

1 John J. Hebert (#010633)
Mark W. Roth (#010708)
2 Philip R. Rudd (#014026)
Mary B. Martin (#019196)
3 **POLSINELLI SHUGHART PC**
CitiScape Plaza
4 One E. Washington, Suite 1200
Phoenix, AZ 85004
5 Telephone: (602) 650-2000
Facsimile: (602) 264-7033
6 E-mail: PhoenixBankruptcyECF@polsinelli.com
E-Mail: jhebert@polsinelli.com
7 E-Mail: mroth@polsinelli.com
E-Mail: prudd@polsinelli.com
8 E-Mail: mmartin@polsinelli.com

9 *Attorneys for Debtor*

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **THE DISTRICT OF ARIZONA**

13 In re:
14 94TH AND SHEA, L.L.C.
15 Debtor.

Chapter 11 Proceedings
Case No. 2:10-bk-37387-SSC
**NOTICE OF FILING REDLINED
AMENDED DISCLOSURE
STATEMENT AND REDLINED
AMENDED PLAN OF
REORGANIZATION**

19 **NOTICE IS HEREBY GIVEN** that Debtor 94th & Shea, L.L.C. (“Debtor”) filed its
20 “Amended Disclosure Statement Relating to Amended Plan of Reorganization” (“Amended
21 Disclosure Statement”) and “Amended Plan of Reorganization” (“Amended Plan”) on May 11,
22 2011. Attached hereto are redlined copies of the “Amended Disclosure Statement Relating to
23 Amended Plan of Reorganization” and “Amended Plan of Reorganization” redlined against the
24 Debtors’ initial “Disclosure Statement Relating to Plan of Reorganization” and the Debtor’s initial
25 Plan of Reorganization each of which were filed on February 17, 2011.
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DATED: May 11, 2011.

POLSINELLI SHUGHART PC

By: 

John J. Hebert
Mark W. Roth
Philip R. Rudd
Mary B. Martin
CityScape Plaza
One E. Washington., Suite 1200
Phoenix, AZ 85004

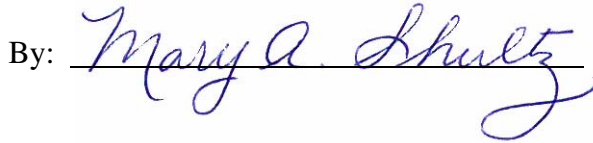
Attorneys for Debtor

COPY of the foregoing mailed (or served via electronic notification if indicated by an “*”) on May 11, 2011, to:

U.S. TRUSTEE’S OFFICE
230 N. 1st Avenue, Suite 204
Phoenix, AZ 85003

Robert R. Kinas * rkinas@swlaw.com
Jonathan M. Saffer * jmsaffer@swlaw.com
SNELL & WILMER LLP
One S. Church Ave., Suite 1500
Tucson, AZ 85701-1630

Attorneys for JPMCC 2007-CIBC19 Shea Boulevard, LLC

By: 

1 John J. Hebert (#010633)
Mark W. Roth (#010708)
2 Philip R. Rudd (#014026)
Mary B. Martin (#019196)
3 **POLSINELLI SHUGHART PC**
CityScape Plaza
4 One E. Washington, Suite 1200
Phoenix, AZ 85004
5 Telephone: (602) 650-2000
Facsimile: (602) 264-7033
6 E-mail: PhoenixBankruptcyECF@polsinelli.com
E-Mail: jhebert@polsinelli.com
7 E-Mail: mroth@polsinelli.com
E-Mail: prudd@polsinelli.com
8 E-Mail: mmartin@polsinelli.com

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10 *Attorneys for Debtor*

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14 94TH AND SHEA, L.L.C.,
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AMENDED DISCLOSURE
STATEMENT RELATING TO
AMENDED PLAN OF
REORGANIZATION

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18 **I. INTRODUCTION**

19 Debtor 94th and Shea, L.L.C., debtor and debtor-in-possession in the above captioned
20 bankruptcy case (“94th and Shea” or “Debtor”), hereby submits to the Court and creditors of the
21 Debtor’s estate the following “Amended Disclosure Statement Relating to Amended Plan of
22 Reorganization” (the “Disclosure Statement”). This Disclosure Statement is submitted pursuant to
23 11 U.S.C. § 1125.

24 11 U.S.C. § 1125(b) prohibits the solicitation of acceptances or rejections of a Plan of
25 Reorganization unless such Plan is accompanied by a copy of the Disclosure Statement which has
26 been approved by the Bankruptcy Court.

1 The purpose of this Disclosure Statement is to provide creditors and interested parties in this
2 bankruptcy proceeding with such information as may reasonably be deemed sufficient to allow
3 creditors and interested parties to make an informed decision regarding the Debtor’s “[Amended](#)
4 Plan of Reorganization” (the “Plan”).

5 Unless otherwise noted, those portions of the Plan and this Disclosure Statement providing
6 factual information concerning the Debtor, its assets and liabilities, have been prepared from
7 information submitted by the Debtor and its retained professionals.

8 This Disclosure Statement contains information that may influence your decision to accept
9 or reject the Debtor’s proposed Plan. Please read this document with care.

10 The financial information contained in this Disclosure Statement has not been subjected to
11 an audit by an independent certified public accountant. For that reason, the Debtor is not able to
12 warrant or represent that the information contained in this Disclosure Statement is without any
13 inaccuracy. To the extent practicable, the information has been prepared from the Debtor’s
14 financial books and records and great effort has been made to ensure that all such information is
15 fairly represented.

16 This Disclosure Statement and the Plan will classify all creditors into Classes. The
17 treatment of each Class of creditors will be set forth in this Disclosure Statement and in the Plan.
18 You should carefully examine the treatment of the Class to which your Claim will be assigned.

19 This Disclosure Statement requires approval by the Bankruptcy Court after notice and a
20 hearing pursuant to 11 U.S.C. §1125(b). Once approved, the Disclosure Statement will be
21 distributed with the Debtor’s proposed Plan for voting. Approval of the Disclosure Statement by
22 the Bankruptcy Court does not constitute either certification or approval of the Debtor’s Plan by the
23 Bankruptcy Court or that the Disclosure Statement is without any inaccuracy.

24 The Bankruptcy Court will confirm the Plan if the requirements of §1129 of the Bankruptcy
25 Code are satisfied. The Bankruptcy Court must determine whether the Plan has been accepted by
26 each impaired Class entitled to vote on the Plan. Impaired Classes entitled to vote on the Plan are
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1 those Classes of claims whose legal, equitable, or contractual rights are altered, as defined under
2 §1124 of the Bankruptcy Code. An impaired Class of claims is deemed to have accepted the Plan if
3 at least two-thirds (2/3) in amount of those claims who vote and more than one-half (1/2) in number
4 of those claims who vote have accepted the Plan. An impaired Class of interests is deemed to have
5 accepted the Plan if the Plan has been accepted by at least two-thirds (2/3) in amount of the allowed
6 interests who vote on the Plan.

7 Even if each Class of creditors does not accept the Plan, the Plan can be confirmed under
8 §1129(b) of the Bankruptcy Code, so long as one impaired Class of creditors accepts the Plan. This
9 is referred to as the “cram down” provision of the Bankruptcy Code. The failure of each Class to
10 accept the Plan could very well result in a conversion of this case to Chapter 7 or dismissal of the
11 Chapter 11.

12 Only the votes of those creditors or interested parties whose ballots are timely received will
13 be counted in determining whether a Class has accepted the Plan.

14 **II. DEFINITIONS**

15 The definitions set forth in Article I of the Plan apply in this Disclosure Statement except to
16 the extent other definitions are set forth in this Disclosure Statement.

17 **III. THE DEBTOR, BACKGROUND, AND EVENTS PRECIPITATING 18 THE CHAPTER 11**

19 **A. Background**

20 The Debtor is an Arizona limited liability company that was formed in May 2002. The
21 Debtor’s members are 9400 Shea Investors, LLC (“Shea Investors”), the Goodhue Family
22 Partnership, L.L.L.P. (“Goodhue Partnership”), and the Rosso Family Partnership, L.L.L.P.
23 (“Rosso Partnership”). The Debtor is managed by Steven J. Goodhue (“Goodhue”) and John Rosso
24 (“Rosso”).

25 The Debtor owns and operates that certain real property known as The Shops And Office at
26 9400 Shea, located at 9325, 9343, 9375, and 9397 East Shea Boulevard in Scottsdale, Arizona (the
27 “Property”). The Property consists of 37,037 square feet of retail space and 35,238 square feet of

1 office space. The retail space has 23,238 square feet occupied. The office space has 35,238 square
2 feet occupied. The total occupancy for both office and retail is 81%. The Property is managed by
3 Nobeus Property Management, Inc. an Arizona corporation. The Debtor believes the value of the
4 Property to be between \$7 million and \$9 million as of the Petition Date. The Debtor also owns
5 approximately 3.5 acres of adjacent land, described below as the “Outparcel.”

6 JPMCC 2007-CIBC19 Shea Boulevard, LLC (“Lender”), has asserted a claim against the
7 Debtor, allegedly secured by the Property, in the amount of approximately \$21 million. The Debtor
8 believes that it has certain defenses, counter-claims and offsets against the Lender based upon, for
9 example, the Lender’s inappropriate and improper refusal to release funds from reserves held by the
10 Lender and/or to release its lien in the Outparcel.

11 Specifically, for example, when the Loan from the Lender was originated, certain Loan
12 proceeds were set aside in a Stabilization Reserve pursuant to a Side Letter dated May 17, 2007.
13 The Side Letter Agreement provided that the funds in the Stabilization Reserve would be used to
14 pay for construction costs for a parking lot that 94th & Shea was obligated to build on an adjacent
15 property owned by W.P. Carey. 94th & Shea completed construction of the parking lot in 2009;
16 however, despite having made several disbursement requests, approximately \$300,000 of the
17 Stabilization Reserve was never disbursed by the Lender.

18 In addition, per the terms of the Side Letter another entity, North Scottsdale Medical
19 Commons, L.L.C. transferred an adjacent 3.5 acres of land (“Outparcel”) to 94th & Shea so that it
20 could pledge it to the Lender as additional collateral to ensure the completion of the parking
21 structure. While the parking structure was completed in 2009 and the Debtor made requests for
22 release of the Outparcel, to date the Lender has not consented to release its lien on the Outparcel.
23 By refusing to release either the remainder of the Stabilization Reserve or the lien on the Outparcel,
24 the Lender has made it virtually impossible for 94th & Shea to have the means of paying certain
25 construction costs or curing alleged defaults.

1 Prior to the Debtor's bankruptcy filing, the Lender noticed a foreclosure sale of the Property
2 for January 6, 2011. Despite the Debtor's best efforts to negotiate a resolution of Lender's asserted
3 claims against the Debtor, the Debtor was unable to reach an agreement with Lender and filed its
4 voluntary petition for relief on the Petition Date in order to reorganize and restructure its debts and
5 liabilities for the benefit of all parties-in-interest.

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8 **B. The Debtor's Relationships with Certain Tenants and Other Interested**
9 **Parties**

10 As mentioned, the Debtor is managed by Goodhue and Rosso and the Debtor's members
11 include partnerships in which Goodhue and Rosso have interests. Goodhue and Rosso are also
12 principals of, have interests in, and or have relationships with, certain tenants of the Property.

