above NAV is for the value of the "ongoing concern", or the inability of management to create value on a sustainable basis. One way in which REITs create sustainable value is through acquisitions and development. New investments require capital. REITs do not have significant retained earnings, and hence make frequent trips to the equity market. In our opinion, neither Chateau nor Chateau-ROC can be thought of as shareholder friendly. How do these companies ever expect to raise additional capital. With no capital there is less growth, with less growth there is a reduced multiple, with a reduced [multiple] follows a falling stock price. This is the future Chateau and ROC have chosen.

46. On the previous day, Louis Taylor, Prudential Securities, another independent REIT industry analyst, had commented:

[T]he extraordinary tactics to avoid the MHC offer, including the transfer of \$27 million of unrecognized gains and the future tax liability to the new entity, imply management is concerned about its own interests, not public shareholders.

\* \* \*

We believe the combined value of [Chateau] and [ROC] has been permanently impaired by [Chateau's Board's] tactics. We believe the shares of the combined entity, if the merger

goes through, will trade at a significant discount to the real estate industry averages. We believe the combined entity will have little or no access to public market capital or it will be at a very high cost.

47. On September 20, 1996, several of Chateau's largest shareholders, each a significant institutional investor, sold all of their common stock in Chateau in response to the announcement by Chateau's Board of the Revised Agreement, according to news reports. A managing director at one of the institutional investors, ABKB/LaSalle Securities (the third largest sophisticated REIT investor with over \$1 billion invested), was quoted in a report by Bloomberg L.P. as follows:

It's clear that Chateau's board is looking out for (Chairman John) Boll and other insiders rather than shareholders.

The Bloomberg L.P. report continued:

The sales are especially troubling in that these companies are some of the biggest and most influential REIT investors. Since they have sold their stakes, the pool of future investors in a newer, larger Chateau could narrow substantially.

#### CHATEAU'S SCHEDULE 14D-9

48. On September 18, 1996, Chateau filed its response to the Tender Offer with the SEC in a Schedule 14D-9 which it amended in a Schedule 14D-9/A filed the next day (collectively the "Schedule 14D-9"). The untimely filing of the Schedule 14D-9 violated SEC rule 14e-2, which requires a subject company of a public tender offer to respond with such a filing no later than 10 business days from the

date on which the tender offer is first published (which, in the case of the Tender Offer, required response on September 17, 1996).

49. In the Schedule 14D-9, Chateau announced that its Board of Directors recommended to Chateau's shareholders that they not tender their shares pursuant to the Tender Offer.

50. The Schedule 14D-9 cites a number of factors influencing the misplaced focus on the Board's decision, including the terms of the Revised Agreement that were announced in a press release issued the same day and the fact that under the Revised Agreement "OP Unitholders will have the opportunity. . . to assign and transfer their OP Units to the Company in exchange for Shares on a substantially tax-free basis as opposed to a taxable basis pursuant to the structure of the MHC Offer and the Proposed MHC Merger."

A copy of the full Schedule 14D-9/A is attached as Exhibit B.

#### MISLEADING STATEMENTS IN THE SCHEDULE 14D-9

51. The Schedule 14D-9 states that in deciding to reject the MHC OP Tender Offer:

[t]he Board of Directors took into account the conditional nature of the MHC Offer, in that the MHC Offer is conditioned on a condition the Board does not believe can be satisfied: MHC OP being satisfied, in its sole judgment, that after consummation of the MHC Offer none of the Shares purchased by MHC OP will be deemed Excess Stock (as defined in Article VI of the Company's Articles of Amendment and Restatement (the "Articles")). In this regard, the Company has commenced litigation seeking a declaratory judgment as to the applicability to the MHC Offer of the provisions of the Articles relating to Excess Stock.

\* \* \*

In light of all the above factors, the Board determined that its fiduciary duties require that it not take steps to facilitate the MHC Offer and the Proposed MHC Merger and not waive the provisions of . . . the Ownership Limit . . . or the Excess Stock provisions of the Articles with respect to the MHC Offer or the Proposed MHC Merger.

52. The statements contained in the Schedule 14D-9, alone and in combination with earlier statements by Chateau and its representatives, are misleading in that they falsely suggest that the 7% ownership restriction provisions found in Article VI of the Charter would apply to MHC's or MHC OP's ownership of Chateau shares. These statements were calculated to induce Chateau shareholders not to tender their shares pursuant to the Tender Offer.

53. After filing the Schedule 14D-9, Chateau representatives including Messrs. Boll and Kellogg participated in a telephonic conference with analysts and further engaged in false and misleading statements and representations regarding the proposed Chateau-ROC deal.

#### REIT STATUS, ARTICLE VI OF THE CHARTER AND THE TENDER OFFER

54. Among other conditions, in order for a corporation to qualify as a REIT, it cannot be "closely held" (Code Section 856(a)(6)).

55. In order for a REIT not to be "closely held" under the Code, not more than 50% of the value of the REIT's issued and outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of a taxable year (except for the first year of the entity's qualification as a REIT). With respect to this test for "closely held" status, the Code contains certain rules

for determining ownership of REIT stock. REIT stock owned by a corporation, partnership, estate or trust is treated as being owned proportionately by its stockholders, partners or beneficiaries (Code Section 856(h)(1), incorporating by reference, with modifications, rules of Code Sections 542(a)(2) and 544 (a)). Thus, even if a publicly held parent corporation owns 100% of a REIT's stock, so long as there are not five or fewer shareholders who collectively own more than 50% of the parent's stock, the "closely held" condition is not violated. This rule is commonly referred to as a "look-through" rule because the owners of the stock are deemed to be the underlying owners of the partnership or corporate interests after looking through the partnership or corporate forms.

56. Corporations intended to qualify as REITs often include in their corporate charters ownership restrictions designed to help ensure that the REIT ownership restrictions contained in the Code will be met.

57. On numerous occasions prior to MHC's Tender Offer, Chateau indicated that its 7% ownership restriction was included in its Charter for REIT purposes. According to Chateau's Notice of Annual Meeting and Proxy Statement dated April 13, 1995 (the "1995 Proxy Statement"), Chateau's Charter contains a 7% ownership restriction "[i]n order to preserve REIT status." Similarly, the Form S-3 Registration Statement that Chateau filed with the SEC on May 3, 1996 states that Chateau's Charter contains the 7% ownership restriction "[b]ecause the Board of Directors believes it is essential for the



Company to continue to qualify as a REIT." Chateau has made identical statements in several documents it has filed with the SEC, including its initial offering prospectus dated November 16, 1993. In addition, the reverse side of Chateau's stock certificates reads, "[t]he securities represented by this certificate are subject to restrictions on transfer for the purpose of the Corporation's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended," followed by a description of the 7% provision. Further, a private letter ruling issued by the Internal Revenue Service which, upon information and belief was obtained by Chateau, describes the ownership limitation from the perspective of the definitions of beneficial ownership set forth in the Internal Revenue Code ("Code").

58. (a) Article VI, Section 2 of Chateau's Charter provides that, with certain limited exceptions, "no Person . . . shall Beneficially Own shares of Common Stock . . . in excess of the applicable Ownership Limit"; Article VI, Section 1 defines the "Ownership Limit" as, "in the case of Common Stock, seven (7.0%) percent in number of shares or value, of the outstanding Common Stock. . . ."

