

1 JOEL K. BELWAY [60556]
2 THE LAW OFFICE OF JOEL K. BELWAY
3 Professional Corporation
4 235 Montgomery Street, Suite 668
5 San Francisco, CA 94104
6 Telephone: (415) 788-1702
7 Facsimile: (415) 788-1517

8 Attorney for Debtor and Debtor-in-Possession

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re) Case No.: 11-34171
13) (Chapter 11)
14 WYSTERIA, LLC, Debtor.)
15) **COMBINED PLAN OF**
16) **REORGANIZATION AND**
17) **DISCLOSURE STATEMENT UNDER**
18) **CHAPTER 11 OF THE BANKRUPTCY**
19) **CODE DATED February 16, 2012**
20 Federal ID No. 57-1210719)

21 **INTRODUCTION**

22 This Combined Plan of Reorganization and Disclosure Statement Under Chapter 11 of
23 the Bankruptcy Code dated February 16, 2012 (the "Plan Document") provides for the
24 restructuring of the debts of debtor and debtor in possession, WYSTERIA, LLC (referred to
25 herein as "Debtor" or "Wysteria"). This Plan Document contains the Debtor's proposal with
26 respect to payment of claims against the Debtor and the Debtor's emergence from bankruptcy
27 (as set forth in Section III herein, and as may be amended from time to time, the "Plan") and has
28 been preliminarily approved by the United States Bankruptcy Court, Northern District of
California ("Bankruptcy Court"), as containing adequate information regarding the Plan to
enable creditors to make a reasonably informed decision in exercising their right to accept or
reject the Plan.

1 Each recipient should carefully review and consider this Plan Document before voting
2 the ballot enclosed herewith.

3 **NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY**
4 **AS TO ITS FUTURE BUSINESS OPERATIONS, AFFAIRS, THE VALUE OF ITS**
5 **PROPERTY OR ITS LIABILITIES ON CREDITORS' CLAIMS, ARE AUTHORIZED**
6 **BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS PLAN DOCUMENT.**
7 **THE INFORMATION CONTAINED IN THIS PLAN DOCUMENT HAS NOT BEEN**
8 **SUBJECT TO A CERTIFIED AUDIT. HOWEVER, EVERY REASONABLE EFFORT**
9 **HAS BEEN MADE TO PRESENT ACCURATE FIGURES AND ESTIMATES. THE**
10 **RECORDS KEPT BY THE DEBTOR ARE NOT WARRANTED OR REPRESENTED**
11 **TO BE WITHOUT ANY INACCURACY. THE DEBTOR'S COUNSEL MAKES NO**
12 **REPRESENTATIONS OR WARRANTIES WHATSOEVER IN CONNECTION**
13 **HEREWITH. THE BANKRUPTCY COURT'S PRELIMINARY APPROVAL OF THIS**
14 **PLAN DOCUMENT DOES NOT MEAN THAT THE BANKRUPTCY COURT HAS**
15 **CONDUCTED AN INQUIRY TO VERIFY THE ACCURACY OF THE**
16 **INFORMATION CONTAINED HEREIN.**

17
18 If confirmed, the Plan will bind all creditors provided for in the Plan, whether or not
19 they file a proof of claim or accept the Plan, and whether or not their claims are allowed. All
20 creditors should refer to the Plan for information regarding the precise treatment of their claims.
21 **Your rights may be affected. You should read the Plan Document carefully and discuss it**
22 **with your attorney, if you have one.**

23 SUMMARY OF THE PLAN

24 The Plan seeks to restructure the Debtor's debts in accordance with its rights and
25 obligations under the Bankruptcy Code. As required by the Bankruptcy Code, the Plan divides
26 the Debtor's creditors into separate classes. Each Secured Creditor has its own class. There are
27 classes for general unsecured creditors, priority creditors, and administrative convenience
28 creditors, see Article III below.

1 The Plan provides that through the ongoing development of its real property, the Debtor
2 will pay all Allowed creditors in full, and interest holders will retain their interests.

3 This is a summary only. The Plan is a complex document containing additional details
4 which should be studied in full. Additionally, the treatment summarized here applies only to
5 "Allowed Claims", defined below. The Plan reserves the Debtor's right to dispute any claim on
6 any basis and to bring affirmative litigation claims against any party.

7 **DEFINITIONS**

8 As used in the Plan and Disclosure Statement, the following terms shall have the
9 respective meanings specified below:

10 "Administrative Claim" means a Claim for any cost or expense of administration of a
11 kind specified in Section 503(b) of the Bankruptcy Code, including any actual and necessary
12 costs and expenses of preserving the Estate incurred on or after the Petition Date and through
13 and including the Confirmation Date, any cure amounts that must be paid in connection with the
14 assumption of any executory contract or unexpired lease of the Debtor under Section 365 of the
15 Bankruptcy Code, fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and
16 compensation for legal or other services and reimbursement of expenses allowed by the
17 Bankruptcy Court under Sections 330 and 331 of the Bankruptcy Code or otherwise.

18 "Administrative Claims Bar Date" means that date which is thirty (30) days following
19 the Effective Date.

20 "Allowed" or "Allowed Amount" means the amount in which any Claim is allowed.
21 Unless otherwise expressly required by the Bankruptcy Code or the Plan, the Allowed Amount
22 of any Claim does not include interest on such Claim from or after the Petition Date.

23 "Allowed Administrative Claim" means all or any portion of an Administrative Claim
24 that has either been Allowed by a Final Order or has not been objected to within the time period
25 established by the Plan or by an order of the Bankruptcy Court.

