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9
10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 In re
14 SECOND STREET PROPERTIES, a
California corporation, f/k/a PACIFIC STEEL
CASTING COMPANY,
15 Debtor.

Case No. 14-41045-RLE
Case No. 14-41048-RLE
Chapter 11
Cases Jointly Administered

16 In re
17 BERKELEY PROPERTIES, LLC, a
California limited liability company,
18 Debtor.

**NOTICE OF FILING OF REDLINE OF:
DEBTORS' AND COMMITTEE'S FIRST
AMENDED JOINT CHAPTER 11 PLAN
OF REORGANIZATION DATED
APRIL 23, 2015**

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OF REORGANIZATION DATED ~~MARCH~~
~~16~~ APRIL 23, 2015**

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1 **I.**

2 **INTRODUCTION**

3 Debtors and debtors-in-possession Second Street Properties, f/k/a Pacific Steel Casting
4 Company and Berkeley Properties, LLC (“Debtors”) and the Official Committee of Unsecured
5 Creditors of Second Street Properties and Berkeley Properties, LLC (the “Committee,” and
6 together with the Debtors, the “Proponents”) propose the following chapter 11 plan of
7 reorganization for the Debtors pursuant to section 1121 of the Bankruptcy Code. Capitalized
8 terms used in this Plan have the meanings set forth in Section II, “Definitions and Interpretation.”
9 The Debtors and Committee are proponents of the Plan within the meaning of section 1129 of the
10 Bankruptcy Code. The Plan is a reorganization plan. It provides for the replacement of the
11 Debtors’ current management with new management led or selected by a Plan Administrator, for
12 the continuation of the Debtors’ business of owning and leasing certain real property located in
13 Berkeley, California to the buyer of its former steel casting business, and for treatment of the
14 outstanding Allowed Claims against and Interests in the Debtors. The Plan does not provide for
15 any substantive consolidation of the Debtors’ estates.

16 Under the Plan, distributions are intended to be made to Holders of Allowed
17 Administrative Expense Claims (Unclassified), Allowed Priority Tax Claims (Unclassified),
18 Allowed Priority Non-Tax Claims (Class 1), Allowed Miscellaneous Secured Claims (Class 2),
19 and Allowed General Unsecured Claims against Berkeley Properties (Class 5) and Allowed
20 General Unsecured Claims against Second Street Properties (Class 6). The Holder of the Disputed
21 CraneTech Claims (Class 3) will receive one of the alternative forms of treatment set forth herein
22 as a Secured Claim if and only if it obtains a Final Order in the CraneTech Adversary Proceeding
23 providing that some or all of the Disputed CraneTech Claims are Allowed Secured Claims.
24 Otherwise, the Disputed CraneTech Claims will be treated as a General Unsecured Claims Against
25 Second Street Properties to the extent that they are Allowed. The Holder of the Local 164B Claim
26 (Class 4) will not receive a distribution of Cash in the Plan, but will receive a deed of trust
27 encumbering the real property owned by the Berkeley Properties pursuant to an agreement with
28

1 the Bankruptcy Code or Bankruptcy Rules, shall have the meaning assigned to that term in the
2 Bankruptcy Code or Bankruptcy Rules.

3
4 **A. Definitions**

5 1. “*Administrative Expense Claim*” means any Claim for a cost or expense of
6 administration under Bankruptcy Code sections 503(b) and 507(a)(2), including, without
7 limitation: any actual and necessary costs and expenses of preserving and administering the
8 Debtors’ Estates, all allowances of compensation and reimbursement of costs and expenses to
9 Professionals, as approved by a Final Order of the Bankruptcy Court, and any fees or charges
10 assessed against the Debtors’ Estates under section 1930 of Title 28 of the United States Code.

11 2. “*Administrative Reserve*” means, for each Estate, Cash reserved for the payment of
12 Allowed Administrative Expense Claims to the Effective Date and for administration of the
13 Debtors after the Effective Date, including payment of the reasonable and necessary projected
14 costs to carry out the provisions of the Plan on and after the Effective Date, payment of
15 professional fees and costs on and after the Effective Date, and payment of all other amounts
16 required to pursue Causes of Action and manage and/or liquidate the Estate Assets on and after the
17 Effective Date, including without limitation, such reserves for taxes, assessments and other
18 expenses of administration of the Debtors as may be necessary and appropriate. The
19 Administrative Reserve shall be in an amount to be determined by the Plan Administrator, in
20 consultation with the Post-Confirmation Committee as provided under Section VIII.D.8 of the
21 Plan.

22 3. “*Allowed*” when used in reference to a Claim means,

- 23 a. any Claim, proof of which was filed on or before the Bar Date, as to which
24 no objection has been interposed;
- 25 b. any Claim as to which no proof has been filed, but that has been listed in the
26 Debtors’ Schedules (as such Schedules may be amended from time to time in accordance
27
28

1 with the Bankruptcy Rules) as liquidated in amount in an amount greater than zero and not
2 disputed or contingent, as to which no objection has been interposed;

3 c. any Claim as to which any objection has been interposed, to the extent such
4 Claim has been allowed in whole or in part by a Final Order of the Bankruptcy Court;
5 provided, however, that Claims allowed solely for the purpose of voting to accept or reject
6 the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed”
7 Claims hereunder; or

8 d. any Claim that is compromised, settled or otherwise resolved pursuant to
9 authority granted by a Final Order of the Bankruptcy Court.

10 Unless otherwise specified herein, or by Final Order of the Bankruptcy Court, an
11 “Allowed” Claim shall not include interest on such Claim for the period from and after the
12 Petition Date. Multiple Proofs of Claim of the same Class filed by a Claim Holder shall be
13 aggregated and shall constitute a single Claim. Any portion of a Claim that is satisfied or released
14 during the Bankruptcy Cases is not an Allowed Claim. Nothing in this Plan shall prevent the
15 Debtors from objecting to Claims after the Effective Date.

16 4. **“Amended and Restated Bylaws”** means the Amended and Restated Bylaws
17 governing Reorganized Second Street Properties, to be attached to the Plan Supplement, and to
18 become effective on the Effective Date pursuant to Section VIII.A of this Plan.

19 5. **“Amended and Restated Operating Agreement”** means the Amended and Restated
20 Operating Agreement governing Reorganized Berkeley Properties, to be attached to the Plan
21 Supplement, and to become effective on the Effective Date pursuant to Section VIII.A of this Plan.

22 6. **“Avoidance Actions”** means any actions commenced or that may be commenced
23 before or after the Effective Date arising under Bankruptcy Code sections 510, 542, 543, 544, 545,
24 547, 548, 549, 550, 551 or 553, or under related state, federal, or foreign statutes and common
25 law, including, without limitation fraudulent transfer laws, whether or not litigation is commenced
26 to prosecute such actions.

1 7. “**Bankruptcy Case(s)**” means the Chapter 11 bankruptcy cases of the Debtors,
2 styled as *In re Second Street Properties, f/k/a Pacific Steel Casting Company*, Case No. 14-41045-
3 RLE, and *In re Berkeley Properties, LLC*, Case No. 14-41048-RLE, which cases are jointly
4 administered under Case No. 14-41045-RLE pursuant to the Order entered by the Bankruptcy
5 Court on March 13, 2014.

6 8. “**Bankruptcy Code**” means title 11 of the United States Code, as amended from
7 time to time, as applicable to the Bankruptcy Case.

8 9. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern
9 District of California having jurisdiction over the Bankruptcy Case or any other court with
10 jurisdiction over the Bankruptcy Cases.

11 10. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure and any
12 Local Rules of the Bankruptcy Court, as amended from time to time, as applicable to the
13 Bankruptcy Cases.

14 11. “**Bar Date**” means July 14, 2014, the last date for filing Proofs of Claim (other than
15 Administrative Expense Claims and Claims by governmental units) against the Debtors as fixed
16 by the notice disseminated by the Bankruptcy Court on March 27, 2014.

17 12. “**Berkeley Deed of Trust**” has the meaning ascribed to it in Section VI.D.2 of this
18 Plan. As provided in said Section VI.D.2, the Berkeley Deed of Trust shall be in the form
19 attached to the Plan Supplement.

20 13. “**Berkeley Properties**” means Berkeley Properties, LLC, a California limited
21 liability company, debtor and debtor-in-possession in Bankruptcy Case No. 14-41048.

22 14. “**Berkeley Real Property**” means the real property owned by Berkeley Properties,
23 LLC, commonly known as 640 Gilman Street, 1310 3rd Street, 1333 2nd Street, 1305 Eastshore
24 Highway, 1314 2nd Street, 1320 2nd Street, 1401 Eastshore Highway, 1420 2nd Street, 1421 2nd
25 Street, and 648 Page Street, Berkeley, CA, and as described in greater detail in the Berkeley Deed
26 of Trust.

1 15. “**Business Day**” means any day that is not a Saturday, Sunday or legal holiday as
2 identified in Bankruptcy Rule 9006.

3 16. “**Cash**” means legal tender of the United States of America and equivalents thereof,
4 including without limitation, bank deposits, checks, and other similar items.

5 17. “**Causes of Action**” means, without limitation, any and all actions, causes of action,
6 choses in action, controversies, liabilities, obligations, rights, suits, claims for rebates, debts, dues,
7 sums of money, accounts, reckonings, bonds, bills, covenants, contracts, agreements, promises,
8 variances, trespasses, damages, judgments, claims, third-party claims, counter-claims, cross-
9 claims and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or
10 unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or
11 unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity or
12 otherwise which have been or may be commenced by the Debtors or the Debtors’ Estates. “Causes
13 of Action” include, but are not limited to, all objections to Claims, all adversary proceedings, all
14 Avoidance Actions and any objection to or action to recharacterize or subordinate (whether by law
15 or equity) any Claim. “Causes of Action” also include, without limitation, all Claims and Causes
16 of Action against the Debtors’ current and former directors, officers, employees, and management.
17 “Causes of Action” also include, without limitation, all Claims and Avoidance Actions against any
18 Person identified on the Statement of Financial Affairs of each of the Debtors as a recipient of a
19 payment made or property transferred by or on behalf of one of the Debtors prior to the Petition
20 Date.

21 18. “**Claim**” means a claim, as that term is defined under Bankruptcy Code
22 section 101(5), against either of the Debtors or their Estates.

23 19. “**Claim Objection Deadline**” means one hundred and twenty (120) days after the
24 Effective Date, provided however that the Bankruptcy Court may extend the Claim Objection
25 Deadline for good cause upon a motion filed by the Plan Administrator, the Post-Confirmation
26 Committee, or any Holder of Class 7 Interests in Second Street Properties before the currently
27 applicable Claim Objection Deadline. The filing of such a motion before the currently applicable
28

1 Claim Objection Deadline shall have the effect of automatically extending the Claim Objection
2 Deadline to a date that is 15 days after the entry of an order disposing of such a motion.

3 20. “**Class**” means a category of substantially similar Allowed Claims or Interests as
4 established pursuant to the Plan, as such term is used and described in Bankruptcy Code
5 sections 1122 and 1123(a)(1).

6 21. “**Confirmation Date**” means the date on which the Confirmation Order is entered
7 by the Bankruptcy Court.

8 22. “**Confirmation Order**” means the order of the Bankruptcy Court confirming and
9 approving the Plan in accordance with the Bankruptcy Code and approving the actions
10 contemplated herein.

11 23. “**CraneTech Adversary Proceeding**” means the adversary proceeding filed by
12 Berkeley Properties against CraneTech, Inc. and United Rentals (North America) Inc., pending in
13 the Bankruptcy Court as Adversary Proceeding No. 14-04032.

14 24. “**Debtors**” means, collectively, Second Street Properties and Berkeley Properties,
15 debtors and debtors-in-possession in the Bankruptcy Cases.

16 25. “**Disbursing Agent**” means the Plan Administrator, or any Entities or Persons
17 chosen by the Plan Administrator to make or facilitate distributions pursuant to the Plan.

18 26. “**Disclosure Statement**” means that certain disclosure statement relating to the
19 Plan, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant
20 to section 1125 of the Bankruptcy Code.

21 27. “**Disputed**” means any Claim, other than an Administrative Expense Claim, as to
22 which an objection has been filed and which objection has not been withdrawn or resolved by the
23 entry of a Final Order.

24 28. “**Disputed Claims Reserve(s)**” means Cash reserved in each Estate to satisfy
25 Disputed Claims in said Estate in the event that a Disputed Claim becomes an Allowed Claim
26 entitled to distribution under the Plan. Except to the extent that the Bankruptcy Court shall have
27 estimated under section 502(c) of the Bankruptcy Code or otherwise determined that a good and
28

1 sufficient reserve for Disputed Claims is less than the full amount thereof, the Disputed Claims
2 Reserve(s) shall be in an amount to be determined by the Plan Administrator, in consultation with
3 the Post-Confirmation Committee as provided under Section VIII.D.8 of the Plan, which would
4 have been distributed on account of all Disputed Claims if all Disputed Claims were allowed in
5 the full amount claimed by the Holders thereof as of the Effective Date.

6 29. **“Disputed CraneTech Claims”** means, collectively, the Claims asserted by
7 CraneTech, Inc. as Claim Nos. 189 and 190, and any other claims that may be filed by CraneTech.

