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8 Boundary Bay Capital, LLC

9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SANTA ANA DIVISION

12 In re
13 BOUNDARY BAY CAPITAL, LLC, a
California limited liability company,
14 Debtor-in-Possession.

Case No. 8:11-bk-14298-CB

Chapter 11

THIRD AMENDED DISCLOSURE
STATEMENT DESCRIBING THIRD
AMENDED CHAPTER 11 PLAN

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Cont. Disclosure Statement Hearing

DATE: December 12, 2012

TIME: 10:00 a.m.

PLACE: Courtroom 5D
411 W. Fourth St.
Santa Ana, CA 92701

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Plan Confirmation Hearing

DATE:

TIME:

PLACE: Courtroom 5D
411 W. Fourth St.
Santa Ana, CA 92701

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THIRD AMENDED DISCLOSURE
STATEMENT

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1 Boundary Bay Capital, LLC, debtor and debtor-in-possession ("Debtor"), provides
2 this Third Amended Disclosure Statement Describing Third Amended Chapter 11 Plan
3 (the "Disclosure Statement") to creditors, pursuant to § 1125 of the Bankruptcy Code, in
4 connection with the solicitation of acceptances of its Third Amended Chapter 11 Plan (the
5 "Plan") filed with the United States Bankruptcy Court for the Central District of California
6 (the "Court") in the above-captioned chapter 11 bankruptcy case (the "Case").

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7 I. INTRODUCTION

8 The Case was commenced by the filing of a voluntary chapter 11 petition under the
9 United States Bankruptcy Code (the "Bankruptcy Code" or "Code"), 11 U.S.C. §§ 101 *et*
10 *seq.*, on or about March 28, 2011 (the "Petition Date").

11 Chapter 11 allows debtors, and, under some circumstances, creditors and other
12 parties in interest to propose a plan. A plan may provide for a debtor to reorganize by
13 continuing to operate, to liquidate by selling assets of the estate, or a combination of both.
14 The Debtor is the proponent of the Plan, which was sent to you in the same envelope as
15 this document. THE DOCUMENT YOU ARE READING IS THE DISCLOSURE
16 STATEMENT FOR THE ENCLOSED PLAN.

17 The Plan is a reorganizing plan. As described in detail below, creditors holding
18 unsecured claims (Allowed General Unsecured Claims) will become the new owners of
19 the Debtor (and all the equity interests of the current owners will be terminated). Secured
20 creditors will be paid through the surrender or sale of their collateral or through payments
21 over time, in some cases on a restructured basis. The payments under the Plan will be
22 funded through the proceeds of a post-petition loan obtained by NewCo, a new company
23 in which the Debtor will have a membership interest, sales of assets, and funds generated
24 through operations. The Debtor will make periodic distributions to creditors (as equity
25 holders of the Reorganized Debtor) as net proceeds become available ("Equity
26 Distributions").

27 The Debtor believes that, in the absence of the chapter 11 reorganization and the
28 confirmation of the Plan, the Debtor's assets would be liquidated at substantially

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1 discounted prices, leaving much less to pay creditors. The Plan, on the other hand,
2 allows the Debtor to maximize the return to creditors through the orderly administration of
3 its assets. For example, the real property assets being sold will be sold through NewCo
4 over sufficient time periods to generate the highest potential recoveries (and not "fire sale"
5 prices). The Debtor will continue to collect its good receivables (and will not have to
6 liquidate them on a discounted basis). As to loans owned by the Debtor that are in
7 default, the Debtor or NewCo may, over time, take possession of the collateral and then
8 monetize it for the benefit of creditors. In furtherance of this process, the Debtor has been
9 and the Reorganized Debtor will continue to address the current challenges impacting the
10 assets, which if not resolved will severely undermine the value of the assets available for
11 distribution.

12 In sum, the Debtor believes that the Plan will provide the greatest potential
13 recovery for creditors through maximizing the returns on the assets.

14 The Effective Date of the Plan will be the first Business Day that is fourteen (14)
15 days after the entry of an order confirming the Plan (the "Confirmation Order"), provided
16 there has been no order staying the effectiveness of the Confirmation Order.

17 **A. The Purpose of This Document**

18 This Disclosure Statement summarizes what is in the Plan, and tells you certain
19 information relating to the Plan and the process the Court follows in determining whether
20 or not to confirm the Plan.

21 READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW
22 ABOUT:

- 23 1. WHO CAN VOTE ON OR OBJECT TO THE PLAN;
- 24 2. WHAT THE TREATMENT OF YOUR CLAIM IS UNDER THE PLAN (*i.e.*,
25 what you will receive on account of your claim if the Plan is confirmed), AND
26 HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD
27 RECEIVE IN LIQUIDATION IN CHAPTER 7;

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- 3. THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE;
- 4. WHAT THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;
- 5. WHAT IS THE EFFECT OF CONFIRMATION; AND
- 6. WHETHER THIS PLAN IS FEASIBLE.

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how the Plan will affect you and what is the best course of action for you. Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP ("Weiland Golden"), general insolvency counsel for the Debtor does not represent you.

Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

The Code requires that a disclosure statement contain "adequate information" concerning the Plan. By order entered on _____, 2012, the Court approved this document as an adequate Disclosure Statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. Any party can now solicit votes for or against the Plan.¹

B. Deadlines for Voting and Objecting; Date of the Plan Confirmation Hearing

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS

¹ The Disclosure Statement has not yet been approved. A hearing on the approval of the Disclosure Statement will take place on December 12, 2012.

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1 THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL
2 CREDITORS AND INTEREST HOLDERS IN THIS CASE.

3 **1. Time and Place of the Confirmation Hearing**

4 The hearing where the Court will determine whether or not to confirm the Plan will
5 take place on ____, 20__, at __:__.m. in Courtroom 5D of the Ronald Reagan Federal
6 Building and United States Courthouse located at 411 West Fourth Street, Santa Ana,
7 California 92701.

8 **2. Deadline for Voting for or Against the Plan**

9 If you are entitled to vote, it is in your best interest to timely vote on the enclosed
10 ballot and return the ballot in the enclosed envelope to Weiland, Golden, Smiley, Wang
11 Ekvall & Strok, LLP, attn: Hutchison B. Meltzer, Esq. and Claudia Yoshonis, 650 Town
12 Center Drive, Suite 950, Costa Mesa, California 92626.

13 Your ballot must be received no later than 5:00 p.m. (Pacific Standard Time)
14 ____, 2012 or it will not be counted.

15 **3. Deadline for Objecting to the Confirmation of the Plan**

16 Objections to the confirmation of the Plan must be filed with the Court and served
17 upon counsel for the Debtor so as to be received on ____, 2012.

18 **4. Identity of Person to Contact for More Information**
19 **Regarding the Plan**

20 Any interested party desiring further information about the Plan should contact
21 Hutchison B. Meltzer or Beth E. Gaschen of Weiland, Golden, Smiley, Wang Ekvall &
22 Strok, LLP, by phone at (714) 966-1000 or by e-mail at hmeltzer@wglp.com or
23 bgaschen@wglp.com.

24 **C. Disclaimer**

25 The financial data relied upon in formulating the Plan is based on the financial
26 records of the Debtor, projections created by the Debtor, or information provided by other
27 parties in interest. The professionals employed by the Debtor drafted the Plan and the
28 Disclosure Statement based on this information and have no independent knowledge

1 regarding the accuracy of the data. The Court has not yet determined whether or not the
2 Plan is confirmable and makes no recommendation as to whether or not you should
3 support or oppose the Plan.

4 **II. BACKGROUND**

5 **A. Description and History of the Debtor's Business**

6 **1. General Background**

7 The Debtor was formed in September, 2004, for the purpose of originating loans
8 secured by real estate. It also managed a portfolio of successful marketable securities,
9 which were sold pre-petition to meet the obligations of the Debtor including, but not limited
10 to, note holder principal and interest payments, interest payments due to other creditors,
11 and operating expenses. The Debtor's primary assets are secured notes. In December,
12 2008, the Debtor entered into an agreement to assume the assets and liabilities of
13 Covenant Bancorp, Inc. and Covenant Capital, LLC. The Debtor also owns some real
14 property which it obtained through foreclosures on its collateral. The Debtor is not making
15 any new loans.

16 **2. The LV Secured Notes**

17 The Debtor's primary assets include interests in three notes ("LV Notes") secured
18 by first, second, and third position trust deeds ("LV Trust Deeds") on certain real property
19 in Clark County, Nevada ("LV Property") (The LV Property is undeveloped land, which the
20 Debtor estimates to have a value of approximately \$14,000,000). There are liens against
21 the first and second position LV Notes and LV Trust Deeds. As described below, the LV
22 Notes exceed the estimated current value of the LV Property. The Debtor's interests in
23 the LV Notes and LV Trust Deeds are:

24 **a. The 1st LV Note and Deed of Trust**

25 The Debtor owns a 100% interest in a note dated November 2, 2006 ("1st LV Note")
26 in the approximate amount of \$4,692,600 (original principal amount was \$4,000,000)
27
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1 executed by BV Land Company, LLC ("BV Land").² The 1st LV Note is secured by a first
2 position deed of trust ("1st LV DOT") against the LV Property. The 1st LV and 1st LV DOT
3 names Heritage Orcas as the beneficiary. The Debtor acquired its interest in the 1st LV
4 Note and 1st LV DOT from Heritage Orcas, an entity related to the Debtor.

5 Prepetition, the Debtor borrowed \$160,000 pursuant to an 8% Secured Promissory
6 Note in favor of various parties. The 8% Secured Promissory Note is secured by a first
7 position lien on the 1st LV Note.

8 b. The 2nd LV Note and Deed of Trust

9 The Debtor owns a 24.1173% interest in a second position deed of trust on the LV
10 Property ("2nd LV DOT") securing a total obligation of \$19,076,316.63 (with the Debtor's
11 portion being \$4,600,692.45)³ ("2nd LV Note"). The Debtor estimates the value of its
12 24.1173% interest is \$2,411,730 based upon the LV Property's estimated value of
13 \$14,000,000.

14 Prepetition, in October, 2009, Enhanced Income Fund I, LLC ("Enhanced Income")
15 received a note ("Enhanced Income Note") in connection with the Debtor's purchase of
16 Enhanced Income's investment in Heritage Orcas. The Enhanced Income Note is
17 secured by a first position lien against the Debtor's interest in the 2nd LV Note and 2nd LV
18 DOT, a lien on the Debtor's interest in Heritage Orcas, and a lien on property owned by
19 the Debtor in Murrieta, California.

20 The liens on the 2nd LV Note and 2nd LV DOT and the lien on the Debtor's interest
21 in Heritage Orcas will be released pursuant to the compromise with Enhanced Income
22 described below. The current balance of the Enhanced Income Note is approximately
23 \$4,254,666.79.

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25 ² BV Land is a related entity to the Debtor.

26 ³ The other interests in the 2nd LV Note are held by Heritage Orcas Partners, LP (44.788%), Birch Bay
27 Partners, LP (8.6639%), Heritage Orcas VL Partners (12.5568%), Covenant Opportunity Fund, LP
(3.743%), and Echo Bay/Island Capital (6.1299%).

28 ⁵ The Debtor, along with related equity owners and holders, filed a preliminary claim against Chicago
Title Insurance Company and Commonwealth Title Insurance Company relating to access issues for the
(Continued...)

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1 The Debtor and the Committee have alleged that Enhanced Income's lien on the
2 2nd LV Note is avoidable, at least in part, as a fraudulent transfer pursuant to 11 U.S.C. §§
3 544 and 548 because the Debtor did not receive reasonably equivalent value for the 2nd
4 LV Note ("EI Avoidance Claims"). The Committee examined Enhanced Income regarding
5 these issues under Federal Rule of Bankruptcy Procedure 2004. The Debtor has reached
6 a compromise of the fraudulent transfer claims pursuant to which Enhanced Income's
7 Allowed Secured Claim will be reduced to \$2,000,000 with the option of a discount for an
8 early payoff, as described further in Section III.D.2 below ("EI Settlement"). The Debtor
9 will seek approval of this compromise in connection with Plan confirmation.

10 c. The 3rd LV Note and Deed of Trust

11 The Debtor also owns a 16.7189% interest in a third position deed of trust on the
12 LV Property ("3rd LV DOT") securing a total obligation of \$13,322,143.26 (with the
13 Debtor's portion being \$2,227,315.81) ("3rd LV Note"). There is no lien on the Debtor's
14 interest in the 3rd LV DOT. The Debtor estimates that, while it will receive proceeds (or
15 collateral that will then be converted into proceeds) from its interests in the 1st LV Note
16 and the 2nd LV Note, its interest in the 3rd LV Note likely has no value due to the
17 decreased value of the collateral.

18 **3. The LV Property**

19 a. General Overview

20 The LV Property consists of seventeen (17) parcels of undeveloped land that
21 together total 259.24 gross acres of M2 zoned land. Six (6) of the parcels, totaling
22 approximately 45 acres, are located within Apex Central ("Central") and eleven (11)
23 parcels, totaling approximately 214.24 acres, are within Apex Industrial Rail ("Industrial
24 Rail"). All of the parcels are located within the Apex Industrial Park (the "Park"), which is
25 an approximately 21,000 gross acre master planned industrial park designed for heavy
26 industrial use. The Park is located approximately 13 miles northeast of downtown Las

27 _____
28 (...Continued)

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1 Vegas and is situated along Interstate 15 extending north from about Nellis Air Force
2 Base to Highway 93.

3 The Park was created in 1989, in part, to keep high risk chemical plants away from
4 homes, prompted by an explosion in Henderson, Nevada that killed two people and
5 injured another 200. After acquiring the land from the Bureau of Land Management, the
6 county sold land to Kerr-McGee, Georgia Pacific Corporation, Chemical Lime Company,
7 and the private investor group named Apex Holding Company. The Park is also home to
8 a mining operation and power plants. There is no municipal water or sewer services
9 provided to the Park and gas and electricity are located nearby. The lack of infrastructure
10 has hampered the growth of the Park. In 2008, the City of North Las Vegas began a
11 phased annexation of the Park. To date, this annexation has not included the LV
12 Property. In 2009, the City of North Las Vegas approved a planning and land use plan.
13 According to the City of North Las Vegas' website, an application needs to be submitted to
14 be considered for annexation. The potential benefits of annexation include coordinated
15 city services such as fire, police, water, sewer, and zoning services.

16 More recently, Love's Truck Stop has opened a location just north of Industrial Rail
17 at Highway 93 and Interstate 15, Blue Oasis Shrimp has opened a facility in the Mountain
18 View Industrial Park, and a 20 MegWatt Solar Plant has recently closed escrow on 150
19 acres for \$33,000 per acre in or adjacent to the Mountain View Industrial Park. Mountain
20 View Industrial Park is northwest of Industrial Rail. The Debtor also understands that
21 another 20 MegWatt Solar Park is in escrow in the same Mountain View Park. The
22 Debtor believes that the original owners of the Mountain View Park may have lost the
23 property in foreclosure to Sorenson Capital, a firm which purchases defaulted loans from
24 the FDIC.

25 b. Central and Industrial Rail

26 Five of the six parcels in Central lie approximately a quarter mile west of Las Vegas
27 Boulevard and along a privately developed county road and run westerly from Las Vegas
28 Boulevard along the paved private county road. The other parcel is north of the other five

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1 and is currently not accessible by paved road. The eleven parcels in Industrial Rail are
2 located between Las Vegas Boulevard and Interstate 15 with the Union Pacific Railroad
3 mainline running through the parcels adjacent to Las Vegas Boulevard. There are three
4 parcels which bifurcate the Industrial Rail parcels. These three parcels are owned by
5 Hardy Management Company ("Hardy"), an entity associated with 84 Lumber. Neither the
6 Debtor nor any of its affiliates are related to Hardy or 84 Lumber. Hardy purchased the
7 three lots in April 2006 for approximately \$3,900,000. At that time, the Debtor and other
8 entities received a principal payment on the then outstanding loan according to the
9 release clauses and the payment was allocated according to each entity's ownership of
10 the note and deed of trust.

11 In December 2007, Alliance Bank commissioned an appraisal of the 17 parcels,
12 appraising the value at approximately \$37,000,000. The Debtor's estimated value of the
13 LV Property at \$14,000,000 is based upon an estimated value ranging from \$40,000 to
14 \$60,000 per acre derived from adjacent land owners and industrial realtors in early 2011.
15 However, given the lack of sale activity and the current status of the Vegas industrial
16 market, the actual value of the LV Property could be much less. A reasonable
17 improvement in the Las Vegas industrial market has the possibility of increasing the value
18 up to the 2007 appraised value.

19 The Debtor believes the highest and best use for the LV Property lies in the
20 warehouse/distribution industrial marketplace. The Debtor bases this belief on previous
21 meetings and discussions with entities such as Majestic and Trammell Crowe, private end
22 users, all of whom were attracted by the relatively large, potentially railroad served
23 Industrial Rail parcels, compared to other smaller rail served parcels available in the
24 Vegas valley. Further, even with the infrastructure challenges discussed below, the
25 Industrial Rail parcels seemed to offer a cost advantage to offset the distance from the
26 valley. Most, if not all, of these discussions occurred in 2007 and early 2008. Discussions
27 with Trammell Crowe had advanced the farthest.

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1 c. Challenges to Overcome Regarding the LV Property

2 The LV Property faces certain challenges to short term monetization, but these
3 challenges can be resolved.

4 According to Colliers International Q4 2011 Las Vegas Industrial Market Overview,
5 the industrial market had its first quarter of positive absorption in four years. The
6 warehouse/distribution sector was largely responsible for the positive absorption. Overall,
7 it seems that the market may be leveling out, and the Debtor believes that values will
8 increase at a moderate pace and therefore a certain amount of time, effort and money
9 needs to be invested in the LV Property to fully obtain all of the advantages discussed
10 above.

11 The Plan provides for the joint interest holders to work together to maximize the
12 value of the LV Property. This includes, but is not limited to developing the infrastructure
13 of Central and Industrial Rail. The challenge posed by a lack of utilities will need to be
14 addressed. Power, fiber optic, sewer through a septic system, and water by well are
15 available to the LV Property. With the annexation by the City of Las Vegas, longer term
16 needs can be addressed. Access to Industrial Rail will increase the value of these
17 parcels.⁵ Options include an overpass over the Union Pacific mainline, a private crossing,
18 or use of an existing adjacent private crossing.

