

1 Tara J. Schleicher, OSB #954021
TSchleicher@fwwlaw.com
2 Peter C. McKittrick, OSB #852816
PMcKittrick@fwwlaw.com
3 Christopher L. Parnell, OSB #054352
CParnell@fwwlaw.com
4 Farleigh Wada Witt
121 SW Morrison Street, Suite 600
5 Portland, Oregon 97204-3136
Telephone: (503) 228-6044

6 Attorneys for Debtor

7
8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In re
11 Salpare Bay, LLC,
12 Debtor.

Case No. 10-35333-tmb11

DEBTOR'S CHAPTER 11 DISCLOSURE
STATEMENT (SEPTEMBER 7, 2010)

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1
2 **I. INTRODUCTION AND SUMMARY OF PLAN**

3 **A. INTRODUCTION**

4 On June 7, 2010 (the "Petition Date"), Salpare Bay, LLC ("Debtor" or "Salpare")
5 filed a voluntary petition under chapter 11 of Title 11 of the United States Code (the
6 "Bankruptcy Code"). The Debtor is seeking acceptance of Debtor's Plan of Reorganization (the
7 "Plan") by the creditors of the Debtor's estate. This Disclosure Statement (the "Disclosure
8 Statement") describes:

- 9
- 10 • Historical information regarding the Debtor and the events leading to its
11 bankruptcy filing.
 - 12 • Significant events since the bankruptcy filing.
 - 13 • How the Plan proposes to treat claims of the type you hold (i.e., what you
14 will receive on your claim if the Plan is confirmed).
 - 15 • Who can vote on or object to the Plan.
 - 16 • What factors the Bankruptcy Court (the "Court") will consider when
17 deciding whether to confirm the Plan.
 - 18 • Why the Debtor believes the Plan is feasible, and how the treatment of
19 your Claim under the Plan compares to what you would receive on your Claim in liquidation.
 - 20 • The effect of confirmation of the Plan.

21 A copy of the Debtor's Chapter 11 Plan (the "Plan") is attached hereto as
22 Exhibit 1. You are urged to review the Plan and, if appropriate, consult with counsel about the
23 Plan and its impact on your legal rights before voting on the Plan. Capitalized terms used but not
24 defined in this Disclosure Statement shall have the meanings assigned to such terms in the Plan
25 or the Bankruptcy Code.

26 This Disclosure Statement has been prepared by the Debtor based upon its
knowledge and information in Debtor's books and records. The information contained herein

1 has been prepared in good faith, based upon information available. The information concerning
2 the Plan has not been subject to a verified audit. The Debtor believes this Disclosure Statement
3 complies with the requirements of the Bankruptcy Code.

4 The statements contained in this Disclosure Statement are made as of the date
5 hereof, unless another time is specified herein, and the delivery of this Disclosure Statement shall
6 not imply that there has been no change in the facts set forth herein since the date of this
7 Disclosure Statement and the date of the material relied on in preparation of this Disclosure
8 Statement was compiled. The description of the Plan contained in this Disclosure Statement is
9 intended as a summary only and is qualified in its entirety by reference to the Plan itself. If any
10 inconsistency exists between the Plan and this Disclosure Statement, the terms of the Plan are
11 controlling. Each holder of a Claim is encouraged to read, consider and carefully analyze the
12 terms and provisions of the Plan.

13 This Disclosure Statement may not be relied on for any purpose other than to
14 determine how to vote on this Plan. Nothing contained herein shall constitute an admission of
15 any fact or liability by any party, or be admissible in any proceeding involving Debtor or any
16 other party, or be deemed conclusive advice on the tax or other legal effects of the reorganization
17 on the holders of Claims or Interests.

18 The Debtor submits this Disclosure Statement in accordance with Section 1125 of
19 the Bankruptcy Code and Bankruptcy Rule 3016. The Bankruptcy Court has scheduled a
20 hearing on confirmation of the Plan to commence on _____, 2010 at _____. The
21 Bankruptcy Court will hold that hearing at the United States Bankruptcy Court for the District of
22 Oregon, Courtroom No. 4, 1001 SW Fifth Avenue, Portland, Oregon 97204 before the
23 Honorable Trish M. Brown. The hearing on confirmation may be adjourned from time to time
24 by the Bankruptcy Court without further notice, except for an announcement made at the hearing
25 or any adjournment thereof.

26 ///

1 A ballot has been enclosed with this Disclosure Statement for use in voting on the
2 Plan. In order to be tabulated for purposes of determining whether the Plan has been accepted or
3 rejected, ballots must be received at the address indicated on the ballot no later than 4:00 p.m. on
4 _____, 2010.

5 **B. SUMMARY OF PLAN**

6 A copy of the Plan is attached hereto as Exhibit 1. The following description of
7 the Plan is intended as a summary only and is qualified in its entirety by reference to the Plan.
8 The Debtor urges each holder of a Claim to carefully review the entire Plan, together with this
9 Disclosure Statement, before voting on the Plan.

10 The Debtor will refinance the Property through an FHA loan,¹ which will allow
11 the Debtor to develop a multi-family residential project in two (2) phases around the Marina,
12 with Creditors holding Allowed Claims secured by perfected construction liens to be paid in full
13 by June of 2013. Creditors with Unsecured Claims will be paid from either or both additional
14 loan proceeds or Net Operating Income (to the extent it does not cause the Debtor to default
15 under its loan documents) generated by the Debtor post-confirmation.

16 The only Secured Creditors in this case are the county taxing authorities and
17 Creditors asserting that they hold a Claim secured by a perfected Construction Lien asserted
18 under Oregon law or by judgment. The Debtor will partition the Property three ways: (1) the
19 Marina; (2) Phase 1;² and (3) Phase 2.³ The FHA lender will obtain a first lien on Phase 1 of the
20 Property. Upon the closing of the FHA loan, and when the Debtor makes its initial payment to

21 _____
22 ¹ Alternatively, the Debtor will obtain a conventional loan to develop the Property. *See* Section VI.B.1
for further discussion.

23 ² The Debtor intends to develop the first phase of the multi-family residential project with approximately
24 166 apartment units and ancillary improvements where Building C currently sits on the Property, as
indicated on Exhibit 2 hereto.

25 ³ Phase 2 means the development of the remainder of the planned approximately 371 multi-family
26 residential units as indicated on Exhibit 2 hereto.

1 the Creditors holding a claim secured by an Allowed Construction Lien, each such Claimant will
2 retain its lien on Phase 2 with the same priority such lien had on the Petition Date. Such
3 Claimants will be paid in full by June of 2013 from loan proceeds obtained by the Debtor. Small
4 creditors with Unsecured Claims equal to or less than \$2,000 will be paid 100% of their Allowed
5 Claim in Cash, with 25% being paid within sixty (60) days of the Effective Date of the Plan and
6 the remaining 75% being paid on or before October 31, 2011. Creditors holding General
7 Unsecured Claims will receive Pro Rata distributions of 30% of Net Operating Income generated
8 by the Reorganized Debtor on a quarterly basis for five (5) years. All post-petition and
9 Administrative Expense Claims will be paid upon the Effective Date unless such claimant agrees
10 to different treatment in writing. All current equity interests will be cancelled and new equity
11 may be issued as set forth in more detail in the Plan.

12 All unexpired leases and executory contracts will be rejected by the Debtor
13 through the Plan unless such unexpired leases and executory contracts have previously been
14 assumed and assigned, or rejected, or a motion seeking their assumption or rejection has been
15 Filed before the Confirmation Date.

16 The Effective Date of the Plan shall be _____, 20__ or the 10th day
17 following entry of the Confirmation Order, whichever is later.

18 In the event that any Class of Creditors of the Debtor does not accept the Plan, the
19 Debtor reserves the right to request that the Bankruptcy Court confirm the Plan in accordance
20 with Section 1129(b) of the Bankruptcy Code or otherwise modify the Plan.

21 **C. BRIEF EXPLANATION OF CHAPTER 11**

22 Chapter 11 of the Bankruptcy Code is the principal reorganization provision of
23 the Bankruptcy Code. Pursuant to Chapter 11, a debtor attempts to reorganize its business for
24 the benefit of the debtor, its creditors, and other parties in interest.

25 The formulation and confirmation of a plan of reorganization is the principal
26 purpose of a Chapter 11 case. A plan of reorganization sets forth a proposed method for

1 compensating the holders of claims and interests in the debtor. A claim or interest is impaired
2 under a plan of reorganization if the plan provides that the legal, equitable or contractual rights
3 of the holder of such claim or interest are altered. A holder of an impaired claim or interest is
4 entitled to vote to accept or reject the plan. Chapter 11 does not require all holders of claims and
5 interests to vote in favor of a plan in order for the Bankruptcy Court to confirm it. However, the
6 Bankruptcy Court must find that the plan meets a number of statutory tests before it may approve
7 the plan. These tests are designed to protect the interests of the holders of claims or interests
8 who do not vote to accept the plan, but who will nonetheless be bound by the plan's provisions if
9 it is confirmed by the Bankruptcy Court.

