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6

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

10 In re: Case No. 09-61196  
11 SANTA CLARA SQUARE, 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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Debtor in Possession Santa Clara Square, LLC ("Debtor") submits the following Disclosure Statement ("Disclosure Statement") with respect to its Chapter 11 Plan of Reorganization ("Plan").

## **I. PURPOSE OF DISCLOSURE STATEMENT**

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

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

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

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

## **II. VOTING REQUIREMENTS**

A creditor whose legal rights are impaired under the Plan and who has filed or is deemed to 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

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

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

5 **2. Form of Debtor:**

6 Debtor is a California limited liability company that was created on July 29, 2003. The  
7 members of Debtor are E& H SC Family Limited Partnership (51%), Santa Clara QVN, LLC (18%),  
8 Hung Nguy (8%), Albert Wang (6%), Chia Van Dang (5%), Jenny Nguy (5%), Minh Nguy (5%),  
9 and Linh My Nguy (2%).

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

11 Debtor is in the business of investing in commercial real property. More particularly, Debtor  
12 is in the business of purchasing, leasing, renovating and selling commercial real property. Debtor  
13 currently owns certain commercial real property commonly known as 3610 - 3700 El Camino Real,  
14 Santa Clara, California (the "Property"). Debtor's income is derived from the leasing of the  
15 commercial units, but the maximum potential value of the Property may be as a development project  
16 for residential and additional commercial improvements.

17 **4. Related Entities:**

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

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

20 The Debtor has no other sources of income other than from the rental of the commercial  
21 property. Debtor's members have advanced funds to the Debtor. Those funds remain on deposit in  
22 the DIP Account.

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

24 This case was commenced on December 21, 2009.

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

26 The Property has a current value of approximately \$19,000,000 (based upon recent offers for

1 purchase of the Property). The secured claim is approximately \$14,500,000, and therefore there is  
2 significant equity in the Property to be protected. Prior to the commencement of the bankruptcy  
3 case, the secured lender, East West Bank as the assignee of the FDIC receivership of United  
4 Commercial Bank ("East West Bank") recorded and published a Notice of Default and a Notice of  
5 Trustee's Sale, with the sale set to occur on December 22, 2009. Debtor attempted to negotiate a  
6 resolution of the issues with East West Bank and to obtain a postponement of the foreclosure sale  
7 but was unable to do so.

8 Prior to the filing of the bankruptcy case Debtor had obtained an offer for purchase, with the  
9 purchaser offering the purchase price of \$19,000,000 for the purchase of the Property.  
10 Contingencies were scheduled to be removed on December 21, 2009, with escrow to close on  
11 December 27, 2009. However, on November 16, 2009, the Bank caused a Notice of Trustee's sale to  
12 be recorded, with the sale set for December 22, 2009. During this period Debtor understands that the  
13 note and rights under the Deed of Trust were transferred from the FDIC, as the receiver for United  
14 Commercial Bank, to East West Bank. The sale would have resulted in payment of all claims,  
15 including that of the Bank, but East West Bank refused to continue the foreclosure sale to allow the  
16 voluntary sale to consummate. Accordingly, Debtor was forced to file the bankruptcy case to  
17 reorganize its financial affairs, and to prevent foreclosure of the property, thereby protecting the  
18 significant equity.

#### 19 **B. Status of Bankruptcy Case**

20 Debtor has operated as Debtor-in-Possession since the commencement of the case. For cash  
21 collateral purposes the Debtor and the secured creditor have treated the rents and related income as  
22 cash collateral, and have entered into various stipulations for payment of necessary expenses. As set  
23 forth below, Debtor contends that a significant portion of the cash in the Debtor in Possession  
24 Account is not subject to any liens, in particular those funds which were advanced to the Debtor by  
25 certain shareholders (as opposed to funds received from rental income). The Debtor is compliant in  
26 its reporting and other administrative requirements, and the 341 Meeting of Creditors has been

1 concluded.

