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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

OHANA GROUP, LLC,

Debtor.

No. 12-21904

DEBTOR'S DISCLOSURE STATEMENT  
FOR PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE  
BANKRUPTCY CODE

IMPORTANT: THIS DISCLOSURE STATEMENT CONTAINS INFORMATION RELATED TO THE DEBTOR'S PROPOSED PLAN OF REORGANIZATION. PLEASE READ THIS DOCUMENT WITH CARE. THE INFORMATION CONTAINED HEREIN IS SOLELY FOR PURPOSES OF SOLICITING ACCEPTANCE OF THE PLAN AND SHOULD NOT BE RELIED UPON FOR ANY OTHER PURPOSE.

THE DEBTOR MAY CONTINUE TO NEGOTIATE PAYMENT TERMS WITH ITS CREDITORS, AND THE SPECIFIC TREATMENT OF CLAIMS MAY CHANGE AS A RESULT, BUT THE DEBTOR BELIEVES THAT THE PAYMENT TERMS WHICH THE DEBTOR WILL ASK THE COURT TO APPROVE WILL NOT BE LESS FAVORABLE THAN THOSE DESCRIBED HEREIN.

TO ALL PARTIES IN INTEREST:

On November 30, 2012, Ohana Group, LLC ("Debtor") filed a petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is presently acting as a debtor-in-possession. The Debtor's reorganization case is pending before the above-captioned court ("Bankruptcy Court" or "Court").

1 This Disclosure Statement is submitted by the Debtor and contains information with respect to  
2 Debtor's proposed Plan of Reorganization ("Plan"). Pursuant to Section 1125 of the Bankruptcy  
3 Code, this Disclosure Statement is being distributed to you along with a copy of the proposed Plan to  
4 allow you to make an informed decision in exercising your right to accept or reject the Proposed Plan.  
5 This Disclosure Statement has been approved by order of the Court pursuant to Section 1125 of the  
6 Bankruptcy Code as containing information of a kind, and in sufficient detail, as far as is reasonably  
7 practicable under the circumstances, that would enable a hypothetical reasonable investor to make an  
8 informed judgment about the Plan. In the event of inconsistencies between the Plan and the  
9 Disclosure Statement, however, the terms of the Plan shall control. The Court's approval of this  
10 Disclosure Statement does not constitute an endorsement by the Court of the proposed Plan.

11 THE ONLY REPRESENTATIONS THAT ARE AUTHORIZED OR THAT MAY BE MADE  
12 CONCERNING THE DEBTOR, THE VALUE OF ASSETS, OR THE PLAN ARE CONTAINED IN  
13 THIS DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED HEREIN  
14 OR INCORPORATED BY REFERENCE HAS BEEN PREPARED BY THE DEBTOR'S  
15 MANAGEMENT AND IS EFFECTIVE AS OF THE DATE HEREOF UNLESS OTHERWISE  
16 SPECIFIED. THE READER SHOULD NOT INFER OR ASSUME THAT THERE HAVE BEEN  
17 NO CHANGES IN THE FACTS SET FORTH HEREIN SINCE THE DATE HEREOF.  
18 FINANCIAL INFORMATION, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, IS  
19 NECESSARILY BASED UPON A VARIETY OF ESTIMATES AND ASSUMPTIONS THAT,  
20 ALTHOUGH CONSIDERED REASONABLE AND PRUDENT BY MANAGEMENT, MAY NOT  
21 BE REALIZED AND WILL REMAIN SUBJECT TO INHERENT UNCERTAINTIES. THE  
22 FINANCIAL INFORMATION HAS NOT BEEN SUBJECTED TO AN AUDIT AND FOR THAT  
23 REASON THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE  
INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS WITHOUT  
INACCURACY. HOWEVER, GREAT EFFORT HAS BEEN MADE TO ENSURE THAT ALL  
SUCH INFORMATION IS FAIRLY REPRESENTED.

15 The Debtor urges you to accept the proposed Plan and to promptly return your completed  
16 ballot to enable your vote to be counted.

## 17 **ARTICLE I.** 18 **DEFINITIONS**

19 Terms used in this Disclosure Statement not specifically defined herein or in the Bankruptcy  
20 Code shall be defined as set forth in the Plan that accompanies this Disclosure Statement. In  
21 particular, capitalized terms shall have the meanings prescribed for such terms in Section II of the  
22 Plan.  
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**ARTICLE II.  
BACKGROUND INFORMATION**

**A. Historical Background and Events Leading to Bankruptcy.**

1. The Debtor

The Debtor is a Washington limited liability company formed in 2006 for the purpose of managing and operating a mixed-use real property development located at 3601 Fremont Avenue N. in Seattle, WA, commonly known as Fremont Village Square. The Debtor's members are Patricia Cawdrey and Daniel Cawdrey, Jr.

2. The Debtor's Property, Fremont Village Square

Fremont Village Square has been in the Cawdrey family for a number of generations. Daniel Cawdrey is the Debtor's manager. Daniel Cawdrey's father, James Cawdrey, originally acquired the Property in the 1950s. The Property was later sold, and then re-purchased by Daniel and Lillian Cawdrey in 1985. Daniel and Lillian Cawdrey leased the Property to the City of Seattle for approximately ten (10) years. They then expanded, redesigned, and rebuilt the Property to its current configuration.