13 Specifically:

14 **1. 94 Hundred Corporate Center**

15 Goodhue and Rosso are the members of 94 Hundred Corporate Center, L.L.C. ("Corporate
16 Center"). Corporate Center is a tenant, occupying Suite 100 consisting of approximately 35,239
17 square feet, of the Property pursuant to a Lease Agreement dated October 1, 2009 ("Corporate
18 Center Lease"). The basic lease information for the Corporate Center Lease is attached hereto as
19 Exhibit "A." The Debtor believes that the terms and conditions of the Corporate Center Lease
20 reflect current market conditions and are arms-length terms. Corporate Center is current on its rent
21 obligations under the Corporate Center Lease.

22 Corporate Center owns and operates an executive suites service at the Property whereby
23 customers enter into a service agreement with Corporate Center for the use of office and
24 conference room space and a wide variety of business services, including videoconference, phone
25 and internet services, copy, mail and print services, concierge services, and receptionist and
26 administrative services. A brochure regarding Corporate Center and its services is attached hereto

1 as Exhibit “B.” More information regarding Corporate Center is available at its website:
2 <http://www.corporatecenteroffices.com>.

3 Goodhue and Rosso took over the corporate center space as a matter of necessity when the
4 former tenant, Regus PLC, a publicly traded, multinational executive suite firm, breached its lease
5 with the Debtor and stopped paying rent. The Debtor was forced to evict Regus from the corporate
6 center space in October 2009. At that time, the occupancy of the corporate center was less than
7 50%. In order to preserve the value from those occupants of the corporate center, and to maintain a
8 viable, on-going presence at the space occupied by the corporate center, Goodhue and Rosso
9 committed substantial resources to take over the operations of the executive suites through
10 Corporate Center. As a result of Goodhue’s and Rosso’s efforts and investments, the Corporate
11 Center is currently approximately 92% occupied and is generating gross monthly revenues of
12 approximately \$90,000 per month.

13 The existence of the Corporate Center at the Property is significant to the overall success of
14 the Property, as it not only provides rent to the Debtor but also reflects a robust and active center to
15 the public.

16 **2. Renegade Canteen**

17 Renegade Café & Canteen, LLC (“Renegade”) is another tenant at the Property.
18 Renegade’s managing member is Leather Sandals, LLC (“Leather Sandals”). Goodhue and Rosso
19 are the managers of Leather Sandals. The members of Leather Sandals include the Goodhue
20 Partnership and the Rosso Partnership, Ed Leclere (who is also a creditor of the Debtor, as
21 discussed below), and Tammera Wells. Renegade is a tenant, occupying approximately 7,800
22 square feet, of the Property pursuant to a Lease Agreement entered into by the parties in or about
23 January 2010 (“Renegade Lease”). The basic lease information for the Renegade Lease is attached
24 hereto as Exhibit “C.” The Debtor believes that the terms and conditions of the Renegade Lease
25 reflect current market conditions and are arms-length terms, particularly given the nature of the
26 tenant, and the history of the tenant’s space, and the role that the tenant plays at the Property.

1 Renegade is, and has been, delinquent on its rent payments to the Debtor due to insufficient cash
2 flow from Renegade's operations. However, the Debtor is confident that Renegade is a viable
3 restaurant and will be able to turn its current operational issues around to the point where it will be
4 able to pay rent to the Debtor pursuant to the Renegade Lease and that Renegade will continue to
5 be a vital component of the Property's operations.

6 Renegade owns and operates the Renegade Canteen, a refined, yet affordable restaurant
7 servicing American Western cuisine prepared and inspired by James Beard Award-winning Chef
8 Robert McGrath. Chef Robert McGrath's impressive list of awards and credentials spans more
9 than two decades. At Renegade, Chef McGrath has created a welcoming and unpretentious
10 environment where friends and neighbors are encouraged to show up in a suit, or in shorts and
11 sandals, to enjoy a casual weekday dinner, or a romantic steak and wine dinner on a Saturday night.
12 Renegade's distinctly Arizona décor is as warm and approachable as Chef McGrath's menu, which
13 reflects the influence of the medley of robust and distinctive flavors that emerged from the unique
14 mix of cultures in the American West.

15 Chef McGrath is credited with spearheading the American Western cuisine movement over
16 two decades ago. In 2001, Chef McGrath won The James Beard Foundation Award for Best Chef
17 in America — Southwest. Educated at the Culinary Institute of America, Hyde Park and Le Cordon
18 Bleu in Paris, France, Chef McGrath and his restaurants have been winning awards since 1985. He
19 has appeared on The Today Show, Good Morning America, The Morning Show on CBS, Live with
20 Regis and Kathie Lee, Good Morning Arizona, CNN, Lifestyles of the Rich and Famous, and The
21 Food Network. Chef McGrath is the author the best-selling cookbook, American Western Cooking
22 from the Roaring Fork, Taylor Trade Publishing, 2000. More information regarding Renegade
23 Canteen is available at its website: www.renegadecanteen.com.

24 The space currently occupied by Renegade was previously occupied by the South Beach
25 Restaurant ("South Beach"). However, due to poor management and low revenues, South Beach
26 was unable to pay rent to the Debtor and the Debtor forced South Beach to vacate the premises in
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1 September 2009, around the same time that Regus was vacating the executive suite space. Again,
2 like the executive suites, Goodhue and Rosso were forced to find a new tenant to occupy the vacant
3 restaurant space for the benefit of the Property. Fortunately, they were introduced to Chef McGrath
4 and persuaded him to join them in the creation of Renegade. After spending considerable time,
5 effort and funds renovating the South Beach space, Renegade opened its doors for dinner on June
6 14, 2010. Since then, Renegade has received many glowing reviews of its cuisine, atmosphere and
7 affordability. Further, the Property has been positively impacted by Renegade’s opening, as it has
8 helped to generate foot traffic and attract tenant-interest. Despite Renegade’s current inability to
9 pay rent to the Debtor, the existence of Renegade at the Property is significant to the overall
10 success of the Property, as it not only provides potential rent to the Debtor but also reflects a robust
11 and active center to the public.

12 3. Westar and Mary Lineback

13 Mary Lineback (“Lineback”) is an independent contractor who performs services for Westar
14 Development, LLC (“Westar”). Rosso is the manager and member of Westar. Lineback also
15 performs certain accounting and oversight functions for the Debtor, and has done so since the
16 Debtor’s formation in May 2002. Lineback is paid \$4,000 per month by the Debtor for such
17 services. The Court has approved this compensation to Lineback. Lineback and her daughter, Jill
18 Lineback, are the members of Sway Boutique, LLC (“Sway”). Sway is a former tenant of the
19 Property. Sway was unable to pay rent to the Debtor and closed its business in March 2011.
20 Lineback is also a member of North Scottsdale Farmers Market, LLC (“Farmers Market”) which
21 promotes and organizes a farmer’s market at the Property every Saturday throughout the year
22 pursuant to a licensing agreement between the Debtor and Farmers Market. The Debtor believes
23 that the terms and conditions of the licensing agreement are market terms and reflect arms-length
24 negotiations between the Debtor and Farmers Market.

25 C. ~~B.~~ Operations

1 The Debtor has operated, and intends to continue operating, the Property as a high end retail
2 center. The Debtor continues to receive income from tenants to pay for the ordinary and necessary
3 operating expenses of the Property, as well as any necessary repairs, from such income. In fact, the
4 Court has consistently entered orders authorizing the Debtor's use of Lender's asserted cash
5 collateral pursuant to a budget, which has been approved the Court (the "Budget"). The Budget
6 reflects the current anticipated revenues and expenses relating to the Property. Additionally, the
7 Debtor continues to market and lease vacant space in the Property and to renew existing leases
8 when appropriate.

9 In order to provide for efficient and productive operations, and to keep the Debtor's
10 business competitive, the Debtor intends to retain the same management team and structure that
11 existed pre-petition. The issues confronted by the Debtor that led to the bankruptcy filing were the
12 product of market changes, not the Debtor's management or its structure. Thus, a change in
13 management structure is not in the best interests of the Debtor or its creditors because the existing
14 structure is appropriate to meet the needs of the Debtor.

15 By maintaining its current management and operational structure, the Debtor will avoid the
16 transactional costs associated with significant and unnecessary change. In addition, the institutional
17 knowledge of the management team will be preserved.

18 **D. ~~C.~~ Construction Related Claims and Litigation**

19 The project received its ~~Certificate~~Certificate of ~~Substantial~~Substantial Completion on
20 February of 2008. However, there are still a number of construction issues that must be addressed.
21 In late 2008, the Debtor discovered that a significant "Construction Bust" had occurred in the
22 construction of the Property, and there were numerous "Punch List" items that were not being
23 addressed. At that time, the Debtor had paid all but \$287K of an \$8MM construction loan. In light
24 of these problems, the decision was made by the Debtor not to make any further payments to the
25 general contractor until the full scope of the "Construction Bust" was determined, and a plan for
26 remediation was finalized, as well as demonstrable progress being made on the Punch List.

1 Of particular concern was that the tunnel, which passes under the 2 story office building, did
2 not meet the plan specifications. Simply put, in several areas, the tunnel was too low making it
3 impassable for certain trucks and equipment, such as fire trucks. While the exact cause of this
4 “bust” has not been fully determined, the culpable parties include the contractor, the engineer,
5 and/or the architect. ~~At this time, the Debtor has employed the services of a very experienced and~~
6 ~~competent~~The Debtor is currently working through these construction defect ~~lawyer and is working~~
7 ~~through the~~ issues with the assistance of counsel.

8 **E. ~~D.~~ Preferences and Fraudulent Conveyances**

9 To the extent that a preference or fraudulent conveyance occurred before the bankruptcy
10 filing, such transfer may be recoverable by the bankruptcy estate for the benefit of the estate under
11 §§ 544, 547, or 548 of the Bankruptcy Code. To date, no complaints have been filed under any of
12 these theories, and the Debtor is not currently aware of any causes of action for the recovery of
13 preferences or fraudulent conveyances. To the extent any such claims exist, they will be analyzed
14 for their potential value to the estate. These potential claims are specifically preserved for the
15 benefit of the bankruptcy estate. Any recovery that is obtained will be obtained for the benefit of
16 the estate.

17 **E. Projections of Future Operations**

18 Attached hereto as Exhibit “D” are the Debtor’s ten (10) year projections of future revenues
19 and expenses (“Projections”), as well as the “lease-up” assumptions pertaining to the Projections.

20 **IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

21 **A. Administrative Proceedings**

22 The Debtor filed its Petition for Relief under Chapter 11 on November 19, 2010, and a first
23 meeting of creditors was held on December 21, 2010.

24 **B. Retention of Professionals**

25 The Debtor retained Polsinelli Shughart, P.C. (“PS”) to act as its original bankruptcy
26 counsel. The Court signed an Order approving the retention of PS on December 14, 2010.

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C. Appointment of Unsecured Creditors Committee

The United States Trustee’s Office filed a statement stating that, despite its efforts to contact unsecured creditors, it was unable to appoint a Committee of Unsecured Creditors.

