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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **RIVERSIDE DIVISION**

11
12 In re:

13 NORTHGATE CROSSING, LLC,

14 Debtor and
15 Debtor-in-Possession.

Case No. 6:11-bk-24944 SC

Chapter 11 Proceeding

DEBTOR'S DISCLOSURE STATEMENT
DESCRIBING DEBTOR'S CHAPTER 11
PLAN OF REORGANIZATION

DATE: September 27, 2011

TIME: 1:30 p.m.

PLACE: Courtroom 126
3420 Twelfth Street
Riverside, CA 92501

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I.

INTRODUCTION

This Disclosure Statement¹ is filed by Northgate Crossing, LLC, a California limited liability company as the Plan Proponent in the Debtor's Chapter 11 Case.

Chapter 11 allows debtors-in-possession, Chapter 11 trustees, and under some circumstances, creditors, interest holders and others parties-in-interest, to propose a Chapter 11 plan. The Debtor's Plan is sent to you in the same envelope as the Disclosure Statement. THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ENCLOSED PLAN. The Disclosure Statement summarizes the contents of the Plan, certain information relating to the Plan and the process the Bankruptcy Court follows in determining whether or not to confirm the Plan.

The Debtor's Plan provides for the orderly and structured reorganization of the Debtor through the sale and liquidation of the Debtor's Assets, the prosecution and liquidation of the Debtor's Avoidance Actions, if any, and the distribution of the Net Sale Proceeds, Net Avoidance Actions Recoveries and Available Cash to the Holders of Allowed Claims against the Debtor in accordance with the priorities and other rights set forth in the Bankruptcy Code.

**READ THE DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO
KNOW ABOUT:**

- **WHO CAN VOTE OR OBJECT TO THE PLAN;**
- **HOW YOUR CLAIM IS TREATED;**
- **HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION;**
- **A BRIEF HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING ITS CHAPTER 11 BANKRUPTCY PROCEEDING;**
- **WHAT FACTORS THE BANKRUPTCY COURT WILL CONSIDER TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;**

¹ All capitalized terms are defined terms set forth in Article II of the Disclosure Statement.

1 ➤ **WHAT IS THE EFFECT OF CONFIRMATION; AND**

2 ➤ **WHETHER THE PLAN IS FEASIBLE.**

3 The Disclosure Statement cannot tell you everything about your rights. You should
4 consider consulting your own attorney to obtain more specific advice on how the Plan will affect
5 you and your best course of action.

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

8 The Bankruptcy Code requires a Disclosure Statement to contain “adequate information”
9 concerning the Plan. On _____, 2011, the Bankruptcy Court entered an order approving the
10 Disclosure Statement, based upon a finding that this document contained “adequate information”
11 to enable parties affected by the Plan to make an informed judgment regarding the Plan. Any party
12 can now solicit votes for or against the Plan.

13 **II.**

14 **DEFINITIONS AND RULES OF INTERPRETATION**

15 **2.1 Definitions.** The following defined terms are used in the Plan. Any capitalized
16 term that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules,
17 shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules.

18 2.1.1 Administrative Claim(s). Any Claim incurred after the Petition Date but
19 before the Confirmation Date for any cost or expense of administration of the Case
20 allowable under Section 330, 331, 503(b), or 507(a)(1) of the Bankruptcy Code, including,
21 without limitation, any actual and necessary post-petition expenses of preserving the Estate
22 of the Debtor, any actual and necessary post-petition expenses of operating the business of
23 the Debtor, all compensation or reimbursement of expenses to the extent allowed by the
24 Bankruptcy Court under Section 330, 331, or 503 of the Bankruptcy Code and any fees or
25 charges assessed against the Estate of the Debtor under Section 1930 of title 28 of the
26 United States Code.

27 2.1.2 Administrative Claims Bar Date. The last date fixed by the Plan for the
28 filing of Proofs of Claim or requests for payment of Administrative Claims. Under the

1 Plan, the Administrative Claims Bar Date shall be the first business day after the sixtieth
2 (60th) day after the Confirmation Date.

3 2.1.3 Affiliate(s). The term shall have the meaning set forth under
4 Section 101(2) of the Bankruptcy Code, including, but not limited to, as to any Person, any
5 other Person that directly or indirectly owns or controls, is owned or controlled by, or is
6 under common ownership or control with, such Person. The term “control” (including,
7 with correlative meanings, the terms “controlled by” and “under common control with”), as
8 applied to any Person, means the possession, direct or indirect, of the power to direct or
9 cause the direction of the management and policies of such Person, whether through the
10 ownership of voting securities or other equity ownership interest, by contract or otherwise.

11 2.1.4 Allowed. When used to describe Claim(s) or Interest(s), such Claim(s) or
12 Interest(s), to the extent that it or they are “Allowed Claim(s)” or “Allowed Interest(s).”

13 2.1.5 Allowed Amount shall mean:

14 i. With respect to any Administrative Claim (i) if the Claim is based
15 upon a Fee Application, the amount of such Fee Application that has been approved
16 by a Final Order of the Bankruptcy Court; (ii) if the Claim is based upon any
17 indebtedness or obligation incurred in the ordinary course of business of the Debtor
18 and is not otherwise subject to an Administrative Claim Bar Date, the amount of
19 such Claim that has been agreed to by the Debtor and such creditor, failing which,
20 the amount thereof as fixed by a Final Order of the Bankruptcy Court; or (iii) if the
21 Holder of such Claim was required to file and has filed proof thereof with the
22 Bankruptcy Court prior to an Administrative Claim Bar Date, (1) the amount stated
23 in such proof if no objection to such Proof of Claim is interposed within the
24 applicable period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or
25 the Bankruptcy Court, or (2) the amount thereof as fixed by Final Order of the
26 Bankruptcy Court if an objection to such proof was interposed within the applicable
27 period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or the
28 Bankruptcy Court. The Allowed Amount of any Administrative Claim which is

1 subject to an Administrative Claims Bar Date and not filed by the applicable
2 Administrative Claims Bar Date shall be zero, and no Distribution shall be made on
3 account of any such Administrative Claim;

4 ii. With respect to any Claim which is not an Administrative Claim (the
5 “Other Claim”): (i) if the Holder of such Other Claim did not file proof thereof
6 with the Bankruptcy Court on or before the Claims Bar Date, the amount of such
7 Claim as listed in the Debtor’s Schedules as neither disputed, contingent or
8 unliquidated; or (ii) if the Holder of such Claim has filed proof thereof with the
9 Bankruptcy Court on or before the Claims Bar Date, (a) the amount stated in such
10 proof if no objection to such Proof of Claim was interposed within the applicable
11 period of time fixed by the Bankruptcy Code, the Bankruptcy Rules, the Plan or the
12 Bankruptcy Court, or (b) the amount thereof as fixed by Final Order of the
13 Bankruptcy Court if an objection to such proof was interposed within the applicable
14 period of time fixed by the Bankruptcy Code, the Bankruptcy Rules, the Plan or the
15 Bankruptcy Court. The Allowed Amount of any Other Claim which is not Filed by
16 the applicable Claims Bar Date, is not listed on the Debtor’s Schedules or is listed
17 as disputed, unliquidated, contingent or unknown, and is not allowed under the
18 terms of the Plan shall be zero, and no distribution shall be made on account of any
19 such Claim; and

20 iii. With respect to any Interest, (i) the amount provided by or
21 established in the records of the Debtor at the Confirmation Date, provided,
22 however, that a timely filed proof of Interest shall supersede any listing of such
23 Interest on the records of the Debtor; or (ii) the amount stated in a proof of Interest
24 Filed prior to the Confirmation Date if no objection to such Interest was filed prior
25 to the Confirmation Date or such later date as the Bankruptcy Court allows; or
26 (iii) the amount of such Interest as fixed by a Final Order of the Bankruptcy Court.
27
28

1 2.1.6 Allowed Claim. Except as otherwise provided in the Plan (including with
2 respect to those Classes for which the amount of the Allowed Claims is specified by the
3 Plan), a Claim to the extent of the Allowed Amount of such Claim.

4 2.1.7 Allowed Interest. Any Interest to the extent, and only to the extent, of the
5 Allowed Amount of such Interest.

6 2.1.8 Allowed Secured Claims. An asserted Secured Claim that is not either a
7 Disputed Claim or a Disputed Lien.

8 2.1.9 Assets. All assets that are property of the Debtor pursuant to Section 541
9 of the Bankruptcy Code, including but not limited to the Project.

10 2.1.10 Available Cash. The Cash deposited into the Distribution Account(s) on
11 or after the Effective Date that is available for making Distributions under the Plan to
12 Holders of Allowed Claims.

13 2.1.11 Avoidance Actions. All Claims and defenses to Claims accruing to the
14 Debtor and its Estate under Bankruptcy Code Sections 506(d), 510(c), 541, 544, 545, 547,
15 548, 549, 550, or 551.

16 2.1.12 Avoidance Actions Recoveries. Any Cash or other property received by
17 the Debtor from all or any portion of a Avoidance Action(s), including, but not limited to,
18 awards of damages, attorneys' fees and expenses, interest and punitive damages, whether
19 recovered by way of settlement, execution on judgment or otherwise.

20 2.1.13 Bankruptcy Code. The Bankruptcy Reform Act of 1978, as amended, as
21 set forth in Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as applicable to
22 the Case.

23 2.1.14 Bankruptcy Court. The United States Bankruptcy Court for the Central
24 District of California, having jurisdiction over the Case and, to the extent of any
25 withdrawal of the reference made pursuant to Section 157 of title 28 of the United States
26 Code, the United States District Court for the Central District of California; or, in the event
27 such courts cease to exercise jurisdiction over the Case, such court or unit thereof that
28 exercises jurisdiction over the Cases in lieu thereof.

1 2.1.15 Bankruptcy Rules. Collectively, as now in effect or hereafter amended and
2 as applicable to the Case, (i) the Federal Rules of Bankruptcy Procedure, and (ii) the Local
3 Bankruptcy Rules and General Orders applicable to cases pending before the Bankruptcy
4 Court.

5 2.1.16 Business Day. Any day, other than a Saturday, a Sunday or a “legal
6 holiday,” as defined in Bankruptcy Rule 9006(a).

7 2.1.17 Case. The Chapter 11 case of the Debtor pending before the Bankruptcy
8 Court.

9 2.1.18 Cash. Currency of the United States of America and cash equivalents,
10 including, but not limited to, bank deposits, immediately available or cleared checks,
11 drafts, wire transfers and other similar forms of payment.

12 2.1.19 CFD. The Community Facilities District to be established under the
13 terms of the Development Agreement, and any amendments thereto.

14 2.1.20 Claim(s). This term shall have the broadest possible meaning under
15 Section 101(5) of the Bankruptcy Code, and shall include (a) any right to payment from
16 the Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated,
17 fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or
18 unsecured, or (b) any right to an equitable remedy for breach of performance if such
19 breach gives rise to a right of payment from the Debtor, whether or not such right to an
20 equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured,
21 disputed, undisputed, secured, or unsecured.

22 2.1.21 Claims Bar Date. For any Claim other than an Administrative Claim,
23 July 25, 2011, established by the Bankruptcy Court as the last date for Creditors to file
24 Proof of Claims with the Bankruptcy Court in the Debtor’s case. The exceptions to this
25 Claims Bar Date are: (1) Claims arising from the rejection of executory contracts or
26 unexpired leases; (2) Claims of “governmental units,” as such term is defined in Section
27 101(27) of the Bankruptcy Code; and (3) Claims arising as the result of transfer
28 avoidance pursuant to Chapter 5 of the Bankruptcy Code. For Claims arising from

1 rejection of executory contracts or unexpired leases pursuant to 11 U.S.C. § 365, the last
2 day to file a Proof of Claim is (a) 30 days after the date of entry of the order authorizing
3 the rejection, or (b) 30 days after service of a bar date notice upon the Creditor asserting
4 such Claim, whichever is later. For Claims of “governmental units,” as that term is
5 defined in 11 U.S.C. §101(27), Proofs of Claim are timely filed if filed: (a) before 180
6 days after the Petition Date, or as otherwise provided in Rule 3002(c)(1) of the
7 Bankruptcy Rules. *See* 11 U.S.C. §502(b)(9). For Claims arising from the avoidance of a
8 transfer under chapter 5 of the Bankruptcy Code, the last day to file a Proof of Claim is
9 30 days after the entry of judgment avoiding the transfer, or (b) 30 days after service of a
10 bar date notice upon the Creditor asserting such Claim, whichever is later.

11 2.1.22 Claims Objection Deadline. The later of (i) the first business day
12 following the one hundred and eightieth (180th) day after the Effective Date, or (ii) such
13 greater period of limitation as may be fixed or extended by the Bankruptcy Court or by
14 agreement between the Debtor and the Holder of the Claim.

15 2.1.23 Class. Each group of Claims or Interests classified in the Plan pursuant to
16 Sections 1122 and 1123 of the Bankruptcy Code.

17 2.1.24 Closing Costs Limitation. Restriction that reasonable credits to buyer and
18 closing costs including accrued property taxes, escrow costs, legal fees (but only fees
19 relating to closing of a sale) and other costs typically historically incurred in sales, but
20 specifically excluding real estate broker commissions on the gross sales price on parcels of
21 the Project, shall not exceed 10%.

22 2.1.25 Cobb. Patrick B. Cobb, the managing member of Oresund, the holder of a
23 4% membership/equity interest in PHR and a 45.94932% Interest in Toklan, and an alleged
24 guarantor of the OneWest Bank Loan.

25 2.1.26 Confirmation Date. The date on which the Confirmation Order is entered
26 in the Bankruptcy Court’s docket.

27
28

1 2.1.27 Confirmation Order. The Final Order entered by the Bankruptcy Court
2 confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy
3 Code.

4 2.1.28 Creditor(s). Any Person who is the Holder of a Claim against the Debtor
5 that arose or accrued or is deemed to have arisen or accrued or to have matured, or
6 otherwise become due, owing, and payable on or before the Petition Date, including,
7 without limitation, Claims of the kind specified in Sections 502(g), 502(h) or 502(i) of the
8 Bankruptcy Code.

9 2.1.29 City. The City of Indio, located in the County of Riverside, California.

10 2.1.30 Debtor. Northgate Crossing, LLC, a California limited liability company.

11 2.1.31 Designated Rate. Effective as of the Effective Date, the interest rate shall
12 be the Prime Rate plus 1.00%.