10 An official committee of unsecured creditors is appointed by the United States
11 Trustee's office in most Chapter 11 cases to, among other things, negotiate the plan of
12 reorganization on behalf of the unsecured creditors of the debtor. A committee of unsecured
13 creditors was not appointed by the United States Trustee in this case.

14 **II. VOTING PROCEDURES AND CONFIRMATION OF A PLAN.**

15 **A. BALLOTS AND VOTING DEADLINE**

16 A ballot to be used for voting to accept or reject the Plan is enclosed with each
17 copy of this Disclosure Statement mailed to all Creditors entitled to vote. After carefully
18 reviewing this Disclosure Statement and its exhibits, including the Plan, please indicate your
19 acceptance or rejection of the Plan by voting in favor or against the Plan on the enclosed ballot as
20 directed below.

21 The Bankruptcy Court had directed that, to be counted for voting purposes, ballots
22 for acceptance or rejection of the Plan must be received no later than 4:00 p.m. Pacific time, on
23 _____, 2010 by the Debtor at the following address:

24 Farleigh Wada Witt
25 Attn: Diane Fallon
26 121 SW Morrison, Ste. 600
Portland, OR 97204

1 or via facsimile transmission to Diane Fallon at (503) 228-1741, or via e-mail in pdf format to
2 dfallon@fwwlaw.com.

3
4 Holders of each Claim that was scheduled by the Debtor or with respect to which
5 a Proof of Claim has been Filed for which no objection is pending will receive ballots and are
6 permitted to vote based on the amount of the Proof of Claim. If no Proof of Claim has been
7 Filed, then the vote will be based on the amount scheduled by the Debtor in its Schedules.
8 Holders of Disputed Claims who have settled their dispute with the Debtor are entitled to vote
9 the settlement amount of their Claim. The Bankruptcy Code provides that such votes will be
10 counted unless the Claim has been disputed, disallowed, disqualified or suspended prior to
11 computation of the vote on the Plan. The Claim to which an objection has been Filed is not
12 allowed to vote unless and until the Bankruptcy Court rules on the objection. The Bankruptcy
13 Code provides that the Bankruptcy Court may, if requested to do so by the holder of such claim,
14 estimate or temporarily allow a Disputed Claim for the purposes of voting on the Plan.

15 If a person holds Claims in more than one class entitled to vote on the Plan, such
16 person will be entitled to complete and return a ballot for each Class. If you do not receive a
17 ballot or if a ballot is damaged or lost, please contact:

18 Farleigh Wada Witt
19 Attn: Diane Fallon
20 121 SW Morrison, Ste. 600
21 Portland, OR 97204
22 Telephone Number: (503) 228-6044

23 All persons entitled to vote on the Plan may cast their vote for or against the Plan
24 by completing, dating and signing the enclosed ballot and returning it, by First Class Mail or
25 hand delivery, to the Debtor, at the address indicated above. In order to be counted, all ballots
26 must be executed and received at the above address no later than 4:00 Pacific time on _____, 2010. Any ballots received after 4:00 p.m. Pacific time on _____, 2010 will not be included in any calculation to determine whether the parties entitled to vote on the Plan

1 have voted to accept or reject the Plan.

2 Ballots may be received by the Debtor by facsimile transmission to Farleigh
3 Wada Witt, Attn: Diane Fallon at (503) 228-1741. Ballots sent by facsimile transmission will be
4 counted if faxed to Ms. Fallon by 4:00 p.m. Pacific time on _____, 2010.

5 When a ballot is signed and returned without further instruction regarding
6 acceptance or rejection of the Plan, the signed ballot shall be counted as a vote accepting the
7 Plan. When a ballot is returned indicating acceptance or rejection of the Plan but is unsigned, the
8 unsigned ballot will not be included in any calculation to determine whether parties entitled to
9 vote on the Plan have voted to accept or reject the Plan. When a ballot is returned without
10 indicating the amount of the Claim, the amount shall be as set forth on the Debtor's Schedules or
11 any Proof of Claim Filed with respect to such Claim.

12 **B. PARTIES ENTITLED TO VOTE**

13 Pursuant to Section 1126 of the Bankruptcy Code, each class of impaired claims
14 or interests that is not deemed to reject the Plan is entitled to vote to accept or reject the Plan.
15 Any holder of an Allowed Claim that is in an impaired class under the Plan, and whose Class is
16 not deemed to reject the Plan, is entitled to vote. A Class is "impaired" unless the legal,
17 equitable and contractual rights of the holders of claims in that Class are left unaltered by the
18 Plan or if the Plan reinstates the Claims held by members of such Class by (1) curing any
19 defaults, (2) reinstating the maturity of such claim, (3) compensating the holder of such claim for
20 damages that result from the reasonable reliance on any contractual provision of law that allows
21 acceleration of such claim and (4) otherwise leaving unaltered any legal, equitable or contractual
22 right of which the Claim entitled the holder of such claim. Because of their favorable treatment,
23 classes that are not impaired are conclusively presumed to accept the Plan. Accordingly, it is not
24 necessary to solicit votes from the holders of claims in classes that are not impaired.

25 Classes of Claims or Interests that will not receive or retain any money or
26 property under a Plan on account of such Claims or Interests are deemed, as a matter of law

1 under Section 1126(g) of the Bankruptcy Code, to have rejected the Plan and are likewise not
2 entitled to vote on the Plan. The current ownership interests classified as Class 10 are such a
3 class and are deemed to have rejected the Debtor's Plan.

4 Class 1 (Other Priority Creditors) and Class 6 (County Secured Claim for
5 Property Taxes) are not impaired and, therefore, are deemed to have accepted the Plan. All other
6 Classes of Claims are impaired under the Plan, and persons holding Claims are entitled to vote to
7 accept or reject the Plan.

8 **C. VOTES REQUIRED FOR CLASS ACCEPTANCE OF THE PLAN**

9 As a condition to confirmation, the Bankruptcy Code requires that each impaired
10 Class of Claims or Interests accept the Plan, subject to the exceptions described below in the
11 section entitled "Cram Down of the Plan." At least one impaired Class of Claims must accept
12 the Plan in order for the Plan to be confirmed.

13 For a Class of Claims to accept a plan, Section 1126 of the Bankruptcy Code
14 requires acceptance by Creditors that hold at least two-thirds in dollar amount and a majority in
15 number of the Allowed Claims of such Class, in both cases counting only those claims actually
16 voting to accept or reject the Plan. If the Plan is confirmed, the Plan will be binding with respect
17 to all holders of Claims and Interests in each Class, including Classes and members of Classes
18 that did not vote or that voted to reject the Plan.

19 **D. "CRAM DOWN" OF THE PLAN**

20 If the Plan is not accepted by all of the Impaired Classes of Claims, the Plan may
21 still be confirmed by the Bankruptcy Court pursuant to Section 1129(b) of the Bankruptcy
22 Code's "Cram Down" provision if the Plan has been accepted by at least on Impaired Class of
23 Claims, without counting the acceptances of any Insiders of the Debtor, and the Bankruptcy
24 Code determines, among other things, that the Plan "does not discriminate unfairly" and "is fair
25 and equitable" with respect to each non-accepting Impaired Class of Claims or Interests. The
26 Debtor believes that the Plan can be confirmed even if it is not accepted by all impaired Classes

1 of Claims.

2 **E. CONFIRMATION HEARING**

3 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to
4 commence on _____, 2010, at _____. The Confirmation Hearing will be held at
5 the United States Bankruptcy Court for the District of Oregon, Courtroom No. 4, 1001 SW Fifth
6 Avenue, 9th Floor, Portland, Oregon, before the Honorable Trish M. Brown, United States
7 Bankruptcy Judge. At the hearing, the Bankruptcy Court will consider whether the Plan satisfies
8 the various requirements of the Bankruptcy Code, including whether it is feasible and whether it
9 is in the best interests of the creditors of the Debtor. At that time, the Debtor will submit a report
10 to the Bankruptcy Court concerning the votes for acceptance or rejection of the Plan by the
11 persons entitled to vote thereon.

12 Section 1128(b) of the Bankruptcy Code provides that any party in interest may
13 object to confirmation of the Plan. Any objections to confirmation of the Plan must be made in
14 writing and filed with the Bankruptcy Court and received by counsel for the Debtor no later than
15 _____, 2010, by 4:00 p.m. Pacific time. Unless an objection to confirmation is timely filed
16 and received, it may not be considered by the Bankruptcy Court.

17 **III. BACKGROUND AND GENERAL INFORMATION**

18 **A. PROPERTY DEVELOPMENT**

19 Salpare and Harbor Investors, LLC (“Harbor”) are the owners of real property on
20 Hayden Island, Portland, Oregon that was to be developed into a luxury riverfront planned
21 community of 204 high-end residential water view condominium units commonly known as
22 Salpare Bay (the “Project”). Salpare and Harbor own the Project with an undivided 85% and
23 15% interest, respectively, pursuant to a joint tenancy agreement. Salpare began construction in
24 approximately 2005 on the related marina and other horizontal improvements. The Project
25 presently includes 24.5 acres of land, a marina, 200 feet of beach on the Columbia River,
26 14 acres of water, 204 slips to accommodate large crafts and amenities and facilities such as

1 wireless internet, cable television, laundry, showers and dump station facilities.