8 30. **“Effective Date”** means the first (1st) Business Day following the date on which
9 each of the conditions to effectiveness of the Plan set forth in Article X of this Plan have been
10 satisfied or waived.

11 31. **“Estate”** or **“Estates”** means, individually or collectively, the Debtors’ bankruptcy
12 estates created upon commencement of the Bankruptcy Case pursuant to section 541 of the
13 Bankruptcy Code.

14 32. **“Estate Assets”** means all of the property of the Debtors and their respective
15 Estates, including, without limitation (a) all tangible and intangible assets of every kind and
16 nature, including Causes of Action, and all proceeds thereof, existing as of the Effective Date and
17 thereafter, (b) all property treated by the Plan, and (c) all books and records of the Debtors,
18 including any attorney-client privilege, work-product privilege or other privilege or immunity in
19 connection therewith, which shall automatically vest in the Reorganized Debtors on the Effective
20 Date pursuant to the terms of the Plan.

21 33. **“Entity”** means entity, as that term is defined under Bankruptcy Code
22 section 101(15).

23 34. **“FEIN”** means federal tax identification number.

24 35. **“Final Order”** means an order or judgment of the Bankruptcy Court or other court
25 of competent jurisdiction: (i) which has not been reversed, stayed, modified or amended; (ii) as to
26 which the time to or the right to appeal or seek reconsideration, review, rehearing, or *certiorari*
27 has expired or been waived (without regard to whether the time to seek relief from a judgment
28

1 under Bankruptcy Rule 9024 has expired); and (iii) *provided* the appellant has posted a bond that
2 is adequate to protect the interests of the Estate(s) pending the duration of any such appeal or
3 petition, as to which no appeal or petition for reconsideration, review, rehearing, or certiorari is
4 pending.

5 36. “**General Unsecured Claim**” means any Claim against either of the Debtor’s
6 Estates that is not (a) an Administrative Expense Claim, (b) a Priority Tax Claim, (c) a Priority
7 Non-Tax Claim, (d) the Disputed CraneTech Claims (unless the Disputed CraneTech Claims are
8 Allowed as General Unsecured Claims against either Estate pursuant to a Final Order); (e) the
9 Local 164B Claim, or (f) otherwise classified and treated under this Plan. For the avoidance of
10 doubt, the term “General Unsecured Claim” shall include, without limitation, any Claim against
11 either of the Debtor’s Estates arising under Section 502(h) of the Bankruptcy Code.

12 37. “**Holder**” means an Entity or Person holding a Claim or Interest.

13 38. “**Initial Distribution Date**” means a Business Day, as determined by the Plan
14 Administrator, in consultation with the Post-Confirmation Committee as provided under
15 Section VIII.D.8 of the Plan, as soon as reasonable and practicable after the Effective Date, but in
16 any event, no later than ninety (90) calendar days after the Effective Date, for the distribution of
17 the Initial Distributable Second Street Properties Cash and the Initial Distributable Berkeley
18 Properties Cash to Holders of Allowed Claims against each Estate pursuant to the terms of the
19 Plan.

20 39. “**Initial Distributable Cash**” means, for each of the Debtors’ Estates, all of the
21 Estate Assets of each Estate in the form of Cash, including (a) Cash held by each Debtor as of the
22 Petition Date, (b) Cash realized from the sale or disposition of each Debtor’s assets prior to the
23 Effective Date, (c) the interest earned on invested funds, and (d) recoveries from any of the Causes
24 of Action held by each Debtor or from any other source or otherwise prior to the Effective Date;
25 less the amount of Cash estimated and reserved for the Administrative Reserve and the Disputed
26 Claims Reserve established with respect to each Debtor’s Estate. For the avoidance of doubt, the
27 Speyside Sale Proceeds constitute Initial Distributable Cash for the Estate of Second Street
28

1 Properties only, and do not constitute Initial Distributable Cash for the Estate of Berkeley
2 Properties. Notwithstanding the foregoing, the security deposit held by Berkeley Properties under
3 the lease of the Berkeley Real Property shall be reserved pursuant to the terms of said lease, and
4 shall not constitute Initial Distributable Cash.

5 40. “**Insider**” means insider, as that term is defined under Bankruptcy Code
6 section 101(31) and applicable case law.

7 41. “**Interest**” means any ownership interest in the Debtors, as of the Petition Date,
8 including, but not limited to, an interest in any issued, unissued, authorized or outstanding shares
9 or stock and other equity security of the Debtors together with any warrants, options or contractual
10 rights to purchase or acquire such interests at any time and all rights arising with respect thereto.

11 42. “**Legal Rate**” means the greater of: (a) the interest rate, as of the Effective Date,
12 allowed on judgments entered in federal courts under 28 U.S.C. § 1961(a), which is the weekly
13 average 1-year constant maturity (nominal) Treasury yield, as published by the Federal Reserve
14 System, and which was .20%; as of the date of the filing of this Plan; or (b) the contractual rate of
15 interest applicable to any Allowed Claim.

16 43. “**Local 164B**” means the CMTA – Glass, Molders, Pottery, Plastics & Allied
17 Workers (Local 164B) Pension Trust.

18 44. “**Local 164B Claim**” means the contingent Claim in the amount of \$26,702,858
19 filed by Local 164B for potential withdrawal liability as Claim No. 170 on the claims register in
20 the Bankruptcy Cases.

21 45. “**Miscellaneous Secured Claim**” means a Secured Claim that has not been released
22 or satisfied prior to the Effective Date.

23 46. “**New Pacific Steel**” means Pacific Steel Casting Company, LLC, the buyer and
24 designee of Speyside in the Speyside Sale, and the entity operating Second Street Properties’
25 former steel casting business.

26 47. “**Pacific Steel Lease**” means the lease of the Berkeley Real Property by Berkeley
27 Properties to New Pacific Steel pursuant to that certain AIR Commercial Real Estate Association
28

1 Standard Industrial/Commercial Single-Tenant Lease – Net, dated August 29, 2014, by and
2 between Berkeley Properties and New Pacific Steel.

3 48. “*Person*” means person, as that term is defined under Bankruptcy Code
4 section 101(41), including an individual, corporation, limited liability company, partnership or
5 foreign business entity.

6 49. “*Petition Date*” means March 10, 2014.

7 50. “*Periodic Distribution Date(s)*” means the date(s) after the Initial Distribution Date
8 which shall occur (a) after the first Business Day occurring ninety (90) calendar days after the
9 immediately preceding distribution date or (b) on such other Business Day selected by the Plan
10 Administrator, in consultation with the Post-Confirmation Committee as provided under
11 Section VIII.D.8 of the Plan, for the distribution of Periodic Distributable Cash to Holders of
12 Allowed Claims.

13 51. “*Periodic Distributable Cash*” means the net proceeds derived from the liquidation
14 and monetization of all of the Estate Assets for each Debtor’s Estate (including all Causes of
15 Action), after (a) payment of Allowed Administrative Expense Claims and Priority Tax Claims
16 pursuant to Section IV of the Plan; (b) payment of Allowed Class 1 Claims and partial payment of
17 Allowed Class 5 and Class 6 Claims on the Initial Distribution Date pursuant to Section VI of the
18 Plan; and (c) reserving funds for the Administrative Reserve and Disputed Claim Reserve in each
19 Estate, in amounts to be determined by the Plan Administrator, in consultation with the Post-
20 Confirmation Committee as provided under Section VIII.D.8 of the Plan.

21 52. “*Plan*” means this Chapter 11 Plan of Reorganization, including all exhibits and
22 schedules attached hereto or otherwise incorporated herein, either in its present form or as it may
23 be altered, amended, modified, revised or supplemented from time to time.

24 53. “*Plan Administrator*” means the Person appointed to fill the role of Plan
25 Administrator Under the Plan, as described in Section VIII.D of the Plan.

26 54. “*Plan Supplement*” means the supplement to this Plan filed by the Proponents by
27 the time of the Disclosure Statement hearing that: (i) sets forth the identity of the initial Plan
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1 Administrator, the two directors of Second Street Properties chosen by the Plan Administrator, and
2 all members of the Post-Confirmation Committee; (ii) attaches the Amended and Restated
3 Bylaws; (iii) attaches the Amended and Restated Operating Agreement; and (iv) attaches the
4 Berkeley Deed of Trust.

5 55. **“Post-Confirmation Committee”** means the group of individuals, comprised of
6 members of the Official Committee of Unsecured Creditors, who choose to serve on the Post-
7 Confirmation Committee described in Section VIII.E of this Plan.

8 56. **“Priority Non-Tax Claim”** means a Claim (or portion of such Claim) entitled to
9 priority under Bankruptcy Code section 507(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(9), or
10 (a)(10) of the Bankruptcy Code.

11 57. **“Priority Tax Claim”** means a Claim entitled to priority under Bankruptcy Code
12 section 507(a)(8).

13 58. **“Professional”** means any professional retained, employed or to be compensated in
14 the Bankruptcy Case pursuant to Bankruptcy Code sections 327, 328, 330, 331 and/or 1103.

15 59. **“Proof of Claim”** means a proof of Claim filed against the Debtors in the
16 Bankruptcy Cases.

17 60. **“Pro Rata”** means proportionately so that the ratio of the amount of the distribution
18 made on account of a particular Allowed Claim to the distributions made on account of all
19 Allowed Claims of the Class in which the particular Allowed Claim is included is the same as the
20 ratio of the amount of such particular Allowed Claim to the total amount of Allowed Claims of the
21 Class of which such particular Allowed Claim is included.

22 61. **“Record Date”** means the Confirmation Date.

23 62. **“Reorganized Berkeley Properties”** shall mean Berkeley Properties, from and after
24 the Effective Date, pursuant to the Amended and Restated Operating Agreement. All references to
25 Berkeley Properties after the Effective Date shall be deemed to be references to Reorganized
26 Berkeley Properties unless the context requires otherwise or unless otherwise stated.

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1 63. “**Reorganized Debtors**” shall mean, collectively, Reorganized Berkeley Properties
2 and Reorganized Second Street Properties. All references to the Debtors after the Effective Date
3 shall be deemed to be references to the Reorganized Debtors unless the context requires otherwise
4 or unless otherwise stated.

5 64. “**Reorganized Second Street Properties**” shall Second Street Properties, from and
6 after the Effective Date, pursuant to the Amended and Restated Bylaws. All references to Second
7 Street Properties after the Effective Date shall be deemed to be references to Reorganized Second
8 Street Properties unless the context requires otherwise or unless otherwise stated.

9 65. “**Schedules**” means those certain schedules of assets and liabilities and the
10 statements of financial affairs filed by each of the Debtors pursuant to Bankruptcy Code
11 section 521 and Bankruptcy Rule 1007, including any supplements or amendments thereto.

12 66. “**Second Street Properties**” means Second Street Properties, a California
13 corporation, f/k/a Pacific Steel Casting Company, debtor and debtor-in-possession in Bankruptcy
14 Case No. 14-41045.

15 67. “**Secured Claim**” means a Claim against either Debtor’s Estate secured by a valid,
16 perfected and enforceable lien that is not subject to avoidance under bankruptcy or non-
17 bankruptcy law, equal to the lesser of: (a) the Allowed amount of such Claim; or (b) the value, as
18 determined by the Bankruptcy Court pursuant to Sections 506(a) and 1129(b) of the Bankruptcy
19 Code and Bankruptcy Rule 3012, of: (i) the interest of the holder of such Claim in the property of
20 the relevant Estate securing such Claim, or (ii) the amount subject to setoff under Section 553 of
21 the Bankruptcy Code.

22 68. “**Speyside Sale**” means Bankruptcy Court-approved sale of substantially all of the
23 operating assets of Second Street Properties to New Pacific Steel, the designee of Speyside
24 Funding, LLC, which sale closed on August 29, 2014.

25 69. “**Speyside Sale Proceeds**” means the proceeds paid to Second Street Properties
26 pursuant to the Speyside Sale.

27 70. “**SSN**” means social security number.
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1 71. “*Substantial Consummation*” means substantial consummation of the Plan under
2 Section 1101(2) of the Bankruptcy Code, which shall occur once all of the following conditions
3 are satisfied: (i) all adversary proceedings and claim objections are either consensually resolved or
4 finally adjudicated; and (ii) the Plan Administrator has made an initial distribution to creditors
5 under the terms of this Plan.

6 72. “*Unclaimed Distributions*” means any distributions that are unclaimed one
7 hundred and twenty (120) calendar days following the date of distribution, including checks (and
8 the funds represented thereby) which have been returned as undeliverable.

9 73. “*Unsecured Deficiency Claim*” means a Claim by a Person holding a Secured
10 Claim to the extent the value of such Creditor’s collateral, as determined in accordance with
11 Section 506(a) of the Bankruptcy Code, is less than the Allowed amount of such Creditor’s Claim
12 as of the Petition Date, after taking into account any election made pursuant to Section 1111(b) of
13 the Bankruptcy Code.

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16 **B. Rules of Interpretation**

17 The words “herein,” “hereof,” “hereto,” and “hereunder” and other words of similar import
18 refer to the Plan or Disclosure Statement as a whole and not to any particular section, subsection
19 or clause contained in this Plan or Disclosure Statement, unless the context requires otherwise.

20 Whenever from the context it appears appropriate, each term stated in either the singular or
21 the plural includes both the singular and the plural, and pronouns stated in the masculine, feminine
22 or neuter gender include the masculine, feminine and the neuter.