19 Based on the foregoing, it is the Debtor's opinion that the value of the LV Property
20 will be maximized by the orderly development of the property by NewCo and opportunistic
21 sales versus a quick liquidation of the LV Property. This is demonstrated in the NewCo
22 projections and accompanying footnotes attached hereto as Exhibit "1"

23 **4. Other Secured Notes Owned by the Debtor**

24 a. Lots 1-6, and 23, LLC Secured Notes

25 The Debtor also owned a 5.97% fractional, undivided interest in a \$40,000,000
26 first-position secured note against Lots 1-6, and 23, secured by 21.2 acres of vacant land
27 in Clark County, Nevada. Based upon the Debtor's fractional, undivided interest, the
28 Debtor estimated the value of the collateral associated with the Debtor's interest to be

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1 approximately \$152,807. This note was relinquished to the Receiver (defined below) as
2 part of the court-approved settlement agreement resolving all litigation with the Receiver
3 as fully described below.

4 b. SV Assets, LLC Secured Note

5 The Debtor owned a 2% fractional, undivided interest in a \$40,000,000 first-position
6 secured note against SV Assets, LLC secured by 4.84 acres of vacant land in Henderson,
7 Nevada. Based upon the Debtor's fractional, undivided interest, the Debtor estimated the
8 value of the collateral associated with the Debtor's interest to be approximately \$51,700.
9 This note was relinquished to the Receiver as part of the court-approved settlement
10 agreement resolving all litigation with the Receiver as fully described below.

11 c. Odyssey Equity, LLC Secured Note

12 The Debtor owned a 3.988% fractional, undivided interest in a \$25,000,000 first-
13 position secured note against Odyssey Equity, LLC secured by vacant land in Henderson,
14 Nevada.⁶ Based upon the Debtor's fractional, undivided interest, the Debtor estimated the
15 value of the collateral associated with the Debtor's interest to be approximately \$176,242.
16 This note was relinquished to the Receiver as part of the court-approved settlement
17 agreement resolving all litigation with the Receiver as fully described below.

18 d. Junior Trust Deeds Secured by Residential Real
19 Property

20 Moreover, the Debtor holds notes in favor of Gilmartin and Humphrey that are
21 secured by junior trust deeds on certain residences located in Riverside County. The
22 Debtor estimates that the value of the collateral exceeds the total of the first-priority trust
23 deeds.

24
25
26 ⁶ The Debtor and other related entities have placed a *lis pendens* against an office building adjacent to
27 these vacant parcels. In or around June 2007, two other adjacent buildings also had *lis pendens*, that when
28 sold, resulted in a pay down on this loan. The Debtor is releasing these *lis pendens* as a term of the Layton
settlement agreement.

5. Debtor's Interest in Real Property

The Debtor also owns interests in real property which it obtained pursuant to foreclosures on secured notes:

a. Dana Point Property (PCH Property)

The Debtor owns a 29.5048% interest in the real property located at 34311 Pacific Coast Highway, Dana Point, California (the "PCH Property"). The PCH Property is a vacant parcel consisting of approximately 1.45 acres located at the southeast corner of Pacific Coast Highway and Del Obispo Ave. in Dana Point, California. The PCH Property is significantly overencumbered.

North of the parcel is a Union 76 Station which is undergoing a Remediation Plan conducted by URS Corporation ("URS") on behalf of ConocoPhillips. This Remediation Plan is overseen by the Orange County Health Care Agency. The owners of the PCH Property have granted access to URS to drill ground water testing wells to measure possible ground water migration. The City of Dana point has begun testing for a desalinization plant which will pull water from the ocean. URS has installed an ozone injection system on the property to treat ground water migration. There has been no indication that the ground water migration will impact development of the site.

The Plan provides for the Debtor's interest in the PCH Property to be abandoned to the secured creditor, California Bank & Trust ("CBT"). The Debtor is currently in negotiations with CBT regarding the disposition of the PCH Property.

b. Murrieta Property

The Debtor owns 9.13 acres of real property located at Washington & Nutmeg, in Murrieta, California, described legally as assessors ID 90602009-5 (the "Murrieta Property"). Stacy Vierheilg-Fraser (20%), J. Gunther, Inc. Money Purchase Plan (20%), Dana R. Gunther (20%), Jon Vartan and Armene Hovsepian (28%), Sandra P. Cortave (4%), and Ten-Two Company (8%) ("Dunn Creditors") hold a second position lien against

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1 the Murrieta Property securing a claim of approximately \$265,727.78 and Enhanced
2 Income holds a third position lien.⁷

3 **6. The Debtor's Other Assets**

4 a. Unsecured Receivables

5 The Debtor also owns unsecured receivables against various parties described in
6 Exhibit "2". The total amount of these receivables is approximately \$558,755.20.

7 b. Equity Interests

8 The Debtor owns a limited partnership interest in a related entity, Heritage ORCAS
9 Partners, LP, which was also in the business of making real estate loans. The Debtor
10 estimates the value of these interests to be approximately \$1,019,346.31.

11 c. Litigation Claims

12 (1) Malpractice Claim

13 The Debtor has a claim for legal malpractice against its former counsel. An action
14 ("Malpractice Action") was filed on June 8, 2011, naming Glaser, Weil, Fink, Jacobs,
15 Howard, Avachen & Shapiro, LLP the successor entity to Christiansen, Miller, Glaser,
16 Fink, Jacobs, Weil & Shapiro, LLP, among other defendants ("Malpractice Defendants").
17 Malpractice Defendants have done legal work for the Debtor and other entities. In
18 addition to other work, the Malpractice Defendants advised the Debtor with respect to the
19 preparation of an Offering Circular. The Malpractice Action relates to certain non-
20 disclosures in the Offering Circular, based on the Malpractice Defendants' advice, which
21 led to the Rafael Litigation and other potential liability. The Debtor and the Malpractice
22 Defendants entered into a tolling agreement and attempted to settle their disputes;
23 however, no further settlement discussions occurred since the execution of the Rafael
24 settlement agreement (described below). The tolling agreement expires on September 1,
25

26 ⁷ Because under California law every property tax lien has priority over all other liens on the property,
27 the secured property tax claim of the Riverside County Treasurer-Tax Collector is in first position against the
28 Murrieta Property, making the lien held by the Dunn Creditors in second position and Enhanced Income in
third position. See Cal. Rev. & T. Code § 2192.1.

1 2012. The counsel employed to pursue the Malpractice Action, Joel Pores, resigned. The
2 Debtor does not intend to continue to pursue the Malpractice Action.

3 d. Title Insurance Claims

4 In connection with the Receivership Action, described more fully below, the Debtor
5 tendered to its title insurance companies several claims relating to the defense of the
6 validity of a lien, the priority of a lien, and access to a piece of real property. These claims
7 have been denied by the title insurance companies, but the Debtor reserves the right to
8 pursue those claims in the future.⁸⁹

9 **7. The Debtor's Unsecured Liabilities**

10 a. Unsecured Notes

11 The Debtor's loans were funded primarily by the Debtor's borrowing pursuant to
12 certain unsecured notes ("Notes"). The total amount of the claims of the holders of the
13 Notes ("Note Holders") is approximately \$43,993,502.68.

14 Effective December 31, 2008, the Debtor entered into an Asset Purchase
15 Agreement and Assignment and Assumption Agreement with Covenant Capital, LLC and
16 Covenant Bancorp, Inc., with the Debtor acting as the remaining entity. A copy of the
17 Asset Purchase Agreement and Assignment and Assumption Agreement is attached as
18 Exhibit "3."

19 b. Other Unsecured Debt

20 The Debtor also has other unsecured debt for goods and services used in
21 connection with its operations, as well as insider claims. The total amount of the other
22 unsecured debt is approximately \$1,289,223.11. The claims are described in Exhibit "4".
23
24
25

26 ⁸ The denial by the insurance company was not necessarily because of the validity of the claim or the
liability of the insurance company, but could have related to whether or not the claim was ripe.

27 ⁹ It has not been determined at this time whether the Layton Settlement or the Wing Receiver
28 Settlement Agreement will have any effect on the Debtor's ability to pursue these claims in the future.

1 c. Orange County Business Bank

2 Orange County Business Bank ("OCBB") made a loan to the Debtor secured by
3 real property located on Ventura Blvd. in Sherman Oaks, California ("Ventura Property").
4 The Ventura Property was subsequently transferred to a related entity, Covenant
5 Opportunity Fund, for consideration. In November 2011, OCBB foreclosed on the Ventura
6 Property. OCBB has no further claim against the Estate.

7 d. Litigation Claims

8 (1) Rafael Arbitration

9 A Note Holder, Maureen Rafael ("Rafael"), commenced litigation in the San Diego
10 Superior Court related to the non-payment of her Note in June 2010 ("Rafael Litigation").
11 In or about March, 2011, Rafael alleged that the over 20-year old conviction of principal
12 Jerry Smith for securities fraud should have been disclosed in the applicable Private
13 Placement Memorandum ("PPM"). The Debtor disputes these allegations. Further, the
14 conviction had been disclosed in a prior PPM and was not included in any subsequent
15 PPM based on the advice of counsel.¹⁰ The Debtor has never intended to hide the
16 conviction and disputes any allegations to the contrary.

17 This matter was assigned to arbitration. The arbitration has been stayed with
18 respect to the Debtor by the filing of the Case. The arbitration was scheduled to begin on
19 November 14, 2011. Rafael filed a Motion for Summary Disposition on her sixth cause of
20 action for violation of California Corporations Code § 25401 seeking recession against
21 non-debtors Heritage Orcas Partners, LP, Covenant Management Group, LLC, Heritage
22

23 ¹⁰ As expressly provided in the Heritage Capital Partners, LP Offering Memorandum: "In 1986, Mr. Jerry
24 D. Smith was convicted of two counts of grand theft under California Penal Code section 487 and two
25 counts of securities fraud under Corporations Code section 25401. Count one arose from a real estate
26 venture and related to monies which were purportedly invested without the permission of some investors.
27 Count two centered on the same investor funds which were co-mingled in a general account rather than
28 segregated into a separate account titled in the name of the real estate venture. Count three involved a
representation by Mr. Smith that he had received a BA degree at Westmont College, when in fact it was
later determined that he lacked three units of language credits and had done some graduate work at USC
when it was in fact at Pepperdine University. Count four related to a separate investment involving the
acquisition of a Bakersfield vineyard where, upon the sale of the vineyard, investors received a sum less
than they had expected to collect. In November, 1989, the California Court of Appeal in the Second District
affirmed the conviction on all four counts in a split decision. (263 Cal.Rptr. 684, 215 Cal.App.3d 230).

1 Capital Management, LLC, David T. Lawlor and Jerry D. Smith. On June 13, 2011,
2 Rafael's motion was denied as there remained triable issues of fact.

3 On October 25, 2011, all parties named as defendants in the arbitration proceeding
4 settled with Rafael. While the Debtor was named in the original complaint and in the
5 arbitration agreement, the Debtor is not a signatory to the settlement agreement.
6 However, one of the terms of the settlement agreement provides that Rafael retains her
7 claim in the Bankruptcy Case and that Rafael will dismiss all claims asserted in the
8 arbitration as to the Debtor without prejudice.

9 (2) Wing Receiver

10 Robert Wing, the federal receiver ("Receiver") of Vescor, an entity which the Debtor
11 had entered into transactions with, filed a fraudulent transfer action against the Debtor and
12 other defendants in the United States District Court, District of Utah, Case No. 2:08-cv-
13 00835 DB ("Receivership Action"). Subsequently, the Receiver filed a motion for
14 summary judgment seeking to avoid and invalidate the Apex 1-6/23, Siena Vista and
15 Siena Office Park liens against the LV Property, portions of which are owned by the
16 Debtor, and seeking an unspecified monetary award.¹¹ The summary judgment motion
17 was denied in December 2010.

18 The Receiver has also filed a fraudulent transfer action against BV Land Company,
19 an affiliate of the Debtor, who owns the membership interests of the LLC's which own the
20 LV Property in the United States District Court, District of Utah, Case No. 2:09-cv-1057
21 ("BV Land Action"). The Receiver was granted an extension of time for the filing of an
22 expert report to appraise the LV Property as of the date of acquisition in 2006. The
23 Debtor is not a party to this action, but it might have an effect on the Debtor's collateral.
24

25
26 ¹¹ In or around February 2008, an entity related to the Debtor negotiated control of the Loan
27 Management Agreement for Apex 1-6, 23, Siena Vista, and Odyssey Equity (Siena Office Park). This entity
28 began to foreclose on the properties shortly thereafter. The appointment of the Receiver stayed these
actions. The stay was appealed to the Tenth Circuit Court of Appeals and was upheld, preventing the
foreclosure. The related entities will resign as loan manager pursuant to the Wing Receiver Settlement
Agreement.

1 On December 7, 2011, the Debtor and all other named defendants entered into a
2 settlement agreement with the Receiver (the "Wing Receiver Settlement Agreement")
3 resolving in their entirety the Receivership Action and the BV Land Action. On January
4 20, 2012, the Debtor filed a motion for order approving the Wing Receiver Settlement
5 Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "Wing Receiver
6 Settlement Motion"). An order approving the Wing Receiver Settlement Motion was
7 entered on March 5, 2012.

8 (3) Layton

9 The Debtor and certain related entities filed a lawsuit against Christopher Layton
10 ("Layton") and his related entities over the ownership of SOP 871 building in Nevada
11 District Court (Case No. A524992). Layton filed a cross-complaint alleging that he was
12 entitled to a commission on the Debtor and related entities' purchase of the membership
13 interests of the limited liability companies owning the LV Property (collectively, the "Layton
14 Litigation"). A settlement agreement has been entered into by the parties that resolves
15 the Layton Litigation (the "Layton Settlement Agreement"). On April 16, 2012, the Debtor
16 filed a motion for order approving the Layton Settlement Agreement pursuant to Federal
17 Rule of Bankruptcy Procedure 9019 (the "Layton Settlement Motion"). An order approving
18 the Layton Settlement Motion was entered on June 5, 2012.

19 **B. Principals/Affiliates of the Debtor's Business**

20 The current members of the Debtor are Covenant Management Group, LLC and
21 Heritage Capital Management, LLC. The Debtor's affiliates and related parties include
22 Covenant Opportunity Fund, LLC, a California limited liability company; Birch Bay
23 Partners, LP, a Washington limited partnership, BV Land, LLC, a Nevada limited liability
24 company; Heritage Orcas Partners, Limited Partnership, a Nevada limited partnership;
25 Heritage Orcas VL Partners, Limited Partnership a Delaware limited partnership, Island
26 Capital, a Wyoming limited liability company; and Birch Bay Management, a Washington
27 limited liability company (collectively, "Affiliates").
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1 **C. Management of the Debtor Before and After Bankruptcy**

2 Prior to the commencement of the Case, David Lawlor and Jerry Smith, through
3 Heritage Capital Management, LLC, managed the Debtor and the Properties and has
4 continued to manage them post-petition.¹² Post-confirmation, the Reorganized Debtor will
5 be managed by David Lawlor and Jerry Smith, individually.

6 **1. Oversight Committee**

7 The management of the Reorganized Debtor will be monitored by an oversight
8 committee (the "Oversight Committee") that will consist of three (3) people elected by the
9 equity holders of the Reorganized Debtor. However, for the first term, Albert Wazlak, a
10 member of the Committee, shall serve as a member of the Oversight Committee, and the
11 other two members of the Oversight Committee will be elected. Each member of the
12 oversight committee must be an equity holder in the Reorganized Debtor. The election for
13 the oversight committee will take place prior to the Effective Date. Any equity holder may
14 present themselves for nomination by submitting their name in writing to David Lawlor by
15 5:00 p.m. on _____, 2012 at Covenant Management Group, LLC, Airport Executive
16 Suites, 2102 Business Center Drive, Suite 130-220Q, Irvine, California 92612, however,
17 no insiders¹³ may nominate themselves or be nominated for the Oversight Committee. A
18 complete list of nominees will be listed on a ballot mailed to all equity members who will
19 have until _____, 2012 to return their ballot to David Lawlor at the address indicated
20 above. Members of the oversight committee shall be elected by the remaining equity
21 holders of the Reorganized Debtor with each equity holder's vote being counted in
22 accordance with its percentage ownership interest, except that no insider shall have the
23 right to vote. The candidates receiving the highest number of votes, up to the number of
24 open member seats, shall be elected. If there are only two nominations made, no vote will

25 _____
26 ¹² Heritage Capital Management, LLC and Covenant Management Group, LLC manage and operate
various other funds which may, under certain circumstances, present a potential conflict of interest.

27 ¹³ In the context of the Oversight Committee, insiders shall mean David Lawlor, Jerry Smith, their
28 immediate family members, and the Affiliates.

1 take place and the nominees will automatically become the members of the Oversight
2 Committee. If less than two nominations are received, the Reorganized Debtor will solicit
3 nominations until there is a sufficient number of nominees to form a three member
4 committee. Each member of the oversight committee shall serve for a three (3) year term.
5 No equity holder shall be eligible to serve more than two (2) consecutive terms.

6 The Oversight Committee will have the power to request from the Bankruptcy Court
7 a change in the management of the Reorganized Debtor and replacement with
8 management of its choosing. The Reorganized Debtor will consult with the Oversight
9 Committee with respect to working capital requirements and distributions to equity. The
10 Oversight Committee shall be entitled to information from NewCo regarding the
11 calculation of the management fees for the management of NewCo.

12 **D. Events Leading to Chapter 11 Filing**

13 Due to the general downturn in the real estate market, a substantial portion of the
14 Debtor's loans stopped performing. Once the loans stopped performing, the Debtor in
15 some cases initiated foreclosure proceedings with respect to its collateral and had to bear
16 related costs (including in connection with the chapter 11 proceedings of borrowers). The
17 Debtor depleted liquid assets by making cash payments of interest and principal to both
18 current and previous secured debt holders, as well as cash payments of interest and
19 principal to Note Holders. The Debtor then had to bear the ongoing expense of non-
20 income producing properties after such foreclosures. Further, interest payments due to
21 the Note Holders continued to accrue while the value of the Debtor's collateral and real
22 property (REO) continued to decline. As a result, the Debtor was not able to make the
23 payments due to the Note Holders. Further, the Debtor had to expend a significant
24 amount of funds on both pending and settled litigation, described more fully below.

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1 **E. Significant Events During the Bankruptcy Case**

2 **1. Bankruptcy Proceedings**

3 a. The Order for Relief

4 The Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on
5 March 28, 2011.

6 b. The Employment of Estate Professionals

7 By order entered on June 9, 2011, the Court authorized the employment of Weiland
8 Golden as the Debtor's general insolvency counsel. By order entered on September 15,
9 2011, the Court authorized the employment of Joel M. Pores as special counsel to the
10 Debtor. As discussed above, Mr. Pores has resigned. The Committee, as set forth
11 below, has also hired professionals.

