

1 JEFFREY C. KRAUSE (State Bar No. 94053),
ERIC D. GOLDBERG (State Bar No. 157544),
2 H. ALEXANDER FISCH (State Bar No. 223211), and
MICHAEL S. NEUMEISTER (State Bar No. 274220), Members of
3 STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
4 1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
5 Telephone: (310) 228-5600
Telecopy: (310) 228-5788
6 Email: jkrause@stutman.com; egoldberg@stutman.com;
afisch@stutman.com; mneumeister@stutman.com

7
8 Reorganization Counsel for
Debtors and Debtors in Possession

9 Debtors' Mailing Addresses:
Post Street LLC
10 c/o Bend Properties
1920 Main St Suite # 150
11 Irvine, CA 92614

12 **UNITED STATES BANKRUPTCY COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **SAN FRANCISCO DIVISION**

15 In re) Case No. 11-32255
16 POST STREET, LLC, a Delaware limited)
liability company; and POST 240 PARTNERS,) Chapter 11
17 LP, a California limited partnership,) Jointly Administered with Case No. 11-33788
18)
Debtors.) **DEBTORS' FIRST AMENDED PLAN OF**
19) **REORGANIZATION**
Jointly Administered Debtors) **(APRIL 30, 2012)**
20 and Debtors in Possession)
21)

22 Hearing

23 Date: [To Be Set By The Court]

24 Time:

25 Place: Hon. Thomas E. Carlson
235 Pine Street, 23rd Floor
San Francisco, CA

26 Affects:

- 27 Post Street, LLC Only
28 Post 240 Partners, LP Only
 BOTH DEBTORS

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1 This Plan of Reorganization (the “Plan”) is proposed by chapter 11 debtors Post
2 Street, LLC (“Post Street”) and Post 240 Partners, L.P. (“Post 240” and together with Post Street, the
3 “Debtors”). The Disclosure Statement for the Plan discusses the Debtors’ history, business,
4 property, and results of operations, and contains a summary of the Plan. All holders of claims and
5 interests are encouraged to read the Plan and the Disclosure Statement in their entirety before voting
6 to accept or reject the Plan. No solicitation materials, other than the Disclosure Statement and the
7 exhibits attached thereto or referenced therein and related materials transmitted with it, have been
8 approved by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

9 **I.**

10 **DEFINITIONS AND RULES OF CONSTRUCTION**

11 **A. Definitions.**

12 In addition to such other terms as are defined in other sections of the Plan, the
13 following terms (which appear in the Plan as capitalized terms) have the following meanings as used
14 in the Plan:

- 15 1. **“Administrative Claim”** means a Claim for costs and expenses of
16 administration of the Reorganization Case under Bankruptcy Code section 503(b) or 507(a)(2).
- 17 2. **“Allowed Claim”** or **“Allowed Interest”** means a Claim or Interest, other
18 than an Administrative Claim, to the extent that: (a) either: (1) a proof of claim or proof of interest
19 was timely filed before the Claims Bar Date or pursuant to an Order of the Court; or (2) a proof of
20 claim or proof of interest is deemed timely filed either under Bankruptcy Rule 3003(b)(1)-(2) or by a
21 Final Order; and (b) either: (1) the Claim or Interest is not a Disputed Claim or a Disputed Interest;
22 or (2) the Claim or Interest is allowed by a Final Order or under the Plan. Any Claim or portion of a
23 Claim that is satisfied or released during the Cases is not an Allowed Claim.
- 24 3. **“Allowed . . . Claim”** means an Allowed Claim in the particular class
25 described.
- 26 4. **“Allowed . . . Interest”** means all interests in the particular Debtor described
27 as of the Confirmation Date.

1 5. **“Avoiding Power Causes of Action”** means causes of action, if any, arising
2 under Bankruptcy Code sections 502(d), 506, 544, 545, 547, 548, 549, 550, 553, and 558, or any
3 fraudulent conveyance, fraudulent transfer or preference laws, or any cause of action arising under,
4 or relating to, any similar state law or federal law that constitutes property of either Estate under
5 Bankruptcy Code section 541, whether or not an action is initiated on or before the Effective Date.

6 6. **“Bankruptcy Court”** means the United States Bankruptcy Court for the
7 Northern District of California, San Francisco Division, or, if such court ceases to exercise
8 jurisdiction over the Reorganization Cases, such court or adjunct thereof that exercises jurisdiction
9 over the Reorganization Cases in lieu of the United States Bankruptcy Court for the Northern
10 District of California, San Francisco Division.

11 7. **“Bankruptcy Rules”** means, collectively, the: (a) Federal Rules of
12 Bankruptcy Procedure, and (b) the Local Rules of the Bankruptcy Court, as applicable from time to
13 time in the Reorganization Cases.

14 8. **“Brooks Brothers”** means Retail Brand Alliance, Inc., a Delaware
15 corporation.

16 9. **“Brooks Brothers Lease”** means that certain *Lease Agreement*, dated as of
17 September 30, 2010, as subsequently amended from time to time, by and between Post Street, Post
18 240, and Brooks Brothers.

19 10. **“Brooks Brothers Work”** means those undertakings defined as “Landlord’s
20 Work” under the Brooks Brothers Lease.

21 11. **“Business Day”** means any day that is not a Saturday, Sunday, or “legal
22 holiday” as defined in Bankruptcy Rule 9006(a).

23 12. **“Cash”** means cash or cash equivalents including, but not limited to, bank
24 deposits, checks or other similar items.

25 13. **“Claim”** means a claim – as the word is defined in Bankruptcy Code
26 section 101(5) – against one of the Debtors or both.

27 14. **“Confirmation”** means the entry of the Confirmation Order.

28 15. **“Confirmation Date”** means the date on which Confirmation occurs.

1 16. “**Confirmation Hearing**” means the hearing held pursuant to Bankruptcy
2 Rule 3020(b)(2), including any continuances thereof, at which the Bankruptcy Court will consider
3 Confirmation of the Plan.

4 17. “**Confirmation Order**” means the order of the Bankruptcy Court confirming
5 the Plan under section 1129 of the Bankruptcy Code.

6 18. “**Contingent Guarantors**” means Stanley W. Gribble, an individual, and
7 Festival Retail Fund 1, L.P., a Delaware limited partnership.

8 19. “**Contingent Guaranty Claim**” means any rights to the payment of damages,
9 claims, causes of action, charges, suits, demands, defaults, rights of recovery, assessments, rights of
10 setoff or rights of recoupment arising under or relating to the Guarantees (whether paid before or
11 after the Effective Date).

12 20. “**Debtor**” means either of Post Street or Post 240.

13 21. “**Debtors**” means Post Street and Post 240, together.

14 22. “**Debtor in Possession**” means, as applicable, either of the Debtors when
15 acting in the capacity of representative of their Estate in the Reorganization Cases.

16 23. “**Debtors in Possession**” means the Debtors when acting in the capacity of
17 representatives of their respective Estates in the Reorganization Cases.

18 24. “**Disputed Claim**” means with respect to any Claim as to which:

19 (a) a proof of Claim is timely Filed or is deemed timely Filed under applicable law or
20 by reason of an order of the Bankruptcy Court; and

21 (b) on or before the deadline to object to such Claim, a Debtor or Reorganized
22 Debtor, either has filed a notice of designation of such Claim as a Disputed Claim or has Filed an
23 objection to such Claim which objection has not been (i) waived on account of a failure to timely file
24 and serve a claim objection; or (ii) overruled, denied by a Final Order, or withdrawn.

25 25. “**Distribution Date**” has the meaning ascribed to it in section VII.C.2 of the
26 Plan.

