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MALIBU ASSOCIATES, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

KAYE SCHOLER LLP

In re)
MALIBU ASSOCIATES, LLC, a)
California limited liability company, dba)
MALIBU COUNTRY CLUB)

Debtor.)

Tax I.D. 20-4106767)

Case No. 1:09-bk-24625-MT

Chapter 11

**[PROPOSED] DISCLOSURE
STATEMENT DESCRIBING DEBTOR'S
PLAN OF REORGANIZATION (DATED
APRIL 5, 2010); DECLARATION OF
THOMAS C. HIX IN SUPPORT
THEREOF**

Disclosure Statement Hearing:

Date: May 24, 2010
Time: 11:00 a.m.
Place: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA 91367

Plan Confirmation Hearing:

Date: [To Be Scheduled]
Time:
Place: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA 91367

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1 **I. INTRODUCTION**

2 Malibu Associates, LLC, is the debtor and debtor in possession (the "Debtor") in the above-
3 captioned Chapter 11 bankruptcy case. On November 3, 2009 (the "Petition Date"), the Debtor
4 commenced this bankruptcy case by filing a voluntary petition under Chapter 11 of the United
5 States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). THIS DOCUMENT
6 IS THE DISCLOSURE STATEMENT ("DISCLOSURE STATEMENT") WHICH DESCRIBES
7 THE *DEBTOR'S PLAN OF REORGANIZATION (DATED APRIL 5, 2010)* (THE "PLAN")
8 BEING PROPOSED BY THE DEBTOR.

9 Chapter 11 allows the Debtor, and, under some circumstances, creditors and other parties in
10 interest, to propose a plan of reorganization. A plan may provide for a debtor to reorganize by
11 continuing to operate, to liquidate by selling assets of the bankruptcy estate, or a combination of
12 both. The Plan is a reorganizing plan and is described herein. The effective date of the Plan (the
13 "Effective Date") will be the first business day of the first full calendar month which is at least
14 fourteen (14) days following the date of entry of the Bankruptcy Court (the "Court") confirming
15 the Plan (the "Confirmation Order") when and provided that all of the following conditions to the
16 effectiveness of the Plan have been satisfied or waived by the Debtor: (a) there shall not be any
17 stay in effect with respect to the Confirmation Order; (b) the Confirmation Order shall not be
18 subject to any appeal or rehearing; and (c) the Plan and all documents, instruments and agreements
19 to be executed in connection with the Plan shall have been executed and delivered by all parties to
20 such documents, instruments and agreements. Following the Effective Date, the Debtor shall be
21 referred to as the "Reorganized Debtor."

22
23 **A. Purpose of this Disclosure Statement**

24 This Disclosure Statement summarizes what is in the Plan, and tells you certain information
25 relating to the Plan and the process the Court follows in determining whether or not to confirm the
26 Plan.
27
28

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READ THIS DISCLOSURE STATEMENT CAREFULLY SO THAT YOU KNOW

ABOUT:

- (1) **WHO CAN VOTE OR OBJECT;**
- (2) **WHAT TREATMENT YOUR CLAIM WILL RECEIVE UNDER THE PLAN OF REORGANIZATION (I.E., WHAT YOUR CLAIM WILL RECEIVE IF THE PLAN IS CONFIRMED) AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION;**
- (3) **THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE DEBTOR'S BANKRUPTCY CASE;**
- (4) **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;**
- (5) **WHAT IS THE EFFECT OF CONFIRMATION; AND**
- (6) **WHETHER THE PLAN IS FEASIBLE.**

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how the Plan will affect you and what is the best course of action for you. Kaye Scholer LLP, general insolvency counsel to the Debtor, does not represent you.

Be sure to read the Plan as well as this Disclosure Statement. If there are any inconsistencies between the Plan and this Disclosure Statement, the Plan provisions will govern.

The Bankruptcy Code requires a Disclosure Statement to contain "adequate information" concerning the Plan. By an order entered on [REDACTED], 2010, the Court has approved this document as an adequate disclosure statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. Any party can now solicit votes for or against the Plan.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT

1 YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN,
2 THEN THE PLAN WILL BE BINDING ON ALL CREDITORS AND INTEREST HOLDERS IN
3 THIS CASE.

4
5 **1. Time and Place of the Plan Confirmation Hearing**

6 The hearing where the Court will determine whether or not to confirm the Plan (the "Plan
7 Confirmation Hearing") will take place on [REDACTED] 2010, at [REDACTED] :00 m., before the
8 Honorable Maureen A. Tighe, United States Bankruptcy Judge for the Central District of
9 California, in Courtroom 302, located at 21041 Burbank Blvd., Woodland Hills, California 91367.

10
11 **2. Deadline For Voting For or Against the Plan**

12 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and
13 return the ballot in the enclosed envelope to:

14 Kaye Scholer LLP
15 Ashleigh A. Danker, Esq.
16 1999 Avenue of the Stars, 17th Floor
17 Los Angeles, California 90067

18 Ballots may also be submitted by fax to (310) 229-1935, attention: Ashleigh A. Danker, or by
19 email to adanker@kayescholer.com. Your ballot must be received by 5:00 p.m., Pacific Standard
20 Time, on [REDACTED] 2010 **or your ballot will not be counted.**

21
22 **3. Deadline for Objecting to the Confirmation of the Plan**

23 Objections to the confirmation of the Plan must, by [REDACTED] 2010, be filed with
24 the Court and served by same day service upon Ashleigh A. Danker, Esq., Kaye Scholer LLP, 1999
25 Avenue of the Stars, 17th Floor, Los Angeles, California 90067; telephone (310) 788-1235,
26 facsimile: (310) 229-1935; e-mail: adanker@kayescholer.com.

27
28 **4. Identity of Persons to Contact for More Information Regarding the Plan**

Any interested party desiring further information about the Plan should contact Marc S.
Cohen or Ashleigh A. Danker, Esq., Kaye Scholer LLP, 1999 Avenue of the Stars, 17th Floor, Los

1 Angeles, California 90067; telephone (310) 788-1000, facsimile: (310) 788-1200; e-mail: *mcohen*
2 *@kayescholer.com* or *adanker@kayescholer.com*.

3
4 **C. Disclaimer**

5 The financial data relied upon in formulating the Plan is based on the financial records of
6 the Debtor and the projections prepared by the Debtor's current management and its consultants.
7 The Debtor represents that everything stated in this Disclosure Statement is true to the Debtor's
8 best knowledge. The Bankruptcy Court has not yet determined whether or not the Plan is
9 confirmable and makes no recommendation as to whether or not you should support or oppose the
10 Plan.

11
12 **II. BACKGROUND**

13 **A. Description and History of the Debtor's Business**

14 **1. The Debtor**

15 The Debtor is a California limited liability company organized in June 2005 for the
16 primary purpose of acquiring and entitling for redevelopment the approximately 648.5 acre
17 property, including an operating eighteen-hole golf course and restaurant, near Malibu (the
18 "Property") commonly known as the "Malibu Country Club." The Debtor acquired the Property
19 in 2006.

20 The Debtor has no employees. It operates the Country Club (defined below) pursuant to a
21 Management Agreement with Malibu Golf Club, LLC ("MGC"), a wholly-owned non-debtor
22 subsidiary of the Debtor. MGC, among other things, employs the staff who conduct the day-to-
23 day operations of the Country Club and maintains accounts directly with providers of utility
24 services for the Country Club. The Debtor conducts senior level redevelopment/entitlement
25 activities (the "Entitlement Activities") for the Property pursuant to a Development Management
26
27
28

1 Agreement with Hix Rubenstein Companies (“HRC”)¹ and day-to-day Entitlement Activities
2 pursuant to a Management Agreement with Development Management Services Company, Inc.
3 (“DMS”).²

4 2. The Property

5 The Property includes an eighteen (18) hole golf course (the “Golf Course”) and certain
6 related improvements such as an approximately 10,000 sq. ft. clubhouse complex (including, but
7 not limited to, offices, a golf shop, men’s and women’s locker rooms, a restaurant, snack bar,
8 kitchen and other facilities) (collectively, the “Clubhouse Complex”), golf course maintenance
9 buildings, a golf cart storage facility, practice green, a driving net, parking areas, rest rooms,
10 drinking fountains, water elements, cart paths, and related landscaping (collectively with the Golf
11 Course and the Clubhouse Complex, the “Country Club”) situated on approximately 200 acres.
12 The Property also includes twenty-nine (29) legal parcels of various sizes.

13 Plans for the redevelopment of the Property include a partnership with educational
14 institutions focused on environmental issues; compliance with the LEED³ standard of green
15 development; partial restoration of a Santa Monica Mountain creek bulldozed by the original
16 owner; and designs for generation of green power through solar, wind, and geothermal sources,
17 resulting in a net neutral energy consumption.

18 Pursuant to a February 15, 2010 appraisal (the “Appraisal”), the Property was appraised at
19 \$44,200,000 on an “as-is” basis (the “As-Is Value”). See Exhibit A hereto.

20 ///

21 _____
22 ¹ Pacific Capital Holdings, Inc. (“PCH”) and MPK Development, LLC (“MPK”) are also
23 named as managers under the Development Management Agreement. PCH no longer provides
24 services or receives compensation under that agreement and MPK has provided strategic direction
25 under the agreement for which it has not asserted a right to compensation.

26 ² DMS also acts as manager of MGC and receives separate compensation for its services in
27 managing and operating the Country Club.

28 ³ The Leadership in Energy and Environmental Design (LEED) Green Building Rating
System is a nationally accepted third party certification program for the design, construction, and
operation of high performance green buildings.

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1 **3. The Secured Debt**

2 The Debtor's primary secured creditor is U.S. Bank National Association ("U.S. Bank"),
3 as successor-in-interest to the Federal Deposit Insurance Corporation ("FDIC"), Receiver for
4 California National Bank ("CalNational"). References herein to the "Bank" are to CalNational
5 with respect to the period prior to its seizure by the FDIC on October 30, 2009, and to U.S. Bank
6 thereafter.