26 "Allowed Claim", "Allowed Priority Claim", "Allowed Secured Claim", "Allowed Tax
27 Claim", or "Allowed Unsecured Claim" means a Claim of the given type (a) in respect to which
28

1 a proof of Claim has been filed with the Bankruptcy Court by the applicable Claims Bar Date
2 and to which no objection has been filed within the time fixed by the Plan or the Bankruptcy
3 Court; (b) as to which no proof of Claim has been filed and which has been listed on Schedule
4 D, E or F of the Debtor's Schedules and is not listed as disputed, contingent, unliquidated or
5 unknown as to amount, and to which no objection has been filed within the time fixed by the
6 Plan or the Bankruptcy Court; or (c) which is Allowed by a Final Order. No Claim shall be
7 considered an Allowed Claim if (1) an objection to the allowance thereof is interposed by a
8 party in interest within the time fixed by the Plan or the Bankruptcy Court, and such objection
9 has not been overruled by a Final Order, or (2) the Claim has already been satisfied.

10 "Available Cash" means any and all cash and cash equivalents owned or held by the
11 Reorganized Debtor or the Estate available for payment of Claims after payment of Allowed
12 Administrative Claims, Allowed Tax Claims, Allowed Priority Claims, Allowed Secured
13 Claims, and after reserving for expenses incurred and anticipated to be incurred as provided for
14 under the Plan.
15

16 "Bankruptcy Case" or "Case" means the bankruptcy case commenced by the Debtor
17 filing with the Bankruptcy Court of its Voluntary Petition under Chapter 11 of the Bankruptcy
18 Code, Case No. 11-34171.

19 "Bankruptcy Code" means Title 11, United States Code, § 101, et seq. as in effect and
20 applicable to the Case.

21 "Bankruptcy Court" means the United States Bankruptcy Court for the Northern District
22 of California, San Francisco Division, or such other court exercising jurisdiction over the Case.

23 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure promulgated
24 under 28 U.S.C. § 2075, as amended, as applicable to the Bankruptcy Case.

25 "Claim" means any (A) right to payment, whether or not such right is reduced to
26 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
27 undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for
28 breach of performance if such breach gives rise to a right to payment, whether or not such right

1 to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed,
2 undisputed, secured, or unsecured.

3 "Claims Bar Date" means (a) with respect to claims other than those held by
4 governmental units, March 26, 2012, (b) with respect to claims held by governmental units, 180
5 days after the Petition Date, and (c) with respect to Rejection Claims, the Rejection Claims Bar
6 Date.

7 "Claims Objection Date" means the date ninety (90) days after the Effective Date;
8 provided, however, that the Claims Objection Date may be extended by the Bankruptcy Court
9 for cause upon the *ex parte* motion of the Reorganized Debtor or the Plan Administrator.

10 "Confirmation" means the entry by the Bankruptcy Court of the Order of Confirmation.

11 "Confirmation Date" means the date on which the Bankruptcy Court enters the Order of
12 Confirmation.

13 "Confirmation Hearing" means the hearing held by the Bankruptcy Court on
14 confirmation of the Plan as required by Section 1128(a) of the Bankruptcy Code.

15 "Creditor" means any entity holding a Claim against the Debtor.

16 "Debtor" means Wysteria, LLC, a limited liability company.

17 "Debtor's Professionals" means The Law Office of Joel K. Belway, P.C., and/or their
18 respective successors, if any; and such other professionals whose employment by the Debtor
19 prior to Confirmation is approved by order of the Bankruptcy Court, if any; and following the
20 Effective Date, any professionals engaged by the Reorganized Debtor to represent or assist it in
21 fulfilling its duties and obligations under the Plan, including such accountant(s) as may be
22 selected to complete the Debtor's tax returns and other required filings with governmental
23 authorities having jurisdiction over the Reorganized Debtor or the Estate and such legal
24 professionals as might be appropriate to assist in administering the Plan, the Bankruptcy Case
25 and the Estate.

26 "Disputed Claim" means a Claim against the Debtor (a) as to which a proof of Claim has
27 not been filed and that has been listed in the Debtor's Schedules as disputed, contingent,
28

1 unliquidated, or unknown as to amount or; (b) as to which an objection or adversary proceeding
2 has not been withdrawn or disposed of by a Final Order.

3 "Distribution" means, as the context requires: (a) the cash to be provided under the Plan
4 to the holders of Allowed Claims; or (b) the payment, transfer, delivery or deposit of cash to
5 Creditors pursuant to the Plan.

6 "Distribution Date" means any date on which a Distribution is made pursuant to the
7 Plan.

8 "Effective Date" means the fourteenth (14th) day following the date of the entry of the
9 Order of Confirmation, provided, however, if a stay of the Confirmation Order is in effect on
10 that date, the Effective Date will be the first business day after the date on which no stay of the
11 Confirmation is in effect, provided that the Confirmation Order has not been vacated.

12 "Estate" means the estate created by the commencement of the Bankruptcy Case and
13 comprised of the Property described in Section 541 of the Bankruptcy Code and all property
14 and property interests acquired or arising after the Petition Date, including without limitation
15 the proceeds of any litigation. The "Estate" as used herein shall continue to exist on and after
16 the Effective Date.

17 "Final Order" means an order entered on the docket by the Bankruptcy Court as to which
18 no timely filed notice of appeal is pending within fourteen (14) days after entry of such order;
19 or, if such appeal is pending, for which no stay pending appeal has been issued.

20 "Local Rules" means the Local Rules of the United States Bankruptcy Court for the
21 Northern District of California, as amended, as applicable to this Bankruptcy Case.

22 "Order of Confirmation" or "Confirmation Order" means the order entered by the
23 Bankruptcy Court approving and confirming the Plan in accordance with the provisions of
24 Chapter 11 of the Bankruptcy Code.