The structure that comprises Fremont Village Square consists of two condominium units. Unit 1 (the "Project") consists of a 42,542 rentable square foot commercial condominium unit. It is presently 98% leased and generates approximately \$100,000 per month in income for the Debtor. Unit 2 is presently a residential condominium unit that is physically within the same structure as, but legally separate from, the Project. In addition, the Debtor owns additional real property adjacent to the Project (the "Phase III Property") that does not yet have any vertical improvements, is presently utilized for additional parking and is being held for future development.

CCC Investors, LLC, a related entity, manages the day-to-day operations of Fremont Village Square.

3. Obligations Secured by the Property

In March 2007, the Debtor entered into a financing transaction with Capmark Bank ("Capmark") in the amount of \$10,300,000 (the "Loan"). In connection with the Loan, the Debtor executed various documents in favor of Capmark, including (i) a Promissory Note, dated March 12, 2007, in the original principal amount of \$10,300,000; (ii) a Loan Agreement (Fixed Rate Loan) ("Class 1 Loan Agreement"), dated as of March 5, 2007; (iii) a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing ("Deed of Trust"), dated as of March 12, 2007 and recorded in the real property records of King County, Washington under Recording No. 20070312002104, encumbering the Project in first-lien position; and (iv) a separate Assignment of Leases and Rents, dated as of March, 2007 and recorded in the real property records of King County, Washington under Recording No. 20070312002105 (the Promissory Note, the Class 1 Loan Agreement, the Deed of Trust, the Assignment of Leases and Rents, and all other documents evidencing the Loan are collectively referred to as the "Class 1 Loan Documents").

1 In November 2007, Capmark assigned its interests in the Loan and Class 1 Loan Documents to  
2 Wells Fargo, N.A., as trustee for the registered Holders of Credit Suisse First Boston Mortgage  
3 Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2007-C5 (the "Lender").  
The Lender asserts a first-position security interest in, among other things, the real property and  
improvements comprising the Project, the related tenant leases, and the income derived therefrom.

4 4. Substantial Equity in the Property

5 The Debtor enjoys significant equity in the Project. As of November 30, 2012, the principal  
6 balance owing under the Loan was approximately \$10,004,146.07. As set forth in an appraisal  
7 performed by Kidder Mathews Valuation Advisory Services, dated September 27, 2012, the combined  
value of the Project and the Phase III Property is \$16,000,000.

8 5. Events Leading to Bankruptcy

9 Beginning in 2011, several of the Debtor's ten and fifteen-year tenant leases at Fremont  
10 Village Square came up for renewal. Because of the general downturn in the economy, many of these  
11 tenants sought to negotiate renewals at reduced lease rates, and also sought space upgrades and  
compensation for build-outs. The cost of improvements through the first quarter of 2012 exceeded  
\$575,000, a sum the Debtor did not then have available to it.

12 Despite the substantial equity in the Property, the Lender refused to alter a negative covenant  
13 against junior encumbrances against the Property, so the Debtor was unable to finance the costs of  
these improvements through financing secured by the Property. Ultimately, the Debtor was forced to  
14 do use operating funds to pay for the cost of the improvements and, as a result, the Debtor was unable  
to make the monthly payments due on the Loan for the months January through April 2012. The  
15 Lender, through its servicing agent, declared the Loan to be in default. At the time, the arrearage  
totaled approximately \$200,000.

16 Also during this period, in December, 2011, Anytime Fitness abandoned the lease of its unit  
(Unit #214) without paying the Debtor all of the rent that it was owed or completing the remaining  
17 term. The Debtor is currently prosecuting an action in King County Superior Court to recover the  
unpaid rents. In January 2012, Zoo Health Club, LLC, dba Fremont Health Club entered into a lease  
18 with the Debtor and took over the space that Anytime Fitness vacated. Fremont Health Club is owned  
and operated by Patricia Cawdrey, an equity holder of the Debtor. Fremont Health Club opened its  
19 doors with only approximately 25% of the membership that Anytime Fitness held and is slowly  
growing the business back to prior levels. It also had to replace approximately \$200,000 in exercise  
20 equipment that Anytime Fitness took when it abandoned its lease. In addition, the health club  
business suffers from seasonality in this region, and is currently in the midst of a slow season. As a  
21 result, Fremont Health Club has gotten behind on its rent payments to the Debtor, which are currently  
approximately \$54,000 in arrears. Nonetheless, Fremont Health Club's membership is growing at the  
22 approximate rate of 10% per month, and it plans to resume making full lease payments to the Debtor  
in September 2013 going forward on a monthly basis.

1 The Debtor continued in workout negotiations with the Lender during the latter half of 2012.  
2 After those negotiations were unsuccessful, the Lender commenced a non-judicial foreclosure of its  
3 Deed of Trust against Fremont Village Square, and sought appointment of a receiver for the Property.  
4 An order was entered on November 7, 2012 directing the appointment of a receiver. The Lender  
5 agreed to delay the effectiveness of that order to November 21, 2012 to permit further workout  
6 negotiations. The Debtor and the Lender attempted to work out a payment schedule for the arrearage,  
7 but the parties were unsuccessful. This case was filed on November 30, 2012.

8 **B. Events Since Bankruptcy Filing.**

9 1. Employment of Debtor's Bankruptcy Counsel. On December 28, 2012, the Court  
10 entered an Order authorizing the Debtor's employment of Bush Strout & Kornfeld LLP as its  
11 bankruptcy counsel.