(b) Article VI, Section 1 of the Charter defines "Beneficial Ownership" as "ownership of Common Stock or Preferred Stock by a Person who would be treated as an owner of such Equity Stock under Section 542(a)(2) of the Code, either directly or constructively through the application of Section 544 of the Code, as

modified by Section 856(h)(1)(B) of the Code." Sections 542(a)(2) and 544 of the Code codify the "look-through" rule whereby ownership of equity interests held by a partnership or corporation is attributed proportionately to the partners of the partnership or the shareholders of the corporation, as the case may be. Therefore, Article VI, Section 2 of Chateau's Charter allows a widely-held partnership, corporation or other entity (such as MHC or MHC OP) from holding more than 7% of Chateau's stock so long as, after application of the "look-through" rule, no partner of such partnership or shareholder of such corporation or equity holder of such other entity would be deemed individually to own more than 7% of Chateau's stock.

A copy of Chateau's Charter is attached as Exhibit C.

59. According to Chateau's 1995 Proxy Statement, at least one entity shareholder of Chateau, Capital Growth Management Limited Partnership ("Capital Growth"), has owned more than 7% of Chateau's outstanding common stock. Upon information and belief, Capital Growth is a "look through" entity like MHC and no IRS ruling was ever solicited or received pursuant to Article VI, Section 12 of Chateau's Charter with respect to Capital Growth's ownership of more than 7% of Chateau's outstanding common stock. Because the provisions of Article VI did not apply, Chateau's Board never deemed any portion of this or any other entity shareholder's holdings to be "Excess Stock" under Article VI of its Charter, thus acknowledging that Article VI's Ownership Limit and definition of Beneficial Ownership are "look-through" provisions.

60. After the Tender Offer is completed, MHC OP will own a substantial number of shares of Chateau's common stock.

61. Under the Code's rules for determining the "closely held" status of REITs under Code Section 856(a)(6), the owners of the Chateau common shares acquired by MHC OP will be deemed to be, proportionately, MHC OP's limited partners and MHC, its general partner; and the owners of MHC's proportionate interest will be further deemed to be MHC's shareholders. As a result of such deemed ownership, Chateau would not be "closely held" under section 856 of the Code by virtue of MHC OP's ownership of its stock and will continue to qualify as a REIT if all the other relevant conditions under the Code continue to be met.

62. Nevertheless, Chateau, in its Schedule 14D-9 and its public statements, has misleadingly stated that MHC OP's acquisition of Chateau stock in excess of the 7% ownership limitation would result in "Excess Stock" under its Charter and thereby strip MHC OP (and MHC, as its general partner) of virtually every right ordinarily provided to a shareholder, including the voting and dividend rights that would normally attach to such shares. The stock market, as well as journalists and analysts who comment on the REIT industry, have understood Chateau's statements in this way.

63. Chateau's stated position that the acquisition of more than 7% of its common shares by MHC OP would result in "Excess Stock" (and thus the effective confiscation of such shares from MHC OP) is plainly incorrect under the terms of Article VI of Chateau's Charter. Any

interpretation beyond the purpose of preserving REIT status may result in Chateau shares being nontransferable in violation of the Internal Revenue Code.

64. "Beneficial Ownership" is defined in Article VI of the Charter as "ownership of Common Stock or Preferred Stock by a Person who would be treated as an owner of such Equity Stock under Section 542(a)(2) of the Code, either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code." MHC OP (or MHC) would not be "treated as an owner of such Equity Stock under Section 542(a)(2)" either "directly" under Code Section 542(a)(2) -- the plain language of which applies (with certain inapplicable exceptions) only to "individuals" -- or "constructively" under Code Section 544 -- the plain language of which indicates that stock owned by a partnership is deemed to be owned proportionately by its partners and that stock owned by a corporation is deemed to be owned proportionately by its shareholders. As a result, under the plain language of the Charter, the ownership limits of Article VI would not apply to MHC OP's acquisition of more than 7% of Chateau's outstanding common stock.

COUNT I

(Section 14(e) violation by Chateau --  
false statements about Chateau's Charter)

65. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

66. Section 14(e) of the Exchange Act provides in relevant part;

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.

67. Chateau's repeated references to its Charter's ownership restriction provisions in its Schedule 14D-9 and in public statements commenting on MHC's offer to combine with Chateau and on the Tender Offer constitute -- and have been understood by the market as -- assertions that the ownership restriction provisions would apply to MHC OP's acquisition of Chateau shares pursuant to the Tender Offer and will prevent the consummation of the Tender Offer by allowing Chateau's Board to treat any Chateau shares MHC OP acquires in excess of 7% of Chateau's outstanding common stock. These assertions are false because the Charter provisions, by their plain language, incorporate the "look-through" ownership rules of the Code, application of which to MHC OP's ownership of all or substantially all of Chateau's stock would result in no person being deemed to own more than 7% of Chateau's stock. These false assertions are designed to discourage Chateau's shareholders from tendering their shares pursuant to the Tender Offer and to discourage MHC from seeking to ensure that Chateau's shareholders receive full value for their shares.

68. As a result of these assertions, the Schedule 14D-9 contains untrue statements of material fact and omits to state material facts necessary in order to make the statements made, in the light of the

circumstances under which they are made, not misleading. The Schedule 14D-9, therefore, violates Section 14(e) of the Exchange Act.

69. The false assertions and omissions in the Schedule 14D-9 are material in that a reasonable Chateau shareholder would consider important in deciding whether to tender such shareholder's shares pursuant to the Tender Offer the purported fact that MHC OP's acquisition of more than 7% of Chateau's stock would result in the ownership of MHC OP of "Excess Stock" under Chateau's Charter, thus seeking to mislead a reasonable Chateau shareholder that one of the conditions for the consummation of the Tender Offer could not be satisfied.

70. These false assertions and omissions were knowingly or recklessly made. Chateau's Charter plainly incorporates the "look-through" rules of the Code. Chateau has recognized as much in the past when it did not deem shares owned by other "look-through" entities in excess of the 7% ownership limitation as "Excess Stock" under its Charter.

71. MHC's Tender Offer expires on October 1, 1996. MHC, MHC OP and Chateau's shareholders stand to suffer imminent and irreparable harm unless Chateau's Board of Directors is enjoined from continuing to make false statements about the applicability of the Charter's ownership restrictions to the Tender Offer and are ordered to correct publicly the false statements and omissions that they have made already.

72. MHC and MHC OP have no adequate remedy at law.

COUNT II

(Section 14(e) violation by Chateau -- false statements and material omissions about the tax consequences of the proposed Chateau/ROC merger)

73. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

74. Chateau's Schedule 14D-9 fails to fully inform its shareholders of the significantly adverse tax consequences that will result from the proposed Chateau-ROC merger. It does not fully and adequately explain the tax implications inherent in the transfer of in excess of \$100 million in unrecognized gains and the future tax liability relating thereto to the new entity and its shareholders.

75. As a result of these failures to so inform Chateau's shareholders the Schedule 14D-9 contains untrue statements of material fact and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. The Schedule 14D-9, therefore, violates Section 14(e) of the Exchange Act.

76. The false assertions and omissions in the Schedule 14D-9 are material in that a reasonable Chateau shareholder would consider such assertions and omissions important in deciding whether to tender such shareholder's shares pursuant to the Tender Offer, or retain or sell such shares if the proposed Chateau-ROC merger is permitted.

77. These false assertions and omissions were knowingly or recklessly made. After filing its Schedule 14D-9, Chateau reluctantly conceded in a public conference telephone call with securities

analysts and sophisticated institutional investors that the proposed merger would result in a transfer of at least \$27 million of unrecognized gains and therefore the attendant future tax liabilities from the insider CP OP unit holders to the existing Chateau shareholders. That material fact was omitted in the Schedule 14D-9. In contrast to misleading statements made in such public conference call, the tax detriment to the public shareholders will not be eliminated.

