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16 UNITED STATES BANKRUPTCY COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SANTA ROSA DIVISION
19

20 In re
21 COPIA: THE AMERICAN CENTER FOR
WINE, FOOD, AND THE ARTS, a California
22 nonprofit public benefit corporation,
23 Debtor.
24
25
26
27
28

Chapter 11

Case No. 08-12576

**DISCLOSURE STATEMENT BY JOINT
PLAN PROPONENTS ACA FINANCIAL
GUARANTY CORPORATION AND
COPIA: THE AMERICAN CENTER FOR
WINE, FOOD, AND THE ARTS**

1
2 THIS DISCLOSURE STATEMENT FOR JOINT PLAN OF LIQUIDATION
3 (“DISCLOSURE STATEMENT”) HAS BEEN APPROVED BY THE BANKRUPTCY COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA AS CONTAINING ADEQUATE
5 INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE FOR SOLICITATION OF
6 ACCEPTANCES OF THE JOINT PLAN OF LIQUIDATION DATED JULY 7, 2009, (“JOINT
7 PLAN”). DISTRIBUTION OF THIS DISCLOSURE STATEMENT TO CREDITORS AND
8 OTHER PARTIES IN INTEREST WAS AUTHORIZED BY THE BANKRUPTCY COURT ON
9 _____, 2009. THE COURT HAS MADE NO INDEPENDENT INVESTIGATION OR
10 DETERMINATION OF ANY FACTUAL STATEMENT OR DOLLAR VALUE SET FORTH IN
11 THE JOINT PLAN OR THE DISCLOSURE STATEMENT.
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1 **I. INTRODUCTION**

2 **A. The Disclosure Statement Purpose**

3 This Disclosure Statement for Joint Plan Proponents ACA Financial Guaranty Corporation’s
4 (“ACA”) and Debtor, Copia: The American Center for Wine, Food and the Arts’ (“Debtor”) Joint
5 Plan of Liquidation (“Disclosure Statement”) is being distributed to creditors of the above-captioned
6 estate by the Joint Plan Proponents for the purpose of soliciting acceptances of the accompanying
7 Joint Plan of Liquidation.¹

8 The purpose of this Disclosure Statement is to provide holders of Claims against the Debtor
9 with adequate information to enable them to make informed judgments about the Joint Plan before
10 exercising their right to vote for acceptance or rejection of the Joint Plan. This Disclosure Statement
11 describes the business background and operating history of the Debtor before the filing of the
12 Chapter 11 Case. It also summarizes certain significant events that have taken place during the
13 Chapter 11 Case and describes the terms of the Joint Plan, which divides the Claims of creditors into
14 separate classes and provides for the treatment of Allowed Claims.

15 **B. Joint Plan Proponents’ Joint Plan Summary**

16 The Joint Plan is the only proposal that the Joint Plan Proponents will make to any Creditor.
17 **The term “Creditor” is broadly defined to include, without limitation, the Debtor’s employees,**
18 **individuals who placed deposits with the Debtor, taxing authorities, trade creditors, certain**
19 **bondholders, ACA as bond insurer, and The Bank of New York Mellon Trust Company, N.A.**
20 **as indenture trustee.**

21 The Joint Plan Proponents contend that the Joint Plan provides the following benefits: (1) a
22 cash contribution to the Estate in the amount of \$622,000; (2) the waiver of the Unsecured Deficiency
23 Claim held by ACA pursuant to its contractual rights with the 2007 Bondholders; (3) the waiver of
24 ACA’s collateral rights to the Thiebaud painting and/or its proceeds; (4) the waiver of ACA’s
25 Administrative Claims; and (5) the smooth transition of ownership and reuse of the Debtor’s
26 landmark building and surrounding real property.

27 ¹ This Disclosure Statement utilizes all defined terms employed in the Joint Plan. Please refer
28 to that document for definitions not included in this Joint Disclosure Statement.

1 As part of this plan only, ACA will also waive its right to assert its own significant pre- and
2 post-confirmation administrative priority claim (e.g., building maintenance and other property
3 management expenses). Allowed administrative expenses that accrue from and after Confirmation of
4 the Joint Plan will be paid separately by ACA, and will not be deducted from ACA's cash
5 contribution of \$622,000 to the Estate. It is important to note that ACA's contribution includes an
6 additional \$100,000 incremental to amounts ACA previously agreed to under the original settlement
7 agreement described below. But for this contribution by ACA, and given that Debtor's collateral is
8 worth less than the amount owed to the Secured Creditors, Debtor's unsecured creditors would
9 otherwise not be entitled to any distribution from Debtor's estate. Assuming that aggregate allowed
10 administrative and unpaid priority claims do not exceed \$435,000,² the Joint Plan will provide an
11 estimated dividend of approximately 13.4% to the Debtor's general unsecured creditors, including its
12 estimated \$1.4 million in trade creditors.

13 The Joint Plan also allows for a smooth transition of property ownership, which will
14 maximize the ability of the owners and community to realize the highest and best use for the Debtor's
15 real and personal property. To provide for the Debtor's constituents and the Napa community as a
16 whole, the Joint Plan Proponents have put together the Joint Plan, and ACA has agreed to make
17 significant contributions to the Debtor's Estate as set forth in more detail herein.

18 **C. How to Vote on the Joint Plan**

19 For an acceptance or rejection of the Joint Plan, **you must return the enclosed Ballot to:**

20 Matthew A. Richards
21 Nixon Peabody LLP
22 One Embarcadero Center, Suite 1800
23 San Francisco, CA 94705
24 Email: mrichards@nixonpeabody.com
25 Fax: 866-904-7778

26 **In order for your vote to be counted, your completed Ballot must be received by mail,**
27 **facsimile transmission, email or personal delivery no later than the date specified on the Ballot.**

28 In making a decision about the Joint Plan, Creditors must rely on their own examination of the
Debtor's financial records, this Disclosure Statement and the terms of the Joint Plan. After the

² ACA reserves all rights to object to any such claims.

1 Ballots have been tabulated, the Bankruptcy Court will decide whether the Plan Proponents have met
2 the necessary legal requirements for Bankruptcy Court approval of the Joint Plan.

3 Bankruptcy Court approval is called “Confirmation” of the Joint Plan. Upon Confirmation,
4 the Joint Plan will be binding upon all Creditors regardless of whether an individual Creditor has
5 voted in favor of the Joint Plan.

6 **THE JOINT PLAN PROPONENTS URGE YOU TO READ THIS DISCLOSURE**
7 **STATEMENT AND THE JOINT PLAN OF LIQUIDATION CAREFULLY.**

8 **THE PROJECTED FINANCIAL INFORMATION IN THIS DISCLOSURE**
9 **STATEMENT REFLECTS ASSUMPTIONS THAT MAY OR MAY NOT PROVE TO BE**
10 **CORRECT. THIS INFORMATION COMES FROM THE DEBTOR AND SHOULD NOT BE**
11 **ATTRIBUTED TO ACA. IN ADDITION, ESTIMATES OF ALLOWED CLAIMS MAY**
12 **VARY FROM THE FINAL AMOUNTS OF ALLOWED CLAIMS. ALL OBJECTIONS TO**
13 **CLAIMS ARE RESERVED.**

14 **II. DEFINITIONS**

15 Unless the context requires otherwise, all capitalized terms used in this Disclosure Statement
16 are defined in Article I of the Joint Plan, which is attached. References to a code section are
17 references to a section of the Bankruptcy Code, except as otherwise stated.

18 The description of the Joint Plan and other documents provided in this Disclosure Statement
19 are summaries only. In the event of any inconsistency between the Joint Plan and this Disclosure
20 Statement, the Joint Plan controls.

21 **III. BACKGROUND OF DEBTOR AND EVENTS LEADING TO THE CHAPTER 11**
22 **FILING**

23 **A. Formation and Financing**

24 Debtor is a duly organized California nonprofit public benefit corporation, which the IRS has
25 qualified as a tax exempt charitable organization pursuant to Section 501(c)(3) of the Internal
26 Revenue Code. It is governed by a volunteer Board of Trustees, subject to oversight by the
27 California State Attorney General’s Office Registrar of Charitable Trusts.

1 Debtor was founded by the late Robert Mondavi. The organization’s mission was dedicated
2 to teaching and promoting the appreciation, enjoyment and health benefits of wine and food.
3 Mr. Mondavi personally donated over \$25 million to the launch of the organization. Since its
4 inception, Debtor has raised an additional \$20 million in donations from other members of the
5 community.

6 In 1999, the California Infrastructure and Economic Development Bank (the “I-Bank”)
7 participated in a bond transaction that raised \$70 million to be used in connection with the
8 construction and development of facilities to be owned and operated by the Debtor. The \$70 million
9 was raised from the sale of bonds to the public. I-Bank is a public body and instrumentality of the
10 State of California established under California law (Government Code § 63000 et seq.) and is
11 authorized to act as a “conduit issuer,” such that it can issue tax exempt bonds on behalf of qualified
12 entities and projects. Debtor initially constructed an 80,000 square-foot building on 12 acres, located
13 in a formerly depressed area of downtown Napa. The cost to construct the building and
14 improvements was approximately \$60 million. The construction, along with an interest reserve and
15 additional sums for working capital, was funded in connection with a bond transaction.

16 In connection with the 1999 Bond Transaction, I-Bank issued bonds which were sold to the
17 1999 bondholders. As part of the bond transaction, I-Bank entered into an Indenture (the “1999
18 Indenture”) with BNY Western Trust Company. I-Bank and Debtor entered into a loan agreement
19 (the “1999 Loan Agreement”) whereby I-Bank loaned the bond proceeds to Debtor. To secure
20 repayment of the bonds, I-Bank in the 1999 Indenture pledged or assigned certain of its rights as
21 lender to Trustee for the benefit of the 1999 bondholders. I-Bank pledged the loan repayments from
22 Debtor and assigned its security interests in Debtor’s unrestricted gross revenues and the deed of trust
23 on the portion of Debtor’s real property and the improvements thereon that secured the loan. ACA
24 insured the 1999 bonds.

