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6 Attorneys for Debtor and Debtor in Possession
7 MALIBU ASSOCIATES, LLC

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SAN FERNANDO VALLEY DIVISION**

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11 In re)
12 MALIBU ASSOCIATES, LLC, a)
13 California limited liability company, dba)
14 MALIBU COUNTRY CLUB)

14 Debtor.)

15 Tax I.D. 20-4106767)

Case No. 1:09-bk-24625-MT

Chapter 11

**[PROPOSED] FIRST AMENDED
DISCLOSURE STATEMENT
DESCRIBING DEBTOR'S FIRST
AMENDED PLAN OF
REORGANIZATION (DATED APRIL
5, MAY 19, 2010); DECLARATION OF
THOMAS C. HIX IN SUPPORT
THEREOF**

Disclosure Statement Hearing:

Date: May 24, 2010
Time: 11:00 a.m.
Place: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA 91367

Plan Confirmation Hearing:

Date: [To Be Scheduled]
Time:
Place: Courtroom 302
21041 Burbank Blvd.
Woodland Hills, CA 91367

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I. INTRODUCTION

Malibu Associates, LLC, is the debtor and debtor in possession (the "Debtor") in the above-captioned Chapter 11 bankruptcy case. On November 3, 2009 (the "Petition Date"), the Debtor commenced this bankruptcy case by filing a voluntary petition under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). THIS DOCUMENT IS THE **FIRST AMENDED DISCLOSURE STATEMENT** ("DISCLOSURE STATEMENT") WHICH DESCRIBES THE DEBTOR'S **FIRST AMENDED PLAN OF REORGANIZATION (DATED APRIL 5, MAY 19, 2010)** (THE "PLAN") BEING PROPOSED BY THE DEBTOR.

Chapter 11 allows the Debtor, and, under some circumstances, creditors and other parties in interest, to propose a plan of reorganization. A plan may provide for a debtor to reorganize by continuing to operate, to liquidate by selling assets of the bankruptcy estate, or a combination of both. The Plan is a reorganizing plan and is described herein. The effective date of the Plan (the "Effective Date") will be the first business day of the first full calendar month which is at least fourteen (14) days following the date of entry of the Bankruptcy Court (the "Court") confirming the Plan (the "Confirmation Order") when and provided that all of the following conditions to the effectiveness of the Plan have been satisfied or waived by the Debtor: (a) there shall not be any stay in effect with respect to the Confirmation Order; (b) the Confirmation Order shall not be subject to any appeal or rehearing; and (c) the Plan and all documents, instruments and agreements to be executed in connection with the Plan shall have been executed and delivered by all parties to such documents, instruments and agreements. Following the Effective Date, the Debtor shall be referred to as the "Reorganized Debtor."

A. Purpose of this Disclosure Statement

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

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READ THIS DISCLOSURE STATEMENT CAREFULLY SO THAT YOU KNOW

ABOUT:

(1) **WHO CAN VOTE OR OBJECT;**

(2) **WHAT TREATMENT YOUR CLAIM WILL RECEIVE UNDER THE PLAN OF REORGANIZATION (I.E., WHAT YOUR CLAIM WILL RECEIVE IF THE PLAN IS CONFIRMED) AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION;**

(3) **THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE DEBTOR'S BANKRUPTCY CASE;**

(4) **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;**

(5) **WHAT IS THE EFFECT OF CONFIRMATION; AND**

(6) **WHETHER THE 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. Kaye Scholer LLP, general insolvency counsel to the Debtor, does not represent you.

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

The Bankruptcy Code requires a Disclosure Statement to contain "adequate information" concerning the Plan. By an order entered on _____, 2010, the Court has 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.

B. Deadlines for Voting and Objecting; Date of 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

1 BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN
2 THE PLAN WILL BE BINDING ON ALL CREDITORS AND INTEREST HOLDERS IN THIS
3 CASE.

4
5 **1. Time and Place of the Plan Confirmation Hearing**

6 The hearing where the Court will determine whether or not to confirm the Plan (the "Plan
7 Confirmation Hearing") will take place on _____, 2010, at __:00 .m., before the
8 Honorable Maureen A. Tighe, United States Bankruptcy Judge for the Central District of California, in
9 Courtroom 302, located at 21041 Burbank Blvd., Woodland Hills, California 91367.

10
11 **2. Deadline For Voting For or Against the Plan**

12 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and
13 return the ballot in the enclosed envelope to:

Kaye Scholer LLP
Ashleigh A. Danker, Esq.
1999 Avenue of the Stars, 17th Floor
Los Angeles, California 90067

14 Ballots may also be submitted by fax to (310) 229-1935, attention: Ashleigh A. Danker, or by email to
15 *adanker@kayescholer.com*. Your ballot must be received by 5:00 p.m., Pacific Standard Time,
16 on _____, 2010 **or your ballot will not be counted.**

17
18
19
20 **3. Deadline for Objecting to the Confirmation of the Plan**

21 Objections to the confirmation of the Plan must, by _____, 2010, be filed with the
22 Court and served by same day service upon Ashleigh A. Danker, Esq., Kaye Scholer LLP, 1999 Avenue
23 of the Stars, 17th Floor, Los Angeles, California 90067; telephone (310) 788-1235, facsimile: (310)
24 229-1935; e-mail: *adanker@kayescholer.com*.

25
26 **4. Identity of Persons to Contact for More Information Regarding the Plan**

27 Any interested party desiring further information about the Plan should contact Marc S. Cohen or
28 Ashleigh A. Danker, Esq., Kaye Scholer LLP, 1999 Avenue of the Stars, 17th Floor, Los Angeles,

1 California 90067; telephone (310) 788-1000, facsimile: (310) 788-1200; e-mail: *mcohen*
2 *@kayescholer.com* or *adanker@kayescholer.com*.

3
4 **C. Disclaimer**

5 The financial data relied upon in formulating the Plan is based on the financial records of the
6 Debtor and the projections prepared by the Debtor's current management and its consultants. The
7 Debtor represents that everything stated in this Disclosure Statement is true to the Debtor's best
8 knowledge. The Bankruptcy Court has not yet determined whether or not the Plan is confirmable and
9 makes no recommendation as to whether or not you should support or oppose the Plan.

10
11 **II. BACKGROUND**

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

13 **1. The Debtor**

14 The Debtor is a California limited liability company organized in June 2005 for the primary
15 purpose of acquiring and entitling for redevelopment the approximately 648.5 acre property, including
16 an operating eighteen-hole golf course and restaurant, near Malibu (the "Property") commonly known
17 as the "Malibu Country Club." The Debtor acquired the Property in 2006.

18 The Debtor has no employees. It operates the Country Club (defined below) pursuant to a
19 Management Agreement with Malibu Golf Club, LLC ("MGC"), a wholly-owned non-debtor
20 subsidiary of the Debtor. MGC, among other things, employs the staff who conduct the day-to-day
21 operations of the Country Club and maintains accounts directly with providers of utility services for the
22 Country Club. The Debtor conducts senior level redevelopment/entitlement activities (the
23 "Entitlement Activities") for the Property pursuant to a Development Management Agreement with
24 Hix Rubenstein Companies ("HRC")¹ and day-to-day Entitlement Activities pursuant to a
25 Management Agreement with Development Management Services Company, Inc. ("DMS").²

26
27 ¹ Pacific Capital Holdings, Inc. ("PCH") and MPK Development, LLC ("MPK") are also named
28 as managers under the Development Management Agreement. PCH no longer provides services or
(continued...)

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1 **2. The Property**

2 The Property includes an eighteen (18) hole golf course (the "Golf Course") and certain related
3 improvements such as an approximately 10,000 sq. ft. clubhouse complex (including, but not limited
4 to, offices, a golf shop, men's and women's locker rooms, a restaurant, snack bar, kitchen and other
5 facilities) (collectively, the "Clubhouse Complex"), golf course maintenance buildings, a golf cart
6 storage facility, practice green, a driving net, parking areas, rest rooms, drinking fountains, water
7 elements, cart paths, and related landscaping (collectively with the Golf Course and the Clubhouse
8 Complex, the "Country Club") situated on approximately 200 acres. The Property also includes
9 twenty-nine (29) legal parcels of various sizes.

10 Plans for the redevelopment of the Property include a partnership with educational institutions
focused on environmental issues; compliance with the LEED³ standard of green development; partial
restoration of a Santa Monica Mountain creek bulldozed by the original owner; and designs for
generation of green power through solar, wind, and geothermal sources, resulting in a net neutral
energy consumption.

 Pursuant to a February 15, 2010 appraisal (the "Appraisal"), the Property was appraised at
\$44,200,000 on an "as-is" basis (the "As-Is Value"). See **Exhibit A** hereto.

##

18
19 **3. The Secured Debt**

20 The Debtor's primary secured creditor is U.S. Bank National Association ("U.S. Bank"), as
21 successor-in-interest to the Federal Deposit Insurance Corporation ("FDIC"), Receiver for California

22 _____
23 receives compensation under that agreement and MPK has provided strategic direction under the
agreement for which it has not asserted a right to compensation.

24 ² DMS also acts as manager of MGC and receives separate compensation for its services in
25 managing and operating the Country Club.

26 ³ The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is
27 a nationally accepted third party certification program for the design, construction, and operation of
high performance green buildings.

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1 National Bank (“CalNational”). References herein to the “Bank” are to CalNational with respect to the
2 period prior to its seizure by the FDIC on October 30, 2009, and to U.S. Bank thereafter.