12 c. The Claims Bar Date

13 At the chapter 11 status conference on April 27, 2011, the Court fixed July 15, 2011
14 (the "Bar Date") as the last date to file Proofs of Claim for all creditors. The Debtor served
15 all creditors and parties in interest with the Bar Date Notice on May 11, 2011.

16 d. Claim Objections

17 On September 30, 2011, the Debtor filed eight motions objecting to claims on a
18 variety of grounds. By orders entered November 8, 2011, November 10, 2011, November
19 21, 2011, January 30, 2012, March 29, 2012, and July 13, 2012, the Court granted the
20 Debtor's motions and approved the relief requested therein, except as to the Debtor's
21 objection to the claim of CBT, ~~which the Debtor withdrew without prejudice at the hearing~~
22 held on October 3, 2012.

Deleted: the hearing on which has been continued to August 22, 2012.

23 e. The Debtor's Schedules, Interim Statements, and
24 Operating Reports

25 The Debtor believes that the Estate is in compliance with the requirements under
26 11 U.S.C. §§ 521, 1006 and 1107, and the applicable Guidelines of the Office of the
27 United States Trustee ("OUST"). On April 11, 2011, the Debtor filed its bankruptcy
28 schedules (the "Schedules") and statements of financial affairs ("SOFA"). On May 10,

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1 2011, the Debtor filed amended schedules ("First Amended Schedules"). On July 27,
2 2011, the Debtor filed further amended Schedules ("Second Amended Schedules"). The
3 Debtor has prepared and submitted Monthly Operating Reports ("MOR") for the Estate
4 through July, 2012. The Debtor is current on the quarterly fees owed to the OUST.

5 f. LV Property Taxes

6 Property taxes with respect to the LV Property had to be paid by June 1, 2011, or
7 the taxing authority would deed the LV Property as the first step to a foreclosure sale.
8 Accordingly, in order to protect the value of its collateral, the Debtor filed a Motion for
9 Order Authorizing the Debtor to: (1) Incur Debtor Pursuant to 11 U.S.C. § 364(d); and (2)
10 Enter into Transactions Outside the Ordinary Course of Business Pursuant to 11 U.S.C.
11 § 363. On May 31, 2011, the Court approved the motion with respect to the taxes and the
12 Debtor made the payment.

13 g. The Appointment of the Official Committee of
14 Unsecured Creditors

15 On April 22, 2011, the OUST appointed an official committee of unsecured
16 creditors ("Committee"). On July 29, 2011, the OUST appointed two additional members
17 to the Committee. On August 16, 2011, the OUST replaced one member of the
18 Committee. On August 25, 2011, the OUST replaced the latest member. On December
19 6, 2011, the OUST again replaced the latest member of the Committee. The members of
20 the Committee are as follows: Albert Wazlak; Joy Campbell; West Harrington on behalf of
21 Harrington Construction Co., Inc.; Lynell Burmark; and Andrea Jupina.

22 By order entered on October 4, 2011, the Court authorized the employment of
23 Shulman Hodges & Bastian, LLP as general counsel to the Committee, effective as of
24 August 30, 2011. By order entered on January 11, 2012, the Court authorized the
25 employment of Crowe Horwath LLP as the Committee's accountant, effective as of August
26 30, 2011.

27 Upon the Effective Date, the Committee will be disbanded and the Oversight
28 Committee will be responsible for monitoring the management of the Reorganized Debtor.

1 **2. Other Legal Proceedings**

2 The Debtor is a defendant in certain non-bankruptcy legal proceedings commenced
3 pre-petition, as described above in Section II.A.6.c, and as set forth below.

4 a. DOC Cease and Desist

5 In mid 2008, the principals of the Debtor learned the Department of Corporations
6 ("DOC") issued a Cease and Desist Order in 2000 requiring Covenant Group to cease and
7 desist from the sale of securities unless the prior conviction of Jerry D. Smith was
8 disclosed. This order was produced in the litigation with the Wing Receiver. This order
9 does not prevent the Debtor from continuing to manage its assets.¹⁴ In September 2010,
10 the Debtor received a general subpoena from the DOC and the Debtor produced
11 responsive documents in January, 2011. No further action has been taken by the DOC.

12 b. PCH Property

13 The Debtor is also involved in litigation with CBT related to pending concurrent
14 judicial and non-judicial foreclosure proceedings against the PCH Property.

15 **3. Actual and Projected Recovery Avoidance Actions and**
16 **Causes of Action**

17 Attached hereto as Exhibit "5" are the lists that the Debtor attached to its SOFA of
18 all payments made to creditors during the 90-day period and insiders during the one year
19 period prior to the Petition Date. The Debtor does not intend to pursue any Avoidance
20 Actions. Upon the Effective Date, no party shall have standing to bring or prosecute
21 Avoidance Actions except as specifically set forth below in Section III.H.4.

22 **4. Procedures Implemented to Resolve Financial Problems**

23 The Debtor's financial problems primarily relate to its inability to perform under the
24 terms of the Notes due to the downturn in the real estate market. Once the loans stopped
25

26 ¹⁴ There have been general allegations made by individuals that the Debtor was a ponzi scheme. These
27 allegations have been thoroughly investigated by the Committee's attorneys and accountants. The Debtor
28 spent substantial time and resources cooperating in this investigation. Upon the completion of the
investigation, the Committee decided not to pursue any claims against the Debtor, its management, or its
Affiliates.

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1 performing, the Debtor in some cases initiated foreclosure proceedings with respect to its
2 collateral and had to bear related costs (including in connection with the chapter 11
3 proceedings of borrowers). The Debtor depleted liquid assets by making cash payments
4 of interest and principal to both current and previous secured debt holders, as well as
5 cash payments of interest and principal to Note Holders. The Debtor then had to bear the
6 ongoing expense of non-income producing properties after such foreclosures. Further,
7 interest payments due to the Note Holders continued to accrue while the value of the
8 Debtor's collateral and real property (REO) continued to decline. As a result, the Debtor
9 was not able to make the payments due to the Note Holders. Further, the Debtor had to
10 expend a significant amount of funds on pending litigation. The Debtor is resolving these
11 issues by reforming its capital structure, specifically by converting its unsecured debt
12 (including that held by the Note Holders) into equity in the Reorganized Debtor. The
13 Debtor has also resolved most of the pending litigation through settlements (as described
14 above).

15 In order to ensure the maximum return to creditors (*i.e.*, the New Equity Holders),
16 the Debtor will sell certain assets, continue to collect receivables, and, in some cases,
17 obtain possession of and then monetize its collateral for the benefit of creditors. The
18 Debtor will make periodic Equity Distributions to creditors. Also, upon the Effective Date,
19 a new entity, NewCo, will be formed. The Debtor will have a membership interest in
20 NewCo. NewCo will obtain a loan secured by the LV Property. The NewCo loan amount
21 will be \$2,500,000, \$991,040.00 of which will be distributed to the Debtor. The Debtor will
22 also obtain a \$700,000 3rd Trust Deed on the Murrieta Property. The combined proceeds
23 of these two loans will fund the EI Settlement, the Buy-Back offer and be used for other
24 ongoing expenses as more fully described in the projections and footnotes of the Debtor
25 and NewCo. Further, the Debtor and the other 2nd LV Note holders, and the current
26 owner of the LV Property will cooperate in the transfer of the LV Property to NewCo either
27 through a deed in lieu or foreclosure.

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1 **5. Current and Historical Financial Conditions**

2 The Debtor's assets and their value are more specifically identified in the liquidation
3 analysis in Section IV.B. below. Copies of the Debtor's balance sheets and financial
4 statements from October 2010 through March 2011 are attached as Exhibit "6" and the
5 Debtor's MOR's filed during the case are attached as Exhibit "7".

6 **III. SUMMARY OF THE PLAN**

7 The following is a summary of the material provisions of the Plan.

8 **A. Overview of the Plan**

9 The Debtor believes that, in the absence of the Plan, the Debtor's assets would be
10 liquidated at substantially discounted prices. The Plan allows the Debtor to maximize the
11 return to creditors through the orderly administration of its assets. For example, the real
12 property assets being sold will be sold through NewCo over sufficient time periods to
13 generate the highest potential recoveries (and not at "fire sale" prices). The Debtor will
14 continue to collect its good receivables (and will not have to liquidate them on a
15 discounted basis). As to loans owned by the Debtor that are in default, the Debtor or
16 NewCo may, over time, take possession of the collateral and then monetize it for the
17 benefit of creditors. In furtherance of this process, the Debtor has been and the
18 Reorganized Debtor will continue to address the current challenges impacting the assets,
19 such as pending litigation, which if not resolved will severely undermine the value of the
20 assets available for distribution. The Debtor will make periodic Equity Distributions to
21 creditors (as equity holders of the Reorganized Debtor) as proceeds become available.
22 Also, upon the Effective Date, a new entity, NewCo, will be formed. The Debtor will have
23 a membership interest in NewCo. NewCo will obtain a loan secured by the LV Property.
24 The NewCo loan amount will be \$2,500,000, \$991,040.00 of which will be distributed to
25 the Debtor. The Debtor will also obtain a \$700,000 3rd Trust Deed on the Murrieta
26 Property. The combined proceeds of these two loans will fund the EI Settlement, the Buy-
27 Back Offer and be used for other ongoing expenses as more fully described in the
28 projections and footnotes of the Debtor and NewCo. Further, the Debtor and the other

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1 2nd LV Note holders, and the current owner of the LV Property will cooperate in the
2 transfer of the LV Property to NewCo either through a deed in lieu or foreclosure. The
3 Debtor believes that the current equity owner and manager of Apex Central, LLC and
4 Industrial Rail, LLC (aka CDL3, LLC), the entities which currently own the LV Property, will
5 cooperate in this process. These are entities which are related to the Debtor. In sum, the
6 Debtor believes that the Plan will provide the greatest potential recovery for creditors
7 through maximizing the returns on the assets.

8 Unless otherwise expressly stated in the Plan, the treatment of Allowed Claims and
9 allowed interests under the Plan supersedes any agreements or rights the Holders of
10 those Claims or Interests may have in or against the Debtors or their assets and is in full
11 satisfaction of the legal, equitable, and contractual rights of the Holders of the Claims or
12 Interests.

13 Unless the Plan provides otherwise, no Distributions will be made and no rights
14 retained on account of any Claim or Interest that has not become an Allowed Claim or
15 allowed Interest.

16 **B. What Creditors and Interest Holders Will Receive Under the**
17 **Proposed Plan**

18 As required by the Bankruptcy Code, the Plan classifies Claims and Interests in
19 various Classes according to their right to priority. The Plan states whether each Class of
20 Claims or Interests is impaired or unimpaired. The Plan provides the treatment each
21 Class will receive. In no event shall any creditor receive more than the creditor's Allowed
22 Claim, plus interest, to the extent provided herein.

23 **C. Unclassified Claims**

24 Certain types of Claims are not placed into voting classes but are instead
25 unclassified. They are not considered impaired and they do not vote on the Plan because
26 they are automatically entitled to certain treatment under the Bankruptcy Code.

27 Accordingly, the following Claims have not been placed into a Class:
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THIRD AMENDED DISCLOSURE
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1 **1. Administrative Expenses**

2 Administrative Claims are Claims for costs or expenses of administering the
3 Debtor's Case which are allowed under § 507(a)(2) of the Bankruptcy Code. The
4 Bankruptcy Code requires that all Allowed Administrative Claims be paid on the Effective
5 Date of the Plan, unless a particular claimant agrees to a different treatment. The
6 following charts list all of the Debtor's § 507(a)(2) unpaid Administrative Claims and their
7 treatment under the Plan:

8 **Non-Professional Administrative Claims**

Description	Estimated Amount Owed	Treatment
Ordinary-Course Administrative Claims	\$0.00	Unless the Debtor objects to an Ordinary-Course Administrative Claim, the Claim will be Allowed in accordance with the terms and conditions of the particular transaction that gave rise to the Ordinary-Course Administrative Claim, and the Person holding the Ordinary-Course Administrative Claim need not File any Request for Payment of its Claim.
Non-Ordinary Course Administrative Claims	\$0.00	To the extent that any Non-Ordinary-Course Administrative Claims are Allowed, they will be paid in full by the Debtor on the later of (i) the Effective Date, and (ii) the date that is ten (10) Business Days after the Court enters a Final Order allowing the Non-Ordinary-Course Administrative Claim.
Clerk's Office Fees	\$0.00	Paid in full on or before the Effective Date.
Office of the United States Trustee Fees	\$0.00	Paid in full on or before the Effective Date.
Administrative Tax Claims	\$16,850.00	Unless the Debtor objects to an Administrative Tax Claim or otherwise disputes the Administrative Tax Claim in accordance with applicable law, the Claim will be Allowed in accordance with the terms and conditions of the particular transaction that gave rise to the Administrative Tax Claim, and the Person holding the Administrative Tax Claim need not file any Request for Payment of its Claim. Any Allowed Administrative Tax Claim will be paid in the ordinary course of business, currently and timely as they

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Non-Professional Administrative Claims		
Description	Estimated Amount Owed	Treatment
		are incurred and billed, unless the Debtor objects to or otherwise disputes such Administrative Tax Claim in accordance with applicable law. In an event of default, and to the extent such Administrative Tax Claim is also secured, the payment thereof will include all costs, fees, charges and interest, if applicable, as required under 11 U.S.C. §§ 506(b) and 511, and applicable non-bankruptcy law.
		Failure by the Debtor to make a payment on account of any Allowed Administrative Tax Claim pursuant to the terms of the Plan shall be an event of default. Within ten (10) days of receiving written notice of an event of default, the Debtor shall either cure the event of default or shall notify the Administrative Tax Claimant that it disputes the event of default. If the Debtor and the Administrative Tax Claimant are not able to resolve the dispute, then the Debtor shall file an appropriate motion with the Court for the Court to determine whether an event of default exists. If the Debtor (i) fails to cure an undisputed event of default; or (ii) disputes the event of default and the Court makes a finding in favor of the Administrative Tax Claimant and the Debtor fails to cure the disputed event of default, then the Administrative Tax Claimant shall be able to enforce the entire amount of its Claim, plus all penalties and interest accrued under state law, against the Debtor in accordance with applicable state law remedies.
Total	\$16,850.00	

Professional-Fee Claims		
Description	Estimated Amount Owed	Treatment
Weiland Golden	\$185,000.00	Within the later of sixty (60) days after the Effective Date or ten (10) days after the date such claims become Allowed,, all Professional-Fee Claims will be paid a pro rata portion of \$200,000. The remaining balance of the Professional-Fee Claim will be paid in accordance with the Debtor's

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Professional-Fee Claims		
Description	Estimated Amount Owed	Treatment
		projections.
The Law Office of Joel M. Pores	\$0.00 ¹⁵	Within the later of sixty (60) days after the Effective Date or ten (10) days after the date such claims become Allowed, all Professional-Fee Claims will be paid a pro rata portion of \$200,000. The remaining balance of the Professional-Fee Claim will be paid in accordance with the Debtor's projections.
Counsel to the Committee	\$200,000.00	Within the later of sixty (60) days after the Effective Date or ten (10) days after the date such claims become Allowed, all Professional-Fee Claims will be paid a pro rata portion of \$200,000. The remaining balance of the Professional-Fee Claim will be paid in accordance with the Debtor's projections.
Crowe Horwath	\$140,000.00	Within the later of sixty (60) days after the Effective Date or ten (10) days after the date such claims become Allowed, all Professional-Fee Claims will be paid a pro rata portion of \$200,000. The remaining balance of the Professional-Fee Claim will be paid in accordance with the Debtor's projections.
Total	\$525,000.00	

The following applies to Administrative Claims:

a. Ordinary Course Administrative Claims

Unless the Debtor or other party-in-interest objects to an Ordinary-Course Administrative Claim, the Claim will be deemed Allowed in accordance with the terms and conditions of the particular transaction that gave rise to the Ordinary-Course Administrative Claim, and the Person holding the Ordinary-Course Administrative Claim need not File any Request for Payment of its Claim. However, any Request for Payment,

¹⁵ Pursuant to the application to employ, The Law Offices of Joel M. Pores will receive a flat fee of \$25,000, payable \$15,000 upon execution of the agreement and \$10,000 upon entry of an order of the Court approving special counsel's employment. All of the terms of the employment of The Law Offices of Joel M. Pores are set forth in the employment application which can be found on the case docket at docket entry no. 59. Mr. Pores has resigned. The Debtor intends on objecting to the payment of any outstanding amounts due to Mr. Pores.

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1 or Motion to allow a Claim as an Ordinary-Course Administrative Claim must be Filed with
2 the Court and served on counsel for the Debtor or the Reorganized Debtor, as the case
3 may be, and the OUST by no later than sixty (60) days after the Effective Date.

4 b. Non-Ordinary-Course Administrative Claims

5 A Non-Ordinary-Course Administrative Claim will be paid by the Debtor on the
6 Effective Date to the extent that prior to the Effective Date it has already been determined
7 to be an Allowed Non-Ordinary-Course Administrative Claim by the Court pursuant to a
8 Final Order. Any other Non-Ordinary-Course Administrative Claim will be paid by the
9 Debtor to the extent that it is allowed by the Court only if: (1) on or before sixty (60) days
10 after the Effective Date, the Person holding the Non-Ordinary Course Administrative Claim
11 both Files with the Court a Request for Payment of the Non-Ordinary-Course
12 Administrative Claim and serves the Request for Payment on counsel for the Debtor and
13 the OUST; and (b) the Court, in a Final Order, allows the Non-Ordinary-Course
14 Administrative Claim. Any party-in-interest, including, but not limited to, the Debtor, may
15 File an objection to such a Request for Payment within the time provided by the
16 Bankruptcy Rules or within any other period the Court establishes. Persons holding Non-
17 Ordinary-Course Administrative Claims who do not timely File and serve a Request for
18 Payment will be forever barred from asserting these Claims or sustaining any action
19 seeking payment in any forum or from any court deriving from these Claims against the
20 Estate, the Reorganized Debtor, the Debtor, or their property.