13 2.1.32 Development Agreement. The agreement between the City and the Debtor
14 authorizing the development of the Project subject to certain conditions described therein.

15 2.1.33 Development Agreement Proceeds. Cash paid to the Debtor under the
16 terms of the Development Agreement including, without limitation, proceeds from the
17 issuance of CFD bonds, which will yield up to \$10 million to be paid to the Debtor;
18 reimbursement of a dust control deposit in the approximate amount of \$175,000,
19 reimbursement of 25% of certain costs from the City for street and utility improvements
20 that are for the general benefit of the public and retention of a portion of Occupancy Taxes.

21 2.1.34 Disclosure Statement. The Debtor's Disclosure Statement Describing the
22 Debtor's Chapter 11 Plan of Reorganization.

23 2.1.35 Disputed Claim(s). All or any part of a Claim other than any Allowed
24 Amount thereof as to which any one of the following applies: (i) no Proof of Claim has
25 been filed with respect to such Claim, and either (a) the Claim is not listed in the
26 Schedules; or (b) the Claim is listed in the Schedules as unliquidated, disputed, contingent,
27 unknown or in a zero amount, (ii) the Claim is the subject (a) to an Avoidance Action;
28 (b) of offset by a Avoidance Action; (c) to a timely objection that has not been resolved by

1 a Final Order; or (d) to a request for estimation in accordance with the Bankruptcy Code,
2 the Bankruptcy Rules, any applicable order of the Bankruptcy Court, or the Plan which is
3 Filed on or before the Claims Objection Deadline, which adversary proceeding, objection,
4 or request for estimation has not been dismissed, withdrawn or determined by a Final
5 Order; or (iii) the Claim is otherwise treated as a "Disputed Claim" pursuant to the Plan.

6 2.1.36 Disputed Lien(s). An asserted lien(s) against Assets of the Debtor that is
7 either subject to a Disputed Claim, not duly perfected, subject to an Avoidance Action, or
8 subject to an action pursuant to Bankruptcy Code Sections 510(c)(2) and/or 506(d).

9 2.1.37 Distribution(s). Payments to Holders of Allowed Claims provided for
10 under the Plan.

11 2.1.38 Distribution Agent. The entity that is responsible for making Distributions
12 under the Plan, which shall be the Debtor.

13 2.1.39 Distribution Account(s). Separate account(s) to be established for the
14 Project by the Debtor at JP Morgan Chase Bank into which the Debtor's Available Cash
15 shall be deposited and all Available Cash received by the Debtor after the Confirmation
16 Date that would have belonged to the Debtor shall be deposited. Separate accounts for
17 each project shall be maintained until the secured obligations relating to a project have
18 been paid in full.

19 2.1.40 Distribution Date. With respect to any Allowed Claim or Allowed
20 Interest, the date on which a Distribution is required to be made under the Plan.

21 2.1.41 Effective Date. A date selected by the Debtor, but in no event later than
22 the sixtieth (60th) day after recordation of the Final Map.

23 2.1.42 Equity Contribution. Equity contributions in the form of Cash made by the
24 Guarantors, contribution of the Gon Galt Parcel and a pledge of collateral on or before the
25 Effective Date and Cash contributions after the Effective Date by the Guarantors in such
26 amounts sufficient to make all payments required under the terms of the Plan.

27 2.1.43 Estate. The bankruptcy estate of the Debtor created pursuant to
28 Section 541 of the Bankruptcy Code.

1 2.1.44 Fee Applications. Applications of Professional Persons under
2 Sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and
3 reimbursement of expenses in the Cases.

4 2.1.45 Filed. Delivered to, received by and entered upon the legal docket by the
5 Clerk of the Bankruptcy Court. "File" shall have a correlative meaning.

6 2.1.46 Final Map. A map prepared in accordance with applicable state, municipal
7 or City ordinances, which is designed to place on record in the office of the county recorder
8 of the County of Riverside the approved subdivision and development of the Project.

9 2.1.47 Final Order. A judgment, order, ruling or other decree issued and entered
10 by the Bankruptcy Court.

11 2.1.48 General Unsecured Claim. A Claim against the Debtor that is not (a) a
12 Secured Claim, (b) an Administrative Claim, (c) a Tax Claim or (d) a Priority Claim.

13 2.1.49 Gon Galt. Gon Galt, LLC, the owner of the Gon Galt Parcel.

14 2.1.50 Gon Galt Parcel. A seven (7) acre parcel of land owned by Gon Galt that,
15 except for the Substation Site to be dedicated to the IID, will be contributed to the Debtor
16 as part of the Equity Contribution on or before the Effective Date.

17 2.1.51 Gross Rental Income. All rents, issues and profits generated by the
18 Project.

19 2.1.52 Guaranty Litigation. The state court litigation commenced by OneWest
20 Bank against the Guarantors for breach of the guarantees for and request for judgment for
21 all amounts due under the terms of the OneWest Bank Loan, the OneWest Bank Note and
22 the OneWest Bank Security Documents.

23 2.1.53 Guarantors. Cobb, Mann and Toklan, the alleged guarantors of the
24 OneWest Bank Loan.

25 2.1.54 Holder. The beneficial owner of any Claim or Interest.

26 2.1.55 IID. The Imperial Irrigation District, the public agency responsible for
27 providing sufficient, affordable and safe water and energy services to the communities it
28 serves in the Coachella Valley, including the City of Indio.

1 2.1.56 Insider. The term shall have the broadest meaning possible under
2 Section 101(31), including, but not limited to, a person in control of the Debtor, Affiliates
3 and Insiders of such Affiliates.

4 2.1.57 Interest. Any equity security interest in the Debtor within the meaning, of
5 Section 101(16) of the Bankruptcy Code, including, without limitation, any equity
6 ownership interest in the Debtor, whether in the form of common or preferred stock, stock
7 options, warrants, partnership interests, or membership interests.

8 2.1.58 Mann. P. Thomas Mann, a principal of TM Realty, the holder of a 50%
9 Interest in PHR, and an alleged guarantor of the OneWest Bank Loan.

10 2.1.59 Mechanic Lien Claims. Mechanic Lien Claims arising pursuant to
11 California law that were either allegedly perfected prepetition or otherwise allegedly satisfy
12 the requirements of Bankruptcy Code 546(b).

13 2.1.60 Minimum Release Price. The price assigned to each parcel of the Project
14 based upon the following formula: the greater of: (i) the gross purchase price less the
15 actual closing costs in an amount not to exceed the Closing Costs Limitation; or (ii) the
16 acreage of parcel sold divided by 81.78 acres multiplied by the Allowed Claim(s) of
17 OneWest Bank on account of the OneWest Bank Loan. This figure represents the
18 minimum price for which a parcel of the Project can be sold without OneWest Bank's
19 written consent. The minimum release prices for the Project are shown in Exhibit "2"
20 attached to the Plan.

21 2.1.61 Net Avoidance Actions Recoveries. Avoidance Actions Recoveries less
22 associated Administrative Claims and Post-Confirmation Expenses incurred in connection
23 with such Avoidance Actions Recoveries, which shall be deposited in the applicable
24 Distribution Account(s).

25 2.1.62 Net Cash Flow. The Gross Rental Income less Operating Costs.

26 2.1.63 Net Sales Proceeds. The Cash generated from the sale(s) or liquidation of
27 parcels of the Project, less payment of selling expenses, closing costs, taxes, and any
28 associated Post-Confirmation Expenses pursuant to the Plan Financial Projections and

1 Administrative Claims incurred in furtherance of such sales or liquidation of such Assets
2 subject to the Closing Costs Limitation.

3 2.1.64 Northgate Crossing. Northgate Crossing, LLC, a California limited
4 liability company, the Debtor.

5 2.1.65 Occupancy Taxes. Transient occupancy taxes that may be charged and
6 collected from a hotel that may be constructed at the Project. Under the terms of the
7 Development Agreement, the Debtor or hotel operator can retain 33% of the Occupancy
8 Taxes collected for a period of seven (7) years.

9 2.1.66 OneWest Bank. OneWest Bank, FSB.

10 2.1.67 OneWest Bank Loan. That certain *Construction Loan*, entered into by and
11 between La Jolla Bank, FSB, as lender and the Debtor, as borrower, as of September 8,
12 2008 for the principal amount of \$26,500,000.00 and allegedly owned by OneWest Bank,
13 the alleged successor in interest to La Jolla Bank.

14 2.1.68 OneWest Bank Note. That certain promissory note for the principal
15 amount of \$26,500,000.00 dated as of September 8, 2008, between the Debtor and La Jolla
16 Bank, FSB, and allegedly owned by OneWest Bank, the alleged successor in interest to La
17 Jolla Bank.

18 2.1.69 OneWest Bank Security Documents. All documents creating or
19 evidencing a lien in favor of La Jolla Bank, FSB, predecessor-in-interest to OneWest Bank,
20 encumbering the Debtor's Assets including its interest in the Project, as such documents
21 may have been amended or modified from time to time.

22 2.1.70 Operating Costs. Those costs and expenses reasonably necessary to
23 operate, maintain, and manage the Project including a reserve for the payment of real
24 property taxes for the current tax period.

25 2.1.71 Oresund. Oresund Capital, LLC, an Oklahoma limited liability company,
26 the Holder of a 50% Interest in and the managing member of the Debtor.

27
28

1 2.1.72 Person. An individual, partnership, corporation, limited liability company,
2 business trust, joint stock company, trust, unincorporated association, joint venture,
3 governmental authority, governmental unit, committee or other entity of whatever nature.

4 2.1.73 Petition Date. May 5, 2011.

5 2.1.74 PHR. PHR, LLC, an Oklahoma limited liability company, the Holder of a
6 50% Interest in the Debtor.

7 2.1.75 Plan. The Debtor's Chapter 11 Plan, together with the Exhibits thereto, as
8 the same may be amended or modified from time to time in accordance with the Plan.

9 2.1.76 Plan Financial Projections. The financial projections prepared by the
10 management of the Debtor, attached to the Plan as Exhibit "1."

11 2.1.77 Plan Proponent. The Debtor, which is the party-in-interest that is
12 proposing the Plan.

13 2.1.78 Post-Confirmation Expenses. The fees and expenses incurred by the
14 Debtor and its professionals following the Confirmation Date (including the fees and costs
15 of Professionals) for the purpose of (i) prosecuting and liquidating the Avoidance Actions;
16 (ii) objecting to and resolving Disputed Claims and Disputed Liens; (iii) selling or
17 otherwise liquidating the Assets; (iv) effectuating Distributions under the Plan; and
18 (v) otherwise consummating the Plan and closing the Debtor's Chapter 11 Case.

19 2.1.79 Prime Rate. The lowest New York prime rate in effect on the first
20 business day of the month (cycle) as published in the money rate section of the West Coast
21 edition of the Wall Street Journal, which as of August 1, 2011 was 3.25%.

22 2.1.80 Priority Claim. Any Claim, other than an Administrative Claim or a Tax
23 Claim, to the extent entitled to priority under Section 507(a) of the Bankruptcy Code.

24 2.1.81 Pro Rata. Proportionately, so that with respect to any distribution with
25 respect to any Allowed Claim, the ratio of (a)(i) the amount of property distributed on
26 account of such Allowed Claim to (ii) the amount of such Allowed Claim, is the same as
27 the ratio of (b)(i) the amount of property distributed on account of all Allowed Claims of
28

1 the Class or Classes sharing in such distribution to (ii) the amount of all Allowed Claims in
2 such Class or Classes.

3 2.1.82 Professional. A Person or Entity (a) employed by the Debtor pursuant to a
4 Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be
5 compensated for services rendered prior to the Effective Date, pursuant to Sections 327,
6 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and
7 reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b) of
8 the Bankruptcy Code.

9 2.1.83 Professional Fees. All Allowed Claims for compensation and for
10 reimbursement of expenses under Sections 328, 330 and/or 503(b) of the Bankruptcy Code.

11 2.1.84 Project. Entitled land owned by the Debtor consisting of approximately
12 88.10 gross acres or 81.78 net acres (the difference of 6.32 acres includes interior streets)
13 located east and west of Jefferson Street, south of Indio Boulevard in the City of Indio,
14 Riverside County, California and approved by the City of Indio for development as a
15 mixed use residential and commercial real estate project known as "Northgate Crossing."

16 2.1.85 Refinance Proceeds. The Cash from a refinance of the Project.

17 2.1.86 Schedules. The schedules of assets and liabilities and list of equity
18 security holders Filed by the Debtor, as required by Section 521 of the Bankruptcy Code,
19 Bankruptcy Rules 1007(a)(3) and (b)(1), and Official Bankruptcy Form No. 6, as amended
20 from time to time.

21 2.1.87 Secured Claim. Any Claim, including interest, fees, costs, and charges to
22 the extent allowable pursuant to Bankruptcy Code Section 506, that is secured by a valid
23 and unavoidable Lien on the Debtor's Assets.

24 2.1.88 Secured Real Property Tax Claim(s). Claim(s) held by the Riverside
25 County Treasurer Tax Collector secured by liens on the Project owned by the Debtor.

26 2.1.89 Substation Site. An approximate 315 square foot portion of the Gon Galt
27 Property that Gon Galt will contribute on or before the Effective Date to the IID for
28

1 development of an electrical substation site, which is intended to provide electricity to the
2 entirety of the Project.

3 2.1.90 Tax. Any tax, charge, fee, levy, impost or other assessment by any federal,
4 state, local or foreign taxing authority, including, without limitation, income, excise,
5 property, sales, transfer, employment, payroll, franchise, profits, license, use, ad valorem,
6 estimated, severance, stamp, occupation and withholding tax. "Tax" shall include any
7 interest or additions attributable to, or imposed on or with respect to such assessments.

8 2.1.91 Tax Claim. Any Claim for any Tax to the extent that it is entitled to
9 priority in payment under Section 507(a)(8) of the Bankruptcy Code.

10 2.1.92 Toklan. Toklan Oil & Gas Corp., the holder of a 45% Interest in PHR, and
11 an alleged guarantor of the OneWest Bank Loan.

