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Judge:
Hearing Location:

Marc L. Barreca
Chapter 11
Seattle

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8
9

10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON

12 In Re

13 CANYON HOLDINGS LLC
SERIES SOUTHGATE 42,

14 Debtor.

Case No. 12-11327-MLB
PLAN OF REORGANIZATION

15
16 Canyon Holdings LLC Series Southgate 42, Business Bank, and Nantucket Fund,
17 Inc., the Plan Proponents, propose the following Plan of Reorganization pursuant to
18 Subchapter II of Chapter 11 of the Bankruptcy Code.

19 **ARTICLE I. DISCLOSURE STATEMENT**

20 1. The Plan Proponents have not filed a Disclosure Statement under 11 U.S.C. §
21 1125 and Bankruptcy Rule 3016(c) because they are not soliciting any votes from third party
22 creditors in connection with the confirmation of this Plan.
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PLAN OF REORGANIZATION - 1

Dated March 20, 2012

PDX/124123/183599/RGB/9164513.4

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1 **ARTICLE II. DEFINITIONS**

2 2. Any term used in the Plan not defined below shall have the meaning ascribed
3 to it in the Bankruptcy Code. When used in this Plan, the following terms have the meanings
4 specified below, unless the context otherwise requires:

5 2.1. **ALLOWED CLAIM:** Any claim in the amount and of the priority
6 classification set forth in the proof of such claim that has been filed timely in the
7 Reorganization Case or in the predecessor King County Receivership, or in the absence of
8 such proof, as set forth in the Debtor's schedules of liabilities in the Reorganization Case,
9 unless: (i) such claim has been listed in such schedules as disputed, contingent, or
10 unliquidated, in which case such claim shall be allowed only in such amount and such
11 classification as is authorized by Final Order of the Bankruptcy Court; (ii) such claim has
12 been objected to or is objected to after Confirmation, in which case such claim shall be
13 allowed only in such amount and such classification as is authorized by Final Order of the
14 Bankruptcy Court; or (iii) such claim has been paid in full, withdrawn, or otherwise deemed
15 satisfied in full.

16 2.2. **ALLOWED SECURED CLAIM:** An Allowed Claim that is a secured claim
17 against the Debtor determined in accordance with § 506(a)-(d) of the Bankruptcy Code or as
18 otherwise specified in this Plan.

19 2.3. **AS SOON AS PRACTICABLE:** Unless extended by Court order, within
20 thirty days following the occurrence of a triggering event.

21 2.4. **ASSUMED OBLIGATIONS:** collectively, (a) all payment and performance
22 obligations of the Debtor under executory contracts, leases, and other obligations to the
23 extent the foregoing are assumed by the Reorganized Debtor in accordance with ¶ 8.1.2 of
24 this Plan.

25 2.5. **BANKRUPTCY CODE or CODE:** The Bankruptcy Code enacted November
26 6, 1978, as set forth in Title 11 of the United States Code, and as amended thereafter.

PLAN OF REORGANIZATION - 2

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1 2.6. BANKRUPTCY COURT or COURT: The United States Bankruptcy Court
2 for the Western District of Washington, at Seattle, before which the Reorganization Case is
3 pending, or if that Court ceases to exercise jurisdiction over the Bankruptcy Case, the Court
4 that does exercise jurisdiction.

5 2.7. BUSINESS BANK: Business Bank, a commercial bank chartered in the State
6 of Washington.

7 2.8. CIREPSA: The Commercial & Investment Real Estate Purchase and Sale
8 Agreement dated February 6, 2012, by and between J Hugh Wiebe and/or assigns and
9 Canyon Holdings, LLC, as amended, a copy of which is attached to this Plan as Schedule
10 2.8.

11 2.9. CLASS: A class of claims or equity security interests as defined in ARTICLE
12 III of this Plan.

13 2.10. CLOSING ORDER: The order of the Bankruptcy Court closing the
14 Reorganization Case pursuant to § 350 of the Bankruptcy Code.

15 2.11. CLOSING DATE: The date upon which the Bankruptcy Court enters the
16 Closing Order.

17 2.12. CONFIRMATION: The entry of the Order of Confirmation by the
18 Bankruptcy Court.

19 2.13. CONFIRMATION DATE: The date upon which the Bankruptcy Court enters
20 the Order of Confirmation.

21 2.14. CONTRACT ASSUMPTION SCHEDULE: Schedule 2.14 to the Plan, which
22 identifies all executory contracts, unexpired leases, and other Assumed Obligations to be
23 assumed by the Reorganized Debtors pursuant to sections 365(a) and 1123 of the Bankruptcy
24 Code.

25 2.15. DEBTOR: Canyon Holdings LLC Series Southgate 42.
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PLAN OF REORGANIZATION - 3

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1 2.16. DEBTOR IN POSSESSION: The Debtor, when exercising its rights, powers,
2 and duties under § 1107(a) of the Bankruptcy Code in the Reorganization Case.

3 2.17. DISPUTED CLAIM: A filed or scheduled claim of an alleged creditor as to
4 which an objection has been filed by a party in interest.

5 2.18. EFFECTIVE DATE: Fourteen days after Confirmation unless the effect of
6 the Confirmation Order is stayed pursuant to the provisions of Bankruptcy Rule 8005.

7 2.19. ESTATE: The Estate created pursuant to § 541 of the Bankruptcy Code.

8 2.20. EAST WEST BANK: East West Bank, a California state chartered
9 commercial bank and assignee of the Federal Deposit Insurance Corporation as receiver of
10 United Commercial Bank with respect to claims against the Debtor and the Debtor's
11 property.

12 2.21. FINAL ORDER: An order or judgment of the Court as to which the time for
13 appeal has expired without notice of appeal having been filed or as to which any appeal
14 therefrom has been resolved.