21 c. Professional-Fee Claims

22 A Professional-Fee Claim will be paid only if: (a) on or before forty-five (45) days
23 after the Effective Date (or such further date if extended by Court order), the Person
24 holding the Professional-Fee Claim both Files with the Court an application requesting
25 allowance and payment of the Professional-Fee Claim; and (b) the Professional-Fee
26 Claim is allowed by order of the Court (as to which fourteen (14) days has passed without
27 a stay of the enforcement or effectiveness of such order or, if a stay has been obtained,
28 such stay has lapsed or been dissolved). The Debtor or any other party-in-interest may

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1 File an objection to such an application within the time provided by the Bankruptcy Rules
 2 or within any other period that the Court establishes. Persons holding Professional-Fee
 3 Claims who do not timely File and serve an application for allowance and payment will be
 4 forever barred from asserting these Claims against the Estate, the Debtor, the
 5 Reorganized Debtor, or their property.

6 As is indicated above, the Debtor estimates that it will need to pay Administrative
 7 Claims totaling approximately \$541,850.00 on the Effective Date, unless the claimant has
 8 agreed to be paid later (as with Professional-Fee Claims) or the Court has not yet ruled on
 9 the Claim. The Debtor expects that it will have funds on the Effective Date to make the
 10 necessary payments.¹⁶

11 **2. Priority Tax Claims**

12 Priority Tax Claims include certain unsecured income, employment and other taxes
 13 described by Bankruptcy Code § 507(a)(8). The Bankruptcy Code requires that each
 14 Holder of such a § 507(a)(8) Priority Tax Claim receive the present value of such Claim in
 15 regular installment payments in Cash, over a period not exceeding five years from the
 16 Petition Date, unless the Holder agrees to a different treatment. The following chart lists
 17 all of the Debtor's known § 507(a)(8) Priority Tax Claims and their treatment under the
 18 Plan:

Priority Tax Claims		
Description	Estimated Amount Owed	Treatment
Franchise Tax Board	\$800.00	The Franchise Tax Board will be paid in full on the Effective Date or as soon as reasonably practicable thereafter.
Franchise Tax Board (Covenant Bancorp., Inc. 2008 Taxes)	\$93,576.80	The Franchise Tax Board will be paid in full the allowed amount of its Claim no more than five (5) years from the entry of the Order for Relief. The Claim shall accrue interest from the Effective Date on the unpaid balance

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 26 ¹⁶ Because the Professional-Fee Claims are being paid over time, as of the Effective Date, the Debtor
 27 will need to have \$216,850 of cash on hand to make the necessary payments. The Debtor will have funds
 28 to pay the \$16,500 Administrative Tax Claim on the Effective Date and the \$200,000 Professional Fee Claim
 within 60 days of the Effective Date. The balance of the Allowed Professional Fee Claims will be paid over
 time in accordance with the projections.

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Priority Tax Claims		
Description	Estimated Amount Owed	Treatment
		of the Allowed Priority Tax Claim at the rate required by 11 U.S.C. § 511 to provide "present value" of the Allowed Priority Tax Claim.

D. Classified Claims

1. Summary of Classes

Summary of Classes	
Class	Claimant(s)
1	Secured Claim of Parties to the 8% Secured Note – 1 st Lien on 1 st LV Notes
2	Secured Claim of Enhanced Income Fund I, LLC – 1 st Lien on 2 nd LV Notes, 3 rd Lien on the Murrieta Property, and lien on Heritage Orcas Partners, LP
3(a)	Secured Claim of Riverside County Treasurer-Tax Collector – 1 st Lien on Murrieta Property
3(b)	Secured Claim of Dunn Creditors – 2 nd Lien on Murrieta Property
4(a)	Secured Claim of Orange County Treasurer-Tax Collector – 1 st Lien on PCH Property
4(b)	Secured Claim of CBT – 2 nd Lien on PCH Property
5	Secured Claim of Los Angeles County Treasurer-Tax Collector – Lien on Ventura Property
6	Priority Unsecured Claim – Los Angeles County Treasurer-Tax Collector
7(a)	General Unsecured Claims
7(b)	General Unsecured Claims Less than \$2,000
8	Interest Holders

2. Secured Claims

Secured Claims are Claims secured by liens against property of the Estate. The following chart lists all Classes of Secured Claims and their treatment under the Plan:

Secured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
1	Secured Claim of Parties to the 8% Secured Note (This class includes current note holders and any note holders	N ¹⁷	Y	The secured creditors in this class will release their liens on the 1 st LV Notes. Anthony Hasso holds a note in the amount of \$50,000. This note will accrue interest at a rate of 3% per annum with interest and

¹⁷ While there are some insiders within Class 1, the whole class is not made up of insiders.

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Secured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
	from potential post-confirmation borrowing). • Collateral: 1 st LV Notes • Priority of Security Interest: First • Total Claim Amount: \$160,000.00 • Collateral Value: approximately \$4,692,600.00			principal due within 36 months of the Effective Date. Echo Bay holds a note in the amount of \$15,000. This note will accrue interest at a rate of 3% per annum with interest and principal due within 36 months of the Effective Date. Smith Family Trust holds a note in the amount of \$95,000. This note will not accrue interest. The principal will be due within 84 months of the Effective Date. The Debtor may pay the remaining balance of these Allowed Secured Claims in full at any time with no prepayment penalty.
2	Secured Claim of Enhanced Income Fund I, LLC Current Collateral: • Collateral: 2 nd LV Notes • Priority of Security Interest: First • Collateral Value: approximately \$4,600,692.45 • Collateral: Murrieta Property • Priority of Security Interest: Third • Collateral Value: \$1,250,000.00 • Collateral: Debtor's equity interest in Heritage-Orcas Partners, LP • Total Claim Amount: \$4,254,666.79	N	Y	<u>Pursuant to a settlement of the EI Avoidance Claims (discussed above in section II.A.2.b), Enhanced Income will have an Allowed Secured Claim of \$2,000,000 payable as follows:</u> <u>Principal: \$2,000,000.00</u> <u>Interest: 5% simple interest.</u> <u>Payments:</u> <u>Principal: A balloon payment of the principal amount of \$2,000,000 is due to be paid on December 31, 2013 or concurrently with the payoff of the Dunn Creditors, whichever is earlier.</u> <u>Interest: Interest will begin to accrue on the Effective Date. Interest payments will be made monthly within 5 days after the end of each month. Interest payments commence on April 15, 2013 (provided that there is no early payoff by March 31, 2013).</u> <u>Collateral:</u> <u>On the Effective Date, Enhanced Income will be granted the following liens:</u> <u>1. A first priority lien on the Debtor's Interests in NewCo; and</u> <u>2. A third priority lien on the Murrieta Property.</u>

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Secured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
				<p><u>Enhanced Income will release its liens on all other Debtor assets.</u></p> <p><u>Enhanced Income will release its liens on the Murrieta Property to allow its sale or refinancing provided that Net Proceeds of any such sale or refinance will be used to pay Enhanced Income. Any proceeds received by Enhanced Income will be credited against the amount of its Allowed Secured Claim.</u></p> <p><u>Enhanced Income shall be enjoined from enforcing its liens and rights as long as there is no material monetary default that is not cured within 15 days after giving of notice of default or an uncured default by the Debtor to the Dunn Creditors. If there is such an uncured default, Enhanced Income shall be allowed to foreclose and may seek relief from stay on an expedited basis. If the Dunn Creditors obtain relief from stay, Enhanced Income shall be entitled to relief from stay.</u></p> <p><u>Prepayment Discount:</u></p> <p><u>The Enhanced Income Allowed Secured Claim may be paid in full at the discounted amount of \$1,350,000 if paid by March 31, 2013 or concurrently with the payment of the Dunn Creditors, whichever is earlier."</u></p>
3(a)	Secured Claim of Riverside County Treasurer-Tax Collector <ul style="list-style-type: none"> • Collateral: Murrieta Property • Priority of Security Interest: First • Total Claim Amount: \$40,511.15 • Collateral Value: \$1,250,000.00 	N	Y	The Riverside County Treasurer-Tax Collector be paid in full the allowed amount of its Claim, including all applicable costs, fees, charges and interest pursuant to 11 U.S.C. § 506 and 511, on the Effective Date or as soon as reasonably practicable thereafter. In the event that the Claim is not paid in full within sixty (60) days after the Effective Date, the Claim will be paid in monthly payments not to exceed five (5) years from the entry of the Order for Relief, beginning the first full month that is sixty (60) days after the Effective Date. The Riverside County Treasurer-Tax Collector shall retain its lien until the Claim is paid in full. Failure by the Debtor to make a payment to the Riverside County Treasurer-Tax

Deleted: Pursuant to a settlement of the EI Avoidance Claims (discussed above in section II.A.2.b), Enhanced Income will have an Allowed Secured Claim of \$2,000,000 payable as follows:¶

¶ Principal: \$2,000,000.00¶

Interest: 5% simple interest. ¶

¶ Payments: -

Principal: A balloon payment of the principal amount of \$2,000,000 is due to be paid on December 31, 2013.¶

Interest: Interest will begin to accrue on the Effective Date. Interest payments will be made monthly within 5 days after the end of each month. Interest payments commence on January 5, 2013 (provided that there is no early payoff by December 31, 2012 pursuant to the schedule below).¶

¶ Collateral: ¶

On the Effective Date, Enhanced Income will be granted the following liens:¶

¶ 1. A first priority lien on the Debtor's interests in NewCo; and¶

¶ 2. A third priority lien on the Murrieta Property.¶

¶ Enhanced Income will release its liens on all other Debtor assets.¶

¶ Enhanced Income will release its liens on the Murrieta Property to allow its sale or refinancing provided that the Net Proceeds of any such sale will be paid to the secured creditors, according to their respective priorities, up to the amounts of the balances of the Allowed Secured Claims. Any proceeds received by Enhanced Income will be credited against the amount of its Allowed Secured Claim.

¶ Enhanced Income shall be enjoined from enforcing its liens and rights as long as there is no material monetary default that is not cured within 15 days after giving of notice of default.¶

¶ Prepayment Discounts: ¶

The Enhanced Income Allowed Secured Claim may be paid in full at the discounted amounts set forth in the following schedule:¶

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Secured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
				Collector pursuant to the terms of the Plan shall be an event of default. Within ten (10) days of receiving written notice of an event of default, the Debtor shall either cure the event of default or shall notify the Riverside County Treasurer-Tax Collector that it disputes the event of default. If the Debtor and the Riverside County Treasurer-Tax Collector are not able to resolve the dispute, then the Debtor shall file an appropriate motion with the Court for the Court to determine whether an event of default exists. If the Debtor (i) fails to cure an undisputed event of default; or (ii) disputes the event of default and the Court makes a finding in favor of the Riverside County Treasurer-Tax Collector and the Debtor does not cure the disputed event of default, then the Riverside County Treasurer-Tax Collector shall be able to enforce the entire amount of its Claim, plus all penalties and interest accrued under state law, against the Debtor in accordance with applicable state law remedies.
3(b)	Secured Claim of Dunn Creditors • Collateral: Murrieta Property • Priority of Security Interest: Second • Total Claim Amount: \$265,727.78 • Collateral Value: \$1,250,000.00	N	Y	<p><u>The Dunn Creditors' Allowed Secured Claim, including accrued interest at the existing contract rate, will be paid in full within 30 days after the Effective Date (i.e. Plan Approval). As of September 28, 2012, the amount of the claim is \$331,898.41. Interest will accrue at the fourteen percent (14%) note rate after September 28, 2012, at \$97.22 per diem. Additional attorneys' fees may be added to the amount due if incurred prior to payment, subject to court determination of any objection.</u></p> <p><u>The Dunn Creditors will release their lien through escrow on the Murrieta Property to allow its sale or refinance provided that the Net Proceeds of any such sale or refinance will be used to pay the Dunn Creditors' Allowed Secured Claim in full through escrow. However, such a sale will not extend the due date, described above. Fidelity and the Dunn Creditors will cooperate and coordinate this reconveyance with any escrow set up by the Debtor to implement and effectuate such a refinance. The payment will be made from escrow to the foreclosure trustee of the Dunn Creditors (Fidelity) who will issue the reconveyance upon clearance of the payment check or wire transfer: including depositing</u></p>

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Secured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
				<p>the reconveyance into such escrow pending payment. The Dunn Creditors shall be enjoined from enforcing their lien as long as there is no material monetary default that is not cured within 15 days after giving of notice of default in writing to debtor's counsel of record in this bankruptcy proceeding. If there is such an uncured default, the Dunn Creditors shall be allowed to foreclose and may seek relief from stay on an expedited basis.</p> <p>The Debtor may pay the remaining balance of the Dunn Creditors' Allowed Secured Claim in full at any time with no prepayment penalty.</p>
4(a)	Secured Claim of Orange County Treasurer-Tax Collector <ul style="list-style-type: none"> • Collateral: PCH Property • Priority of Security Interest: First • Total Claim Amount: \$91,101.92 	N	N	The Orange County Treasurer-Tax Collector will not receive a Distribution under the Plan. Instead, the secured creditor will retain all of its rights against the PCH Property, which the Debtor is not retaining. In the event that the Debtor does retain the PCH Property, the Orange County Treasurer-Tax Collector shall receive payments over time until the Allowed amount of its Claim is paid in full, but in no event, more than five (5) years from the entry of the Order for Relief. Under these circumstances, the Claim shall accrue interest from the Effective Date on the unpaid balance of the Claim at the rate required by 11 U.S.C. § 511 to provide "present value" of the Allowed Claim.
4(b)	Secured Claim of California Bank & Trust <ul style="list-style-type: none"> • Collateral: PCH Property • Priority of Security Interest: Second • Total Claim Amount: \$2,630,115.89 • Collateral Value: Sunknown 	N	N	The Debtor will abandon/surrender its interests in the PCH Property to CBT in full satisfaction of its Allowed Secured Claim and CBT shall have no further Claim against the Estate, the Debtor, or the Reorganized Debtor, or their property.
5	Secured Claim of Los Angeles County Treasurer-Tax Collector	N	N	The Los Angeles County Treasurer-Tax Collector will not receive a Distribution under the Plan. Instead, the secured creditor will retain its rights against the Ventura Property,

Deleted: The Dunn Creditors will receive monthly payments calculated based on an interest rate of 5.5% per annum and amortization over 25 years. The Allowed Secured Claim will be paid in full within 7 years after the Effective Date.¶

¶ The Dunn Creditors will release their lien on the Murrieta Property to allow its sale. The Net Proceeds of any such sale will be paid to those creditors secured by the Murrieta Property, according to their respective priorities, up to the amounts of the balances of the Allowed Secured Claims. The Dunn Creditors shall also be enjoined from enforcing their lien as long as there is no material monetary default that is not cured within 30 days after giving of notice of default.¶

¶ The Debtor, at its discretion, may surrender the collateral to the Dunn Creditors in full satisfaction of the Allowed Secured Claim.¶

¶ The Debtor may pay the remaining balance of the Allowed Secured Claim in full at any time with no prepayment penalty.¶

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THIRD AMENDED DISCLOSURE STATEMENT

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Secured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
	<ul style="list-style-type: none"> • Collateral: Ventura Property • Priority of Security Interest: First • Total Claim Amount: \$unknown • Collateral Value: \$unknown 			which is no longer owned by the Debtor.

3. Classes of Priority Unsecured Claims

Certain Priority Unsecured Claims that are referred to in Bankruptcy Code §§ 507(a)(3), (4), (5), (6), and (7) are required to be placed in Classes in a Chapter 11 plan. The Bankruptcy Code requires that each Holder of the above Priority Claims receive Cash on the Effective Date of the Plan equal to the allowed amount of such Claim. However, a Class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such Claim. The following chart lists all Classes containing the Debtor's Bankruptcy Code §§ 507(a)(3), (4), (5), (6) and (7) Priority Claims and their treatment under the Plan:

Priority Unsecured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
6	Los Angeles County Treasurer-Tax Collector Estimated Claim Amount: \$19,058.61	N	Y	The Los Angeles County Treasurer-Tax Collector will be paid in full the Allowed amount of its Claim, including all applicable costs, fees, charges, and interest pursuant to 11 U.S.C. § 511 and applicable California Revenue and Taxation Code sections, on the Effective Date or as soon as reasonably practicable thereafter, but, in no event, more than five (5) years from the entry of the Order for Relief. The Claim shall accrue interest from the Effective Date on the unpaid balance of the Claim at the rate required by 11 U.S.C. § 511 and applicable California Revenue and Taxation Codes sections. The Property

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Priority Unsecured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
				securing this claim has been sold upon and is not property of the Estate.

4. Classes of Unsecured Claims

General Unsecured Claims are unsecured Claims that are not entitled to priority under 11 U.S.C. § 507(a). Below is a summary of the Plan's treatment of the Classes containing the Debtor's General Unsecured Claims.

General Unsecured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
7(a)	General Unsecured Claims Estimated total amount of claims: \$45,000,000.00	N ¹⁸	Y	1. <u>Equity Option</u> . Each Class 7(a) general unsecured creditor will receive a Pro Rata Share of the New Equity Interests in the Reorganized Debtor based on the amount of such creditors Allowed Unsecured Claim. The holders of New Equity Interests will ultimately receive distributions from the Net Proceeds of the Debtor's assets and distributions received from NewCo less working capital requirements (including for operating expenses) and the payment of senior claims as the funds become available. 2. <u>Buyout Option</u> . Eligible Creditors in class 7(a) may elect to have 7.5% of the amount of their Allowed Claims paid on the later of 90 days after the Effective Date or the date the claim becomes allowed ("Buyout Option") in full satisfaction and for a release of all obligations of the Debtor. Eligible Creditors may only elect the Buyout Option for their full Allowed Claims (<i>i.e.</i> , there will be no partial buyout of claims for any Eligible Creditor). To elect the Buyout Option, a creditor must check the box on the Plan ballot indicating such election and providing the Debtor a fully complete release contingent only upon receiving payment.

¹⁸ While there are insiders within Class 7(a), the whole class is not comprised of insiders.

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General Unsecured Claims				
Class #	Description	Insiders (Y/N)	Impaired (Y/N)	Treatment
				<p>The Buyout Option is only effective and will only be paid if the aggregate face value of the amount of the claims ("Buyout Claim Amount") of all of the creditors electing the Buyout Option is less than \$4,000,000. If the aggregate Buyout Claim Amount is more than \$4,000,000 then all creditors that elected the Buyout Option will be treated the same as creditors receiving the default Equity Option and will not receive a buyout of their claims.</p> <p>Eligible Creditors are all general unsecured creditors (class 7(a)) with Allowed Claims except the excluded creditors ("Excluded Creditors") listed on the schedule attached as Exhibit 10 to the Disclosure Statement. Excluded Creditors include the principals of the Debtor, David Lawlor and Jerry Smith, their spouses, and their blood relatives, the Affiliates and Insiders (as that term is defined in the Bankruptcy Code) of the Debtor, commissioned salespeople of the Debtor and their blood relatives, and parties who were limited partners in Heritage Real Estate Equity Fund in 2004.</p> <p>The treatment proposed herein shall be in full satisfaction of all Class 7(a) general unsecured claims.</p>
7(b)	General Unsecured Claims Less than \$2,000 Estimated total amount of claims \$8,000	N	Y	General Unsecured creditors who (1) Filed a Proof of Claim for an amount less than \$2,000; or (2) were scheduled by the Debtor as a General Unsecured Claim for less than \$2,000 and the Claim is not disputed, contingent or unliquidated, shall be paid 10% of the value of the Claim upon the Effective Date.

