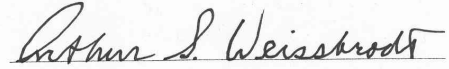




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IT IS SO ORDERED.
Signed March 31, 2011


Arthur S. Weissbrodt
U.S. Bankruptcy Judge

5 Attorneys for Debtor
6 Santa Clara Square, LLC

7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

11 In re
12 SANTA CLARA SQUARE, LLC,
13 Debtor.

Case No. 09-61196
Chapter 11

**ORDER CONFIRMING DEBTOR'S
THIRD AMENDED CHAPTER 11 PLAN
OF REORGANIZATION DATED
MARCH 3, 2011**

Date: March 30, 2011
Time: 10:45 a.m.
Place: 280 S. First Street
San Jose, CA
Room 3020
Judge: Honorable Arthur S. Weissbrodt

19
20 Santa Clara Square, LLC, as debtor and debtor-in-possession in the above-
21 captioned bankruptcy case (the "Debtor"), having proposed its *Third Amended Chapter 11 Plan of*
22 *Reorganization Dated March 3, 2011* (the "Plan"); the Court having conducted a hearing to
23 consider confirmation of the Plan on March 30, 2011 (the "Confirmation Hearing"); copies of the
24 Plan, the *Disclosure Statement in Support of Third Amended Chapter 11 Plan of Reorganization*
25 *Dated March 3, 2011* (the "Disclosure Statement"), the order approving the Disclosure Statement
26 and providing related relief (the "Disclosure Statement Order") and the ballot having been
27 provided to creditors, equity security holders, the Office of the United States Trustee and parties-
28 in-interest in accordance with the terms of the Disclosure Statement Order or as otherwise

1 approved by this Court; adequate notice of the hearing having been provided in accordance with
2 Rule 2002(b) of the Federal Rules of Bankruptcy Procedure, to the Office of the United States
3 Trustee, and to all creditors, equity security holders, parties-in-interest and other entities as
4 required to be served in the Disclosure Statement Order and prior orders of this Court;
5 appearances by and on behalf of parties-in-interest having been made at the hearing and noted on
6 the record; no objections being filed to the Plan; the Court having considered the Plan, the
7 arguments of counsel, the *Memorandum of Points and Authorities in Support of Confirmation of*
8 *Debtor's Third Amended Chapter 11 Plan Of Reorganization Dated March 3, 2011* filed by the
9 Debtor on March 24, 2011 (the "Confirmation Brief"), the filed declarations of Emily Chen (the
10 "Chen Declaration") and John Eudy (the "Eudy Declaration"), the *Verified Ballot Tabulation*
11 *Regarding Voting on Debtor's Third Amended Chapter 11 Plan Of Reorganization Dated*
12 *March 3, 2011* filed by the Debtor on March 24, 2011 (the "Ballot Tally"), the offer of proof made
13 and other evidence introduced at the Confirmation Hearing, the records and files in this chapter 11
14 case, and all documents and testimony admitted into evidence at the Confirmation Hearing; and
15 good cause appearing therefore, the Court orders as follows:

16 **ORDER**

17 1. The Plan is confirmed. The Court finds that all of the applicable confirmation
18 requirements set forth in Bankruptcy Code section 1129 have been satisfied. The Plan is binding
19 upon the Debtor, its creditors and equity security holders irrespective of (i) whether the claim or
20 interest of such creditor or equity security holder has been allowed and (ii) whether such creditor
21 or equity security holder has accepted the Plan.

22 2. Capitalized terms not conforming to customary usage and not defined herein shall
23 have the meanings ascribed to them in the Plan. The Plan is filed as docket number 183 in this
24 case.

25 3. Service of the Plan, the Disclosure Statement, the Disclosure Statement Order and
26 accompanying ballot as set forth in the record is hereby approved and ratified as providing
27 creditors, interest holders, and parties-in-interest adequate and sufficient notice of the
28 Confirmation Hearing and an opportunity to submit ballots accepting or rejecting the Plan.

1 4. On the Effective Date, and automatically and without further action, the
2 reorganized Debtor (the “Reorganized Debtor”) shall be authorized and empowered to take all
3 such actions and measures necessary to implement and administer the terms and conditions of the
4 Plan. On the Effective Date, Essex and the holders of pre-petition membership interests in the
5 Debtor (the “Pre-Petition Members”) shall execute and deliver the Amended and Restated Limited
6 Liability Company Agreement. As of the Effective Date, the rights and interests of all members in
7 the Reorganized Debtor shall be governed by the Amended and Restated Limited Liability
8 Company Agreement attached to the Plan as Exhibit D. Except as otherwise provided in
9 Sections 1.2, 9.1 and 9.2 of the Plan or in the Amended and Restated Limited Liability Company
10 Agreement, all previously existing membership interests and economic interests in the
11 Debtor, including, without limitation, all voting rights, rights to participate in management,
12 information rights, and rights to distributions or allocations of income, gains, losses, deductions,
13 and credits shall be terminated as of the Effective Date. The consideration paid by Essex for its
14 rights as Class A Member and sole Manager of the Reorganized Debtor under the Amended and
15 Restated Limited Liability Company Agreement is adequate.