12 **2.2 Rules of Construction**. For purposes of the Plan and the Disclosure Statement,
13 unless otherwise provided herein or in the Plan, (a) whenever from the context it is appropriate,
14 each term, whether stated in the singular or the plural, will include both the singular and the plural;
15 (b) each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and
16 neuter; (c) any reference in the Plan or the Disclosure Statement to an existing document or
17 schedule filed or to be filed means such document or schedule, as it may have been or may be
18 amended, modified or supplemented pursuant to the Plan; (d) any reference to an entity as a
19 Holder of a Claim or Interest includes that entity's successors and assigns; (e) except as otherwise
20 indicated herein all references in the Plan or the Disclosure Statement to Sections and Articles are
21 references to Sections and Articles of or to the Plan; (f) the words "therein," "thereunder" and
22 "thereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; and
23 (g) unless otherwise provided in the Plan or the Disclosure Statement, any reference in the Plan or
24 the Disclosure Statement to a contract, instrument, release, indenture, agreement, or other
25 document being in a particular form or on particular terms and conditions means that such
26 document shall be substantially and materially in such form or substantially and materially on such
27 terms and conditions; (iii) any reference in the Plan or the Disclosure Statement to a document or
28 schedule to the Plan or Disclosure Statement Filed or to be Filed means such document or

1 schedule, as it may have been or may be amended, modified, or supplemented; and (vii) the rules
2 of construction set forth in Section 102 of the Bankruptcy Code shall apply to the extent such rules
3 are not inconsistent with the express terms of the Plan or the Disclosure Statement or any other
4 provision in this Section.

5 **III.**

6 **PLAN CONFIRMATION DEADLINES**

7 The Bankruptcy Court has not confirmed the Plan described in this Disclosure Statement.
8 Accordingly, the terms of the Plan are not binding on anyone. However, if the Bankruptcy Court
9 confirms the Plan, then the Plan will be binding on the Debtor and on all Creditors and Interest
10 Holders in this Case.

11 **3.1 Time and Place of the Confirmation Hearing.**

12 The hearing where the Bankruptcy Court will determine whether or not to confirm the
13 Plan will take place at 3420 Twelfth Street, Riverside, CA 92501 on _____, 2011 at _:_
14 _m. in Courtroom 126.

15 **3.2 Deadline for Voting for or Against the Plan.**

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

18 Winthrop Couchot Professional Corporation
19 660 Newport Center Drive, Suite 400
20 Newport Beach, CA 92660
21 Facsimile: (949) 720-4111
22 Attn: P.J. Marksbury

23 Your ballot must be **received by** _____, 2011, or it will not be counted.

24 **3.3 Deadline for Objecting to the Confirmation of the Plan.**

25 Objections to the confirmation of the Plan must be filed with the Bankruptcy Court, and
26 served upon the following parties so that they are received by _____, 2011:

27 **Counsel to the Debtor:** Richard H. Golubow
28 Winthrop Couchot Professional Corporation
660 Newport Center Drive, Suite 400
Newport Beach, CA 92660

1 **3.4 Identity of Person to Contact for More Information Regarding the Plan.**

2 Any interested party desiring further information about the Plan should contact the
3 Debtor's counsel, Winthrop Couchot Professional Corporation, 660 Newport Center Drive, Suite
4 400, Newport Beach, CA 92660, Attn: Richard H. Golubow (949) 720-4100.

5 **3.5 Disclaimer.**

6 The information contained in this Disclosure Statement is provided by the Debtor. The
7 Debtor represents that everything stated in this Disclosure Statement is true to the best of the
8 Debtor's knowledge. No statements or information concerning the Debtor or its Assets are
9 authorized, other than those set forth herein. The Bankruptcy Court has not yet determined
10 whether or not the Plan is confirmable and makes no recommendation as to whether or not you
11 should support or oppose the Plan.

12 The discussion in this Disclosure Statement regarding the Debtor may contain "forward
13 looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995.
14 Such statements consist of any statement other than a recitation of historical fact and can be
15 identified by the use of forward looking terminology such as "may," "expect," "anticipate,"
16 "estimate," or "continue," or the negative thereof or other variations thereon or comparable
17 terminology. The reader is cautioned that all forward looking statements are necessarily
18 speculative and there are certain risks and uncertainties that could cause actual events or results to
19 differ materially from those referred to in such forward looking statements. The liquidation
20 analyses, distribution projections, projections of financial results and other information are
21 estimates only, and the timing, amount and value of actual distributions to Creditors may be
22 affected by many factors that cannot be predicted. Therefore, any analyses, estimates, or
23 projections may or may not turn out to be accurate.

24 The Debtor and its counsel are investigating prospective Avoidance Actions, but have not
25 yet completed their investigation. A schedule of potential Avoidance Actions is attached hereto as
26 Exhibit "2." The Debtor or other parties-in-interest may seek to investigate, file and prosecute
27 Avoidance Actions after the Confirmation Date or Effective Date of the Plan whether or not the
28 Avoidance Actions are identified in this Disclosure Statement.

1 IV.

2 **FACTUAL BACKGROUND OF THE DEBTOR**

3 **4.1 Description of the Debtor and Nature of the Debtor's Business.**

4 The Debtor is a California limited liability company. The Debtor was formed in July 2004
5 for the purpose of acquiring and developing real property located in the State of California.

6 Cobb is the managing member of Oresund, the Holder of a 50% Interest in and the
7 managing member of the Debtor. PHR is the Holder of the remaining 50% Interest in the Debtor.
8 Toklan holds a 45% membership/equity interest in PHR and Cobb holds a 4% membership/equity
9 interest in PHR and a 45.94932% membership/equity interest in Toklan.²

10 **4.2 Acquisition, Entitlement and Status of the Development of the Project.**

11 In October 2003 a predecessor of the Debtor entered into three (3) separate purchase
12 option contracts to purchase four (4) parcels of raw land consisting of approximately 88.10 gross
13 acres or 81.78 net acres (the difference of 6.32 acres includes interior streets) located east and
14 west of Jefferson Street, south of Indio Boulevard in the City of Indio, Riverside County,
15 California. The Debtor exercised its option to purchase one (1) of the parcels in September 2004
16 and then exercised its option to purchase the remaining three (3) parcels in January 2005.

17 When acquired by the Debtor, the site was vacant land comprised primarily of steep sand
18 dunes and flat sandy areas. The site was zoned "Community Commercial" and designated by the
19 City General Plan as a "business park." The Debtor's intent was to rezone the site to a
20 combination of residential and commercial uses including single-family, multi-family and
21 office/warehouse space. The Debtor's goal was to provide a complementary mix of housing and
22 commercial uses that is "pedestrian friendly."

23 The Debtor then commenced the entitlement process to rezone the site to a mixed use
24 residential and commercial development known as "Northgate Crossing." The Debtor filed
25 applications for lot line adjustments, a tentative map and a general plan amendment. The tentative
26

27 ² The remaining membership equity interest in PHR is held by Alex C. Cobb (1%) and TM Realty (50%). P.
28 Thomas Mann is a principal of TM Realty. The remaining membership equity interest in Toklan is held in various
percentages by Cobb's family members.

1 map included a request for a zoning change for multi-family and single-family residential uses
2 while all other uses were allowed under the then-existing zoning.

3 The Northgate Conceptual Specific Plan and Project Master Plan (collectively, “Master
4 Plan”), along with a Tentative Parcel Map, Development Agreement, Final Environmental Impact
5 Report, General Plan Amendment, Change of Zone, and several Conditional Use Permits were
6 approved by the City Council on June 20, 2007 and July 3, 2007. The approved Tentative Parcel
7 Map reflects that the Project is comprised of 23 parcels including 19 commercial parcels, 3
8 residential parcels, and 1 open space parcel, in addition to 3 public rights of way. Development of
9 the Project is to be implemented in accordance with the terms of the Development Agreement.

10 A CFD was approved as part of the Development Agreement. Generally, a CFD is formed
11 to finance the development of authorized improved public facilities through the issuance of
12 special tax bonds, which are secured by the levy of special taxes. Debt service on the CFD bonds
13 is paid by assessments on the Project that are akin to ad valorem taxes.

14 The City has committed to issue CFD bonds to acquire improved public facilities the
15 Debtor has constructed at the Project. The total CFD bond amount is capped at \$15 million.

16 The Development Agreement sets forth the preconditions for the City to become the issuer
17 for the CFD bonds including primarily that (1) the City receives \$2 million of the funds from CFD
18 bond proceeds, and (2) that the Debtor commence “vertical construction” of commercial and
19 residential elements of the Project. The Development Agreement defines “vertical construction”
20 as closing on a construction loan for each use or beginning construction (whichever is earlier) on a
21 residential portion and a commercial portion of the Project.

22 Most actions and approvals needed to issue the CFD bonds have been completed. The last
23 pre-condition is a CFD Acquisition Agreement (“Acquisition Agreement”) whereby the City
24 contractually agrees to purchase the improved public facilities from the Debtor upon completion.
25 The Debtor has drafted an Acquisition Agreement, which would allow for the CFD bond proceeds
26 to be paid directly to a third-party lender such as OneWest Bank.

27 When issued, the CFD bonds will be used to finance: a \$2 million payment to the City; a
28 two-year bond interest reserve and bond closing costs; with the balance in an amount up to \$10

1 million paid to or on behalf of the Debtor for already constructed public improvements at the
2 Project.

3 Other benefits that flow to the Debtor under the Development Agreement upon approval
4 and recordation of a Final Map include reimbursement of a dust control deposit in the
5 approximate amount of \$175,000, reimbursement of 25% of certain costs from the City for street
6 and utility improvements that are for the general benefit of the public and retention of a portion of
7 Occupancy Taxes collected from a hotel that may be constructed at the Project. Occupancy Taxes
8 are charged and collected by hotel operators for the City by hotels at a rate of 10% of the
9 occupancy rate. In order to induce the Debtor or a hotel operator to build a hotel on the site, the
10 City agreed that the Debtor or the hotel operator can retain 33% of the Occupancy Taxes collected
11 for a period of seven (7) years.

12 The Debtor estimates the reimbursement for street and utility improvements will result in
13 hundreds of thousands of dollars paid to the Debtor upon recording the Final Map. Further, the
14 Debtor conservatively estimates retention of Occupancy Taxes retained under the Development
15 Agreement would exceed \$450,000.³

16 The Debtor's plans to develop the Project include construction of: 350,000+ square feet of
17 commercial retail space with restaurants, upscale shopping, retail showroom space and a gas
18 station; approximately 247 multi-family units with a clubhouse; 118 single family residences
19 ranging in size from approximately 1,500 to 2,500 square feet; and a 100 room hotel. Consistent
20 therewith, the Debtor has improved the Project by leveling the site and removing 213,000 cubic
21 yards of dirt, realigning and extending Avenue 42 and vacating a portion of the public right of
22 way that is Country Club Drive between Avenue 42 and Jefferson Street, mass-grading building
23 pads, installing utilities and constructing other offsite improvements including curbs, gutters,
24 streets, waterlines sewer lines, storm drains and traffic signals.

25 Upon receiving the approved Tentative Parcel Map, the Debtor marketed various parcels

26 _____
27 ³ For example, average daily room rental rates at \$90 per room when rented would produce \$9 in taxes of which
28 the Debtor or hotel operator can retain \$3 thereof for seven (7) years. If a 100-room hotel averages 60% occupancy,
that equates to 60 rooms at \$3.00 per room or \$180 per day, \$5,400 per month and \$64,800 per year for seven (7)
years.

1 for sale or lease. The Debtor's marketing efforts resulted in agreements or letters of intent for the
2 sale or lease of parcels at the Project including: the sale of two (2) parcels to Trammell Crow
3 Residential, the largest multi family developer in the United States, to build an apartment complex
4 and clubhouse; a lease with McDonald's USA, LLC for one (1) parcel to be developed as a
5 McDonald's restaurant with a drive-through window; a lease of one (1) parcel to be developed as
6 a Carl's Jr./Green Burrito restaurant with a drive through window; the sale of one (1) parcel for
7 development of a hotel; the sale of up to five (5) parcels to an owner/operator of a memory care
8 center and senior housing; the sale of one (1) parcel to The Chandi Group (originally through its
9 affiliate Sunny & Karan, LLC), a developer, owner, operator and franchisee for several Arco gas
10 stations, "am/pm" mini marts, and Del Taco and Subway stores located in the Coachella Valley,
11 County of Riverside, California; and the sale of one (1) parcel to Joint Replacement Hospitals of
12 America ("JRHA") for development of a surgical facility.

13 The Debtor and the prospective purchasers and lessees made substantial progress towards
14 selling or leasing several parcels and development of the Project. For example, the Debtor
15 submitted to the City and the City provided architectural approval of the 350,000+ planned retail
16 center. Trammell Crow submitted to the City and the City provided architectural approval for its
17 plans to develop an apartment complex. The Debtor and Trammell Crow spent in excess of \$1.5
18 million in predevelopment costs for the apartment site. The Arco and "am/pm" mini mart, which
19 is a combined gas, service station and convenience store to be built by The Chandi Group, went
20 through land use design review and site plan approval with the City. The final plan was
21 unanimously approved by the City planning commission in January 2010. The Debtor and The
22 Chandi Group spent tens of thousands of dollars in predevelopment costs for the Arco and
23 "am/pm" site. JHRA, representatives of the Debtor and the City negotiated an amendment to the
24 Debtor's Operating Agreement with the City that met any environmental concerns with JHRA's
25 use. As a result thereof, the City agreed to support JHRA's planned use of the parcel to be
26 acquired and developed and, in furtherance thereof, enacted a City-wide zoning change that
27 eliminated any concern with the use of the parcel to be acquired by JHRA as complying with the
28 Debtor's approved Master Plan. JRHA has incurred tens of thousands of dollars in expense

1 related to the future development of the parcel it intends to acquire and develop.

2 The extreme downturn in the real estate market over the past three (3) years including a
3 dearth of traditional bank financing for real estate developments, has resulted in termination of the
4 agreements with McDonald's and Trammell Crow and stalled the other pending sales or lease of
5 parcels at and final development of the Project. In addition thereto, OneWest Bank has refused to
6 consensually release its lien against the parcel to be sold to The Chandi Group and has also
7 refused to release its lien against the parcel that the Debtor intends to sell to JHRA.