3 On or about March 28, 2006, the Debtor entered into a loan agreement and related documents
4 with the Bank in the amount of \$28,500,000 (the “First Loan”). The purpose of the First Loan was to
5 assist the Debtor in purchasing the Property. The First Loan was secured by the Property and
6 guaranteed by each of Thomas C. Hix, Mark D. Kvamme, and Richard S. Fuld, Jr. (collectively, the
7 “Guarantors”).⁴

8 On or about June 15, 2006, the Debtor entered into a second loan agreement and related
9 documents with CalNational for a loan in an amount not to exceed \$11,500,000 to fund the process of
10 entitling the Property (the “Second Loan” and, collectively with the First Loan, the “Loans”).⁵ The
Second Loan was also secured by the Property and guaranteed by the Guarantors. The First Loan and
the Second Loan are referred to herein collectively as the “Loan”.

The Bank has filed a proof of claim asserting that it is owed at least \$39,532,519.88 as of the
Petition Date, including default interest at the rate of 18% per annum. The Debtor disputes the Bank’s
claim and also believes that the Bank’s claim is subject to partial or complete offset based upon
principles of lender liability. The Debtor intends to file an objection to the Bank’s claim asserting these
offsets.

18
19 **B. Principals of the Debtor’s Business and Guarantors**

20 **1. Membership Interests in the Debtor**

21
22 ⁴ A fourth guarantor, Jeffrey S. Klein, filed a personal Chapter 7 case on October 21, 2009 in the
23 United States Bankruptcy Court for the Middle District of Florida, Case No. 8:09-bk-23914-CED.

24 ⁵ The process of entitling the Property includes obtaining a variety of approvals from the County of
25 Los Angeles, including, but not limited to, certification of an environmental impact report, approval of
26 a vesting tentative tract map, approval of an oak tree permit, amendment to an existing conditional use
27 permit, and a coastal development permit. Other approvals necessary to implement the redevelopment
28 of the Property include, but are not limited to, the California Coastal Commission, the California
Department of Fish and Game, the Army Corps of Engineers, and the Regional Water Quality Control
Board.

The Debtor is currently comprised of ten members (interest holders), some of which are parties experienced in real estate development and management, some which are outside investors, and one which is both a developer and an investor as follows:

<u>Developer Members:</u>	<u>Investor Members:</u>
Pacific Capital Investments, LP ("PCI") (20.25%)	MPK (4.762%)
Pacific Capital Holdings, Inc. ("PCH") (1%)	The Leone-Perkins Family Trust (14.286%)
T&J Investment Partners, LLC ("T&J") (20.25%)	Crankstart Foundation (14.286%)
Hix Rubenstein Companies ("HRC") (1%)	Third Millennium Trust (9.524%)
MPK Development, LLC ("MPK") 7.5%	RSF, Jr., LLC (" <u>RSF</u> ") (4.762%)
	David B. Agus (" <u>Agus</u> ") (2.380%)

On the Effective Date, the membership interests in the Debtor shall be restructured and owned (the "Restructured Membership Interests") as follows:

<u>Restructured Developer Members:</u>	<u>Restructured Investor Members:</u>
T&J Investment Partners, LLC ("T&J") (0% to be determined)	MPK (<u>4.76%</u> tbid)
<u>T&J (20.25%)</u>	The Leone-Perkins Family Trust (<u>14.29%</u> tbid)
Hix Rubenstein Companies ("HRC") (1% tbid)	Crankstart Foundation (<u>14.29%</u> tbid)
MPK Development, LLC ("MPK") (7.5% tbid)	Third Millennium Trust (<u>9.52%</u> tbid)
<u>MPK II (21.25%)</u>	RSF, Jr., LLC (<u>4.76%</u> tbid)
	David B. Agus (<u>2.38%</u> tbid)

The Restructured Membership Interests shall be owned by the Restructured Developer Members and the Restructured Investor Members (collectively, the "New Members") in exchange for (i) payments made by the New Members to fund the Debtor's postpetition operations and administrative expenses, not satisfied pursuant to the Court-approved cash collateral budget, including the fees and costs of the Debtor's professionals, (ii) funding of the Effective Date Payments (defined in

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1 Section III.D.1, below), (iii) funding of payments due to the Bank pursuant to its treatment in Class 2,
2 with the exception of the Balloon Payment provided under Class 2 - Option A, if applicable, and (iv)
3 funding of payments needed to fund the Debtor's entitlement of the Property during the term of the
4 Plan (collectively, the "Equity Contributions"). The Equity Contributions are estimated to
5 approximate \$18,425,000. A summary of the Equity Contributions is attached as hereto as **Exhibit B**.

6 Principals of the New Members include: Thomas C. Hix (T&J and HRC); Mark D. Kvamme
7 (MPK); Richard S. Fuld, Jr. (RSF); Douglas M. Leone (Leone-Perkins Family Trust); Mark Stevens
8 (Third Millennium Trust); and Michael Moritz (Crankstart Foundation); and Dr. David B. Agus. Mr.
9 Stevens, Mr. Moritz, and Mr. Leone are each high net worth individuals and partners in venture capital
10 firm Sequoia Capital. Mr. Fuld and Dr. Agus are also high net worth individuals. The capital
contributions required to fund the Plan shall be paid according to the following percentages:
Leone-Perkins Family Trust (28.57%); Crankstart Foundation (28.57%); Third
MillenniumTrust (19.05%); MPK (9.52%); RSF (9.52%), and Agus (4.76%).

2. The Guarantors/Guarantees and Collection Stay

18 The Plan provides for payment in full of the Bank under either Class 2 - Option A or Class 2
19 Option B. The Plan imposes a collection stay with respect to the Guarantors provided that the
20 Reorganized Debtor is not in material default with respect to its obligations to the Bank under the Plan
21 for more than 30 days following receipt of written notification from the Bank of such material default
22 or the bankruptcy case is not dismissed or converted to one under Chapter 7. Personal financial
23 statements for Mr. Hix, Mr. Kvamme, and Mr. Fuld, each of whom are Guarantors, shall be submitted
24 to the Court prior to the confirmation hearing along with a request that such information be held by the
25 Court under seal.

26 C. Management of the Debtor Before and After the Bankruptcy

27 The Debtor's Managing Member is an Executive Committee composed of HRC, acting through
28 Thomas C. Hix, MPK, acting through Mark D. Kvamme, and PCH, acting through Jeffrey S. Klein.
Mr. Klein is no longer an active participant in the Debtor and on October 21, 2009 filed a personal

1 voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for
2 the Middle District of Florida, Case No. 8:09-bk-23914-CED.

3 Prior to and since the bankruptcy filing, Mr. Hix, the President and co-founder of HRC, has led
4 and continues to lead the Debtor's efforts to redevelop the Property. Mr. Hix has over thirty (30) years
5 of experience in real estate development and management, including several projects similar to the one
6 pursued by the Debtor. HRC is a full service land development company with expertise in land
7 acquisition, entitlement processing, infrastructure development, and final product build-out, including
8 several residential and resort projects centered around premier golfing facilities. It was the developer
9 of the Cordevalle Golf Club in San Martin, California, ranked in the top 25 golf clubs in the country.

10 HRC's current projects include Pronghorn, a premier private golf community, in Bend, Oregon
- which is fully entitled and in the build-out stage; Tuscany Hills on the shores of Lake Tulloch in
Central California's Calaveras County, a master-planned, premier golf community, which
contemplates the development of 335 single family residential units - which is now fully entitled and
awaiting build-out; The Bluff's at Riverbend overlooking the San Joaquin River in Madera County,
California, a master-planned, premier golf community, which contemplates the development of 400
residential units - which is before the Board of Supervisors for approval and expected to complete the
entitlement process in the next twelve months; and Northwest Innovation Park located in Bend,
18 Oregon, an eco-friendly business hotel with approximately 100 rooms, executive suites, and
19 conference facilities, an athletic club, and a golf academy attached to a six hole golf course that
20 provides alternating fairways that create an 18 hole experience - which is now fully entitled and
21 awaiting build-out. Virtually all of HRC's projects are located in areas of great natural beauty and had
22 to satisfy rigorous approval requirements from numerous state and local authorities as part of the
23 entitlement process.

24 After the Effective Date, Mr. Hix shall continue to lead the Reorganized Debtor's entitlement
25 effort.

26 ///

27 ///

28 **D. Events Precipitating The Chapter 11 Filing**

1 What follows is a brief summary of the circumstances that led the Debtor to file this bankruptcy
2 case. The Debtor's allegations and contentions set forth in this Section constitute the Debtor's views
3 regarding events precipitating the filing of this Chapter 11 case, are the subject of pending litigation,
4 and are contested by the Bank.

5 As described in Section II.A.3, above, the Debtor and the Bank entered into the Loans in 2006.
6 Eventually, the maturity of the First Loan was extended to at least April 4, 2009 and the maturity of the
7 Second Loan was extended to at least August 18, 2009. Long before the maturity of the First Loan, the
8 Debtor initiated a request for a long-term extension of the Loans which would be necessary to complete
9 the project, and which was contemplated in the written agreements.

10 Prior to the filing of the Debtor's bankruptcy case, the Debtor and the Bank filed in litigation in
the Los Angeles County Superior Court based on the Bank's assertion that the Loans had matured,
Case No. SC104512 (the "State Court Action"). The Debtor asserts that the Bank breached the loan
agreement by failing to fund the Debtor's project as agreed and filed counterclaims on several lender
liability theories. Pursuant to a stipulation between the Debtor and the Bank, the Bank had the right to
obtain the appointment of a receiver on or before November 5, 2009 if the Debtor was not able to obtain
a commitment for takeout financing prior to that time. When the Debtor was not able to obtain a
commitment for takeout financing, the Debtor made several proposals to the Bank in October 2009 to
18 resolve the Loans. The Bank had the opportunity to respond prior to the November 5, 2009 deadline,
19 but while the Debtor waited for a response, the Bank was seized by the FDIC. Accordingly, the Debtor
20 filed its petition on November 3, 2009 to stay the appointment of a receiver and foreclosure of the
21 Property.

