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6

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

10 In re: Case No. 09-60597  
11 SAIGON VILLAGE, LLC, Chapter 11  
12 Debtor.  
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14 **DEBTOR'S DISCLOSURE STATEMENT IN SUPPORT**  
15 **OF CHAPTER 11 PLAN OF REORGANIZATION**  
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1 Debtor Saigon Village, LLC ("Debtor") submits the following Disclosure Statement  
2 ("Disclosure Statement") with respect to its Chapter 11 Plan of Reorganization ("Plan").

3 **I. PURPOSE OF DISCLOSURE STATEMENT**

4 This Disclosure Statement contains information which may bear upon your decision to  
5 accept or to reject the Plan. The information presented in this Disclosure Statement is provided to  
6 enable the parties in interest to make a reasonably informed decision as to whether to vote for or  
7 against the Plan.

8 All of Debtor's statements and representations in this Disclosure Statement, including those  
9 relating to the financial, business, and accounting data are those of the Debtor and are not those of  
10 the professionals who represent the Debtor. The financial information in this Disclosure Statement  
11 concerning the Debtor is compiled from Debtor's books and records and is unaudited. The Debtor is  
12 unable to warrant or represent that information contained herein is without error, although all  
13 reasonable efforts under the circumstances have been made to be accurate.

14 This Disclosure Statement has been prepared by Debtor's representatives and counsel  
15 pursuant to Section 1125 of the Bankruptcy Code in connection with the solicitation of votes on the  
16 Plan which is provided to you with this Disclosure Statement. The purpose of this Disclosure  
17 Statement is to provide to Debtor's creditors, who are entitled to vote on the Plan, adequate  
18 information to make an informed judgment about whether to accept or reject the Plan.

19 The Disclosure Statement describes the relevant background and history of Debtor and  
20 significant events both before and after the commencement of the Chapter 11 case. The Disclosure  
21 Statement also describes the terms and provisions of the Plan of Reorganization, including the  
22 treatment of the various classes of creditors, according to the types of claims held by each creditor,  
23 and the manner in which the Debtor will be able to provide such treatment.

24 **II. VOTING REQUIREMENTS**

25 A creditor whose legal rights are impaired under the Plan and who has filed or is deemed to  
26 have filed a proof of claim is entitled to vote to accept or to reject the Plan, unless an objection to

1 such creditor's claim has been filed with the Court. A claim which is the subject of a pending  
2 objection is not entitled to vote on the Plan unless the holder of the claim successfully moves the  
3 Court to temporarily allow the claim for voting purposes or unless the Court allows some portion of  
4 the claim. If the Debtor or other party in interest files an objection to your claim, you must move the  
5 Court to allow your claim for voting or your vote will not be counted.

6 In order for the Plan to be confirmed by the Court, two-thirds (2/3) in dollar amount and  
7 more than one-half (1/2) in number of the allowed claims in an impaired class which vote must accept  
8 the Plan. Voting percentages will be based upon the number of ballots actually cast.

9 After carefully reviewing the Disclosure Statement and the Plan, please indicate your vote to  
10 accept or to reject the Plan on the enclosed ballot and return it to Debtor's counsel no later than the  
11 date and time specified in the Order Approving Disclosure Statement, which is served herewith. The  
12 ballot should be returned to the following address:

13 COHEN AND JACOBSON  
14 Attn: Lawrence A. Jacobson  
15 900 Veterans Boulevard, Suite 600  
16 Redwood City, CA 94063

17 Your ballot will not be counted unless **received** by the deadline. Your ballot will not be  
18 counted if it is not signed. Your ballot will not count unless you indicate whether you accept or  
19 reject the Plan.

20 In tabulating acceptances and rejections, Debtor will use the lesser of (a) the dollar amount  
21 you state on your ballot, (b) the dollar amount of your claim as shown on the official claims register,  
22 or, if you did not file a proof of claim, (c) the undisputed amount of your claim on Debtor's  
23 schedules, unless you move the Bankruptcy Court to allow your claim for voting purposes in a  
24 different amount. The claims register reflects the amount you included on a proof of claim if you  
25 filed a proof of claim. You may review the official claims register and Debtor's schedules at the  
26 office of the Clerk of the Bankruptcy Court, Third Floor, 280 South First Street, San Jose, California  
95113, or by using the PACER electronic docketing system (charges may apply for use of PACER).

1 **III. BACKGROUND**

2 **A. Preliminary Information**

3 **1. Debtor's Name:**

4 The Debtor is Saigon Village, LLC.

5 **2. Form of Debtor:**

6 Debtor is a California limited liability company that was created on May 21, 2004. The  
7 members of Debtor are Thomas Nguyen, the Responsible Individual in this case, and Diep ("David")  
8 Le.

9 **3. Debtor's Business:**

10 Debtor is in the business of investing in commercial real property. More particularly, Debtor  
11 is in the business of purchasing, leasing, renovating and selling commercial real property. Debtor  
12 currently owns condominium units in a commercial real property comprised of 29 commercial  
13 condominiums. Debtor's business is derived from the sale and leasing of these condominiums.

14 **4. Related Entities:**

15 Debtor does not have any parent, subsidiary, or other related entities.

16 **5. Other Sources of Income:**

17 The Debtor has no other sources of income other than from the sale and rental of the  
18 condominiums.

19 **6. Date of Chapter 11 Petition:**

20 This case was commenced on December 3, 2009.

21 **7. Events That Caused the Filing:**

22 The filing of this bankruptcy case resulted from a culmination of events which placed  
23 considerable financial strain on the Debtor. The primary purpose for the filing of the bankruptcy  
24 case was to obtain relief from pressure being placed upon Debtor by United Commercial Bank and  
25 East West Bank (an alleged secured creditor) and to provide a forum for the redress of certain  
26 damages which Debtor attributes to the wrongful conduct of the alleged secured creditor. The

1 Debtor's goal is to achieve an expeditious resolution of the dispute with the alleged secured creditor,  
2 and to confirm the proposed plan which will utilize the value of the Property, and improved cash  
3 flow after completion of tenant improvements, to pay creditors.

4 The most recent appraisal reflects a value of the Property at \$37,000,000. Debtor estimates  
5 that the current value is more likely approximately \$24,000,000. The current purported secured  
6 creditor has alleged a claim of \$19,926,093, and the unsecured claims in this case are scheduled to be  
7 the aggregate sum of \$1,330,792. Based upon this analysis, the Property has equity for the benefit of  
8 all creditors.

9 Prior to the filing of this bankruptcy case, the disputed secured creditor had filed a judicial  
10 foreclosure proceeding which has been stayed by the filing of this bankruptcy case. Through the  
11 judicial foreclosure proceeding the disputed secured creditor sought to foreclose on the Property and  
12 proceed to sale, which would have resulted in the loss of the equity in the Property, and inability to  
13 pay other creditors.

