

1 Michael St. James, CSB No. 95653
ST. JAMES LAW, P.C.
2 155 Montgomery Street, Suite 1004
San Francisco, California 94104
3 (415) 391-7566 Telephone
(415) 391-7568 Facsimile
4 michael@stjames-law.com

5 Counsel for Debtor
6

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 San Francisco Division

11
12 In re
13 2655 BUSH LLC.
14 Debtor

Case No. 12-30388-TC
Chapter 11

15
16
17 **COMBINED DISCLOSURE STATEMENT AND**
18 **PLAN OF REORGANIZATION**

19 *Dated June 17, 2012*
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 2655 Bush LLC (the “Debtor”) has proposed this Combined Chapter 11 Plan of Reorganization
3 and Disclosure Statement (the “Plan”) for acceptance by its creditors.

4 The Debtor’s sole material asset is a building and associated parking garage located at
5 2655 Bush Street, at the intersection of Divisadero Street, in San Francisco, California (the "Property").
6 The Property has received entitlements for development into approximately 4,180 square feet of retail
7 space and 81 residential condominium or apartment units. The Debtor intends to sell the Property,
8 thereby providing funds to satisfy all of its debts; until that occurs, the Debtor’s sole member will
9 continue to provide the Debtor with financial support.

10 Under the Plan of Reorganization, the Debtor proposes to pay secured and unsecured creditors in
11 full, over time. Specifically, the debt secured by a first deed of trust encumbering the Property will
12 receive monthly payments of interest and principal, and a balloon payment of the balance of the debt
13 upon the sale of the Property, or in any event by the first day of the 18th month after the Effective Date
14 of the Plan. Substantially all other secured and unsecured debts will be paid in full, half when the Plan
15 becomes effective, half on the first anniversary of the Effective Date.

16 Part II of the Plan presents background information regarding the Debtor and the events that led
17 to the filing of the bankruptcy petition and disclosures regarding the Plan. Attached to the Plan as
18 Exhibit B is an analysis of how much creditors would likely receive in a Chapter 7 liquidation.

19 Part III of the Plan presents the monetary treatment of creditors. Part IV contains other
20 provisions governing the treatment of creditors under the Plan, including provisions regarding the
21 Debtor’s discharge and creditors’ remedies if the Debtor defaults in its obligations under the Plan.

22 All creditors are entitled to vote on confirmation of the Plan because they are in “impaired”
23 classes. Completed ballots must be received by the Debtor’s counsel, and objections to confirmation
24 must be filed and served, no later than [date]. The Court will hold a hearing on confirmation of the Plan
25 on [date] at [time].

26 Whether the Plan is confirmed is subject to complex legal rules that cannot be fully described
27 here. You are strongly encouraged to read the Plan carefully and to consult an attorney to help you
28 determine how to vote and whether to object to confirmation of the Plan.

If the Plan is confirmed, the payments promised in the Plan constitute new contractual
obligations that replace the Debtor’s pre-confirmation debts. Creditors may not seize their collateral or
enforce their pre-confirmation debts so long as Debtor performs all obligations under the Plan. If
Debtor defaults in performing Plan obligations, any creditor can file a motion to have the case dismissed
or converted to a Chapter 7 liquidation, or enforce their non-bankruptcy rights.

1 **II. BACKGROUND AND DISCLOSURES**

2 **A. Events Leading to the Bankruptcy Filing**

3 1. Pre-Petition Effort to Develop the Property

4 The Debtor purchased the Property from Sum L. Seto Properties, LLC and Jenny P. Seto
5 Properties, LLC (collectively, the "Setos") in 2005. The purchase price was \$9.4 million, consisting of
6 \$3 million in cash and a promissory note payable to the Setos, secured by a first deed of trust
7 encumbering the Property, for \$6.4 million (the "Note"). Under the Note, interest accrued but was not
8 paid, except for the interest that accrued in the fifth year. As a consequence, on maturity in 2011,
approximately \$8 million was owed on the Note. The cash component of the purchase price was
obtained through a loan from the Debtor's sole member, Ernest McNabb.

9 The Property was occupied by a skilled nursing convalescent hospital until September of 2007.
10 The building has been vacant and unoccupied since then, although commencing in 2011 the Debtor
leased the parking garage on a month-to-month basis.

11 Following acquisition of the Property, the Debtor diligently undertook to obtain entitlements to
12 develop the Property.

13 The Debtor caused architectural designs and technical drawings to be prepared by Forum
14 Design, Ltd. presenting the development of the Property into 81 residential condominium units or
apartments and a 4,180 square foot retail space (the "Project Design"). The Debtor holds an exclusive
15 license to the Project Design, duly recorded with the United States Copyright Office.

16 The Debtor sought and obtained from governmental authorities appropriate entitlements to
17 prosecute the development based on the Project Designs. That effort was successfully concluded
when the Planning Commission for the City and County of San Francisco voted unanimously to grant
18 the Debtor's Application No. 2005.1106C and Planning Commission Motion No. 17922 to allow a
Planned Unit Development with 81 residential units, 86 parking spaces and approximately 4,180
19 square feet of ground floor commercial space at 2655 Bush Street, and issued a Conditional Use
Authorization to that effect on July 16, 2009.