2 BankFirst, Inc. (“BankFirst”) was the lead lender of 41 participating lenders who
3 promised \$63 million in construction financing (the “Loan”) for the Project. However, after it
4 received nearly \$1 million in loan fees at the closing of the Loan in December 2006, BankFirst
5 was dilatory in funding the Loan. Later, in June 2007, it stopped funding the Loan entirely based
6 on a pretextual default, claiming Salpare and Harbor had failed to fulfill certain presold unit
7 requirements that BankFirst had previously waived on numerous occasions. Moreover,
8 BankFirst misled Salpare into proceeding with construction, even though as it turns out,
9 ultimately, it had no ability to fund the Loan. Notably, Salpare was in full compliance with the
10 Loan terms, including fulfilling all monthly payment obligations.

11 In the meantime, despite Salpare’s compliance with the Loan, unbeknownst to the
12 guarantor Michael DeFrees (“DeFrees”), BankFirst confiscated DeFrees’ \$4 million bank
13 account that was provided as additional collateral for the Loan that he had intended to use to
14 fund the Project. BankFirst, realizing that it had problems declaring a default under these
15 conditions without a release of Salpare’s claims, demanded under a threat of default and
16 foreclosure, execution of a first amendment of the Loan documents (the “First Amendment”) that
17 purported to resurrect and reinstate the presale conditions that it waived; required Salpare to
18 fulfill the resurrected conditions by selling \$50 million in units in what was ultimately a two-
19 week period; retroactively required Salpare to bless BankFirst’s unlawful confiscation of
20 DeFrees’ bank account; and provided for a release and waiver of all claims against BankFirst for
21 its wrongful conduct. Salpare and Harbor complained that the First Amendment was impossible
22 to fulfill, lacked any consideration and was simply unlawful. BankFirst rejected such
23 complaints. BankFirst reiterated its threat of foreclosure and added a promise to negotiate a
24 further extension after the First Amendment was executed. Although Salpare executed the First
25 Amendment, BankFirst did not negotiate further for an extension as promised.

26 What Salpare and Harbor did not know, and BankFirst did not disclose to them

1 during these events, was that BankFirst was having its own financial problems. Within days
2 after Salpare and Harbor signed the First Amendment, on August 7, 2007 BankFirst executed
3 with the Federal Reserve an agreement (“Consent Order”) which limited its funding of future
4 loans to the maximum amount on BankFirst’s books as of March 12, 2007, which was about the
5 time that BankFirst’s funding of the Loan slowed nearly to a stop.

6 As a result of BankFirst’s failure to fund the Loan, all construction at the Project
7 ceased. The contractor JE Dunn Northwest Inc. (“Dunn”) and other subcontractors (the
8 “Construction Claimants”) filed liens and on or about October 26, 2007. They in turn filed an
9 action on their construction claims (“Construction Claims”) in that case known as *J.E.Dunn*
10 *Northwest, Inc. v. Salpare Bay, LLC, et. al.* in the Circuit Court of the State of Oregon,
11 Multnomah County, Case No. 0710-12536 (the “Dunn Action”). Thereafter, the Project
12 deteriorated. The sales agents and team quit; purchasers of the presold units cancelled their
13 purchases and withdrew their deposits; and the development came to a halt in all respects by the
14 end of 2007.

15 In the Dunn Action, BankFirst asserted claims based on the Loan against Salpare,
16 Harbor, DeFrees, Columbia Rim Construction, Inc. and Columbia Rim Corporation (collectively,
17 the “Salpare Parties”). The Salpare Parties counterclaimed against BankFirst and the participant
18 lenders, originally identified only as the “DOES,” because their identity was not known. The
19 Salpare Parties claimed \$130 million in damages, plus any penalties and attorneys’ fees that may
20 be awarded for breach of contract, negligence, interference with contract, promissory estoppel,
21 conversion, breach of good faith and fair dealing, breach of fiduciary duty, four counts of fraud,
22 negligent misrepresentation, rescission and violation of Oregon Racketeer Influenced and
23 Corrupt Organization Act.

24 The Dunn Action was bifurcated between the Construction Claims and the Loan
25 claims. When a Limited Judgment was about to be entered in the Dunn Action on the
26 Construction Claims, BankFirst’s assets were seized by the Federal Deposits and Insurance

1 Corporation (“FDIC”). After the FDIC removed the entire Dunn Action, a Limited Judgment
2 was entered in the Circuit Court of the State of Oregon on September 9, 2009, which Salpare
3 contends had no effect since the Dunn Action had been removed. To further add to the problems
4 with that Limited Judgment, it was entered *nunc pro tunc* to April 21, 2009, thus invalidly
5 cutting off parties’ appeal rights. Following the transfer of the Dunn Action back to the Circuit
6 Court of State of Oregon, an Order Reaffirming the Limited Judgment was signed and entered on
7 January 22, 2010, but no separate Limited Judgment was entered on that date and the Order
8 Reaffirming the Limited Judgment did not correct the inappropriate nunc pro tunc entry that cut
9 off parties’ appeal rights.

10 After the Dunn Action was returned to the Circuit Court of the State of Oregon, it
11 was further bifurcated with BankFirst’s and the Salpare Parties’ claims removed to Federal Court
12 for disposition in the United States District Court for the District of Oregon Case No. 10-373-PK
13 (the “Federal Case”). In those proceedings, the Salpare Parties identified and served the
14 participant lenders requiring that they appear and defend against the Salpare Parties’ claims.⁴ In
15 the Federal Case, the Salpare Parties and George Killian, on the one hand, and the FDIC and
16 participants on the other, entered into a settlement on the record on June 2, 2010 that resolved all
17 claims between them. In the meantime, Dunn sought to proceed with an execution sale on the
18 Limited Judgment for the Construction Claims, with a foreclosure sale scheduled for June 8,
19 2010.

20 The Salpare Parties, the FDIC for BankFirst, and the loan participants entered into
21 a written settlement agreement on or about June 7, 2010, pursuant to which all parties agreed to
22 dismiss the Federal Case and the Salpare Parties released their claims against BankFirst, the loan
23 participants and the FDIC (the “Settlement”). As a result of the Settlement and in consideration
24 of the Salpare Parties’ release of their claims (the value of which was equal to or exceeded the

25 _____
26 ⁴ During the litigation the identity of the participants was learned as the result of an Order obtained by the
Salpare compelling BankFirst to provide discovery.

1 Loan balance), the FDIC for BankFirst and the loan participants have agreed not to seek payment
2 on the Loan from Salpare or Harbor. The only Secured Claims against the Property are those
3 held by construction lien claimants and real property taxing authorities, all totaling
4 approximately \$7.5 million.

5 Salpare currently operates a high-end marina business with 204 slips on the
6 Property. The Marina was completed in 2007 and became operational in the Spring of 2007.
7 The Marina is an extremely attractive and appealing operation situated on the Columbia River,
8 having been constructed and dredged at significant cost by Salpare. Salpare maintains a
9 clubhouse for the Marina with laundry, kitchen, bathroom and shower facilities and rents out a
10 yacht sales office. It contracts for catering events, repair and cleaning of boats and provides
11 other services and goods for compensation to its lessees. Each slip has dockside access to
12 electricity, water and internet service. Moreover, the Marina has extrinsic value in that it is the
13 only marina in Oregon that has fee title ownership for each slip. Therefore, there is an
14 opportunity for the slips at the Marina to be sold individually and not subject to any leasehold
15 interest held by a governmental authority.

16 Due to the changes in the overall economic climate since 2005, the Debtor now
17 plans to construct approximately 371 apartment units on Phase 1 and Phase 2 of the Property.
18 The building pads at Building C for the previously planned condominium project are anticipated
19 to serve as the foundation for Phase 1 of the proposed multi-family development. Salpare
20 intends to develop the Property in two (2) phases, with the first phase comprised of
21 approximately 166 apartment units and ancillary improvements.

22 Salpare currently maintains temporary parking for the Marina on the industrial
23 zoned portion of the Property. Salpare has filed an application to construct permanent parking
24 for the Marina on the Property and has filed an application to employ land use counsel, Dorothy
25 Cofield, to assist it in obtaining the application from the City of Portland as well as to possibly
26 divide the commercial zoned land from the marina, which it believes will generate more options

1 for the development of the Property as a multi-family residential and marina project.

2 Salpare has begun the process to obtain funding to develop the initial phase of the
3 Project, and has generated interest from lenders. Salpare has hired Obsidian Finance Group to
4 provide financial consulting services to it in its endeavors to develop the Property and obtain
5 financing for it. Salpare has also hired Steven Wiltshire of Marcus & Millichap (“M&M”), a
6 financial services broker, who has issued a pre-qualification approval letter and term sheet to the
7 Debtor for purposes of funding the development of the Project. That pre-qualification states that
8 M&M is “highly confident” that the Debtor can successfully obtain an FHA 221(d) mortgage
9 loan. The M&M term sheet provides that Salpare is prequalified for an FHA loan in the amount
10 of \$24,194,000 or 83.3% loan to cost or the minimum of 1.20 Debt Coverage Ratio using market
11 income proforma or validated market income and expense components, whichever is less. The
12 construction period is to be 14 months to allow for 12 months construction and two months for
13 cost certification. Upon issuance of a Certificate of Occupancy, the loan will be converted to a
14 40-year fixed term with a 40-year amortization, with a loan rate of 5.15%. The loan will be non-
15 recourse. The loan origination fee will be .73% of the loan amount payable at closing of the
16 loan.

