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9  
10 UNITED STATES BANKRUPTCY COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12

13 In re  
14 ENEA SQUARE PARTNERS, L.P.,

15 Debtor.

16 Case No. 11-44888 RLE

17 Chapter 11

18 **DISCLOSURE STATEMENT FOR**  
19 **DEBTOR'S PLAN OF**  
20 **REORGANIZATION**

21 This Disclosure Statement has been approved by the United States Bankruptcy Court for  
22 the Northern District of California as containing adequate information as required by the  
23 Bankruptcy Code for solicitation of acceptances of the Chapter 11 Plan of Reorganization dated  
24 August 2, 2011, and filed by the Debtor in this proceeding. However, conditional approval of the  
25 Disclosure Statement does not constitute an endorsement of the Plan by the Court. The Court has  
26 made no independent investigation or determination of any factual statements or dollar values set  
27 forth in the Plan or the Disclosure Statement.

28 **I. INTRODUCTION**

This Disclosure Statement has been prepared by Enea Square Partners, L.P., the Debtor  
and Debtor-in-possession in the above-entitled Chapter 11 case, and is being disseminated to all  
creditors for the purpose of soliciting acceptances of the Plan, a copy of which accompanies this  
Disclosure Statement. This Disclosure Statement is being provided to creditors to provide

1 adequate information of a kind, and in sufficient detail, to enable creditors to make informed  
2 judgments about the Plan before exercising its rights to vote for acceptance or rejection of the  
3 Plan. Capitalized terms in this Disclosure Statement are defined in the Plan.

4 An acceptance or rejection of the Plan may be voted by completing the ballot and mailing,  
5 faxing, or emailing it to Kornfield, Nyberg, Bendes & Kuhner, P.C., attorneys for the Debtor,  
6 1970 Broadway, Suite 225, Oakland, California 94612, (510) 763-1000,  
7 c.kuhner@kornfieldlaw.com.

## 9 II. BACKGROUND OF THE DEBTOR

10 The Debtor is the owner of commercial property including five (5) parcels located at 1450  
11 Enea Circle, 1485 Enea Court, 1470 Enea Circle, 1465 Enea Circle D, and 1465 Enea Circle E,  
12 Concord, California. The Debtor has owned and managed these properties for the last twelve (12)  
13 years.

14 The original lender of the property was Comerica Bank (“Comerica”). Since the inception  
15 of the loan the Debtor never missed a payment to Comerica. However, the Debtor failed to pay  
16 property taxes, and Comerica alleged a default based on the non-payment of property taxes and  
17 loan-value ratio. On May 4, 2010, Comerica filed a Complaint against the Debtor and foreclosed  
18 on a Deed of Trust on the properties in Concord as well as Pebble Beach. In addition, Comerica  
19 requested specific performance of assignment of rents and appointment of receiver.  
20

21 The Debtor and Comerica entered into three (3) stipulations whereby the Debtor agreed to  
22 the general injunction against transferring any of the Debtor’s assets and to only pay expenses  
23 pursuant to a budget.  
24

25 The Debtor and Comerica entered into a Stipulation and Request to Extend the Temporary  
26 Restraining Order and Continue Hearing on Order to Show Appointment of Receiver on May 6,  
27 2010. The parties agreed to continue the Stipulation on three (3) separate occasions. The Debtor  
28

1 complied with all terms of the Stipulation.

2 During the last year, Debtor has been entertaining offers to buy out the Comerica debt. In  
3 addition the Debtor engaged real estate brokers in October, 2010 to list and market the Property  
4 for a potential sale. Informally, the Debtor approached Comerica with potential offers to “buy out”  
5 the debt and/or sell the Property at an amount at less than what was owed.

6  
7 On March 31, 2011, Secured Lender NUCP Fund I, LLC (“NUCP”), purchased the  
8 Comerica debt in an amount unknown to the Debtor<sup>1</sup>.

