

**United States Bankruptcy Court  
Northern District of California**

In re 54 Nipomo Partners, LLC

Case No. 18-40282 CN  
Chapter 11

Debtor.

**[PROPOSED] COMBINED PLAN OF REORGANIZATION  
AND DISCLOSURE STATEMENT  
(April 30, 2018)**

**INTRODUCTION**

This is Debtor's Combined Chapter 11 Plan of Reorganization and Disclosure Statement (the Plan). The Plan identifies each known creditor by name and describes how each claim will be treated if the Plan is confirmed.

Part 1 contains the treatment of creditors with secured claims; Part 2 contains the treatment of general unsecured creditors: 100% of their allowed claims upon sale or refinance of the Debtor's real property. Taxes and other priority claims would be paid in full, as shown in Part 3.

Most creditors (those in impaired classes) are entitled to vote on confirmation of the Plan. Completed ballots must be received by Debtor's counsel, and objections to confirmation must be filed and served, no later than \_\_\_\_\_. The court will hold a hearing on confirmation of the Plan on \_\_\_\_\_ at \_\_\_\_\_.

Attached to the Plan are exhibits containing financial information that may help you decide how to vote and whether to object to confirmation. Exhibit 1 includes background information regarding Debtor and the events that led to the filing of the bankruptcy petition and describes significant events that have occurred during this Chapter 11 case. Exhibit 2 contains an analysis of how much creditors would likely receive in a Chapter 7 liquidation. Exhibit 4 describes how much Debtor is required to pay on the effective date of the plan.

Whether the Plan is confirmed is subject to complex legal rules that cannot be fully described here. You are strongly encouraged to read the Plan carefully and to consult an attorney to help you determine how to vote and whether to object to confirmation of the Plan.

If the Plan is confirmed, the payments promised in the Plan constitute new contractual obligations that replace the Debtor's pre-confirmation debts. Creditors may not seize their collateral or enforce their pre-confirmation debts so long as Debtor performs all obligations under the Plan. If Debtor defaults in performing Plan obligations, any creditor can file a motion to have the case dismissed or converted to a Chapter 7 liquidation, or enforce their non-bankruptcy rights. Debtor will be discharged from all pre-confirmation debts (with certain exceptions) if Debtor makes all Plan payments. Enforcement of the Plan, discharge of the Debtor, and creditors' remedies if Debtor defaults are described in detail in Parts 4 and 5 of the Plan.

**PART 1: TREATMENT OF SECURED CREDITORS**  
**Property to be Sold or Refinanced.**

Class	Name of Creditor	Collateral	Value of Collateral	Monthly Payment
1	Union Home Loan, Inc.	170 Frontage Rd. Nipomo, CA	\$7,000,000.00	\$14,987.50
2	San Luis Obispo County Tax	170 Frontage Rd. Nipomo, CA	\$7,000,000.00	Semi-annual \$

Debtor will sell or refinance the above collateral within six (6) months of the Effective Date, paying secured creditors from the proceeds of the sale. Debtor will file a motion for approval of any such sale or refinance/borrowing on 21 days' notice to lien holders and all parties-in-interest. Unless the court orders otherwise, a lienholder whose lien is not in bona fide dispute may credit bid the amount of its lien at the sale. If a sale or refinance is not completed within 6 months of the Effective Date, the secured creditors shall have relief from stay to exercise their rights and remedies under state law.

Pending the sale or refinance, interest will continue to accrue at the contract rate (Class 1) and statutory rate (Class 2) until the secured creditors are paid in full. Secured creditors shall retain all of their lien rights.

Creditors in those classes may not repossess or dispose of their collateral so long as Debtor is not in material default under the Plan (defined in Part 5(c)). **Those secured claims are impaired and are entitled to vote on confirmation of the Plan.**

## **PART 2: TREATMENT OF GENERAL UNSECURED CREDITORS**

### **Class 2. General Unsecured Claims.**

Name of Creditor	Amount of Claim	Disputed Y/N	Amount to be Paid	[Monthly] [Quarterly] Payment
MBS Land Surveys	\$3,900	N	\$3,900	Lump Sum
Montclair Environmental	\$62,500	N	\$62,500	Lump Sum
Robert Marinai	\$15,000	N	\$15,000	Lump Sum
Franchise Tax Board	\$326.00	N	\$326.00	Lump Sum

Allowed claims of general unsecured creditors (including allowed claims of creditors whose executory contracts or unexpired leases are being rejected under this Plan) shall be paid as follows:

**Percent Plan.** Creditors will receive **100%** of their allowed claim from the proceeds of sale of the Debtor's real property or the refinance of the property. A sale or refinance shall be completed within six (6) months of the Effective Date of the Plan.