20 2. The Ryan Litigation

21 Following issuance of the Conditional Use Authorization, Stephen Ryan presented an untimely
22 challenge in an effort to block the development. Mr. Ryan attempted to appeal to the San Francisco
Board of Supervisors, but failed to collect the requisite number of signatures to qualify his petition.
23 Although Mr. Ryan had failed to exhaust his administrative remedies as required by law, Mr. Ryan
nonetheless advanced his challenge through litigation, filing a lawsuit entitled *Stephen Ryan v. The San*
24 *Francisco Department of City Planning et al.* in which he was represented by Demas Yan. The Debtor
25 successfully defended the lawsuit as the real party in interest.

26 Ryan appealed that determination to the First District Court of Appeals. The Debtor
successfully defended that appeal.

27 Ryan then appealed to the California Supreme Court. The Debtor successfully defended that
28 appeal and on August 17, 2011, the California Supreme Court denied Ryan's petition for review,

1 The pendency of the Ryan lawsuit made it impossible to prosecute development of the Property
2 or to sell the Property for development. All forward movement on the project was frozen until August
3 17, 2011, when Ryan's appeal was finally rejected by the California Supreme Court.

3 3. The Seto's Loan Matures

4 Sales of real property for development are characterized by long contingency periods, during
5 which the buyer does "due diligence" on the property and its entitlements, and also determines whether
6 it can obtain the necessary financing and development resources to successfully implement the
7 development.

7 Unfortunately, by the time the California Supreme Court finally ended the Ryan lawsuit, the
8 Debtor only had about six weeks left before its debt to the Setos would mature. The Debtor attempted
9 to negotiate an extension with the Setos seeking to defer the commencement of foreclosure
10 proceedings so as to allow for the Property to be sold at a fair market value, but those efforts were
11 unsuccessful. The Debtor believed that following the commencement of foreclosure proceedings,
12 prospective purchasers would view the Property as distressed, and reduce their offers to opportunistic
13 levels. Indeed, a sale was pending when the foreclosure process commenced, and the buyer reneged
14 shortly thereafter.

12 Setos continued to prosecute efforts to foreclose upon the Property, and the foreclosure sale
13 was set for February 9, 2012. This bankruptcy case was filed on February 8, 2012 to prevent the
14 foreclosure and to permit a restructuring of the Debtor's debts so as to enable it to realize the
15 substantial equity in the project.

15 ***B. The Debtor's Current Assets and Liabilities***

16 1. Assets

17 The Debtor has two principal assets. First, it owns the Property located at 2655 Bush Street.
18 The Property is improved with a two-story convalescent hospital containing 37,583 square feet of
19 rentable space. The building has been vacant for approximately 4½ years, although the parking garage
20 is currently being operated. The Debtor believes that the highest and best use of the Property is for it
21 to be developed consistent with the entitlements the Debtor has obtained.

21 The Debtor's other significant assets consist of two interrelated intangible property rights: the
22 Project Design and the Conditional Use Authorization. The Project Design and the Debtor's exclusive
23 license to the Project Design have been perfected through registration and recordation with the U. S.
24 Copyright Office. The Conditional Use Authorization and associated entitlements relating to the
25 development of the Property permit its development in the fashion contemplated by the Project Design.

24 The Debtor believes that a different developer proceeding without access to the Project Designs
25 would be required to commence the entitlement process "from scratch" and develop *new* designs and
26 *new* technical drawings, and then commission a *new* environmental impact report for the *new* project.
27 This process would likely take years to complete and would require San Francisco Planning
28 Department approval; neighborhood notice and meetings; and finally, Planning Commission approval.
Additionally, the developer might face neighborhood opposition and an appeal of any Planning
Commission approval to the Board of Supervisors. Further, this opposition could include Mr. Ryan's
timely legal challenge to the environmental impact report, as well as any Planning Commission

1 approval. Thus, the Debtor believes that its intangible assets have substantial value to any buyer who
2 wishes to develop the Property.

3 The Debtor's Schedule of Assets filed at the outset of the bankruptcy case valued the Debtor's
4 real estate, coupled with its intangible assets, in the range of \$12 to \$15 million. In the course of
5 bankruptcy litigation, the Debtor obtained an MAI appraisal which valued the property at \$14.5 million
6 and a Broker's Opinion of Value, which concluded that the property could be sold for \$13 million to
7 \$15 million. In the same litigation, the Setos presented two appraisals, one which valued the property
8 at \$7.6 million and another which valued the property at \$8.6 million

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Liabilities

a. *Secured Debts*

The Debtor has five liabilities secured by the Property.

First, real property taxes (assigned to Class 1A in the Plan of Reorganization) were current as of the commencement of the Bankruptcy case, the Debtor having timely paid the installment due in December. The installment due in April of 2012, in the approximate amount of \$58,833.33 has not yet been paid and represents the sole Class 1A claim.

The Setos are owed approximately \$8.2 million, secured by a First Deed of Trust encumbering the Property (this debt is the subject of Class 1B under the Plan of Reorganization). This debt matured pre-petition. Following the commencement of the case, the Debtor has funded adequate protection payments of \$37,583.33 per month to the Setos on account of accruing interest on their debt at the contract interest rate.

Shortly before commencing the bankruptcy case, the Debtor borrowed \$75,000 secured by three junior deeds of trust encumbering the Property so as partially to fund the retainer for its bankruptcy counsel and to provide liquidity in the first months of the bankruptcy case. The secured debts are classified in Classes 1C, 1D and 1E under the Plan of Reorganization.