14 The judicial foreclosure action, and related misconduct of the alleged secured creditor,  
15 impaired certain business opportunities which would otherwise have been available to Debtor. In  
16 particular, the Debtor has several prospective tenants interested in renting space at the property,  
17 including one potential tenant that requested nearly 16,000 square feet of space. Obtaining these and  
18 additional tenants will significantly increase the Debtor's current cash flow. In order to allow for  
19 these and other tenants to occupy the premises, Debtor will need to perform certain tenant  
20 improvements. The Debtor possessed the requisite funds to perform the tenant improvements, with  
21 those funds held in accounts initially at United Commercial Bank, and subsequently at East West  
22 Bank (after UCB was placed into receivership by the FDIC). The funds in those accounts, or part of  
23 them, were specifically contemplated to be used for tenant improvements. However in August,  
24 2009, the disputed secured creditor froze the accounts due to an alleged default under the financing  
25 agreement. Accordingly, Debtor has not been able to perform the tenant improvements, and without  
26 performing the tenant improvements Debtor has not been able to realize the benefit of the increased

1 cash flow.

2 Thus, the judicial foreclosure and the freeze of Debtor's bank accounts placed Debtor in a  
3 financial position which required the commencement of this bankruptcy case.

4 **B. Status of Bankruptcy Case**

5 Debtor has operated as Debtor-in-Possession since the commencement of the case. For cash  
6 collateral purposes the Debtor and the disputed secured creditor have treated the rents and related  
7 income as cash collateral, and have entered into various stipulations for payment of necessary  
8 expenses. The Debtor is compliant in its reporting and other administrative requirements, and the  
9 341 Meeting of Creditors has been concluded.

10 In February, 2010, the disputed secured creditor filed a Motion for Relief From Stay seeking  
11 to foreclose on the Property. The matter is set for March 10, 2010, and Debtor will oppose the  
12 Motion on the grounds, *inter alia*, that the moving party is not a secured creditor (and therefore not  
13 entitled to the requested relief), that a confirmable plan is being filed, that the creditor is adequately  
14 protected by the equity in the Property, and that the Motion for Relief From Stay is disingenuous  
15 because the bank's act of freezing the Debtor's bank accounts was the primary factor in Debtor's  
16 inability to realize cash flow necessary to pay any secured obligation.

17 This is a single asset real estate case, and as such Debtor is timely filing its Chapter 11 Plan  
18 of Reorganization on March 3, 2010. Debtor estimates that the hearing on this Disclosure Statement  
19 will take place in April, 2010, and the confirmation hearing will occur in June, 2010.

20 **C. Description of the Property**

21 Debtor's primary asset consists of certain commercial real property, which is described in  
22 more detail as follows.

23 **1. General Information**

24 Debtor currently owns certain commercial real property in Fremont, California. The  
25 commercial property consists of 2 Buildings with total 69,250 square feet located on 5.99 acres of  
26 land (the "Property"). The Property was acquired in 2005 pursuant to a lease option to purchase in

1 the amount of \$5,227,200. Debtor currently estimates the Property value to be at least \$24,000,000.  
2 The most recent appraisal of the Property was undertaken in August, 2007, and reflected a value of  
3 \$37,000,000. As is described in more detail below, the value of the Property is contested by East  
4 West Bank, which alleges to be a secured creditor. Debtor disputes the claim of East West Bank,  
5 and alleges that it is an unsecured creditor for the reasons detailed herein. East West Bank alleges  
6 the value of the Property to be the sum of \$11,200,000, or less, and has filed verified pleadings so  
7 stating.

8 Shortly after acquisition Debtor converted the property to commercial condominiums, and  
9 the condominiums were assigned the addresses of 6032-6096 Stevenson Boulevard, Fremont,  
10 California 93458. Attached as Exhibit A hereto is a depiction of the Property which details the  
11 Property generally, and identifies each particular condominium. There are 29 individual commercial  
12 condominium units ranging in size from 1,750 square feet to 11,676 square feet. The design of the  
13 Property permits the individual units to be combined to create larger units by merging 2 or more  
14 units into a new and larger individual unit.

15 Upon acquisition of the Property, Debtor obtained financing from East West Bank in the  
16 amount of \$10,970,000 which was utilized for purchase and initial improvements. Over a course of  
17 time Debtor performed improvements to the Property, with construction completed in 2007. The  
18 Property is currently in above average condition, contains ample parking and lighting, and provides  
19 common area marquees, electricity, and water.

20 In September, 2007, Saigon entered into a permanent takeout financing arrangement with  
21 UCB, with UCB providing financing to Saigon in the amount of \$24,500,000, and with a maturity  
22 date of October 5, 2008. During this period of time Debtor also marketed and arranged for the sale  
23 of certain commercial condominiums. In particular, Debtor arranged for the sale of the following  
24 units:

<u>Condominium Address</u>	<u>Purchaser</u>
6050 Stevenson Blvd:	An Tran
6054 & 6056 Stevenson Blvd:	David Baker

6070 Stevenson Blvd:	Tinh Nguyen
6072 Stevenson Blvd:	Andy Tran
6074 Stevenson Blvd;	John Du
6078 & 6080 Stevenson Blvd:	Michael Drier
6082, 6084, 6086 & 6088 Stevenson Blvd:	Astrid Lee

As such, Debtor currently maintains ownership of the following units: 6032, 6034, 6036, 6038, 6044, 6046, 6048, 6052, 6058, 6062, 6054, 6066, 6068, 6076, 6092 & 6096 Stevenson Blvd. (the "Remaining Units").

## 2. Liens

There exists one undisputed secured claim held by the Alameda County Tax Collector. This lien in the amount of \$154,165 pertains to property taxes owing for the Property.

There exists a disputed lien which is alleged by East West Bank. Debtor believes that East West Bank is a California corporation, and that EWB claims to be the assignee of certain assets formerly owned by UCB and transferred to East West Bank as a result of the FDIC Receivership of United Commercial Bank ("EWB"), including rights under a certain promissory note and deed of trust. EWB has alleged a secured claim of \$19,926,093, but has valued the Property in the amount of \$11,200,000, and as such EWB asserts a secured claim of \$11,200,000. As stated above, the valuation in this case is disputed, as Debtor anticipates that the value of the Property far exceeds the amount adopted by EWB. As is discussed more fully below, Debtor asserts that the acts of EWB, and its predecessors, in freezing Debtor's bank accounts has resulted in a waiver of its security interest in the Property. As such Debtor contends that EWB holds no lien on the Property, and that it is unsecured. Debtor believes that EWB contends that it remains a secured creditor.

## 3. Occupancy

As the owner of the Remaining Units, Debtor is currently seeking to lease and/or sell those units as part of its Chapter 11 Plan. Of the Remaining Units, the following units are currently rented:

<u>Condominium Address</u>	<u>Tenant</u>	<u>Rent</u>
6032 -6036 Stevenson Blvd.	East West Bank	\$14,465.75
6038 Stevenson Blvd.	Cyclo Café	\$3,920
6096 Stevenson Blvd.	Pho Appetite	\$5,600



1 The Property is being managed by the Debtor in Possession.

2 **D. Detailed Disclosure Regarding Dispute with EWB**

3 As is set forth in this section of the Disclosure Statement, Debtor's dispute with EWB is  
4 significant in terms of determining the purported secured claim, and in recovering damages caused  
5 by the conduct of EWB and its predecessors. In order to provide the necessary context, Debtor will  
6 provide a summary of the facts and circumstances commencing with Debtor's acquisition of the  
7 Property.