8 **4.3 Events Precipitating the Chapter 11 Filing.**

9 OneWest Bank alleges that on or about February 19, 2010, it entered into a purchase and
10 assumption agreement with the Federal Deposit Insurance Corporation as receiver for La Jolla
11 Bank, FSB ("La Jolla Bank") for the acquisition of all the deposits and certain assets of La Jolla
12 Bank. Pursuant to this alleged transaction, OneWest Bank purportedly acquired all of La Jolla
13 Bank's rights and interests in connection with a construction loan that La Jolla Bank made to the
14 Debtor on or about September 8, 2008 with a maturity date of September 1, 2011, for the principal
15 sum of \$26,500,000 ("OneWest Bank Loan"). To evidence the OneWest Bank Loan, the Debtor
16 made, executed and delivered to La Jolla Bank a promissory note and an amendment thereto dated
17 as of September 8, 2008 ("OneWest Bank Note").

18 To secure payment of the obligations evidenced by the OneWest Bank Note and as part of
19 the OneWest Bank Loan transaction, the Debtor as trustor made, executed and delivered to La
20 Jolla Bank, as beneficiary, the One West Bank Security Documents. La Jolla Bank also
21 purportedly obtained commercial guarantees for repayment of the OneWest Bank Loan from the
22 Guarantors.

23 On June 25, 2010, or approximately, three (3) months after OneWest Bank refused to
24 honor the Debtor's last draw request under the terms of the OneWest Bank Loan, OneWest Bank
25 alleged defaults under the terms of the One West Bank Security Documents on the grounds that:
26 the Debtor failed to timely complete improvements at the Project; the Debtor failed to pay interest
27 in the sum of \$439,080.67 (as of May 25, 2010) when due; a mechanics lien was recorded against
28 the Project in the amount of \$77,000; the Debtor failed to obtain or maintain certain building

1 permits; the Debtor and the Guarantors failed to provide updated financial statements; and the
2 Debtor failed to provide rent rolls or operating reports. In furtherance thereof, a notice of default
3 was recorded against the Project on August 20, 2010.

4 The Debtor and the Guarantors attempted to negotiate a consensual resolution of the
5 alleged default. The Debtor and the Guarantors provided to OneWest Bank and its counsel
6 substantial amounts of financial and other information for its consideration, which information
7 was accompanied by several good faith offers to pay OneWest Bank a reduced amount in full
8 satisfaction of the OneWest Bank Loan.

9 While the Debtor and the Guarantors proffered at least four (4) separate good faith
10 settlement offers to either restructure the OneWest Bank Loan over time or payoff the OneWest
11 Bank Loan at a discount in cash, no counter proposal of any kind was ever made by OneWest
12 Bank to the Debtor. In fact, OneWest Bank specifically refused to make any such counteroffer
13 and has repeatedly said that any counteroffer would amount to negotiating against itself. Instead,
14 OneWest Bank caused to be recorded a notice of trustee's sale and scheduled a non-judicial
15 foreclosure sale to occur January 24, 2011. OneWest Bank adjourned on several occasions the
16 non-judicial foreclosure sale originally scheduled to occur on January 24, 2011 and last scheduled
17 to occur on May 6, 2011, ostensibly to engage in good faith settlement negotiations with the
18 Debtor.

19 Despite the transmission of hundreds of pages of detailed financial information in respect
20 of the Guarantors and despite the willingness to provide further such financial information, the
21 Debtor's efforts to consensually resolve its obligations to OneWest Bank prior to the May 6th
22 foreclosure sale were unsuccessful. OneWest Bank refused to further adjourn the May 6th
23 foreclosure sale. Accordingly, the Debtor was required to file for relief under Chapter 11 of the
24 Bankruptcy Code, so that it could obtain time sufficient for it to reorganize its financial affairs,
25 obtain sufficient funding to address the claims of OneWest Bank and the Debtor's other creditors
26 and to continue the development of the Project.

27 **4.4 The Debtor's Plan Financial Projections for the Debtor's Reorganization.**

28 The Debtor has prepared the Plan Financial Projections for the Debtor, a copy of which is

1 attached to the Plan as Exhibit "1". The Plan Financial Projections present the entire financial
2 template for the Debtor's reorganization effort. The Plan Financial Projections assumes that the
3 Debtor will sell or develop all parcels of the Project. As the Plan Financial Projections indicate,
4 the Equity Contribution, Net Sales Proceeds from the sale(s) of parcels of the Project and the
5 Development Agreement Proceeds, will be sufficient to repay OneWest Bank in full, plus interest.
6 The Debtor projects that it will be able to pay all Allowed Claims in full under the terms of the
7 Plan.

8 The Plan Financial Projections set forth the Debtor's estimate of the anticipated cash flow
9 of the Reorganized Debtor for the term of the Plan. Projections of anticipated cash flow are
10 based, in part, upon anticipated trends within the real estate market. The Plan Financial
11 Projections contain a description of material assumptions underlying the Plan Financial
12 Projections. Although the Debtor has devoted considerable effort to the development of the Plan
13 Financial Projections and believes that the Financial Projections represent fairly the projected
14 future cash flow of the Debtor, care should be taken in analyzing the Plan Financial Projections
15 as no guarantee exists that the Plan Financial Projections can be met by the Debtor.

16 THE PLAN FINANCIAL PROJECTIONS SET FORTH IN THIS DISCLOSURE
17 STATEMENT REPRESENT AN ESTIMATE OF FUTURE PERFORMANCE BASED UPON
18 CERTAIN ASSUMPTIONS SET FORTH IN THE PLAN FINANCIAL PROJECTIONS. THESE
19 FUTURE EVENTS MAY OR MAY NOT OCCUR, AND THE PLAN FINANCIAL
20 PROJECTIONS MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER
21 ASSURANCE OF THE ACTUAL RESULTS WHICH WILL OCCUR. BECAUSE OF THE
22 UNCERTAINTIES INHERENT IN PREDICTIONS OF FUTURE EVENTS AND EVENTS
23 OUTSIDE OF THE DEBTORS' CONTROL, THE DEBTORS' ACTUAL CASH FLOW MAY
24 WELL BE DIFFERENT FROM THAT PREDICTED, AND SUCH DIFFERENCE MAY BE
25 MATERIAL AND ADVERSE TO THE INTERESTS OF CREDITORS.

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V.

SIGNIFICANT EVENTS IN THE DEBTOR'S CHAPTER 11 CASE

5.1 Debtor's Operation as Debtor-in-Possession.

Since the Petition Date, the Debtor has continued to operate as a "debtor-in-possession" subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. The Debtor is authorized to operate its businesses in the ordinary course during the Chapter 11 proceedings. Transactions outside the ordinary course of business must be approved by the Bankruptcy Court.

5.2 Debtor's Employment of Professionals.

On May 13, 2011, the Debtor filed an application to employ Winthrop Couchot Professional Corporation ("WCPC") as its general insolvency counsel. On June 7, 2011, the Court entered an order granting the employment application.

5.3 Debtor's Motion to Set Bar Date.

On May 13, 2011, in order to ascertain all alleged claims against the Debtor and in furtherance of proposing a feasible plan of reorganization, the Debtor filed a Motion for Order Fixing Bar Date ("Bar Date Motion"). By order entered on June 7, 2011, this Court granted the Bar Date Motion. In accordance therewith, July 25, 2011 is the Bar Date for Creditors to File Proofs of Claim against the Debtor's Estate.⁴

5.4 Relief from Stay Motion filed by OneWest Bank.

On June 28, 2011, OneWest Bank filed a motion for relief from stay with respect to the Project alleging that relief from stay should be granted to permit OneWest Bank to take any and

⁴ The exceptions to this Bar Date are: (1) claims arising from the rejection of executory contracts or unexpired leases; (2) claims of "governmental units," as such term is defined in Section 101(27) of the Bankruptcy Code; and (3) claims arising as the result of transfer avoidance pursuant to Chapter 5 of the Bankruptcy Code.

For claims arising from rejection of executory contracts or unexpired leases pursuant to 11 U.S.C. § 365, the last day to file a proof of claim is (a) 30 days after the date of entry of the order authorizing the rejection, or (b) 30 days after service of a bar date notice upon the creditor asserting such claim, whichever is later.

For claims of "governmental units," as that term is defined in 11 U.S.C. §101(27), proofs of claim are timely filed if filed: (a) before 180 days after the date of the Order for Relief in this case, or as otherwise provided in Rule 3002(c)(1) of the Federal Rules of Bankruptcy Procedure. *See* 11 U.S.C. §502(b)(9).

For claims arising from the avoidance of a transfer under chapter 5 of the Bankruptcy Code, the last day to file a proof of claim is 30 days after the entry of judgment avoiding the transfer, or (b) 30 days after service of a bar date notice upon the creditor asserting such claim, whichever is later.

1 all actions as may be necessary or appropriate to enforce OneWest Bank's rights and remedies
2 under the OneWest Bank Security Documents and applicable non-bankruptcy law against the
3 Debtor's Assets. In effect, OneWest Bank sought Court authority to continue with its foreclosure
4 sale on the Project.

5 The relief requested by OneWest Bank is premised upon (i) Bankruptcy Code Section
6 362(d)(1) for "cause" on the alleged grounds that there is a lack of adequate protection for
7 OneWest Bank's interest in the Debtor's Project because there is a lack of an equity cushion; the
8 Debtor's case was filed in bad faith; and OneWest Bank is one of very few creditors listed on the
9 Debtor's mailing matrix; and (ii) Bankruptcy Code Section 362(d)(2) on the alleged grounds that
10 there is no equity in the Project and that the Project is not necessary to an effective reorganization.
11 Alternatively, if relief from stay is not granted, OneWest Bank has requested that the Debtor's
12 case be treated as a single-asset real estate case subject to the provisions of Bankruptcy Code
13 Section 362(d)(3).

14 On July 12, 2011, the Debtor filed its opposition to the Motion alleging that OneWest
15 Bank's attempt to obtain relief from stay based upon a purported lack of "adequate protection" is
16 not supported by any credible evidence, contradicts the appraisal submitted by OneWest Bank and
17 is based upon a flawed legal analysis. Under long-established and binding Supreme Court and
18 Ninth Circuit applicable case law, adequate protection focuses solely on whether or not the present
19 economic value of OneWest Bank's "interest in property" is declining in value post-petition.
20 OneWest Bank is only entitled to adequate protection if there is a post-petition decline in value of
21 the Project and here there is none. Under these facts, OneWest Bank's interest is adequately
22 protected, and there is no cause for relief from stay.

23 OneWest Bank also seeks relief from stay under Bankruptcy Code Section 362(d)(1) for
24 "cause" asserting the "Debtor's bad faith in filing the Petition" citing only to factors indicative of a
25 typical "single-asset real estate case", to wit, that the primary asset is the Project, which is real
26 property, with no cash flow, encumbered by OneWest Bank's lien, with "very few creditors" and
27 that the Debtor filed its bankruptcy case on the eve of a scheduled foreclosure sale.

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1 The mere fact that this is a single asset real estate case does not justify immediate relief
2 from stay. Otherwise, Congress' enactment of Bankruptcy Code Section 362(d)(3) would be
3 rendered meaningless. Accordingly, OneWest Bank has failed to establish "cause" for relief from
4 the automatic stay.

5 OneWest Bank further asserts that it is entitled to relief from stay under Bankruptcy Code
6 Section 362(d)(2) on the basis that there is no equity in the Project **and** that the Project is not
7 necessary to an effective reorganization. OneWest Bank contends that the value of the Project is
8 \$5.8 million and as a result there is no equity in the Project. However, OneWest Bank's valuation
9 methodology for and valuation of the Project is fatally flawed both factually and legally.

10 OneWest Bank's \$5.8 million value of the Project is dated as of February 7, 2011, or
11 approximately five (5) months ago, is patently incredible based upon the passage of time and
12 because it is based on an "as-is" raw land value with no analysis or opinion whatsoever of the
13 value of the Project as developed, which is exactly what the Debtor, with the continued financial
14 support of its affiliates, intends to do.

15 So, while the Motion is in large part premised upon OneWest Bank's appraisal which
16 concludes that it is not feasible to develop the Project, its data is flawed as it is stale and it fails to
17 recognize that the Debtor, the existing owner of the Project, does not intend to sell the Project as
18 raw land. Instead, the Debtor intends to: satisfy conditions necessary to record a Final Map, which
19 is unequivocally supported by the City; pursue a sale of the Chandi Parcel to The Chandi Group
20 for \$1.5 million and the JHRA Parcel to JHRA for approximately \$1.116 million with the net sale
21 proceeds paid to OneWest Bank; pursue the establishment and funding of the already approved
22 CFD pursuant to the terms of the Development Agreement with the City, which will yield up to
23 \$10 million to be paid to the Debtor or directly to OneWest Bank; pursue other financial benefits
24 under the terms of the Development Agreement including reimbursement of a dust control deposit
25 in the approximate amount of \$175,000, reimbursement of 25% of certain costs from the City of
26 Indio for street and utility improvements that are for the general benefit of the public and retention
27 of a portion of Occupancy Taxes; pay interest to OneWest Bank under the terms of a confirmed
28 plan initially with funds contributed by affiliates of the Debtor and subsequently with income

1 generated from the Project and ultimately pay the allowed claim of OneWest Bank and all other
2 creditors in full. The Debtor further asserted in its Opposition, that recording the Final Map,
3 selling parcels and otherwise developing the Project will greatly enhance the value of the Project,
4 which will inure to the benefit of OneWest Bank and all other Creditors.

5 On July 19, 2011, OneWest Bank filed its reply re-alleging, among other things, that
6 OneWest Bank was not adequately protected, there was no equity in the Project the Project was
7 not necessary for an effective reorganization and that any Plan proposed by the Debtor is
8 unconfirmable.

9 On July 26, 2011, the Court conducted a preliminary hearing / scheduling conference on
10 the pending OneWest Bank relief from stay motion and continued the hearing on the relief from
11 stay motion to October 6, 2011 to conduct a trial on the issues alleged in the motion.

12 **5.5 Proof of Claim filed by OneWest Bank.** On July 22, 2011, OneWest Bank Filed
13 its Claim assigned Claim no. 8 by the Clerk of the Court (“OneWest Bank Claim”). According to
14 the OneWest Bank Claim, OneWest Bank asserts that it holds a Claim in the aggregate amount of
15 \$28,201,552.98 of which \$5.8 million is a Secured Claim and the balance thereof in the amount of
16 \$22,401,552.98 is a General Unsecured Claim based upon OneWest Bank’s alleged value of the
17 Project that serves as collateral for repayment of its Claim. As set forth in Section 8.2 below,
18 OneWest Bank shall be given a first priority security interest in and to the Equity Contribution
19 contributed to the Debtor, less amounts paid to Holders of all other Allowed Claims to be paid
20 under the terms of the Plan, in an amount that when added to the value of the Assets subject to the
21 OneWest Bank Lien will result in OneWest Bank being the Holder of a Secured Claim for the
22 allowed amount of the OneWest Bank Claim.