Creditors in this class may not take any collection action against Debtor so long as Debtor is not in material default under the Plan (defined in Part 5(c)). **This class is impaired and is entitled to vote on confirmation of the Plan.** Debtor has indicated above whether a particular claim is disputed.

### PART 3: TREATMENT OF PRIORITY AND ADMINISTRATIVE CLAIMS

#### (a) Professional Fees.

The following professionals have agreed to accept payment on the following terms. Payments will be made from the proceeds of the sale of the Debtor's real property or refinance of the property or upon approval by the court, whichever is later.

Name and Role of Professional	Estimated Amount	Payment Amount	Number of Payments
Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.	\$15,000	\$15,000	1 or as otherwise agreed

Professionals may not take collection action against Debtor so long as Debtor is not in material default under the Plan (defined in Part 5(c)). **Estate professionals are not entitled to vote on confirmation of the Plan.**

(b) Other Administrative Claims. Debtor will pay other allowed claims entitled to priority under section 503(b) in full on the Effective Date; except expenses incurred in the ordinary course of Debtor's business or financial affairs, which shall be paid when normally due and payable (these creditors are not listed below). All fees payable to the United States Trustee as of confirmation will be paid on the Effective Date; post-confirmation fees to the United States Trustee will be paid when due.

Administrative Creditors may not take any collection action against Debtor so long as Debtor is not in material default under the Plan (defined in Part 5(c)). **Administrative claimants are not entitled to vote on confirmation of the Plan.**

Name of Administrative Creditor	Estimated Amount of Claim
N/A	

(c) Tax Claims. Debtor will pay allowed claims entitled to priority under section 507(a)(8) in full over time with interest (at the non-bankruptcy statutory interest rate) in equal amortizing payments in accordance with section 511 of the Bankruptcy Code. Payments will be made [monthly/quarterly], due on the [number] day of the [month/quarter], starting [month & year]. To the extent amounts owed are determined to be other

than as shown below, appropriate adjustments will be made in the number of payments.

Priority tax creditors may not take any collection action against Debtor so long as Debtor is not in material default under the Plan (defined in Part 5(c)). **Priority tax claimants are not entitled to vote on confirmation of the Plan.**

Name of Creditor	Estimated Amount of Claim	Statutory Interest Rate	Payment Amount	Number of Payments
Franchise Tax Board	\$1,623.90	18%	100% plus interest	Lump Sum

#### **PART 4: DISCHARGE AND OTHER EFFECTS OF CONFIRMATION**

(a) Discharge. Debtor shall not receive a discharge of debts until Debtor makes all payments due under the Plan or the court grants a hardship discharge.

(b) Vesting of Property. On the Effective Date, all property of the estate and interests of the Debtor will vest in the reorganized Debtor pursuant to § 1141(b) of the Bankruptcy Code free and clear of all claims and interests except as provided in this Plan, subject to revesting upon conversion to Chapter 7 as provided in Part 5(f) below.

(c) Plan Creates New Obligations. Except as provided in Part 5(d) and (e), the obligations to creditors that Debtor undertakes in the confirmed Plan replace those obligations to creditors that existed prior to the Effective Date of the Plan. Debtor's obligations under the confirmed Plan constitute binding contractual promises that, if not satisfied through performance of the Plan, create a basis for an action for breach of contract under California law. To the extent a creditor retains a lien under the Plan, that creditor retains all rights provided by such lien under applicable non-Bankruptcy law.

#### **PART 5: REMEDIES IF DEBTOR DEFAULTS IN PERFORMING THE PLAN**

(a) Creditor Action Restrained. The confirmed Plan is binding on every creditor whose claims are provided for in the Plan. Therefore, even though the automatic stay terminates on the Effective Date with respect to secured claims, no creditor may take any action to enforce either the pre-confirmation

obligation or the obligation due under the Plan, so long as Debtor is not in material default under the Plan, except as provided in Part 5(e) below.