27 26. “**Effective Date**” means the first Business Day that is at least fifteen (15) days
28 after the Confirmation Date, and on which all conditions to the Effective Date contained in

1 section VI. hereof have been satisfied or, if waivable, waived, unless the Confirmation Order has
2 been stayed. If the Confirmation Order has been stayed the Effective Date shall be the third
3 Business Day after any such stay terminates, lapses or expires.

4 27. **“Estate”** means the respective estate created in the Reorganization Cases
5 under section 541 of the Bankruptcy Code.

6 28. **“Estates”** means the Estate of Post Street and the Estate of Post 240, together
7 or, where indicated, respectively.

8 29. **“Eurohypo”** means Eurohypo AG, New York Branch.

9 30. **“Festival Retail Guaranty”** means the obligations, if any, under the
10 *Guaranty of Payment Agreement*, dated as of July 24, 2007, by Festival Retail Fund 1, L.P. in
11 respect of the obligations of the Debtors under the Mortgage Note.

12 31. **“File” or “Filed”** means filed with the Bankruptcy Court in the
13 Reorganization Cases.

14 32. **“Final Order”** means an order or judgment of the Bankruptcy Court, as
15 entered on its docket, which has not been reversed, stayed, modified or amended, and as to which
16 (a) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as
17 to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall
18 then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall
19 have been waived in writing in form and substance satisfactory to the Debtors or Reorganized
20 Debtors, as applicable, or (b) in the event that an appeal, writ of certiorari, or reargument or
21 rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other
22 applicable court shall have been affirmed by the highest court to which such order or judgment was
23 appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the
24 time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have
25 expired.

26 33. **“Gribble Guaranty”** means the obligations, if any, under the springing
27 *Guaranty Agreement*, dated as of December 21, 2007, by Stanley W. Gribble in respect of the
28 obligations of the Debtors under the Mortgage Note.

1 34. **“Guarantees”** means the Gribble Guaranty and the Festival Retail Guaranty.

2 35. **“Interest”** means the interest of any Person who holds an equity security in
3 Post Street or Post 240 no matter how held.

4 36. **“Judgment Rate”** means the interest rate on a federal judgment entered on
5 the Petition Date, which was 0.18% per annum.

6 37. **“Mortgage Lender”** means either Eurohypo or Post Investors, whichever is
7 determined by Final Order or stipulation to be the owner of rights against the Debtors under the
8 Mortgage Note.

9 38. **“Mortgage Note”** means that certain *Promissory Note*, dated as of July 24,
10 2007, in the principal amount of up to \$59,850,000.00, which is secured by a first priority lien on the
11 Property, pursuant to a deed of trust dated as of July 24, 2007.

12 39. **“New Capital Contribution”** means the Cash to be invested in the
13 Reorganized Debtors by Stanley W. Gribble on the Effective Date, in such amount as the
14 Bankruptcy Court determines is required to confirm the Plan.

15 40. **“New Deed of Trust”** shall mean the new deed of trust that shall be provided
16 to the holder of the Class 2 Claim on the Effective Date, along with any other security agreement
17 necessary to give effect to the terms of the New Mortgage Note, which shall be a part of the Plan
18 Supplement.

19 41. **“New Mortgage Note”** shall mean the new promissory note that shall be
20 provided to the holder of the Class 2 Claim, the terms of which are described in Section III.B.2
21 hereof and as set forth in the form of New Mortgage Note, which shall be part of the Plan
22 Supplement.

23 42. **“Other Priority Claim”** means an Allowed Claim entitled to priority under
24 section 507(a) of the Bankruptcy Code, except for Administrative Claims and Priority Tax Claims.

25 43. **“Person”** means an individual, a partnership, a corporation, a limited liability
26 company, an association, a joint stock company, a trust, a joint venture, an unincorporated
27 organization, any other business entity, or a Governmental Authority.

28

1 44. **“Petition Date”** means June 15, 2011, the date on which Post Street filed its
2 voluntary petition, and October 19, 2011, the date on which Post 240 filed its voluntary petition,
3 respectively.

4 45. **“Plan”** means the Plan of reorganization, either in its present form or as it
5 may be altered, amended or modified from time to time in accordance with the Bankruptcy Code and
6 Bankruptcy Rules.

7 46. **“Plan Supplement”** shall mean a compilation of documents and forms of
8 documents, including any exhibits to the Plan that are not Filed contemporaneously with the filing of
9 the Plan, and any amendments to exhibits Filed contemporaneously with the filing of the Plan, to be
10 Filed and served on parties in interest no later than the Plan Supplement Filing Date, which, *inter*
11 *alia*, may include (a) the New Mortgage Note; (b) the New Deed of Trust; and (3) a list of executory
12 contracts or leases to be rejected under the Plan.

13 47. **“Plan Supplement Filing Date”** means a Business Day on which drafts of all
14 Exhibits to the Plan shall be Filed and which day shall be no later than twenty (20) days before the
15 Confirmation Hearing. The Debtors reserve the right to File amended or revised versions of any
16 Exhibit through and including the Confirmation Date.

17 48. **“Post 240”** means Post 240 Partners, L.P.

18 49. **“Post Investors”** means Post Investors, LLC, a Delaware limited liability
19 company.

20 50. **“Post Street”** means Post Street, LLC.

21 51. **“Priority Tax Claim”** means an Allowed Claim entitled to priority under
22 section 507(a)(8) of the Bankruptcy Code.

23 52. **“Professional Fee Claim”** means (a) a Claim under Bankruptcy Code
24 Sections 327, 328, 330, 331, 503, or 1103 for compensation for professional services rendered or
25 expenses incurred on the Estates’ behalf; or (b) a Claim either under Bankruptcy Code Section
26 503(b)(4) for compensation for professional services rendered or under Bankruptcy Code Section
27 503(b)(3)(D) for expenses incurred in making a substantial contribution to the Estate.

1 53. **“Property”** means the commercial property located at 228-240 Post Street,
2 San Francisco, California, the true and correct legal description of which shall be Filed not later than
3 the Plan Supplement Filing Date.

4 54. **“Pro Rata”** means proportionately so that the ratio of (a) the amount of
5 consideration distributed on account of a particular Allowed Claim to (b) the amount of such
6 Allowed Claim is the same as the ratio of (x) the amount of consideration distributed on account of
7 all Allowed Claims of the class or group of classes in which the particular Allowed Claim is
8 included to (y) the amount of all Allowed Claims of that class or group of classes.

9 55. **“Reorganization Cases”** means the cases under chapter 11 of the Bankruptcy
10 Code commenced by the Debtors on the respective Petition Dates and captioned *In re Post Street,*
11 *LLC*, Case No. 11-32255-TEC, and *In re Post 240 Partners, L.P.*, Case No. 11-33788-TEC.

12 56. **“Reorganized Debtors”** means Reorganized Post 240 and Reorganized Post
13 Street.

14 57. **“Reorganized Post 240”** means Post 240, or any successor thereto by merger,
15 consolidation or otherwise, as revested with property of the Post 240 Estate on and after the
16 Effective Date.

17 58. **“Reorganized Post Street”** means Post Street, or any successor thereto by
18 merger, consolidation or otherwise, as revested with property of the Post Street Estate on and after
19 the Effective Date.

20 59. **“Scheduled”** means set forth on the Schedules.

21 60. **“Schedules”** means the schedules of assets and liabilities and list of equity
22 security holders Filed by each Debtor under the Bankruptcy Rules, as the same have been or may be
23 amended from time to time before the Effective Date.

24 61. **“Secured Claim”** means any Allowed Claim that is secured by a lien on
25 property in which the Estate has an interest or that is subject to setoff under section 553 of the
26 Bankruptcy Code, to the extent of the value of the Claimholder’s interest in the Estate’s interest in
27 such property or to the extent of the amount subject to setoff, as applicable, as determined under
28 section 506 of the Bankruptcy Code.