25 "Person" shall have the meaning ascribed to it in the Bankruptcy Code.
26
27
28

1 "Petition Date" means November 18, 2011, the date on which the Debtor filed its
2 Voluntary Petition under Chapter 11 initiating the Bankruptcy Case and on which date relief
3 was ordered in the Bankruptcy Case.

4 "Plan" means this Combined Plan of Reorganization and Disclosure Statement under
5 Chapter 11 of the Bankruptcy Code (Dated February 16, 2012), including any modification(s)
6 hereof and/or amendment(s) hereto that comply with Section 1127 of the Bankruptcy Code and
7 Bankruptcy Rule 3019.

8 "Priority Claim" means any Claim entitled to priority pursuant to Section 507(a) of the
9 Bankruptcy Code, but not including an Administrative Claim or a Tax Claim.

10 "Priority Claims Objection Date" means the date thirty (30) days after the Effective
11 Date.

12 "Pro Rata" means, with respect to any Distributions to be made to the holder of an
13 Allowed Claim, the proportion that such Allowed Claim bears to the aggregate of all
14 outstanding Allowed Claims in the same Class.

15 "Rejection Claim" means an Unsecured Claim arising from the Debtor's rejection of an
16 unexpired lease or executory pursuant to the Plan or pursuant to an order of the Bankruptcy
17 Court.

18 "Rejection Claims Bar Date" means the earlier of (a) thirty (30) days following the date
19 of the Effective Date, or (b) thirty (3) days after the rejection date with respect to an executory
20 contract or unexpired lease rejected before the Confirmation Date pursuant to a Final Order.

21 "Reorganized Debtor" means the Debtor from and after the Effective Date up through
22 the entry of a final decree closing the Case.

23 "Schedules" means the Debtor's respective schedules of assets and liabilities consisting
24 of Schedule "A" through "H" filed with the Bankruptcy Court pursuant to Section 521(a)(1) of
25 the Bankruptcy Code and Bankruptcy Rule 1007(b), as may be amended at any time prior to
26 Distribution.
27
28

1 "Secured Claim" means a Claim secured by a lien, security interest, or other charge
2 against or interest in property in which the Debtor has an interest or that is subject to set off
3 under Section 553 of the Bankruptcy Code, to the extent of the value (as specified in the Plan,
4 or if no value is specified, as determined in accordance with Section 506(a) of the Bankruptcy
5 Code) of the interest of a holder of such Allowed Claim in the Debtor's interest in such property
6 or to the extent of the amount subject to such setoff, as the case may be.

7 "Tax Claim" means any Claim against the Debtor entitled to priority pursuant to Section
8 507(a)(8) of the Bankruptcy Code.

9 "Unsecured Claim" means a Claim which is not a Secured Claim.

10 A term used in the Plan that is not herein defined but is defined in the Bankruptcy Code
11 or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code
12 or the Bankruptcy Rules.
13

14 **ARTICLE I**

15 **BACKGROUND OF THE DEBTOR AND FINANCIAL INFORMATION**

16 Debtor is a California limited liability company. The members are Claire Kendrick,
17 Rosemary Kendrick and Katherine Kendrick. The sole manager (and responsible individual in
18 this Chapter 11 case) is Steve Kendrick ("Mr. Kendrick")

19 **Assets and Liabilities.**

20 The Debtor filed "Schedules of Assets and Liabilities" and "Statement of Financial
21 Affairs" shortly after the Petition, which described its assets and liabilities. These documents
22 are available for viewing online at the Court's PACER website. See www.canb.uscourts.gov for
23 instructions on how to access these materials, or contact the Debtor's counsel to receive paper
24 copies.

25 Debtor's real property holding consists of the undeveloped real property commonly
26 described as 5,418 square feet of land known as Lot 54 being a portion of 50 Vara Block 212,
27 San Francisco, CA, currently zoned RH-2 (the "Property"). There is one secured loan against
28 the Property, held by Fourth Third, LLC, a Delaware limited liability company ("Fourth

1 Third”), with a principal balance of \$15,000,000 together with accrued interest and charges (the
2 “43 Loan”). As of November 1, 2011, the balance of the 43 Loan was \$18,641,588.35.

3 Other than the Property, Debtor owns certain construction and architectural documents
4 associated with present and future improvements to the Property, together with all personal
5 property rights, entitlements or claims, howsoever denominated or described, associated with
6 the Property. These additional personal property assets and rights (the “Personal Property”) are
7 the subject to a security agreement with Fourth Third, and are additional collateral for the 43
8 Loan.

9 The Property was appraised in June 2011 in its as-is condition as raw land, by an
10 appraiser for Fourth Third, for \$25,340,000. Debtor values the Personal Property, which was
11 produced at a cost of \$2,639,570, at \$12,285,212 as of November 18, 2011 (at market, per
12 proration of projected net proceeds).

13 As to liabilities other than the 43 Loan, Debtor has scheduled unsecured claims of
14 \$91,605.37, held by professionals engaged to work on the development of the Property. The
15 Internal Revenue Service has filed a claim of \$2,500.

17 **ARTICLE II**

18 **EVENTS LEADING TO BANKRUPTCY AND POST-PETITION DEVELOPMENTS**

19 **Project Background.**

20 Debtor is a company formed to develop an historically sensitive site in the National
21 Register Historic District at the crest of Russian Hill in San Francisco. The Property is vacant
22 land in the only block of old San Francisco that was spared by the fire that accompanied the
23 1906 earthquake. This vacant land is surrounded by historic and architecturally significant pre-
24 earthquake houses.

25 The members and manager of Debtor are part of the Kendrick family, which has lived in
26 an historic house on this same block for nearly 40 years and has long been active in historic
27 preservation. They acquired the vacant land that is the Property in 1976, and subsequently a
28 second vacant parcel on the back side of this same historic block, on Vallejo Street, in 1984.