8 **1. Financing Agreements**

9 Debtor obtained the Property in 2005, and entered into a financing agreement with EWB in  
10 the principal amount of \$10,970,000. Thus, East West Bank was the original lender.

11 In September, 2007, Debtor entered into a permanent takeout financing arrangement with  
12 United Commercial Bank ("UCB"), with UCB providing financing to Debtor in the amount of  
13 \$24,500,000, with a maturity date of October 5, 2008. This financing replaced EWB as the lender,  
14 however EWB was familiar with the facts and circumstances related to Debtor and the Property due  
15 to its status as the original lender. The purpose of the new financing arrangement was to provide  
16 replacement funds from UCB to Debtor related to the acquisition of the Property and the  
17 construction of certain tenant improvements in the structures located at the Property. As a part of the  
18 financing arrangement, Debtor executed a certain promissory note which was secured by a Deed of  
19 Trust recorded on September 27, 2007, in the office of the County Recorder in and for the County of  
20 Alameda, State of California (the "Deed of Trust").

21 Debtor made payments of principal and interest pursuant to the terms of the promissory note,  
22 with payments of principal being made from the sale of certain condominiums. On December 2,  
23 2008, Debtor and UCB entered into a modification of the financing agreement by which Debtor  
24 executed a replacement promissory note in favor of UCB in the amount of \$18,489,985.87, with that  
25 amount representing the balance of, and replacing, the prior note (the "Replacement Promissory  
26 Note"). This Replacement Promissory Note included a maturity date of April 5, 2009, and

1 contemplated interest only payments, with a balloon payment due upon maturity. No new Deed of  
2 Trust was prepared or recorded.

3 Debtor made interest payments on the Replacement Promissory Note, and on July 31, 2009,  
4 Debtor and UCB entered into a third financing agreement pursuant to which Debtor executed a  
5 further replacement promissory note in favor of UCB in the amount of \$18,489,985.87, with that  
6 amount representing the balance of, and replacing, the prior note ("Second Replacement Promissory  
7 Note"). This Second Replacement Promissory Note included a maturity date of September 5, 2009,  
8 and contemplated interest only payments, with a balloon payment due upon maturity. No new Deed  
9 of Trust was prepared or recorded.

## 10 **2. Defaults Alleged by UCB**

11 UCB alleged a default under the Second Replacement Note, and initiated an action in San  
12 Francisco Superior Court by the filing of a Verified Complaint on or about October 1, 2009. Among  
13 the claims asserted by UCB in the Verified Complaint is a cause of action for judicial foreclosure by  
14 which UCB seeks judicial foreclosure of the Property. In its Verified Complaint, UCB alleges that  
15 (a) UCB advanced sums to Debtor; (b) Debtor is in default under a promissory note issued by Debtor  
16 in favor of UCB; and (c) the financing is secured by a Deed of Trust dated September 20, 2007.

## 17 **3. Acts Which Debtor Contends Constitute a Waiver of the Security Interest**

18 In addition to obtaining financing from UCB, Debtor also maintained certain demand  
19 banking accounts with UCB as to which Debtor was entitled to the control of the accounts and the  
20 use of the funds. These accounts included a general account which at pertinent times had a balance  
21 of approximately \$790,000, and a money market account which at pertinent times had a balance of  
22 approximately \$160,000, for an aggregate amount of approximately \$950,000. These accounts are  
23 referred to jointly as the "Accounts" and the funds in the accounts are referred to as the "Seized  
24 Funds."

25 Debtor and UCB contemplated that the funds in these Accounts, or part of them, would be  
26 used by Debtor for the purpose of performing tenant improvements at the Property, and for the

1 payment of the expenses of operation of Debtor. These tenant improvements are necessary to  
2 maximize the tenancy at the Property, which would thereby generate increased cash flow to Debtor.

3 In late-August, 2009, UCB froze all activity by Debtor in the Accounts due to its assertion (a)  
4 that Debtor had defaulted in the performance of its obligations under the Second Replacement  
5 Promissory Note, and (b) that therefore the bank was entitled, as the exercise of a remedy available  
6 to the bank, to freeze all activity in the Accounts and to thereby deny to Debtor the agreed and  
7 intended use of its funds based upon such assertion of default. UCB froze the activity in the  
8 Accounts, and denied Debtor the use of its funds, as a means to enforce its purported rights and  
9 remedies based upon such alleged default. As such, Debtor contends that UCB thereby elected its  
10 remedy.

11 Based UCB's election of such remedy, the UCB refused, and continued to refuse, to permit  
12 Debtor to utilize any of its funds in the Accounts commencing in August, 2009; asserted repeatedly  
13 and continuously that UCB was retaining those funds, and denying Debtor the use of those funds, as  
14 a result of the alleged default, and asserted repeatedly and continuously that UCB was taking such  
15 actions as a remedy to enforce the purported rights of UCB with respect to the alleged default by  
16 Debtor in the performance of the terms of the Second Replacement Promissory Note.

17 Subsequent to the seizure, Debtor repeatedly and continuously demanded that UCB, and later  
18 EWB, release the freeze on the Accounts and allow Debtor to utilize its funds for the making of  
19 tenant improvements and the payment of expenses. These demands were made directly by  
20 representatives of Debtor to bank officers, and through demands made in discussions and  
21 correspondence among the parties' respective counsel. UCB and EWB repeatedly and continuously  
22 refused to reverse the freeze of the Accounts and repeatedly and continuously denied Debtor the use  
23 of its funds as a continuing exercise of the remedy chosen by UCB.

24 The seizure was particularly problematic for Debtor because after the freeze of the Accounts,  
25 and the denial of Debtor's use of its funds, Debtor did not possess other funds or sources of  
26 financing available for performing necessary tenant improvements. Thus, while Debtor had several

1 prospective tenants interested entering into leases for condominiums, Debtor was unable to complete  
2 the tenant improvements required for those tenants to occupy the Property. Therefore, Debtor has  
3 been unable to enter into and effectuate leases with tenant, and has thereby suffered losses of  
4 income, and loss of value of the real property formerly constituting collateral for the performance of  
5 the obligations under the Second Replacement Promissory Note. Despite their knowledge that  
6 Debtor required the funds for performance of tenant improvements, the bank refused to reverse the  
7 seizure, and therefore the tenant improvements have not been performed. As such, Debtor contends  
8 that the bank is responsible for the lost income, especially because the parties had specifically  
9 contemplated that the seized Accounts would be used for tenant improvements, and that therefore the  
10 banks had no right to seize the funds in the first instance.