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

28 **1. Bankruptcy Proceedings**

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1 a) Cash Collateral

2 On November 4, 2009, the Debtor filed an emergency motion for an order authorizing the use
3 of cash collateral (Docket No. 2) to allow the cash generated by the operations of the Country Club to
4 fund the continued operations of the Country Club. On November 10, 2009, the Court entered an
5 interim order (Docket No. 9) authorizing the interim use of cash collateral as requested by the Debtor,
6 and setting a final hearing on the use of cash collateral for December 14, 2009. Prior to the final
7 hearing, the Debtor and the Bank entered into a stipulation (Docket No. 30) regarding use of cash
8 collateral pursuant to a budget through June 30, 2010. The Court entered an order approving the cash
9 collateral stipulation on December 10, 2009 (Docket No. 32).

10 b) Employment of the Debtor's Professionals

Pursuant to orders entered on January 26, 2010 (Docket Nos. 54, 55, and 56), the Court
approved the employment of Kaye Scholer LLP as general insolvency counsel to the Debtor, Truman &
Elliott LLP as special land use counsel to the Debtor, and Cappello & Noel LLP as special litigation
counsel to the Debtor.

c) Administrative Matters

The Debtor was required to address the various administrative matters attendant to the
commencement of this bankruptcy case, which required an extensive amount of work by Debtor's
18 management and bankruptcy counsel. These matters included the preparation of the Debtor's
19 Schedules of Assets and Liabilities and Statement of Financial Affairs and preparation of the materials
20 required by the Office of the United States Trustee ("OUST"), including, without limitation, the 7-Day
21 Package for the Debtor. The Debtor has made every effort to comply with the Debtor's duties under 11
22 U.S.C. Sections 521, 1106 and 1107 and all applicable OUST guidelines, including the filing of the
23 Debtor's monthly operating report with the OUST and the Court. The Debtor also attended the
24 Debtor's initial interview with the OUST and the meeting of creditors required under 11 U.S.C. §
25 341(a).

26 ///

27 d) Claims Bar Date

1 On January 11, 2010, the Debtor filed a motion for an order requiring that all creditors and
2 parties in interest file proofs of claim within a date certain after service of notice of the bar date (Docket
3 No. 45, the "Bar Date Motion"). An order approving the Bar Date Motion was entered on February 2,
4 2001 (Docket No. 57). The Debtor served the *Notice of Prepetition Claims Bar Date* (Docket No. 58)
5 on February 3, 2010. The last day to file proofs of claim or interest was March 10, 2010.

6 e) Stay Litigation with the Bank

7 On November 17, 2009, the Bank filed a motion for relief from the automatic stay (Docket No.
8 13, the "RFS Motion"). In the RFS Motion, the Bank sought relief from the automatic stay to compel
9 arbitration of the Debtor's counterclaims against the Bank in the State Court Action. The Bank also
10 sought a determination that the automatic stay did not apply with respect to the Guarantors. On
December 16, 2009, the Debtor commenced an adversary proceeding against the Bank and filed a
motion for a preliminary injunction requesting the Court to enjoin further prosecution of the State
Court Action by the Bank against the Guarantors (Adv. Proc. 1:09-ap-01528, Docket No. 2, the
"Injunction Motion"). Pursuant to an order entered on January 27, 2010 in the Adversary Proceeding
(Docket No. 11), the Court denied the Injunction Motion. Pursuant to an order entered on February 10,
2010 (Docket No. 59), the Court denied the RFS Motion with respect to the Debtor and granted it with
respect to the Guarantors.

18 **2. State Court Litigation with the Bank**

19 On or about February 19, 2010, the Bank filed a motion to compel arbitration (the "Arbitration
20 Motion") with respect to certain of the claims against and by the Guarantors in the State Court Action.
21 On or about February 22, 2010, the Bank filed a motion seeking a right to attach order in the amount of
22 \$6,461,598.10 (the "Attachment Motion") with respect to the Guarantors. Both the Arbitration Motion
23 and the Attachment Motion came on for hearing before the State Court on March 16, 2010. Pursuant to
24 a Minute Order entered on March 23, 2010, the State Court granted the Attachment Motion, subject to
25 the Bank posting a \$1 million bond. In so holding, Judge Biderman found that the Guarantors made a
26 "strong showing" of a possible offset amount with respect to any amounts owed to the Bank as a
27 consequence of the Bank's behavior with respect to the Loans. As of the date hereof, the Bank has not
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1 posted the bond required by the State Court. On April 1, 2010, the State Court granted the Arbitration
2 Motion with respect to all claims except those requesting injunctive relief.

3 **3. Actual and Projected Recovery of Preferential or Fraudulent Transfers**

4 The Debtor does not believe that there are any preference, fraudulent conveyance, or other
5 avoidance actions to pursue.

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

10 The Debtor's financial problems relate to its dispute with the Bank regarding the alleged
maturity of the Loans and the Debtor's claims against the Bank for its failure to deal fairly with the
Debtor in connection with an extension of the Loans. These problems are resolved through the Plan.

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

12 Attached hereto as **Exhibit C** are copies of: (1) a balance sheet as of December 31, 2008; (2) a
profit and loss statement from January through December 2008; (3) a balance sheet as of December 31,
2009; (4) a profit and loss statement from January through December 2009; (5) a balance sheet as of
March 31, 2010; (6) a profit and loss from January through March 2010; and (7) the Debtor's March
18 2010 Monthly Operating Report. As of February 15, 2010, the As-Is Value of the Property was
19 appraised at \$44,200,000. See **Exhibit A** hereto.

20 **III. SUMMARY OF THE PLAN**

21 The following is a summary of the material provisions of the Plan, although it should not
22 replace a review of the Plan in its entirety.

23 The goal of the Plan is to satisfy all allowed claims in full. With the exception of the Bank's
24 claim, which is disputed, each creditor will be paid in full on the Effective Date without interest on
25 account of such creditor's allowed claim.

26 Following determination of the Allowed Bank Claim (defined in Section III.C.1 (Class 2)), the
27 Reorganized Debtor shall pay the full amount of the Allowed Bank Claim, at the Reorganized Debtor's
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1 election, under either Option A, interest only at 4% or such other rate as is necessary to comply the with
2 Bankruptcy Code for four years with a balloon payment due upon maturity, or Option B, an immediate
3 lump sum payment. So long as the Reorganized Debtor is not in material default of its obligations to
4 the Bank under the Plan that is not cured within 30 days after the Reorganized Debtor's receipt of
5 written notice of such material default or the bankruptcy case is not dismissed or converted to one
6 under Chapter 7, the Bank shall be stayed from pursuing any collection efforts with respect to the
7 Guarantors or their property.

8 With the exception of the balloon payment due to the Bank under Class 2 - Option A, all
9 payments required under the Plan and all monies needed to fund the Reorganized Debtor's efforts to
10 re-entitle the Property shall be funded by the Reorganized Debtor's New Members. Upon completion
of the re-entitlement, the Debtor believes that the value of the Property will have substantially
increased over the As-Is Value and the Reorganized Debtor will satisfy the balloon payment either
through a sale of the Property or re-financing.

A. What Creditors and Interest Holders Will Receive Under the Plan

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes
according to their right to priority. The Plan states whether each class of claims or interests is impaired
or unimpaired and provides the treatment each class will receive. In no event shall any creditor
received more than the creditor's allowed claim, plus interest, to the extent provided in the Plan.

B. Unclassified Claims

Certain types of claims are not placed into voting classes but are, instead, unclassified. They
are not considered impaired and they do not vote on the Plan because they are automatically entitled to
certain treatment under the Bankruptcy Code. Accordingly, the following claims have not been placed
into a class:

1. Administrative Expenses

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter
11 cases which are allowed under Bankruptcy Code Section 507(a)(2). The Bankruptcy Code requires
that all administrative claims be paid on the Effective Date unless a particular claimant agrees to a

1 different treatment. The following chart lists all of the Debtor's § 507(a)(2) administrative claims and
2 their treatment under the Plan.

Description	Estimated Allowed Amount	Treatment
Clerk's Office Fees	\$0.00	Paid in full on or before the Effective Date
Office of the U.S. Trustee	\$0.00	Paid in full on or before the Effective Date
Kaye Scholer LLP, bankruptcy counsel to the Debtor	\$300,000 (estimated) (after application of prepetition retainer and amounts paid pursuant to monthly payment procedure)	Paid in full on the later of the Effective Date and the date the Court enters an order allowing such fees and expenses
Truman & Elliott LLP, special land use counsel to the Debtor	\$50,000 (estimated) (after application of prepetition retainer and amounts paid pursuant to monthly payment procedure)	Paid in full on the later of the Effective Date and the date the Court enters an order allowing such fees and expenses
Cappello & Noël LLP, special litigation counsel to the Debtor	\$150,000 (estimated) (after application of prepetition retainer and amounts paid pursuant to monthly payment procedure)	Paid in full on the later of the Effective Date and the date the Court enters an order allowing such fees and expenses
Postpetition Non-Professional Fee Administrative Expenses	\$0.00	Paid in full in the ordinary course of business from cash collateral pursuant to the approved budget or paid in full out of the Debtor's funds contributed by one or more of its members
TOTAL	\$500,000 (estimated)	Paid in the manner described above.