9 Immediately upon acquiring the Comerica debt, the Secured Lender undertook aggressive  
10 enforcement tactics including but not limited to sending out a letter to the Debtor’s largest tenant,  
11 Beverages & More! (“Bev Mo!”), demanding that the rent of \$52,000 be paid directly to them. At  
12 the time, Bev Mo! had already paid their rent to the Debtor but immediately cancelled that check  
13 and reissued payment directly to the Secured Lender. Presently, Secured Lender is holding or has  
14 been paid \$104,000 in rent due to the Debtor.

15  
16 Although Bev Mo! is the largest tenant of the Debtor, there are an additional twenty-two  
17 (22) tenants equating to \$120,000 in monthly rent.

18 The Debtor filed this Chapter 11 bankruptcy with the intent to cure pre-petition monetary  
19 defaults owed, if any, to the Secured Lender and to reinstate the loan pursuant to its terms prior to  
20 the filing of the bankruptcy.

21  
22 In addition to the Secured Lender, the Debtor has other unsecured creditors in the amount  
23 of \$850,000 in this Chapter 11 bankruptcy and unpaid property taxes in the amount of \$650,000.

24 The assets and liabilities of the Chapter 11 estate are discussed in detail in Article IV  
25 below.

26 Following the filing of the Chapter 11 case, the Debtor filed all required Schedules,  
27 Statements of Affairs, and other initial papers. The Debtor was authorized by the Court to use the

28

1 “cash collateral” to pay its ongoing operating expenses pending promulgation of this Plan. The  
2 Debtor was authorized to retain the law firm of Kornfield, Nyberg, Bendes & Kuhner, P.C. as its  
3 counsel in the proceedings. Prior to the Chapter 11 filing, Kornfield, Nyberg, Bendes & Kuhner,  
4 P.C. was paid a \$35,000 retainer on account of services to be rendered in this case.

5 No official committee of unsecured creditors was appointed in the case.

### 6 **III. SUMMARY OF THE PLAN**

7 The Debtor’s Plan seeks to restructure its respective debts in three different ways. First,  
8 the secured debt in favor of NUCP will be reamortized into a new note in the same priority  
9 secured by the existing deeds of trust, bearing interest at 2%<sup>2</sup> which is greater than specified in the  
10 Note. Interest only will be payable monthly and the entire balance of these notes will be due in full  
11 in four (4) years.

12 Second, unsecured creditors will be paid in full with interest at the federal judgment  
13 interest rate (.42% per annum) in twenty-eight (28) quarterly installments commencing ninety (90)  
14 days from the Effective Date of the Plan through a cash flow from the Debtor’s rental income  
15 property.

16 Third, any delinquent real property taxes will be cured, with statutory interest, through a  
17 five-year payment plan of monthly installments, starting upon confirmation of the Plan. Payments  
18 on these obligations will be funded through the rental income from the Debtor’s real property as  
19 well as a one-time loan to the reorganized Debtor.

20 If the Debtor fails to meet these requirements, the secured lenders will be permitted to  
21 foreclose and/or the Case may be converted to Chapter 7 liquidation proceedings on the motion of  
22 a party in interest.

23 The treatment of claims and interests described below applies only to Allowed Claims.  
24 Determination of the amounts due to creditors will be after reconciliation of the amounts claimed  
25 by the Creditor in question with the Debtor’s business records. In the event of a dispute, the  
26 Debtor will file objections to the allowance of the claim.

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27 <sup>1</sup> The Debtor believes that the Secured Lender purchased the debt from Comerica under \$8.1 million.

28 <sup>2</sup> The interest rate paid Comerica since inception was a 110 margin over 1month LIBOR today that rate is 110 over .19 or 1.29%  
for a payment of \$20,800.

1 The treatment of each particular type of Creditor is described below.

2 **A. Unclassified Claims**

3 Section 1123(a)(1) of the Bankruptcy Code provides that certain claims, including claims  
4 for post-petition administrative expenses (including professional fees) and certain claims by  
5 governmental units for taxes, are not classified under the Plan. Entities holding unclassified claims  
6 are not entitled to vote on the Plan.