D. Motion and Orders Regarding the Use of Cash Collateral

The Debtor filed a motion to use the revenues generated by the Property, which Lender asserts constitute its cash collateral, on November 19, 2010. Lender filed an objection to the use of its asserted cash collateral on November 30, 2010. Following a hearing on December 1, 2010, the Court entered its agreed order authorizing the Debtor’s use of the purported cash collateral through January 30, 2011, with certain restrictions, on January 20, 2011. Also on January 20, 2011, the Court heard evidence regarding the Debtor’s request for authority to pay an asset management fee to the Debtor’s managers. Following the evidentiary hearings, on February 2, 2011, the Court entered its order authorizing the Debtor to pay an asset management fee to the Debtor’s managers in the amount of \$6,000 per month.

On January 26, 2011, the Debtor filed its second motion for authorization to use cash collateral through April 30, 2011. Lender filed a limited objection to this second request. The Court held a hearing regarding the Debtor’s request on February 3, 2011. At that hearing, the Court authorized the Debtor’s use of cash collateral, pursuant to a budget submitted and approved by the Court, through April 30, 2011. An order to this effect was lodged with the Court on February 7, ~~2010.~~2011. The Debtor is currently negotiating with the Lender regarding a further continuation of the agreement for the use of cash collateral.

E. Operating Reports

The Debtor’s monthly operating reports are current and copies can be obtained from the Court’s electronic docket

V. DESCRIPTION OF ASSETS AND LIABILITIES OF THE DEBTORS

A. Assets

1 The values ascribed to the Debtor's assets below are based on the Debtor's best estimate
2 and other factors such as the purchase price, comparable sales, tax assessments, and appraisals.

3 **1. Real Property** – Between approximately \$7 million and \$9 million.

4 **2. Bank Accounts** – Approximately \$16,151.35 as of the Petition Date. The
5 Debtor has accumulated, and continues to accumulate, net cash from operations of the Property
6 since the Petition Date. The current amount of cash held by the Debtor is reflected in the most
7 recent Monthly Operating Report filed by the Debtor.

8 **3. Accounts Receivable** – The Debtor owns certain accounts receivable from
9 tenants for unpaid rent in the amount of approximately \$101,186.62 as of the Petition Date.

10 **4. Vehicle** – The Debtor owns a service vehicle with an estimated value of
11 approximately \$6,000 as of the Petition Date.

12 **5. Personal Property** – The Debtor owns certain tools valued at
13 approximately \$250 as of the Petition Date.

14 **B. Liabilities**

15 The following is an overview of the Debtor's known liabilities.

16 **1. Priority Claims**

17 The Debtor is not aware of the existence of any pre-petition priority claims.

18 **2. Secured Claims**

19 a. The Debtor's schedules list Lender as a secured creditor with a first
20 position lien on the Property in the amount of approximately \$21,000,000. The
21 Debtor has listed the Lender' claim as disputed and the Debtor believes that it has
22 certain counter-claims, offsets and defenses to Lender's asserted claim.

23 b. The Debtor's schedules list the accounting firm of Forrest & Trapp,
24 P.C. as a secured creditor with a claim of approximately \$1,500 secured by a cash
25 retainer held by Forrest & Trapp.

1 c. The Debtor's schedules list Ed Leclere as a secured creditor with a
2 claim of approximately \$6,000, secured by the Debtor's service vehicle.

3 **3. Unsecured Claims**

4 According to the Debtor's Schedules of Assets and Liabilities, the total amount of
5 unsecured claims, not including any deficiency claims of secured creditors, is \$1,855,116.48. This
6 amount includes tenant security deposits in the amount of approximately \$25,000, claims owing to
7 9400 Corporate Center in the total amount of \$13,585.95, a claim for reimbursement of tenant
8 improvement costs, held by Cohen, in the amount of approximately \$69,000, and Construction
9 Claims in the amount of nearly \$900,000. The Debtor has certain counter-claims, offsets and
10 defenses to the Construction Claims.

11 These unsecured claims also include a claim by the City of Scottsdale's Water Resources
12 Department ("City of Scottsdale") in the estimated amount of \$196,303.13. This claim is for
13 certain water and wastewater development fees that the Debtor owes to the City of Scottsdale
14 pursuant to that certain "Financial Obligation Agreement for Payment of Water & Sewer
15 Development Fees & Penalties" dated January 10, 2005 between the Debtor and the City of
16 Scottsdale (the "Development Agreement"). The Development Agreement was recorded in the
17 Official Records of the Maricopa County Recorder's Office on July 5, 2005 at document no.
18 20050923668. Generally, the Development Agreement provides that the Debtor is required to pay
19 certain development fees to the City of Scottsdale as a condition precedent to the Debtor's receipt
20 of water and sewer services. The Development Agreement further provides that the Debtor was
21 required to, and the Debtor did, submit a Water and Sewer Need Report to the City of Scottsdale
22 that estimates the Debtor's anticipated annual water and sewer needs for the Debtor's Property.
23 Pursuant to the Development Agreement, the City is entitled to monitor the Debtors' water and
24 sewer usage for a minimum period of three years beginning on the date a certificate of occupancy is
25 issued for the Property. If the amount of actual water and sewage usage exceeds the projected
26 usage, then the Debtor is required to pay additional development fees to the City of Scottsdale. The

1 Debtor believes that the City of Scottsdale is in the process of analyzing the Debtor's water and
2 sewage usage to determine if additional development fees are required under the Development
3 Agreement. The Debtor anticipates that it will retain a consultant to assist the Debtor is addressing
4 the City of Scottsdale in this regard, but anticipates that additional development fees will be
5 required.

6 **C. Administrative Expenses**

7 The Debtor's administrative expenses consist of the fees and costs of attorneys and other
8 professionals necessary to the Debtor's operations, bankruptcy case, and plan of reorganization.
9 The fees and costs of these professionals will not be precisely known until the Bankruptcy Case is
10 completed. However, as set forth below, the Debtor's professionals anticipate that either (a) the
11 retainers they presently have will be sufficient to cover the services they have rendered, and will
12 render, in the Bankruptcy Case, or (b) for those professionals that do not have retainers and will be
13 paid by some other manner, their projected anticipated fees and costs for their services will be
14 commensurate with their historical fees and costs incurred by the Debtor.

15 The Debtor's bankruptcy counsel is PS. PS is currently in possession of a retainer in the
16 amount of \$100,000. PS anticipates its fees will be less than the amount of the retainer. However,
17 to the extent that PS's fees and costs exceed the amount of the retainer, PS's fees and costs will
18 constitute administrative claims against the Debtor's Estate.

19 **VI. PLAN SUMMARY**

20 The following statements concerning the Plan are merely a summary of the Plan and are not
21 complete. The statements are qualified entirely by express reference to the Plan. Creditors are
22 urged to consult with counsel or each other in order to understand the Plan fully. The Plan is
23 complete, inasmuch as it proposes a legally binding agreement by the debtor, and an intelligent
24 judgment cannot be made without reading it in full. With the exception of the Classes 1-A through
25 1-C (the "Priority Claims"), all the creditors of the Debtor are impaired under the terms of the Plan.
26 The Secured Creditors are impaired because they will be subjected to different treatment than they
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1 had originally contracted for with the Debtor. The Unsecured Creditors will be impaired because
2 they will be subject to different treatment than they originally contracted for. Thus, the Debtor will
3 have numerous classes with the right to vote on its Plan of reorganization, as set forth herein.

4 VII. **CLASSIFICATION OF CLAIMS AND INTERESTS.**

5 **A. Class 1: Priority Claims**

6 1. Class 1-A consists of Allowed Priority Claims under 11 U.S.C. § 503
7 and § 507(a)(2) (Administrative Claims).

8 2. Class 1-B consists of Allowed Priority Claims under 11 U.S.C. §
9 507(a)(3) (Wage Claims).

10 3. Class 1-C consists of Allowed Priority Claims under 11 U.S.C.
11 §507(a)(8) (Tax Claims).

12 **B. Class 2: Secured Claims**

13 1. Class 2-A consists of the Allowed Secured Claim of JPMCC.

14 2. Class 2-B consists of the Allowed Secured Claim of Maricopa County
15 for real property taxes.

16 3. Class 2-C consists of the Allowed Secured Claim of Leclere.

17 4. Class 2-D consists of the Allowed Secured Claim of Forrest & Trapp.

18 **C. ~~Class 3: Allowed Claim of Cohen~~**

19 ~~Class 3 consists of the Allowed Claim of Cohen relating to the Debtor's obligation to~~
20 ~~reimburse Cohen for tenant improvements made to Cohen's leased premises.~~

21 **~~D.~~ **Class 4: Tenant Security Deposits****

22 Class 43 consists of Allowed Claims by tenants for the return of tenant security deposits
23 held by the Debtor.

24 **D. ~~E.~~ **Class 54: Unsecured Claims****

25 Class 54 consists of the Allowed Unsecured Claims of Creditors not otherwise treated in
26 the Plan.

1 **E. Class 5: City of Scottsdale Development Agreement Claims**

2 Class 5 consists of the allowed claims of the City of Scottsdale for water and wastewater
3 development fees under the Development Agreement.

4 **F. Class 6: Construction Claims**

5 Class 6 consists of all Allowed Construction Claims.

6 **G. Class 7: Interest Holders**

7 Class 7 consists of all Allowed Interests of Interest Holders.

8 **VIII. IMPAIRMENT OF CLASSES.**

9 Classes 1-A, 1-B, and 1-C are unimpaired under the Plan. All other Classes are Impaired,
10 as that term is defined in 11 U.S.C. § 1124.

11 **IX. TREATMENT OF CLASSES.**

12 **A. Class 1: Priority Claims**

13 **1. Class 1-A: Administrative Claims**

14 This Class consists of Allowed Priority Claims under 11 U.S.C. §§ 503 and 507(a)(2) –
15 administrative priority claims. Unless Claimants holding Claims in this Class agree to an
16 alternative form of treatment, the Allowed Claims of Class 1-A shall be paid in full, in cash, on or
17 before the Effective Date or as the same are Allowed and ordered paid by the Court. Any Class 1-
18 A Claim not allowed as of the Effective Date shall be paid as soon thereafter as it is allowed by the
19 Court according to the terms of this Class. This Class is not impaired.

20 **2. Class 1-B: Wage Claims**

21 This Class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(4) – wage claims.
22 As provided in 11 U.S.C. § 1129(a)(9)(B), unless Claimants holding Claims in this Class agree to
23 an alternative form of treatment, the Allowed Priority Claims of Class 1-B shall be paid in full, in
24 cash, on or before the Effective Date. The Debtor does not believe that any claims exist under this
25 Class. Any Class 1-B Claim not allowed as of the Effective Date shall be paid as soon thereafter as
26 they are allowed by the Court according to the terms of this Class. This Class is not impaired.

1 Effective Date (the “New JPMCC Note Maturity Date”). During the term of the New JPMCC
2 Note, the Debtor will make monthly principal and interest payments to JPMCC based upon a 25
3 year amortization schedule with interest at the Plan Rate. On the New JPMCC Note Maturity
4 Date, all remaining amounts of principal and interest due under the New JPMCC Note will be
5 immediately due and payable, and will be paid by the Debtor to JPMCC either through a sale of
6 the Real Property or through refinancing of the Real Property. The first payment of principal and
7 interest will be made on the Effective Date, and each monthly payment thereafter will be made on
8 the first business day of each month during the term of the New JPMCC Note.