7 On or about March 28, 2006, the Debtor entered into a loan agreement and related
8 documents with the Bank in the amount of \$28,500,000 (the "First Loan"). The purpose of the
9 First Loan was to assist the Debtor in purchasing the Property. The First Loan was secured by the
10 Property and guaranteed by each of Thomas C. Hix, Mark D. Kvamme, and Richard S. Fuld, Jr.
11 (collectively, the "Guarantors").⁴

12 On or about June 15, 2006, the Debtor entered into a second loan agreement and related
13 documents with CalNational for a loan in an amount not to exceed \$11,500,000 to fund the
14 process of entitling the Property (the "Second Loan" and, collectively with the First Loan, the
15 "Loans").⁵ The Second Loan was also secured by the Property and guaranteed by the Guarantors.
16 The First Loan and the Second Loan are referred to herein collectively as the "Loan".

17 The Bank has filed a proof of claim asserting that it is owed at least \$39,532,519.88 as of
18 the Petition Date, including default interest at the rate of 18% per annum. The Debtor disputes
19 the Bank's claim and also believes that the Bank's claim is subject to partial or complete offset
20

21
22 ⁴ A fourth guarantor, Jeffrey S. Klein, filed a personal Chapter 7 case on October 21, 2009 in the
23 United States Bankruptcy Court for the Middle District of Florida, Case No. 8:09-bk-23914-CED.

24 ⁵ The process of entitling the Property includes obtaining a variety of approvals from the County
25 of Los Angeles, including, but not limited to, certification of an environmental impact report,
26 approval of a vesting tentative tract map, approval of an oak tree permit, amendment to an
27 existing conditional use permit, and a coastal development permit. Other approvals necessary to
28 implement the redevelopment of the Property include, but are not limited to, the California
Coastal Commission, the California Department of Fish and Game, the Army Corps of Engineers,
and the Regional Water Quality Control Board.

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1 based upon principles of lender liability. The Debtor intends to file an objection to the Bank's
 2 claim asserting these offsets.

3
 4 **B. Principals of the Debtor's Business and Guarantors**

5 **1. Membership Interests in the Debtor**

6 The Debtor is currently comprised of ten members (interest holders), some of which are
 7 parties experienced in real estate development and management, some which are outside investors,
 8 and one which is both a developer and an investor as follows:

<u>Developer Members:</u>	<u>Investor Members:</u>
Pacific Capital Investments, LP ("PCT") (20.25%)	MPK (4.762%)
Pacific Capital Holdings, Inc. ("PCH") (1%)	The Leone-Perkins Family Trust (14.286%)
T&J Investment Partners, LLC ("T&J") (20.25%)	Crankstart Foundation (14.286%)
Hix Rubenstein Companies ("HRC") (1%)	Third Millennium Trust (9.524%)
MPK Development, LLC ("MPK") 7.5%	RSF, Jr., LLC (4.762%) David B. Agus (2.380%)

15 On the Effective Date, the membership interests in the Debtor shall be restructured and
 16 owned (the "Restructured Membership Interests") as follows:

<u>Restructured Developer Members:</u>	<u>Restructured Investor Members:</u>
T&J Investment Partners, LLC ("T&J") (% to be determined)	MPK (% tbd)
Hix Rubenstein Companies ("HRC") (% tbd)	The Leone-Perkins Family Trust (% tbd)
MPK Development, LLC ("MPK") (% tbd)	Crankstart Foundation (% tbd)
	Third Millennium Trust (% tbd)
	RSF, Jr., LLC (% tbd) David B. Agus (% tbd)

23 The Restructured Membership Interests shall be owned by the Restructured Developer
 24 Members and the Restructured Investor Members (collectively, the "New Members") in exchange
 25 for (i) payments made by the New Members to fund the Debtor's postpetition operations and
 26 administrative expenses, not satisfied pursuant to the Court-approved cash collateral budget,
 27 including the fees and costs of the Debtor's professionals, (ii) funding of the Effective Date
 28 Payments (defined in Section III.D.1, below), (iii) funding of payments due to the Bank pursuant

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1 to its treatment in Class 2, with the exception of the Balloon Payment provided under Class 2 -
2 Option A, if applicable, and (iv) funding of payments needed to fund the Debtor's entitlement of
3 the Property during the term of the Plan (collectively, the "Equity Contributions"). The Equity
4 Contributions are estimated to approximate \$18,425,000. A summary of the Equity Contributions
5 is attached as hereto as **Exhibit B**.

6 Principals of the New Members include: Thomas C. Hix (T&J and HRC); Mark D.
7 Kvamme (MPK); Richard S. Fuld, Jr. (RSF); Douglas M. Leone (Leone-Perkins Family Trust);
8 Mark Stevens (Third Millenium Trust); and Michael Moritz (Crankstart Foundation); and Dr.
9 David B. Agus. Mr. Stevens, Mr. Moritz, and Mr. Leone are each high net worth individuals and
10 partners in venture capital firm Sequoia Capital.

11 2. The Guarantors/Guarantees and Collection Stay

12 The Plan provides for payment in full of the Bank under either Class 2 - Option A or Class
13 2 - Option B. The Plan imposes a collection stay with respect to the Guarantors provided that the
14 Reorganized Debtor is not in material default with respect to its obligations to the Bank under the
15 Plan for more than 30 days following receipt of written notification from the Bank of such
16 material default or the bankruptcy case is not dismissed or converted to one under Chapter 7.
17 Personal financial statements for Mr. Hix, Mr. Kvamme, and Mr. Fuld, each of whom are
18 Guarantors, shall be submitted to the Court prior to the confirmation hearing along with a request
19 that such information be held by the Court under seal.

21 C. Management of the Debtor Before and After the Bankruptcy

22 The Debtor's Managing Member is an Executive Committee composed of HRC, acting
23 through Thomas C. Hix, MPK, acting through Mark D. Kvamme, and PCH, acting through
24 Jeffrey S. Klein. Mr. Klein is no longer an active participant in the Debtor and on October 21,
25 2009 filed a personal voluntary petition under Chapter 7 of the Bankruptcy Code in the United
26 States Bankruptcy Court for the Middle District of Florida, Case No. 8:09-bk-23914-CED.

27 Prior to and since the bankruptcy filing, Mr. Hix, the President and co-founder of HRC,
28 has led and continues to lead the Debtor's efforts to redevelop the Property. Mr. Hix has over

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1 thirty (30) years of experience in real estate development and management, including several
2 projects similar to the one pursued by the Debtor. HRC is a full service land development
3 company with expertise in land acquisition, entitlement processing, infrastructure development,
4 and final product build-out, including several residential and resort projects centered around
5 premier golfing facilities. It was the developer of the Cordevalle Golf Club in San Martin,
6 California, ranked in the top 25 golf clubs in the country.

7 HRC's current projects include Pronghorn, a premier private golf community, in Bend,
8 Oregon - which is fully entitled and in the build-out stage; Tuscany Hills on the shores of Lake
9 Tulloch in Central California's Calaveras County, a master-planned, premier golf community,
10 which contemplates the development of 335 single family residential units - which is now fully
11 entitled and awaiting build-out; The Bluff's at Riverbend overlooking the San Joaquin River in
12 Madera County, California, a master-planned, premier golf community, which contemplates the
13 development of 400 residential units - which is before the Board of Supervisors for approval and
14 expected to complete the entitlement process in the next twelve months; and Northwest
15 Innovation Park located in Bend, Oregon, an eco-friendly business hotel with approximately 100
16 rooms, executive suites, and conference facilities, an athletic club, and a golf academy attached to
17 a six hole golf course that provides alternating fairways that create an 18 hole experience - which
18 is now fully entitled and awaiting build-out. Virtually all of HRC's projects are located in areas
19 of great natural beauty and had to satisfy rigorous approval requirements from numerous state and
20 local authorities as part of the entitlement process.

21 After the Effective Date, Mr. Hix shall continue to lead the Reorganized Debtor's
22 entitlement effort.

23 **D. Events Precipitating The Chapter 11 Filing**

24 What follows is a brief summary of the circumstances that led the Debtor to file this
25 bankruptcy case. The Debtor's allegations and contentions set forth in this Section constitute the
26 Debtor's views regarding events precipitating the filing of this Chapter 11 case, are the subject of
27 pending litigation, and are contested by the Bank.
28

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1 As described in Section II.A.3, above, the Debtor and the Bank entered into the Loans in
2 2006. Eventually, the maturity of the First Loan was extended to at least April 4, 2009 and the
3 maturity of the Second Loan was extended to at least August 18, 2009. Long before the maturity
4 of the First Loan, the Debtor initiated a request for a long-term extension of the Loans which
5 would be necessary to complete the project, and which was contemplated in the written
6 agreements.

7 Prior to the filing of the Debtor's bankruptcy case, the Debtor and the Bank filed in
8 litigation in the Los Angeles County Superior Court based on the Bank's assertion that the Loans
9 had matured, Case No. SC104512 (the "State Court Action"). The Debtor asserts that the Bank
10 breached the loan agreement by failing to fund the Debtor's project as agreed and filed
11 counterclaims on several lender liability theories. Pursuant to a stipulation between the Debtor
12 and the Bank, the Bank had the right to obtain the appointment of a receiver on or before
13 November 5, 2009 if the Debtor was not able to obtain a commitment for takeout financing prior
14 to that time. When the Debtor was not able to obtain a commitment for takeout financing, the
15 Debtor made several proposals to the Bank in October 2009 to resolve the Loans. The Bank had
16 the opportunity to respond prior to the November 5, 2009 deadline, but while the Debtor waited
17 for a response, the Bank was seized by the FDIC. Accordingly, the Debtor filed its petition on
18 November 3, 2009 to stay the appointment of a receiver and foreclosure of the Property.