23 Any reference in the Plan to a contract, instrument, release, indenture or other agreement
24 or document being in a particular form or on particular terms and conditions means that such
25 document shall be substantially in such form or substantially on such terms and conditions.

26 Any reference in the Plan to an existing document or exhibit filed or to be filed means such
27 document or exhibit, as it is or may be further amended, modified or supplemented. If the Plan’s
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1 description of the terms of an exhibit is inconsistent with the terms of the exhibit, the terms of the
2 exhibit shall control.

3 The section headings and captions to articles, sections and subsections herein are inserted
4 for convenience of reference only and are not intended to be a part of or to affect the interpretation
5 of the Plan or the Disclosure Statement.

6 The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the
7 extent such rules are not inconsistent with any other provision in this subsection.

8 In computing any period of time prescribed or allowed by the Plan or Disclosure
9 Statement, the provisions of Bankruptcy Rule 9006 shall apply.

10 III.

11 **NO CONSOLIDATION OF THE DEBTORS' ESTATES; EFFECT OF PARENT- 12 SUBSIDIARY RELATIONSHIP**

13 This Plan does not provide for any substantive consolidation of the Debtors' Estates.
14 Claims against Second Street Properties shall be satisfied by the assets of Second Street
15 Properties, and Claims against Berkeley Properties shall be satisfied by the assets of Berkeley
16 Properties. Note however that because Berkeley Properties is a wholly owned subsidiary of
17 Second Street Properties, once the Claims against Berkeley Properties are satisfied, the proceeds
18 produced by the assets of Berkeley Properties (including, without limitation, the rental payments
19 made to Berkeley Properties for use of the Berkeley Real Estate) shall be distributed to Second
20 Street Properties, as Holder of 100% of the Interests in Berkeley Properties, and sole member of
21 Class 8. Once such proceeds are distributed to Second Street Properties, they shall become assets
22 of the Second Street Properties Estate and shall be used to satisfy Claims against and Interests in
23 Second Street Properties in the manner set forth in this Plan.

24 IV.

25 **TREATMENT OF UNCLASSIFIED CLAIMS**

26 **A. Administrative Expense Claims**

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1 As provided under Bankruptcy Code section 1123(a)(1), Administrative Expense Claims
2 are not classified for purposes of voting on, or receiving distributions under, the Plan.

3 Accordingly, holders of Administrative Expense Claims are not entitled to vote on this Plan.

4 To the extent that Allowed Administrative Expense Claims have not already been paid,
5 satisfied or otherwise released prior to the Effective Date, and except to the extent that a Holder of
6 an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an
7 Allowed Administrative Expense Claim shall receive Cash from either the Estate of Second Street
8 Properties or the Estate of Berkeley Properties in an amount equal to such Allowed Claim, in full
9 and final satisfaction, settlement and release and in exchange for such Claim, on the later of the
10 Effective Date or the date such Administrative Expense Claim becomes an Allowed
11 Administrative Expense Claim pursuant to a Final Order of the Bankruptcy Court, or as soon
12 thereafter as reasonably practicable.

13 1. Applicable Bar Dates for Administrative Expense Claims

14 Except for applications for payment by Professionals under the Bankruptcy Code and fees
15 payable to the United States Trustee pursuant to 28 U.S.C. § 1930, all requests for payment of
16 outstanding Administrative Expense Claims incurred from the Petition Date through August 29,
17 2014 were required to be filed and served by no later than October 31, 2014, as set forth in the
18 Order of the Bankruptcy Court entered on September 16, 2014 as Docket No. 329.

19 Except for applications for payment by Professionals under the Bankruptcy Code and fees
20 payable to the United States Trustee pursuant to 28 U.S.C. § 1930, and except for taxes that arise
21 after the Petition Date (which shall be paid as and when they come due), all requests for payment
22 of outstanding Administrative Expense Claims incurred from August 30, 2014 through the
23 Effective Date shall be filed and served on the Plan Administrator no later than thirty (30) calendar
24 days after the Effective Date.

25 2. Professional Fees

26 All Professionals seeking an award by the Bankruptcy Court of compensation for services
27 rendered or reimbursement for expenses incurred through and including the Effective Date in
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1 accordance with section 503(b) of the Bankruptcy Code, to the extent not already paid as a result
2 of interim applications for such payment, shall file their respective final applications for allowance
3 of compensation for services rendered and reimbursement of expenses incurred through the
4 Effective Date by no later than that date that is thirty (30) calendar days after the Effective Date or
5 such other date as may be fixed by the Bankruptcy Court. Such Professional fee and expense
6 Claims shall be paid in full in such amounts as are Allowed by the Bankruptcy Court (i) on the
7 date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or
8 as soon thereafter as is reasonably practicable, or (ii) upon such other terms as may be mutually
9 agreed upon by such Holder of an Administrative Expense Claim and the Plan Administrator.

10 3. Statutory U.S. Trustee Fees

11 All United States Trustee fees payable by each Estate pursuant to 28 U.S.C. § 1930 shall
12 be paid in full by each Estate in accordance with the Plan without the need for the Office of the
13 United States Trustee to file any request for payment.

14 **C. Priority Tax Claims**

15 As provided under Bankruptcy Code section 1123(a)(1), Priority Tax Claims are not
16 classified for purposes of voting on, or receiving distributions under, the Plan. Accordingly,
17 holders of Priority Tax Claims are not entitled to vote on this Plan.

18 To the extent that Allowed Priority Claims have not already been paid, satisfied or
19 otherwise released prior to the Effective Date, and except to the extent that a Holder of an Allowed
20 Priority Tax Claim agrees to a different treatment, on the later of the Effective Date or the date
21 such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is
22 reasonably practicable, the Trustee shall pay to each Holder of an Allowed Priority Tax Claim, in
23 full and final satisfaction, settlement and release and in exchange for such Claim, an amount in
24 Cash equal to the unpaid amount of such Allowed Priority Tax Claim plus any interest that may be
25 owing under Bankruptcy Code section 511, from either the assets of the Estate of Second Street
26 Properties or the assets of the Estate of Berkeley Properties.

27 **V.**

28 **CLASSIFICATION OF CLAIMS AND INTERESTS**

1 **A. Summary of Classification.**

2 This Plan is intended to address all Claims and Interests against the Debtors and
3 any property or assets of the Debtors or their Estates, of whatever character. Claims and Interests,
4 other than Administrative Expense Claims and Priority Tax Claims, are classified for all purposes
5 including voting (unless otherwise specified), confirmation and distribution pursuant to the Plan as
6 set forth below.

7 A Claim or Interest is placed in a particular Class only to the extent that the Claim
8 or Interest falls within the description of that Class, and is classified in other Classes to the extent
9 that any portion of the Claim or Interest falls within the description of such other Classes. A Claim
10 or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the
11 Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such
12 Claim or Interest has not been paid, released or otherwise satisfied prior to the Effective Date.
13 Multiple Proofs of Claim filed by a Claim Holder which qualify for inclusion within the same
14 Class shall be aggregated, and if Allowed, shall constitute a single Allowed Claim.

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20 **B. Classes Under the Plan.**

21 Class 1	Priority Non-Tax Claims	Unimpaired, deemed to accept
22 Class 2	Miscellaneous Secured Claims (each secured creditor in a separate class identified as Class 2A, 2B, etc.)	Unimpaired, deemed to accept
23 Class 3	Disputed CraneTech Claims	Unimpaired, deemed to accept
24 Class 4	Local 164B Claim	Impaired, entitled to vote, but have consented to treatment by settlement
25 Class 5	General Unsecured Claims Against Berkeley Properties	Impaired, entitled to vote
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Class 6	General Unsecured Claims Against Second Street Properties	Impaired, entitled to vote
Class 7	Interests in Second Street Properties	Impaired, entitled to vote
Class 8	Interests in Berkeley Properties	Unimpaired, not entitled to vote

VI.

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

A. Class 1 – Priority Non-Tax Claims.

1. Impairment and Voting.

Class 1 is unimpaired. Holders of Priority Non-Tax Claims are deemed to have accepted this Plan under Bankruptcy Code section 1126(f) and are not entitled to vote on the Plan.

2. Treatment.

Each Holder of an Allowed Class 1 Claim, unless otherwise mutually agreed upon by the Holder of such Claim and the Debtor, will receive Cash in an amount equal to such Allowed Class 1 Claim on the later of (a) the Initial Distribution Date, or (b) the date such Claim becomes an Allowed Claim pursuant to a Final Order, or as soon thereafter as is practicable, from either the Estate of Second Street Properties or the Estate of Berkeley Properties, as applicable.

B. Class 2 – Miscellaneous Secured Claims.

1. Impairment and Voting.

Class 2 is unimpaired under the Plan. Holders of Miscellaneous Secured Claims are deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan. For purposes of distributions under the Plan, each holder of a Miscellaneous Secured Claim in Class 2 is considered to be in its own separate subclass within Class 2, and each such subclass is deemed to be a separate Class for purposes of the Plan.

2. Alternative Treatment.

1 On the Initial Distribution Date, the Plan Administrator shall select one of the
2 following alternative treatments for each Allowed Miscellaneous Secured Claim in Class 2, which
3 treatment shall be in full and final satisfaction, settlement, release, and discharge of, and exchange
4 for, such Allowed Miscellaneous Secured Claim:

5 a. *Abandonment or Surrender.*

6 The Plan Administrator will abandon or surrender to the holder of such Claim the property
7 securing such Claim, in full satisfaction and release of such Claim.

8 b. *Cash Payment.*

9 The Plan Administrator will pay to the holder of such Claim Cash equal to the amount of
10 such Claim, or such lesser amount to which the holder of such Claim shall agree, in full
11 satisfaction and release of such Claim, from either the assets of the Estate of Second Street
12 Properties or the assets of the Estate of Berkeley Properties, as applicable.

13 c. *Unimpairment.*

14 The Plan Administrator will leave the rights of the holder of such Claim unimpaired or
15 provide for such other treatment as necessary to otherwise satisfy the requirements of the
16 Bankruptcy Code.

17 3. Unsecured Deficiency Claim.

18 Any Unsecured Deficiency Claim asserted by a Holder of an Allowed Miscellaneous
19 Secured Claim in Class 2 shall be filed with the Bankruptcy Court within thirty (30) days
20 following the date of the abandonment or surrender of such Creditor's collateral or such Creditor's
21 receipt of its distribution under the Plan. Any such Allowed Unsecured Deficiency Claim shall be
22 treated as a Class 5 General Unsecured Claim against Berkeley Properties or a Class 6 General
23 Unsecured Claim against Second Street Properties, as applicable.

24 **C. Class 3 – Disputed CraneTech Claims.**

25 1. Impairment and Voting.

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1 Class 3 is unimpaired under the Plan. The Holder of the Disputed CraneTech Claims is
2 deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code and is not
3 entitled to vote on the Plan.

4 2. Initial Treatment of Claim.

5 The Class 3 Disputed CraneTech Claims are not Allowed as the validity and priority of
6 their asserted status as secured claims is subject to the CraneTech Adversary Proceeding. Unless
7 and until a Final Order is entered allowing the Disputed CraneTech Claims in any amount, the
8 Plan Administrator shall reserve for the Disputed CraneTech Claims as if they were Class 5
9 General Unsecured Claims Against Berkeley Properties, as provided in Section VIII.I.2 of the
10 Plan.

11 3. Treatment if Claim is Allowed by a Final Order.

12 If the Bankruptcy Court enters a Final Order allowing the Disputed CraneTech Claims as
13 Secured Claims, then the Plan Administrator shall pay to the holder of such Claims Cash equal to
14 the amount of such Claims, or such lesser amount to which the Holder of such Claims shall agree,
15 in full satisfaction and release of such Claims, from either the assets of the Estate of Second Street
16 Properties or the assets of the Estate of Berkeley Properties, as applicable.

17 If the Bankruptcy Court enters a Final Order allowing the Disputed CraneTech Claims but
18 only as General Unsecured Claims against either or both Estates, then the Disputed CraneTech
19 Claims shall receive the treatment provided in this Article VI of the Plan for an Allowed General
20 Unsecured Claim against the relevant Estate or Estates.

21 If the Disputed CraneTech Claims are Allowed, either as Secured Claims or General
22 Unsecured Claims, they shall be limited to one recovery from the Debtors' Estates. In other
23 words, the same Claim asserted against each Estate shall receive a distribution from only one
24 Estate.

25 **D. Class 4 – Local 164B Claim.**

26 1. Impairment and Voting.

1 Class 4, which is comprised of the Local 164B Claim, is impaired under the Plan. The
2 Holder of the Local 164B Claim is entitled to vote on the Plan, however the Holder of the
3 Local 164B Claim has consented to its Claim's treatment in this Plan as described below.

4 2. Treatment.

5 The Proponents and Local 164B have reached an agreement on the treatment of the
6 Local 164B Claim, which is as follows. On the Effective Date, the Plan Administrator on behalf
7 of Berkeley Properties shall execute a deed of trust (the "Berkeley Deed of Trust") that encumbers
8 the Berkeley Real Property and secures payment of the contingent Local 164B Claim in the full
9 amount asserted by Local 164B – *i.e.*, \$26,702,858. The Berkeley Deed of Trust shall be in the
10 form attached to the Plan Supplement. If (a) New Pacific Steel has not completely or partially
11 withdrawn from Local 164B before July 1, 2020, or (b) New Pacific Steel has completely or
12 partially withdrawn from Local 164B before July 1, 2020, and has completely satisfied all
13 resulting withdrawal liability obligations to Local 164B when and as due, then, no later than 60
14 days following the occurrence of either (a) or (b) above, Local 164B shall execute and deliver to
15 the Plan Administrator a substitution of trustee and full reconveyance that reconveys the Berkeley
16 Deed of Trust.