15 2.22. KING COUNTY RECEIVERSHIP: The receivership pending in King
16 County Superior Court, Cause No. 11-2-42765-0 SEA.

17 2.23. NANTUCKET FUND, INC., a Washington Corporation.

18 2.24. NET PROCEEDS: The gross proceeds from any sale of a portion of the
19 Reorganized Debtor's property less (a) all usual and customary closing costs, including, but
20 not limited to escrow fees and title insurance premiums, (b) all reasonable real estate
21 commissions related to the sale, (c) all income taxes, if any, to be incurred in connection with
22 any sale, and (d) all United States Trustee's fees to be incurred in connection with the
23 disbursements required to be made in connection with the sale.

24 2.25. JOSEPH & MARQUETTA NOVAK: Joseph and Marquette Novak, husband
25 and wife, Washington residents.

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PLAN OF REORGANIZATION - 4

Dated March 20, 2012

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1 2.26. ORDER OF CONFIRMATION: The order of the Bankruptcy Court
2 confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

3 2.27. PLAN: This Plan of Reorganization in its present form or as it may be
4 amended or modified from time to time pursuant to order of the Bankruptcy Court.

5 2.28. PLAN PROPONENTS: Collectively, the Debtor, Business Bank, and
6 Nantucket Fund, Inc., the proponents of this Plan.

7 2.29. PLAN TRUSTEE: The person or entity appointed by the court pursuant to
8 the provisions of ¶ 7.14.1

9 2.30. POST CONFIRMATION EXPENSES: All fees and expenses of Professional
10 Persons allowed by the Court which are incurred after the Effective Date, all the Debtor's
11 and Reorganized Debtor's expenses, including the expenses of those persons necessary to
12 carry out the duties of the Reorganized Debtor under the Plan, and any income taxes related
13 to the sale of any property under the Plan.

14 2.31. PROFESSIONAL PERSONS: Persons, including a trustee (if one is
15 appointed), retained or to be compensated pursuant to §§ 326, 327, 328, 330 and/or 1103 of
16 the Bankruptcy Code, and Marc S. Stern, the Receiver in the predecessor King County
17 Receivership.

18 2.32. PRO RATA: Proportionally so that the ratio of the amount distributed on
19 account of a particular Allowed Claim to the amount of such Allowed Claim is the same as
20 the ratio of the amount distributed on account of all Allowed Claims in the Class of which
21 such particular Allowed Claim is a member to the total amount of all Allowed Claims in such
22 Class.

23 2.33. RECEIVER: Marc S. Stern, the receiver appointed in the King County
24 Receivership.

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PLAN OF REORGANIZATION - 5

Dated March 20, 2012

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1 2.34. REORGANIZATION CASE: The Chapter 11 case pending before the
2 Bankruptcy Court commenced by the filing of an involuntary petition against the Debtor by
3 Joseph and Marquette Novak, designated Case No. 12-11327-MLB.

4 2.35. REORGANIZED DEBTOR: As provided by § 1141(d) of the Bankruptcy
5 Code, the Debtor following the Effective Date.

6 2.36. UNCLASSIFIED CLAIM: An Allowed Claim described in § 507(a)(2), (3)
7 or (8) of the Bankruptcy Code and any fees payable pursuant to 28 U.S.C. § 1930. For the
8 avoidance of doubt, the fees due to the Receiver as a custodian pursuant to § 543(c)(2) shall
9 be Unclassified Claims.

10 2.37. UNSECURED CLAIM: An Allowed Claim that is not an Allowed Secured
11 Claim.

12 **ARTICLE III. CLASSIFICATION OF CLAIMS AND INTERESTS**

13 3. All claims, as defined in § 101(5) of the Bankruptcy Code, against the Debtor
14 and all interests of the Debtor, as defined in §§ 101(16) and (17) of the Bankruptcy Code, are
15 classified as set forth herein. A claim is in a particular Class or is Unclassified only to the
16 extent it qualifies within the definition of such Class or as Unclassified and is in a different
17 Class or is Unclassified to the extent it qualifies within the definition of such different Class
18 or as Unclassified.

19 3.1. Priority Claims:

20 3.1.1. Class 1: All Allowed Claims against the Debtor entitled to priority pursuant
21 to §§ 507(a)(3), (4) & (5) of the Bankruptcy Code. There are no members of Class 1.

22 3.2. Secured Claims:

23 3.2.1. Class 2a: The first position Allowed Secured Claim of East West Bank.

24 3.2.2. Class 2b: The second position Allowed Secured Claim of Business Bank.

25 3.2.3. Class 2c: The third position Allowed Secured Claim of Nantucket Fund, Inc.

26 3.2.4. Class 2d: The fourth position Allowed Secured Claim of Business Bank.

PLAN OF REORGANIZATION - 6

Dated March 20, 2012

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1 3.2.5. Class 2e: The fifth position Allowed Secured Claim of Joseph and Marquette
2 Novak.

3 3.2.6. Class 2f: The Allowed Secured Claim of Whatcom County.

4 3.2.7. Class 2g: The Allowed Secured Claim of any other creditor holding a claim
5 secured by assets of the estate, each of which are separately classified in their own distinct
6 sub-classes Class 2g-1 through 2g-n.

7 3.3. Unsecured Claims:

8 3.3.1. Class 3: All Allowed Claims against the Debtor, however arising, not entitled
9 to priority and not otherwise included in any other Class hereof, including, without
10 limitation, claims based upon the rejection of executory contracts or unexpired leases.

11 3.4. Interests:

12 3.4.1. Class 4: All Allowed Interests of the Debtor's Members.