78. MHC's Tender Offer expires on October 1, 1996, MHC, MHC OP and Chateau's shareholders stand to suffer imminent and irreparable harm unless Chateau and its Board of Directors are enjoined from continuing to make false statements and omit to state material facts about the tax consequences of the proposed Chateau-ROC merger and ordered to correct publicly the false statements and omissions that they have made already.

79. MHC and MHC OP have no adequate remedy at law.

#### COUNT III

(Section 14(d) violation by Chateau --  
unauthorized solicitation or recommendation)

80. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

81. Chateau's public assertions made before it filed its Schedule 14D-9 that the Charter's ownership restrictions will prevent the successful consummation of the Tender Offer constitute solicitations or recommendations to its security holders with respect



to the Tender Offer. They were designed to discourage shareholders from tendering their shares pursuant to the Tender Offer.

82. These solicitations or recommendations violate SEC Rule 14D-9.

83. Under Rule 14D-9, a subject company of a tender offer may make no solicitation or recommendation with respect to a tender offer before filing a Schedule 14D-9, other than (pursuant to subsection (e) of the Rule) a communication to its shareholders that (1) identifies the tender offeror, (2) states that the tender offer is under consideration, (3) states that the company will, as of a specified date (i.e., when it files its Schedule 14D-9), advise shareholders whether the company recommends acceptance or rejection of the tender offer or remains neutral toward the offer and the reasons for its position.

84. Chateau had not filed a Schedule 14D-9 when it and its Board of Directors began making solicitations or recommendations concerning the Charter's ownership restriction provisions and the Tender Offer. These solicitations or recommendations do not fall within the exception described in subsection (e) of Rule 14D-9.

#### COUNT IV

(Section 14(e) violation by Chateau --  
false statement/omission about Chateau-ROC merger agreement)

85. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

86. The public statement made by Chateau's Chief Executive Officer to The Wall Street Journal that the Chateau-ROC merger agreement "requires that we don't negotiate with any other company" is untrue, and Chateau has omitted any correction of it in all its public statements and filings to date, including its Schedule 14D-9, all in violation of Section 14(e) of the Exchange Act.

87. Nothing in the Chateau-ROC merger agreement forbids Chateau from "negotiat[ing] with any other company" as stated by Mr. Kellogg. Section 5.6 of the merger agreement only forbids Chateau from "initiat[ing] or solicit[ing]" Competing Transactions (as defined therein) to the proposed Chateau-ROC merger. In fact, Section 7.1 of the merger agreement explicitly permits Chateau's Board of Directors to "participate in discussions or negotiations with . . . any person in connection with a competing transaction proposed by such person" and to "approve or recommend" a "Superior Competing Transaction" to the ROC deal with a third party and in such event to "withdraw . . . its approval or recommendation of this Agreement."

88. Chateau's false statements and omissions as to the terms of its agreement with ROC with knowingly or recklessly made because they were contrary to the explicit terms of the merger agreement signed only days earlier.

89. The false statements and omissions were material in that a reasonable Chateau shareholder would consider important in deciding whether to tender such shareholder's shares pursuant to the Tender

Offer the purported fact that Chateau could not, even if it wanted to, effectuate a "friendly" deal with MHC or MHC OP.

90. MHC, MHC OP and Chateau's shareholders stand to suffer imminent and irreparable harm unless Chateau and its Board of Directors are enjoined from continuing to make false statements about their ability to negotiate with MHC or MHC OP and ordered to correct publicly the false statements that they have already made.

91. MHC and MHC OP have no adequate remedy at law.

#### COUNT V

(Section 14(e) violations by Chateau, ROC and the Individual Defendants -- fraudulent, deceptive and manipulative conduct in connection with the Tender Offer)

92. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

93. Chateau, ROC and the Individual Defendants have engaged in a course of fraudulent, deceptive and manipulative conduct in connection with the Tender Offer in violation of Section 14(e) of the Exchange Act. This course of conduct was designed to provide a series of false and misleading statements and omissions that are intended to block the consummation of the Tender Offer and impose the lower value Chateau-ROC merger on Chateau's shareholders.

94. As part of this course of fraudulent, deceptive and manipulative conduct, Chateau, ROC and the Individual Defendants, individually and collectively, have issued and caused to be issued a series of false and misleading statements about the Tender Offer, including false statements about MHC OP's ability to acquire in excess

of 7% of Chateau's stock under the Charter and Chateau's ability to negotiate with MHC under the terms of the Chateau-ROC merger agreement.

95. MHC's Tender Offer is due to expire on October 1, 1996, MHC, MHC OP and Chateau's shareholders stand to suffer imminent and irreparable harm unless Chateau, ROC and the Individual Defendants are enjoined from continuing their course of fraudulent, deceptive and manipulative conduct designed to thwart the Tender Offer.

96. MHC and MHC OP have no adequate remedy at law.

#### COUNT VI

(Breach of fiduciary duties under Section 2-405.1 of the Maryland General Corporation Law against the Individual Defendants)

97. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

98. By virtue of their positions as directors of Chateau, the Individual Defendants owe fiduciary duties to Chateau and its shareholders, as codified in Section 2-405.1 of the Maryland General Corporation Law. (The MGCL is Titles 1 through 3 of the Corporation and Association Articles of the Annotated Code of Maryland). Section 2-405.1(a) requires each director of a Maryland corporation to perform his duties (1) "in good faith," (2) in a manner he reasonably believes to be in the best interests of the corporation" and (3) "with the care that an ordinarily prudent person in a like position would use under similar circumstances."

99. The Individual Defendants' duty under Section 2-405.1(a)(1) to act "in good faith" requires them, at a minimum, to place the

interests of Chateau and its stockholders ahead of their own personal interests and not to cause Chateau to enter into transactions that confer on the Individual Defendants benefits not proportionately conferred on the other stockholders. The Individual Defendants have violated their statutory duty to act in good faith by, among other things:

(a) refusing to seek transaction offering the highest value for Chateau and its stockholders;

(b) refusing to negotiate with MHC and recommending that Chateau stockholders not sell their shares in the Tender Offer;

(c) causing Chateau to enter into a transaction that preserves for the Individual Defendants favorable tax benefits not enjoyed by the overwhelming majority of other Chateau stockholders;

(d) causing Chateau to restructure the Chateau-ROC merger so as to shift a significant potential tax liability from the Individual Defendants to Chateau, with the further result that a higher proportion of annual cash dividends subsequently received by Chateau stockholders will be taxable, thereby adversely affecting the value of the Chateau stockholders' investment;

(e) causing Chateau to restructure the Chateau-ROC merger to effectively deprive non-insider stockholders of the ability to vote down the Chateau-ROC merger;

(f) proposing to cause Chateau and ROC to use corporate funds to repurchase outstanding shares of Chateau in furtherance of

their scheme to obtain majority voting power in Chateau at no cost to themselves;

(g) repeatedly making and causing Chateau to make false and misleading statements and omitting material information in connection with the Tender Offer in order to induce Chateau's stockholders not to tender their shares pursuant to the Tender Offer;

(h) causing Chateau to amend its 1993 Long-Term Incentive Stock Plan so that, among other things, upon a change in control of Chateau (except through a merger with ROC), all outstanding options awarded under the Plan become fully exercisable and vested, for no apparent purpose other than to entrench and enrich the participants in the Plan;

(i) causing Chateau to enter into the lucrative Golden Parachute with five senior executive officers, including Mr. Kellogg, for no apparent reason other than to entrench and enrich these executives;

(j) failing to adopt a resolution opting out of the Maryland Business Combination Law so as to permit the Tender Offer, which will provide more value to the Chateau stockholders than the Chateau-ROC merger, to go forward; and

(k) failing to take action to exempt MHC, if that were necessary, from the Excess Stock provisions of Chateau's Charter.