19
20 **E. Significant Events During the Bankruptcy Case**

21 **1. Bankruptcy Proceedings**

22 **a) Cash Collateral**

23 On November 4, 2009, the Debtor filed an emergency motion for an order authorizing the
24 use of cash collateral (Docket No. 2) to allow the cash generated by the operations of the Country
25 Club to fund the continued operations of the Country Club. On November 10, 2009, the Court
26 entered an interim order (Docket No. 9) authorizing the interim use of cash collateral as requested
27 by the Debtor, and setting a final hearing on the use of cash collateral for December 14, 2009.
28 Prior to the final hearing, the Debtor and the Bank entered into a stipulation (Docket No. 30)

1 regarding use of cash collateral pursuant to a budget through June 30, 2010. The Court entered an
2 order approving the cash collateral stipulation on December 10, 2009 (Docket No. 32).

3 b) Employment of the Debtor's Professionals

4 Pursuant to orders entered on January 26, 2010 (Docket Nos. 54, 55, and 56), the Court
5 approved the employment of Kaye Scholer LLP as general insolvency counsel to the Debtor,
6 Truman & Elliott LLP as special land use counsel to the Debtor, and Cappello & Noel LLP as
7 special litigation counsel to the Debtor.

8 c) Administrative Matters

9 The Debtor was required to address the various administrative matters attendant to the
10 commencement of this bankruptcy case, which required an extensive amount of work by Debtor's
11 management and bankruptcy counsel. These matters included the preparation of the Debtor's
12 Schedules of Assets and Liabilities and Statement of Financial Affairs and preparation of the
13 materials required by the Office of the United States Trustee ("OUST"), including, without
14 limitation, the 7-Day Package for the Debtor. The Debtor has made every effort to comply with
15 the Debtor's duties under 11 U.S.C. Sections 521, 1106 and 1107 and all applicable OUST
16 guidelines, including the filing of the Debtor's monthly operating report with the OUST and the
17 Court. The Debtor also attended the Debtor's initial interview with the OUST and the meeting of
18 creditors required under 11 U.S.C. § 341(a).

19 d) Claims Bar Date

20 On January 11, 2010, the Debtor filed a motion for an order requiring that all creditors and
21 parties in interest file proofs of claim within a date certain after service of notice of the bar date
22 (Docket No. 45, the "Bar Date Motion"). An order approving the Bar Date Motion was entered
23 on February 2, 2010 (Docket No. 57). The Debtor served the *Notice of Prepetition Claims Bar*
24 *Date* (Docket No. 58) on February 3, 2010. The last day to file proofs of claim or interest was
25 March 10, 2010.

26 e) Stay Litigation with the Bank

27 On November 17, 2009, the Bank filed a motion for relief from the automatic stay
28 (Docket No. 13, the "RFS Motion"). In the RFS Motion, the Bank sought relief from the

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1 automatic stay to compel arbitration of the Debtor's counterclaims against the Bank in the State
2 Court Action. The Bank also sought a determination that the automatic stay did not apply with
3 respect to the Guarantors. On December 16, 2009, the Debtor commenced an adversary
4 proceeding against the Bank and filed a motion for a preliminary injunction requesting the Court
5 to enjoin further prosecution of the State Court Action by the Bank against the Guarantors (Adv.
6 Proc. 1:09-ap-01528, Docket No. 2, the "Injunction Motion"). Pursuant to an order entered on
7 January 27, 2010 in the Adversary Proceeding (Docket No. 11), the Court denied the Injunction
8 Motion. Pursuant to an order entered on February 10, 2010 (Docket No. 59), the Court denied the
9 RFS Motion with respect to the Debtor and granted it with respect to the Guarantors.

10 **2. State Court Litigation with the Bank**

11 On or about February 19, 2010, the Bank filed a motion to compel arbitration (the
12 "Arbitration Motion") with respect to certain of the claims against and by the Guarantors in the
13 State Court Action. On or about February 22, 2010, the Bank filed a motion seeking a right to
14 attach order in the amount of \$6,461,598.10 (the "Attachment Motion") with respect to the
15 Guarantors. Both the Arbitration Motion and the Attachment Motion came on for hearing before
16 the State Court on March 16, 2010. Pursuant to a Minute Order entered on March 23, 2010, the
17 State Court granted the Attachment Motion, subject to the Bank posting a \$1 million bond. In so
18 holding, Judge Biderman found that the Guarantors made a "strong showing" of a possible offset
19 amount with respect to any amounts owed to the Bank as a consequence of the Bank's behavior
20 with respect to the Loans. As of the date hereof, the Bank has not posted the bond required by the
21 State Court. On April 1, 2010, the State Court granted the Arbitration Motion with respect to all
22 claims except those requesting injunctive relief.

23 **3. Actual and Projected Recovery of Preferential or Fraudulent Transfers**

24 The Debtor does not believe that there are any preference, fraudulent conveyance, or other
25 avoidance actions to pursue.

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1 **4. Procedures Implemented to Resolve Financial Problems**

2 The Debtor's financial problems relate to its dispute with the Bank regarding the alleged
3 maturity of the Loans and the Debtor's claims against the Bank for its failure to deal fairly
4 with the Debtor in connection with an extension of the Loans. These problems are resolved
5 through the Plan.

6 **5. Current and Historical Financial Conditions**

7 Attached hereto as **Exhibit C** are copies of: (1) a balance sheet as of December 31, 2008;
8 (2) a profit and loss statement from January through December 2008; (3) a balance sheet as of
9 December 31, 2009; (4) a profit and loss statement from January through December 2009; (5) a
10 balance sheet as of March 31, 2010; (6) a profit and loss from January through March 2010; and
11 (7) the Debtor's March 2010 Monthly Operating Report. As of February 15, 2010, the As-Is
12 Value of the Property was appraised at \$44,200,000. *See Exhibit A* hereto.

13
14 **III. SUMMARY OF THE PLAN**

15 The following is a summary of the material provisions of the Plan, although it should not
16 replace a review of the Plan in its entirety.

17 The goal of the Plan is to satisfy all allowed claims in full. With the exception of the
18 Bank's claim, which is disputed, each creditor will be paid in full on the Effective Date without
19 interest on account of such creditor's allowed claim.

20 Following determination of the Allowed Bank Claim (defined in Section III.C.1 (Class
21 2)), the Reorganized Debtor shall pay the full amount of the Allowed Bank Claim, at the
22 Reorganized Debtor's election, under either Option A, interest only at 4% or such other rate as is
23 necessary to comply with Bankruptcy Code for four years with a balloon payment due upon
24 maturity, or Option B, an immediate lump sum payment. So long as the Reorganized Debtor is
25 not in material default of its obligations to the Bank under the Plan that is not cured within 30
26 days after the Reorganized Debtor's receipt of written notice of such material default or the
27 bankruptcy case is not dismissed or converted to one under Chapter 7, the Bank shall be stayed
28 from pursuing any collection efforts with respect to the Guarantors or their property.

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1 With the exception of the balloon payment due to the Bank under Class 2 - Option A, all
2 payments required under the Plan and all monies needed to fund the Reorganized Debtor's efforts
3 to re-entitle the Property shall be funded by the Reorganized Debtor's New Members. Upon
4 completion of the re-entitlement, the Debtor believes that the value of the Property will have
5 substantially increased over the As-Is Value and the Reorganized Debtor will satisfy the balloon
6 payment either through a sale of the Property or re-financing.

7 **A. What Creditors and Interest Holders Will Receive Under the Plan**

8 As required by the Bankruptcy Code, the Plan classifies claims and interests in various
9 classes according to their right to priority. The Plan states whether each class of claims or
10 interests is impaired or unimpaired and provides the treatment each class will receive. In no event
11 shall any creditor received more than the creditor's allowed claim, plus interest, to the extent
12 provided in the Plan.

13 **B. Unclassified Claims**

14 Certain types of claims are not placed into voting classes but are, instead, unclassified.
15 They are not considered impaired and they do not vote on the Plan because they are automatically
16 entitled to certain treatment under the Bankruptcy Code. Accordingly, the following claims have
17 not been placed into a class:

18 **1. Administrative Expenses**

19 Administrative expenses are claims for costs or expenses of administering the Debtor's
20 Chapter 11 cases which are allowed under Bankruptcy Code Section 507(a)(2). The Bankruptcy
21 Code requires that all administrative claims be paid on the Effective Date unless a particular
22 claimant agrees to a different treatment. The following chart lists all of the Debtor's § 507(a)(2)
23 administrative claims and their treatment under the Plan.

Description	Estimated Allowed Amount	Treatment
Clerk's Office Fees	\$0.00	Paid in full on or before the Effective Date
Office of the U.S. Trustee	\$0.00	Paid in full on or before the Effective Date
Kaye Scholer LLP, bankruptcy counsel to the Debtor	\$300,000 (estimated) (after application of prepetition retainer	Paid in full on the later of the Effective Date and the date the

	and amounts paid pursuant to monthly payment procedure)	Court enters an order allowing such fees and expenses
1 Truman & Elliott LLP, special land use counsel to the Debtor	\$50,000 (estimated) (after application of prepetition retainer and amounts paid pursuant to monthly payment procedure)	Paid in full on the later of the Effective Date and the date the Court enters an order allowing such fees and expenses
2 Cappello & Noël LLP, special litigation counsel to the Debtor	\$150,000 (estimated) (after application of prepetition retainer and amounts paid pursuant to monthly payment procedure)	Paid in full on the later of the Effective Date and the date the Court enters an order allowing such fees and expenses
3 Postpetition Non-Professional Fee Administrative Expenses	\$0.00	Paid in full in the ordinary course of business from cash collateral pursuant to the approved budget or paid in full out of the Debtor's funds contributed by one or more of its members
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9 TOTAL	\$500,000 (estimated)	Paid in the manner described above.

a) Professional Fee Claims

Any professional seeking allowance of a professional fee claim for services rendered prior to the Effective Date in connection with the Debtor's case must (1) file their application for allowance of compensation and reimbursement of expenses on or before 45 days after the Effective Date or in accordance with such other date as may be set by the Bankruptcy Court, and (2) have the fees and expenses allowed by a final order. Any party in interest may file an objection to such application within the time provided by the Local Bankruptcy Rules or within any other period that the Bankruptcy Court sets. Professionals holding professional fee claims who do not timely file and serve their applications for payment will be forever barred from asserting these claims against the Reorganized Debtor or its property.