9 JPMCC will retain its existing lien on the property that served as collateral for JPMCC’s
10 Claim pre-petition, except the Outparcel (as defined in the Disclosure Statement), until the New
11 JPMCC Note has been satisfied in full. As of the Effective Date, the Outparcel shall be
12 reconveyed by the Debtor, free and clear of any liens (except ~~to~~ real property taxes), to North
13 Scottsdale Medical Commons, L.L.C. pursuant to the terms of the Side Letter (as defined in the
14 Disclosure Statement). At any time prior to the end of the term, the Debtor may pay the balance of
15 the New JPMCC Note without penalty.

16 The Debtor anticipates that, during the first approximately 24 months following the
17 Effective Date of the Plan, before the occupancy of the Real Property becomes fully stabilized, the
18 Real Property may not generate sufficient net cash flow, after paying operating expenses, to make
19 the full amount of monthly principal and interest payments payable under the New JPMCC Note
20 (the “Monthly Note Payments”). Accordingly, on the Effective Date of the Plan, and as discussed
21 below, the Interest Holder(s) or the Successful Bidder will deposit the New Value into an interest
22 bearing reserve account (the “Reserve Account”) which can be used to, among other things, pay
23 any cash flow deficiency between the monthly net cash flow generated by the Real Property and
24 the Monthly Note Payments during the term of the New JPMCC Note (a “Cash Flow Deficiency”),
25 if any. To the extent that the use of the funds in the Reserve Accounts will result in the amount of
26 funds in the Reserve Account being reduced to an amount below \$50,000, at any time during the
27

1 term of the New JPMCC Note, the Reorganized Debtor (from any retained excess cash flow) or the
2 Interest Holder, or the Successful Bidder, if any, (from an additional contribution of capital) will
3 replenish the Reserve Account such that the Reserve Account shall always be maintained in the
4 total amount of \$50,000 until the New JPMCC Note matures.

5 The failure to maintain the Reserve Account in the total amount of at least \$50,000 will
6 constitute a default under the New JPMCC Note and the lien in the collateral securing the New
7 JPMCC Note.

8 Immediately upon payment, in full, of the New JPMCC Note, JPMCC's Allowed Secured
9 Claim, and its secured interest in the Real Property, will be deemed satisfied, extinguished,
10 released and discharged, in full.

11 **(ii) JPMCC's Treatment if the § 1111(b) Election is Made**

12 If JPMCC makes the § 1111(b) election, then JPMCC's entire Allowed Claim will be
13 treated as fully secured, and JPMCC will not have any claims in Class 4.

14 In this event, the Debtor will treat JPMCC's Allowed Claim as follows:

15 • Except with respect to the Outparcel, JPMCC will retain its lien on the Property and
16 its other pre-petition collateral in the full amount of its Allowed Claim, as such Allowed Claim is
17 determined by the Court. As of the Effective Date, the Outparcel shall be reconveyed by the
18 Debtor, free and clear of any liens (except real property taxes), to North Scottsdale Medical
19 Commons, L.L.C. pursuant to the terms of the Side Letter (as defined in the Disclosure Statement).

20 • For purposes of this analysis, the Debtor assumes that (i) JPMCC's Allowed Claim
21 will be established at no more than \$21,000,000, rather than the over \$29,000,000 asserted by
22 JPMCC in its pleadings filed in this case; and (ii) the value of JPMCC's collateral is \$8 million.
23 The actual amount of JPMCC's Allowed Claim, and the value of its collateral base, will be
24 established by the Court.

25 • The Reorganized Debtor will pay the total amount of JPMCC's Allowed Claim on
26 or before the end of the fifteenth year following the Effective Date of the Plan as follows:

1 (i) On the Effective Date, the Debtor will make a payment of \$57,000 to
2 JPMCC;

3 (ii) Each month thereafter, the Debtor shall make payments of \$57,000 each to
4 JPMCC, for a total annual payment to JPMCC of \$684,000 per year for a period of fifteen
5 years (the “Pre-Payoff Period”);

6 (iii) On or before the end of the fifteenth year following the Effective Date of the
7 Plan (the “Pay-Off Date”), the Debtor will pay the remaining balance of JPMCC’s Allowed
8 Claim, assumed to be \$10,740,000 (based upon an initial loan amount of \$21,000,000),
9 from either the sale of the Real Property or a refinancing of the Real Property.

10 • Notwithstanding the foregoing payment schedule, the Reorganized Debtor shall
11 have the right and ability to make additional principal reduction payments to JPMCC during the
12 Pre-Payoff Period, without penalty, from excess cash flow, if any, from the operations of the
13 Property, which payments will reduce the amount of JPMCC’s Allowed Claim payable on the Pay-
14 Off Date.

15 • In the event the Court finds that JPMCC’s Allowed Claim is greater than
16 \$21,000,000 and/or that the value of JPMCC’s collateral is more than \$8 million, then (i) the
17 stream of payments on JPMCC’s claim will remain the same as set forth above but (ii) any balance
18 of JPMCC’s Allowed Claim remaining on the Pay-Off Date will be increased accordingly.

19 • The Debtor anticipates that, during the first approximately 24 months following the
20 Effective Date of the Plan, before the occupancy of the Property becomes stabilized, the Property
21 may not generate sufficient net cash flow, after paying operating expenses, to make the full amount
22 of monthly payments called for in the foregoing payment schedule. Accordingly, just as with the
23 Debtor’s treatment of JPMCC’s claim if JPMCC does not make the § 1111(b) election, on the
24 Effective Date of the Plan, as part of the New Value infused by the Interest Holder, if any, the
25 Interest Holder will deposit the New Value into the Reserve Account, which can be used to, among
26 other things, pay any cash flow deficiency between the net cash flow generated by the Property

1 and the amounts due to JPMCC under the foregoing payment schedule, if any. To the extent that
2 the use of the funds in the Reserve Accounts will result in the amount of funds in the Reserve
3 Account being reduced to an amount below \$50,000, at any time prior to the Pay-Off Date, the
4 Reorganized Debtor (from any retained excess cash flow) or the Interest Holder (from an
5 additional contribution of capital) will replenish the Reserve Account such that the Reserve
6 Account shall always be maintained in the total amount of \$50,000 until the Pay-Off Date. The
7 failure to maintain the Reserve Account in the total amount of at least \$50,000 will constitute a
8 default under the Plan and the loan documents contemplated herein. Further, any failure by the
9 Debtor to make the payments set forth in the foregoing schedule, or to pay the remaining unpaid
10 amount of JPMCC's Allowed Claim on the Pay-Off Date, will constitute a default under the Plan.

11 • Immediately upon payment, in full, of JPMCC's Allowed Claim, JPMCC's secured
12 interest in the Property and any other collateral securing its Allowed Claim will be deemed
13 satisfied, extinguished, released and discharged, in full.

14 • The Reorganized Debtor reserves its right and ability to sell or refinance the
15 Property at any time during the Pre-Payoff Period, so long as the net sale or loan proceeds (after
16 payment of costs of sale or loan) are sufficient to pay the remaining amount of JPMCC's Allowed
17 Claim in full.

18 **2. Class 2-B –Allowed Secured Claim of Maricopa County**

19 This Class consists of the Allowed Secured Claim of Maricopa County, Arizona
20 (“Maricopa County”), if any, that is secured by a tax lien on the Real Property. This Class is
21 impaired.

22 Commencing on the Effective Date, the Allowed Secured Claim of Maricopa County, if
23 any, will be paid in equal quarterly payments of principal and interest over a term of 1 year.
24 Interest will accrue and will be paid at the statutory rate plus 2%. The County will retain its
25 existing secured interest in the Real Property until this claim has been satisfied in full.

1 If funds generated from the normal operations of the Real Property are insufficient to pay
2 the secured real property tax claims as provided herein, the payments required herein to Maricopa
3 County will be made from the New Value contributed by the Interest Holder(s) or the Successful
4 Bidder, if any.

5
6 **3. Class 2-C –Allowed Secured Claim of Leclere**

7 This Class consists of the Allowed Secured Claim of Leclere in the amount of
8 approximately \$6,000 secured by a service vehicle (“Leclere Collateral”) used by the Debtor in
9 connection with the operation and maintenance of the Real Property. This Class is impaired.

10 Leclere’s Allowed Secured Claim shall be limited to the value of the Leclere Collateral as
11 of the Confirmation Date. The remainder of Leclere’s Allowed Claim shall be treated as a general
12 unsecured claim in Class ~~5-4~~. The Debtor intends to pay Leclere’s Allowed Secured Claim in full,
13 with interest at the Plan Rate, over a period of three (3) years.

14 Specifically, the Debtor will execute and deliver to Leclere a promissory note (the “New
15 Leclere Note”) in the principal face amount of Leclere’s Allowed Secured Claim. The New
16 Leclere Note will mature and become fully due and payable on the 3rd anniversary of the Effective
17 Date (the “New Leclere Note Maturity Date”). During the term of the New Leclere Note, the
18 Debtor will make monthly principal and interest payments to Leclere based upon a three year
19 amortization schedule with interest at the Plan Rate such that the New Leclere Note will be paid in
20 full as of the New Leclere Note Maturity Date. The first payment of principal and interest will be
21 made on the Effective Date, and each monthly payment thereafter will be made on the first
22 business day of each month during the term of the New Leclere Note.

23 Leclere will retain its existing lien on the Leclere Collateral until the New Leclere Note has
24 been satisfied in full. At any time prior to the end of the term, the Debtor may pay the balance of
25 the New Leclere Note without penalty.

1 Immediately upon payment, in full, of the New Leclere Note, Leclere's Allowed Secured
2 Claim, and its secured interest in the Leclere Collateral, will be deemed satisfied, extinguished,
3 released and discharged, in full.

4 **4. Class 2-D –Allowed Secured Claim of Forrest & Trapp**

5 This Class consists of the Allowed Secured Claim of Forrest & Trapp in the amount of
6 approximately \$1,500.00. This Class is impaired.

7 Notwithstanding anything to the contrary in the retention agreement between Forrest &
8 Trapp, Forrest & Trapp's Allowed Secured Claim shall include interest at the Plan Rate from the
9 date that the amount due and owing to Forrest & Trapp first became 60 days past due until the
10 Effective Date of the Plan. On the Effective Date of the Plan, Forrest & Trapp will be entitled to
11 apply its collateral (consisting of a cash retainer) to the principal amount of Forrest & Trapp's
12 claim plus any such accrued interest. Regardless of the total amount of Forrest & Trapp's claim,
13 Forrest & Trapp's application of its retainer to the principal amount of the claim and any accrued
14 interest shall be deemed to be in full and final satisfaction of Forrest & Trapp's claims against the
15 Debtor. To the extent that the amount of the retainer is greater than the amount of Forrest &
16 Trapp's claim, including accrued interest, Forrest & Trapp shall deliver any excess funds to the
17 Debtor after application of the retainer to Forrest & Trapp's claim.