16 5. Except as otherwise provided in the Plan, on the Effective Date, and automatically
17 and without further action: (i) all property of the estate shall vest in the Reorganized Debtor free
18 and clear of all liens, claims and other interests pursuant to Section 1141(b) and (c) of the
19 Bankruptcy Code, except that said property shall be subject to the El Camino Deed of Trust, as
20 provided in Section 13.1 of the Plan; and (ii) the Reorganized Debtor shall have all powers of a
21 limited liability company under applicable law. Except as otherwise provided in the Plan, as of
22 the Effective Date, the Reorganized Debtor may operate its business and use, acquire and dispose
23 of property and settle and compromise post-Effective Date claims or interests without the
24 supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or
25 Bankruptcy Rules.

26 6. On the Effective Date, the Reorganized Debtor shall be responsible for making
27 distributions pursuant to the terms and conditions of the Plan, and shall hold and administer any
28 reserves created by the terms of the Plan, except as otherwise provided in the Plan. Said

1 distributions will be funded by, among other things, the Essex Investment described in Section 1.2
2 of the Plan, which will be utilized as follows:

3 a. \$700,000 of the Essex Investment will be used to fund the El Camino
4 Reserve on the Effective Date pursuant to Section 1.2(a)(i) of the Plan;

5 b. \$3,994,110 of the Essex Investment will be paid to El Camino to be applied
6 to the principal balance of the El Camino Loan to reduce said balance to \$10,500,000,
7 pursuant to Section 1.2(a)(ii) of the Plan;

8 c. \$1,700,000 of the Essex Investment (plus any Delayed Effectiveness
9 Charges) will be paid to El Camino on the Effective Date to cure all allowed and
10 outstanding arrearages, including without limitation all accrued interest, late fees and
11 reimbursable costs (including attorneys' fees), pursuant to Section 1.2(a)(ii) of the Plan;

12 d. Approximately \$900,000 of the Essex Investment will pay all past due real
13 property taxes and assessments on the Property on the Effective Date pursuant to
14 Section 1.2(a)(iii) of the Plan, provided that pursuant to Section 5.3 of the Plan, Essex will
15 pay the second installment of 2010/2011 real property taxes that are delinquent after
16 April 10, 2011 from funds other than the Essex Investment;

17 e. Up to \$100,000 of the Essex Investment denoted as Unsecured Claims
18 Primary Funds will be utilized to pay holders of Allowed Class D-2 Claims as provided in
19 Section 1.2(a)(iv) of the Plan;

20 f. Essex will fund the Unsecured Claims Excess Reserve with funds from the
21 Essex Investment, as and when such reserve may be required under Section 1.2(a)(iv) of
22 the Plan;

23 g. Up to \$300,000 of the Essex Investment will be paid to holders of allowed
24 Class A administrative expenses, as when such expenses are approved by the Bankruptcy
25 Court, as provided in Section 1.2(a)(v) of the Plan; and

26 h. Up to \$1,500,000 of the Essex Investment will be utilized to pay costs and
27 expenses incurred in connection with obtaining entitlements and governmental approvals
28 for the development of the Property according to the Development Plan, which costs and

1 expenses shall be paid as they are incurred during the Term of the Plan, pursuant to Section
2 1.2(b) of the Plan.

3 7. The Reorganized Debtor shall administer the Plan subject to the foregoing duties
4 and powers, which shall also include the following:

5 a. To make decisions regarding the retention or engagement of professionals
6 after the Effective Date, and to pay, without court order, all reasonable fees and expenses
7 incurred after the Effective Date;

8 b. To make or direct distributions to holders of Allowed Claims to otherwise
9 implement and administer any reserves created under the Plan;

10 c. To implement and execute the Plan in accordance with the terms of the
11 Plan, including Sections 10.1 through 10.6 thereof;

12 d. To file any potential avoidance or recovery actions pursuant to 11 USC §§
13 541, 544, 547, 548, 549, 550, 551 or 553, as provided in Section 10.4 of the Plan, and
14 except as otherwise settled or released under the Plan;