1 62. “**Secured Mortgage Lender Claim**” means the Allowed Claim that is
2 secured by the Property.

3 63. “**Secured Tax Claims**” means every Claim of a governmental unit for taxes
4 which, by operation of applicable nonbankruptcy law, is a Secured Claim.

5 64. “**SNDA**” means that certain *Subordination, Non-Disturbance and Attornment*
6 *Agreement*, by Mortgage Lender in favor of Brooks Brothers, a form of which will be included in the
7 Plan Supplement, to be executed on the Effective Date.

8 65. “**Unsecured Claim**” means all Claims against the Debtors that are not
9 Secured Claims, Administrative Claims, Priority Tax Claims or Other Priority Claims.

10 **B. Interpretation, Rules Of Construction, Computation Of Time.**

11 **1. Defined Terms.**

12 Any term used in the Plan that is not defined in the Plan, but that is used in the
13 Bankruptcy Code or Bankruptcy Rules has the meaning assigned to that term in the Bankruptcy
14 Code or Bankruptcy Rules, as applicable, unless the context requires otherwise.

15 **2. Rules Of Interpretation.**

16 For purposes of the Plan:

- 17 a. whenever from the context it is appropriate, each term, whether stated
18 in the singular or the plural, shall include both the singular and the plural;
- 19 b. any payment required under the Plan on a particular date shall be made
20 on such date or as soon thereafter as practicable;
- 21 c. any reference in the Plan to a contract, instrument, release or other
22 agreement or document being in a particular form or on particular terms and conditions
23 means that such document shall be substantially in such form or substantially on such terms
24 and conditions, delivered and Filed on or before the Plan Supplement Filing Date as an
25 exhibit to the Plan;
- 26 d. any reference in the Plan to an existing document or exhibit Filed or to
27 be Filed means such document or exhibit, as it may have been or may be amended, modified
28 or supplemented through and including the Confirmation Date which, after they are Filed,

1 may be amended, modified or supplemented only with the express written consent of the
2 proponents of the Plan;

3 e. unless otherwise specified in a particular reference, all references in
4 the Plan to sections, articles and exhibits are references to sections, articles and exhibits of or
5 to the Plan;

6 f. the words “herein,” “hereof,” “hereto,” “hereunder” and others of
7 similar import refer to the Plan in its entirety rather than to only a particular portion of the
8 Plan;

9 g. captions and headings to articles and sections are inserted for
10 convenience of reference only and are not intended to be a part of or to affect the
11 interpretation of the Plan;

12 h. all exhibits to the Plan and documents included in the Plan Supplement
13 are incorporated herein, regardless of when those exhibits are Filed;

14 i. to the extent any discrepancy exists between the description contained
15 herein of a document or agreement that is an exhibit to the Plan and with the provisions of
16 that exhibit, the actual agreement or document shall govern; and

17 j. the rules of construction set forth in section 102 of the Bankruptcy
18 Code shall apply.

19 **3. Time Periods.**

20 In computing any period of time prescribed or allowed by the Plan, the provisions of
21 Bankruptcy Rule 9006(a) shall apply.

22 **II.**
23 **DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

24 The following is a designation of the classes of Claims and Interests under the Plan.
25 Administrative Claims and Priority Tax Claims have not been classified and are excluded from the
26 following classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or
27 Interest is classified in a particular class only to the extent that the Claim or Interest qualifies within
28 the description of that class and is classified in a different class to the extent that any remainder of

1 the Claim or Interest qualifies within the description of such different class. A Claim or Interest is in
2 a particular class only to the extent that the Claim or Interest is an Allowed Claim or Allowed
3 Interest in that class and has not been paid, released, or otherwise satisfied before the Effective Date.

4 **A. Secured Claims.**

5 **1. Secured Tax Claims (Class 1).**

6 Class 1 consists of all Claims that are Secured Tax Claims.

7 **2. Secured Mortgage Lender Claim (Class 2).**

8 Class 2 consists of the Secured Mortgage Lender Claim.

9 **B. Other Priority Claims (Class 3).**

10 Class 3 consists of all Other Priority Claims.

11 **C. General Unsecured Claims (Class 4).**

12 Class 4 consists of all Unsecured Claims not in Class 3.

13 **D. Interests.**

14 **1. Post Street Interests (Class 5).**

15 Class 5 consists of Interests in Post Street.

16 **2. Post 240 Interests (Class 6).**

17 Class 6 consists of Interests in Post 240.

18 **III.**

19 **TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

20 **A. Unclassified Claims.**

21 **1. Administrative Claims.**

22 **a. General.**

23 Subject to the bar date provisions herein, the Reorganized Debtors shall pay, in
24 proportion to their respective interest in the Property, to each holder of an Allowed Administrative
25 Claim, on account and in full satisfaction of the Allowed Administrative Claim, Cash equal to the
26 amount of the Allowed Administrative Claim, unless the holder agrees to other treatment of the
27 Claim.
28

1 **b. Payment of Statutory Fees.**

2 On or before the Effective Date, all fees payable under 28 U.S.C. § 1930, as
3 determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in Cash, in full, by
4 each Debtor in proportion to their respective interest in the Property.

5 **c. Bar Date for Administrative Claims.**

6 **(1) General Provisions.**

7 Except as provided below in section III.A.1.c.(3) for non-tax liabilities incurred in the
8 ordinary course of business by the Debtors in Possession, requests for payment of Administrative
9 Claims must be Filed no later than sixty (60) days after the Effective Date. Holders of
10 Administrative Claims (including without limitation any governmental units asserting Claims for
11 federal, state or local taxes and excluding any Professional Fee Claims, which are subject to the
12 process set forth below)) that are required to File a request for payment of such Claims and that do
13 not File such requests by the applicable bar date shall be forever barred from asserting such Claims
14 against the Debtors, Reorganized Debtors, any other person or entity, or any of their respective
15 property.

16 **(2) Professionals.**

17 The Court must approve all Professional Fee Claims. As set forth below, each
18 professional in question must File and serve a properly noticed fee application or motion (the "Fee
19 Motion"), and the Court must rule on the Fee Motion. Only the amount of fees allowed by the Court
20 will be required to be paid under this Plan. A Professional Fee Claim will be allowed only if:

- 21 (a) On or before 60 days after the Effective Date, the professional or other entity
22 holding the Professional Fee Claim both Files with the Court a Fee Motion
23 requesting that the Reorganized Debtor(s) pay the Professional Fee Claim and
24 serves the Fee Motion on the Reorganized Debtor(s) and its counsel; and
25 (b) The Professional Fee Claim is allowed by a Final Order.

26 Either Reorganized Debtor or any other party in interest may File an objection to such
27 Fee Motion within the time provided by the Bankruptcy Rules or within any other period that the
28 Court establishes. **Persons holding Professional Fee Claims who do not timely File and serve a**

1 **Fee Motion for payment will be forever barred from asserting those Claims against the**
2 **Debtors, their Estates, the Reorganized Debtors, or their respective property.**

3 **(3) Ordinary Course Liabilities.**

4 Holders of Administrative Claims based on liabilities incurred in the ordinary course
5 of business of the Debtors in Possession before the Effective Date (other than professionals or other
6 entities described in subparagraph (2), above, and governmental units that hold Claims for taxes or
7 Claims and/or penalties related to such taxes) shall not be required to File any request for payment of
8 such Claims. Each Administrative Claim shall be assumed and paid, in proportion to their respective
9 interest in the Property, by the Reorganized Debtors under the terms and conditions of the particular
10 transaction giving rise to that Administrative Claim, without any further action by the holder of such
11 Administrative Claim.