100. The Individual Defendants' duty under Section 2-405.1(a)(2) is to act with a reasonable belief that their actions are in the best interests of the persons with the residual equity interest in Chateau

- - - its stockholders. The Individual Defendants have violated their statutory duty to act in the best interests of the Chateau stockholders by, among other things:

(a) refusing to seek a transaction offering the highest value for Chateau and its stockholders;

(b) refusing to negotiate with MHC and recommending that Chateau stockholders not sell their shares in the Tender Offer;

(c) causing Chateau to enter into a transaction that preserves for the Individual Defendants favorable tax benefits not enjoyed by the overwhelming majority of other Chateau stockholders;

(d) causing Chateau to restructure the Chateau-ROC merger so as to shift a significant potential tax liability from the Individual Defendants to Chateau, with the further result that a higher portion of annual cash dividends subsequently received by Chateau stockholders will be taxable, thereby adversely affecting the value of the Chateau stockholders' investment;

(e) causing Chateau to restructure the Chateau-ROC merger to effectively deprive non-insider stockholders of the ability to vote down the Chateau-ROC merger;

(f) proposing to cause Chateau and ROC to use corporate funds to repurchase outstanding shares of Chateau in furtherance of their scheme to obtain majority voting power in Chateau at no cost to themselves;

(g) repeatedly making and causing Chateau to make false and misleading statements and omitting material information in connection

with the Tender Offer in order to induce Chateau's stockholders not to tender their shares pursuant to the Tender Offer;

(h) causing Chateau to amend its 1993 Long-Term Incentive Stock Plan so that, among other things, upon a change in control of Chateau (except through a merger with ROC), all outstanding options awarded under the Plan become fully exercisable and vested, for no apparent purpose other than to entrench and enrich the participants in the Plan;

(i) causing Chateau to enter into the lucrative Golden Parachutes with five senior executive officers, including Mr. Kellogg, for no apparent reason other than to entrench and enrich these executives; and

(j) failing to adopt a resolution opting out of the Maryland Business Combination Law so as to permit the Tender Offer, which will provide more value to the Chateau stockholders than the Chateau-ROC merger, to go forward.

100. The Individual Defendants' duty under Section 2-405.1(a)(3) to act with the care of an ordinarily prudent person in a like position under similar circumstances requires them to reach their decisions with full information (including consultation with independent experts), upon arm's-length negotiations and after adequate deliberation (including exploration and comparison of alternative transactions). The Individual Defendants have violated their statutory duty to act with the care of an ordinarily prudent



person in a like position under similar circumstance by, among other things:

(a) refusing to negotiate with MHC and recommending that Chateau stockholders not sell their shares in the Tender Offer;

(b) repeatedly making and causing Chateau to make false and misleading statements and omitting material information in connection with the Tender Offer in order to induce Chateau's stockholders not to tender their shares pursuant to the Tender Offer;

(c) failing to appoint a committee of independent directors to evaluate the proposed Chateau-ROC merger and negotiate its terms and conditions -- the traditional approach to addressing a conflict-ridden situation such as this one; and

(d) failing to file the Schedule 14D-9 on time as required by law.

102. Chateau's Schedule 14D-9 states that the stock repurchases will take place either through open market purchases, negotiated purchases or a self-tender offer. Accordingly, Chateau may have already begun to disburse corporate funds in furtherance of the plan to guarantee insider control over the voting process.

103. MHC, MHC OP and Chateau's shareholders will be imminently and irreparably harmed unless the Individual Defendants and Chateau are enjoined from paying out corporate funds or taking any other steps in furtherance of the stock reissuance and repurchase plan.

104. Unless enjoined by this Court, Chateau and the Individual Defendants will continue to breach their fiduciary duties to Chateau's

shareholders to the imminent and irreparable detriment of MHC, MHC OP and Chateau's shareholders.

105. MHC and MHC OP have no adequate remedy at law.

COUNT VII

(Aiding and abetting the Individual Defendants' and Chateau's breach of fiduciary duties of loyalty and care and self-dealing against ROC)

106. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

107. By agreeing to the Revised Agreement and by agreeing to buy 350,000 shares of Chateau's outstanding common stock as part of Chateau's and the Individual Defendants' plan to deprive Chateau's shareholders of a meaningful vote with regard to the Chateau-ROC merger, ROC has knowingly participated in and aided and abetted Chateau's and the Individual Defendants' breach of their fiduciary duties to Chateau's shareholders and their self-dealing.

108. Unless enjoined, ROC will continue to aid and abet Chateau's and the Individual Defendants' breach of their fiduciary duties to Chateau's shareholders and their self-dealing.

109. MHC and MHC OP have no adequate remedy at law.

COUNT VIII

(Declaration of nonviolation of Chateau's Charter)

110. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

111. If, despite the plain language of the Charter, Chateau's Board of Directors is permitted to apply its erroneous construction to

the ownership limitation provisions of the Charter and treat Chateau shares acquired by MHC OP pursuant to the Tender Offer as Excess Stock, as it has indicated that it will, MHC OP will be unable to consummate the Tender Offer. As a result, MHC, MHC OP and Chateau's shareholders will suffer imminent and irreparable harm. Such an interpretation would also produce the unwarranted punitive result of effectively confiscating from MHC OP any Chateau shares it has acquired (despite MHC OP having paid for such shares) by depriving MHC OP of any voting rights and dividend rights appurtenant to those shares and allowing Chateau to direct the sale of such shares at a potentially severe economic loss to MHC OP.

112. Whether Chateau's Board of Directors will treat shares acquired by MHC OP pursuant to the Tender Offer as "Excess Stock" under the Charter is a matter of actual controversy that affects the rights and legal relations of MHC, MHC OP and Chateau.

113. Accordingly, MHC and MHC OP are entitled to a declaration that MHC OP's acquisition of more than 7% of Chateau's outstanding common shares pursuant to the Tender Offer will not result in ownership of "Excess Stock" under the terms of Chateau's Charter.

#### COUNT IX

(Declaration that MHC and MHC OP are exempt  
the Maryland Business Combination Act)

114. MHC and MHC OP repeat and reallege each of the preceding paragraphs as if fully set forth here.

115. Despite MHC and MHC OP's proper request to Chateau to approve or otherwise exempt any proposed merger or business combination among MHC, MHC OP, and Chateau from the requirements of the Maryland Business Combination Act, Chateau has indicated it will not adopt any such resolution. The Individual Defendant's refusal to properly consider such a resolution to either approve a merger or similar business combination or cause an exemption from the requirements of the Maryland Business Combination Act is a further aspect of their scheme to prevent Chateau's shareholders from accepting MHC's superior Tender Offer and part of the breach of their fiduciary duties to Chateau's shareholders and their self-dealing. As a result the Individual Defendants' breach of their fiduciary duties and self-dealing, MHC OP will either have to waive the condition and close with a structure that may be detrimental to shareholders or be unable to accomplish the Tender Offer. In either case, MHC, MHC OP and Chateau's shareholders will suffer imminent and irreparable harm.

116. Whether Chateau and the Individual Defendants properly refused to adopt a resolution under the Maryland Business Combination Act approving or exempting a merger or proposed business combination from the requirements of the Act is a matter of actual controversy that affects the rights and legal relations of MHC, MHC OP and Chateau.

117. Accordingly, MHC and MHC OP are entitled to a declaration that Chateau and the Individual Defendants failed to give proper consideration to the adoption of a resolution under the Maryland

Business Combination Act approving or exempting a merger or proposed business combination from the requirements of the Act. Further, MHC and MHC OP are entitled to a declaration that had Chateau and the Individual Defendants properly considered such a resolution, it should and would have been approved and would exempt MHC and MHC OP from the requirements of the Maryland Business Combination Act.