(b) Obligations to Each Class Separate. Debtor's obligations under the Plan are separate with respect to each class of creditors. Default in performance of an obligation due to members of one class shall not by itself constitute a default with respect to members of other classes. For purposes of this Part 5, the holders of all administrative claims shall be considered to be a single class, the holders of all priority claims shall be considered to be a single class, and each non-debtor party to an assumed executory contract or lease shall be considered to be a separate class.

(c) Material Default Defined. If Debtor fails to make any payment, or to perform any other obligation required under the Plan, for more than 10 days after the time specified in the Plan for such payment or other performance, any member of a class affected by the default may serve upon Debtor and Debtor's attorney (if any) a written notice of Debtor's default. If Debtor fails within 30 days after the date of service of the notice of default either: (i) to cure the default; (ii) to obtain from the court an extension of time to cure the default; or (iii) to obtain from the court a determination that no default occurred, then Debtor is in Material Default under the Plan to all the members of the affected class.

(d) Remedies Upon Material Default. Upon Material Default, any member of a class affected by the default: (i) may file and serve a motion to dismiss the case or to convert the case to Chapter 7; or (ii) without further order of the court has relief from stay to the extent necessary, and may pursue its lawful remedies to enforce and collect Debtor's pre-confirmation obligations.

(e) Claims not Affected by Plan. Upon confirmation of the Plan, and subject to Part 4(c), any creditor whose claims are left unimpaired under the Plan may, notwithstanding paragraphs (a), (b), (c), and (d) above, immediately exercise all of its contractual, legal, and equitable rights, except rights based on default of the type that need not be cured under section 1124(2)(A) and (D).

(f) Effect of Conversion to Chapter 7. If the case is at any time converted to one under Chapter 7, property of the Debtor shall vest in the Chapter 7 bankruptcy estate to the same extent

provided for in section 348(f) of the Bankruptcy Code upon the conversion of a case from Chapter 13 to Chapter 7.

(g) Retention of Jurisdiction. The bankruptcy court may exercise jurisdiction over proceedings concerning: (i) whether Debtor is in Material Default of any Plan obligation; (ii) whether the time for performing any Plan obligation should be extended; (iii) adversary proceedings and contested matters pending as of the Effective Date or specifically contemplated in this Plan to be filed in this court (see Part 6(e)); (iv) whether the case should be dismissed or converted to one under Chapter 7; (v) any objections to claims; (vi) compromises of controversies under Fed. R. Bankr. Pro. 9019; (vii) compensation of professionals; and (viii) other questions regarding the interpretation and enforcement of the Plan.

## **PART 6: GENERAL PROVISIONS**

(a) Effective Date of Plan. The Effective Date of the Plan is the thirtieth (30<sup>th</sup>) day following the date of the entry of the order of confirmation, if no notice of appeal from that order has been filed. If a notice of appeal has been filed, Debtor may waive the finality requirement and put the Plan into effect, unless the order confirming the Plan has been stayed. If a stay of the confirmation order has been issued, the Effective Date will be the first day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

(b) Cramdown. Pursuant to section 1129(b) of the Bankruptcy Code, Debtor reserves the right to seek confirmation of the Plan despite the rejection of the Plan by one or more classes of creditors.

(c) Severability. If any provision in the Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

(d) Governing Law. Except to the extent a federal rule of decision or procedure applies, the laws of the State of California govern the Plan.

(e) Lawsuits. Debtor believes that there are no causes of action for fraudulent transfers, voidable preferences, or other claims for relief exist against the following parties:

(f) Notices. Any notice to the Debtor shall be in writing, and will be deemed to have been given three days after the date sent by first-class mail, postage prepaid and addressed as follows:

(g) Post-Confirmation United States Trustee Fees. Following confirmation, Debtor shall continue to pay quarterly fees to the United States Trustee to the extent, and in the amounts, required by 28 U.S.C. § 1930(a)(6). So long as Debtor is required to make these payments, Debtor shall file with the court quarterly reports in the form specified by the United States Trustee for that purpose.

(h) Deadline for § 1111(b) Election. Creditors with an allowed secured claim can make a timely election under section 1111(b) no later than 14 days before the first date set for the hearing on confirmation of the Plan.