12 **2. Treatment of Priority Tax Claims.**

13 In accordance with section 1129(a)(9)(C) of the Bankruptcy Code, except as
14 otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim shall receive from
15 the Reorganized Debtors, in proportion to their respective interests in the Property, deferred Cash
16 payments over a period not exceeding five (5) years from the date of assessment of such Claim.
17 Payments shall be made in equal, quarterly installments and each installment shall include simple
18 interest accrued on the unpaid portion of such Claim at the rate of 5% per annum from and after the
19 Effective Date; provided, however, that the Reorganized Debtors reserve the right to pay any
20 Allowed Priority Tax Claim, or any remaining balance of such Allowed Claim, in full, at any time
21 on or after the Effective Date, without premium or penalty.

22 **B. Classified Claims and Interests.**

23 **1. Class 1 (Secured Tax Claims).**

24 Class 1 is not impaired under the Plan. The holder of each Allowed Class 1 Claim
25 will receive Cash equal to its Allowed Claim, including any interest, fees and costs to which it is
26 entitled under Bankruptcy Code §§ 506 & 1124, on the Effective Date, or such other treatment as the
27 Reorganized Debtors and the holder of an Allowed Class 1 Claim agree to in writing, on or before
28 the Confirmation Date.

1 **2. Class 2 (Secured Mortgage Lender Claim).**

2 Class 2 is impaired under the Plan. The holder of an Allowed Class 2 Claim will
3 receive, in full satisfaction of its Class 2 Claim, the New Mortgage Note and New Deed of Trust.
4 The terms and conditions of which will be substantially similar in all material respects to the terms
5 and conditions of the Secured Mortgage Note and original Mortgage Lender deed of trust, except as
6 set forth below:

- 7 (a) Principal: The principal amount of the New Mortgage Note shall be equal to
8 the Mortgage Lender's claim as of the Effective Date, which shall be
\$62,503,173 or such amount as determined by the Bankruptcy Court.
- 9 (b) Interest Payments: Interest only shall be payable monthly in arrears at the rate
10 of 5% per annum or such rate set by the Bankruptcy Court. The first monthly
11 interest payment shall be payable on or before the tenth (10th) day of the
12 second month following the Effective Date and on or before the tenth (10th)
13 day of each successive month. All Cash on hand, including Cash that is
subject to Mortgage Lender's lien, as of the Effective Date, shall be
14 contributed to the Debtors' working capital, which, with the New Capital
15 Contribution, shall serve to effectuate the terms of this Plan, including
16 providing assurance of the timely payment of interest.
- 17 (c) Escrow of Funds Pending Resolution of Dispute: To the extent that payments
18 under the New Mortgage Note become due before the aggregate amount of its
Allowed Class 2 Claim is determined by a Bankruptcy Court order or
19 agreement among the Debtors and Square Mile, such payments will be made
20 to an escrow account subject to a control agreement in favor of Mortgage
21 Lender, in satisfaction of the Debtors' obligation to make such payments. In
the event that such payments exceed the amount due as a result of the
22 Bankruptcy Court's determination of the amount of the Allowed Class 2
23 Claim, such excess payments will be returned to Debtors.
- 24 (d) Maturity: All unpaid amounts due under the New Mortgage Note, including
principal, shall be due and payable on the date that is five (5) years from the
25 Effective Date. The Reorganized Debtors may prepay the outstanding
principal and interest at any time without penalty.
- 26 (e) Cure Period upon Default: The Reorganized Debtors shall have fifteen (15)
27 days following a written Plan Default Notice of a default to cure any monetary
28 Plan Default and thirty (30) days to cure any other asserted Plan Default under
the New Mortgage Note. If the Reorganized Debtors fail to cure any such
default, the Mortgage Lender's rights and remedies will be governed by the
New Mortgage Note, the New Deed of Trust, and applicable California law.

29 Except as otherwise provided in the Plan, the New Mortgage Note, or the New Deed
30 of Trust, and notwithstanding Section 1146(a) or any other provision of the Bankruptcy Code, any
31 and all valid, enforceable, and perfected prepetition liens, deeds of trust, or security interests against
32 the Property and/or any other Estate Asset shall survive the Effective Date and continue in

1 accordance with the terms of the New Deed of Trust and/or applicable nonbankruptcy law until the
2 holder's Allowed Class 2 Claim is satisfied pursuant to this Plan; provided, however, said holder
3 shall be prohibited from exercising any rights and remedies pursuant to the New Deed of Trust or the
4 Guarantees so long as the Reorganized Debtors have not defaulted on their obligations under the
5 New Mortgage Note and New Deed of Trust and have failed to cure such default as provided
6 thereunder; provided further, that upon receipt of the payments required hereunder, the Reorganized
7 Debtors and the Mortgage Lender shall promptly make such customary arrangements and execute
8 such customary documents, as mutually agreed upon, to effectuate a release of Mortgage Lender's
9 security interests or liens in the Reorganized Debtors' assets. In consideration for the payment in
10 full of its Allowed Class 2 Claim, Mortgage Lender shall be deemed to have executed an SNDA in
11 favor of Brooks Brothers, consistent with the form of SNDA set forth in the *Loan Agreement*
12 *between Festival Retail Fund 1 228 Post Street, LP and Eurohypo AG, New York Branch* dated as of
13 July 24, 2007 (the "Loan Agreement"), as of the Effective Date. The Court shall retain jurisdiction
14 to resolve any disputes which may arise in connection with the foregoing matters.

15 **3. Class 3 (Other Priority Claims).**

16 Class 3 is not impaired under the Plan. Each holder of an Allowed Class 3 Claim will
17 be paid in Cash, in full, with interest at the Judgment Rate, on the Distribution Date.

18 **4. Class 4 (General Unsecured Claims).**

19 Class 4 is impaired under the Plan. Each holder of an Allowed Class 4 Claim will
20 receive quarterly Cash payments over one (1) year following the Effective Date, plus simple interest
21 at the Judgment Rate per annum, which will in the aggregate equal 100% of the amount of its
22 Allowed Claim as of the Effective Date.

23 **5. Class 5 (Post Street Interests).**

24 Class 5 consists of the Post Street Interests. The holder of Class 5 Post Street
25 Interests shall receive no distribution under the Plan on account of that interest and, therefore, shall
26 be deemed to have rejected the Plan pursuant to Bankruptcy Code § 1126(g).

27 **6. Class 6 (Post 240 Interests).**

28 Class 6 consists of the Post 240 Interests. The holder of Class 6 Post 240 Interests

1 shall receive no distribution under the Plan on account of that interest and, therefore, shall be
2 deemed to have rejected the Plan pursuant to Bankruptcy Code § 1126(g).

3 **IV.**

4 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

5 **A. Assumption.**

6 Each executory contract or unexpired lease of the Debtors that has not expired by its
7 own terms before the Effective Date or previously been rejected by the Debtors in Possession and
8 is listed on the “Schedule of Executory Contracts and Unexpired Leases to be Assumed,” Filed as
9 Exhibit IV.A hereto (which Exhibit shall be filed by the Plan Supplement Filing Date) is assumed, as
10 of the Effective Date, pursuant to Bankruptcy Code section 365. All leases under which the Debtors
11 lease any portion of the Property, including the Brooks Brothers Lease, shall be assumed and the
12 Cure Amount with respect thereto is \$0, except as otherwise provided in Exhibit IV.A. A list of the
13 security deposits of the tenants will be filed as a part of the Plan Supplement. The Debtors also
14 intend at the present time to assume all executory contracts, including the asset management
15 agreement with Festival Retail Fund Management, LLC and the property management agreement
16 with Festival Management Corp.