25 Debtor opened its doors in 2001 and enjoyed over one million visitors to its campus since that
26 time. It has been an important anchor to the economic development of the City of Napa. Despite its
27 widespread community support and the large number of visitors to the campus, however, Debtor’s
28 operating business struggled financially. Each year Debtor’s operations lost in excess of \$5 million,

1 not counting debt service on the 1999 Loan Agreement. Much of the financial disappointment was
2 attributed to a location that was not centrally located to benefit from tourists, a business model that
3 was heavily reliant on philanthropy, and a management team that was not experienced in running the
4 commercial ventures necessary to fund the nonprofit mission.

5 A second related bond transaction took place in 2007. The 2007 bond transaction was
6 designed to generate funds to prepay the 1999 bonds and to defease the 1999 Indenture and to
7 provide Debtor with some additional working capital.

8 As was true of the 1999 bond transaction, I-Bank was the conduit issuer in the 2007 bond
9 transaction. Debtor was the borrower. The 2007 bondholders had their own trustee pursuant to a
10 2007 Indenture. The Bank of New York Mellon Trust Company, N.A. (“BNY Mellon”), then known
11 as The Bank of New York Trust Company, N.A., successor in interest to BNY Western Trust
12 Company) was also trustee for the 2007 bondholders.

13 The 2007 bond transaction generated approximately \$78 million in proceeds from the sale of
14 the 2007 bonds. Of these proceeds, approximately \$70 million was deposited into an irrevocable
15 escrow account, held by BNY Mellon as agent, to be used to pay the remaining principal balance of,
16 and accruing interest and a prepayment premium of 1% on the 1999 bonds.

17 The 2007 bond transaction was structured so that the loan repayments Debtor was required to
18 make under the 1999 Loan Agreement would be prepaid in accordance with the 1999 Loan
19 Agreement and so that prepayment would be used to pay off the bonds. That eliminated any further
20 obligation of Debtor to I-Bank under the 1999 Loan Agreement, and in this way, the collateral
21 previously pledged by Debtor and assigned by I-Bank in connection with the 1999 bond transaction
22 was made available to secure Debtor’s obligation in connection with the 2007 bonds.

23 **B. Unsuccessful Efforts to Financially Restructure**

24 From 2006 to early 2008 the first phase of a business-restructuring plan was approved by
25 Debtor’s Board of Trustees and implemented by Debtor’s management. Several significant staff
26 changes were made and key areas of the business including expense reduction, profitability, and
27 mission. During this period of time, Debtor was instrumental in several redevelopment projects in
28 downtown Napa that have created jobs and developed the neighborhood around Debtor into a

1 thriving food and wine related tourist area. While progress was made, however, Debtor continued to
2 incur operating losses.

3 In March 2008, the Board of Trustees of Debtor stepped in and took control of day-to-day
4 operations. The second phase of a business restructuring was quickly implemented. Planned changes
5 to the business were accelerated, including initiatives around e-commerce, distance learning, and
6 fundraising. Immediate actions were taken to develop and implement additional steps in the business
7 restructuring. This new focus sought to leverage the organization's expertise in wine and culinary
8 arenas as well as the intellectual property created and distributed across the country. The new
9 business plan was based on deriving revenue from five main lines of business: web content and
10 advertising, retail operations, wine country tourism, brand licensing for wine and food products, and
11 awards related to wine. This business model sought to continue to deliver the not-for-profit's
12 education mission, but through new higher impact delivery channels.

13 Although these restructuring efforts improved Debtor's cash flow somewhat, they were
14 insufficient to complete a timely turnaround. Debtor ran out of cash on November 21, 2008, at which
15 time it closed its doors. Debtor filed this Chapter 11 bankruptcy case on December 1, 2008.

16 **IV. CHAPTER 11 EVENTS**

17 **A. Status of Assets and Secured Debt**

18 Debtor's primary asset is its building and 12 acre Napa campus. As of the petition date, there
19 were outstanding secured bonds in the aggregate principal amount of approximately \$78 million.
20 ACA had issued certain insurance policies to bondholders in connection with the secured bonds.³
21 The claims of the bondholders and ACA are secured by, among other things, a first priority lien on
22 the Debtor's real and personal property, including the Napa campus. By all accounts, the current
23 market value of the real property and all other collateral is significantly less than the amount of the
24 bond debt and thus the Debtor has no equity in the real and personal property.

25
26 ³ ACA has insured the Bonds pursuant to, and subject to the terms and limitations of, Bond
27 Insurance Policy Number NI0507-19 and Bond Insurance Policy Number NI0507-20 with
28 effective dates of May 24, 2007 (collectively, the "Bond Insurance Policies"). The Bond
Insurance Policies were only to be drawn upon to pay debt service on the bonds in the event
the Debtor defaulted on its payments obligations under the Loan Agreement.

1 Since the Chapter 11 case was filed, ACA has paid, and continues to pay, for the essential
2 utilities and other services in order to preserve and maintain the real and personal property. Since
3 Debtor filed for bankruptcy, ACA has paid the utility bills when due, including the PG&E electric
4 bill that is essential to maintaining the continuous operation of the HVAC system. ACA has posted a
5 security deposit required by PG&E, and there are no outstanding invoices with respect to PG&E.
6 ACA, through its property manager Alvarez & Marsal, has worked with Copia's Facilities Manager,
7 Art Ferretti, to evaluate the maintenance, repairs, and utilities expenses of the property, and has
8 implemented a plan to ensure such expenses are covered to the extent necessary to maintain the real
9 and personal property. ACA, through Alvarez & Marsal, has hired and has paid for the services of a
10 landscape maintenance firm in order to ensure the quality of the landscaped grounds. Since Alvarez
11 & Marsal began managing the property, the buildings' interiors have also been organized and
12 cleaned, and are presentable for sale. In addition to paying for the utilities, landscape maintenance,
13 and building clean-up and maintenance, ACA, through Alvarez & Marsal, has secured the property,
14 including ensuring that the property's security system was functioning properly upon first assuming
15 management responsibilities. Alvarez & Marsal has also procured, and ACA has paid for, the
16 services of a security firm to conduct security patrols of the property to protect it and the safety of
17 persons on the premises. The security firm patrols the grounds of the property three times per night,
18 and on two of these patrols also checks the interiors of all buildings on the property as well. To date,
19 ACA has incurred administrative costs of approximately \$141,000 to preserve the Property for the
20 benefit of creditors and the Napa community. ACA will waive its administrative claim as part of the
21 Joint Plan only.

22 As security for its repayment obligations under the Loan Agreement, the Debtor provided a
23 Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, made as of May 1,
24 2007, (the "Deed and Security Agreement") to First American Title Insurance Company as the trustee
25 thereunder, for the benefit of BNY Mellon and ACA, as Beneficiaries. The property pledged and the
26 security granted under the Deed and Security Agreement relates not only to the Debtor's real
27 property, but also to the Debtor's personal property, including intellectual property. The Deed and
28

1 Security Agreement was the consideration and essential and primary security that ACA relied upon
2 when agreeing to issue the Bond Insurance Policies.

3 Prior to the Debtor's commencement of this Chapter 11 case, the Debtor was in default in
4 payment of amounts due under the Loan Agreement and an Event of Default existed under both the
5 Loan Agreement and the Indenture. Pursuant to the terms of the Loan Agreement and the Indenture,
6 ACA has the right to direct the Trustee with respect to remedies to be exercised against the Borrower
7 following the occurrence of an Event of Default so long as the ACA has not defaulted in payment
8 under the Bond Insurance Policy. ACA is not in default in payment under the Bond Insurance Policy.

9 In addition to the Copia real property, the only other significant assets of Debtor are its
10 inventory, furniture, fixtures, equipment, intellectual property, and the proceeds of a Wayne Thiebaud
11 painting, all of which ACA contends are subject to the Deed and Security Agreement. These assets
12 are highly illiquid and difficult to precisely value. Debtor estimated that their value was no more
13 than \$1.6 million as of the Petition Date.

14 **B. Status of Unsecured Debt**

15 In addition to the foregoing Secured Claim, Debtor estimates that it owes unsecured trade debt
16 of approximately \$1.4 million to around 370 vendors. Debtor also contends that it owes the
17 following additional unsecured debt entitled to "priority" under the Bankruptcy Code: (1) \$180,000
18 in employee benefit claims, primarily accrued vacation pay due its 60 employees, (2) \$25,000 in
19 consumer deposit claims, and (3) \$60,000 in unpaid sales taxes. The Joint Plan is designed to
20 provide payment in full to allowed priority claimants and a partial distribution to allowed general
21 unsecured claimants.

22 **C. The Debtor's Failed Emergency Motion to Incur "Super Priority" Secured Debt**

23 Debtor's initial reorganization effort was to spin off a new for-profit entity which would pay
24 royalties to Debtor. Debtor obtained a commitment for a \$2 million credit line from Charter Oak
25 Bank, which was conditioned upon Debtor's being able to secure this facility with a first deed of trust
26 on its real property under the rarely used powers of the Bankruptcy Court to "prime," or involuntarily
27 subordinate, the 2007 Mortgage into a junior position. Debtor sought approval of this new loan
28 simultaneously with its Chapter 11 filing. However, the Bankruptcy Court denied the motion after

1 finding that Debtor could not offer BNY Mellon and ACA “adequate protection” for the loss of their
2 collateral rights under the 2007 Mortgage.