It should be noted that all of the foregoing secured creditors' liens encumber only the real Property and not the intangible assets of the Debtor. The Debtor believes that the value of the Property exceeds the aggregate of all secured claims, and as a consequence the secured creditors will be entitled to recover post-bankruptcy interest.

b. *Unsecured Debts*

The Debtor expended more than \$1 million in its efforts to prosecute development of the Property and defend against the Ryan lawsuit. Most of its expenses were satisfied through loans provided by its sole member, but some obligations remain unpaid and outstanding, primarily relating to consultants. Non-insider unsecured debts aggregate approximately \$60,000 and are the subject of Class 2A under the Plan; they are identified in detail in Exhibit A.

The sole member loaned more than \$3 million to the Debtor in order to fund the cash portion of the purchase price, and thereafter loaned more than an additional \$1 million to the Debtor in order to enable it to prosecute the development and defend against the Ryan lawsuit. The sole member's loans to the Debtor are the subject of Class 2B under the Plan.

1 **C. Marketing Efforts**

2 At around the time that the Ryan litigation ended and the Setos' Note came due, the Debtor
3 entered into two successive sale agreements, with proposed purchase prices of \$14.975 million and \$14
4 million, respectively. At about the same time, the Debtor received a proposed Letter of Intent which
5 contemplated a sale at \$14.5 million. The two sale agreements cancelled within their contingency
6 period.

7 The Debtor believes that they cancelled due to the perception of seller distress after learning of
8 the Setos' foreclosure proceeding. One of the sale counter-parties, through a different entity, offered to
9 purchase the Setos' Note at more than face value; the other submitted a proposed letter of intent to
10 purchase the property from the Debtor at the reduced price of \$12.5 million.

11 Shortly before the bankruptcy filing, the Debtor retained Greenwich Group as its investment
12 banker to market the property. The Greenwich Group prepared and disseminated a Development
13 Investment Memorandum and undertook a process to solicit a sale of the property. That effort resulted
14 in offers with purchase prices substantially reduced from the prior sales, leading the Debtor to
15 conclude that they were the result of opportunistic activity based on perceptions of seller distress.

16 The Debtor continued to engage in marketing efforts following the commencement of its
17 Chapter 11 case. In June, the Debtor entered into an agreement to sell the property for \$14.5 million,
18 but the contingency period will not expire until July 30, 2012. If at that time the buyer releases all
19 contingencies, the Debtor will move the Court to approve the sale and may defer the hearing on
20 confirmation of this Plan.

21 **D. Intended Business Reorganization**

22 But for the Ryan lawsuit, the Debtor could have successfully prosecuted its development
23 project, paying all debts in full and eliminating the need for any Chapter 11 case. Although the sole
24 member of the Debtor is an experienced real estate developer who has successfully participated in 10
25 prior development projects and built 15 buildings, he was never previously associated with any
26 Chapter 11 case.

27 Although real estate development projects have long gestation periods, the 2½ years between
28 the Planning Commission's approval of a Conditional Use Authorization for the project and the
maturity of the Setos' debt would likely have been sufficient to provide for a suitable disposition of the
Property. Unfortunately, the six weeks between the termination of the Ryan lawsuit and the maturity
of the Setos' Note were not. Through the Plan of Reorganization, the Debtor proposes to restructure
the Setos Note so as to eliminate the threat of imminent foreclosure and to provide it with an
opportunity to realize its equity in the Property and its intangible assets.

 Under the Plan, the Debtor will sell the project promptly after confirmation. The Plan provides
for an assumption of the contract with Greenwich, and the Debtor anticipates that marketing efforts
would commence immediately. Although the Debtor has continued to attempt to market the property
following its bankruptcy filing, it is doubtful that a fair market value for the Property can be obtained
in the face of the Setos' foreclosure and the instant Chapter 11 case pending, because the market will
consider the Property to be distressed.

1 For the past several years, the Property has generated little or no rental income or other
2 revenues, and the sole Member has provided the funds necessary to satisfy its expenses and
3 obligations. The Debtor expects to continue to rely upon its sole Member as the source of necessary
4 funding for operations and for payments under the Plan of Reorganization until the Property is
5 developed or sold.

6 ***D. Liquidation and Sale Alternatives***

7 The Debtor believes that so long as there is a foreclosure and a bankruptcy case pending, the
8 market will view the Property as distressed, and only opportunistic purchase offers at less than fair
9 market value will be presented.

10 That perception is consistent with the Debtor's experience: previously, it had entered into two
11 contracts to sell the Property at market prices, but in each case the buyers reneged shortly after the Setos
12 recorded a Notice of Default. Shortly thereafter, a developer offered the Debtor \$100,000 to execute a
13 deed in lieu of foreclosure in favor of the Setos. The Debtor does not believe it can obtain a fair market
14 value for the Property until it exits bankruptcy with stable secured debt that cannot be interpreted as
15 leaving it distressed.

16 Exhibit B presents an analysis of the results of a liquidation of its assets by a Chapter 7 trustee
17 under various alternative scenarios.

18 ***E. Risk Factors***

19 If confirmed, the Debtor believes that the Plan is likely to be performed. Nonetheless, there is
20 one significant risk factor: it is not clear that the Debtor will successfully close a sale within the 18
21 months available to it under the Plan.

22 Sales agreements for development land typically provide the buyer with a contingency period of
23 2 to 3 months, during which the seller takes the property off the market and the buyer conducts an
24 extensive investigation into the merits of the development. During the contingency period the buyer
25 ordinarily can walk away from the transaction, losing its out-of-pocket costs, but at no further cost. The
26 seller must then resume marketing the property.

27 It is not uncommon for a development property to go into contract and have the contract
28 cancelled by the end of the contingency period. If that occurs post-confirmation, it will consume a
portion of the 18 month marketing period. In addition, as potential buyers learn that the marketing
period is nearing an end, enabling the Setos to foreclose, they will perceive seller distress and offered
purchase prices will drop accordingly. (Indeed, that was the Debtor's experience following the
recording of a Notice of Default by the Setos pre-bankruptcy.)

During the six months before the Debtor defaulted under the Note, the Setos engaged in efforts
to market their interest in the property, essentially publicizing their expectations of "seller distress,"
effectively undercutting the Debtor's sale efforts. Should that occur again post-confirmation, it could
severely shorten the practical extent of the marketing period.

Thus, there is a real and material danger that if a couple sales agreements are canceled at the end
of their contingency periods and/or the Setos persuade the market that seller distress is imminent, the
Debtor will fail to conclude a sale during the available marketing period. Originally, the Debtor

1 proposed a Plan that would effectively have provided a five year marketing period and thereby
2 eliminated this risk, but it seemed clear the Court viewed that period as too long, so the Debtor has
3 proposed the longest marketing period it believes the Court will approve.

3 ***F. Tax Consequences***

4 It is the Debtor's best estimate that confirmation of the Plan will generally be tax neutral for
5 creditors and the Debtor.

6 All creditors are to be paid in full under the Plan. From the perspective of the Debtor and of the
7 creditor, the payments to be made under the Plan will likely have precisely the same tax attributes and
8 consequences as they would have had, if the claims had been timely paid in the absence of the
9 bankruptcy case: if the payment by the Debtor otherwise would have been taxable income to the
10 creditor, it will be taxable income when made under the Plan.

11 There are two circumstances in which the tax consequences may differ. First, payments may be
12 made or received in a different tax year as a result of the deferrals provided by the bankruptcy process,
13 which may have an effect on certain taxpayers. Second, since creditors are to be paid in full under the
14 Plan, there will likely be tax consequences to any creditors that have already taken a bad debt deduction
15 with respect to any obligation of the Debtor.

16 Creditors are urged to obtain and rely upon the advice of their tax professionals, rather than the
17 foregoing summary.

1 **III. TREATMENT OF CREDITORS**

2
3 **Class 1A: City and County of San Francisco**

4 **Treatment: Retain lien, principal paid in two equal installments of \$29,400 on Effective Date**
5 **and on the earlier of sale or the first anniversary of Effective Date, interest and charges paid with**
6 **second installment.**

7 3.1. Class 1A: The Class 1A Claim is impaired and can vote on the Plan. In full and
8 complete satisfaction, the holder of Allowed Class 1 Claim:

9 3.1.1. Shall retain its lien; and

10 3.1.2. Shall receive two equal payments of principal paid on the Effective Date and on
11 the earlier of (a) the closing of a sale of the property, or (b) the first anniversary of the Effective
12 Date, together with interest at the rate established by Section 511 of the Code paid on the first
13 anniversary of the Effective Date

14 **Class 1B: Sum L. Seto Properties, LLC and Jenny P. Seto Properties, LLC (the “Setos”)**

15 **Treatment: Retain liens, 18 monthly payments of approximately \$42,000 and a 19th payment of**
16 **the balance owed, approximately \$7.5 million; paid in full upon sale, if earlier.**

17
18 3.2. Class 1B: The Class 1B Claim is impaired. In full and complete satisfaction,:

19 3.2.1. The holder of Allowed Class 1B Claim shall retain its lien and the terms of its
20 existing deed of trust and promissory note except as expressly modified by this Plan;

21 3.2.2. The existing Notice of Default under that deed of trust shall be cancelled and of
22 no legal effect;

23 3.2.3. The holder of Allowed Class 1B Claim shall receive monthly payments of
24 principal amortized over a 30 year period and interest at the Interest Rate, with the initial
25 payment funded on the first day of the first calendar month following the Effective Date and the
26 remaining payments funded on the first day of each succeeding month;

1 3.2.4. The then-remaining balance of the Class 1 Claim shall be paid in full on the
2 earlier of (a) the closing of a sale of the property, or (b) the first day of the 19th month following
3 the first payment provided for in the preceding paragraph.
4

5 **Class 1C: Katherine Simon**

6 **Treatment: Retain lien, principal paid in two equal installments of \$15,000 on Effective Date**
7 **and on the earlier of sale or the first anniversary of Effective Date, interest at 6% paid with**
8 **second installment.**

9 3.3. Class 1C: The Class 1C Claim is impaired and can vote on the Plan. In full and
10 complete satisfaction, the holder of Allowed Class 1C Claim:

11 3.3.1. Shall retain its lien; and

12 3.3.2. Shall receive two equal payments of principal paid on the Effective Date
13 and on the earlier of (a) the closing of a sale of the property, or (b) the first anniversary of the
14 Effective Date, together with interest at the Existing Interest Rate, paid on the first anniversary of
15 the Effective Date.