11 Based upon these acts, Debtor contends that UCB and EWB have violated the Security First  
12 Rule. Under California Law, the Security First Rule requires that a secured lender first proceed  
13 against the real property collateral before exercising any other rights. The consequence for failing to  
14 first proceed against the real property is the loss of any security interest in the Property. Therefore,  
15 in this case, by electing its remedy of seizure of the bank accounts, Debtor contends that UCB and  
16 EWB violated the Security First Rule, and waived their security interest in the Property.

17 After committing the violation of the Security First Rule and the Election of Remedy, UCB  
18 and EWB did not take any act with respect to the Accounts until February, 2010, i.e., nearly six  
19 months after the taking of the funds, at which time EWB transferred the funds into the Debtor in  
20 Possession Account due to the directive of the Office of the United States Trustee, a division of the  
21 Department of Justice.

22 It is also noteworthy that beginning in at least July or August, 2009, the account  
23 representative at UCB responsible for making the decisions complained of was Emily Ong. Debtor  
24 is informed and believe that prior to UCB being placed in receivership Ms. Ong obtained  
25 employment with East West Bank. As an employee at East West Bank Ms. Ong acted as the account  
26 representative with respect to Debtor's account, and Debtor is informed and believes that Ms. Ong

1 remained, and continues to remain, the decision maker with regard to the acts complained of herein.  
2 During the pertinent time period, Debtor complained to UCB, East West Bank, and Ms. Ong (in her  
3 capacity as a representative of UCB and later East West Bank), with respect to the conduct described  
4 above. In sum, both UCB and EWB's actions were taken by the same bank officer.

5 As a result of the foregoing, Debtor is initiating an Adversary Proceeding before this Court  
6 for Declaratory Relief; to Quiet Title; for Cancellation and Expungement of Deed of Trust; for  
7 Avoidance of Purported Lien; for Determination of Nature, Extent and Validity of Lien; for  
8 Damages for Wrongful Seizure of Funds; for Conversion; for Damages for Intentional Interference  
9 with Prospective Economic Advantage; for Damages for Unjust Enrichment by which the Debtor  
10 seeks, inter alia, a determination that the Lien Claim of East West Bank is unsecured, and damages.

11 The Adversary Proceeding seeks a determination that (1) the bank is unsecured; and (2) the  
12 bank is liable for damages due to the wrongful seizure of the Accounts.

#### 13 **IV. DEBTOR'S CREDITORS AT PRESENT**

##### 14 **A. Administrative Claims (Class A)**

15 Debtor believes the only Class A administrative claim to be held by Cohen and Jacobson,  
16 LLP, as counsel for Debtor. Debtor estimates that the administrative claim will be the sum of  
17 \$60,000, however this figure is difficult to estimate because the litigation with the bank is in its  
18 initial stages.

##### 19 **B. Priority Claims (Class B)**

20 Debtor is presently unaware of any priority claims.

##### 21 **C. Lien Claimants (Class C)**

##### 22 **1. Disputed Claim of East West Bank (Class C-1)**

23 Class C-1 consists of the disputed lien claim of East West Bank, claiming as the successor to  
24 FDIC Receivership of United Commercial Bank. East West Bank asserts a lien claim against the  
25 Property, the Seized Funds, and other personal property, in the amount of \$11,200,000. This claim is  
26 disputed as discussed above.

1                   **2.       Alameda County Tax Collector (Class C-2)**

2           The C-2 Claim pertains to property taxes owing to the Alameda County Tax Collector in the  
3 amount of \$154,165.

4           **D.       Claims of Option Purchasers with respect to Lease/Option**  
5           **Payments (Class D)**

6           The Class D claims consist of “Option Purchasers.” These individuals have signed Leases  
7 and paid Lease Purchase Payments in connection with the potential purchase of units at the Property.

8                   **1.       Claim of Fred Kim (Class D-1)**

9           The Class D-1 Claim consists of the claim of Fred Kim in the amount of \$100,000.

10                  **2.       Claim of Luc Nguyen (Class D-2)**

11           The Class D-2 Claim consists of the claim of Luc Nguyen in the amount of \$100,000.

12                  **3.       Claim of Maggie Tran (Class D-3)**

13           The Class D-3 Claim consists of the claim of Maggie Tran in the amount of \$150,000.

14                  **4.       Claim of Brian Vu (Class D-4)**

15           The Class D-4 Claim consists of the claim of Brian Vu in the amount of \$300,000.

16           **E.       Claims of Tenants with respect to Tenant Deposits (Class E)**

17           The Class E claims consist of claims of tenants who have paid tenant deposits in connection  
18 with their current leasing of the Property

19                  **1.       Claim of Cyclo Café (Class E-1)**

20           The Class E-1 Claim consists of the claim of Cyclo Café in the amount of \$10,500.

21                  **2.       Claim of Pho Appetit (Class E-2)**

22           The Class E-2 Claim consists of the claim of Pho Appetit in the amount of \$17,500.

23           **F.       Claims of Unsecured Creditors (Class F)**

24           The Class F claims consist of unsecured creditors which are subject to further classification.

25                  **1.       Unsecured Claim of East West Bank (Unsubordinated) (Class F-1)**

26           The Class F-1 Claim consists of the unsubordinated claim of East West Bank. Given that the

Class F-1 Claim is subject to litigation, the amount of such claim will depend on the results of the litigation between Debtor and EWB, as is described more fully in the section below regarding treatment of claims.

**2. Unsecured Claims excluding East West Bank (Class F-2)**

The Class F-2 Claim consists of general unsecured claims other than classes D, E, and F, which classes require different treatment due to the character, treatment, and status of such claims. The F-2 claims are currently scheduled in the amount of \$1,330,792.

**3. Unsecured Claim of East West Bank (Subordinated to Class F-2) (Class F-3)**

The Class F-3 Claim consists of the subordinated claim of East West Bank. Given that the Class F-1 Claim is subject to litigation, the amount of such claim will depend on the results of the litigation between Debtor and EWB, as is described more fully in the section below regarding treatment of claims.

**V. THE ESTATE'S ASSETS AT PRESENT**

**A. Summary of Assets Available to Pay Priority and Unsecured Claims**

Debtor's assets are as follows:

ASSET	NAME OF LIENHOLDERS	Value
Bank Balances	Disputed (EWB Claims lien)	\$982,249.00
Real Property	Disputed (EWB Claims lien)	\$11,200,000.00 to \$24,000,000 <sup>1</sup>
Account Receivable (Predecessor of Cyclo Caf�)	None	\$0.00 <sup>2</sup>

<sup>1</sup> The \$11,200,000 figure is the value attributed to the Property by EWB. Debtor estimates the value of the Property to be \$24,000,000. Debtor further believes that the value of the Property will be significantly higher than the bank's estimate upon completion of the tenant improvements, and upon the corresponding increased occupancy rate.

<sup>2</sup> This account is uncollectable.