7 Any unpaid professional fees incurred up through Confirmation will be paid if and when  
8 allowed by the Court pursuant to Bankruptcy Code Section 330. The amount of unpaid  
9 professional fees depends in large part on whether there are contested confirmation proceedings.  
10 Debtor' counsel estimates that the amount of these additional fees may range from zero to  
11 \$50,000. All other post-petition administrative expenses, including quarterly fees due or to  
12 become due to the United States Trustee will be paid as of the Effective Date of the Plan. The  
13 Debtor estimates that, other than professional fees, unpaid administrative expenses will be less  
14 than \$5,000.

15 All tax claims entitled to priority under Bankruptcy Code Section 507(a)(8) will receive  
16 deferred cash payments over a period not to exceed five (5) years after the Petition Date, as  
17 provided by Bankruptcy Code Section 1129(a)(9)(C). Tax claims will bear interest at the rate  
18 specified in Section 6621 of the Internal Revenue Code. Unclassified Tax Claims do not include  
19 local real estate taxes, which are separately classified as Classes 4, as described below, due to the  
20 secured status of those Claims. The Debtor does not believe that it owes any unclassified Tax  
21 Claims, but has made a provision for the payment of such claims if an allowable proof of claim is  
22 timely filed by a taxing authority.

23 **B. Classified Claims And Interests**

24 The Plan divides claims and interests into 4 classes. A description of each class and its  
25 treatment under the Plan follows.

26 Class 1: Secured Claim of NUCP Fund, I

27 NUCP Fund, I ("NUCP"), holds a Secured Claim in the amount of \$19,500,000 (the  
28 precise amount is subject to dispute) collateralized by a first deed of trust on the Debtor's real

1 property. The Plan provides that to the extent that NUCP has an Allowed Secured Claim, any  
2 default will be cured under the loan reinstated in good standing. The principal amount will be all  
3 unpaid principal, interest, attorney's fees, and collection costs due under the existing obligation,  
4 but not to include a default interest rate. The note will bear interest greater than the variable rate as  
5 specified in the pre-petition promissory note, at 2% or payable in monthly installments of \$32,500.  
6 This Class is unimpaired and not entitled to vote on the Plan. In the event NUCP elects to treat its  
7 claim as both secured and unsecured under the plan, it will be impaired based on its claim an  
8 entitled to vote for the Plan.

9 Class 2: Secured Claim of Contra Costa County

10 Contra Costa County holds a Secured Claim for back, unpaid real estate taxes secured by  
11 the Debtor's real property. The Plan provides that any such defaulted real property taxes will be  
12 repaid with interest as required by Bankruptcy Code Section 511 in monthly installments paid  
13 over five years, commencing upon confirmation of the Plan. In order to meet these payment  
14 requirements the Debtor has to pay down \$200,000 to bring one year tax current. This Class is  
15 impaired and entitled to vote on the Plan.

16 Class 3: Claims of General Unsecured Creditors.

17 General Unsecured Creditors will be paid 100% of their Allowed Claims with interest at  
18 the Legal Rate in twenty-eight (28) quarterly installments commencing ninety (90) days from the  
19 Effective Date. The Debtor estimates that there is approximately \$850,000 in Class 3 Claims. This  
20 Class is impaired and entitled to vote on the Plan.

21 Class 4: The Holders of Partnership Interests in the Debtor

22 The holders of the partnership interests in the Debtor shall retain their interests. No  
23 dividend, distribution, or other payment or transfer shall be made to the Class 4 interests on  
24 account of its interest until all classified and unclassified creditors are paid in full. Class 4 is  
25 unimpaired and not entitled to vote on the Plan.

26 C. Other Provisions of the Plan

27 The Plan contains a number of other provisions concerning its implementation. The  
28 following is a summary. Consult the Plan itself for details.