16 **Class 1D: Peter Siwinski**

17 **Treatment: Retain lien, principal paid in two equal installments of \$12,500 on Effective Date**
18 **and on the earlier of sale or the first anniversary of Effective Date, interest at 6.5% paid with**
19 **second installment.**

20 3.4. Class 1D: The Class 1D Claim is impaired and can vote on the Plan. In full and
21 complete satisfaction, the holder of Allowed Class 1D Claim:

22 3.4.1. Shall retain its lien; and

23 3.4.2. Shall receive two equal payments of principal paid on the Effective Date
24 and on the earlier of (a) the closing of a sale of the property, or (b) the first anniversary of the
25 Effective Date, together with interest at the Existing Interest Rate, paid on the first anniversary of
26 the Effective Date.
27
28

1 **Class 1E: Robert Guichard**

2 **Treatment: Retain lien, principal paid in two equal installments of \$10,000 on Effective Date**
3 **and on the earlier of sale or the first anniversary of Effective Date, interest at 7% paid with**
4 **second installment.**

5 3.5. Class 1E: The Class 1E Claim is impaired and can vote on the Plan. In full and
6 complete satisfaction, the holder of Allowed Class 1E Claim:

7 3.5.1. Shall retain its lien; and

8 3.5.2. Shall receive two equal payments of principal paid on the Effective Date
9 and on the earlier of (a) the closing of a sale of the property, or (b) the first anniversary of the
10 Effective Date, together with interest at the Existing Interest Rate, paid on the first anniversary of
11 the Effective Date.

12 **Class 2A: General Unsecured Creditors**

13 **Treatment: Payment in full, without interest, principal paid in two equal installments on**
14 **Effective Date and on the earlier of sale or the first anniversary of the Effective Date.**

15 **Allowance: Only Allowed unsecured claims will receive payment: Allowed unsecured claims**
16 **and potentially Allowed unsecured claims are identified by name in Exhibit A.**

17 3.6. Class 2A: The Class 2A Claims are Impaired.

18 3.6.1. In full and complete satisfaction, the holders of Allowed Class 2A Claims
19 shall receive payment in full, without interest, over time.

20 3.6.2. Specifically the holders of Allowed Class 2A Claims shall receive two
21 equal payments of principal paid on the Effective Date and on the earlier of (a) the closing of a
22 sale of the property, or (b) the first anniversary of the Effective Date.

23 **Class 2B: Unsecured Claim of Ernest McNabb**

24 **Treatment: No payment until every other creditor has received all payments provided under the**
25 **Plan; thereafter, payment on such terms as the Debtor and Mr. McNabb agree.**

26
27 3.7. Class 2B: The Class 2B Claim is Impaired.
28

1 3.7.1. In full and complete satisfaction, the holders of Allowed Class 2B Claims shall
2 receive payment on such terms as he and the Reorganized Debtor may agree, *provided* that no
3 payment shall be made with respect to any Class 2B claim until every other creditor whose claim
4 is entitled to payment under this Plan has received the entirety of its Plan treatment.

5
6 **Class 3: Ownership Interests of Ernest McNabb**

7 **Treatment: Mr. McNabb's ownership interest is not affected by the Plan.**

8
9 3.8. Class 3: The Class 3 Interest is unimpaired.

10
11 **Administrative Claims**

12 **Treatment: Post-bankruptcy debts will be paid in full on confirmation of the Plan or when they**
13 **come due.**

14
15 3.9. *Non-Classified Claims*. The non-classified Claims described in Section 3.3 hereof shall
16 be treated as follows:

17 3.9.1. With respect to every claim and expense entitled to treatment under Section
18 503(b) of the Code, excepting only those Claims described in the following paragraph 3.8.2, to
19 the extent, if any, that the holder of such a Claim has not heretofore been paid, then, on the
20 Effective Date or as promptly thereafter as the Claim shall become an Allowed Claim, each
21 holder of such a Claim shall receive from the Reorganized Debtor cash equal to the Allowed
22 amount of such Claim.

1 3.9.2. With respect to the Allowed Claim of the Office of the United States Trustee in
2 respect of any demand for fees entitled to treatment pursuant to Section 1129(a)(12) of the Code,
3 to the extent, if any, that such a Claim has become due prior to the Confirmation Date and has
4 not heretofore been paid, then, on the Effective Date, holder of such a Claim shall receive from
5 the Reorganized Debtor cash equal to the Allowed amount of such Claim. Any such claim
6 relating to the period from the Confirmation Date until entry of the Final Decree shall be paid by
7 the Estate promptly after it has been liquidated.
8

9 **Assumed Contracts: The Contracts with ABC Parking and The Greenwich Group are**
10 **assumed under the Plan and shall remain binding and effective after confirmation. Any other**
11 **unexpired contracts are rejected** by confirmation of the Plan. No claims arising out of such rejection
12 shall be Allowed unless the counterparties to such contracts have filed Proofs of Claim with the Court
13 within the 30 days following the Effective Date
14

15 **IV. OTHER PROVISIONS GOVERNING THE TREATMENT OF CREDITORS**

16 4.1. The following definitions apply in this Plan:

17 4.1.1. "Allowed Claim" means a Claim against the Debtor (a) proof of which was timely
18 filed with the Bankruptcy Court and as to which no objection has been filed; (b) which was listed
19 in Debtor's Schedules of Assets and Liabilities filed herein and (i) not shown as disputed,
20 contingent or unliquidated and (ii) as to which no objection has been filed; or (c) which has been
21 Allowed by a Final Order of the Bankruptcy Court.

22 4.1.2. "Confirmation Date" means the date on which the Order of Confirmation is
23 entered.

24 4.1.3. "Confirmation Deposit" means a deposit of cash to the attorney-client trust
25 account maintained by Debtor's counsel, sufficient to fund all payments due on the Effective
26 Date, which shall unconditionally be dedicated to that purpose, provided only that the Plan is
27 confirmed and becomes Effective.

28 4.1.4. "Debtor" means 2655 Bush LLC.