ASSET	NAME OF LIENHOLDERS	Value
Cause of Action Against EWB	None	Unknown <sup>3</sup>
Surplus Rental Income	None	\$1,611,580.00 <sup>4</sup>
<b>Total</b>		<b>\$13,793,829.00</b> <b>to \$26,593,829</b>

In the opinion of Debtor's management, the value of the Debtor's assets, if sold on a liquidation basis by a trustee in a Chapter 7 case, would be the following:

ASSET	NAME OF LIENHOLDERS	Value
Bank Balances <sup>5</sup>	Disputed (EWB Claims lien)	\$850,000.00
Real Property	Disputed (EWB Claims lien)	\$11,200,000.00 <sup>6</sup>
Account Receivable (Predecessor of Cyclo Café)	None	\$0.00
Cause of Action Against EWB	None	\$0.00 <sup>7</sup>

<sup>3</sup> The claims against the bank have as of yet undetermined value. Debtor's damages will be established through discovery, forensic accounting, and trial of the claims at issue

<sup>4</sup> This figure is achieved by calculating the Debtor's current rental income and further expected rental income upon completion of the tenant improvements, less current expenses, and less interest of \$56,000 per month (interest on the amount of \$11,200,000 at 6% interest amortized over 30 years). This calculation yields the amount of \$27,693 per month, multiplied by 60 months (the term of the Plan), for a total amount of \$1,611,580.

<sup>5</sup> Debtor anticipates that, if its assets are being liquidated by a Trustee, the available cash would be decreased as a results of liquidation, including Trustee's fees, real estate agent fees, Trustee's professionals, and related expenses.

<sup>6</sup> Reflects distress forced sale valuation. For this purpose Debtor uses the bank's lower valuation.

<sup>7</sup> This value is attributed a value of zero given the uncertainty that a liquidating trustee would pursue the claims



ASSET	NAME OF LIENHOLDERS	Value
Total		\$12,050,000.00

**B. Avoidance Actions**

Debtor reserves the right to file any potential avoidance or recovery actions pursuant to 11 USC §§ 541, 544, 547, 548, 549, 550, 551 or 553. Debtor's recovery in such action will be paid to creditors according to their priorities. Aside from the EWB claim, Debtor does not presently anticipate any other litigations.

**C. Exempt Assets**

The Debtor is a limited liability company which has no exempt property.

**VI. PLAN**

**A. Effective Date:**

The Effective Date is the day after the last date on which an appeal from this Court's order confirming Plan would be timely or, if an appeal is filed, the day after the appeal becomes final.

**B. Treatment of Unclassified Claims:**

Debtor will pay in full, in cash, any claims of governmental units entitled to priority under Bankruptcy Code Section 507(a)(8) which are less than \$5,000. Any claims of governmental units entitled to priority under Bankruptcy Code Section 507(a)(8) which are more than \$5,000 shall be paid in twenty four equal monthly installments, together with interest at the rate of six percent (6%) per annum.

**C. Treatment of Unimpaired Claims**

Classes A, B, and G are unimpaired. Class A claims will be paid in full, in cash, on the Effective Date, unless other treatment is agreed upon. If a claim is disputed, Debtor will set aside and reserve sufficient funds to satisfy the claim if subsequently allowed. Class B claims will be paid in full, in cash, on or prior to the due date for payment of such claims, unless other treatment is agreed upon. In the event that all claims are paid in full, Class G members, currently

1 comprised of two members of Debtor, shall retain their interests without impairment.

2 **D. Treatment of Priority Claims:**

3 There are no current priority claims.

4 **E. Treatment the Class C-1 Claim:**

5 Debtor has filed an Objection to Claim and a lawsuit against East West Bank. By these  
6 proceedings Debtor seeks a determination that East West Bank is unsecured, and further seeks an  
7 award of damages against East West Bank. The results of the litigation will determine the  
8 treatment of the claim(s) of East West Bank, including the C-1, F-1, and F-3 claims.

9 In the event the Bankruptcy Court determines that the Lien Claim of East West Bank is *not*  
10 secured, then the claim shall be treated as a Class F-1 claim, except to the extent that a portion  
11 thereof may be treated as a Class F-3 (subordinated) claim. The payment of any dividend on any  
12 unsecured claim of East West Bank, whether as a result of a determination that the claim is entirely  
13 unsecured or as a result of the deficiency between the total claim of East West Bank and the value  
14 adopted by East West Bank as the valuation of the Property, shall be subordinated to the extent that  
15 East West Bank would otherwise receive a dividend from the Debtor's recovery of damages in the  
16 Litigation against East West Bank. East West Bank will be subordinated to Class F-2 Unsecured  
17 Claimants as to the distribution of proceeds recovered by Debtor from East West Bank.

18 To the extent that the Bankruptcy Court may determine that the Lien Claim of East West  
19 Bank is secured, the Lien Claim shall be paid to the extent of \$11,200,000 ("Lien Claim Amount")  
20 through the sale of condominiums and through net income achieved from the rental of the  
21 Property. The sales will be made to Class D claimants and/or to new third party purchasers. The  
22 Plan contemplates payment of 80% percent of the net proceeds from each sale to the Class C-1  
23 claimant if deemed to be secured. The remaining 20% will be retained in a blocked account for  
24 use in making tenant improvements. The tenant improvement reserve is contemplated to permit  
25 Debtor to make the remaining units salable and attractive to potential purchasers. By placing the  
26 remaining units in updated and move-in condition, Debtor believes that the Property will be more

1 marketable and more valuable.

2        Additionally, if deemed secured, Debtor will make payments to the Class C-1 Claimant  
3 from net profits and will also begin making interest payments on the amount of any secured claim  
4 (which would be the maximum amount of \$11,200,000). The interest on the secured claim is  
5 \$56,000 per month, calculated by amortizing the principal balance of \$11,200,000 at 6% over 30  
6 years. The payment from net profits and interest will commence on the 180<sup>th</sup> day after the  
7 Effective Date.

8        The 180 day period is contemplated in order to allow Debtor (1) 120 days to perform tenant  
9 improvements for certain tenants that are presently ready and willing to occupy designated units;  
10 and (2) to allow an additional 60 days for those new tenants to occupy the premises and begin  
11 paying rent. As part of the Plan, Debtor will utilize cash funds to perform these tenant  
12 improvements which are necessary to make designated units move-in ready. Debtor has  
13 prospective tenants willing and desirous of moving into these units upon completion of the tenant  
14 improvements. These tenancies are subject to finalizing lease paperwork and completion of tenant  
15 improvements. Debtor estimates that tenant improvements can be completed as early as  
16 September 1, 2010, and the new tenants could then begin their tenancies on September 1, 2010,  
17 thereby generating increased cash flow. The net profits and interest payments would then  
18 commence within 60 days after these new tenants begin paying rent to allow Debtor to obtain the  
19 increased cash flow which will be necessary to make the interest and net profits payments.