17 Nothing in the Plan, any Exhibit to the Plan, or any document executed or delivered
18 in connection with the Plan or any such Exhibit creates any obligation or liability on the part of the
19 Debtors, the Reorganized Debtors, or any other person or entity that is not currently liable on such
20 obligation, with respect to any executory contract or unexpired lease. The Debtors reserve the right
21 to amend, on or before fourteen (14) days before the Confirmation Hearing Date, Exhibit IV.A either
22 to: (a) delete any executory contract or unexpired lease listed on Exhibit IV.A and provide for its
23 rejection under section IV.C below, or (b) add any executory contract or unexpired lease to Exhibit
24 IV.A, thus providing for its assumption under this section IV.A. Debtors shall provide notice of any
25 amendment of Exhibit IV.A to the parties to the affected executory contract or unexpired lease and
26 the Office of the United States Trustee.

1 **B. Cure Payments.**

2 Any monetary defaults under each executory contract and unexpired lease assumed
3 under the Plan shall be satisfied under section 365(b)(1) of the Bankruptcy Code either by payment
4 of the cure amount (if any) in Cash on the Effective Date, or on such other terms as agreed to by
5 Reorganized Debtors and the non-debtor party to the executory contract or unexpired lease. Unless
6 the non-debtor party to any executory contract or unexpired lease to be assumed Files and serves on
7 the Debtors and their counsel an objection to the “cure amount” specified on Exhibit IV.A (which
8 Exhibit shall be Filed on the Plan Supplement Filing Date) on or before the later of (i) the last date
9 established by the Bankruptcy Court to File and serve objections to confirmation of the Plan or (ii)
10 seven (7) days after the Debtors File and serve Exhibit IV.A, or any amendment thereto, such “cure
11 amount” shall be forever binding on such non-debtor party to said executory contract or unexpired
12 lease. In the event of a timely Filed and served objection regarding (1) the amount of any cure
13 payments, (2) the ability of Reorganized Debtors to provide adequate assurance of future
14 performance under the contract or lease to be assumed, or (3) any other matter pertaining to
15 assumption, any cure payment required by section 365(b)(1) of the Bankruptcy Code shall be made
16 following the entry of a Final Order resolving the dispute and approving assumption.

17 **C. Rejection.**

18 Effective immediately before the Effective Date, each executory contract or
19 unexpired lease of the Debtors that has not expired by its own terms before the Effective Date or
20 previously been assumed by the Debtors in Possession, that is either: (1) listed on the “Schedule of
21 Executory Contracts and Unexpired Leases to be Rejected,” Filed as Exhibit IV.C to the Plan (which
22 Exhibit shall be filed by the Plan Supplement Filing Date), or (2) is not assumed pursuant to section
23 IV.A. above, is rejected, as of the Effective Date, pursuant to Bankruptcy Code section 365, to the
24 extent, if any, that they constitute executory contracts or unexpired leases, and without conceding
25 that they constitute executory contracts or unexpired leases or that the Debtors have any liability
26 under them. Listing a contract or lease on Exhibit IV.C is not an admission by the Debtors or
27 Reorganized Debtors that such contract or lease is an executory contract or unexpired lease or that
28 the Debtors or Reorganized Debtors have any liability thereunder. The Debtors reserve the right at

1 any time before Confirmation to amend Exhibit IV.C to delete any executory contract or unexpired
2 lease listed on Exhibit IV.C and provide for its assumption under section IV.A above. Debtors shall
3 provide notice of any amendment of Exhibit IV.C to the parties to the affected executory contract or
4 unexpired lease and the Office of the United States Trustee.

5 The Confirmation Order shall constitute an Order of the Bankruptcy Court approving
6 all such rejections as of the Effective Date. Any Claim for damages arising from the rejection under
7 the Plan of an executory contract or unexpired lease must be Filed within sixty (60) days after the
8 Effective Date or be forever barred and unenforceable against the Debtors, the Reorganized Debtors
9 and their properties and barred from receiving any distribution under the Plan.

10 **V.**

11 **MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

12 **A. Investment in the Property.**

13 Stanley W. Gribble shall contribute to the Reorganized Debtors on the Effective Date
14 the New Capital Contribution, which, together with the Debtors' Cash on hand, shall be sufficient to
15 (1) fund the Brooks Brothers Work, (2) pay all Administrative Priority Claims and Priority Tax
16 Claims, and (3) establish a working capital reserve for the Debtors. Completing the Brooks Brothers
17 Work will ensure that the Debtors satisfy their obligations to Brooks Brothers under the Brooks
18 Brothers Lease and that Brooks Brothers' obligation to open for business and pay rent under the
19 Brooks Brothers Lease will commence in approximately September 2012. The implementation of
20 the Brooks Brothers Lease will increase revenue from and profitability of the Property. That
21 enhancement of revenue, together with the Debtors' existing assets and the New Capital
22 Contribution, will be sufficient to pay (1) all amounts due on the Effective Date, (2) all payments
23 that come due under this Plan, and (3) all amounts that will come due under the New Mortgage Note,
24 in addition to generating surplus profit. Demonstrating the Debtors' confidence in their projections
25 and ability to meet their future obligations under the Plan, Mr. Gribble is committing to contribute
26 the New Capital Contribution as equity, which by definition will be junior to all present and future
27 creditors, including the Mortgage Lender. No distributions shall be made to any holder of Post
28

1 Street Interests or Post 240 Interests before Brooks Brothers' obligation to pay rent under the Brooks
2 Brothers Lease has commenced.

3 **B. Execution of the SNDA.**

4 On the Effective Date, the Mortgage Lender shall be deemed to have executed the
5 SNDA, which SNDA shall be in the same form as set forth as Schedule 6.2-2 to the Loan
6 Agreement.

7 **C. Organizational Matters.**

8 Amended organizational documents for the Reorganized Debtors shall be filed not
9 later than the Plan Supplement Filing Date. They will provide for the issuance of new equity
10 interests to Stanley W. Gribble, or his nominee, in the Debtors in exchange for funding the New
11 Capital Contribution. As of the Effective Date, the Debtors' organizational documents shall be
12 amended to comply with the provisions of the Plan and the Bankruptcy Code, including, to the
13 extent applicable, Bankruptcy Code section 1123(a)(6).

14 **D. Revesting of Assets and Operations of Property.**

15 As of the Effective Date, all property of the Post Street Estate shall revest in
16 Reorganized Post Street and all property of the Post 240 Estate shall revest in Reorganized Post 240
17 (including each Debtor in Possession bank account), free and clear of all Claims, liens,
18 encumbrances and other interests of creditors and holders of interests, except as otherwise set forth
19 herein. From and after the Effective Date, the Reorganized Debtors may operate their business and
20 use, acquire, and dispose of property and settle and compromise Claims without supervision by the
21 Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other
22 than those restrictions expressly imposed by the Plan and the Confirmation Order. Reorganized
23 Debtors shall have authority to pay any Post-Effective Date Claims in the ordinary course of
24 business.