WHEREAS, Counterclaim-Plaintiffs request:

A. That the Court temporarily restrain and preliminarily and permanently enjoin Chateau and the Individual Defendants from spending Chateau corporate funds or otherwise taking steps to carry out the plan to repurchase up to 1.45 million outstanding Chateau common shares.

B. That the Court temporarily restrain and preliminarily and permanently enjoin ROC from its plan to purchase up to 350,000 outstanding Chateau common shares.

C. That the Court preliminarily and permanently enjoin Chateau, the Individual Defendants and ROC from consummating or otherwise proceeding with the proposed Chateau-ROC merger.

D. That the Court preliminarily and permanently enjoin Chateau and the Individual Defendants from making any further false statements that because of the ownership restrictions provisions of Chateau's Charter, the Tender Offer will result in ownership of "Excess Stock" by MHC OP and thus cannot be successfully consummated.

E. That the Court preliminarily and permanently enjoin Chateau and the Individual Defendants from making any further false statements

that the merger agreement with ROC prevents Chateau from negotiating a business combination with MHC or MHC OP.

F. That the Court order Chateau to immediately issue public statements correcting the false statements and omissions of material fact that it has already made.

G. That the Court preliminarily and permanently enjoin Chateau, the Individual Defendants and ROC from engaging in further fraudulent, deceptive and manipulative conduct in connection with the Tender Offer.

H. That the Court declare that MHC OP's acquisition of more than 7% of Chateau's outstanding common shares pursuant to the Tender Offer would not result in ownership by MHC OP or MHC of "Excess Stock" under the terms of Chateau's Charter.

I. That the Court order Chateau's Board of Directors to exempt MHC and MHC OP from the Maryland Business Combination Act.

J. That the Court award MHC and MHC OP compensatory damages in an amount to be determined at trial.

K. That the Court award MHC and MHC OP the costs and expenses of this action, including reasonable attorneys fees.

L. That the Court grant such other and further relief as it deems appropriate.

Dated: September 25, 1996

Respectfully submitted,

-----  
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VERIFICATION

I, David H. Helfand, on oath, state that I am President and Chief Executive Officer of the Counterclaim-Plaintiffs Manufactured Home Communities, Inc., and MHC Operating Limited Partnership, that I have read the foregoing Counterclaims, and that the statements of fact contained therein are true to the best of my knowledge, information and belief.

/s/ David A. Helfand

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SUBSCRIBED AND SWORN TO  
before me this 24th day  
of September, 1996.

/s/ Monika Castiglioni

-----

Notary Public

My Commission Expires:  
11/29/98

"OFFICIAL SEAL"

Monika Castiglioni

Notary Public, State of Illinois

My Commission Expires 11/29/98



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CHATEAU PROPERTIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MANUFACTURED HOME COMMUNITIES, INC.,	)	Case No. 96-2930
MHC OPERATING LIMITED PARTNERSHIP,	)	
	)	Judge Nickerson
Defendants and Counterclaim-Plaintiffs,	)	
	)	
v.	)	
	)	
CHATEAU PROPERTIES, INC., ROC COMMUNITIES,	)	
INC., JOHN A. BOLL, C.G. KELLOGG, JAY G.	)	
RUDOLPH, GEBRAN S. ANTON, JR., JAMES M.	)	
LANE, KENNETH E. MYERS and EDWARD R. ALLEN,	)	
	)	
Counterclaim-Defendants.	)	
	)	
	)	

MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65, Defendants Manufactured Home Communities, Inc., ("MHC") and MHC Operating Limited Partnership ("MHC OP") (collectively, the "MHC Parties") hereby move for a temporary restraining order enjoining the purchase or sale of Chateau Properties, Inc. stock by Chateau and its directors and prohibiting Chateau and its directors from taking any other steps to materially alter the status quo until the MHC Parties' motion for a preliminary injunction is decided. The grounds for this motion are set forth in the accompanying memorandum in support filed herewith.

Manufactured Home Communities, Inc. and  
MHC Operating Limited Partnership

By: \_\_\_\_\_  
One of their Attorneys

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Dated: September 25, 1996

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CHATEAU PROPERTIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MANUFACTURED HOME COMMUNITIES, INC.,	)	Case No. 96-2930
MHC OPERATING LIMITED PARTNERSHIP,	)	
	)	Judge Nickerson
Defendants and Counterclaim-Plaintiffs,	)	
	)	
v.	)	
	)	
CHATEAU PROPERTIES, INC., ROC COMMUNITIES,	)	
INC., JOHN A. BOLL, C.G. KELLOGG, JAY G.	)	
RUDOLPH, GEBRAN S. ANTON, JR., JAMES M.	)	
LANE, KENNETH E. MYERS and EDWARD R. ALLEN,	)	
	)	
Counterclaim-Defendants	)	
	)	
	)	

MEMORANDUM OF THE MRC PARTIES IN SUPPORT OF  
THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER

Defendants and counterclaim-plaintiffs Manufactured Home Communities, Inc. ("MHC") and MHC Operating Limited Partnership ("MHC OP") (collectively, the "MHC Parties") respectfully submit this memorandum in support of their motion for a temporary restraining order preventing the purchase or sale, by Chateau Properties, Inc. ("Chateau") or its directors, of Chateau stock or the taking of other steps to materially alter the status quo until the MHC Parties' motion for a preliminary injunction is decided. These purchases and sales are part of a larger scheme designed by entrenched management to preclude Chateau's shareholders from having the opportunity to accept a \$26 per

share cash offer for their shares from MHC OP and to force shareholders to accept inferior consideration for their shares pursuant to a revised merger agreement (the "Revised Merger Agreement") between Chateau and ROC Communities, Inc. ("ROC").

Under the scheme contemplated in the Revised Merger Agreement:

- \* The Chateau Insiders (as defined herein) will transfer at least \$27 million in taxable gain to Chateau's shareholders and over \$100 million in taxable gain to the new entity created by the merger.
- \* Up to \$35 million in corporate funds will be used for a stock repurchase program that is detrimental to existing shareholders. The sole purpose of this repurchase program is to assure both the approval of the Revised Merger Agreement and the achievement of the personal tax objectives of the Chateau Insiders.
- \* Chateau will sell stock to the Insiders, again for the sole purpose of assuring approval of the Revised Merger Agreement and achieving the Insiders' personal tax objectives.
- \* Unlike the original Chateau-ROC merger agreement, which required the approval of two-thirds of Chateau's outstanding shares, the Revised Merger Agreement need

only be approved by a majority of the shares voted, which will allow the Insiders to ensure that their scheme is successful.

The net effect of all of these machinations is that the shareholders will effectively be disenfranchised. Chateau's Insiders will give themselves the power to approve the Chateau-ROC merger EVEN IF EVERY SINGLE EXISTING SHAREHOLDER DISAGREES. Moreover, because consummation of the Chateau-ROC merger would cause MHC OP to terminate its tender offer, the shareholders will be deprived of the opportunity to choose for themselves the future of their investment.

In pursuing this scheme, Chateau's directors are engaging in transparent self-dealing in blatant disregard of their fiduciary duties to the shareholders. If the directors had not placed their own interests ahead of those of the shareholders, Chateau and ROC could have merely adjusted the exchange ratio pursuant to the Revised Merger Agreement without also depriving the shareholders of effective voting rights and burdening them with substantial tax liabilities.

What makes this case astonishing is that Chateau's directors have gone beyond simply attempting to entrench themselves in office by preventing a change in corporate control. Entrenchment IS an important element of the directors' plan. But the plan also contemplates that the shareholders will be compelled to bear the burden of millions of dollars in tax liabilities from the

insiders. It is as if the shareholders are being required to pay a fee for the privilege of being cheated. This is an unprecedented breach of fiduciary duty that the Court should not countenance.