12 2. Employment of Debtor's Special Counsel. On February 4, 2013, the Court entered an  
13 Order authorizing the Debtor's employment of The Law Offices of Brian H. Krikorian as its Special  
14 Counsel for the purpose of representing the Debtor in litigation against one of the Debtor's former  
15 tenants, King County Superior Court Case No. 12-2-15573-9 (the "Tenant Litigation").

16 3. Claims Bar Date Established. On December 17, 2012, the Court entered an Order  
17 fixing January 31, 2013 as the last day to file proofs of claim in this case.

18 4. Use of Cash Collateral and Adequate Protection. On December 17, 2012, the Court  
19 entered an Order granting interim authority to the Debtor to use cash collateral and approving, on an  
20 interim basis, adequate protection in favor of the Lender. On January 24, 2013, the Court entered an  
21 order granting final approval of the use of cash collateral, and granting final approval of adequate  
22 protection in favor of the Lender in the form of monthly interest payments, a lien against postpetition  
23 leases, and an interest in the Debtor's rents, profits, and other proceeds of postpetition collateral.

5. Continued Use of Prepetition Bank Accounts. On December 17, 2012, the Court  
entered an Order authorizing the Debtor to continue to use business bank accounts and checks that  
were in existence before the Petition Date.

6. Adequate Assurance to Utilities Under Bankruptcy Code § 366. On December 17,  
2012, the Court entered an Order approving, on an interim basis, the Debtor's proposed adequate  
assurance to utilities under Bankruptcy Code § 366 in the form of a two-week deposit. None of the  
utility providers submitted any written objections by the January 11, 2013 deadline, and the Court's  
interim Order became final as to each utility provider.

7. Motion for Relief from Stay. On December 5, 2012, Umpqua Bank filed a motion for  
relief from stay to proceed against non-debtor defendants to certain litigation that is currently pending  
in King County Superior Court, Case No. 12-2-14184-3. On January 22, 2013, the Court entered an  
Order finding that the automatic stay does not apply to the non-debtor defendants involved in said  
lawsuit, and deeming the Debtor severed therefrom so that Umpqua Bank can proceed as to the non-  
debtor defendants.



1 of Claim is also inaccurate to the extent it does not give the Debtor credit for payments the Debtor  
2 made for the months of May through August 2012.

3 The Debtor is currently in the process of seeking to reach an agreement with the Lender on the  
4 allowable amount of the Lender's claim. In the absence of such an agreement, the Debtor will ask the  
5 Court to determine such amount.

6 **2. General Unsecured Claims.**

7 As set forth in the Debtor's Schedule F, the Debtor's records indicate that there are general  
8 unsecured claims against the Debtor totaling \$1,291,519.03.

9 The amounts set forth above are tentative and at this time are based solely on amounts set forth  
10 in the Debtor's records and proofs of claim that were filed in this case. It is possible that the Debtor  
11 may object to some of the claims in order to resolve disputes that cannot be resolved through  
12 negotiation, and the Debtor has specifically reserved the right to do so. Claims against the Debtor  
13 may be increased or may be reduced through litigation, compromise, or other developments  
14 subsequent to the date of approval of this Disclosure Statement.

15 **ARTICLE IV.**  
16 **SUMMARY OF PROPOSED PLAN OF REORGANIZATION**

17 A complete copy of the proposed Plan accompanies this Disclosure Statement. The discussion  
18 of the Plan that follows constitutes a summary only. You are urged to read the Plan itself with care  
19 before deciding to accept or reject the Plan.

20 **A. Explanation of Impaired and Unimpaired Claims.**

21 The term "Impaired" as used herein refers to those creditors to whom this Disclosure  
22 Statement (and the related Ballots and other materials delivered together herewith) are being furnished  
23 and who are entitled to accept or reject the Plan. The Claims in each of the Classes 1 through 4 are  
impaired under the Plan, and the holders of Claims in such Classes are entitled to vote to accept or  
reject the Plan.

The term "Unimpaired" refers to those creditors whose claims or interests remain unaltered by  
the reorganization effectuated by the Plan. Because of this favorable treatment, these creditors are  
conclusively deemed to have accepted the Plan. Accordingly, under Section 1126(f) of the  
Bankruptcy Code, it is not necessary to solicit acceptances from the holders of claims or interests in  
such classes. The Debtor believes that Class 5 is unimpaired under the Plan.

**B. Classification of Claims and Interests.**

The Plan establishes 5 classes of claims and 1 class of interests. If the Plan is confirmed by  
the Court and becomes effective, the class into which each Allowed Claim and Allowed Interest fits

1 will determine the manner in which such claim or interest will be treated. The classes defined in the  
2 proposed Plan are summarized below.

3 **1. Unclassified Claims.**

4 **a. Administrative Expense Claims**

5 Administrative Expense Claims are Claims for costs or expenses of the Reorganization Case  
6 that are allowed under Sections 503(b) and 507(a)(2) of the Bankruptcy Code, including all claims  
7 incurred in the ordinary course of business, all actual and necessary costs and expenses relating to the  
8 preservation of Debtor's estate, and all compensation or reimbursement of expenses to the extent  
9 allowed by the Court.

10 Administrative Expense Claims also consist of fees and expenses of Professional Persons, and  
11 other ongoing expenses of operation. As of June 30, 2013, Bush Strout & Kornfeld has incurred  
12 \$65,272.53 in fees and costs for its representation of the Debtor. As of June 30, 2013, special counsel  
13 for the Debtor, The Law Offices of Brian H. Krikorian, has incurred \$13,102.49 in fees and costs for  
14 its representation of Debtor in the Tenant Litigation. While additional amounts owing Professional  
15 Persons will necessarily accrue prior to Confirmation, the ultimate amount is not subject to estimation  
16 at this time.

17 Administrative Expense Claims (other than the Allowed Claims of Professional Persons)  
18 representing an undisputed unpaid liability incurred on and after the Petition Date in the ordinary  
19 course of business will be paid as and when due in the ordinary course of business without an order of  
20 the Court. Unless an Administrative Expense Claim is paid as aforesaid as an ordinary course  
21 obligation, an Administrative Expense Claim shall become an Allowed Claim only to the extent  
22 Allowed by Final Order of the Court. Unless otherwise ordered by the Court, requests for payment of  
23 Administrative Expense Claims that have accrued from the Claims Bar Date through the Effective  
Date, must be filed and served no later than thirty (30) days after the Effective Date.

Under the Plan, each Holder of an Administrative Expense Claim shall be paid in full on the  
later of the Effective Date or the date such Claim becomes an Allowed Claim, except to the extent that  
any Holder of an Allowed Administrative Expense Claim agrees to less favorable treatment thereof.  
Administrative Expense Claims representing obligations incurred in the ordinary course shall be paid  
in the ordinary course of Debtors' business in accordance with the terms and conditions of the  
particular agreements governing such obligations.

**2. Classified Claims and Interests.**

All Claims (as defined in § 101(5) of the Bankruptcy Code) against the Debtor are classified as  
set forth herein. A Claim is in a particular Class only to the extent it qualifies within the definition of  
such Class and is in a different Class to the extent it qualifies within the definition of such different  
Class.



- a. Class 1: Secured Claim of Lender
- b. Class 2: Unsecured Claim of Umpqua Bank
- c. Class 3: Administrative Convenience Class
- d. Class 4: Allowed Unsecured Claims Other Than Class 3
- e. Class 5: Security Deposit Claims
- f. Class 6: Allowed Interests of Members

**C. Treatment of Classified Claims and Interests Under the Plan.**

The Treatment of Claims and Interests Under the Plan, and the Means for Execution of the Plan, are set forth in Sections IV and VII, respectively, of the Plan and are summarized below. Notwithstanding the summary provided below, the terms of the Plan shall control the classification and treatment of claims and all other aspects of Reorganized Debtor's rights and obligations as to matters governed by the Plan following the Effective Date. Parties are urged to read the Plan with care to determine the treatment proposed for their Claim or Interest.

In summary, the Debtor will continue to operate the Project in the ordinary course of business. So long as it complies with other provisions of the Plan and the Order of Confirmation, the Debtor will have full discretion as to all aspects of the operation and maintenance of the Project.

**1. Class 1: Secured Claim of Lender.**

Class 1 is Impaired and consists of the Secured Claim of the Lender. From and after the Effective Date, the Class 1 Claim shall be paid as follows, with each monthly payment being made on or before the 15<sup>th</sup> day of each month: commencing in the first full month following the Effective Date and continuing each month through the month prior to the Class 1 Maturity Date, the Debtor shall make equal monthly principal and interest payments on the Class 1 Claim based upon a 30-year amortization, with interest accruing on the unpaid principal balance at the rate of four and 50/100 percent (4.50%) per annum, with all amounts owing on the Class 1 Claim due and payable on the Class 1 Maturity Date. Lender shall retain its lien on and security interests in the Project, the associated leases and rental income therefrom on and after the Effective Date, except as modified by the Plan. On the Effective Date, all defaults under the Class 1 Loan Documents that existed or were alleged to exist prior to or as of the Effective Date, whether known or unknown, shall be deemed cured, satisfied and of no further force or effect pursuant to and in connection with the entry of the order of Confirmation. Except where modified by the terms of the Plan, the provisions of Article 9 of the Class 1 Loan Agreement shall apply on and after the Effective Date, and any prohibitions under the Class 1 Loan Documents against the recording of consensual junior encumbrances against the Project shall be null, void and of no further force and effect.

**2. Class 2: Unsecured Claim of Umpqua Bank.**

Class 2 is Impaired and consists of the Unsecured Claim of Umpqua Bank arising from the Debtor's guaranties of two separate loans made by EvergreenBank, Umpqua Bank's predecessor in interest, to CCC Investors, LLC. The Class 2 Claim shall be allowed, whether prior to or following Confirmation, in such amount as to which the Debtor may agree or the Court may approve following

1 Notice and Hearing. Umpqua Bank previously filed a Proof of Claim in the amount of \$1,233,667.53  
2 as of the Petition Date. The Debtor understands that, as of the date hereof, a settlement between CCC  
3 Investors and Umpqua Bank has been achieved and will soon be closing that will cure CCC Investors'  
4 outstanding defaults and reduce the amount of the Class 2 Claim to approximately \$400,000. The  
5 reduced amount shall remain secured by the Unit 2 Property. Following the Effective Date, the  
6 Debtor shall make monthly payments to Umpqua Bank in the amount of \$1,000.00 each. Each such  
7 payment shall be applied to reduce the principal balance of the Class 2 Claim.

8 **3. Class 3: Administrative Convenience Class.**

9 Class 3 is Impaired and consists of the Administrative Convenience Class arising from all  
10 Unsecured Claims in the amount of \$1500.00 or less ("Class 3 Claims"), including Allowed Claims in  
11 an amount greater than \$1500.00 of claimants electing on the Ballot to be treated as if holding an  
12 Allowed Claim in the amount of \$1500.00. Each holder of a Class 3 Claim shall receive a Cash  
13 payment equal to the full amount of their Allowed Claim, on the later of (i) thirty (30) Business Days  
14 after the Effective Date, or (ii) three (3) Business Days following the date upon which the Debtor  
15 receives notice that such Claim has become an Allowed Claim. The Plan contains provisions that  
16 would apply in the event the total dollar amount of Claims electing treatment under Class 3 exceeds  
17 the estimated amount.

18 **4. Class 4: Allowed General Unsecured Claims Other Than Class 3.**

19 Class 4 is Impaired and consists of all Unsecured Claims that are not more specifically defined  
20 in Class 3 or Class 5. The Debtor shall pay each Allowed Claim that is a Class 4 Claim in full in  
21 twelve (12) equal monthly payments, the first of which shall be due on the fifteenth (15<sup>th</sup>) day of the  
22 first full month following the Effective Date. All payments to Class 4 shall be made on the fifteenth  
23 (15th) day of each month in which a payment is due. Notwithstanding the preceding paragraph, no  
payments shall be made to the holder of a Class 4 Claim that is an Insider until all other Allowed  
Claims in Class 4 are paid in full. Interest shall accrue on the unpaid principal balance of each Class 4  
Claim at the Federal Judgment Rate.

**5. Class 5: Security Deposit Claims.**

Class 5 consists of the all Security Deposit Claims, which are Allowed Claims of tenants of the  
Project representing the amount of an unrefunded cash deposit previously paid to the Debtor in  
connection with such tenancy. The Debtor shall pay each holder of a Security Deposit Claim in the  
ordinary course of business and in accordance with the terms of the lease between the Debtor and such  
holder.

**6. Class 6: Allowed Interests of Members.**

Class 6 consists of the Allowed Interests of Members of the Debtor. Except as otherwise  
provided for under the Plan, the Members shall retain such interests following Confirmation but shall  
receive no distributions on account of such interests (i) if there exists a default under payments owing  
to any Class, or (ii) if the Debtor shall fail to make any payment due on the Effective Date.

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**ARTICLE V.  
MEANS FOR EXECUTION OF THE PLAN**

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**A. General Terms**

In summary, the Debtor will continue to operate the Property in the ordinary course of business. So long as it complies with other provisions of the Plan and the Order of Confirmation, the Debtor will have full discretion as to all aspects of the operation and maintenance of the Property.

Attached hereto as **Exhibit A** is a projection of revenue and expenses for the operation of the Property, presented on a monthly basis through November 2014, and annually through 2017. Funding for payments to creditors under the Plan shall come from Cash on hand as of the Effective Date, and operating revenues. The Debtor or its designee shall act as disbursing agent for payments and distributions due under the Plan.

**B. Retention of Claims and Causes of Action**

Except as otherwise provided in the Plan, and as summarized in more detail below, all rights, claims and causes of action, whether equitable or legal, of the Debtor or the Reorganized Debtor against all persons are reserved for the Reorganized Debtor, including without limitation all rights, claims and causes of action of the Debtor or the Reorganized Debtor arising under Sections 544, 545, 549 and 550 of the Bankruptcy Code, or under applicable non-bankruptcy law, for the recovery of avoidable preferences, fraudulent transfers or other conveyances.

**ARTICLE VI.  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption of Executory Contracts and Unexpired Leases.**

The Plan constitutes a motion by the Debtor to assume the executory contracts and unexpired leases set forth on **Exhibit B** as of the Effective Date pursuant to § 365(a) of the Bankruptcy Code. The Debtor believes no cure pursuant to § 365(b)(1)(A) of the Code will become due upon assumption. Notwithstanding the foregoing, any party to an executory contract or unexpired lease scheduled for assumption as provided in this paragraph shall, within the same deadline and in the same manner established for objections to confirmation, file any claim for arrearage required to be cured by § 365(b)(1) of the Bankruptcy Code and any objections to the assumption. Failure to assert such arrearage or to file any objections shall constitute an agreement to the assumption and an acknowledgment that no defaults or claims exist under said contract that require a cure.

The unexpired leases the Debtor seeks to assume include a lease with Fremont Wine Outlet, LLC, which is owned and operated by Michael Cawdrey, the brother of the Debtor's manager, Daniel P. Cawdrey. Michael Cawdrey has owned and operated Fremont Wine Outlet for approximately six years. In that time, Fremont Wine Outlet has never missed a rent payment to the Debtor.

1 **B. Rejection of Executory Contracts and Unexpired Leases.**

2 The Plan constitutes a motion by the Debtor to reject all other executory contracts and  
3 unexpired leases of the Debtor, not heretofore assumed or rejected, as of the Effective Date, except  
4 (1) those executory contracts and unexpired leases previously assumed, and (2) those executory  
5 contracts and unexpired leases set forth on **Exhibit B** to this Disclosure Statement. Any claim arising  
6 from the rejection of an executory contract or unexpired lease is a Class 4 Claim to the extent it is an  
7 Allowed Claim. Any entity holding a claim based upon the rejection of an executory contract or  
8 unexpired lease pursuant to Section VI of the Plan must file a Proof of Claim with the Bankruptcy  
9 Court within thirty (30) days after the Effective Date. The failure of any such entity to file a Proof of  
10 Claim within the specified time period will result in the disallowance of such claim.

7 **ARTICLE VII.**  
8 **LIQUIDATION ANALYSIS**

9 The Bankruptcy Code requires that a creditor with a right to vote either accept the Plan, or that  
10 such creditor receive under the Plan at least as much as it would receive if the Debtor's assets were  
11 liquidated in and the proceeds distributed under a Chapter 7 liquidation. This is generally known as  
12 the “best interests” test. To apply the test, the Debtor’s assets are valued at the dollar amount that  
13 would be generated from their distressed liquidation in the context of a Chapter 7 case by a trustee  
14 appointed by the Bankruptcy Court. The analysis takes into account the costs and expenses of the  
15 liquidation, and such additional administrative and priority claims that may result from such a  
16 liquidation. Net liquidation proceeds would be paid to general unsecured creditors only to the extent  
17 funds are available after secured creditors have been paid the full value of their collateral and priority  
18 creditors receive full payment on their claims. For purposes of this case, the analysis also assumes  
19 that a trustee would hold the Project for a limited amount of time, and sell the Project over a shorter  
20 marketing period than would be recommended to maximize on its value.

21 The Plan provides for full payment to all creditors, and the “best interests” test is satisfied. In  
22 contrast, the Debtor believes it is clear that unsecured creditors would receive nothing in a  
23 hypothetical Chapter 7 bankruptcy case. Although the Debtor enjoys equity in the Project, the Plan is  
based upon the retention and ongoing operation of the Project. In a Chapter 7 liquidation, two  
dynamics would operate against the interests of unsecured creditors.

24 First, the Debtor believes that the Project in the hands of a Chapter 7 trustee would sell for a  
25 price less than its appraised value. A Chapter 7 trustee would generally have a more limited period of  
26 time in which to market and sell the Project. Less marketing time will generally translate into a lower  
27 price for the property, especially given that this is a \$16 million commercial center and not (for  
28 example) a single-family residence. Also, the Debtor believes that the Project being marketed for sale  
29 by a Chapter 7 trustee would be viewed by potential buyers as “distressed” property and, everything  
30 else being equal, would yield a lesser return than if it was being sold by its owner outside of a  
31 bankruptcy case. In fact, many secured lenders today are obtaining two values in their appraisals: an  
32 “as is” value and a lower “disposition” value, the latter frequently being some 20%-25% lower than  
33 the former. The Debtor believes that the combination of these factors would inevitably lead to a sale

1 price for the Project significantly lower than the appraised value. For purposes of this analysis, the  
2 Debtor assumes the gross sales price would be the appraised value less fifteen percent (15%).

3 Second, a Chapter 7 trustee would incur various expenses in liquidating the Project that the  
4 Debtor would not incur following Confirmation of its Plan. These expenses include but would not be  
5 limited to (i) real estate commissions (assume 3%)<sup>1</sup>, (ii) excise taxes (1.78%), (iii) trustee's  
6 commission (assume 3%),<sup>2</sup> and (iv) attorney fees (assume \$50,000). The analysis assumes a sale  
7 would close on December 1, 2013.

8 As detailed below, the Lender's claim would exceed the net sale proceeds. According to its  
9 Proof of Claim, the Lender states it was owed \$13,434,335.79 as of the Petition Date, which includes  
10 (i) principal in the amount of \$10,058,909.17, (ii) interest at the non-default rate of \$445,665.56,  
11 (iii) additional interest at the default rate from March 1, 2012 through the Petition Date, (iv) additional  
12 interest at the default rate from January 4 through February 29, 2012, (v) a prohibited Prepayment  
13 Premium of \$2,510,880.70, (vi) late charges of \$44,877.06, (vii) Servicer Fees of \$300.00, (viii)  
14 Property Protection Advances of \$3,142.90, and (ix) miscellaneous charges of \$404.00. However, in  
15 addition to that amount, the Lender would be entitled to receive unpaid default interest accruing  
16 following the Petition Date. (The analysis assumes that the trustee operates the Project and maintains  
17 monthly payments at the non-default rate through the closing of a sale.) The Lender states that the per  
18 diem rate for default interest is \$1,117.66, resulting in a total of \$407,946 (\$1,117.66 x 365). The  
19 Lender's claim would therefore total \$13,842,281.<sup>3</sup>

20 These assumptions yield the following outcome:

21	Gross sale proceeds (\$16,000,000 less 15%):	\$13,600,000
22	Less: Real estate commission:	\$408,000
23	Excise taxes:	\$242,080
	Trustee's commission:	\$408,000
	Attorney fees:	<u>\$50,000</u>
	Total costs of sale:	<u>\$1,108,080</u>
	Net proceeds:	<u>\$12,491,920</u>
	Less: Lender's secured claim:	\$13,842,281
	Deficiency:	<u>(\$1,350,361)</u>

24 \_\_\_\_\_  
25 <sup>1</sup> The Debtor understands that the average real estate commission for a property of comparable value to  
26 Fremont Village Square would be between 3% - 4%.

27 <sup>2</sup> A trustee's commission under 11 U.S.C. § 326(a) would be a blended rate that would actually exceed  
28 3% in the aggregate, but a 3% rate is used here for simplicity.

29 <sup>3</sup> The Lender would also have the right to seek payment of its accrued professional fees and related  
30 costs and expenses, although this amount is ignored in the analysis as it is unknown and would not change the  
31 outcome anyway.

1 It is clear that unsecured creditors would receive nothing in a Chapter 7 liquidation. Under the  
2 circumstances, a Chapter 7 trustee would likely abandon the Project, its value and revenue-generating  
3 capacity would be lost, and unsecured creditors would receive nothing. It is plain that the Plan  
4 represents a much better alternative for unsecured creditors.

## 5 **ARTICLE VIII.** 6 **TAX CONSEQUENCES**

### 7 **A. Introduction**

8 Implementation of the Plan may result in federal, state, and local tax consequences to the  
9 Debtor, to its members, and to its creditors. Neither rulings from the Internal Revenue Service (the  
10 “IRS”) or any state or local taxing authority, nor tax opinions will be sought or obtained with respect  
11 to any consequences of the Plan. This Disclosure Statement Article is not a tax opinion; the  
12 description of potential tax consequences contained herein is provided solely for general informational  
13 purposes, no attempt has been made to identify the specific tax consequences to any specific party,  
14 and the information in this Article cannot be relied upon for tax reporting or penalty avoidance  
15 purposes.

16 Because of the numerous uncertainties concerning the consequences of the Plan, there is no  
17 assurance of any kind that a particular taxpayer will, in fact, be entitled to the tax treatment described  
18 in this Disclosure Statement Article. **EVERY PARTY POTENTIALLY AFFECTED BY THE PLAN  
19 IS STRONGLY ADVISED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING  
20 THE TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE  
21 PLAN.**

### 22 **B. Tax Consequences to the Debtor**

23 The Debtor is a Washington limited liability company that is a disregarded entity for federal  
income tax purposes. As such, it is a conduit rather than a separate tax-paying entity for federal  
income tax purposes, and should incur no separate liability for such tax on any of the transactions  
contemplated by the Plan.

Pursuant to WAC 458-61A-207, the Debtor would be exempt from the imposition of real  
estate excise taxes that would otherwise be payable under RCW 82.45.060 and/or other applicable law  
as to any sale of the Project or any portion thereof at any time following Confirmation. In this case,  
the Plan does not provide for or anticipate a sale of the Project.

As discussed below, the members include their allocable shares of partnership income items in  
their gross income and, subject to various limitations, may deduct their allocable share of partnership  
losses.

### 24 **C. Tax consequences to Members of the Debtor**

The Members must each include their allocable shares of partnership income items and gains  
in their gross income. These items are allocated based upon the profit-sharing ratio of the Debtor’s

1 Operating Agreement, but subject to any mandatory special allocations under the Agreement and to  
2 various requirements of the Internal Revenue Code (the "IRC").

3 With the exception of any gain from sale of all or a portion of the Project, the income items  
4 discussed in this Article VIII will probably be taxed as ordinary income for federal net income tax  
5 purposes with respect to each Member. Some or all of any gain on a sale of the Project will probably  
6 be characterized as long-term capital gain.

#### 7 **D. Tax Consequences to Creditors**

8 Creditors will report any payments received under the Plan and any amounts disbursed in  
9 accordance with their normal method of accounting.

### 10 **ARTICLE IX.** 11 **RISK FACTORS**

12 Distributions to creditors contemplated under the Plan are contingent upon many assumptions,  
13 some or all of which could fail to materialize and preclude the Plan from becoming effective or reduce  
14 anticipated distributions. Most important, however, is that the Plan is subject to approval by the  
15 various classes of creditors entitled to vote under the Bankruptcy Code and to confirmation of the Plan  
16 by the Bankruptcy Court. No assurance can be given that the Plan will be accepted by the requisite  
17 number and amount of creditors or confirmed by the Court. In that event, due to the costs and  
18 uncertainties inherent in a modified Plan of Reorganization or a conversion and liquidation under  
19 Chapter 7, all creditors of the estate face substantial risk that their recovery under such alternative  
20 circumstances may be substantially less favorable than their recovery provided for by the Plan.

### 21 **ARTICLE X.** 22 **CONFIRMATION OF THE PLAN**

#### 23 **A. Voting Procedures.**

24 A ballot to be used for voting your acceptance or rejection of the Debtor's Plan of  
25 Reorganization is being mailed to you together with this Disclosure Statement and Plan. Holders of  
26 claims should read the instructions carefully, complete, date and sign the ballot, and transmit it in the  
27 envelope enclosed. **IN ORDER TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED AT  
28 THE INDICATED ADDRESS NOT LATER THAN 5:00 P.M. ON \_\_\_\_\_, 2013. FAILURE  
29 TO VOTE OR A VOTE TO REJECT THE PLAN WILL NOT AFFECT THE TREATMENT TO BE  
30 ACCORDED A CLAIM OR INTEREST IF THE PLAN NEVERTHELESS IS CONFIRMED.**

31 If more than one-half in number of claimants voting and at least two-thirds in amount of the  
32 allowed claims of such claimants in each class of claims vote to accept the Plan, such classes will be  
33 deemed to have accepted the Plan. If at least two-thirds in amount of the shares voted in a class of  
equity interests are voted to accept the Plan, such Class will be deemed to have accepted the Plan. For  
purposes of determining whether a class of claims or interests has accepted or rejected the Plan, only  
the votes of those who have timely returned their ballots will be considered.

1       **B.     Hearing on Confirmation**

2             The hearing on confirmation of the Plan has been set for \_\_\_\_\_, before the Honorable  
3     Marc L. Barreca, United States Bankruptcy Judge, in U.S. Bankruptcy Court in Seattle, Washington.  
4     The Bankruptcy Court shall confirm the Plan at that hearing only if certain requirements, as set forth  
5     in § 1129 of the Bankruptcy Code, are satisfied.

6       **C.     Feasibility**

7             The Debtor must also establish that confirmation of the Plan is not likely to be followed by the  
8     Reorganized Debtor's liquidation, or the need for further financial reorganization. To the extent  
9     necessary, the Debtor will present testimony with respect to feasibility at the hearing on confirmation  
10    of the Plan. The Debtor believes that the Plan is feasible and that the Bankruptcy Court will so find,  
11    but a Bankruptcy Court finding of feasibility does not guarantee that the Debtor will successfully  
12    complete or pay all of its obligations under the Plan.

13       **D.     Treatment of Dissenting Classes of Creditors**

14            The Bankruptcy Code requires the Bankruptcy Court to find that the Plan does not  
15    discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is  
16    impaired under, and has not accepted, the Plan. Upon such a finding, the Bankruptcy Court may  
17    confirm the Plan despite the objections of a dissenting class. The Debtor has requested that the Court  
18    confirm the Plan even if creditors holding claims in impaired classes do not accept the Plan.

19       **E.     Effect of Confirmation**

20            Confirmation of the Plan shall operate on the Effective Date as a discharge of the Debtor from  
21    all claims and indebtedness that arose before the Effective Date, except for those unclassified claims  
22    that the Reorganized Debtor agrees to pay as a continuing obligation. All such discharged claims and  
23    indebtedness shall be satisfied by the cash payment or other consideration provided under the Plan.  
24    Upon Confirmation, all property of the Debtor's estate shall be free and clear of all claims and  
25    interests of creditors, except as otherwise provided in the Plan or the order of the Bankruptcy Court  
26    confirming the Plan. The Reorganized Debtor shall be vested with all assets of the Debtor's estate.  
27    The provisions of the Plan shall bind the Debtor, the Reorganized Debtor, and all other parties in  
28    interest, including any creditor of the Debtor, whether or not such creditor is impaired under the Plan  
29    and whether or not such creditor has accepted the Plan.

30       **F.     Consequences of the Failure to Confirm the Plan**

31            In the event the Court declines to confirm the Debtor's Plan, whether due to a failure of  
32    creditor support or otherwise, a liquidation might ultimately result, either through a revised Plan under  
33    Chapter 11 or conversion of this Chapter 11 case to a bankruptcy under Chapter 7 of the Bankruptcy  
34    Code. As set forth in Section VII of this Disclosure Statement, there is a risk that creditors would  
35    receive a significantly reduced recovery under a liquidation.



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RESPECTFULLY SUBMITTED this 31st day of July, 2013.

OHANA GROUP, LLC

By /s/ Daniel P. Cawdrey  
Daniel P. Cawdrey  
Its Manager

**EXHIBIT A  
TO DISCLOSURE STATEMENT**



**PROJECTION OF REVENUE AND EXPENSES THROUGH 2017**  
**TO BE PROVIDED**

**EXHIBIT B  
TO DISCLOSURE STATEMENT**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
TO BE ASSUMED UNDER THE PLAN**

Body Works  
3601 Fremont Ave. N., #306  
Seattle, WA 98103

J & B Restaurants  
3601 Fremont Ave. N., #202 & 207  
Seattle, WA 98103

Componentlab Inc.  
3601 Fremont Ave. N., #216  
Seattle, WA 98103

Kipling Law Group  
3601 Fremont Ave. N., #414  
Seattle, WA 98103

Dr. Astrid Pujari, MD  
3601 Fremont Ave. N., #412  
Seattle, WA 98103

Kylies Pizza  
3601 Fremont Ave. N., #101  
Seattle, WA 98103

Dr. Lisa Park, DDS  
3601 Fremont Ave. N., #316  
Seattle, WA 98103

L & M Partners  
3601 Fremont Ave. N., #102  
Seattle, WA 98103

Dr. Martin Cahn, MD  
3601 Fremont Ave. N., #309  
Seattle, WA 98103

Northwest Cannacare  
3601 Fremont Ave. N., #210  
Seattle, WA 98103

Fremont Health Club  
3601 Fremont Ave. N., #214  
Seattle, WA 98103

Northwest Independent Ruby  
Development LLC  
3601 Fremont Ave. N., #304  
Seattle, WA 98103

Fremont Wine Outlet LLC  
3601 Fremont Ave. N., # 212  
Seattle, WA 98103

Rainspark Labs  
3601 Fremont Ave. N., #315  
Seattle, WA 98103

Group West  
3601 Fremont Ave. N., #314  
Seattle, WA 98103

Saucy Tiger Studios, Inc.  
3601 Fremont Ave. N., #302  
Seattle, WA 98103