15 e. To prosecute litigations as it deems appropriate, and to initiate any
16 adversary proceedings which may result in recovery of funds for the estate, as provided in
17 Section 10.5 of the Plan, and except as otherwise settled or released under the Plan;

18 f. To object to any and all claims that are not allowed under the Plan, as
19 provided in Section 12.1 of the Plan, provided, however, that Pre-Petition Members and
20 their counsel retain the authority to act on behalf of the estate in the prosecution of the
21 claims objection litigation and shall make such determinations as they deem appropriate
22 with respect to the disposition of such objections, as set forth in said Section 12.1;

23 g. To seek a modification of this Plan upon all applicable legal grounds for
24 doing so, pursuant to Section 12.2, provided, however, that the Reorganized Debtor shall
25 not modify this Plan in a manner inconsistent with the Settlement Term Sheet without the
26 prior written consent of El Camino, to be given or withheld in El Camino's sole and
27 absolute discretion, as provided in said Section 12.2;

1 h. To timely file post-confirmation quarterly reports with the Bankruptcy
2 Court and serve them on the U.S. Trustee until a final decree is obtained;

3 i. To pay a quarterly fee to the United States Trustee, for deposit into the
4 Treasury, for each quarter (including any fraction thereof) until this case is converted;
5 dismissed, or closed pursuant to a final decree, as required by 28 U.S.C. §§ 1930(a)(6);

6 j. To seek a Final Decree following the occurrence of the earlier of the sale of
7 the Property, the refinance of the Property, or the payment of all claims; and

8 k. To take all other actions not inconsistent with the provisions of the Plan
9 deemed necessary or advisable in connection with administering the Plan.

10 8. Notwithstanding any provision of the Plan or this Confirmation Order, neither the
11 Reorganized Debtor, nor Essex, as the Class A Member and Manager of the Reorganized Debtor,
12 shall have any duty or obligation of any kind to take action which would involve incurring fees,
13 costs or other financial obligations that would exceed the available funds provided by the Essex
14 Investment, the other funds to be paid by Essex or the Reorganized Debtor under the Plan or the
15 Plan Documents, or by the net operating income of the Property, which funds shall be the sole
16 source of funding for such fees, costs and financial obligations. Essex, as the Class A Member
17 and the sole Manager of the Reorganized Debtor, shall have no obligation to make any
18 contributions to the Reorganized Debtor other than the Essex Investment identified in Section 1.2
19 of the Plan and Article II of the Amended and Restated Limited Liability Company Agreement,
20 and the agreement to pay the second installment of 2010/2011 secured real property taxes set forth
21 in Section 5.3 of the Plan. Nothing herein, however, shall limit (i) the obligations of the
22 Reorganized Debtor under the Reorganized Debtor Note or the El Camino Deed of Trust (as
23 modified in connection with the Plan), or (ii) the obligations of Essex Portfolio, L.P. under the
24 EPLP Guaranty.

25 9. On the Effective Date, pursuant to the Amended and Restated Limited Liability
26 Company Agreement, Essex shall obtain the Essex Purchase Option enabling Essex to purchase
27 the remaining 15% of the membership interests in the Reorganized Debtor that Essex will not
28 obtain on the Effective Date, as provided in Section 1.2(c) of the Plan and in the Amended and

1 Restated Limited Liability Company Agreement. The consideration paid by Essex for said
2 Option, and to be paid by Essex in the future to exercise said Option, is adequate.

3 10. On the Effective Date, the option agreement attached as Exhibit F to the Disclosure
4 Statement (the "Option Agreement") shall be executed by the parties thereto, and the Member
5 Entity shall obtain the Member Buyback Option as provided in Section 1.2(d) of the Plan and in
6 said Option Agreement, subject to the El Camino Deed of Trust. The consideration provided by
7 the Pre-Petition Members for said Option, and to be paid by Member Entity in the future to
8 exercise said Option, is adequate.

9 11. Pursuant to Bankruptcy Code section 1123(b)(3)(A) and 1123(b)(5) and Federal
10 Rule of Bankruptcy 9019, the Court approves the compromise and settlement with El Camino
11 embodied in the Plan and in the Settlement Term Sheet attached as Exhibit H to the Disclosure
12 Statement, including without limitation the provision in Section 6.1(c) of the Plan for the
13 execution of mutual releases on the Effective Date by and between El Camino, on the one hand,
14 and the Debtor, Essex, the Pre-Petition Members, and the Existing Guarantors, on the other hand,
15 releasing each other from all claims except those specifically preserved under this Plan (which
16 releases will include waivers of California Civil Code Section 1542). Included among the claims
17 released will be the Debtor's Interference Claims. The aforementioned parties shall execute said
18 mutual releases on the Effective Date.