1                   1.       Executory Contracts

2                   The Debtor believes that those leases on its property in which it is a lessor are “executory  
3 contracts,” as the term is defined by Bankruptcy Code Section 365, and the Plan provides that  
4 these executory contracts are to be assumed. The Plan further provides that any other executory  
5 contracts may be assumed or rejected up through the time of Confirmation. If there is a rejected  
6 executory contract is timely rejected by the Debtor, the holder of the contract right may have a  
7 “Rejection Claim” as defined in the Plan and subject to the deadlines and treatment specified  
8 therein.

9                   2.       Post Confirmation Management

10                  Following Confirmation, the Debtor intends to maintain its role as manager and will also  
11 act as the Disbursing Agent under the Plan.

12                  3.       Post-Confirmation Compensation and Reimbursement of Professionals.

13                  All professionals employed by the Reorganized Debtor or the Disbursing Agent (if a third  
14 party Disbursing Agent is appointed), including the Debtor’s Professionals, shall be entitled to  
15 payment of its post-Confirmation Date fees and reimbursement of expenses on a monthly basis,  
16 based on the service of a detailed statement of the requested fees and expenses on the Notice  
17 Parties as discussed more fully in the Plan.

18                  4.       Distributions and Claims.

19                  Subject to the deadlines in the Plan, distributions will be made to Creditors when its  
20 Claims are Allowed Claims, as defined in the Plan. Proofs of Claim, when required, had to be filed  
21 with the Bankruptcy Court no later than the applicable Claims Bar Date (which for most  
22 prepetition Claims is September 6, 2011) or the applicable Governmental Unit Claims Bar Date  
23 for prepetition tax and similar Claims. However, Bankruptcy Rule 3001(b) provides that it is not  
24 necessary for a Creditor to file a proof of Claim if its Claim has been listed on the Debtor  
25 Schedules filed with the Bankruptcy Court pursuant to Section 521(a) (1) of the Bankruptcy Code  
26 and Rule 1007(a) (3) of the Bankruptcy Rules, and is not listed as disputed, contingent,  
27 unliquidated or unknown as to amount. Except as provided by the Plan or as otherwise permitted  
28 by the Bankruptcy Court, the Bankruptcy Rules or applicable law, upon expiration of the

1 applicable bar date, proofs of Claim may not be filed or amended unless the amendment is solely  
2 to decrease the amount or priority. Distributions to Creditors under the Plan will be made to the  
3 Persons shown on the Debtor' or the Bankruptcy Court's records on the Effective Date.

4 **Any party who acquires a claim against the Reorganized Debtor after the**  
5 **Effective Date must arrange with the holder on that date to receive**  
6 **distributions to which the transferee may be entitled. Neither the Reorganized**  
7 **Debtor nor the Disbursing Agent will be required to track changes in**  
8 **ownership of claims after the Effective Date.**

9 Objections to any Claim may be filed by any party in interest and shall be filed no later  
10 than the Claims Objection Date, which is defined in the Plan as 90 days after the Effective Date.

#### 11 5. Reservation of Litigation Rights

12 Under the Plan the Debtor is reserving all of its litigation rights and defenses against all  
13 Creditors, including without limitation (1) any claims and causes of action against NUCP (2) the  
14 right to object to any Claim, even if the Creditor in question votes to accept the Plan. The failure  
15 of this Disclosure Statement to disclose or discuss any particular potential Claim objection, cause  
16 of action or claim for relief held by the Debtor or the Bankruptcy Estate is not and shall not be  
17 construed as a settlement, compromise, waiver, or release of any such Claim objection, cause of  
18 action or claim for relief.

#### 19 6. Retention of Jurisdiction.

20 Article X of the Plan provides that the Bankruptcy Court shall retain broad jurisdiction  
21 under the Bankruptcy Code to adjudicate any disputes arising out of the Plan, the administration of  
22 the Cases, and claims for relief held by the Debtor or Reorganized Debtor.

#### 23 7. Persons Bound/Discharge of Debts.

24 Confirmation of the Plan binds the Debtor, the Reorganized Debtor, any entity acquiring  
25 property under or otherwise accepting the benefits of the Plan, and every Creditor and Equity  
26 Security Holder, whether or not such Creditor or Equity Security Holder has filed a proof of Claim  
27 or Interest in the Bankruptcy Case, whether or not the Claim or Interest of such Creditor or Equity  
28 Security Holder is impaired under the Plan, and whether or not such Creditor or Equity Security  
Holder has accepted or rejected the Plan. The Confirmation Order shall further discharge the



1 Debtor from all Claims which arose prior to the date of Confirmation, as is more particularly  
2 described in Section 1141(d)(1) of the Bankruptcy Code.

3 **IV. STATEMENT OF ASSETS AND LIABILITIES AND FEASIBILITY OF THE**  
4 **PLAN**

5 A. In General

6 This section will describe the assets and liabilities of the Debtor and discuss the feasibility  
7 of the Plan.

8 B. Assets

9 The Debtor generates \$171,200 in monthly rents.

10 The Debtor is also holding cash reserves of approximately \$50,000. This amount is  
11 significantly less than the total amount unsecured claims against the Debtor. However, the  
12 Debtor's management believes it is necessary to hold the funds in reserve rather than pay  
13 unsecured creditors these funds immediately. These funds will allow the Debtor to have sufficient  
14 reserves to pay lease commissions, tenant improvement allowance and property taxes in order to  
15 lease the remaining vacancies in the project to maximize its value.

16 C. Liabilities

17 The Debtor's best estimate of the amount of asserted claims against its Chapter 11 Estate is  
18 as follows:

19  
20 Secured Debt

21	Contra Costa County	\$650,000.00
22	NUCP	\$19,500,000.00
23	<b>Subtotal Secured Debt</b>	<b>\$20,150,000.00</b>

24  
25 Unsecured Debt

26	Administrative expenses	\$25,000.00 (est.)
27	Priority claims (non-tax)	0.00
28	Priority unsecured taxes	0.00

1	General unsecured claims	\$850,000.00 (est.)
2		
3	<b>Subtotal Unsecured Debt</b>	<b>\$875,000.00</b>
4	<b>TOTAL DEBT</b>	<b>\$21,025,000</b>
5		

6 D. Feasibility of the Plan

7 Successful consummation of the Plan has two components. First, there is the Debtor's  
8 obligation to make periodic debt service payments to its secured creditors. Second, there is the  
9 Debtor's obligation to pay its unsecured creditors.

10 The Debtor estimates that the monthly debt service accruing and/or due to its secured  
11 creditors under the Plan will be no greater than \$44,300 per month, consisting of \$32,500 per  
12 month due NUCP in its note, a payment of \$4,249.41 to the new tax loan maker and a \$7,500  
13 payment for the delinquent property taxes to the County.

14 The Debtor's ability to make these debt service payments is contingent upon maintaining  
15 the current gross monthly rent (including reimbursed CAM charges) of \$171,200 without  
16 significant further vacancies, and maintaining operating expenses, insurance, taxes, and reserves  
17 for new tenant improvements, leasing commissions for vacant space below the balance. Based on  
18 historical performance, the Debtor believes that this is feasible. The Debtor's ninety-day (90) pro-  
19 forma budget is attached as Exhibit A. Although the Plan provides for a seven (7) year term, the  
20 Debtor believes that it is not prudent to make itemized projections beyond three (3) months.

21 However, with the exception of Bev Mo!, the existing leases extend through the full life of  
22 the Plan and the Debtor believes that these financials may well improve as the remaining  
23 vacancies in the project are filled. In fact, Debtor is currently working on three (3) leases that  
24 would significantly improve the vacancy rate and improve the cash flow by 20%.

25 Bev Mo's lease terminates on July 31, 2012, but the Debtor wishes to renew the lease for  
26 the life of the Plan. If Bev Mo does not renew its lease then the Debtor will find a replacement  
27 tenant for the space.