13 **ARTICLE IV. CLAIMS AND INTERESTS NOT IMPAIRED BY THE**
14 **PLAN**

15 4. The Allowed Claims of Class 1, Class 2a, Class 2b, Class 2d, and Class 2f are
16 not impaired under this Plan. The Allowed Claims of all other Classes are or may be
17 impaired under the Plan.

18 **ARTICLE V. PROVISIONS FOR SATISFYING CLAIMS AND**
19 **SPECIFYING TREATMENT OF EACH CLASS UNDER THE PLAN**

20 5. The treatment of all Allowed Claims and Allowed Equity Security Interests
21 are specified as follows:

22 5.1. Unclassified Claims: Unclassified Claims will be paid as follows:

23 5.1.1. Administrative Expense Claims. All holders of an Unclassified Claim entitled
24 to priority pursuant to §507(a)(1) of the Code shall receive on the later of (a) the Effective
25 Date or (b) the date upon which an order of the Court allowing such claim becomes a Final
26 Order, cash in the amount of such Allowed Claim unless the holder of such Unclassified

1 Claim agrees to different treatment, provided that fees and costs of Professional Persons shall
2 be subject to the approval of the Bankruptcy Court.

3 5.1.2. U.S. Trustee Fees. All quarterly fees due to the United States Trustee
4 pursuant to 28 U.S.C. § 1930(a)(6) will be paid in full on or before the Effective Date, as
5 required by 11 U.S.C. § 1129(a)(12).

6 5.1.3. Source of Payments. The payments required under the provisions of ¶ 5.1.1
7 and ¶ 5.1.2 above shall be made by the Plan Trustee from any available funds.

8 5.2. Priority Claims:

9 5.2.1. Class 1: Class 1 Claims are not impaired under this Plan. Each holder of a
10 Class 1 Allowed Claim shall be paid the entire amount of such holder's Allowed Claim by
11 the Reorganized Debtor on the later of (a) the Effective Date or (b) the date upon which an
12 order of the Court allowing such claim becomes a Final Order. There shall be credited
13 against any Class 1 Allowed Claim any Post Petition Date payments made to the holder of
14 such Class 1 Allowed Claim. Holders of Class 1 Claims are not entitled to vote.

15 5.2.2. Source of Payments. The payments required under the provisions of ¶ 5.2.1
16 above shall be made by the Plan Trustee from any available funds.

17 5.3. Secured Claims:

18 5.3.1. Class 2a (East West Bank): The first position Class 2a Allowed Secured
19 Claim is unimpaired under this Plan. Unless the Plan Proponents and the holder of the Class
20 2a Secured Claim otherwise agree to alternative treatment of the claim, the holder of the
21 Class 2a Allowed Secured Claim shall be paid and satisfied from the sale proceeds received
22 from the sale of the Debtor's Real Property as provided in ¶ 7.9 in accordance with the
23 provisions of ¶¶ 5.3.1.1 & 5.3.1.2 below.

24 5.3.1.1. Allowance and Treatment. The holder of the Class 2a Allowed
25 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
26 such holder's claim determined in accordance with the provisions of 11 U.S.C.

PLAN OF REORGANIZATION - 8

Dated March 20, 2012

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1 § 1124(2) as of the closing date of the sale of the Debtor's real property pursuant to
2 the provisions of ¶ 7.9 after crediting the amounts paid to such holder during the
3 pendency of the bankruptcy case using the non-default rates under the loan
4 documents covering such claim.

5 5.3.1.2. Sales Free and Clear. The sale of the Debtor's real property,
6 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
7 claim of the holder of the Class 2a Allowed Secured Claim.

8 5.3.1.3. Unimpaired Claim. The Class 2a Allowed Secured Claim is
9 unimpaired and the holder of such claim is not entitled to vote on the Plan.

10 5.3.2. Class 2b (Business Bank): The second position Class 2b Allowed Secured
11 Claim is unimpaired under this Plan. Unless the Plan Proponents and the holder of the Class
12 2b Secured Claim otherwise agree to alternative treatment of the claim, the holder of the
13 Class 2b Allowed Secured Claim shall be paid and satisfied from the sale proceeds received
14 from the sale of the Debtor's Real Property as provided in ¶ 7.9 in accordance with the
15 provisions of ¶¶ 5.3.2.1 5.3.2.2 below.

16 5.3.2.1. Allowance and Treatment. The holder of the Class 2b Allowed
17 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
18 such holder's claim determined in accordance with the provisions of 11 U.S.C.
19 § 1124(2) as of the closing date of the sale of the Debtor's real property pursuant to
20 the provisions of ¶ 7.9 after crediting the amounts paid to such holder during the
21 pendency of the bankruptcy case using the non-default rates under the loan
22 documents covering such claim. In the event there are funds remaining after the
23 payment of the Class 2a and 2f Allowed Claims, the holder of the Class 2b Allowed
24 Secured Claim shall receive funds up to the Allowed amount of such Claim.

1 5.3.2.2. Sales Free and Clear. The sale of the Debtor’s real property,
2 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
3 claim of the holder of the Class 2b Allowed Secured Claim.

4 5.3.2.3. Unimpaired Claim. The Class 2b Allowed Secured Claim is
5 unimpaired and the holder of such claim is not entitled to vote on the Plan.

6 5.3.3. Class 2c (Nantucket Fund): The third position Class 2c Allowed Secured
7 Claim is impaired under this Plan. Unless the Plan Proponents and the holder of the Class 2c
8 Secured Claim otherwise agree to alternative treatment of the claim, the holder of the Class
9 2c Allowed Secured Claim shall be paid and satisfied from the sale proceeds received from
10 the sale of the Debtor’s Real Property as provided in ¶ 7.9 in accordance with the provisions
11 of ¶¶ 5.3.3.1 & 5.3.3.2 below.

12 5.3.3.1. Allowance and Treatment. The holder of the Class 2c Allowed
13 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
14 such holder’s claim determined in accordance with the provisions of 11 U.S.C.
15 § 1124(2) as of the closing date of the sale of the Debtor’s real property pursuant to
16 the provisions of ¶ 7.9 and (ii) shall have the distributions on account of such claim
17 subordinated to the distributions to the Class 2d Allowed Secured Claim pursuant to
18 the provisions of ¶ 7.11. In the event there are funds remaining after the payment of
19 the Class 2a, 2b, 2d, and 2f Allowed Claims, the holder of the Class 2c Allowed
20 Secured Claim shall receive funds up to the Allowed amount of such Claim.

21 5.3.3.2. Sales Free and Clear. The sale of the Debtor’s real property,
22 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
23 claim of the holder of the Class 2c Allowed Secured Claim.

24 5.3.4. Class 2d (Business Bank): The fourth position Class 2d Allowed Secured
25 Claim is unimpaired under this Plan. Unless the Plan Proponents and the holder of the Class
26 2d Secured Claim otherwise agree to alternative treatment of the claim, the holder of the

1 Class 2d Allowed Secured Claim shall be paid and satisfied from the sale proceeds received
2 from the sale of the Debtor's Real Property as provided in ¶ 7.9 in accordance with the
3 provisions of ¶¶ 5.3.4.1 & 5.3.4.2 below. In the event there are funds remaining after the
4 payment of the Class 2a, 2b, and 2f Allowed Claims, the holder of the Class 2d Allowed
5 Secured Claim shall receive funds up to the Allowed amount of such Claim.

6 5.3.4.1. Allowance and Treatment. The holder of the Class 2d Allowed
7 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
8 such holder's claim determined in accordance with the provisions of 11 U.S.C.
9 § 1124(2) as of the closing date of the sale of the Debtor's real property pursuant to
10 the provisions of ¶ 7.9 after crediting the amounts paid to such holder during the
11 pendency of the bankruptcy case using the non-default rates under the loan
12 documents covering such claim.

13 5.3.4.2. Sales Free and Clear. The sale of the Debtor's real property,
14 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
15 claim of the holder of the Class 2d Allowed Secured Claim.

16 5.3.4.3. Unimpaired Claim. The Class 2d Allowed Secured Claim is
17 unimpaired and the holder of such claim is not entitled to vote on the Plan.

18 5.3.5. Class 2e (Joseph & Marquette Novak): The fifth position Class 2e Allowed
19 Secured Claim is impaired under this Plan. Unless the Plan Proponents and the holder of the
20 Class 2e Secured Claim otherwise agree to alternative treatment of the claim, the holder of
21 the Class 2e Allowed Secured Claim shall be paid and satisfied from the sale proceeds
22 received from the sale of the Debtor's Real Property as provided in ¶ 7.9 in accordance with
23 the provisions of ¶¶ 5.3.5.1 & 5.3.5.2 below.

24 5.3.5.1. Allowance and Treatment. The holder of the Class 2e Allowed
25 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
26 such holder's claim determined in accordance with the provisions of 11 U.S.C.

1 § 1124(2) as of the closing date of the sale of the Debtor's real property pursuant to
2 the provisions of ¶ 7.9. In the event there are funds remaining after the payment of
3 the Class 2a, 2b, 2c, 2d, and 2f Allowed Claims, the holder of the Class 2e Allowed
4 Secured Claim shall receive funds up to the Allowed amount of such claim.

5 5.3.5.2. Sales Free and Clear. The sale of the Debtor's real property,
6 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
7 claim of the holder of the Class 2b Allowed Secured Claim.

8 5.3.6. Class 2f (Whatcom County): The Class 2f Allowed Secured Claim is
9 unimpaired under this Plan. Unless the Plan Proponents and the holder of the Class 2f
10 Secured Claim otherwise agree to alternative treatment of the claim, the holder of the Class
11 2f Allowed Secured Claim shall be paid and satisfied from the sale proceeds received from
12 the sale of the Debtor's Real Property as provided in ¶ 7.9 in accordance with the provisions
13 of ¶¶ 5.3.6.1 & 5.3.6.2 below.

14 5.3.6.1. Allowance and Treatment. The holder of the Class 2f Allowed
15 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
16 such holder's claim determined in accordance with the provisions of 11 U.S.C.
17 § 1124(2) as of the closing date of the sale of the Debtor's real property pursuant to
18 the provisions of ¶ 7.9.

19 5.3.6.2. Sales Free and Clear. The sale of the Debtor's real property,
20 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
21 claim of the holder of the Class 2f Allowed Secured Claim.

22 5.3.6.3. Unimpaired Claim. The Class 2f Allowed Secured Claim is
23 unimpaired and the holder of such claim is not entitled to vote on the Plan.

24 5.3.7. Class 2g-1 through 2g-n. (Other Secured Claims): The Class 2g-1 through
25 Class 2g-n claims are impaired under this Plan. Unless the Plan Proponents and the holder of
26 the Class 2g-n Secured Claim otherwise agree to alternative treatment of the claim, a holder

1 of a Secured Claim within these classes shall retain all its liens on the assets revested in the
2 Reorganized Debtor. As Soon as Practicable after Confirmation and prior to the Effective
3 Date, or if such claim is not known as of Confirmation, As Soon as Practicable after the
4 discovery of such Claim, the Reorganized Debtor shall elect to retain the assets subject to the
5 lien of any such holder. In the event the Reorganized Debtor elects to retain the assets, then
6 any claim shall be satisfied pursuant to the provisions of ¶ 5.3.7.1 below. In the event the
7 Debtor does not retain the assets, then any claim shall be satisfied pursuant to the provisions
8 of ¶ 5.3.7.3 below.