19 12. On the Effective Date, and automatically and without further action, the Class C-2
20 Claim shall be allowed in the amount of \$14,494,110 of principal and \$1,700,000 (plus any
21 Delayed Effectiveness Charges) in interest, fees, and late charges, as provided in Section 6.1(b) of
22 the Plan.

23 13. On the Effective Date, Essex shall execute and deliver the EPLP Guaranty to El
24 Camino as provided in Section 6.2 of the Plan.

25 14. On the Effective Date, the Reorganized Debtor shall execute and deliver the
26 Reorganized Debtor Note and the modification of the El Camino Deed of Trust to El Camino as
27 provided in Section 6.2 of the Plan.

28

1 15. Pursuant to Section 6.4 of the Plan, if either (i) the Effective Date has not occurred
2 on or prior to the Implementation Deadline of July 31, 2011, including the making of all payments
3 to El Camino from the proceeds of the Essex Investment that are required to be made on the
4 Effective Date, or (ii) the Debtor or the Pre-Petition Members do not otherwise elect, in its or their
5 sole discretion, to cause the payment to El Camino of \$16,194,110 plus all additional amounts
6 required to be paid to El Camino under Sections 6.2.1 and 6.2.2 of the Plan (which payment must
7 be received by El Camino on or before the Implementation Deadline), then:

8 a. El Camino shall obtain immediate relief from the automatic stay to
9 foreclose on the Property and all other collateral securing the El Camino Loan (including
10 outstanding cash collateral, which shall be promptly turned over to El Camino). Neither
11 Debtor, a trustee or any other entity acting on behalf of Debtor, the Pre-Petition Members,
12 the Existing Guarantors, nor Essex shall take any action to oppose, hinder, defend, or
13 otherwise delay El Camino's exercise of any or all of its remedies vis-à-vis the Property
14 and other collateral. Debtor (or any entity acting on behalf of Debtor) shall promptly
15 surrender possession of the Property to El Camino, and provide to El Camino all non-
16 privileged documentation relating to the Property that it has not already provided to El
17 Camino;

18 b. At the non-judicial foreclosure sale referenced in the preceding paragraph,
19 El Camino shall be entitled to credit bid in any amount up to the full amount of its claim,
20 including principal, non-default interest, default interest, late charges, fees and expenses,
21 irrespective of any discount that El Camino has agreed to for purposes of this Plan (which
22 discount shall not apply in the context of a foreclosure);

23 c. Mutual releases will be executed on or about the Implementation Deadline
24 by and between El Camino, on the one hand, and the Debtor, the Pre-Petition Members,
25 and the Existing Guarantors, on the other hand, releasing each other from all claims (which
26 releases will include waivers of California Civil Code Section 1542). Included among the
27 claims released will be the Interference Claim; and

28 d. The Plan will be deemed withdrawn.

1 16. Pursuant to Section 6.3.4 of the Plan, until the Class C-2 Claim is repaid in full, the
2 Reorganized Debtor, the Pre-Petition Members, Essex, the Existing Guarantors and any affiliates
3 of the foregoing shall not cause or otherwise assist or encourage a bankruptcy filing by the
4 Reorganized Debtor. In the event the Reorganized Debtor becomes a debtor in a new case under
5 the Bankruptcy Code, the Debtor, the Pre-Petition Members, Essex, the Existing Guarantors, and
6 the affiliates of the foregoing shall not oppose immediate relief from the automatic stay in favor of
7 El Camino to permit El Camino to exercise its rights and remedies with respect to the Property and
8 the other collateral pledged as security for the Reorganized Debtor Note.

9 17. To the extent that rental income constitutes cash collateral subject to any lien of El
10 Camino, and provided that no default exists under the Reorganized Debtor Note, the El Camino
11 Deed of Trust, or the EPLP Guaranty, (i) Reorganized Debtor shall be authorized to utilize cash
12 collateral to make payments contemplated by this Plan and to pay monthly operating expenses,
13 and (ii) Reorganized Debtor shall also be authorized to pay post petition property taxes as they
14 come due from cash collateral.

15 18. The following unexpired leases and executory contracts shall be deemed assumed
16 by the Debtor effective as of the Effective Date: (i) Debtor's leases with each of its three current
17 Tenants on the Property, namely Kohl's Department Stores, YUM! Brands, and Bharat Bazaar;
18 and (ii) Debtor's Property Management Agreement with Altos Enterprises, Inc., dba Alpha
19 Investments and Property Management Company. This Court finds that due and proper notice of
20 such assumption was provided, and that all requirements for assumption of such unexpired leases
21 and executory contracts in Bankruptcy Code section 365 have been satisfied. All other executory
22 contracts and unexpired leases shall be deemed rejected by the Debtor as of the Effective Date.