I. FACTUAL BACKGROUND

A. CHATEAU'S CORPORATE AND PARTNERSHIP STRUCTURE

Chateau, a Maryland corporation that is publicly traded on the New York Stock Exchange, is a real estate investment trust (a "REIT") in the business of operating manufactured home communities. Chateau is the corporate general partner of CP Limited Partnership, the operating partnership that holds the REIT's assets.

The Chateau insiders (the "Insiders") are John A. Boll, the Chairman of the Board of Directors, C.G. Kellogg, the President, Chief Executive Officer, and a member of the Chateau Board and Edward R. Allen, a member of the Board.<sup>(1)</sup> The Insiders own virtually no stock in Chateau even though they control the company through their positions as directors and officers. Instead, they own units in CP Limited Partnership ("OP units"). The reason for this is tax-driven. Under federal tax law, the Insiders could not have contributed real estate to Chateau in exchange for common stock without triggering substantial tax

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1 Jay G. Rudolph, Gebran S. Anton, Jr., James M. Lane and Kenneth E. Myers are the other members of the Board of Directors of Chateau.

liabilities. They avoided these taxes by creating and taking OP units for their properties instead. The OP units are convertible into Chateau common stock on a 1-for-1 basis, but conversion of the OP units would, under ordinary circumstances, trigger the substantial tax liabilities which the Insiders have thus far avoided.

B. THE INITIAL CHATEAU-ROC MERGER PROPOSAL

On July 18, 1996, Chateau and ROC, another REIT in the manufactured home communities business, announced an agreement to merge the two companies into a combined entity through an exchange of stock. Immediately after the announcement of the proposed transaction, the market price of Chateau stock was between \$23 and \$24 per share.

C. THE MHC PROPOSAL AND THE TENDER OFFER

On August 16, 1996, MHC, which is also a REIT in the manufactured home communities business, communicated to Chateau's Chairman, Mr. Boll, an offer to merge with Chateau. The offer provided a choice to shareholders and OP unit holders of \$26 cash per share or 1.15 shares of MHC common stock per share, or a combination of cash and MHC common stock at that ratio. The \$26 per share price represented a substantial premium over the value of between \$23 and \$24 per share that the market was assigning to the proposed Chateau-ROC combination and a 17 percent premium over Chateau's closing price on July 17, 1996, the day before the original Chateau-ROC merger agreement was announced. The Chateau

Board reiterated its commitment to the Chateau-ROC merger and rejected the MHC offer.

MHC decided to give Chateau's shareholders the choice of whether to accept MHC's offer, and it therefore caused MHC OP(2) to commence a tender offer on September 4, 1996 for all outstanding shares of Chateau's common stock that it does not already own at a price of \$26 per share ("the Tender Offer"). The Tender Offer expires on October 1, 1996, unless extended. MHC OP presently owns approximately two percent of Chateau's outstanding common stock.

D. THE INSIDERS' RESPONSE TO THE TENDER OFFER

On September 17, 1996, Chateau and ROC entered into the Revised Merger Agreement, providing for minor adjustments in the exchange ratio for the merger. What is startling about the Revised Merger Agreement is that it contemplates a series of devices that would effectively disenfranchise the shareholders, cause a transfer of substantial tax liabilities to the shareholders from the Insiders and have as their sole purpose preventing the shareholders from exercising their rights.

The crux of the Insiders' plan is to obtain majority voting power in Chateau and leave the existing shareholders with no

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2 MHC OP is a limited partnership organized under the laws of Illinois. The sole general partner of MHC OP is MHC. MHC owns approximately a 90% interest in MHC OP. MHC is a Maryland corporation.

meaningful control over the future of their investment. If the Insiders succeed in obtaining voting control over Chateau, they will be able to assure shareholder approval of the Chateau-ROC merger even if all of the existing shareholders disagree. Consummation of the Chateau-ROC merger would cause MHC to terminate the Tender Offer and deprive the shareholders of the opportunity to receive \$26 per share. However, to make their plan succeed, the Insiders need to cause a number of events to occur, all of which are detrimental to the shareholders.

First, the Revised Merger Agreement would enable the Insiders to exchange their OP units for shares of Chateau common stock on a tax-efficient basis and avoid more than \$100 million in taxable gain. The ability to convert their nonvoting OP units into shares on a tax-efficient basis would be a triumph for the Insiders: they have never previously been able to exchange their OP units into voting common stock without incurring very large taxes, and some of their OP units were not convertible at all. Indeed, they were not able to make a tax-efficient conversion of their OP units under the original Chateau-ROC Agreement.

However, the Insiders' gain would be the shareholders' loss because the contemplated conversion of OP units would transfer substantial amounts of taxable gain from the Insiders to the existing shareholders. Chateau and its directors do not contest this point; a Chateau representative conceded at an analysts' conference held on September 18, 1996 that the planned conversion



would cause a net transfer of \$27 million (or \$4 to \$5 per share) of taxable gain to the existing shareholders of Chateau. (Transcript of Analysts' Conference (transcribed from a tape), attached as Exhibit A, at pp. 19, 38.)

Although having both common stock and operating partnership units in REITs (called "UPREITS") is common, the transfer of tax liabilities from operating partnership unit holders to common shareholders is unprecedented in the REIT industry. No purchaser of common stock in an UPREIT, including Chateau, has ever had any reason to expect that he or she could be mistreated in this way. In fact, it could not happen absent the self-dealing present in this case.

Second, the Insiders' scheme calls for Chateau to spend approximately \$35 million to repurchase up to 1.45 million Chateau shares through open market purchases, private transactions or a tender offer. By reducing the number of shares outstanding, these repurchases would move the Insiders closer to their goal of having voting control over Chateau after they convert their OP units. The repurchases would also help to ensure that at least 80 percent of the stock in the new company formed in the Chateau-ROC merger would be owned by ROC shareholders or converting OP unit holders. Satisfaction of this 80% test is essential under the Internal Revenue Code for the success of the Insiders' scheme to achieve the transfer of tax liabilities from OP unit holders to shareholders.

Thus, the contemplated repurchases would confer a very large benefit on the Insiders. By contrast, the repurchases would be highly detrimental for the existing shareholders. \$35 million from Chateau's corporate treasury would be used for the precise purpose of preventing the shareholders from taking the best transaction available to them. The shareholders would suffer doubly -- not only would they be unable to receive the \$26 per share MHC OP is offering, but they also would suffer because corporate assets would be spent for a purpose that is detrimental to their interests.

Third, the Revised Merger Agreement contemplates a series of further machinations designed to give the Insiders voting control over Chateau. These include a planned sale of shares to the Insiders and a purchase of Chateau shares by ROC, each of which would help the Insiders and their allies achieve the votes necessary to consummate the merger and satisfy the 80 percent threshold necessary to ensure that the Insiders can transfer their tax liability to the shareholders. The directors have also restructured the merger so that it need only be approved by a majority of the Chateau shares voted rather than by two-thirds of the Chateau shares outstanding, which the original Chateau-ROC merger required.(3) All of these machinations serve no purpose

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3 Because Chateau was a direct participant in the original merger, Maryland law would have required the approval of two-thirds of Chateau's outstanding shares to approve that

(continued...)

other than to benefit the Insiders by assuring that the vote of the public shareholders will be effectively nullified. If the Insiders' interests had not been paramount, Chateau and ROC could have merely increased the stock conversion ratio in favor of Chateau shareholders without taking the additional steps of depriving the shareholders of effective voting rights and saddling them with a substantial tax burden.