1 These land acquisitions were part of an effort, in cooperation with other preservation-minded
2 neighbors, to gain control of the remaining vacant parcels within this block to ensure that their
3 inevitable development was done in a manner that was historically sensitive and compatible
4 with the surrounding Historic District.

5 The family successfully developed the Vallejo Street site in 1999 with historically-
6 sensitive architecture that has been widely acclaimed and admired by both the neighborhood
7 and the City of San Francisco. The family then turned its attention, starting in 2004, to the
8 current site, and after extensive discussions with the neighborhood, with historic preservation
9 groups and with the city, developed the designs to build two single family homes and one
10 duplex on the site, and formed Wysteria LLC, owned by the family's three adult daughters and
11 managed by Mr. Kendrick, assisted by one of the daughters, to carry out this development.

12 To fund the pre-construction phase of the development (architecture, engineering, permit
13 fees, interest reserve, etc.), along with refinancing pre-existing debt on the Property, Debtor
14 took out a \$15 million pre-construction loan with Fourth Third, a special purpose entity formed
15 by Medley Capital, a hedge fund ("Medley"), for the purpose of making this loan. The
16 expectation at the time was that by the time the Fourth Third loan came due that the project
17 would be fully entitled and would thus be in a position to refinance out the Fourth Third loan
18 with a conventional construction loan which, in addition to taking out Fourth Third, would
19 provide the funds needed to build the project.

20
21 **Unexpected Problems.**

22 Unfortunately, shortly after taking out the 43 Loan, Lehman Brothers filed bankruptcy,
23 triggering a series of events that plunged the United States and the rest of the world into a
24 severe financial crisis. The San Francisco Planning Department, which oversees Wysteria's
25 entitlement process, was severely impacted as the City of San Francisco underwent a series of
26 budget cuts, layoffs and hiring freezes. Further complicating the Planning Department's
27 productivity were two scandals that resulted in further staff terminations. As a result, many of
28 the planners responsible for working on Wysteria's application were laid off or resigned before

1 completing their tasks in the step-by-step entitlement process, and worse still, due to the budget
2 cuts, many of the desks that Wysteria's entitlements needed to pass through were left unmanned
3 for six months at a time. As a result, Wysteria's entitlements, though progressing through the
4 process, have taken far longer than originally projected.

5 Consequently, as the 43 Loan approached its October 1, 2011 maturity, it become clear
6 that Wysteria, though finally through most of its entitlement hurdles, and all the most significant
7 ones, would not be 100% entitled by the 43 Loan maturity date, and hence not yet in a position
8 to qualify for a conventional construction loan to take out Fourth Third. In normal economic
9 times it would be possible to resolve this problem by simply taking out Fourth Third with a new
10 pre-construction lender similar to Medley, especially as the project was now far more advanced,
11 its architecture and engineering extensively developed and its entitlements nearly complete.
12 However, in the aftermath of the financial crash, credit had become virtually frozen. By
13 October 2011, while limited construction lending was beginning to become available, pre-
14 construction lending - land loans for projects not yet fully entitled - remained virtually
15 nonexistent.
16

17 Recognizing this problem, Fourth Third offered to convert \$5 million of its \$15 million
18 loan to equity in Wysteria, in order to improve the loan-to-value ratio to a point that it might be
19 possible to attract a new land loan to take their loan. Fourth Third's attorneys drafted the
20 necessary legal documentation to permit a discounted loan payoff for \$10 million cash plus \$5
21 million preferred equity in Wysteria, such preferred equity to accrue an 8% per annum return.

22 With the availability of this discounted payoff, Wysteria was then ultimately able to
23 attract a new lender to take out the 43 Loan. The new lender was a real estate development and
24 investment company in San Francisco, S.N. Barnes LP. The terms of the Barnes takeout loan
25 were negotiated back and forth between Barnes, Wysteria and Fourth Third until final terms
26 were agreed to by all parties, and Barnes deposited money into escrow. Fourth Third extended
27 its loan term maturity to November 4, 2011 to provide the time needed to close the Barnes
28

1 The Allowed Claims against and Interests in the Debtor are designated and classified
2 below for purposes of the Plan. Except to the extent that the Plan provides otherwise, a Claim
3 or Interest that is properly includable in more than one class is classified in a particular class
4 only to the extent that it qualifies within the description of that class, and is placed in a different
5 class to the extent it qualifies within the description of such different class.

6 3.1 **Class 1 (Secured Claim of the City and County of San Francisco, CA).** Class 1
7 consists of the Allowed Claim of the City and County of San Francisco, or its assignee, for
8 unpaid real and personal property taxes to the extent that such Claim constitutes an Allowed
9 Secured Claim on the real and personal property owned by the Debtor.

10 3.2 **Class 2 (Secured Claim of Fourth Third).** Class 2 consists of the Allowed Claim
11 of Fourth Third, or its assignee, to the extent that such Claim constitutes an Allowed Secured
12 Claim on certain real and personal property owned by the Debtor.

13 3.3 **Class 3 (Administrative Convenience Claims).** Class 3 consists of Allowed Non-
14 Priority Unsecured Claims in the amount of \$1,000 or less.

15 3.4 **Class 4 (General Unsecured Claims).** Class 4 consists of all Allowed Unsecured
16 Claims against the Debtor, including without limitation all Rejection Claims, all unsecured
17 Claims of vendors and trade creditors for goods delivered or services provided to the Debtor
18 prior to the Petition Date.

19 3.5. **Class 5 (Wysteria LLC Interests).** Class 5 consists of the membership interests in
20 the Debtor.