17 If New Pacific Steel completely or partially withdraws from Local 164B before July 1,
18 2020 ~~and subsequently fails to cure any withdrawal liability payment when and as due~~, then Local
19 164B shall promptly deliver written notice of the same to the Plan Administrator, ~~which shall~~
20 ~~constitute notice pursuant to~~ accompanied by notice of Local 164B's calculation of the amount of
21 the withdrawal liability of Second Street Properties that may be triggered under ERISA § 4204, 29
22 U.S.C. §§ 1384 (and such notice shall satisfy any notice requirement to the Plan Administrator
23 under ERISA § 4219(b)(1), 29 U.S.C. § 1399(b)(1). ~~The~~ Thereafter, the Plan Administrator may
24 request review of and contest ~~the amount of the withdrawal liability asserted to be triggered by~~
25 Local 164B, B's calculation of the amount of Second Street Properties' withdrawal liability that
26 may be triggered in accordance with ERISA §§ 4219(b); and 4221, 29 U.S.C. §§ 1399(b); and
27 1401. Except as provided in the preceding sentence and notwithstanding any other provision
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1 hereof, neither the Plan Administrator, the Post-Confirmation Committee, nor any other party
2 may, or shall have standing to, file or prosecute any objection to, seek review or reconsideration
3 of, or request estimation of the Local 164B Claim. If the withdrawal liability is uncontested
4 and/or confirmed through the dispute resolution procedures of ERISA § 4221, 29 U.S.C. § 1401,
5 then the Local 164B Claim shall be an Allowed Claim.

6 If New Pacific Steel, following a complete or partial withdrawal from Local 164B that
7 occurs prior to July 1, 2020, fails to make any withdrawal liability payment when and as due, and
8 such failure to pay is not cured by New Pacific Steel or the Plan Administrator is unable in the 60-
9 day period following receipt of written notification as provided in ERISA § 4219(c)(5)(A), 29
10 U.S.C. § 1399(c)(5); and the Plan Administrator subsequently fails to pay said Allowed Local
11 164B Claim as and when provided by law or the parties' agreement, then Local 164B shall
12 become entitled to exercise any and all remedies available to it under the Berkeley Deed of Trust,
13 including foreclosing on the Berkeley Real Property pursuant to the power of sale in the Berkeley
14 Deed of Trust, ~~provided, however, that the Plan Administrator shall have 60 days to cure any~~
15 ~~default under the Berkeley Deed of Trust before Local 164B commences the non-judicial~~
16 ~~foreclosure process under the Berkeley Deed of Trust.~~

17 In the event that Local 164B conducts a non-judicial foreclosure on the Berkeley Real
18 Property in order to collect on the Local 164B Claim, Local 164B shall not be entitled to any
19 Claim against either Estate for any deficiency. Such a deficiency claim shall be deemed fully and
20 finally waived as of the date title to the Berkeley Real Property passes pursuant to such a non-
21 judicial foreclosure sale. The Berkeley Deed of Trust and the foregoing provisions regarding the
22 Berkeley Deed of Trust shall constitute the sole source of recovery against either Estate for the
23 Local 164B Claim. Local 164B also waives any and all existing or potential future claims for
24 partial or complete withdrawal liability against the Class 7 Interest Holders, to the extent such
25 claims may arise under applicable non-bankruptcy law. For clarification, the distribution of the
26 Initial Distributable Cash and the Periodic Distributable Cash made to holders of allowed Claims
27 pursuant to the Plan from the payment of rents and other monies received during the term of this
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1 Plan shall not trigger withdrawal liability under ERISA because the Berkeley Deed of Trust
2 satisfies the requirement for the posting of a bond under 29 U.S.C. § 1384(a)(3) and Local 164B
3 consents thereto.

4 **E. Class 5 – General Unsecured Claims Against Berkeley Properties.**

5 1. Impairment and Voting.

6 Class 5 is impaired under the Plan. Holders of General Unsecured Claims against
7 Berkeley Properties are entitled to vote on the Plan.

8 2. Treatment.

9 On or as soon as practicable following the Effective Date, each Holder of such an Allowed
10 General Unsecured Claim against Berkeley Properties shall receive a Pro Rata share of the Initial
11 Distributable Cash of the Berkeley Properties Estate on the Initial Distribution Date and a Pro Rata
12 share of the Periodic Distributable Cash of the Berkeley Properties Estate on such Periodic
13 Distribution Dates as are established by the Plan Administrator. As set forth in the definition of
14 Initial Distributable Cash, no part of the Speyside Sale Proceeds constitutes the Initial
15 Distributable Cash of the Berkeley Properties Estate. To the extent there are sufficient funds with
16 which to pay it, Holders of Allowed General Unsecured Claims against Berkeley Properties are
17 entitled to interest at the Legal Rate.

18 **F. Class 6 – General Unsecured Claims Against Second Street Properties.**

19 1. Impairment and Voting.

20 Class 6 is impaired under the Plan. Holders of General Unsecured Claims against Second
21 Street Properties are entitled to vote on the Plan.

22 2. Treatment.

23 On or as soon as practicable following the Effective Date, each Holder of such an Allowed
24 General Unsecured Claim against Second Street Properties shall receive a Pro Rata share of the
25 Initial Distributable Cash of the Second Street Properties Estate on the Initial Distribution Date
26 and a Pro Rata share of the Periodic Distributable Cash of the Second Street Properties Estate on
27 such Periodic Distribution Dates as are established by the Plan Administrator. To the extent there
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1 are sufficient funds with which to pay it, Holders of Allowed General Unsecured Claims against
2 Second Street Properties are entitled to interest at the Legal Rate.

3 **G. Class 7 – Interests in Second Street Properties**

4 1. Impairment and Voting.

5 Class 7 is impaired under the Plan. Holders of Interests in this Class are entitled to vote on
6 the Plan.

7 2. Treatment.

8 Holders of Class 7 Interests in Second Street Properties shall receive common stock in
9 Reorganized Second Street Properties in an amount equal to the common stock held by such
10 Interest Holders on the Petition Date, as follows:

<u>Interest Holder</u>	<u>Security Class</u>	<u>Number of Shares and % of Issued and Outstanding Shares</u>
CAMLEE CORPORATION 89 Alvarado Road Berkeley, CA 94705	Common	27,000 shares, or 6.522%
DAVI ASSOCIATES 129 Sunnyglen Drive Vallejo, CA 94591	Common	29,000 shares, or 7.004%
EMMERICHS ASSOCIATES 1674 Glazier Drive Concord, CA 94521	Common	9,000 shares, or 2.174%
TRI-PACIFIC, INC. 85 Lakeside Drive Corte Madera, CA 94925-1037	Common	340,000 shares or 82.126%
WESTRIDGE CAPITAL 89 Alvarado Road Berkeley, CA 94705	Common	9,000 shares or 2.174%

21 Such newly issued common stock shall be represented by stock certificates issued by the
22 Plan Administrator on behalf of Reorganized Second Street Properties on the Effective Date.
23 Stock certificates representing the pre-petition Interests held by such Holders on the Petition Date
24 shall be deemed cancelled as of the Effective Date of the Plan.

25 Holders of Class Interests shall also receive a Pro Rata share of the Periodic Distributable
26 Cash, if any, remaining after payment of Class 5 General Unsecured Claims against Berkeley
27 Properties and Class 6 General Unsecured Claims Against Second Street Properties in full with
28 interest at the Legal Rate. Such distributions, if any, shall be made by the Plan Administrator on

1 such Periodic Distribution Dates as are established by the Plan Administrator. Among other
2 things, such distributions to Holders of Class 7 Interests may include distributions from the
3 proceeds of a sale of the Berkeley Real Property after such proceeds are used to satisfy all Class 5
4 General Unsecured Claims against Berkeley Properties and Class 6 General Unsecured Claims
5 Against Second Street Properties in full with interest at the Legal Rate. The Plan Administrator
6 shall also give advance written notice to Holders of Allowed Class 7 Interests prior to listing the
7 Berkeley Real Property for sale.

8 Holders of Class 7 Interests shall be deemed to grant to the Post-Confirmation an
9 irrevocable proxy to exercise all voting and approval rights represented by the Interests under the
10 Debtors' organizational documents until such time as all Holders of Allowed Claims in Classes 5
11 and 6 are repaid in full with interest at the Legal Rate. Upon such repayment, the proxy shall be
12 automatically revoked.

13 **H. Class 8 – Interests in Berkeley Properties**

14 1. Impairment and Voting.

15 Class 8 is unimpaired under the Plan. Holders of Interests in this Class are deemed to
16 accept the Plan.

17 2. Treatment.

18 Holders of Class 8 Interests in Berkeley Properties shall retain their Interests in
19 Reorganized Berkeley Properties, which will be governed by an Amended and Restated Operating
20 Agreement to be attached to the Plan Supplement. As described in Article III of this Plan, the sole
21 Holder of Interests in Berkeley Properties is Second Street Properties. Thus, after the proceeds
22 produced by the assets of Berkeley Properties are used to pay Holders of Allowed Class 5 Claims
23 against Berkeley Properties, said proceeds will be used to make distributions to Holders of
24 Allowed Class 6 Claims against Second Street Properties and Class 7 Interests in Second Street
25 Properties in the manner described above.

26 **VII.**

27 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

28 **A. Assumption or Rejection**

1 Subject to Bankruptcy Code section 365, unless expressly assumed under the Plan, all
2 unexpired leases and executory contracts not previously assumed, assigned or rejected pursuant to
3 Final Order of the Bankruptcy Court entered prior to the Effective Date or not subject to a pending
4 motion to assume, assign or reject filed with the Bankruptcy Court prior to the Effective Date shall
5 be deemed rejected as of the Effective Date. Notwithstanding the foregoing, none of the Debtors'
6 pre-petition worker's compensation insurance policies shall be deemed rejected by this
7 Section VII.A of the Plan.

8 **B. Claims Arising Out of Rejection**

9 Any Claims arising out of the rejection of an executory contract or unexpired lease
10 pursuant to the Plan must be filed with the Bankruptcy Court by no later than thirty (30) calendar
11 days after the Effective Date. If no Proof of Claim is filed within such time period, it shall be
12 conclusively presumed that no such Claim exists and will be forever barred from receiving a
13 distribution from the Plan Administrator or the Debtors. Potential Claims arising from rejection
14 under this section will be considered Disputed Claims for purposes of Plan implementation and
15 calculation of the Disputed Claims Reserve for each Estate.

16 **VIII.**

17 **IMPLEMENTATION AND EXECUTION OF THE PLAN**

18 **A. Funding the Plan**

19 The Plan is a reorganizing plan and shall be funded with the Cash on hand in each
20 Debtor's Estate as of the Effective Date, including the Speyside Sale Proceeds, Cash received
21 from New Pacific Steel under the Pacific Steel Lease, any Cash obtained from a sale of the
22 Berkeley Real Property following the reconveyance of the Berkeley Deed of Trust, and/or Claims
23 that may be recovered for the benefit of the Estates by the Plan Administrator.

24 **B. Corporate Action.**

25 On the Effective Date and automatically and without further action, (i) each existing
26 member of the board of directors of Second Street Properties will be deemed to have resigned,
27 (ii) the Plan Administrator shall be appointed as Plan Administrator under the Plan ~~and as director~~
28

1 ~~and~~, (iii) one nominee of the Plan Administrator will be appointed to serve as the sole officer,
2 chairman of the board, and one of three directors of Second Street Properties, ~~(iii) two~~ with the
3 identity of said individual set forth in the Plan Supplement (iv) two additional nominees of the
4 Plan Administrator will be appointed to serve as the second and third directors of Second Street
5 Properties, whose identities will be set forth in the Plan Supplement, ~~(iv)~~ the Amended and
6 Restated Bylaws for Second Street Properties shall become effective, ~~(v)~~ the Amended and
7 Restated Operating Agreement for Berkeley Properties shall become effective, and ~~(vi)~~ pursuant
8 to California law, the Debtors shall be authorized and empowered to take all such actions and
9 measures necessary to implement and administer the terms and conditions of the Plan.

10 The Amended and Restated Bylaws and the Amended and Restated Operating Agreement
11 will each incorporate the terms of the Plan as necessary or appropriate and prohibit the issuance of
12 nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code.

13 **C. Revesting.**

14 Except as otherwise provided for in the Plan or the Confirmation Order, on the Effective
15 Date, without any further action, the each of the Reorganized Debtors will be vested with all of the
16 Estate Assets held by such Debtor prior to the Effective Date, free and clear of all Claims, liens,
17 interests, and other encumbrances, and shall have all of the powers of a corporation and limited
18 liability company, as applicable, under applicable law. As of the Effective Date, and except as
19 provided in this Plan, the Reorganized Debtors may operate their business and use, acquire and
20 dispose of property and settle and compromise claims or interests without the supervision of the
21 Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

22 **D. Plan Administrator.**

23 1. Appointment, Removal, Duration of Appointment.