23 **VI.**

24 **TREATMENT OF UNCLASSIFIED CLAIMS**

25 As required by the Bankruptcy Code, the Plan places Claims and Interests into various
26 Classes according to their right to priority. However, certain types of Claims are not classified in
27 any Classes under the Plan. These Claims are deemed “unclassified” under the provisions of the
28 Code. They are not considered impaired and they do not vote on the Plan, because they are

1 automatically entitled to specific treatment provided for them in the Code. The treatment of these
2 unclassified Claims is as provided below.

3 **6.1 Treatment of Allowed Administrative Claims.**

4 The Bankruptcy Code requires that all Allowed Administrative Claims be paid on the
5 Effective Date of the Plan, unless a particular Holder agrees to a different treatment. The
6 treatment of Allowed Administrative Claims is as described below. However, such
7 Administrative Claims are continuing to be incurred. The Debtor shall be liable for the payment of
8 the Allowed Administrative Claims, and the Allowed Administrative Claims shall be paid from
9 any of the Distribution Account(s) in which funds exist.

10 (a) **Repayment of Allowed Administrative Claims.**

11 Except to the extent that the Holder of an Allowed Administrative Claim agrees to a
12 different treatment and subject to the Administrative Claims Bar Date set forth herein, the
13 Distribution Agent shall pay each Allowed Administrative Claim in full, in Cash, on the later of
14 (i) the Effective Date, (ii) within ten (10) Business Days after the date such Administrative Claim
15 becomes an Allowed Administrative Claim, or (iii) the date such Allowed Administrative Claim
16 becomes due according to its terms. Notwithstanding the foregoing, any Allowed Administrative
17 Claim representing obligations incurred in the ordinary course of post-petition business by the
18 Debtor (including without limitation post-petition trade obligations) shall be paid in full or
19 performed by the Debtor in the ordinary course of business, in accordance with the terms of the
20 particular obligation.

21 (b) **Administrative Claims Bar Date.**

22 (i) **General Administrative Claims Bar Date.**

23 All applications for final compensation of Professionals for services rendered and for
24 reimbursement of expenses incurred on or before the Effective Date and all other requests for
25 payment of Administrative Claims incurred before the Effective Date under Sections 507(a)(2)
26 or 507(b) of the Bankruptcy Code (except only for (i) post-petition, ordinary course trade
27 obligations incurred in the ordinary course of the Debtor's post-petition business, for which no bar
28 date shall apply, and (ii) post-petition tax obligations, for which the bar date described in the

1 following Section shall apply) shall be Filed with the Bankruptcy Court and served upon the
2 Debtor no later than the General Administrative Claims Bar Date, unless such date is extended by
3 the Bankruptcy Court after notice to the Debtor. Any such request for payment of an
4 Administrative Claim that is subject to the General Administrative Claims Bar Date and that is not
5 Filed and served on or before the General Administrative Claims Bar Date shall be forever barred;
6 any party that seeks payment of Administrative Claims that (i) is required to file a request for
7 payment of such Administrative Claims and (ii) does not file such a request by the deadline
8 established herein shall be forever barred from asserting such Administrative Claims against the
9 Debtor, its estate, or any of its property.

10 **(ii) Administrative Tax Claims Bar Date.**

11 All requests for payment of Administrative Claims by a governmental unit for Taxes (and
12 for interest and/or penalties related to such Taxes) for any tax year or period, all or any portion of
13 which occurs or falls within the period from and including the Petition Date through and including
14 the Effective Date ("Tax Administrative Claims") and for which no bar date has otherwise
15 previously been established, must be filed and served on the Debtor on or before the later of (i)
16 sixty (60) days following the Effective Date; and (ii) 180 days following the filing of the tax return
17 for such taxes for such tax year or period with the applicable governmental unit. Any Holder of
18 any Tax Administrative Claims that is required to file a request for payment of such taxes and does
19 not file and properly serve such a request by the applicable bar date shall be forever barred from
20 asserting any such Tax Administrative Claims against the Debtor.

21 **6.2 Treatment of Priority Unsecured Tax Claims.**

22 Priority Tax Claims are certain unsecured income, employment and other taxes described
23 by Code Section 507(a)(8). The Code requires that each holder of such a Section 507(a)(8)
24 priority tax claim receive the present value of such Claim in deferred cash payments, over a period
25 not exceeding five (5) years from the Petition Date and that such treatment not be less favorable
26 than the treatment accorded to non priority unsecured creditors.

27 At the election of the Debtor, the Holder of each Allowed Priority Tax Claim shall be
28 entitled to receive, on account of such Claim, (i) equal cash payments on the last Business Day of

1 each three-month period following the Effective Date, during a period not to exceed five (5) years
2 after May 5, 2011, totaling the principal amount of such Claim plus simple interest on any unpaid
3 balance from the Effective Date, calculated at the interest rate available on ninety (90) day United
4 States Treasuries on the Effective Date, (ii) such other treatment agreed to by the Holder of the
5 Allowed Priority Tax Claim and the Debtor, provided such treatment is on more favorable terms to
6 the Debtor than the treatment set forth in clause (i) hereof, or (iii) payment of the full Allowed
7 Priority Tax Claim in Cash.

8 **6.3 A Summary of Estimated Allowed Administrative Expenses.**

9 As of June 30, 2011, the Debtor has incurred administrative expenses in the approximate
10 amount of \$63,077.55 payable to WCPC, the Debtor's general insolvency counsel. Toklan funded
11 the foregoing amounts to the Debtor as an equity contribution, which payments remain subject to
12 Court approval in accordance with the Court Order entered on June 7, 2011 approving WCPC's
13 employment.

14 **VII.**

15 **CLASSIFICATION OF CLAIMS AND INTERESTS**

16 As required by the Code, the Plan places Claims and Interests into various Classes
17 according to their right to priority and other relative rights. The Plan specifies whether each Class
18 of Claims or Interests is impaired or unimpaired, and the Plan sets forth the treatment each Class
19 will receive. The table below lists the Classes of Claims established under the Plan and states
20 whether each particular Class is impaired or left unimpaired by the Plan. A Class is "unimpaired"
21 if the Plan leaves unaltered the legal, equitable and contractual rights to which the Holders of
22 Claims or Interests in the Class are entitled, with certain exceptions specified in the Bankruptcy
23 Code.

24 The Debtor has not yet completed its investigation on whether or not the Claims and
25 Interests are Allowed and their listing herein should not be construed as providing for Allowance
26 under the Plan.

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CLASSIFICATION OF HOLDERS OF SECURED CLAIMS		
Class	Claimant	Impaired Status
Class 1.1	Riverside County Treasurer Tax Collector as the Holder of a Secured Real Property Tax Claim against the Debtor, in the approximate amount of \$192,609.06.	Impaired
Class 1.2	OneWest Bank the Holder of a Secured Claim against the Debtor, as lender, pursuant to the Loan, for the principal amount up to \$26,500,000.00 plus the Allowed Amount of accrued unpaid interest, fees and charges on account of the OneWest Bank Note and OneWest Bank Security Documents.	Impaired

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CLASSIFICATION OF HOLDERS OF PRIORITY UNSECURED CLAIMS		
Class	Claimant	Impaired Status
Class 2.1	Holders of Priority Unsecured Claims that fall within Code Sections 507(a)(4), (5), (6), (7) and (8) against the Debtor, in the approximate amount of \$845.76.	Unimpaired

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CLASSIFICATION OF HOLDERS OF GENERAL UNSECURED CLAIMS		
Class	Claimant	Impaired Status
Class 3.1	Holders of Mechanic Lien Claims against the Debtor, in the approximate amount of \$918,612.49.	Impaired
Class 3.2	Holders of General Unsecured Claims against the Debtor, in the approximate amount of \$230,256.65.	Impaired
Class 3.3	City of Indio, as the Holder of Claims against the Debtor under the terms of the Development Agreement, as amended.	Impaired
Class 3.4	OneWest Bank, as the Holder of an Unsecured Deficiency Claim against the Debtor, if any.	Impaired

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CLASSIFICATION OF HOLDERS OF INTERESTS		
Class	Interest Holder	Impaired Status
Class 4.1	Oresund and PHR as the Holder of Allowed Interests in the Debtor.	Unimpaired

1 VIII.

2 **THE PLAN'S TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

3 Based on the Plan Financial Projections, discussed above, the following is the Plan's
4 treatment of Allowed Claims and Interests.

5 **8.1 The Plan's Treatment of Holders of Secured Claims (Riverside County**
6 **Treasurer Tax Collector/Class 1.1).**

7 The treatment of the Holder of the Allowed Class 1.1 Claim under the Plan is as follows:

- 8 (a) The Holder's rights are impaired under the Plan;
- 9 (b) The Holder's Allowed Claim shall accrue interest at the applicable statutory
10 rate as of the Effective Date;
- 11 (c) The Holder shall retain its lien on the Project but shall forebear from
12 pursuing its rights and remedies until its claim is paid in accordance with the Plan;
- 13 (d) If the Holder votes in favor of the Plan, the Holder will receive payment of
14 25% of the Holder's Allowed Claim: (i) on the first (1st) Business Day of the first (1st) full
15 month following the Effective Date, with the balance on account of the Holder's Allowed
16 Claim paid in equal monthly installments of principal and interest commencing on the first
17 (1st) Business Day of the second (2nd) full month following the Effective Date and on the
18 first (1st) Business Day of the next seventeen (17) months thereafter; or (ii) prior to or upon
19 recordation of a Final Map, whichever occurs first;
- 20 (e) If the Holder casts a no vote or does not vote in favor of the Plan, the Holder
21 will receive payment of the Holder's Allowed Claim: (c) in eighteen (18) equal monthly
22 installments of principal and interest commencing on the first (1st) Business Day of the first
23 (1st) full month following the Effective Date, or (ii) prior to or upon recordation of a Final
24 Map, whichever occurs first; and
- 25 (f) In the event the Debtor defaults in payment to the Holder under the Plan,
26 after written notice of such default by the Holder to the Debtor and the Debtor's failure to
27 cure the default within ten (10) Business Days of such notice, the Holder shall be free to
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1 pursue its rights and remedies against the Project under applicable California law, but shall
2 have no recourse against the Guarantors.

3 **8.2 The Plan's Treatment of Holders of Secured Claims (OneWest Bank/Class**
4 **1.2).**

5 The treatment of the Holder of the Allowed Class 1.2 Claim under the Plan shall be as
6 follows:

7 (a) OneWest Bank is impaired under the Plan;

8 (b) OneWest Bank shall retain its underlying lien on the Project but shall
9 forebear from pursuing its rights and remedies until its Allowed Claim is paid in
10 accordance with the Plan;

11 (c) OneWest Bank shall be given a first priority security interest in and to the
12 Equity Contribution contributed to the Debtor, less amounts paid to Holders of all other
13 Allowed Claims to be paid under the terms of the Plan in an amount that when added to the
14 value of the Assets subject to the OneWest Bank Lien will result in OneWest Bank being
15 the Holder of a Secured Claim for the allowed amount of the OneWest Bank Claim;

16 (d) OneWest Bank's Claim shall be treated as a fully Secured Allowed Claim in
17 an amount determined as of the Effective Date of the Plan;

18 (e) Interest on OneWest Bank's Allowed Claim shall accrue at the Designated
19 Rate as of the Effective Date;

20 (f) The term of the OneWest Bank Note shall be extended to a date which is ten
21 (10) years from the first (1st) Business Day of the first (1st) full month following the
22 Effective Date at which time all accrued unpaid amounts under the OneWest Bank Note
23 will be due and payable;

24 (g) Interest only payments on account of OneWest Bank's Allowed Claim shall
25 be due and payable commencing on the first (1st) Business Day of the first (1st) full month
26 following the Effective Date and on the first (1st) Business Day of the next one hundred
27 nineteen (119) months thereafter with the interest only payment amount to be adjusted to
28 account for any principal paydowns during the term of the OneWest Bank Note;

1 (h) Subject to the Minimum Release Price, the Debtor may sell OneWest
2 Bank's collateral free and clear of OneWest Bank's Secured Claim and lien. All Net Sale
3 Proceeds generated from such sales shall be paid from escrow to OneWest Bank; and

4 (i) In the event the Debtor defaults in payment to OneWest Bank under the
5 Plan, after written notice of such default by OneWest Bank to the Debtor and the Debtor's
6 failure to cure the default within ten (10) Business Days of such notice, OneWest Bank
7 shall be free to pursue its rights and remedies against the Project and the Guarantors under
8 applicable California law.

9 **8.3 The Plan's Treatment of Holders of Unsecured Priority Claims (Class 2.1).**

10 The treatment of the Holders of Allowed Class 2.1 Unsecured Priority Claims under the
11 Plan shall be as follows:

12 (a) The Holder(s) are unimpaired under the Plan; and

13 (b) The Holder(s) of Allowed Class 2.1 Claims will receive payment of the
14 Holder's Allowed Claim on the Effective Date.

15 **8.4 The Plan's Treatment of Holders of General Unsecured Claims (Mechanic**
16 **Lien Claims/Class 3.1).**

17 The treatment of the Holders of Allowed Class 3.1 Claims under the Plan shall be as
18 follows:

19 (a) The Holders' rights are impaired under the Plan;

20 (b) If the Holder(s) vote in favor of the Plan, the Allowed Class 3.1 Claims
21 shall accrue interest at the Prime Rate as of the Effective Date and the Holder will receive a
22 Pro Rata payment of 25% of the Holder's Allowed Claim: (i) on the first (1st) Business Day
23 of the first (1st) full month following the Effective Date, with the balance on account of the
24 Holder's Allowed Claim paid in equal monthly installments of principal and interest
25 commencing on the first (1st) Business Day of the second (2nd) full month following the
26 Effective Date and on the first (1st) Business Day of the next seventeen (17) months
27 thereafter; or (ii) prior to or upon recordation of a Final Map, whichever occurs first;
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1 (c) If the Holder(s) cast a no vote or do not vote in favor of the Plan, the
2 Holder(s) will receive a Pro Rata payment of the Holder(s)' Allowed Claim with no
3 interest accruing thereon in eighteen (18) equal monthly installments of principal and
4 interest commencing on the first (1st) Business Day of the first (1st) full month following
5 the Effective Date; and

6 (d) In the event the Debtor defaults in payment to the Holder(s) under the Plan,
7 after written notice of such default by the Holder(s) to the Debtor and the Debtor's failure
8 to cure the default within ten (10) Business Days of such notice, the Holder(s) shall be free
9 to pursue its rights and remedies against the Project under applicable California law, but
10 shall have no recourse against the Guarantors.