3 **D. The Proposed Compromise Between Debtor and the 2007 Indenture Trustee and**
4 **ACA Financial Guaranty Corporation, and Related Events**

5 Once the Court denied Debtor’s Motion to Incur “Super Priority” Secured Debt, Debtor risked
6 losing virtually all of its assets in foreclosure. BNY Mellon and ACA, in turn, expressed concern to
7 Debtor’s management over how to maximize the value of their return on the 2007 Mortgage given
8 the difficult land use entitlement problems Debtor faced. Debtor, BNY Mellon, and ACA then
9 entered into negotiations resulting in the execution of a “Collateral Disposition and Settlement
10 Agreement.” This Agreement included the following principal provisions:

- 11 A) The Debtor would stipulate to relief from the automatic stay to permit BNY
12 Mellon and ACA to take peaceful repossession of their collateral;
- 13 B) The Debtor would provide certain assistance to BNY Mellon and ACA in
14 preserving, maintaining, and liquidating their collateral;
- 15 C) BNY Mellon and ACA would waive any collateral rights they may have in the
16 prepetition auction proceeds of certain artwork in the approximate amount of
17 \$138,000;
- 18 D) BNY Mellon and ACA would agree to pay to the Debtor a “carve out”
19 pursuant to the provisions of Bankruptcy Code Section 506(c) in the amount of
20 \$327,349.63; and
- 21 E) The parties would exchange mutual general releases, including a release of the
22 litigation threatened by Copia Claims, LLC, Freefall Manager, LLC, Ferry
23 Claims, LLC, Abundant Claims LLC, or any other person or entity associated
24 with, affiliated with, or controlled by William McGrane. (the “McGrane
25 Group”).

26 The Debtor sought approval of this Agreement pursuant to Bankruptcy Rule 9019. The
27 McGrane Group objected. The McGrane Group had no objection to items A, B, C, and D of the
28 Agreement but objected to the release language because the McGrane Group wanted to pursue a
litigation solution, in ACA’s view, largely for the McGrane Group’s own benefit.

Hearings on the Rule 9019 Motion were held on February 27 and March 6. While the Rule
9019 Motion was under submission and without notice to ACA, the McGrane Group and the Debtor
negotiated a proposed agreement and outline for a plan of liquidation.

1 Thereafter, the Debtor and the McGrane Group filed, in effect, a joint plan of liquidation and
2 disclosure statement. ACA objected to the disclosure statement and related pleadings and also filed a
3 motion to terminate the Debtor's exclusive right to file a plan. At a hearing on April 10, 2009, the
4 Court terminated that exclusive right and allowed ACA and other parties in interest to file
5 "competing" plans so long as they were filed by May 1, 2009. Accordingly, on April 30, 2009, ACA
6 filed a separate Disclosure Statement and its plan. Since the April 10, 2009, hearing, ACA has also
7 sought and received the support of members of the Napa community and others interested in the
8 future of Copia, including: (i) the City of Napa; (ii) the Coalition to Preserve Copia ("CPC"); and (3)
9 the Culinary Institute of America ("CIA"). Since the April 10, 2009, hearing, Debtor has likewise
10 sought to work with members of the Napa community and others concerned about the Copia
11 Property's prompt return to productive and beneficial use.

12 **E. Creation of the Joint Plan**

13 Following a hearing on May 1, 2009, the McGrane Group withdrew its support for the
14 Debtor's plan and the Debtor withdrew its motion for approval of a financing agreement with the
15 McGrane Group.

16 Since the April 10, 2009, hearing, the Debtor and ACA sought to resolve their differences
17 regarding the best plan of liquidation of Debtor's Estate. These efforts culminated with an agreement
18 reached on June 11, 2009, read into the record at the June 12, 2009, hearing in the Bankruptcy Case,
19 and incorporated into the Joint Plan and this Disclosure Statement.

20 On June 10, 2009, Copia Claims, LLC commenced a purported class action lawsuit in the
21 United States District Court for the Eastern District of California against several defendants,
22 including ACA; an amended complaint (the "Complaint") was filed on June 16, 2009. Copia Claims,
23 LLC claims to be acting on behalf of all persons and entities holding a "derivative interest" in the
24 proof of claim filed by ACA and BNY Mellon in the Copia bankruptcy proceeding on April 8, 2009.
25 The Complaint asserts claims for violations of Section 10(b) of the Securities Exchange Act of 1934
26 and SEC Rule 10b-5 against all of the defendants based on the assertion that a May 1, 2007 Escrow
27 Agreement between Copia, the California Infrastructure and Economic Development Bank, and BNY
28 Mellon contained false and misleading statements. The Complaint also asserts a cause of action for

1 bad faith insurance against ACA, based on the assertion that ACA's participation in the Bankruptcy
2 Case is in bad faith. All defendants believe that the Complaint is without merit and intend to
3 vigorously defend the claims against them.

4 **F. ACA's Collaborative Efforts Regarding Best Use of the Copia Property**

5 Since well before the April 10, 2009, hearing, ACA has sought to find a collaborative solution
6 to this case that would maximize the feasible return to Debtor's general unsecured creditors and
7 address the concerns expressed by this Court and others interested in the preservation of Copia.
8 These efforts have included: retaining Alvarez & Marsal in September 2008 to identify potential
9 buyers, or other highest and best uses for Debtor's real and personal property; working with Debtor to
10 consummate the agreement described above; meeting with Napa city officials regarding possible uses
11 for Debtor's property; working with the CPC and the Napa community to identify the best possible
12 use for the property; and seeking to identify and collaborate with other entities interested in the
13 preservation of Copia, including the CIA.

14 ACA retained Alvarez & Marsal before Debtor filed for bankruptcy, and attempted to work
15 with Debtor prior to bankruptcy to identify potential purchasers. As described above, in November
16 2008, these efforts by ACA, through Alvarez & Marsal, resulted in multiple potential purchasers
17 submitting letters of intent seeking to purchase the real and personal property, including one for \$37
18 million. Since Debtor filed for bankruptcy protection, Alvarez & Marsal has continued to seek out
19 prospective buyers, and to seek out parties interested in utilizing Debtor's real and personal property,
20 so as to obtain the highest and best value for all the property.

21 In ACA's discussions with the City of Napa, the City has represented that it believes Copia
22 has been, and will continue to be, a critical economic catalyst for the community; wants to move
23 quickly to support effective re-use of the Copia site, and will strongly support a solution that avoids
24 litigation and unnecessary delay; and believes that ACA has been operating in good faith to maintain
25 the Copia property and work with the City toward a redevelopment plan.

26 ACA has had several meetings and telephone conversations with representatives of the CPC.
27 In these meetings, the CPC has expressed its concern that a litigation-based plan would not serve the
28 interests of the Napa community. The Joint Plan is not litigation-based. ACA has been supportive of

1 the CPC's efforts, and has indicated its willingness to consider the CPC's interim and long-term
2 financing plans and proposed uses for the property. Discussions with the CPC, as well as other
3 potential purchasers and/or tenants, have been productive and are ongoing.

4 ACA has also sought to identify and collaborate with entities like CIA that have a history with
5 and interest in Copia to determine best uses for the property. The CIA was one of the original
6 partners in the Copia venture with Robert Mondavi, and is now engaged in exploratory conversations
7 with ACA regarding the future of Copia and CIA's potential interest in using some or all of the
8 property for educational purposes. ACA and the CIA are in discussions relating to leasing and
9 operating the Copia property.

10 **G. Other Post Petition Events**

11 On December 2, 2008, the Bankruptcy Court entered its order providing for notice of the
12 Chapter 11 Case and the Claims Bar Date was established as April 9, 2009. The Bankruptcy Court
13 also established June 1, 2009, as the Governmental Units Claims Bar Date. Debtor represents that a
14 copy of this notice has been mailed to all known potential Creditors in the Chapter 11 Case.

15 Following the filing of the Case, the Office of the U.S. Trustee held an organizational meeting
16 of certain of the Debtor's 20 largest Unsecured Creditors to gauge interest in the formation of an
17 Official Committee of Unsecured Creditors pursuant to Bankruptcy Code Sections 1102 and 1103.
18 As a result of that meeting, no committee was appointed.

19 The law firm of MacConaghy & Barnier, PLC has been authorized by the Bankruptcy Court
20 to represent the Debtor in connection with the Chapter 11 Case. Payment of pre-Confirmation
21 compensation to this firm is subject to Bankruptcy Court approval after notice and a hearing. Any
22 party in interest may be heard. MacConaghy & Barnier, PLC was paid a prepetition retainer of
23 \$60,000, and expects to incur additional fees and costs prior to the Effective Date.

24 **V. JOINT PLAN OF LIQUIDATION**

25 **A. Joint Plan Objectives**

26 The objectives of the Joint Plan are to: (1) provide for an orderly wind down of the affairs of
27 Debtor; (2) allow the Secured Creditors to take possession of their Collateral without unnecessary
28 expense or further delays, and further allow the Secured Creditors to create the highest and best use

1 for the real and personal property for the benefit of their stakeholders and the surrounding
2 community; (3) generate funds sufficient to pay allowed administrative, priority, and priority tax
3 claims in full; and (4) generate the maximum feasible return to general unsecured creditors.

4 **B. ACA Contributions to the Joint Plan**

5 In order to facilitate the efficient wind-down of the Estate and achieve the maximum feasible
6 return to general unsecured creditors, pursuant to the Joint Plan ACA will make a series of
7 contributions to the Estate. The Joint Plan achieves this by means of: (1) a cash contribution to the
8 Estate in the amount of \$622,000; (2) the waiver of the Unsecured Deficiency Claim held by ACA
9 pursuant to its contractual rights with the 2007 Bondholders; (3) the waiver of ACA's collateral rights
10 to the Thiebaud painting and/or its proceeds; and (4) the waiver of ACA's Administrative Claims.

11 **C. Specification and Treatment of Claims and Interests**

12 The treatment of Claims described below applies only to Allowed Claims. Claims that are
13 asserted but are subject to a pending objection, to an estimation order of the Bankruptcy Court, or to a
14 requirement of Bankruptcy Court review or approval (such as requests for payment of professionals)
15 will be paid only after they become Allowed Claims. No Distributions will be made until a Claim
16 becomes an Allowed Claim.

17 **D. Non-Classified Claims**

18 Section 1123(a)(1) of the Bankruptcy Code provides that certain Claims, including certain
19 professional fees and Claims for goods or services arising out of the ordinary course of the business
20 of the Debtor after the Petition Date, and Claims for taxes, shall not be classified under the Joint Plan.