9 5.3.7.1. Allowance and Treatment. The holder of the Class 2g-n Allowed
10 Secured Claim shall (i) have an Allowed Secured Claim equal to the full amount of
11 such holder's claim determined in accordance with the provisions of 11 U.S.C.
12 § 1124(2) as of the closing date of the sale of the Debtor's real property pursuant to
13 the provisions of ¶ 7.9 after crediting the amounts paid to such holder during the
14 pendency of the bankruptcy case using the non-default rates under the loan
15 documents covering such claim. . In the event there are funds remaining after the
16 payment of the Class 2a, 2b, 2c, 2d, and 2f Allowed Claims, the holder of the Class
17 2g-n Allowed Secured Claim shall receive funds up to the Allowed amount of such
18 Claim.

19 5.3.7.2. Sales Free and Clear. The sale of the Debtor's real property,
20 pursuant to the provisions of 11 U.S.C. § 1123(a)(5)(D), shall be free and clear of the
21 claim of the holder of the Class 2g-n Allowed Secured Claim.

22 5.3.7.3. Option to Abandon. The Reorganized Debtor shall abandon the
23 collateral securing the claim to the holder of such claim.

24 5.3.7.4. Request to Confirm Pursuant to 11 U.S.C. § 1129(b). In the event
25 any holder of a Secured Claim included in a subclass of Class 2g votes against the
26 Plan, in accordance with the provisions of 11 U.S.C. § 1129(b), the Plan Proponents

1 request that the Court confirm the plan notwithstanding any rejection of the plan by
2 the holder of such Class 2g-n Secured Claim.

3 5.4. Unsecured Claims:

4 5.4.1. Class 3 (Unsecured Claims): The Class 3 Unsecured Claims are impaired
5 under this Plan. No distributions shall be made to the holders of Class 3 Unsecured Claims
6 unless the Reorganized Debtor successfully prosecutes any avoidance claims reserved to it
7 pursuant to the provisions of ¶ 7.3. In such event, the Reorganized Debtor shall distribute
8 such net proceeds pro rata to the holders of Class 3 Unsecured Claims.

9 5.5. Interests:

10 5.5.1. Class 4: (Members): The Class 4 Interests are impaired under this Plan. The
11 holder of the Class 4 Interests shall retain their interests in the Reorganized Debtor, but shall
12 receive no distributions under this Plan.

13 **ARTICLE VI. TREATMENT OF DISPUTED CLAIMS AND INTEREST**

14 6. Disputed Claims and Interests shall be treated in the manner set forth below.

15 6.1. Reservation of Disbursements. In calculating the cash to be distributed to
16 Allowed Claims, all Disputed Claims will be treated as if they were Allowed Claims in the
17 full amount thereof; provided, however, that the cash so allocated to Disputed Claims will
18 not be distributed, but will be held in trust by the Reorganized Debtor or the Plan Trustee for
19 the benefit of the holders of Allowed Claims ultimately entitled thereto.

20 6.2. Distributions. At such time as a Disputed Claim becomes an Allowed Claim,
21 the Reorganized Debtor or the Plan Trustee shall deliver to the holder of the Allowed Claim
22 the cash allocable to such Allowed Claim.

23 **ARTICLE VII. MEANS FOR EXECUTION OF THE PLAN**

24 7. The Debtor, Debtor in Possession, and Reorganized Debtor shall perform or
25 shall have performed all acts required of it.

1 7.1. Revesting of Assets. Subject to the provisions of ¶ 7.9 below, in accordance
2 with 11 U.S.C. § 1141, on Confirmation all assets of the Estate shall be revested in the
3 Reorganized Debtor.

4 7.2. Distributions. The Plan Trustee shall timely make all payments required
5 under this Plan; provided, however, that such obligation shall not serve to create any liability
6 for any discharged claims, including any claims which are Allowed Secured Claims.

7 7.3. Reservation of Causes of Action. All rights, claims and causes of action,
8 whether equitable or legal, of the Estate, the Debtor, Debtor in Possession, and Reorganized
9 Debtor against all persons are reserved for the Debtor, Debtor in Possession, and
10 Reorganized Debtor. Following confirmation the Reorganized Debtor may commence
11 adversary proceedings against persons or entities to realize upon causes of action retained
12 under the Plan. If the Reorganized Debtor prosecutes or, where appropriate, settles and
13 compromises, any action transferred to it, then the net proceeds of such action shall be
14 distributed Pro Rata by the Reorganized Debtor to the holders of Class 3 Claims.

15 7.4. Resolution of Claims. The Reorganized Debtor shall resolve the claims of all
16 creditors and interest holders.

17 7.5. Objections to Claims. Any objection to a claim by a party in interest in the
18 Reorganization Case must be filed on or before sixty (60) days following the Confirmation
19 Date unless said time period is extended by the Bankruptcy Court for cause shown by order
20 entered before or after the expiration of the period, provided, however, that the foregoing
21 limitation does not apply to any claims filed subsequent to Confirmation.

22 7.6. Unclaimed Funds. Pursuant to § 347(b) of the Bankruptcy Code, ninety (90)
23 days after any distribution by the Reorganized Debtor provided for herein, the Reorganized
24 Debtor shall stop payment on any such check remaining unpaid to a holder of an Allowed
25 Claim and funds shall be returned to the Reorganized Debtor. From and after the date the
26 Reorganized Debtor stops payment on any distribution check pursuant to this ¶ 7.6, the

1 holder of the claim on account of which such check was issued shall be entitled to receive no
2 further distributions on account of his claim and such holder's Allowed Claim shall
3 thereupon be deemed satisfied in full.