11 **8.5 The Plan's Treatment of Holders of General Unsecured Claims (General**
12 **Unsecured Claims/Class 3.2).**

13 The treatment of the Holders of Allowed Class 3.2 Claims under the Plan shall be as
14 follows:

15 (a) The Holder(s) rights are impaired under the Plan;

16 (b) The Holder(s) will receive a Pro Rata payment of the Holder(s)' Allowed
17 Claim with no interest accruing thereon: in twenty four (24) equal monthly installments of
18 principal and interest commencing on the first (1st) Business Day of the first (1st) full
19 month following the Effective Date;

20 (c) In the event the Debtor defaults in payment to the Holder(s) under the Plan,
21 after written notice of such default by the Holder(s) to the Debtor and the Debtor's failure
22 to cure the default within ten (10) Business Days of such notice, the Holder(s) shall be free
23 to pursue its rights and remedies against the Project under applicable California law, but
24 shall have no recourse against the Guarantors.

25 **8.6 The Plan's Treatment of Holders of General Unsecured Claims (City of**
26 **Indio/Class 3.3).**

27 The treatment of the Holder of Allowed Class 3.3 Claims under the Plan shall be as
28 follows:

- 1 (a) The City's rights are impaired under the Plan; and
2 (b) The City's rights are to be specifically governed by the terms of the
3 Development Agreement, as such will be amended, and by the applicable provisions of the
4 California Subdivision Map Act (See, California Government Code Section 66456 *et seq.*)
5 and the City's subdivision regulations (See, Title XV (Land Usage), Chapter 156, Sections
6 156.025, 156.055-057).

7 **8.7 The Plan's Treatment of Holders of General Unsecured Claims (OneWest**
8 **Bank Unsecured Deficiency Claim/Class 3.4).**

9 The Debtor does not believe that there will be a Holder of an Allowed Class 3.4 Claim.
10 However, in the event that such a Claim exists, the treatment of the Holder of Allowed Class 3.4
11 Claims under the Plan shall be as follows:

- 12 (a) The Holder is unimpaired under the Plan;
13 (b) The Allowed Class 3.4 Claim shall accrue interest at the Prime Rate as of
14 the Effective Date and the Holder will receive interest only payments on account of such
15 Allowed Claim commencing on the first (1st) Business Day of the first (1st) full month
16 following the Effective Date, and on the first (1st) Business Day of the next one hundred
17 nineteen (119) months thereafter at which time all accrued unpaid amounts owed on
18 account of such Allowed Claim will be due and payable; and
19 (c) In the event the Debtor defaults in payment to the Holder under the Plan,
20 after written notice of such default by the Holder to the Debtor and the Debtor's failure to
21 cure the default within ten (10) Business Days of such notice, the Holder shall be free to
22 pursue its rights and remedies against the Project and the Guarantors under applicable
23 California law.

24 **8.8 The Plan's Treatment of Holders of Allowed Interests (Class 4.1).**

25 The treatment of the Holders of Allowed Class 4.1 Interests under the Plan shall be as
26 follows:

- 27 (a) The Holder(s) are unimpaired under the Plan; and
28

1 (b) The Holders of Interests shall not receive any Distributions from the Debtor
2 until all claims of higher priority have been paid in full in accordance with the terms of the
3 Plan.

4 **IX.**

5 **ACCEPTANCE OR REJECTION OF THE PLAN**

6 **9.1 Introduction.**

7 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
8 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
9 CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following
10 discussion is intended solely for the purpose of alerting readers about basic confirmation issues,
11 which they may wish to consider, as well as certain deadlines for filing Claims. The Debtor
12 cannot represent that the discussion contained below is a complete summary of the law on this
13 topic.

14 Many requirements must be met before the Court can confirm the Plan. Some of the
15 requirements include that the Plan must be proposed in good faith, acceptance of the Plan, whether
16 the Plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and
17 whether the Plan is feasible. The requirements described herein are not the only requirements for
18 confirmation.

19 **9.2 Who May Object to Confirmation of the Plan.**

20 Any party in interest may object to the confirmation of the Plan.

21 **9.3 Who May Vote to Accept/Reject the Plan.**

22 A Holder of a Claim or Interest has a right to vote for or against the Plan if that Holder of
23 the Claim or Interest has a Claim which is both (1) Allowed or Allowed for voting purposes and
24 (2) Classified in an impaired Class.

25 **9.4 What Is an Allowed Claim/Interest.**

26 As noted above, a Holder of Claim or Interest must first have an Allowed Claim or
27 Allowed Interest to vote.

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1 **9.5 What Is an Impaired Class.**

2 A Class is impaired if the Plan alters the legal, equitable, or contractual rights of the
3 Claims or Interests in that Class, other than the right to accelerate the Claim upon certain kinds of
4 defaults. In this case, the Debtor believes that all Classes, except Classes 2.1 and 4.1, are
5 impaired.

6 **9.6 Who Is Not Entitled to Vote.**

7 The following four types of Claims are not entitled to vote: (1) Claims that have been
8 disallowed; (2) Claims in unimpaired Classes; (3) Claims entitled to priority pursuant to
9 Bankruptcy Code Sections 507(a)(2), (a)(3) and (a)(8) and Claims in Classes that do not receive or
10 retain any value under the Plan. Claims in unimpaired Classes are not entitled to vote because
11 such Classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to
12 Bankruptcy Code Section 507 (a)(2), (a)(3) and (a)(8) are not entitled to vote because such Claims
13 are not placed in Classes and they are required to receive certain treatment specified by the
14 Bankruptcy Code. Claims in Classes that do not receive or retain any property under the Plan do
15 not vote because such Classes are deemed to have rejected the Plan. The Debtor believes that all
16 Classes, except for Classes 2.1 and 4.1, are entitled to vote.

17 EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL
18 HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

19 **9.7 Who Can Vote in More than One Class.**

20 A creditor whose Claim has been Allowed in part as a Secured Claim and in part as an
21 Unsecured Claim is entitled to accept or reject a Plan in both capacities by casting one ballot for
22 the secured part of the Claim and another ballot for the Unsecured Claim. Also, a Creditor may
23 otherwise hold Claims in more than one Class and may vote the Claims held in each Class.

24 **9.8 Votes Necessary for a Class to Accept the Plan.**

25 A Class of Claims is deemed to have accepted the Plan when more than one-half (1/2) in
26 number and at least two-thirds (2/3rds) in dollar amount of the Claims *that actually voted*, vote to
27 accept the Plan. A Class of interests is deemed to have accepted the Plan when Holders of at least
28

1 two-thirds (2/3rds) in amount of the interest holders of such Class which actually vote, vote to
2 accept the Plan.

3 **9.9 Treatment of Nonaccepting Classes.**

4 As noted above, even if there are impaired Classes that do not accept the proposed Plan,
5 the Court may nonetheless confirm the Plan if the nonaccepting Classes are treated in the manner
6 required by the Code and at least one impaired Class of Claims accepts the Plan. The process by
7 which a plan may be confirmed and become binding on non-accepting Classes is commonly
8 referred to as “cramdown.” The Bankruptcy Code allows the Plan to be “crammed down” on
9 nonaccepting Classes of Claims or interests if it meets all statutory requirements except the voting
10 requirements of Section 1129(a)(8) of the Bankruptcy Code and if the Plan does not “discriminate
11 unfairly” and is “fair and equitable” with respect to each impaired Class that has not voted to
12 accept the Plan, as set forth in Section 1129(b) of the Bankruptcy Code and applicable case law.

13 **9.10 Request for Confirmation Despite Nonacceptance by Impaired Class(es).**

14 The Plan Proponent will ask the Court to confirm the Plan by cramdown on any impaired
15 Class if such Class does not vote to accept the Plan.

16 **X.**

17 **MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

18 **10.1 Introduction.**

19 This Section is intended to address how the Debtor intends to fund and to implement the
20 obligations to Creditors under the Plan. It thus provides information regarding funding sources for
21 the Plan obligations and other material issues bearing upon the performance of the Plan.

22 **10.2 Source of Funds.**

23 The Debtor shall make all payments due under the Plan to holders of Allowed Claims out
24 of the Equity Contribution, Net Sales Proceeds from the sale(s) of parcels of the Project,
25 Development Agreement Proceeds, Net Cash Flow from the Project, if any, and Refinance
26 Proceeds, if any.

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1 **10.3 Enforcement Injunction.**

2 The Confirmation Order shall act as an injunction (the “Enforcement Injunction”) to stay
3 and restrain from taking any of the following actions against the Guarantors, or against property in
4 which the Guarantors hold an interest, on account of any judgments, claims or causes of action that
5 arise out of or relate to Claims against the Debtor or the Estate, and which judgments, claims or
6 causes of action if asserted or enforced against the Guarantors may give rise to a claim of
7 indemnity or contribution against the Debtor, including without limitation the Guaranty Litigation
8 and any and all other alleged claims of OneWest Bank against the Guarantors (“Enjoined Claim”):
9 (a) commencing or continuing in any manner any such Enjoined Claim against the Guarantors; (b)
10 enforcing, attaching. Collecting or recovering in any manner any judgment, award, decree, or order
11 on account of an Enjoined Claim; (c) creating, perfecting, or enforcing any lien or encumbrance on
12 account of an Enjoined Claim.

13 The Enforcement Injunction shall continue in effect until the earliest to occur of the
14 following: (a) all of the payments required to be made under the Plan have been paid, and all
15 Allowed Claims have been fully satisfied pursuant to the terms of the Plan, at which time the
16 Enforcement Injunction shall be terminated; (b) the Case is dismissed or converted to a proceeding
17 under Chapter 7 of the Bankruptcy Code; or (c) In the event the Debtor defaults in payment to the
18 Holder of an Allowed Claim under the Plan, after written notice of such default by the Holder of
19 such Allowed Claim to the Debtor and the Debtor’s failure to cure the default within ten (10)
20 Business Days of receipt of such notice.

21 **10.4 Management of the Debtor After Effective Date.**

22 After the Effective Date, the Debtor shall be managed by its existing management team,
23 which includes Cobb on behalf of Oresund. No remuneration shall be paid to the Debtor, any
24 Affiliate thereof, or the Guarantors until all Allowed Claims are paid in accordance with the Plan.
25 Subject to the provisions herein, the Debtor shall be entitled to retain, employ and compensate
26 Professionals, in order to assist with their obligations and rights under the terms of the Plan. The
27 Debtor may also employ or contract with other persons or entities to perform the obligations
28 created under the Plan.

1 **10.5 Avoidance Actions.**

2 Unless an Avoidance Action is expressly waived, relinquished, released, compromised or
3 settled in the Plan or in a Final Order, all rights with respect to such Avoidance Actions are
4 reserved and the Debtor may pursue such Avoidance Actions. Notwithstanding the foregoing, the
5 Debtor shall not settle or abandon an Avoidance Action valued at greater than \$50,000 except
6 upon ten (10) days' prior written notice and opportunity to object to one or another. Any disputes
7 concerning the settlement or abandonment of an Avoidance Action shall be submitted to the
8 Bankruptcy Court for resolution on no less than ten (10) days' notice to the objecting party.

9 **10.6 Collection of Avoidance Actions Recoveries.**

10 All Avoidance Actions Recoveries realized or obtained by the Debtor shall be promptly
11 deposited into the applicable Distribution Account(s). Except as otherwise provided in the Plan
12 and the Confirmation Order, the Avoidance Actions Recoveries shall be free and clear of all
13 claims and liens and shall only be expended in accordance with the provisions of the Plan. All Net
14 Avoidance Actions Recoveries shall first be paid to OneWest Bank until OneWest Bank receives a
15 full Distribution on the account of its Allowed Claims.

16 **10.7 Payment of Post-Confirmation Expenses.**

17 All Post-Confirmation Expenses may be paid by the Debtor from the Distribution
18 Account(s) upon ten (10) days' prior written notice and opportunity to object provided to the
19 Office of the United States Trustee, but without further notice to other Creditors or Holders of
20 Interests, or approval of the Bankruptcy Court. Any disputes concerning the payment of the Post-
21 Confirmation Expenses shall be submitted to the Bankruptcy Court for resolution.

22 **XI.**

23 **DISTRIBUTIONS**

24 **11.1 Distribution Agent.**

25 The Distribution Agent may employ one or more sub agents on such terms and conditions
26 as it may agree in its discretion and pay such sub agent as a Post-Confirmation Expense from the
27 Distribution Accounts. The Distribution Agent shall not be required to provide any bond in
28 connection with the making of any Distributions pursuant to the Plan.

1 **11.2 Distributions.**

2 **(a) Dates of Distributions.**

3 Any distribution required to be made on the Effective Date shall be deemed timely if made
4 as soon as practicable after such date and, in any event, within thirty (30) days after such date.
5 Any distribution required to be made upon a Disputed Claim becoming an Allowed Claim and no
6 longer being a Disputed Claim shall be deemed timely if made as soon as practicable thereafter.

7 **(b) Limitation on Liability.**

8 Neither the Debtor nor any of its employees, members, officers, directors, agents, or
9 professionals or Affiliates shall be liable for (i) any acts or omissions (except for gross negligence
10 or willful misconduct) in connection with implementing the Distribution provisions of the Plan
11 and the making or withholding of Distributions pursuant to the Plan, or (ii) any change in the value
12 of distributions made pursuant to the Plan resulting from any delays in making such distributions
13 in accordance with the Plan's terms (including but not limited to any delays caused by the
14 resolution of Disputed Claims).

15 **11.3 Old Instruments and Securities.**

16 **(a) Surrender and Cancellation of Instruments and Securities.**

17 As a condition to receiving any distribution pursuant to the Plan, each Person holding any
18 note or other instrument or security (collectively "Instruments or Securities" and individually an
19 "Instrument or Security") evidencing, an existing Claim(s) against the Debtor must surrender such
20 Instrument or Security to the Distribution Agent.