21 Allowed professional fees will be paid through the Joint Plan on the later of (a) the Effective
22 Date, (b) the date such Claims become Allowed Claims, (c) the date such Claims are due in the
23 ordinary course of the business of the Liquidating Trust, or (d) at such time and in such amounts as
24 the Liquidating Trustee and the holder of such Allowed Claims shall agree. Obligations incurred by
25 the Debtors' professionals for services provided through the Effective Date will be paid in
26 accordance with the Court order approving the fees and expenses of such professionals.

1 The Plan Proponents anticipate that the Debtor's Tax Claims will be paid as soon as its
2 priority wage and consumer deposit claims are satisfied. The outside deadline for paying tax claims
3 under the Joint Plan is the period set forth in Bankruptcy Code Section 1129(a)(9)(C).

4 As of the Effective Date, Debtor estimates that the total amount due to the Allowed Non-
5 Classified Claims will be approximately \$310,000. A breakdown of the Non-Classified Claims
6 amount is estimated as follows:

7 Professional Fees (est.)	\$150,000
8 Other Administrative Expenses	\$100,000
9 Tax Claims (sales taxes)	\$60,000
10 Total	\$310,000

11 **E. Classified Claims and Interests**

12 The Joint Plan divides Claims of Creditors and the holders of interests into classes. The
13 classes and their treatment are as described below. The 1999 Bondholders are not classified below.
14 The 1999 bonds, as defined by the 1999 Bond Documents, have been fully and completely defeased.
15 The 1999 Escrow Account was created for the 1999 Bondholders, who are to be paid in full from its
16 proceeds. The 1999 Bondholders are therefore not considered or treated as creditors of the Debtor's
17 Estate in this Bankruptcy Case.

18 **Class 1.** Class 1 is the Secured Claim of the County of Napa for unpaid property taxes. The
19 County of Napa shall retain its liens until the taxes have been paid in full. The secured real property
20 taxes will be paid with interest under Bankruptcy Code Sections 506(b) and 511. The Joint Plan
21 provides that all installments due to the Class 1 Claimant as of the Effective Date shall be paid in full
22 within ten days of the Effective Date. All subsequent installments shall be paid by the date last
23 payable without default penalties under State law. A failure to make a required payment to the Class
24 1 Creditor shall be deemed a "Class 1 Default". If a "Class 1 Default" is not cured within ten (10)
25 days after service of written notice of default from the County of Napa, then it may enforce the entire
26 amount of its claims, plus all penalties and interest accrued under State law, in accordance with
27 applicable State law remedies. This Class is "unimpaired" under Bankruptcy Code Section 1124 and
28 is not entitled to vote on the Joint Plan, but is conclusively presumed to have accepted the Joint Plan.

1 **Class 2.** Class 2 is the Allowed contingent Claim of the State of California, Department of
2 Parks and Recreation, pursuant to Grant Contract No. C0204034 of the State of California 2002
3 Resources Bond Act Historical and Cultural Resources Preservation Opportunity Grant Program.
4 Pursuant to this program, the State of California made a \$1,000,000 grant to Debtor for the
5 construction of a children’s garden and demonstration project, which required Debtor to maintain the
6 facility for public use. The Joint Plan provides that the Debtor shall satisfy its obligations to the Class
7 2 Claimant by dismantling the funded fixtures, to the extent practicable, and reinstalling them on the
8 Connolly Ranch for continued public use as soon as practicable after the Effective Date. Any
9 residual monetary claim for damages held by the Class 2 Creditor shall be treated as a Class 7 Claim.
10 This Class is impaired and entitled to vote on the Joint Plan.

11 **Class 3.** Class 3 is the Secured Claim of Kubota Credit Corporation USA, secured by a
12 tractor owned by the Debtor. The Joint Plan provides that this claim will either be paid in full on the
13 Effective Date or the Class 3 Creditor will be permitted to exercise its State law enforcement rights
14 with respect to its Claim. Because of this treatment, this class is deemed “unimpaired” under
15 Bankruptcy Code Section 1124 and is not entitled to vote on the Joint Plan, but is conclusively
16 presumed to have accepted the Joint Plan.

17 **Class 4.** Class 4 consists of the Allowed Secured Claim of the Secured Creditors, arising out
18 of the 2007 Bond Documents, secured by a blanket lien on virtually all of the Debtor’s assets, to the
19 extent of the value of the collateral. The holders of the Class 4 Allowed Secured Claim shall retain
20 all of their lien rights under non-bankruptcy law, notwithstanding the transfers to be made under the
21 Joint Plan. On the Effective Date, all of the Debtor’s Property, with the exception of the ACA
22 Contribution, shall be transferred to the Trust (as defined below) free and clear of all Claims,
23 interests, Liens, security interests, charges, and other encumbrances on a tax-free basis pursuant to
24 Bankruptcy Code Section 1146(a), except for the lien rights of the Secured Creditors. All parties,
25 including the Trust, shall execute such documents as are reasonably necessary to maintain and
26 evidence the Class 4 Creditors’ continuing blanket lien. Among the many valuable contributions
27 ACA is making to the estate (set forth in greater detail in Sections I.B. and V.B.), in order to facilitate
28 the effective wind-down of this case, Secured Creditors will elect to waive their Unsecured

1 Deficiency Claim for the benefit of the unsecured creditors, among others. This is not a waiver of the
2 rights of the 2007 Bondholders under the Indenture dated May 1, 2007, nor is it a waiver of the
3 insurance afforded them by ACA through that Indenture. This Class is impaired and entitled to vote
4 on the Joint Plan.

5 **Class 5.** Class 5 includes the Priority Claims of employees and employee benefit plans.
6 Under Bankruptcy Code Sections 507(a) (4) and 507(a)(5), claims for unpaid wages, salaries,
7 vacation pay, and employee benefits incurred within 6 months of the Petition Date are entitled to
8 priority distribution of up to \$10,950 per employee. The Debtor estimates that its Class 5 Creditors
9 were owed approximately \$180,000, as of the Petition Date. Half of this sum has already been paid
10 pursuant to Bankruptcy Court Order. The Joint Plan provides that Priority Wage and Employee
11 Benefit Claims will be paid in full, but without interest, as soon as practical after the “Priority Claims
12 Objection Bar Date” – 30 days after the Effective Date. This Class is impaired and entitled to vote on
13 the Joint Plan.

14 **Class 6.** Class 6 includes the Priority Claims of individuals for prepetition consumer deposits
15 paid to Debtor for goods and services which were never delivered. Under Bankruptcy Code Section
16 507(a)(7), these claims are entitled to priority distribution of up to \$2,425 per person after all priority
17 wage claims are paid in full. The Debtor estimates that its Class 6 Claims are owed approximately
18 \$25,000. The Joint Plan provides that consumer deposit Priority Claims will be paid in full, but
19 without interest, as soon as practical after the “Priority Claims Objection Bar Date” – 30 days after
20 the Effective Date. This Class is impaired and entitled to vote on the Joint Plan.

21 **Class 7.** Class 7 includes all other general unsecured Creditors with Allowed Claims. This
22 includes, without limitation: (1) all Rejection Claims; (2) all unsecured Claims of vendors and trade
23 creditors for goods delivered or services provided to the Debtor prior to the Petition Date; (3) all
24 employee wage and benefit claims to the extent that they exceed the Allowed Priority Claim
25 amounts; (4) all Unsecured Deficiency Claims (except the Secured Creditors’ Unsecured Deficiency
26 Claim); and (5) all consumer deposit claims to the extent that they exceed the Allowed Priority Claim
27 amounts. Class 7 would also include the Secured Creditor’s Unsecured Deficiency Claim arising out
28 of the 2007 Bond Documents, but for the fact that this Claim is waived if the Joint Plan is confirmed.

1 This is not a waiver of the rights of the 2007 Bondholders under the Indenture dated May 1, 2007, nor
2 is it a waiver of the insurance afforded them by ACA through that Indenture. The Joint Plan provides
3 that Class 7 Creditors will be paid on a Pro Rata basis from Available Cash, which will include any
4 and all of the remainder of the ACA Contribution after payment of all allowed costs of
5 administration, unclassified claims, and priority claims. The total Class 7 Claims are estimated at
6 approximately \$1.4 million. The estimated dividend is approximately 13.4%.⁴ This Class is
7 impaired and entitled to vote on the Joint Plan.

8 **Class 8.** Class 8 includes all the holders of all membership interests and other interests in the
9 Debtor. The Joint Plan provides that these interests will be cancelled as of the Effective Date and that
10 they will receive nothing under the Joint Plan. This Class is impaired, but because it is neither
11 receiving nor retaining any property, it is conclusively presumed to have rejected the Joint Plan and is
12 not entitled to vote.

13 **F. Financial Reports and Quarterly Fees**

14 As of the Effective Date, the Debtor will no longer be required to file “Monthly Operating
15 Reports” with the Court. Until a “Final Decree” is entered by the Court, the Trust (as defined below)
16 will be obligated to file Post Confirmation Quarterly Reports on official Court forms showing the
17 gross amount collected by the Trust and disbursed under the Joint Plan. The Trust will also be
18 obligated to pay post confirmation quarterly fees to the Office of the United States Trustee, which is
19 determined based on the amount of its cash disbursements. No other financial reports will be filed
20 with the Court.

21 **G. Means for Implementation of the Joint Plan**

22 1. Joint Plan Funding for Certain Creditors

23 The source for all cash Distributions under the Joint Plan to Unclassified and Class 5, 6, 7,
24 and 8 Creditors shall be the ACA Contribution, consisting of the cash currently on hand; the
25 \$622,000 in cash infused by ACA through the Joint Plan; and the remaining auction proceeds from a
26

27 ⁴ Assuming aggregate allowed unpaid administrative and priority claims of no more than
28 \$435,000.

1 Wayne Thiebaud painting to be contributed by ACA to the estate, the rights to which ACA has
2 waived under the Joint Plan.

