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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re WAVE HOUSE BELMONT PARK, LLC, Debtor.	CASE NO. 10-19663-LT11 Chapter 11 **DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT** Date: May 23, 2013 Time: 2:00 pm Dept: 3 Judge: Hon. Laura S. Taylor

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TABLE OF CONTENTS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:	*	
WAVE HOUSE BELMONT PARK, LLC	*	**Case No. 10-19663-LT11** **(Chapter 11)**
	*	
Debtor.		

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DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE WITH RESPECT TO DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION

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I. EXECUTIVE SUMMARY

This executive summary is intended to provide creditors and interested parties with a brief summary of the First Amended Disclosure Statement provided herein below. This executive summary should not be taken as a substitution for the full disclosures made within the Disclosure Statement and the Debtor still encourages creditors to read the full Disclosure Statement in order to make a fully informed decision when voting for or against the Debtor's First Amended Plan of Reorganization.

The Debtor's First Amended Plan of Reorganization (the "Plan"), attached hereto in full as Exhibit 1, calls for the Debtor to liquidate its remaining assets in an attempt to pay creditors in full. The Debtor has taken necessary steps to maximize the value of its previous business operations for the benefit of its secured creditor and to increase the value of remaining estate assets for the benefit of all creditors.

The Debtor shall press forward with the litigation against the City of San Diego as explained in detail below. Assets identified below, and the Plan, as the Schedule B Assets are treated in accordance with that certain Settlement Agreement between the Debtor and Symphony Asset Pool XVI, LLC ("SAP") as further detailed herein (the "SAP Settlement Agreement"). The SAP Settlement Agreement incorporates the previous Settlement Agreement between the Debtor and East West Bank ("EWB") (the "EWB Settlement Agreement"). The EWB Settlement Agreement described herein, also remains in force and effect to the extent indicated within the SAP Settlement Agreement, which is attached hereto as Exhibit 3. The Debtor's plan is a liquidating plan that distributes the Debtor's assets, and proceeds therefrom, to creditors in the order of priority called for under the Bankruptcy Code.

II. INTRODUCTION

Wave House Belmont Park, LLC ("Debtor" and/or "WHBP"), debtor in possession in the above-referenced chapter 11 case (the "Reorganization Case"), submits this First Amended Disclosure Statement (the "Disclosure Statement") pursuant to section 1125 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the "Bankruptcy Code") with respect to the Debtor's First Amended Plan Of Reorganization filed concurrently herewith (the "Plan"). This Disclosure Statement is to be used in connection with the solicitation of acceptances of the Plan. A copy of the Plan is attached hereto as Exhibit 1. Unless otherwise defined herein, terms used herein have the meanings ascribed thereto in the Plan (*see* Section 1 of the Plan entitled "Definitions and Interpretation").

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Attached, or to be filed as exhibits to this Disclosure Statement, are the following documents:

- The First Amended Plan (Exhibit 1)
- List of Creditors by Class and Claim Amounts. Amounts listed are subject to objection (Exhibit 2).
- Settlement Agreement Between Debtor and SAP (Exhibit 3).

If you are entitled to vote to accept or reject the Plan, the ballot ("Ballot") for acceptance or rejection of the Plan is enclosed with this Disclosure Statement.

The Plan contemplates the liquidation of the Debtor's estate, which may lead to a distribution to holders of Unsecured Claims. Each holder of an Unsecured Claim (Class 4) will receive, on account of such claim, its pro rata share of distributions from the Disbursement Account maintained by the Plan Distribution Agent. The Disbursement Account will consist of potential distributions from the Debtor's sale of assets, payment on the 8(a) Note as defined in the Plan, and from any proceeds obtained from the pending lawsuit against the City of San Diego, after the payment of expenses, administrative and priority claims as described herein. Based upon all general unsecured claims filed, the distribution, to general unsecured claims depends totally on the results of the Adversarial Action and on the value obtained from the payments to be made under the 8(a) Note.

The Plan implements the Debtor's liquidation of all estate assets.

III. NOTICE TO HOLDERS OF CLAIMS

The purpose of this Disclosure Statement is to enable you, as a creditor whose claim is impaired under the Plan, to make an informed decision in exercising your right to vote to accept or reject the Plan.

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

On _____, the United States Bankruptcy Court for the Southern District of California (the "Bankruptcy Court") entered an order approving this Disclosure Statement as containing adequate information of a kind, and in sufficient detail, to enable a hypothetical, reasonable investor typical of the solicited classes of claims against the Debtor to make an informed judgment with respect to the acceptance or rejection of the Plan.

APPROVAL OF THIS (OR ANY OTHER) DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT OF THE FAIRNESS OR MERITS OF THE PLAN OR THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

Each holder of a claim entitled to vote to accept or reject the Plan should read this Disclosure Statement, the Plan, and all accompanying documents in their entirety before voting. No solicitation of votes to accept or reject the Plan may be made except pursuant to a Court-approved Disclosure Statement. No person or entity is authorized to use or promulgate any information concerning the Debtor or its business or the Plan, other than information contained in a Court-approved Disclosure Statement. You should not rely on any information relating to the Debtor, its business or the Plan other than that contained in the Court-approved Disclosure Statement, the proposed Plan and in accompanying exhibits.

After carefully reviewing this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed ballot and return the same to John L. Smaha, Esq., Smaha Law Group, 7860 Mission Center Court, Ste. 100, San Diego, CA, 92108, no later than 4:00 p.m., Pacific Time, on _____ (the "Voting Deadline"). You will be bound by the Plan if it is accepted by the requisite holders of claims, even if you do not vote to accept the Plan.

TO BE SURE YOUR BALLOT IS COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED NO LATER THAN 4:00 P.M., PACIFIC TIME ON _____. For a general description of the voting instructions and the name, address and phone number of the person you may contact if you have questions regarding the voting procedures, *see* Section X "Confirmation and Consummation Procedures-Solicitation of Votes" below.

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan (the "Confirmation Hearing") on _____ at _____, Pacific Time, in the United States Bankruptcy Court, Southern District of California, located at 325 West F Street, San Diego, California 92101.

The Bankruptcy Court has directed that Objections, if any, to confirmation of the Plan be filed on or before _____ at 4:00p.m., Pacific Time, in the manner described in Section X "Confirmation and Consummation Procedure" below.

THE DEBTOR BELIEVES THAT THE PLAN MAXIMIZES CREDITOR RECOVERIES AND URGES ALL HOLDERS OF IMPAIRED CLAIMS TO VOTE TO ACCEPT THE PLAN.

IV. EXPLANATION OF CHAPTER 11

A. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, a debtor attempts to reorganize its business for the benefit of the debtor, its creditors and other parties in interest. The Debtor commenced its Reorganization Case with the Bankruptcy Court by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code on February 4, 2011.

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor as of the date the petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession" unless the bankruptcy court orders the appointment of a trustee. In the present Reorganization Case, the Debtor has remained in possession of certain litigation rights against the City of San Diego and continues to otherwise manage its financial affairs as a debtor-in-possession.

The filing of a chapter 11 petition also triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides, among other things, for an automatic stay of all attempts to collect or recover pre-petition claims from the debtor or to otherwise interfere with, or exercise control over, the debtor's property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the effective date of a confirmed plan of reorganization.

The formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying claims against and interests in the debtor.

B. PLAN OF REORGANIZATION

Although referred to as a plan of reorganization, a plan may provide for anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of a debtor's assets. In either event, upon confirmation, the plan becomes binding on the debtor and all of its creditors and

equity holders, and the obligations owed by the debtor to such parties are compromised and exchanged for the obligations specified in the plan.

After a plan of reorganization has been filed, the holders of impaired claims against and interests in a debtor are permitted to vote to accept or reject the plan, provided such holders are to receive distributions under the plan. Before soliciting acceptances to the proposed plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Disclosure Statement is presented to holders of Claims against the Debtor to satisfy the requirements of section 1125 of the Bankruptcy Code in connection with the Debtor's solicitation of votes on the Plan.

If all classes of claims and interests have not accepted a plan of reorganization, the bankruptcy court may confirm the plan if it independently determines that the requirements of section 1129 of the Bankruptcy Code have been satisfied. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the "best interests" of creditors test and be "feasible." The "best interests" test generally requires that the value of the consideration to be distributed under a plan to the holders of claims or interests in the debtor is not less than those parties would receive if the debtor were liquidated pursuant to a hypothetical liquidation occurring under chapter 7 of the Bankruptcy Code. Under the "feasibility" requirement, the court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization. With the possible exception of approval of the Plan by all impaired classes, the Debtor believes that the Plan satisfies all the applicable requirements of section 1129(a) of the Bankruptcy Code including, in particular, the best interests of creditors test and the feasibility requirement.

Chapter 11 does not require that each holder of a claim or interest in a particular class vote in favor of a plan of reorganization in order for the bankruptcy court to determine that the class has accepted the plan. Rather, a particular class will be determined to have accepted the plan if the court determines that the plan has been accepted by a majority in number and two-thirds in amount of those claims actually voting in such class. In the present case, only the holders of claims who actually vote will be counted as either accepting or rejecting the Plan.

In addition, classes of claims or interests in the debtor that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or equity interests in an impaired class or because of applicable law, a class is deemed to have rejected the Plan. A class is "impaired" if any of the legal, equitable, or contractual rights associated with the claims or equity interests of that class are modified in any way under the plan. Modification for purposes of determining impairment, however, does not include curing defaults and reinstating maturity or payment in full in cash on the effective date of the plan.

Class 1 (Secured Claim of Kathleen Lochtefeld) is unimpaired by virtue of her post-petition agreement with the Debtor. Class 2 (Secured Claim of Symphony Asset Pool XVI, LLC) is impaired, although deemed to have accepted the Plan pursuant to its post-petition agreement with the Debtor in the form of the SAP Settlement Agreement. As more fully discussed below, holders of claims in Class 3 (Unsecured Priority Claims) and Class 4 (General Unsecured Claims) are impaired and entitled to vote on the Plan. Class 5 (Equity Interests) are deemed to have rejected the Plan pursuant to 11 U.S.C. § 1126.

The Bankruptcy Court may also confirm a plan of reorganization even though fewer than all classes of impaired claims and equity interests accept it. For a plan of reorganization to be confirmed despite its rejection by a class of impaired claims or equity interests, the proponent of the plan must show, among other things, that the plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each impaired class of claims or equity interests that has not accepted the plan.

Under section 1129(b) of the Bankruptcy Code, a plan is "fair and equitable" as to a rejecting class of claims or equity interests if, among other things, the plan provides: (a) with respect to secured claims, that each such holder will receive or retain on account of its claim property that has a value, as of the effective date of the plan, in an amount equal to the allowed amount of such claim or such other treatment as accepted by the holder of such claim; and (b) with respect to unsecured claims and equity interests, that the holder of any claim or equity interest that is junior to the claims or equity interests of such class will not receive or retain on account of such junior claim or equity interest any property at all unless the senior class is paid in full.

A plan does not "discriminate unfairly" against a rejecting class of claims or equity interests if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any

class (or classes) of similarly situated claims or equity interests, and (b) no senior class of claims or equity interests is to receive more than 100% of the amount of the claims or equity interests in such class.

V. HISTORY OF THE DEBTOR

Lease with the City of San Diego.

On March 4, 1987, City entered into a lease (the "Lease") with Belmont Park Associates, a California limited partnership, for the property commonly known as Belmont Park, allowing Belmont Park Associates to construct, operate and maintain a commercial and recreational center which incorporated the historic plunge pool ("Plunge). The Lease was assigned from Belmont Park Associates to PARS Belmont Park, LLC on or about December 1, 1995, which subsequently assigned the lease to Wave The Planet, LLC on June 22, 2000, which subsequently assigned the Lease to Wave House San Diego, LLC on May 10, 2002. Wave House San Diego, LLC paid six million ($6,000,000) to acquire the leasehold interest in contemplation of the future development as provided in Lease modifications referenced below. The Lease was subsequently assigned to the Debtor, on August 22, 2004.

The Lease has been modified by a series of five operating memoranda. The Fifth Operating Memorandum ("5OM") was entered into between the City and WHBP's predecessor in interest, Wave the Planet, LLC, on June 26, 2000. A dispute exists between the Debtor and the City as to the interpretation and event that took place. The facts stated herein represent the Debtor's interpretation of the Lease and the event that took place. At the time the 5OM was entered into, Belmont Park was in a rundown condition. Despite redevelopment efforts by the prior developers, the project did not generate sufficient income to become a viable project. Consequently, maintenance had been deferred and the project was in a state of disrepair, pedestrian traffic was significantly reduced, criminal behavior became rampant, and vacancy in the commercial and retain spaces was in excess of fifty percent (50%). The Plunge at that time had only 400 members and was also in need of significant maintenance and repairs.

Tom Lochtefeld, who was a member of Wave the Planet, LLC, and is the manager of the Debtor, had a vision to revitalize Belmont Park which involved capital improvements including new water attractions based on standing wave machines and other attractions. The concept was to split the revitalization into two phrases. Phase I would address the immediate issues with Belmont Park, and

create a more vibrant and inviting attraction. This would be achieved though the creation of an aquatic recreation area that would serve to redefine Belmont Park from a sordid past and blight. While Phase I was expected to increase business in the then moribund Belmont Park, it was not expected to make Belmont Park economically viable. Because the preservation fo the Plunge at the lessee's expense was a requirement of the Lease, the project would continue to operate at a loss during this development, the size of which was dependent on the lessee's rental obligation to the City. Thus, financial incentives in the form of rent credits were negotiated with the City.

These credits were based in part on investments made in the particular phase. Phase II, on the other hand, was envisioned to include a new hotel and other improvements that were intended to create profit centers that would make the overall project more viable, allow for the needed structural improvements and continue maintenance to preserve the historic Plunge building for years to come and to pay rents more commensurate to market rates.

The terms of 5OM were consistent with that overall intent. Indeed, the agreement recites that it is the desire of the parties to "revitalize Belmont Park" by including "park visitor-oriented commercial and recreational uses." Another company headed by Mr. Lochtefeld, Wave Loch Tool & Die, LLC, was to be hired by the lessee to manage the revitalization of Belmont Park. The 5OM provided in paragraph 3 that the lessee "must construct, operate and maintain" the new features contemplated by the Supplemental Development Plan which was attached to the agreement as its Exhibit 2. The plan called for 2 phases at a total projected cost to the lessee of $13,000,000.

Phase One of 5OM called for the lessee to invest $4,000,000 in improvements, including deferred maintenance items, new wave machines and water recreational features designed to "increase the attractiveness of the existing Plunge and provide an aquatic recreational sports draw for the adjacent boardwalk restaurants and... common area plazas; new parking options, and beach rentals and food service." As an inducement for these improvements, the City agreed to $4,000,000 in rent credits.

Phase Two of 5OM called for the lessee to submit a Phase II Capital Improvement Plan within six (6) years (approximately June 2006) for an estimated $9,000,000 in additional improvements that included new water recreation attractions, including a "Cirque de Soleil" style water show, a new parking

structure, a shuttle service, and the refurbishment and adaptive reuse of the Plunge building. As to the latter, the 5OM's Development Plan provides as follows: "In order to insure continued operation of the Plunge swimming pool, the Plunge Building requires major renovation in order to overcome design flaws and permit an economically viable adaptive re-use. LESSEE shall consider commercial uses within a historically rehabilitated Plunge Building which would serve park and beach visitors, including but not limited to: an upper level hotel; a surrounding beach culture and retail arcade; participatory water attractions and games." (Emphasis added).

The hotel was to the be main element of Phase II. It was the anticipated hotel which would create the economic engine to make the entire project economically viable. Without an agreement from the City to these Phase 2 improvements, it made no sense for the lessee to incur the cost of the Phase 1 improvements. The point of the two phases was to make the project economically viable such that the lessee could pay the rents anticipated under the lease. Representatives for both the City and the lessee anticipated a project that would be much larger in magnitude than the $9,000,000 provided in the 5OM. According to representatives of the City at the time, the concept was to create parity, so that both landlord and lessee had obligations and commitments as to the improvements.

The 5OM was approved by the City Council. To provide assurances to Lochtefeld and his entities that the lessee would not need further City Council approval for Phase 2, the agreement authorized the City Manager to undertake such acts as necessary for the implementation of the two phases. In reliance on the City's agreement for both phases of development, the lessee went forward with the Phase 1 improvements. In reliance on the City's commitments in the 5OM, Wave the Planet commenced the improvements envisioned in Phase 1. In 2002, Lochtefeld acquired sole ownership of Wave the Planet, and subsequently transferred the leasehold to Wave House San Diego, LLC. Phase 1 improvements were completed by WHSD. If the lessee had not had a commitment from the City as to Phase 2, the lessee would not have gone forward with the acquisition of Wave the Planet, or undertaken the improvements of Phase 1. Incurring the expense of the Phase 1 improvements made no economic sense without the City's commitment to allow the Phase 2 improvements, as it was the latter phase that would create the economic engine to drive the project. Toward that end, the 5OM also provided the City

Manager with the broad authority to negotiate for, and commit the City to, the development plan for Phase 2 to be put forward by the lessee and that no further City Council approval was required.

As provided in the 5OM, the City gave rent credits to the lessee that were equal to the minimum improvements required under Phase 1. These are referred to in the 5OM as "Tier 2" rent credits. The rent credits were in consideration for lessee's undertaking the expense of the improvements without any real prospect of recovering those costs from operations, as the project did not generate sufficient cash flow to both service debt and pay full rent. Pursuant to the terms of the Lease, the minimal cash rent portion of the Lease after credits were to be $70,000, which is what the lessee paid. The 5OM also anticipated that rent credits would be available to make Phase 2 improvements financially feasible. The 5OM provided for Tier 3 rent credits to be applied in a similar fashion to the Tier 2 rent credits, which Lochtefeld, as manager of the lessee, understood committed the City to provide dollar for dollar rent credits up to the $9,000,000 of improvements provided in the 5OM, depending on the economic viability of the project based on the Phase 2 improvements. This was a critical component to the 5OM and all parties to the 5OM knew that the project, as then configured, was not capable of sustaining full rent payments called for in the Lease after the Tier 2 credits were exhausted. The City and Lochtefeld intended that the Tier 3 credits, to which the City Manager had been given authority to establish, would be available by the time the Tier 2 credits were exhausted.

After completing Phase 1 improvements at a cost in excess of $4,000,000, the lessee began work on developing plans for Phase 2. The lessee expended considerable time, effort and money in developing those plans. The lessee submitted a development plan in December 2006, which called for a 250 room hotel and other collateral improvements that would transform Belmont Park into a more dynamic and inviting area, and create an attraction that would extend beyond the summer season, and thereby reducing the seasonable drop in business after summer that has always plagued Belmont Park as a commercial and recreational venture. The City's initial reaction to the plan was positive. Accordingly, Mr. Lochtefeld on the lessee's behalf continued work on the development plans, and engaged potential hotel and development partners to undertake the development of hotel and retail improvements. However, in February of 2008, the City failed to give the necessary approvals to allow the process to proceed further.

Despite requests from the Debtor for comments as to specific objections the City might have, or any changes to the development plan, the City simply did not timely respond.

Instead, in May of 2008, the City, acting through head of its Real Estate Assets Department, James Barwick, began questioning the economic viability of the project as the perceived grounds for delaying necessary approvals. This was precisely the type of situation the 5OM was structured to prevent. The terms of the 5OM had been negotiated between Mr. Lochtefeld and the City to provide that the City Council has already approved Phase II and had authorized the City Manager to implement the redevelopment by issuing the necessary approvals and allowing for rent credits that would assure the economic viability of the redevelopment.

In the years between the execution of the 5OM and the submission of the Phase II plans, the City experienced a change in administration, and shifted from a City Manager to a strong mayor form of governance. According to some involved in the negotiations, the current City administration was not enthusiastic about the prospect of allowing the construction of a hotel at Belmont Park, which was to the center piece of, and the financial engine for, the continued preservation of the Plunge and the economic viability of Belmont Park as a whole.

In an effort to maintain good faith relations with the City, the lessee continued to work with the City with regards to Belmont Park. In response to Mr. Barwick's questioning of the viability of the hotel project, Mr. Lochtefeld and the lessee retained Hotel and Leisure Advisors to do a study to show the feasibility of the Phase II project, Mr. Barwick informed Mr. Lochtefeld on July 25, 2008, that the City would not support the Phase II development at that time. Instead, Mr. Barwisk requested that WHBP, which was now the lessee, develop a new alternate plan to operate Belmont Park "as is", and work with the City on setting a new sustainable rent that would allow WHBP to operate Belmont Park and maintain the Plunge based on the current state of operations.

Although the City was equivocating on its commitment under the 5OM, and WHBP was fully prepared to proceed with Phase II, the lessee agreed to explore other possibilities that would allow Belmont Park to persevere, with the expectation that at some time in the future, the City would honor its commitment to allow the Phase II redevelopment and tier 3 rent credits. Toward that end, WHBP

retained Economic Consulting Services to advise on solutions that would allow the parties to sustain operations for the time being on an "as is" basis. Their report in November of 2008 made a number of recommendations such as paid parking, additional commercial, recreational and dining uses, and to base the ground rent under the Lease on the amount of tenant rents actually collected rather than gross sales. Thereafter the City did not respond to Economic Consulting Services' suggestions, other than to dismiss the paid parking idea out of hand.

The City then asked for a rent survey as part of an effort to negotiate a sustainable rent, and suggested the firm ERA, whom WHBP retained. ERA's study showed that, given the conditions existing and the expense of maintaining and operating the Plunge, the sustainable rent on a current operations basis was zero. In other words, the income derived from the Belmont Park property was sufficient for the continued maintenance and operation of Belmont Park and the Plunge only if there was no additional cash rent. The City then suggested a profit sharing approach. Again, in an effort to work with the City in the hopes of at least keeping Belmont Park sustainable, WHBP made a proposal to the City based on the second ERA study.

On April 24, 2009, Mr. Barwick informed Mr. Lochtefeld that the City was no longer interested in a profit sharing approach. WHBP thereafter continued to try to negotiate with the City to arrive at a sustainable rent that would allow for the continued operations of Belmont Park and the continued maintenance and operation of the Plunge on an "as is" basis with no further development. However, the City on or about June 25, 2010 unilaterally and unexplainably, for the first time, took the position that it had no obligation to support Phase II under the 5OM, and advised WHBP that it would be liable for the full rent provided in the Lease once the Tier 2 rent credits expired. Taking this position had the effect of increasing the cash portion of the rent from $70,000 to approximately $767,000 per year.

Because such rents could not be supported by the revenue stream generated by Belmont Park in its current configuration, and because the City was as of June 25, 2010 in actual breach of the Lease and the 5OM, WHBP refused to pay the unjustified rent demanded by the City but continued to tender rent based upon $70,000 per year it had been paying. The City on October 12, 2010 declared WHBP to be in formal default under the Lease, and threatened to commence unlawful detainer proceedings to remove

WHBP from the property. The City also gave a thirty (30) day notice of default to East West Bank and demanded that the bank cure the default or lose its security interest in the Lease. These combined actions prompted the filing of the within Chapter 11 bankruptcy proceeding.

East West Bank Loan

In February 2008, with the City's consent, East West Bank ("EWB") extended a $17,000,000 loan to Debtor (the "EWB Loan"). WHBP used these funds to improve and maintain Belmont Park on the good faith belief that the City would comply with the Lease and 5OM and that Belmont Park would be allowed to develop into a viable economic location. WHBP's obligations to EWB and the security therefor are more particularly described in various documents, including but not limited to:

(1) Security Agreement dated as of February 6, 2008 (the "Security Agreement");

(2) Noted Secured by Leasehold Deed of Trust dated as of February 6, 2008, in the original principal sum of $17,000,000 (the "EWB Note");

(3) Leasehold Deed of Trust With Assignment of Rents and Fixture Filing dated as of February 12, 2008, recorded in Official Records of San Diego County, California on February 12, 2008 as Instrument No. 2008-0073027 (the "Deed of Trust");

(4) UCC-1 Financing Statement filed with the California Secretary of State as Document No. 087153175209.

(5) Assignment of Leases and Rents dated as of February 12, 2008 and recorded on February 12, 2008 in the Official Records of San Diego County, California as Instrument No. 2008-0073028.

(6) Agreement - Percentage Estoppel Certificate, recorded on February 12, 2008 in the Official Records of San Diego County, California as Instrument No. 2008-0073029.

At the time of the bankruptcy filing, EWB held a first position security interest in the ground lease for Belmont Park discussed in detail above, all personal property assets of the Debtor, including, but not limited to, inventory, equipment, fixtures, leases, subleases, goods, accounts, accounts receivable, general intangibles, chattel paper, instruments, and intellectual property; and all leases to which the Debtor is a party and the rents, issues and proceeds thereof. As of the Petition Date, the amount due,

owing and unpaid under the Note and Deed of Trust and other EWB loan documents was the approximate sum of $16,507,623.89, plus any accrued and accruing interest, and attorneys' fees and costs in accordance with and as allowed under the terms and provisions of the EWB loan documents and applicable law. Debtor's principal, Thomas Lochtefeld had also guaranteed Debtor's obligations to EWB.

Chapter 11 Bankruptcy

As indicated above, the Debtor filed for bankruptcy protection under title 11 of the U.S. Code on November 3, 2010 (Docket No. 1). The filing was made to retain control of the Leasehold on Belmont Park. The Debtor's schedules were filed November 12, 2010 (Docket No. 11) and, shortly thereafter, the Debtor filed its Emergency Motion to Extend the Automatic Stay provided by 11 U.S.C. Section 362 to Third Party East West Bank or, in the alternative, Relief Under 11 U.S.C. Section 105 (Docket No. 14). The Debtor's Emergency Motion, which sought to give EWB time to assume or reject the Leasehold in the event that Debtor rejected the Belmont Park Leasehold, came on specially for hearing on November 18, 2010. The Court granted a preliminary injunction in favor of EWB, established a briefing schedule to consider further arguments on the matter and established a further hearing, for February 11, 2011 to consider a further injunction (Docket No. 19) The thirty (30) day notice of default to East West Bank was, therefore, tolled for the time being.

On November 22, 2010, the Debtor next filed an emergency motion for the use of cash collateral which is security for EWB (Docket No. 26). Upon providing notice to EWB, the Debtor and EWB were able to enter into a stipulation for the use of cash collateral that allowed the Debtor to continue operations of the Belmont Park property and provided ongoing security to EWB (Docket No. 27). On June 2, 2011, the City filed a status report indicating that it would no longer support any further continuances on the bankruptcy, on the extension of the stay to EWB and on the adversarial complaint further described below (Docket No. 112). As a result, EWB filed a motion for relief from stay on June 8, 2011 (Docket No. 114). The Debtor opposed the motion and a hearing was scheduled for June 30, 2011. On the day of the hearing, the Debtor filed its own status report. The status report informed the Court in part:

> Assumption or Rejection of Lease with City of San Diego - As of the time of filing of the status report, no deal had been reached between the Debtor, EWB and/or the City of San Diego relative to any continuation of the time to assume or reject the lease with

> the City of San Diego set to expire on July 2, 2011. All parties agreed that absent consent from the City, the Court was without any power to extend such time. Unless an agreement was reached with the bank and/or the City of San Diego for a further extension, or other relief, the Debtor did not intend to seek to assume the lease and would allow the lease to be rejected as a matter of law on or after July 2, 2011. All other rights are specifically reserved by the Debtor. In the event that some other arrangement is made, a stipulation or other appropriate motion would be made.

On July 7, 2011, the Debtor and EWB entered into a final stipulation for interim use of cash collateral for the period from July 1, 2011 to July 30, 2011 in order to provide a bridge between the rejection of the Lease by the Debtor to the time that EWB could have a receiver in place to take over operations of Belmont Park (Docket No. 135). The Order on the stipulation was entered the same day (Docket NO. 136).

The City on August 4, 2011 submitted a statement of position, supporting the dismissal and/or conversion of the Debtor's chapter 11 case (Docket No. 139). On August 11, 2011, the Court held a further status conference on the chapter 11 and an additional status conference on EWB's motion for relief from stay relating to various remaining personal property assets of the Debtor. Both matters were once again continued to allow the Debtor to file a motion for debtor-in-possession financing under 11 USC Section 364. (Docket No. 141).

On August 16, 2011, the Debtor filed its Motion of Debtor-In-Possession to Obtain Financing Under Section 364. The Motion sought to obtain post-petition, priming financing in the amount of up to $500,000 from Kathleen C. Lochtefeld, the mother of Thomas Lochtefeld in order for the Debtor to cover ongoing administrative expenses and to fund the Litigation against the City (Docket No. 143). The City opposed the motion on September 1, 2011 (Docket No. 145). EWB and the Debtor entered into a stipulation to extend opposition dates as discussions took place between EWB and the Debtor towards a potential agreement on the financing and other items (Docket No. 149).

The motion for financing came on for hearing on September 22, 2011. The Debtor and EWB represented to the Court that a tentative agreement had been reached on a settlement between the Debtor and EWB as to the financing and additional issues relating back to EWB's relief from stay motion. The Court continued the matters again to October 7, 2011 with a formal agreement to be presented to the Court and to creditors as between the Debtor and EWB (Docket No. 157).

On September 26, 2011, the Debtor and East West Bank filed a joint motion to approve a settlement agreement between EWB and the Debtor and certain affiliates of the Debtor (Docket No. 161). The details of the settlement agreement are described in further detail below. The motion was opposed by the City (Docket No. 169), however, the Court approved the settlement after a hearing on October 7, 2011. The Order approving the settlement agreement was entered on October 13, 2011 (Docket No. 177). Thereafter, the Order approving the Debtor's Motion for Debtor-In-Possession Financing was signed by the Court on November 1, 2011 (Docket No. 185).

Litigation Against City

On November 18, 2010, the Debtor filed an adversarial action against the City, styled *Wave House Belmont Park, LLC v. The City of San Diego*, Case Number 10-90553, in the Bankruptcy Court. The initial complaint sought Declaratory Relief for a finding that the Debtor should be allowed to continue the development rights provided for in the Lease to continue in effect, allowing Belmont Park to continue in existence. The initial complaint also sought Injunctive Relief under 11 U.S.C. Section 105 on a preliminary and permanent basis to prevent the City from continuing its claims of default and allow the status quo to continue in existence.

On December 21, 2010, the City and the Debtor submitted a stipulation for mediation which also called for the City to receive an extension on a response date. The City received various subsequent extensions on a response, on February 18, 2011, February 28, 2011 and March 25, 2011.

On July 14, 2011, the Debtor, in response to the rejection of the Lease, filed its first amended complaint against the City. The first amended complaint seeks declaratory relief for a determination of the rights of the City and the Debtor with respect to the Lease and the 5OM. The first amended complaint also alleges a breach of contract claim, a breach of the covenant of good faith and fair dealing claim, a fraudulent misrepresentation claim, a negligent misrepresentation claim and an unjust enrichment claim in requesting monetary damages against the City. The City again received three extensions to respond to the first amended complaint on August 16, 2011, September 27, 2011 and November 10, 2011.

On November 30, 2011, the First Amended Complaint filed in the Bankruptcy Court was dismissed without prejudice by the Debtor over concerns regarding the Bankruptcy Court's power to

enter a final order regarding the dispute between the Debtor and the City as a result of findings in the recently decided *Stern v. Marshall* Supreme Court case.

As the dismissal was completed without prejudice, the Debtor filed a new action on December 14, 2011 in the Superior Court of California for and in the County of San Diego. The new complaint, styled *Wave House Belmont Park, LLC v. The City of San Diego*, Case No. 37-2011-00102475-CU-MC-CTL is on file with the Superior Court. The state law complaint alleges many, if not all, of the same allegations contained in the statement fo the care herein above. The Debtor anticipates that the City will vigorously defend the suit. The Debtor is informed and believes that the City would deny a number, if not all, of the factual allegations made by the Debtor in its complaint and provided above with respect to the Lease with the City. The Complaint seeks damages in excess of $25,000,000.

Settlement Agreement with East West Bank and Priming Financing

As expressed herein above, Debtor's primary asset was a ground lease with the City for Belmont Park. EWB holds a first priority security interest in the Leasehold, all personal property assets of the Debtor and all leases to which Debtor is a party and the rents, issues and proceeds thereof. The balance due EWB as of the petition date was the approximate sum of $16,507,623.89, plus accrued and accruing interest, costs and attorneys' fees.

Any interest of Debtor's bankruptcy estate in the Lease was rejected effective July 2, 2011 pursuant to 11 U.S.C. § 365(d)(4). By order of the Bankruptcy Court entered June 30, 2011 (Docket No. 131), EWB was granted relief from the automatic stay as to all assets of Debtor, excepting only Debtor's prepetition accounts receivable and Debtor's claims and causes of action against the City. The Settlement Agreement between Debtor and EWB resolved the balance of EWB's motion for relief from the automatic stay and, in part, formed the basis for the Plan proposed herein.

Upon obtaining relief from stay, on July 13, 2011, EWB filed an action in the San Diego Superior Court against Debtor and others (the "Superior Court Action"), seeking the appointment of a receiver for Belmont Park and judicial foreclosure. On July 22, 2011, the Superior Court entered an order appointing Kenneth A Krasne as receiver for Belmont Park (the "Receiver"). As of the petition date, Debtor had subleased a substantial portion of Belmont Park to various third parties who operate various business at

Belmont Park, in particular Wave House Athletic Club, LLC ("WHAC") and Wave House San Diego, LLC. WHAC and WHSD have continued to operate these venues following the petition date and following the appointment of the Receiver.

On or about October 27, 2011, Debtor, EWB, and other affiliated Wave House entities entered into the EWB Settlement Agreement, a true and correct copy of which is included as an attachment to Exhibit 3. The EWB Settlement Agreement resolves certain claims of EWB, Debtor, WHAC and WHSD regarding the Debtor's pre-petition accounts receivables (the "Schedule B Assets"), ongoing operations of the athletic club and food and entertainment venues at Belmont Park and other claims, including but not limited to monies owed by Debtor pursuant to the EWB Note.

The EWB Loan's terms are described in detail above. The loan also attached to assets that have become known as the Schedule B Assets. On May 28, 2011, Debtor filed its amended Schedule B (Docket No. 110), which set forth certain debts owed to Debtor by certain affiliates of Debtor. Debtor's books and records reflected the following amounts owed to Debtor by the following affiliated entities:

* The "Section 8(a) Obligors": the Lochtefeld Family (i.e. Thomas and Maureen Lochtefeld) for $621,790.08, Blade Loch, Inc., for $1,427.50, Wave the Planet, LLC for $472.53, Wave Loch, LLC, for $579,608.47, Wave House International, LLC, for $155,250.77, Wave House Holdings, LLC, for $2,109,535.05 (collectively, the "Section 8(a) Claims").
* WHAC for $1,136,632.65 and WHSD for $538,603.67 (the "Section 8(b) claims").

The Section 8(a) and Section 8(b) Claims arose out of inter-company memoranda over several years from the Debtor to various related companies, including, but not limited to the Lochtefeld Family, Blade Loch, Inc., Wave the Planet, LLC, Wave Loch, LLC, Wave House International, LLC, Wave House Holdings, LLC, WHAC and WHSD. WHAC and WHSD, agreed to pay over to EWB a total of $1,127,651.00 over time in full satisfaction of such claims, which payments shall be applied toward the EWB Claim indebtedness owed by Debtor to EWB pursuant to EWB's Secured Claim. As for the proposed resolution of the debts owed by Wave House Holdings, LLC, WHAC and WHSD to Debtor, which claims totaled $3,785,000.00, under the EWB Settlement Agreement, these entities agreed to transfer to EWB or EWB's designee, free and clear of all liens, claims and encumbrances, all personal

property assets owned by them that are necessary to operate the businesses at Belmont Park that they presently operate, including all necessary operating licenses. These assets comprised substantially all assets currently owned by these entities and the value of these assets (to be determined at a future date) will be applied toward the indebtedness owed by Debtor to EWB pursuant to EWB's Secured Claim.

Set forth below are the material terms of the EWB Settlement Agreement:

1. Each of Debtor and Lochtefeld shall use their best efforts to cooperate with the Receiver and EWB in connection with any foreclosure proceedings, or any subsequent sale, of all or a portion of Belmont Park to EWB or any third party designated by EWB or the Receiver. Each of Debtor and Lochtefeld will grant to Bank an irrevocable power of attorney, coupled with an interest, to take any action or execute any document required to effect any of the foregoing.

2. No later than three (3) business days after EWB provides written notice to WHSD and WHAC, each of WHSD and WHAC shall transfer to EWB or EWB's designee all personal property assets owned by them that are necessary to operate the businesses they presently operate at Belmont Park (including all necessary operating licenses) (the "Other Assets"), which other assets shall be transferred to EWB or its designee free and clear of all liens, claims, and interests, excluding only any and all claims under the control of EWB, including but not limited to rent claims. Each of WHSD and WHAC shall grant to EWB an irrevocable power of attorney, coupled with an interest, to take any action or execute any document required to effect any of the foregoing.

3. From and after October 10, 2011 and continuing until the earlier of March 31, 2012 or the lapse of fifteen days following written notice from the Receiver or EWB to such Wave House parties, each of Debtor, WHSD and WHAC shall operate its respective businesses, as previously conducted at Belmont Park prior to the Execution Date of the Settlement Agreement, under the direction of Lochtefeld but subject to the supervision of the Receiver. All net revenues shall be paid to the Receivership estate and all costs and expenses of the operations shall be borne by the Receivership estate. Lochtefeld will

receive compensation for directing the operations as reasonably determined by Lochtefeld and the Receiver.

4. Section 7 of the Settlement Agreement provides that Wave Loch, LLC will continue to operate the Wave Machines at Belmont Park.

5. In settlement of the Section 8(a) Claims:

   a. The Section 8(a) Obligors shall execute and deliver to EWB a promissory note in the amount of $1,127,651 in the form attached to the Settlement Agreement as Exhibit B. Pursuant to the note, the Section 8(a) obligors agree to pay EWB the sum of $1,127,651 without interest to be paid at a rate of $5,000 per month for four months commencing on January 16, 2012 and the balance over 56 months in equal monthly installments commencing on May 15, 2012, and continuing on the same day of each succeeding month (the "Section 8(a) Note");

   b. Payment by Section 8(a) Obligors of all sums due under the Section 8(a) Note shall constitute full satisfaction of any and all known pre-petition claims that Debtor may have against the Section 8(a) Obligors; and,

   c. Debtor agrees to surrender, and the Settlement Agreement constitutes Debtor's surrender of the Section 8(a) Claims to EWB.

6. In settlement of the Section 8(b) Claims:

   a. Debtor agrees to surrender, and the Settlement Agreement constitutes Debtor's surrender, of the Section 8(b) Claims to EWB; and,

   b. EWB agrees to release WHSD and WHAC from the Section 8(b) Claim on the 91st day following the completion of the following conditions: EWB or its nominee receives the Other Assets and liquor licenses free and clear of all liens, claims and interests; and EWB or its nominee, at its option, elects to obtain the right to use the Wave House brand for the San Diego venue, except that any royalty, booking or marketing fees otherwise owing with respect thereto shall be waived for a period of two years from the Effective Date.

7. Debtor and Lochtefeld agree to diligently prosecute the Debtor's lawsuit against the City to an initial disposition within two years following the Effective Date of the Settlement Agreement, excluding any delays caused by appeals. Debtor shall not settle the City lawsuit without EWB's consent or alternatively, Bankruptcy Court approval, obtained on due and adequate notice to EWB.

8. Debtor will obtain a loan (the "Debtor Funding Loan") in the amount of $500,000 to fund the lawsuit against the City and Debtor's attorneys fees and costs and U.S. Trustee's fees in the Bankruptcy Case (not to exceed $200,000 of the Debtor Funding Loan). The Debtor Funding Loan will accrue simple interest at 3% per annum on funds actually advanced. Bank will subordinate to the holder of the Debtor Funding Loan Bank's payment priority with respect to proceeds received by Debtor on account of the Adversarial Action (defined below) pursuant to the Intercreditor Agreement attached as part of Exhibit 3; such Intercreditor Agreement shall provide that: the Debtor Funding Loan plus accrued interest can be repaid first from the Adversarial Action; and Bank will consider further subordination(s) of payment priority, with respect to payments from any Adversarial Action proceeds, to future increases in the Debtor Funding Loan which Debtor may propose and EWB may approve, in EWB's sole and absolute discretion.

9. Lochtefeld shall execute and deliver to Bank a guaranty in the form attached to the Settlement as Exhibit D. The Lochtefeld guaranty provides that the maximum liability of Lochtefeld thereunder is $5,000,000 (exclusive of attorneys fees and costs in collecting of the guaranty) so long as no Settlement Event of Default has occurred.

10. The Wave House Parties shall provide EWB with a general release.

Assignment of Loan Documents and Settlement Agreement

Pursuant to a Mortgage Loan Sale Agreement dated June 6, 2012, as amended by a First Amendment to the Mortgage Loan Sale Agreement entered into June 18, 2012 between EWB and Symphony Asset Pool, XVI ("SAP"), EWB sold and assigned to SAP all of its rights under the Loan Documents and the EWB Settlement Agreement by execution of the Assignment of Loan Documents.

Settlement Agreement with Symphony Asset Pool, XVI

The SAP Settlement Agreement is dated November 8, 2012 and was approved by the Bankruptcy Court on December 20, 2012. Since the EWB Settlement Agreement, the following events pertinent to this Motion and the SAP Settlement Agreement have occurred:

1. Pursuant to paragraph 5 of the EWB Settlement Agreement, the Wave House Parties were to assign all liquor licenses and other personal property assets of WHSD and WHAC necessary for the operation of all business to the Receivership Estate. Such assets were in part to be assigned and transferred as payment for the benefit of Mr. Lochtefeld in reduction of his liability under the guaranty.

2. The note required pursuant to paragraph 8(a) of the EWB Settlement Agreement (the "8(a) Note") was executed by Mr. Lochtefeld, BL, WTP , WL and WHI in favor of EWB (and SAP as its success-in-interest) in the sum of $1,127,651.

3. Pursuant to a Mortgage Loan Sale Agreement dated June 6, 2012, as amended, EWB sold and assigned to SAP all of its rights under the Loan Documents (as defined in the assignment) and the EWB Settlement Agreement.

4. On or about August 10, 2012, a Notice of Unified Trustee's Sale ("NOS") was recorded as Document Number 2012-0476077 to sell the property described therein pursuant to the original Deed of Trust recorded in the Official Records of San Diego County on February 12, 2008 as Document No. 2008-0073027 ("DOT"). SAP is thereby the successor beneficiary of the DOT. 5 .

EWB neither completed a transfer of the asserts before March 31, 2012, nor did it settle anything with the City. This caused a material failure in the process envisioned in the EWB Settlement Agreement. The Debtor and SAP have therefore negotiated in good faith to settle all claims and disputes between them subject to the express conditions set forth in the SAP Settlement Agreement.

B. Terms of SAP Settlement Agreement

An overview of the terms of the SAP Settlement Agreement is as follows:

1. Provisions Providing for Continuing Turnover of Assets

The SAP Settlement Agreement allows the Parties additional time to complete the coordinated turnover of certain property the Receivership Estate and for the completion of the pending Non-Judicial

Foreclosure Sale pursuant to the NOS on November 13, 2012, or as soon thereafter as practical in the sole discretion of SAP. The actual sale occurred on November 16, 2012 and SAP was the successful bidder for $4,500,000. Transfer of certain assets is to continue under the new Settlement Agreement as the process did not complete prior to the assigned from EWB to SAP.

Included in the turnover of assets provisions are the following terms:

a. Paragraph 2.3 - Transfer of Liquor Licenses

In this provision the Parties direct and authorize the Receiver to immediately execute any document necessary to transfer the Liquor Licenses to SAP's designees.

b. Paragraph 2.4 - Telephone Systems

A dispute has arisen concerning a sum of money that SAP contends WL converted, and which properly belongs to the Receivership Estates. WL denies that any such conversion occurred. In settlement of this dispute, the Wave House Parties shall transfer to SAP the telephone system currently in use by WL and others at the Belmont Park Property free and clear of liens and encumbrances.

c. Paragraph 2.5 - Possession of Belmont Park Property

The Debtor and SAP have agreed that on or before November 12, 2012, the Wave House Parties and all affiliated entities occupying space at the Belmont Park Property, other than the Debtor, WHSD and WHAC, shall vacate and surrender possession of the Belmont Park Property to SAP ("Delivery of Possession"). As of the date of the Non-Judicial Foreclosure Sale, Debtor, WHSD and WHAC will likewise vacate and surrender possession.

d. Miscellaneous Provisions

Other provisions of the SAP Settlement Agreement provide for the migration of data to SAP by leaving network file servers on site and available to SAP pending input into SAP's servers. SAP is also provided all rights to use the Wave House trade name and brand until October 31, 2013 at no charge, including the continuing right to use the Wave House domains and website content, which the Receivership Estate has already been utilizing. Any trade names, trademarks or website domains utilizing "Belmont Park" have been transferred to SAP. Funds from operation of Belmont Park Property, including the operating bank account, were likewise transferred to the Receiver.

2. Provisions for Which Court Approval was Sought – Section 6

Section 6 of the SAP Settlement Agreement is entitled "Conditional Post Closing Obligations". That section of the SAP Agreement provides new terms for conclusion of the City Lawsuit, waiver by SAP of any unsecured claims and assignment of the 8(a) Note as set forth below.

a. Disposition of Pending Litigation (Paragraph 6.1)

As discussed herein, there are two related actions pending in San Diego Superior Court, Central Division. Aside from the City Lawsuit, the other is the foreclosure action initiated by EWB and styled East West Bank vs. Wave House Belmont Park LLC (Case No. 37-2011-00093959-CU-OR-CTL) (the "Foreclosure Action"). Pursuant to paragraph 2.11 of the SAP Settlement Agreement, the Foreclosure Action is to be dismissed upon approval of the Receiver's final accounting of the Receivership Estate and the completion of the Non-Judicial Foreclosure, and has been dismissed as of January 30, 2013.

With respect to the City Lawsuit, paragraph 6.1 of the SAP Settlement Agreement allows SAP room to renegotiate its lease with the City of San Diego (the "City"). If any Renegotiated Lease is conditioned on dismissal of the City Lawsuit, then SAP may request that Debtor dismiss the action. Until the latter of January 16, 2013 or 90 days before trial (the "Dismissal Period"), if SAP requests that Debtor dismiss the City Lawsuit with prejudice, the Debtor will do so subject to the City executing a mutual release for the benefit of the Debtor and all Wave House Parties. Until expiration of the Dismissal Period, the Debtor may not dismiss the City Lawsuit without express written authorization of SAP. Once the Dismissal Period expires, the Debtor shall once more have sole control of the City Lawsuit and its prosecution, although an extension of the Dismissal Period is provided for under certain circumstances.

b. Waiver by SAP of Unsecured Claims (Paragraph 6.2)

Pursuant to paragraph 6.2 of the SAP Settlement Agreement, upon Dismissal of the City Lawsuit, or expiration of the Dismissal Period, SAP agrees to waive any and all unsecured claims against the Debtor and its bankruptcy estate.

c. Assignment of 8(a) Note to Debtor (Paragraph 6.3)

Under the terms of the SAP Settlement Agreement, the 8(a) Note in amount of $1,127,651. is to be transferred back to the Debtor to fund a liquidating plan. Paragraph 6.3 of the SAP Settlement

Agreement provides that upon dismissal of the City Lawsuit or the expiration of the Dismissal Period or any extension thereof, SAP shall assign and convey, without recourse or warranty, all its right, title and interest in the 8(a) Note to Debtor. Moreover, during the Dismissal Period or until the 8(a) Note is assigned to Debtor, no payments shall come due under the note. Upon assignment of the 8(a) Note, the Debtor will be free to collect thereon and use the proceeds to fund a litigation chapter 11 plan.

As of the date hereof, the Debtor and all related entities have performed all matters required of them by the settlement. Payments under the 8(a) Note have not yet commenced, but will proceed under the Plan for the benefit of unsecured creditors.

VI. OVERVIEW OF THE PLAN

A. GENERAL

After confirmation of the Plan, the Reorganized Debtor will continue to exist only for the purposes of liquidating its estate assets, mainly confined to the litigation of Debtor's lawsuit against the City and the 8(a) Note. The Settlement Agreement with EWB has been approved by the Court and called for the surrender to EWB of the majority of the Debtor's personal property, including the Debtor's rights to recovery from the City under the Lease. The Settlement Agreement with SAP is set for hearing on December 20, 2012. The Debtor's plan calls for the orderly and timely liquidation of the Debtor's estate in the order and fashion provided in the Plan and described in detail herein below. All assets of the Debtor, save and except for the City lawsuit, were transferred to the control of the receiver appointed by EWB. The transfer of assets to EWB, and now SAP, did not include the right to file Avoidance Actions and/or to recover avoidances, and the SAP Settlement Agreement provides for the re-transfer of the 8(a) Note back to the Debtor to assist in the funding and implementation of the Plan.

B. SUMMARY OF CLASSIFICATION AND TREATMENT UNDER THE PLAN

The following section provides a summary of the classification and treatment under the Plan of all Claims and Equity Interests and is intended to highlight information contained elsewhere in this Disclosure Statement. The summary is qualified in its entirety by the more detailed information in the Plan, the pro forma information appearing elsewhere in this Disclosure Statement, and the other documents referenced herein. The Administrative Expense Claims, Fee Claims, Priority Claims and

Priority Tax Claims shown below constitute the Debtor's estimate of the amount of such Claims to be paid in Cash by the Debtor on the Effective Date or as soon thereafter as possible, taking into account amounts paid or projected to be paid prior to that date. The total amount of the classified Claims shown below reflects the Debtor's current estimate, based upon the Debtor's schedules, books and records, and the informed opinion of the Debtor's financial advisors and other professionals of the likely amount of such Claims after the resolution by settlement or litigation of Claims that the Debtor believes are subject to disallowance or reduction. However, because no assurances can be provided regarding the amount of Claims that will ultimately be disallowed or reduced, and because numerous Claims have been filed that exceed the amounts reflected for such Claims in the Debtor's schedules, distributions under the Plan to certain classes of Claims may differ substantially from the projected ultimate recoveries reflected below. Reference should be made to the entire Disclosure Statement and to the Plan for a complete description of the classification and treatment of Claims and Equity Interests.

1. Classified Claims Against the Debtor

A list of all potential claims and estimated amounts are attached hereto for Creditor reference.

A. Class 1 - Kathleen Lochtefeld

Total Estimated Claim - $500,000 ***(Unimpaired)***

The Debtor has been authorized to borrow $500,000 (the "Loan") on a senior secured lien on specified litigation proceeds from Mrs. Lochtefeld to enable the Debtor to prosecute litigation during the pendency of this bankruptcy case and pay ongoing legal fees and U.S. Trustee fees incurred in the administration of the estate. The portion of the Loan to be used for other than direct litigation costs cannot exceed $200,000. Interest on the outstanding amount accrues at the rate of 3.00% per annum. The Loan is due and payable upon conclusion of the Adversarial Action referenced herein above. If the Debtor does not need to borrow the full $500,000, the Debtor will not unnecessarily burden the estate with a larger loan. As of March 1, 2013, the amount lent by Mrs. Lochtefeld was approximately $320,1140.24.

Mrs. Lochtefeld's loan is secured solely by the proceeds, if any, from litigation Superior Court of California for the County of San Diego between the Debtor and the City of San Diego (the "City"), styled as *Wave House Belmont Park, LLC v. The City of San Diego*, Case No. 37-2011-00102475 and/or any

other action that seeks to recover damages under the same factual and/or legal circumstances against the City of San Diego as in such case (the "Adversarial Action" or "City Lawsuit"). Further, Mrs. Lochtefeld has no debt, lien or other claim to any other asset of the Debtor. Mrs. Lochtefeld is not entitled to receive any repayment of the Loan unless and until any amounts which are hereafter determined to be due and owing to the Debtor, if any, and any amounts owed from any future avoidance action, are repaid to Debtor.

Mrs. Lochtefeld's treatment is governed by that certain Secured Promissory Note between the Debtor and Mrs. Lochtefeld. In turn, the Secured Promissory Note was subject to that certain Intercreditor Agreement dated as of September 20, 2011 as between Mrs. Lochtefeld and Symphony Asset Pool XVI, LLC, however, as a result of the SAP Settlement, this agreement is no longer in effect.

B. Class 2 - Symphony Asset Pool XVI, LLC

Total Estimated Claim - $0.00 ***(Impaired – Deemed Acceptance)***

This claim has been reduced to zero dollars ($0.00) pursuant to the SAP Settlement Agreement.

C. Class 3 - Unsecured, Priority Claims

Estimated Amount - $350,987.88 ***(Impaired)***

This class is comprised of claims that are entitled to priority under 11 U.S.C. Section 507. This class is comprised of all pre-petition obligations owed to the County of San Diego Treasurer - Tax Collector by the Debtor as a result of unpaid real property taxes on the Debtor's Subject Property.

The San Diego County Treasurer has filed a proof of claim for $350,987.88. The Debtor is informed and believes that EWB paid these claims as part of its election to take over the Subject Property. If so, the Debtor will object to the claim and call for its reduction to zero. No amounts should thus be due.

D. Class 4 - General, Unsecured Claims

Estimated Amount - $837,917.88 (*Impaired*)

Except to the extent that a holder of an Unsecured Claim agrees to a different treatment, each such holder shall receive, in full satisfaction of such Unsecured Claim, Cash in an amount up to 100% of the amount of the Unsecured Claim with interest accruing at the current federal short term rate of .20%. The payments to General Unsecured Claims are contingent on funds available from the proceeds of the Adversarial Action, if any, after payment in full to Classes 1 and 3 above, and payment of the 8(a) Note

discussed above. Upon transfer of the 8(a) Note pursuant to the terms of the SAP Settlement Agreement, the Reorganized Debtor will deposit all payments on the 8(a) Note into the Distribution Account until the full principle balance of the note. No interest shall accrue absent default. Payments under the 8(a) Note shall commence on the Effective Date of the Plan and be made monthly thereafter, and funds from the 8(a) Note shall be applied to approved administrative claims and then unsecured claims in Class 4 Claims on a pro rata basis. Payment shall consist of the following:

a) 4 monthly payments of $5,000.00; and

b) 56 monthly payments of $19,779.48

The Debtor is informed and believes that the City's claim of $234,769.25 has been paid by EWB, thereby significantly reducing the General Unsecured Claims. The City has not yet acknowledged payment by an amended claim and it may become necessary to object to such claim, along with others as set forth below. The City may have a rejection claim against the Debtor as a result of the rejection of the Lease with the City. In that event, any such claim will be treated as part of the General Unsecured Claims class as provided under the Plan and herein below (Section VII.F). The amount of the Rejection Claim submitted by the City will be limited by 11 U.S.C. Section 502. Pursuant to the SAP Settlement, payments under the 8(a) Note were suspended pending the transfer of the 8(a) Note to the Debtor.

E. Class 5 - Equity Interests

Estimated Amount - $110,520.81

The Equity Interests of the owners of Wave House Belmont Park, LLC shall not receive any payment under the Plan unless and until all holders of Classes 1 through 4 are paid in full. If, at the end of the Plan, all creditors have been paid in full as provided herein above, the Debtor and its Equity Interest holders shall receive all remaining funds from the Adversarial Action and the 8(a) Note, if any remain.

2. Plan Distributions to Classes of Creditors

Unless otherwise provided herein, any distributions and deliveries to be made on account of Allowed Claims hereunder shall be in complete settlement, satisfaction and discharge of such Allowed Claims. Except as specifically provided herein any Cash payment to be made hereunder may be made by check or wire transfer, or as otherwise required or provided in applicable agreements.

All unclaimed Plan Distributions shall revert to the Reorganized Debtor.

HOLDERS OF IMPAIRED CLAIMS SHOULD CAREFULLY READ AND CONSIDER THE PLAN AND THIS DISCLOSURE STATEMENT. THE DEBTOR URGES HOLDERS OF IMPAIRED CLAIMS TO VOTE TO ACCEPT THE PLAN.

VII. SUMMARY OF THE PLAN

As a result of the chapter 11 process and through the Plan, Debtor expects that creditors will obtain a substantially greater recovery from the estate than the recovery that would be available if the Assets had been liquidated under chapter 7 of the Bankruptcy Code. The Plan is annexed hereto as *Exhibit 1* and forms a part of this Disclosure Statement. The summary of the Plan set forth below is qualified in its entirety by the more detailed provisions set forth in the Plan.

A. CLASSIFICATION AND TREATMENT OF CLAIMS & EQUITY INTERESTS

If the Plan is confirmed by the Bankruptcy Court, each holder of an Allowed Claim in a particular class will receive the same treatment as the other holders in the same class of Claims, whether or not such holder voted to accept the Plan. Moreover, upon confirmation, the Plan will be binding on all of the Debtor's creditors and members whether or not such creditors or stockholders voted to accept the Plan. Such treatment will be in full satisfaction, release and discharge of and in exchange for such holder's respective Claims, except as otherwise provided in the Plan. Creditors are advised that, to the extent that their claims are not in a class that will receive payment, in full, on the Effective Date, that the present value of funds received under the Plan is less than the aggregate amount of the payments received over time, under the Plan. This maxim recognizes that a dollar received one year from today is worth less than a dollar received today. In performing a present value analysis, creditors should consult their financial advisor for a determination of an appropriate discount rate.

Unclassified Claims

The Bankruptcy Code does not require classification of certain priority claims against a debtor. In this case, these unclassified claims comprise Administrative Claims, including Fee Claims, Priority Tax Claims and Priority Claims.

1. **Administrative Claims** An Administrative Claim is any cost or expense of administration of the Reorganization Case incurred by the Debtor (or its Estate) on or after the Petition Date and before the Effective Date, and which is entitled to and allowed priority under sections 503(b) and 507(a)(2) of the Bankruptcy Code (exclusive of Fee Claims, which are classified separately) and the actual and necessary costs and expenses of preserving the Estate and operating the Debtor's business during the Reorganization Case.

Under the Plan, except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment (and except to the extent provided in sections 2.1 or 2.2 of the Plan), the Debtor shall pay to each holder of an Allowed Administrative Expense Claim, Cash in an amount equal to such Claim on the later of the Effective Date or as soon thereafter as possible after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is reasonably practicable; *provided, however,* that Allowed Administrative Expense Claims representing any: (a) expense or liability incurred in the ordinary course of the Reorganized Debtor's business on or after the Effective Date; (b) Administrative Expense Claim held by a trade vendor, which administrative liability was incurred by the Debtor in the ordinary course of business between the Debtor and such creditor on or after November 3, 2010; or (c) fees of the United States Trustee arising under 28 U.S.C. § 1930 allocable to periods on or after November 3, 2010 shall be paid by the Reorganized Debtor in the ordinary course.

As discussed above, the Debtor believes that on the Effective Date, there will be no Administrative Claims as all of such claims will have been paid by the loan from Mrs. Lochtefeld. All Administrative Claims, if any, are subject to claims objections and allowance procedures. The Debtor anticipates that these claims, if any, will receive payment in full.

Proofs of Administrative Expense Claims and/or requests for the allowance and payment of Administrative Expense Claims, other than a Fee Claim, unless otherwise required pursuant to a prior order of the Bankruptcy Court, must be filed and served by the date that is no later than Forty-five (45) days after the Effective Date. Notwithstanding anything to the contrary herein, no proof of Administrative Expense Claim or application for payment of an Administrative Expense Claim need be filed for the allowance of any: (a) expense or liability incurred in the ordinary course of the Reorganized Debtor's business on or after

the Effective Date; (b) Administrative Expense Claim held by a trade vendor, which administrative liability was incurred by the Debtor in the ordinary course of business between the Debtor and such creditor; or (c) fees of the United States Trustee arising under 28 U.S.C. § 1930. All Claims described in clause (a), (b) and (c) of the immediately preceding sentence shall be paid by the Reorganized Debtor in the ordinary course of business. Any Persons that fail to file a proof of Administrative Expense Claim or request for payment thereof on or before the Administrative Bar Date as required herein, or other applicable order of the Bankruptcy Court, shall be forever barred from asserting such Claim against the Debtor, the estate, the Reorganized Debtor or its property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Expense Claim.

2. Fee Claims.

All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by a date that is no later than the date that is forty-five (45) calendar days after the Effective Date and (b) shall be paid in full in such amounts as are approved by the Bankruptcy Court (a) upon the later of (I) the Effective Date and (ii) ten (10) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or (b) upon such other terms as may be mutually agreed upon between the holder of such Fee Claim and the Reorganized Debtor. The Debtor believes that on the Effective Date, the total amount of all Allowed Fee Claims will be paid by the loan from Mrs. Lochtefeld.

B. IMPLEMENTATION OF PLAN

1. Prosecution of Causes of Action and Avoidance Actions

All avoidance actions assertable by the Debtor-in-Possession, pursuant to Sections 542 through 553 of the Bankruptcy Code, shall be retained by the Reorganized Debtor ("Avoidance Actions"). Until all litigation is completed up to and through the appeals process, the Reorganized Debtor shall deposit into the Plan Disbursement Account 100% of the net recovery by the Reorganized Debtor on all Avoidance Actions, actions for the recovery of any pre-petition

debt owed to the Debtor or any other Cause of Action (the "Avoidance Collections"). For the purposes hereof, the term Net Recovery shall mean the gross dollars collected in the particular avoidance action less all Litigation Expenses, attorneys fees and normal costs, including experts fees expended in the collection thereof. The Court will retain jurisdiction to determine the reasonableness of the deduction of any such fees or costs if any objection is made. At the time of any net distribution, the Debtor will provide to Creditors a breakdown of the award or settlement and the fees and costs expended. Any creditor or party in interest may request a billing statement for attorney's fees and costs expended in any such action. Any creditor or party in interest can object to the deduction of such fees and costs incurred within sixty (60) days of the net distribution by filing an objection with the United States Bankruptcy Court. In the event that the Court after notice and hearing determines that any such fees and costs should be disallowed as a deduction, then within 30 days thereafter the Reorganized Debtor shall deposit into the Plan Disbursement Account a sum equal to 100% of such disallowed amount. All Litigation Expenses and related costs shall be at the sole risk and expense of the Reorganized Debtor and shall not diminish any distributions from the Plan Disbursement Account. As indicated above, the Debtor does not anticipate filing any Avoidance Actions.

2. 8(a) Note

Pending turnover of the 8(a) Note pursuant to the terms of the Settlement Agreement with SAP, no principal or interest shall be paid on the note. The current balance of the 8(a) Note is $1,127,651.00. The Debtor agrees to commence payments under the 8(a) Note on the Effective Date, with monthly payments to follow in the amounts indicated in the note for a total of sixty (60) payments. No interest is due under the 8(a) Note except in circumstances of default.

Upon transfer of the 8(a) Note into the Reorganized Debtor's estate, the Reorganized Debtor shall deposit one hundred percent (100%) of all proceeds into the Disbursement Account for the payment of administrative and unsecured claims on a pro rata basis until such claims are paid in full. The 8(a) Note calls for four (4) consecutive monthly payments of $5,000 commencing on the sixteenth day of the month upon which the 8(a) Note becomes effective and

continuing on th fifteenth day of each month thereafter until the four payments are made. Thereafter, there will fifty-six (56) monthly installments of Nineteen Thousand Seven Hundred Seventy-Nine Dollars and Forty-Eight Cents ($19,779.48) commencing on May 15, 2012 and continuing on the fifth month and continuing on the 16th day of each succeeding month until a total of sixty (60) monthly payments have been made, at which time all unpaid principal, accrued interest and fees and costs due under the 8(a) Note, if any, will be due and payable.

3. Default.

3.1 Secured Creditors

Class 1: A default will occur if the Debtor fails to make the required distribution to this creditor within ten (10) days of the date due after the Adversarial Action is resolved and payment from the City has been received by the Debtor. A default will also occur if the Debtor breaches any terms of the Promissory Note. In the event of any default, the Class 1 Claimant may take any action available to it under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of the loan documents between Debtor and Class 1 Claimant provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

Class 2: A default will occur as to payment of the Class 2 Claims if Debtor fails to make the required distributions to these creditors within ten days of the date due. In the event of any default, the Class 2 Claimant may take any action available to it under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of the loan documents between Debtor and Class 2 Claimant provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

3.2 Unsecured Priority Claims

Class 3: A default will occur as to payment of the Class 3 Unsecured Priority Claims if Debtor fails to make the required distributions to these creditors within ten days of the date due. In the event of any default, Class 3 Unsecured Priority Claimants may take any action available to them under applicable

bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of contract provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default after such opportunity to cure.

3.3 Unsecured Claims

Class 4: A default will occur as to payment of the Class 4 Unsecured Claims if Debtor fails to make the required distributions to these creditors within ten days of the date due. In the event of any default, Class 4 Unsecured Claimants may take any action available to them under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of contract provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

4. Time Bar to Payments

The Plan Distribution Agent shall stop payment on any distribution check that has not cleared through the Disbursement Account within ninety (90) days of the date of issuance thereof. Requests for re-issuance of any such checks shall be made directly to the Plan Distribution Agent by the holder of the Allowed Claim with respect to which such check was issued. Any claim in respect of such voided check shall be made within one hundred and eighty (180) days after the date of the issuance of such voided check. If no request is made as provided herein, all Claims in respect of voided checks shall be discharged and forever barred. The amount represented by such unclaimed checks, and those undeliverable after commercially reasonable diligence, shall be distributed Pro Rata to the remaining holders of Allowed Claims, pursuant to the terms of this Plan. Distributions to holders of Allowed Claims shall be made to their last known address, which shall be presumed to be as set forth on the proof of claim filed by such Claimant, or if no proof of claim was filed, on the Schedules filed by the Debtor, as may have been amended from time to time, unless a Claimant shall have supplied a new or corrected address in writing to the Plan Distribution Agent within two weeks prior to a Distribution to permit the Plan Distribution Agent to revise their records accordingly.

5. Exemption from Securities Laws

The issuance of any securities, if any, pursuant to the Plan, shall be exempt from any securities laws registration requirements to the fullest extent permitted by section 1145 of the Bankruptcy Code.

6. Special Tax Provisions

Pursuant to section 1146© of the Bankruptcy Code, the issuance, transfer or exchange of any notes or securities under the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, any deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

C. THE PLAN DOCUMENTS

The Plan includes the Plan Documents which means those certain agreements, documents and instruments entered into on or as of the Effective Date as contemplated by, and in furtherance of, the Plan. The Plan Documents shall be included as part of the Plan Supplement. On the Effective Date, the Debtor, Plan Distribution Agent, and the Reorganized Debtor shall execute and deliver the Plan Documents as required under the Plan. The solicitation of votes on the Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated thereunder. Entry of the Confirmation Order shall constitute approval of the Plan Documents and all such transactions.

D. COMPROMISE OF CONTROVERSIES

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under this Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to this Plan, including, without limitation, all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of or transactions with the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in this Plan,

and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the estate, creditors and other parties in interest, and are fair, equitable and within the range of reasonableness.

There are two related actions pending in San Diego Superior Court, Central Division. Aside from the City Lawsuit, the other is the foreclosure action initiated by EWB and styled East West Bank vs. Wave House Belmont Park LLC (Case No. 37-2011-00093959-CU-OR-CTL) (the "Foreclosure Action"). Pursuant to paragraph 2.11 of the SAP Settlement Agreement, the Foreclosure Action is to be dismissed upon approval of the Receiver's final accounting of the Receivership Estate and the completion of the Non-Judicial Foreclosure, and has been dismissed as of January 30, 2013.

With respect to the City Lawsuit, paragraph 6.1 of the SAP Settlement Agreement allows SAP room to renegotiate its lease with the City of San Diego (the "City"). If any Renegotiated Lease is conditioned on dismissal of the City Lawsuit, then SAP may request that Debtor dismiss the action. Until the latter of January 16, 2013 or 90 days before trial (the "Dismissal Period"), if SAP requests that Debtor dismiss the City Lawsuit with prejudice, the Debtor will do so subject to the City executing a mutual release for the benefit of the Debtor and all Wave House Parties. Until expiration of the Dismissal Period, the Debtor may not dismiss the City Lawsuit without express written authorization of SAP. Once the Dismissal Period expires, the Debtor shall once more have sole control of the City Lawsuit and its prosecution, although an extension of the Dismissal Period is provided for under certain circumstances in paragraph 6.1.1.

E. PROCEDURES FOR DISPUTED CLAIMS

1. Objections to Claims

Other than with respect to Fee Claims, only the Reorganized Debtor shall be entitled to object to Claims, including any Claim which was listed by the Debtor in the Schedules in an amount not disputed or contingent. Any objections to such Claims (other than Fee Claims) shall be served and filed on or before the later of: (a) ninety (90) days after the Effective Date; (b) thirty (30) days after a request for payment or proof of Claim is properly filed and served upon the Debtor; or © such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) hereof. Notwithstanding the above, any objection to a Claim shall be served and filed on or before thirty (30) days after the Confirmation

Date. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the Reorganized Debtor effects service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the extent counsel for a claimant is unknown, by first class mail, postage prepaid, on the signatory of the proof of claim as well as all other representatives identified in the proof of claim or any attachment thereto; or © by first class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Reorganization Case (so long as such appearance has not been subsequently withdrawn). The Plan shall not affect any party's rights to object to Fee Claims.

In Exhibit 2 to this Disclosure Statement, the Debtor has identified and marked various claims that are objectionable. The Debtor reserves the right to object to any and all claims listed on Exhibit 2, however, the marked claims have specific issues already identified by the Debtor. Although Debtor may choose not to object to some or all of the objectionable claims, there are grounds for objecting to each claim and creditors should take into consideration that objections may be filed within the time period provided for herein above.

2. Payments and Distributions with Respect to Disputed Claims

To the extent a Claim is a Disputed Claim, the Plan Distribution Agent shall not be required to make the applicable disputed portion of a payment to the holder of such Disputed Claim which would otherwise be payable to the holder of a Disputed Claim. In the event that Disputed Claim is subsequently allowed, the Plan Distribution Agent shall thereafter pay the appropriate amount to the holder of the Claim in accordance with the terms of the Plan and in the same manner as any other creditor of the same Class.

F. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. General Treatment

Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases to which the Debtor is currently a party are hereby rejected; except for any executory contracts or unexpired leases that (I) have been assumed pursuant to Final Order of the Bankruptcy Court, (ii) are designated specifically or by category as a contract or lease to be assumed on an exhibit contained in the Plan Supplement, as such exhibit may be amended from time to time prior to the Effective Date to include

additional or exclude pre-existing contracts and agreements, (iii) are the subject of a separate motion to assume filed under section 365 of the Bankruptcy Code by the Debtor prior to the Effective Date, (iv) or reaffirmed as part of the Plan.

2. Cure of Defaults

Except to the extent that different treatment has been agreed to by the non-debtor party or parties to any executory contract or unexpired lease to be assumed, the Reorganized Debtor shall within thirty (30) days after the Effective Date, file and serve on parties to any executory contracts or unexpired leases to be assumed and other parties in interest a pleading with the Bankruptcy Court listing the cure amounts of all executory contracts or unexpired leases to be assumed. The parties to such executory contracts or unexpired leases to be assumed by the Reorganized Debtor shall have fifteen (15) days from the date of service to object to the cure amounts listed by the Debtor. If an objection is filed with respect to the cure amount due under an executory contract or unexpired lease, the Bankruptcy Court shall hold a hearing to determine the cure amount. Notwithstanding the foregoing, at all times through the date that is five (5) Business Days after the Bankruptcy Court enters an order resolving and fixing the amount of a disputed cure amount, the Debtor shall have the right to reject such executory contract or unexpired lease.

3. Rejection Claims

Except as otherwise ordered by the Bankruptcy Court, in the event that the rejection of an executory contract or unexpired lease by the Debtor pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Debtor or the Reorganized Debtor, unless a proof of claim has been filed with the Bankruptcy Court and served upon counsel for the Debtor on or before the Rejection Claims Bar Date. If there are no objections to a Rejection Claim, or to the extent a Rejection Claim later becomes an Allowed Claim, the Rejection Claim shall be classified and treated as a General Unsecured Claim. No claims in this Class are anticipated.

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G. EFFECT OF CONFIRMATION

1. Vesting of Assets.

Except as otherwise provided herein, all real and non-exempt personal property of the estate shall be held in trust by the Reorganized Debtor for the benefit of the estate, until such time as all claims have been paid in full as provided in the Confirmation Order. The entry of a final decree will not re-vest property of the estate in the Debtor, but rather the Debtor will remain in possession of the assets to an actual or constructive trust in favor of the creditors of the estate. The Debtor is obligated to hold the assets for the benefit of unpaid creditors, and may deal with the assets only in a manner consistent with the Plan. Upon all such claims being paid in full, the remaining assets of the Debtor shall immediately vest in the Reorganized Debtor, free and clear of all Claims, liens, encumbrances, charges and other interest except for any liens and claims of secured creditors as provided herein without further order from the Bankruptcy Court.

After assets vest in the Reorganized Debtor, the Debtor may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code, except as otherwise provided in the Plan.

After the City litigation proceeds have been distributed in full, the case shall end even if all creditors have not been paid in full.

2. Discharges of Claims.

Except as otherwise provided herein or in the Confirmation Order, the rights afforded in this Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims of any kind, nature, or description whatsoever against or in the Debtor or any of its Assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise provided herein, upon the Effective Date, all Claims against the Debtor shall be, and shall be deemed to be, discharged whether or not a proof of Claim or proof of interest was filed with respect thereto.

3. Discharge of the Debtor.

The Debtor will not receive a discharge in this case.

4. Injunctions.

Unless otherwise provided in the Plan, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Upon the entry of the Confirmation Order, all holders of Claims and other parties in interest, along with their respective present or former affiliates, employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as otherwise provided in the Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against the Debtor or the Estate are, with respect to any such Claims, permanently enjoined from and after the Confirmation Date from:

(a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the estate, the Reorganized Debtor or any of its property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or any property of any such transferee or successor;

(b) enforcing, levying, attaching (including, without limitation, any pre judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor, the estate, or the Reorganized Debtor or any of its property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor.

(c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the estate or the Reorganized

Debtor or any of its property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; and,

(d) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan to the fullest extent permitted by applicable law.

5. Retention of Causes of Action/Reservation of Rights

Except as specifically provided in the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights, Claims or Causes of Action that the Debtor may have or the Reorganized Debtor may choose to assert on behalf of the Estate in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation:

(a) any and all Claims against any Person, to the extent such Person asserts a cross-claim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtor, Reorganized Debtor, or any of their officers, directors, or representatives;

(b) the avoidance of any transfer by or obligation of the Estate or the Debtor or the recovery of the value of such transfer;

(c) the turnover of any property of the estate; and/or

(d) Claims against other third parties.

Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtor had immediately prior to the Petition Date. The Reorganized Debtor shall have, retain, reserve and be entitled to assert all such Claims, Causes of Action, rights of setoff, or other legal or equitable defenses which the Debtor had immediately prior to the Petition Date as fully as if the Reorganization Case had not been commenced.

THE FAILURE TO SPECIFICALLY IDENTIFY ANY OTHER CAUSE OF ACTION OR AVOIDANCE ACTION SHALL NOT BE CONSTRUED OR ACT TO CREATE A WAIVER, RELEASE OR DISCHARGE OF SUCH CAUSE OF ACTION OR AVOIDANCE ACTION.

6. Exculpation.

None of the Debtor, the Reorganized Debtor, or any of their respective directors, officers, employees or members (acting in such capacity) shall have or incur any liability to any entity for any act taken or omitted to be taken in connection with and subsequent to the commencement of the Reorganization Case, the formulation, preparation, dissemination, implementation, confirmation or approval of the Plan, any other plan of reorganization or any compromises or settlements contained therein, any disclosure statement related thereto or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the transactions set forth in the Plan or in connection with any other proposed plan; provided, however, that the foregoing provisions shall not affect the liability that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted breach of fiduciary duty, negligence or willful misconduct. Each of the foregoing parties in all respects shall have and shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities during the Reorganization Case and under the Plan.

7. Termination of Professionals

On the Effective Date, the engagement of each professional retained by the Debtor may be terminated without further order of the Court or act of the parties. The Debtor shall thereafter, without the need for further order of the Bankruptcy Court, be free to retain and compensate one or more professionals.

8. Substantial Consummation

As the Effective Date, upon the execution and delivery of the Plan Documents, the Debtor may seek an order from the Bankruptcy Court determining that the Plan has been substantially consummated pursuant to section 1101 of the Bankruptcy Code.

9. Plan Modifications, Amendments and Revocation

The Plan may be amended, modified or supplemented by the Debtor in the manner provided by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise direct. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Claims pursuant to the Plan, the Debtor may institute proceedings in the Bankruptcy

Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

Prior to the Effective Date, the Debtor may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, *provided, that,* such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims.

The Debtor reserves the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtor takes such action, the Plan shall be deemed null and void.

H. RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157 (but the Plan shall in no way expand the jurisdiction otherwise granted to the Bankruptcy Court pursuant 28 U.S.C. §§ 1334 and 157), over all matters arising in, arising under, or related to the Reorganization Case for, among other things, the following purposes:

(a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom.

(b) To determine any motion, adversary proceeding, avoidance action, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date.

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein.

(d) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim or Administrative Expense Claim.

(e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated.

(f) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court.

(g) To hear and determine any motion to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof

(h) To hear and determine all Fee Claims.

(i) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing.

(j) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan, including any release, injunction or exculpation provisions set forth herein, or to maintain the integrity of the Plan following consummation.

(k) To determine such other matters and for such other purposes as may be provided in the Confirmation Order.

(l) To hear and determine matters concerning state, local, and federal regulations, Claims or taxes.

(m) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code.

(n) To enter a final decree closing the Reorganization Case.

(o) To recover all Assets of the Debtor and property of the estate, wherever located.

(p) To resolve any disputes under section 11.6 of the Plan.

VIII. CERTAIN FACTORS TO BE CONSIDERED

The holder of a Claim against the Debtor should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan.

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A. CERTAIN BANKRUPTCY CONSIDERATIONS

The Debtor believes that if the Plan is not confirmed and consummated, there can be no assurance that any alternative plan of reorganization would be on terms as favorable to the holders of the impaired Claims as the terms of the Plan. In addition, if a protracted reorganization or a liquidation of the Debtor's assets were to occur, there is a substantial risk that holders of Claims would receive less than they will receive under the Plan. As this is a liquidating plan, the Debtor believes this Plan provides more return for creditors than a liquidation by providing a means by which the Debtor is funding the litigation in a manner that is better than any one could find under a chapter 7 liquidation.

B. TAX CONSEQUENCES

THE FEDERAL, STATE, LOCAL AND OTHER GENERAL TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS AND INTEREST AS A RESULT OF THE PLAN MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. THEREFORE, EACH CREDITOR OR EQUITY SECURITY HOLDER SHOULD CONSULT THEIR OWN TAX ADVISOR TO DETERMINE THE TREATMENT AFFORDED THEIR RESPECTIVE CLAIMS OR INTERESTS BY THE PLAN UNDER FEDERAL TAX LAW, THE TAX LAW OF THE VARIOUS STATES AND LOCAL JURISDICTIONS OF THE UNITED STATES AND THE LAWS OF FOREIGN JURISDICTIONS.

NO STATEMENT IN THIS DISCLOSURE STATEMENT SHOULD BE CONSTRUED AS LEGAL OR TAX ADVICE. THE DEBTOR AND ITS COUNSEL DO NOT ASSUME ANY RESPONSIBILITY OR LIABILITY FOR THE TAX CONSEQUENCES A CREDITOR OR EQUITY SECURITY HOLDER MAY INCUR AS A RESULT OF THE TREATMENT AFFORDED THEIR CLAIM OR INTEREST UNDER THE PLAN.

IX. CONFIRMATION AND CONSUMMATION PROCEDURE

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

A. SOLICITATION OF VOTES

In accordance with sections 1126 and 1129 of the Bankruptcy Code, the Claims in Classes 2, 3 and 4 are impaired and are entitled to vote to accept or reject the Plan. Any Creditor holding a Claim in

an impaired class under the Plan (other than those Classes deemed to have rejected the Plan) may vote on the Plan so long as such Claim has not been disallowed and is not the subject of an objection pending as of the voting deadline. Nevertheless, if a Claim is the subject of such an objection, the holder thereof may vote if, prior to the voting deadline such holder obtains an order of the Bankruptcy Court allowing such Claim, in whole or in part, or the Bankruptcy Court approves a stipulation between the Debtor and such holder, fully or partially allowing such Claim, whether for all purposes or for voting purposes only.

In accordance with section 1126(g) of the Bankruptcy Code, the holders of such Equity Interest Claims are conclusively presumed to reject the Plan and the votes of such holders will not be solicited with respect to such Claims.

As to classes of claims entitled to vote on a plan, the Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the claims of that class that have timely voted to accept or reject a plan.

A BALLOT WILL NOT BE COUNTED IF IT IS NOT *ACTUALLY RECEIVED* BY JOHN L. SMAHA, ESQ., SMAHA LAW GROUP, 7860 MISSION CENTER COURT, STE. 100, SAN DIEGO, CA, 92108, NO LATER THAN 4:00 P.M., PACIFIC TIME, ON _____. PLEASE FOLLOW THE INSTRUCTIONS ON YOUR BALLOT FOR RETURNING THE BALLOT.

In addition, a vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

If you have any questions about these instructions, please call John L. Smaha, Esq., at (619) 688-1557.

B. THE CONFIRMATION HEARING

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing. The Confirmation Hearing in respect of the Plan has been scheduled for _____ at _____ Pacific Time, before the Honorable Laura S. Taylor United States Bankruptcy Court, Southern

District of California. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing.

Objections, if any, to confirmation of the Plan must be in writing, and must (a) state the name and address of the objecting party and the nature and amount of the claim or interest of such party, (b) state with particularity the basis and nature of each objection to confirmation of the Plan, and © be filed, together with proof of service, with the Court (with a copy to chambers) and served so that they are received no later than 4:00 p.m., Pacific Time, on _____ at 4:00 p.m. by the Court and the following parties: (I) John L. Smaha, Esq., Smaha Law Group, 7860 Mission Center Court, Ste. 100, San Diego, CA, 92108; (ii) Office of the United States Trustee, 402 West Broadway, Ste. 600, San Diego, CA 92101-8511, Attention: David Ortiz; Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014

Any party failing to file and serve an Objection to the Plan in compliance with this Order shall be barred from being heard upon or raising any objections to the Plan at the Confirmation Hearing.

C. CONFIRMATION

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of the Plan are that the Plan is (I) accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such class, (ii) feasible, (iii) in the "best interests" of creditors and stockholders that are impaired under the Plan, and (iv) complies with section 1129(a)(9)(C)of the Bankruptcy Code.

1. Cramdown - Unfair Discrimination and Fair and Equitable Tests

To obtain non-consensual confirmation of the Plan, at least one impaired class must vote to accept the Plan (excluding any votes of insiders), and the Debtor must demonstrate to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, non-accepting class. The Bankruptcy Code provides the following non-exclusive

definition of the phrase "fair and equitable," as it applies to secured creditors, unsecured creditors and equity holders:

a. **Secured Creditors.** Either (I) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a value as of the Effective Date of the Plan equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the "indubitable equivalent" of its allowed secured claim, or (iii) the property securing the claim is sold free and clear of liens with such liens attaching to the proceeds of the sale and the treatment of such liens on proceeds is provided in clause (I) or (ii) immediately above.

b. **Unsecured Creditors.** Either (I) each impaired unsecured creditor receives or retains under the Plan property of a value equal to the allowed amount of its claim, or(ii) the holders of claims and interests that are junior to the claims of the rejecting class of unsecured creditors will not receive or retain any property under the Plan.

c. **Equity Interests.** Either (I) each impaired holder of an equity interest receives or retains under the Plan on account of such interest, property of a value, as of the Effective Date of the Plan, equal to the greater of (A) the allowed amount of any fixed liquidation preference to which such holder is entitled, (B) any fixed redemption price to which such holder is entitled or © the value of such interest, or (ii) the holders of any equity interests that are junior to the interests of the rejecting class of equity holders will not receive or retain any property under the Plan. The Debtor believes that the Plan and the treatment of all classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan. In the event that one or more classes of impaired Claims or Equity Interests reject the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired class of Claims or Equity Interests.

2. Feasibility

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. The Debtor believes that confirmation of

the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor as this is, in essence, a liquidating plan.

3. Best Interests of Creditors Test

With respect to each impaired class of Claims and Equity Interests, confirmation of the Plan requires that each holder of a Claim or Equity Interest either (I) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the "best interests of creditors test." To determine what holders of Claims and Equity Interests of each impaired class would receive if the Debtor were liquidated under chapter 7, the Bankruptcy Court determines the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The cash amount that would be available for satisfaction of Claims and Equity Interests would consist of the proceeds resulting from the disposition of the assets of the Debtor, augmented by the unencumbered cash held by the Debtor at the time of the commencement of the liquidation case. Such amounts would be reduced by the amount of the costs and expenses of the liquidation and by such additional administrative and priority claims that may result from the termination of the Debtor's business and the use of chapter 7 for the purposes of liquidation.

As this plan is a liquidating plan, the Debtor believes this plan provides a greater potential distribution to all creditors than what would be available under a chapter 7 liquidation, with the added advantage of providing a court approved methodology for completing the litigation against the City which provides the highest potential distribution for all creditors. As provided above, the Debtor has a methodology for the funding of this litigation by and through the loan from Mrs. Lochtefeld. Just as importantly, the Debtor has negotiated an agreement with SAP that provides for the potential elimination of the SAP's claim, which was previously capped at $18,346,457.34. Under the negotiated agreement, SAP will also be transferring the 8(a) Note to the Debtor. The payments under the note will bring in over one million dollars to the Reorganized Debtor's estate, and the Debtor anticipates that this will allow for payment of Class 4 claims in full. In the absence of the SAP Settlement

Agreement, the proceeds of the Adversarial Action against the City would then necessarily have to generate enough to pay Mrs. Lochtefeld on her loan, approximately $500,000, and then generate additional sums to pay SAP in full prior to any further distribution.

Under the Settlement Agreement with EWB, the Debtor would have needed to net enough to pay off EWB's $18,346,457.34 claim before unsecured creditors would be assured of getting anything. Now, the unsecured creditors will be assured of a 100% payment through the transfer of the 8(a) Note. Without this compromise, the Debtor would have needed to fund multiple actions with uncertain results, while accruing significant administrative expenses. The compromise allows the Debtor additional time to effectuate a viable plan of reorganization, and also provides certainty to the unsecured creditors as to payment in full. Debtor gains a significant asset in the 8(a) Note which will allow it to appropriately fund a liquidating plan. Lastly, the agreement provided a mechanism to bring the entire EWB claim to a positive and mutually-agreed upon conclusion.

If the Debtor is forced into a chapter 7 liquidation, the trustee taking over the liquidation of the bankruptcy estate would face the prospect of having to reinvent the wheel in this case. The SAP Settlement Agreement would be placed into jeopardy and the transfer of the 8(a) Note may not occur as intended by the Debtor. In order to litigate the Adversarial Action against the City, a chapter 7 trustee would most probably need to get a loan in order to fund the litigation or would have to obtain counsel that would do the case on contingency. A loan with an unrelated, disinterested party made solely to fund litigation would obviously necessitate a substantial interest return for potential lenders. Certainly, a trustee would likely be hard pressed to obtain a three percent (3%) interest rate as provided by Mrs. Lochtefeld's loan. If the Trustee was unable to obtain a significant loan for the litigation, a trustee would then likely be left with the option of hiring a law firm to handle the Adversarial Action on a contingency basis. A firm taking this matter on a full contingency basis would likely demand as much as a forty percent (40%) contingency. Assuming the trustee could reach a similar capped agreement with SAP, which is of course no certainty, the Adversarial Action would then have had to generate enough to pay SAP in full plus the amount that would be owed to administrative expenses, including the trustee's fees, which could certainly be estimated at $500,000, and an additional $4,200,000 to pay

attorney's fees. Thereafter, any money going to general unsecured creditors under Class 4 would still be reduced by an additional forty cents on the dollar for every dollar recovered from the Adversarial Action in order to pay the contingency fees. As such, a trustee would have to generate, at least, $13,700,000 from the Adversarial Action (versus $9,500,000) by the Debtor in order to guarantee a return to creditors other than Class 2 creditors. Further, any distribution thereafter would be reduced by 40% for the ongoing contingency recovery for the trustee's counsel.

Also to be considered, would be the trustee's motivation to actually litigate the action. If the trustee considers the Adversarial Action to be too risky and SAP's secured claim insurmountable, then a trustee may decide not to go forward with the Adversarial Action or the trustee may push for an early settlement. A trustee would have no stake in the Adversarial Action as the Debtor and Mr. Lochtefeld certainly have. This is not to say that a trustee could not do as effective a job as the Debtor, but the personal knowledge, the incentive and the motivation may not be as strong in a trustee as there will be with the Debtor and Mr. Lochtefeld. With the above in mind, Debtor would argue that the Debtor and Mr. Lochtefeld are in a better position to manage the Debtor's interests in the liquidation of the 8(a) Note, the Leasehold interest held by SAP and the Adversarial Action as any disinterested and potentially unmotivated trustee.

X. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed and consummated, the Debtor's alternatives include (I) liquidation of the Debtor under chapter 7 of the Bankruptcy Code and (ii) the preparation and presentation of an alternative plan of reorganization, however, as of the date hereof no alternate Plan has been filed. In addition thereto the timing of confirmation of the Plan is an important factor with the status of the litigation. CREDITORS ARE URGED TO VOTE IN FAVOR OF THE DEBTOR'S PLAN.

As provided above, this is a liquidating plan. The failure of this plan would still result in a liquidation of the Debtor's estate. However, given the circumstances, especially Mrs. Lochtefeld's loan, the settlement with EWB, the ongoing involvement of Mr. Lochtefeld in this Adversarial Action, the operation of the Leasehold Interested now owned by EWB and the efforts to liquidate the Schedule B Assets, the Debtor strongly believes that the liquidation

of these valuable assets by the Debtor will be of greater value to all parties, including General Unsecured Creditors, than would result from a trustee led liquidation under chapter 7.

LIQUIDATION UNDER CHAPTER 7

If no chapter 11 plan can be confirmed, the Reorganization Case may be converted to a case under chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed to liquidate the assets of the Debtor. A discussion of the effect that a liquidation would have on the recovery of holders of Claims is set forth above under the Best Interests of Creditors Test section.

XI. CONCLUSION AND RECOMMENDATION

The Debtor urges holders of impaired Claims to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received on or before 4:00 p.m., Pacific Time on _____.

Dated: March 5, 2013

Respectfully submitted,

/s/ John L. Smaha
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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re WAVE HOUSE BELMONT PARK, LLC, Debtor.	CASE NO. 10-19663-LT11 Chapter 11 **DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION DATED MARCH 5, 2013** Judge: Hon. Laura S. Taylor

W:\Wave House Belmont\Plan and D.S\Cover Page - Plan.wpd

TABLE OF CONTENTS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:	*	
WAVE HOUSE BELMONT PARK, LLC	*	**Case No. 10-19663-LT11 (Chapter 11)**
	*	
Debtor.		

* * * * * * * * * * * *

DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION

DATED MARCH 5, 2013

Wave House Belmont Park, LLC, Debtor and Debtor-in-Possession, proposes the following Plan of Reorganization pursuant to Section 1121(a) of Title 11 of the United States Code:

SECTION 1. DEFINITIONS AND INTERPRETATION

A. Definitions

1.1 The following terms shall have the respective meanings set forth below (such meanings to be equally applicable to both the singular and plural):

1.2 **Administrative Bar Date** means the date specified in Section 2.2 of this Plan, or such other date as may be fixed by order of the Bankruptcy Court, by which an Administrative Expense Claim must be filed, or be forever barred from asserting such Administrative Expense Claim against the Debtor, the Estate, the Distribution Agent or the Reorganized Debtor or their property.

1.3 **Administrative Expense Claim** means any right to payment constituting a cost or expense of administration of the Reorganization Case (other than a Fee Claim) allowed under sections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Debtor's estate, any actual and necessary costs and expenses of operating the Debtor's business and any fees or charges assessed against the Debtor's estate under Section 1930 of Chapter 123 of Title 28 of the United States Code.

1.4 **Allowed** means, with reference to any Claim: (a) any Claim against the Debtor which has been listed in the Schedules as liquidated in amount and not disputed or contingent, and for which no contrary or inconsistent proof of claim has been filed; or notwithstanding the Claim being listed in the Schedules as liquidated in an amount and not disputed or contingent, (i)the Debtor has filed an objection to the Claim which has been overruled, or (ii) as to which no objection to allowance has been interposed prior to the deadline by which such objections must be filed in accordance with this Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court and as to which such deadline has expired; (b) any timely filed proof of claim (i) as to which no objection to allowance has been interposed prior to the deadline by which such objections must be filed in accordance with this Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court and as to which such deadline has expired, or (ii) as to which an objection has been filed and not withdrawn and such objection has been determined by a Final Order (but only to the extent such objection has been overruled); (c) any Claim which is not a Disputed Claim; or (d) any Claim

allowed hereunder. Unless otherwise specified herein or allowed by order of the Bankruptcy Court, Allowed Claims (including Allowed Administrative Expense Claims) shall not, for any purpose under this Plan, include post Petition Date interest on such Claims, unless otherwise provided for under this Plan.

1.5 **Amended Bylaws** means the Amended and Restated Bylaws of the Reorganized Debtor, if any.

1.6 **Amended Articles of Incorporation** means the Amended and Restated Articles of Incorporation of the Reorganized Debtor, if any.

1.7 **Assets** means all of the right, title and interest of the Debtor in and to property of whatever type or nature (real, personal, mixed, tangible or intangible).

1.8 **Avoidance Actions** means all claims, rights and causes of action of the Debtor and the Estate that arise under the terms of the Bankruptcy Code, including, but not limited to, all preference, fraudulent conveyance and other causes of action under chapter 5 of the Bankruptcy Code, whether or not such litigation has been commenced as of the Effective Date.

1.9 **Bankruptcy Code** means Title 11 of the United States Code, as amended from time to time, as applicable to the Reorganization Case.

1.10 **Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of California or any other court exercising competent jurisdiction over the Reorganization Case or any proceeding therein.

1.11 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United States Code, as amended from time to time, applicable to the Reorganization Case, and any Local Rules of the Bankruptcy Court.

1.12 **Bar Date(s)** means the original claims bar date of January 7, 2011 or such other dates fixed by order(s) of the Bankruptcy Court or this Plan as the day(s) by which all Persons asserting a certain Claim must have filed proofs of such Claim or be forever barred from asserting such Claim against the Debtor or the estate.

1.13 **Beneficiaries** means collectively the holders of Allowed Claims under the Plan, or any successors to such holders' Allowed Claims.

1.14 **Business Day** means any day other than a Saturday, a Sunday, or any other day on which nationally chartered banking institutions in San Diego, California are required or authorized to close by law or executive order.

1.15 **Cash** means legal tender of the United States of America or a commercially recognized cash equivalent.

1.16 **Causes of Action** means any and all of the Debtor's actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and Claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether or not such litigation has been commenced as of the Effective Date.

1.17 **Claim** means "claim" as defined in section 101(5) of the Bankruptcy Code.

1.18 **Class** means a Claim or interest, or a group of Claims or interests, consisting of those Claims or interests which are substantially similar to each other, as classified under the Plan, or a Claim or interest, or a group of Claims or interests, classified by amount as may be reasonable and necessary as an administrative convenience claims, or a group of Claims or interests which are otherwise required to be separately classified.

1.19 **Confirmation Date** means the date that the Confirmation Order is entered on the docket of the Bankruptcy Court.

1.20 **Confirmation Hearing** means the hearing to be held by the Bankruptcy Court regarding confirmation of this Plan; as such hearing may be adjourned or continued from time to time.

1.21 **Confirmation Order** means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

1.22 **Convenience Claim** means an Unsecured Claim that (a) is Allowed in, or as to which the holder thereof elects to reduce such Allowed Claim to, an amount equal to or less than $1,000, and (b) accepts the distribution set forth in section 4.2 of this Plan in full satisfaction, settlement and release, and discharge of such Claim.

1.23 **Debtor** means Wave House Belmont Park, LLC.

1.24 **Deficiency Claim** means, with respect to a Claim that is partially secured, the amount by which the Allowed amount of such Claim exceeds the Debtor's interest in such property that collateralizes the Claim.

1.25 **Disallowed** (when used in the context of a Claim or Interest) means the entirety or any portion of any Claim against, or interest in, the Debtor which has been disallowed by a Final Order of the Bankruptcy Court.

1.26 **Disbursement Account** means the federally insured bank account to be administered and maintained by the Reorganized Debtor which is to be created pursuant to and for the purposes set forth in the Plan.

1.27 **Disclosure Statement** means the Disclosure Statement that relates to this Plan, as such Disclosure Statement may be amended, modified or supplemented (including all exhibits and schedules annexed thereto or referred to therein).

1.28 **Disclosure Statement Hearing** means the hearing held by the Bankruptcy Court to consider approval of the Disclosure Statement as containing adequate information as required by section 1125 of the Bankruptcy Code, as the same may be adjourned or continued from time to time.

1.29 **Disputed Claim** means any Claim that is not an Allowed Claim as of the relevant date.

1.30 **Effective Date** means the date that is eleven (11) calendar days after the Confirmation Date, or, if such date is not a Business Day, the next succeeding Business Day, so long as no stay of the Confirmation Order is in effect on such date; provided, however that if, on or prior to such date, all conditions to the Effective Date set forth in this Plan have not been satisfied, or waived, then the Effective Date shall be the first Business Day following the day on which all such conditions to the Effective Date have been satisfied or waived.

1.31 **Estate** means the estate of the Debtor in the Reorganization Case created pursuant to section 541 of the Bankruptcy Code.

1.32 **Fee Claim** means a Claim by a Professional Person for compensation, indemnification or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103(a) of the Bankruptcy Code in connection with the Reorganization Case.

1.33 **Final Order** means an order of the Court or of any court of competent jurisdiction which has been entered and which has become final by expiration of the time of an appeal therefrom, or, if an appeal(s) is taken, by resolution of such appeal(s) in favor of one of the parties thereto and the expiration of the time for further appeal(s) therefrom.

1.34 **General Unsecured Claim** means a Claim against the Debtor, including a Deficiency Claim, but other than a Secured Claim, an Unsecured Priority Claim, an Administrative Expense Claim, a Fee Claim, a Priority Claim or a Tax Priority Claim.

1.35 **Insider** has the meaning ascribed to that term by section 101(31) of the Bankruptcy Code.

1.36 **Person** means any individual, corporation, partnership, association, indenture trustee, limited liability company, organization, joint stock company, joint venture, estate, trust, governmental unit or any political subdivision thereof, interest holders, or any other entity.

1.37 **Petition Date** means November 3, 2010.

1.38 **Plan** means this Plan of Reorganization, including, without limitation, any exhibits or schedules hereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof

1.39 **Plan Documents** means the agreements, documents and instruments entered into on or as of the Effective Date as contemplated by, and in furtherance of, the Plan.

1.40 **Plan Supplement** means the supplemental appendix to this Plan, filed at least ten (10) calendar days prior to the Confirmation Hearing, that will contain draft forms of the Plan Documents or such other documents as may be necessary or appropriate to implement the terms and provisions of this Plan.

1.41 **Priority Claims** means all claims as defined in sections 507(a)(4), (a)(5) and (a)(7) of the Bankruptcy Code only, excluding claims as defined in sections 507(a)(2), (a)(3), (a)(6), (a)(8) and (a)(9) of the Bankruptcy Code.

1.43 **Priority Tax Claim** means any Claim of a governmental unit against the Debtor of the kind entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

1.44 **Pro Rata** means the proportion that the dollar amount of an Allowed Claim in a particular Class or particular Classes bears to the aggregate dollar amount of all Allowed Claims in such Class or Classes.

1.45 **Professional Person(s)** means all Persons retained by order of the Bankruptcy Court in connection with the Reorganization Case, pursuant to sections 327, 328, 330 or 1103 of the Bankruptcy Code.

1.46 **Rejection Claim** means any Claim arising under section 502(g) of the Bankruptcy Code and any Claim of a holder of an Executory Contract which pursuant to prior Order of Court is allowed as a Claim under section 502(g) of the Bankruptcy Code.

1.47 **Rejection Claims Bar Date** means the date that is 30 days after the Effective Date and by which all Persons asserting Claims arising from the rejection of an executory contract or unexpired lease must have filed proofs of such Claims or be forever barred from asserting such Claims against the Debtor or the estate, or other similar order, as may be entered by the Bankruptcy Court.

1.48 **Remaining Cash** means all Cash in the possession of the Debtor as of the Effective Date.

1.49 **Reorganization Case** means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor on the Petition Date in the Bankruptcy Court and styled *In re Wave House Belmont Park, LLC.*, Case Number 10-19663-LT11.

1.50 **Reorganized Debtor** means the Debtor on and after the Effective Date.

1.51 **Schedule B Assets and 8(a) Note:** On May 18, 2011, Debtor filed its amended Schedule B (Docket No. 110), which schedule set forth certain debts (accounts receivable) owed to Debtor by certain affiliates of Debtor. Debtor's books and records reflect the following amounts owed to Debtor by the following affiliated entities: Lochtefeld family $621,790.08, Blade Loch, Inc. $1,427.50, Wave the Planet, LLC $472.53, Wave Loch, LLC $579,608.47, Wave House International, LLC $155,250.77, Wave House Holdings, LLC $2,109,535.05, Wave House Athletic Club, LLC $1,136,632.65 and Wave House San Diego, LLC $538,603.67 (the "Schedule B Assets"). Debtor entered into a settlement agreement with East West Bank in which the Debtor agreed to surrender the Schedule B Assets to East West Bank in the form of a promissory note pursuant to Section 8(a) of the settlement agreement, and such a note was executed in the sum of $1,127,651.00 (the "8(a) Note"). East West Bank's interests in the 8(a) Note were transferred to Symphony Asset Pool XVI, LLC. Pursuant to a separate settlement agreement between Symphony Asset Pool XVI, LLC and the Debtor, the 8(a) Note will be transferred to the Debtor upon dismissal of the lawsuit against the City of San Diego, or in other specified circumstances in the settlement agreement with Symphony Asset Pool XVI, LLC (the "SAP settlement"). Pursuant to the SAP Settlement, payments under the 8(a) Note were suspended pending the transfer of the 8(a) Note to the Debtor.

1.52 **Schedules** means the schedules of assets and liabilities, lists of holders of Claims, and the statement of financial affairs filed by the Debtor with the Bankruptcy Court, as such schedules and statements may be supplemented or amended.

1.53 **Schedule of Assumed Contracts and Leases** means the schedule of executory contracts to be assumed, if any, pursuant to section 365 of the Bankruptcy Code consistent with the terms and conditions of this Plan, which schedule will be included in the Plan Supplement. As of the date thereof all executory contracts were either terminated pre-petition or assumed post petition.

1.54 **Distribution Assets** means the Assets and all property, including the proceeds and/or income related thereto, assigned and transferred to the Plan Distribution Account pursuant to the Plan, the order confirming this Plan and Plan Documents held from time to time pursuant to the Plan by the Plan Distribution Agent for the benefit of the Creditors.

1.55 **Distribution Expenses** means all expenses incurred in the Plan Distribution Account after the Effective Date in connection with the implementation of this Plan and liquidation of the Distribution Assets, which expenses shall include, postage, paper, casual labor, book keeping, travel and related distribution expenses capped at $10,000 for the life of the Plan. Such expenses shall not include any attorneys fees or general overhead of the Debtor. The Distribution Expenses shall include the costs of retaining a third party, certified public accountant to certify that net income and distribution calculations by the Reorganized Debtor are legitimate and in accordance with the Plan. Any expenses of litigation of the Debtor, including any attorneys fees, costs and expert expenses incurred in any such action, claims objections or otherwise shall not be Distribution Expenses but rather expenses of the Reorganized Debtor ("Litigation Expenses").

1.56 **Unsecured Priority Claim** means a Claim against the Debtor, including a Deficiency Claim, but other than a Secured Claim, a General Unsecured Claim, an Administrative Expense Claim, a Fee Claim, a Priority Claim or a Tax Priority Claim.

1.57 **Unsecured Claim Distribution** means the distribution of Cash by the Distribution Agent to each holder of an Allowed Unsecured Claim as set forth in section 4.3 of this Plan.

B. ***Interpretation; Application of Definitions and Rules of Construction.***

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. Any capitalized term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. Except for the rule contained in section 102(5) of the Bankruptcy Code, the rules of construction contained in section 102 of the Bankruptcy Code shall apply to this Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. To the extent there is an inconsistency between any of the provisions of this Plan and any of the provisions contained in the Plan Documents to be entered into as of the Effective Date, the Plan Documents shall control.

SECTION 2. ADMINISTRATIVE EXPENSE CLAIMS AND FEE CLAIMS

2.1 ***Administrative Expense Claims in General***

2.1.1 Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment (and except to the extent provided in sections 2.1 or 2.2 of this Plan), the Distribution Agent on behalf of the Reorganized Debtor shall pay to each holder of an Allowed Administrative Expense Claim Cash from the Disbursement Account, in an amount equal to such Claim on the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is reasonably practicable.

2.1.2 All fees payable pursuant to 28 U.S.C. § 1930(a)(6) shall be paid by the Debtor on or before the Effective Date.

2.1.3 Upon the disposition of any property (including real or personal property) of the Debtor, the Bankruptcy Court, upon application of the Debtor, may determine the amount of any tax claim accruing as a result of the disposition of said property pursuant to section 503(b)(1)(B) of the Bankruptcy Code.

2.2 ***Bar Date for Administrative Expense Claims.***

Proofs of Administrative Expense Claims and/or requests for the allowance and payment of Administrative Expense Claims, other than a Fee Claim, unless otherwise required pursuant to a prior order of the Bankruptcy Court, must be filed and served by the date that is no later than forty-five (45) days after the Effective Date. Notwithstanding anything to the contrary herein, no proof of Administrative Expense Claim or application for payment of an Administrative Expense Claim need be filed for the allowance of any: (a) expense or liability incurred in the ordinary course of the Reorganized Debtor's business on or after the Effective Date; (b) Administrative Expense Claim held by a trade vendor, which administrative liability was incurred by the Debtor in the ordinary course of business between the Debtor and such creditor on or after November 3, 2010; or (c) fees of the United States Trustee arising under 28 U.S.C. § 1930 allocable to periods on or after November 3, 2010.

All Claims described in clause (a), (b) and (c) of the immediately preceding sentence shall be paid by the Reorganized Debtor in the ordinary course of business. Any Persons that fail to file a proof of Administrative Expense Claim or request for payment thereof on or before the Administrative Bar Date as required herein, or other applicable order of the Bankruptcy Court, shall be forever barred from asserting such Claim against the Debtor, the estate, the Reorganized Debtor or its property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Expense Claim.

2.3 ***Fee Claims***

All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by a date that is no later than the date that is forty-five (45) calendar days after the Effective Date and (b) shall be paid by the Distribution Agent on behalf of the Reorganized Debtor, in full from the Disbursement Account, in such amounts as are approved by the Bankruptcy Court (a) upon the later of (i) the Effective Date and (ii) ten (10) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered or (b) upon such other terms as may be mutually agreed upon between the holder of such Fee Claim and the Reorganized Debtor.

SECTION 3. CLASSIFICATION OF CLAIMS AND OLD EQUITY INTERESTS

The following are the Classes of Claims and Equity Interests of the Debtor, along with a specification of which Classes are (a) impaired or unimpaired by this Plan, and (b) entitled to vote to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code:

Class 1 — Secured claim of Kathleen Lochtefeld ("Mrs. Lochtefeld") to the extent secured solely by the proceeds, if any, from litigation currently pending before the Superior Court of California for the County of San Diego between the Debtor and the City of San Diego (the "City"), styled as *Wave House Belmont Park, LLC v. The City of San Diego*, Case No. 37-2011-00102475-CU-MC-CTL and/or any other action that seeks to recover damages under the same factual and/or legal circumstances against the City of San Diego as lessor (the "Adversarial Action" or "City Lawsuit"). This Class is unimpaired and not entitled to vote.

Class 2	Secured claim of Symphony Asset Pool XVI, LLC secured to the extent provided for under its Promissory Note and to the extent its security interest has been affected by its election to take possession of the Debtor's Leasehold interest in the commercial properties located at 3106-3146 Mission Boulevard and 3105-3125 Ocean Front Walk, in the City of San Diego, County of San Diego (the "Subject Property"), and pursuant to the terms of its settlement agreement with the Debtor approved by the Bankruptcy Court on December 20, 2012. A foreclosure sale of the Leasehold occurred in November 2012. As a result of the SAP Settlement this claim has been reduced to zero dollars ($0). This is impaired, but deemed to have accepted the Plan by virtue of its post-petition agreement with the Debtor.
Class 3	Unsecured priority claims. This class is impaired.
Class 4	General, unsecured claims. This class is impaired.
Class 5	Equity interests. This class is deemed to have rejected the Plan.

SECTION 4. TREATMENT OF CLAIMS AND OLD EQUITY INTERESTS

In full and final satisfaction of their respective Claims against the Debtor, the Estate and the Reorganized Debtor, the following Classes of Creditors and Old Equity Interests and the holders of Claims therein shall receive the following treatment:

4.1 ***Secured Claim of Mrs. Lochtefeld (Class 1)***

The Debtor has been authorized to borrow up to $500,000 (the "Loan") on a senior secured lien on specified litigation proceeds from Mrs. Lochtefeld to enable the Debtor to prosecute litigation during the pendency of this bankruptcy case and pay ongoing legal fees and U.S. Trustee fees incurred in the administration of the estate. The portion of the Loan to be used for other than direct litigation costs cannot exceed $200,000. Interest on the outstanding amount accrues at the rate of 3.00% per annum. The Loan is due and payable upon conclusion of the Adversarial Action referenced herein below.

Mrs. Lochtefeld's loan is secured solely by the proceeds, if any, from litigation between the Debtor and the City of San Diego (the "City"), styled as Wave House Belmont Park, LLC v. The City of San Diego and/or any other action that seeks to recover damages under the same factual and/or legal circumstances against the City of San Diego as in such case (the "Adversarial Action"). Further, Mrs. Lochtefeld has no debt, lien or other claim to any other asset of the Debtor.

Mrs. Lochtefeld is not entitled to receive any repayment of the Loan unless and until any amounts which are hereafter determined to be due and owing to the Debtor, if any, including any amounts owed from any loan and/or any future avoidance action, are repaid to the Debtor from Mrs. Lochtefeld.

Mrs. Lochtefeld's treatment is governed by that certain Secured Promissory Note between the Debtor and Mrs. Lochtefeld. In turn, the Secured Promissory Note was subject to that certain Intercreditor Agreement dated as of September 20, 2011 as between Mrs. Lochtefeld and Symphony Asset Pool XVI, LL, however, as a result of the SAP Settlement, this agreement is no longer in effect.

4.2 ***Secured Claim of Symphony Asset Pool XVI, LLC (Class 2)***

This claim has been reduced to zero dollars ($0) pursuant to the SAP Settlement Agreement.

4.3 ***Unsecured, Priority Claims (Class 3)***

This class is comprised of claims that are entitled to priority under 11 U.S.C. Section 507. This class is comprised of all pre-petition obligations owed to the County of San Diego Treasurer - Tax Collector by the Debtor as a result of unpaid real property taxes on the Debtor's Subject Property. The San Diego County Treasurer has filed a proof of claim for $350,987.88.

The Debtor is informed and believes that EWB paid these claims as part of its election to take over the Subject Property. If so, the Debtor will object to the claim and call for its reduction to zero dollars ($0.00). No amounts should thus be due to this class.

4.5 ***Unsecured Claims (Class 4)***

Except to the extent that a holder of an Unsecured Claim agrees to a different treatment, each such holder shall receive, in full satisfaction of such Unsecured Claim, Cash in an amount up to 100% of the amount of the Unsecured Claim with interest accruing at the current federal short term rate of .20%. The payments to General Unsecured Claims are contingent of funds available from the proceeds of the Adversarial Action and the 8(a) Note after payment in full to Classes 1 and 3 above.

4.6 ***Equity Interests (Class 5)***

The Equity Interests of the owners of Wave House Belmont Park, LLC shall not receive any payment under the Plan unless and until all holders of Classes 1 through 4 are paid in full. If, at the end of the Plan, all creditors have been paid in full as provided herein above, the Debtor and its Equity Interest holders shall receive all remaining funds from the Adversarial Action and 8(a) Note , if any remain.

SECTION 5. MEANS FOR IMPLEMENTATION

5.1 ***Plan Documents***

On the Effective Date the Debtor shall execute and deliver the Plan Documents, as the case may be and as required hereunder.

5.2 ***8(a) Note***

Pending turnover of the 8(a) Note pursuant to the terms of the Settlement Agreement with SAP, no principal or interest shall be paid on the note. The current balance of the 8(a) Note is $1,127,651.00. The Debtor agrees to commence payments under the 8(a) Note on the Effective Date, with monthly payments to follow in the amounts indicated in the note for a total of sixty (60) payments. No interest is due under the 8(a) Note except in circumstances of default.

Upon transfer of the 8(a) Note into the Reorganized Debtor's estate, the Reorganized Debtor shall deposit one hundred percent (100%) of all proceeds into the Disbursement Account for the payment of administrative and unsecured claims on a pro rata basis until such claims are paid in full. The 8(a) Note calls for four (4) consecutive monthly payments of $5,000 commencing on the sixteenth day of the month upon which the 8(a) Note becomes effective and continuing on th fifteenth day of each month thereafter until the four payments are made. Thereafter, there will fifty-six (56) monthly installments of Nineteen Thousand Seven Hundred Seventy-Nine Dollars and Forty-Eight Cents ($19,779.48), and continuing on the fifth month and continuing on the 16th day of each

succeeding month until a total of sixty (60) monthly payments have been made, at which time all unpaid principal, accrued interest and fees and costs due under the 8(a) Note, if any, will be due and payable.

5.3 *Avoidance Actions and Collections*

All avoidance actions assertable by the Debtor-in-Possession, pursuant to Sections 542 through 553 of the Bankruptcy Code, shall be retained by the Reorganized Debtor ("Avoidance Actions"). For the period of 36 months on and after the Effective Date, the Reorganized Debtor shall deposit into the Disbursement Account 100% of the net recovery by the Reorganized Debtor on all Avoidance Actions, actions for the recovery of any pre-petition debt owed to the Debtor or any other Cause of Action (the "Avoidance Collections"). For the purposes hereof, the term Net Recovery shall mean the gross dollars collected in the particular action less all Litigation Expenses, attorneys fees and normal costs, including experts and employee overhead expended in the collection thereof. All Litigation Expenses and related costs shall be at the sole risk and expense of the Reorganized Debtor and shall not diminish any distributions from the Disbursement Account. Debtor does not anticipate filing any Avoidance Actions.

5.4 *Compromise of Controversies*

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under this Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to this Plan, including, without limitation, all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of or transactions with the Debtor. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in this Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the estate, creditors and other parties in interest, and are fair, equitable and within the range of reasonableness.

There are two related actions pending in San Diego Superior Court, Central Division. Aside from the City Lawsuit, the other action is the foreclosure action initiated by EWB and styled East West Bank vs. Wave House Belmont Park LLC (Case No. 37-2011-00093959-CU-OR-CTL) (the "Foreclosure Action"). Pursuant to paragraph 2.11 of the SAP Settlement Agreement, the Foreclosure Action is to be dismissed upon approval of the Receiver's final accounting of the Receivership Estate and the completion of the Non-Judicial Foreclosure, and it was so dismissed as of January 30, 2013.

With respect to the City Lawsuit, paragraph 6.1 of the SAP Settlement Agreement allows SAP room to renegotiate its lease with the City of San Diego (the "City"). If any Renegotiated Lease is conditioned on dismissal of the City Lawsuit, then SAP may request that Debtor dismiss the action. Until the latter of January 16, 2013 or 90 days before trial (the "Dismissal Period"), if SAP requests that Debtor dismiss the City Lawsuit with prejudice, the Debtor will do so subject to the City executing a mutual release for the benefit of the Debtor and all Wave House Parties. Until expiration of the Dismissal Period, the Debtor may not dismiss the City Lawsuit without express written authorization of SAP. Once the Dismissal Period expires, the Debtor shall once more have sole control of the City Lawsuit and its prosecution, although an extension of the Dismissal Period is provided for under certain circumstances in paragraph 6.1.1 of the SAP Settlement Agreement.

5.5 *Approval of Plan Documents*

The solicitation of votes on this Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated hereunder. Entry of the Confirmation Order shall constitute approval of the Plan Documents and such transactions.

SECTION 6. DISTRIBUTIONS

6.1 *Satisfaction of Claims*

Unless otherwise provided herein, any distributions and deliveries to be made on account of Allowed Claims hereunder shall be in complete settlement, satisfaction and discharge of such Allowed Claims.

6.2 *Manner of Payment Under Plan*

Except as specifically provided herein, at the option of the Distribution Agent, any Cash payment to be made hereunder may be made by a check or wire transfer, or as otherwise required or provided in applicable agreements.

6.3 *Exemption from Securities Laws*

The issuance of any securities pursuant to this Plan, including but not limited to the New Quality Plus Common Stock, shall be exempt from any securities laws registration requirements to the fullest extent permitted by section 1145 of the Bankruptcy Code.

6.4 *Setoffs*

The Debtor or the Reorganized Debtor, as applicable, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim, and the distributions to be made pursuant to this Plan on account of such Claim, Causes of Action of any nature that the Debtor or Reorganized Debtor may hold against the holder of such Allowed Claim; provided that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtor or Reorganized Debtor of any Causes of Action that the Debtor or the Reorganized Debtor may possess against such holder.

6.5 *Special Tax Provisions*

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any notes or securities under the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, any deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

SECTION 7. PROCEDURES FOR DISPUTED CLAIMS

7.1 *Objections to Claims*

Other than with respect to Fee Claims, only the Reorganized Debtor shall be entitled to object to Claims, including any Claim which has been listed by the Debtor in the Schedules in an amount not disputed or contingent. Any objections to such Claims (other than Fee Claims) shall be served and filed on or before the later of: (a) ninety (90) days after the Effective Date; (b) thirty (30) days after a request for payment or proof of Claim is properly filed and served upon the Debtor; or © such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) hereof. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the Reorganized Debtor effects service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the extent counsel for a claimant is unknown, by first class mail, postage prepaid,

on the signatory of the proof of claim as well as all other representatives identified in the proof of claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Reorganization Case (so long as such appearance has not been subsequently withdrawn). This Plan shall not affect any party's rights to object to Fee Claims.

7.2 ***Payments and Distributions with Respect to Disputed Claims***

To the extent a Claim is a Disputed Claim, the Distribution Agent shall not be required to make a distribution of the applicable disputed portion of a payment to the holder of such Disputed Claim which would otherwise be payable to the holder of a Disputed Claim. Instead such Disputed Claim shall be reserved for pending allowance or disallowance. In the event that Disputed Claim is subsequently allowed, the Distribution Agent shall thereafter pay the appropriate amount to the holder of the Claim in accordance with the terms of the Plan and in the same manner as any other creditor of the same Class.

SECTION 8. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 ***General Treatment***

Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases to which the Debtor is currently a party are hereby rejected; except for any executory contracts or unexpired leases that (I) have been assumed pursuant to Final Order of the Bankruptcy Court, (ii) are designated specifically or by category as a contract or lease to be assumed on an exhibit contained in the Plan Supplement, as such exhibit may be amended from time to time prior to the Effective Date to include additional or exclude pre-existing contracts and agreements, (iii) are the subject of a separate motion to assume filed under section 365 of the Bankruptcy Code by the Debtor prior to the Effective Date, (iv) or reaffirmed as part of the Plan.

8.2 ***Cure of Defaults***

Except to the extent that different treatment has been agreed to by the non-debtor party or parties to any executory contract or unexpired lease to be assumed, the Debtor shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code, and consistent with the requirements of section 365 of the Bankruptcy Code, on or before thirty (30) days after the Effective Date, file and serve on parties to executory contracts or unexpired leases to be assumed and other parties in interest a pleading with the Bankruptcy Court listing the cure amounts of all executory contracts or unexpired leases to be assumed. The parties to such executory contracts or unexpired leases to be assumed by the Reorganized Debtor shall have fifteen (15) days from the date of service to object to the cure amounts listed by the Debtor. If an objection is filed with respect to the cure amount due under an executory contract or unexpired lease, the Bankruptcy Court shall hold a hearing to determine the cure amount. Notwithstanding section 8.1 or the foregoing, at all times through the date that is five (5) Business Days after the Bankruptcy Court enters an order resolving and fixing the amount of a disputed cure amount, the Debtor shall have the right to reject such executory contract or unexpired lease. Any cure amounts, determined pursuant to separate motion and order from the Bankruptcy Court, shall be paid by the Reorganized Debtor and shall not be an obligation of the Distribution Agent or the Disbursement Account.

8.3 ***Rejection Claims***

Except as otherwise ordered by the Bankruptcy Court, in the event that the rejection of an executory contract or unexpired lease by the Debtor pursuant to this Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Debtor or the Reorganized Debtor, unless a proof of claim has been filed with the Bankruptcy Court and served upon counsel for the Debtor on or before the Rejection Claims Bar Date. If there are no objections to the Rejection Claim, or to the extent the Rejection Claim later becomes an Allowed Claim, the Rejection Claim shall be classified and

treated as provided in Sections 3 and 4 of this Plan.

SECTION 9. DEFAULT

9.1 *Secured Creditors*

Class 1: A default will occur if the Debtor fails to make the required distribution to this creditor within ten (10) days of the date due after the Adversarial Action is resolved and payment from the City has been received by the Debtor. A default will also occur if the Debtor breaches any terms of the Promissory Note. In the event of any default, the Class 1 Claimant may take any action available to it under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of the loan documents between Debtor and Class 1 Claimant provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

Class 2: A default will occur as to payment of the Class 2 Claims if Debtor fails to make the required distributions to these creditors within ten days of the date due. In the event of any default, the Class 2 Claimant may take any action available to it under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of the loan documents between Debtor and Class 2 Claimant provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

9.2 *Unsecured Priority Claims*

Class 3: A default will occur as to payment of the Class 3 Unsecured Priority Claims if Debtor fails to make the required distributions to these creditors within ten days of the date due. In the event of any default, Class 3 Unsecured Priority Claimants may take any action available to them under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of contract provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

9.3 *Unsecured Claims*

Class 4: A default will occur as to payment of the Class 4 Unsecured Claims if Debtor fails to make the required distributions to these creditors within ten days of the date due. In the event of any default, Class 4 Unsecured Claimants may take any action available to them under applicable bankruptcy law including but not limited to seeking a conversion of the case to one under Chapter 7 to the Bankruptcy Code or remedies available under state law for breach of contract provided that any such default continues after thirty (30) days notice to the Debtor and their counsel and the failure of the Debtor to cure any such default.

SECTION 10. EFFECT OF CONFIRMATION

10.1 *Vesting of Assets*

Except as otherwise provided herein, all real and non-exempt personal property of the estate shall be held in trust by the Reorganized Debtor for the benefit of the estate, until such time as all claims have been paid in full as provided in the Confirmation Order. The entry of a final decree will not re-vest property of the estate in the Debtor, but rather the Debtor will remain in possession of the assets to an actual or constructive trust in favor of the creditors of the estate. The Debtor is obligated to hold the assets for the benefit of unpaid creditors, and may deal with the assets only in a manner consistent with the Plan. Upon all such claims being paid in full, the remaining assets of the Debtor shall immediately vest in the Reorganized Debtor, free and clear of all Claims, liens,

encumbrances, charges and other interest except for any liens and claims of secured creditors as provided herein without further order from the Bankruptcy Court.

After assets vest in the Reorganized Debtor, the Debtor may operate its business and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code, except as otherwise provided in the Plan.

After the Adversarial Action proceeds have been distributed in full; the case shall end even if all creditors have not been paid in full. Notwithstanding, the Settlement Agreement shall remain effective and enforceable and Debtor shall remain obligated under the terms of the Settlement Agreement.

10.2 ***Discharge of Claims and Old Equity Interests***

Except as otherwise provided herein or in the Confirmation Order, the rights afforded in this Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims of any kind, nature, or description whatsoever against or in the Debtor or any of its Assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as otherwise provided herein, upon the Effective Date, all Claims against the Debtor shall be, and shall be deemed to be, discharged whether or not a proof of Claim or proof of interest was filed with respect thereto.

10.3 ***Term of Injunctions or Stays***

Unless otherwise provided herein, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

10.4 ***Injunction Against Interference With Plan***

Upon the entry of the Confirmation Order, all holders of Claims and other parties in interest, along with their respective present or former affiliates, employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan.

10.5 ***Injunction***

Except as otherwise provided in this Plan, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against the Debtor or the Estate are, with respect to any such Claims, permanently enjoined from and after the Confirmation Date from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the Reorganized Debtor or any of their property or any direct or indirect successor in interest to the Debtor or the Reorganized Debtor or any property of any such successor; (b) enforcing, levying, attaching (including, without limitation, any pre judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor or the Reorganized Debtor or any of their property or any direct or indirect successor in interest to the Debtor or the Reorganized Debtor or any property of any such successor; © creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or the Reorganized Debtor or any of their property or any direct or indirect successor in interest to the Debtor or the Reorganized Debtor or any property of any such successor; and (d) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan to the full extent permitted by applicable law.

10.6 ***Retention of Causes of Action/Reservation of Rights***

1. Except as specifically provided herein, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights, Claims or Causes of Action that the Debtor may have or which the Reorganized Debtor may choose to assert on behalf of the Estate in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law, including, without limitation, (I) any and all Claims against any Person, to the extent such Person asserts a cross-claim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtor, Reorganized Debtor or any of their officers, directors, or representatives; (ii) the avoidance of any transfer by or obligation of the Estate or the Debtor or the recovery of the value of such transfer; (iii) the turnover of any property of the estate; and/or (iv) Claims against other third parties.

2. Nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, Avoidance Action, right of setoff, or other legal or equitable defense that the Debtor had immediately prior to the Petition Date. The Reorganized Debtor shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, or other legal or equitable defenses which the Debtor had immediately prior to the Petition Date as fully as if the Reorganization Case had not been commenced.

10.7 ***Exculpation***

None of the Debtor, the Reorganized Debtor, or any of their respective directors, officers, employees, or members(acting in such capacity) shall have or incur any liability to any entity for any act taken or omitted to be taken in connection with and subsequent to the commencement of the Reorganization Case, the formulation, preparation, dissemination, implementation, confirmation or approval of the Plan, any other plan of reorganization or any compromises or settlements contained therein, any disclosure statement related thereto or any contract, instrument, release or other agreement or document provided for or contemplated in connection with the transactions set forth in the Plan or in connection any other proposed plan; provided, however, that the foregoing provisions shall not affect the liability that otherwise would result from any such acts or omissions to the extent that such acts or omissions are determined in a Final Order to have constituted breach of a fiduciary duty negligence, or willful misconduct. Each of the foregoing parties in all respects shall have been and shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities during the Reorganization Case and under the Plan and shall be entitled to exercise normal business discretion.

SECTION 11. RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157 (but this Plan shall in no way expand the jurisdiction otherwise granted to the Bankruptcy Court pursuant 28 U.S.C. §§ 1334 and 157), over all matters arising in, arising under, or related to the Reorganization Case for, among other things, the following purposes:

(a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom.

(b) To determine any motion, adversary proceeding, avoidance action, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date.

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein.

(d) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim or Administrative Expense Claim.

(e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated.

(f) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of this Plan, the Confirmation Order, or any other order of the Bankruptcy Court.

(g) To hear and determine any motion to modify this Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof.

(h) To hear and determine all Fee Claims.

(i) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing.

(j) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate this Plan, including any release, injunction or exculpation provisions set forth herein, or to maintain the integrity of this Plan following consummation.

(k) To determine such other matters and for such other purposes as may be provided in the Confirmation Order.

(1) To hear and determine matters concerning state, local, and federal regulations, Claims or taxes.

(m) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code.

(n) To enter a final decree closing the Reorganization Case.

(o) To recover all Assets of the Debtor and property of the estate, wherever located.

(p) To resolve any disputes under section 11.5 of the Plan.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 *Termination of Professionals*

On the Effective Date, the engagement of each professional retained by the Debtor may be terminated without further order of the Court or act of the parties. The Debtor shall thereafter, without the need for further order of the Bankruptcy Court, be free to retain and compensate one or more professionals. Notwithstanding the foregoing, counsel to the Debtor will continue to have the right to be heard for their respective clients with respect to (a) any applications for allowance of Fee Claims and (b) any contested matters which are pending as of the Effective Date.

12.2 *Substantial Consummation*

On the Effective Date, upon the execution and delivery of the Plan Documents, the Debtor may seek an order from the Bankruptcy Court determining that, this Plan has been substantially consummated pursuant to section 1101 of the Bankruptcy Code.

12.3 ***Amendments***

(a) *Plan Modifications.* This Plan may be amended, modified, or supplemented by the Debtor in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise direct. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Claims or Old Equity Interests pursuant to this Plan, the Debtor may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in this Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of this Plan.

(b) *Other Amendments.* Prior to the Effective Date, the Debtor may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court; *provided, however,* that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Old Equity Interests.

12.4 ***Revocation or Withdrawal of this Plan***

The Debtor reserves the right to revoke or withdraw this Plan prior to the Effective Date. If the Debtor takes such action, this Plan shall be deemed null and void.

12.5 ***Cramdown***

In the event a Class votes against this Plan, and this Plan is not withdrawn as provided above, the Debtor reserves the right to seek a "cram down" of this Plan pursuant to section 1129(b) of the Bankruptcy Code. To the extent any Class is deemed to reject this Plan by virtue of the treatment provided to such Class, this Plan shall be "crammed down" on the claimants within such Class pursuant to section 1129(b) of the Bankruptcy Code.

12.6 ***Confirmation Order***

The Confirmation Order shall, and is hereby deemed to, ratify all transactions effected by the Debtor during the period commencing on the Petition Date and ending on the Confirmation Date except for any acts constituting willful misconduct, gross negligence, recklessness or fraud.

12.7 ***Severability***

If, prior to the entry of the Confirmation Order, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terns.

12.8 ***Governing Law***

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent a Plan Document provides otherwise, the rights, duties, and obligations arising under this Plan and the Plan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without giving effect to the principles of conflict of laws thereof.

12.9 *Section 1125(e) of the Bankruptcy Code*

The Debtor has, and upon confirmation of this Plan shall be deemed to have, solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and the Debtor (and each of its respective affiliates, agents, directors, officers, employees, advisors and attorneys) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale and purchase of the securities offered and sold under this Plan, and therefore are not, and on account of such offer, issuance, sale, solicitation and/or purchase will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or offer, issuance, sale or purchase of the securities offered and sold under this Plan.

12.10 *Expedited Determination*

The Reorganized Debtor is hereby authorized to file a request for expedited determination under section 502(b) of the Bankruptcy Code for all tax returns filed with respect to the Debtor or the Reorganized Debtor, as the case may be.

12.11 *Time Bar to Payments*

The Distribution Agent shall stop payment on any distribution check that has not cleared through the Disbursement Account within ninety (90) days of the date of issuance thereof. Requests for re-issuance of any such checks shall be made directly to the Distribution Agent by the holder of the Allowed Claim with respect to which such check was issued. Any claim in respect of such voided check shall be made within one hundred and eighty (180) days after the date of the issuance of such voided check. If no claim is made as provided herein, all Claims in respect of voided checks shall be discharged and forever barred. The amount represented by such unclaimed checks, and those undeliverable, after commercially reasonable diligence, shall be distributed pro-rata to the remaining holders of Allowed Claims, pursuant to the terms of this Plan. Distributions to holders of Allowed Claims shall be made to their last known address, which shall be presumed to be as set forth on the proof of claim filed by such Claimant, or if no proof of claim was filed, on the Schedules filed by the Debtor, as may have been amended from time to time, unless a Claimant shall have supplied a new or corrected address in writing to the Distribution Agent within two weeks prior to a Distribution to permit the Distribution Agent to revise its records accordingly.

12.12 *Fractional Distributions*

Notwithstanding anything to the contrary contained in the Plan, no Cash payments of fractions of cents shall be made. Fractional cents shall be rounded to the nearest whole cents.

12.13 *Time*

In computing any period of time prescribed or allowed by this Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.14 *Waiver of Bankruptcy Rule 7062*

The Confirmation Order shall include: (I) a finding that Bankruptcy Rule 7062 shall not apply to the Confirmation Order; and (ii) authorization for the Debtor to consummate the Plan immediately after entry of the Confirmation Order.

12.15 *Compliance with Tax Requirements*

In connection with the Plan, the Debtor, the Reorganized Debtor and the Distribution Agent, as applicable, shall comply with all withholding and reporting requirements imposed by federal, state, local and foreign taxing authorities and any distributions under the Plan, shall be subject to such withholding and reporting requirements. Notwithstanding the foregoing, each holder of an Allowed Claim that is to receive a distribution under the Plan, shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligations, on account of any distributions. The Distribution Agent has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to the Distribution Agent for the payment of any tax obligations.

12.16 *Notices*

All notices, requests and demands to or upon the Debtor or the Reorganized Debtor to be effective shall be in writing (including by facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to Debtor:

Thomas Lochtefeld
210 Westbourne St.
La Jolla, CA 92037

and

John L. Smaha, Esq., Bar No. 95855
SMAHA LAW GROUP, APC
7860 Mission Center Ct., Ste. 100
San Diego, CA 92108
T: (619) 688-1557
F: (619) 688-1558

12.17 ***Exhibits***

All exhibits and schedules to this Plan, including the Plan Supplement, are incorporated by reference into this Plan and are made a part hereof as if more fully set forth herein.

12.18 ***Binding Effect***

The provisions of this Plan (including the exhibits and schedules to, and all documents and agreements executed pursuant to or in connection with this Plan) and the Confirmation Order shall be binding on (I) the Debtor, (ii) all holders of Claims against and Old Equity Interests in the Debtor, whether or not impaired under the Plan and whether or not such holders have accepted or rejected the Plan, (iii) each Person or entity receiving, retaining or otherwise acquiring property pursuant to the terms of the Plan, (iv) any non-Debtor party to an executory contract or unexpired lease with the Debtor, (v) and Person or entity making an appearance in this Reorganization Case, and (vi) each of the foregoing's respective heirs, successors, assigns, executors, administrators, officers, directors and agents.

Dated: March 5, 2013

/s/ John L. Smaha

John L. Smaha, Esq., Bar No. 95855
SMAHA LAW GROUP, APC
7860 Mission Center Ct., Ste. 100
San Diego, CA 92108
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F: (619) 688-1558
Attorneys for Wave House Belmont Park, LLC

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EXHIBIT B

Unsecured Creditors	Claim per Debtors	Proof of Claim	Residual Claim	% of Total Claims	Claim #	Disputed/ Objectionable
A.O. Reed & Co.	$ 845.29	$ -	$ 845.29	0.10%		
Ahlee Backflow Service Inc.	$ 145.00	$ -	$ 145.00	0.02%		*
Alliance Insurance Services	$ 9,722.30	$ -	$ 9,722.30	1.20%		*
American Express	$ 9,087.30	$ 9,087.30	$ 9,087.30	1.12%	7	
AT&T/SBC(Deleted)	$ -	$ -	$ -	0.00%		
AT&T/SBC	$ 407.31	$ -	$ 407.31	0.05%		*
AT&T/SBC	$ 29.85	$ -	$ 29.85	0.00%		*
AT&T/SBC	$ 48.03	$ 135.41	$ 135.41	0.02%	11	*
AT&T/SBC	$ 314.20	$ -	$ 314.20	0.04%		*
AT&T/SBC	$ 34.26	$ -	$ 34.26	0.00%		*
AT&T/SBC	$ 69.11	$ -	$ 69.11	0.01%		*
AT&T/SBC	$ 35.60	$ -	$ 35.60	0.00%		*
AT&T/SBC	$ 281.29	$ -	$ 281.29	0.03%		*
AT&T/SBC	$ 523.88	$ -	$ 523.88	0.06%		*
AT&T/SBC	$ 273.96	$ -	$ 273.96	0.03%		*
AT&T/SBC	$ 1,311.41	$ -	$ 1,311.41	0.16%		*
AT&T/SBC	$ 86.36	$ -	$ 86.36	0.01%		*
BlueHornet Networks, Inc.	$ 2,251.94	$ -	$ 2,251.94	0.28%		
C3 Communications	$ 3,148.54	$ 4,224.39	$ 4,224.39	0.52%	3	*
Cal Pure Water Service	$ 271.50	$ 271.50	$ 271.50	0.03%	16	
Cisco Systems Capitol Corp.	$ 3,924.99	$ -	$ 3,924.99	0.48%		*
CIT/Konica	$ -	$ 39,185.21	$ 39,185.21	4.84%	27	*
CIT/Konica	$ -	$ 12,585.89	$ 12,585.89	1.55%	26	*
CIT/Konica	$ -	$ 33,318.72	$ 33,318.72	4.11%	28	*
Citibank Advantage	$ 15,300.92	$ -	$ 15,300.92	1.89%		
City Mgr. Property Director	$ -	$ -	$ -	0.00%		
City of San Diego	$ 101,337.65	$ 234,769.25	$ 234,769.25	28.98%	23	*
CLS Security Electronics	$ 920.00	$ -	$ 920.00	0.11%		
Daniel Obst. Advertising, Inc.	$ -	$ -	$ -	0.00%		
Darling International, Inc.	$ 416.70	$ -	$ 416.70	0.05%		
David Shepherd	$ 2,943.00	$ -	$ 2,943.00	0.36%		*
Dennis Ryan	$ -	$ -	$ -	0.00%		
Downtown Digital, Inc.	$ 21.92	$ -	$ 21.92	0.00%		
Edward Bates	$ 15.52	$ -	$ 15.52	0.00%		
Elite Concessions	$ -	$ -	$ -	0.00%	19	
Elite Concessions	$ -	$ -	$ -	0.00%	20	
EPA K-9 Investigative Ser.	$ 33,790.00	$ 34,456.00	$ 34,456.00	4.25%	21	
Ernest Jackson	$ 65.71	$ -	$ 65.71	0.01%		
Expenses Reduction Experts	$ 11,268.01	$ 25,691.60	$ 25,691.60	3.17%	24	*
Fastsigns	$ 2,214.72	$ 2,214.72	$ 2,214.72	0.27%	6	
Grassroots Landcare	$ 9,110.00	$ -	$ 9,110.00	1.12%		
IRS	$ -	$ -	$ -	0.00%	29	
Kaiser Permanente	$ 2,020.00	$ -	$ 2,020.00	0.25%		
Keith Monroe & Co.	$ 130,000.00	$ -	$ 130,000.00	16.05%		*
KNSD (deleted)	$ -	$ -	$ -	0.00%		
Konica Minolta	$ 60.00	$ 7,654.68	$ 7,654.68	0.94%	8	*
Konica Minolta Bus. Solutions	$ 1,900.83	$ 4,438.29	$ 4,438.29	0.55%	5	*
Landmark Mechanical	$ 38,750.00	$ -	$ 38,750.00	4.78%		

Unsecured Creditors	Claim per Debtors	Proof of Claim	Residual Claim	% of Total Claims	Claim #	Disputed/ Objectionable
Maintex	$ 1,179.58	$ 1,179.58	$ 1,179.58	0.15%	12	
Midwest Television, Inc.	$ -	$ -	$ -	0.00%		
Mission Beach Attractions	$ 571.96	$ -	$ 571.96	0.07%		
Orkin Exterminating	$ 1,286.91	$ -	$ 1,286.91	0.16%		
Prudential Overall Supply	$ 428.63	$ -	$ 428.63	0.05%		
R&M Construction	$ 66,329.77	$ 66,329.77	$ 66,329.77	8.19%	1	
Rayne Water	$ 115.50	$ 115.50	$ 115.50	0.01%	15	
SafeGuard Dental & Vision	$ 65.94	$ 197.82	$ 197.82	0.02%	14	*
San Diego Coaster Company	$ 5,880.00	$ 6,026.91	$ 6,026.91	0.74%	2	
Santa Clara Rec Center	$ 202.30	$ -	$ 202.30	0.02%		*
SDA Security Systems	$ 825.00	$ -	$ 825.00	0.10%		
SDG&E	$ 713.88	$ -	$ 713.88	0.09%		*
SDG&E	$ 5,585.06	$ -	$ 5,585.06	0.69%		*
SDG&E	$ 38.63	$ -	$ 38.63	0.00%		*
SDG&E	$ 153.84	$ -	$ 153.84	0.02%		*
SDG&E	$ 268.90	$ -	$ 268.90	0.03%		*
SDG&E	$ 133.18	$ -	$ 133.18	0.02%		*
SDG&E	$ 255.77	$ -	$ 255.77	0.03%		*
SDG&E	$ 169.31	$ -	$ 169.31	0.02%		*
SDG&E	$ 1,313.03	$ -	$ 1,313.03	0.16%		*
SDG&E	$ 232.94	$ -	$ 232.94	0.03%		*
SDG&E	$ 10.18	$ -	$ 10.18	0.00%		*
SDG&E	$ 143.90	$ -	$ 143.90	0.02%		*
SDG&E	$ 81.98	$ -	$ 81.98	0.01%		*
SDG&E	$ 214.26	$ -	$ 214.26	0.03%		*
SDG&E (deleted)	$ -	$ -	$ -	0.00%		
SDG&E	$ 895.94	$ -	$ 895.94	0.11%		*
SDG&E	$ 355.89	$ -	$ 355.89	0.04%		*
Sharp Rees	$ 51.50	$ -	$ 51.50	0.01%		
Sheppard Enterprises	$ -	$ -	$ -	0.00%	18	
Standard Art, Inc.	$ 30,602.50	$ -	$ 30,602.50	3.78%		
Thorsnes Bartolotta McGuire	$ 23,414.47	$ 43,538.29	$ 43,538.29	5.37%	22	*
Trident Technologies	$ 674.26	$ -	$ 674.26	0.08%		
Turner & Maasch, Inc.	$ 12,911.23	$ -	$ 12,911.23	1.59%		
Waste Mgmt. of El Cajon	$ 9,194.95	$ 6,806.62	$ 6,806.62	0.84%	9	*
XETV SanDiego6 (deleted)	$ -	$ -	$ -	0.00%		
	$ -	$ -	$ -	0.00%		
	$ -	$ -	$ -	0.00%		
TOTALS:	**$547,248.29**	**$ 532,227.45**	**$810,168.95**	**100.00%**		
Equity Claims						
Wave House Athletic Club	$ 200.00	$ -	$ 200.00	0.18%		
Wave House US, LLC	$ 110,320.81	$ -	$ 110,320.81	99.82%		
TOTALS:	**$ 110,520.81**	**$ -**	**$ 110,520.81**	**100.00%**		
Priority Claims						
San Diego County Treasurer	$ 496,105.18	$ 350,987.88	$ 350,987.88	100.00%	4	*
TOTALS:	**$ 496,105.18**	**$ 350,987.88**	**$ 350,987.88**	**100.00%**		

Wave House

Unsecured Creditors	Claim per Debtors	Proof of Claim	Residual Claim	% of Total Claims	Claim #	Disputed/ Objectionable
	$ 283,211.46					