21 **(b) Cancellation of Liens.**

22 Except as otherwise provided in the Plan, any lien securing any Secured Claim shall be
23 deemed released and discharged, and the Person holding such Secured Claim shall be authorized
24 and directed to release any collateral or other property of the Debtor (including, without limitation,
25 any cash collateral) held by such Person and to take such actions as may be requested by the
26 Debtor to evidence the release of such lien, including, without limitation, the execution, delivery
27 and Filing or recording of such releases as may be requested by the Debtor.
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1 **11.4 De Minimis Distributions and Fractional Shares.**

2 No Cash payment of less than ten dollars (\$10.00) shall be made to any Holder of Claims
3 unless a request therefore is made in writing to the Distribution Agent. Whenever payment of a
4 fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down
5 of such fraction to the nearest whole cent. Any Cash or other property that is not distributed as a
6 consequence of this Section shall, after the last distribution on account of Allowed Claims in the
7 applicable Class, be treated as “Unclaimed Property” under the Plan.

8 **11.5 Delivery of Distributions.**

9 Except as provided in the Plan with respect to Unclaimed Property, distributions to Holders
10 of Allowed Claims and Allowed Administrative Claims shall be distributed by mail as follows:

11 (1) with respect to each Holder of an Allowed Claim that has filed a Proof of Claim, at the address
12 for such Holder as maintained by the official claims agent for the Debtor; (2) with respect to each
13 Holder of an Allowed Claim that has not filed a Proof of Claim, at the address reflected on the
14 Schedules filed by the Debtor, provided, however, that if the Distribution Agent has received a
15 written notice of a change of address for such Holder, the address set forth in such notice shall be
16 used; or (3) with respect to each Holder of an Allowed Administrative Claim, at such address as
17 the Holder may specify in writing.

18 **11.6 Undeliverable Distributions.**

19 If the Distribution of Cash to the Holder of any Allowed Claim is returned to the
20 Distribution Agent as undeliverable or the Distribution check is not negotiated within 90 days of
21 mailing (any such distribution being hereinafter referred to as “Unclaimed Property”), no further
22 distribution shall be made to such Holder unless and until the Distribution Agent is notified in
23 writing of such Holder’s then current address. Subject to the remainder of this Section and the
24 following Section, Unclaimed Property shall remain in the possession of the Distribution Agent
25 pursuant to this Section, and shall be set aside and (in the case of Cash) held in a segregated
26 interest bearing account (as to Cash Unclaimed Property) to be maintained by the Distribution
27 Agent until such time as the subject Distribution becomes deliverable. Nothing contained in the
28 Plan shall require the Distribution Agent or any other Person to attempt to locate such Person.

1 distribute to the Person holding such Claim any Cash that would have been distributable to such
2 Person if on the initial Distribution Date such Claim had been an Allowed Claim and not a
3 Disputed Claim.

4 **XIII.**

5 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

6 **13.1 Executory Contracts Potentially Being Assumed.**

7 The Debtor shall have until the Effective Date to assume or reject any of the executory
8 contracts and unexpired leases attached to the Plan as Exhibit "3". The Plan Proponent may add
9 any executory contract or unexpired leases to these exhibits, or delete any contract or lease
10 therefrom up to and including the Confirmation Date. All contracts or leases not assumed by the
11 Effective Date shall be deemed rejected.

12 **13.2 Executory Contracts Being Rejected.**

13 The Debtor hereby rejects those executory contracts and unexpired leases set forth in the
14 Debtor's schedules attached to the Plan as Exhibit "4." The Plan Proponent reserves the right to
15 amend Exhibit "4" to the Plan to include additional leases and contracts on this exhibit, or to
16 delete leases and contracts from this exhibit, up to and including the Confirmation Date.

17 **13.3 Bar Date for Rejection Damages.**

18 Any Claim arising out of the rejection of an executory contract or unexpired lease shall be
19 forever barred and shall not be enforceable against the Debtor, its Affiliates, its successors, or the
20 Project, and shall not be entitled to any distribution under the Plan, unless a Proof of Claim for
21 such Claim is filed and served on the Debtor within thirty (30) days after the receipt of a notice of
22 the rejection of any contract or lease.

23 **13.4 Changes in Rates Subject to Regulatory Commission Approval.**

24 The Debtor is not subject to governmental regulatory commission approval of its rates.
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1 **XIV.**

2 **BEST INTEREST OF CREDITORS TEST AND PLAN FEASIBILITY**

3 **14.1 Best Interest of Creditors Test.**

4 The Best Interest of Creditors Test must be satisfied even if the Plan is accepted by each
5 impaired Class of Claims and if any Holder of an Allowed Claim objects to the Plan on such basis.
6 The Best Interests Test requires the Bankruptcy Court to find either that either (i) all Holders of
7 Claims in an impaired Class of Claims have accepted the Plan or (ii) the Plan provides each
8 Holder of Allowed Claims of an impaired Class who has not accepted the Plan with a recovery of
9 property of a value, as of the effective date of the Plan, that is not less than the amount that such
10 Holder would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. As
11 set forth below, the Debtor's Creditors will clearly receive a distribution under the Plan equal to or
12 greater than they would receive in a hypothetical Chapter 7.

13 Attached hereto as Exhibit "1" is a liquidation analysis, which shows (i) the liquidation
14 value of the Debtor's Assets, exclusive of the collateral on which OneWest Bank has a lien⁵, under
15 a hypothetical Chapter 7 proceeding would be approximately \$0.00; and (ii) Holders of Allowed
16 General Unsecured Claims would not receive anything on the account of such Holders' Allowed
17 Claims. As set forth in the Plan Financial Projections, the Debtor believes that the Equity
18 Contribution, Net Sales Proceeds from the sales of parcels of the Project, Development Agreement
19 Proceeds, Net Cash Flow from the Project, if any, and Refinance Proceeds, if any, will be
20 sufficient to pay the Allowed Claims of all Creditors in full. Accordingly, the Debtor satisfies the
21 best interest of creditors test.

22 **14.2 Feasibility.**

23 In addition, in order to confirm the Plan, the Bankruptcy Court must find that confirmation
24 of the Plan is not likely to be followed by the liquidation or the need for further financial
25 reorganization of the Debtor(s). This requirement is imposed by Section 1129(a)(11) of the
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28 ⁵ Holders of Allowed Secured Claims would have the right to foreclose on their collateral.

1 Bankruptcy Code and is generally referred to as the “feasibility” requirement. As set forth below,
2 this requirement is also satisfied.

3 The Debtor will repay the outstanding amounts owed to OneWest Bank, plus interest, from
4 the Equity Contribution, Net Sales Proceeds from the sale(s) of parcels of the Project,
5 Development Agreement Proceeds, Net Cash Flow from the Project and Refinance Proceeds, if
6 any over a one-hundred and twenty month (120) period. The alleged outstanding balance owed to
7 OneWest Bank, plus interest, as of July 22, 2011 was \$28,201,552.98.

8 In addition to paying OneWest Bank in full, as set forth above, the proceeds from the
9 Equity Contribution will be sufficient to pay all Allowed Administrative Claims, Allowed Priority
10 Claims and Allowed General Unsecured Claims in full. After the repayment of the foregoing, the
11 Holders of Allowed Interests will retain the residual interest in the remainder of the Project.

12 These projections are set forth in detail in the Plan Financial Projections attached as
13 Exhibit “1” to the Plan.

14 **XV.**

15 **LIMITATION OF LIABILITY**

16 **15.1 No Liability for Solicitation or Participation.**

17 As specified in Section 1125(e) of the Bankruptcy Code, entities that solicit acceptances or
18 rejections of the Plan and/or that participate in the offer, issuance, sale, or purchase of securities
19 offered or sold under the Plan, in good faith and in compliance with the applicable provisions of
20 the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for
21 violation of any applicable law, rule, or regulation governing the solicitation of acceptances or
22 rejections of the Plan or the offer, issuance, sale, or purchase of securities.

23 **15.2 Limitation of Liability.**

24 Effective as of the Effective Date, neither the Debtor, nor its Affiliate, nor any of its
25 respective members, officers, directors, employees and other agents, advisors, attorneys and
26 accountants shall have or incur any liability to any Holder of any Claim or Interest or any other
27 Person for any act or omission in connection with or arising out of the negotiation, preparation and
28 pursuit of confirmation of the Plan, the Disclosure Statement, the consummation of the Plan, the

1 administration of the Plan, the Cases or the property to be distributed under the Plan except: (a)
2 the Debtor shall be liable for the performance of obligations assumed by it or imposed upon it
3 under or by the Plan; and (b) for liability based on willful misconduct as finally determined by a
4 Final Order of the Bankruptcy Court. The Debtor and its Affiliates, and each of their respective
5 officers, directors, employees and other agents, advisors, attorneys and accountants shall be
6 entitled to rely, in every respect, upon the advice of counsel with respect to their duties and
7 responsibilities under or with respect to the Plan.

8 **XVI.**

9 **CONDITIONS TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

10 **16.1 Conditions Precedent to Plan Confirmation.**

11 The only condition precedent to confirmation of the Plan is that the Bankruptcy Court shall
12 have entered a Confirmation Order in form and substance reasonably acceptable to the Debtor.

13 **16.2 Conditions Precedent to Plan Effectiveness.**

14 The only conditions precedent to the effectiveness of the Plan and the occurrence of the
15 Effective Date is that the Final Map shall be recorded and Confirmation Order shall be a Final
16 Order in form and substance reasonably satisfactory to the Debtor.

17 **XVII.**

18 **RETENTION OF JURISDICTION**

19 Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective
20 Date, the Bankruptcy Court shall not be limited under the Plan and the Bankruptcy Court's
21 jurisdiction shall apply to the fullest extent possible under applicable law.

22 **XVIII.**

23 **MODIFICATION OR WITHDRAWAL OF PLAN**

24 **18.1 Modification of Plan.**

25 At any time prior to confirmation of the Plan, the Debtor(s) may supplement, amend or
26 modify the Plan. After confirmation of the Plan, the Debtor may (x) apply to the Bankruptcy
27 Court, pursuant to Section 1127 of the Bankruptcy Code, to modify the Plan; and (y) apply to the
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1 Bankruptcy Court to remedy defects or omissions in the Plan or to reconcile inconsistencies in the
2 Plan.

3 **18.2 Nonconsensual Confirmation.**

4 In the event that any impaired Class of Claims or Interests shall fail to accept the Plan in
5 accordance with Section 1129(a)(8) of the Bankruptcy Code, the Plan Proponent (i) may request
6 that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy
7 Code, and (ii) in accordance with the Plan, and may modify the Plan in accordance with
8 Section 1127 of the Bankruptcy Code.

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XIX.

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SALE OF PARCELS OF THE PROJECT

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19.1 Brokerage Firms.

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In order to maximize the sales efforts for parcels of the Project, the Debtor likely needs to
utilize a real estate brokerage firm of the Debtor's choice engaged on a non-exclusive basis. The
Debtor may continue to use its current broker on a non-exclusive basis. All brokers entitled to
commissions pursuant to the sale of any parcel of the Project are subject to the Closing Costs
Limitation.

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19.2 Sale Right and Minimum Release Price.

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The Debtor may sell any parcel of the Project after the Confirmation Date without approval
from OneWest Bank or Order of the Bankruptcy Court as long as the net proceeds from the sale of
any parcel are no less than the Minimum Release Price. Otherwise, OneWest Bank must approve
all purchase contracts and escrow settlement statements. On a case-by-case basis, OneWest Bank
and the Debtor may mutually agree to accept less than the Minimum Release Price for any parcel
of the Project.

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TAX CONSEQUENCES OF PLAN

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20.1 Introduction.

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The implementation of the Plan may have federal, state and local tax consequences to the
Debtor and the Holders of Claims and Interests. No tax opinion has been sought or will be

1 obtained with respect to any tax consequences of the Plan. This Disclosure Statement does not
2 constitute, and is not intended to constitute, either a tax opinion or tax advice to any person, and
3 the summary contained herein is provided for informational purposes only.

4 The discussion below summarizes only certain of the federal income tax consequences
5 associated with the Plan's implementation. This discussion does not attempt to comment on all
6 aspects of the federal income tax consequences associated with the Plan, nor does it attempt to
7 consider various facts or limitations applicable to any particular Holder of a Claim or Interest
8 which may modify or alter the consequences described herein. A Holder of a Claim or Interest
9 may find that the tax consequences of the Plan to such Holder differs materially from the tax
10 consequences discussed below because of such Holder's facts and circumstances. This discussion
11 does not address state, local or foreign tax consequences or the consequences of any federal tax
12 other than the federal income tax.

13 The following discussion is based upon the provisions of the Internal Revenue Code, the
14 regulations promulgated thereunder, and existing judicial decisions and administrative rulings. In
15 light of the rapidly-changing nature of tax law, no assurance can be given that legislative, judicial
16 or administrative changes will not be forthcoming that would affect the accuracy of the discussion
17 below. Any such changes could be material and could be retroactive with respect to the
18 transactions entered into or completed prior to the enactment or promulgation thereof. The tax
19 consequences of certain aspects of the Plan are uncertain due to the lack of applicable legal
20 authority and may be subject to judicial or administrative interpretations that differ from the
21 discussion below.

22 HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED TO CONSULT WITH
23 THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM AND
24 TO THE DEBTORS OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN,
25 INCLUDING FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.

26 **20.2 Federal Income Tax Consequences to the Debtor.**

27 Consummation of the Plan may reduce substantially the amount of the Debtor's aggregate
28 outstanding indebtedness (any amount of potential discharged indebtedness for federal income tax

1 purposes will be referred to herein as a “Debt Discharge Amount”). In general, the Internal
2 Revenue Code provides that a taxpayer who realizes a discharge of indebtedness must include the
3 Debt Discharge Amount in its gross income in the taxable year of discharge to the extent that the
4 Debt Discharge Amount exceeds any consideration given for such discharge.⁶ However, if a
5 taxpayer is in a Title 11 case and the discharge of indebtedness occurs pursuant to a plan approved
6 by the Bankruptcy Court, as in this Case, then such discharge of indebtedness is specifically
7 excluded from gross income. Accordingly, the Debtor will not be required to include in income
8 any Debt Discharge Amount as a result of Plan transactions.