3 2. Creation of Trust for Benefit of Class 4 Creditors and Related Parties

4 (a) In General. Prior to the Confirmation Hearing ACA will file with the Court a form of
5 trust agreement for a trust to hold title to the Debtor's property (the "Trust") and will identify the
6 trustee (the "Trustee") in a notice filed with the Court. In the event that the Trustee is unable to act as
7 such or resigns or in the event that ACA files a notice of the removal of the Trustee, then ACA will
8 promptly file with the Court a notice appointing another natural person as Trustee. However, if ACA
9 is in default of any of its obligations under the Bond Insurance Policies, then ACA may not remove
10 the Trustee or appoint a successor Trustee, but any party may make a motion to the Court for an order
11 removing the existing Trustee or appoint a successor Trustee.

12 (b) Rights and Powers of Trust. The Trust will be authorized to take all necessary steps,
13 and perform all necessary acts, to consummate the terms and conditions of the Joint Plan with respect
14 to the 2007 Bondholders and related parties. The Debtor and the Trust will be authorized to execute
15 all agreements and documents and take such other actions as are necessary to effectuate the
16 transactions provided for in the Joint Plan, without the need for any required approvals,
17 authorizations or consents.

18 (c) Organization. On or before the Effective Date, the Trustee will (a) form the Trust and
19 register it as appropriate with applicable government authorities; and (b) file with the Court such
20 agreements and documents as may then be necessary or appropriate to effectuate or further evidence
21 the terms and conditions of the Joint Plan.

22 (d) Beneficiaries. The beneficiary of the Trust will be the Reorganized Debtor. The
23 interest of the beneficiary under the Trust will be determined by the terms of the Joint Plan.

24 (e) Transfer of Debtor's Property to the Trust. On the Effective Date, title to all property
25 of the Debtor's estate (except as otherwise provided in the Joint Plan) will, on a tax-free basis
26 pursuant to Bankruptcy Code Section 1146(a), pass to and vest in the Trust free and clear of all
27 Claims, interests, Liens, security interests, charges, and other encumbrances, except for the security
28

1 interests of BNY Mellon, as indenture trustee on behalf of the 2007 Bondholders, ACA, as insurer of
2 the 2007 Bonds, and the Class 1 Creditor.

3 (f) Compensation. The Trustee's compensation shall be set forth in the Trust Agreement.
4 The Trustee's compensation shall not be deemed an allowable Administrative Claim against the
5 Estate.

6 3. Responsible Person

7 To the extent that assets, liabilities, and other affairs of the Debtor remain outside of the Trust,
8 the Joint Plan provides that as of the Effective Date, the Reorganized Debtor will be managed by a
9 Responsible Person. The principal duties of the Responsible Person shall be to wind up the Debtor's
10 affairs and distribute the proceeds of the ACA Contribution without further supervision or control by
11 the Bankruptcy Court, except as provided in Debtor's Plan or by an order of the Bankruptcy Court.
12 The Responsible Person shall be nominated by ACA and will be identified prior to Confirmation.
13 The Responsible Person will be compensated pursuant to agreement with ACA, but shall under no
14 circumstances receive compensation in excess of that permitted to a Chapter 7 bankruptcy trustee—a
15 sliding scale commission calculated on the amount of cash distributed to creditors, ranging from 25%
16 of the first \$5,000 up through 3% of amounts over \$1,000,000. See Bankruptcy Code Section 326.

17 4. Organizational Matters for the Debtor

18 On the Effective Date, the Debtor will be deemed to have elected to dissolve as a nonprofit
19 public benefit corporation pursuant to the provisions of California Corporations Code Section 6610.
20 The Notice of Bankruptcy served on Creditors and parties in interest by the Debtor or the Bankruptcy
21 Court will be deemed to satisfy the notice requirements of California Corporations Code Section
22 6613, and any and all Claims against the Debtor will be filed, allowed, and paid as set forth in the
23 Bankruptcy Code and the Joint Plan. On or after the Effective Date, Debtor shall file a Certificate of
24 Dissolution of the Debtor with the California Secretary of State.

25 The Final Decree shall be deemed to be the written confirmation that there are no remaining
26 assets, as defined by California Corporations Code Section 6615. To the extent that there is a conflict
27 between the dissolution provisions of the California Nonprofit Public Benefit Corporation Law and
28

1 the Bankruptcy Code, the Bankruptcy Code shall preempt any such conflicting provisions of State
2 law.

3 5. Post-Confirmation Role of Insiders

4 Section 1129(a)(5)(A) of the Bankruptcy Code requires the Joint Plan Proponents to disclose
5 the identity and affiliation of any person serving as a director or officer of the Debtor after
6 Confirmation. Additionally, Section 1129(a)(5)(B) requires the disclosure of the employment and
7 any compensation payable to an individual who meets the statutory definition of an “insider” of the
8 Debtor. “Insiders” of the Debtor include its current executive officers and directors.

9 Debtor will just have one officer as of the Effective Date, Joseph Fischer, its former Chief
10 Financial Officer, who will serve as its President. In that capacity, Mr. Fischer will be responsible for
11 filing final reports and tax returns with the Bankruptcy Court, and State and Federal governmental
12 entities, as applicable. Mr. Fischer will have received post petition salary up through the Effective
13 Date of approximately \$18,000. He intends to assert an Administrative Claim for accrued and unpaid
14 post petition salary. ACA reserves all rights to object to Mr. Fischer’s Administrative Claim.

15 Until its dissolution, the Debtor will be managed by a two person Board of Trustees
16 consisting of Mr. Fischer, and Joseph Peatman, Esq. Neither Mr. Peatman nor Mr. Fischer shall
17 receive compensation for services as Trustees.

18 6. Post Confirmation Administration and Retention of Professionals

19 All allowed fees and costs incurred by professionals on or after the Effective Date in
20 connection with the implementation of the Joint Plan, the making of Distributions under the Joint
21 Plan, the determination of Allowed Claims, the enforcement of the obligations and rights of the
22 Debtor under the Joint Plan, and appeals, if any, shall be paid in full by ACA. No further Court
23 authorization will be necessary to pay post confirmation professional fees and expenses.

24 7. Retention, Assignment, and Waiver of Avoiding Powers

25 As a Chapter 11 Debtor in possession, the Debtor holds any cause of action under sections
26 502 through 553 of the Bankruptcy Code. These include claims under section 502 (claim objections),
27 510 (subordination powers), 541 (all non-bankruptcy causes of action), 542 (turnover powers), 544
28 (strong arm powers), 545 (avoidance of statutory liens), 547 (preferential transfers), 548 (fraudulent

1 transfers), 549 (unauthorized post-petition transfers), 550 (specification of remedies against initial
2 and subsequent transferees), and 553 (set off rights). Pursuant to the provisions of Bankruptcy Code
3 Section 1123(b)(3)(A), as of the Effective Date, all litigation claims or interests belonging to the
4 Debtor or the Estate shall be deemed settled or adjusted as set forth in the Joint Plan.

5 Specifically and without limitation, in consideration for the ACA Contribution and the other
6 rights and duties of the Plan Proponents set forth in the Joint Plan, as of the Effective Date, the
7 Debtor, the Reorganized Debtor, the Responsible Person, and the Estate release and forever discharge
8 the Defeasance Transaction Group and each of their present and former nominees, affiliates, assigns,
9 partners, personal representatives, parents, subsidiaries, employees, agents, officers, directors,
10 trustees, shareholders, agents, attorneys, advisors, accountants, financial advisors, and investment
11 bankers of and from all demands, liens, claims, assignments, contracts, covenants, actions, suits,
12 causes of action (including without limitation Avoidance Actions), obligations, costs, expenses,
13 attorneys' fees, damages, losses, controversies, judgments, costs of litigation and suits, interests,
14 orders and liabilities whatsoever, whether arising at law or equity, whether known or unknown,
15 asserted or non-asserted, suspected or unsuspected, pending or threatened, or fixed or contingent, that
16 arise out of any matters relating, directly or indirectly, to the 1999 Bond Documents, the 1999
17 Escrow Account, the 2007 Bond Documents, the Case, and any other transaction between the parties
18 up through and including the Effective Date. Further, as of the Effective Date, except as specifically
19 set forth in the Joint Plan, Secured Creditors release and forever discharge the Debtor and each of its
20 nominees, affiliates, assigns, current and former partners, employees, personal representatives and
21 attorneys of and from all demands, liens, claims, assignments, contracts, covenants, actions, suits,
22 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, controversies,
23 judgments, costs of litigation and suits, interests, orders and liabilities whatsoever, whether arising at
24 law or equity, whether known or unknown, asserted or non-asserted, suspected or unsuspected,
25 pending or threatened, or fixed or contingent, that arise out of any matters relating, directly or
26 indirectly, to the 1999 Bond Documents, the 1999 Escrow Account, the 2007 Bond Documents, the
27 Case, and any other transaction between the parties. This settlement and release shall be deemed to
28 include a waiver by all settling parties to the provisions of California Civil Code Section 1542, which

1 states: “A general release does not extend to claims which the creditor does not know or suspect to
2 exist in his or her favor at the time of executing the release, which if known by him or her must have
3 materially affected his or her decision to settle.”

4 The Estate specifically reserves all rights, claims, and causes of action arising out of this
5 Bankruptcy Case against William McGrane, Freefall Manager, LLC, Ferry Claims, LLC, Copia
6 Claims LLC, Abundant Claims LLC, and any other person or entity associated with, affiliated with,
7 or controlled by William McGrane. In consideration for the ACA Contribution, any such claims and
8 any resulting recovery are assigned to the Plan Proponent ACA for prosecution as it deems fit at its
9 sole expense.

10 Other litigation claims and causes of action not specifically reserved, including without
11 limitation the right to prosecute any action under Bankruptcy Code Section 547 against any Creditor,
12 are deemed waived.

13 The Plan Proponents and the Responsible Person reserve the right to object to any and all
14 Claims.

15 8. Default by Debtor

16 Should the Debtor fail timely to take or perform any action required by it under the Joint Plan,
17 the Trustee or the Responsible Person will be authorized to act in name and on the behalf of the
18 Debtor to take and perform such actions.