1 4.1.5. "Effective Date" means a date selected by the Debtor which is not later than 30
2 days after the Order of Confirmation becomes a final order, provided that the finality
3 requirement may be waived by the Debtor.

4 4.1.6. "Existing Interest Rate" shall mean the interest rate established by the pre-petition
5 agreement between the Debtor and the applicable secured creditor, or, if the creditor objects
6 through a timely Objection to confirmation of this Plan, such rate as the Court shall determine,
7 when applied to the treatment of the Class 2 claim provides the holder with "deferred cash
8 payments... of a value, as of the Effective Date of the Plan, of at least the value of such holder's
9 interest in the estate's interest in such property."

10 4.1.7. "Interest Rate" shall mean 4.5% or, if the holder of the Class 2 Claim objects
11 through a timely Objection to confirmation of this Plan, such rate as the Court shall determine,
12 when applied to the treatment of the Class 2 claim provides the holder with "deferred cash
13 payments... of a value, as of the Effective Date of the Plan, of at least the value of such holder's
14 interest in the estate's interest in such property."

15 4.1.8. Single-spaced provisions of the Plan are merely explanatory and illustrative; the
16 Debtor shall be bound only by the double-spaced provisions of the Plan, except where doing so
17 would be manifestly unjust.

18 4.1.9. A term used in the Plan, whether or not capitalized, that is not defined in the Plan
19 but that is used in the Code has the meaning assigned to the term in the Code. If a term is not
20 defined in the Plan or the Code, it shall be given the meaning ordinarily ascribed to it in
21 bankruptcy or insolvency law.

22 4.2. *Means of Execution:*

23 4.2.1. Prior to the seventh day before the first date set for the Confirmation Hearing,
24 Ernest McNabb shall post the Confirmation Deposit to the attorney-client trust account of
25 Debtor's counsel. Those funds shall be released to the applicable creditors upon the Effective
26 Date of the Plan, and otherwise shall be returned to Mr. McNabb.

27 4.2.2. From and after the Confirmation Date:
28

1 4.2.2.1. Any amounts to be paid under this Plan may be paid by either the
2 Debtor or a disbursing agent, as the Debtor shall determine.

3 4.2.2.2. All funds which are undisbursed or are returned and have not been
4 claimed by the 540th day after the Effective Date, e.g., because the recipient of the funds
5 could not be located or because the recipient refused to accept the funds, and any other
6 excess and undistributable cash, including *de minimis* distributions, shall be retained by
7 the Debtor free of creditor claims.

8 4.2.3. From and after the Effective Date, the Reorganized Debtor may move the Court
9 for such Orders as it deems advisable or beneficial to creditors or for the implementation of this
10 Plan.

11 4.2.4. No distribution shall be made on account of any Claim unless and until it is
12 determined to be an Allowed Claim by the Debtor or the Court.

13 4.2.5. From and after the Effective Date, only the Reorganized Debtor may prosecute
14 objections to claims.

15 4.2.6. Professionals employed by the Reorganized Debtor may be paid in the ordinary
16 course and need not submit fee applications with respect to services performed after the
17 Confirmation Date.

18 4.2.7. Notwithstanding anything to the contrary, on and after the Effective Date, all of
19 the property of the Estate, including without limitation the Property and all causes of action, shall
20 revert in the Reorganized Debtor, free and clear of all claims, liens and interests except as
21 specifically provided herein. Confirmation of this Plan shall result in a release of any causes of
22 action that arise exclusively under Title 11.

23 4.2.8. *Grace Period:* Any payment to be made under the Plan shall be deemed timely
24 made if it is mailed to the recipient's last known address within the 10 calendar days following
25 the date described in this Plan.

26 4.2.9. *Effect of Confirmation.* On the Confirmation Date, the provisions of this Plan
27 shall be binding on the Debtor, the Estate, all holders of Claims against or Interests in the
28 Debtors, and all other Persons whether or not such Persons have accepted this Plan. Except as

1 provided otherwise in this Plan, from and after the Effective Date, the automatic stay of section
2 362(a) of the Bankruptcy Code shall terminate.

3 4.2.10. *Integration.* The provisions of this Plan and the Order of Confirmation supersede
4 any and all prior agreements, documents, understandings, written or otherwise, in respect of any
5 Claim against the Debtors, and the treatment or satisfaction thereof. All such prior agreements,
6 documents or understandings are merged herein, and no person may thereafter pursue or
7 prosecute any Claim or demand arising out of or pertaining to such superseded agreements,
8 documents or understandings as against the Committee or the Estate.

9 4.2.11. *Section Headings.* The section headings contained in the Plan are for reference
10 purposes only and shall not affect in any way the meaning or interpretation of the Plan.

11 4.3. *Discharge and Injunction*

12 4.3.1. *Discharge of Claims and Termination of Interests.* Except as otherwise provided
13 in the Plan or the Order of Confirmation and to the maximum extent permitted by the
14 Bankruptcy Code and any other applicable law: (i) on the Effective Date, the Reorganized
15 Debtor shall be deemed discharged and released from all Claims and Interests, including without
16 limitation demands, liabilities, Claims and Interests that arose before the Effective Date and all
17 debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether
18 or not: (A) a proof of Claim or proof of Interest based on such debt or Interest is filed or deemed
19 filed pursuant to section 501 of the Bankruptcy Code, (B) a Claim or Interest based on such debt
20 or Interest is Allowed pursuant to section 502 of the Bankruptcy Code, (C) the holder of a Claim
21 or Interest based on such debt or Interest has accepted the Plan, or (D) such Claim is listed in the
22 Debtors' schedules of assets and liabilities; and all Persons (including without limitation
23 governmental entities) shall be precluded from asserting against each Reorganized Debtor, its
24 successors, or its assets any other or further Claims or Interests based upon any act or omission,
25 transaction or other activity of any kind or nature that occurred prior to the Effective Date.
26 Except as otherwise provided in the Plan or the Order of Confirmation, upon the occurrence of
27 the Effective Date, the Order of Confirmation shall act as a discharge of any and all Claims
28 against and all debts and liabilities of the Reorganized Debtors, as provided in sections 524 and

1 1141 of the Bankruptcy Code, and such discharge shall void any judgment against each
2 Reorganized Debtor at any time obtained to the extent that it relates to a Discharged Claim.

3 4.3.2. *Injunction.* The Order of Confirmation will permanently enjoin the
4 commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any
5 Claims discharged or modified pursuant to the Plan and any efforts to sell, joint venture or
6 otherwise address claims against the Property which have the effect of impairing the Debtor's
7 efforts to sell the Property.

8 4.4. *Chapter 11 Post-confirmation Reports and Final Decree.*

9 4.4.1. Post-confirmation Reports. Not later than 90 days after entry of the Confirmation
10 Order and quarterly thereafter, the Debtor shall file a quarterly post-confirmation status report,
11 the purpose of which is to explain the progress made toward substantial consummation of the
12 confirmed plan of reorganization. The quarterly reports shall be filed no later than 30 days
13 following the end of the applicable calendar quarter. The report shall include a statement of
14 receipts and disbursements, with the ending cash balance, ending on the last day of a quarter.
15 The report shall also include information sufficiently comprehensive to enable the court to
16 determine: (1) whether the order confirming the plan has become final; (2) whether deposits, if
17 any, required by the plan have been distributed; (3) whether any property proposed by the plan to
18 be transferred has been transferred; (4) whether the Debtor under the plan has assumed the
19 business or the management of the property dealt with by the plan; (5) whether payments under
20 the plan have commenced; (6) whether accrued fees due to the United States Trustee under 28
21 U.S.C. § 1930(a)(6) have been paid; and (7) whether all motions, contested matters and
22 adversary proceedings have been finally resolved. Further quarterly reports must be filed every
23 90 days thereafter until entry of a final decree, unless otherwise ordered by the court.

24 4.4.2. Post-Confirmation United States Trustee Quarterly Fees. A quarterly fee shall be
25 paid by the Reorganized Debtor to the United States Trustee, for deposit into the Treasury, for
26 each quarter (including any fraction thereof) until this case is converted, dismissed, or closed
27 pursuant to a final decree, as required by 28 U.S.C. § 1930(a)(6).
28

1 4.4.3. Service of Reports. A copy of each report shall be served, no later than the day
2 upon which it is filed with the court, upon the United States Trustee and such other persons or
3 entities as may request such reports in writing by special notice filed with the court.

4 4.5. The Bankruptcy Court shall retain and have jurisdiction over the bankruptcy case for all
5 purposes provided by the Code, including, without limitation, for the following purposes:

6 4.5.1. To determine any and all objections to the allowance of Claims and to allow,
7 disallow, estimate, liquidate or determine any Claim;

8 4.5.2. To grant full and complete relief upon the request of the Reorganized Debtor;

9 4.5.3. To determine any and all motions for compensation and reimbursement of
10 expenses and any other fees and expenses authorized to be paid or reimbursed under the Code or
11 the Plan which accrued on or prior to the Confirmation Date;

12 4.5.4. To determine any and all applications, adversary proceedings and contested or
13 litigated matters that may be pending on the Effective Date, except as provided in the
14 Confirmation Order, or which shall be commenced on or after the Effective Date and be properly
15 before the Bankruptcy Court;

16 4.5.5. To consider any modifications of the Plan, any defect or omission, or reconcile
17 any inconsistency in any order of the Bankruptcy Court, including the Order of Confirmation, to
18 the extent authorized by the Code; and

19 4.5.6. To implement the provisions of the Plan and to issue orders in aid of execution of
20 the Plan to the extent authorized by Section 1142 of the Code.

1 **V. CONFIRMATION REQUEST**

2 If necessary, the Debtor requests Confirmation of the Plan pursuant to Section 1129(b) of the
3 Code.

4
5 DATED: June 17, 2012 2655 BUSH LLC

6
7 By: /s/ Ernest McNabb
8 Ernest McNabb
9 Responsible Individual

10 Presented by:

11 ST. JAMES LAW, P.C.

12
13 By: /s/ Michael St. James
14 Michael St. James
15 Counsel for the Debtor

1
2 **EXHIBIT A**

3 **GENERAL UNSECURED CREDITORS**

4
5
6 **A. Creditors Holding Allowed Claims**

7 The following creditors hold Allowed general unsecured claims subject to treatment under Class
8 2A of the Plan.

9

Creditor	Amount Owed
Building Green Projects	\$ 100.00
Ena Liu	\$ 550.00
Law Offices of Mark J. Romeo	\$ 2,322.80

10
11
12

13
14 **B. Creditors Holding Potentially Allowed Claims**

15 The following creditors filed timely Proofs of Claim respecting general unsecured claims. If
16 these claims are not objected to, they will be treated as Allowed Class 2A Claims.