4 7.7. Administrative Claim Bar Date. The deadline for submission of all claims
5 entitled to priority pursuant to §§ 507(a)(2), (a)(3), (a)(8) and (b) of the Bankruptcy Code
6 incurred prior to Confirmation shall be thirty (30) days following Confirmation. Failure to
7 file a claim by this date shall conclusively bar the claimant from asserting its Claim, which
8 Claim shall be forever barred from sharing in the distributions under the Plan.

9 7.8. Treatment of Negotiable Instruments. Any negotiable instrument held by the
10 holder of an Allowed Claim shall be deemed exchanged, paid, canceled, or satisfied, as the
11 case may be, on the Effective Date.

12 7.9. Treatment of Debtor's Real Property. The Debtor's real property shall be
13 administered as follows:

14 7.9.1. The CIREPSA shall be approved by the Confirmation Order and the Plan
15 Trustee and Reorganized Debtor shall take all actions necessary to close the sale pursuant to
16 the CIREPSA.

17 7.9.2. In the event the sale pursuant to the CIREPSA fails to close, then the Debtor's
18 real property shall be remarketed and sold made pursuant to the provisions of § 1123 & 363.

19 7.9.3. The provisions of 11 U.S.C. § 1146 shall apply to any sale pursuant to this
20 Plan.

21 7.9.4. In the event the CIREPSA fails to close for any reason, the Plan Trustee shall
22 remarket the Debtor's real property, subject to the Court's approval of any sale after
23 appropriate notice and hearing.

24 7.10. Plan Trustee. Marc Stern shall be the Plan Trustee. In addition, the following
25 provisions, shall apply to his appointment:
26

1 7.10.1. The bond obtained by the Receiver in the King County Receivership shall
2 remain in effect and shall be a sufficient bond for the Plan Trustee's activities in this case.

3 7.10.2. All orders entered by the court in the King County Receivership authorizing
4 the Receiver to retain professionals, i.e. the listing agent, and special counsel to litigate tax
5 issues, both of which are referred to in the CIREPSA will be adopted in the Order of
6 Confirmation.

7 7.10.3. The Confirmation Order in the form reasonably approved by the Plan
8 Proponents shall specify any additional terms with respect to the Plan Trustee's appointment.

9 7.11. Subordination of Class 2c Allowed Secured Claim. The holder of the Class
10 2b and 2c Allowed Secured Claim and the holder of the Class 2c Allowed Secured have
11 agreed, subject to the entry of the Confirmation Order and the closing of the sale pursuant to
12 the CIREPSA, that the distributions to the Class 2c Allowed Secured Claim shall be
13 subordinated to the distributions to the Class 2d Allowed Secured Claim. In exchange for
14 such subordination, Business Bank agrees that it shall continue the foreclosure sale with
15 respect to its additional collateral pending completion of the sale pursuant to the CIREPSA.

16 **ARTICLE VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

17 8. The following provisions apply with respect to executory Contracts and
18 unexpired leases governed by § 365.

19 8.1. Assumption or Rejection.

20 8.1.1. Rejected Contracts and Leases. On the Effective Date, all executory contracts
21 and unexpired leases to which the Debtor is a party shall be deemed rejected in accordance
22 with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code,
23 except those executory contracts, unexpired leases, and other obligations that (i) have
24 previously been assumed by the Debtor pursuant to an order of the Bankruptcy Court, (ii) are
25 the subject of a motion to assume filed by the Debtor at any time prior to the Effective Date,
26 or (iii) are Assumed Obligations listed in the Contract Assumption Schedule. The Debtor

1 may identify additional executory contracts, unexpired leases, and other obligations for the
2 Debtor to assume and reserves the right to seek such assumption at any time prior to the
3 Effective Date.

4 8.1.2. Assumed Obligations. Entry of the Confirmation Order shall constitute
5 approval by the Bankruptcy Court of the Reorganized Debtor's assumption of the Assumed
6 Obligations listed in the Contract Assumption Schedule, as of the Effective Date pursuant to
7 section 365(a) of the Bankruptcy Code.

8 8.1.3. Right to Reject Obligations. Notwithstanding anything to the contrary in this
9 ¶ 8.1, the Debtor or Reorganized Debtor (as applicable) shall have the right (a) to modify the
10 Contract Assumption Schedule at any time prior to 15th business day prior to the
11 Confirmation Hearing unless such date is extend by order of the Bankruptcy Court, or (b) to
12 abandon the assumption of any Assumed Obligation, and to treat such Assumed Obligation
13 as rejected under the Plan, at any time during the thirty (30) day period following the
14 Bankruptcy Court's resolution of any objection by the non-Debtor party to the assumption of
15 such Assumed Obligation (including, but not limited to, any objection by the non-Debtor to
16 the Cure Amount, if any, proposed with respect to such Assumed Obligation).

17 8.2. Payment of Cure Amounts. The Contract Assumption Schedule shall list the
18 proposed Cure Amount, if any, with respect to each Assumed Obligation included therein.
19 Cure Amounts with respect to any Assumed Obligations will be satisfied, pursuant to section
20 365(b)(1) of the Bankruptcy Code, (i) by payment by the Reorganized Debtor of the Cure
21 Amount in cash on the Effective Date or, (ii) in the event a timely objection to assumption of
22 the Assumed Obligation or to the proposed Cure Amount is raised in accordance with ¶ 8.3
23 of this Plan, as soon as practicable after the Cure Amount is determined by the Bankruptcy
24 Court in a Final Order and the expiration of the time for the Reorganized Debtor or Debtor
25 (as applicable) to elect to treat such agreement as rejected pursuant to ¶ 8.1.3, or agreed to by
26

1 the Debtor or Reorganized Debtor (as applicable) and the non-Debtor party to the Assumed
2 Obligation.