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3 a) Professional Fee Claims

18 Any professional seeking allowance of a professional fee claim for services rendered prior to
19 the Effective Date in connection with the Debtor's case must (1) file their application for allowance of
20 compensation and reimbursement of expenses on or before 45 days after the Effective Date or in
21 accordance with such other date as may be set by the Bankruptcy Court, and (2) have the fees and
22 expenses allowed by a final order. Any party in interest may file an objection to such application
23 within the time provided by the Local Bankruptcy Rules or within any other period that the Bankruptcy
24 Court sets. Professionals holding professional fee claims who do not timely file and serve their
25 applications for payment will be forever barred from asserting these claims against the Reorganized
26 Debtor or its property.

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As indicated above, the Debtor may need to pay approximately \$500,000 of administrative claims on the Effective Date of the Plan, although the actual amount that the Debtor may have to pay could be less. The Debtor will have cash on hand in excess of this amount on the Effective Date to make the necessary payments funded by cash contributions made by the New Members (defined in Section II.B.1) of the Reorganized Debtor.

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2. Priority Tax Claims

Priority tax claims include certain unsecured income, employment and other tax claims described by Bankruptcy Code Section 507(a)(8). The Bankruptcy Code requires that each holder of such a Section 507(a)(8) priority tax claim receive the present value of such claim in regular installment payments in cash, over a period not exceeding five years from the Petition Date. Such payments may not be in a manner less favorable than the most favored nonpriority unsecured claim provided for by the Plan other than a convenience class. The following chart lists all of the Debtor's known Section 507(a)(8) priority tax claims and their treatment under the Plan:

Description	Amount Owed	Treatment
Franchise Tax Board	\$1,814.75	The Franchise Tax Board will be paid in full on the Effective Date.
Internal Revenue Service	\$100.00	The Internal Revenue Service will be paid in full on the Effective Date

C. Classified Claims and Interests

1. Classes of Secured Claims

Secured claims are claims secured by liens against property of the estate. The following chart lists all classes containing the Debtor's secured claims and their treatment under the Plan:

Class #	Description	Insider (Y/N)	Impaired (Y/N)	Treatment
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1	<p>Los Angeles County Treasurer - Tax Collector Various Parcels Taxes Due: November 1, 2009</p> <ul style="list-style-type: none"> • Collateral: the Property • Priority of Security Interest: First (statutory) • Amount of Claim: \$282,107.37 • Property Value: \$44,200,000 	N	N (Creditor in this Class is not entitled to vote on the Plan)	Paid in full on the Effective Date, or as soon as practicable thereafter
2	<p>Secured claim of U.S. Bank N.A., as successor-in-interest to the Federal Deposit Insurance Corporation, Receiver for California National Bank (the "Bank")</p> <ul style="list-style-type: none"> • Collateral: the Property and all rents, issues, and profits • Priority of Security Interest: Second • Est. amount of Claim: unknown and disputed (the Bank's proof of claim asserts an amount of at least \$39,532,519.88)⁶ 	N	<p>Y - Option A (Creditor in this Class is entitled to vote on the Plan)</p> <p>N - Option B</p>	<p>The Bank will be paid the full amount of its allowed claim (the "Allowed Bank Claim") as such amount is determined by the Court or as jointly agreed by the Debtor or Reorganized Debtor, as applicable, and the Bank. Unless otherwise agreed by the Bank, ordered by the Court, or already pending, no later than 30 days following the Effective Date, the Reorganized Debtor shall file an objection to the Bank's proof of claim. Following determination of the objection to the Bank's proof of claim by a final, non-appealable order, the Reorganized Debtor shall have 10 business days in which to elect, in its sole discretion, to pay the Allowed Bank Claim in full under either Option A or Option B herein and give written notice of its election to the Bank.</p> <p>During the pendency of any timely filed objection to the Bank's proof of claim, payments that would otherwise be due to the Bank if the Reorganized Debtor elected Option A under the Plan calculated based upon an unadjusted principal balance of \$34,165,520 shall be deposited into a segregated disputed claim reserve (the "Disputed Claim Reserve") and held pending a final, non-appealable determination of the Bank's claim or as otherwise jointly agreed by the Reorganized Debtor and the</p>

⁶ All of the bankruptcy and non-bankruptcy causes of action of the Debtor and the Debtor's estate against the Bank and/or CalNational, and/or their respective current or former officers, directors, employees, parent companies, and/or other parties or entities, including, without limitation, those based on lender liability claims, unfair business practices, or "racketeering and corrupt

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	<ul style="list-style-type: none"> • Collateral Value: \$44,200,000 			<p>Bank, and subject to the Reorganized Debtor's election of Option A or Option B. Following determination of the Allowed Bank Claim by a final, non-appealable order and the Reorganized Debtor's election of Option A or Option B, the amount then due and payable to the Bank, if any, under the selected Option shall be paid first from the Disputed Claim Reserve until exhausted and then from other funds of the Reorganized Debtor.</p> <p>Treatment of the Allowed Bank Claim as provided under the Plan shall not exonerate the Guaranty Agreements made by Thomas C. Hix, Mark D. Kvamme, and Richard S. Fuld, Jr. (collectively, the Guarantors)⁷ in favor of California National Bank (now, the Bank), copies of which are attached to the Plan as Exhibits A and B (collectively, the "Guarantees"); except with respect to the foregoing provision, however, nothing under the Plan shall waive any rights, claims, causes of action, or defenses of the Guarantors with respect to the Guarantees, including for exoneration for reasons unrelated to the treatment of the Allowed Bank Claim under the Plan. The Bank shall be stayed from all further efforts to collect on its claims under the Guarantees from the Guarantors or any of their property until the earlier of (a) the bankruptcy case is dismissed or converted to Chapter 7 or (b) when there is a material default with respect to the obligations of the Reorganized Debtor to the Bank under the Plan that is not cured within 30 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth such default.</p> <p style="text-align: center;">OPTION A:</p> <p>The Reorganized Debtor will pay the Allowed Bank Claim in full. The Reorganized Debtor shall pay the Bank, in arrears, monthly payments of interest only with respect to the principal amount of the Allowed Bank Claim beginning on the 15th day of the first full month after the Effective Date (the "Commencement Date") and then on the 15th day of each subsequent month.</p> <p>Interest rate = 4% fixed, or such other rate of interest</p>
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organization" statutes, are expressly preserved under the Plan and, on the Effective Date, shall vest in the Reorganized Debtor, which shall have the full power and authority to prosecute, settle, adjust, retain, enforce, or abandon any such claims.

⁷ A fourth guarantor, Jeffrey S. Klein, filed a personal Chapter 7 case on October 21, 2009 in the United States Bankruptcy Court for the Middle District of Florida, Case No. 8:09-bk-23914-CED.

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				<p>as is necessary to comply with 11 U.S.C. § 1129(b)(2)(A)(i)(II).</p> <p>A balloon payment of the unpaid balance of the Allowed Bank Claim shall mature and be due and payable on the 15th day of the 48th month following the Commencement Date (the "Maturity Date").</p> <p>The unpaid balance of the Allowed Bank Claim may be prepaid, in the Reorganized Debtor's sole discretion, at any time prior to the Maturity Date without penalty.</p> <p>The Bank shall retain its liens against the Property pursuant to its existing deeds of trust, which are hereby incorporated by reference to the extent they are consistent with this Plan. Copies of the Bank's deeds of trust are attached to the Plan as Exhibits C and D.</p> <p>The Bank shall be enjoined from enforcing its liens against the Property as long as there is no material default under the Plan with respect to the obligations of the Reorganized Debtor to the Bank under that Plan that is not cured within 30 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth such default.</p> <p>The Bank shall promptly release its liens against the Property following receipt of payment as provided under Option A.</p> <p style="text-align: center;">OPTION B:</p> <p>The Reorganized Debtor shall pay the Allowed Bank Claim in full, excluding default interest and all other consequences of default on the Effective Date or as soon as practicable thereafter following receipt from the Bank of an accurate and detailed payoff demand based upon the Allowed Bank Claim.</p> <p>The Bank shall be enjoined from enforcing its liens against the Property as long as there is no material default under the Plan with respect to the obligations of the Reorganized Debtor to the Bank under that Plan that is not cured within 30 days following receipt of written notice from the Bank by the Reorganized Debtor setting forth such default.</p> <p>The Bank shall promptly release its liens against the Property following receipt of payment as provided under Option B.</p>
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2. Class of Priority Unsecured Claims

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Certain priority claims that are referred to in Bankruptcy Code Sections 507(a)(3), (4), (5), (6), and (7) are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash on the Effective Date 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 Debtor does not believe that there are any claims against the Debtor which fall into such a class.

3. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a). The following chart identifies the Plan's treatment of the class containing the Debtor's general unsecured claims:

Class #	Description	Impaired (Y/N)	Treatment
3	<p>General Unsecured Claims</p> <p>Estimated total amount of general unsecured claims, excluding indemnification claims: \$211,580.52</p> <p>A chart of all general unsecured claims is attached as Exhibit E to the Plan.</p>	Y	<p>Holders of allowed general unsecured claims, excluding indemnification claims, will be paid in full without interest as soon as practicable following the later of the Effective Date and the date the Court enters an order allowing such claims.</p> <p>Holders of indemnification claims shall retain their rights of indemnification and subrogation to the extent of any payments by such holder to the Bank on account of such holder's guarantee of the Debtor's obligations to the Bank.</p>

4. Class of Interest Holders

Interest holders are the parties who hold ownership interests (*i.e.*, equity) in the Debtor. The Debtor is a California limited liability company in which the members hold ownership interests. The following chart identifies the Plan's treatment of the class of interest holders:

Class #	Description	Impaired (Y/N)	Treatment

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4	Interest Holders	Y	On the Effective Date, all Class 4 interests will be deemed cancelled, terminated, extinguished and of no further force and effect and will no longer constitute an equity interest in the Debtor without the need for either the Debtor or the Class 4 interest holders to take any further action. Interest holders will not receive any distribution or retain any property under the Plan on account of their equity interests in the Debtor. Instead, 100% of the interest in the Reorganized Debtor shall be issued to the New Members (defined below) in exchange for their equity contributions as described below.
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D. Means of Effectuating the Plan

1. Funding for the Plan

Administrative expenses, priority tax claims, the Class 1 secured claim of the L.A. County Tax Collector, the Class 2 claim (secured claim of the Bank) but excluding the balloon payment under Option A, and Class 3 claims (general unsecured claims, excluding indemnification claims) will be paid from (i) the cash on hand in the Debtor’s “equity” account at Bank of America as of the Effective Date and (ii) new cash to be contributed by the New Members (defined below) in an amount sufficient to pay (x) the allowed amount of such claims as provided under the Plan (including postpetition interim compensation paid to the Debtor’s professionals pursuant to the Court approved monthly fee application procedure) and (y) the amounts budgeted to complete the entitlement process for the Property (as annually revised and updated, the “Budget”), in exchange for a one hundred percent (100%) ownership interest in the Reorganized Debtor.⁸ A summary of the cash needed to fund the initial payments under Plan is attached to the Plan as Exhibit F (the “Effective Date Payments”). A copy of the initial entitlement Budget is attached to the Plan as Exhibit G.

The New Members shall contribute the cash needed to satisfy the Effective Date Payments required under the Plan no later than five (5) business days prior to the Effective Date. The New

⁸ Additional consideration paid by the New Members includes payment of certain postpetition ordinary course of business expenses of the Debtor to the extent not included in the Debtor’s approved cash collateral budget or with respect to any shortfalls thereunder.

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1 Members shall contribute the amounts required pursuant to the Budget in four annual installments, in
2 advance (the "Annual Installments"), beginning with the initial Annual Installment no later than five
3 (5) business days prior to the Effective Date, in an amount sufficient to satisfy the Budget for the
4 upcoming twelve month period. Prior to the due date of each Annual Installment after the initial
5 Annual Installment, the Reorganized Debtor shall review and, if appropriate, revise and update the
6 Budget and provide a copy to the Bank. The Reorganized Debtor shall also provide proof of its receipt
7 of the applicable Annual Installment to the Bank.

8 The balloon payment to the Bank under Class 2 - Option A, if applicable, shall be paid by the
9 Reorganized Debtor from the proceeds of a sale or refinancing of the Property as provided under Class
10 2 - Option A. After the proposed entitlements are obtained, the value of the Property is estimated
to be \$98.4 million.⁹

2. **The Structure of the Reorganized Debtor and Post-Confirmation
Management of the Reorganized Debtor**

The Reorganized Debtor will continue to be incorporated under the laws of the State of
California. On the Effective Date, all of the existing equity interests in the Debtor shall be deemed
cancelled and extinguished and of no force or effect. Existing equity holders in the Debtor will not
receive any distribution or retain any property on account of such equity interests. On the Effective
18 Date, the Reorganized Debtor shall be wholly owned by the New Members in such percentages as the
19 New Members shall agree among themselves. The New Members shall be:

T&J Investment Partners, LLC
Hix Rubenstein Companies
MPK Development, LLC
MPK II
The Leone-Perkins Trust
Crankstart Foundation
Third Millenium Trust
RSF, Jr., LLC
Dr. David Agus

26 _____
27 ⁹ This value is with the new entitlements only and prior to the build-out which the entitlements
28 would permit.

1 The managing member of Reorganized Debtor shall consist of an Executive Committee
2 comprised of: Hix Rubenstein Companies and MPK Development, LLC. Thomas C. Hix of Hix
3 Rubenstein Companies shall continue to be in charge of the Reorganized Debtor's overall entitlement
4 and redevelopment process.

5 **3. The Disbursing Agent**

6 The Reorganized Debtor shall serve as the disbursing agent for purposes of making all
7 distributions required to be made under the Plan. The Reorganized Debtor will not charge any
8 disbursing agent fee for making such distributions.

9 **4. Objections to Claims**

10 Except as set forth immediately below, the Debtor or Reorganized Debtor, as applicable, will
file objections to all claims which are inconsistent with the Debtor's books and records unless the
Debtor or Reorganized Debtor deems the inconsistency to be insignificant. With respect to disputed
claims which are not resolved prior to the Effective Date, the Reorganized Debtor will have the
authority, in its sole discretion in the reasonable exercise of its business judgment, to settle or
compromise any disputed claim without further notice or Court approval; provided, however, the
foregoing shall not prevent the Reorganized Debtor from seeking Court approval of any such
settlement should it decided to do so in the reasonable exercise of its business judgment. As provided
18 by Section 502(c) of the Bankruptcy Code, the Court may estimate any contingent or unliquidated
19 disputed claim for purposes of confirmation of the Plan.

20 The Debtor or the Reorganized Debtor, as applicable, will have the authority to file any
21 objection to claims following confirmation of the Plan, and the Court shall retain jurisdiction over the
22 Debtor, Reorganized Debtor and this case to resolve such objections to claims following confirmation
23 of the Plan. Nothing contained in the Plan shall constitute a waiver or release by the Debtor or the
24 Reorganized Debtor of any rights of setoff or recoupment, or of any defense, the Debtor or
25 Reorganized Debtor may have with respect to any claim.

26 With the exception of the Bank's claim, the Debtor does not expect to be filing any objections
27 to claims. The Debtor or Reorganized Debtor, as applicable, shall have up to and including 30 days
28 following the Effective Date to file its objections to the Bank's claim.

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3 **5. Avoidance Actions**

4 The Debtor is not aware of any payments made during the ninety-day preference period for
5 non-insiders or the one-year period for insiders which would be clearly avoidable as preference
6 payments, as the Debtor believes that all such payments would be subject to some form of ordinary
7 course, contemporaneous exchange or new value defense. The Debtor also believes that the detriment
8 to the Debtor's business from suing vendors (primarily consultants assisting with the entitlement
9 process for the Property) would outweigh any benefit from the pursuit of preference actions.

10 The Debtor is also not aware of any fraudulent conveyances which have occurred and which
11 need to be avoided. Nevertheless, on the Effective Date the power and standing of this estate to pursue
12 avoidance causes of action shall be transferred to and retained by the Reorganized Debtor pursuant to
13 Section 1123(b) of the Bankruptcy Code. All claims, causes of action and avoidance actions of the
14 Debtor and the Debtor's estate are preserved by the Plan, and the Reorganized Debtor shall have full
15 power and authority to settle, adjust, retain, enforce or abandon any claim, cause of action or avoidance
16 actions under Section 1123(b) of the Bankruptcy Code or otherwise, regardless of whether such claims,
17 causes of action or avoidance actions were commenced prior or subsequent to the Effective Date.

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19 **E. Risk Factors**

20 Risk exists that the Reorganized Debtor will not be able to obtain the entitlements for the
21 Property in the time frame contemplated under the Plan. The Reorganized Debtor's timetable for
22 completion of the entitlements, however, is conservative and allows the Reorganized Debtor an
23 approximately twelve (12) month cushion to complete the entitlements beyond what is projected to be
24 needed for the process. Accordingly, the Debtor believes this risk is small.

25 Risk also exists that the Reorganized Debtor may be required to modify the scope of the
26 entitlements it seeks in order to obtain the required regulatory approvals. Because the full slate of
27 entitlements will substantially increase the value of the Property, the Debtor believes that even if it is
28 required to limit the scope of some the requested entitlements, the value of the Property will,

1 nonetheless, increase to a point well in excess of that needed to satisfy the balloon payment due to the
2 Bank under Class 2 - Option A.

3 The foregoing risks impact only the Bank and not other creditors under the Plan who are paid in
4 full on the Effective Date. If the Reorganized Debtor materially defaults with respect to its obligations
5 to the Bank under the Plan and such default is not timely cured, the Bank may seek to foreclose on the
6 Property and the collection stay in favor of the Guarantors would lift.

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8 **F. Other Provisions of the Plan**

9 **1. Executory Contracts and Unexpired Leases**

10 To the best of the Debtor's knowledge, the Debtor is a party only to the prepetition executory
contracts and unexpired leases set forth on Exhibit H to the Plan. As of the Effective Date, all
prepetition executory contracts and unexpired leases set forth on Exhibit H to the Plan, shall be
assumed and the cure amounts listed thereon paid on the Effective Date or as soon thereafter as
reasonably practicable.

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17 **2. Changes in Rates Subject to Regulatory Commission Approval**

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

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19 **3. Employment of Professionals By the Reorganized Debtor and Payment of**
20 **Professionals' Fees and Expenses Incurred After the Plan Effective Date**

21 On and after the Effective Date, the Reorganized Debtor shall have the right to employ and
22 compensate such officers, employees, professionals, agents and representatives as the Reorganized
23 Debtor determines is necessary or appropriate to implement all of the provisions of the Plan. The
24 payment of all fees and expenses of the professionals engaged by the Reorganized Debtor, including
25 such professionals necessary to facilitate the entitlement process with respect to the Property, and any
26 other expenses of the Reorganized Debtor shall be the responsibility of the Reorganized Debtor. The
27 Reorganized Debtor shall have the authority to pay the fees and expenses incurred by its officers,
28 employees, professionals, agents and representatives without any further order of the Court.