25 **E. Preservation of Rights of Action and Defenses.**

26 Except to the extent such rights, Claims, causes of action, defenses, and
27 counterclaims are expressly and specifically released in connection with the Plan or in any
28 settlement agreement approved during the Reorganization Cases, (i) any and all rights, Claims,

1 causes of action, defenses, and counterclaims accruing to the Debtors or their estates (including,
2 without limitation, Avoiding Power Causes of Action) shall remain assets of and vest in the
3 applicable Reorganized Debtor, whether or not litigation relating thereto is pending on the Effective
4 Date, and whether or not any such rights, Claims, causes of action, defenses, and counterclaims have
5 been Scheduled or otherwise listed or referred to in the Plan, or any other document filed with the
6 Bankruptcy Court, and (ii) neither the Debtors nor the Reorganized Debtors waive, relinquish, or
7 abandon (nor shall they be estopped or otherwise precluded from asserting) any right, Claim, cause
8 of action, defense, or counterclaim that constitutes property of either Debtors' estate: (a) whether or
9 not such right, Claim, cause of action, defense, or counterclaim has been listed or referred to in the
10 Schedules, the Plan, or any other document filed with the Bankruptcy Court, (b) whether or not such
11 right, Claim, cause of action, defense, or counterclaim is currently known to the Debtors, and
12 (c) whether or not a defendant in any litigation relating to such right, Claim, cause of action, defense,
13 or counterclaim filed a proof of Claim in the Reorganization Cases, filed a notice of appearance or
14 any other pleading or notice in the Reorganization Cases, voted for or against the Plan, or received
15 or retained any consideration under the Plan. Without in any manner limiting the scope of the
16 foregoing, notwithstanding any otherwise applicable principle of law or equity, including, without
17 limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or
18 any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, cause of
19 action, defense, or counterclaim, or potential right, Claim, cause of action, defense, or counterclaim,
20 in the Debtors' Schedules, the Plan, or any other document filed with the Bankruptcy Court shall in
21 no manner waive, eliminate, modify, release, or alter the Reorganized Debtors' right to commence,
22 prosecute, defend against, settle, and realize upon any rights, Claims, causes of action, defenses, or
23 counterclaims that any of the Debtors or Reorganized Debtors has or may have as of the
24 Confirmation Date, including claims against Eurohypo and Post Investors or its affiliates. The
25 Reorganized Debtors may commence, prosecute, defend against, recover on account of, and settle all
26 rights, Claims, causes of action, defenses, and counterclaims in their sole discretion in accordance
27 with what is in the best interests, and for the benefit, of the Reorganized Debtors.

1 **F. Powers of the Reorganized Debtors.**

2 The Reorganized Debtors shall have all the powers and duties set forth in the Plan,
3 and the Reorganized Debtors' organizational documents, as may be amended, and under applicable
4 law. Each Reorganized Debtor shall become, on the Effective Date of the Plan, the exclusive
5 representative of its respective Estate. Subject to the provisions of the Plan, but notwithstanding
6 whether they are set forth in the Plan, on and after the Effective Date, each of the Estates shall retain
7 and each Reorganized Debtor may enforce any and all rights, Claims, causes of action, powers,
8 privileges, licenses, and franchises of such Debtor or Estate, including all rights regarding tax
9 determinations under Bankruptcy Code section 505, all causes of action arising under the Plan and
10 the Bankruptcy Code.

11 The Reorganized Debtors shall have the authority to pay any post-Effective Date
12 Claims in the ordinary course of business.

13 **G. Discharge of Debtors, Injunction and Other Releases.**

14 **1. Discharge of Debtors.**

15 On and after the Effective Date, the rights afforded in the Plan and the treatment of all
16 Claims and interests therein shall be in exchange for and in complete satisfaction, discharge, and
17 release of all Claims and interests of any nature whatsoever, including any interest accrued on such
18 Claims from and after the Petition Date, against the Debtors and the Debtors in Possession, or any of
19 their assets or properties. Except as otherwise provided in the Plan or the Confirmation Order on
20 and after the Effective Date: (a) each Debtor shall be deemed discharged and released to the fullest
21 extent permitted by section 1141 of the Bankruptcy Code from all Claims and interests, including
22 Claims and interests that arose before the Effective Date and all debts of the kind specified in
23 sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (i) a proof of Claim or
24 proof of interest based on such debt or interest is Filed or deemed Filed pursuant to section 501 of
25 the Bankruptcy Code, (ii) a Claim or interest based on such debt or interest is allowed pursuant to
26 section 502 of the Bankruptcy Code, or (iii) the holder of a Claim or interest based on such debt or
27 interest has accepted the Plan; and (b) all persons shall be precluded from asserting against
28 Reorganized Post Street, Reorganized Post 240, their successors, the Debtors' assets or properties,

1 or, to the extent provided in this Plan, the Contingent Guarantors, any other or further Claims or
2 interests based upon any act or omission, transaction, or other activity of any kind or nature that
3 occurred before the Effective Date. Except as otherwise provided in the Plan or the Confirmation
4 Order, on and after the Effective Date, the Confirmation Order shall act as a discharge of any and all
5 Claims against and all debts and liabilities of the Debtors, as provided in sections 524 and 1141 of
6 the Bankruptcy Code.

7 **2. Injunction.**

8 **In addition to the injunction provided under section 524(a) of the Bankruptcy**
9 **Code, on and after the Effective Date, all persons who have held, currently hold or may hold a**
10 **debt, Claim or interest discharged under the Plan are permanently enjoined from taking any**
11 **of the following actions on account of any such discharged debt, Claim or interest:**

12 **(a) commencing or continuing in any manner any action or other proceeding against either**
13 **Debtor, either Reorganized Debtor, or their respective property; (b) enforcing, attaching,**
14 **collecting or recovering in any manner any judgment, award, decree or order against either**
15 **Debtor, Reorganized Debtor, their successors or their respective property; (c) creating,**
16 **perfecting or enforcing any lien or encumbrance against either Debtor, Reorganized Debtor,**
17 **their successors or their respective property; and (d) commencing or continuing any action, in**
18 **any manner, in any place that does not comply with or is inconsistent with the provisions of the**
19 **Plan or the Confirmation Order.**

20 **Unless and until the Reorganized Debtors default under the New Mortgage Note**
21 **or the New Deed of Trust and fail to cure any such default within the cure periods therein, all**
22 **persons who have held, currently hold or may hold a Class 2 Claim are enjoined from taking**
23 **any of the following actions on account of such discharged Class 2 Claim: (a) commencing or**
24 **continuing in any manner any action or other proceeding against either Contingent Guarantor**
25 **or its respective property on account of a Contingent Guaranty Claim; (b) enforcing,**
26 **attaching, collecting or recovering in any manner any judgment, award, decree or order**
27 **against either Contingent Guarantor, their successors or their respective property on account**
28 **of a Contingent Guaranty Claim; (c) creating, perfecting or enforcing any lien or encumbrance**

1 **against either Contingent Guarantor, their successors or their respective property on account**
2 **of a Contingent Guaranty Claim; and (d) commencing or continuing any action, in any**
3 **manner, in any place that does not comply with or is inconsistent with the provisions of the**
4 **Plan or the Confirmation Order.**

5 **Any person injured by any willful violation of the foregoing injunction may**
6 **recover actual damages, including costs and attorneys' fees, and, in appropriate**
7 **circumstances, may recover punitive damages, from the willful violator.**

8 **H. Limitation of Liability.**

9 On and after the Effective Date, none of the Debtors, the Debtors in Possession, nor
10 any of their members, partners, employees, officers, directors, agents, or representatives, nor any
11 professional persons employed by any of them, shall have or incur any liability to any person or
12 entity for any authorized act taken or authorized omission made in good faith in connection with (a)
13 the management or operation of the Debtors or the discharge of their duties under the Bankruptcy
14 Code; (b) the negotiation, formulation, development, proposal, disclosure, solicitation, Confirmation,
15 or implementation of this Plan, including with respect to objections to Claims or negotiating or
16 preparing any contract, instrument, release, or other agreement or document pursuant to this Plan; (c)
17 the implementation of any of the transactions provided for or contemplated in this Plan; (d) the
18 administration of this Plan or the assets and property to be distributed pursuant to this Plan; or (e) the
19 performance of services related to the above. Nothing in the foregoing shall relieve any party from
20 liability on account of gross negligence or willful misconduct.

21 **I. Execution of Documents and Interest Holder Action.**

22 The Debtors and Debtors in Possession, and the Reorganized Debtors, without any
23 partner or member action whatsoever, shall execute such documents and take such other action as is
24 necessary to effectuate the transactions provided for in the Plan.

25 **J. Retention of Jurisdiction.**

26 After Confirmation of the Plan and occurrence of the Effective Date, the Bankruptcy
27 Court will retain such jurisdiction as is legally permissible, including for the following purposes:
28

- 1 1. To resolve any and all disputes regarding the operation and interpretation of
2 the Plan or the Confirmation Order;
- 3 2. To determine the allowability, classification, or priority of any Claim or
4 interest, based on any objection by a Debtor or by other parties in interest with standing to bring
5 such objection or proceeding;
- 6 3. To determine the extent, validity, and priority of any lien asserted against
7 property of the Reorganized Debtors or property of the Estates;
- 8 4. To construe and to take any action to (a) enforce and execute the Plan, the
9 Confirmation Order, and any other order of the Bankruptcy Court; (b) issue such orders as may be
10 necessary for the implementation, execution, performance, and consummation of the Plan, the
11 Confirmation Order and all matters referred to in the Plan and the Confirmation Order; and
12 (c) determine all matters that may be pending before the Bankruptcy Court in these Reorganization
13 Cases on or before the Effective Date with respect to any person or entity;
- 14 5. To determine any and all applications for allowance of compensation and
15 reimbursement of expenses of professionals for periods on or before the Effective Date;
- 16 6. To determine any other request for payment of administrative expenses;
- 17 7. To resolve any dispute regarding the implementation, execution, performance,
18 consummation, or interpretation of the Plan or the Confirmation Order;
- 19 8. To determine motions for the rejection, assumption, or assignment of
20 executory contracts or unexpired leases filed before the Effective Date and the allowance of any
21 Claims resulting therefrom;
- 22 9. To adjudicate all adversary proceedings and contested matters initiated by the
23 Reorganized Debtors to pursue retained causes of action;
- 24 10. To determine all applications, motions, adversary proceedings, contested
25 matters, and any other litigated matters commenced during the Reorganization Cases whether before,
26 on, or after the Effective Date;
- 27 11. To determine such other matters and for such other purposes as may be
28 provided in the Confirmation Order;

1 12. To modify the Plan under section 1127 of the Bankruptcy Code in order to
2 remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the Plan so
3 as to carry out its intents and purposes;

4 13. To issue injunctions or take such other actions or issue such other orders as
5 may be necessary or appropriate to restrain interference with the Plan or the Confirmation Order or
6 their implementation by any person or entity; and

7 14. To issue such orders in aid of consummation of the Plan and the Confirmation
8 Order, notwithstanding any otherwise applicable nonbankruptcy law, with respect to any person or
9 entity, to the full extent authorized by the Bankruptcy Code or Bankruptcy Rules.

10 **K. Successors and Assigns.**

11 The rights, benefits and obligations of any entity named or referred to in the Plan are
12 binding on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors
13 or assigns of such entity.

14 **L. Amendment, Revocation, Modification and Severability.**

15 1. The Plan may be amended or modified before the Effective Date by the
16 Debtor to the extent provided by section 1127 of the Bankruptcy Code.

17 2. The Debtors reserve the right to withdraw the Plan before the Confirmation
18 Date.

19 3. The Debtors reserve the right to modify or amend the Plan upon a
20 determination by the Bankruptcy Court that the Plan, as it is currently drafted, is not confirmable
21 pursuant to section 1129 of the Bankruptcy Code. To the extent such a modification or amendment
22 is permissible under section 1127 of the Bankruptcy Code without the need to solicit acceptances,
23 the Debtors reserve the right to sever any provisions of the Plan that the Bankruptcy Court finds
24 objectionable.

25 4. In addition to the foregoing general reservations of rights, the Debtors
26 specifically reserve the right to amend, modify or withdraw the Plan as necessary to provide for a
27 sale of the Property.

1 **M. Exhibits.**

2 Any Exhibits to the Plan will be Filed not later than the Plan Supplement Filing Date.
3 The Exhibits will not be served with the Plan, but rather copies of all such Exhibits will be available
4 upon written request to the Debtors' counsel.

5 **N. No Admission.**

6 Except as specifically provided in the Plan, nothing contained in the Plan shall be
7 deemed or construed in any way as an admission by the Debtors or the Estates with respect to any
8 matter set forth in the Plan, including the amount or allowability of any Claim, or the value of any
9 property of the Estates.

10 **O. 1146(c) Exemption.**

11 In accordance with Bankruptcy Code section 1146(c), the making delivery, filing or
12 recording of any mortgages, deeds of trust, leasehold mortgages, leases (whether recorded or
13 unrecorded) and/or the various instruments and documents of transfer as specified in or
14 contemplated by the Plan (collectively, "Instruments of Transfer") and/or the exhibits thereto are
15 hereby exempt from taxation under any law imposing a recording tax, stamp tax, transfer tax, or any
16 similar tax. The appropriate state or local government officers are hereby directed to accept for
17 filing or recording all Instruments of Transfer or other documents of transfer to be filed and recorded
18 in accordance with the Plan and the exhibits thereto, without payment of any such tax or government
19 assessment, and without the presentation of any affidavits, instruments, or returns otherwise required
20 for recording other than the Confirmation Order. The Bankruptcy Court retains jurisdiction to
21 enforce the foregoing direction by contempt proceedings or otherwise.

22 **P. General Authority.**

23 The Reorganized Debtors shall execute such documents, and take such other actions,
24 as are necessary to effectuate the transactions provided for in the Plan.

25 **Q. Binding Effect.**

26 The Plan and all rights, duties and obligations thereunder shall be binding upon and
27 inure to the benefit of the Debtors, the Reorganized Debtors, holders of Claims, holders of interests,
28 and their respective successors and assigns.

1 **R. Governing Law.**

2 Unless a rule of law or procedure is supplied by federal law (including the
3 Bankruptcy Code and Federal Rules of Bankruptcy Procedure), or by an express choice of law
4 provision in any agreement, contract, document, or instrument provided for or executed in
5 connection with the Plan, the rights and obligations arising under the Plan and any agreement,
6 contract, document, or instrument provided for or executed in connection with the Plan, shall be
7 governed by, and construed and enforced in accordance with, the laws of the State of California,
8 without giving effect to the principles of conflict of laws thereof.

9 **S. Payment Dates.**

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

13 **T. Headings.**

14 The headings used in the Plan are inserted for convenience only and neither
15 constitutes a portion of the Plan nor in any manner affects the construction of the provisions of the
16 Plan.

17 **U. No Waiver.**

18 The failure of the Debtors or any other person to object to any Claim for purposes of
19 voting shall not be deemed a waiver of the Debtors' or the Reorganized Debtors' of the right to
20 object to or examine such Claim, in whole or in part.

21 **VI.**

22 **CONDITIONS TO CONFIRMATION EFFECTIVE DATE**

23 **A. Condition to Confirmation.**

24 The only condition precedent to Confirmation of the Plan is that the Bankruptcy
25 Court shall have entered the Confirmation Order in a form acceptable to the Debtors.

26 **B. Conditions to Effective Date.**

27 The Effective Date of the Plan shall not occur unless and until each of the conditions
28 set forth below has been satisfied. As soon as practicable after the occurrence of the Effective Date,

1 but no later than ten (10) days thereafter, the Reorganized Debtors shall File and serve on each
2 creditor and equity interest holder a written notice of occurrence of Effective Date.