21 22 ARTICLE IV

23 **CLASSES OF CLAIMS NOT IMPAIRED UNDER THE PLAN**

24 The following classes of Claims are not impaired under the Plan and shall receive the
25 following treatment: Class 3, the holders of which shall be paid a lump sum dividend equal to
26 the amount of their Allowed Claims as soon as practical after the Effective Date; and Class 5,
27 which shall retain their membership interests in the Debtor.
28

1 **ARTICLE V**

2 **TREATMENT OF UNCLASSIFIED CLAIMS**

3 Unclassified Claims shall be treated as follows:

4 5.1 **Allowed Administrative Claims.** Except to the extent that the holder of a
5 particular Administrative Claim has agreed to a different treatment of such Claim, each holder
6 of an Allowed Administrative Claim shall be paid in cash, in full upon the later of (a) the
7 Effective Date, (b) if such Claim is initially a Disputed Claim, when it becomes an Allowed
8 Administrative Claim, and (c) if such Claim is incurred after the Petition Date in the ordinary
9 course of the Debtor's business by a person other than an insider, within such time as payment is
10 due pursuant to the terms giving rise to such Claim. Any request for allowance of an
11 Administrative Claim pursuant to Section 503(a) of the Bankruptcy Code (including an
12 estimation of expenses to be incurred after the Effective Date), other than by the Debtor's
13 Professionals, must be filed on or before the Administrative Claims Bar Date or the holder of
14 such Claim shall be forever barred from asserting such Claim or receiving any payment on
15 account of such Claim.
16

17 5.2 **Tax Claims.** The holders of Allowed Claims entitled to priority under 11 U.S.C.
18 § 507(a)(8) ("Allowed Tax Claims") will receive deferred cash payments, payable quarterly,
19 commencing with an initial payment six months from the Effective Date, over a period not
20 exceeding five (5) years after the Petition Date, the unpaid portion of any such claim to bear
21 interest at the statutory rate; provided however, that Allowed Tax Claims shall be paid in a
22 manner not less favorable than the most favored nonpriority unsecured claim provided for by the
23 Plan. The Reorganized Debtor reserves the right to pay Allowed Tax Claim(s) in full at any
24 time after the Effective Date, provided that all claims entitled to higher priority pursuant to
25 Bankruptcy Code Section 507(a) are first paid in full.
26

27 **ARTICLE VI**

28 **TREATMENT OF CLASSES OF CLAIMS AND INTERESTS THAT ARE IMPAIRED**

UNDER THE PLAN

1 The following classes of Claims and Interests are impaired under the Plan and shall
2 receive the following treatment:

3 6.1 **Class 1 (Secured Claims of The City and County of San Francisco.)** The holder
4 of the Allowed Class 1 Secured Claims shall retain its liens under non-bankruptcy law until all
5 taxes have been paid in full and the Claims shall be fully matured, due, and payable within 365
6 days of the Effective Date.

7 6.2 **Class 2 (Secured Claim of Fourth Third.)** The holder of the Allowed Class 2
8 Secured Claim shall retain its lien under non-bankruptcy law. As of the Effective date, the Note
9 representing the Class 2 Secured Claim shall be deemed modified to provide that it shall be
10 fully matured, due, and payable within the later of entry of a final order allowing its claim or
11 365 calendar days from the Effective Date. Except as provided in this Plan, all terms and
12 conditions of the loan documents for the loan held by the Class 2 Claimant will remain
13 unchanged and will be paid by the Debtor as required by the terms of said documents, and shall
14 be enforceable by the Class 2 Claimant in accordance with their terms.

15 6.3 **Class 4 (General Unsecured Claims.)** Each Class 4 Allowed Claim shall be paid
16 in full, with interest at the rate of six percent (6%) per annum, within 365 days from the
17 Effective Date.
18

19 ARTICLE VII

20 **MEANS FOR IMPLEMENTATION OF THE PLAN**

21 7.1 **Post Confirmation Operation and Management of Reorganized Debtor.** On
22 and after the Effective Date, the Reorganized Debtor shall be free to operate its business without
23 further supervision or control by the Bankruptcy Court and free of any restrictions imposed by
24 the Bankruptcy Code except as provided in the Plan or by an order of the Bankruptcy Court.
25 Specifically and without limitation, the Reorganized Debtor may sell, lease, or refinance its
26 properties without further Order of Court.

27 7.2 **Retained Power to Sell Free and Clear of Liens.** The Reorganized Debtor
28 reserves all of its pre-confirmation rights and powers to sell its property free and clear of liens

1 and interests by noticed motion pursuant to Bankruptcy Code § 363(f), as to any lien or interest
2 whether scheduled or unscheduled, and whether perfected or unperfected. The Court expressly
3 reserves jurisdiction over those matters.

4 **7.3 Distributions.**

5 **7.3.1 In General.** The Reorganized Debtor shall make Distributions to holders
6 of Allowed Claims within 365 days after the Effective Date. Distributions may be made
7 without further Order of Court.

8 **7.3.2 Distribution Addresses.** Unless the Creditor has provided the
9 Reorganized Debtor with written notice of a different address, Distributions will be sent to
10 Creditors at the address set forth in the proofs of claim filed with the Bankruptcy Court. If no
11 proof of Claim is filed with respect to a particular Claim, the Distribution will be mailed to the
12 address set forth in the Schedules.

13 **7.3.3 Withholding Taxes.** Pursuant to Section 346(h) of the Bankruptcy Code,
14 the Reorganized Debtor shall be entitled to deduct any federal, state or local withholding taxes
15 from any cash payments made with respect to Allowed Claims, as appropriate. The
16 Reorganized Debtor shall be permitted to withhold a Distribution to any Creditor that has not
17 provided information requested by the Reorganized Debtor for the purpose of fulfilling its
18 obligations hereunder. The Reorganized Debtor shall comply with all reporting obligations
19 imposed on it by any governmental unit with respect to withholding and related taxes.