2 This is a single asset real estate case, and as such Debtor is timely filing its Chapter 11 Plan  
3 of Reorganization on or before March 21, 2010. Debtor estimates that the hearing on this Disclosure  
4 Statement will take place in May, 2010, and the confirmation hearing will occur in June or July,  
5 2010.

6 **C. Description of the Property**

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

9 **1. General Information**

10 Debtor currently owns certain commercial real property in Santa Clara, California. The  
11 commercial property consists of 138,915 square feet of leasable space located on 12.59 acres of land  
12 (the "Property"). The Property was acquired in 2004 for a purchase price of \$16,988,000. Debtor  
13 currently estimates the Property value to be at least \$19,000,000, with that amount based, in part,  
14 upon the proposed purchase of the Property. As stated above, the size, location, and design of the  
15 Property is such that the maximum potential for the Property would be achieved with the  
16 development of residential and commercial units.

17 **2. Liens**

18 There exists an undisputed secured claim held by the Santa Clara County Tax Collector. This  
19 lien in the amount of \$399,465.23 pertains to property taxes owing for the Property.

20 The Property was initially purchased with financing provided by Far East Bank. In  
21 September, 2005, United Commercial Bank refinanced the loan with a principal amount of  
22 \$13,500,000. Debtor and UCB entered into various modification agreements in January, 2007;  
23 December, 2007; July, 2008; and December, 2008.

24 East West Bank has succeeded to UCB's interests in the loan with Debtor, and East West  
25 Bank holds a secured claim scheduled as a disputed claim in the amount of \$14,500,000, which  
26 claim is secured by a Deed of Trust. Debtor has not made post-petition payments to the secured

1 creditor as a result of its current decreased cash flow, and because the significant equity cushion  
2 provides adequate protection to the bank. However, the terms of the Plan, discussed below, provide  
3 for treatment of the bank's claim, including the commencement of adequate protection payments.

### 4                   **3.       Occupancy**

5           The Property is currently occupied by three tenants: Kohl's Department Stores, YUM!  
6 Brands (Taco Bell), and Bharat Bazaar. The monthly rental income is \$54,559.51.  
7 The Property is being managed by the Debtor in Possession.

#### 8           **D.       Detailed Disclosure Regarding Prior Marketing and Sale Efforts, and the** 9           **Origination of the Dispute With the Secured Creditor**

10          Debtor has been engaged in efforts to sell the Property from 2007 through the petition date,  
11 and has continued these efforts post-petition. Upon acquiring the Property, Debtor researched and  
12 evaluated the potential development of the Property, and remains interested in the possibility of  
13 developing the Property if it obtains appropriate financing. In furtherance of these evaluations,  
14 Debtor has been involved in seeking entitlements either for its own benefit, and/or for enhancement  
15 of value in the event of the sale of the Property.

16          Debtor obtained three pre-petition offers for purchase. However, for various reasons,  
17 including those described below none of these transactions closed. Each of the purchases would  
18 have resulted in full payment of all claims in this case, as well as the return of a substantial surplus to  
19 Debtor.

20          An initial offer for purchase was signed in December, 2007, with Urban Dynamic.  
21 Contingencies were removed, and the deposit released, however Urban Dynamic failed to close the  
22 transaction, and the sale was not completed. Urban Dynamic subsequently filed suit against Debtor,  
23 seeking return of its deposit, and recorded a lis pendens. Debtor engaged counsel and disputed any  
24 claim to return of the deposit. Urban Dynamic subsequently rescinded the lis pendens, and has filed  
25 a proof of claim based upon the claim regarding the deposit. Debtor will file an Objection to Claim,  
26 and is evaluating counter-claims against Urban Dynamic.

1 After the first potential sale failed to close, the initial offer for sale of the Property was  
2 modified, with the modified offer involving Urban Dynamic and an equity partner. This Sale also  
3 failed to consummate. Shortly after the modified sale failed to close, Debtor obtained another offer  
4 for purchase which also failed to close.