28 The Debtor further believes that the real estate and capital markets will sufficiently recover

1 by the end of the of the restructuring period to allow for a sale or refinancing so that the principal  
2 amount of the Allowed Secured Claim can be satisfied by that time. The Debtor selected the seven  
3 year term for the Plan based on advice of counsel, and not any objective commercial standards for  
4 work-out transactions.

5 Aside from financial matters, the Debtor believes that it can comply with all technical  
6 requirements of the Bankruptcy Code necessary to confirm and substantially consummate the  
7 Plan.

## 8 9 V. ALTERNATIVES TO THE PLAN

### 10 A. Chapter 7 Liquidation

11 In a Chapter 7 liquidation proceeding, the Debtor's interest in any assets of the Estate  
12 would vest in a Chapter 7 trustee, who would either release them to the respective secured  
13 creditors or attempt to sell those assets to third parties and distribute any proceeds pro rata to all  
14 creditors of the estate under the priorities established by Bankruptcy Code Section 507. A Chapter  
15 7 Trustee also has the statutory power to assert "avoidance claims" and other litigation claims held  
16 by the Estate against third parties pursuant to Bankruptcy Code Sections 510, 541, 544, 545, 547,  
17 548, and 549, which can generate funds to pay unsecured creditors.

18 The Debtor believes that the Plan is significantly more beneficial to creditors than Chapter  
19 7 for a number of reasons. Creditors will be paid in full in seven (7) years.

20 First, the Debtor may utilize its powers under Bankruptcy Code Section 1123(a) (5) to  
21 modify and extend its secured debt to carry the properties through the current economic downturn.  
22 A Chapter 7 Trustee lacks these powers.

23 Second, the Debtor believes that its management can return a full dividend to unsecured  
24 creditors more quickly and efficiently than a Chapter 7 Trustee. Under the Plan, unsecured  
25 creditors will be paid in full within seven (7) years. Under a Chapter 7, the sole asset would be lost  
26 to NUCP I, with unsecured creditors receiving nothing.

### 27 B. No Other Plans

28 The Bankruptcy Code permits parties in interest other than the Debtor to propose a plan of

1 reorganization under certain circumstances. The Plan submitted by the Debtor is the only plan of  
2 reorganization that has been proposed at this time.

3 **VI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

4 A. In General

5 The following is a summary of certain United States federal income tax consequences of  
6 the Plan that may be material to Creditors and holders of Equity Securities (each a “Holder”).  
7 This discussion is included for general information purposes only and is not intended to be, and is  
8 not, legal or tax advice to any particular Holder. This summary is based on the current provisions  
9 of the Internal Revenue Code of 1986, as amended (the “Code”), the Income Tax Regulations (the  
10 “Regulations”) and other legal authorities, all of which are subject to change, possibly with  
11 retroactive effect. No rulings from the Internal Revenue Service (the “IRS”) or opinions of counsel  
12 have been or will be requested concerning the matters discussed below. The tax consequences set  
13 forth in the following discussion are not binding on the IRS or the courts, and no assurance can be  
14 given that contrary positions will not be successfully asserted by the IRS or adopted by a court.

15 This summary does not address the taxation of the Debtor or the Holders under state, local  
16 law or foreign law.

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

25 **EACH HOLDER SHOULD CONSULT THE HOLDER’S OWN TAX**  
26 **ADVISOR TO DETERMINE THE HOLDER’S PARTICULAR U.S.**  
27 **FEDERAL INCOME TAX CONSEQUENCES AND OTHER TAX**  
28 **CONSEQUENCES TO THE HOLDER OF THE PLAN, INCLUDING ANY**  
**STATE, LOCAL AND FOREIGN TAX LAWS AND THE EFFECT OF ANY**  
**CHANGES IN SUCH LAWS.**

1 B. Consequences to Debtor.

2 As a limited partnership which has not elected to be taxed as a corporation, the Debtor is  
3 disregarded as an entity separate from its owners for U.S. federal income tax purposes.  
4 Accordingly, any income, gain or loss realized by the Debtor will be considered, for U.S. federal  
5 income tax purposes to be realized by the Holder of the partnership interests in the Debtor.