5. Class of Interest Holders

Interest Holders are the parties who hold membership Interests (*i.e.*, equity interests) in the Debtor. The Debtor is a California limited liability company in which the owners hold Membership Interests. The following chart identifies the Plan's treatment of the Class of Interest Holders.

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Interest Holders			
Class #	Description	Impaired (Y/N)	Treatment
8	Interest Holders	Y	On the Effective Date, all existing Membership Interests in the Debtor will be cancelled, annulled, and extinguished. No Distribution of any kind will be made on account of any existing Membership Interests.

E. Means of Effectuating the Plan

This section is intended to explain how the Debtor intends to effectuate the Plan, and how the Debtor intends to fund the obligations to Holders of Allowed Claims as provided in the Plan. This section provides information regarding the funding sources for Plan obligations, the establishment of the Reorganized Debtor, and other material issues bearing upon performance of the Plan. The Plan will be effectuated through the income generated from receivables, sales of assets, and the vesting of all assets in the Reorganized Debtor.

1. Transfer of Estate Assets

Except as otherwise provided for in the Plan, upon the Effective Date, the Assets, including, but not limited to, the LV Notes, all real property, the Avoidance Actions and other Causes of Action, shall be deemed transferred to and vested in the Reorganized Debtor in accordance with the Plan.

2. The Reorganized Debtor

The Reorganized Debtor shall be a California limited liability company operated pursuant to the Plan and an Operating Agreement substantially in the form of the document attached as Exhibit "1" to the Plan.

3. The LV Notes and the LV Property

Upon the Effective Date, the following will occur as to the LV Notes and the LV Property:

- (a) The interest holders in the 3rd LV Note will release the 3rd LV DOT. Based upon the value of the LV Property, the 3rd LV Note is wholly unsecured. The interest

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1 holders in the 3rd LV Note will not receive a membership interest in NewCo based upon
2 their interest in the 3rd LV Note or 3rd LV DOT;

3 (b) The interest holders in the 2nd LV Note will release the 2nd LV DOT in
4 exchange for membership interests in NewCo according to their percentage ownership
5 interest in the 2nd LV Note described in Section II.A.2.b above. The membership interests
6 are adjusted based on the membership interest received by the Debtor for releasing its 1st
7 LV Note;

8 (c) The Debtor will release the 1st LV Note and will receive a 33.5185%
9 membership interest in NewCo as credit for the release of the 1st LV Note (the Debtor's
10 total interest in NewCo will be 49.5520%). This membership interest calculation is based
11 upon a full credit of the 1st LV Note balance of \$4,692,600 and assumes the LV Property
12 value is \$14,000,000.

13 (d) The Secured 8% note holders will release their lien against the 1st LV Note
14 and will be repaid according to the terms set forth above for Class 1;

15 (e) On the Effective Date, the owners of the 2nd LV Note will form a new entity,
16 NewCo. The membership shares in NewCo will be as follows: (i) the Debtor
17 (49.5520%)¹⁹; (ii) Heritage Orcas Partners, LP (29.7763%); (iii) Birch Bay Partners, LP
18 (5.7599%); (iv) Heritage Orcas VL Partners, LP (8.3479%); (v) Echo Bay/Covenant
19 Opportunity Fund/Island Capital, LLC²⁰ (collectively, 6.5639%). Projections for NewCo
20 are attached hereto as Exhibit "1." NewCo will be governed by a board of directors or
21 oversight committee consisting of five (5) members to be appointed by the members of
22 NewCo. Each member in NewCo shall have the right to appoint one member of the board
23 of directors or oversight committee, except that Island Capital and Covenant Opportunity
24

25 ¹⁹ The Debtor's percentage interest in NewCo is calculated in the following manner. As stated above,
26 the Debtor receives a 33.5185% Membership Interest in exchange for releasing its 1st LV Note. This is
27 calculated by dividing the \$4,692,600 1st LV Note Balance by the \$14,000,000 estimated LV Property Value.
28 The Debtor then receives an additional 16.0035% Membership Interest for its ownership of the 2nd LV Note.
This is calculated by multiplying the Debtor's current 24.1173% 2nd LV Note ownership by the remaining
NewCo equity of 66.4815%.

²⁰ These entities have merged.

1 Fund shall have only one appointment between the two entities. The members of each
2 entity will elect the NewCo board or committee member for that entity. The management
3 of NewCo, David Lawlor and Jerry Smith, will report to and receive direction from the
4 board. Each member's representative will have voting rights in accordance with the
5 member's percentage interest in NewCo. For example, the Debtor will have a 49.552%
6 voting interest;

7 (f) The Debtor together with NewCo and the other LV Note holders will
8 foreclose on the LV Property or will provide a deed in lieu of foreclosure. Upon the
9 completion of the foreclosure process, title to the remaining 15 LV Property parcels will be
10 held by NewCo;

11 (g) NewCo will obtain a loan for \$2,500,000.00. The loan will be secured by a
12 first priority deed of trust on the LV Property parcels. NewCo will immediately distribute
13 \$991,040.00 of the loan to the Debtor. The remaining funds will be used for proportional
14 distributions to the other members or operations and monetization of the LV Property. As
15 NewCo receives net proceeds (net of NewCo expenses) from the sale, development, or
16 joint venture of the LV Property, it will make cash distributions to its members based upon
17 their ownership percentage. The Debtor will also obtain a \$700,000 3rd Trust Deed on
18 the Murietta property. The Debtor may also monetize its interest in the Murrieta Property
19 through a sale of all or part of its interest in the Murrieta Property, through a refinancing,
20 or through a joint venture with respect to Murrieta. Any such transaction will be subject to
21 all existing liens to the extent that such liens are not paid in full through the transaction.

22 (h) Pursuant to the compromise, Enhanced Income's restructured obligation will
23 be secured by a lien on the Debtor's interests in NewCo. Until the restructured obligation
24 to Enhanced Income is paid in full and the Enhanced Income lien on the Debtor's interests
25 in NewCo are released, the only liens on the LV Property will be the lien to secure the
26 loan described in section (g) above and potential property tax liens.

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1 (i) If the Dunn Creditors' Secured Claim is purchased by a third party prior to its
2 satisfaction, the Debtor may restructure that obligation on terms agreed upon with the
3 purchaser.

4 **F. Risk Factors**

5 Performance of the obligations under the Plan are subject to various factors and
6 contingencies, some of which are described in this section. The following discussion
7 summarizes some of the material risks associated with the Plan, but is not intended to be
8 exhaustive. Moreover, it should be read in connection with the other disclosures
9 contained in this Disclosure Statement and the Plan. Each creditor, in conjunction with its
10 advisors, should supplement the following discussion by analyzing and evaluating the
11 Plan and the Disclosure Statement as a whole. THE RISKS ASSOCIATED WITH THE
12 PLAN MUST BE CAREFULLY CONSIDERED IN DETERMINING WHETHER TO
13 ACCEPT THE PLAN.

14 There is always a risk that the Debtor's assets will lose value. Here, there is a
15 possibility that the real property that is the collateral for the Debtor's loans or the real
16 property held directly by the Debtor could decline in value. General unsecured creditors
17 are receiving all of the assets of the Debtor and there is no fixed or guaranteed distribution
18 amount or percentage. Thus, even if the recoveries are less than expected, the Plan will
19 still be feasible as to unsecured creditors.

20 Crucial to the success of the reorganization is the Debtor obtaining cash by a
21 membership distribution by the new entity described above in Section III.E.3 and through
22 obtaining funds from the Murrietta Property through financing or other disposition. If
23 administrative expenses significantly increase, due to litigation or otherwise, beyond what
24 the Debtor currently forecasts, the Debtor believes obtaining financing may be more
25 difficult. Failure to obtain financing may result in the Plan not being feasible.²¹ Further, if

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27 ²¹ On November 5, 2012 California Bank and Trust was granted three judgments based on Guarantees
28 of certain loans against Mr. Smith, Mr. Lawlor, Covenant Management Group, LLC (CMG), Heritage Capital
Management, LLC (HCM). All parties are jointly and severally liable. A judgment in the amount of

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1 the proceeds of this financing, even if obtained, have to be used for significantly greater
2 administrative expenses than is forecasted, the Plan may not be feasible or the assets
3 may have to be sold sooner in the current difficult real estate market resulting in a
4 decreased return to creditors. The Plan maximizes the return to creditors by providing for
5 cooperation between the entities owning interests in the LV Notes and LV Property.

6 **G. Provisions Governing Distributions**

7 **1. Dates of Distributions**

8 Effective Date Payments shall be deemed timely made if made as soon as
9 practicable after the Effective Date, but, in any event, within fifteen (15) days of the
10 Effective Date. Any Distribution required to be made when a Disputed Claim becomes an
11 Allowed Claim shall be deemed timely made if made as soon as practicable thereafter,
12 but, in any event, within fifteen (15) days thereafter.

13 **2. Manner of Distribution**

14 At the option and in the sole discretion of the Debtor, monetary Distributions may
15 be made by (i) wire transfers from, or (ii) a check drawn on a domestic bank approved by
16 the OUST.

17 **3. Delivery of Distributions in General**

18 Distributions to Holders of Allowed Claims shall be made by the Debtor (a) at the
19 addresses set forth on the Proof of Claim filed by such Holders, (b) at the addresses
20 reflected in the Schedules if no Proof of Claim has been filed and the Debtor has not
21 received a written notice of a change of address, or (c) in the case of a Holder of a Claim
22 that is governed by an agreement and is administered by an agent or servicer, at the

23 _____
24 (...Continued)

25 \$1,932,635.94 was entered against Mr. Lawlor, Mr. Smith and CMG as a result of their Guaranty of the
26 Cartwright Properties, LLC loan. A judgment in the amount of \$13,223,965.68 was entered against Mr.
27 Lawlor, Mr. Smith HCM and CMG as a result of their Guaranty of the Dana Villa loan. A judgment in the
28 amount of \$6,586,307.57 Mr. Lawlor, Mr. Smith HCM and CMG as a result of their Guaranty of the line of
credit issued to Heritage Orcas Partners, LP and Heritage Orcas VL Partners, LP. As a result of these
judgments, Mr. Lawlor and Mr. Smith may be forced to file personal bankruptcies. The judgments entered
against CMG creates uncertainty as to the ability of CMG to meet its obligation to the Debtor but the
Principals of CMG intend, to the extent allowed by law, to see this obligation paid.

1 address (i) set forth on any Proof of Claim filed by the agent or servicer, (ii) in the
2 Schedules for the agent or servicer if no Proof of Claim has been filed, or (iii) contained in
3 the official records of such agent or servicer. Holders of Claims may change the address
4 to which Distributions will be sent by filing a written change of address with the Court and
5 serving a copy of the change of address on the Debtor.

6 If a Distribution to any Holder of an Allowed Claim is returned to the Debtor as
7 undeliverable or otherwise unclaimed ("Undeliverable Distribution"), the Debtor shall make
8 no further Distributions to such Holder unless and until the Debtor is notified in writing of
9 such Holder's then-current address, at which time all Undeliverable Distributions shall be
10 made to such Holder without interest. All Undeliverable Distributions shall be returned to
11 the Debtor until such Undeliverable Distributions are claimed. The Debtor shall, in the
12 case of Cash, hold Undeliverable Distributions in a segregated interest-bearing account
13 for Undeliverable Distributions until such Undeliverable Distributions become deliverable,
14 is claimed or is forfeited. Nothing contained in the Plan shall require the Debtor, or
15 anyone else, to attempt to locate the intended recipient of an Undeliverable Distribution.

16 Any Holder of an Allowed Claim that does not present itself within six (6) months of
17 the Distribution Date upon which the Undeliverable Distribution was made shall be
18 deemed to have forfeited its right or Claim to or interest in the Undeliverable Distribution
19 and shall be forever barred and enjoined from asserting any Claim for the Undeliverable
20 Distribution against the Debtor and its Estate, the Reorganized Debtor, and their
21 respective agents, attorneys, representatives, employees or independent contractors,
22 and/or any of its or their property. In such cases, the Undeliverable Distribution and
23 accrued interest thereon shall become property of the Reorganized Debtor free and clear
24 of any restrictions thereon and notwithstanding any federal or state escheat laws to the
25 contrary and shall be distributed in accordance with the terms of this Plan.

26 **4. Rounding of Payments**

27 The Debtor shall not be required to make Distributions or payments of fractions of
28 dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise

1 be called for, the actual payment shall reflect a rounding of such fraction to the nearest
2 whole dollar (up or down), with half dollars being rounded down.

3 **5. Interest on Claims**

4 Unless otherwise specifically provided for in the Plan, post-petition interest shall not
5 accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest
6 accruing on or after the Petition Date on any Claim.

7 **6. Compliance with Tax Requirements**

8 In connection with this Plan and all Distributions under this Plan, the Debtor shall,
9 to the extent applicable, comply with all tax withholding, payment and reporting
10 requirements imposed by federal, state, or local taxing authorities. The Debtor shall be
11 authorized to take any and all actions that may be necessary or appropriate to comply
12 with such withholding, payment, and reporting requirements. All amounts properly
13 withheld from Distributions to a Holder of a Claim as required by applicable law and paid
14 over to the applicable taxing authority for the account of such Holder shall be treated as
15 part of the Distributions to such Holder. All persons holding Claims shall be required to
16 provide any information necessary to effect information reporting and withholding of such
17 taxes. If such information has not been received by the Debtor, then the Debtor may, at
18 his option, withhold the amount required and distribute the balance to such Holder or
19 decline to make the Distribution until the information is received.

20 Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed
21 Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive
22 responsibility for the satisfaction and payment of any tax obligations imposed by any
23 governmental unit, including income, withholding, and other tax obligations, on account of
24 such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder
25 pursuant to the Plan unless and until such Holder has made arrangements satisfactory to
26 the Debtor for the payment and satisfaction of such withholding tax obligations or such tax
27 obligation that would be imposed upon the Debtor in connection with such Distribution.
28 Any property to be distributed pursuant to the Plan shall, pending implementation of such

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1 arrangements, be treated as an Undeliverable Distribution pursuant to Section III.G.3.
2 above.

3 **7. De Minimis Distributions**

4 The Debtor shall not have any obligation to make a Distribution on account of an
5 Allowed Claim if the amount to be distributed to the specific Holder of the Allowed Claim
6 on a Distribution Date is for an amount of \$5.00 or less, and may, at the Debtor's option,
7 either add the Distribution to the next Distribution if the collective amount would be greater
8 than \$5.00, or treat the Distribution as an Undeliverable Distribution.

9 **8. Setoffs**

10 Except as otherwise provided in the Plan, the Debtor may, pursuant to 11 U.S.C.
11 § 553 or applicable non-bankruptcy law, but shall not be required to, set off against any
12 Allowed Claim and the Distribution to be made pursuant to the Plan on account of such
13 Allowed Claim any account stated, Claim, right, or Cause of Action which the Debtor or
14 the Estate possesses against the Holder of such Allowed Claim; provided, however, that
15 neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a
16 waiver or release by the Debtor of any such account, Claim, right, and Cause of Action
17 that the Debtor or the Estate may possess against the Holder of such Allowed Claim.

18 **9. Limitation on Liability**

19 The Debtor, and any of their respective employees, members, officers, directors,
20 shareholders, agents, or professionals shall not be liable for (i) any acts or omissions,
21 except for willful misconduct, in connection with implementing the Distribution provisions
22 of the Plan and the making or withholding of Distributions under the Plan, or (ii) any
23 change in the value of Distributions made under the Plan resulting from any delays in
24 making such Distributions in accordance with the terms of the Plan (including, but not
25 limited to, any delays caused by the resolution of Disputed Claims).

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H. Other Provisions of the Plan

1. Claim Objections and Disputed Claims

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE BY CLAIMANTS WHOSE CLAIMS WERE NOT SCHEDULED OR WERE SCHEDULED AS DISPUTED, CONTINGENT OR UNLIQUIDATED WAS JULY 15, 2011.

a. Standing

As of the Effective Date, the Reorganized Debtor shall have the sole and exclusive right to file objections to Claims. The Debtor may settle or compromise any Disputed Claim without approval or order of the Court, notice, or hearing.

b. Claims Objection Deadline

Unless extended by the Court, pursuant to the Court's prior order, any objection to a Claim must be filed with the Court and served on the Holder of the Claim by September 30, 2011 (the "Claims Objection Deadline"). On September 30, 2011, the Debtor filed eight motions objecting to claims on a variety of grounds. By orders entered November 8, 2011, November 10, 2011, November 21, 2011, January 30, 2012, March 29, 2012, and July 13, 2012, the Court granted the Debtor's motions and approved the relief requested therein, except as to the Debtor's objection to the claim of CBT, which the Debtor withdrew without prejudice at the hearing held on October 3, 2012.

c. No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim; provided, however, that if the only dispute regarding a Disputed Claim is to the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to a Distribution on account of that portion of the Disputed Claim which the Debtor does not dispute at the time and in the manner that the Debtor makes Distributions to the Holders of Allowed Claims pursuant to the provisions of the Plan.

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d. Reserves for Disputed Claims

In the event that Disputed Claims are pending at the time of a Distribution under the Plan, the Debtor shall establish and maintain a reserve for such Disputed Claims. For purposes of establishing a reserve, Cash will be set aside equal to the amount that would have been distributed to the Holders of the Disputed Claims had the Disputed Claims been Allowed on the date a Distribution is made to the Holders of Allowed Claims in the same Class or of the same priority as the Disputed Claims. If a Disputed Claim ultimately becomes an Allowed Claim, the amount of Cash reserved for that Disputed Claim shall be distributed on the earlier of (a) the Distributed Date following the date when the Disputed Claim becomes an Allowed Claim, or (b) ninety (90) days after such Disputed Claim becomes an Allowed Claim. Any reserved Cash not ultimately distributed to the Holder of a Disputed Claim because the Disputed Claim does not become an Allowed Claim shall become property of the Reorganized Debtor and shall be distributed in accordance with the terms of the Plan.