20        Payments of net profits and interest will occur for a term of five years. At the end of the  
21 five year term the unpaid principal balance will become fully due and payable. In the event that the  
22 balance of the Lien Claim is not paid within thirty (30) days after the expiration of such period, the  
23 Debtor shall transfer to East West Bank all of the Debtor's right, title and interest in and to all of  
24 the property upon which EWB holds a lien at the date upon which the payment is due, including  
25 any undisbursed funds remaining in the Tenant Improvement Reserve.

26        In the event that an Order or Judgment issues in the EWB Litigation with a determination

1 that EWB does not hold, or cannot enforce, any lien against property of the estate, then EWB shall  
2 pay to the Debtor, within thirty (30) days after such Order of Judgment becomes final, all sums  
3 previously paid pursuant to the terms set forth above.

4 **F. Treatment of the Class C-2 Claim**

5 The Class C-2 claims shall be paid from the Seized Funds within thirty days after entry of a  
6 final Order or Judgment authorizing Debtor to utilize the funds for such purpose. Alternatively,  
7 and cumulatively, the Class C-2 Claims shall be paid upon the sale of any property subject to a lien  
8 for payment of such taxes.

9 **G. Treatment of Class D Claims**

10 The holders of Class D claims are parties to certain lease agreements pertaining to the  
11 respective condominium units specified therein with provisions providing for the option to  
12 purchase the units. The option provisions require certain acts by the tenants within specified  
13 periods after the commencement of the leases. The leases provide that the "commencement"  
14 occurs upon delivery of possession with completion of specified tenant improvements. The tenant  
15 improvements have not been completed in the units which are the subject of the Class D claims.  
16 The Debtor maintains that the Debtor has not been able to complete the tenant improvements due  
17 to economic circumstances and the seizure of the funds by UCB and EWB. A controversy exists  
18 between the Debtor and the holders of Class D Claims regarding these matters. By the treatment  
19 provided to the holders of such Class D Claims, such controversy is resolved.

20 The holders of Class D claims shall be entitled to purchase the units specified in their  
21 leases at the prices and upon the terms specified in the option provisions with their Lease Purchase  
22 Payments applied as credits as provided in the lease and option documents, with a further credit for  
23 tenant improvements as indicated below, provided that such purchases are completed no later than  
24 the date which is one hundred twenty days after the Effective Date of the Plan.

25 The Debtor has ascertained that the cost of completing the tenant improvements for the  
26 units which are the subject of the Class D claims is approximately \$50,000 per unit. Provided that

1 the holder(s) of Class D claims timely consummate the purchase of the units subject to their  
2 options, the holder(s) shall receive a credit in escrow in the sum of \$50,000 from the purchase  
3 price in lieu of the completion of the tenant improvements as otherwise provided in the lease and  
4 option documents.

5 In the event that any holder of a Class D claim elects not to exercise the option to purchase  
6 the unit(s) which are the subject of the lease and option agreements, then the claim of the Option  
7 Purchaser(s) shall be treated as a Class F-2 claim and the options, and all rights thereunder, shall be  
8 extinguished without further order.

#### 9 **H. Treatment of Class E Claims**

10 In the event that the Debtor can obtain the use of the Seized Funds to set aside into a  
11 segregated account, by an Order or Judgment in the EWB Litigation, or otherwise, the Debtor will  
12 deposit to such an account from the Seized Funds the amount of the deposit paid by the holder of  
13 the Class E Claim(s). The Debtor shall make reasonable efforts to obtain such an Order or  
14 Judgment.

15 In the event that the Debtor cannot obtain the use of the Seized Funds to set aside the  
16 amounts of the Tenant Deposits, then the holders of the Class E Claims may elect either (a) to  
17 apply the amount of the Tenant Deposit as the payment of rent at the end of the term of the lease or  
18 (b) to consent to treatment as a Class F-2 Claim.

#### 19 **I. Treatment of Class F-1 Claim**

20 The amount, and allowance, of the Class F-1 Claim shall be determined by Order or  
21 Judgment made in the Litigation. Any such allowed claim shall be paid in the manner specified  
22 with respect to Class F-2 and F-3 as provided below. This claim is the unsubordinated claim of  
23 EWB, and therefore its treatment will depend on the recovery of proceeds by Debtor in the  
24 litigation with EWB. In particular, if Debtor prevails, and Debtor obtains a monetary recovery  
25 against EWB, EWB will not be entitled to a dividend from these litigation proceeds. The claim of  
26 EWB is subordinated for such purpose.

1           **J.       Treatment of Class F-2 Claims**

2           Class F-2 claims shall be paid, pro rata, semi-annually, after payment of the Class C  
3 Claims, from Net Profits and from sale of condominium units at the Property, subject to the same  
4 tenant improvement retention specified with respect to treatment of Class C Claims.

5           The payments shall be made for a period of five years after payments commence to the C-1  
6 claim, or until the Class F-2 Claims have been paid in full, whichever occurs first. The date of  
7 actual commencement of payments on account of Class F-2 Claims will be determined by the  
8 Order or Judgment in the Litigation as to whether the Class C-1 Lien Claimant holds, and can  
9 enforce, a lien against property of the estate. In the event that the Order or Judgment in the  
10 Litigation determines that the Class C-1 Lien Claimant does not hold a lien, then payments will  
11 commence in the semi-annual period immediately following the effective date of such Order or  
12 Judgment. In the event that such Order or Judgment determines that the Class C-2 Lien Claimant  
13 does hold a lien, then the payments on account of Class F-2 Claims shall commence in the semi-  
14 annual period immediately following the completion of payments on account of the Class C-1  
15 Claim as provided above.

16           In the event that the Debtor holds any of the Seized Funds, or any funds in the Tenant  
17 Improvement Reserve, at the end of such five year period, and all claims in classes A through E  
18 have been paid, the balance of such funds shall be paid on account of Class F Claims within thirty  
19 (30) days after the end of such five year period, except as provided with respect to the Class F-3  
20 Claim below.

21           **K.       Treatment of Class F-3 Claims**

22           To the extent that an Order or Judgment in the Litigation makes an award of damages  
23 against EWB, or otherwise orders payment by EWB to the Debtor, EWB shall not receive a  
24 dividend from such monies paid by East West Bank to the Debtor. Rather, the amount of any such  
25 dividend that East West Bank would otherwise received from such sums paid by it shall be paid as  
26 a Class F-3 Claim to be paid only after full payment of all Class F-2 claims.

1           **E.       Equity Holders:**

2           Class G members shall provide, without charge to the Reorganized Debtor, and with a  
3 waiver of all fees and commissions to which a provider of such services would otherwise  
4 reasonably expect to receive, all the services required for the consummation of this Plan, including  
5 without limitation the leasing and management services for the Property; engaging professionals  
6 for the design and construction of Tenant Improvements; engaging contractors and subcontractors  
7 to perform the tenant improvements; supervising the construction and completion of the tenant  
8 improvements; the procurement of permits necessary for sales or leasing; assistance in the  
9 prosecution of all litigations contemplated by this Plan, and the marketing and sale of the  
10 condominium units (other than providing or paying the fees and costs of sales or leasing agents)  
11 pursuant to the terms of this Plan. The obligations to be performed by the Class G members  
12 include all of the obligations to be performed by the Debtor under the terms of this Plan, and as  
13 otherwise required by the Bankruptcy Code, the Rules of Bankruptcy Procedure, the Local Rules of  
14 the above entitled Court, the Guidelines of the Office of the United States Trustee In the event that  
15 any party in interest considers that any Class G equity security holder has failed, or is failing, to  
16 provide such services, such party in interest may move the court for a determination that the  
17 Member(s) have failed to provide such services and for an order determining the appropriate  
18 disposition of the membership interests.