6 C. Consequences to Creditors.

7 Creditors should consult its own tax advisors concerning any income tax consequences of  
8 its respective treatment under the Plan.

9 D. Consequences to Partnership Interest Holders.

10 A Holder of the units of a limited partnership that has not filed an election to be taxed as a  
11 corporation for federal income tax purposes is considered to realize the income, gain or loss  
12 realized by the limited partnership in accordance with the Holder's method of accounting for  
13 federal income tax purposes.

14 Such income, gain or loss may be realized and reportable by the Holder regardless of  
15 whether any distribution is received by the Holder. Thus, the Holder (or its owners) may be  
16 required to recognize income for U.S. federal income tax purposes as a result of a sale of assets of  
17 the Debtor even if no cash or other property is distributed by the Debtor to the Unit Holder. The  
18 income, gain or loss may be taxable to the Holder.

19 However, the Debtor does not believe that the Confirmation of the Plan will result in a  
20 taxable event to the holder(s) of its respective LP interests.

21 E. Wage Withholding.

22 If any Allowed Claim under the Plan constitutes "wages" for U.S. federal income tax  
23 purposes, the U.S. federal income tax rules applicable to wage withholding will apply to the  
24 payment of the Allowed Claim.

25 F. Backup Withholding.

26 U.S. federal income tax laws require that, to avoid backup withholding with respect to  
27 "reportable payments" (in an amount equal to 28%), Creditor or Holder must (a) provide Debtor  
28 with its correct taxpayer identification number ("TIN") on IRS Form W-9 and certify as to its

1 eligibility for exemption from backup withholding, or (b) establish a basis for exemption from  
2 backup withholding on an appropriate IRS Form W-8 (including a Form W-8BEN, W-8ECI, W-  
3 8EXP and W-8IMY) or IRS Form W-9, as applicable. Exempt Creditors and Holders (including,  
4 among others, all corporations and certain foreign individuals) are not subject to backup  
5 withholding and reporting requirements. If withholding is made and results in an overpayment of  
6 taxes, a refund may be obtained.

## 7 VII. VOTING, ACCEPTANCE AND CONFIRMATION

### 8 A. In General.

9 The Honorable Roger L. Efremsky, Judge, United States Bankruptcy Court, will set a date  
10 for the hearing on the Confirmation of the Plan. The hearing will be held at the United States  
11 Bankruptcy Court, 1300 Clay Street, Courtroom 201, Oakland, California. The Plan can be  
12 implemented only if accepted by the requisite percentage of creditors and confirmed by the  
13 Bankruptcy Judge. Creditors entitled to vote should vote on the Plan by filling out and mailing the  
14 accompanying ballot to counsel. There is no assurance that, if accepted, the Plan will be confirmed  
15 by the Bankruptcy Court.

### 16 B. Voting.

17 Only impaired classes under the Plan will be entitled to vote on the Plan. The definition of  
18 an “impaired” class of Creditors is set forth in Section 1124 of the Bankruptcy Code. Classes 2  
19 and 3 are impaired by the Plan and entitled to vote. No other Classes are impaired under the Plan.  
20 Pursuant to Section 1126(f) of the Bankruptcy Code, a class that is not impaired under the Plan,  
21 and each holder of a Claim or Interest of such class, are conclusively presumed to have accepted  
22 the Plan, and solicitation of acceptances with respect to such class from the holders of Claims or  
23 Interests of such class is not required. The Bankruptcy Code defines “acceptance” of a plan by a  
24 class of Creditors as acceptance by the holders of two-thirds (2/3) in dollar amount and more than  
25 one-half (1/2) in number of the claims of that class which actually cast ballots for acceptance or  
26 rejection of the Plan.