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2 **4. Distributions to be Made Pursuant to the Plan**

3 Except as otherwise agreed to by the Reorganized Debtor in writing, distributions to be made to
4 holders of allowed claims pursuant to the Plan may be delivered by regular mail, postage prepaid, to the
5 address shown in the Debtor's schedules, as they may from time to time be amended in accordance
6 with Bankruptcy Rule 1009, or, if a different address is stated in a proof of claim duly filed with the
7 Bankruptcy Court, to such address. Checks issued to pay allowed claims shall be null and void if not
8 negotiated within sixty (60) days after the date of issuance thereof.

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10 **5. Exemption from Transfer Taxes**

11 Pursuant to Section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of a
12 security, or the making or delivery of an instrument of transfer under a plan confirmed under Section
13 1129 of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or similar tax.
14 Transfers under the Plan that are exempt from taxes under Section 1146(c) of the Bankruptcy Code
15 include all transfers by the Debtor after the commencement of the Debtor's Chapter 11 case made
16 pursuant to the Debtor's confirmed Plan. The taxes from which such transfers are exempt include
17 stamp taxes, recording taxes, sales and use taxes, transfer taxes, and other similar taxes.

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19 **6. Exculpation and Releases**

20 To the maximum extent permitted by law, neither the Debtor, the Reorganized Debtor, nor any
21 of the Debtor's or Reorganized Debtor's employees, officers, directors, agents, members,
22 representatives, experts, consultants, or professionals employed or retained by any of them, whether or
23 not by Bankruptcy Court order ("Released Parties"), shall have or incur liability to any person or entity
24 for any act taken or omission made in good faith in connection with or related to the formulation and
25 implementation of the Plan, or a contract, instrument, release, or other agreement or document created
26 in connection therewith, the solicitation of acceptances for or confirmation of the Plan, or the
27 consummation and implementation of the Plan and the transactions contemplated therein.

1 7. **Injunctions and Collection Stay**

2 The Plan Confirmation Order shall enjoin the prosecution, whether directly, derivatively or
3 otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action,
4 liability or interest released, discharged or terminated pursuant to the Plan. The Plan Confirmation
5 Order shall also stay all further efforts by the Bank to collect on its claims under the Guarantees from
6 the Guarantors or any of their property until the earlier of (a) the bankruptcy case is dismissed or
7 converted to Chapter 7 or (b) when there is a material default with respect to the obligations of the
8 Reorganized Debtor to the Bank under the Plan that is not cured within 30 days following receipt of
9 written notice from the Bank by the Reorganized Debtor setting forth such default. The Allowed Bank
10 Claim, representing the full amount owed to the Bank by the Debtor and the Guarantors, shall be paid
in full pursuant to the Plan. Accordingly, upon successful completion of all payments to the Bank
provided under the Plan, the Guarantors shall have no remaining liability whatsoever to the Bank on
account of their Guarantees.

 Except as provided in the Plan or the Plan Confirmation Order, as of the Effective Date, all
entities that have held, currently hold or may hold a claim or other debt or liability that is discharged or
an interest or other right of an equity security holder that is extinguished pursuant to the terms of the
Plan are permanently enjoined from taking any of the following actions against the Released Parties, or
18 any of them, and the Reorganized Debtor's property on account of any such discharged claims, debts or
19 liabilities or extinguished interests or rights: (i) commencing or continuing, in any manner or in any
20 place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner
21 any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien or encumbrance;
22 (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or
23 obligation due to the Debtor or Reorganized Debtor; and (v) commencing or continuing any action in
24 any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan.
25 By accepting distribution pursuant to the Plan, each holder of an allowed claim receiving distributions
26 pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in this
27 Section.

1 **8. Default Provisions**

2 Except as provided herein or in the Confirmation Order, in the event that the Reorganized
3 Debtor or the Disbursing Agent materially defaults in the performance of any of its obligations under
4 the Plan and does not cure such default within thirty (30) days after receipt of written notice of material
5 default from the creditor to whom performance is due, then the entity or individual to whom the
6 performance is due may pursue such remedies as are available at law or in equity. An event of material
7 default occurring with respect to one claim shall not be any event of default with respect to any other
8 claim.

9
10 **9. Retention of Jurisdiction**

 After confirmation of the Plan and occurrence of the Effective Date, in addition to jurisdiction
which exists in any other court, the Court will retain such jurisdiction to the maximum extent as is
legally permissible, including for the following purposes:

 a) To determine the allowability, classification, or priority of claims and interests
upon objection by any parties in interest with standing to bring such objection or proceeding and to
consider any objection to claim or interest whether such objection is filed before or after the Effective
Date;

18 b) To determine the extent, validity and priority of any lien asserted against
19 property of the Debtor, or property of the Debtor's estate;

20 c) To construe and take any action to enforce the Plan, the Plan Confirmation
21 Order, and any other order of the Court, issue such orders as may be necessary for the implementation,
22 execution, performance, and consummation of the Plan, the Plan Confirmation Order and all matters
23 referred to in the Plan and the Plan Confirmation Order and to determine all matters that may be
24 pending before the Court in this case on or before the Plan Effective Date with respect to any person or
25 entity related thereto;

26 d) To determine (to the extent necessary) any and all applications for allowance of
27 compensation and reimbursement of expenses of professionals for the period on or before the Effective
28 Date;

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- 1 e) To determine any request for payment of administrative expenses;
- 2 f) To determine motions for the rejection, assumption, or assignment of executory
3 contracts or unexpired leases filed before the Plan Effective Date and the allowance of any claims
4 resulting therefrom;
- 5 g) To determine all applications, motions, adversary proceedings, contested
6 matters, and any other litigated matters instituted during the pendency of this case whether before, on,
7 or after the Effective Date including avoidance causes of action, and the Reorganized Debtor shall have
8 the right to commence any avoidance causes of action after the Effective Date and to continue with the
9 prosecution of any avoidance causes of action;
- 10 h) To determine such other matters and for such other purposes as may be provided
in the Plan Confirmation Order;
- i) To modify the Plan under Section 1127 of the Bankruptcy Code in order to
remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the Plan so as to
carry out its intent and purpose;
- j) To enforce and interpret the Plan;
- k) To correct any defects, cure any omissions, or reconcile any inconsistency in the
Plan or the Plan Confirmation Order as may be necessary to carry out the purpose and intent of the
18 Plan;
- 19 l) Except as otherwise provided in the Plan and the Plan Confirmation Order to
20 issue injunctions, to take such other actions or make such other orders as may be necessary or
21 appropriate to restrain interference with the Plan or the Plan Confirmation Order, or the execution or
22 implementation by any person or entity of the Plan or the Plan Confirmation Order;
- 23 m) To issue such orders in aid of consummation of the Plan or the Plan
24 Confirmation Order notwithstanding any otherwise applicable nonbankruptcy law, with respect to any
25 person or entity, to the fullest extent authorized by the Bankruptcy Code or Bankruptcy Rules;
- 26 n) To resolve any disputes as to whether there has been a default under the Plan;
- 27 and
- 28 o) To enter a final decree closing this Chapter 11 case.

1
2 **G. TAX CONSEQUENCES OF THE PLAN**

3 THIS SUMMARY DOES NOT ADDRESS THE TAX CONSEQUENCES TO CREDITORS
4 OR INTEREST HOLDERS. THE TAX CONSEQUENCES TO CREDITORS OR INTEREST
5 HOLDERS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH SUCH
6 PERSON. SOME CREDITORS AND INTEREST HOLDERS MAY RECOGNIZE INCOME AND
7 SOME CREDITORS AND INTEREST HOLDERS MAY RECOGNIZE LOSS AS A RESULT OF
8 THE PLAN. CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN
9 MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
10 ACCOUNTANTS, ATTORNEYS, AND/OR TAX ADVISORS.

The following disclosure of possible federal income tax consequences is intended solely for the purpose of alerting readers about possible tax issues the Plan may present to the Debtor. The Debtor and its professionals CANNOT and DO NOT represent that the federal income tax consequences described below are the only federal income tax consequences of the Plan, and such discussion is not intended to be all-inclusive. Also, this summary does not address foreign, state or local income tax consequences, estate or gift tax consequences, or any other foreign, federal, state or local tax consequences of the Plan.

THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION
18 CONCERNING THE MATTERS DESCRIBED. THERE CAN BE NO ASSURANCE THAT THE
19 INTERNAL REVENUE SERVICE WILL NOT CHALLENGE ANY OR ALL OF THE TAX
20 CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED,
21 WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH PERSON AFFECTED BY THE PLAN IS
22 STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE
23 FEDERAL, STATE, LOCAL, FOREIGN OR OTHER TAX CONSEQUENCES OF THE PLAN.

24 IRS CIRCULAR 230 DISCLOSURE: NOTHING CONTAINED IN THIS DISCLOSURE
25 STATEMENT WAS INTENDED OR WRITTEN TO BE USED, CAN BE USED BY ANY
26 TAXPAYER OR MAY BE RELIED UPON OR USED BY ANY TAXPAYER, FOR THE PURPOSE
27 OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER THE
28 INTERNAL REVENUE CODE OF 1986, AS AMENDED. ANY WRITTEN STATEMENT

1 CONTAINED IN THIS DISCLOSURE STATEMENT RELATING TO ANY FEDERAL TAX
2 TRANSACTION OR MATTER MAY NOT BE USED BY ANY PERSON IN ANY MATTER TO
3 SUPPORT THE PROMOTION OR MARKETING OF OR TO RECOMMEND ANY FEDERAL TAX
4 TRANSACTION(S) OR MATTER(S).