2. Executory Contracts and Unexpired Leases

a. Assumption and Assignment

On the Effective Date, the executory contracts and unexpired leases identified on the Schedule of Assumed and Assigned Agreements attached or filed, or to be attached or filed as Exhibit "2" to the Plan shall be deemed assumed. The Debtor intends to file the Schedule of Assumed and Assigned Agreements with the Court no later than twenty-eight (28) days prior to the Confirmation Hearing. The Schedule of Assumed and Assigned Agreements also identifies or will identify any amounts that must be paid to cure defaults under the executory contracts and unexpired leases to be assumed and assigned under the Plan (the "Cure Amount"). If filed earlier, the Debtor reserves the right to amend the Schedule of Assumed Agreements up to twenty-eight (28) days prior to the Confirmation Hearing to: (a) add any executory contract or unexpired lease and provide for its assumption and assignment; or (b) modify the Cure Amount for any particular executory contract or unexpired lease. The Debtor further reserves the right to amend the Schedule

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1 of Assumed Agreements to delete any executory contract or unexpired lease and provide
2 for its rejection at any time prior to the Confirmation Hearing. The Debtor will provide
3 notice of any amendment to the Schedule of Assumed and Assigned Agreements to any
4 party or parties to the executory contracts or unexpired leases affected by the
5 amendment. Absent a timely objection as provided below, the Confirmation Order will
6 constitute a Court order approving the assumption and assignment, on the Effective Date,
7 of the executory contracts and unexpired leases then identified on the Schedule of
8 Assumed and Assigned Agreements, and shall constitute a final determination of the Cure
9 Amount and that the Debtor has shown adequate assurance of future performance.
10 Furthermore, any Cure Amount ordered by the Court, through entry of the Confirmation
11 Order, and paid shall be deemed to satisfy any and all defaults arising from, out of or
12 related to the executory contract or unexpired lease, including any tort claims that were or
13 could be asserted by the non-debtor party to the contract or lease on or prior to the entry
14 of the Confirmation Order, and all actual or pecuniary losses that have resulted from such
15 defaults.

16 If you are a party to an executory contract or unexpired lease to be assumed and
17 assigned and you object to the assumption and assignment of your lease or contract
18 and/or you dispute the Cure Amount related to your lease or contract, then you must File
19 and serve upon counsel for the Debtor (Weiland, Golden, Smiley, Wang Ekvall & Strok,
20 LLP, attn: Hutchison B. Meltzer, Esq., 650 Town Center Drive, Suite 950, Costa Mesa,
21 California 92626) a written objection by _____, 2012, as provided in Section
22 I.B.3. of this document. An objection to the Cure Amount must also set forth the amount
23 you contend to be the correct Cure Amount and contain evidence to support such amount.
24 Failure to timely File an objection as provided herein shall be deemed consent to the
25 proposed assumption and assignment and to the Cure Amount and a waiver of any and
26 all rights to challenge such assumption and assignment and the Cure Amount.

27 With respect to each executory contract and unexpired lease identified on the
28 Schedule of Assumed and Assigned Agreements, if no dispute arises regarding the Cure

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THIRD AMENDED DISCLOSURE
STATEMENT

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1 Amount, adequate assurances, or some other matter related to the assumption of the
2 executory contract or unexpired lease, then the Cure Amount set forth in the Schedule of
3 Assumed and Assigned Agreements shall be paid to the applicable non-debtor party in
4 Cash on the Effective Date or as soon as reasonably practicable thereafter. If a dispute
5 arises regarding (a) whether the Debtor has provided adequate assurance of future
6 performance of an executory contract or unexpired lease to be assumed, or (b) any other
7 matter pertaining to a proposed assumption and assignment, the Cure Amount will be
8 paid on the later of (1) the Effective Date or as soon as practicable thereafter, or (2) within
9 thirty (30) days after entry of a Final Order resolving the dispute and approving the
10 assumption and assignment; provided, however, if a dispute arises regarding any of the
11 foregoing, the Debtor reserves the right to completely forego assumption and assignment
12 of and, instead, reject the subject executory contract or unexpired lease.

13 If a party to an executory contract or unexpired lease identified on the Schedule of
14 Assumed and Assigned Agreements Files an objection disputing the Cure Amount, then
15 the Debtor may amend the Schedule of Assumed and Assigned Agreements at any time
16 prior to the Confirmation Hearing to delete the subject executory contract or unexpired
17 lease and provide for its rejection. Executory contracts or unexpired leases not so deleted
18 shall be conditionally assumed, subject to the Debtor's right to file a Motion to determine
19 the appropriate Cure Amount up to the first (1st) Business Day that is at least sixty (60)
20 days following the Effective Date. The Debtor will serve any such Motion on the party to
21 the executory contract or unexpired lease affected by the Motion (or its attorney, if any). If
22 the Debtor does not file a Motion to determine the appropriate Cure Amount, then the
23 executory contract or unexpired lease shall be assumed and assigned, as of the Effective
24 Date, and the Cure Amount shall be the alternative Cure Amount asserted by the non-
25 debtor party to the subject executory contract or unexpired lease in its objection to the
26 Plan. The Cure Amount shall be paid as soon as reasonably practicable following the
27 expiration of the 60-day deadline.

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1 If the Debtor files a Motion to determine the appropriate Cure Amount, then the
2 Reorganized Debtor shall have the right to amend the Schedule of Assumed and
3 Assigned Agreements to completely forego assumption and assignment of and, instead,
4 reject the subject executory contract or unexpired lease up to the first (1st) Business Day
5 that is at least fifteen (15) days after the entry of an order fixing the Cure Amount. The
6 Debtor will provide notice of any amendment to the Schedule of Assumed and Assigned
7 Agreements to the party to the executory contract or unexpired lease affected by the
8 amendment. If the Debtor has filed such a Motion and does not timely amend the
9 Schedule of Assumed and Assigned Agreements within fifteen (15) days after entry of an
10 order fixing the Cure Amount, then the executory contract or unexpired lease shall be
11 assumed and assigned, as of the Effective Date, and the Cure Amount shall be fixed as
12 the Cure Amount ordered by the Court. The Cure Amount shall be paid as soon as
13 reasonably practicable following the expiration of the 15-day deadline.

14 b. Rejections

15 On the Effective Date, the Debtor will be deemed to have rejected any and all
16 executory contracts and unexpired leases not identified on the Schedule of Assumed and
17 Assigned Agreements attached or filed, or to be attached or filed as Exhibit "2" to the
18 Plan. The Confirmation Order will constitute a Court order approving the rejection, as of
19 the Effective Date, of such executory contracts and unexpired leases. Any Claim for
20 damages arising from the rejection under the Plan of any executory contract or unexpired
21 lease must be Filed with the Court and served upon the Debtor and its counsel within
22 thirty (30) days of the later of (a) the Confirmation Date, and (b) the Debtor's amendment
23 of the Schedule of Assumed and Assigned Agreements to eliminate the executory
24 contract or unexpired lease. Any such damage Claims that are not timely Filed and
25 served will be forever barred and unenforceable against the Debtor, the Estate, the
26 Reorganized Debtor, and their respective property. Persons holding these Claims who fail
27 to timely File Claims will be barred from receiving any Distributions under the Plan on
28 account of their requested damage Claims.

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1 If you are a party to a lease or contract to be rejected and you object to the
2 rejection of your lease or contract, then you must File and serve your objection by
3 _____, 2012, as provided in Section I.B.3. of this document.

4 **3. Changes in Rates Subject to Regulatory Commission**
5 **Approval**

6 The Debtor is not subject to governmental regulatory commission approval of its
7 rates.

8 **4. Preservation of Causes of Action and Avoidance Actions**

9 The Debtor reserves for the Estate and the Reorganized Debtor all rights to
10 commence and pursue, as appropriate, any and all Causes of Action and Avoidance
11 Actions, whether arising prior to or after the Petition Date, in any court or other tribunal,
12 including without limitation, in an adversary proceeding Filed in the Court, except for as
13 otherwise provided in the Plan. On the Effective Date, the Debtor will be vested with
14 authority to enforce, file, litigate, prosecute, settle and collect with respect to Causes of
15 Action and Avoidance Actions, although it will not be required to do so and the
16 determination of whether to do so will be made solely by the Debtor in its absolute
17 discretion.

18 While the Debtor has attempted to identify Causes of Action and Avoidance Actions
19 in the Disclosure Statement which may be pursued, and hereby incorporates by reference
20 those disclosures and provisions, the failure to list any potential Cause of Action or
21 Avoidance Action, generally or specifically, is not intended to limit the rights of the Debtor
22 to pursue such Cause of Action or Avoidance Action. Unless a Cause of Action or
23 Avoidance Action against any Person is expressly waived, relinquished, released,
24 compromised or settled as provided or identified in the Plan, any Confirmation Order or
25 prior order of the Court, the Debtor expressly reserves any Causes of Action and
26 Avoidance Actions for later adjudication including, without limitation, the Malpractice
27 Action and potential title insurance claims. Therefore, no preclusion doctrine, including,
28 without limitation, the doctrine of *res judicata*, *collateral estoppel*, issue preclusion, claim

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1 preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes
2 of Action or Avoidance Actions upon or after Confirmation or consummation of the Plan.
3 All Avoidance Actions and other Causes of Action are preserved under the Plan for the
4 benefit of the Estate, except as otherwise provided for in the Plan. Any recoveries from
5 Avoidance Actions and/or other Causes of Action will be paid to the Reorganized Debtor.

6 ANY CREDITORS THAT BELIEVE THEY RECEIVED A TRANSFER OR SETOFF
7 THAT IS AVOIDABLE UNDER THE CODE OR THAT HOLDS A CLAIM AGAINST THE
8 ESTATE THAT COULD BE SUBJECT TO AN OBJECTION BASED UPON FAILURE TO
9 RETURN AN AVOIDABLE TRANSFER OR SETOFF, ARE DIRECTED TO REVIEW
10 THEIR RECORDS AND/OR THE DEBTOR'S SCHEDULES FOR FURTHER
11 INFORMATION. HOWEVER, ALL RIGHTS OF THE DEBTOR AND THE ESTATE ARE
12 RESERVED WITH RESPECT TO ANY AND ALL TRANSFERS OR SETOFFS WHICH
13 MAY BE AVOIDABLE UNDER THE BANKRUPTCY CODE.

14 **5. Retention of Jurisdiction**

15 The Court will retain exclusive jurisdiction during the Plan payout period to resolve
16 disputes and conflicts arising from the administration of the Plan, upon request of a party-
17 in-interest and after notice and a hearing, including, without limitation:

- 18 a. The adjudication of the validity, scope, classification, allowance, and
19 disallowance of any Claim;
20 b. The estimation of any Claim;
21 c. The allowance or disallowance of Professional-Fee Claims,
22 compensation, or other Administrative Claims;
23 d. To hear and determine Claims concerning taxes pursuant to
24 Bankruptcy Code §§ 346, 505, 525, and 1146;
25 e. To hear and determine any action or proceeding brought under
26 Bankruptcy Code §§ 108, 510, 543, 544, 545, 547, 548, 549, 550,
27 551, and 553;
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THIRD AMENDED DISCLOSURE
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- 1 f. To hear and determine all actions and proceedings which relate to
- 2 pre-confirmation matters;
- 3 g. To hear and determine any issue relating to the assumption or
- 4 rejection of executory contracts and unexpired leases;
- 5 h. To hear and determine any modification to the Plan in accordance
- 6 with the Bankruptcy Rules and the Bankruptcy Code;
- 7 i. To enforce and interpret the terms of the Plan;
- 8 j. To correct any defects, cure any omissions, or reconcile any
- 9 inconsistency in the Plan or the Confirmation Order as may be
- 10 necessary to carry out the purpose and intent of the Plan;
- 11 k. The entry of any order, including injunctions, necessary to enforce
- 12 title, rights and powers of the Reorganized Debtor, and to impose
- 13 such limitations, restrictions, terms and conditions on such title, rights
- 14 and powers as the Court may deem necessary including, without
- 15 limitation, any right of the Reorganized Debtor to recover and
- 16 liquidate assets;
- 17 l. To determine the validity, extent and priority of all liens and security
- 18 interests against property of the Estate or the Reorganized Debtor;
- 19 m. To hear and resolve any disputes regarding employment applications
- 20 and professional fees;
- 21 n. To hear and determine such matters and make such orders as are
- 22 consistent with the Plan as may be necessary to carry out the
- 23 provisions thereof and to adjudicate any disputes arising under or
- 24 relating to any order entered by the Court in this Case;
- 25 o. The entry of an order concluding and terminating this Case; and
- 26 p. To resolve any disputes as to whether there has been a default under
- 27 the Plan.
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1 **6. Tax Consequences of the Plan**

2 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN
3 MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
4 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of
5 possible tax consequences is intended solely for the purpose of alerting readers about
6 possible tax issues the Plan may present to the Debtor or the Reorganized Debtor. The
7 Debtor and its professionals CANNOT and DO NOT represent that the tax consequences
8 contained below are the only tax consequences of the Plan because the Tax Code
9 embodies many complicated rules which make it difficult to state completely and
10 accurately all the tax implications of any action.

11 Due to the unsettled and complex nature of some of the tax issues, as well as the
12 possibility that developments subsequent to the date hereof could affect the tax
13 consequences of the Plan, the following discussion should not be regarded as definitive or
14 as covering all possible tax consequences. Additionally, this summary does not discuss
15 all aspects of federal income taxation that may be relevant to a particular creditor in light
16 of its individual circumstances or to certain creditors subject to special treatment under the
17 federal income tax laws (for example, life insurance companies, tax-exempt organizations,
18 foreign corporations and individuals who are not citizens or residents of the United
19 States).

20 As stated above, creditors concerned with how the Plan will affect their own tax
21 liability should consult with their own accountants, attorneys, and/or advisors. The Debtor
22 is still in the process of determining the tax consequences of the Plan. However, the
23 Debtor does not expect adverse consequences materially affecting the distributions to the
24 Holders of Allowed Claims under the Plan.

25 **7. Exemption from Transfer Taxes**

26 Pursuant to Bankruptcy Code § 1146(a), any transfers from the Debtor to the
27 Reorganized Debtor or to any other Person pursuant to the Plan in the United States shall
28 not be subject to any stamp, real estate transfer, personal property, recording or other

1 similar tax, and the Confirmation Order shall direct the appropriate state or local
2 governmental officials or agents to forgo the collection of any such tax or governmental
3 assessment and to accept for filing and recordation any of the foregoing instruments or
4 other documents without payment of any such tax or governmental assessment.

5 **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

6 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
7 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
8 CONFIRMING A PLAN IS VERY COMPLEX. The following discussion is intended solely
9 for the purpose of alerting readers about basic confirmation issues, which they may wish
10 to consider, as well as certain deadlines for filing Claims. The Debtor CANNOT and
11 DOES NOT represent that the discussion contained below is a complete summary of the
12 law on this topic.

13 Many requirements must be met before the Court can confirm a Plan. Some of the
14 requirements include that the Plan must be proposed in good faith, acceptance of the
15 Plan, whether the Plan pays creditors at least as much as creditors would receive in a
16 chapter 7 liquidation, and whether the Plan is feasible. These requirements are not the
17 only requirements for confirmation.

18 **A. Who May Vote or Object**

19 **1. Who May Object to Confirmation of the Plan**

20 Any party in interest may object to the confirmation of the Plan, but as explained
21 below, not everyone is entitled to vote to accept or reject the Plan.

22 **2. Who May Vote to Accept/Reject the Plan**

23 A creditor has a right to vote for or against the Plan if that creditor has a Claim that:
24 (a) either is an Allowed Claim or is allowed for voting purposes; (b) is classified in an
25
26
27
28

1 impaired Class; and (c) is entitled to receive or retain some property on account of its
2 Claim.²²

3 a. What Is an Allowed Claim/Interest

4 As noted above, a creditor must first have an Allowed Claim to have the right to
5 vote. Generally, any Proof of Claim will be Allowed, unless a party-in-interest Files an
6 objection to that Claim. When an objection to a Claim is Filed, the Holder of the Claim
7 cannot vote unless and until the Court, after notice and hearing, either overrules the
8 objection or allows the Claim for voting purposes. Any Person who seeks temporary
9 allowance of its Claim for the purpose of voting on the Plan must promptly take the steps
10 necessary to File an appropriate motion requesting the same and to arrange an
11 appropriate hearing with the Court.

12 THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE BY
13 CLAIMANTS WHOSE CLAIMS WERE NOT SCHEDULED OR WERE SCHEDULED AS
14 DISPUTED, CONTINGENT, OR UNLIQUIDATED WAS JULY 15, 2011. A creditor may
15 have an Allowed Claim even if a Proof of Claim was not timely filed. A Claim is deemed
16 Allowed if (1) it is scheduled on the Debtor's Schedules and such Claim is not scheduled
17 as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the
18 Claim. An Interest is deemed Allowed if it is scheduled and no party in interest has
19 objected to the Interest.

20 b. What Is an Impaired Claim/Interest

21 As noted above, the Holder of an Allowed Claim only has the right to vote if it is in a
22 Class that is impaired under the Plan. A Class is impaired if the Plan alters the legal,
23 equitable, or contractual rights of the members of that Class. For example, a Class
24 comprised of General Unsecured Claims is impaired if the Plan fails to pay the members
25
26

27 ²² If the Plan provides that a Class will receive or retain no property on account of its Claims, that Class
28 is deemed to reject the Plan under Bankruptcy Code § 1126(g) and therefore is not entitled to vote.

1 of that Class 100% of what they are owed or otherwise impairs the legal rights of the
2 Holders of the Claims.

3 In this case, the Debtor believes that Classes 1, 2, 3(a), 3(b), 6, 7(a), and 7(b) are
4 impaired and that Holders of Claims or Interests in each of these Classes are therefore
5 entitled to vote to accept or reject the Plan, unless otherwise specified below. The Debtor
6 believes that Classes 4(a), 4(b), 5, and 8 are unimpaired under the Plan. Any party in
7 interest who disputes the Debtor's characterization of its Claim or Interest as being in an
8 impaired or unimpaired Class may File an objection to the Plan contending that the Debtor
9 incorrectly characterized the Claim, Interest, or Class.