19 9. Treatment of Executory Contracts and Unexpired Leases

20 The Joint Plan provides that the Debtor’s “Ground Lease and Option to Purchase” with
21 Oxbow Market L.P. will be assumed as of the Effective Date. Oxbow Market L.P. was granted a
22 long-term ground lease of bare land at the northwest corner of Debtor’s real property on which it
23 constructed a building to operate a public market. It also has an option to purchase the site. Neither
24 the Debtor nor Oxbow Market L.P. is in default of the Ground Lease. If the Plan Proponents were to
25 reject this Ground Lease it would cause significant harm to Oxbow Market L.P. and its subtenants
26 without any corresponding benefit to the Estate. Even if the Ground Lease were rejected, Oxbow
27 Market L.P. could retain possession of the site pursuant to Bankruptcy Code Section 365(h).
28 Accordingly the Joint Plan provides that this executory contract is assumed.

1 All other executory contracts will be deemed rejected. The only other known executory
2 contracts are three equipment leases for office equipment (e.g., photocopier, postage meter). Since
3 the Debtor is discontinuing operations, it has no need for these assets, and it has no available funds to
4 cure the arrearages. It is estimated that these equipment lessors may hold rejection claims totaling
5 \$25,000.

6 ACA shall be entitled to designate to the Debtor which executory contracts and unexpired
7 leases related to the Debtor's real property will be assumed, assumed and assigned, or rejected, and
8 Debtor will seek to effectuate the same.

9 Claims for damages resulting from this rejection of executory contracts and unexpired leases
10 must be filed with the Bankruptcy Court within thirty (30) days after such Effective Date and will be
11 treated, as applicable, as a Class 7 general unsecured Allowed Claim under the Joint Plan.

12 **H. Provisions Governing Distributions**

13 1. Distribution Account

14 The Responsible Person shall hold any funds transmitted to it, less funds needed to manage
15 the Reorganized Debtor, in a segregated trust account for the benefit of holders of Allowed Claims in
16 the amounts, at the times, and in the priority of payment established by the Joint Plan. The Trustee of
17 the Delaware Statutory Trust shall hold all funds transmitted to it, which constitutes the collateral or
18 proceeds or products of the collateral of the Secured Creditors, in a segregated trust account and shall
19 pay the same over to BNY Mellon on behalf of the Secured Creditors.

20 2. Timing of Distributions

21 The Responsible Person shall make a first Distribution to holders of Allowed Claims as soon
22 as practicable after the Effective Date. Thereafter, the Responsible Person shall make subsequent
23 Distributions in its discretion, but not less than annually. Distributions may be made without further
24 Order of Court.

25 3. Distribution Addresses

26 Unless the Creditor has provided the Responsible Person with written notice of a different
27 address, Distributions will be sent to Creditors at the address set forth in the proofs of Claim filed
28

1 with the Bankruptcy Court. If no proof of Claim is filed with respect to a particular Claim, the
2 Distribution will be mailed to the address set forth in the Schedules.

3 4. Withholding Taxes

4 Pursuant to Section 346(h) of the Bankruptcy Code, the Responsible Person shall be entitled
5 to deduct any federal, state, or local withholding taxes from any cash payments made with respect to
6 Allowed Claims, as appropriate. The Responsible Person shall be permitted to withhold a
7 Distribution to any Creditor that has not provided information requested by the Responsible Person
8 for the purpose of fulfilling its obligations hereunder. The Responsible Person shall comply with all
9 reporting obligations imposed on it by any governmental unit with respect to withholding and related
10 taxes.

11 5. No Interest

12 Except with respect to holders of unimpaired Claims entitled to interest under applicable non-
13 bankruptcy law or as otherwise expressly provided herein, no holder of an Allowed Claim shall
14 receive interest on the distribution to which such holder is entitled hereunder, regardless of whether
15 such distribution is made on the Effective Date or thereafter.

16 6. De Minimis Distributions

17 Notwithstanding any other provision of the Joint Plan, Distributions of less than \$10.00 need
18 not be made on account of any Allowed Claim or Allowed Interest; provided that Distributions that
19 would otherwise be made but for this provision shall carry over until the next Distribution Date until
20 the cumulative amount to which any holder of an Allowed Claim or Allowed Interest is entitled to
21 more than \$10.00, at which time the cumulative amount of such Distributions will be paid to such
22 holder.

23 7. Unclaimed Distributions

24 Any cash Distributions that remain unclaimed or unnegotiated for ninety (90) days following
25 Distribution or are returned for reasons other than the absence of a current or correct address (unless a
26 current or correct address cannot be determined after reasonable inquiry) shall become the property
27 of the Responsible Person and be considered Available Cash. Any claim of any holder or successor
28

1 to such holder with respect to such property shall be discharged and forever barred notwithstanding
2 any federal or state escheat laws to the contrary.

3 **I. Procedures for Resolving Disputed Claims**

4 1. Time for Filing Proofs of Claim

5 Proofs of Claim, when required, shall be filed with the Bankruptcy Court no later than the
6 applicable Claims Bar Date, or such Claims shall be conclusively deemed barred and disallowed.

7 2. Evidence of Claim

8 For purposes of any Distribution under the Joint Plan, the Responsible Person shall have no
9 obligation to recognize any transfer of Claims or interests occurring on or after the first Distribution
10 Date. The Plan Proponents, their professionals, and the Responsible Person shall be entitled to
11 recognize and deal for all purposes with only those Creditors of record with the Bankruptcy Court as
12 of the first Distribution Date.

13 3. Amendments to Claims

14 Except as provided by the Joint Plan or as otherwise permitted by the Bankruptcy Court, the
15 Bankruptcy Rules or applicable law, upon expiration of the applicable bar date, proofs of Claim and
16 proofs of interest may not be filed or amended except for amendments to proofs of Claim to decrease
17 the amount or priority thereof.

18 4. Claim Objections

19 An objection to a Priority Claim shall be filed no later than the Priority Claims Objection
20 Date. An objection to any other Claim shall be filed no later than the Claims Objection Date. The
21 Plan Proponents and the Responsible Person, as appropriate, shall have the responsibility to review
22 Claims filed against the Debtor, to file objections as appropriate, and to resolve Disputed Claims.
23 From and after the Effective Date, the Plan Proponents or the Responsible Person may settle or
24 compromise any disputed Claim or interest without approval of the Court. Any settlement or
25 compromise of a disputed Claim by the Plan Proponents or the Responsible Person shall be binding
26 on any other party in interest.

1 5. Estimation of Claims

2 The Plan Proponents, or the Responsible Person, as appropriate, may, at any time, request that
3 the Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy
4 Code, regardless of whether the Plan Proponents or the Responsible Person has previously objected
5 to such Claim or whether the Court has ruled on any such objection, and the Court will retain
6 jurisdiction to estimate any Claim at any time during litigation concerning any objection to any
7 Claim, including during the pendency of any appeal related to any such objection. In the event the
8 Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the
9 Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Court.
10 If the estimated amount constitutes a maximum limitation on such Claim, the Plan Proponents, or the
11 Responsible Person, as appropriate, may elect to pursue any supplemental proceedings to object to
12 any ultimate payment of such Claim. All of the aforementioned objection, estimation and resolution
13 procedures are cumulative and are not necessarily exclusive of one another. Claims may be
14 estimated and thereafter resolved by any permitted mechanism.

15 6. Setoffs

16 The Plan Proponents or the Responsible Person may (but will not be required), pursuant to
17 section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed
18 Claim, and the distributions to be made pursuant to the Joint Plan on account of such Claim, claims
19 of any nature whatsoever that the Debtor or its successors may hold against the holder of such
20 Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any
21 Claim hereunder will constitute a waiver or release by the Debtor or its successors of any such claims
22 that the Debtor or its successors may possess against such holders, unless an order allowing such
23 Claim otherwise so provides.

24 7. Prosecution of Claims

25 After the Confirmation Date, only the Responsible Person shall have the authority to file
26 objections, settle, compromise, withdraw, or litigate to judgment objections to Claims or interests.
27 From and after the Effective Date, the Responsible Person may settle or compromise any disputed
28 Claim or interest without approval of the Court.

1 8. Distributions

2 Notwithstanding any provision of the Joint Plan specifying a date or time for payments or
3 Distributions of consideration hereunder, payments and Distributions in respect of any Claim that at
4 such date or time is disputed, unliquidated or contingent, shall not be made until a Final Order with
5 respect to an objection, estimation or valuation of such Claim is entered by the Bankruptcy Court,
6 whereupon appropriate Distributions shall be made promptly.

7 **VI. EFFECT OF ORDER OF CONFIRMATION**

8 As of the Effective Date, the effect of the Order of Confirmation shall be as follows:

9 **A. Binding Effect of Joint Plan**

10 The provisions of the confirmed Joint Plan shall bind the Debtor, any entity acquiring
11 property under or otherwise accepting the benefits of the Joint Plan, every Creditor, and the Registry
12 of Charitable Trusts of the State of California, whether or not such entity has filed a proof of Claim or
13 interest in the Bankruptcy Case, whether or not the Claim or interest of such entity is impaired under
14 the Joint Plan, and whether or not such Creditor or entity has accepted or rejected the Joint Plan.

15 **B. Full Satisfaction of Claims**

16 Except as otherwise provided in the Joint Plan and the Order of Confirmation, the rights
17 afforded in the Joint Plan shall constitute full and complete satisfaction and release of all Claims,
18 including any interest accrued thereon from and after the Petition Date, against the Debtor, ACA, the
19 Estate, or any assets or property of the Debtor and the Estate.

20 Except with respect to Administrative Claims, Rejection Claims, and Claims described in
21 Bankruptcy Rule 3002(c)(3), the Confirmation Order shall be deemed to be a Final Order disallowing
22 any Claim not filed as of the Effective Date.