17 Salpare’s projections indicate gross potential rental income of \$2.7 million to \$2.9
18 million for just the first 166 units. While occupancy rates have dropped over the past few years,
19 the market is improving and established multi-family residential developments in the Portland
20 area continue to be feasible.

21 **B. MANAGEMENT**

22 Columbia Rim Corporation (“CR Corp.”) is the manager of the Debtor’s limited
23 liability company. CR Corp.’s shares are owned 50% by Michael DeFrees (“DeFrees”) and 50%
24 by Christy DeFrees. DeFrees runs the day to day operations of CR Corp. DeFrees is the sole
25 member of the Debtor and runs the day to day operations of the Debtor. DeFrees is a native of
26 the Vancouver, Washington area and began his career as a developer by building single family

1 residential housing projects in the early 1980s. He then began developing commercial projects
2 and has developed hotels, recreational vehicle parks, medical complexes, and apartment
3 buildings over his 30-year career. DeFrees is not an employee of the Debtor; rather the Debtor
4 pays Gateway National Corporation (“Gateway”) for the services provided to it by Gateway’s
5 employees, of which DeFrees is one. DeFrees is shareholder and the President of Gateway. The
6 Debtor pays approximately \$5,000 per month for management fees to Gateway for the services
7 DeFrees and others perform on its behalf. DeFrees will continue to oversee the operations of the
8 Debtor and will continue to be paid from his other entities for such services provided.

9 **C. FINANCIAL PERFORMANCE**

10 Attached hereto as Exhibit 3 are the income statements for the Debtor for its fiscal
11 years ending in the prior three years. The income statements reflect the expense associated with
12 the BankFirst related debt and, thus, do not provide an accurate picture of the Debtor’s true net
13 income from its current operations because BankFirst no longer seeks payment of that debt
14 pursuant to the Settlement. Additional or more detailed information may be obtained by
15 submitting a written request to Debtor’s counsel identifying the information sought.

16 **IV. THE BANKRUPTCY CASE**

17 **A. THE FILING**

18 The Debtor filed its voluntary petition for relief under Chapter 11 of the
19 Bankruptcy Code on June 7, 2010.

20 **B. POST –PETITION DEVELOPMENTS**

21 After the filing of the Petition, the Debtor sought and obtained the following
22 orders: (1) an Order Pursuant to 11 USC § 366(a) Finding Adequate Assurance of Payment for
23 Future Utility Services (Docket No. 36); (2) an order authorizing the employment of Spencer
24 Powell as an appraiser for the Debtor’s Property (Docket No. 67); (3) an order authorizing the
25 employment of Farleigh Wada Witt as counsel for the Debtor (Docket No. 90); and (4) an order
26 authorizing the employment of Obsidian Finance Group, LLC (“Obsidian”) as a financial

1 consultant to the Debtor (Docket No. 80). Because the BankFirst debt was eliminated
2 prepetition, there was no need for the Debtor to obtain an order authorizing use of cash collateral.

3 Almost immediately after the Debtor filed its Petition, Dunn filed a motion for
4 relief from stay to foreclose its asserted construction lien against the Property, alleging that there
5 was no equity in the Property for the Debtor and that it was not necessary for an effective
6 reorganization. After a two-day contested hearing before the Court held on August 3 and 4,
7 2010, the Court entered an order denying Dunn's motion and holding that there is equity in the
8 Property over the amount of Dunn's asserted secured claim, that the Property is necessary for an
9 effective reorganization and that the Debtor did not file this case in bad faith. This Court also
10 found that this is a single asset real estate case under 11 USC §101(51B) and that, thus, the
11 provisions of 11 USC §362(d)(3) apply.

12 The US Trustee's Office has not appointed an unsecured creditors committee in
13 this case.

14 **V. ASSETS AND LIABILITIES**

15 **A. ASSETS**

16 **1. Real Property.**

17 The Debtor's assets consist primarily of the Property, which is comprised of a
18 204-slip, fully operating high-end marina on the Columbia River, a commercially zoned parcel
19 of land about 24 acres in size that contains a partially constructed parking garage that may be
20 used in the 375-unit apartment complex contemplated by the Debtor's Plan, and an industrially
21 zoned parcel of land about 1.8 acres in size that currently houses temporary parking for the
22 marina and a high-end sales trailer leased by a yacht sales company, Royal Marine.

23 **2. Other Property.**

24 The Debtor's other assets consist of a claim against its co-owner of the Property,
25 Harbor for the amounts Harbor owes it under the joint tenancy agreement. The Debtor has sued
26 Harbor to recover on that claim in Adversary Proceeding No. 10-03252. The Debtor's remaining

1 assets include the sales trailer leased to Royal Marine worth approximately \$273,000, the lease
2 with Royal Marine, and the sales office furniture and office equipment, formerly in the sales
3 trailer when it housed the Debtor's sales team for the condominium Project, worth approximately
4 \$42,000

5 **B. LIABILITIES**

6 The Debtor's only asserted Secured Creditors in this case are Creditors asserting
7 that they hold a claim secured by a perfected construction lien asserted under Oregon law or by
8 judgment and the county taxing authority. For the reasons set forth at pages 13-14 above, the
9 Debtor does not concede that the judgment upon which the asserted Secured Creditors rely is
10 valid or that their purported Construction Liens constitute a lien superior in right to the Debtor or
11 its interests. The amount asserted to be perfected Construction Liens under Oregon law or by
12 judgment is approximately \$7.1 million. Multnomah County's personal property and real
13 property tax claim is approximately \$234,000.

14 As previously explained, there is no other secured debt in this case because the
15 BankFirst debt was eliminated prepetition.

16 **C. UNSECURED CREDITORS**

17 The Debtor owes approximately \$3 million to unsecured creditors, plus
18 approximately \$10 million to the Debtor's sole member, Mr. DeFrees. The Plan contains two
19 classes of unsecured creditors: Small Unsecured Creditors and General Unsecured Creditors.
20 Small Unsecured Creditors are Creditors holding claims of \$2,000 or less. The total current
21 outstanding amount due to Creditors holding Claims of \$2,000 or less is approximately \$32,000.

22 **D. ADMINISTRATIVE EXPENSES**

23 The Debtor has retained Farleigh Wada Witt as its general bankruptcy counsel in
24 this case (Docket No. 90) and has filed an application to retain Dorothy Cofield as its land use
25 counsel (Docket No. 94). The Debtor has also retained Obsidian Finance Group, LLC (Docket
26 No. 80) as its financial consultant, and has filed an application to retain Marcus & Millichap

1 Capital Corporation as its loan broker (Docket No. 98). Debtor also hired Spence Powell as its
2 real estate appraiser to prepare an appraisal and to testify at the hearing on Dunn's motion for
3 relief from stay (Docket No. 67). The Debtor anticipates that it will incur approximately
4 \$250,000 in professional fees and expenses through confirmation of the Plan.

5 **VI. DESCRIPTION OF PLAN OF REORGANIZATION**

6 **A. UNCLASSIFIED CLAIMS**

7 Administrative Expense Claims and Priority Tax Claims are not classified. An
8 Administrative Expense Claim is a Claim against the Debtor constituting an expense of
9 administration of the Bankruptcy Case allowed under Section 503(b) of the Bankruptcy Code
10 including, without limitation, the actual and necessary costs and expenses of preserving the
11 estate and operating the Debtor's businesses during the Case, any indebtedness or obligations
12 incurred by the Debtor during the pendency of the Case in connection with the rendition of
13 services to the Debtor, and compensation for legal and other professional services and
14 reimbursement of expenses and statutory fees payable to the United State Trustee.

15 A "Priority Tax Claim" is a Claim of a governmental unit of the kind entitled to
16 priority under Section 507(a)(8) of the Bankruptcy Code or that would otherwise be entitled to
17 priority but for the Secured status of the Claim. The Debtor owes approximately \$243,000 in
18 property taxes. The property taxes will be paid in accordance with the requirements of Section
19 1129 of the Bankruptcy Code in equal amortizing payments over a period ending five years from
20 the Petition Date.

21 Pursuant to the Plan of Reorganization, Administrative Expense Claims will be
22 paid in full on the latter of the Effective Date or the date on which any such Administrative
23 Expense Claim becomes an Allowed Claim. However, the Administrative Expense Claims
24 representing liabilities incurred in the ordinary course of business (including amounts owed to
25 vendors and suppliers that have sold products or furnished services to the Debtor after the
26 Petition Date) will be paid in accordance with the written terms and conditions of the particular

1 transactions and any other agreements relating thereto.