At the same time that Chateau announced the Revised Merger Agreement, it also filed a Schedule 14D-9 opposing MHC OP's Tender Offer. Chateau took the position in the Schedule 14D-9 that the Tender Offer could not proceed because a provision in Chateau's corporate charter allegedly prohibits any person from owning more than seven percent of its common stock. MHC disagrees with this position and notes that it cannot be correct because, among other things, Chateau, as reported in its 1995 Annual Proxy Statement, has had a shareholder owning substantially in excess of seven percent of its stock.

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3 (...continued)  
merger. Under the Revised Merger Agreement, ROC is to merge with a subsidiary of Chateau and the Maryland law requirement is therefore avoided. The New York Stock Exchange Rules still require the approval of Chateau shareholders, but that approval need only be by a majority of the shares voted.

E. THE RESPONSE OF SHAREHOLDERS AND MARKET ANALYSTS TO THE INSIDERS' MANEUVERS HAS BEEN UNEQUIVOCALLY NEGATIVE.

Shareholders and market analysts were shocked at the brazen self-dealing reflected in the Revised Merger Agreement. On September 18, 1996, the day the Revised Merger Agreement was announced, Chateau stock closed at 24-7/8, down 1-3/4 (reducing the equity capitalization by more than \$26 million), closing at its lowest price since MHC announced its offer.

On September 19, 1996, the New York Times reported (Exhibit B) that a representative of a major shareholder of Chateau said "[t]heir main objective with this merger seems to be to structure a transaction that is tax-advantaged to the OP unit holders with little regard given to the wishes of the common shareholders." The New York Times reported that "shareholders were particularly exercised by a provision of the merger agreement that would saddle the shareholders of the combined company with \$27 million or more in deferred gains, which serve to reduce the tax burden that John Boll, the chairman and chief executive of Chateau, Edward Allen, a Chateau director, and others would incur in swapping units for stock."

On September 18, 1996, Louis Taylor of Prudential Securities, an independent REIT analyst, observed (Exhibit C):

"Chateau And Roc Shareholders Are Potentially Big Losers If The Merger Goes Forward. Chateau's announcement that it intends to pursue its merger with ROC Communities (RCI 23 7/89 -- Not Rated) is a blow to shareholders of both CPJ and ROC. In our view, its

tactics are designed only to thwart a valid offer of \$26 cash per share from MHC. We believe the MHC offer is the best offer for the CPJ shares and the CPJ board's unanimous rejection of the offer can be construed as a rejection of maximizing shareholder value. Moreover, the extraordinary tactics to avoid the MHC offer, including the transfer of \$27 million of unrecognized gains and the future tax liability to the new entity, imply management is concerned about its own interests, not public shareholders."

Similarly, on September 19, 1996, independent REIT analysts at Everen Securities, Inc. described the transaction as follows (Exhibit D):

"The revised merger agreement is a disappointment from an economic standpoint and a disaster from a fairness standpoint...While there are plenty of synergies to the ROC/Chateau combination, we actually believed MHC and Chateau were a better fit and perhaps offered more accretion. However, synergies and accretion are really no longer the point here, the point is now management credibility.

Conflicts of Interest: Instead of demonstrating to shareholders the merit of their proposed merger Chateau management has done nothing but highlight their own conflicts of interest -- protecting their tax position, jobs and egos. Chateau has shifted tax liability effectively to the common shareholder, reduced shareholders voting power to assure approval, initiated a share buyback which has absolutely no economic merit relative to the acquisition of property..."

#### F. THE CURRENT LITIGATION

On September 17, 1996, Chateau brought an action in this Court against the MHC Parties, contending that MHC OP's Tender Offer should be enjoined because the Schedule 14D-1 filed by the MHC Parties was false and misleading. Chateau also sought declarations that a provision in its corporate charter prevents

the MHC Parties from owning more than seven percent of Chateau's outstanding common stock and that Chateau's Board was not required to exempt the MHC Parties from the application of the Maryland Business Combination Act.

On September 25, 1996, the MHC Parties filed a counterclaim against Chateau, Chateau's directors and ROC, contending that the Revised Merger Agreement and the transactions contemplated thereunder constituted a breach (which ROC had aided) of the directors' fiduciary duties to Chateau's shareholders, that the Schedule 14D-9 filed by Chateau was false and misleading, that Chateau's charter did not prohibit the MHC Parties from owning more than seven percent of Chateau's outstanding common stock and that Chateau's Board was required to exempt the MHC Parties from the application of the Maryland Business Combination Act. The counterclaim seeks preliminary and permanent injunctive relief, and the MHC Parties have filed a motion for a preliminary injunction to prevent the counterclaim-defendants from carrying out the wrongful acts identified in the counterclaim.

The various aspects of the counterclaim-defendants' scheme to unjustly enrich themselves while preventing the shareholders from accepting MHC OP's offer are interrelated and should be considered together at the preliminary injunction stage of this litigation. However, the MHC Parties have brought this motion for a temporary restraining order because it is important that this Court preserve the status quo until it reaches a decision on

the MHC Parties' motion for a preliminary injunction. The temporary restraining order requested would prohibit the purchase or sale of Chateau shares by Chateau or its directors. It would also prohibit Chateau from taking other steps that would materially alter the status quo before the motion for a preliminary injunction is decided.

II. THE APPLICABLE STANDARDS FOR A TEMPORARY RESTRAINING ORDER.

Under Fourth Circuit law, the decision whether to grant a temporary restraining order involves the consideration of four factors: (1) the likelihood of irreparable harm to the plaintiff if injunctive relief is denied; (2) the likelihood of harm to the defendant if an injunction is issued; (3) the likelihood of success on the merits; and (4) the public interest. *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189 (4th Cir. 1977); *The Citrus Group, Inc. v. Cadbury Beverages, Inc.*, 781 F. Supp. 386, 388 (D. Md. 1991) (Nickerson, J.) (applying *Blackwelder*). (4) As the *Blackwelder* court explained, "[t]he two more important factors are those of probable irreparable injury

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4 The cases cited discussed the standard for granting a preliminary injunction. However, in the Fourth Circuit, "[t]he factors to be weighed before issuing a temporary restraining order are the same as those considered before issuance of a preliminary injunction." *Perdue Farms, Inc. v. National Labor Relations Board*, 927 F. Supp. 897, 904 (E.D.N.C. 1996); see also *Commonwealth of Virginia v. Kelly*, 29 F.3d 145, 147 (4th Cir. 1994) (applying *Blackwelder* test to temporary restraining order); *James A. Merritt & Sons v. Marsh*, 791 F.2d 328 (4th Cir. 1986) (same).

to plaintiff without a decree and of likely harm to the defendant with a decree. If that balance is struck in favor of plaintiff, it is enough that grave or serious questions are presented; and plaintiff need not show a likelihood of success." 550 F.2d at 196. As we explain below, all of these factors favor the granting of the requested temporary restraining order.

III. THE MHC PARTIES ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER.

A. MHC OP AND THE OTHER SHAREHOLDERS OF CHATEAU WILL SUFFER IRREPARABLE HARM IF THIS COURT DOES NOT ISSUE A TEMPORARY RESTRAINING ORDER.

MHC OP and the other shareholders of Chateau will suffer irreparable harm if the requested temporary restraining order is not granted. If Chateau repurchases stock or sells stock to Insiders prior to a decision on a motion for preliminary injunction, the status quo will be altered irrevocably. The voting power and ownership of Chateau, and the amount of cash held by or available to Chateau, will be materially different than they now are; the Insiders will have taken significant steps toward obtaining voting control of Chateau and will have depleted corporate assets in doing so.