23 **C. Injunction**

24 From and after the Effective Date, except as otherwise provided for herein or in the Order of
25 Confirmation, all Persons who have held, currently hold or may hold a debt, Claim, or interest against
26 the Estate, the Debtor, or their respective property, including the property transferred pursuant to the
27 Joint Plan are permanently enjoined from taking any of the following actions on account of any such
28 debt or Claim, pursuant to the statutory rights of creditors of a nonprofit public benefit corporation set

1 forth in California Corporations Code Sections 6618, 6719, and 6721: (a) commencing or continuing
2 in any manner any action or other proceeding against the Estate, the Debtor, the Reorganized Debtor,
3 the Responsible Person, the Secured Creditors, or their respective property; (b) enforcing, attaching,
4 collecting, or recovering in any manner any judgment, award, decree, or order against the Estate, the
5 Debtor, the Reorganized Debtor, the Responsible Person, or the Secured Creditors; (c) creating,
6 perfecting, or enforcing any lien or encumbrance against the Estate, the Debtor, the Reorganized
7 Debtor, the Responsible Person, the Secured Creditors, or their respective property including the
8 property transferred pursuant to the Joint Plan; (d) asserting any setoff, right of subrogation, or
9 recoupment of any kind against any obligation due to the Estate or the Debtor; and (e) commencing
10 or continuing any action, in any manner, in any place that does not comply with or is inconsistent
11 with the provisions of the Joint Plan or the Order of Confirmation. Nothing herein shall be deemed to
12 enjoin the exercise of police and/or regulatory powers of the United States of America, Internal
13 Revenue Service or the State of California, or any other Governmental Unit.

14 **D. Release of Claims and Interests**

15 (a) Except as otherwise specifically provided by the Joint Plan, the distributions and rights
16 that are provided in the Joint Plan will be in complete satisfaction, discharge and release, effective as
17 of the Confirmation Date (but subject to the occurrence of the Effective Date), of all Claims and
18 Causes of Action against, liabilities of, liens on, obligations of and interests in the Debtor or the
19 direct or indirect assets and properties of the Debtor, whether known or unknown, regardless of
20 whether a proof of Claim or interest was filed, whether or not Allowed and whether or not the holder
21 of the Claim or interest has voted on the Joint Plan, or based on any act or omission, transaction or
22 other activity or security, instrument or other agreement of any kind or nature occurring, arising or
23 existing prior to the Effective Date that was or could have been the subject of any Claim or interest,
24 in each case regardless of whether a proof of Claim or interest was filed, whether or not Allowed and
25 whether or not the holder of the Claim or interest has voted on the Joint Plan.

26 (b) Except as otherwise specifically provided in the Joint Plan (in addition to the releases
27 and exculpations otherwise provided in the Joint Plan), on or after the Effective Date, holders of
28 Claims of interests (a) voting to accept the Joint Plan or (b) abstaining from voting on the Joint Plan

1 and electing not to opt out of the release contained in this paragraph (which by definition does not
2 include holders of Claims who are not entitled to vote in favor of or against the Joint Plan), shall be
3 deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and
4 discharged the Debtor, the Reorganized Debtor, the Secured Creditors, the present and former
5 members of any of the foregoing (together with the advisory affiliates and advised affiliates of such
6 members), their respective successors, assigns, and each of their respective present and former
7 officers, directors, trustees, shareholders, agents, attorneys, advisors, accountants, financial advisors,
8 investment bankers, and employees, and any entity claimed to be liable derivatively through any of
9 the foregoing, from any and all Claims, interests, obligations, rights, suits, damages, causes of action,
10 remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of the Debtor
11 or Reorganized Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter
12 arising, in law, equity, or otherwise, that such entity would have been legally entitled to assert
13 (whether individually or collectively), based on, relating to, or in any manner arising from, in whole
14 or in part, the Debtor, the Reorganized Debtor, the Debtor's liquidation, the Debtor's Bankruptcy
15 Case, the purchase, sale, or rescission of the purchase or sale of any security of the Debtor, the
16 subject matter of, or the transactions or events giving rise to, any Claim or interest that is treated in
17 the Joint Plan, the business or contractual arrangements between Debtor and any released party, the
18 restructuring of Claims or interests prior to or in the Bankruptcy Case, the negotiation, formulation,
19 or preparation of the Joint Plan and Disclosure Statement, or related agreements, instruments, or other
20 documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking
21 place on or before the Effective Date.

22 (c) Additionally, the confirmation of the Joint Plan (subject to the occurrence of the
23 Effective Date) shall act as a discharge and release of all Causes of Action (including without
24 limitation, Causes of Action held by a trustee and debtor in possession under the Bankruptcy Code)
25 held by the Debtor, whether known or unknown, against: (i) the Secured Creditors and their present
26 and former parents, subsidiaries, affiliates, officers, directors, trustees, shareholders, attorneys,
27 accountants, financial advisors, investment bankers, advisory affiliates, employees, agents,
28 successors, and assigns; (ii) the present and former 1999 Bondholders, 1999 Escrow Agent, 1999

1 Indenture Trustee, 2007 Bondholders, and 2007 Indenture Trustee, each in such capacity, and their
2 respective present and former parents, subsidiaries, affiliates, officers, directors, trustees,
3 shareholders, attorneys, accountants, financial advisors, investment bankers, advisory affiliates,
4 employees, agents, successors, and assigns; and (iii) any Entity claimed to be liable derivatively
5 through any of the foregoing.

6 **E. Exculpation**

7 The Responsible Person, the Plan Proponents, and each of the respective present and former
8 parents, subsidiaries, affiliates, officers, directors, trustees, members, shareholders, attorneys,
9 financial advisors, investment bankers, other advisors, employees, agents, successors, and assigns of
10 the foregoing (including any professionals retained by such persons or entities) will have no liability
11 for any act or omission in connection with, or arising out of, the pursuit of approval of the Disclosure
12 Statement or the Joint Plan or the solicitation of votes for or confirmation of the Joint Plan, or the
13 consummation of the Joint Plan, or the transactions contemplated and effectuated by the Joint Plan or
14 the administration of the Joint Plan or the property to be distributed under the Joint Plan, or any other
15 act or omission during the administration of the Debtor's estate or in contemplation of the Chapter 11
16 Cases except for gross negligence or willful misconduct as determined by a Final Order of the Court,
17 and in all respects, will be entitled to rely upon the advice of counsel with respect to their duties and
18 responsibilities under the Joint Plan.

19 **F. Limitation of Liability**

20 On and after the Effective Date, neither the Responsible Person, the Debtor, the Reorganized
21 Debtor, ACA, nor any of their respective present and former parents, subsidiaries, affiliates, officers,
22 directors, trustees, members, shareholders, attorneys, financial advisors, investment bankers, other
23 advisors, employees, agents, successors, and assigns, shall have or incur any liability to any Person
24 for any authorized act taken or authorized omission made in good faith, including objections to or
25 estimations of Claims, disposition of assets, or formulating, determining not to solicit acceptances or
26 rejections to, or confirming the Joint Plan, or any contract, instrument, release, or other agreement or
27 document created in connection with the Joint Plan. Nothing herein shall be deemed to release any
28 party from any claims for willful misconduct or gross negligence.

1 **VII. CERTAIN INCOME TAX CONSEQUENCES OF THE JOINT PLAN**⁵

2 **A. In General**

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

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

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

5 The statements in this Section are Debtor’s, and should not be attributed to ACA, which makes no independent statements regarding tax consequences.

1 **B. Consequences to the Debtor**

2 The Debtor is a duly organized nonprofit public benefit corporation and is qualified as a tax
3 exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code. Accordingly, the Debtor
4 should not incur any income, gain, or loss as a result of the Joint Plan.

5 **C. Consequences to Creditors**

6 Any amount realized by a Creditor in satisfaction of an Allowed Claim, to the extent such
7 amount constitutes “gross income” within the meaning of Section 61 of the Code, will be taxable to
8 the Creditor in accordance with the Creditor’s method of accounting, if not previously included in the
9 Creditor’s gross income. This would include, for example, payments for goods and services. If a
10 Creditor previously reported as taxable income their respective Allowed Claim then the unpaid
11 portion of the previously reported taxable income would be deductible as a bad business debt.
12 Similarly, if a Creditor has previously deducted some or all of its Allowed Claim against either
13 Debtor as a bad business debt, amounts received under the Joint Plan may be reportable as ordinary
14 income. A Creditor may be subject to regular income tax withholding or backup withholding as well.

15 **VIII. CONDITIONS TO CONFIRMATION OF THE JOINT PLAN**

16 **A. Conditions to Confirmation**

17 The following conditions must occur and be satisfied or waived in accordance with Section
18 XII.C. of the Joint Plan by ACA on or prior to the Confirmation Date:

19 1. Confirmation Order

20 The Confirmation Order shall: (a) be in form and substance satisfactory to ACA; (b) approve
21 all provisions, terms and conditions of the Joint Plan; and (c) include a finding of fact that the Plan
22 Proponents and their present and former members, officers, directors, trustees, employees, advisors,
23 attorneys, and agents acted in good faith within the meaning of and with respect to all of the actions
24 described in Section 1125(e) of the Bankruptcy Code and therefore are not liable for the violation of
25 any applicable law, rule, or regulation governing such action.

1 **B. Conditions to Effective Date**

2 The following conditions must occur and be satisfied or waived in accordance with Section
3 XII.C. of the Joint Plan on or before the Effective Date for the Joint Plan to be effective on the
4 Effective Date:

- 5 a. Entry of Confirmation Order. The Confirmation Order shall have become a
6 Final Order;
- 7 b. Authorizations, Consents and Approvals. All authorizations, consents and
8 regulatory approvals in connection with the consummation of the Joint Plan
9 have been obtained and not revoked;
- 10 c. Effective Date. The Effective Date shall have occurred on or before seventy-
11 five (75) days after the Court enters the Confirmation Order, or such later date
12 as the Responsible Person and ACA may have mutually agreed;

11 **C. Waiver of Conditions**

12 ACA may waive one or more of the conditions precedent to the confirmation of the Joint Plan
13 set forth in Section XII.A. of the Joint Plan, without any other notice to parties in interest or the Court
14 and without a hearing. The Responsible Person, with the consent of ACA, may waive one or more of
15 the conditions precedent to the effectiveness of the Joint Plan set forth in Section XII.B. of the Joint
16 Plan, without any other notice to parties in interest or the Court and without a hearing.