2 **B. CLASSIFIED CLAIMS**

3 **1. Overall Plan Implementation.**

4 The Debtor will obtain either an FHA loan or a conventional loan to develop the
5 Property and will pay creditors from a combination of loan proceeds and operating income.

6 If the Debtor obtains FHA financing, it intends to obtain a construction loan for
7 Phase 1 of the construction on the Property in approximately August of 2011 in the approximate
8 amount of \$24 million and pay \$3 million to Classes 3, 4, 5 and 6 creditors on their Allowed
9 Construction Lien Claims, subject to the outcome of the Dunn Adversary Proceeding, as
10 discussed at Section VI(B)(4) below. The Debtor anticipates completing construction of Phase 1
11 in approximately June of 2012. At that point, the Debtor will refinance the Marina and pay \$3
12 million to Classes 3, 4, 5 and 6 creditors on their Allowed Construction Lien Claims, subject to
13 the outcome of the Dunn Adversary Proceeding, as discussed at Section VI(B)(4) below infra.
14 The Debtor intends to obtain financing for Phase 2 of the construction on the Property in
15 approximately June of 2013, at which time the Debtor will pay Class 3, 4, 5 and 6 Claimants.
16 The Debtor plans to pay Small Unsecured Creditors and General Unsecured Creditors from net
17 operating income or loan proceeds.

18 **2. Class 1 (Other Priority Claims).**

19 Class 1 is unimpaired. Each holder of an Allowed Class 1 Claim will be paid in
20 full in Cash the amount of its Allowed Class 1 Claim, including all interest, costs, fees and
21 charges provided for under any agreement under which such Claim arose or is otherwise allowed
22 by law, on the latter of (a) the Effective Date or (b) the date on which such Claim becomes
23 Allowed, unless such holder shall agree or has agreed to a different treatment of such Claim
24 (including any different treatment that may be provided for in any documentation, agreement,
25 contract, statute, law or regulation creating and governing such Claim. The Debtor is not aware
26 of the existence of any Other Priority Claims.

1 **3. Class 3 (City of Portland Secured Claim).**

2 Class 2 consists of the Claim asserted by the City of Portland under the Dunn
3 Action judgment in the amount of \$152,028.81 as a Secured Claim. The holder of an Allowed
4 Secured Class 2 Claim will be paid in full in Cash the amount of its Allowed Class 2 Claim, on
5 the latter of the closing of the loan the Debtor will obtain for the development of Phase 1 or
6 September 30, 2011.

7 **4. Class 3 through 5 (Construction Liens).**

8 Classes 3 through 6 are impaired and consist of Claims asserted by: Dunn (Class
9 3), TKS (Class 4), BMI (Class 5) and Myhre (Class 6). Each Creditor holding a Class 3, 4, 5 or
10 6 Allowed Claim secured by a perfected construction lien will retain its lien with the same
11 priority such lien had on the Petition Date, except as set forth herein at Section 6.3 of this Plan.
12 The Allowed Claims in Classes 3, 4, 5 and 6 will be paid in full, together with interest accruing
13 from and after the Effective Date at the rate of 3.25% per annum from the proceeds of the
14 refinancing of the Property. The first payment to Classes 3, 4, 5 and 6 on their Allowed
15 Construction Lien Claims (subject to the outcome of the Dunn Adversary Proceeding), will occur
16 on the later of the closing of the loan Debtor will obtain to develop Phase 1 or September 30,
17 2011, and will be in the approximate amount of \$3 million. In June 2012, the Debtor anticipates
18 refinancing the Marina and will pay approximately \$3 million at the later of the closing of that
19 loan or August 30, 2012 to the Allowed Construction Lien Claims. The Debtor intends to obtain
20 financing to develop Phase 2 in approximately June 2013 and will pay the balance of the
21 Allowed Construction Lien Claims on the later of the closing of that loan or June 30, 2013.⁵ The

22 _____
23 ⁵ If the Debtor obtains conventional financing, the Debtor intends to proceed the same way as it would if
24 it were obtaining FHA financing, with the following differences: (1) it will pay approximately \$1 million
25 instead of \$3 million upon the initial financing anticipated to be in September of 2011 to Class 3, 4, 5 and
26 6 Claimants on their Allowed Construction Lien Claims, subject to the outcome of the Dunn Adversary
Proceeding; and (2) it will obtain permanent financing for Phase 1 and pay approximately \$2 million to
Class 3, 4, 5 and 6 Claimants on their Allowed Construction Lien Claims on the later of the closing of
that loan or June 13, 2013, along with the payment from the financing for Phase 2 as discussed above.

1 Multnomah County Circuit Court (the “State Court”) granted Classes 3, 4, 5 and 6 a Limited
2 Judgment against the Debtor in the Dunn Action; however, that Limited Judgment was entered in
3 September of 2009 *nunc pro tunc* to April 21, 2009, thus invalidly cutting off parties’ appeal
4 rights. Moreover, when the State Court entered the Limited Judgment, the case had already been
5 removed to federal court, thus eliminating the State Court’s jurisdiction to enter the Limited
6 Judgment. Following the transfer of the Dunn Action back to the State Court, an Order
7 Reaffirming the Limited Judgment was signed and entered on January 22, 2010, but no separate
8 Limited Judgment was entered on that date and the Order Reaffirming the Limited Judgment did
9 not correct the inappropriate *nunc pro tunc* entry that cut off parties’ appeal rights. The Debtor
10 contests the validity of the Limited Judgment in favor of the Class 3, 4, 5 and 6 Claimants in the
11 Dunn Adversary Proceeding pending before the Bankruptcy Court, in which the Debtor seeks a
12 declaratory judgment that: (i) the Limited Judgment is void; (ii) the Debtor is equitably
13 subrogated to the rights of BankFirst under the BankFirst DOT; (iii) pursuant to ORS 87.025(2),
14 the Class 3, 4, 5 and 6 Claimants are entitled to foreclose their interest in and remove the
15 Improvements they created on the Property, but are not entitled to foreclose their interest in the
16 Property ahead of the BankFirst DOT; and (iv) any judgment of foreclosure entered in the future
17 (in the event the automatic stay were lifted to allow entry of the judgment) shall reflect: (a) the
18 BankFirst DOT’s superior position with respect to the Land; (b) any foreclosure sale held by
19 Dunn, TKS, and/or Myhre shall include only the Improvements, and that any foreclosure sale of
20 the Land by those parties shall be subject to the BankFirst DOT; and (c) the purchaser at any
21 foreclosure sale held with respect to the Improvements shall be required to remove the
22 Improvements within 30 days, subject to the terms and conditions of ORS 87.035(3). Should the
23 Debtor prevail in the Dunn Adversary Proceeding, then the Class 3, 4, 5 and 6 Allowed Claims
24 will be paid an amount equivalent to the fair market value of the Improvements that each of the
25 Claimants made to the Property from the refinancing of the Property by the Debtor, with interest
26 at the rate of 3.25% per annum. Thereafter, the Class 3, 4, 5 and 6 Claimants will retain their

1 liens and will be treated as Secured Claims only to the extent of any value securing the lien after
2 satisfaction of the BankFirst DOT. To the extent the value of the Property is insufficient to pay
3 such lien, the holder will have a Small Unsecured Claim or a General Unsecured Claim, as
4 appropriate. The Unsecured Claim will be the difference between the Claim on the Petition Date
5 and the payment the Debtor makes to the Claimant based upon the fair market value of their
6 respective Improvements from the refinance of the Property. Any disputes regarding the
7 allowance of a Class 3, 4, 5 and 6 Claim may be determined in the Dunn Adversary Proceeding
8 or by the claims objection process.

9 **5. Class 7 (County Secured Claim for Property Taxes).**

10 Class 7 is unimpaired. The holder of the Class 7 Claim will retain its security
11 interest with the same priority to which it is entitled by law. The Allowed Class 7 Claimant shall
12 be paid the full amount of its Secured Claim as permitted by 11 USC §1129(a)(9)(D) in full from
13 financing of the Property or net operating income, but not later than five (5) years after the
14 Petition Date.

15 **6. Class 8 (Small Unsecured Claims).**

16 Class 8 is impaired. Each holder of a Class 8 Claim will be paid in Cash an
17 amount equal to 25% of their Allowed Claim within 60 days of the Effective Date of the Plan or
18 30 days of the date their Claim becomes an Allowed Claim, whichever is later. Thereafter, each
19 holder of a Class 8 Claim will be paid in Cash an amount equal to 75% of their Allowed Claim
20 on or before October 31, 2011. The total costs of payment to current Small Unsecured Creditors
21 will be approximately \$31,000.

22 **7. Class 9 (General Unsecured Claims).**

23 Class 9 is impaired. Each holder of a Class 9 Claim shall be paid by receiving a
24 Pro Rata share of 30% of the Net Operating Income generated by the Reorganized Debtor for
25 each calendar quarter from after September 30, 2011 for five (5) years. Additionally, any
26 amounts in excess of \$23.5 million in ending cash balances as of October 31, 2016, if any, shall

1 be paid to Class 9 Allowed Claims to the extent necessary to pay such Claims, if possible.
2 General Unsecured Claims total approximately \$2.2 million, plus approximately \$10.9 million to
3 General Unsecured Claims owing to Michael DeFrees, plus any Deficiency Claims of Secured
4 Claims. Mr. DeFrees has agreed to subordinate payments to him on his General Unsecured
5 Claim and he will be treated as a Class 9 Claimant.