3 8.3. Objections to Assumption and Proposed Cure Amounts.

4 8.3.1. Requirement of Timely Objection. If any non-Debtor party to an Assumed
5 Obligation opposes the Reorganized Debtor's assumption of such Assumed Obligation for
6 any reason (including, but not limited to, (i) the assertion of the existence of a default under
7 such Assumed Obligation, (ii) any dispute as to the Cure Amount set forth in the Contract
8 Assumption Schedule, or (iii) any dispute as to the ability of the Reorganized Debtor to
9 provide "adequate assurance of future performance" (within the meaning of section 365 of
10 the Bankruptcy Code), then such non-Debtor party to the Assumed Obligation must file an
11 objection no later than the deadline for filing objections to Confirmation of this Plan. Such
12 objection shall be served on the Debtor and shall state (i) the Cure Amount to which such
13 non-Debtor party claims it is entitled; (ii) the amount of the Rejection Claim which such non-
14 Debtor would be able to assert if the Assumed Obligation were rejected by the Debtors; (iii)
15 the nature of any defaults with respect to such Assumed Obligation; and (iv) any other basis
16 upon which the non-Debtor party opposes the assumption of the Assumed Obligation.

17 Pending the Bankruptcy Court's ruling on such an objection, the Assumed Obligation at
18 issue shall be treated as assumed by the Reorganized Debtors unless otherwise ordered by the
19 Bankruptcy Court.

20 8.3.2. Consequences of Failure To Object. Failure to timely file and serve an
21 objection in accordance with this ¶ 8.3 shall constitute the non-Debtor party's consent to the
22 Reorganized Debtor's assumption of the Assumed Obligation, a determination by the
23 Bankruptcy Court that, upon the Reorganized Debtor's payment of the Cure Amount (if any),
24 no defaults shall exist under such Assumed Obligation. Any non-Debtor party that fails to
25 object timely to the proposed Cure Amount or to the Debtors' assumption of any contract,
26 unexpired lease, or other obligation to which it is a party shall be forever barred and estopped

1 from asserting any Claims against the Debtor, the Reorganized Debtor, or any Person acting
2 on behalf of the Debtor that arose prior to the Effective Date with respect to such contract or
3 unexpired lease or with respect to any additional agreements, either oral or written, that may
4 be related thereto, and any such Claims shall be deemed Disallowed.

5 8.4. Rejection Claims Bar Date. All proofs of claim with respect to Rejection
6 Claims arising from the rejection of any executory contract or unexpired lease pursuant to the
7 Plan or otherwise must be filed with the Bankruptcy Court within thirty (30) days after the
8 entry of an order by the Bankruptcy Court, which may be the Confirmation Order,
9 authorizing the rejection of such executory contract or unexpired lease. All Rejection Claims
10 that become Allowed Claims shall be treated as Class 3 Claims. Any Rejection Claims that
11 are not timely filed in accordance with the foregoing provision shall be forever barred and
12 shall not be enforceable against the Debtor or the Reorganized Debtor, the Estate, or any
13 property of the Debtor or the Reorganized Debtor unless otherwise ordered by the
14 Bankruptcy Court.

15 8.5. Post-Petition Contracts and Leases. All contracts, agreements and leases that
16 were entered into by the Debtor or assumed by the Debtor after the Petition Date shall be
17 deemed assigned by the Debtor to the Reorganized Debtors on the Effective Date. These
18 assumed contracts, agreements, and leases shall include all contracts, agreements, and leases
19 entered into by the Receiver prior the commencement of this case.

20 **ARTICLE IX. SATISFACTION OF INDEBTEDNESS AND INJUNCTION**

21 9. The distribution made to the various Classes of creditors as provided for in
22 this Plan shall be in full and complete satisfaction of their Allowed Claims. Because the Plan
23 provides for the liquidation of substantially all of the Debtor's property, Confirmation shall
24 not operate as a discharge of any and all debts and claims as defined in § 101(4) of the
25 Bankruptcy Code against the Debtor or Debtor in Possession that arose at any time prior to
26 Confirmation.

1 **ARTICLE X. MODIFICATIONS OF THE PLAN**

2 10. Pursuant to the provisions of § 1127 of the Bankruptcy Code and Bankruptcy
3 Rule 3019, the Plan Proponents reserve the right to modify or alter the provisions of the Plan
4 at any time prior or subsequent to Confirmation. Any proposed modification shall require
5 the unanimous consent of all the Plan Proponents, which consent shall not be unreasonably
6 withheld.

7 **ARTICLE XI. RETENTION OF JURISDICTION BY THE BANKRUPTCY**
8 **COURT**

9 11.1. Retention of Jurisdiction. Notwithstanding Confirmation, until entry of the
10 Closing Order, the Bankruptcy Court shall retain jurisdiction to ensure that the purposes and
11 intent of the Plan are carried out. Without limiting the generality of the foregoing, the Court
12 shall retain jurisdiction for the following purposes:

13 11.1.1. Fixing and allowing a claim as a cost and expense of the administration of the
14 Reorganization Case;

15 11.1.2. Reexamining any claim that has been allowed;

16 11.1.3. Hearing and determining any objection to a claim or interest. The failure of
17 the Debtor to object to, or to examine any claim or equity security interest for the purpose of
18 voting, shall not be deemed to be a waiver of the Debtor's right to object to, or re-examine
19 any claim or equity security interest in whole or in part;

20 11.1.4. Hearing and determining any action brought by the Debtor or the Debtor in
21 Possession seeking to avoid the transfer of an interest of the Debtor in property, or any
22 obligation incurred by Debtor, that is avoidable pursuant to applicable law;