20 **7.4 De Minimis Distributions.** Notwithstanding any other provision of the Plan,
21 Distributions of less than \$10.00 need not be made on account of any Allowed Claim or
22 Allowed Interest; provided that Distributions that would otherwise be made but for this
23 provision shall carry over until the next Distribution Date until the cumulative amount to which
24 any holder of an Allowed Claim or Allowed Interest is entitled to more than \$10.00, at which
25 time the cumulative amount of such Distributions will be paid to such holder.

26 **7.5 Unclaimed Distributions.** Any cash Distributions that remain unclaimed or
27 unnegotiated for ninety (90) days following Distribution or are returned for reasons other than
28

1 the absence of a current or correct address (unless a current or correct address cannot be
2 determined after reasonable inquiry) shall become the property of the Reorganized Debtor and
3 be considered Available Cash.

4 **7.6 Waiver and Reservation of Avoidance Actions and Other Litigation.**

5 Reorganized Debtor reserves all litigation claims of any kind, including without limitation
6 including any claims arising out of Bankruptcy Code Sections 502, 510, 541, 542, 543, 544,
7 545, 546, 547, 548, 549, 550, 551 and 552, any claims or setoff rights for usury, and any claims
8 or set offs arising out of any non-bankruptcy right under contract, tort, or statute in law or
9 equity ("the Debtor's Reserved Litigation"). **Any Creditor holding a filed or scheduled Claim**
10 **and any and all third parties are subject to potential litigation claims brought by the**
11 **Reorganized Debtor.** The Debtor and the Reorganized Debtor reserve the right to object to
12 any and all Claims.

13
14 **7.7 Tax Returns and Payments.** The Reorganized Debtor shall file or cause to be filed
15 any and all delinquent and final tax returns and pay any and all taxes owed by the Debtor and
16 the Reorganized Debtor on a timely basis (other than Tax Claims provided for under the Plan).

17 **7.8 Further Orders.** Upon motion by the Debtor or the Reorganized Debtor, on not
18 less than ten (10) days notice to registered ECF participants entitled to notice in this Case, the
19 Bankruptcy Court may enter such other and further orders as may be necessary or appropriate to
20 facilitate consummation of the Plan.

21 **7.9 Insurance Policies.** To the extent any insurance policies exist in which either the
22 Debtor and/or its personnel have an insurable or other interest in or right to make a claim, such
23 policies shall remain available, before and after the Effective Date, to satisfy any and all Claims
24 held by, or asserted against, the Debtor or other personnel that may be covered by such policies.

25 **7.10 Post-Confirmation Operating Expenses.** From and on the Effective Date, the
26 Reorganized Debtor and Plan Administrator may incur and pay operating expenses, including
27 professional fees for post petition services, in the ordinary course of business.

28 **7.11 Post-Confirmation Reports, Fees and Final Decree.**

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ARTICLE X

ALTERNATIVES TO THE PLAN

10.1 Chapter 7 Liquidation

In a Chapter 7 liquidation proceeding, the Debtor's interest in any assets of the Estate would vest in a Chapter 7 trustee, who would either release them to the respective secured creditors or attempt to sell those assets to third parties and distribute any proceeds Pro Rata to all creditors of the estate under the priorities established by Bankruptcy Code Section 507.

The Debtor believes that the Plan is more beneficial to creditors and interest holders than Chapter 7. The Debtor believes that in a Chapter 7 there is a probability that the Property could be lost in foreclosure to Fourth Third, and the equity in the Property would be unavailable for the benefit of unsecured creditors and interest holders.

Section 1123 of the Bankruptcy Code gives the Debtor a number of powers to modify and restructure its secured debt, which are not available to a Chapter 7 Trustee. For example, if certain conditions are met, a Chapter 11 Debtor may reduce interest rates and modify fully amortized mortgages into "interest only" obligations, see *In re Orosio* 77BR 246 (Bankr. N.D. Cal. 1987). This, in turn, enables the Debtor to avoid loss of real property assets in foreclosure while properties are sold, and to generate cash flow to pay dividends to unsecured creditors. A Chapter 7 trustee lacks these powers.

10.2 No Other Plans

The Bankruptcy Code permits a party in interest other than the Debtor to propose a plan of reorganization under certain circumstances. The Plan submitted by the Debtor is the only plan of reorganization that has been proposed at this time.

ARTICLE XI

PROOFS OF CLAIM; OBJECTIONS

11.1 Time for Filing Proofs of Claim. Proofs of Claim, when required, shall be filed with the Bankruptcy Court no later than the applicable Claims Bar Date, or such Claims shall be conclusively deemed barred and disallowed.

1 appropriate under the circumstances. Any party in interest, including the Reorganized Debtor
2 may oppose any such motion.

3 **ARTICLE XIII**

4 **CERTAIN INCOME TAX CONSEQUENCES OF DEBTOR'S PLAN**

5 **13.1 In general**

6 The following is a summary of certain United States federal income tax consequences of
7 Debtor's Plan that may be material to Creditors. This discussion is included for general
8 information purposes only and is not intended to be, and is not, legal or tax advice to any
9 particular Creditor. This summary is based on the current provisions of the Internal Revenue
10 Code of 1986, as amended (the "Code"), in Income Tax Regulations (the "Regulations") and
11 other legal authorities, all of which are subject to change, possibly with retroactive effect. No
12 rulings from the Internal Revenue Service (the "IRS") or opinions of counsel have been or will
13 be requested concerning the matters discussed below. The tax consequences set forth in the
14 following discussion are not binding on the IRS or the courts and no assurance can be given that
15 contrary provisions will not be successfully asserted. This summary does not address the
16 taxation of the Debtor or the Creditors under state law.
17

18 TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT
19 CIRCULAR 230, CREDITORS ARE HEREBY NOTIFIED THAT: (A) ANY
20 DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS
21 NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE
22 RELIED UPON BY CREDITORS FOR THE PURPOSE OF AVOIDING PENALTIES
23 THAT MAY BE IMPOSED ON CREDITORS UNDER THE CODE; (B) SUCH
24 DISCUSSION IS INCLUDED HEREIN BY DEBTOR IN CONNECTION WITH THE
25 PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230)
26 BY DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN;
27 AND (C) CREDITORS SHOULD SEEK ADVICE BASED UPON THEIR
28 PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

1 EACH CREDITOR SHOULD CONSULT THE CREDITOR'S OWN TAX
2 ADVISOR TO DETERMINE THE CREDITOR'S PARTICULAR U.S. FEDERAL
3 INCOME TAX CONSEQUENCES AND OTHER TAX CONSEQUENCES TO THE
4 CREDITOR OF DEBTOR'S PLAN, INCLUDING ANY STATE, LOCAL AND
5 FOREIGN TAX LAWS AND THE EFFECT OF ANY CHANGES IN SUCH LAWS.

6 **13.2 Consequences to Creditors**

7 Any amount realized by a Creditor in satisfaction of an Allowed Claim, to the extent
8 such amount constitutes "gross income" within the meaning of Section 61 of the Code, will be
9 taxable to the Creditor in accordance with the Creditor's method of accounting, if not previously
10 included in the Creditor's gross income. This would include, for example, payments for goods
11 and services. If a Creditor previously reported as taxable income their respective Allowed
12 Claim then the unpaid portion of the previously reported taxable income would be deductible as
13 a bad business debt. Similarly, if a Creditor has previously deducted some or all of its Allowed
14 Claim against either Debtor as a bad business debt, amounts received under the Plan may be
15 reportable as ordinary income. A Creditor may be subject to regular income tax withholding or
16 backup withholding as well.
17

18 **ARTICLE XIV**

19 **PLAN CONFIRMATION PROCESS**

20 **14.1 Voting**

21 Under the Bankruptcy Code, only classes of Claims that are "impaired" (as that term is
22 defined in Section 1124 of the Bankruptcy Code) under Debtor's Plan and which will receive or
23 retain property under the Plan are entitled to vote to accept or reject the Plan. Within each
24 Class, only the holders of Allowed Claims may vote. In order to confirm Debtor's Plan, with
25 regard to each impaired class of creditors, two thirds in monetary amount and a majority of the
26 number of Allowed Claims of creditors who vote on the Plan must vote to accept the Plan. The
27 holders of Allowed Claims in Classes 1, 2 and 4 are impaired. These are the only creditors who
28 are entitled to vote on the Plan. Pursuant to Bankruptcy Code Section 1126(f), the classes of

1 Claims that are not impaired – Classes 3 and 5 – are conclusively presumed to have accepted
2 the Plan and are not entitled to vote.

3 An acceptance or rejection of Debtor's Plan may be voted by completing and signing the
4 Ballot that accompanies Debtor's Plan and mailing, faxing, emailing or delivering it to The Law
5 Office of Joel K. Belway, P.C., 235 Montgomery Street, Suite 668, San Francisco, California
6 94104, (415) 788-1702, belwaypc@pacbell.net. Only the Ballot should be transmitted and all
7 Ballots must be received by the deadline set forth on the ballot.

8 **UNSIGNED BALLOTS, LATE BALLOTS, AND BALLOTS RECEIVED THAT**
9 **ARE SIGNED BUT DO NOT DESIGNATE ACCEPTANCE OR REJECTION OF THE**
10 **PLAN WILL NOT BE COUNTED.**

11 **14.2 Confirmation Standards**

12 For a Plan to be confirmed and to be binding on all Creditors, the Bankruptcy Court
13 must determine that the requirements of Section 1129(a) of the Bankruptcy Code have been
14 satisfied, including that at least one class of Claims that is impaired under Debtor's Plan has
15 accepted the Plan.
16

17 **14.3 Classification of Claims**

18 The Bankruptcy Code requires that a plan of reorganization place each claim and interest
19 in a class with other claims or interests that are "substantially similar." The dollar amount of a
20 claim is usually not a basis upon which to distinguish it from other claims. Debtor believes that
21 the classification system set forth in Debtor's Plan meets the Bankruptcy Code standard.

22 **14.4 Confirmation Without Acceptance by All Impaired Classes**

23 Section 1159(b) of the Bankruptcy Code enables the Debtor to confirm Debtor's Plan
24 without acceptance of one or more classes of Claims. If necessary, the Debtor will seek
25 Confirmation under Section 1129(b). In order to be confirmed over the rejection of a class of
26 Allowed Claims, the Bankruptcy Court must find that Debtor's Plan does not unfairly
27 discriminate and that it is fair and equitable as to each rejecting, impaired Class. Section
28 1129(b)(2)(A), (B) and (C) contain detailed provisions as to the meaning of "fair and equitable"

1 as to dissenting secured creditors, unsecured creditors and interest holders. If necessary, the
2 Debtor believes that it can comply with all of the requirements of Section 1129(b).