17

Creditor	Estimated Amount Owed
Joseph L. Chennault, CPA	\$ 300.00
Robert Guichard	\$ 50,000.00
William D. A. Kremen	\$ 2,000.00
Wiegel Law Group	\$ 2,258.50

18
19
20
21
22
23
24
25
26
27
28

1 **EXHIBIT B**

2 **LIQUIDATION ANALYSIS**

3 Creditors are entitled to understand what they would likely receive if the case were converted to
4 a Chapter 7 case and a trustee was appointed to liquidate the Debtor's assets. The Debtor believes that
5 there are three likely outcomes, based on whether the Trustee is successful in selling the Property and/or
6 the intangible assets or is left to look to litigation claims for a recovery.

7 **A. Successful Sale of the Property: 100% Payment in 18 Months**

8 The Debtor has submitted evidence to the effect that the realizable value of the Property is
9 between \$13 million to \$15 million. In order to pay all general unsecured creditors (other than Mr.
10 McNabb) in full, the Trustee would only need to realize \$9.2 million from the sale of the Property. It
11 seems likely that the Trustee could succeed in effecting such a sale, resulting in the distribution
12 presented below:

11	Sale Price	\$ 9,200,000.00
12	Less costs of sale (5%)	\$ (460,000.00)
13	Less Secured Debts	\$ (8,300,000.00)
14	Net Proceeds	\$ 440,000.00
15	Trustee's Fee	\$ (251,320.00)
16	Trustee's Professionals	\$ (25,000.00)
17	Chapter 11 Expenses	\$ (20,000.00)
18	Unsecured Creditors	\$ (65,000.00)
19	Available to Mr. McNabb	\$ 78,680.00

20 It is extremely unusual for Chapter 7 bankruptcy cases to be closed and fund a distribution to
21 creditors in less than a year, and here complex and time-consuming efforts would be required of the
22 Trustee in order to sell the Property. The Debtor thinks it reasonable to expect that 18 months would
23 elapse between the Trustee's appointment and the distribution to unsecured creditors, assuming that the
24 Trustee successfully sold the Property.

25 The Setos have filed appraisals valuing the property at \$7.6 million and \$8.6 million. If those
26 valuations are accurate, the Trustee is unlikely to sell the Property and it will instead be foreclosed.
27
28

1 **B. *Sale of Only the Intangible Property: Partial Distribution in 2 Years***

2 The Setos will likely seek permission to foreclose, and if the Trustee does not successfully sell
3 the Property, the Court is likely to authorize the foreclosure. As noted, the Setos do not have a security
4 interest in the Debtor's Intangible Assets (the Plan Design and Conditional Use Authorization). The
5 Setos are likely to contend that the Conditional Use Authorization runs with the land and the Plan
6 Design is not necessary, although a developer acquiring the Property might view them as potentially
7 valuable.

8 If the Property is foreclosed, the Trustee might likely attempt to recover something by selling the
9 Intangible Assets to the Setos or their purchaser. Unfortunately, that would be the *only* person who
10 might be interested in buying the Intangible Assets from the Trustee, so the Trustee will have difficulties
11 extracting a high price for them. Under these disadvantageous marketing conditions, the Debtor
12 assumes that the Trustee would likely only obtain \$50,000 to \$100,000 for the Intangible Assets.

13 Assuming a sale at the upper end of that range yields the following distribution:

14	Sale Price	\$ 100,000.00
15	Trustee's Fee	\$ (5,320.00)
16	Trustee's Professionals	\$ (25,000.00)
17	Chapter 11 Expenses	\$ (20,000.00)
18	Available for Unsecured Creditors	\$ 49,680.00
19	% of \$140,000.00	35%
20	Available to Mr. McNabb	\$ 0

21 Note that the unsecured creditor pool is larger when a foreclosure is assumed, because the three junior
22 deeds of trust aggregating \$75,000 will be foreclosed out and will therefore assert general unsecured
23 claims against the bankruptcy estate.

24 Again, it is extremely unusual for Chapter 7 bankruptcy cases to be closed and fund a
25 distribution to creditors in less than a year, and here the Trustee would likely engage in complex and
26 time-consuming but ultimately unsuccessful efforts to sell the Property before attempting to sell the
27 Intangible Property to the buyer at the foreclosure sale. The Debtor thinks it reasonable to expect that 2
28 years would elapse between the Trustee's appointment and the distribution to unsecured creditors,
assuming that the Trustee successfully sold the Intangible Assets.

1 **C. *Pursuit of Litigation Claims: No Likely Distribution***

2 There is only one potential litigation claim that the Trustee might attempt to pursue. The Debtor
3 repaid \$300,000 to Ernest McNabb within the 90 days prior to the bankruptcy filing, and the Trustee
4 could seek to recover that payment as a “preference.” An essential element of a preference claim is
proof that the Debtor was “insolvent” when the payment was made.

5 Mr. McNabb would likely defend by presenting evidence that the value of the Property is not
6 less than \$8.6 million, demonstrating that the Debtor was solvent at the time. The Debtor thinks a
7 Trustee would be unlikely to prevail on a preference claim against Mr. McNabb, and would likely enter
8 into a “nuisance value” settlement. Any such settlement might fund some payment to the Trustee and
9 his/her professionals, but would not result in a distribution to general unsecured creditors.

10 **D. *Conclusion***

11 Under the Plan, unsecured creditors are paid in full, half on the Effective Date, half one year
12 later. The best outcome in a liquidation would be to receive payment in full a year and a half after the
13 Trustee is appointed. The Plan seems clearly better for unsecured creditors.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28