5 As a result of the possible discharge and satisfaction of Claims pursuant to the Plan, the Debtor
6 may realize some cancellation of debt ("COD") income. In general, the Debtor, as a limited liability
7 company that has not elected to be taxed as a corporation for federal income tax purposes, will not incur
8 any federal income tax liability as a result of the implementation of the Plan. Rather, the tax items of the
9 Debtor, which is treated as a partnership for federal income tax purposes, will flow through to the
10 Interest Holders of the Debtor. This means that any COD income that is realized at the Debtor level as a
result of the Plan will pass through to the Interest Holders themselves.

THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN UNITED
STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A
SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE
FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF
THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES
MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH PERSON.
ACCORDINGLY, EACH PERSON IS STRONGLY URGED TO CONSULT WITH HIS, HER OR
ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN
INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN AND ITS IMPLEMENTATION.

18 **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

19 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN SHOULD
20 CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN
21 OF REORGANIZATION IS COMPLEX. The following discussion is intended solely for the purpose of
22 alerting readers about basic confirmation issues, which they may wish to consider, as well as certain
23 deadlines for filing claims. The Debtor CANNOT and DOES NOT represent that the discussion
24 contained below is a complete summary of the law on this topic.
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1 Many requirements must be met before the Court can confirm a plan. Some of the requirements
2 include that the plan must be proposed in good faith, acceptance of the plan, whether the plan pays
3 creditors at least as much as creditors would receive in a Chapter 7 liquidation, and whether the plan is
4 feasible. These requirements are not the only requirements for confirmation.

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

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

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

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

10 A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest
holder has a claim or interest which is both (1) allowed or allowed for voting purposes and (2) classified
in an impaired class.

a) What is an Allowed Claim/Interest

As noted above, a creditor or interest holder must first have an allowed claim or interest to have
the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest files
an objection to the claim or interest. When an objection to a claim or interest is filed, the creditor or
interest holder holding the claim or interest cannot vote unless the Court, after notice and hearing, either
18 overrules the objection or allows the claim or interest for voting purposes.

19 **THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE ON ACCOUNT OF**
20 **PRE-PETITION CLAIMS WAS MARCH 10, 2010.** Nonetheless, a creditor or interest holder may have
21 an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed
22 allowed if (1) it is scheduled on the Debtor's schedules and such claim is not scheduled as disputed,
23 contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed
24 allowed if it is scheduled and no party in interest has objected to the interest.

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28 b) What is an Impaired Claim/Interest

1 As noted above, an allowed claim or interest has the right to vote only if it is in a class that is
2 impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of
3 the members of that class.

4 In this case, the Debtor believes that classes 2 and 3 are impaired. Members of classes 2 and 3 are
5 entitled to vote to accept or reject the Plan. Members of class 4 (equity interests) are deemed to reject the
6 Plan because they receive no distribution under the Plan, and, therefore, are not entitled to vote on the
7 Plan. Parties who dispute the Debtor's characterization of their claim or interest as being impaired or
8 unimpaired may file an objection to the Plan contending that the Debtor has incorrectly characterized the
9 class.

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

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

21 **4. Who Can Vote In More Than One Class**

22 A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured
23 claim is entitled to accept or reject the Plan in both capacities by casting one ballot for the secured part of
24 the claim and another ballot for the unsecured claim.

25 ##

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

2 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class
3 has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired
4 classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cramdown” on
5 non-accepting classes, as discussed below.

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

7 A class of claims is considered to have accepted the Plan when more than one-half (1/2) in
8 number and at least two-thirds (2/3) in dollar amount of the claims which actually voted on the plan,
9 voted in favor of the plan. A class of interests is considered to have “accepted” a plan when at least
10 two-thirds (2/3) in amount of the interest-holders of such class which actually voted on the plan, voted to
accept the plan.

11 **7. Treatment of Non-accepting Classes**

12 As noted above, even if all impaired classes do not accept the Plan, the Court may nonetheless
13 confirm the Plan if the non-accepting classes are treated in the manner required by the Bankruptcy Code.
14 The process by which non-accepting classes are forced to be bound by the terms of a plan is commonly
15 referred to as “cramdown.” The Bankruptcy Code allows the Plan to be “crammed down” on
16 non-accepting classes of claims or interests if it meets all consensual requirements except the voting
17 requirements of 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and equitable”
18 toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and
19 applicable case law.
20

21 **8. Request for Confirmation Despite Nonacceptance by Impaired Classes**

22 Because Class 4 is deemed to have rejected the Plan, the Debtor requests confirmation by
23 “cramdown” as to this class. The Debtor will also ask the Court to confirm the Plan by “cramdown” as to
24 any other impaired classes that do not vote to accept the Plan.
25

26 **B. Liquidation Analysis**

27 Another confirmation requirement is the “Best Interest Test,” which requires a liquidation
28 analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that

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1 claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must
2 receive or retain under the Plan property of a value not less than the amount that such holder would
3 receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

4 In a Chapter 7 case, the debtor's assets are usually sold by a Chapter 7 trustee. Secured creditors
5 are paid first from the sales proceeds of properties on which the secured creditor has a lien.
6 Administrative claims are paid next. Next, unsecured creditors are paid from any remaining sales
7 proceeds, according to their rights to priority. Unsecured creditors with the same priority share in
8 proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured
9 claims. Finally, interest holders receive the balance that remains after all creditors are paid, if any.

10 For the Court to be able to confirm the Plan, the Court must find that all creditors and interest
holders who do not accept the Plan will receive at least as much under the Plan as such holders would
receive under a Chapter 7 liquidation of the Debtor. The Debtor maintains that this requirement is
clearly met.

The impaired classes under the Plan consist of Class 2 (secured claim of the Bank), Class 3
(general unsecured creditors), and Class 4 (equity interests). The Debtor must therefore satisfy the "best
interest of creditors test" with respect to members of Classes 2 and 3 who do not vote to accept the Plan
and with respect to Class 4 (which is deemed to have rejected the Plan).

19	ASSETS VALUED AT LIQUIDATION	
20	VALUE:	
21	CURRENT ASSETS	
22	a. The Property	<u>\$44,200,000</u>
23	TOTAL ASSETS AT LIQUIDATION	<u>\$44,200,000 \$44,200,000¹⁰</u>
24	VALUE:	
25	LESS: (Nothing herein shall be an admission of the allowance of any claims and	

26 ¹⁰ The Debtor believes that the Bank would seek relief from the automatic stay and assert that the
27 liquidation value is less than this amount.

1	merely approximates the amount of such claims alleged by the creditors.)	
2	a. Secured Creditor (Tax Collector)	\$282,107
3	Recovery	
4	b. Secured Creditor (Bank) Recovery	\$43,917,893 ¹⁰ <u>43,917,893¹¹</u>
5	c. Chapter 7 trustee fees and expenses	-0- ¹²
6	d. Chapter 11 administrative expenses	\$500,000
7	e. Priority tax claims	\$1,914.17
8	f. Unsecured claims (including rejection	\$829,292.05
9	claims)	

Below is a demonstration, in tabular format, that all creditors are projected to receive at least as much under the Plan as such creditor would receive under a Chapter 7 liquidation.

CLAIMS & CLASSES	PAYOUT PERCENTAGE UNDER THE PLAN	PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION
Administrative Claims - Unclassified	100%	0%
Priority Tax Claims - Unclassified	100%	0%
Secured Tax Claims - Class 1	100%	100%
Secured Claim of Bank - Class 2	100%	<100%

¹¹ The Bank filed a proof of claim asserting a prepetition amount owed of at least \$39,532,519.88, including principal of \$34,165,519.31. The Bank also asserts that interest accrues on the Loans at the default rate of 18%, or approximately \$17,082 per day (or approximately \$512,460 per month). At the default rate, postpetition interest from the Petition Date through August 1, 2010 would equal an additional approximately \$4,646,304 for an alleged combined total owed to the Bank of at least \$44,178,823.88, excluding professionals' fees and costs of sale. The Debtor assumes that in a Chapter 7 liquidation, the Chapter 7 trustee would not pursue the Debtor's lender liability claims against the Bank due to the lack of cash in the estate.

¹² The Debtor assumes that the Bank claim would consume the entire value of the Property and that the Chapter 7 trustee would treat the case as a no-asset estate.

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1	General Unsecured Claims - Class 3	100%	0%
2	Cure Claims	100%	0%
3	Interest Holders - Class 4	0%	0% ¹³

4
5 **C. Feasibility**

6 Another requirement for confirmation involves the feasibility of the Plan, which means that
7 confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial
8 reorganization, of the Reorganized Debtor unless such liquidation or further reorganization is proposed
9 in the Plan.

10 There are at least two important aspects of a feasibility analysis. The first aspect considers
whether the Debtor will have enough cash on hand on the Effective Date to pay all the claims and
expenses which are entitled to be paid on such date. The Debtor maintains that this aspect of feasibility
is satisfied. The cash necessary to pay the Effective Date Payments will be funded by cash on hand in the
Debtor's equity account (consisting of cash infusions by certain of the Debtor's members) and cash
contributions made by the Reorganized Debtor's New Members prior to the Effective Date.

11 The second aspect considers whether the Reorganized Debtor will have enough cash over the life
of the Plan to make the required Plan payments. Again, with the exception of the balloon payment to the
12 Bank under Class 2 - Option A, Plan payments during the course of the Plan shall be funded by the
13 Reorganized Debtor's New Members.