3 **ARTICLE XV**

4 **RETENTION OF JURISDICTION**

5 The Bankruptcy Code shall retain exclusive jurisdiction of the Bankruptcy Code (a) to
6 enforce the provisions, purposes and intent of the Plan; (b) to hear and determine any adversary
7 proceedings or contested matters filed in or related to the Case; (c) to hear and determine the
8 allowance or disallowance of Claims; (d) to fix and approve allowance of compensation and
9 other Administrative Claims, including, if appropriate, payments to be made in connection with
10 the Plan; (e) to adjudicate controversies arising from the terms of the Plan; (f) to hear and
11 determine any proposed modifications of or amendments to the Plan to the extent permitted by
12 Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019; (g) to enforce or interpret the
13 provisions of the Plan, the Order of Confirmation or any order entered by the Bankruptcy Court
14 in the Bankruptcy Case; (h) to facilitate the consummation of the Plan; (i) to consider such other
15 matters as may be set forth in the Plan or the Order of Confirmation; (j) to hear and determine
16 any Claim of any Persons of any nature whatsoever against the Debtor's Professionals arising in
17 or related to the Case; and (k) to enter a Final Decree closing the Bankruptcy Case. If closed,
18 the Bankruptcy Case may be reopened at any time to facilitate the provisions of the Plan,
19 including the granting of a discharge to the Debtor. Notwithstanding the foregoing, the
20 Bankruptcy Court shall have no jurisdiction to hear and determine disputes arising in
21 connection with the interpretation, implementation or enforcement of the Plan as they relate to
22 the Mechanics Bank Class 4 Secured Claim, as to which the Courts of the State of California or
23 the United States of America (other than the bankruptcy courts) shall have jurisdiction as
24 provided for by applicable non-bankruptcy law.
25

26 **ARTICLE XVI**

27 **EFFECT OF ORDER OF CONFIRMATION**

28 As of the Effective Date, the effect of the Order of Confirmation shall be as follows:

1 16.1 **Binding Effect of Plan.** The provisions of the confirmed Plan shall bind the
2 Debtor, the Reorganized Debtor, any entity acquiring property under or otherwise accepting the
3 benefits of the Plan, and every Creditor, whether or not such entity has filed a proof of Claim or
4 Interest in the Bankruptcy Case, whether or not the Claim or Interest of such entity is impaired
5 under the Plan, and whether or not such Creditor or entity has accepted or rejected the Plan.

6 16.2 **Full Satisfaction of Claims.** Except as otherwise provided in the Plan and the
7 Order of Confirmation, the rights afforded in the Plan shall constitute full and complete
8 satisfaction and release of all Claims, including any interest accrued thereon from and after the
9 Petition Date, against the Debtor, the Reorganized Debtor, the Estate, or any assets or property
10 of the Debtor, the Reorganized Debtor and the Estate. Except with respect to Administrative
11 Claims, Rejection Claims, and Claims described in Bankruptcy Rule 3002(c)(3), the
12 Confirmation Order shall be deemed to be a Final Order disallowing any claim not filed as of
13 the Effective Date.
14

15 16.3 **Injunction.** From and after the Effective Date, except as otherwise provided for
16 herein or in the Order of Confirmation, all Persons who have held, currently hold or may hold a
17 debt, Claim or interest against the Estate, the Debtor, the Reorganized Debtor, their trustees,
18 agents, employees or Professionals, or their respective property, including the property
19 transferred pursuant to this Plan are permanently enjoined from taking any of the following
20 actions on account of any such debt or Claim: (a) commencing or continuing in any manner any
21 action or other proceeding against the Estate, the Debtor, the Reorganized Debtor, their agents,
22 employees or Professionals, or their respective property; (b) enforcing, attaching, collecting or
23 recovering in any manner any judgment, award, decree or order against the Estate, the Debtor,
24 the Reorganized Debtor, their agents, employees or Professionals; (c) creating, perfecting or
25 enforcing any lien or encumbrance against the Estate, the Debtor, the Reorganized Debtor, their
26 agents, employees or Professionals, or their respective property transferred pursuant to this
27 Plan; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any
28 obligation due to the Estate, the Debtor or the Reorganized Debtor; and (e) commencing or

1 17.3 **Waiver.** After the Confirmation Date, except as otherwise specifically set forth in
2 the Plan, any term of the Plan may be waived only by the parties entitled to the benefit of the
3 term to be waived.

4 17.4 **Reservation of Rights.** Neither the filing of the Plan nor any statement or
5 provision contained in the Plan or in the Disclosure Statement, nor the taking by any party in
6 interest of any action with respect to the Plan, shall (a) be or be deemed to be an admission
7 against interest, and (b) until the Effective Date, be or be deemed to be a waiver of any rights
8 any party in interest may have (i) against any other party in interest, or (ii) in any of the assets
9 of any other party in interest, and, until the Effective Date, all such rights are specifically
10 reserved. In the event that the Plan is not confirmed or fails to become effective, neither the
11 Plan nor the disclosure Statement nor any statement contained in the Plan or in the Disclosure
12 Statement may be used or relied upon in any manner in any suit, action, proceeding or
13 controversy within or without this Bankruptcy Case involving the Debtor, except with respect to
14 Confirmation of the Plan.
15

16 17.5 **Revesting of Property.** As of the Effective Date, pursuant to the provisions of
17 Section 1123(b) of the Bankruptcy Code and otherwise, all title, ownership, possession and
18 interest of the Debtor's estate and any assets shall be deemed preserved and fully revested and
19 full owned and possessed by the Reorganized Debtor free and clear of any and all claims,
20 interest, liens, security interest and obligations other than those that are expressly related or
21 preserved by the provisions of this Plan or the Confirmation Order.
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1 Dated: February 16, 2012

WYSTERIA, LLC

2 By: /s/ Steve Kendrick

3 STEVE KENDRICK

4 Its: Manager

and Responsible Individual

5 Dated: February 16, 2012

6 THE LAW OFFICE OF JOEL K. BELWAY
Professional Corporation

7
8 /s/ Joel K. Belway

9 JOEL K. BELWAY

Attorney for Debtor