23 19. The deadline (the "Admin Expense Deadline") for filing any administrative claim,
24 including Class A Claims, shall be 30 days after a notice of the occurrence of the Effective Date
25 has been filed and served, provided that holders of Administrative Expense Claims that have
26 already filed requests for payment or proofs of claim shall not be required to file additional
27 requests for payment or proofs of claim unless additional amounts are sought by such claimant.
28 Objections to any such administrative claims shall be filed within 30 days of the Admin Expense

1 Deadline. For the avoidance of doubt, the foregoing shall not apply to fees and expenses accrued
2 on behalf of the Reorganized Debtor after the Effective Date by the Debtor's current professionals,
3 including without limitation fees and expenses accrued in connection with the Urban Dynamic
4 claim objection. Said post-Effective Date fees are to be paid by the Reorganized Debtor in the
5 ordinary course without Court supervision, and shall be subject to the \$300,000 aggregate limit set
6 forth in paragraph 6(g) of this Order.

7 20. Claims arising from the rejection of executory contracts and unexpired leases must
8 be filed with the Bankruptcy Court and served upon the Reorganized Debtor within 30 days after a
9 notice of the occurrence of the Effective Date has been filed and served, and shall be paid, if
10 Allowed, as a Class D-2 Claim under the Plan. Any objection to such a rejection damages claim
11 shall be filed within 30 days of the date such rejection damages claim is filed.

12 21. Other than administrative expense claims and claims arising from the rejection of
13 executory contracts and unexpired leases, any unsecured claim filed after the Effective Date shall
14 be disallowed and shall not be entitled to any payment.

15 22. Except as otherwise provided in the Plan, entry of this Order operates as a
16 discharge to the full extent provided in Bankruptcy Code section 1141, effective as of the
17 Effective Date, of all debts, claims against, liens on, and interests in the Debtor, its assets and
18 property, which debts, claims, liens and interests arose at any time before the Effective Date. The
19 discharge of the Debtor shall be effective as to each claim and interest, regardless of whether a
20 proof of claim or interest was filed or whether the claim or interest was allowed or whether the
21 holder of the claim or interest voted to accept the Plan. On the Effective Date, as to each and
22 every discharged claim and interest, any holder of such claim or interest shall be precluded from
23 asserting such claim or interest against the Debtor or Reorganized Debtor or their assets or
24 properties. For the avoidance of doubt, the liens created by the El Camino Deed of Trust, as
25 modified by the Plan, shall not be discharged.

26 23. On the Effective Date, and except as otherwise expressly provided in this Plan or in
27 connection with its enforcement, all persons who have held, hold or may hold claims against the
28 Debtor and/or the estate that arose before the Effective Date are permanently enjoined from

1 (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding
2 of any kind against the Debtor or any property of Debtor or the estate, with respect to any such
3 claim, (b) the enforcement, attachment, collection or recovery by any manner or means, directly or
4 indirectly, of any judgment, award, decree, or order against the Debtor, any property of Debtor or
5 the estate, with respect to any such claim, (c) creating, perfecting or enforcing, directly or
6 indirectly, any lien or encumbrance of any kind against the Debtor, any property of the Debtor or
7 the estate, with respect to any such claim, and (d) asserting, directly or indirectly, any setoff, or
8 right of subrogation of any kind against any obligation due the Debtor or any property of the
9 Debtor or the estate, with respect to any such Claim. Nothing contained herein will prohibit the
10 holder of a timely-filed proof of claim from litigating its right to seek to have that claim declared
11 an allowed claim and paid in accordance with the distribution provisions of the Plan.

12 24. Pursuant to Bankruptcy Code section 1146, no stamp, transfer or similar taxes will
13 be owing to any taxing authority in connection with either (a) Essex's purchase of the membership
14 interests of the Debtor under the Plan; or (b) Essex's exercise of the Essex Purchase Option
15 pursuant to the terms of the Plan.

16 25. This Court shall retain jurisdiction, to the extent permitted by applicable law or
17 Section 16.1 of the Plan.

18 26. Except to the extent that the Bankruptcy Code is applicable, the rights and
19 obligations arising under the Plan shall be governed by and construed and enforced in accordance
20 with the laws of the State of California.

21 ** END OF ORDER **
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COURT SERVICE LIST

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John Wesolowski
Office of the United States Trustee
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Gabriel Glazer
Stutman Treister & Glatt
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