27 In addition to the requirement that a Creditor be in an “impaired class”, in order for a  
28 creditor's vote to be counted, either for or against the Plan, the creditor must have either (1) filed a

1 proof of claim on or before the “Claims Bar Date”, which was set by the Court for September 6,  
2 2011, (2) have been listed by the Debtor in the Schedule of Liabilities as having a claim which  
3 was noncontingent and undisputed.

4 **If you have already filed a claim you need not refile for the purpose of voting on the**  
5 **Plan.**

6 If a Creditor wishes to vote for or against the Plan, the Creditor should complete an  
7 acceptance or rejection of the Plan on the form ballot enclosed herewith which must be returned  
8 pursuant to the instructions set forth thereon.

9 C. Confirmation

10 If no impaired Creditor classes accept the Plan, it cannot be confirmed. If at least one  
11 impaired class of Creditors accept the Plan, the Court will hold a Confirmation Hearing. At the  
12 Confirmation hearing, the Bankruptcy Judge has the duty to determine whether the Plan meets the  
13 requirements of Section 1129 of the Bankruptcy Code. The principal requirements of Section  
14 1129 include the following: (1) that the proponents of the Plan have complied with the applicable  
15 provisions of the Bankruptcy Code on all matters connected with the case; (2) that the Plan has  
16 been proposed in good faith, and not by any means forbidden by law; (3) that the requisite amount  
17 of creditors have accepted the Plan or that the creditors are receiving an amount not less than they  
18 would receive if liquidation under Chapter 7 took place; (4) that at least one class of Creditors has  
19 accepted the Plan; and (5) that confirmation of the Plan is not likely to be followed by liquidation,  
20 or the need for further financial reorganization of the debtor; and (6) that the Debtor and the Plan  
21 in all other respects comply with applicable law. Only if such determinations are made will the  
22 Judge confirm the Plan.

23 In addition, if there are impaired Creditor classes which have rejected the Plan, the  
24 Bankruptcy Court may order Confirmation over its rejection, but only if the Court first determines  
25 that the rights of non-consenting classes of creditors are protected under Bankruptcy Code Section  
26 1129(b) and other applicable law.

27 D. Modification of the Plan.

28 The Debtor may propose amendments to or modifications of the Plan under Section

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1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019 at any time prior to the conclusion of the hearing on Confirmation of the Plan. After the Confirmation Date, the Debtor or Reorganized Debtor may modify the Plan in accordance with Section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019.

**VIII. CONCLUSION**

The Debtor believes that its Plan of Reorganization realistically affords to Creditors its best opportunity for receiving a prompt, meaningful dividend. The Debtor respectfully requests that Creditors vote to accept the Plan.

Dated: August 2, 2011

Enea Square Partners, L.P.

By: /s/ Joan Enea-Lopez  
Managing Member of Enea-Makepeace, LLC,  
General Partner of Debtor Enea Square Partners,  
L.P.

Dated: August 2, 2011

KORNFIELD, NYBERG, BENDES & KUHNER, P.C.

By: /s/ Chris D. Kuhner  
(Bar No. 131105)  
Attorneys for Debtor Enea Square Partners, L.P.



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**DECLARATION OF SERVICE**

I, the undersigned, declare:

I am employed in the City of Oakland, County of Alameda, California. I am over the age of 18 years and not a party to this action. My business address is 1970 Broadway, Suite 225, Oakland, California 94612.

I am readily familiar with the business practices of my employer, Kornfield, Nyberg, Bendes & Kuhner, P.C., for the collection and processing of correspondence for mailing with the United States Postal Service and that correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 2, 2011, I served the following documents:

**DISCLOSURE STATEMENT FOR DEBTOR’S PLAN OF REORGANIZATION**

Office of the U.S. Trustee  
1301 Clay St. #690N  
Oakland, CA 94612

Robert F. Kidd  
Eric A. Handler  
Donahue, Gallagher and Woods  
1999 Harrison St 25th Floor  
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of August, 2011 at Oakland, California.

/s/ Jessica Mangacat