24 The appointment of the initial Plan Administrator identified in the Plan Supplement shall
25 become effective on the Effective Date. Any successor Plan Administrator shall be appointed by
26 the Post-Confirmation Committee.

1 ~~The~~If the Plan Administrator is an individual, the Plan Administrator shall serve as the sole
2 officer of Reorganized Second Street Properties, one of Reorganized Second Street Properties'
3 three directors; and its chairman of the board. If the Plan Administrator is a corporate entity, the
4 Plan Administrator shall appoint one of its members, officers, employees, or agents to be the sole
5 officer, chairman of the board, and one of the three directors of Reorganized Second Street
6 Properties, in addition to appointing the other two directors of Reorganized Second Street
7 Properties. The Plan Administrator shall have the duties with respect to both the Estates of
8 Second Street Properties and Berkeley Properties as identified in this Plan, and described in more
9 detail below.

10 The Plan Administrator may resign upon not less than thirty (30) calendar days' prior
11 written notice to the Post-Confirmation Committee, provided that no such resignation shall be
12 effective until the earlier of (i) the expiration of the thirty (30) calendar day notice period of the
13 resignation, or (ii) the date the Plan Administrator receives the Post-Confirmation Committee's
14 written acknowledgement of the resignation.

15 The Plan Administrator may be removed by the Post-Confirmation Committee in its sole
16 and absolute discretion for any or no reason, which removal shall become effective upon the
17 delivery to the removed Plan Administrator of a written notice of removal by the Post-
18 Confirmation Committee.

19 Unless the Plan Administrator resigns, is removed, or otherwise is unable to continue, the
20 Plan Administrator's term shall expire upon payment in full of all Holders of Class 5 and Class 6
21 Claims.

22 2. Powers and Duties of the Plan Administrator.

23 The Plan Administrator shall administer the Reorganized Debtors' Estates, and the Estate
24 Assets, and make distributions from the proceeds of the Estate Assets in accordance with the Plan,
25 subject to the oversight of the Post-Confirmation Committee where specifically provided for
26 herein. Subject to oversight by the Post-Confirmation Committee as to certain material
27 transactions and other matters where specified herein, including matters described under Section
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1 VIII.D.8 the Plan Administrator shall be authorized, empowered and directed to take all actions on
2 behalf of the Debtors necessary or desirable to comply with the Plan and fulfill the duties and
3 obligations arising hereunder including, without limitation, to:

- 4 a) Object to the allowance of Claims;
- 5 b) Open, maintain and administer bank accounts;
- 6 c) Engage employees and professional persons as necessary or desirable to
7 assist in carrying out the provisions of and purposes underlying the Plan;
- 8 d) Incur and pay reasonable fees, costs, and expenses in connection with
9 administering the Estates and implementing the terms of the Plan, including the reasonable fees,
10 costs and expenses of retained professionals and including the reasonable expenses of the
11 members of the Post-Confirmation Committee, in accordance with the provisions of the Plan;
- 12 e) Expend the Estate Assets as necessary to maintain the value of the Estate
13 Assets during the Plan Administrator's term;
- 14 f) Pay the reasonable and necessary expenses incurred by the Post-
15 Confirmation Committee;
- 16 g) Investigate, analyze, commence, prosecute, litigate, compromise and
17 otherwise administer the Causes of Action, and take all other necessary and appropriate steps to
18 collect, recover, settle, liquidate or otherwise reduce the Estate Assets to Cash;
- 19 h) Approve compromises of the Causes of Action and all Claims and execute
20 all necessary and appropriate documents to effectuate such settlements, without notice to any party
21 and without further order of the Bankruptcy Court;
- 22 i) Administer, sell, liquidate, encumber, or otherwise dispose of the Estate
23 Assets in accordance with the terms of the Plan, including without limitation the sale or
24 refinancing of the Berkeley Real Property;
- 25 j) Represent the Reorganized Debtors before the Bankruptcy Court and other
26 courts of competent jurisdiction, if necessary, with respect to matters regarding the administration
27 of the Reorganized Debtors;
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1 k) Comply with any applicable orders of the Bankruptcy Court and any other
2 court of competent jurisdiction, and all applicable laws and regulations, concerning the matters set
3 forth herein;

4 l) Maintain the Reorganized Debtors' books and records;

5 m) Make all distributions to the Holders of Allowed Claims provided for, or
6 contemplated by, the Plan;

7 n) Establish the Disputed Claims Reserve for each Estate;

8 o) Establish the Administrative Reserve for each Estate;

9 p) Make all tax withholdings, file tax information returns, make tax elections
10 by and on behalf of the Reorganized Debtors and file tax returns for the Reorganized Debtors
11 (including paying for the cost of preparation of all tax returns for the Reorganized Debtors). To
12 the extent that one or more of the Reorganized Debtors file tax returns on a consolidated basis
13 with any Class 7 Interest Holder, the Reorganized Debtors shall work and cooperate in good faith
14 to make all tax withholdings and file any tax returns including any obligation for payment;

15 q) Pay any taxes imposed on the Reorganized Debtors or incurred or otherwise
16 attributable to the Reorganized Debtors;

17 r) Carry insurance coverage if the Plan Administrator deems such insurance
18 necessary and appropriate in his sole and absolute discretion unless otherwise provided by this
19 Plan;

20 s) Exercise such other powers as may be vested in the Plan Administrator
21 pursuant to the Plan, the Confirmation Order, or other Final Orders of the Bankruptcy Court;

22 t) Execute any documents, instruments, contracts or agreements necessary or
23 desirable to carry out the powers and duties of the Reorganized Debtors;

24 u) Provide to the Post-Confirmation Committee and Class 7 Interest Holders
25 such reports on the progress of the Plan as may be reasonably requested by the Post-Confirmation
26 Committee or Class 7 Interest Holders, and file the reports on the progress of the Plan as provided
27 in Section VIII.D.7 of this Plan; and
28

1 v) Act as the authorized representative of the Reorganized Debtors and the
2 Estates for all purposes consistent with the Plan.

3 3. Fees and Expenses

4 Subject to and in accordance with the provisions of the Plan, the Confirmation Order, and
5 any other Final Order of the Bankruptcy Court, the Plan Administrator shall be entitled to receive
6 reasonable compensation for services rendered on behalf of the Debtors and reimbursement of
7 reasonable and necessary expenses. The compensation of the Plan Administrator shall be
8 disclosed in a filing with the Bankruptcy Court. Compensation of the Plan Administration and
9 other costs and expenses of administration of the Debtors, including, without limitation, the fees
10 and expenses of retained counsel, accountants or other professionals, shall be paid out of the
11 Estate Assets, specifically the Administrative Reserves.

12 The Plan Administrator shall not be required to file a fee application or otherwise seek
13 approval of the Bankruptcy Court to receive compensation, including compensation for counsel
14 for the Plan Administrator and other retained professionals, but such compensation shall be
15 subject to the oversight of the Post-Confirmation Committee as follows: The fees, costs and
16 expenses of the Plan Administrator, counsel for the Post-Confirmation Trustee and any other
17 retained professionals, may be paid out of the Estate Assets not earlier than (a) ten (10) Business
18 Days after written notice of the proposed action and service of the relevant invoices and/or other
19 relevant documentation on the Post-Confirmation Committee and a majority of the Post-
20 Confirmation Committee has not objected to such action in writing, or (b) in the event of objection
21 by a majority of the Post-Confirmation Committee received by the Plan Administrator within such
22 ten (10) day period, the date of approval by Final Order of the Bankruptcy Court.

23 4. Retention of Professionals

24 On or after the Effective Date, and subject to Section VIII.D.8, the Plan Administrator may
25 retain such professionals (including, without limitation, attorneys and accountants) as may be
26 deemed necessary or desirable by the Plan Administrator to assist in carrying out the provisions of
27 and purposes underlying the Plan. The Plan Administrator may retain Professionals who
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1 represented parties in interest the Bankruptcy Case, including counsel retained by the Debtors or
2 the Committee prior to the Effective Date. The Plan Administrator may retain such professionals
3 without the need for Bankruptcy Court approval.

4 5. No Recourse to Estate Representatives

5 Notwithstanding that the Allowed amount of any particular Claim is reconsidered under
6 the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an
7 amount for which there is insufficient Cash in the relevant fund or reserve to provide a recovery
8 equal to that received by other Holders of Allowed Claims in the relevant Class, no Claim Holder
9 shall have recourse to the Debtors, the Debtors' Estates, the Plan Administrator, the Committee,
10 the Post-Confirmation Committee, or any of their respective professionals, or their agents
11 (including employees, officers and the like), successors or assigns, or the Holder of any other
12 Claim, or any of their respective property. However, nothing in the Plan shall modify any right of
13 a Holder of a Claim under section 502(c) of the Bankruptcy Code. Thus, the Bankruptcy Court's
14 entry of an estimation order under Bankruptcy Code section 502(c) may limit the distribution to be
15 made on Disputed Claims, regardless of the amount finally Allowed on account of such Disputed
16 Claims.

17 6. Indemnification of Plan Administrator

18 The Plan Administrator and his agents shall not be liable for actions taken or omitted in his
19 or their capacity as the Plan Administrator, or on behalf of, the Plan Administrator, except those
20 acts arising out of his or their own willful misconduct, gross negligence, bad faith, self-dealing,
21 breach of fiduciary duty, or ultra vires acts, and each shall be entitled to indemnification and
22 reimbursement for fees and expenses in defending any and all of his or their actions or inactions in
23 his or their capacity as Plan Administrator, or on behalf of, the Debtors, except for any actions or
24 inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of
25 fiduciary duty, or ultra vires acts or breach of any duty imposed post-confirmation as officers,
26 directors, or managers of the Debtors under applicable non-bankruptcy law. Any indemnification
27 claim under this section shall be satisfied from the Estate Assets and any insurance coverages
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1 procured by the Plan Administrator on behalf of the Debtors. The Plan Administrator shall be
2 entitled to rely, in good faith, on the advice of his retained professionals.

3 7. Reporting Requirements

4 Within one hundred twenty (120) calendar days following the Effective Date, the Plan
5 Administrator shall file a report with the Bankruptcy Court setting forth the status of
6 implementation of the Plan, including the amount distributed to Holders of Allowed Claims on the
7 Initial Distribution Date, a good faith valuation of the remaining Estate Assets, and amounts
8 reserved for the Administrative Reserves and Disputed Claims Reserves. Further reports shall be
9 filed every one hundred twenty (120) calendar days setting forth the ongoing status of
10 implementation of the Plan through the closing of the Bankruptcy Case.

11 8. Limitation of Powers

12 a. *Asset Disposition*

13 The Plan Administrator must obtain approval of the Post-Confirmation Committee
14 concerning any sale or other disposition of any Estate Asset, or any release, modification or
15 waiver of existing rights as to an asset of the Estates, if the asset at issue has a fair market value in
16 excess of \$50,000. The Post-Confirmation Committee shall be deemed to have approved any such
17 sale or disposition if it fails to object thereto in a writing received by the Plan Administrator within
18 ten (10) Business Days following written notification to the Post-Confirmation Committee by the
19 Plan Administrator of the intended sale, disposition or other matter provided for in this subsection.
20 For the avoidance of doubt, any proposed sale of the Berkeley Real Property shall require approval
21 of the Post-Confirmation Committee under this Section.

22 b. *Prosecution of Causes of Action*

23 The Plan Administrator must obtain approval of the Post-Confirmation Committee
24 concerning the prosecution of any Causes of Action proposed by the Plan Administrator involving
25 an amount in controversy in excess of \$50,000. The Post-Confirmation Committee shall be
26 deemed to have approved any such prosecution if it fails to object thereto in a writing received by
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1 the Plan Administrator within ten (10) Business Days following written notification to the Post-
2 Confirmation Committee by the Plan Administrator of the intended prosecution.

3 c. *Settlement and Compromise*

4 The Plan Administrator must obtain approval of the Post-Confirmation Committee
5 concerning any compromise or settlement of Causes of Action proposed by the Plan Administrator
6 involving Claims in excess of \$50,000. The Post-Confirmation Committee shall be deemed to
7 have approved any such compromise or settlement if it fails to object thereto in a writing received
8 by the Plan Administrator within ten (10) Business Days following written notification to the Post-
9 Confirmation Committee by the Plan Administrator of the intended compromise or settlement.

10
11 d. *Retention of Professionals*

12 The Plan Administrator must obtain approval of the Post-Confirmation Committee
13 concerning the retention by the Plan Administrator of professionals. The Post-Confirmation
14 Committee shall be deemed to have approved any such retention if it fails to object thereto in a
15 writing received by the Plan Administrator within ten (10) Business Days following written
16 notification to the Post-Confirmation Committee by the Plan Administrator of the intended
17 retention of the professional.

18 e. *Approval by Post-Confirmation Committee*

19 Wherever the Plan provides for consultation with or approval or oversight by the Post-
20 Confirmation Committee, the Plan Administrator shall provide the Post-Confirmation Committee
21 with notice of the action(s) or inaction(s) the Plan Administrator proposes to take at least ten (10)
22 Business Days in advance of any such proposed action; provided, however, that the Post-
23 Confirmation Committee may waive the ten (10) day prior notice requirement by a vote of a
24 majority of the members of the Post-Confirmation Committee.

25 Unless otherwise specifically stated in the Plan, the Plan Administrator shall not be
26 required to obtain Bankruptcy Court approval with respect to any proposed action(s) or inaction(s)
27 (a) authorized by the Plan, or (b) to which the Post-Confirmation Committee has approved. The

1 Post-Confirmation Committee shall be deemed to have approved a proposed action or inaction if a
2 majority of the Post-Confirmation Committee has not objected to such action or inaction within
3 ten (10) Business Days of notice by the Plan Administrator. The Plan Administrator shall consult
4 with, or obtain the prior approval of the Post-Confirmation Committee as expressly provided for in
5 the Plan, and the Plan Administrator shall not act, or refrain from acting, without consultation with
6 or obtaining prior approval of the Post-Confirmation Committee if such consultation or approval is
7 required under the Plan.

8 The Plan Administrator shall not be empowered to seek review by the Bankruptcy Court or
9 any other court of competent jurisdiction of the business judgment of the Post-Confirmation
10 Committee exercised in discharging its oversight duties as set forth under the Plan; provided,
11 however, the Plan Administrator shall be empowered, in his sole and absolute discretion, to seek
12 review by the Bankruptcy Court or other court of competent jurisdiction of any act taken or
13 omitted by the Post-Confirmation Committee, its members in their capacity as such, its agents and
14 professionals arising out of willful misconduct, gross negligence, bad faith, self-dealing, breach of
15 fiduciary duty or *ultra vires* acts.

16 Notwithstanding any provision herein to the contrary, the Plan Administrator and his
17 agents and professionals may refuse to take any actions they determine, in their sole and absolute
18 discretion, would violate their duties under this Plan.

19 With respect to any Cause of Action, Claim, transaction or other matter directly or
20 indirectly involving any member of the Post-Confirmation Committee, such member(s) shall
21 recuse himself or herself from any decision affecting such litigation, transaction or other matter.
22 The Plan Administrator may seek recusal of any member of the Post-Confirmation Committee by
23 agreement with a majority of the remaining members of the Post-Confirmation Committee.

24 f. *Actions Affecting Interest Holders.*

25 The Plan Administrator must give at least thirty (30) Business Days' advance written
26 notice to all Holders of Allowed Interests in Class 7 before doing any of the following:

- 27 (a) Amend the bylaws or charter of Second Street Properties;
- 28

- 1 (b) Dissolve Berkeley Properties;
- 2 (c) Enter into any agreement to merge Second Street Properties with any other
- 3 entity, including without limitation Berkeley Properties;
- 4 (d) Sell, encumber or refinance the Berkeley Real Property; or
- 5 (e) Change or revoke either of the Debtors' existing election to file income tax
- 6 returns on a consolidated basis with Second Street Properties' majority shareholder, Tri-Pacific,
- 7 Inc. Nothing contained in the Plan shall limit or otherwise prevent Tri-Pacific, Inc. from any legal
- 8 rights regarding its ability to make its own tax election including, but not limited to, discontinuing
- 9 filing income tax returns on a consolidated basis with the Reorganized Debtors.

10 The Plan Administrator may not undertake any of the above actions unless either (a) a

11 majority of the outstanding Interests in Second Street Properties approve the proposed action; or

12 (b) the Bankruptcy Court approves the proposed action. Failure of any Interest Holder to object to

13 any proposed action in the time provided in this subsection (f) will be deemed consent to the

14 proposed action.

15 **E. Post-Confirmation Committee**

16 1. Role of Post-Confirmation Committee

17 On the Effective Date, the Post-Confirmation Committee shall be established for the

18 purpose of overseeing the Plan Administrator's implementation of the Plan, administration of the

19 Estate Assets, and distributions on account of Allowed Claims under the Plan, as specifically

20 provided for herein. Unless otherwise specified in this Plan, any vote to be taken by or approval

21 given by the Post-Confirmation Committee shall require only a majority for approval.

22 2. Powers and Duties

23 The Post-Confirmation Committee will oversee certain decisions of the Plan Administrator

24 and approve certain material transactions in connection with the administration of the Estate

25 Assets, as specifically provided for herein.

26 The Post-Confirmation Committee shall meet and/or consult periodically with the Plan

27 Administrator and keep itself apprised of the affairs of the Debtors.

28

1 In discharging their duties as members of the Post-Confirmation Committee, such
2 members shall act in the best interests of creditors of the Debtors in the same manner as members
3 of an official committee of creditors appointed pursuant to Bankruptcy Code section 1102
4 discharge their duties to the creditor constituents represented by such committee.

5 3. Committee Members

6 The Post-Confirmation Committee shall be comprised of no more than seven (7) members
7 selected by the Committee from the present members of the Committee who are willing to serve
8 on the Post-Confirmation Committee on and after the Effective Date. The initial members of the
9 Post-Confirmation Committee shall be disclosed in the Plan Supplement, which will be filed with
10 the Bankruptcy Court at least 14 days prior to the Confirmation Hearing. In the event there is a
11 voting deadlock on the matters that are subject to the Post-Confirmation Committee's
12 consideration as provided herein, then to settle the deadlock a vote by the Plan Administrator shall
13 be solicited and shall be determinative, except in situations involving a conflict of interest on the
14 part of the Plan Administrator.

15 In the event of any change in the membership of the Post-Confirmation Committee, the
16 Committee shall promptly provide written notice of such change to the Plan Administrator and all
17 Holders of Interests in Class 7.

18 4. Termination

19 The Post-Confirmation Committee will remain in existence until the completion of
20 distributions to Holders of Allowed Class 5 and Class 6 Claims.

21 5. Limitation on Liability and Exculpation

22 Neither the members of the Post-Confirmation Committee nor the representatives or agents
23 of such members shall be liable for actions taken or omitted in their capacity as, or on behalf of,
24 the Post-Confirmation Committee, except those acts arising out of its or their own willful
25 misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts,
26 and each shall be entitled to indemnification and reimbursement for fees and expenses in
27 defending any and all of its actions or inactions in its capacity as, or on behalf of, the Post-

1 Confirmation Committee, except for any actions or inactions involving willful misconduct, gross
2 negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts. Any
3 indemnification claim under this section shall be satisfied from the Estate Assets and any
4 insurance coverages procured by the Plan Administrator on behalf of the Debtors. The Post-
5 Confirmation Committee shall be entitled to rely, in good faith, on the advice of its retained
6 professionals.

7 6. Fees and Expenses of Members

8 Subject to and in accordance with the provisions of the Plan, the Confirmation Order, and
9 any other Final Order of the Bankruptcy Court, each member of the Post-Confirmation Committee
10 shall be entitled to reimbursement of reasonable and necessary expenses incurred in carrying out
11 their duties as members of the Post-Confirmation Committee, which shall be paid out of the Estate
12 Assets, specifically the Administrative Reserves.

13 The members of the Post-Confirmation Committee shall not be required to file a fee
14 application or otherwise seek approval of the Bankruptcy Court to receive such reimbursement.

15 7. Retention and Payment of Professionals

16 On or after the Effective Date, the Post-Confirmation Committee may retain such
17 professionals (including, without limitation, attorneys and accountants) as may be deemed
18 necessary or desirable by the Post-Confirmation Committee to assist and advise the Post-
19 Confirmation Committee for purposes of carrying out the Post-Confirmation Committee's
20 oversight duties as specified under the Plan. The Post-Confirmation Committee may retain
21 Professionals who represented parties in interest the Bankruptcy Case, including counsel retained
22 by the Committee prior to the Effective Date.

23 The Post-Confirmation Committee shall not be required to file a fee application or
24 otherwise seek approval of the Bankruptcy Court to receive compensation for the reasonable fees,
25 costs and expenses of retained professionals.

26 **F. Avoidance Actions and Other Causes of Action**

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1 On the Effective Date, the Reorganized Debtors shall be vested with the right to pursue the
2 Avoidance Actions, the Causes of Action, and any other causes of action, defenses, requests for
3 subordination or recharacterization, or requests for any other equitable or legal relief that was or
4 could have been asserted pre-petition by the Debtors against any party, with the exception of all
5 claims released pursuant to the Plan and Confirmation Order. The Plan Administrator on behalf of
6 the Reorganized Debtors may pursue, settle or release all such actions in accordance with the best
7 interest of and for the benefit of the holders of Allowed Claims and Interests, subject to the
8 oversight of the Post-Confirmation Committee as provided in Section VIII.D.8 of this Plan..

9 **G. Claim Objections and Estimation of Claims**

10 On and after the Effective Date, the Plan Administrator may file objections to Claims at
11 any time prior to the Claim Objection Deadline; provided, however, that as to Administrative
12 Expense Claims, the Plan Administrator, the Post-Confirmation Committee and other parties in
13 interest may object within thirty (30) calendar days of their filing. As to any Claims arising from
14 the rejection of an executory contract or unexpired lease pursuant to Section VII of the Plan, the
15 Plan Administrator may object within thirty (30) calendar days of the filing of any such Claims.
16 As to Claims arising from the recovery of an avoidable transfer under chapter 5 of the Bankruptcy
17 Code, the Plan Administrator may object within thirty (30) calendar days of the filing of any such
18 Claims.

19 In addition to the Plan Administrator's standing to object to Claims above, any Holder of
20 an Allowed Class 7 Interest in Second Street Properties may object to (x) the portion of any Claim
21 in Class 5 or Class 6 comprised of interest at the Legal Rate, and (y) any Claim held by a member
22 of the Post-Confirmation Committee, provided, however, that the objecting party shall bear all
23 costs and expenses associated with any objection filed pursuant to this paragraph.

24 No distribution shall be made under the Plan with respect to all or any portion of a
25 Disputed Claim until (a) that Claim becomes an Allowed Claim by agreement of the parties to any
26 Claim dispute or by Final Order of the Bankruptcy Court; and (b) the Holder of the Allowed
27 Claim delivers applicable tax information, including a FEIN or SSN, to the Plan Administrator.
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1 As soon as reasonably practicable after the Allowed Claim is established by agreement or Final
2 Order and the Plan Administrator is in possession of all required tax information of the Holder of
3 the Allowed Claim, the Plan Administrator shall pay to the Holder of such Allowed Claim in the
4 manner and amount provided in the Plan pursuant to Section IV or Section VI, as the case may be,
5 including any catch-up on prior distributions. Such distribution is to be paid from the
6 Administrative Reserves or Disputed Claims Reserves, as appropriate. Pending resolution, the
7 Holder of a Disputed Claim will not receive interest on its Claim.

8 From and after the Effective Date, and subject only to the approval of the Post-
9 Confirmation Committee if required under Section VIII.D.8 of the Plan, the Plan Administrator
10 shall have the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any
11 objections to Claims, including without limitation, any objections to Claims filed by the Debtors
12 prior to the Effective Date. The Plan Administrator expressly reserves the right to resolve any
13 Disputed Claim outside the Bankruptcy Court under applicable governing law.

14 In addition, the Plan Administrator may, at any time request that the Bankruptcy Court
15 estimate, pursuant to section 502(c) of the Bankruptcy Code, any Claim that is contingent or
16 unliquidated, regardless of whether the Debtors have previously objected to such Claim or whether
17 the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain
18 jurisdiction to estimate any Claim at any time during litigation concerning any objection to any
19 Claim, including during the pendency of any appeal relating to any such objection. In the event
20 that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount of such
21 estimation will constitute either the Allowed amount of such Claim or a maximum limitation on
22 such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a
23 maximum limitation on such Claim, the Plan Administrator may elect to pursue any supplemental
24 proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims
25 objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive
26 of one another. Administrative Expense and Priority Tax Claims may be estimated and thereafter
27 resolved by any mechanism permitted under the Bankruptcy Code or the Plan.

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1 Notwithstanding the contents of the Schedules, Claims listed therein as undisputed,
2 liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtors
3 prior to the Effective Date including pursuant to orders of the Bankruptcy Court. To the extent
4 such payments are not reflected in the Schedules, such Schedules will be deemed amended and
5 reduced to reflect that such payments were made.

6 **H. Conflicts of Interest**

7 In the event that the Plan Administrator has a conflict of interest relating to the matters
8 addressed in Section VIII.F and Section VIII.G herein, the Plan Administrator shall recuse himself
9 from such matter. If the Plan Administrator does not voluntarily recuse himself as provided in this
10 Section, the Post-Confirmation Committee may seek recusal of the Plan Administrator by a
11 majority vote of the Post-Confirmation Committee. In the event of recusal of the Plan
12 Administrator pursuant to this Section, the Post-Confirmation Committee shall be empowered to
13 designate an additional Plan Administrator solely for purposes of the conflicted matter. The Post-
14 Confirmation Committee may, in its sole and absolute discretion, appoint a member of the Post-
15 Confirmation Committee to act as Plan Administrator for purposes of the conflicted matter. The
16 Post-Confirmation Committee shall act with only its remaining members for purposes of the
17 conflicted matter.

18 **I. Reserves**

19 1. Administrative Reserves

20 The Administrative Reserves, as defined herein, shall be used for the payment of Allowed
21 Administrative Expense Claims in each Estate up to the Effective Date and for the expenses
22 incurred by the Plan Administrator and Post-Confirmation Committee on and after the Effective
23 Date, including, without limitation, for payment of fees and costs of professionals retained by the
24 Plan Administrator and by the Post-Confirmation Committee, compensation of the Plan
25 Administrator, and other fees and expenses incurred in the pursuit of the Causes of Action. The
26 amount of the Administrative Reserves is to be determined by the Plan Administrator in his or her
27 discretion, subject to the oversight of the Post-Confirmation Committee, with reference to the
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1 funding sources of the Plan, both present and future. Any amount of the Administrative Reserves
2 that are not used for such purposes shall, as determined by the Plan Administrator, subject to
3 oversight by the Post-Confirmation Committee as provided under Section VIII.D.8 of the Plan, be
4 distributed to Holders of Allowed Class 5 and Class 6 Claims on a Pro Rata basis as provided for
5 under the Plan. The Plan Administrator, subject to oversight by the Post-Confirmation Committee
6 as provided under Section VIII.D.8 of the Plan, may determine that the Administrative Reserves
7 are not adequate for continued administration of the Debtors' Estates after the Effective Date and
8 may reserve additional reasonable amounts.

9 2. Disputed Claims Reserves

10 The Disputed Claims Reserves, as defined herein, shall be used for the payment of all or
11 part of a Disputed Claim in either Estate that becomes an Allowed Claim entitled to distribution
12 under the Plan after the Initial Distribution Date. If any Disputed Claims are not Allowed in
13 whole or in part, or are subordinated to Class 5 or Class 6 Claims in whole or in part, then the Plan
14 Administrator may, subject to oversight by the Post-Confirmation Committee as provided under
15 Section VIII.D.8 of the Plan, distribute all or a portion of the Disputed Claims Reserves to the
16 Holders of Allowed Class 5 or Class 6 Claims on a Pro Rata basis as provided for under the Plan.

17 Notwithstanding any other provision of the Plan to the contrary, and for the sake of clarity,
18 no distribution shall be made on account of any Claim or portion thereof that (a) has been satisfied
19 prior to the Effective Date, or (b) is listed in the Schedules as contingent, unliquidated, disputed or
20 in a zero amount, and for which a Proof of Claim has not been timely filed.

21 3. Tax Reserves

22 The Plan Administrator shall establish a reserve for any and all taxes and similar levies
23 incurred on behalf of the Reorganized Debtors.

24 **J. Method of Distributions**

25 1. Disbursing Agent

26 The Plan Administrator, or such other Disbursing Agent as the Plan Administrator may
27 appoint, subject to oversight by the Post-Confirmation Committee as provided under
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1 Section VIII.D.8 of the Plan, shall make all distributions in accordance with the terms of the Plan.
2 If any distribution or act under the Plan is required to be made or performed on a date that is not a
3 Business Day, then the making of such distribution or performance of such act may be completed
4 on the next Business Day, without interest, and shall be deemed to have been completed as of the
5 required date.

6 2. Best Efforts to Make Distributions

7 Notwithstanding anything to the contrary in this Plan, under no circumstances shall the
8 Reorganized Debtors receive or retain Cash in excess of a reasonable amount to meet Claims and
9 contingent liabilities or to maintain the value of the Estate Assets during the term of the Plan
10 Administrator's appointment. The Plan Administrator shall be required to distribute at least
11 annually to Holders of Allowed Claims qualifying for distribution under the Plan, all Cash held by
12 the Debtors; provided, however, that the Plan Administrator may retain such amounts reasonably
13 necessary to maintain the value of the Estate Assets or meet Claims and contingent liabilities
14 including to fund the Administrative Reserves, Tax Reserves, and the Disputed Claims Reserves;
15 and provided, further, however, that the Plan Administrator shall not be obligated to make a
16 distribution if it is reasonably expected that the cost of such distribution would exceed the amount
17 of Cash on hand. The Plan Administrator shall make continuing efforts to administer the Estate
18 Assets, make timely distributions, and shall not unduly prolong the duration of the Plan
19 Administrator's appointment.

20 3. De Minimus Distributions

21 If a distribution to be made to a given Holder of an Allowed Claim on the Initial
22 Distribution Date or any subsequent Periodic Distribution Date would be \$100.00 or less in the
23 aggregate, notwithstanding any contrary provision of the Plan, no such distribution will be made
24 to such Holder unless a request therefore is made in writing to the Plan Administrator no later than
25 thirty (30) calendar days after such distribution date.

26 4. No Distribution in Excess of Allowed Amount of Claim

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1 Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall
2 receive in respect of such Claim any distribution (in the aggregate) in excess of the Allowed
3 amount of such Claim.

4 5. Delivery of Distributions; Distribution to Class Claim

5 Any distributions or notices which a Claim Holder, Interest Holder or other Person or
6 Entity is or becomes entitled to receive pursuant to the Plan may be delivered by first class mail,
7 postage prepaid, in an envelope addressed to that Claim Holder, Interest Holder or other Person or
8 Entity, as the case may be, or an authorized agent of any of the foregoing at the address indicated
9 on the latest notice of appearance or the latest Proof of Claim or other paper filed by any of the
10 foregoing in the Bankruptcy Court. Absent any such filing, the address set forth in the relevant
11 Schedules may be used. Distributions made in accordance with this provision shall be deemed
12 delivered to such Claim Holder, Interest Holder or other Person or Entity regardless of whether
13 such is actually received by that Claim Holder, Interest Holder or other Person or Entity.

14 As to any Allowed Claim comprised of a class action judgment or settlement, including
15 without limitation Claim No. 1 filed by Roberto Rodriguez, the Plan Administrator or Disbursing
16 Agent is authorized to make the distribution to the class action claim administrator approved by
17 the non-bankruptcy court with jurisdiction over the underlying suit. In the case of Claim No. 1,
18 such claim administrator is Gilardi & Co.

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20 6. Record Date

21 On the Record Date, the claims register and other various transfer registers shall be closed,
22 and there shall be no further changes in the record holders of any Claim or Interest. The Plan
23 Administrator, or such other Disbursing Agent as may be appointed under Section VIII.J.1 of the
24 Plan, shall have no obligation to recognize any transfer of any Claim or Interest occurring after the
25 Record Date. The Plan Administrator shall be entitled to recognize and deal for all purposes
26 hereunder only with those Holders stated on the claims register or any other transfer register as of
27 the close of business on the Record Date.

28 7. Disputed Distributions

1 If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive
2 any distribution, the Plan Administrator may, in lieu of making such distribution to such Holder,
3 make such distribution into a segregated fund until the disposition thereof shall be determined by
4 Bankruptcy Court order or by written agreement among the interested parties to such dispute.

5 8. Distributions of Cash

6 Any payment of Cash made by the Plan Administrator, or other Disbursing Agent,
7 pursuant to the Plan may be made either by check drawn on a domestic bank or by wire transfer, at
8 the discretion of the Plan Administrator or other Disbursing Agent.

9 9. Fractional Cents

10 Any other provision of the Plan to the contrary notwithstanding, no payments of fractions
11 of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called
12 for, the actual payment will reflect rounding of such fraction to the nearest whole cent (.5 will be
13 rounded up).

14 10. Withholding and Reporting Requirements

15 Any foreign, federal, state or local withholding taxes or other amounts required to be
16 withheld under applicable law shall be deducted from any distributions hereunder. All Holders of
17 Claims shall be required to provide any information necessary to effect the withholding of such
18 taxes, including provision of a Holder's FEIN or SSN to the Plan Administrator, and the Plan
19 Administrator shall be authorized to withhold distribution on such Claims until the requisite
20 information is received. If such information is not received within one hundred and twenty (120)
21 calendar days after the relevant distribution date, the Unclaimed Distributions provisions of
22 Section VIII.K shall apply. In such event, such Claim Holder will not be entitled to receive such
23 distribution. All distributions under the Plan shall be net of the actual and reasonable costs of
24 making such distributions and of any allocable fees or other charges relating thereto.

25 11. Setoff

26 Except as otherwise provided in the Plan, the Confirmation Order or in agreements
27 previously approved by Final Order of the Bankruptcy Court, the Plan Administrator on behalf of
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1 the Debtors may, pursuant to applicable law, set off against any Claim (for purposes of
2 determining the Allowed amount of such Claim on which distribution shall be made and before
3 any distribution is made on account of such Claim), any and all of the Claims, rights and other
4 Causes of Action of any nature that the Debtors or their Estates may hold against the Holder of
5 such Claim.

6 Neither the failure to effect such a setoff, the Allowance of any Claim hereunder, any other
7 action or omission of the Debtors or the Plan Administrator, nor any provision of the Plan shall
8 constitute a waiver or release by the Debtors or the Plan Administrator of any such Claims, rights
9 and other Causes of Action that the Debtors, the Debtors' Estates, or the Plan Administrator may
10 possess against such Holder. To the extent the Plan Administrator fails to setoff against a Claim
11 Holder and seeks to collect on a Claim from such Holder after a distribution to such Holder
12 pursuant to the Plan, the Plan Administrator, if successful in asserting such Claim, shall be entitled
13 to full recovery against such Holder. The Plan Administrator may seek periodic Bankruptcy Court
14 approval for any such setoff or setoffs.

15 **K. Unclaimed Distributions**

16 If any distribution remains unclaimed for a period of one hundred and twenty (120)
17 calendar days after the relevant distribution date, or any distribution check remains uncashed for
18 one hundred and twenty (120) calendar days after its issuance, by the Holder of an Allowed Claim
19 entitled thereto, the distribution shall constitute an Unclaimed Distribution, any such uncashed
20 check shall be void, and the Holder shall no longer be entitled to that distribution. Pursuant to
21 Bankruptcy Code section 347(b), all right, title and interest in and to Unclaimed Distributions
22 shall immediately vest in the Reorganized Debtors and be administered by the Plan Administrator
23 pursuant to the terms of this Plan.

24 **L. Marketing and Sale of the Berkeley Real Estate**

25 Following the reconveyance of the Berkeley Deed of Trust as provided in Section VI.D of
26 this Plan, the Plan Administrator shall seek to market the Berkeley Real Property for sale for the
27 highest and best value. The Plan Administrator shall consult with the Post-Confirmation
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1 Committee and with holders of Allowed Interests in Class 7 regarding the broker to be retained,
2 the listing price, and the other details of the marketing of the Berkeley Real Property, which shall
3 be reasonable and appropriate in light of the type and use of the property. However, all decisions
4 regarding the marketing of the Berkeley Real Property shall be the ultimate responsibility of the
5 Plan Administrator, who shall retain sole authority over the making of such decisions.

6 **IX.**

7 **EFFECT OF CONFIRMATION OF PLAN**

8 **A. Discharge**

9 Except as otherwise provided for in the Plan or in the Confirmation Order, in accordance
10 with section 1141(d) of the Bankruptcy Code, entry of the Confirmation Order acts as a discharge
11 effective as of the Effective Date of all debts, Claims against, liens and encumbrances on, and
12 Interests in the Debtors and the Estate Assets, which debts, Claims, liens, encumbrances, and
13 Interests arose at any time before the entry of the Confirmation Order. The discharge of the
14 Debtors shall be effective as to each such debt, Claim, lien, encumbrance, and Interest, regardless
15 of whether a proof of Claim or Interest was filed or whether the Claim or Interest was Allowed or
16 whether the holder of the Claim or Interest votes to accept the Plan. On the Effective Date, as to
17 each and every discharged debt, Claim, lien, encumbrance, and Interest, any Holder of such debt,
18 Claim, lien, encumbrance, or Interest shall be precluded from asserting such debt, Claim, lien,
19 encumbrance, or Interest against the Reorganized Debtors, the Estate Assets, or any other property
20 of the Debtors.

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22 **B. Confirmation Injunction**

23 On and after the Confirmation Date, except to enforce the terms and conditions of the Plan
24 before the Bankruptcy Court or to implement the terms of the Plan applicable to the Local 164B
25 Claim, all Persons or Entities who have held, hold or may hold any debt, Claim, lien, encumbrance
26 against or Interest in either of the Debtors are permanently enjoined from and after the
27 Confirmation Date from: (a) commencing, conducting or continuing in any manner, directly or
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1 indirectly, any suit, action or other proceeding of any kind (including, without limitation, any
2 proceeding in a judicial, arbitral, administrative or other forum) against either of the Reorganized
3 Debtors, the Estate Assets, or either of the Debtors' property, or any direct or indirect transferee of
4 any property of, or direct or indirect successor in interest to, any of the foregoing Persons or
5 Entities (collectively, the "Protected Parties"); (b) enforcing, levying, attaching (including, without
6 limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or
7 means whether directly or indirectly, against any of the Protected Parties of any judgment, award,
8 decree or order; (c) creating, perfecting or otherwise enforcing in any manner, directly or
9 indirectly, any encumbrance of any kind against any of the Protected Parties; (d) asserting any
10 right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any
11 obligation due to any of the Protected Parties; and (e) taking any actions in any place and in any
12 manner whatsoever that do not conform to or comply with the provisions of the Plan.

13 **C. Binding Effect**

14 Except as otherwise expressly provided in the Plan, as of the Effective Date, the provisions
15 of the Plan, the Confirmation Order, and any associated findings of fact or conclusions of law
16 shall bind the Debtors, the Plan Administrator, and all Holders of Claims and Interests against the
17 Debtors, regardless of whether such Holders are Impaired under the Plan or voted to accept the
18 Plan.

19 The rights, benefits and obligations of any Person or Entity named or referred to in the
20 Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator,
21 successor or assign of such Person or Entity.

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23 **D. Exculpation**

24 To the fullest extent permissible under 11 U.S.C. §§524(e), 1103(c), 1125(e), and where
25 not in conflict with *Resorts International, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394
26 (9th Cir. 1995), on and after the Confirmation Date, the Debtors, the officers, directors, and/or
27 managers of the Debtors, the Class 7 Interest Holders, the Committee, and their agents (together,
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1 the “Exculpated Parties”) shall not have or incur any liability for, and are expressly exculpated and
2 released from, any claims (including without limitation, any claims whether known or unknown,
3 foreseen or unforeseen, then existing or thereafter existing in law, equity or otherwise), by any
4 Person or Entity for any act or omission occurring on or prior to the Confirmation Date in
5 connection with or arising out of action or inaction taken or omitted to be taken in connection with
6 or related to the Bankruptcy Cases; the formulation, preparation, dissemination, implementation,
7 confirmation or Substantial Consummation of the Plan or any other document created or entered
8 into in connection with the Plan; or any other act taken or omitted to be taken in connection with
9 or in contemplation of the filing of the Bankruptcy Cases, except those acts arising out of its or
10 their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or
11 ultra vires acts. Any Exculpated Party shall be entitled to reasonably rely upon the advice of
12 counsel with respect to its duties and responsibilities (if any) under this Plan or related to the
13 Bankruptcy Cases. Without limiting the generality of the foregoing, each Exculpated Party shall
14 be entitled to and granted the protections of section 1125(e) of the Bankruptcy Code and principles
15 of judicial immunity, where applicable. No provision of this Plan shall be deemed to act to or
16 release any Claims, Causes of Action, or liabilities that the Plan Administrator or the Debtors’
17 Estates may have against any Entity or Person for any act, omission, or failure to act that occurred
18 prior to the Petition Date, nor shall any provision of this Plan be deemed to act to release any
19 Cause of Action.

20 **E. Preservation of Insurance**

21 This Plan shall not diminish or impair the enforceability of any insurance policy, right or
22 claim that may cover Claims against the Debtors (including, without limitation, its officers or
23 directors) or any other person or entity. Likewise, the Plan and Confirmation Order shall not
24 impair any insurance carrier’s rights, claims, defenses or disputes under any policy and shall not
25 act to increase or extend any rights of the Debtors or the carriers. The insurance policies
26 maintained by the Debtors shall be maintained as an expense of the Debtors until the later of
27 (a) expiration of such policies or (b) such later dates as the Debtors may deem appropriate.

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1 Without limiting the foregoing, the Plan Administrator shall keep the current director's and
2 officer's liability policy, director's and officer's liability run off policy, fiduciary run off policy
3 and commercial general liability policy in place, and shall maintain the extended reporting period
4 currently in place under the existing "tail" coverage for the director's and officer's liability policy
5 for a period of six years or Termination, whichever is earlier.

6 **X.**

7 **EFFECTIVENESS OF THE PLAN**

8 The following are conditions precedent to the Effective Date of the Plan:

9 (a) The Bankruptcy Court shall have entered the Confirmation Order which
10 shall be in a form and substance satisfactory to the Proponents;

11 (b) No stay of the Confirmation Order shall then be effect at the time the other
12 conditions set forth in this section are satisfied or waived; and

13 (c) All documents, instruments and agreements, in form and substance
14 satisfactory to the Proponents, provided for under or necessary to implement the Plan shall
15 have been executed and delivered by the parties thereto, unless such execution or delivery
16 has been waived by the parties benefited thereby.

17 The foregoing conditions may be waived, in whole or in part, by agreement of the
18 Proponents, in writing, at any time without notice, an order of the Bankruptcy Court, or any
19 further action other than proceeding to confirmation and consummation of the Plan.

20 **XI.**

21 **RETENTION OF JURISDICTION**

22 The Bankruptcy Court shall retain jurisdiction over the Bankruptcy Case subsequent to the
23 Confirmation Date to the fullest extent permitted by law, including, without limitation, for the
24 following purposes:

25 (a) To determine any and all proceedings related to allowance of Claims or objections
26 to the allowance of Claims, including objections to the classification of any Claim and including,
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1 on an appropriate motion pursuant to Bankruptcy Rule 3008, reconsidering Claims that have been
2 Allowed or not Allowed prior to the Confirmation Date;

3 (b) To determine any and all fee applications of Professionals and any other fees and
4 expenses authorized to be paid or reimbursed in accordance with the Bankruptcy Code or the Plan;

5 (c) To determine any and all Causes of Action, whether pending before the Bankruptcy
6 Court on the Confirmation Date or filed or instituted after the Confirmation Date, including,
7 without limitation, proceedings under the Bankruptcy Code or other applicable law seeking to
8 avoid and recover any transfer of an interest of the Debtors in property or of obligations incurred
9 by the Debtors, or to exercise any rights pursuant to Bankruptcy Code sections 544-550;

10 (d) To modify the Plan or the Disclosure Statement, or to remedy any defect or
11 omission or reconcile any inconsistency in any order of the Bankruptcy Court (including the
12 Confirmation Order), the Plan, or the Disclosure Statement in such manner as may be necessary to
13 carry out the purposes and effects of the Plan;

14 (e) To determine disputes regarding title of the property claimed to be property of the
15 Debtors;

16 (f) To ensure that the Distributions to Holders of Allowed Claims are accomplished in
17 accordance with the provisions of the Plan;

18 (g) To enter such orders as may be necessary to consummate and effectuate the
19 operative provisions of the Plan, including actions to enjoin enforcement of Claims inconsistent
20 with the terms of the Plan;

21 (h) To hear and determine disputes concerning any event of default or alleged event of
22 default under the Plan, as well as disputes concerning remedies upon any event of default under
23 the Plan;

24 (i) To hear any other matter not inconsistent with Chapter 11 of the Bankruptcy Code;

25 (j) To enter a final decree closing the Debtors' Bankruptcy Cases;

26 (k) To enter and implement such orders as may be appropriate in the event the
27 Confirmation Order is for any reason stayed, reversed, revoked or vacated;

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1 (l) To hear and determine such other matters as may arise in connection with the Plan,
2 the Disclosure Statement, or the Confirmation Order;

3 (m) To hear and determine any dispute between the Plan Administrator and the Post-
4 Confirmation Committee;

5 (n) To issue temporary restraining orders and preliminary injunctions;

6 (o) To hear and determinate any dispute over the amount of any contingent liability of
7 either Estate; and

8 (p) To hear and determine and dispute arising out of or in connection with the Berkeley
9 Deed of Trust, and to issue any order implementing necessary or appropriate to implement the
10 terms of the Berkeley Deed of Trust.

11 XII.

12 MISCELLANEOUS PROVISIONS

13 A. Effectuating Documents and Further Transactions

14 Upon entry of the Confirmation Order, the Debtors, the Committee, the Plan
15 Administrator, and the Post-Confirmation Committee shall be authorized to execute, deliver, file
16 or record such contracts, instruments, releases and other agreements or documents and to take such
17 actions as may be reasonably necessary or appropriate to effectuate and further evidence the terms
18 and conditions of the Plan.

19 Each of the matters provided for under the Plan involving the corporate structure of the
20 Reorganized Debtors or corporate action to be taken by or required of the Reorganized Debtors
21 shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein,
22 and shall be authorized and approved in all respects without any requirement of further action by
23 the Plan Administrator, the Post-Confirmation Committee, Holders of Claims or Interests,
24 directors or officers of the Reorganized Debtors or any other Persons or Entities.

25 26 27 B. Modification of Plan

1 The Proponents reserve the right, in accordance with the Bankruptcy Code and Bankruptcy
2 Rules, to amend or modify the Plan at any time prior to entry of the Confirmation Order. After
3 entry of the Confirmation Order but prior to the Effective Date, the Proponents may seek an order
4 of the Bankruptcy Court to amend or modify the Plan in accordance with section 1127(b) of the
5 Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in
6 such manner as may be necessary to carry out the purpose and intent of the Plan. On and after the
7 Effective Date, the Plan Administrator, subject to oversight by the Post-Confirmation Committee
8 as provided under Section VIII.D.8 of the Plan, may seek an order of the Bankruptcy Court to
9 amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code, or remedy
10 any defect or omission or reconcile any inconsistency in the Plan in such manner as may be
11 necessary to carry out the purpose and intent of the Plan. The Holder of an Allowed Claim that has
12 accepted the Plan shall be deemed to have accepted the Plan as modified if the modification does
13 not materially and adversely change the treatment of the Claim of such Holder.

14 **C. Withdrawal or Revocation of Plan**

15 The Proponents may withdraw or revoke the Plan at any time prior to the Confirmation
16 Date. If the Proponents revoke or withdraw the Plan prior to the Confirmation Date, or if the
17 Confirmation Date does not occur, then the Plan shall be deemed null and void. In such event,
18 nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or
19 against the Debtors or any other Person or Entity or to prejudice in any manner the rights of the
20 Debtors or any other Person or Entity in any further proceedings involving the Debtors.

21 **D. Failure of Effective Date**

22 In the event the Effective Date does not occur, nothing in this Plan, shall be binding on the
23 Debtors, the Debtors' Estates, or any other Person or Entity, or otherwise be of any force or effect.

24 **E. Severability**

25 Should any provision in this Plan be determined to be unenforceable, such determination
26 shall in no way limit or affect the enforceability and operative effect of any other provision(s) of
27 this Plan.

28 **F. Section 1146(c) Exemption**

1 Pursuant to Bankruptcy Code section 1146(a): (a) the issuance, transfer, or exchange of
2 notes or equity securities under the Plan; (b) the creation of any mortgage, deed of trust, lien,
3 pledge, or other security interest; (c) the making or assignment of any contract, lease or sublease;
4 or (d) the making or delivery of any deed or other instrument of transfer under, in the furtherance
5 of, or in connection with, the Plan, including, without limitation, any merger agreements,
6 agreements of consolidation, restructuring, disposition, liquidation, or dissolution, stock purchase
7 agreements, stockholders agreements or stockholders rights agreements; deeds, bills of sale, or
8 transfers of tangible property will not be subject to any stamp tax, or other similar tax or any tax
9 held to be a stamp tax or other similar tax by applicable law.

10 **G. Exemption from Securities Laws**

11 The issuance of securities under the Plan satisfies the requirements of Bankruptcy Code
12 section 1145 and, therefore, any such issuance is exempt from registration.

13 **H. Preservation of Causes of Action**

14 For avoidance of any doubt, any and all claims and other Causes of Action accruing to the
15 Debtors or their Estates shall be preserved and retained by the Reorganized Debtors after the
16 Confirmation Date, and the Plan Administrator on behalf of the Reorganized Debtors shall have
17 the exclusive right and standing to enforce any such Causes of Action.

18 **I. Nonconsensual (“Cramdown”) Confirmation**

19 The Proponents request that the Bankruptcy Court confirm the Plan in accordance with
20 section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan
21 and any Class the fails to accept the Plan.

22 **J. Notices**

23 Except as otherwise provided in the Plan, any notice or other communication required or
24 permitted under the Plan will be in writing and deemed to have been validly served, given,
25 delivered, and received upon the earlier of: (a) the first Business Day after transmission by
26 facsimile or hand delivery or deposit with an overnight express service or overnight mail delivery
27 service or by electronic means with consent of the recipient; or (b) the third calendar day after
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1 deposit in the United States mail, with proper first class postage prepaid. Contact information
2 relevant to providing notice to the Plan Administrator or the Post-Confirmation Committee will be
3 disclosed in the Plan Supplement.

4 **K. Post-Effective Date Notices**

5 Except as otherwise provided in the Plan, upon and after the Effective Date, notices will be
6 served only on the Office of the United States Trustee, the Plan Administrator, the Post-
7 Confirmation Committee, and those Persons who file with the Bankruptcy Court and serve upon
8 the Plan Administrator a request, which includes the Person's name, contact individual, address,
9 telephone number and facsimile number, that such Person receive notice of post-Effective Date
10 matters. Persons who had previously filed with the Bankruptcy Court requests for special notice
11 of the proceedings and other filings in the Bankruptcy Cases will not receive notice of post-
12 Effective Date matters unless such Persons file a new request in accordance with this Section.
13 Without limiting the foregoing, Holders of Allowed Interests in Class 7 who file and serve a
14 request for notice under this paragraph shall be entitled to receive notice of all proposed actions by
15 the Plan Administrator that the Post-Confirmation Committee is entitled to receive in
16 Section VIII.D.8 of this Plan.

17 **L. Plan Controls**

18 To the extent the terms of the Plan are inconsistent with the Disclosure Statement or any
19 document implementing the Plan, the terms of the Plan shall be controlling.

20 **M. Applicable Law**

21 The Plan is to be governed by and construed under the Bankruptcy Code and the laws of
22 the State of California as they may be applicable.

23 **N. Implementation Orders**

24 The Bankruptcy Court may, at any time, make such orders and give such directions as
25 appropriate for consummation of the Plan pursuant to Bankruptcy Code section 1142.

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JOINT CHAPTER 11 PLAN OF REORGANIZATION

Summary report:	
Litéra® Change-Pro TDC 7.5.0.145 Document comparison done on 4/23/2015 1:13:50 PM	
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Intelligent Table Comparison: Active	
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Changes:	
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Delete	95
Move From	2
<u>Move To</u>	2
<u>Table Insert</u>	10
Table Delete	10
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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