18 **C. Class 3: ~~Allowed Claim of Cohen~~**

19 ~~This Class consists of the Allowed Claim of Cohen for unreimbursed tenant improvement~~
20 ~~costs and expenses owing by the Debtor to Cohen in the amount of approximately \$69,000~~
21 ~~("Cohen's Reimbursement Claim"). This Class is impaired.~~

22 ~~—————Cohen's Reimbursement Claim shall not accrue interest. Cohen's Reimbursement Claim~~
23 ~~shall be satisfied and paid in full by Cohen setting off against the monthly rent owing by Cohen to~~
24 ~~the Debtor, beginning with the month following the Effective Date, pursuant to the following~~
25 ~~schedule until Cohen's Reimbursement Claim is paid in full:~~

26 ~~—————Months 1-6—————\$3,000 per month~~

1 ~~Months 7-17~~ ~~\$5,000 per month~~

2 ~~Once Cohen's Reimbursement Claim is paid in full, Cohen will no longer receive a rental~~
3 ~~credit on the rent due to the Reorganized Debtor.~~

4 ~~D.~~ **Class 4: Tenant Security Deposits**

5 This Class consists of all Allowed Unsecured Claims of tenants for pre-petition security
6 deposits held by the Debtor in the total aggregate amount of approximately \$26,431. This Class is
7 impaired.

8 The Reorganized Debtor shall retain its right and ability to determine whether and what
9 extent a tenant is entitled to the return of its security deposit pursuant to the terms of the lease
10 between the Debtor and the tenant and applicable state law. However, notwithstanding anything to
11 the contrary in the lease between the Debtor and its tenants or in applicable law, valid and
12 enforceable tenant security deposits will be paid to tenants within 90 days of the later of either (a)
13 the date that the Debtor determines the appropriate amount of the security deposit to be returned or
14 (b) the date the tenant vacates its premises. This 90 day delay is necessary in order to ensure that
15 the Debtor has sufficient funds on hand to return the security deposit to the tenant, either from the
16 cash flow of the Real Property or from an infusion of cash from one or more of the New Interest
17 Holders.

18 ~~D.~~ **E. Class 54: Unsecured Claims**

19 This Class consists of all Allowed Unsecured Claims of Creditors that are not specifically
20 treated elsewhere in the Plan (e.g., this Class does not include ~~the Allowed Claim of Cohen,~~ claims
21 of tenants for security deposits, Construction Claims, the City of Scottsdale claims under the
22 Development Agreement, or any administrative or priority claims). JPMCC's ~~and Leclere's~~
23 ~~respective~~ unsecured deficiency ~~claims~~claim—i.e., the difference between the amount of ~~their~~
24 ~~respective~~its Allowed Claims and the value of ~~their~~ ~~respective~~its collateral, if any—will be
25 included in this Class if but only if JPMCC does not make the § 1111(b) election. If JPMCC does
26 make the § 1111(b) election, then it will not have any claims in this Class. This Class also

1 includes Leclere's unsecured deficiency claim—i.e., the difference between the amount of his
2 Allowed Claims and the value of his collateral, if any. This Class is impaired.

3 **(i) Treatment of Allowed Unsecured Claims if JPMCC Does Not**
4 **Make the § 1111(b) Election**

5 If JPMCC does not make the § 1111(b) election, then Allowed Unsecured Claims will be
6 treated as follows:

7 • If the Interest Holder(s) is the successful bidder at the auction discussed below, if
8 any, the Interest Holder(s) will waive their Unsecured Claims against the Debtor and the Debtor's
9 Estate, and will not participate in any distribution to Class 54 Claimants. However, if the Interest
10 Holder(s) is not the successful bidder at the auction, then the Interest Holder(s) shall participate in
11 the distributions to this Class to the extent of any Claims they may have against the Debtors.

12 • The Allowed Unsecured Claims in this Class will be treated as follows:

13 (i) First, Allowed Unsecured Claims will share, pro-rata, in a distribution of the
14 sum of \$150,000 in cash (the "Unsecured Distribution Amount") paid by the Reorganized Debtor,
15 from the New Value contribution, on the 90th day following the Effective Date of the Plan.

16 (ii) Second, the Reorganized Debtor will issue to each holder of an Allowed
17 Unsecured Claim its pro rata portion of a \$500,000 subordinated debenture payable to holders of
18 Allowed Unsecured Claims (the "Subordinated Debenture"). The Subordinated Debenture will not
19 accrue interest. The Subordinated Debenture will be secured by a second position lien in and to
20 the Real Property, subject only to real property taxes and the Allowed Secured Claim of JPMCC.
21 The Reorganized Debtor shall not be required to make periodic payments to the holders of the
22 Subordinated Debenture. However, the Subordinated Debenture will be fully due and payable on
23 the 10th anniversary of the Effective Date of the Plan or upon the sale or refinancing of the Real
24 Property.

1 [payments to the City of Scottsdale such that the Allowed amount of this claim is paid no later than](#)
2 [the 6th anniversary of the Effective Date of the Plan. Upon payment in full of the Allowed amount](#)
3 [of this Claim, with interest at the rate of 5% per annum, the City of Scottsdale's claims arising](#)
4 [under the Development Agreement will be deemed satisfied and discharged in full. This Class is](#)
5 [impaired.](#)

6 **F. Class 6: Construction Claims**

7 [This Class-6](#) consists of all Allowed Construction Claims. The Debtor is currently engaged
8 in litigation, or pre-litigation discussions, with the holders of the Construction Claims. The Debtor
9 believes that it has counter-claims, set-off rights and other defenses to the Construction Claims. To
10 the extent that any holder of a Construction Claim is determined to have an Allowed Claim against
11 the Debtor, after all rights of the Debtor and the holder of such Construction Claim have been fully
12 adjudicated or resolved, then the Debtor will pay each such holder of an Allowed Construction
13 Claim a total payment of 5% of the Allowed Amount of such Construction Claim in equal
14 quarterly payments over a period of two years from either the Effective Date or the date that the
15 Allowed Construction Claim is finally adjudicated or settled and, thereby, becomes Allowed.
16 Upon payment of such amount, the Allowed Construction Claim will be deemed satisfied and
17 discharged in full. [This Class is impaired.](#)

18 **G. Class 7: Interest Holders**

19 [This Class-7](#) consists of all Allowed Interests of the Interest Holder in the Debtor. The
20 Interest Holder(s) will purchase the equity interests in the Reorganized Debtor by the contribution
21 of cash to the Reorganized Debtor, on the Effective Date, in the amount of \$500,000¹ (*i.e.*, the
22 New Value). The New Value will be used to:

- 23 (a) pay the amount necessary to pay all Class 1 Allowed Priority Claims as set forth above;

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25
26
27 ¹ The amount of the New Value may be adjusted, as and if necessary, depending upon the ultimate
determination of the amount of JPMCC's Allowed Secured Claim.

1 (b) pay the amounts to Maricopa County as set forth above, to the extent that cash flow
2 from the Real Property is insufficient to pay the taxes;

3 (c) pay the Unsecured Distribution Amount of \$150,000;

4 (d) fund the Reserve Account to pay, as necessary, among other things, (1) debt service
5 payments to JPMCC, to the extent that cash flow is insufficient to make debt service payments, (2)
6 tenant improvements, (3) broker's commissions, and (4) other necessary and appropriate capital
7 expenses of the Real Property to ensure that the value of the Real Property is maintained;

8 (e) pay the amount(s) due to Allowed Construction Claims, if any, as such amounts become
9 due and payable, and only to the extent that cash flow from the operation of the Real Property is
10 insufficient to pay such Allowed Construction Claims.

11 If the Court determines that, under the circumstances, the New Value to be contributed by
12 the Interest Holder(s) is insufficient, or that other parties-in-interest should be allowed to bid for
13 the equity interests in the Reorganized Debtor, then other interested parties may bid for the equity
14 interests in the Reorganized Debtor by meeting all of the terms and conditions identified below.
15 Such bids shall be made pursuant to the following auction procedures and terms:

16 a. The auction ("Auction") of the equity interests in the Reorganized Debtor will be
17 held thirty days after the Confirmation Hearing, in the courtroom, with the Court presiding over
18 the bidding.

19 b. Any party wishing to bid on the equity interests of the Reorganized Debtor must
20 satisfy the following requirements to be a "Qualified Bidder":

21 i. The bidder must be a current Creditor or Interest Holder of the Debtor. This
22 requirement is necessary to avoid any potential registration or like requirements of any
23 applicable securities laws or regulations.

24 ii. The bidder must deposit \$100,000 in cash ("Deposit") with the Debtor's
25 counsel at least twenty-five days prior to the Auction. Any Deposits will be returned to any
26 unsuccessful bidder on the day following the Auction. The Deposit, plus any additional
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1 amounts bid by the Successful Bidder at the Auction for the equity interests in the
2 Reorganized Debtor, will be delivered to the Reorganized Debtor on the Effective Date of
3 the Plan.

4 iii. At least twenty-five days prior to the Auction, all bidders must provide
5 satisfactory evidence to the Debtor of their ability to make a cash payment to the Debtor,
6 on the Effective Date of the Plan, in the amount of no less than \$550,000. To the extent
7 that the Debtor contests the sufficiency of the evidence submitted regarding a bidder's
8 ability to pay such amount, the evidence will be presented to the Court at the Auction, prior
9 to bidding, and the Court will make a determination as to the sufficiency of the evidence
10 and whether the bidder should be deemed to be a Qualified Bidder.

11 iv. At least twenty-five days prior to the Auction, all bidders must provide
12 satisfactory evidence to the Debtor of their ability to operate the Reorganized Debtor in
13 such a manner as to satisfy the requirements of this Plan, including payments to
14 administrative claimants, secured creditors and unsecured creditors, on the terms and
15 conditions set forth herein. To the extent that the Debtor contests the sufficiency of the
16 evidence submitted regarding a bidder's ability to make payments as required by the Plan,
17 the evidence will be presented to the Court at the Auction, prior to bidding, and the Court
18 will make a determination as to the sufficiency of the evidence and whether the bidder
19 should be deemed to be a Qualified Bidder.

20 v. At least twenty-five days prior to the Auction, all bidders must provide
21 satisfactory evidence to the Debtor that they are authorized to do business in the State of
22 Arizona, and have, or have the ability to obtain, any and all necessary permits and/or
23 licenses to operate the Real Property. To the extent that the Debtor contests the sufficiency
24 of such evidence, the evidence will be presented to the Court at the Auction, prior to
25 bidding, and the Court will make a determination as to the sufficiency of the evidence and
26 whether the bidder should be deemed to be a Qualified Bidder.

1 c. All bids for the interests in the Reorganized Debtor shall be in increments of no less
2 than \$50,000.

3 d. In order for a Qualified Bidder's bid to be determined to be higher and better than
4 the New Value to be contributed by the Interest Holder(s) as set forth above, the Qualified
5 Bidder's bid must:

6 i. Exceed, by at least \$50,000, the Interest Holder(s)'s bid; and

7 ii. Provide that the Qualified Bidder will comply with and perform under the
8 terms of this Plan, including the payments to creditors (including tenant security deposits)
9 as provided herein.

10 e. The Interest Holder(s) shall have the right and ability to bid at the Auction.

11 Competing bids will be assessed by the Court for their relative merits including, but not
12 limited to, the amount of the bid and the expertise of the would-be New Interest Holder to manage
13 and guide the Reorganized Debtor after the Effective Date and to satisfy the requirements of this
14 Plan, including its ability to make the payments to creditors required herein and to satisfy the
15 assumed obligations as required herein.