6 **8. Class 10 (Subordinated Claims).**

7 Class 10 is impaired. Holders of subordinated claims will be paid a Pro Rata
8 share of all remaining Unsecured proceeds after Holders of allowed Class 9 Claims have been
9 paid in full.

10 **9. Class 11 (Interests).**

11 Class 11 is impaired. The holder of the Class 11 Claims is the holders of all
12 equity interests in the Debtor. All equity interests will be retained by Mr. DeFrees in exchange
13 for the subordination of his \$10.9 million General Unsecured Claim, the interests in the
14 Reorganized Debtor will be issued to Mr. DeFrees.

15 **C. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

16 The Bankruptcy Code gives Debtor the right, after commencement of their
17 Chapter 11 cases, subject to the approval of the Bankruptcy Court, to assume or reject executory
18 contracts and unexpired leases. Generally, an “executory contract” is a contract under which
19 material performance (other than payment of money) is still due by each party. The Plan
20 provides for assumption of all executory contracts and leases.

21 If an executory contract or unexpired lease is or has been rejected, the Creditor
22 may file a Proof of Claim for damages resulting from such rejection. The Plan provides that a
23 Proof of Claim with respect to any such Claim must be Filed no later than 30 days after approval
24 of the Bankruptcy Code of the rejection of the relevant executory contract or unexpired lease or
25 30 days after the Effective Date, whichever is sooner. Any such Claim shall constitute an
26 Unsecured Claim to the extent that such Claim is finally treated as an Allowed Claim. To the

1 extent the Debtor rejects an unexpired lease of nonresidential real property, the Claim for
2 damages resulting from such rejection will be limited to the amount allowed under the
3 Bankruptcy Code.

4 Upon assumption of an executory contract or unexpired lease, the Debtor must
5 cure or provide adequate assurance of prompt cure of any monetary defaults. The Plan provides
6 that the Reorganized Debtor will cure all defaults, if any, in the ordinary course of business and
7 will cure any monetary defaults, if any, promptly. All assumed executory contracts and leases
8 will be automatically assigned to the Reorganized Debtor as of the Effective Date.

9 **D. EFFECT OF CONFIRMATION**

10 **1. DISCHARGE**

11 The treatment of, and consideration received by, holders of Allowed
12 Claims and Allowed Interests pursuant to the Plan will be in full satisfaction, release and
13 discharge of their respective Claims against or interests in the Debtor. Confirmation Orders shall
14 discharge the Debtor from any liability that arose before the Effective Date as provided in
15 Sections 524 and 1141 of the Bankruptcy Code, and any debt and liability of a kind specified in
16 Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (a) a Proof of Claim
17 based on such debt or liability is filed or deemed filed under Section 501 of the Bankruptcy
18 Code; (b) a Claim based on such debt or liability is Allowed; or (c) the holder of the Claim based
19 on such debt or liability has accepted the Plan.

20 **2. REVESTING, OPERATION OF BUSINESS**

21 All property of the estates shall revert in Reorganized Debtor on the
22 Effective Date free and clear of all rights, claims, liens charges, encumbrances and interests,
23 except as otherwise provided in the Plan.

24 **3. INJUNCTION**

25 Except as otherwise expressly provided in the Plan, all persons who have
26 held, hold or may hold Claims, or who may have held, hold or may hold any Interest, are

1 permanently enjoined from and after the Effective Date from (a) commencing or continuing in
2 any manner any action or other proceedings of any kind with respect to any Claims or Interests
3 against Reorganized Debtor; (b) enforcing, attaching, collecting or recovering by any manner or
4 any means any judgment, award, decree or order against Reorganized Debtor; (c) creating,
5 perfecting or enforcing any encumbrances of any kind against Reorganized Debtor with respect
6 to any such Claim except as specifically set forth in the Plan; (d) asserting any setoff, right of
7 subrogation or recoupment of any kind against any obligation due to the Debtor, Reorganized
8 Debtor or their property; and (e) proceeding in any manner in any place whatsoever that does not
9 conform to, does not comply with, or is inconsistent with the provisions of the Plan or the order
10 confirming the Plan.

11 **4. MODIFICATION OF THE PLAN; REVOCATION OR**
12 **WITHDRAWAL OF THE PLAN**

13 Subject to Section 1127 of the Bankruptcy Code, the Debtor reserves the
14 right to alter, amend or modify the Plan before its substantial consummation so long as the
15 treatment of holders of Claims and Interests under the Plan are not adversely affected.

16 **5. RETENTION OF JURISDICTION**

17 Notwithstanding the entry of the Confirmation Order on the Effective Date
18 having occurred, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising
19 out of or relating to the Chapter 11 Case, including, but not limited to, the following matters: (a)
20 to hear and determine any pending applications for the rejection of executory contracts or
21 unexpired leases, and the allowance of Claims resulting therefrom; (b) to determine any
22 adversary proceedings, applications, contested matters or other litigative matters pending on the
23 Effective Date or Filed prior to the closing of the case; (c) to ensure that distributions to holders
24 of Allowed Claims are accomplished; (d) to hear and determine objections to or requests for
25 estimations of Claims, including any objections to the classification of any Claim, and to allow,
26 disallow and/or estimate any Claim in whole or in part; (e) to enter and implement such orders as

1 may be appropriate in the event the Confirmation Order is for any reason stayed, revoked,
2 modified or vacated; (f) to issue any appropriate orders in aid of execution of the Plan or to
3 enforce the Confirmation Order and/or the discharge, or the effect of such discharge, provided to
4 the Debtor; (g) to hear and determine any applications to modify the Plan, to cure any defect or
5 omission or to reconcile any inconsistency in the Plan or in any order of the Bankruptcy Court,
6 including, without limitation, the Confirmation Order; (h) to hear and determine all applications
7 for compensation and reimbursement of expenses of professionals or members of the Creditors
8 Committee under the Bankruptcy Code; (i) to hear and determine disputes arising in connection
9 with the interpretation, implementation and enforcement of the Plan; (j) to hear and determine
10 other issues presented or arising under the Plan; (k) to hear and determine any other matters
11 related hereto and not inconsistent with Chapter 11 of the Bankruptcy Code; and (l) to enter a
12 final decree closing the Chapter 11 Case.

13 **6. UNITED STATES TRUSTEE FEES**

14 Reorganized Debtor shall be responsible for timely payment of fees
15 incurred pursuant to 28 USC § 1930(a)(6) until the case is closed, converted or dismissed. After
16 confirmation, Reorganized Debtor shall serve on the United States Trustee a monthly financial
17 report for each month, or portion thereof, that the case remains open. The monthly financial
18 report shall include a statement of all disbursements made during the course of the month,
19 whether or not pursuant to the Plan.

20 **7. AVOIDANCE ACTIONS.**

21 The Debtor has not done an analysis of possible preference or fraudulent
22 transfer actions. The Debtor has not budgeted Professional Fees to pursue preference claims, but
23 has also not budgeted for any recovery. If any such claims exist, the Professional Fees would
24 presumably be covered by any recoveries. The Debtor will complete a preference analysis
25 before the hearing date on Confirmation. The Plan preserves all avoidance actions to the extent
26 any exist.

VII. LIQUIDATION ANALYSIS

A Plan of Reorganization cannot be confirmed unless the Bankruptcy Court finds that the Plan is in the “best interest of creditors” of holders of claims against, and interests in, the debtor subject to such plan. The best interest test is satisfied if the plan provides each dissenting or non-voting member of each impaired Class with a recovery not less than the recover such member would receive if the debtor was liquidated in a hypothetical case under Chapter 7 of the Bankruptcy Code by a Chapter 7 Trustee. The Debtor believes that the holders of impaired Claims will receive more than they would receive under a Chapter 7 liquidation. In applying the “best interest” test, the Bankruptcy Court would ascertain the hypothetical recovery in a Chapter 7 proceeding to Secured Creditors, priority claimants, general Unsecured Creditors and equity interest holders. The hypothetical Chapter 7 recoveries would then be compared with the distribution offered to each Class of Claims or Interests under the Plan to determine that the Plan satisfied the “best interest” test set forth in the Bankruptcy Code.

A copy of the Debtor’s tabulation liquidation analysis is attached hereto as Exhibit 4. The liquidation table shows that upon a liquidation of the Debtor, there would be no funds available for distribution to Unsecured Creditors.

VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

CIRCULAR 230 DISCLAIMER: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, WE INFORM YOU THAT (A) ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED OR RELIED UPON, AND CANNOT BE USED OR RELIED UPON, FOR THE PURPOSE OF (1) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR

1 TAX MATTER(S) ADDRESSED HEREIN, AND (B) THIS DISCUSSION WAS WRITTEN
2 IN CONNECTION WITH DEBTOR SOLICITING ACCEPTANCES OF THE PLAN
3 THROUGH THIS DISCLOSURE STATEMENT.