23 11.1.5. Hearing and determining all causes of action, controversies, disputes, or
24 conflicts between or among the Debtor and any other party, including those that were
25 pending prior to Confirmation;

1 11.1.6. Hearing and determining all questions and disputes regarding title to the
2 property of the Debtor or the Estate;

3 11.1.7. Correcting any defect, curing any omission, or reconciling any inconsistency
4 in the Plan or the Order of Confirmation as may be necessary to carry out the purpose and
5 intent of the Plan;

6 11.1.8. Hearing and determining any action brought by the Debtor to protect the
7 Debtor and the Estate from actions of creditors, equity security holders, or other parties in
8 interest;

9 11.1.9. Issuing any order necessary to implement the Plan or Order of Confirmation,
10 including, without limitation, such declaratory and injunctive orders as are appropriate to
11 protect the Debtor, the Estate and the Reorganized Debtor from actions of creditors, equity
12 security holders, or other parties in interest;

13 11.1.10. Hearing and determining any dispute relating to the terms or
14 implementation of the Plan or Order of Confirmation, or to the rights or obligations of any
15 parties in interest with respect thereto;

16 11.1.11. The modification of the Plan after Confirmation pursuant to the
17 Bankruptcy Rules and the Bankruptcy Code in accordance with Article X above;

18 11.1.12. Entering orders concluding and terminating the Reorganization Case.

19 11.2. Alternative Jurisdiction. In the event that the Bankruptcy Court is found to
20 lack jurisdiction to resolve any matter, then such matter may be brought before any court
21 having jurisdiction with regard thereto.

22 **ARTICLE XII. MISCELLANEOUS PROVISIONS**

23 12.1. Terms Binding. Upon the entry of the Confirmation Order, all provisions of
24 this Plan, including all agreements, instruments and other documents filed in connection with
25 this Plan and executed by the Debtor, the Reorganized Debtor, or the Plan Trustee in
26 connection with this Plan, shall be binding upon the Debtor, the Reorganized Debtor, the

1 Plan Trustee, all holders of Claims and Interests, and all other Persons that are affected in
2 any manner by this Plan. All agreements, instruments and other documents filed in
3 connection with this Plan shall have full force and effect, and shall bind all parties thereto as
4 of the entry of the Confirmation Order, whether or not the same shall be issued, delivered or
5 recorded on the Effective Date or thereafter.

6 12.2. Successors and Assigns. The rights, benefits and obligations of any person
7 named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the
8 heir, executor, administrator, successor or assignee of such person.

9 12.3. Confirmation Order and Plan Control. Except as otherwise provided in this
10 Plan, in the event of any inconsistency between this Plan, any schedule to this Plan, or any
11 other instrument or document created or executed pursuant to this Plan, this Plan shall
12 control. In the event of any inconsistency between the Plan and the Confirmation Order, the
13 Confirmation Order shall control.

14 12.4. Governing Law. Except to the extent that the Bankruptcy Code or any other
15 federal law is applicable or to the extent the law of a different jurisdiction is validly elected
16 by the Debtor, the rights, duties and obligations arising under this Plan shall be governed in
17 accordance with the substantive laws of the United States of America and, to the extent
18 federal law is not applicable, the laws of the State of Washington.

19 12.5. Severability. If the Bankruptcy Court determines at the Confirmation Hearing
20 that any material provision of this Plan is invalid or unenforceable, such provision, subject to
21 section 1127 of the Bankruptcy Code, shall be severable from this Plan and shall be null and
22 void, and, in such event, such determination shall in no way limit or affect the enforceability
23 or operative effect of any or all other portions of this Plan.

24 12.6. Incorporation by Reference. Each exhibit or schedule to this Plan is
25 incorporated herein by reference.
26

1 12.7. Reservation of Rights. Except as expressly set forth herein, the Plan shall
2 have no force and effect unless the Bankruptcy Court has entered the Confirmation Order.
3 The filing of the Plan, any statement or provision contained in the Plan, or the taking of any
4 action with respect to the Plan shall not be and shall not be deemed to be an admission or
5 waiver of any rights with respect to the holders of Claims and Interests.

6 12.8. Interpretation. For purposes of this Plan: (a) whenever appropriate, each term
7 stated herein, whether stated in the singular or the plural, will include both the singular and
8 the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract,
9 instrument, release, indenture or other agreement or document being in a particular form or
10 on particular terms and conditions means that such document will be substantially in such
11 form or substantially on such terms and conditions; (c) unless otherwise provided in this
12 Plan, any reference in this Plan to an existing document or exhibit means such document or
13 exhibit, as it may have been or may be amended, modified or supplemented pursuant to this
14 Plan; (d) unless otherwise specified herein, any reference to an entity as a holder of a Claim
15 includes that entity's successors, assigns and affiliates; (e) unless otherwise specified, all
16 references in this Plan to ¶, Articles, schedules and exhibits are references to ¶, Articles,
17 schedules and exhibits of or to this Plan; (f) the words "herein", "hereto" and "hereunder"
18 refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and
19 headings to Articles and ¶s of this Plan are inserted for convenience of reference only and are
20 not intended to limit or otherwise affect the provisions of this Plan; and (h) the rules of
21 construction set forth in section 102 of the Bankruptcy Code shall apply to the construction
22 of this Plan.

23 12.9. Computation of Time. In computing any period of time prescribed or allowed
24 by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1 Dated this 20th day of March, 2012.

2
3 /s/ Richard Birinyi
4 Richard G. Birinyi, WSBA #9212
Attorneys for Business Bank

5 /s/ Jeffrey B. Wells
6 Jeffrey B. Wells, WSBA #6317
Attorney for Debtor

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