As indicated above, the Debtor may need to pay approximately \$500,000 of administrative claims on the Effective Date of the Plan, although the actual amount that the Debtor may have to pay could be less. The Debtor will have cash on hand in excess of this amount on the Effective Date to make the necessary payments funded by cash contributions made by the New Members (defined in Section II.B.1) of the Reorganized Debtor.

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2. Priority Tax Claims

Priority tax claims include certain unsecured income, employment and other tax claims described by Bankruptcy Code Section 507(a)(8). The Bankruptcy Code requires that each holder of such a Section 507(a)(8) priority tax claim receive the present value of such claim in regular installment payments in cash, over a period not exceeding five years from the Petition Date. Such payments may not be in a manner less favorable than the most favored nonpriority unsecured claim provided for by the Plan other than a convenience class. The following chart lists all of the Debtor's known Section 507(a)(8) priority tax claims and their treatment under the Plan:

Description	Amount Owed	Treatment
Franchise Tax Board	\$1,814.75	The Franchise Tax Board will be paid in full on the Effective Date.
Internal Revenue Service	\$100.00	The Internal Revenue Service will be paid in full on the Effective Date

C. Classified Claims and Interests

1. Classes of Secured Claims

Secured claims are claims secured by liens against property of the estate. The following chart lists all classes containing the Debtor's secured claims and their treatment under the Plan:

Class #	Description	Insider (Y/N)	Impaired (Y/N)	Treatment
1	Los Angeles County Treasurer - Tax Collector Various Parcels Taxes Due: November 1, 2009 • Collateral: the Property • Priority of Security Interest: First (statutory)	N	N (Creditor in this Class is not entitled to vote on the Plan)	Paid in full on the Effective Date, or as soon as practicable thereafter

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1		<ul style="list-style-type: none"> • Amount of Claim: \$282,107.37 			
2		<ul style="list-style-type: none"> • Property Value: \$44,200,000 			
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4					
5	2	<p>Secured claim of U.S. Bank N.A., as successor-in-interest to the Federal Deposit Insurance Corporation, Receiver for California National Bank (the "Bank")</p> <ul style="list-style-type: none"> • Collateral: the Property and all rents, issues, and profits • Priority of Security Interest: Second • Est. amount of Claim: unknown and disputed (the Bank's proof of claim asserts an amount of at least \$39,532,519.88)⁶ • Collateral Value: \$44,200,000 	N	Y - Option A (Creditor in this Class is entitled to vote on the Plan) N - Option B	<p>The Bank will be paid the full amount of its allowed claim (the "Allowed Bank Claim") as such amount is determined by the Court or as jointly agreed by the Debtor or Reorganized Debtor, as applicable, and the Bank. Unless otherwise agreed by the Bank, ordered by the Court, or already pending, no later than 30 days following the Effective Date, the Reorganized Debtor shall file an objection to the Bank's proof of claim. Following determination of the objection to the Bank's proof of claim by a final, non-appealable order, the Reorganized Debtor shall have 10 business days in which to elect, in its sole discretion, to pay the Allowed Bank Claim in full under either Option A or Option B herein and give written notice of its election to the Bank.</p> <p>During the pendency of any timely filed objection to the Bank's proof of claim, payments that would otherwise be due to the Bank if the Reorganized Debtor elected Option A under the Plan calculated based upon an unadjusted principal balance of \$34,165,520 shall be deposited into a segregated disputed claim reserve (the "Disputed Claim Reserve") and held pending a final, non-appealable determination of the Bank's claim or as otherwise jointly agreed by the Reorganized Debtor and the Bank, and subject to the Reorganized Debtor's election of Option A or Option B. Following determination of the Allowed Bank Claim by a final, non-appealable order and the Reorganized Debtor's election of Option A or Option B, the amount then due and payable to the Bank, if any, under the selected Option shall be paid first from the Disputed Claim Reserve until exhausted and then from other funds of the Reorganized Debtor.</p> <p>Treatment of the Allowed Bank Claim as provided under the Plan shall not exonerate the Guaranty Agreements made by Thomas C. Hix, Mark D.</p>
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⁶ All of the bankruptcy and non-bankruptcy causes of action of the Debtor and the Debtor's estate against the Bank, including those based on lender liability claims, are expressly preserved under this Plan and, on the Effective Date, shall vest in the Reorganized Debtor, which shall have the full power and authority to prosecute, settle, adjust, retain, enforce, or abandon any such claims.

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			<p>Kvamme, and Richard S. Fuld, Jr. (collectively, the Guarantors)⁷ in favor of California National Bank (now, the Bank), copies of which are attached to the Plan as Exhibits A and B (collectively, the "Guarantees"); except with respect to the foregoing provision, however, nothing under the Plan shall waive any rights, claims, causes of action, or defenses of the Guarantors with respect to the Guarantees, including for exoneration for reasons unrelated to the treatment of the Allowed Bank Claim under the Plan. The Bank shall be stayed from all further efforts to collect on its claims under the Guarantees from the Guarantors or any of their property until the earlier of (a) the bankruptcy case is dismissed or converted to Chapter 7 or (b) when there is a material default with respect to the obligations of the Reorganized Debtor to the Bank under the Plan that is not cured within 30 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth such default.</p> <p style="text-align: center;">OPTION A:</p> <p>The Reorganized Debtor will pay the Allowed Bank Claim in full. The Reorganized Debtor shall pay the Bank, in arrears, monthly payments of interest only with respect to the principal amount of the Allowed Bank Claim beginning on the 15th day of the first full month after the Effective Date (the "Commencement Date") and then on the 15th day of each subsequent month.</p> <p>Interest rate = 4% fixed, or such other rate of interest as is necessary to comply with 11 U.S.C. § 1129(b)(2)(A)(i)(II).</p> <p>A balloon payment of the unpaid balance of the Allowed Bank Claim shall mature and be due and payable on the 15th day of the 48th month following the Commencement Date (the "Maturity Date").</p> <p>The unpaid balance of the Allowed Bank Claim may be prepaid, in the Reorganized Debtor's sole discretion, at any time prior to the Maturity Date without penalty.</p> <p>The Bank shall retain its liens against the Property pursuant to its existing deeds of trust, which are hereby incorporated by reference to the extent they are consistent with this Plan. Copies of the Bank's</p>
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⁷ A fourth guarantor, Jeffrey S. Klein, filed a personal Chapter 7 case on October 21, 2009 in the United States Bankruptcy Court for the Middle District of Florida, Case No. 8:09-bk-23914-CED.

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				<p>deeds of trust are attached to the Plan as Exhibits C and D.</p> <p>The Bank shall be enjoined from enforcing its liens against the Property as long as there is no material default under the Plan with respect to the obligations of the Reorganized Debtor to the Bank under that Plan that is not cured within 30 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth such default.</p> <p>The Bank shall promptly release its liens against the Property following receipt of payment as provided under Option A.</p> <p style="text-align: center;">OPTION B:</p> <p>The Reorganized Debtor shall pay the Allowed Bank Claim in full, excluding default interest and all other consequences of default on the Effective Date or as soon as practicable thereafter following receipt from the Bank of an accurate and detailed payoff demand based upon the Allowed Bank Claim.</p> <p>The Bank shall be enjoined from enforcing its liens against the Property as long as there is no material default under the Plan with respect to the obligations of the Reorganized Debtor to the Bank under that Plan that is not cured within 30 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth such default.</p> <p>The Bank shall promptly release its liens against the Property following receipt of payment as provided under Option B.</p>
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2. Class of Priority Unsecured Claims

Certain priority claims that are referred to in Bankruptcy Code Sections 507(a)(3), (4), (5), (6), and (7) are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claim. The Debtor does not believe that there are any claims against the Debtor which fall into such a class.

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3. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a). The following chart identifies the Plan’s treatment of the class containing the Debtor’s general unsecured claims:

Class #	Description	Impaired (Y/N)	Treatment
3	<p>General Unsecured Claims</p> <p>Estimated total amount of general unsecured claims, excluding indemnification claims: \$211,580.52</p> <p>A chart of all general unsecured claims is attached as Exhibit E to the Plan.</p>	Y	<p>Holders of allowed general unsecured claims, excluding indemnification claims, will be paid in full without interest as soon as practicable following the later of the Effective Date and the date the Court enters an order allowing such claims.</p> <p>Holders of indemnification claims shall retain their rights of indemnification and subrogation to the extent of any payments by such holder to the Bank on account of such holder’s guarantee of the Debtor’s obligations to the Bank.</p>

4. Class of Interest Holders

Interest holders are the parties who hold ownership interests (*i.e.*, equity) in the Debtor. The Debtor is a California limited liability company in which the members hold ownership interests. The following chart identifies the Plan’s treatment of the class of interest holders:

Class #	Description	Impaired (Y/N)	Treatment
4	Interest Holders	Y	<p>On the Effective Date, all Class 4 interests will be deemed cancelled, terminated, extinguished and of no further force and effect and will no longer constitute an equity interest in the Debtor without the need for either the Debtor or the Class 4 interest holders to take any further action. Interest holders will not receive any distribution or retain any property under the Plan on account of their equity interests in the Debtor. Instead, 100% of the interest in the Reorganized Debtor shall be issued to the New Members (defined below) in exchange for their equity contributions as described below.</p>

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1 **D. Means of Effectuating the Plan**

2 **1. Funding for the Plan**

3 Administrative expenses, priority tax claims, the Class 1 secured claim of the L.A.
4 County Tax Collector, the Class 2 claim (secured claim of the Bank) but excluding the balloon
5 payment under Option A, and Class 3 claims (general unsecured claims, excluding
6 indemnification claims) will be paid from (i) the cash on hand in the Debtor's "equity" account at
7 Bank of America as of the Effective Date and (ii) new cash to be contributed by the New
8 Members (defined below) in an amount sufficient to pay (x) the allowed amount of such claims as
9 provided under the Plan (including postpetition interim compensation paid to the Debtor's
10 professionals pursuant to the Court approved monthly fee application procedure) and (y) the
11 amounts budgeted to complete the entitlement process for the Property (as annually revised and
12 updated, the "Budget"), in exchange for a one hundred percent (100%) ownership interest in the
13 Reorganized Debtor.⁸ A summary of the cash needed to fund the initial payments under Plan is
14 attached to the Plan as Exhibit F (the "Effective Date Payments"). A copy of the initial
15 entitlement Budget is attached to the Plan as Exhibit G.

16 The New Members shall contribute the cash needed to satisfy the Effective Date Payments
17 required under the Plan no later than five (5) business days prior to the Effective Date. The New
18 Members shall contribute the amounts required pursuant to the Budget in four annual
19 installments, in advance (the "Annual Installments"), beginning with the initial Annual
20 Installment no later than five (5) business days prior to the Effective Date, in an amount sufficient
21 to satisfy the Budget for the upcoming twelve month period. Prior to the due date of each Annual
22 Installment after the initial Annual Installment, the Reorganized Debtor shall review and, if
23 appropriate, revise and update the Budget and provide a copy to the Bank. The Reorganized
24 Debtor shall also provide proof of its receipt of the applicable Annual Installment to the Bank.

25
26 ⁸ Additional consideration paid by the New Members includes payment of certain postpetition
27 ordinary course of business expenses of the Debtor to the extent not included in the Debtor's
28 approved cash collateral budget or with respect to any shortfalls thereunder.

1 The balloon payment to the Bank under Class 2 - Option A, if applicable, shall be paid by
2 the Reorganized Debtor from the proceeds of a sale or refinancing of the Property as provided
3 under Class 2 - Option A.

4 **2. The Structure of the Reorganized Debtor and Post-Confirmation**
5 **Management of the Reorganized Debtor**

6 The Reorganized Debtor will continue to be incorporated under the laws of the State of
7 California. On the Effective Date, all of the existing equity interests in the Debtor shall be
8 deemed cancelled and extinguished and of no force or effect. Existing equity holders in the
9 Debtor will not receive any distribution or retain any property on account of such equity interests.
10 On the Effective Date, the Reorganized Debtor shall be wholly owned by the New Members in
11 such percentages as the New Members shall agree among themselves. The New Members shall
12 be:

13 T&J Investment Partners, LLC
14 Hix Rubenstein Companies
15 MPK Development, LLC
16 The Leone-Perkins Trust
17 Crankstart Foundation
18 Third Millenium Trust
19 RSF, Jr., LLC
20 Dr. David Agus

21 The managing member of Reorganized Debtor shall consist of an Executive Committee
22 comprised of: Hix Rubenstein Companies and MPK Development, LLC. Thomas C. Hix of Hix
23 Rubenstein Companies shall continue to be in charge of the Reorganized Debtor's overall
24 entitlement and redevelopment process.

25 **3. The Disbursing Agent**

26 The Reorganized Debtor shall serve as the disbursing agent for purposes of making all
27 distributions required to be made under the Plan. The Reorganized Debtor will not charge any
28 disbursing agent fee for making such distributions.

4. Objections to Claims

Except as set forth immediately below, the Debtor or Reorganized Debtor, as applicable,
will file objections to all claims which are inconsistent with the Debtor's books and records
unless the Debtor or Reorganized Debtor deems the inconsistency to be insignificant. With

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1 respect to disputed claims which are not resolved prior to the Effective Date, the Reorganized
2 Debtor will have the authority, in its sole discretion in the reasonable exercise of its business
3 judgment, to settle or compromise any disputed claim without further notice or Court approval;
4 provided, however, the foregoing shall not prevent the Reorganized Debtor from seeking Court
5 approval of any such settlement should it decided to do so in the reasonable exercise of its
6 business judgment. As provided by Section 502(c) of the Bankruptcy Code, the Court may
7 estimate any contingent or unliquidated disputed claim for purposes of confirmation of the Plan.

8 The Debtor or the Reorganized Debtor, as applicable, will have the authority to file any
9 objection to claims following confirmation of the Plan, and the Court shall retain jurisdiction over
10 the Debtor, Reorganized Debtor and this case to resolve such objections to claims following
11 confirmation of the Plan. Nothing contained in the Plan shall constitute a waiver or release by the
12 Debtor or the Reorganized Debtor of any rights of setoff or recoupment, or of any defense, the
13 Debtor or Reorganized Debtor may have with respect to any claim.

14 With the exception of the Bank's claim, the Debtor does not expect to be filing any
15 objections to claims. The Debtor or Reorganized Debtor, as applicable, shall have up to and
16 including 30 days following the Effective Date to file its objections to the Bank's claim.

17 **5. Avoidance Actions**

18 The Debtor is not aware of any payments made during the ninety-day preference period
19 for non-insiders or the one-year period for insiders which would be clearly avoidable as
20 preference payments, as the Debtor believes that all such payments would be subject to some
21 form of ordinary course, contemporaneous exchange or new value defense. The Debtor also
22 believes that the detriment to the Debtor's business from suing vendors (primarily consultants
23 assisting with the entitlement process for the Property) would outweigh any benefit from the
24 pursuit of preference actions.

25 The Debtor is also not aware of any fraudulent conveyances which have occurred and
26 which need to be avoided. Nevertheless, on the Effective Date the power and standing of this
27 estate to pursue avoidance causes of action shall be transferred to and retained by the Reorganized
28 Debtor pursuant to Section 1123(b) of the Bankruptcy Code. All claims, causes of action and

1 avoidance actions of the Debtor and the Debtor's estate are preserved by the Plan, and the
2 Reorganized Debtor shall have full power and authority to settle, adjust, retain, enforce or
3 abandon any claim, cause of action or avoidance actions under Section 1123(b) of the Bankruptcy
4 Code or otherwise, regardless of whether such claims, causes of action or avoidance actions were
5 commenced prior or subsequent to the Effective Date.

6
7 **E. Risk Factors**

8 Risk exists that the Reorganized Debtor will not be able to obtain the entitlements for the
9 Property in the time frame contemplated under the Plan. The Reorganized Debtor's timetable for
10 completion of the entitlements, however, is conservative and allows the Reorganized Debtor an
11 approximately twelve (12) month cushion to complete the entitlements beyond what is projected
12 to be needed for the process. Accordingly, the Debtor believes this risk is small.

13 Risk also exists that the Reorganized Debtor may be required to modify the scope of the
14 entitlements it seeks in order to obtain the required regulatory approvals. Because the full slate of
15 entitlements will substantially increase the value of the Property, the Debtor believes that even if
16 it is required to limit the scope of some the requested entitlements, the value of the Property will,
17 nonetheless, increase to a point well in excess of that needed to satisfy the balloon payment due to
18 the Bank under Class 2 - Option A.

19 The foregoing risks impact only the Bank and not other creditors under the Plan who are
20 paid in full on the Effective Date. If the Reorganized Debtor materially defaults with respect to
21 its obligations to the Bank under the Plan and such default is not timely cured, the Bank may seek
22 to foreclose on the Property and the collection stay in favor of the Guarantors would lift.

23
24 **F. Other Provisions of the Plan**

25 **1. Executory Contracts and Unexpired Leases**

26 To the best of the Debtor's knowledge, the Debtor is a party only to the prepetition
27 executory contracts and unexpired leases set forth on Exhibit H to the Plan. As of the Effective
28 Date, all prepetition executory contracts and unexpired leases set forth on Exhibit H to the Plan,

1 shall be assumed and the cure amounts listed thereon paid on the Effective Date or as soon
2 thereafter as reasonably practicable.

3
4 **2. Changes in Rates Subject to Regulatory Commission Approval**

5 The Debtor is not subject to governmental regulatory commission approval of its rates.

6
7 **3. Employment of Professionals By the Reorganized Debtor and Payment**
8 **of Professionals' Fees and Expenses Incurred After the Plan Effective**
9 **Date**

10 On and after the Effective Date, the Reorganized Debtor shall have the right to employ
11 and compensate such officers, employees, professionals, agents and representatives as the
12 Reorganized Debtor determines is necessary or appropriate to implement all of the provisions of
13 the Plan. The payment of all fees and expenses of the professionals engaged by the Reorganized
14 Debtor, including such professionals necessary to facilitate the entitlement process with respect to
15 the Property, and any other expenses of the Reorganized Debtor shall be the responsibility of the
16 Reorganized Debtor. The Reorganized Debtor shall have the authority to pay the fees and
17 expenses incurred by its officers, employees, professionals, agents and representatives without
18 any further order of the Court.

19
20 **4. Distributions to be Made Pursuant to the Plan**

21 Except as otherwise agreed to by the Reorganized Debtor in writing, distributions to be
22 made to holders of allowed claims pursuant to the Plan may be delivered by regular mail, postage
23 prepaid, to the address shown in the Debtor's schedules, as they may from time to time be
24 amended in accordance with Bankruptcy Rule 1009, or, if a different address is stated in a proof
25 of claim duly filed with the Bankruptcy Court, to such address. Checks issued to pay allowed
26 claims shall be null and void if not negotiated within sixty (60) days after the date of issuance
27 thereof.