Dated: April 30, 2018

54 Nipomo Partners, LLC

/s/ Robert Marinai  
Robert Marinai  
Its: General Manager

/s/ Eric A. Nyberg  
Eric A. Nyberg, Esq.  
Attorneys for Debtor

## Attorney Certification

I, Eric A. Nyberg, am legal counsel for the Debtor in the above-captioned case and hereby certify the following: (i) the foregoing plan is a true and correct copy of the Individual Chapter 11 Combined Plan and Disclosure Statement promulgated by the Northern District of California, San Francisco Division, on July 30, 2012 (the "Standard-Form Plan"); and (ii) except as specified below, there have been no alterations or modifications to any provision of the Standard-Form Plan.

The following provisions of the Standard-Form Plan have been altered or otherwise modified:

- Eliminated Part 4 (Executory Contracts and Unexpired Leases) because there are no executory contracts.
- Part 6 (General Provisions) - 6(a) Effective Date of Plan has been changed to 30<sup>th</sup> day following the date of entry of the order confirming the Plan.
- Exhibit 3 has been modified to the Plan contents.
- Exhibit 5 (Investment Property Analysis) has been eliminated.

All inapplicable provisions have been deleted from the Combined Plan and Disclosure Statement.

I declare that the foregoing is true and correct. Executed this 30th day of April, 2018.

/s/ Eric A. Nyberg  
Attorney for Debtor

## **Exhibit 1 - Events That Led To Bankruptcy**

The Debtor is a limited liability company. The Debtor's sole asset is a parcel of land located in Nipomo, California. The land consists of a single parcel that is approximately 5 acres in size. The land is currently undeveloped except for one existing cement pad, electrical and water service to the land. The Debtor financed its acquisition of the land by borrowing the sum of \$1,500,000 from Union Home Loan, Inc. The promissory note evidencing said loan was a one year note bearing interest at the annual rate of 11.99%. The note called for monthly interest only payments of \$14,987.50 and was all due and payable on February 1, 2018. The Promissory Note is secured by a first deed of trust on the Debtor's land. The Debtor anticipated a capital infusion from one of its members but said infusion has been delayed. As a result, the Debtor defaulted in making its monthly interest only payments. The lender commenced foreclosure proceedings and a foreclosure sale was set to take place on February 2, 2018. The Debtor filed its Chapter 11 bankruptcy on February 1, 2018 to stay the foreclosure and preserve the value in the land.

**Exhibit 2 - What Creditors Would Receive if the Case Were  
Converted to a Chapter 7**

Real Property #1: 170 Frontage Road, Nipomo, California

Fair Market Value	Liens	Cost of Sale	Resulting Income Tax	Amt of Exemption	Net Proceeds
\$7,000,000	1 <sup>st</sup> \$1,679,156	\$490,000	Unknown	0	\$4,830,844
	2 <sup>nd</sup>				
	3 <sup>rd</sup>				

Net Proceeds of Real Property and Personal Property	\$4,830,844
Recovery from Preferences / Fraudulent Conveyances [ADD]	0
Chapter 7 Administrative Claims [SUBTRACT]	0
Chapter 11 Administrative Claims [SUBTRACT]	\$15,000
Priority Claims [SUBTRACT]	\$1,623
Chapter 7 Trustee Fees [SUBTRACT]	\$233,500
Chapter 7 Trustee's Professionals [SUBTRACT]	\$25,000
NET FUNDS AVAILABLE FOR DISTRIBUTION TO UNSECURED CREDITORS	\$4,555,721

Estimated Amount of Unsecured Claims	\$81,726
Percent Distribution to Unsecured Creditors Under Proposed Plan	100%
Percent Distribution to Unsecured Creditors Under Liquidation Analysis	100%

### **Exhibit 3 - Monthly Income and Expenses**

The Debtor currently generates no income because the Debtor's sole asset is undeveloped real property.

#### Exhibit 4 - Effective Date Feasibility

Can the Debtor Make the Effective Day Payments?

	Amount	Amount
A. Projected Total Cash on Hand on Effective Date		
Payments on Effective Date		
Unclassified Claims		
Administrative Expense Claims		
Priority Claims		
Small Claims (Class 2(a))		
U.S. Trustee Fees		
B. Total Payments on Effective Date		
C. Net Cash on Effective Date (Line A - Line B) (Not feasible if less than zero)		

This case is a liquidating Chapter 11 and all administrative claims will be paid from the sales proceeds within six (6) months from the Effective Date. The real property is currently listed for sale by the debtor-in-possession's court approved real estate brokers. In addition, the debtor-in-possession is also currently in discussions with a lender to provide a refinance loan.