9 Although the Debtor will not have to include the Debt Discharge Amount resulting from
10 Plan transactions in its gross income, there will be a tax effect. The Internal Revenue Code
11 requires certain tax attributes of a debtor to be reduced by the Debt Discharge Amount excluded
12 from income. Tax attributes are reduced in the following order of priority: net operating losses
13 and net operating loss carryovers; general business credits; minimum tax credits; capital loss
14 carryovers; basis of property of the taxpayer; passive activity loss or credit carryovers; and foreign
15 tax credit carryovers. Tax attributes are generally reduced by one dollar for each dollar excluded
16 from gross income, except that general tax credits, minimum tax credits and foreign tax credits are
17 reduced by 33.3 cents for each dollar excluded from gross income.

18 An election can be made to alter the order of priority of attribute reduction by first applying
19 the reduction against depreciable property held by the taxpayer in an amount not to exceed the
20 aggregate adjusted basis of such property. The Debtor has not yet decided whether to make such
21 election. The deadline for making such election is the due date (including extensions) of the
22 Debtor’s federal income tax return for the taxable year in which such debt is discharged pursuant
23 to the Plan.

24 Any Claim against the Debtor (except a Claim that would give rise to a deduction if paid)
25 that is discharged by payment to a Creditor of Cash and/or property will result in the creation of a
26 Debt Discharge Amount reducing tax attributes to the extent that the adjusted issue price of the

27 _____
28 ⁶ No income from the discharge of indebtedness is realized to the extent that payment of the liability being discharged
would have given rise to a deduction.

1 debt discharged (plus accrued interest) exceeds the fair market value of the payment made in
2 cancellation thereof.

3 A Debtor's Debt Discharge Amount may be increased to the extent that a person holding
4 unscheduled Claims fails to timely file a proof of claim and has his claim discharged on the
5 Confirmation Date pursuant to Bankruptcy Code Section 1141.

6 **20.3 Tax Consequences To Creditors.**

7 A Holder of a Claim who receives a Distribution on the account of such Claim that is less
8 than the Holder's adjusted basis in such Claim may be entitled to claim a bad debt deduction for
9 this difference. A bad debt deduction is allowed in the taxable year of the Creditor in which a
10 debt becomes wholly worthless. The discharge of a Claim pursuant to the Plan establishes that
11 such Claim is wholly worthless as of the date of discharge (assuming the Holder of the Claim
12 receives no consideration under the Plan with respect to such Claim). It is possible, however, that
13 such Claim may have become wholly worthless on an earlier date, depending upon all the facts
14 and circumstances. The Debtor expresses no opinion regarding the date or dates on which Claims
15 discharged under the Plan become worthless.

16 **XXI.**

17 **MISCELLANEOUS**

18 **21.1 Payment of Statutory Fees.**

19 All quarterly fees due and payable to the Office of the United States Trustee pursuant to
20 Section 1930(a)(6) of title 28 of the United States Code shall be paid in full on or before the
21 Effective Date, or, to the extent such quarterly fees are disputed, an adequate reserve shall have
22 been established and set aside for payment in full thereof, as required by Section 1129(a)(12) of
23 the Bankruptcy Code. The Debtor shall remain responsible for timely payment of quarterly fees
24 due and payable after the Effective Date and until the Debtor's Case is closed, to the extent
25 required by Section 1930 of title 28 of the United States Code.

26 **21.2 Discharge of Debtor and Injunction.**

27 The rights afforded in the Plan and the treatment of all Claims therein shall be in exchange
28 for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever,

1 including any interest accrued on such Claims from and after the Petition Date, against the Debtor
2 and the Debtor-in-Possession, or any of their assets or properties. Except as otherwise provided in
3 the Plan or the Confirmation Order: (i) on the Effective Date, the Debtor shall be deemed
4 discharged and released to the fullest extent permitted by Section 1141 of the Bankruptcy Code
5 from all Claims, including, but not limited to, demands, liabilities, and Claims that arose before
6 the Confirmation Date and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of
7 the Bankruptcy Code, whether or not: (a) a proof of claim based on such debt is Filed or deemed
8 Filed pursuant to Section 501 of the Bankruptcy Code, (b) a Claim based on such debt is allowed
9 pursuant to Section 502 of the Bankruptcy Code or (c) the holder of a Claim based on such debt
10 has accepted the Plan; and (ii) all Persons shall be precluded from asserting against the Debtor, its
11 successors, or their assets or properties any other or further Claims based upon any act or
12 omission, transaction, or other activity of any kind or nature that occurred prior to the
13 Confirmation Date. Except as otherwise provided in the Plan or the Confirmation Order, the
14 Confirmation Order shall act as a discharge of any and all Claims against and all debts and
15 liabilities of the Debtor, as provided in Sections 524 and 1141 of the Bankruptcy Code, and such
16 discharge shall void any judgment against the Debtor at any time obtained to the extent that it
17 relates to a Claim discharged.

18 Except as otherwise provided in the Plan or the Confirmation Order, on and after the
19 Effective Date, all Persons who have held, currently hold or may hold a debt or Claim discharged
20 pursuant to the terms of the Plan are permanently enjoined from taking any of the following
21 actions on account of any such discharged debt or Claim: (1) commencing or continuing in any
22 manner any action or other proceeding against the Debtor, its successors or their respective
23 property; (2) enforcing, attaching, collecting or recovering in any manner any judgment, award,
24 decree or order against the Debtor, its successors or their respective property; (3) creating,
25 perfecting or enforcing any lien or encumbrance against the Debtor, its successors or their
26 respective property; (4) asserting any setoff, right of subrogation or recoupment of any kind against
27 any obligation due to any of the Debtor, its successors or their respective property; and
28 (5) commencing or continuing any action, in any manner, in any place that does not comply with

1 or is inconsistent with the provisions of the Plan or the Confirmation Order. Any Person injured
2 by any willful violation of such injunction shall recover actual damages, including costs and
3 attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful
4 violator.

5 **21.3 Payment Dates.**

6 Whenever any payment or distribution to be made under the Plan shall be due on a day
7 other than a Business Day, such payment or distribution shall instead be made, without interest, on
8 the immediately following Business Day.

9 **21.4 Headings.**

10 The headings used in the Disclosure Statement and in the Plan are inserted for convenience
11 only and neither constitutes a portion of the Disclosure Statement or the Plan nor in any manner
12 affect the construction of the provisions of the Disclosure Statement or the Plan.

13 **21.5 Other Documents and Actions.**

14 The Debtor may execute such other documents and take such other actions as may be
15 necessary or appropriate to effectuate the transactions contemplated under the Plan.

16 **21.6 Notices.**

17 All notices and requests in connection with the Disclosure Statement and the Plan shall be
18 in writing and shall be hand delivered or sent by mail addressed to:

19 Richard H. Golubow
20 Winthrop Couchot Professional Corporation
21 660 Newport Center Drive, Suite 400
Newport Beach, CA 92660

22 All notices and requests to any Person holding of record any Claim or Interest shall be sent
23 to them at their last known address or to the last known address of their attorney of record. Any
24 such Person may designate in writing any other address for purposes of this Section, which
25 designation will be effective on receipt.

26 **21.7 Governing Law.** Unless a rule of law or procedure is supplied by federal law

27 (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of California
28 (without reference to its conflict of law rules) shall govern the construction and implementation of

1 the Plan and any agreements, documents, and instruments executed in connection with the Plan,
2 unless otherwise specifically provided in such agreements, documents, or instruments.

3 **21.8 Binding Effect.** The Plan and all rights, duties and obligations thereunder shall be
4 binding upon and inure to the benefit of the Debtor, Holders of Claims, Holders of Interests, and
5 their respective successors and assigns.

6 **21.9 Successors and Assigns.** The rights, benefits, and obligations of any entity named
7 or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors,
8 administrators, successors, and assigns of such entity.

9 **21.10 Severability of Plan Provisions.** If, prior to the Confirmation Date, any term or
10 provision of the Plan is held by the Bankruptcy Court to be illegal, impermissible, invalid, void or
11 unenforceable, or otherwise to constitute grounds for denying confirmation of the Plan, the
12 Bankruptcy Court shall, with the consent of the Debtor, have the power to interpret, modify or
13 delete such term or provision (or portions thereof) to make it valid or enforceable to the maximum
14 extent practicable, consistent with the original purpose of the term or provision held to be invalid,
15 void or unenforceable, and such term or provision shall then be operative as interpreted, modified
16 or deleted. Notwithstanding any such interpretation, modification or deletion, the remainder of the
17 terms and provisions of the Plan shall in no way be affected, impaired or invalidated by such
18 interpretation, modification or deletion.

19 **21.11 No Waiver.** The failure of the Debtor or any other Person to object to any Claim
20 for purposes of voting shall not be deemed a waiver of the Debtor's right to object to or examine
21 such Claim, in whole or in part.

22 **21.12 Inconsistencies.** In the event the terms or provisions of the Disclosure Statement
23 are inconsistent with the terms and provisions of the Plan or documents executed in connection
24 with the Plan, the terms of the Plan shall control.

25 **21.13 Exemption from Certain Transfer Taxes and Recording Fees.** Pursuant to
26 Section 1146 of the Bankruptcy Code, any transfers from a Debtor to any other Person or entity
27 pursuant to the Plan, or any agreement regarding the transfer of title to or ownership of any of the
28 Debtor's real or personal property or of any other interest in such property (including, without

1 limitation, a security interest) will not be subject to any document recording tax, stamp tax,
2 conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax,
3 mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or
4 governmental assessment, and the Confirmation Order will direct the appropriate state or local
5 governmental officials or agents to forego the collection of any such tax or governmental
6 assessment and to accept for filing and recordation any of the foregoing instruments or other
7 documents without the payment of any such tax or governmental assessment.

8 **21.14 Post-Confirmation Status Report.** Within 180 days following the entry of the
9 Confirmation Order, the Debtor shall file a status report with the Court explaining what progress
10 has been made toward consummation of the confirmed Plan. The status report shall be served on
11 the United States Trustee, the twenty largest unsecured creditors, and those parties who have
12 requested special notice. Unless otherwise ordered, further status reports shall be filed every 180
13 days and served on the same entities.

14 **21.15 Post-Confirmation Conversion/Dismissal.** A creditor or party in interest may
15 bring a motion to convert or dismiss the case under Section 1112(b) of the Bankruptcy Code, after
16 the Plan is confirmed, if there is a default in performing the Plan. The Debtor reserves the right to
17 object to any motion for conversion or dismissal. If the Court orders any of the Case converted to
18 Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11

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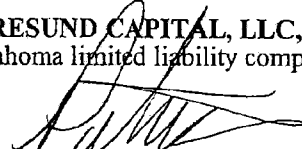
1 Estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7 estate.
2 The automatic stay will be reimposed upon the revested property, but only to the extent that relief
3 from stay was not previously authorized by the Court during this case.

4 **21.16 Final Decree.** Once the Estate has been fully administered, as referred to in
5 Bankruptcy Rule 3022, the Debtor, or other parties as the Court shall designate in the
6 Confirmation Order, shall file a motion with the Court to obtain a final decree to close the
7 Debtor's Case.

8
9 Date: August 3, 2011

10 **NORTHGATE CROSSING, LLC,**
11 a California limited liability company

12 **By: ORESUND CAPITAL, LLC,**
13 an Oklahoma limited liability company

14 By: 
15 Patrick B. Cobb, Managing Member

16 **SUBMITTED BY:**

17 **WINTHROP COUCHOT**
18 **PROFESSIONAL CORPORATION**

19 By: /s/ Richard H. Golubow
20 Richard H. Golubow
21 General Insolvency Counsel to
22 the Debtor and Debtor-in-Possession
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EXHIBIT “1”

EXHIBIT 1

CHAPTER 7 LIQUIDATION ANALYSIS

Current Assets	Amount
Cash on Hand	\$4,160.54
Security Deposits	\$2,147.55
Total Assets	\$6,308.08
Less:	
Chapter 7 Trustee and Professional Fees and Expenses	\$7,500.00 ¹
Chapter 11 Professional Fees	0.00 ²
Funds Available for Claim Payments	0.00
Creditor Payments – Chapter 7 Liquidation	
Class 1.1/Riverside County	100% ³
Class 1.2/OneWest Bank	20.56% ⁴
Class 2.1 Priority Unsecured Claims	0%
Class 3.1/Mechanic Lien Claims	0%
Class 3.2/General Unsecured Claims	0%
Class 3.3/City of Indio	0%
Class 3.4/Unsecured Deficiency Claim of OneWest Bank	0%

¹ Assumes a blended hourly rate for professional fees of no less than \$375.00 and no less than 20 hours devoted to the chapter 7 administration of the Debtor's case.

² Assumes that funds advanced by Toklan are sufficient to pay chapter 11 professional fees and expenses.

³ Assumes that this first priority secured claim against the Project claim will be paid from proceeds of a non-judicial foreclosure sale of the Project.

⁴ Assumes that OneWest Bank will realize the full amount of its alleged secured "as-is" claim valued at \$5.8 million at a non-judicial foreclosure sale of the Project, thereby resulting in an unpaid deficiency claim of no less than \$22,401,552.98.

EXHIBIT “2”

EXHIBIT 2

POTENTIAL AVOIDANCE ACTIONS

[TO BE AMENDED]

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive, 4th Fl., Newport Beach, CA 92660.

A true and correct copy of the foregoing document described as: **DEBTOR'S DISCLOSURE STATEMENT DESCRIBING DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On August 3, 2011, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served): On August 3, 2011, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Everett Green, Esq. US Trustee's Office 3685 Main St., #300 Riverside, CA 92501	One West Bank c/o Allen Matkins etc. Susan E. Graham /Michael S. Greger 1900 Main Street, 5th Floor Irvine, CA 92614-7321
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Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on August 3, 2011, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Via Attorney Service

Honorable Scott C. Clarkson
Ronald Reagan Federal Bldg.
411 W. Fourth St., Suite 5130
Santa Ana, CA 92701

Debtor: Patrick Cobb: theboss@toklanog.com

Service information continued on attached page

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

August 3, 2011	Viann Corbin	/s/ Viann Corbin
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

1 NEF SERVICE LIST

- 2 • Richard Dinets rdinets@allenmatkins.com
- 3 • Richard H Golubow rgolubow@winthropcouchot.com, pj@winthropcouchot.com
- 4 • Everett L Green everett.l.green@usdoj.gov
- 5 • Michael S Greger mgreger@allenmatkins.com
- 6 • William W Huckins whuckins@allenmatkins.com, clynch@allenmatkins.com
- 7 • United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov

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