1 **5. Exemption from Transfer Taxes**

2 Pursuant to Section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of
3 a security, or the making or delivery of an instrument of transfer under a plan confirmed under
4 Section 1129 of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or
5 similar tax. Transfers under the Plan that are exempt from taxes under Section 1146(c) of the
6 Bankruptcy Code include all transfers by the Debtor after the commencement of the Debtor's
7 Chapter 11 case made pursuant to the Debtor's confirmed Plan. The taxes from which such
8 transfers are exempt include stamp taxes, recording taxes, sales and use taxes, transfer taxes, and
9 other similar taxes.

10
11 **6. Exculpation and Releases**

12 To the maximum extent permitted by law, neither the Debtor, the Reorganized Debtor, nor
13 any of the Debtor's or Reorganized Debtor's employees, officers, directors, agents, members,
14 representatives, experts, consultants, or professionals employed or retained by any of them,
15 whether or not by Bankruptcy Court order ("Released Parties"), shall have or incur liability to any
16 person or entity for any act taken or omission made in good faith in connection with or related to
17 the formulation and implementation of the Plan, or a contract, instrument, release, or other
18 agreement or document created in connection therewith, the solicitation of acceptances for or
19 confirmation of the Plan, or the consummation and implementation of the Plan and the
20 transactions contemplated therein.

21
22 **7. Injunctions and Collection Stay**

23 The Plan Confirmation Order shall enjoin the prosecution, whether directly, derivatively
24 or otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of
25 action, liability or interest released, discharged or terminated pursuant to the Plan. The Plan
26 Confirmation Order shall also stay all further efforts by the Bank to collect on its claims under the
27 Guarantees from the Guarantors or any of their property until the earlier of (a) the bankruptcy
28 case is dismissed or converted to Chapter 7 or (b) when there is a material default with respect to

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1 the obligations of the Reorganized Debtor to the Bank under the Plan that is not cured within 30
2 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth
3 such default. The Allowed Bank Claim, representing the full amount owed to the Bank by the
4 Debtor and the Guarantors, shall be paid in full pursuant to the Plan. Accordingly, upon
5 successful completion of all payments to the Bank provided under the Plan, the Guarantors shall
6 have no remaining liability whatsoever to the Bank on account of their Guarantees.

7 Except as provided in the Plan or the Plan Confirmation Order, as of the Effective Date,
8 all entities that have held, currently hold or may hold a claim or other debt or liability that is
9 discharged or an interest or other right of an equity security holder that is extinguished pursuant
10 to the terms of the Plan are permanently enjoined from taking any of the following actions against
11 the Released Parties, or any of them, and the Reorganized Debtor's property on account of any
12 such discharged claims, debts or liabilities or extinguished interests or rights: (i) commencing or
13 continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing,
14 attaching, collecting or recovering in any manner any judgment, award, decree or order;
15 (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a setoff, right of
16 subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor
17 or Reorganized Debtor; and (v) commencing or continuing any action in any manner, in any
18 place, that does not comply with or is inconsistent with the provisions of the Plan. By accepting
19 distribution pursuant to the Plan, each holder of an allowed claim receiving distributions pursuant
20 to the Plan shall be deemed to have specifically consented to the injunctions set forth in this
21 Section.

22
23 **8. Default Provisions**

24 Except as provided herein or in the Confirmation Order, in the event that the Reorganized
25 Debtor or the Disbursing Agent materially defaults in the performance of any of its obligations
26 under the Plan and does not cure such default within thirty (30) days after receipt of written notice
27 of material default from the creditor to whom performance is due, then the entity or individual to
28 whom the performance is due may pursue such remedies as are available at law or in equity. An

1 event of material default occurring with respect to one claim shall not be any event of default with
2 respect to any other claim.

3
4 **9. Retention of Jurisdiction**

5 After confirmation of the Plan and occurrence of the Effective Date, in addition to
6 jurisdiction which exists in any other court, the Court will retain such jurisdiction to the
7 maximum extent as is legally permissible, including for the following purposes:

8 a) To determine the allowability, classification, or priority of claims and
9 interests upon objection by any parties in interest with standing to bring such objection or
10 proceeding and to consider any objection to claim or interest whether such objection is filed
11 before or after the Effective Date;

12 b) To determine the extent, validity and priority of any lien asserted against
13 property of the Debtor, or property of the Debtor's estate;

14 c) To construe and take any action to enforce the Plan, the Plan Confirmation
15 Order, and any other order of the Court, issue such orders as may be necessary for the
16 implementation, execution, performance, and consummation of the Plan, the Plan Confirmation
17 Order and all matters referred to in the Plan and the Plan Confirmation Order and to determine all
18 matters that may be pending before the Court in this case on or before the Plan Effective Date
19 with respect to any person or entity related thereto;

20 d) To determine (to the extent necessary) any and all applications for
21 allowance of compensation and reimbursement of expenses of professionals for the period on or
22 before the Effective Date;

23 e) To determine any request for payment of administrative expenses;

24 f) To determine motions for the rejection, assumption, or assignment of
25 executory contracts or unexpired leases filed before the Plan Effective Date and the allowance of
26 any claims resulting therefrom;

27 g) To determine all applications, motions, adversary proceedings, contested
28 matters, and any other litigated matters instituted during the pendency of this case whether before,

1 on, or after the Effective Date including avoidance causes of action, and the Reorganized Debtor
2 shall have the right to commence any avoidance causes of action after the Effective Date and to
3 continue with the prosecution of any avoidance causes of action;

4 h) To determine such other matters and for such other purposes as may be
5 provided in the Plan Confirmation Order;

6 i) To modify the Plan under Section 1127 of the Bankruptcy Code in order to
7 remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the Plan
8 so as to carry out its intent and purpose;

9 j) To enforce and interpret the Plan;

10 k) To correct any defects, cure any omissions, or reconcile any inconsistency
11 in the Plan or the Plan Confirmation Order as may be necessary to carry out the purpose and
12 intent of the Plan;

13 l) Except as otherwise provided in the Plan and the Plan Confirmation Order
14 to issue injunctions, to take such other actions or make such other orders as may be necessary or
15 appropriate to restrain interference with the Plan or the Plan Confirmation Order, or the execution
16 or implementation by any person or entity of the Plan or the Plan Confirmation Order;

17 m) To issue such orders in aid of consummation of the Plan or the Plan
18 Confirmation Order notwithstanding any otherwise applicable nonbankruptcy law, with respect to
19 any person or entity, to the fullest extent authorized by the Bankruptcy Code or Bankruptcy
20 Rules;

21 n) To resolve any disputes as to whether there has been a default under the
22 Plan; and

23 o) To enter a final decree closing this Chapter 11 case.

24
25 **G. TAX CONSEQUENCES OF THE PLAN**

26 THIS SUMMARY DOES NOT ADDRESS THE TAX CONSEQUENCES TO
27 CREDITORS OR INTEREST HOLDERS. THE TAX CONSEQUENCES TO CREDITORS OR
28 INTEREST HOLDERS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES

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1 OF EACH SUCH PERSON. SOME CREDITORS AND INTEREST HOLDERS MAY
2 RECOGNIZE INCOME AND SOME CREDITORS AND INTEREST HOLDERS MAY
3 RECOGNIZE LOSS AS A RESULT OF THE PLAN. CREDITORS AND INTEREST
4 HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY
5 SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR TAX
6 ADVISORS.

7 The following disclosure of possible federal income tax consequences is intended solely for
8 the purpose of alerting readers about possible tax issues the Plan may present to the Debtor. The
9 Debtor and its professionals CANNOT and DO NOT represent that the federal income tax
10 consequences described below are the only federal income tax consequences of the Plan, and such
11 discussion is not intended to be all-inclusive. Also, this summary does not address foreign, state or
12 local income tax consequences, estate or gift tax consequences, or any other foreign, federal, state
13 or local tax consequences of the Plan.

14 THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION
15 CONCERNING THE MATTERS DESCRIBED. THERE CAN BE NO ASSURANCE THAT
16 THE INTERNAL REVENUE SERVICE WILL NOT CHALLENGE ANY OR ALL OF THE
17 TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF
18 ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH PERSON AFFECTED
19 BY THE PLAN IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR
20 REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN OR OTHER TAX
21 CONSEQUENCES OF THE PLAN.

22 IRS CIRCULAR 230 DISCLOSURE: NOTHING CONTAINED IN THIS DISCLOSURE
23 STATEMENT WAS INTENDED OR WRITTEN TO BE USED, CAN BE USED BY ANY
24 TAXPAYER OR MAY BE RELIED UPON OR USED BY ANY TAXPAYER, FOR THE
25 PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER
26 UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. ANY WRITTEN
27 STATEMENT CONTAINED IN THIS DISCLOSURE STATEMENT RELATING TO ANY
28 FEDERAL TAX TRANSACTION OR MATTER MAY NOT BE USED BY ANY PERSON IN

1 ANY MATTER TO SUPPORT THE PROMOTION OR MARKETING OF OR TO
2 RECOMMEND ANY FEDERAL TAX TRANSACTION(S) OR MATTER(S).

3 As a result of the possible discharge and satisfaction of Claims pursuant to the Plan, the
4 Debtor may realize some cancellation of debt ("COD") income. In general, the Debtor, as a
5 limited liability company that has not elected to be taxed as a corporation for federal income tax
6 purposes, will not incur any federal income tax liability as a result of the implementation of the
7 Plan. Rather, the tax items of the Debtor, which is treated as a partnership for federal income tax
8 purposes, will flow through to the Interest Holders of the Debtor. This means that any COD
9 income that is realized at the Debtor level as a result of the Plan will pass through to the Interest
10 Holders themselves.

11 THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN
12 UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT
13 A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE
14 FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES
15 OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH
16 CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES
17 OF EACH PERSON. ACCORDINGLY, EACH PERSON IS STRONGLY URGED TO
18 CONSULT WITH HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL,
19 STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE
20 PLAN AND ITS IMPLEMENTATION.

21
22 **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

23 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
24 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
25 CONFIRMING A PLAN OF REORGANIZATION IS COMPLEX. The following discussion is
26 intended solely for the purpose of alerting readers about basic confirmation issues, which they may
27 wish to consider, as well as certain deadlines for filing claims. The Debtor CANNOT and DOES
28 NOT represent that the discussion contained below is a complete summary of the law on this topic.

1 Many requirements must be met before the Court can confirm a plan. Some of the
2 requirements include that the plan must be proposed in good faith, acceptance of the plan, whether
3 the plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and
4 whether the plan is feasible. These requirements are not the only requirements for confirmation.

5 **A. Who May Vote or Object**

6 **1. Who May Object to Confirmation of the Plan**

7 Any party in interest may object to the confirmation of the Plan, but, as explained below,
8 not everyone is entitled to vote to accept or reject the Plan.

9 **2. Who May Vote to Accept/Reject the Plan**

10 A creditor or interest holder has a right to vote for or against the Plan if that creditor or
11 interest holder has a claim or interest which is both (1) allowed or allowed for voting purposes and
12 (2) classified in an impaired class.

13 a) **What is an Allowed Claim/Interest**

14 As noted above, a creditor or interest holder must first have an allowed claim or interest to
15 have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in
16 interest files an objection to the claim or interest. When an objection to a claim or interest is filed,
17 the creditor or interest holder holding the claim or interest cannot vote unless the Court, after notice
18 and hearing, either overrules the objection or allows the claim or interest for voting purposes.

19 **THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE ON ACCOUNT**
20 **OF PRE-PETITION CLAIMS WAS MARCH 10, 2010.** Nonetheless, a creditor or interest holder
21 may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A
22 claim is deemed allowed if (1) it is scheduled on the Debtor's schedules and such claim is not
23 scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the
24 claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the
25 interest.

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b) What is an Impaired Claim/Interest

As noted above, an allowed claim or interest has the right to vote only if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

In this case, the Debtor believes that classes 2 and 3 are impaired. Members of classes 2 and 3 are entitled to vote to accept or reject the Plan. Members of class 4 (equity interests) are deemed to reject the Plan because they receive no distribution under the Plan, and, therefore, are not entitled to vote on the Plan. Parties who dispute the Debtor's characterization of their claim or interest as being impaired or unimpaired may file an objection to the Plan contending that the Debtor has incorrectly characterized the class.

3. Who is Not Entitled to Vote

The following four types of claims are not entitled to vote: (1) claims that have been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to Bankruptcy Code Sections 507(a)(2), (a)(3), and (a)(8); and (4) claims in classes that do not receive or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to Bankruptcy Code Sections 507(a)(2), (a)(3), and (a)(8) are not entitled to vote because such claims are not placed in classes and they are required to receive certain treatment specified by the Bankruptcy Code. Claims in classes that do not receive or retain any value under the Plan do not vote because such classes are deemed to have rejected the Plan. **EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.**

4. Who Can Vote In More Than One Class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim is entitled to accept or reject the Plan in both capacities by casting one ballot for the secured part of the claim and another ballot for the unsecured claim.

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1 **5. Votes Necessary to Confirm the Plan**

2 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
3 class has accepted the Plan without counting the votes of any insiders within that class, and (2) all
4 impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by
5 “cramdown” on non-accepting classes, as discussed below.

6 **6. Votes Necessary for a Class to Accept the Plan**

7 A class of claims is considered to have accepted the Plan when more than one-half (1/2) in
8 number and at least two-thirds (2/3) in dollar amount of the claims which actually voted on the
9 plan, voted in favor of the plan. A class of interests is considered to have “accepted” a plan when
10 at least two-thirds (2/3) in amount of the interest-holders of such class which actually voted on the
11 plan, voted to accept the plan.

12 **7. Treatment of Non-accepting Classes**

13 As noted above, even if all impaired classes do not accept the Plan, the Court may
14 nonetheless confirm the Plan if the non-accepting classes are treated in the manner required by the
15 Bankruptcy Code. The process by which non-accepting classes are forced to be bound by the
16 terms of a plan is commonly referred to as “cramdown.” The Bankruptcy Code allows the Plan to
17 be “crammed down” on non-accepting classes of claims or interests if it meets all consensual
18 requirements except the voting requirements of 1129(a)(8) and if the Plan does not “discriminate
19 unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the
20 Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law.

21 **8. Request for Confirmation Despite Nonacceptance by Impaired Classes**

22 Because Class 4 is deemed to have rejected the Plan, the Debtor requests confirmation by
23 “cramdown” as to this class. The Debtor will also ask the Court to confirm the Plan by
24 “cramdown” as to any other impaired classes that do not vote to accept the Plan.

25
26 **B. Liquidation Analysis**

27 Another confirmation requirement is the “Best Interest Test,” which requires a liquidation
28 analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and

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1 that claimant or interest holder does not vote to accept the Plan, then that claimant or interest
2 holder must receive or retain under the Plan property of a value not less than the amount that such
3 holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy
4 Code.

5 In a Chapter 7 case, the debtor's assets are usually sold by a Chapter 7 trustee. Secured
6 creditors are paid first from the sales proceeds of properties on which the secured creditor has a
7 lien. Administrative claims are paid next. Next, unsecured creditors are paid from any remaining
8 sales proceeds, according to their rights to priority. Unsecured creditors with the same priority
9 share in proportion to the amount of their allowed claim in relationship to the amount of total
10 allowed unsecured claims. Finally, interest holders receive the balance that remains after all
11 creditors are paid, if any.

12 For the Court to be able to confirm the Plan, the Court must find that all creditors and
13 interest holders who do not accept the Plan will receive at least as much under the Plan as such
14 holders would receive under a Chapter 7 liquidation of the Debtor. The Debtor maintains that this
15 requirement is clearly met.

16 The impaired classes under the Plan consist of Class 2 (secured claim of the Bank), Class 3
17 (general unsecured creditors), and Class 4 (equity interests). The Debtor must therefore satisfy the
18 "best interest of creditors test" with respect to members of Classes 2 and 3 who do not vote to
19 accept the Plan and with respect to Class 4 (which is deemed to have rejected the Plan).

21	ASSETS VALUED AT LIQUIDATION VALUE:	
22	CURRENT ASSETS	
23	a. The Property	\$44,200,000
24	TOTAL ASSETS AT LIQUIDATION VALUE:	\$44,200,000 ⁹
25	LESS: (Nothing herein shall be an admission of the allowance of any claims and merely approximates the	

26 _____
27 ⁹ The Debtor believes that the Bank would seek relief from the automatic stay and assert that the
28 liquidation value is less than this amount.

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amount of such claims alleged by the creditors.)	
a. Secured Creditor (Tax Collector) Recovery	\$282,107
b. Secured Creditor (Bank) Recovery	\$43,917,893 ¹⁰
c. Chapter 7 trustee fees and expenses	-0 ¹¹
d. Chapter 11 administrative expenses	\$500,000
e. Priority tax claims	\$1,914.17
f. Unsecured claims (including rejection claims)	\$829,292.05

Below is a demonstration, in tabular format, that all creditors are projected to receive at least as much under the Plan as such creditor would receive under a Chapter 7 liquidation.

CLAIMS & CLASSES	PAYOUT PERCENTAGE UNDER THE PLAN	PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION
Administrative Claims - Unclassified	100%	0%
Priority Tax Claims - Unclassified	100%	0%
Secured Tax Claims - Class 1	100%	100%
Secured Claim of Bank - Class 2	100%	<100%
General Unsecured Claims - Class 3	100%	0%
Cure Claims	100%	0%
Interest Holders - Class 4	0%	0% ¹²

¹⁰ The Bank filed a proof of claim asserting a prepetition amount owed of at least \$39,532,519.88, including principal of \$34,165,519.31. The Bank also asserts that interest accrues on the Loans at the default rate of 18%, or approximately \$17,082 per day (or approximately \$512,460 per month). At the default rate, postpetition interest from the Petition Date through August 1, 2010 would equal an additional approximately \$4,646,304 for an alleged combined total owed to the Bank of at least \$44,178,823.88, excluding professionals' fees and costs of sale. The Debtor assumes that in a Chapter 7 liquidation, the Chapter 7 trustee would not pursue the Debtor's lender liability claims against the Bank due to the lack of cash in the estate.

¹¹ The Debtor assumes that the Bank claim would consume the entire value of the Property and that the Chapter 7 trustee would treat the case as a no-asset estate.

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1
2 **C. Feasibility**

3 Another requirement for confirmation involves the feasibility of the Plan, which means that
4 confirmation of the Plan is not likely to be followed by the liquidation, or the need for further
5 financial reorganization, of the Reorganized Debtor unless such liquidation or further
6 reorganization is proposed in the Plan.

7 There are at least two important aspects of a feasibility analysis. The first aspect considers
8 whether the Debtor will have enough cash on hand on the Effective Date to pay all the claims and
9 expenses which are entitled to be paid on such date. The Debtor maintains that this aspect of
10 feasibility is satisfied. The cash necessary to pay the Effective Date Payments will be funded by
11 cash on hand in the Debtor's equity account (consisting of cash infusions by certain of the Debtor's
12 members) and cash contributions made by the Reorganized Debtor's New Members prior to the
13 Effective Date.