16 On the Effective Date, if the Interest Holder(s) is not the successful bidder at the auction,
17 then the Successful Bidder at the auction must deliver its cash bid to the Reorganized Debtor and,
18 upon such delivery, the Successful Bidder will be deemed to hold the equity interests in the
19 Reorganized Debtor, subject to all terms and conditions of this Plan, including the obligations to
20 other creditors as provided herein and the assumption of liabilities as provided herein.

21 **X. MEANS FOR EXECUTING THE PLAN.**

22 **A. Funding**

23 The Plan will be funded by operations of the Real Property and a capital infusion in the
24 amount of the New Value by the Interest Holder(s) or the Successful Bidder, if an auction as
25 described above is held. As a showing of good faith and commitment to the Plan, the Interest
26 Holder(s) will place \$100,000 in "escrow" in the trust account of the Debtor's bankruptcy counsel
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1 on or before the Auction. These funds will become a part of the Estate and will fund the New
2 Value contribution obligations set forth herein at confirmation only in the event that the Interest
3 Holder(s) is the successful bidder for the equity interests in the Reorganized Debtor. Additionally,
4 these funds will only be available to, and become a part of, the Estate if a Confirmation Order
5 confirming this Plan is entered and becomes a Final Order.

6 **B. Liquidation of Estate Property**

7 The Debtor shall have the authority to retain such brokers, agents, counsel, or
8 representatives as it deems necessary to market, lease and/or sell assets of the Reorganized Debtor.

9 **C. Management**

10 The Plan will be implemented by the retention of the Debtor's existing management,
11 Steven Goodhue and John Rosso. This implementation will also include the management and
12 disbursement of the funds infused by the Interest Holder(s), or the Successful Bidder, if any, as set
13 forth above and in accordance with the terms of this Plan.

14 **D. Disbursing Agent**

15 The Reorganized Debtor shall act as the Disbursing Agent under the Plan.

16 **E. Documentation of Plan Implementation**

17 In the event any entity which possesses an Allowed Secured Claim or any other lien in any
18 of the Debtor's property for which the Plan requires the execution of any documents to incorporate
19 the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to
20 satisfy the requirements of the Plan, the Debtor may record a copy of this Plan or the Confirmation
21 Order with the appropriate governmental agency and such recordation shall constitute the lien
22 release and creation of any necessary new liens to satisfy the terms of the Plan. If the Debtor
23 deems advisable, it may obtain a further Order from the Court that may be recorded in order to
24 implement the terms of the Plan.

25 **F. New Obligations**

1 Any Allowed Claims which are otherwise impaired herein, and which are paid in deferred
2 payments, shall be a New Obligation of the Reorganized Debtor under the terms described herein
3 and completely replace any pre-confirmation obligations of the Debtor.

4 **XI. EFFECT OF CONFIRMATION.**

5 Except as otherwise provided in the Plan or the Confirmation Order, Confirmation acts as a
6 Discharge, effective as of Confirmation, of any and all debts of the Debtor that arose any time
7 before the entry of the Confirmation Order including, but not limited to, all principal and all
8 interest accrued thereon, pursuant to § 1141(d)(1) of the Bankruptcy Code. The Discharge shall be
9 effective as to each Claim, regardless of whether a Proof of Claim thereon was filed, whether the
10 Claim is an Allowed Claim, or whether the Holder thereof votes to accept the Plan.

11 In addition, any pre-confirmation obligations of the Debtor dealt with in this Plan shall be
12 considered New Obligations of the Debtor, and these New Obligations shall not be considered in
13 default unless and until the Reorganized Debtor defaults on the New Obligations pursuant to the
14 terms of the Plan. The New Obligations provided for in the Plan shall be in the place of, and
15 completely substitute for, any pre-Confirmation obligations of the Debtor. Once the Plan is
16 confirmed, the only obligations of the Debtor shall be such New Obligations as provided for under
17 the Plan.

18 **XII. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS.**

19 **A. Objections and Bar Date for Filing Objections.**

20 As soon as practicable, but in no event later than 45 days after the Effective Date,
21 objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each
22 of the Claims to which objections are made pursuant to the Bankruptcy Code and the Bankruptcy
23 Rules. Objections filed after such date will be barred.

24 **B. Settlement of Claims.**

25 Settlement of any objection to a Claim not exceeding \$10,000 shall be permitted on the
26 eleventh (11th) day after notice of the settlement has been provided to the Debtor, the Creditors,
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1 the settling party, and other persons specifically requesting such notice, and if on such date there is
2 no written objection filed, such settlement shall be deemed approved. In the event of a written
3 objection to the settlement, the settlement must be approved by the Court on notice to the objecting
4 party.

5 **C. Estimation of Claims.**

6 For purposes of making distributions provided for under the Plan, all Claims objected to
7 shall be estimated by the Disbursing Agent at an amount equal to (i) the amount, if any,
8 determined by the Court pursuant to § 502(c) of the Bankruptcy Code as an estimate for
9 distribution purposes; (ii) an amount agreed to between the Debtor and the Claimant; or, (iii) that
10 amount set forth as an estimate in the Plan or Disclosure Statement. Notwithstanding anything
11 herein to the contrary, no distributions shall be made on account of any Claim until such Claim is
12 an Allowed Claim.

13 **D. Unclaimed Funds and Interest.**

14 Distribution to Claimants shall be mailed by the Reorganized Debtor to the Claimants at
15 the address appearing on the master mailing matrix unless the Claimant provides the Reorganized
16 Debtor with an alternative address. For a period of one year from the date that a distribution was
17 to be made by the disbursing agent but has gone uncollected by the Claimant, the disbursing agent
18 shall retain any distributions otherwise distributable hereunder which remain unclaimed or as to
19 which the disbursing agent has not received documents required pursuant to the Plan. Thereafter,
20 the unclaimed funds shall be deposited in the appropriate distribution account for distribution to
21 other Claimants entitled to participate in such respective fund.

22 **XIII. NON-ALLOWANCE OF PENALTIES AND FINES.**

23 No distribution shall be made under this Plan on account of, and no Allowed Claim,
24 whether Secured, Unsecured, Administrative, or Priority, shall include any fine, penalty,
25 exemplary or punitive damages, late charges, default interest or other monetary charges relating to
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1 or arising from any default or breach by the Debtor, and any Claim on account thereof shall be
2 deemed Disallowed, whether or not an objection was filed to it.

3 **XIV. CLOSING OF CASE.**

4 Until this case is officially closed, the Reorganized Debtor will be responsible for filing
5 pre- and post-confirmation reports required by the United States Trustee and paying the quarterly
6 post-confirmation fees of the United States Trustee, in cash, pursuant to 28 U.S.C. § 1930, as
7 amended. Pursuant to 11 U.S.C. § 1129(a)(12), all fees payable under § 1930 of Title 28, as
8 determined by the Court at the hearing on confirmation of the Plan, will be paid, in cash, on the
9 Effective Date.

10 **XV. MODIFICATION OF THE PLAN.**

11 In addition to its modification rights under § 1127 of the Bankruptcy Code, the Debtor may
12 amend or modify this Plan at any time prior to Confirmation without leave of the Court. The
13 Debtor may propose amendments and/or modifications of this Plan at any time subsequent to
14 Confirmation with leave of the Court and upon notice to Creditors. After Confirmation of the
15 Plan, the Debtor may, with approval of the Court, as long as it does not materially or adversely
16 affect the interests of Creditors, remedy any defect or omission or reconcile any inconsistencies of
17 the Plan, or in the Confirmation Order, if any may be necessary to carry out the purposes and
18 intent of this Plan.

19 **XVI. JURISDICTION OF THE COURT.**

20 The Court will retain jurisdiction until this Plan has been fully consummated for, including
21 but not limited to, the following purposes:

22 1. The classification of the Claims of any Creditors and the re-examination of any
23 Claims which have been allowed for the purposes of voting, and for the determination of such
24 objections as may be filed to the Creditor's Claims. The failure by the Debtor to object to or
25 examine any Claim for the purpose of voting shall not be deemed to be a waiver of the Debtor's
26 rights to object to or to re-examine the Claim in whole or in part.

1 which have not been resolved or disposed of prior to the Effective Date, whether or not such
2 claims or causes of action are specifically identified in the Disclosure Statement.

3 Any recovery obtained from retained causes of action shall become an additional asset of
4 the Debtor, unless otherwise ordered by the Court, and shall be available for distribution in
5 accordance with the terms of this Plan.

6 **XVIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

7 The Debtor hereby expressly assumes any and all tenant leases in existence as of the
8 Confirmation Date and all executory contracts listed in the Debtor's Schedules of Assets and
9 Liabilities. Every other executory contract and/or unexpired lease of the Debtor not expressly
10 assumed by this Plan is hereby rejected.

11 Claims under § 502(g) of the Code arising as a result of the rejection of executory contracts
12 or unexpired leases shall be filed no later than 30 days after the Confirmation Date. Any such
13 Claims not timely filed and served shall be Disallowed.

14 **XIX. REVESTING.**

15 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date the
16 Reorganized Debtor shall be vested with all the property of the Estate free and clear of all claims,
17 liens, charges, and other interests of Creditors, arising prior to the Effective Date. Upon the
18 Effective Date, the Reorganized Debtor shall operate their business free of any restrictions.

19 **XX. LIQUIDATION ANALYSIS.**

20 If the Plan is not confirmed, and the Debtor's assets were liquidated instead, it is likely that
21 only Lender would recover anything from such liquidation, and all other creditors (other than
22 Forrest & Trapp and Leclere) will not recover anything from the Debtor or the Debtor's Estate.
23 Indeed, the value of the Debtor's Property is less than the total amount of Lender's second claim.
24 Furthermore, the Debtor's other unencumbered personal property is virtually worthless, and may be
25 covered by Lender's security interest in the Debtor's assets.

1 The Debtor's Plan provides a better recovery than such a liquidation. Indeed, as opposed to
2 recovering nothing in the event of a liquidation, under the Plan, Allowed Unsecured Creditors will
3 share in a pro rata distribution of \$150,000 on the Effective Date, and a pro rata interest in the
4 Subordinated Debenture. Also, under the Plan, Lender will recover the value of its collateral, plus
5 a market rate of interest, plus its share of the Unsecured Distribution Amount and Subordinated
6 Debenture. This treatment will result in a better recovery to Lender than if the Property were
7 liquidated.

8 Thus, the Plan provides for a better recovery to creditors than a liquidation.

9 **XXI. TAX CONSEQUENCES.**

10 Pursuant to §1125(a)(1) of the Bankruptcy Code, the Debtor is to provide a discussion of
11 the potential material tax consequences of the Plan to the Debtor, any successor to the Debtor, and a
12 hypothetical investor typical of the holders of claims or interests in the case, that would enable such
13 a hypothetical investor of the relevant Class to make an informed judgment about the Plan.
14 However, the Debtor need not include such information about any other possible or proposed plan.
15 In determining whether the Disclosure Statement provides adequate information, the Court shall
16 consider the complexity of the case, the benefit of additional information to creditors and other
17 parties in interest, and the cost of providing additional information. The following discussion
18 summarizes certain considerations that may affect the anticipated federal income tax consequences
19 of the Plan's implementation to Creditors and to the Debtor. It does not address all federal income
20 tax consequences of the Plan nor does it address the state or local income tax or other state or local
21 tax consequences of the Plan's implementation to Creditors or to the Debtor.

22 This description of the federal income tax consequences of implementing the Plan is based
23 on Debtor's interpretation of the applicable provisions of the Internal Revenue Code of 1986, as
24 amended (the "IRC"), the regulations promulgated thereunder, and other relevant authority.
25 Debtor's interpretation, however, is not binding on the IRS or any court. The Debtor has not
26 obtained, nor does it intend to obtain, a private letter ruling from the IRS, nor has the Debtor
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1 obtained an opinion of counsel with respect to any of these matters. The discussion below is
2 general in nature and is not directed to the specific tax situation of any particular interested
3 taxpayer. **For these reasons, all Creditors and the Interest Holder should consult with their**
4 **own tax advisors as to the tax consequences of implementation of the Plan to them under**
5 **applicable federal, state, and local tax laws.**

6 **A. Tax Consequences to the Debtor**

7 In general, pursuant to IRC Section 108, the amount of any debt of a corporation that is
8 partially or totally discharged pursuant to a Title 11 bankruptcy case is excluded from gross
9 income. According to IRC Section 108(b), the amount of debt discharge income (“DDI”) that is
10 excluded from gross income must be applied to reduce the tax attributes of the Debtor. The
11 Debtor’s tax attributes are reduced in the following order: (1) net operating losses (“NOLs”); (2)
12 general business credits; (3) minimum tax credit; (4) capital loss carryovers; (5) reduction in tax
13 basis of the Debtor’s property; (6) passive activity loss and credit carryovers; and (7) foreign tax
14 credit carryovers. The Debtor may elect to apply the debt discharge exclusion first to depreciable
15 property and thereafter to the tax attributes in the above-prescribed order.

16
17 **B. Tax Consequences to the Secured and Unsecured Creditors**

18 Both the Secured Claimants and/or the Unsecured Claimants may be required to report
19 income or be entitled to a deduction as a result of implementation of the Plan. The exact tax
20 treatment depends on, among other things, each Claimant’s method of accounting, the nature of
21 each Claimant’s claim, and whether and to what extent such Claimant has taken a bad debt
22 deduction in prior taxable years with respect to the particular debt owed to it by one of the Debtors.
23 **Each Holder of a secured claim or an unsecured claim is urged to consult with his, her, or its**
24 **own tax advisor regarding the particular tax consequences of the treatment of his, her, or its**
25 **claim under the Plan.**

26 **XXII. DISCLAIMER.**

1 Court approval of this Disclosure Statement and the accompanying Plan of Reorganization,
2 is not a certification of the accuracy of the contents thereof. Furthermore, Court approval of these
3 documents does not constitute the Court's opinion as to whether the Plan should be approved or
4 disapproved.

5 **XXIII. RISKS.**

6 The risk of the Plan lies with the Debtor's ability to fund the Plan and ultimately to
7 refinance or sell the Property to pay off its creditors. If the funds to be infused by the Interest
8 Holder are infused, this will lessen the risk accordingly. However, the success of the Debtor
9 depends in large part on the recovery of the national economy over the next several years following
10 confirmation.

11 **XXIV. PROPONENTS RECOMMENDATION/ALTERNATIVES TO THE PLAN.**

12 The Debtor recommends that all creditors entitled to vote for the Plan do so. The Debtor's
13 Plan will pay Lender the full amount of its secured claim and provide funds to pay unsecured
14 creditors. The alternatives to confirmation of the Plan would be either conversion of this case to a
15 case under Chapter 7 of the Bankruptcy Code or its dismissal.

16 Dismissal of this case would result in the foreclosure of the Property by Lender. In such a
17 case, Unsecured Creditors will receive nothing on account of their claims.

18 Conversion will result in the appointment of a Chapter 7 trustee and, most likely, the hiring
19 of an attorney by the trustee. Expenses incurred in administering the Chapter 7 case would take
20 priority in the right to payment over allowed, administrative expenses incurred in the Chapter 11
21 case. Both Chapter 7 and Chapter 11 administrative expenses take priority over the payment of
22 unsecured claims without priority. In other words, conversion would likely decrease the net
23 amount available to pay currently existing creditors.

24 The most likely effect of conversion of the case to a Chapter 7 would be a foreclosure on
25 the Property by Lender, and, as a result, Unsecured Creditors would receive nothing.

1 For all these reasons, the Debtor urges you to vote to accept the Plan and to return your
2 ballots in time to be counted.

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DATED: May ~~2~~6, 2011.

POLSINELLI SHUGHART PC

By:  _____

Mark W. Roth
Philip R. Rudd
Mary B. Martin
CityScape Plaza
One E. Washington., Suite 1200
Phoenix, AZ 85004

Attorneys for Debtor

COPY of the foregoing mailed (or served via electronic notification if indicated by an “*”) on May ~~2~~6, 2011, to:

U.S. TRUSTEE’S OFFICE
230 N. 1st Avenue, Suite 204
Phoenix, AZ 85003

Robert R. Kinas * rkinas@swlaw.com
Jonathan M. Saffer * jmsaffer@swlaw.com
SNELL & WILMER LLP
One S. Church Ave., Suite 1500
Tucson, AZ 85701-1630
Attorneys for JPMCC 2007-CIBC19 Shea Boulevard, LLC

By: /s/ Cathie Bernales _____

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Insertions	80
Deletions	41
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	121

1 John J. Hebert (#010633)
Mark W. Roth (#010708)
2 Philip R. Rudd (#014026)
Mary B. Martin (#019196)
3 **POLSINELLI SHUGHART PC**
CityScape Plaza
4 One E. Washington, Suite 1200
Phoenix, AZ 85004
5 Telephone: (602) 650-2000
Facsimile: (602) 264-7033
6 E-mail: PhoenixBankruptcyECF@polsinelli.com
E-Mail: jhebert@polsinelli.com
7 E-Mail: mroth@polsinelli.com
E-Mail: prudd@polsinelli.com
8 E-Mail: mmartin@polsinelli.com

9
10 *Attorneys for Debtor*

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **THE DISTRICT OF ARIZONA**

13 In re:
14 94TH AND SHEA, L.L.C.
15 Debtor.

Chapter 11 Proceedings
Case No. 2:10-bk-37387-SSC
AMENDED PLAN OF REORGANIZATION

16
17 94th and Shea, L.L.C., (“Debtor” or “94th & Shea”), debtor-in-possession in the above-
18 captioned bankruptcy case, hereby submits to the Court and creditors of the Debtor’s Estate the
19 following “Amended Plan of Reorganization” (the “Plan”), pursuant to § 1121(a) of the Bankruptcy
20 Code.

21 **I. DEFINITIONS.**

22 For purposes of this Plan, except as expressly provided herein or unless the context
23 otherwise requires, all capitalized terms not otherwise defined herein shall have the meanings
24 ascribed to them in this Section I of the Plan, or in the Disclosure Statement. Any term used in the
25 Plan that is not defined in the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules,
26 retains the meaning ascribed to such term in the Bankruptcy Code or the Bankruptcy Rules.

1 Whenever the context requires, such terms include the plural as well as the singular, the masculine
2 gender includes the feminine gender, and the feminine gender includes the masculine gender.

3 As used in this Plan, the following terms have the meanings specified below:

4 **Administrative Claim:** Every cost or expense of administration in the pending case,
5 including, but not limited to, any actual and necessary expenses of preserving or disposing of the
6 assets of the Estate, any actual and necessary expenses incurred in operating any of the Debtors'
7 business post-petition, and all Claims approved under § 507(a)(2) of the Bankruptcy Code,
8 including professional fees and costs approved by the Court.

9 **Allowed Claim:** A Claim:

10 1. With respect to which a proof of claim has been filed with the Court within the
11 applicable period of time fixed by Rule 3003 of the Rules of Bankruptcy Procedure and to which
12 no objection to the allowance of the Claim has been filed by the Debtor or any other party or as to
13 which any such objection has been determined by an order or judgment of the Court which is no
14 longer subject to appeal and to which no appeal is pending; or

15 2. Scheduled in the list of creditors prepared and filed with the Court pursuant to Rule
16 1007(b), Rules of Bankruptcy Procedure, and not listed as disputed, contingent or un-liquidated as
17 to the amount.

18 An Allowed Claim shall not include un-matured or post-petition interest, penalties, fees or
19 costs, unless specifically stated in the Plan. Notwithstanding § 502(a) of the Code and Rules 3001
20 and 3003, for the purposes of the Plan, a Claim shall not be an Allowed Claim unless it satisfies
21 the definition of Allowed Claim under this Plan.

22 **Allowed Interest:** An Interest in the Debtor held by a person or entity, as of the Effective
23 Date, and as to which (a) such Interest was listed in the Debtor's Schedules of Assets and
24 Liabilities and Statement of Financial Affairs, and no objection has been made within the time
25 allowed for the making of objections, (b) a Final Order has been entered allowing such Interest, or
26 (c) a timely and proper proof of interest has been filed, and as to which no objection to the
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1 allowance of the Interest has been filed by the Debtor or any other party, or as to which any such
2 objection has been determined by an order or judgment of the Court which is no longer subject to
3 appeal and to which no appeal is pending.

4 **Allowed Priority Claim:** The Allowed Claim of a Claimant that is entitled to priority in
5 payment under 11 U.S.C. §§ 507(a)(3) through (a)(10).

6 **Allowed Secured Claim:** An Allowed Claim to the extent that such Allowed Claim is
7 secured by a lien which is unavoidable, on property in which the Estate has an interest, to the
8 extent of the value of such Creditor's interest in the Estate's interest in such property as determined
9 in light of the purpose of the valuation and of the proposed disposition and use of such property
10 and as determined as of the Petition Date.

11 **Allowed Unsecured Claim:** An Allowed Claim to the extent that such Allowed Claim is
12 not secured by a lien on property in which the Estate has an interest.

13 **Auction:** See Section IV.G., below.

14 **Bankruptcy Code:** 11 U.S.C. §§ 101, et seq.

15 **Bankruptcy Court:** The United States Bankruptcy Court for the District of Arizona or
16 any other court which may have jurisdiction over this case or any proceeding arising under, in, or
17 relating to this case.

18 **Chapter 11:** Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101, et seq.

19 **Claim:** (a) A right to payment, whether or not such right is reduced to judgment,
20 liquidated, un-liquidated, fixed, contingent, matured, un-matured, disputed, undisputed, legal,
21 equitable, secured or unsecured, which right arose or accrued prior to the date of Confirmation; (b)
22 a right to an equitable remedy for breach of performance if such breach gives rise to a right to
23 payment, whether or not such right to an equitable remedy is reduced to judgment, fixed,
24 contingent, matured, un-matured, disputed, undisputed, secured, or unsecured, where such right
25 arose or accrued prior to Confirmation; or (c) a claim arising under 11 U.S.C. § 502(g).

26 **Claimant or Creditor:** Any person or entity that asserts a Claim.

1 ~~Cohen: Dr. Randall Cohen, M.D., a tenant of the Debtor holding an unsecured claim for~~
2 ~~tenant improvement reimbursements against the Debtor.~~

3 **Confirmation:** The signing by the Court of the Confirmation Order.

4 **Confirmation Date:** The date upon which the Confirmation Order is entered upon the
5 Bankruptcy Court's docket.

6 **Confirmation Order:** The Order signed by the Bankruptcy Court pursuant to 11 U.S.C.
7 § 1129 confirming this Plan.

8 **Construction Claims:** Any Claims, whether asserted to be secured by mechanics' or
9 materialmen's liens on the Real Property or Unsecured, relating to the constructions of the
10 improvements on the Real Property, which Claims are currently disputed by the Debtor and are
11 subject to counter-claims, offsets and other defenses by the Debtor.

12 **Contingent Claim:** Any Claim for which a proof of claim has been filed with the
13 Bankruptcy Court: (a) which was not filed in a sum certain, or which has not accrued and is
14 dependent on a future event that has not occurred and may never occur, and (b) which has not been
15 allowed on or before the Confirmation Date.

16 **Court:** The Bankruptcy Court.

17 **Debtor:** 94th and Shea, L.L.C., an Arizona limited liability company.

18 **Disbursing Agent:** The Reorganized Debtor shall be the Disbursing Agent and shall make
19 distributions to holders of Allowed Claims under the Plan.

20 **Disclosure Statement:** The Debtor's Disclosure Statement relating to this Plan, and any
21 amendments and supplements thereto as approved by an order of the Bankruptcy Court.

22 **Disputed Claim:** A Claim which the Debtor listed as un-liquidated, disputed or contingent
23 in its Schedules of Assets and Liabilities, or to which an objection has been filed which has not
24 been resolved by a Final Order of the Bankruptcy Court.

25 **Effective Date:** The first business day which is at least 30 days after either the
26 Confirmation Date or the Auction, if any, whichever is later. In the event the Confirmation Order
27

1 has been stayed by a court of competent jurisdiction, the Debtor may elect to delay the Effective
2 Date pending a resolution of the order staying the Confirmation Order.

3 **Estate**: The Debtor's bankruptcy estate created by the filing of the Petition as identified
4 and described in § 541 of the Bankruptcy Code.

5 **Final Order**: An order or judgment of the Bankruptcy Court which has not been ~~appealed~~
6 ~~and as to which any applicable appeal period has expired or, if such order has been appealed, as to~~
7 ~~which no stay has been entered or as to which any and all appellate orders or judgments with~~
8 ~~respect to such appeal, or any subsequent appeal to a higher court, have become final and non-~~
9 ~~appealable~~stayed.

10 **Forrest & Trapp**: Forrest & Trapp, P.C., a secured creditor of the Debtor.

11 **Insider**: A person or entity within the definition contained at § 101(31) of the Bankruptcy
12 Code.

13 **IRS**: The Internal Revenue Service.

14 **Interest**: Any equity interest in the Debtor as of the Petition Date.

15 **Interest Holder**: Any person or persons owning an Interest in the Debtors as of the
16 Petition Date.

17 **JPMCC**: JPMCC 2007-CIBC19 Shea Boulevard, LLC, an asserted secured creditor of the
18 Debtor.

19 **Leclere**: Ed Leclere, a secured creditor of the Debtor.

20 **New Debt Obligations**: Those debts of the Debtor which existed pre-confirmation, but
21 which are modified by the confirmed Plan resulting in the creation of a new note. The obligations
22 for which the Reorganized Debtor has liability under the terms of the confirmed Plan. Said New
23 Obligations shall not be considered in default unless and until the Reorganized Debtor defaults on
24 said obligations after the Effective Date.

25 **New Interest Holders**: The owner(s) of the equity interests in the Reorganized Debtor,
26 consisting of either (i) the current Interest Holders or (ii) if an auction for the equity interests in the
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1 Reorganized Debtor is held, then the Successful Bidder, if the successful bidder at the auction is
2 not the current Interest Holders.

3 **New Value:** The cash infusion to be provided to the Reorganized Debtor by either (i) the
4 Interest Holders (according to their proportionate contributions) or (ii) if there is an auction of the
5 equity interests in the Reorganized Debtor as described below, then the Successful Bidder (if the
6 Interest Holders are not the successful bidders), in exchange for the equity interests in the
7 Reorganized Debtor.

8 **Oversecured:** The term describing the Allowed Claim of a Secured Creditor when the
9 value of the collateral securing said Allowed Claim exceeds the amount of the Allowed Claim.

10 **Person:** Any individual, corporation, partnership, joint venture, association, joint stock
11 company, trust, unincorporated association or organization, governmental agency, or associated
12 political subdivision.

13 **Petition:** The original Petition filed by the Debtor under Chapter 11.

14 **Petition Date:** The date on which the Petition was filed, November 19, 2010.

15 **Plan:** This Plan of Reorganization and any amendments or supplements thereto.

16 **Plan Rate:** The annual rate of interest to be paid with respect to Allowed Claims entitled
17 to recover interest pursuant to this Plan, which rate is 6%, unless the Bankruptcy Court determines
18 that the Plan Rate should be some other amount, in which case the Plan Rate shall be the rate
19 determined by the Court.

20 **Pro Rata:** The ratio of an Allowed Claim or Allowed Interest in a particular Class to the
21 aggregate amount of all Allowed Claims or Allowed Interests in that Class.

22 **Real Property:** The real property owned by the Debtor, except the Outparcel (identified in
23 the Disclosure Statement), and the principal asset of the Estate, consisting of certain real property
24 and improvements thereon known as The Shops And Office at 9400 Shea, located at 9325, 9343,
25 9375, and 9397 East Shea Boulevard in Scottsdale, Arizona (the "Property"). The Property
26 consists of 37,037 square feet of retail space and 35,238 square feet of office space.

1 **Reserve Account:** The account into which the New Value will be placed as required by
2 the Plan.

3 **Reorganized Debtor:** The Debtor after the Effective Date.

4 **Successful Bidder:** The successful bidder at the auction of the equity interests in the
5 Reorganized Debtor, if any such auction is held, if such successful bidder is not the Interest
6 Holder(s).

7 **Undersecured:** The term describing the Allowed Claim of a Secured Creditor when the
8 value of the collateral securing said Allowed Claim is less than the amount of the Allowed Claim.

9 **Unliquidated:** The term describing the Allowed Claim of a Creditor when the value of the
10 claim has not been determined or stated with finality.

11 **II. CLASSIFICATION OF CLAIMS AND INTERESTS.**

12 **A. Class 1: Priority Claims**

13 1. Class 1-A consists of Allowed Priority Claims under 11 U.S.C. § 503
14 and § 507(a)(2) (Administrative Claims).

15 2. Class 1-B consists of Allowed Priority Claims under 11 U.S.C. §
16 507(a)(3) (Wage Claims).

17 3. Class 1-C consists of Allowed Priority Claims under 11 U.S.C.
18 §507(a)(8) (Tax Claims).

19 **B. Class 2: Secured Claims**

20 1. Class 2-A consists of the Allowed Secured Claim of JPMCC.

21 2. Class 2-B consists of the Allowed Secured Claim of Maricopa County
22 for real property taxes.

23 3. Class 2-C consists of the Allowed Secured Claim of Leclere.

24 4. Class 2-D consists of the Allowed Secured Claim of Forrest & Trapp.

25 **C. Class 3: ~~Allowed Claim of Cohen~~**

1 ~~Class 3 consists of the Allowed Claim of Cohen relating to the Debtor's obligation to~~
2 ~~reimburse Cohen for tenant improvements made to Cohen's leased premises.~~

3 ~~D.~~ **Class 4: Tenant Security Deposits**

4 Class ~~4~~3 consists of Allowed Claims by tenants for the return of tenant security deposits
5 held by the Debtor.

6 **D. E. Class 54: Unsecured Claims**

7 Class ~~54~~ consists of the Allowed Unsecured Claims of Creditors not otherwise treated in
8 the Plan.

9 **E. Class 5: City of Scottsdale Development Agreement Claims**

10 Class 5 consists of the allowed claims of the City of Scottsdale for water and wastewater
11 development fees under the Development Agreement.

12 **F. Class 6: Construction Claims**

13 Class 6 consists of all Allowed Construction Claims.

14 **G. Class 7: Interest Holders**

15 Class 7 consists of all Allowed Interests of Interest Holders.

16 **III. IMPAIRMENT OF CLASSES.**

17 Classes 1-A, 1-B, and 1-C are unimpaired under the Plan. All other Classes are Impaired,
18 as that term is defined in 11 U.S.C. § 1124.

19 **IV. TREATMENT OF CLASSES.**

20 **A. Class 1: Priority Claims**

21 **1. Class 1-A: Administrative Claims**

22 This Class consists of Allowed Priority Claims under 11 U.S.C. §§ 503 and 507(a)(2) –
23 administrative priority claims. Unless Claimants holding Claims in this Class agree to an
24 alternative form of treatment, the Allowed Claims of Class 1-A shall be paid in full, in cash, on or
25 before the Effective Date or as the same are Allowed and ordered paid by the Court. Any Class 1-
26
27

1 A Claim not allowed as of the Effective Date shall be paid as soon thereafter as it is allowed by the
2 Court according to the terms of this Class. This Class is not impaired.

3 **2. Class 1-B: Wage Claims**

4 This Class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(4) – wage claims.
5 As provided in 11 U.S.C. § 1129(a)(9)(B), unless Claimants holding Claims in this Class agree to
6 an alternative form of treatment, the Allowed Priority Claims of Class 1-B shall be paid in full, in
7 cash, on or before the Effective Date. The Debtor does not believe that any claims exist under this
8 Class. Any Class 1-B Claim not allowed as of the Effective Date shall be paid as soon thereafter as
9 they are allowed by the Court according to the terms of this Class. This Class is not impaired.

10 **3. Class 1-C: Tax Claims**

11 This Class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8) – tax Claims
12 which are not otherwise treated as secured claims herein. As provided in 11 U.S.C. §
13 1129(a)(9)(C), unless Claimants holding Claims in this Class agree to an alternative form of
14 treatment, the Allowed Priority Claims of Class 1-C shall be paid in full, in cash, on or before the
15 Effective Date, or, at the Debtor’s option, such Allowed Claims shall be paid, on account of such
16 Allowed Claim, deferred cash payments, over a period not exceeding five years after the date of
17 assessment of such Claim, of a value, as of the Effective Date of the Plan, equal to the allowed
18 amount of such Claim. Any Class 1-C Claims not allowed as of the Effective Date shall be paid as
19 soon thereafter as they are allowed by the Court according to the terms of this Class. This Class is
20 not impaired.

21 **B. Class 2: Secured Claims**

22 **1. Class 2-A – Allowed Secured Claims of JPMCC**

23 This Class consists of the Allowed Secured Claim of JPMCC. This Class is impaired.

24 [JPMCC asserts that it has the right to make an election under § 1111\(b\) of the Bankruptcy](#)
25 [Code. Accordingly, the following discussion sets forth alternate treatments of JPMCC’s secured](#)
26 [claim, depending upon whether JPMCC makes the § 1111\(b\) election or not.](#)

27 **(i) JPMCC’s Treatment if the § 1111(b) