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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 In Re:

12 WILCOX EMBARCADERO
ASSOCIATES, LLC

13 Debtor.

Case No. 12-40758

Chapter 11

Hearing on Plan Confirmation

Date:

Time:

Judge: Hon. Roger L. Efremsky

Ctrm: 221

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19 **DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION**
20 **(DATED May 22, 2012)**
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TABLE OF EXHIBITS

EXHIBIT A	BUSINESS APPRAISAL
EXHIBIT B	LIQUIDATION ANALYSIS
EXHIBIT C	DEBTOR'S APRIL 30, 2012 MONTHLY OPERATION REPORT
EXHIBIT D	DEBTOR'S PROJECTED CASH FLOW AND BUSINESS PLAN

ARTICLE I
EXECUTIVE SUMMARY OF TREATMENT OF CREDITORS AND INTEREST
HOLDERS UNDER THE PLAN

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>TREATMENT</u>
Priority	Administrative Claims	Administrative, tax, and other priority claims will be paid in full.
Class 1(a)	Priority Claims-Unimpaired	There are no Creditors listed in this Class.
Class 1(b)	Secured Claim of Wells Fargo Bank, N.A.-Unimpaired	Debtor will pay entire amount due with interest by making all monthly post-confirmation regular payments as amended. There is one Creditor listed in this Class with a Claim totaling \$5,748,468.36.
Class 1(c)	Owens Mortgage Investment Fund, L.P.-Unimpaired	Debtor will pay entire amount due with interest by making all monthly post-confirmation regular payments as amended. There is one Creditor listed in this Class with a Claim totaling \$3,008,811.00.
Class 2(a)	General Unsecured Claims-Under \$1,000.00-Unimpaired	General unsecured creditors whose claims are less than \$500.00 will be paid 100% of their allowed claims without interest on the Effective Date of the Plan. There are 5 Creditors listed in this Class with Claims totaling \$1,664.54.
Class 2(b)	General Unsecured Claims Over \$1,000.00 & under \$5,000.00-Impaired	General unsecured creditors whose claims are greater than \$500.00 and under \$2,500.00 will be paid 100% of their Allowed Claim without interest in three equal monthly installments with the first payment on the Effective Date with the final payment 2 months after the Effective Date. There are 6 Creditors listed in this Class with Claims totaling \$7,365.09. Creditors with claims in excess of \$2,500.00 may elect treatment under this class by reducing their claims to \$2,500.00.

1
2 Class 2(c)

General Unsecured Claims
Over \$5,000.00-Impaired

General unsecured creditors whose claims are greater than \$2,500.00, or creditors with claims less than \$2,500.00, who elect treatment under this class, will be paid 100% of their Allowed Claim with interest at the rate of 9.0% in six equal monthly installments with the first payment on the Effective Date, with the final payment 5 months after the Effective Date. There are 5 Creditors listed in this Class with Claims totaling \$25,868.12.

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9 Class 3

General Unsecured Claims
of tenants who have paid
deposits-Unimpaired

General unsecured claims of tenants who have paid deposits will have their claims recognized in full with their deposits retained by the Debtor pursuant to their lease agreements.

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12
13 **ARTICLE II**

14 **INTRODUCTION**

15 Wilcox Embarcadero Associates, LLC, (the “Debtor”) hereby submits its DISCLOSURE
16 STATEMENT FOR DEBTOR’S PLAN OF REORGANIZATION (DATED MAY 22, 2012) (the
17 “Disclosure Statement”) in connection with the solicitation of acceptances of the DEBTOR’S PLAN
18 OF REORGANIZATION (DATED MAY 22, 2012), (the “Plan”). The Plan is being transmitted to
19 Creditors and Interest Holders of the Debtor with this Disclosure Statement.

20 Chapter 11 of the Bankruptcy Code sets forth the rules and procedures under which
21 financially distressed entities may be reorganized or liquidated. The reorganization proposal will be
22 submitted by way of a plan, which will be presented to the equity security holder and Creditors for
23 consideration and approval. If approved, the plan will be confirmed.

24 The Effective Date of the Plan will be the tenth Business Day after the Order of Confirmation
25 becomes a Final Order.

26 The Plan sets forth the Debtor’s proposal for the restructuring of its finances and the
27 satisfaction, discharge and/or cancellation of all Claims against the Debtor. Creditors and Interest
28 Holders should thoroughly review both the Plan and the Disclosure Statement before deciding
whether to accept or reject the Plan. The purpose of the Disclosure Statement is to provide adequate
information that would enable a hypothetical reasonable investor typical of holders of Claims and
Interests of the relevant Class to make an informed judgment about the Plan. The detail of the
information provided must be viewed in light of the history of the Debtor and the nature and
condition of the Debtor’s books and records.

1 Before the Debtor's Disclosure Statement may be used in connection with an acceptance or
2 rejection of the Plan, the Bankruptcy Court, after a noticed hearing, must have approved the
3 Disclosure Statement as containing adequate information to enable Creditors, Interest Holders and
parties in interest to make an informed judgment on whether or not to accept the Plan.

4 The Bankruptcy Court's approval of the Disclosure Statement does not constitute
5 endorsement of the Plan by the Court. Creditors and Interest Holders should read this Disclosure
6 Statement and the Plan in their entirety prior to voting by way of the enclosed Ballot, which must be
completed and returned.

7 No solicitation of votes may be made except pursuant to this Disclosure Statement and
8 Section 1125 of the Bankruptcy Code. In voting on the Plan, Creditors and Interest Holders should
9 not rely on any information relating to the Debtor other than that contained in this Disclosure
Statement, the Plan, and all exhibits hereto and thereto, and such other materials approved by the
Bankruptcy Court.

10 The Plan's objective is to effect a reorganization of the Debtor's financial affairs and to
11 maximize the value of the Debtor's assets for the benefit of Creditors. The Debtor believes that the
12 restructuring contemplated by the Plan will yield recovery to Creditors and Interest Holders as much
13 as would be achieved through other restructuring alternatives or liquidation under Chapter 7 of the
14 Bankruptcy Code. The Plan divides Creditors and Interest Holders into Classes based on their legal
rights and interests, and provides for the satisfaction, cancellation or disallowance of Claims and
Interests from the Debtor's assets.

15 **ARTICLE III**

16 **DEFINITIONS**

17 All definitions contained in Article I of the Plan are incorporated herein by reference. Other
18 terms are defined herein for convenience only. If a capitalized term is not defined herein or in the
19 Plan, but defined in the Bankruptcy Code or Bankruptcy Rules, such term will have the meaning
20 given to that term in the Bankruptcy Code or Bankruptcy Rules unless the context of the Disclosure
Statement clearly requires otherwise. References to a code section are references to the Bankruptcy
Code unless otherwise stated.

21 **ARTICLE IV**

22 **OVERVIEW OF THE CHAPTER 11 PROCESS AND SUMMARY OF THE PLAN**

23 **TREATMENT OF CLAIMS AND INTERESTS**

24 **4.1 The Chapter 11 Process**

25 Chapter 11 of the Bankruptcy Code contains numerous provisions to provide the Debtor with
26 breathing space to restructure its obligations to third parties. The filing of a Chapter 11 petition
27 creates a bankruptcy estate comprised of all the property interests of a debtor. Unless a trustee is
28 appointed by the Bankruptcy Court for cause (no trustee has been appointed in this Case), a debtor
remains in possession and control of its assets as a debtor in possession. A debtor may continue to
operate its business in the ordinary course on a day to day basis without Bankruptcy Court approval.

1 Bankruptcy Court approval is only required for transactions outside of the ordinary course of a
2 debtor's business. The filing of a bankruptcy petition gives rise to the automatic stay, enjoining
3 creditors from taking any action to collect or recover obligations owed by a debtor prior to
4 commencement of the Chapter 11 case. However, the Bankruptcy Court can grant relief from the
5 automatic stay under certain specified conditions that constitute cause.

6 A Chapter 11 debtor may propose a plan providing for the reorganization of the debtor. A
7 plan may either be consensual or non-consensual and provides for the treatment of the claims of
8 creditors and interests of equity security holders.

9 **4.2 Liquidation Analysis**

10 The Debtor operates a commercial building, leasing warehouse, wholesale, retail and office
11 space at its principal place of business in Oakland, California. Prior to the commencement of the
12 case Debtor incurred financial difficulty when its primary lender, the holder of the First Deed of
13 Trust, refused to extend, modify, or refinance its loan to the Debtor. The Plan provides for the
14 continued operation of the Debtor's business and the Debtor believes that, under all circumstances,
15 Creditors will receive more under the Plan than they would if the Case were converted to a case
16 under Chapter 7 of the Bankruptcy Code.

17 Prior to the commencement of the Case, January 26, 2012, the Debtor commissioned an
18 appraisal of the commercial property by VELCO Appraisal Services ("VELCO"), which specializes
19 in commercial appraisals. On December 8, 2010, Nathan Peruman, MAI, of VELCO, estimated that
20 Debtor's commercial property was worth anywhere between \$10,100,000.00 and \$13,500,000.00. A
21 copy of this appraisal is attached hereto as **Exhibit "A"**. In December, 2011, secured creditor,
22 Owens Financial, commissioned an update of the valuation of the Property; their valuation came in
23 at \$12,400,000.00.

24 A liquidation of the commercial property assumes the cancellation of leases and the ceasing
25 of business operations. Based on the liquidation analysis, which is attached hereto as **Exhibit "B"** –
26 and which assumes that the holder of the either the first mortgage or the second mortgage will
27 proceed with a non-judicial foreclosure of the Property, the unsecured creditors would receive 0% of
28 their claims in a liquidation scenario.

29 **ARTICLE V**

30 **THE BANKRUPTCY FILING**

31 On January 26, 2012 (the "Petition Date"), the Debtor filed its Voluntary Petition under
32 Chapter 11 of the Bankruptcy Code and is presently operating its business as a debtor in possession
33 pursuant to the provisions of the Bankruptcy Code Sections 1107 and 1108. This Disclosure
34 Statement and the accompanying Plan constitute the Debtor's proposal for an orderly reorganization
35 of the Debtor's financial affairs and payment to the Creditors in accordance with the relevant
36 provisions of the Bankruptcy Code.

37 **ARTICLE VI**

38 **HISTORY AND DESCRIPTION OF THE DEBTOR'S BUSINESS**

39 **6.1 Overview of the Debtor's Business**

1
2 The Debtor was formed in 2001 to operate a business leasing commercial building space,
3 including: warehouse, wholesale, retail, and office space. Located in Oakland, California at 1001
4 22nd Avenue, the Property consists of four prime buildings, on a seven acre site with 164,864
5 rentable square feet. The property currently has tenants occupying 59,824 square feet, with 105,020
6 square feet currently vacant. The Property is located in an urban waterfront area of Oakland.
7 Originally a site to manufacture wire rope for the construction of the Bay Bridge, the neighborhood
8 has gone through a thorough transformation with restaurants, hotels, and office buildings being built
9 in proximity to the waterfront. The immediate area around the Property is a vibrant mix of light
10 industrial, office retail, warehouse, residential lofts, marinas, and hotel properties.

11
12 Of the four buildings, two are 100% occupied, one is 38% occupied; the largest and best
13 building is completely vacant. The vacant building consists of a 60,000 square feet, turn of the
14 century, historically significant brick building. The building has undergone seismic strengthening,
15 new electrical and plumbing, exterior windows, etc. The building is an empty shell due to the fact
16 that the Debtor does not have the cash reserves to construct interior office improvements to market
17 the building to prospective tenants. This critical lack of funding has prevented and continually
18 hampered the financial success of the project due to the current difficult lending market.

19
20 It is estimated that if the Debtor could obtain a prime loan to complete the tenant
21 improvements of the building, the rental income of this building alone would equate to \$60,000 per
22 month. Currently the Debtor is negotiating a lease of one-half of this building to a book publisher
23 but without access to funds to construct the Tenant Improvements the lease revenue will not be
24 realized.

25
26 The current occupancy percentage of the Property is 36%; the current monthly total income
27 is \$65,043 per month. The Debtor is currently in lease negotiations with a number of tenants to lease
28 space:

29 Social Vocational Service – 10 year lease for 6,703 sq. ft., starting at \$8,043/mo.;
30 Developmental Studies – 8 year lease for 24,296 sq. ft., starting at \$30,320/mo.;
31 West Coast Marine – 10 year lease for 12,000 sq. ft., starting at \$15,000/mo.;
32 510 Media – 5 year lease for 3,500 sq. ft., starting at \$4,000/mo.;
33 Julie Besha Foundation – 3 year lease for 1,500 sq. ft., starting at \$1,500/mo.
34 Oakland Schools Foundation – 3 year lease for 2,500 sq. ft., starting at \$2,500/mo.;
35 IRIS Outdoor – 20 year lease (billboard space), starting at \$20,000/mo. (approx.); and,
36 Like Twice – 3 year lease for 12,059 sq. ft., starting at \$12,059/mo.

37
38 The Debtor recently received two unsolicited offers to purchase the site. One offer in March
39 2012 from Jones Development for \$11.2 million for the entire site and a second offer from a local
40 charter school to purchase one building for \$7,800,000. The Debtor has renewed three existing
41 tenant leases. The Debtor is currently in lease negotiations with three existing tenants to extend their
42 leases. All three tenants are expected to renew their lease. With the current leasing velocity, the
43 Debtor is anticipating leasing an additional 25,687 square feet the year end of 2012 to bring the
44 occupancy percentage up to 52%. By year end of 2013, the Debtor anticipates having an additional
45 62,412 square feet of new leases in place with an occupancy rate of 90%.

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1 945-22nd Ave.

2 Capital improvements to this building included new 800 amp electrical service, new gas
3 service and a new water supply. The old roof was removed and the majority of the building was
4 sheathed in plywood and a new roof installed. New millwork and plumbing were installed and the
interior and exterior were painted. Unit heaters and carpeting was installed as needed and a new
main drain line was installed as deed.

5 1035 & 1045 22nd Avenue

6 The Big Brick building, as it is referred to, was the only building occupied when Mr. Wilcox
7 purchased the building. This building was the only one seismically improved by the previous owner;
8 however, the seismic improvements were insufficient. Engineering calculations showed potential
failures so the building re-engineered and Chevron bracing was installed as needed. The roof
9 structure was bolted into the exterior walls and longer drag lines were installed to dissipate forces. A
steel and wood mezzanine was installed in the building, a new 2000 amp electrical service was
10 installed and a new sewer line was installed. The exterior windows were removed and new
aluminum windows and storefront was installed. Carpet was installed in half the building and the
11 ceiling was repainted.

12 Summary of Capital Improvements:

13 Mass demolition of site improvements, parking lot and landscaping: \$675,000.00;

14 Seismic Improvements: \$2,400,000.00; and,

15 Tenant improvements, ADA improvements, life-safety roofing,
16 paint and carpet. \$3,870,000.00.

17 Total Cost of Improvements: \$6,945,000.00.

18
19 **6.2 Events Leading to Debtor's Bankruptcy Case**

20 The Market

21 Debtor's property maintained a high percentage of occupancy until 2008 when, due to the
economic downturn, commercial tenants began to default on lease payments. In some cases lessees
22 terminated their leases or declined to renew. When the Property was first purchased the Property
was valued at \$3,2 million. At the time of the bankruptcy filing the property was valued at \$10.1
23 million.

24 Unfortunately the Oakland office market continued to experience historic lows. Current
25 vacancy rates in the East Bay have increased to 18.4%. In the Oakland sub-market Class B space,
vacancy rose from 8.8% to 12.5% in the first Quarter of 2012. Vacancy rates are increasing across
26 the board in the East Bay market. The good news is that there is close to one million square feet of
potential tenant space needs throughout the East Bay market that could land in the next 24 months.
27 Brokers are already reporting increased tour activity and demand is slowly rising. After a very
difficult time, the market is primed to return to modest growth in the months and years to come.
28

The Debtor's Lender

The Debtor made numerous attempts to negotiate an extension or modification with Wells Fargo Bank ("Wells"), the holder of the First Deed of Trust. The offer was made to cross collateralize buildings to appease Wells, to no avail. An offer was made to pay down the loan by one million dollars for an 18 month loan extension but the reply from Wells was a 3-month extension in exchange for the one million dollars.

Finally an offer was made to buy down the loan from 5.7 million dollars to 3 million dollars. In the Debtor's opinion, this was a very good solution to satisfy Wells. The property has valued at 12 million dollars and Wells would have a 3 million dollar first mortgage reporting only 25% LTV, a very safe position for any bank. Unfortunately, Wells rejected this buy down offer stating the reason that they could not sell the loan on the secondary market and would not consider keeping the loan on their books.

It is important to note that the reason for Wells' disappointment with the Debtor has nothing to do with its payment history. Over the entire 12 year life of this loan, the Debtor never missed or was late with a mortgage payment.

For many years, the principal of the Debtor (Mr. Jeffrey Wilcox), infused his personal funds to support any cash flow shortfalls. In the last two years alone, Mr. Wilcox has infused over \$745,000 of his own money to keep the project going. Even after the Wells loan came due in February 2012, the Debtor continued to make its full monthly mortgage payments. Even after Wells filed its Notice of Default, the Debtor continued to make the monthly payments. Unfortunately, Wells rejected the Debtors payments in September and subsequent months.

It became apparent that Wells was not going to negotiate a loan modification. They had a very strong equity position on an asset securing a loan that they wanted to remove from their books and their easiest course of action was to foreclose and repossess the buildings. After years of trying to satisfy Wells, it became obvious the only rational course of action to protect the Debtor's equity, its junior secured creditor and unsecured creditors was to place the LLC in Chapter 11.

6.3 The Debtor's Strategy

The key to the successful reorganization of the Debtor is the build-out of 1035 & 1045 22nd Avenue. The build-out, leasing commissions and marketing costs will cost approximately \$2.0 million. As indicated above, once the building is built-out and leased, it can generate \$60,000 per month in income. The challenge, of course, is obtaining the funding in a difficult lending market.

The Debtor is well positioned to capitalize on the long awaited upswing in the market. The Debtor has invested a considerable amount of funds in capital improvements while maintaining a low loan to value ratio. By not over leveraging the property and building sufficient equity over the years, the Debtor has, and can continue, to offer aggressive lease terms to attract future tenants. This strategy is beginning to show results. The Debtor is currently offering a \$.99 per square foot for new prospective tenants. This is approximately 30% under current market and has attracted four new tenants in the first Quarter of 2012. The Debtor's low cost of operations and quality products is attracting tenants. Compared to previous years, the touring activity is up over 60% for the first Quarter of 2012. This is a result of both a pent-up market demand and aggressive lease rates. The

1 gradual improving economy will eventually mean increased demand. This modest growth in the
2 years ahead will accelerate as our economy improves.

3 **6.4 An Inefficient Market for Funds**

4 The Debtor became deeply concerned with the state of the economy in the Spring of 2008
5 and decided it was in its best interest to sell the Property. The Debtor entered into a contract to sell
6 the property for \$15,700,000; however, the seller was unable to acquire financing due to the banking
collapse and the lack of available funding.

7 In the Spring of 2009, the Debtor engaged the service of Northmark Capital to market the
8 building to place a new first mortgage on the property. The goal of the refinance was to take out the
9 Wells Fargo first mortgage which was coming due in two years in February 2011. The Debtor
10 assumed that two years was sufficient time to refinance the property. The response from the banking
11 community was disappointing at best. Due to the recession and subsequent banking bail out, the
lenders were in hasty retreat; their lending requirements had changed drastically. The Debtor spoke
to more than 30 lenders and was told the same thing. They only lend to buildings with credit tenants
that are 100% occupied and if they choose to lend, it is only at 50% loan to value.

12 For two years, in 2009 and 2010, the Debtor attempted to place conventional financing on the
13 property to satisfy Wells Fargo. In the Spring of 2011, the lack of financing success necessitated a
14 more aggressive approach to satisfying Wells Fargo. The Debtor received two proposals to lend in
15 the Fall of 2011 and the Spring of 2012 from these "Hard Money" lenders. The first proposal was a
16 combination of first mortgage at 12% interest and five points for the first \$5 million of debt,
followed by a second mortgage at 15% interest and 6 points. Both loans would be due in 18 months.
In the Debtors opinion, these lending rates would have jeopardized the financial viability of the
project.

17 A second lender showed strong interest at the end of 2011. They initially proposed a more
18 recoverable rate of 9% to start and 1 point. However, when pushed for a formal commitment letter,
19 the lender changed the terms. The actual terms were an interest rate of 15% and 6 points, plus a 25%
20 equity position in the Property. The Debtor rejected this offer due to the clear financial risk to the
project. In the Debtors opinion, after over two years of searching, there was no viable market to
obtain realistic financing for this property.

21 **ARTICLE VII**

22 **SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE**

23 **7.1 Retention of Professionals**

24 The Debtor has retained the following professionals to assist in this case: (i) Steele, George,
25 Schofield & Ramos, LLP ("SGSR") as its reorganization counsel; (ii) Gabrielson & Company
26 ("Gabrielson") as accountant for Debtor and debtor in possession. Hellenic Pacific Management,
27 Inc. ("Hellenic") was engaged as property manager (as an Ordinary Course Professional); however,
28 the Debtor has hired a staff member to fulfill those duties and the Hellenic month-to-month
agreement has been terminated. The firm of Cassidy, Turley BT Commercial Brokerage ("Cassidy")
will be retained as leasing agents.

1 **7.2 Appointment of Responsible Individual**

2
3 Pursuant to this Court's Order of January 31, 2012, Jeffrey A. Wilcox has been appointed as
4 the Debtor's Responsible Individual.

5 **7.3 Other Bankruptcy Administration Matters**

6 Debtor's Statement of Financial Affairs and Schedules were filed on February 21, 2012. The
7 Debtor has responded to information requests by the United States Trustee and has attended
8 meetings as requested.

9 The Debtor submitted its initial Chapter 11 Status Conference Statement on February 14,
10 2012, and attended the Chapter 11 status conference before this Court on February 28, 2012. The
11 Debtor submitted its second Status Conference Statement on April 10, 2012, and attended the
12 Chapter 11 status conference before this Court on April 24, 2012.

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ARTICLE VIII

THE DEBTOR'S ASSETS AND LIABILITIES

8.1 Balance Sheets; Financial Reporting

The Debtor has filed Monthly Operating Reports ("MOR") in this Case reporting all receipts
and disbursements during the pendency of this Case. Attached hereto as **Exhibit "C"** is the most
recently filed MOR (filed on May 18, 2012).

8.2 Cash on Hand

The Debtor's April 30, 2012 MOR reflects cash on hand of \$85,465.00.

8.3 Assets

The Debtor operates a commercial rental property. The value of the land and improvements,
as shown on the attached valuation report, is \$12,400,000.00. The average rental income per month
is \$65,375.00.

8.4 Liabilities

The liabilities of and equity security interests in the Debtor are reflected in Article IX below.

ARTICLE IX

THE PLAN OF REORGANIZATION

9.1 Overview of the Plan

1 The following is a brief overview of the material provisions of the Plan and is qualified in its
2 entirety by reference to the full text of the Plan. Creditors, Interest Holders, and other parties in
interest are urged to review the Plan and Disclosure Statement in their entirety.

3 The key features of the Debtor's proposed Plan include the following, as detailed herein:

- 4 • New Loan – A priming loan in the amount of \$2.0 Million to fund the needed tenant
5 improvements to 1035 & 1045 22nd Avenue;
- 6 • Profitable operation of the commercial rental property;
- 7 • Satisfaction or disallowance of Claims;
- 8 • Assumption of certain executory contracts; and,
- 9 • Rejection of certain executory contracts.

10 **9.1.1 The New Loan**

11 A critical element of the Plan is the approval of a new loan in the amount of \$2.0
12 million. The terms of the loan are as follows: \$2.0 million at 3.5% interest, with no points,
13 amortized for 30 years and fully paid in 5 years. The loan would be secured by a First Deed of
14 Trust and require the subordination of the existing loans on the Property (the First Deed of
15 Trust, currently held by Wells Fargo Bank, and the Second Deed of Trust, currently held by
Owens Mortgage Investment Fund, L.P.).

16 **9.2 Claims and Interests and Treatment under the Plan**

17 The treatment under the Plan of Allowed Claims and Allowed Interests is in full and
18 complete satisfaction of the legal, contractual, and equitable rights that each Person holding an
19 Allowed Claim or an Allowed Interest may have in or against the Debtor or its property. This
20 treatment supersedes and replaces any agreements or rights those entities have in or against the
21 Debtor or its property. All Distributions under the Plan will be tendered to the Person holding the
22 Allowed Claim or the Allowed Interest. EXCEPT AS SPECIFICALLY SET FORTH IN THE
PLAN, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON
ACCOUNT OF ANY CLAIM OR INTEREST THAT IS NOT AN ALLOWED CLAIM OR
ALLOWED INTEREST.

23 **9.3 Summary of Claims and Interests; Treatment**

24 The Claims against and Interest in the Debtor and their treatment under the Plan are
25 summarized below:

26 **9.3.1 Administrative Claims – Description**

27 Administrative Claims arise during the pendency of the Chapter 11 case and are generally
28 entitled to first priority in payment pursuant to Section 507(a)(2) of the Bankruptcy Code. These
include Claims for: (a) costs or expenses of administration as specified in Section 503(b) of the

1 Bankruptcy Code, including any actual and necessary costs and expenses of preserving the
2 Bankruptcy Estate incurred on or after the Petition Date and through and including Confirmation; (b)
3 any cure amounts that must be paid in connection with assumption of executory contracts or
4 unexpired leases of the Debtor under Section 365 of the bankruptcy Code; (c) fees due to the United
5 States Trustee pursuant to 28 U.S.C. § 1930(a)(6); and, (d) allowed compensation and costs for
6 professional services under Section 330 and 331 of the Bankruptcy Code or otherwise.

7 **9.3.1.1 Administrative Expense Claims – Estimate**

8 The Debtor anticipates that the only Administrative Claims that will remain unpaid as to the
9 Effective Date, if any, will be the fees and costs of professionals, which as of August 31, 2012 are
10 estimated to be as follows: SGSR \$24,500.00 and Gabrielson \$7,500.00. All fees are subject to the
11 approval of the Bankruptcy Court on a duly noticed application for compensation.

12 **9.3.1.2 Administrative Expense Claims – Treatment**

13 Except to the extent that the holder of a particular Administrative Claim has agreed to a
14 different treatment of such Claim, each holder of an Allowed Administrative Claim will be paid in
15 cash, in full, upon the later of: (a) the Effective Date; (b) if such Claim is initially a Disputed Claim,
16 when it becomes an Allowed Administrative Claim; and (c) if such Claim is incurred after the
17 Petition Date in the ordinary course of the Debtor's business, within such time as payment is due
18 pursuant to the terms giving rise to such Claim or as otherwise authorized by the Bankruptcy Court.

19 The foregoing is in full and final satisfaction of all Administrative Claims.

20 **9.3.1.3 Administrative Expense Claims – Deadline for Requests for Payment**

21 Any request for allowance of an Administrative Claim pursuant to Section 503(a) of the
22 Bankruptcy Code, other than by the Debtor's professionals must be filed on or before the
23 Administrative Claims Bar Date. If the holder of an asserted Administrative Claim does not file and
24 serve a request for payment of such Claim on or before that date, the holder will be forever barred
25 from asserting such Claim or receiving any payment on account of such Claim.

26 **9.3.1.4 Deadline for Objections**

27 Any objection to the allowance of an Administrative Claim must be filed by the
28 Administrative Claim Objection Deadline. If no objection to the applicable Administrative Claim is
filed on or before the Administrative Claim Bar Date, such Administrative Claim will be deemed
Allowed as of the date.

29 **9.3.2 United States Trustee Fees**

30 Quarterly fees owed to the United States Trustee will be paid by the Debtor when due in
31 accordance with applicable law and the Debtor will continue to file reports to show the calculation of
32 such fees for the Bankruptcy Estate until the Case is closed under Bankruptcy Code Section 350.

33 **9.3.3 Tax Claims**

34 Certain Claims by governmental units, primarily tax claims, are entitled to priority over pre-
petition Claims of general unsecured Creditors pursuant to Section 507(a)(8) of the Bankruptcy

Code. There are no tax claims and the Debtor does not anticipate a tax claim arising in this case.

9.3.4 Class 1(a) Priority Claims – Unimpaired

Class 1(a) consists of all Allowed Claims entitled to priority under Bankruptcy Code Section 507(a) other than unclassified Section 503(b) Administrative Claims and Section 507(a)(8) Tax Claims described above. A preliminary review of the Debtor's books and records indicates that there are no Class 1(a) Priority Claims. Except to the extent that the holder of a particular Allowed Class 1(a) claim has agreed to a less favorable treatment of such Claim, each holder of an Allowed Class 1(a) Claim shall be paid in cash, in full upon the later of: (a) the Effective Date; or (b) if such Claim is initially a Disputed Claim, when it becomes an Allowed Claim. The foregoing is in full and final satisfaction of Class 1(a) Claims.

The holders of Class 1 Claims are unimpaired under the Plan and are presumed to have accepted the Plan. Claims are subject to verification and may be reduced after objections are resolved by the Bankruptcy Court.

9.3.5 Class 1(b) Secured Claim of Wells Fargo Bank, N.A. – Impaired

Class 1(b) consists of the Secured Claim of Wells Fargo Bank, N.A. ("Wells") evidenced by a Promissory Note and Deed of Trust recorded in the Alameda County Recorder's Office.

Treatment: Wells will retain its lien encumbering the Property. Under the Plan, the Wells deed of trust will be subordinated to the lien of the New Loan of Owens Mortgage Investment Fund, L.P. This means that if Wells ultimately forecloses, it will be required to honor the lien of the New Loan lender. As discussed above, the New Loan is extremely important to the successful reorganization of the Debtor, as it provides the Debtor with the funds to complete tenant improvements on the one remaining unimproved building in the Debtor's development, pay for marketing costs for the development and pay broker commissions, all of which will substantially increase the value of the Property as well as the Debtor's cash flow, so the Debtor believes that this subordination is appropriate and permissible.

The Wells loan will be amortized over 30 years, with interest at 5.5% for the first 30 months and interest at 7.5% for the second 30 months, with 30 monthly payments of approximately \$35,003.00, 29 monthly payments of approximately \$42,122.00 and a 60th payment of the balance owed, approximately \$5,228,755.00. The foregoing is in full and final satisfaction of the Class 1(b) Claim.

The holder of Class 1(b) Claim is impaired under the Plan and entitled to vote on the Plan. The Claim is subject to verification and may be reduced after objections are resolved by the Bankruptcy Court.

9.3.6 Class 1(c) Secured Claim of Owens Mortgage Investment Fund, L.P. – Impaired

Class 1(c) consists of the Secured Claim of Owens Mortgage Investment Fund, L.P. ("Owens") evidenced by a Promissory Note and Deed of Trust recorded in the Alameda County Recorder's Office.

Treatment: Owens will retain its lien encumbering the Property. Under the Plan, the Owens deed of trust will be subordinated to the lien of the New Loan of Owens Mortgage Investment Fund,

1 L.P. and that of Wells. This means that if Owens ultimately forecloses, it will be required to honor
2 the lien of the New Loan lender and that of Wells. As discussed above, the New Loan is extremely
3 important to the successful reorganization of the Debtor, as it provides the Debtor with the funds to
4 complete tenant improvements on the one remaining unimproved building in the Debtor's
5 development, pay for marketing costs for the development and pay broker commissions, all of which
6 will substantially increase the value of the Property as well as the Debtor's cash flow, so the Debtor
7 believes that this subordination is appropriate and permissible.

8
9 The Owens loan will be amortized over 30 years, with interest at 8.0% for the first 30 months and
10 interest at 11.0% for the second 30 months, with 30 monthly payments of approximately \$23,154, 29
11 monthly payments of approximately \$29,003.00 and a 60th payment of the balance owed,
12 approximately \$2,848,645.00. The foregoing is in full and final satisfaction of the Class 1(c) Claim.

13
14 The holder of Class 1(c) Claim is impaired under the Plan and entitled to vote on the Plan.
15 Claim is subject to verification and may be reduced after objections are resolved by the Bankruptcy
16 Court.

17 **9.3.7 Class 2 (a) General Unsecured Creditors Under \$500.00 – Unimpaired**

18
19 Class 2(a) consists of General Unsecured Claims in an amount less than \$500.00, or those
20 claims reduced to \$500.00 not included or provided for in any other class, and including without
21 limitation, all general unsecured claims incurred by the Debtor prior to the Petition Date, including
22 Rejection Claims, but excluding Administrative Claims, Priority Claims, and Tax Claims. Except to
23 the extent that the holder of a particular Allowed Class 2(a) Claim has agreed to a less favorable
24 treatment of such Claim, the holders of Allowed Class 2(a) Claims will receive, on account of such
25 Claim(s), a total of one hundred percent (100%) of their Claims, without interest. Creditors with
26 claims of less than \$500.00, who wish to receive interest on their claims, can elect to be included in
27 Class 2(c). Payments will be made on the Effective Date. The foregoing is in full and final
28 satisfaction of any and all Class 2(a) Claims.

Class 2(a) is unimpaired and is presumed to have approved the Plan. All Claims are subject
to verification and may be reduced following resolution of Disputed Claims, including mitigation
and offset as applicable.

21 **9.3.8 Class 2(b) General Unsecured Creditors Over \$500.00 and less than \$2,500.00 –**

22 **Impaired**

23
24 Class 2(b) consists of General Unsecured Claims greater than \$500.00 not included or
25 provided for in any other class, and including without limitation, all general unsecured claims
26 incurred by the Debtor prior to the Petition Date, including Rejection Claims, but excluding
27 Administrative Claims, Priority Claims, and Tax Claims. Creditors with claims of less than
28 \$2,500.00, who wish to receive interest on their claims, can elect to be included in Class 2(c).
Except to the extent that the holder of a particular Allowed Class 2(b) Claim has agreed to a less
favorable treatment of such Claim, the holders of Allowed Class 2(b) Claims will receive, on
account of such Claim(s), a total of one hundred percent (100%) of their Claims, without interest.
Payments will be made in three equal monthly installments commencing on the Effective Date. The
foregoing is in full and final satisfaction of any and all Class 2(b) Claims.

1 Class 2(b) is impaired. All Claims are subject to verification and may be reduced following
2 resolution of Disputed Claims, including mitigation and offset as applicable.

3 **9.3.9 Class 2(c) General Unsecured Creditors Over \$2,500.00 – Impaired**

4 Class 2(c) consists of General Unsecured Claims greater than \$2,500.00 not included or
5 provided for in any other class, and including without limitation, all general unsecured claims
6 incurred by the Debtor prior to the Petition Date, including Rejection Claims, but excluding
7 Administrative Claims, Priority Claims, and Tax Claims. Creditors with claims of less than
8 \$2,500.00, who wish to receive interest on their claims, can elect to be included in Class 2(c).
9 Except to the extent that the holder of a particular Allowed Class 2(c) Claim has agreed to a less
favorable treatment of such Claim, the holders of Allowed Class 2(c) Claims will receive, on
account of such Claim(s), a total of one hundred percent (100%) of their Claims, plus interest at the
rate of 9.0% per annum. Payments will be made in six (6) equal monthly installments commencing
on the Effective Date. The foregoing is in full and final satisfaction of any and all Class 2(c) Claims.

10 **9.3.10 Class 3 General Unsecured Creditors – Tenants Who Have Paid Deposits –**
11 **Unimpaired.**

12 Class 3 consists of the General Unsecured Claims of tenants who have paid deposits pursuant
13 to their lease agreements. Class 3 Claims will be recognized in full with the funds retained by the
Debtor pursuant to the terms of the individual tenants'/creditors' lease agreements.

14 **9.4 Implementation of the Plan of Reorganization**

15 The Plan provides as follows:

16 **9.4.1 Operation of Business**

17 The Reorganized Debtor will continue to operate its business and will use cash on hand and
18 cash generated from business operations to perform its obligations under the Plan. The Debtor
19 believes that through the operation of its business, all Claims will be paid pursuant to provisions of
20 the Plan. The Debtor has projected consistent rental incomes from tenants on the property. The
building is 36% occupied and Debtor anticipates reaching 90% occupancy by the end of 2013. A
projection of the Debtor's cash flow demonstrating the Debtor's ability to pay its Claims is detailed
in the Debtor's Five-Year Projected Cash Flow and Business Plan attached hereto as **Exhibit "D"**.

21 **9.4.2 Payments on the Effective Date**

22 If the Reorganized Debtor does not have sufficient funds on the Effective Date to make such
23 payments provided in the Plan to the holders of Allowed Administrative Claims, Tax Claims, and
24 Priority Claims, the Reorganized Debtor may, in its discretion, borrow sufficient funds to make such
payments, and such loans shall be treated as Class 2(c) Claims.

25 **9.5 Distributions**

26 **9.5.1 Distribution Account**

27 If the Disbursing Agent is a Person other than the Responsible Person, the Disbursing Agent
28 will hold any funds transmitted to it in a segregated trust account for the benefit of holders of

1 Allowed Claims.

2 **9.5.2 Distribution Address**

3 Unless a Creditor has provided the Debtor or the Reorganized Debtor and its counsel with
4 written notice of a different address, Distributions will be mailed to Creditors at the address set forth
5 in their proofs of Claim filed with the Bankruptcy Court. If no proof of Claim is filed with respect to
6 a particular Claim, the Distribution will be mailed to the address set forth in the Schedules filed by
7 the Debtor.

8 **9.5.3 Withholding Taxes**

9 Section 346(h) of the Bankruptcy Code authorizes the Disbursing Agent to deduct any
10 federal, state, or local withholding taxes from any cash payments made with respect to Allowed
11 Claims, as appropriate. The Disbursing Agent will be permitted to withhold a Distribution to any
12 Creditor who has not provided information requested by the Disbursing Agent for the purpose of
13 fulfilling its obligations hereunder. The Disbursing Agent will comply with all reporting obligations
14 imposed on it by any governmental unit with respect to withholding and related taxes.

15 **9.6 Responsible Person**

16 On and after the Effective Date, Jeffrey A. Wilcox shall serve as the Reorganized Debtor's
17 Managing Member. To the extent provided by the Plan, he will also serve as the Responsible Person
18 and Disbursing Agent. As Managing Member, Mr. Wilcox will receive no salary.

19 The Responsible Person will be replaced in the event of a voluntary resignation, death,
20 incapacity or at the request of a party for "cause" upon order of the Bankruptcy Court. In the event
21 of a voluntary resignation, the then-Responsible Person will select a replacement. In all other
22 events, the Court will appoint a replacement. A voluntary resignation will not be effective until a
23 successor has accepted his or her appointment in writing.

24 The Responsible Person will manage the Reorganized Debtor and will have all of the
25 authority to act on behalf of the Reorganized Debtor in accordance with the Bankruptcy Code, the
26 Bankruptcy Rules, and Local Rules. Such management will include: (a) fulfilling the duties of the
27 Debtor and the Reorganized Debtor under the Plan; and (b) fully administering the Bankruptcy
28 Estate as required by the Plan, the Order of Confirmation, and the Bankruptcy Code and the
Bankruptcy Rules, which duties and obligations include the facilitation of Distributions pursuant to
the Plan, reviewing Claims, objecting to Disputed Claims, supervising the preparation and filing of
required tax returns for the Debtor and closing the Bankruptcy Case. The Reorganized Debtor will
be substituted as successor to the Debtor and its Estate in all actions and proceedings pending or
thereafter commenced in the Bankruptcy Court with respect to Disputed Claims. Without limiting
the foregoing, the Responsible Person, acting on behalf of the Reorganized Debtor will have all of
the rights and powers of an estate representative appointed pursuant to Section 1123(b)(3) of the
Bankruptcy Code to prosecute or otherwise assert the Retained Claims, if any, including Avoidance
Actions.

The Responsible Person may, in his discretion, employ such other persons as may be
necessary to assist with implementing the Plan and as otherwise necessary in the Case.

1 Upon the Effective Date, the Responsible Person will be authorized on behalf of the Debtor
2 and Reorganized Debtor to execute all instruments, agreements, and documents and to take all
3 actions for and on behalf of the Debtor or Reorganized Debtor necessary to effectuate the provisions
4 of the Plan. Any such document, agreement, or instrument executed and delivered by the
5 Responsible person will be conclusively deemed duly executed by the Debtor and/or Reorganized
6 Debtor without the need for further corporate action or order of the Bankruptcy Court. After the
7 Effective Date, the Responsible person will be entitled to implement and administer the Plan without
8 the need for further corporate action or order of the Bankruptcy Court.

9 **9.7 Disbursing Agent**

10 Jeffrey A. Wilcox will serve as Disbursing Agent unless otherwise ordered by the Court.

11 **9.8 De Minimis Distributions**

12 Notwithstanding any other provision of the Plan, Distributions of less than \$25.00 need not
13 be made on account of any Allowed Claim; provided, however, that Distributions that would
14 otherwise be made but for this provision will carry over to the next Distribution Date until the
15 cumulative amount to which any holder of an Allowed Claim is entitled is more than \$25.00, at
16 which time the cumulative amount of such Distributions will be paid to the holder.

17 **9.9 Unclaimed Distributions**

18 Any cash Distributions that remain unclaimed or unnegotiated for ninety (90) days following
19 issuance of the check representing the Distribution or are returned for reasons other than the absence
20 of a current or correct address (unless a current or correct address cannot be determined after
21 reasonable inquiry) will become property of the Reorganized Debtor.

22 **9.10 Tax Returns, Payments, and Refunds**

23 The Reorganized Debtor shall file or cause to be filed any and all delinquent and final tax
24 returns and pay any and all taxes owed by the Debtor and the Reorganized Debtor on a timely basis
25 (other than taxes provided for under the Plan). The Reorganized Debtor reserves all rights to amend
26 prior tax returns of the Debtor and to pursue and collect all potential tax refunds, to claim losses, and
27 to take such other actions to the fullest extent allowed by law.

28 **9.11 Further Orders**

Upon motion by the Reorganized Debtor, the Bankruptcy Court may enter such other and
further orders as may be necessary or appropriate to facilitate consummation of the Plan.

9.12 Post-Confirmation Employment of Personnel

The Reorganized Debtor and any Disbursing Agent may employ or contract with Persons and
other Entities to perform, advise, or assist them in the performance of their respective obligations
under the Plan. The Reorganized Debtor may continue to employ the Debtor's Professionals for the
purposes for which they were employed before the Confirmation Date, and for such additional
purposes as the Reorganized Debtor may request.

9.13 Post-Confirmation Compensation and Reimbursement of Professionals

1
2 Until such time as the Bankruptcy Case is closed by a Final Decree, all professionals
3 employed by the Reorganized Debtor after the Confirmation Date will be entitled to payment of their
4 reasonable post-Confirmation Date fees and reimbursement of expenses on a monthly basis, subject
5 to the following:

6 Each professional requesting payment of such compensation shall serve a detailed statement
7 of requested fees and expenses on the Notice Parties.

8 Any Notice Party or other party in interest may object to any portion of the requested fees
9 and expenses. Any objection to the payment of fees or reimbursement of expenses must be in
10 writing and served on the Notice Parties and the professional whose fees and expenses are subject to
11 the objection. Such an objection must be served within fifteen (15) days after service of the detailed
12 statement.

13 If there is no objection to a professional's requested fees and expenses within such fifteen
14 (15) day period, the Reorganized Debtor shall promptly pay the requested amount in full. If an
15 objection to a portion of the fees or expenses requested is timely served, the Reorganized Debtor
16 shall promptly pay the undisputed portion of the fees and expenses.

17 To the extent that an objection is timely served, the Responsible Person shall reserve monies
18 in the Disputed Claims Reserve Account in the amount of the disputed fees and expenses pending
19 resolution of said objection.

20 Any objection to a request for payment of fees and expenses will be resolved by either: (a)
21 written agreement between the professional requesting such fees and expenses and the objecting
22 party; or (b) Final Order of the Bankruptcy Court. Resolution by the Bankruptcy Court must be
23 requested by motion filed and served on the objecting party and the Notice Parties in accordance
24 with the Bankruptcy Rules and Local Rules on not less than twenty-one (21) days notice and such
25 motion may be filed by either the requesting professional or the objecting party. Any opposition to
26 the motion must be filed and served no later than seven (7) days prior to the hearing.

27 Once the case is closed by a Final Decree, the Debtor will be authorized to pay its
28 professionals in the ordinary course of business.

Professionals will not otherwise be required to file applications for Bankruptcy Court
approval of post-Confirmation fees and expenses.

23 **9.14 Post-Confirmation Notice**

24 To the extent that any action taken in the Bankruptcy Case after the Effective Date requires
25 notice under the Bankruptcy Code or the Bankruptcy Rules, a notice must be provided. Notice will
26 not be required to any Person whose Claim has been paid in full. The Reorganized Debtor and the
27 Responsible Person may proceed via the "scream or die" notice procedures in which, pursuant to
28 Local Rules, failure to make a timely objection permits entry of an order without a hearing.

27 **9.15 Revesting of Property of the Estate**

On the Effective Date all property of the Debtor and the Bankruptcy Estate will vest in the

1 Reorganized Debtor, free and clear of any and all liens, encumbrances, Claims and Interests of
2 Creditors, and Interest Holders subject to the provisions of the Plan. Revesting does not modify the
nature of any contracts assumed by the Debtor and/or Reorganized Debtor.

3 **9.16 Post-Confirmation Reports, Fees, and Final Decree**

4 **9.16.1 United States Trustee Fees**

5 Not later than thirty (30) days after the end of each calendar quarter that ends after the
6 Effective Date (including any fraction thereof), the Reorganized Debtor shall pay to the United
7 States Trustee the fee for such quarter until the Case is converted, dismissed, or closed pursuant to a
Final Decree, as required by 28 U.S.C. § 1930(a)(6).

8 **9.16.2 Post-Confirmation Reports**

9 Not later than thirty (30) days after the end of each calendar quarter which ends after the
10 Effective Date, the Reorganized Debtor shall file and serve upon the United States Trustee a
11 quarterly post-Confirmation status report in substantially the form provided by the United States
12 Trustee. Further reports must be filed no later than thirty (30) days after the end of every calendar
quarter thereafter until the entry of a Final Decree, unless otherwise ordered by the Bankruptcy
Court.

13 **9.16.3 Final Decree**

14 At such time as all motions, contested matters, and adversary proceedings have been finally
15 resolved and the Bankruptcy Case is in a condition to be closed, the Reorganized Debtor shall file an
16 application for the entry of a Final Decree to close the Bankruptcy Case pursuant to Section 350 of
17 the Bankruptcy Code and Rule 3022 of the Bankruptcy Rules. Entry of a Final Decree may be
18 sought by the Reorganized Debtor notwithstanding that all payments required by the Plan have not
19 been completed provided the Bankruptcy Case is determined by the Bankruptcy Court to be fully
administered; provided further, that the Bankruptcy Court retains jurisdiction to hear all matters
20 involving the further administration of the Plan until all holders of Allowed Claims have been paid
21 in full or as otherwise agreed to or provided for under the Plan. The Reorganized Debtor shall serve
the application for entry of a Final Decree on the Notice Parties. Pursuant to Local Rule, such
22 application shall be considered by the Bankruptcy Court without a hearing unless within fourteen
(14) days after the date of service of the notice, a party in interest files and serves a request for
hearing.

23 **ARTICLE X**

24 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

25 **10.1 Treatment of Executory Contracts and Unexpired Leases**

26 The Debtor reserves the right to move the Bankruptcy Court at any time for authority to
27 assume, assume and assign, or reject, pursuant to Bankruptcy Code Section 365, any and all
contracts that are executory and leases that are unexpired.

28 **10.2 Assumption of Executory Contracts and Unexpired Leases**

Each contract and lease listed on **Exhibit "A"** to the Plan will be assumed by the Debtor on the Effective Date to the extent each such contract is executory and each such lease is unexpired.

10.3 Effect of Assumption of Executory Contracts and Unexpired Leases

All executory contracts and unexpired leases assumed prior to Confirmation or pursuant to the Plan and not otherwise rejected pursuant to the Plan or otherwise will remain in full force and effect, be unimpaired by the Plan except as specifically modified by the Plan and the Order of Confirmation, and be binding on the parties thereto.

10.4 Adding and Removing Executory Contracts and Unexpired Leases

The provisions of this Article X may be amended, with appropriate notice to those parties in interest directly affected, at any time prior to the conclusion of the hearing on Confirmation of the Plan, to add or remove executory contracts and unexpired leases to be assumed, assumed and assigned, or rejected pursuant to the Plan.

10.5 Defaults

Unless other treatment is agreed to between the parties to each assumed contract or lease, if there has been a default in an assumed executory contract or unexpired lease other than the kind specified in Section 365(b)(2) of the Bankruptcy Code, the Debtor shall, on or before the Effective Date: (a) cure, or provide adequate assurance that it will promptly cure, any such default; (b) compensate, or provide adequate assurance that it will promptly compensate, the other party to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (c) provide adequate assurance of future performance under such contract or lease.

10.6 Rejection of Executory Contracts and Unexpired Leases

Without admitting the validity of any other executory contracts and unexpired leases, all executory contracts and unexpired leases of the Debtor listed on **Exhibit "B"** to the Plan will be rejected by the Debtor as of the Effective Date. Confirmation of the Plan will be deemed to constitute Bankruptcy Court approval of such rejection.

10.7 Rejection Claims

The holder of a Rejection Claim must file with the Bankruptcy Court, and serve on counsel for the Reorganized Debtor, a proof of Claim relative to such Rejection Claim on or before the Rejection Claims Bar Date or be forever barred from asserting any such Claim or receiving any payment or other Distribution on account of such Claim.

ARTICLE XI

PROOFS OF CLAIM; OBJECTIONS

11.1 Time for Filing Proofs of Claim

Proofs of Claim, when required, must be filed with the Bankruptcy Court no later than the applicable Claims Bar Date (which for most pre-petition Claims was 5/29/12 and for governmental

1 units was 180 days after the date relief was entered. However, Bankruptcy Rule 3003(b) provides
2 that it is not necessary for a Creditor to file a proof of Claim if its Claim has been listed on the
3 Debtor's Schedules filed with the Bankruptcy Court pursuant to Section 52(a)(1) of the Bankruptcy
4 Code and Rule 1007(a)(3) of the Bankruptcy Rules, and is not listed as disputed, contingent,
5 unliquidated, or unknown as to amount. Pursuant to Bankruptcy Rule 3003(c)(2), any creditor
6 whose Claim is not scheduled by the Debtor or was scheduled as disputed, contingent, unliquidated,
or unknown as to amount, and who fails to file a proof of Claim on or before the applicable Claims
Bar Date or other applicable deadline may not be treated as a Creditor with respect to that Claim for
purposes of voting on the Plan or receiving a Distribution thereunder.

7 **11.2 Ownership and Transfers of Claims**

8 Distributions to Creditors under the Plan will be made to the Persons shown on the Debtor's
9 or the Bankruptcy Court's records on the Effective Date. For purposes of any Distribution under the
10 Plan, the Reorganized Debtor, the Disbursing Agent, the Responsible Person, and their professionals
will have no obligation to recognize any transfer of Claims after the Effective Date.

11 ANY PARTY WHO ACQUIRES A CLAIM AGAINST THE
12 DEBTOR OR REORGANIZED DEBTOR AFTER THE EFFECTIVE
13 DATE MUST ARRANGE WITH THE HOLDER OF SUCH CLAIM
14 TO RECEIVE DISTRIBUTIONS TO WHICH THE TRANSFEREE
15 MAY BE ENTITLED. NEITHER THE REORGANIZED DEBTOR
NOR THE DISBURSING AGENT WILL BE REQUIRED TO
TRACK CHANGES IN OWNERSHIP OF CLAIMS AFTER THE
EFFECTIVE DATE.

16 **11.3 Amendments to Claims**

17 Except as provided by the Plan or as otherwise permitted by the Bankruptcy Court, the
18 Bankruptcy Rules or applicable law, proofs of Claim: (a) may not be filed upon expiration of the
19 applicable bar date; and (b) may not be amended after the expiration of the applicable bar date
except for amendments to proofs of Claim to decrease the amount or priority thereof.

20 **11.4 Claim Objections**

21 An objection to a Claim must be filed no later than the Claims Objection Date which is
22 ninety (90) days after the Effective Date; provided, however, that such date may be extended by the
23 Bankruptcy Court for cause upon the ex parte motion of the Reorganized Debtor. The Reorganized
Debtor shall have the primary responsibility to review Claims filed against the Debtor, to file
objections as appropriate, and to resolve Disputed Claims.

24 **11.5 Disallowance of Claims**

25 All claims of any Entity from whom property is sought by the Debtor, the Reorganized
26 Debtor, or the Responsible Person, under Sections 542, 543, 550 or 553 of the Bankruptcy Code, or
27 with respect to whom the Debtor, the Reorganized Debtor, or Responsible Person alleges is a
28 transferee of a transfer that is avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549 or
724(a) of the Bankruptcy Code, will be disallowed if: (a) such Entity on one hand, and the Debtor,

1 the Reorganized Debtor, or the Responsible Person, on the other hand, agree, or the Bankruptcy
2 Court has determined by a Final Order that such Entity or transferee is liable to turnover any
3 property or monies under any of the aforementioned sections of the Bankruptcy Code, and (b) such
4 Entity or transferee has failed to turnover such property by the dates set forth in such agreement or
5 Final Order.

6 The Plan contains the following important language with respect to the disallowance of
7 claims:

8 EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED
9 AFTER THE APPLICABLE CLAIMS BAR DATE WILL BE DEEMED DISALLOWED AND
10 EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR
11 ACTION, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH
12 CLAIMS WILL NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS,
13 UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER
14 OF THE BANKRUPTCY COURT ON OR BEFORE THE LATER OF (A) THE
15 CONFIRMATION HEARING, OR (B) 45 DAYS AFTER THE APPLICABLE BAR DATE.

11.6 Reserve Accounts

12 Subject to the next sentence, any cash that would be distributed to the holder of a Disputed
13 Claim if it were an Allowed Claim on any Distribution Date hereunder will be deposited by the
14 Disbursing Agent into the Disputed Claims Reserve Account. Not later than fifteen (15) days after
15 the Disbursing Agent receives notice that a Disputed Claim has been Allowed in whole or in part,
16 the Disbursing Agent shall Distribute the cash deposited into the Disputed Claims Reserve Account
17 on account of such Disputed Claim. To the extent that cash payments made into the Disputed
18 Claims Reserve Account on account of a Disputed Claim ultimately exceed the cash distributable
19 with respect to the Allowed Amount of such Claim, such excess cash will become the property of the
20 Reorganized Debtor.

11.7 Distributions

21 Notwithstanding any provision of the Plan specifying a date or time for payments or
22 Distributions of consideration hereunder, payments and Distributions in respect of any Claim that at
23 such date or time is disputed, unliquidated, contingent, or unknown as to amount will not be made
24 until a Final Order with respect to an objection, estimation, or valuation of such Claim is entered by
25 the Bankruptcy Court, whereupon appropriate Distributions will be made promptly in accordance
26 with the preceding section.

ARTICLE XII

DEFAULT

27 If the Reorganized Debtor defaults in the performance of any of its obligations under the
28 Plan, and has not cured such default within a period of twenty-one (21) days after receipt of written
notice of default from any party in interest affected by the alleged default, then such party in interest
may file a motion with the Bankruptcy Court seeking an order directing the Reorganized Debtor to
perform such obligations. If the Reorganized Debtor defaults in the performance of any material
obligation under the Plan, any party in interest, including the Office of the United States Trustee,

1 may file a motion with the Bankruptcy Court seeking an order converting the Bankruptcy Case to a
2 case under Chapter 7 of the Bankruptcy Code. If such motion is granted, the Plan will terminate,
3 and all then remaining property of the Reorganized Debtor will vest in the Chapter 7 estate. Such
4 property will be administered by the Chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy
5 Code. Any party in interest, including the Reorganized Debtor, may oppose any such motion.

6 **ARTICLE XIII**

7 **PRESERVATION OF RETAINED CLAIMS AND AVOIDANCE ACTIONS**

8 **13.1. All Retained Claims and Avoidance Actions and Rights are Preserved**

9 The Debtor continues to review transactions and records which process may result in
10 additional claims against persons not yet identified herein, and may also result in other claims
11 against persons identified herein in addition to those identified at this point in time. Nothing in the
12 Plan will be deemed to constitute a waiver of the powers of the Debtor as a debtor in possession
13 under the Bankruptcy Code or the Bankruptcy Rules, and the Debtor and the Reorganized Debtor, as
14 applicable, will retain after Confirmation and after the Effective Date, all powers granted by the
15 Bankruptcy Code and the Bankruptcy Rules to a trustee and debtor in possession, including without
16 limitation, those relating to the recovery of property, avoidance of liens, and objection to, and/or
17 subordination of, Claims. Confirmation of the Plan effects no settlement, compromise, waiver or
18 release of any Retained Claim unless the Plan or Order of Confirmation specifically and
19 unambiguously so provides. The failure of the Plan to refer to any particular Retained Claim is not
20 and will not be construed as a settlement, compromise, waiver, or release of any such Retained
21 Claim. All Retained Claims are hereby preserved and will continue to remain valid after the
22 Effective Date. Except as provided in the Plan or the Order of Confirmation, the Debtor and the
23 Reorganized Debtor reserve any and all Claims, Retained Claims, causes of action and rights against
24 any and all third parties, whether such Claims, Retained Claims, causes of action or rights arose
25 before, on or after the Petition Date, the Confirmation Date, the Effective Date and/or the date
26 Distributions are made. The entry of the Confirmation Order will not constitute res judicata or
27 otherwise bar, estop, or inhibit any actions by the Debtor or the Reorganized Debtor, as applicable,
28 regarding any claims they hold as identified herein or otherwise.

29 Without limiting the generality of the foregoing, the Retained Claims include, but are not
30 limited to, Avoidance Actions and all claims identified in the Debtor's Schedules and Statement Of
31 Financial Affairs (as amended or supplemented), if any. Any recovery arising out of or related to an
32 Avoidance Action will be property of the Debtor or Reorganized Debtor as applicable, and will be
33 used to pay Distributions pursuant the Plan.

34 **ARTICLE XIV**

35 **RETENTION OF JURISDICTION**

36 The Bankruptcy Court will have and retain on and after the Confirmation Date and on and
37 after the Effective Date exclusive jurisdiction of the Bankruptcy Case: (a) to enforce the provisions,
38 purposes, and intent of the Plan; (b) to determine the allowance or disallowance of Claims; (c) to
hear and determine proceedings initiated before or after the Confirmation Date and the Effective
Date regarding the prosecution of the Retained Claims or any other rights, claims, causes of action or

1 claims for relief held by the Reorganized Debtor against any party, including the recovery of
2 property and subordination of Claims; (d) to fix and approve allowance of compensation and other
3 Administrative Claims, including, if appropriate, payments to be made in connection with the Plan;
4 (e) to adjudicate controversies arising from the terms of the Plan; (f) to hear and determine any
5 proposed modifications of or amendments to the Plan to the extent permitted by Section 1127 of the
6 Bankruptcy Code and Bankruptcy Rule 3019; (g) to enforce or interpret the provisions of the Plan,
7 the Order of Confirmation or any order entered by the Bankruptcy Court in the Bankruptcy Case; (h)
8 to facilitate the consummation of the Plan; (i) to consider such other matters as may be set forth in
the Plan or the Order of Confirmation; (j) to hear and determine any Claim of any Person of any
nature whatsoever against the Debtor's Professionals arising in, under or related to the Case; (k) to
hear any other matters pertaining to the Plan; and (l) to enter a Final Decree closing the Bankruptcy
Case. If closed, the Bankruptcy Case may be reopened at any time to facilitate the provisions of this
Article XIV of the Plan.

9 **ARTICLE XV**

10 **EFFECT OF CONFIRMATION**

11 As of the Confirmation Date, the effect of the Order of Confirmation will be as provided in
12 Section 1141 of the Bankruptcy Code, and as follows:

13 **15.1 Binding Effect of Plan**

14 The provisions of the confirmed Plan will bind the Debtor, the Reorganized Debtor, any
15 entity acquiring property under or otherwise accepting the benefits of the Plan, and every Creditor
16 and Interest Holder, whether or not such Creditor or Interest Holder has filed a proof of Claim or
17 Interest in the Bankruptcy Case, whether or not the Claim or Interest of such Creditor or Interest
Holder is impaired under the Plan, and whether or not such Creditor or Interest Holder has accepted
or rejected the Plan.

18 **15.2 Full Satisfaction of Claims and Interests**

19 Except as otherwise provided in the Plan or the Order of Confirmation, the rights afforded
20 under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in
21 complete satisfaction, discharge, and release of, all Claims, including any interest accrued thereon
from and after the Petition Date, against the Debtor, the Reorganized Debtor, the Bankruptcy Estate,
or any assets or property of the Debtor, the Reorganized Debtor, and the Bankruptcy Estate.

22 **15.3 Judgments Null and Void**

23 Any judgment obtained before or after the Confirmation Date in any court other than the
24 Bankruptcy Court will be null and void as a determination of the liability of the Debtor or the
Reorganized Debtor.

25 **15.4 Injunction**

26 Under the Plan, as of the Confirmation Date, all entities that have held, currently hold or may
27 hold a Claim or other debt or liability that is satisfied or any other right that is terminated under the
28 Bankruptcy Code or the Plan are permanently enjoined from commencing or continuing any action,
the employment of process, or other action, to collect, recover, or offset any such Claim or debt as a

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1 personal liability of the Debtor or Reorganized Debtor to the fullest extent permitted by Bankruptcy
2 Code Section 524.

3 **15.5 Reservation of Powers**

4 Nothing in the Plan will be deemed to have constituted a waiver of any powers held by the
5 Debtor as a debtor in possession under the Bankruptcy Code, the Bankruptcy Rules, or the Local
6 Rules. The Reorganized Debtor will retain all powers granted by the Bankruptcy Code, the
Bankruptcy Rules, and the Local Rules to a trustee or debtor in possession, including those with
respect to recovery of property and objections to, and/or subordination of, Claims and Interests.

7 **15.6 Preservation of Insurance**

8 Nothing in the Plan will diminish or impair the enforceability of any insurance policy that
9 may cover Claims against the Debtor or any other Person.

10 **ARTICLE XVI**

11 **CONDITIONS PRECEDENT**

12 **16.1. Conditions Precedent**

13 The Plan provides that the following is a condition to the Effective Date:

14 The Confirmation Order is entered and becomes a final order in form and
15 substance satisfactory to the Debtor. The Confirmation Order will provide,
16 among other things, that the Debtor or Reorganized Debtor, as appropriate,
17 is authorized and directed to take all actions necessary or appropriate to
18 consummate the Plan, including, without limitation, entering into,
implementing and consummating the contracts, instruments, releases,
leases, indentures, and other agreements or documents created in
connection with or described in the Plan.

19 **16.2. Waiver of Conditions**

20 The conditions set forth above may be waived by the Debtor without notice, leave or order of
21 the Bankruptcy Court, or any formal action other than proceeding to confirm or consummate the
Plan.

22 **ARTICLE XVII**

23 **OTHER PLAN PROVISIONS**

24 **17.1 Exemption from Stamp, Transfer, and Other Taxes**

25 To the extent any sale contemplated by the Plan would be subject to a stamp or similar tax,
26 the Debtor will be entitled to exclusion of such sale from any stamp or similar tax to the fullest
27 extent allowed by law.

28 **17.2 No Admissions**

1 Except as specifically provided in the Plan, nothing contained in the Plan may be deemed or
2 construed in any way as an admission by the Debtor or its Bankruptcy Estate with respect to any fact
3 or any matter set forth in the Plan, including the amount or allowability of any Claim, or the value of
any property of the Bankruptcy Estate.

4 Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the
Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan will:
5 (a) be deemed to be an admission by the Debtor with respect to any matter discussed in the Plan,
6 including liability on any Claim or the propriety of any Claim's classification; (b) constitute a
7 waiver, acknowledgement, or release of any Claim, Interest, or any claims held by the Debtor; or (c)
prejudice in any manner the rights of the Debtor or the Bankruptcy Estate in any further proceedings.

8 **17.3 Revocation of the Plan**

9 The Debtor reserves the right to withdraw the Plan before the Confirmation Date.

10 **17.4 Successors and Assigns**

11 The rights, benefits, and obligations of any Entity referred to in the Plan will be binding on,
12 and will inure to the benefit of any heir, executor, administrator, successor, or assign of that Entity.

13 **17.5 Nonconsensual Confirmation**

14 In the event that Classes entitled to vote fail to accept the Plan in accordance with
Bankruptcy Code Section 1129(a)(8), the Debtor reserves the right to modify the Plan in accordance
15 with Bankruptcy Code Section 1127(a). In accordance with Section 1127 of the Bankruptcy Code,
the Debtor reserves the right to alter, amend, modify, revoke, or withdraw the Plan or any Plan,
16 exhibit, or schedule including amending or modifying it to satisfy the requirements of the
Bankruptcy Code.

17 **17.6 Destruction of Records**

18 The Reorganized Debtor may, but is not required to, seek one or more orders of the
19 Bankruptcy Court authorizing the abandonment and destruction of its books and records at such time
20 as the recordkeeping time periods required by applicable law, custom, or practice have expired.

21 **17.7 Saturday, Sunday, and Legal Holiday**

22 If any payment or act under the Plan should be made or performed on a day that is not a
23 Business Day, then the payment or act may be completed the next succeeding day that is a Business
Day, in which event the payment or act will be deemed to have been completed on the required day.

24 **17.8 Plan Interpretation**

25 The headings contained in the Plan are for convenience of reference only and do not limit or
26 otherwise affect in any way the meaning or interpretation of the Plan. All references in the Plan to
the singular will be construed to include references to the plural and vice versa. All references in
27 the Plan to any one of the masculine or feminine genders will be deemed to include references to the
other such gender. References to the Debtor will also include the Reorganized Debtor (or vice
28 versa) as the context requires. All references in the Plan to a Section or an Article mean the

1 appropriately numbered Section or Article of the Plan. Whenever the Plan uses the term
2 “including,” such reference is deemed to mean “including, but not limited to.”

3 **17.9 Setoff/Recoupment**

4 Nothing contained in this Plan constitutes a waiver or release by the Debtor or Reorganized
5 Debtor of any right of setoff or recoupment the Debtor may have against any Creditor.

6 **17.10 Notices**

7 All notices required or permitted to be made in accordance with the Plan must be in writing
8 and delivered personally or by first class mail, as follows:

9 If to the Reorganized Debtor:

10 Wilcox Embarcadero Associates, LLC
11 977 Stow Lane
12 Lafayette, California 94549

13 With a copy to:

14 Alan E. Ramos
15 Steele, George, Schofield & Ramos, LLP
16 3100 Oak Road, Suite 100
17 Walnut Creek, California, 94597-2078

18 Notices will be deemed given when delivered or three days after deposit in the United States mail.
19 Any entity may change the address at which such entity is to receive notices under the Plan by filing
20 a written notice with the Bankruptcy Court and serving such notice on the Reorganized Debtor and
21 its counsel.

22 **17.11 Reservation of Rights**

23 Neither the filing of the Plan nor any statement or provision contained in the Plan or in the
24 Disclosure Statement, nor the taking by any party in interest of any action with respect to the Plan,
25 will: (a) be or be deemed to be an admission against interest; and (b) until the Effective Date, be or
26 be deemed to be a waiver of any rights any party in interest may have: (i) against any other party in
27 interest; or (ii) in any of the assets of any other party in interest, and, until the Effective Date, all
28 such rights are specifically reserved. In the event that the Plan is not confirmed or fails to become
effective, neither the Plan nor the Disclosure Statement nor any statement contained in the Plan or in
the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding,
or controversy within or without this Bankruptcy Case involving the Debtor.

17.12 Exhibits

All exhibits attached to the Plan are hereby incorporated into the Plan by this reference. All
exhibits attached to the Disclosure Statement hereby are incorporated into the Disclosure Statement
by reference.

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ARTICLE XVIII

RISK FACTORS

Holders of impaired Claims entitled to vote on the Plan should read and consider carefully the factors set forth below, as well as other information set forth in this Disclosure Statement and the documents delivered together herewith and/or incorporated by reference herein prior to voting to accept or reject the Plan.

18.1 Additional Claims Risks

The Administrative Claims Bar Date will occur after Confirmation and the Allowed amount of such Claims will increase the overall liabilities of the Reorganized Debtor and therefore the cash available for holders of Claims. Additionally, if the Reorganized Debtor is unsuccessful in the objections to Disputed and contingent Claims that have been filed against the Debtor, the total liabilities will be greater than expected, and there may be less cash available for Distribution to holders of Claims.

18.2 Estimation of Claims and Distribution Risks

While the Debtor has endeavored to project what it believes are likely to be the Distributions, if any, to be made to parties holding Allowed Claims, there can be no certainty that the Debtor's projections will be accurate, and that Creditors will receive the Distribution described in the Plan. The Debtor's projections will necessarily be affected by, among other things: (1) successful operation of Debtor's business; (2) the outcome of objections to Claims; and (3) the cost and expenses of such actions.

18.3 Bankruptcy Risks

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court would reach the same conclusion.

If the Debtor receives votes in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek, as promptly as practicable thereafter, to confirm the Plan. In the event the Debtor does not receive sufficient votes, the Debtor may seek to accomplish an alternative Chapter 11 plan. There can be no assurance however that the terms of any such alternative Chapter 11 plan would be similar or as favorable to the holders of Allowed Claims as those proposed in the current proposed Plan.

Even if all classes of Claims and Interests that are entitled to vote accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for Confirmation. The Debtor believes that the Plan satisfies all of the requirements of Confirmation of a plan under Section 1129 however there can be no assurance that the Bankruptcy Court would reach the same conclusion.

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ARTICLE XIX

TAX CONSEQUENCES OF THE PLAN

19.1 Introduction

It is the Debtor's best estimate that confirmation of the Plan will generally be tax neutral for creditors and the Debtor. All creditors are to be paid in full under the Plan. From the perspective of the Debtor and of the creditor, the payments to be made under the Plan will likely have precisely the same tax attributes and consequences as they would have had, if the claims had been timely paid in the absence of the bankruptcy case: if the payment by the Debtor otherwise would have been taxable income to the creditor, it will be taxable income when made under the Plan.

There are two circumstances in which the tax consequences may differ. First, payments may be made or received in a different tax year as a result of the deferrals provided by the bankruptcy process, which may have an effect on certain taxpayers. Second, since creditors are to be paid in full under the Plan, there will likely be tax consequences to any creditors that have already taken a bad debt deduction with respect to any obligation of the Debtor.

Creditors are urged to obtain and rely upon the advice of their tax professionals, rather than the foregoing summary.

19.2 Backup Withholding

United States federal income tax laws require that, to avoid backup withholding with respect to "reportable payments" (in an amount equal to 28%), a Creditor or Holder must: (a) provide the Debtor with its correct taxpayer identification number ("TIN") or IRS Form W-9 and certify as to their eligibility for exemption from backup withholding; or (b) establish a basis for exemption from backup withholding on an appropriate IRS Form W-8 (including a Form W-8BEN, W-8ECI, W-8EXP and W-8IMY) or IRS Form W-9, as applicable. Exempt Creditors and Holders, including corporations and certain foreign individuals, are not subject to backup withholding and reporting requirements. If withholding is made and results in an overpayment of taxes, a refund may be obtained.

THE FEDERAL TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

ARTICLE XX

VOTING PROCEDURES

With the Plan and Disclosure Statement, Creditors entitled to vote on the Plan will receive a

1 Ballot and instructions for voting on the Plan. You should read the Ballot carefully and follow the
2 instructions contained therein. Please use only the Ballot sent to you with this Disclosure Statement
and the Plan.

3 To simplify the voting procedure, Ballots have been sent only to all known holders of Claims
4 and Interests, including Disputed Claims to which objections may be filed. Ballots have not been
5 sent to Class 1(a) and Class 3. Only holders of Claims or Interests allowed under Section 502 of the
6 Bankruptcy Code, or temporarily allowed for voting purposes under Bankruptcy Rule 3018, whose
Claims or Interests are in those classes of Claims or Interests that are “impaired” (as defined in
Section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan.

7 **20.1 Definition of Impairment**

8 Under Section 1124 of the Bankruptcy Code, a class of claims or equity interests is impaired
9 under a Plan of Liquidation unless, with respect to each claim or equity interest of such class, the
plan:

10 (1) leaves unaltered the legal, equitable, and contractual rights to which such
11 claim or interest entitles the holder of such claim or interest; or

12 (2) notwithstanding any contractual provision or applicable law that entitles
13 the holder of such claim or interest to demand or receive accelerated
payment of such claim or interest after the occurrence of a default-

14 (A) cures any such default that occurred before or after the
15 commencement of the case under this title, other than a default of a kind
16 specified in section 365(b)(2) of this title or of a kind that section
365(b)(2) expressly does not require to be cured;

17 (B) reinstates the maturity of such claim or interest as such
18 maturity existed before such default;

19 (C) compensates the holder of such claim or interest for any
20 damages incurred as a result of any reasonable reliance by such holder on
such contractual provision or applicable law;

21 (D) if such claim or such interest arises from any failure to
22 perform a nonmonetary obligation, other than a default arising from
23 failure to operate a nonresidential real property lease subject to section
365(b)(1)(A), compensates the holder of such claim or such interest (other
24 than the debtor or an insider) for any actual pecuniary loss incurred by
such holder as a result of such failure; and

25 (E) does not otherwise alter the legal, equitable, or contractual
26 rights to which such claim or interest entitles the holder of such claim or
interest.

27 A Claim to which an objection has been filed is not an Allowed Claim unless and until the
28 Bankruptcy Court rules on the objection. The Bankruptcy Court may temporarily allow a Disputed

1 Claim to which an objection has been filed for purposes of voting on the Plan. Although holders of
2 Disputed Claims to which an objection has been filed will receive Ballots, these votes will not be
3 counted unless the Bankruptcy Court temporarily allows such Claims for purposes of voting on the
4 Plan.

5 Classes of Claims that are not impaired are conclusively presumed to have voted to accept
6 the Plan pursuant to section 1126(f) of the Bankruptcy code and are not entitled to vote on the Plan.
7 Class 1(a) and Class 3 are not impaired under the Plan and are conclusively presumed to have
8 accepted the Plan. Accordingly, acceptances with respect to Class 1(a) and Class 3 are not being
9 solicited and no Ballots need be returned by Class 1(a) and Class 3.

10 Acceptances of the Plan are therefore being solicited only from Class 1(b), Class 1(c), Class
11 2(b) and Class 2(c). Consequently, only holders of Class 1(b), Class 1(c), Class 2(b) and Class 2(c)
12 need return their Ballots.

13 The Bankruptcy Court will hold a hearing on the Confirmation of the Plan commencing on
14 the date, at the time, and at the place set forth in the Order Approving Disclosure Statement. The
15 hearing may be adjourned from time to time without notice except as given in open court.

16 If a party in interest is a member of more than one class, it will receive a Ballot for each
17 class. IF YOU ARE A MEMBER OF MORE THAN ONE CLASS, YOU MUST FILL OUT AND
18 RETURN ALL BALLOTS SENT TO YOU FOR YOUR VOTE TO COUNT IN EACH CLASS.
19 CREDITORS WISHING TO VOTE ON THE PLAN SHOULD COMPLETE THE BALLOT
20 PROVIDED AND RETURN IT NO LATER THAN [x date] TO:

21 **STEELE, GEORGE, SCHOFIELD & RAMOS, LLP**

22 **Attn: Alan E. Ramos**

23 **3100 Oak Road, Suite 100**

24 **Walnut Creek, California, 94597-2078**

25 **Facsimile: (925) 935-1642**

26 **Email:aramos@sgsrlaw.com**

27 IF YOUR BALLOT IS NOT RETURNED BY [enter date], (the “VOTING DEADLINE”)
28 IT MAY NOT BE CONSIDERED. BALLOTS WHICH ARE RETURNED BUT NOT
PROPERLY EXECUTED WILL NOT BE CONSIDERED. BALLOTS WHICH ARE EXECUTED
BUT WHICH FAIL TO INDICATE EITHER ACCEPTANCE OR REJECTION OF THE PLAN
WILL BE CONSIDERED AS ACCEPTING THE PLAN.

As the holder of a Claim against the Debtor, your acceptance of the Plan is important. Under
the Bankruptcy Code a class of Creditors accepts a plan when holders of two-thirds (2/3) in dollar
amount and more than one-half (1/2) in number of the claims of that class which actually cast ballots
for acceptance or rejection of the Plan. Acceptance takes place only if two-thirds (2/3) in amount
and a majority of the Creditors voting cast their ballots in favor of acceptance.

If any class of Claims does not accept the Plan, the Debtor may elect to seek Confirmation of
the Plan under Section 1129(b) of the Bankruptcy Code. Confirmation under Section 1129(b) can,
in appropriate circumstances, take place notwithstanding the rejection of, or objection to, the plan by
the holders of claims and interests. If required, the Plan may be modified at or prior to the
Confirmation Hearing to permit Bankruptcy Court approval under Section 1129(b). If the Plan is not

1 confirmed, the Bankruptcy Court may order the Bankruptcy Case dismissed, or converted to a case
2 under Chapter 7 of the Bankruptcy Code, or the Debtor or other parties in interest may propose a
different plan.

3 After carefully reviewing the Plan and Disclosure Statement, indicate your vote on the
4 enclosed Ballot and return it in the envelope provided to the address stated above. Accordingly, you
5 are urged to return your signed and completed Ballot promptly. Ballots not received by the Voting
6 Deadline and unsigned Ballots will not be counted. Any executed Ballots that are timely received,
but which do not indicate either an acceptance or rejection of the Plan, will be deemed to constitute
an acceptance of the Plan.

7 If you are a Holder of a Claim in Class 2(a) or Class 2(b) and: (a) did not receive a Ballot; (b)
8 received a damaged or illegible Ballot; or (c) lost your Ballot, or if you are a party in interest and
9 have any questions concerning the Disclosure Statement, any of the Exhibits hereto, the Plan, or the
10 voting procedures in respect thereof, please contact Steele, George, Schofield & Ramos, LLP, Attn:
Alan E. Ramos, 3100 Oak Road, Suite 100 Walnut Creek, California 94597; Telephone: (925) 280-
1700; Facsimile: (925) 935-1642; Email: aramos@sgsrlaw.com.

11 THE DEBTOR, AS PROPONENT OF THE PLAN, RECOMMENDS THAT THE
12 HOLDERS OF CLAIMS IN CLASSES 2(a) AND 2(b) VOTE TO ACCEPT THE PLAN.

13 A summary of the treatment of the various classes of Claims and Interests is set forth above.

14 ARTICLE XXI

15 CONFIRMATION PROCEDURES; OBJECTIONS TO CONFIRMATION

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

17 **21.1 Confirmation Hearing**

18 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold
19 a hearing on Confirmation of the Plan (the "Confirmation Hearing"). The Confirmation Hearing
20 may be postponed from time to time by the Bankruptcy Court without further notice except for an
announcement made at the Confirmation Hearing or any postponement thereof. Section 1129(b)
21 provides that any party in interest may object to Confirmation of the Plan. Any objection to
Confirmation must be made in writing and filed with the Bankruptcy Court and served on the
22 following parties, together with a certificate of service:

23 Steele, George, Schofield & Ramos, LLP
24 Alan E. Ramos
3100 Oak Road, Suite 100
Walnut Creek, California, 94597-2078
25 Facsimile: (925) 935-1642

26 United States Trustee
27 Barbara A. Matthews
1301 Clay Street, #690N
Oakland, CA 94512
28 Facsimile: (510) 637-3220

1 Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014.

2 **21.2 Requirements for Confirmation of the Plan**

3 At the Confirmation Hearing the Bankruptcy Court must confirm the Plan if it determines
4 that all of the requirements of Section 1129 of the Bankruptcy Code have been satisfied. The
5 applicable requirements are as follows:

- 6 a) The Plan complies with the applicable provisions of the Bankruptcy Code;
- 7 b) The Debtor has complied with the applicable provisions of the Bankruptcy Code;
- 8 c) The Plan has been proposed in good faith and not by any means forbidden by law;
- 9 d) Any payment made or to be made by the Debtor, or by a person issuing securities or
10 acquiring property under the Plan, for services or for costs and expenses in or in
11 connection with the Case, or in connection with the Plan and incident to the Case, has
12 been approved by, or is subject to the approval of, the Court as reasonable;
- 13 e) The Debtor has disclosed the identity and affiliations of the individual proposed to
14 serve, after Confirmation of the Plan, as the Managing Member of the Debtor a
15 successor to the Debtor under the Plan; and the appointment to, or continuance in,
16 such office of such individual is consistent with the interests of holders of Claims and
17 Interests and with public policy; and the Debtor has disclosed the identity of any
18 insider that will be employed or retained by the Reorganized Debtor, and the nature
19 of any compensation for such insider;
- 20 f) With respect to each class of impaired Claims or Interests, each holder of a Claim or
21 Interest of such class either (a) has accepted the Plan, or (b) will receive or retain
22 under the Plan on account of such Claim or Interest property of a value, as of the
23 Effective Date of the Plan, that is not less than the amount that such holder would
24 receive or retain if the Debtor were liquidated on such date under Chapter 7 of the
25 Bankruptcy Code;
- 26 g) Subject to the “cramdown” provisions of the Bankruptcy Code discussed in Section
27 21.4 below, each class of Claims or Interest has accepted the Plan;
- 28 h) Except to the extent that the holder of a particular Claim has agreed to a different
 treatment of such Claim, the Plan provides that incurred, Allowed Administrative
 Claims will be paid in full on the Effective Date of the Plan and that Allowed Tax
 Claims will be paid in full over a period not longer than five (5) years from the
 Petition Date.
- i) If a class of Claims is impaired under the Plan, at least one class of impaired Claims
 has accepted the Plan, determined without including any acceptance of the Plan by
 any insider holding a Claim of such class;
- j) Confirmation of the Plan is not likely to be followed by the liquidation, or the need

for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan;

k) All fees payable under Section 1930 of Title 28, as determined by the Court at the Confirmation Hearing of the Plan, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan; and

l) All transfers of property of the Plan are to be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

21.3 Compliance with Confirmation Requirements

The Debtor believes that all of the foregoing requirements have been or will be met prior to the Confirmation Hearing. Specifically, the Debtor believes: (1) the Plan is in the best interests of Creditors, in that holders of all Allowed Claims will receive payments under the Plan having a present value as of the Effective Date of the Plan in amounts not less than the amounts likely to be received if the Debtor was liquidated in a case under Chapter 7 of the Bankruptcy Code; (2) the Plan will be accepted by sufficient votes in each impaired class or may be confirmed under the cramdown standards of Section 1129(b) even if sufficient votes are not received; and (3) the Plan is feasible in that the Debtor will have sufficient cash available at all times to fund the Plan.

21.4 Cramdown

In the event that any impaired class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtor if the Plan does not discriminate unfairly and is fair and equitable as to each impaired class which has not accepted the Plan. A plan does not discriminate unfairly against a class if the plan allocates value to that class in a manner consistent with the treatment afforded to other classes with similar legal claims against the Debtor. Fair and equitable has different meanings for the holders of secured and unsecured claims, and for the holders of interests.

With respect to an unsecured claim, fair and equitable means either: (a) each impaired unsecured creditor receives or retains property of a value equal to the amount of its allowed claim; or (b) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

With respect to a class of interests, fair and equitable means either: (a) the plan provides that each holder of an interest in such class receive or retain on account of such interest in property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (b) the holder of any interest that is junior to the interests of such class will not receive or retain any property under the plan on account of such junior interest.

In the event that one or more classes of impaired Claims or Interests rejects the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired class of Claims or Interests.

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ARTICLE XXII

BEST INTERESTS TEST

The Bankruptcy Court must independently determine that the Plan is in the best interest of all classes of Creditors and Interests. The best interest test requires that the Plan provide to each dissenting member of each impaired class a recovery that has a present value at least equal to the present value of the distribution which each such Creditor or Interest Holder would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

In performing this analysis, the Bankruptcy Court must determine the amount that would be generated from a Chapter 7 liquidation of the Debtor's assets after deducting the cost of liquidation. The cost of liquidation would include the Trustee's commissions, the Trustee's expenses, and fees for counsel and other professionals retained by the Trustee and Administrative Claims. In addition to liquidating the Debtor's assets, the Trustee must also decide whether to litigate certain claims and possibly other litigation matters. Generally, no distribution is made in a Chapter 7 case until all assets of the Bankruptcy Estate and all claims have been liquidated, a process that often can take many months and sometimes years. This delay could further impair the value of any distribution made to holders of Claims under a Chapter 7 liquidation.

In this case, Creditors and Interest holders will receive maximum recovery if the Debtor is able to continue profitable operation of its business. A Chapter 7 trustee would not have the insider knowledge and experience operating the business that the Responsible Person possesses in this case. Any change in management of Debtor's commercial property/business would reduce the value of the business as a going concern. If the Chapter 7 trustee conducted a foreclosure of the Debtor's commercial property, very little value would be realized given the steep decline in the Oakland real estate market. A foreclosure would eliminate Debtor's assets in this single asset real estate case.

On the other hand, Confirmation of the Plan will enable the Reorganized Debtor to timely distribute proceeds, barring unforeseen Claims. By continuing to operate the commercial business and distribute proceeds according to the Plan, the Debtor believes that Creditors will realize a higher return.

The operation of Debtor's business requires attention to matters by management familiar with the Debtor in order to maximize the value of the Estate and return to Creditors. Only through management knowledgeable with the Debtor's operations, will the Debtor be able to maximize value of its assets.

The profits generated from the operation of Debtor's business will be distributed in accordance with the priority scheme set forth in the Bankruptcy Code. The Debtor believes that the distributions made pursuant to the Plan will achieve at least the same results (or better) as would occur in conversion to a Chapter 7. A favorable result can be achieved without the duplication of administrative costs that would result from the appointment of a Chapter 7 Trustee and the employment of additional professional persons, and the delay attendant with the administration of the assets in Chapter 7.

Those Creditors who are impaired under the Plan are receiving, at a minimum, the equivalent of what they would receive in a Chapter 7 liquidation. The Debtor believes that the Creditors will

1 achieve a more favorable result in a Chapter 11 reorganization.

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3 **ARTICLE XXIII**
4 **POST-CONFIRMATION MANAGEMENT**

5 On and after the Effective Date, Jeffrey A. Wilcox shall serve as the Reorganized Debtor's
6 Managing Member. Jeffrey A. Wilcox currently owns 100% of Interests in the Debtor. As
7 Managing Member, Mr. Wilcox will receive no salary.

8 Dated: May 22, 2012

9 **WILCOX EMBARCADERO ASSOCIATES,**
10 **LLC**

11 /s/ Jeffrey A. Wilcox

12 Jeffrey A. Wilcox
13 Responsible Individual

14 **STEELE, GEORGE, SCHOFIELD & RAMOS,**
15 **LLP**

16 /s/ Alan E. Ramos

17 Alan E. Ramos, Esq.
18 Attorneys for Wilcox Embarcadero Associates, LLC
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