14 The second aspect considers whether the Reorganized Debtor will have enough cash over
15 the life of the Plan to make the required Plan payments. Again, with the exception of the balloon
16 payment to the Bank under Class 2 - Option A, Plan payments during the course of the Plan shall
17 be funded by the Reorganized Debtor's New Members.

18 The Reorganized Debtor's New Members have the financial capacity to fund the payments
19 required under the Plan. First, the Guarantors are also principals of certain of the New Members.
20 Prior to the confirmation hearing, financial information regarding the Guarantors shall be
21 submitted to the Court confidentially with an application for the Court to file and maintain such
22

23 _____
24 ¹² PCI and PCH, each Developer Members of the Debtor controlled by Chapter 7 debtor Jeffrey
25 S. Klein, are the only Members of the Debtor who are not New Members of the Reorganized
26 Debtor. Under Paragraph 6.6 of the Debtor's Operating Agreement, upon the liquidation or
27 termination of the Debtor, distributions to Investor Members, first for their preferred rate of return
28 and then for return of capital, have priority over distributions to Developer Members for their
return of capital. Capital contributions made by the Investor Members are in excess of
\$12,000,000. Accordingly, the Debtor does not believe that there is any liquidation scenario that
would result in any distributions to any Developer Members, including PCI and PCH.

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1 information under seal. Second, other principals of certain of the New Members include Michael
2 Moritz (New Member Crankstart Foundation) and Mark Stevens (New Member Third Millennium
3 Trust), each of whom is a venture capitalist and partner in the prominent venture capital firm
4 Sequoia Capital.

5 Principals of the Debtor's New Members have the financial capacity to fund the payments
6 required under the Plan and, with the exception of the balloon payment to the Bank under Class 2 -
7 Option A, will fund such payments through equity contributions. Upon completion of the
8 entitlements for the Property, the value of the Property is estimated to increase substantially.
9 Based upon the expected increased value, the Reorganized Debtor expects to easily be able to sell
10 or re-finance the Property for an amount more than sufficient to satisfy the balloon payment to the
11 Bank under Class 2 - Option A.

12
13 **V. EFFECT OF CONFIRMATION OF PLAN**

14 **A. Discharge**

15 The rights under the Plan and the treatment of claims under the Plan will be in exchange
16 for, and in complete satisfaction, discharge, and release of, all claims of any nature whatsoever
17 (including, without limitation, any interest accrued on claims from and after the Petition Date)
18 against the Debtor, the Reorganized Debtor, or its property. Except as otherwise provided in the
19 Plan or the Plan Confirmation Order:

20 1. On the Effective Date, the Debtor, the Debtor's estate, the Reorganized Debtor, and
21 its property will, to the fullest extent permitted by Bankruptcy Code Section 1141, be deemed
22 discharged and released from any and all claims, including, without limitation, all demands,
23 liabilities, claims, that arose before the confirmation date or that are based upon or otherwise relate
24 to acts, events, omissions, transactions or other activities of any kind that occurred before the
25 confirmation date, and all debts of the kind specified in Bankruptcy Code Section 502(g), 502(h),
26 or 502(i) regardless of whether: (1) a proof of claim based on such a debt is filed or deemed filed;
27 (2) a claim based on such a debt is allowable under Bankruptcy Code Section 502; or (3) the person
28 holding the claim based on such a debt has accepted the Plan;

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1 2. All persons will be precluded from asserting against the Debtor, its estate, the
2 Reorganized Debtor, or its property any other or further claims based on, arising from, or in
3 connection with any act, event, omission, transaction, or other activity of any kind that occurred
4 before the confirmation date;

5 3. Any debt of the Debtor, whether secured or unsecured, which was in default as of or
6 any time prior to the confirmation date, will no longer be deemed in default. Moreover, to the
7 extent that the Reorganized Debtor complies with the terms and conditions of the Plan, these
8 obligations will be deemed in good standing;

9 4. As set forth in Bankruptcy Code Section 524 and 1141, except as otherwise
10 provided in the Plan or the Confirmation Order, the Confirmation Order constitutes a discharge of
11 any and all claims against, and all debts and liabilities of, the Debtor. The Reorganized Debtor and
12 its property will, to the fullest extent permitted by Bankruptcy Code Section 1141, be deemed
13 discharged and released from any and all claims, including, without limitation, all demands,
14 liabilities, claims, that arose before the confirmation date or that are based on or otherwise relate to
15 acts, events, omissions, transactions or other activities of any kind that occurred before the
16 confirmation date. This discharge will void any judgment that was obtained against the Debtor at
17 any time only to the extent that the judgment relates to a discharged claim; and

18 5. Subject to the limitations and conditions imposed under Bankruptcy Code Section
19 1125(e), persons who – in good faith and in compliance with applicable Bankruptcy Code
20 provisions – either solicit Plan acceptances or rejections or participate in the offer, issuance, sale,
21 or purchase of securities under the Plan will not be liable on account of their solicitation or
22 participation for violation of any applicable law, rule, or regulation governing the solicitation of
23 Plan acceptances or rejections or the offer, issuance, sale or purchase of such securities.

24
25 **B. Revesting of Property in the Reorganized Debtors**

26 Except as provided in the Plan or in any agreements contemplated under the Plan, the
27 confirmation of the Plan revests all property of the estate in the Reorganized Debtor.
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C. Modification of the Plan

The Debtor may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan if the Debtor modifies the Plan before confirmation. The Reorganized Debtor may also seek to modify the Plan at any time after confirmation of the Plan so long as (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

D. Post-Confirmation Status Reports

Within 180 days of the entry of the Plan Confirmation Order, the Reorganized Debtor shall file a status report with the Court explaining what progress has been made toward consummation of the confirmed Plan. The status report shall be served on the Office of the United States Trustee and the Bank. Further status reports shall be filed every 180 days and served on the same entities.

E. Quarterly Fees

Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) shall be paid by the Debtor or Reorganized Debtor, as applicable until a final decree, or the entry of an order dismissing the case or converting the case to Chapter 7, at the rate then in effect at the time such fees are due.

F. Post-Confirmation Conversion/Dismissal

A creditor or any other party in interest may bring a motion to convert or dismiss the case under Section 1112(b) of the Bankruptcy Code after the Plan is confirmed if there is a material default in performing the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7 estate, and the automatic stay will be reimposed upon the revested property, but only to the extent that relief from stay was not previously authorized by the Court during this case. The Plan Confirmation Order may also be revoked under very limited circumstances. The Court may revoke the Plan Confirmation Order if

1 it was procured by fraud and if a party in interest brings an adversary proceeding to revoke
2 confirmation within 180 days after the entry of the Plan Confirmation Order.

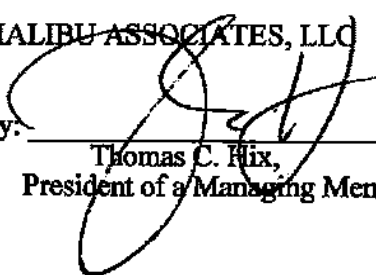
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4 **G. Final Decree**

5 Once the estate has been substantially administered as referred to in Bankruptcy Rule
6 3022, the Reorganized Debtor shall file a motion with the Court to obtain a final decree to close
7 this case.

8
9 Dated: April 16, 2010

Respectfully submitted,

10 MALIBU ASSOCIATES, LLC

11 By: 
12 Thomas C. Hix,
13 President of a Managing Member

14 **Presented By:**
15 **KAYE SCHOLER LLP**
16 Marc S. Cohen
17 Ashleigh A. Danker

18 By: /s/ Marc S. Cohen
19 Marc S. Cohen
20 Attorneys for Debtor and Debtor in Possession
21 MALIBU ASSOCIATES, LLC
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DECLARATION OF THOMAS C. HIX

I, Thomas C. Hix, declare as follows:

1. I am the President of Hix Rubenstein Companies (“HRC”), a managing member of debtor and debtor-in-possession Malibu Associates, LLC (the “Debtor”). I have been involved in the development and management of real estate for over thirty (30) years, including many projects similar to the redevelopment of the Property contemplated by the Debtor. I am submitting this Declaration in support of the *Disclosure Statement Describing Debtor’s Plan of Reorganization (Dated April 5, 2010)* (the “Disclosure Statement”). All terms defined in the Disclosure Statement are incorporated herein by this reference. The following is based upon my personal knowledge and if called as a witness herein, I could and would testify competently thereto.

2. The Debtor’s general insolvency counsel, Kaye Scholer LLP, prepared this Disclosure Statement and the *Debtor’s Plan of Reorganization (Dated April 5, 2010)* (the “Plan”) at the direction of, and with the review, input, and assistance of the Debtor’s management, other professionals, consultants, and experts, including myself.

3. All financial data referenced in this Disclosure Statement and the Plan has been generated from information provided by the Debtor from its books and records. All projections referenced in this Disclosure Statement and the Plan regarding the entitlements, including the Budget, have been generated with the review, input, and assistance of the Debtor’s management, other professionals, consultants, and experts, including myself.

4. All facts and representation in this Disclosure Statement and the Plan are true to the best of my knowledge.

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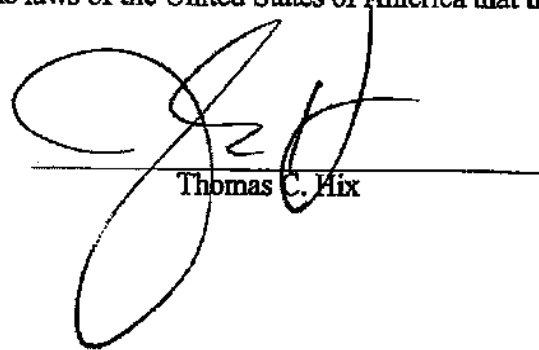
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5. To the best of my knowledge, the Disclosure Statement includes all facts that would be material to a creditor in determining whether to vote to accept or reject the Plan.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 16, 2010



Thomas C. Hix

KAYE SCHOLER LLP