- 3 1. The Confirmation Order is a Final Order; and
- 4 2. The Debtors shall have received the New Capital Contribution.

5 The Debtors can waive the condition of a Final Order if they choose to do so and if no stay pending
6 appeal of the Confirmation Order has been granted.

7 VII.

8 DISTRIBUTION OF CONSIDERATION

9 A. Objections to Claims.

10 1. Deadlines.

11 Notice of designation of a Claim as a Disputed Claim and objections to Claims,
12 including Administrative Claims, not including applications of professionals for compensation and
13 reimbursement of expenses, shall be Filed and served upon the holders of such Claims no later than
14 the last to occur of: (a) thirty (30) days after the Effective Date, or (b) thirty (30) days after a proof
15 of Claim or request for payment of such Claim is Filed and delivered to the respective Debtor or
16 Reorganized Debtor, unless the periods set forth in (a) and (b) hereof are extended by the
17 Bankruptcy Court. An objection to the allowance of a Claim of a professional for compensation
18 shall be Filed and served in accordance with section III.A.1.c.(2) of the Plan.

19 2. Authority.

20 The Reorganized Debtors shall be responsible for filing and resolving objections to
21 Claims in all classes. The Reorganized Debtors may settle and compromise as appropriate, without
22 further order of the Bankruptcy Court any and all Claims, rights of action, causes of action,
23 counterclaims and defenses held by the Estates. Each Estate may, but shall not be required to, set off
24 or recoup against any Claim and the distributions to be made pursuant to the Plan in respect of such
25 Claim, any counterclaims, setoffs, or recoupments of any nature whatsoever that such Estate may
26 have against the holder of the Claim, but neither the failure to do so nor the allowance of any Claim
27 shall constitute a waiver or release by either Estate or Reorganized Debtor of any such Claim, cause
28 of action, setoff or recoupment.

1 **B. Disputed Claims.**

2 No distributions and no payments will be made with respect to all or any portion of a
3 Disputed Claim until such Claim becomes an Allowed Claim.

4 **C. Distributions.**

5 **1. Disputed Claims.**

6 Except as may otherwise be agreed with respect to any Disputed Claim, no payment
7 or distribution will be made with respect to all or a portion of any Disputed Claim until such Claim
8 is an Allowed Claim. Payments and distributions to each holder of a Disputed Claim (to the extent
9 that it ultimately becomes an Allowed Claim) will be made in accordance with the Plan.

10 **2. Distribution Date.**

11 Notwithstanding anything to the contrary contained herein, but subject to the specific
12 provisions of section III.B.2.(c) regarding disputed Class 2 Claims, no distributions will be made
13 under the Plan on account of any Claim until the Distribution Date, which, with regard to any
14 individual Claim, shall be the latest of the following: (a) as soon as practicable after the Effective
15 Date, but in no event more than thirty (30) days after the Effective Date; (b) as soon as practicable
16 after the day upon which such Claim becomes an Allowed Claim, but in no event more than thirty
17 (30) days after the entry of a Final Order allowing such Claim; or (c) the date upon which the Claim
18 became due and payable under applicable nonbankruptcy law.

19 **3. Unclaimed Distributions.**

20 The Reorganized Debtors will hold until the second anniversary of the Effective Date
21 any unclaimed distributions to be made to the holders of Allowed Claims under the Plan. Any
22 unclaimed Cash will be deposited by the Reorganized Debtors in a segregated, interest-bearing
23 account for the sole benefit of the holders of the Allowed Claims who have failed to Claim such
24 property. On the second anniversary of the Effective Date, any unclaimed distributions to be made
25 to holders of Allowed Claims will become the property of the applicable Reorganized Debtor.

26 **4. No De Minimis Distributions.**

27 Notwithstanding anything to the contrary in this Plan, no distribution of less than
28 \$10.00 will be made to any holder of an Allowed Claim on account thereof. No consideration will

1 be provided in lieu of the *de minimis* distributions that are not made under this Section.

2 **D. No Disbursing Agent.**

3 Reorganized Debtors shall act as disbursing agents under the Plan and make all
4 distributions required under the Plan. Reorganized Debtors may employ or contract with other
5 entities to assist in or perform the distribution of property to be distributed.

6 **E. Manner of Payment under the Plan.**

7 Cash payments made pursuant to the Plan shall be in United States dollars by checks
8 drawn on a domestic bank selected by the applicable Reorganized Debtor or by wire transfer from a
9 domestic bank, at Reorganized Debtors' option.

10 **F. Delivery of Distributions.**

11 Except as provided above in section VII.C.3 for holders of undeliverable
12 distributions, distributions to holders of Allowed Claims shall be distributed by mail as follows:
13 (1) at the addresses set forth on the respective proofs of Claim by such holders; (2) at the addresses
14 set forth in any written notices of address changes delivered to the applicable Reorganized Debtor
15 after the date of any related proof of Claim; or (3) at the address reflected on the Schedules if no
16 proof of Claim or proof of interest is Filed and the applicable Debtor or Reorganized Debtor has not
17 received a written notice of a change of address.

18 **G. Compliance with Tax Requirements.**

19 In connection with the Plan, to the extent applicable, the Reorganized Debtors, in
20 making distributions under the Plan, shall comply with all withholding and reporting requirements
21 imposed on it by any governmental unit, and all distributions pursuant to the Plan shall be subject to
22 such withholding and reporting requirements.

23 **H. Old Instruments and Securities; Liens.**

24 **1. Rights of Persons Holding Old Instruments and Securities.**

25 Except as otherwise provided herein, as of the Effective Date, and whether or not
26 surrendered by the holder thereof, all existing instruments and securities evidencing any Claims or
27 interests shall be deemed automatically cancelled and deemed void and of no further force or effect,
28

1 without any further action on the part of any person, and any Claims or interests under or evidenced
2 by any instruments or securities shall be deemed discharged.

3 **2. Cancellation of Liens.**

4 Except as otherwise provided in the Plan, any lien securing any Secured Claim, shall
5 be deemed released and discharged, and the person holding such Secured Claim shall be authorized
6 and directed to release any collateral or other property of the Debtor or Debtors (including, without
7 limitation, any cash collateral) held by such person and to take such actions as may be requested by
8 the Reorganized Debtors to evidence the release of such lien, including, without limitation, the
9 execution, delivery and filing or recording of such releases as may be requested by the Reorganized
10 Debtors at the sole expense of the Reorganized Debtors.

11 **I. Interest.**

12 Nothing in this Article shall affect any right of the holder of any Allowed Claim to
13 include interest accruing before the Petition Date, but no Claim shall be allowed for interest for
14 periods after the Petition Date, or after the Confirmation Date, except as expressly provided in the
15 Plan.

16 **VIII.**

17 **CONFIRMATION REQUEST**

18 In the event that any impaired Class of Claims fails to accept the Plan in accordance
19 with section 1129(a)(8) of the Bankruptcy Code, the Debtor (i) requests that the Bankruptcy Court
20 confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, and in accordance
21 with the Plan, and (ii) may modify the Plan in accordance with section 1127(a) of the Bankruptcy
22 Code.

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Dated: April 30, 2012

Post Street, LLC

By: Stanley W. Gribble

Its: Authorized Agent

Dated: April 30, 2012

Post 240 Partners, L.P.

By: Mark Schurgin

Its: Authorized Agent

Submitted by:

/s/ H. Alexander Fisch
JEFFREY C. KRAUSE,
ERIC D. GOLDBERG,
H. ALEXANDER FISCH, and
MICHAEL S. NEUMEISTER, Members of
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
Reorganization Counsel for the Debtor