Moreover, if a temporary restraining order is not granted and Chateau repurchases its stock, a number of existing shareholders will have sold their stock to Chateau prior to a decision on the MHC Parties' motion for a preliminary injunction. These shareholders would be unfairly and irremediably prejudiced



in making those sales because at present the market has discounted Chateau's stock price in light of the announcement of the Revised Merger Agreement and Chateau's misstatements in its Schedule 14D-9 about the MHC Parties' Tender Offer. If this Court agrees with the MHC Parties on the merits of this case and MHC OP's Tender Offer is successful, that is information the shareholders should have known before selling their stock. But it will be too late to undo what has occurred even if this Court were to agree with the MHC Parties' position after a preliminary injunction hearing unless the requested temporary restraining order is granted.

The repurchases and sales to Insiders of Chateau stock proposed by Chateau are an integral part of the Insiders' scheme to prevent the shareholders from accepting MHC OP's offer. If this Court concludes that that scheme is a breach of the Chateau directors' fiduciary duties, it would be unjust if the repurchases or sales had already been consummated. This Court should maintain the status quo until it has decided the merits of the case after a preliminary injunction hearing.

For reasons similar to those discussed above, a number of courts have entered temporary restraining orders to prevent the purchase of shares and to preserve the status quo in contests for corporate control. See, e.g., *UIS, Inc. v. Walbro Corp.*, 1987 WL 18108, at \*3-4 (Del. Ch. 1987); *Petty v. Penntech Papers, Inc.*, 347 A.2d 140, 143 (Del. Ch. 1975).

B. NEITHER CHATEAU NOR THE INSIDERS WILL BE HARMED BY A TEMPORARY RESTRAINING ORDER.

In contrast to the immediate, irreparable harm to Chateau shareholders and Chateau that will occur if the stock repurchases or sales proceed, neither Chateau nor its directors will be harmed if the Court temporarily restrains those purchases or sales. A short delay in the consummation of any purchases or sales would not preclude Chateau from proceeding with its plan if it succeeds at the preliminary injunction stage. Neither Chateau nor ROC have distributed proxy statements or set a record date for voting. Accordingly, the balance of harms clearly favors the entry of a temporary restraining order. See *Petty v. Penntech Papers, Inc.*, 347 A.2d 140, 143 (Del. Ch. 1975) (temporarily restraining selective stock redemption where the potential harm from delay in redemption was minimal in comparison to evidence that expenditure of corporate funds appeared designed to ensure management voting control); *UIS, Inc. v. Walbro Corp.*, 1987 WL 18108, \*4 (Del. Ch. Oct. 6, 1987) (temporarily restraining stock repurchase where "colorable" claim of breach of duty outweighed right of board to begin stock repurchase plan and where order would "allow a more thoughtful treatment of the issues presented").

C. THE MHC PARTIES HAVE A HIGH PROBABILITY OF SUCCESS ON THE MERITS.

The MHC Parties have a high probability of succeeding on the merits of their claim that the Chateau directors' plan to have the company purchase and sell stock, as part of their overall scheme to thwart MHC OP's offer at the expense of Chateau's shareholders, is a breach of the directors' fiduciary duties to those shareholders. The directors' duties are defined in Section 2-405.1(a) of the Maryland General Corporation Law, which provides:

"A director shall perform his duties as a director, including his duties as a member of a committee of the board on which he serves:

- (1) In good faith;
- (2) In a manner he reasonably believes to be in the best interests of the corporation; and
- (3) With the care that an ordinarily prudent person in a like position would use under similar circumstances."

The directors cannot satisfy the statutory requirement that they act in good faith, in a manner they reasonably believe to be in the best interests of the corporation and with the care that an ordinarily prudent person in a like position would use. The Revised Merger Agreement was plainly the product of an egregious conflict of interest that caused the Insiders, who own virtually no common stock and who dominate Chateau and its Board, to favor their own positions at the expense of the shareholders. There is

simply no explanation other than this conflict for the timing and structure of the Revised Merger Agreement.

As discussed above, the clear purpose of the revisions to the original Chateau-ROC merger agreement is to prevent Chateau's shareholders from accepting MHC OP's offer even if they wish to do so and to force the consummation of the Chateau-ROC merger against the will of the shareholders. Under the Revised Merger Agreement, the OP unit holders -- primarily the Insiders -- can convert their units into common stock on a tax-efficient basis. This conversion, along with the proposed expenditure of approximately \$35 million by Chateau to repurchase shares, the proposed sale of shares to the Insiders and the restructuring of the merger so that only a majority of the voting (instead of two-thirds of the outstanding) Chateau shareholders need to approve it, would give the Insiders the power to approve the ROC merger on their own, even if every single existing shareholder objects. MHC OP's offer would be terminated because the merger would be consummated even if MHC OP acquired 100 percent of the existing common stock.

The advantage to the Insiders would go beyond entrenching themselves and preventing MHC OP's offer from succeeding. The Insiders would also be able to obtain voting common stock in the new company while transferring to others a huge tax burden (the taxes on more than \$100 million of taxable gain), something they have never been able to do since Chateau was formed and would not

have been able to do under the original Chateau-ROC Agreement. This would be of enormous economic value to the Insiders.

However, while the transaction would be a bonanza for the Insiders, it would be a disaster for the existing shareholders. As defendants have conceded, the exchange of OP units by the Insiders would make the existing Chateau shareholders responsible for at least \$27 million (\$4 to \$5 per share) in taxable gain. More significantly, they would lose the right they now have to reject a merger with ROC and accept MHC OP's offer. To add insult to injury, this result would have been achieved by the expenditure by Chateau of up to \$35 million of corporate funds for the repurchase of stock that is designed to prejudice the shareholders' rights.

Chateau's directors should not be permitted to enter into transactions that allow the Insiders to transfer tax liabilities to the shareholders and at the same time prevent the shareholders from doing what is best for them. "Since a director is vested with the responsibility for the management of the affairs of the corporation, he must execute that duty with the recognition that he acts on behalf of others. Such obligation does not tolerate faithlessness or self-dealing." NCR Corp. v. American Telephone and Telegraph Co., 761 F. Supp. 475, 491 (S.D. Ohio 1991) (applying Maryland law), quoting Smith v. Van Gorkom, 488 A. 2d 858, 872 (Del. 1985). Under Maryland law, a "court may intervene to prevent (or annul) conduct on the part of directors that is

fraudulent or represents a breach of their fiduciary obligations." Mountain Manor Realty, Inc. v. Buccheri, 461 A. 2d 45, 51 (Md. App. 1983). Given the circumstances of this case, there is a high probability that this Court will intervene to prevent the Chateau directors from breaching their duties under Section 2-405.1.

D. THE PUBLIC INTEREST FAVORS GRANTING THE REQUESTED TEMPORARY RESTRAINING ORDER.

The public interest in ensuring that directors adhere to their fiduciary duties is manifest. "A PUBLIC POLICY, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that DEMANDS of a corporate officer or director, peremptorily and inexorably, the MOST SCRUPULOUS OBSERVANCE OF HIS DUTY, not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation...The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be NO CONFLICT BETWEEN DUTY AND SELF-INTEREST." Guth v. Loft, Inc., 5 A.2d 503, 510 (Del. 1939) (emphasis added). This language concisely sums up a long-established principle of American corporate law: that directors owe their corporation and its shareholders an uncompromising duty of loyalty. Under the circumstances present here, a temporary restraining order will ensure that Chateau and its directors do

not continue to allow self-interest to conflict with and compromise their fiduciary duty to Chateau's shareholders.

CONCLUSION

For the reasons set forth above, the MHC Parties request that this Court temporarily restrain Chateau and its directors from purchasing or selling Chateau shares or from taking other steps that would materially alter the status quo before the MHC Parties' motion for a preliminary injunction is decided.

Respectfully submitted,

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