4 **A. GENERAL TAX CONSIDERATIONS**

5 The following discussion is a summary of certain material federal income
6 tax consequences expected to result from the consummation of the Plan. This discussion is for
7 general information purposes only, and should not be relied upon for purposes of determining the
8 specific tax consequences of the Plan with respect to a particular holder of an Allowed Claim or
9 equity interest. This discussion does not purport to be a complete analysis or listing of all
10 potential tax considerations. This discussion does not address aspects of federal income taxation
11 that may be relevant to a particular holder of an Allowed Claim subject to special treatment
12 under federal income tax laws (such as foreign taxpayers, broker-dealers, banks, thrifts,
13 insurance companies, financial institutions, regulated investment companies, real estate
14 investment trusts and pension plans, and other tax-exempt investors), and does not discuss any
15 aspects of state, local or foreign tax laws. Furthermore, this summary does not address federal
16 taxes other than income taxes.

17 This discussion is based on existing provisions of the Internal Revenue
18 Code of 1986, as amended (the "IRC"), existing and proposed Treasury Regulations promulgated
19 thereunder, and current administrative rulings and court decisions. Legislative, judicial or
20 administrative changes or interpretations enacted or promulgated after the date hereof could alter
21 or modify the discussion set forth below with respect to federal income tax consequences of the
22 Plan. Any such changes or interpretations may be retroactive and could significantly affect the
23 federal income tax consequences of the Plan. No ruling has been requested or obtained from the
24 Internal Revenue Service (the "IRS") with respect to any tax aspects of the Plan and no opinion
25 of counsel has been sought or obtained with respect thereto. This discussion is not binding on
26 the IRS or the courts and no assurance can be given that the IRS will not assert, or that a court

1 will not sustain, a different position than any position discussed herein. No representations or
2 assurances are being made to the holders of Allowed Claims or equity interests with respect to
3 the federal income tax consequences described herein.

4 Accordingly, the following summary of certain federal income tax
5 consequences of the Plan is for informational purposes only and is not a substitute for careful tax
6 planning or advice based upon the individual circumstances pertaining to a particular holder of
7 an Allowed Claim or an equity interest. Each holder of an Allowed Claim or an equity interests
8 is strongly urged to consult with its own tax advisors regarding the federal, state, local, foreign
9 and other tax consequences of the Plan.

10 Any discussion of federal tax issues set forth in this Disclosure Statement
11 was written solely in connection with the confirmation of the Plan to which the transactions
12 described in this Disclosure Statement are ancillary. Such discussion is not intended or written
13 to be legal or tax advice to any person and is not intended or written to be used, and cannot be
14 used, by any person for the purpose of avoiding any federal tax penalties that may be imposed on
15 such person. Each holder of an Allowed Claim or equity interest should seek advice based on its
16 particular circumstances from an independent tax advisor.

17 **B. FEDERAL INCOME TAX CONSEQUENCES TO DEBTORS**

18 **1. IN GENERAL**

19 The Debtor is a limited liability company and, thus, is a pass-through
20 entity for both federal and state income tax purposes. As such, the Debtor is not itself subject to
21 federal income tax. Instead, the Debtor's sole member is required to include on his personal
22 income tax return the income, gain, loss and deduction recognized by the Debtor. Accordingly,
23 it is unlikely that there will be any direct federal income tax liability at the Debtor's entity level.

24 **2. CANCELLATION OF INDEBTEDNESS INCOME**

25 Under the IRC, a taxpayer generally will recognize cancellation of debt
26 income ("COD Income") upon satisfaction of its outstanding indebtedness for consideration less

1 than the amount of such indebtedness. The amount of COD Income, in general, is the excess of
2 (a) the adjusted issue price of the indebtedness (in most cases, the amount the debtor received on
3 incurring the obligation, with certain adjustments) satisfied, over (b) the sum of the amount of
4 Cash paid and the fair market value of any new consideration given in satisfaction of the
5 indebtedness.

6 However, IRS Section 108(a) provides an exclusion from gross income for
7 COD income if certain requirements are met. Section 108(a) provides an exclusion commonly
8 referred to as the “Bankruptcy Exception,” where a taxpayer is in bankruptcy and the discharge
9 is granted, or is effected, pursuant to a plan approved by the bankruptcy court. In the case of an
10 entity taxable as a corporation, eligibility for the Bankruptcy Exception is determined at the
11 corporate level. If the Bankruptcy Exception applies (with the effect that the taxpayer may
12 exclude its COD Income from its gross income), the taxpayer is required, under IRS Section
13 108(b), to reduce certain of its tax attributes by the amount of COD Income excluded from gross
14 income pursuant to the Bankruptcy Exception. The attributes of the taxpayer that are reduced
15 include any net operation loss carryovers from prior years, general business and minimum tax
16 credit carryforwards, capital loss carryforwards, the basis of the taxpayer’s assets and foreign tax
17 credit tax carryforwards. In the limited liability company context, the reduction in the basis of
18 assets is most important. However, a special rule can also require a reduction in certain losses to
19 be passed through to members of limited liability companies.

20 **C. FEDERAL INCOME TAX CONSEQUENCES TO THE HOLDERS**
21 **OF AN ALLOWED CLAIM**

22 **1. SMALL UNSECURED CREDITOR CLAIMS**

23 In accordance with the Plan, the debt owed by the Debtor to each holder of a
24 Small Unsecured Claim will be satisfied by a payment of Cash in an amount equal to 100% of
25 such Claim. In general, the amount received by each holder of a Small Unsecured Claim is
26 treated as an amount received in exchange for the satisfied debt, and each such holder will

1 recognized taxable gain or loss equal to the amount received less the holder's tax basis in the
2 Claim. Any gain or loss recognized will be long-term or short-term capital gain or loss or
3 ordinary income or loss, depending upon factors specific to each holder of a Small Unsecured
4 Claim, including but not limited to: (i) whether the Claim (or a portion thereof) is attributable to
5 principal or interest; (ii) the origin of the Claim; (iii) whether the holder of the Claim reports
6 income on the accrual or cash basis method; and (iv) whether the holder of the Claim has taken a
7 bad debt deduction or otherwise recognized a loss with respect to the Claim.

8 **2. GENERAL UNSECURED CREDITOR CLAIMS**

9 In accordance with the Plan, the debt owed by the Debtor to each holder of a
10 General Unsecured Claim will be adjusted so that each General Unsecured Creditor will be
11 entitled to a Pro Rata share of 30% of the Net Operating Income generated by the Reorganized
12 Debtor for five years. If this adjustment is considered significant, each such holder will
13 recognize taxable gain or loss equal to the difference between the fair market value of the
14 obligation as adjusted and the holder's adjusted basis in the original debt. It may be difficult to
15 place a value on the obligation as adjusted, but gain may nevertheless be recognized. The
16 character and amount of such taxable gain or loss will be determined based on factors specific to
17 each holder of a Claim, as discussed above with respect to Small Unsecured Claims.

18 **3. OREGON CONSTRUCTION LIEN CREDITOR CLAIMS**

19 In accordance with the Plan, the debt owed by the Debtor to each holder of an
20 Allowed Construction Lien Claim will be restructured. If the modification to the debt is
21 "significant," as such term is defined in the applicable Treasury Regulations, the restructured
22 debt will be treated as received by such holder in a deemed taxable exchange of the underlying
23 debt pursuant to IRC Section 1001.

24 With respect to a deemed taxable exchange, a holder of an Allowed Construction
25 Lien Claim will generally recognize gain or loss in connection with the exchange if the holder's
26 adjusted tax basis in the old debt does not equal the issue price of the modified debt. If the issue

1 price of the modified debt is greater than the holder's adjusted tax basis in the debt, the holder
2 will recognize taxable income as a result of the deemed exchange. Since each modified debt will
3 have a principal amount equal to its corresponding old debt, and each modified debt will have
4 adequate stated interest, a holder of an Allowed Construction Lien Claim generally should not
5 recognize any gain or loss on a deemed taxable exchange of such debt unless the tax basis in the
6 debt is different from the issue price of the modified debt. The character and amount of any
7 taxable gain or loss will be determined based on factors specific to each holder of a Claim, as
8 discussed above with respect to Small Unsecured Claims.

9 The principal amount of certain restructured debt may include accrued but unpaid
10 interest. A holder of an Allowed Construction Lien Claim not previously required to include in
11 its taxable income any accrued but unpaid interest on such Claim may be treated as receiving
12 taxable interest to the extent the modified debt received is allocable to such accrued by unpaid
13 interest.

14 **D. CONSEQUENCES TO HOLDERS OF EQUITY INTERESTS**

15 Pursuant to the Plan, all of the currently outstanding membership interests of the
16 Debtor shall be deemed cancelled and shall be of no further force and effect, whether
17 surrendered for cancellation or otherwise, and there shall be no distribution with respect to such
18 shares. The IRS may assert that the COD Income discussed above is not subject to the
19 Bankruptcy Exception because, in the case of an entity taxed as a partnership, the exclusions of
20 Section 108(a) are determined in relation to the members' situations, not the situation of the
21 entity that realizes the COD Income. If this result obtains, a member may have to include such
22 COD Income in gross income, and this inclusion would increase his, her or its basis in the
23 membership interests. Moreover, upon extinguishment of the member's interests in the Debtor,
24 the member may be deemed to receive a distribution equal to the Debtor's liabilities, which
25 reduces the member's basis. If the reduction in liabilities exceeds basis, the member would
26 realize gain. If the member has an unrecovered basis at the time of extinguishment of his

1 interests, he may be able to claim a loss, which the IRS is likely to characterize as capital rather
2 than ordinary. To the extent that that sole member of the Debtor invests additional monies in the
3 Debtor, this should created basis in the new membership interests to be issued by the Debtor.