17 **D. Effect of Failure of Conditions**

18 If all the conditions to effectiveness and the occurrence of the Effective Date have not been
19 satisfied or duly waived on or before the first Business Day that is more than seventy-five (75) days
20 after the date the Court enters the Confirmation Order, or by such later date as is agreed to by the
21 Responsible Person and ACA, and approved, after notice and a hearing, by the Court, then upon
22 motion by the Responsible Person or Plan Proponents made before the time that all of the conditions
23 have been satisfied or duly waived, the Confirmation Order will be vacated by the Court; provided,
24 however, that notwithstanding the filing of such a motion, the Confirmation Order shall not be
25 vacated if each of the conditions to consummation is either satisfied or duly waived before the Court
26 enters an order granting the relief requested in such motion. If the Confirmation Order is vacated
27 pursuant to the foregoing provision of the Joint Plan, the Joint Plan will be null and void in all
28 respects, and nothing contained in the Joint Plan will (a) constitute a waiver or release of any Claims

1 against or equity interests in the Debtor or (b) prejudice in any manner the rights of the holder of any
2 Claim or equity interest in the Debtor.

3 **IX. JOINT PLAN FEASIBILITY**

4 This is a liquidating Joint Plan. There are no competing plans. Since ACA is committing to
5 fund the Joint Plan with sufficient cash at confirmation, there are no feasibility issues.

6 **X. ALTERNATIVES TO THE JOINT PLAN**

7 **A. Dismissal**

8 Normally, the principal alternative to a Plan of Reorganization is a Chapter 7 liquidation. In a
9 Chapter 7 liquidation proceeding, the Debtor's rights terminate and its interest in any assets vest in a
10 Chapter 7 trustee. In this case, a hypothetical Chapter 7 Trustee would have no alternative but to
11 simply turn the Debtor's assets over to its Secured Creditors. Whatever a hypothetical Chapter 7
12 Trustee might do, because the Debtor is a nonprofit corporation, it cannot be involuntarily converted
13 to a Chapter 7 pursuant to Bankruptcy Code Section 1112(c). For that reason, the Plan Proponents
14 anticipate that if the Joint Plan is not confirmed, the Case will be dismissed.

15 The Plan Proponents believe that the Joint Plan is significantly more beneficial to creditors
16 than Chapter 7 or dismissal for two reasons. First, the Joint Plan is structured to provide a real return
17 to the Estate's Creditors, including general Unsecured Creditors, because of the ACA Contribution:
18 (1) a cash contribution to the Estate in the amount of \$622,000; (2) the waiver of the Unsecured
19 Deficiency Claim held by ACA pursuant to its contractual rights with the 2007 Bondholders; (3) the
20 waiver of ACA's collateral rights to the Thiebaud painting and/or its proceeds; and (4) the waiver of
21 ACA's Administrative Claims. Second, in the event of a dismissal, the Debtor would be subjected to
22 disorderly, expensive collection activity which would be unlikely to generate any net return to
23 creditors.

24 **B. No Other Plans**

25 The Bankruptcy Code permits parties in interest other than the Debtor to propose a plan of
26 reorganization or liquidation under certain circumstances. The Bankruptcy Court permitted
27 interested parties to submit alternative plans on or before May 1, 2009. ACA submitted an
28 alternative plan on April 30, 2009. Since that time, ACA and the Debtor have agreed to submit the

1 Joint Plan. The Joint Plan submitted by the Plan Proponents is the only plan of liquidation that is
2 being proposed for Confirmation.

3 **XI. CONFIRMATION**

4 **A. Voting**

5 Under the Bankruptcy Code, only classes of Claims that are “impaired” (as that term is
6 defined in section 1124 of the Bankruptcy Code) under the Joint Plan and which will receive or retain
7 property under the Joint Plan are entitled to vote to accept or reject the Joint Plan. Within each Class,
8 only the holders of Allowed Claims may vote. In order to confirm the Joint Plan, with regard to each
9 impaired class of creditors, two thirds in monetary amount and a majority of the number of Allowed
10 Claims of creditors who vote on the Joint Plan must vote to accept the Joint Plan. The holders of
11 Allowed Claims in Class 2, Class 4, Class 5, Class 6, and Class 7 are impaired. These are the only
12 creditors who are entitled to vote on the Joint Plan. Pursuant to Bankruptcy Code Section 1126(f),
13 any class of Claims that is not impaired (Class 1 and Class 3) is conclusively presumed to have
14 accepted the Joint Plan and is not entitled to vote. Pursuant to Section 1126(g), any impaired class of
15 claims or interests that is not receiving or retaining any property under the Joint Plan (Class 8) is
16 conclusively presumed to have rejected the Joint Plan and is not entitled to vote.

17 The Joint Plan, Disclosure Statement, and ballots are also being distributed, through the 2007
18 Indenture Trustee, to the 2007 Bondholders. ACA has asserted in the Bankruptcy Case that it is
19 entitled to vote on behalf of the 2007 Bondholders pursuant to the 2007 Bondholders’ valid
20 contractual assignment of their voting rights to ACA. ACA reserves its rights to assert its entitlement
21 to vote on behalf of the 2007 Bondholders, but agrees with the Debtor that the issue may be mooted
22 by the results of the balloting process. The 2007 Bondholders are encouraged to vote to confirm the
23 Joint Plan.

24 Since Class 8 is deemed to have rejected the Joint Plan the Debtor must seek Confirmation of
25 the Joint Plan under section 1129(b) of the Bankruptcy Code. Requirements for Confirmation of the
26 Joint Plan under section 1129(b) are discussed in Section XI.E. below.

27 An acceptance or rejection of the Joint Plan may be voted by completing and signing the
28 Ballot that accompanies the Joint Plan and mailing, faxing, emailing or delivering it to Matthew A.

1 Richards, c/o Nixon Peabody LLP, One Embarcadero Center, Suite 1800, San Francisco California
2 94111-3600, (415) 984-5093, mrichards@nixonpeabody.com. Only the Ballot should be transmitted
3 and all Ballots must be received by the deadline set forth on the ballot.

4 **UNSIGNED BALLOTS, LATE BALLOTS, AND BALLOTS RECEIVED THAT ARE**
5 **SIGNED BUT DO NOT DESIGNATE ACCEPTANCE OR REJECTION OF THE JOINT**
6 **PLAN WILL NOT BE COUNTED.**

7 **B. Confirmation Standards**

8 For the Joint Plan to be confirmed and to be binding on all Creditors, the Bankruptcy Court
9 must determine that the requirements of section 1129(a) of the Bankruptcy Code have been satisfied,
10 including that at least one class of Claims that is impaired under the Joint Plan has accepted the Joint
11 Plan.

12 **C. Classification of Claims**

13 The Bankruptcy Code requires that a plan of reorganization place each claim and interest in a
14 class with other claims or interests that are “substantially similar.” The dollar amount of a claim is
15 usually not a basis upon which to distinguish it from other claims. The Plan Proponents believe that
16 the classification system set forth in the Joint Plan meets the Bankruptcy Code standard.

17 **D. Modification of the Joint Plan**

18 The Plan Proponents may modify the Joint Plan at any time prior to issuance of the
19 Confirmation Order. Under certain circumstances, ACA, the Reorganized Debtor, or the Responsible
20 Person may modify the Joint Plan after Confirmation; provided however that the Joint Plan may not
21 be modified without the written consent of ACA. The Court will determine, in the event of a
22 modification to the Joint Plan, whether ACA or the Responsible Person is required to provide
23 additional disclosure to Creditors and other parties in interest with respect to the Joint Plan as
24 modified. The Court will determine what voting procedures, if any, will apply to the proposed
25 modification.

26 **E. Confirmation Without Acceptance by All Impaired Classes**

27 Section 1129(b) of the Bankruptcy Code enables the Plan Proponents to confirm the Joint
28 Plan without the acceptance of one or more classes of Claims or interests. In this Case, the Plan

1 Proponents will seek Confirmation under section 1129(b). In order to be confirmed over the rejection
2 of a class of Allowed Claims or interests, the Bankruptcy Court must find that the Joint Plan does not
3 unfairly discriminate and that it is fair and equitable as to each rejecting, impaired Class. Section
4 1129(b)(2)(A),(B), and (C) contain detailed provisions as to the meaning of “fair and equitable” as to
5 dissenting secured creditors, unsecured creditors, and interest holders. The Plan Proponents believe
6 that they can comply with all of the requirements of Section 1129(b).

7 **F. Effect of Confirmation**

8 If the Joint Plan is confirmed, its terms and conditions will be binding on all Creditors and
9 other parties in interest.

10 **XII. CONCLUSION**

11 This Disclosure Statement has been presented for the purpose of enabling creditors to make
12 an informed judgment to accept or reject the Joint Plan. Creditors are urged to read the Joint Plan in
13 full and consult with their individual advisors if questions arise. The Plan Proponents believe that
14 acceptance of the Joint Plan by creditors is in the best interests of all parties in interest and that
15 Confirmation of the Joint Plan will provide the best recovery for creditors.

16 Respectfully submitted,

17 DATED: July 7, 2009

NIXON PEABODY LLP

19 By: /s/ Louis J. Cisz, III
20 LOUIS J. CISZ, III
21 Attorneys for Plan Proponent
22 ACA FINANCIAL GUARANTY
CORPORATION

23 DATED: July 7, 2009

ACA FINANCIAL GUARANTY
CORPORATION

26 By: /s/ Raymond J. Brooks, Jr.
27 RAYMOND J. BROOKS, JR.
28 President and CEO
ACA FINANCIAL GUARANTY
CORPORATION

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DATED: July 7, 2009

MacCONAGHY & BARNIER, PLC

By: /s/ John H. MacConaghy
JOHN H. MacCONAGHY
Attorneys for Debtor and Plan Proponent
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WINE, FOOD, AND THE ARTS

DATED: July 7, 2009

COPIA: THE AMERICAN CENTER FOR
WINE, FOOD, AND THE ARTS

By: /s/ Joseph Fischer
JOSEPH FISCHER
President and Responsible Person