19           The individuals who presently hold their membership interests shall retain those interests,  
20 subject to performance of such obligations, and the payment of the sum of \$3,000 by Thomas  
21 Nguyen and the sum of \$1,000 by David Le, which amounts shall be paid to claimants based upon  
22 the priority set forth in this Plan, and subject to overbid at the confirmation hearing. By making an  
23 overbid, the person doing so thereby agrees to perform all of the obligations referenced herein.  
24 Any prospective bidder must serve notice of intent to overbid, and provide a statement of  
25 qualifications to perform the obligations of the Reorganized Debtor, by delivery of such notice and  
26 statement to the office of counsel for the Debtor, no later than five (5) court days prior to the date

1 first set for the Confirmation Hearing.

2 **F. Manner of Funding of Plan:**

3 The manner of funding the plan is described above. In sum, Debtor will pay claims through  
4 a process of (1) performing tenant improvements at the Property to permit the units to become  
5 move-in ready for prospective tenants and purchasers; (2) lease the improved units to currently  
6 waiting and other new third party tenants; and (3) market and sell condominiums during the term  
7 of the Plan. This Plan will permit Debtor to simultaneously obtain increased cash flow from the  
8 Property while also selling certain units, both of which will permit Debtor to pay creditors during  
9 the term of the Plan. Debtor has engaged Collier's International to assist with the sale and/or lease  
10 of the Property.

11 Debtor will use the Seized Funds to make tenant improvements, to pay claims in Clases A  
12 and B, and to make interest payments. Debtor will also fund the Plan from any net litigation  
13 proceeds, and likewise contemplates payment of certain claims and Plan expenses from available  
14 cash.

15 **G. Term of the Plan:**

16 The Term of the Plan is five years. The term of the Plan will commence on the 180<sup>th</sup> day  
17 after the Effective Date.

18 **VII. COMPARISON WITH CHAPTER 7**

19 **A. Chapter 11 Reorganization and Chapter 7 Liquidation**  
20 **Alternatives**

21 If Debtor's proposed Chapter 11 Plan is not confirmed, the potential alternatives would  
22 include proposal of a different plan, dismissal of the case, or conversion of the case to Chapter 7.  
23 If this case is converted to Chapter 7, a trustee will be appointed to liquidate and distribute the  
24 Debtor's assets.

25 **B. Chapter 11 Distribution Scheme**

26 In the event that Debtor's Chapter 11 Plan is confirmed, Debtor anticipates the following



distribution to creditors (the analysis accounts for the full value of the assets being distributed by the end of the Plan):

Analysis if the Bank is Deemed Secured

Classes of Claims	Claim Amounts	Diminishing Balances of Estate Funds	% Dividend
Beginning Balance		\$13,793,829 (minimum)	
Class A	\$60,000	\$13,733,829	100%
Class C-1	\$11,200,000	\$2,533,829	100%
Class C-2	\$154,165	\$2,379,664	100%
Classes D, E, and F <sup>8</sup>	\$10,684,885	\$0	22% <sup>9</sup>

Analysis if the Bank is Deemed Unsecured

Classes of Claims	Claim Amounts	Diminishing Balances of Estate Funds	% Dividend
Beginning Balance		\$13,793,829 (minimum)	
Class A	\$60,000	\$13,733,829	100%
Class C-1	\$0	\$13,733,829	0%
Class C-2	\$154,165	\$13,579,664	100%
Classes D, E, and F <sup>10</sup>	\$21,884,885	\$0	62%

**C. CHAPTER 7 DISTRIBUTION SCHEME**

In the event that the case is converted to a Chapter 7 case, Debtor anticipates the following distribution:

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<sup>8</sup> The aggregate amount of these claims would be as stated herein, in addition to an unsecured portion of EWB's claim in the amount of 8,726,093 (which would be the difference between the amount stated in its Proof of Claim less the secured amount of \$11,200,000).

<sup>9</sup> This percentage could be considerably higher depending on the value of the property.

<sup>10</sup> This calculation accounts for the bank's claim being fully unsecured.

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Analysis if the Bank is Deemed Secured

<b>Classes of Claims</b>	<b>Claim Amounts</b>	<b>Diminishing Balances of Estate Funds</b>	<b>% Dividend</b>
Beginning Balance		\$12,050,000	
Expenses of Administration <sup>11</sup>	\$200,000	\$11,850,000	100%
Class C-2 <sup>12</sup>	\$154,165	\$11,695,835	100%
Class C-1	\$11,200,000	\$495,835	100%
Classes D, E, and F <sup>13</sup>	\$10,684,885	\$0	4%

Analysis if the Bank is Deemed Unsecured

<b>Classes of Claims</b>	<b>Claim Amounts</b>	<b>Diminishing Balances of Estate Funds</b>	<b>% Dividend</b>
Beginning Balance		\$12,050,000 (minimum)	
Expenses of Administration	\$200,000	\$11,850,000	100%
Class C-1	\$0	\$11,850,000	0%
Class C-2	\$154,165	\$11,695,835	100%
Classes D, E, and F	\$21,884,885	\$0	53%

<sup>11</sup> This amount includes administrative claims for Debtor's counsel, as well as the Chapter 7 Trustee's fees, professional fees, and real estate broker fees.

<sup>12</sup> In a liquidation analysis the Class C-2 claim would be paid prior to the C-1 claim.

<sup>13</sup> The aggregate amount of these claims would be as stated herein, in addition to an unsecured portion of EWB's claim in the amount of 8,726,093 (which would be the difference between the amount stated in its Proof of Claim less the secured amount of \$11,200,000).

1 **VIII. FEASIBILITY**

2 **A. The Value of the Assets Exceeds the Amount of Claims**

3 The Plan is feasible based upon the value of the Property. Debtor estimates the value of the  
4 Property to be \$24,000,000, and based upon this valuation the assets of the estate exceed existing  
5 claims such that the Plan is undeniably feasible. Debtor has engaged Collier's International to  
6 assist with the sale of the Property, and Debtor anticipates that the sale of the Property will permit  
7 it to pay creditors in full.

8 Further, the estate holds approximately \$1,000,000 in cash, and therefore has the ability to  
9 immediately begin performing the tenant improvements which should dramatically assist the sale  
10 and rental of the condominiums.