14 The Reorganized Debtor's New Members have the financial capacity to fund the payments
15 required under the Plan. First, the Guarantors are also principals of certain of the New Members. Prior
16

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22
23 ¹³ PCI and PCH, each Developer Members of the Debtor controlled by Chapter 7 debtor Jeffrey S.
24 Klein, are the only Members of the Debtor who are not New Members of the Reorganized Debtor.
25 Under Paragraph 6.6 of the Debtor's Operating Agreement, upon the liquidation or termination of the
26 Debtor, distributions to Investor Members, first for their preferred rate of return and then for return of
27 capital, have priority over distributions to Developer Members for their return of capital. Capital
28 contributions made by the Investor Members are in excess of \$12,000,000. Accordingly, the Debtor
does not believe that there is any liquidation scenario that would result in any distributions to any
Developer Members, including PCI and PCH.

1 to the confirmation hearing, financial information regarding the Guarantors shall be submitted to the
2 Court confidentially with an application for the Court to file and maintain such information under seal.
3 Second, other principals of certain of the New Members include Michael Moritz (New Member
4 Crankstart Foundation) and Mark Stevens (New Member Third Millennium Trust), each of whom is a
5 venture capitalist and partner in the prominent venture capital firm Sequoia Capital.

6 Principals of the Debtor's New Members have the financial capacity to fund the payments
7 required under the Plan and, with the exception of the balloon payment to the Bank under Class 2 -
8 Option A, will fund such payments through equity contributions. Upon completion of the entitlements
9 for the Property, the value of the Property is estimated to increase substantially. Based upon the
10 expected increased value, the Reorganized Debtor expects to easily be able to sell or re-finance the
Property for an amount more than sufficient to satisfy the balloon payment to the Bank under Class 2 -
Option A.

V. EFFECT OF CONFIRMATION OF PLAN

A. Discharge

18 The rights under the Plan and the treatment of claims under the Plan will be in exchange for, and
19 in complete satisfaction, discharge, and release of, all claims of any nature whatsoever (including,
20 without limitation, any interest accrued on claims from and after the Petition Date) against the Debtor,
the Reorganized Debtor, or its property. Except as otherwise provided in the Plan or the Plan
Confirmation Order:

21 1. On the Effective Date, the Debtor, the Debtor's estate, the Reorganized Debtor, and its
22 property will, to the fullest extent permitted by Bankruptcy Code Section 1141, be deemed discharged
23 and released from any and all claims, including, without limitation, all demands, liabilities, claims, that
24 arose before the confirmation date or that are based upon or otherwise relate to acts, events, omissions,
25 transactions or other activities of any kind that occurred before the confirmation date, and all debts of the
26 kind specified in Bankruptcy Code Section 502(g), 502(h), or 502(l) regardless of whether: (1) a proof of
27 claim based on such a debt is filed or deemed filed; (2) a claim based on such a debt is allowable under
28

1 Bankruptcy Code Section 502; or (3) the person holding the claim based on such a debt has accepted the
2 Plan;

3 2. All persons will be precluded from asserting against the Debtor, its estate, the
4 Reorganized Debtor, or its property any other or further claims based on, arising from, or in connection
5 with any act, event, omission, transaction, or other activity of any kind that occurred before the
6 confirmation date;

7 3. Any debt of the Debtor, whether secured or unsecured, which was in default as of or any
8 time prior to the confirmation date, will no longer be deemed in default. Moreover, to the extent that the
9 Reorganized Debtor complies with the terms and conditions of the Plan, these obligations will be
10 deemed in good standing;

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

20 5. Subject to the limitations and conditions imposed under Bankruptcy Code Section
21 1125(e), persons who — in good faith and in compliance with applicable Bankruptcy Code provisions —
22 either solicit Plan acceptances or rejections or participate in the offer, issuance, sale, or purchase of
23 securities under the Plan will not be liable on account of their solicitation or participation for violation of
24 any applicable law, rule, or regulation governing the solicitation of Plan acceptances or rejections or the
25 offer, issuance, sale or purchase of such securities.
26
27
28

1 **B. Revesting of Property in the Reorganized Debtors**

2 Except as provided in the Plan or in any agreements contemplated under the Plan, the
3 confirmation of the Plan revests all property of the estate in the Reorganized Debtor.

4
5 **C. Modification of the Plan**

6 The Debtor may modify the Plan at any time before confirmation. However, the Court may
7 require a new disclosure statement and/or re-voting on the Plan if the Debtor modifies the Plan before
8 confirmation. The Reorganized Debtor may also seek to modify the Plan at any time after confirmation
9 of the Plan so long as (1) the Plan has not been substantially consummated and (2) the Court authorizes
10 the proposed modifications after notice and a hearing.

11
12 **D. Post-Confirmation Status Reports**

13 Within 180 days of the entry of the Plan Confirmation Order, the Reorganized Debtor shall file
14 a status report with the Court explaining what progress has been made toward consummation of the
15 confirmed Plan. The status report shall be served on the Office of the United States Trustee and the
16 Bank. Further status reports shall be filed every 180 days and served on the same entities.

17
18 **E. Quarterly Fees**

19 Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) shall be paid by the Debtor or
20 Reorganized Debtor, as applicable until a final decree, or the entry of an order dismissing the case or
21 converting the case to Chapter 7, at the rate then in effect at the time such fees are due.

22
23 **F. Post-Confirmation Conversion/Dismissal**

24 A creditor or any other party in interest may bring a motion to convert or dismiss the case under
25 Section 1112(b) of the Bankruptcy Code after the Plan is confirmed if there is a material default in
26 performing the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed,
27 then all property that had been property of the Chapter 11 estate, and that has not been disbursed
28 pursuant to the Plan, will revest in the Chapter 7 estate, and the automatic stay will be reimposed upon

1 the revested property, but only to the extent that relief from stay was not previously authorized by the
2 Court during this case. The Plan Confirmation Order may also be revoked under very limited
3 circumstances. The Court may revoke the Plan Confirmation Order if it was procured by fraud and if a
4 party in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry
5 of the Plan Confirmation Order.

6
7 **G. Final Decree**

8 Once the estate has been substantially administered as referred to in Bankruptcy Rule 3022, the
9 Reorganized Debtor shall file a motion with the Court to obtain a final decree to close this case.

10 Dated: ~~April 16~~, May, 2010

Respectfully submitted,
MALIBU ASSOCIATES, LLC

By:

Thomas C. Hix,
President of a Managing Member

Presented By:
KAYE SCHOLER LLP
Marc S. Cohen
Ashleigh A. Danker

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19
20 By: /s/ Marc S. Cohen
21 Marc S. Cohen
22 Attorneys for Debtor and Debtor in
Possession MALIBU ASSOCIATES,
LLC

KAYE SCHOLER LLP

KAYE SCHOLER LLP

DECLARATION OF THOMAS C. HIX

I, Thomas C. Hix, declare as follows:

1. I am the President of Hix Rubenstein Companies (“HRC”), a managing member of debtor and debtor-in-possession Malibu Associates, LLC (the “Debtor”). I have been involved in the development and management of real estate for over thirty (30) years, including many projects similar to the redevelopment of the Property contemplated by the Debtor. I am submitting this Declaration in support of the First Amended Disclosure Statement Describing Debtor’s First Amended Plan of Reorganization (Dated April 5, May 19, 2010) (the “Disclosure Statement”). All terms defined in the Disclosure Statement are incorporated herein by this reference. The following is based upon my personal knowledge and if called as a witness herein, I could and would testify competently thereto.

2. The Debtor’s general insolvency counsel, Kaye Scholer LLP, prepared this Disclosure Statement and the Debtor’s First Amended Plan of Reorganization (Dated April 5, May 19, 2010) (the “Plan”) at the direction of, and with the review, input, and assistance of the Debtor’s management, other professionals, consultants, and experts, including myself.

3. All financial data referenced in this Disclosure Statement and the Plan has been generated from information provided by the Debtor from its books and records. All projections referenced in this Disclosure Statement and the Plan regarding the entitlements, including the Budget, have been generated with the review, input, and assistance of the Debtor’s management, other professionals, consultants, and experts, including myself.

4. All facts and representation in this Disclosure Statement and the Plan are true to the best of my knowledge.

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///

1 5. To the best of my knowledge, the Disclosure Statement includes all facts that would be
2 material to a creditor in determining whether to vote to accept or reject the Plan.

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

5
6 Dated: ~~April~~ May _____, 2010

Thomas C. Hix

KAYE SCHOLER LLP

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In re: Malibu Associates, LLC dba Malibu Country Club Debtor.	CHAPTER 11 CASE NUMBER 1:09-bk-24625-MT
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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:

1999 Avenue of the Stars, Suite 1700
Los Angeles, California 90067

The foregoing document described as **[BLACKLINE] [Proposed] Disclosure Statement Describing Debtor's Plan Of Reorganization (Dated May 19, 2010); Declaration Of Thomas C. Hix In Support Thereof** 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 **May 19, 2010**, 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 **May 19, 2010**, 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.*

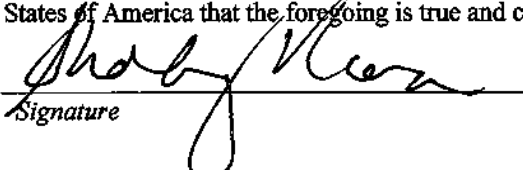
Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to Fed. R. Civ. Proc. 5 and/or controlling LBR, on _____, 2010, 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 mailing to the judge will be completed no later than 24 hours after the document is filed.*

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.

May 19, 2010 Shahnaz Virani
Date Type Name


Signature

KAYE SCHOLER LLP

SERVICE LIST
In re Malibu Associates, LLC
USBC, CDCA Case No. 1:09-bk-24625-MT

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KAYE SCHOLER LLP

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