10 **3. Who is Not Entitled to Vote**

11 The following four types of Claims are not entitled to vote: (1) Claims that have
12 been disallowed; (2) Claims in unimpaired classes; (3) Claims entitled to priority pursuant
13 to Bankruptcy Code §§ 507(a)(2), (a)(3), and (a)(8); and (4) Claims in Classes that do not
14 receive or retain any value under the Plan. Claims in unimpaired Classes are not entitled
15 to vote because such Classes are deemed to have accepted the Plan. Claims entitled to
16 priority pursuant to Bankruptcy Code §§ 507(a)(2), (a)(3), and (a)(8) are not entitled to
17 vote because such Claims are not placed in Classes and they are required to receive
18 certain treatment specified by the Bankruptcy Code. Claims in Classes that do not
19 receive or retain any value under the Plan do not vote because such Classes are deemed
20 to have rejected the Plan. For this reason, Classes 4(a), 4(b), 5, and 8 are not entitled to
21 vote on the Plan, but is deemed to have rejected the Plan. EVEN IF YOUR CLAIM IS OF
22 THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO
23 THE CONFIRMATION OF THE PLAN.

24 **4. Who Can Vote in More Than One Class**

25 A creditor whose Claim has been Allowed in part as a Secured Claim and in part as
26 a General Unsecured Claim is entitled to accept or reject the Plan in both capacities by
27 casting one ballot for the secured portion of the Claim and another ballot for the
28 unsecured portion of the Claim. Also, a creditor who has a Claim for wages or unpaid

1 vacation, healthcare or retirement benefits may have both a Priority Claim up to the
2 maximum specified in 11 U.S.C. §§ 507(a)(4) and (a)(5), provided the conditions for
3 priority treatment as specified under 11 U.S.C. § 507(a) are met, and a General
4 Unsecured Claim for all amounts exceeding the statutory maximum. The Holder of such a
5 Claim may cast a ballot for the priority portion of the Claim and another ballot for the
6 general unsecured portion of the Claim.

7 **5. Votes Necessary to Confirm the Plan**

8 If impaired Classes exist, the Court cannot confirm the Plan unless (1) at least one
9 impaired Class has accepted the Plan without counting the votes of any insiders within
10 that Class, and (2) all impaired Classes have voted to accept the Plan, unless the Plan is
11 eligible to be confirmed by "cramdown" on non-accepting Classes, as discussed later in
12 Section IV.A.7. below.

13 **6. Votes Necessary for a Class to Accept the Plan**

14 A Class of Claims is considered to have accepted the Plan when more than one-
15 half ($\frac{1}{2}$) in number, and at least two-thirds ($\frac{2}{3}$) in dollar amount, of the Claims which
16 actually voted, voted in favor of the Plan. A Class of Interests is considered to have
17 accepted the Plan when at least two-thirds ($\frac{2}{3}$) in amount of the Interest Holders of such
18 Class which actually voted, voted to accept the Plan.

19 **7. Treatment of Nonaccepting Classes**

20 If at least one impaired Class votes to accept the Plan, and other impaired Classes
21 vote to reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting
22 Classes are treated in the manner required by the Bankruptcy Code. The process by
23 which nonaccepting Classes are forced to be bound by the terms of a Plan is commonly
24 referred to as "cramdown." The Bankruptcy Code allows the Plan to be "crammed down"
25 on nonaccepting Classes of Claims if it meets all consensual requirements except the
26 voting requirements of § 1129(a)(8) and if the Plan does not "discriminate unfairly" and is
27 "fair and equitable" toward each impaired Class that has not voted to accept the Plan as
28 referred to in § 1129(b) and applicable case law.

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THIRD AMENDED DISCLOSURE
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1 **8. Request for Confirmation Despite Nonacceptance by**
2 **Impaired Classes**

3 The Debtor will ask the Court to confirm the Plan by "cramdown" on all impaired
4 Classes if any of these Classes do not vote to accept the Plan.

5 **B. Liquidation Analysis**

6 Another confirmation requirement is the so-called "Best Interests Test" embodied in
7 Bankruptcy Code § 1129(a)(7), which requires a liquidation analysis. Under the Best
8 Interests Test, if a claimant is in an impaired Class and that claimant does not vote to
9 accept the Plan, then that claimant must receive or retain under the Plan property of a
10 value not less than the amount that such holder would receive or retain if the Debtor was
11 liquidated under Chapter 7 of the Bankruptcy Code.

12 In a chapter 7 case, the debtor's assets are usually sold by a chapter 7 trustee.
13 Secured creditors are paid first from the sales proceeds of properties on which the
14 secured creditor has a lien. Administrative Claims are paid next. Next, unsecured
15 creditors are paid from any remaining sales proceeds, according to their rights to priority.
16 Unsecured creditors with the same priority share in proportion to the amount of their
17 Allowed Claims in relationship to the amount of total allowed unsecured claims. Finally,
18 Interest Holders receive the balance that remains after all creditors are paid, if any.

19 For the Court to be able to confirm the Plan, the Court must find that all creditors
20 and Interest Holders who do not accept the Plan will receive at least as much under the
21 Plan as such holders would receive under a chapter 7 liquidation. The Debtor maintains
22 that this requirement is met here because pursuant to the liquidation analyses below,
23 creditors are projected to receive at least as much as they would receive in a hypothetical
24 chapter 7 liquidation, unless they have agreed to different treatment.

25 As, under the Plan, creditors will ultimately be receiving the benefit of all the
26 Debtor's assets, creditors will clearly be receiving at least as much as they would receive
27 in a hypothetical chapter 7 liquidation. Further, the Debtor believes that the orderly
28 administration of the assets pursuant to the Plan will result in a greater return to creditors

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1 than they would receive pursuant to an immediate chapter 7 liquidation at "fire sale"
2 prices.

3 As described in the chart attached as Exhibit "8", the Debtor projects that General
4 Unsecured Creditors will ultimately receive distributions totaling approximately 36.5% of
5 the amounts of their Allowed Claims, whereas they would be expected to receive only
6 8.6% in a chapter 7 liquidation.

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7 Pursuant to 11 U.S.C. § 502(d), "the court shall disallow any claim of any entity
8 from which property is recoverable under section 542, 543, 550, or 553 of this title or that
9 is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548,
10 549, or 724(a) of this title, unless such entity transferee as paid the amount, or turned over
11 any such property, for which such entity or transferee is liable under section 522(i), 542,
12 543, 550, or 553 of this title." The Debtor does not believe that the disallowance of any
13 Claims pursuant to § 502(d) will materially affect the amounts received by creditors of the
14 Estate whether under the Plan or in a chapter 7 liquidation.

15 **C. Feasibility**

16 Another requirement for confirmation involves the feasibility of the Plan, which
17 means that confirmation of the Plan is not likely to be followed by the liquidation, or the
18 need for further financial reorganization of the Debtor or any successor to the Debtor
19 under the Plan, unless such liquidation or reorganization is proposed in the Plan.

20 The projections attached as Exhibit "9" show that there will be sufficient funds to
21 make the payments to secured creditors provided for in the Plan. There is also projected
22 to be sufficient cash to pay the costs of administration throughout the term of the Plan.

23 The Debtor estimates that \$541,850.00 will be required to make the Effective Date
24 payments, unless the claimant has agreed to be paid later (as with Professional-Fee
25 Claims). As reflected in Exhibit "9", the Debtor expects to cash from operations and the
26 proceeds of post-petition financing sufficient to make the actual payments that are
27 required on the Effective Date, which are \$16,500 for administrative tax claims and
28 \$200,000 for allowed Professional Fee Claims within 60 days after the Effective Date.

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1 While General Unsecured Creditors are receiving all Net Proceeds of the Debtor's
2 assets, there is no specific distribution amount provided for in the Plan. Thus, there is no
3 issue of feasibility as to this class.

4 **V. EFFECT OF CONFIRMATION**

5 **A. Discharge**

6 The rights under the Plan and the treatment of claims under the Plan will be in
7 exchange for, and in complete satisfaction, discharge, and release of, all claims of any
8 nature whatsoever (including, without limitation, any interest accrued on claims from and
9 after the Petition Date) against the Debtor, the Reorganized Debtor, or its property.

10 Except as otherwise provided in the Plan or the Confirmation Order:

- 11 1. On the Effective Date, the Debtor, the Debtor's estate, the Reorganized
12 Debtor, and its property will, to the fullest extent permitted by Bankruptcy
13 Code § 1141, be deemed discharged and released from any and all claims,
14 including, without limitation, all demands, liabilities, claims, that arose before
15 the confirmation date or that are based upon or otherwise relate to acts,
16 events, omissions, transactions or other activities of any kind that occurred
17 before the Confirmation Date, and all debts of the kind specified in
18 Bankruptcy Code §§ 502(g), 502(h), or 502(i) regardless of whether: (1) a
19 proof of claim based on such a debt was filed or deemed filed; (2) a claim
20 based on such a debt is allowable under Bankruptcy Code § 502; or (3) the
21 person holding the claim based on such a debt has accepted the Plan;
- 22 2. All persons will be precluded from asserting against the Debtor, its estate,
23 the Reorganized Debtor, or its property any other or further claims based on,
24 arising from, or in connection with any act, event, omission, transaction, or
25 other activity of any kind that occurred before the Confirmation Date;
- 26 3. Any debt of the Debtor, whether secured or unsecured, which was in default
27 as of or any time prior to the Confirmation Date, will no longer be deemed in
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1 default. Moreover, to the extent that the Debtor complies with the terms and
2 conditions of the Plan, these obligations will be deemed in good standing;

3 4. As set forth in Bankruptcy Code §§ 524 and 1141, except as otherwise
4 provided in the Plan or the Confirmation Order, the Confirmation Order
5 constitutes a discharge of any and all claims against, and all debts and
6 liabilities of, the Debtor that arose before the Confirmation Date. The
7 Reorganized Debtor and its property will, to the fullest extent permitted by
8 Bankruptcy Code § 1141, be deemed discharged and released from any and
9 all claims, including, without limitation, all demands, liabilities, claims, that
10 arose before the Confirmation Date or that are based on or otherwise relate
11 to acts, events, omissions, transactions or other activities of any kind that
12 occurred before the Confirmation Date. This discharge will void any
13 judgment that was obtained against the Debtor at any time only to the extent
14 that the judgment relates to a discharged claim; and

15 5. Subject to the limitations and conditions imposed under Bankruptcy Code
16 § 1125(e), persons who—in good faith and in compliance with applicable
17 Bankruptcy Code provisions—either solicit Plan acceptances or rejections or
18 participate in the offer, issuance, sale, or purchase of securities under the
19 Plan will not be liable on account of their solicitation or participation for
20 violation of any applicable law, rule, or regulation governing the solicitation
21 of Plan acceptances or rejections or the offer, issuance, sale or purchase of
22 such securities.

23 **B. Revesting of the Assets**

24 The Assets shall not be vested in the Debtor on or following the Effective Date, but
25 shall be vested in the Reorganized Debtor and continue to be subject to the jurisdiction of
26 the Court following confirmation of the Plan until such Assets are distributed to the
27 Holders of Allowed Claims in accordance with the provisions of the Plan.
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1 **C. Exculpation and Releases**

2 Effective upon the entry of the Confirmation Order, neither the Debtor, the
3 Professionals, nor any of their respective members, officers, directors, shareholders,
4 employees, or agents, shall have or incur any liability to any Person, including any creditor
5 or Interest Holder of the Debtor, for any act taken or omission made in connection with or
6 related to the negotiation, formulation, or preparation of the Plan and the Disclosure
7 Statement, the approval of the Disclosure Statement, the confirmation of the Plan, the
8 consummation of the Plan, or the administration of the Plan, the Case, or the property to
9 be distributed under the Plan, to the fullest extent permitted by applicable statutes and
10 case law, except that the Reorganized Debtor will be liable for the performance of
11 obligations assumed by it or imposed upon it under or by the Plan.

12 **D. Modification of the Plan**

13 The Debtor may modify the Plan at any time before confirmation. If the Plan is
14 modified, however, the Court may require a new Disclosure Statement or re-voting on the
15 Plan depending on the nature of the modifications and their effect on parties in interest.
16 The Debtor may seek to modify the Plan at any time after confirmation if (a) the Plan has
17 not been substantially consummated, and (b) the Court, after notice and a hearing,
18 authorizes the proposed modification.

19 **E. Post-Confirmation Status Report**

20 Within 120 days of the entry of the Confirmation Order, the Debtor shall file a status
21 report with the Court explaining what progress has been made towards consummation of
22 the confirmed Plan. The status report shall be served on the OUST, the Oversight
23 Committee, and the parties who have requested special notice. Further status reports
24 shall be filed every 120 days and served on the same entities.

25 **F. Quarterly Fees**

26 Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) prior to confirmation shall be
27 paid to the OUST on or before the Effective Date. Quarterly fees accruing under
28 28 U.S.C. § 1930(a)(6) after confirmation shall be paid to the OUST by the Debtor from

1 the assets of the Reorganized Debtor until a final decree, or the entry of an order
2 dismissing the Case or converting the Case to chapter 7, at the rate in effect at the time
3 such fees are due.

4 **G. Post-Confirmation Conversion/Dismissal**

5 After the Plan is confirmed, a creditor or party in interest may bring a Motion, only
6 after notice and a hearing, to convert or dismiss the Case under Bankruptcy Code
7 § 1112(b) if there is a material default in performing the Plan. If the Court orders the Case
8 converted to chapter 7 after the Plan is confirmed, then all property that had been property
9 of the Estate and transferred to the Reorganized Debtor, and that has not been distributed
10 under the Plan will revert in the chapter 7 estate. The automatic stay will be reimposed
11 upon the reverted property only to the extent that relief from stay was not previously
12 authorized by the Court during the Case.

13 The Confirmation Order may also be revoked under very limited circumstances.
14 The Court may revoke the Confirmation Order if it was procured by fraud and if a party in
15 interest brings an adversary proceeding to revoke the confirmation within 180 days after
16 the entry of the Confirmation Order.

17 **H. Final Decree**

18 Once the Estate has been fully administered as referred to in Bankruptcy Rule
19 3022, the Debtor will File a Motion with the Court to obtain a final decree closing the Case.

21 Dated: December, 2012 WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

23 By: /s/ Hutchison B. Meltzer
HUTCHISON B. MELTZER
Attorneys for Debtor and
Debtor-in-Possession

Deleted: August

Deleted: SECOND

Weiland, Golden,
Smiley, Wang Ekvall & Strook, LLP
650 Town Center Drive, Suite 900
Costa Mesa, California 92626
Tel 714-998-1000 Fax 714-998-1002

TABLE OF DEFINITIONS

"1st LV DOT" means the first position deed of trust securing the 1st LV Note against the LV Property.

"1st LV Note" means the note dated November 2, 2006 in the approximate amount of \$4,692,600 executed by BV Land in which the Debtor owns a 100% interest.

"2nd LV DOT" means the Debtor's 24.1173% interest in the second position deed of trust securing the 2nd LV Note against the LV Property.

"2nd LV Note" means the note in the approximate amount of \$19,076,316.63 (with the Debtor's portion being \$4,600,692.45).

"3rd LV DOT" means the Debtor's 16.7189% interest in the third position deed of trust securing the 3rd LV Note against the LV Property

"3rd LV Note" means the note in the approximate amount of \$13,322,143.26 (with the Debtor's portion being \$2,227,315.81).

"Administrative Claim" means a Claim against the Debtor for administrative costs or expenses that are allowable under Bankruptcy Code § 503(b).

"Administrative Tax Claim" means an Administrative Claim or other Claim that is not an Allowed Secured Claim and that a government unit asserts against the Debtor for taxes (or for related interest or penalties) for any tax period that, either in whole or in part, falls within the period beginning on the Petition Date and ending on the Effective Date.

"Affiliates" refers to Covenant Opportunity Fund, LLC, Birch Bay Partners, LP, BV Land, LLC, Heritage Orcas Partners, LP, Heritage Orcas VL Partners, LP, Island Capital, and Birch Bay Management.

"Allowed Claim" means a Claim against the Debtors, other than an Administrative Claim, to the extent that:

- a. Either: (i) a Proof of Claim was Filed by the Bar Date; or (ii) a Proof of Claim is deemed timely Filed either under Bankruptcy Rule 3003(b)(1) or by a Final Order; and

1 b. Either: (i) the Claim is not a Disputed Claim; (ii) the Claim is allowed by a
2 Final Order; or (iii) the Claim is allowed under the Plan.

3 **"Allowed [Class Designation and/or Secured, Priority, or General Unsecured**
4 **or Trade] Claim"** means an Allowed Claim in the specified Class and/or of the specified
5 type.

6 **"Assets"** means all tangible and intangible assets and property of every kind and
7 nature of the Debtor and/or its Estate, and all proceeds thereof, existing as of the Effective
8 Date.

9 **"Avoidance Action"** means Causes of Action arising under 11 U.S.C. §§ 510,
10 541, 542, 544, 545, 547, 548, 549, 550, 551 and/or 553, or under related state or federal
11 statutes and common law, including, without limitation, fraudulent transfer laws, whether
12 or not litigation is commenced to prosecute such Causes of Action.

13 **"Bankruptcy Code" or "Code"** means Title 11 of the United States Code, as
14 amended.

15 **"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure.

16 **"Bar Date"** means the last date for filing Proofs of Claim in the Debtor's Case. The
17 Bar Date was July 15, 2011.

18 **"Bar Date Notice"** means the notice of the Bar Date served on creditors of the
19 Estate on May 11, 2011.

20 **"Business Day"** means any day, other than a Saturday, a Sunday or a "legal
21 holiday," as defined in Rule 9006(a) of the Bankruptcy Rules.

22 **"Buy-Out Offer" or "Buy-Out Option"** refers to the option of Claimants in Class
23 7(a) to have 7.5% of the amount of their Allowed Claim paid on the later of 90 days after
24 the Effective Date or the date the Claim becomes Allowed in full satisfaction and release
25 of the Debtor.

26 **"Buy Out Claim Amount"** means the aggregate face value of the amount of
27 claims selecting the Buy-Out Option.

28 **"BV Land"** refers to BV Land Company, LLC.

1 **"BV Land Action"** means the fraudulent transfer action filed by the Receiver
2 against BV Land in the United States District Court, District of Utah, Case No. 2:09-cv-
3 1057.

4 **"Case"** means the Debtor's case under chapter 11 of the Bankruptcy Code that is
5 pending before the United States Bankruptcy Court for the Central District of California,
6 Santa Ana Division, as Case No. 8:11-bk-14298-CB.

7 **"Cash"** means legal tender of the United States of America.

8 **"Cause of Action"** mean, without limitation, any and all actions, causes of action,
9 controversies, liabilities, obligations, rights, suits, damages, judgments, Claims (as defined
10 in Code § 101(5)) and demands whatsoever, whether known or unknown, reduced to
11 judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed
12 or undisputed, secured or unsecured, assertable directly or derivatively, existing or
13 hereafter arising, in law, equity, or otherwise that the Debtor and/or the Estate may hold
14 against any Person as of the Effective Date.

15 **"CBT"** refers to California Bank & Trust.

16 **"Central"** refers to Apex Central wherein six of the LV Property parcels are
17 located.

18 **"Claim"** means a claim, as the term "claim" is defined in Bankruptcy Code
19 § 101(5), against the Debtor.

20 **"Claims Objection Deadline"** means September 30, 2011.

21 **"Class"** or **"Class of Claims or Interests"** means a group of Claims or Interests
22 as classified under the Plan.

23 **"Committee"** refers to the official committee of unsecured creditors.

24 **"Confirmation Date"** means the date on which the Court enters the Confirmation
25 Order on its docket.

26 **"Confirmation Hearing"** means the hearing held by the Court on the confirmation
27 of the Plan.

1 **"Confirmation Order"** means the Court order confirming the Plan under
2 Bankruptcy Code § 1129.

3 **"Court"** means the United States Bankruptcy Court for the Central District of
4 California, Santa Ana Division.

5 **"Cure Amount"** means any amounts that must be paid to cure defaults under the
6 executory contracts and unexpired leases to be assumed under the Plan.

7 **"Debtor"** refers to Boundary Bay Capital, LLC.

8 **"Debtor Professionals"** means the agents, financial advisors, attorneys,
9 consultants, independent contractors, representatives, and other professionals engaged
10 or retained by the Debtor (in their capacities as such).

11 **"Disclosure Statement"** means this Disclosure Statement, as the same may be
12 amended or modified from time to time.

13 **"Disputed Claim"** means all or any part of a Claim as to which any one of the
14 following applies: (i) no Proof of Claim has been filed with respect to such Claim, and the
15 Claim is listed in the Schedules as unliquidated, disputed, contingent or unknown, or; (ii)
16 the Claim is the subject of a timely objection or request for estimation which is filed on or
17 before the Claims Objection Deadline, which objection or request for estimation has not
18 been withdrawn or determined by a Final Order. In addition, prior to the earlier of: (a) the
19 Claims Objection Deadline, and (b) such date as the Bankruptcy Court allows the Claim
20 pursuant to a Final Order, any Claim that is evidenced by a Proof of Claim shall be
21 deemed a Disputed Claim for purposes of calculating and making any Distributions under
22 this Plan if: (1) no Claim corresponding to the Proof of Claim is listed in the Schedules, (2)
23 the Claim corresponding to the Proof of Claim is listed in the Schedules as disputed,
24 contingent, unliquidated or unknown, (3) the amount of the Claim as specified in the Proof
25 of Claim exceeds the amount of any corresponding Claim listed in the Schedules as not
26 disputed, not contingent, and liquidated, but only to such extent, or (4) the priority or
27 classification of the Claim as specified in the Proof of Claim differs from the priority of any
28 corresponding Claim listed in the Schedules.

1 **"Distribution"** means any distribution pursuant to the Plan to the Holders of an
2 Allowed Claim.

3 **"Distribution Date"** means the date upon which the Distribution was made.

4 **"DOC"** refers to the Department of Corporations.

5 **"Dunn Creditors"** refers to Stacy Vierhellig-Fraser, J. Gunther, Inc. Money
6 Purchase Plan, Dana R. Gunther, Jon Vartan and Armene Hovsepian, Sandra P. Cortave,
7 and Ten-Two Company.

8 **"Effective Date"** means the first Business Day that is fourteen (14) days after the
9 entry of the Confirmation Order, provided there has been no order staying the
10 effectiveness of the Confirmation Order.

11 **"Effective Date Payments"** means Distributions or payments required by the Plan
12 to be made by the Debtor on the Effective Date.

13 **"EI Avoidance Claims"** refers to the allegations made by the Debtor and the
14 Committee that Enhanced Income's lien on the 2nd LV Note is avoidable, at least in part,
15 as a fraudulent transfer pursuant to 11 U.S.C. §§ 544 and 548 because the Debtor did not
16 receive reasonably equivalent value for the 2nd LV Note.

17 **"EI Settlement"** refers to the compromise of the EI Avoidance Claims to which
18 Enhanced Income's Allowed Secured Claim will be reduced to \$2,000,000.00 with the
19 option of a discount for an early payoff.

20 **"Eligible Creditors"** refers to all general unsecured creditors (Class 7(a)) with
21 Allowed Claims, except the Excluded Creditors, that may select the Buy-Out Option.

22 **"Enhanced Income"** refers to Enhanced Income Fund I, LLC.

23 **"Enhanced Income Note"** means the note secured by a first position lien against
24 the Debtor's interest in the 2nd LV Note and 2nd LV DOT, a lien on the Debtor's interest in
25 Heritage Orcas, and a lien on property owned by the Debtor in Murrieta, California.

26 **"Estate"** means the bankruptcy estate created in the Debtor's Case under
27 Bankruptcy Code § 541.
28

1 **"Equity Distribution"** means periodic distributions to equity holders of the
2 Reorganized Debtor as proceeds net of operational expenses and reasonable reserves
3 become available.

4 **"Equity Option"** refers to the option of Claimants in Class 7(a) to receive a Pro
5 Rata Share of the New Equity Interests in the Reorganized Debtor.

6 **"Excluded Creditors"** refers to those creditors that may not select the Buy-Out
7 Option and include the principals of the Debtor, David Lawlor and Jerry Smith, their
8 spouses, and their blood relative, the Affiliates and Insiders (as that term is defined in the
9 Bankruptcy Code) of the Debtor, commissioned salespeople of the Debtor and their blood
10 relatives, and parties who were limited partners in Heritage Real Estate Equity Fund in
11 2004.

12 **"File," "Filed," or "Filing"** means duly and properly filed with the Court and
13 reflected on the Court's official docket.

14 **"Final Order"** means an order or judgment of the Court entered on the Court's
15 docket.

- 16 a. That has not been reversed, rescinded, stayed, modified, or amended;
17 b. That is in full force and effect; and
18 c. With respect to which (i) the time to appeal or to seek review, remand,
19 rehearing, or a writ of certiorari has expired and as to which no timely Filed
20 appeal or petition for review, rehearing, remand, or writ of certiorari is
21 pending, or (ii) any such an appeal or petition has been dismissed or
22 resolved by the highest court to which the order or judgment was appealed
23 or from which review, rehearing, remand, or a writ of certiorari was sought.

24 **"First Amended Schedules"** means the amended schedules filed by the Debtor
25 on May 10, 2011.

26 **"General Unsecured Claim"** means an unsecured Claim against one or more of
27 the Debtor, however arising, not entitled to priority under Section 507(a) of the Bankruptcy
28 Code.

1 "Hardy" refers to Hardy Management Company.

2 "Holder" means an entity holding a Claim or Interest.

3 "Industrial Rail" refers to Apex Industrial Rail wherein 11 of the LV Property
4 parcels are located.

5 "Interests" means an equity interest in the Debtor.

6 "Interest Holders" refers to parties who hold membership interests (i.e., equity
7 interests) in the Debtor.

8 "Layton" refers to Christopher Layton.

9 "Layton Litigation" means the lawsuit filed by the Debtor and certain related
10 entities against Layton in Nevada District Court (Case No. A524992) and the cross-
11 complaint filed by Layton.

12 "Layton Settlement Agreement" means the settlement agreement entered into
13 resolving the Layton Litigation.

14 "Layton Settlement Motion" means the motion for order approving the Layton
15 Settlement Agreement filed by the Debtor on April 16, 2012.

16 "LV Property" means those 17 parcels contained in 9 tax parcels (259) acres of
17 undeveloped land located in North Las Vegas, Nevada.

18 "LV Notes" means those notes secured by the 1st, 2nd, and 3rd trust deeds on the
19 LV Property.

20 "LV Trust Deeds" means the 1st, 2nd, and 3rd trust deeds on the LV Property.

21 "Malpractice Action" means the Debtor's malpractice claim against the
22 Malpractice Defendants.

23 "Malpractice Defendants" refers to the Debtor's former counsel Glaser, Weil,
24 Fink, Jacobs, Howard, Avachen & Shapiro, LLP, the successor entity to Christiansen,
25 Miller, Glaser, Fink, Jacobs, Weil & Shapiro, LLP, and other defendants.

26 "Membership Interests" means the equity interests held by parties in the Debtor.

27 "MOR" means monthly operating reports.

28

1 **"Motion"** means a request asking a judge to issue a ruling or order on a legal
2 matter.

3 **"Murrieta Property"** means the 9.13 acres of real property located at Washington
4 & Nutmeg in Murrieta, California, described legally as assessors ID 90602009-5.

5 **"NewCo"** means the new entity formed on the Effective Date by the owners of the
6 2nd LV Note.

7 **"New Equity Holders"** means equity holders in the Reorganized Debtor.

8 **"New Equity Interests"** means the new membership interests in the Reorganized
9 Debtor issued to General Unsecured Creditors as provided for in Class 8(a).

10 **"Net Proceeds"** means the proceeds from the sale of assets after all costs of the
11 sale have been deducted.

12 **"Non-Ordinary-Course Administrative Claims"** means Administrative Claims
13 that are not Ordinary Course Administrative Claims, Administrative Tax Claims, or
14 Professional-Fee Claims, including Claims that may arise from agreements entered into
15 with the Estate after the Petition Date other than trade agreements.

16 **"Non-Professional Administrative Claims"** means Administrative Claims that are
17 not Professional-Fee Claims.

18 **"Note" or "Notes"** means the unsecured notes which funded the Debtor's
19 borrowing totaling \$43,180,399.17 as set forth in the Schedules.

20 **"Note Holders"** refers to those parties Holding a Note or Notes.

21 **"OCBB"** refers to Orange County Business Bank.

22 **"Operating Agreement"** refers to the document which sets forth the operating
23 parameters for the Reorganized Debtor.

24 **"Ordinary-Course Administrative Claims"** means Administrative Claims other
25 than Administrative Tax Claims, Professional-Fee Claims, and Non-Ordinary-Course
26 Administrative Claims, based upon liabilities that the Debtor incurs in the ordinary course
27 of its business.

28 **"OUST"** means the Office of the United States Trustee, Santa Ana Division.

1 **"Oversight Committee"** means the committee to be elected prior to the Effective
2 Date comprised of three equity holders of the Reorganized Debtor that will monitor the
3 management of the Reorganized Debtor.

4 **"Pacific Time"** means the time in Los Angeles, California.

5 **"Park"** refers to Apex Industrial Park wherein the LV Property is located.

6 **"PCH Property"** means the real property located at 34311 Pacific Coast Highway,
7 Dana Point, California.

8 **"Person"** means any individual, corporation, general partnership, limited
9 partnership, limited liability company, association, joint-stock company, joint venture,
10 estate, trust, government, political subdivision, governmental unit (as defined in the
11 Bankruptcy Code), official committee appointed by the United States Trustee, unofficial
12 committee of creditors or equity holders, or entity.

13 **"Petition Date"** refers to the petition date for the Debtor.

14 **"Plan"** means the Second Amended Chapter 11 Plan, including any modifications
15 or amendments to the Plan.

16 **"PPM"** means private placement memorandum.

17 **"Priority Claim"** means an Allowed Claim entitled to priority against an Estate
18 under Bankruptcy Code §§ 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7).

19 **"Priority Tax Claim"** means an Allowed Claim entitled to priority against an Estate
20 under Bankruptcy Code § 507(a)(8).

21 **"Professionals"** collectively means the persons and entities employed by the
22 Debtor pursuant to order of the Court in accordance with Bankruptcy Code §§ 327 or
23 1103.

24 **"Professional-Fee Claim"** means:

- 25 a. A Claim under Bankruptcy Code §§ 327, 328, 330, 331, 503, or 1103 for
26 compensation for professional services rendered or expenses incurred on
27 the Estate's behalf, or
28

1 b. A Claim either under Bankruptcy Code § 503(b)(4) for compensation for
2 professional services rendered or under Bankruptcy Code § 503(b)(3)(D) for
3 expenses incurred in making a substantial contribution to the Estate.

4 **"Properties"** refers to the PCH Property, the Murrieta Property, and the Ventura
5 Property.

6 **"Proof of Claim"** means a written statement filed in a Case by a creditor in which
7 the creditor sets forth the amount of its Claim, in accordance with Rule 3001 of the
8 Bankruptcy Rules.

9 **"Pro Rata Share"** means, in the case of Distributions to the Holders of Allowed
10 Claims, the ratio (expressed as a percentage) of the amount of an Allowed Claim to the
11 sum of the aggregate amount of Allowed Claims.

12 **"Rafael"** refers to Maureen Rafael.

13 **"Rafael Litigation"** means the litigation commenced by Rafael in the San Diego
14 Superior Court related to the non-payment of her note, which was subsequently assigned
15 to arbitration.

16 **"Receiver"** refers to Robert Wing, the federal receiver of Vescor.

17 **"Receivership Action"** means the fraudulent transfer action against the Debtor in
18 the United States District Court, District of Utah, Case No. 2:08-cv-00835 DB, seeking to
19 avoid the Debtor's 1st, 2nd, and 3rd liens against the LV Property.

20 **"Request for Payment"** means a request for the payment of an Ordinary Course
21 Administrative Claim or a Non-Ordinary Course Administrative Claim as described in
22 Section III.C.1.a and III.C.1.b. of the Disclosure Statement.

23 **"Reorganized Debtor"** refers to the California limited liability company operated
24 pursuant to the Plan and an Operating Agreement substantially in the form of the
25 document attached as Exhibit "1" to the Plan.

26 **"Schedule of Assumed and Assigned Agreements"** means a list of executory
27 contracts and unexpired leases to be assumed and assigned under the Plan.

28

1 **"Schedules"** means the Schedules of Assets and Liabilities filed by the Debtor in
2 the Case, as required by § 521(1) of the Code, Bankruptcy Rules 1007(a)(3) and (b)(1),
3 and Official Bankruptcy Form No. 6, as the Schedules may be amended from time to time.

4 **"Second Amended Schedules"** means the amended schedules filed by the
5 Debtor on July 27, 2011.

6 **"Secured Claim"** means a Claim that is secured by a valid and unavoidable lien
7 against property in which the Estate has an interest or that is subject to setoff under
8 Bankruptcy Code § 553. A Claim is a Secured Claim only to the extent of the value of the
9 Claim Holder's interest in that property or to the extent of the amount subject to setoff, as
10 applicable, as determined under Bankruptcy Code § 506(a).

11 **"SOFA"** means the Debtor's statements of financial affairs.

12 **"Tax Code"** means the Internal Revenue Code.

13 **"Undeliverable Distribution"** means a Distribution to any Holder of an Allowed
14 Claim that is returned to the Debtor as undeliverable or otherwise unclaimed.

15 **"URS"** refers to URS Corporation.

16 **"Ventura Property"** means the real property located on Ventura Blvd. in Sherman
17 Oaks, California.

18 **"Weiland Golden"** means Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP.

19 **"Wing Receiver Settlement Agreement"** means the settlement agreement
20 entered into on December 7, 2011, between the Debtor, the Receiver, and all other
21 named defendants in the Receivership Action and the BV Land Action.

22 **"Wing Receiver Settlement Motion"** means the motion for order approving the
23 Wing Receiver Settlement Agreement filed by the Debtor on January 20, 2012.

Page 33: [1] Deleted

Hutch Meltzer

12/5/2012 10:53:00 AM

Pursuant to a settlement of the EI Avoidance Claims (discussed above in section II.A.2.b), Enhanced Income will have an Allowed Secured Claim of \$2,000,000 payable as follows:

Principal: \$2,000,000.00

Interest: 5% simple interest.

Payments:

Principal: A balloon payment of the principal amount of \$2,000,000 is due to be paid on December 31, 2013.

Interest: Interest will begin to accrue on the Effective Date. Interest payments will be made monthly within 5 days after the end of each month. Interest payments commence on January 5, 2013 (provided that there is no early payoff by December 31, 2012 pursuant to the schedule below).

Collateral:

On the Effective Date, Enhanced Income will be granted the following liens:

1. A first priority lien on the Debtor's Interests in NewCo; and
2. A third priority lien on the Murrieta Property.

Enhanced Income will release its liens on all other Debtor assets.

Enhanced Income will release its liens on the Murrieta Property to allow its sale or refinancing provided that the Net Proceeds of any such sale will be paid to the secured creditors, according to their respective priorities, up to the amounts of the balances of the Allowed Secured Claims. Any proceeds received by Enhanced Income will be credited against the amount of its Allowed Secured Claim.

Enhanced Income shall be enjoined from enforcing its liens and rights as long as there is no material monetary default that is not cured within 15 days after giving of notice of default.

Prepayment Discounts:

The Enhanced Income Allowed Secured Claim may be paid in full at the discounted amounts set forth in the following schedule:

Date	Payoff Amount
11/30/2012	\$1,150,000
12/31/2012	\$1,200,000
03/31/13	\$1,500,000 plus unpaid interest
06/30/2013	\$1,750,000 plus unpaid interest

If there is no default under the Plan as to Enhanced Income, the guarantors of the Enhanced Income obligation will be released.

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

650 Town Center Drive, Suite 950, Costa Mesa, California 92626

A true and correct copy of the foregoing document described as **THIRD AMENDED DISCLOSURE STATEMENT DESCRIBING THIRD AMENDED CHAPTER 11 PLAN (REDLINE)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **December 10, 2012**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On **December 10, 2012**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **December 10, 2012**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

The Honorable Catherine Bauer, 411 W. 4th Street, 5th Floor, Santa Ana, CA 92701

Service information continued on attached page

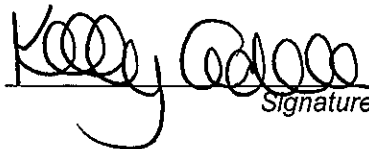
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

December 10, 2012

Date

Kelly Adele

Type Name


Signature

VIA U.S. MAIL

Boundary Bay Capital, LLC
Covenant Management Group LLC
Airport Executive Suites
2102 Business Center Drive, #130
Irvine, CA 92612

Debtor

Securities & Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036

Joel M. Pores
Law Office of Joel M. Pores
24031 El Toro Road, Suite 301
Laguna Hills, CA 92653

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West Harrington
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Lynell Burmark
713 Saranac Dr.
Sunnyvale, CA 94087

Andrea Jupina
P.O. Box 234192
Encinitas, CA 92023-4192

Joy Cambell
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