11 **B. The Plan is Feasible Because The Bank's Claim Will Likely Be Determined to**  
12 **Be Unsecured and Because the Bank has Adopted by Judicial Estoppel and**  
**Otherwise a Secured Claim of \$11,200,000**

13 The Plan is especially feasible given that EWB will likely be determined to be unsecured.  
14 California law is clear that when a bank proceeds first against a Debtor's bank account, and does  
15 not promptly return the funds, the result is that the bank loses any security interest in real property  
16 based upon the Security First Rule. Application of the rule in this case would create a scenario  
17 whereby there is only one secured creditor, namely the Tax Collector for the County of Alameda,  
18 and the Plan contemplates that that secured creditor will be paid from cash currently on hand. The  
19 result is that *all* of Debtor's net income would be paid to the various classes of remaining  
20 unsecured creditors pursuant to the terms of the Plan. This alters the landscape because funds that  
21 otherwise would have been required to be paid to the secured creditor on a monthly basis would  
22 instead be paid to all unsecured creditors. As such, there exists no feasibility issue, regardless of  
23 any dispute regarding value of the Property.

24 Additionally, the lawsuit against the bank will also generate a further fund from which to  
25 pay creditors, with damages to be calculated at trial.

26 The Plan is also feasible inasmuch as the position adopted by EWB allows, indeed requires,

1 treatment of a secured claim of \$11,200,000 (as opposed to some other amount).

2 **C. Debtor Has Prospective Tenants Desirous of Occupying the Property Upon**  
3 **Completion of the Tenant Improvements, and the Additional Income Will**  
4 **Provide Funds for Payment to Creditors**

5 The frustration for Debtor to date, and one of the primary reasons that this bankruptcy case  
6 was necessary, is that the banks seized the funds from which Debtor intended to perform  
7 immediate tenant improvements. Debtor has had prospective tenants ready to occupy the Property  
8 upon completion of tenant improvements, and has remained in communication with these  
9 prospective tenants. Debtor anticipates that each of these prospective tenants is still desirous of  
10 entering into leases with Debtor, and Debtor has engaged in negotiations with these tenants  
11 regarding move-in dates. The additional rent generated from the rental of condominiums will  
12 provide funds from which to pay creditors. This additional fund allows for a feasible plan whether  
13 or not the bank is deemed to be secured.

14 Initially, Debtor currently maintains cash on hand in the amount of approximately  
15 \$1,000,000. As such, the performance of tenant improvements and other costs designated in the  
16 Plan are feasible.

17 With regard to current income and expenses, Debtor's current budget is as follows:

18 Current Expenses

19 Gas and Electricity	\$1,500
20 Water and Sewage:	\$1,500
21 Waste & Recycling:	\$400
22 Phone:	\$150
23 Sweeping/Landscape:	\$2,000
24 Maintenance:	\$500
25 Fire Monitor:	\$400
26 Insurance:	\$2,000
<u>Property Taxes:</u>	<u>\$15,000</u>
Total:	\$23,450

Current Income

East West Bank:	\$14,465.75
Cyclo Café:	\$3,920
<u>Pho Appetite:</u>	<u>\$5,600</u>
Total:	23,985

1 Accordingly, Debtor's current operations generate a profit of \$535 per month.

2 Debtor currently expects to have two tenants move in immediately upon completion of  
3 tenant improvements. The tenants and prospective rents are (1) Banquet Hall (\$15,600 per month);  
4 and (2) David Collection and Design or other tenant (\$18,704 per month). Based upon its  
5 projections and current efforts to rent the condominiums Debtor projects that with tenant  
6 improvements it will generate further additional tenants and rents, in addition to the previously  
7 stated rents, as follows: August \$5,376; September \$9,984.71; October \$18,854.71; November  
8 \$38,854.71; December \$48,854.71.

9 Based upon these figures, the income as of the 150<sup>th</sup> day after the Effective Date, which  
10 would likely be on or about October 1, 2010, will be as follows:

11 Income (October, 2010)

12	East West Bank:	\$14,465.75
	Cyclo Café:	\$3,920
13	Pho Appetite:	\$5,600
	Banquet Hall:	\$15,600
14	David Collection:	\$18,704
	<u>Other:</u>	<u>\$18,854.71</u>
15	Total:	\$77,144.46

16 At such time Debtor would also have cash reserves from the 60 day period between August and  
17 October, 2010. For August and September, 2010, the income for current tenants, in addition to the  
18 Banquet Hall and David Collection (but not including the "other" category of prospective tenants)  
19 will be the sum of \$58,289 less expenses of \$23,450, for an excess of \$34,839 per month. As such,  
20 Debtor will have a reserve of approximately \$70,000, and will be capable of commencing  
21 payments in the event that the Class C-1 claim is deemed secured.

22 Further, as of December, 2010, the income will be as follows:

23 Income (December, 2010)

24	East West Bank:	\$14,465.75
	Cyclo Café:	\$3,920
25	Pho Appetite:	\$5,600
	Banquet Hall:	\$15,600
26	David/Other :	\$18,704
	<u>Other:</u>	<u>\$48,854.71</u>

1           Total:                           \$109,484.46

2   This calculation would yield net profits of \$83,034.46 if the Class C-1 claim is unsecured (i.e.,  
3   \$109,484.46 less \$23,450), and net profits of \$30,034 if the bank is deemed secured and entitled to  
4   the monthly interest payments of \$56,000 (i.e., \$109,484.46 less \$56,000 and \$23,450).

5           Based upon these projections, the Plan is feasible, and the improvement and rental of the  
6   Property will provide income for interest (if allowable) and net profits.

7   **X.       PROPOSED MANAGEMENT AND SALARIES AFTER CONFIRMATION**

8           Thomas Nguyen will remain the central manager of Debtor (subject to any overbidder  
9   succeeding to his obligations), and will continue to act as the Debtor's managing member after  
10   confirmation. Thomas Nguyen will not receive a salary during the term of the Plan.

11   **XI.      EXECUTORY CONTRACTS**

12           Debtor will assume the Class D contracts, and will assume the leases of each current tenant  
13   currently occupying the Property pursuant to a lease.

14   **XII.     LITIGATION**

15           The Plan provides that Debtor is authorized to commence actions which it deems necessary  
16   without the necessity of Court approval, including but not limited to actions to the action against  
17   EWB.

18   **XIII.    CONCLUSION**

19           Debtor urges that the Plan will provide a means for payment to creditors, will likely result  
20   in the fullest potential dividend to creditors, and will permit the reorganized debtor to continue as  
21   an ongoing entity after completion of the bankruptcy case.

22   **IX.      CERTIFICATION**

23           The undersigned hereby certifies that the information herein is true and correct, to the best  
24  
25  
26

1 of my knowledge and belief, formed after reasonable inquiry.

2 Dated: March 3, 2010

SAIGON VILLAGE, LLC

3

By: /s/ Thomas Nguyen  
Thomas Nguyen  
Responsible Individual

5

6 Dated: March 3, 2010

COHEN AND JACOBSON, LLP

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By: /s/ Lawrence A. Jacobson  
Lawrence A. Jacobson

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