4 **E. INFORMATION REPORTING BACKUP WITHHOLDING**

5 Certain payments, including the payments with respect to Claims pursuant to the
6 Plan, are generally subject to information reporting by the payor to the IRS. Moreover, under
7 certain circumstances, a holder of a Claim may be subject to “backup withholding” with respect
8 to payments made pursuant to the Plan, unless such holder either (i) comes within certain exempt
9 categories (which generally include corporations) and, when required, demonstrates this fact, or
10 (ii) provides a correct United States taxpayer identification number and certified under penalty of
11 perjury that the holder is a United States person, the taxpayer identification is correct and that the
12 taxpayer is not subject to backup withholding because of a failure to report all dividend and
13 interest income. Backup withholding is not an additional tax. Amounts withheld under the
14 backup withholding rules may be credited against the holder’s United States federal income tax
15 liability, and the holder may obtain a refund of any excess amounts withheld under the backup
16 withholding rules by filing an appropriate claim for refund with the IRS.

17 **F. IMPORTANCE OF OBTAINING PROFESSIONAL TAX ASSISTANCE**

18 THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY
19 OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS
20 NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL.
21 THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT
22 TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND
23 MAY VARY DEPENDING ON THE PARTICULAR SITUATION OF A HOLDER OF AN
24 ALLOWED CLAIM, OR ANY EQUITY INTEREST HOLDER’S PARTICULAR
25 CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM AND
26

1 EACH EQUITY INTEREST HOLDER IS URGED TO CONSULT ITS TAX ADVISOR
2 ABOUT THE FEDERAL, STATE, LOCAL AND APPLICABLE FOREIGN INCOME AND
3 OTHER TAX CONSEQUENCES OF THE PLAN.

4 **IX. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

5 **A. CONFIRMATION HEARING**

6 The Bankruptcy Court has scheduled a hearing on confirmation of the Plan on
7 _____, 2010 at _____. The hearing will be held at the United States Bankruptcy Court for
8 the District of Oregon, Courtroom No. 4, 1001 SW Fifth Avenue, Portland, Oregon 97204,
9 before the Honorable Trish M. Brown, United State Bankruptcy Judge. At that hearing, the
10 Bankruptcy Court will consider whether the Plan satisfied the various requirements of the
11 Bankruptcy Code, including whether it is feasible, and whether it is in the best interest of
12 Creditors and Interest Holders of the the Debtor. Debtor will submit a report to the Bankruptcy
13 Court at that time concerning the votes for acceptance or rejection of the Plan by the parties
14 entitled to vote thereon. Any objection to confirmation of the Plan must be timely filed as stated
15 in Section II.E. above.

16 **B. REQUIREMENTS OF CONFIRMATION**

17 At the hearing on confirmation, the Bankruptcy Court will determine whether the
18 provisions of Section 1129 of the Bankruptcy Code have been satisfied. If all of the provisions
19 of Section 1129 are met, the Bankruptcy Court may enter an order confirming the Plan. The
20 Debtor believes the Plan satisfies all of the requirements of Chapter 11 of the Bankruptcy Code,
21 that it has complied or will have complied with all of the requirements of Chapter 11, and that it
22 has been proposed and is made in good faith.

23 **C. FEASIBILITY**

24 Attached as Exhibit 5 is Debtor's projected income and Net Operating Income
25 and other distribution projections. The projections support the treatment of claims set forth in
26 Section VI above.

1 **D. RISK FACTORS**

2 There are a number of risks associated with the Debtor's proposed Plan. Each
3 Creditor should carefully consider those risks in evaluating its vote on the Debtor's Plan. All of
4 the risks associated with the Debtor's Plan are too numerous to identify. However, a few of
5 those risks are set forth below.

6 **1. GENERAL FINANCIAL MARKET CONDITIONS**

7 The recent disruption with numerous major financial institutions and the resulting
8 crisis in the financial markets has rippled through the economy, and has impacted the
9 condominium and residential housing market in particular. While the ultimate effect of this
10 crisis on the residential housing market is yet unclear, it is possible that this financial market will
11 adversely affect the ability of the Debtor to develop the Property as set forth in this Plan.

12 **2. PROJECTED FINANCIAL RESULTS**

13 The Debtor projected financial results reflect management's best estimate of the
14 Reorganized Debtor's future financial performance based on currently known facts and
15 hypothetical assumptions about, among other matters, the timing, confirmation and
16 consummation of the Plan in accordance with its terms, the anticipated future performance of the
17 Reorganized Debtor, residential housing industry performance, and general business and
18 economic conditions. Many of these factors are beyond the control of the Reorganized Debtor.
19 As a consequence, the actual financial results may differ significantly from the projections.
20 Specifically, the Reorganized Debtor may not be able to meet the projected financial results or
21 achieve the revenue or cash flow that it has assumed in projecting future business prospects.

22 **3. DEPENDENCE ON SUBCONTRACTORS**

23 The development of the Project depends on construction work done by
24 subcontractors. The Reorganized Debtor's business model relies heavily upon maintaining its
25 existing relationship with its core group of highly skilled and experienced subcontractors. As a
26 result, insufficient availability of, or unsatisfactory performance by these third-party

1 subcontractors could have a material adverse affect on the Debtor's business.

2 **4. CLAIM AMOUNTS**

3 The claims estimates set forth in this Disclosure Statement are based on various
4 assumptions. The actual Allowed Claim amounts may differ significantly from these estimates
5 should one or more of Debtor's underlying assumptions prove to be incorrect. Such differences
6 may materially and adversely affect the percentage recovery to holders of such Claims under the
7 Plan.

8 **E. CRAM DOWN**

9 As discussed previously, a Court may confirm a Plan, even if it is not accepted by
10 all impaired classes, if the Plan has been accepted by at least one impaired class of claims and
11 the Plan meets the cram down requirements set forth in Section 1129(b) of the Bankruptcy Code.
12 In the event that any impaired Class of Claims does not accept the Plan, the Debtor hereby
13 requests that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the
14 Bankruptcy Code or otherwise permit the Debtor to modify the Plan.

15 The Debtor believes the Plan does not violate the absolute priority rule of the
16 Bankruptcy Code. 11 USC §1129(b)(2)(B)(ii), commonly referred to as the absolute priority
17 rule, provides that with respect to a class of unsecured claims, the holder of any claim or interest
18 that is junior to the claims of such class will not receive or retain under the plan on account of
19 such junior claim or interest any property unless the plan provides that each holder of a claim
20 receives or retains on account of such claim property of a value, as of the Effective Date of the
21 plan, equal to the Allowed amount of such claim.

22 **F. ALTERNATIVES TO CONFIRMATION OF THE PLAN**

23 If a Plan is not confirmed, the Debtor or another party in interest may attempt to
24 formulate or propose a different Plan or Plans of Reorganization. Such Plans might involve a
25 reorganization and continuation of the Debtor's business, the sale of the Property or a portion
26 thereof, an orderly liquidation of the Debtor's assets or any combination thereof. If no Plan of

1 Reorganization is determined by the Bankruptcy Court to be confirmable, the Chapter 11 case
2 may be converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code.

3 In a liquidation, a Chapter 7 Trustee would be appointed with the purpose of
4 liquidating the assets of the Debtor. Typically, in a liquidation, assets are sold for less than their
5 going concern value and, accordingly, the return to Creditors and Interest holders is less than the
6 return in a reorganization, which derives the value to be distributed in a Plan from the business as
7 a going concern. Proceeds from liquidation would be distributed to Creditors and Interest
8 holders of the Debtor in accordance with the priorities set forth in the Bankruptcy Code.

9 The Debtor believes that there is no currently available alternative that would
10 offer holders of Claims and Interests in the Debtor greater than the Plan and urges all parties
11 entitled to vote on the Plan to vote to accept the Plan.

12 **X. CONCLUSION**

13 Please read this Disclosure Statement and the Plan carefully. After reviewing all
14 the information and making an informed decision, please vote by using the enclosed ballot.

15 Dated: September 7, 2010.

16 Respectfully submitted,

17 SALPARE BAY, LLC

18 By: ITS MANAGER, COLUMBIA RIM
19 CORPORATION, a Washington corporation

20 By: /s/ Michael J. DeFrees
Michael J. DeFrees, President

21 Presented by:
FARLEIGH WADA WITT

22 By: /s/ Tara J. Schleicher
23 Tara J. Schleicher, OSB #954021
24 tschleicher@fwlaw.com
Of Attorneys for Debtor Salpare Bay, LLC

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