5 In October, 2009, Debtor obtained a new offer for purchase of the Property. This offer for  
6 purchase was scheduled to remove contingencies on December 21, 2009, and close on December 27,  
7 2009. However, the bank refused to continue the foreclosure sale, thereby precluding the final sale  
8 from closing.

9 At various times during the negotiations for the sale of the Property, the Bank interacted with  
10 prospective purchasers regarding a sale of the note in a manner which frustrated the sale process.  
11 The actions of the Bank in these respects will be the subject of review by counsel and prosecution of  
12 such litigation as is appropriate.

13 Debtor has engaged special counsel, namely the firm of Rossi, Hamerslough, Reischl, and  
14 Chuck, to evaluate the claim against East West Bank for interference with the prior sale transactions  
15 and other wrongful acts and omissions in the administration of the loan. Debtor has filed an  
16 Application for Appointment of Special Counsel which is currently pending. The firm of Rossi,  
17 Hamerslough, Reischl, and Chuck specialize in real property transactions and litigation, and  
18 therefore will be of assistance in evaluating and litigating the claims against United Commercial  
19 Bank and East West Bank.

20 It is also noteworthy that one of the account representatives at UCB involved with the  
21 Debtor's account is an officer named Emily Ong. Debtor is informed and believes that prior to UCB  
22 being placed in receivership Ms. Ong obtained employment with East West Bank. As an employee  
23 at East West Bank, Ms. Ong acted as the account representative with respect to Debtor's account  
24 after East West Bank succeeded to UCB's interest in the loan. Thus, Ms. Ong was responsible for  
25 Debtor's account both at UCB and East West Bank, and Debtor is informed and believes that Ms.  
26 Ong continues to remain the decision maker with regard to Debtor's account. Debtor is informed

1 and believes that Ms. Ong ratified and continued the conduct on behalf of East West Bank.

2 **E. Current Offers and Related Business Opportunities Related to the Property**

3 During the post-petition period Debtor has continued to market and explore the sale and other  
4 opportunities related to the Property. During this period Debtor has received multiple offers for the  
5 purchase of the Property and related proposals. Several of these proposals have significant potential,  
6 and Debtor is evaluating the purchase proposals, joint venture proposals, and related proposals.  
7 Debtor has also engaged special counsel to assist with the evaluation of these proposals, namely the  
8 firm of Rossi, Hamerslough, Reischl, and Chuck (described above).

9 Debtor does not include the details of the proposals herein because (1) several prospective  
10 purchasers require confidentiality during negotiations; and (2) Debtor believes that disclosure of the  
11 terms of the various proposals would negatively impact negotiations with other prospective  
12 purchasers and/or joint venturers. Debtor does disclose that the offers which it is considering will  
13 result in payment of all claims which are provided for in the Plan, with a surplus or retention of  
14 assets by the Debtor.

15 Debtor continues to receive offers and proposals, and will continue to evaluate each proposal  
16 to determine which opportunity is in the best interests of creditors and the Debtor.

17 **IV. DEBTOR'S CREDITORS AT PRESENT**

18 **A. Administrative Claims (Class A)**

19 Debtor anticipates that there will be three Class A administrative claims. Debtor estimates  
20 that the claim of Cohen and Jacobson, LLP, as counsel for Debtor, will be approximately \$50,000;  
21 that the claim of Rossi, Hamerslough, Reischl, and Chuck as special counsel will be approximately  
22 \$15,000 (and perhaps higher if litigation with the bank is commenced); and the claim of Bicker &  
23 Associates as accountants for Debtor will be approximately \$5,000.

24 **B. Priority Claims (Class B)**

25 Debtor is presently unaware of any priority claims.  
26

1           **C.     Lien Claimants (Class C)**

2                   **1.     Claim of Santa Clara County Tax Collector (Class C-1)**

3           Class C-1 consists of the Claim of the Santa Clara County Tax Collector in the amount of  
4   \$399,465.23.

5                   **2.     Claim of East West Bank (Class C-2)**

6           The C-2 Claim consists of the secured claim of East West Bank in the amount of  
7   \$14,500,000.

8           **D.     Claims of Unsecured Creditors (Class D)**

9           The Class D claims consist of claims of Unsecured Creditors

10                   **1.     Unsecured Claims Based Upon Shareholder Loans (Class D-1)**

11           The Class D-1 claims consist of the unsecured claims of Emily Chen, Albert Wang, and  
12   Hung Nguy based upon their advance of the Shareholder Loan Funds.

13                   **2.     General Unsecured Claims (Class D-2)**

14           The Class D-2 claims consist of general unsecured claims.

15           **E.     Claims of Members (Class E)**

16           The Class E claims consist of the equity interests of members, namely E& H SC Family  
17   Limited Partnership (51%), Santa Clara QVN, LLC (18%), Hung Nguy (8%), Albert Wang (6%),  
18   Chia Van Dang (5%), Jenny Nguy (5%), Minh Nguy (5%), and Linh My Nguy (2%).

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

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

22           Debtor's assets are as follows:

ASSET	NAME OF LIENHOLDERS	Value
Bank Balances	None	\$437,509.64

ASSET	NAME OF LIENHOLDERS	Value
Real Property	Santa Clara County Tax Collector and East West Bank	\$19,000,000.00
Rental Income	None	\$3,275,970.60 <sub>1</sub>
Cause of Action Against EWB	None	Unknown <sup>2</sup>
<b>Total</b>		<b>\$22,713,480.24</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	None	\$437,509.64
Real Property	Santa Clara County Tax Collector and East West Bank	\$14,500,000.00 <sub>3</sub>
Rental Income	None	\$0.00 <sub>4</sub>

<sup>1</sup> This figure is derived from calculating the rental income of \$54,559.51 for the 60 month term of the Plan.

<sup>2</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>3</sup> Reflects distress forced sale valuation. This value is lower because in a liquidation analysis the property would either be sold at a depressed value, or the secured creditor would foreclose on the Property. Thus, the figure attributed in the liquidation analysis is the amount of the bank's claim. Further, in this scenario neither the creditors nor the Debtor would benefit from the various outstanding business proposals.

<sup>4</sup> In a liquidation analysis there would be no rental income from the Property.

ASSET	NAME OF LIENHOLDERS	Value
Cause of Action Against EWB	None	\$0.00 <sup>5</sup>
Total		\$14,937,509.64

**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 claims against East West Bank, Debtor does not presently anticipate any other litigations. However, it is possible that litigation may be necessary in the dispute regarding the Proof of Claim filed by Urban Dynamic.

**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 E are unimpaired. Class A and B claims will be paid in full on the

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<sup>5</sup> This value is attributed a value of zero given the uncertainty that a liquidating trustee would pursue the claims

1 Effective Date, in cash from the Shareholder Loan Funds, unless other treatment is agreed upon. If  
2 a claim is disputed, Debtor will set aside and reserve sufficient funds to satisfy the claim if  
3 subsequently allowed. In the event that all claims are paid in full, Class E members, currently  
4 comprised of eight members of Debtor, shall retain their interests without impairment.

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

6 There are no current priority claims.

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

8 The Plan provides for payment of the Class C-1 Claim upon the sale of any property subject  
9 to a lien for property taxes, from Litigation Proceeds, and/or from the refinance of the Property.

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

11 Initially, Debtor the Class C-2 Claim of East West Bank will be satisfied, in whole or in  
12 part, from the offset or payment due on account of the Interference Claims. In the event that  
13 Debtor successfully pursues its Interference Claims against the Class C-2 Claimant, the damages  
14 awarded to Debtor will offset the claim, or part of it, such that the Class C-2 Claim will be barred  
15 or reduced to the extent of the offset.

16 The Plan will provide for interim treatment of the Class C-2 Claim pending resolution of  
17 the Interference Claims. The Plan provides for the payment of the Class C-2 Claim from the sale  
18 of the Property. The Property is valued at \$19,000,000, and therefore the sale of the Property will  
19 satisfy the entire Class C-2 Claim. In connection with the sale of the Property Debtor is  
20 authorized, but not required, to pursue entitlements for the development of the Property in order to  
21 maximize the value of the Property.

22 Due to the significant equity cushion in the Property, the Class C-2 Claimant will not  
23 receive interim adequate protection payments so long as the Property is sold within one year of the  
24 Effective Date. If the Property is not sold within one year of the Effective Date, Debtor will make  
25 interest only adequate protection payments to the Class C-2 Claimant for the duration of the term  
26 of the plan (i.e., from one year after the Effective Date through the balance of the five year term, or

1 such longer period as may apply if the term is extended as provided in the Plan). If this Court  
2 makes an order in other proceedings within this case requiring adequate protection payments,  
3 Debtor shall make such payments from Net Profits, from Shareholder Loan Funds, or from other  
4 sources approved by the Court, and the Plan will be deemed amended accordingly. The interest  
5 payments will be based upon the prime rate utilized by the Class C-2 Claimant for similar loans  
6 plus 1.5% ("Class C-2 Interest Rate"). The current prime rate is 3.25%, and therefore the current  
7 interest rate as of the date of the filing of this Disclosure Statement would be 4.75%. Based upon  
8 the principal balance of \$14,500,000, the interest payments would be \$57,395 per month.

9 The Plan provides that the Debtor may elect to retain the Property and pay the Class C-2  
10 Claim by obtaining financing through a refinance of the Property.

11 Alternatively, or additionally, the Class C-2 Claim, or part of it, may also be paid from Net  
12 Profits from the continued rental of the Property.

13 Alternatively or additionally, Debtor may elect to develop the Property and pay claims by  
14 the sale and/or rental of developed residential and commercial units. If Debtor chooses to develop  
15 the Property it is required to file with the Court a Statement of Election within one year of the  
16 Effective Date ("Development Election"). However, if the Debtor does seek to pursue  
17 development of the Property, which will likely require Debtor to obtain financing through a new  
18 loan, equity partner, joint venture, or other arrangement, Debtor must obtain an Order of this court  
19 authorizing any such agreement.

20 Debtor currently anticipates that the development will involve a hybrid development of  
21 residential and commercial units. The Class C-2 Claimant will retain its existing lien rights during  
22 the term of the Plan, including during any development. In the event of a Development Election,  
23 the Debtor is required to make the payments specified below, and is further required to pay the  
24 entire balance of the Class C-2 Claim no later than the fifth anniversary of the Effective Date  
25 ("Development Term"). If the Debtor proceeds with the development of the Property, the Plan  
26 requires that the Debtor comply with the following terms:

- Debtor must make monthly interest only adequate protection payments to the Class C-2 Claimant at the Class C-2 Interest Rate for the duration of the term of the Plan. These interest payments will commence the month in which the Debtor makes the Development Election, or one year from the Effective Date, whichever is earlier.
- Upon completion of the development of the Property, Debtor must market the commercial and residential units for sale and/or rental.
- For those units which are leased following development, the Debtor's interest in Net Profits from the rental of those units shall be used to pay the Class C-2 Claim. The distribution of Net Profits from the new rentals will be paid on a semi-annual basis, with the first payment to be made within six (6) months after the development is complete.
- For those units which are sold after development, the Debtor will pay to the Class C-2 Claimant eighty percent (80%) of the Debtor's interest in the net proceeds from the sale of units, and will retain the remaining twenty percent (20%) in a segregated account ("Development Reserve") for the purpose of making improvements to other units and/or common areas in connection with the development.
- At the end of the Development Term, the remaining balance of the Class C-2 Claim shall be paid in full from the sale of the Property, the refinance of the Class C-2 Claim, or from new contributions from members or other third parties.

Alternatively, at any time during the term of the Plan, the Debtor may elect to refinance the Property, or obtain contribution from new members and/or third parties, and pay the Class C-2 Claim in full from the proceeds of the refinance or contribution.

#### **G. Treatment of Class D-2 Claims**

Class D-2 Claims will be paid no later than the end of the Term of the Plan from the surplus remaining from Litigation Proceeds, from Net Profits, from Shareholder Loan Funds, and from cash balances, after payment of other claims according to their priorities.

1 The Plan provides that the Class D-2 Claimants may also be paid from the remaining  
2 proceeds from the sale of the Property (after payment of costs of sale, taxes, secured claims, and  
3 related costs), or the refinance of the Property.

4 Debtor anticipates that Class D-2 Claims will be paid in full, with such claimants receiving  
5 a 100% dividend. However, if the means for providing payment to Class D-2 are not sufficient for  
6 a 100% dividend, the payment to Class D-2 Claimants will be made on a pro-rata basis from  
7 available assets. If Class D-2 Claims are not paid in full, the portion of the unpaid balance of each  
8 Class D-2 Claim will be discharged. In the event that any Class D-2 Claims are discharged, the  
9 Shareholder Loan Funds shall be deemed to be contributions of capital utilized to fund the  
10 payments required to be paid from such funds under this Plan, and the Class E members will  
11 receive nothing on account of their Class D-1 Shareholder Loans.

#### 12 **H. Treatment of Class D-1 Claims**

13 The Plan provides that Class D-1 Claims, namely the shareholder loan claims, will be  
14 subordinated. Provided that claims in Classes A, B, C, and D-2 are paid in full, Class D-1 Claims  
15 will be repaid, with interest at the rate of 10%, from any remaining assets upon conclusion of the  
16 term of the Plan. If there are insufficient remaining assets to pay all class D-1 Claims in full, the  
17 claims shall be paid on a pro-rata basis.

#### 18 **I. Treatment of Class E Claims**

19 The Plan provides that Class E members will provide, without charge to the Reorganized  
20 Debtor, and with a waiver of all fees and commissions to which a provider of such services would  
21 otherwise reasonably expect to receive, all the services required for the consummation of the Plan,  
22 exclusive of the daily management functions performed by Alpha Investments and Property  
23 Management, but otherwise including without limitation the leasing and management services for  
24 the Property; engaging professionals for the design and construction of the development; engaging  
25 contractors and subcontractors to perform the development; supervising the construction and  
26 completion of the development; the procurement of permits necessary for sales or leasing;

1 assistance in the prosecution of all litigations contemplated by this Plan, and the marketing and  
2 sale/rental of the developed units (other than providing or paying the fees and costs of sales or  
3 leasing agents) pursuant to the terms of this Plan. The obligations to be performed by the Class E  
4 members include all of the obligations to be performed by the Debtor under the terms of this Plan,  
5 and as otherwise required by the Bankruptcy Code, the Rules of Bankruptcy Procedure, the Local  
6 Rules of the above entitled Court, the Guidelines of the Office of the United States Trustee. In the  
7 event that any party in interest considers that the Class E equity security holders have failed, or are  
8 failing, to provide such services, such party in interest may move the court for a determination that  
9 the Member(s) have failed to provide such services and for an order determining the appropriate  
10 disposition of the membership interests.

11 The individuals and entities who presently hold their membership interests shall retain  
12 those interests, subject to performance of such obligations and subject to consent of the treatment  
13 which the Plan provides for Class D-1 Claims.

14 **J. Manner of Funding of Plan:**

15 The manner of funding the plan is described above. In sum, Debtor will pay claims through  
16 a process of (a) continued rental of the Property and collection of rents from Tenants; (b) the sale  
17 of the Property; (c) funding pursuant to a refinance; (d) development of the property by obtaining  
18 an equity partner, joint venturer, or other financing, followed by the sale and/or rental of the  
19 commercial and residential units to be developed; and (e) disbursement of Litigation Proceeds.  
20 Debtor will also use the Shareholder Loan Funds to pay claims in Classes A and B.

21 **K. Specific Terms Related to the Sale or Refinance of the Property**

22 The Plan provides that Debtor is authorized to sell the Property at any time during the term  
23 of the Plan. In connection with the sale of the Property Debtor is also authorized to employ any  
24 qualified real estate broker to assist with the sale of the Property without further order of the Court.  
25 The real estate broker may receive a reasonable commission from the sale of the Property, so long  
26 as the commission conforms with the industry standard.

1 The Plan dictates that the sale of the Property requires Court approval following a motion  
2 noticed to all creditors. The sale, and payment of costs of sale as customary in the industry, shall  
3 be approved if the terms of sale are fair and reasonable. Class C-1 Claims and Class C-2 Claims  
4 will be paid directly from escrow from the net profits after costs of sale. Any surplus funds are to  
5 be returned for the Debtor for distribution pursuant to this Plan pursuant to the priorities set forth  
6 herein.

7 With respect to the refinance of the Property, Debtor is also authorized to refinance the  
8 Property at any time during the term of the Plan, provided that (a) the refinance generates funds  
9 sufficient to pay all outstanding claims; and (b) Debtor notifies East West Bank and the Office of  
10 the United States Trustee prior to consummating any refinance. Provided that the refinance will  
11 result in full payment of all claims, the refinance of the Property does not require court authority,  
12 and the refinance may be effectuated at any time during the term of the Plan without the necessity  
13 of further order of the Court. However, if the proposed refinance of the Property will not generate  
14 funds sufficient to pay all claims, then Court approval is required.

15 In the event that a Final Decree is issued and the case closed prior to the sale of the  
16 Property, no order reopening the case will be required in order for the Court to hear any motion  
17 related to the sale or refinance of the Property.

18 **L. Term of the Plan:**

19 The Term of the Plan is five years, and the term shall commence on the Effective Date.  
20 The Plan also provides that Debtor may extend the term of the Plan. At the conclusion of the five  
21 year term, if Debtor is current in its interest payments on the C-2 Claim of East West Bank, and is  
22 otherwise in compliance with the terms of this Plan, Debtor has the option to automatically extend  
23 the term of the Plan for two additional years. The Plan requires that Debtor make such an election  
24 in writing and file a Notice of Election to Extend Term of Plan with the Court. In the event that  
25 the term of the Plan is extended by Debtor's election, the term of the Plan will be seven years.

26 If the Debtor elects to extend the term of the Plan to seven years, after conclusion of the

seven year term, Debtor can seek a further extension of the term of the Plan. However, a request for a further extension requires a showing that the interest payments on the Class C-2 Claim are current and that there exists a legitimate business purpose for the extension. The business purpose may include, but is not limited to, the need to complete the development of the Property, efforts to sell or refinance the Property, or an increase in rental income such that Debtor is capable of commencing payments to creditors without the need for sale or refinance.

The time for payment of all claims provided for under the Plan shall be extended upon the extension of the term of the Plan.

## **VII. COMPARISON WITH CHAPTER 7**

### **A. Chapter 11 Reorganization and Chapter 7 Liquidation Alternatives**

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

### **B. Chapter 11 Distribution Scheme**

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):

<b>Classes of Claims</b>	<b>Claim Amounts</b>	<b>Diminishing Balances of Estate Funds</b>	<b>% Dividend</b>
Beginning Balance		\$22,713,480	
Class A	\$70,000	\$22,643,480	100%
Class C-1	\$399,465	\$22,244,015	100%
Class C-2	\$14,500,000	\$7,744,015	100%

<b>Classes of Claims</b>	<b>Claim Amounts</b>	<b>Diminishing Balances of Estate Funds</b>	<b>% Dividend</b>
Classes D <sup>6</sup>	\$381,252	\$7,362,763	100%
Residual Balance to Debtor		\$7,362,763	

### **C. Chapter 7 Distribution Scheme**

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

<b>Classes of Claims</b>	<b>Claim Amounts</b>	<b>Diminishing Balances of Estate Funds</b>	<b>% Dividend</b>
Beginning Balance		\$14,937,510	
Class C-1	\$399,465	\$14,538,045	100%
Class C-2	\$14,500,000	\$38,045	100%
Expenses of Administration <sup>7</sup>	\$200,000	\$0	19%
Class D	\$381,252	\$0	0%

### **VIII. FEASIBILITY**

The Plan is feasible based upon the value of the Property. Debtor estimates the value of the Property to be \$19,000,000, and based upon this valuation the assets of the estate exceed existing claims such that the Plan is undeniably feasible. Further, the estate holds approximately \$437,509 in cash, and the rental income generates \$54,599.51 in monthly income. Thus, the rental income will generate \$3,275,970.60 during the term of the Plan and will be available as funds with which

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<sup>6</sup> The class D-1 claims aggregate the amount of \$290,000 and the Class D-2 claims aggregate the amount of \$91,252. The renegade claim of Urban Dynamic is not included in this figure, as the claim is baseless and Debtor will be filing an objection to claim disallowing such claim.

<sup>7</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.

1 to make certain of the payments required by this Plan.

2       Additionally, the alternate options of refinancing, obtaining equity contributions, and  
3 related options, will provide for new capital sufficient to pay all claims. These options will also  
4 provide for the development of the Property such that the income and sale of new residential and  
5 commercial units will generate income for payment of claims.

6 **IX. PROPOSED MANAGEMENT AND SALARIES AFTER CONFIRMATION**

7       Alpha Investments and Property Management will remain the property manager, with the  
8 assistance of the members as discussed above.

9 **X. EXECUTORY CONTRACTS**

10       The Plan provides for the assumption of the leases of the three current tenants of the  
11 Property, namely Kohl's Department Stores, YUM! Brands, and Bharat Bazaar. The property  
12 management contract with Alpha Investments & Property Management will also to be assumed.  
13 Any executory contracts which are not assumed pursuant to the terms of this Chapter 11 Plan are  
14 rejected.

15 **XI. LITIGATION**

16       The Plan provides that Debtor is authorized to commence actions which it deems necessary  
17 without the necessity of Court approval, including but not limited to actions to the action against  
18 East West Bank, Urban Dynamic, or otherwise.

19 **XII. OTHER**

20       To the extent that rental income constitutes cash collateral subject to any lien of the Class  
21 C-2 Claimant, Debtor is authorized to utilize constitute cash collateral to make payments  
22 contemplated by the Plan and to pay monthly operating expenses. The monthly budget for  
23 operating expenses is the maximum of \$12,000 (which budget does not include interest payments  
24 or any taxes). Debtor is also authorized to pay post-petition property taxes as the come due from  
25 cash collateral.

26       In the event of any material failure of the Reorganized Debtor to perform the terms of this

1 Plan, any party in interest may serve upon the Reorganized Debtor a Notice of Default demanding  
2 cure within sixty (60) days from date of service thereof. Unless otherwise provided in the Plan, if  
3 the Reorganized Debtor fails to timely cure the alleged default, any party in interest may pursue  
4 any remedy available under the Bankruptcy Code or other applicable law, including conversion of  
5 the case to a Chapter 7 case.

6 **XIII. CONCLUSION**

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

10 **IX. CERTIFICATION**

11 The undersigned hereby certifies that the information herein is true and correct, to the  
12 best of my knowledge and belief, formed after reasonable inquiry.

13 Dated: March 20, 2010

SANTA CLARA SQUARE, LLC

14 By: /s/ Emily Chen

15 Emily Chen  
16 Responsible Individual

17 Dated: March 20, 2010

COHEN AND JACOBSON, LLP

18 By: /s/ Lawrence A. Jacobson

19 Lawrence A. Jacobson  
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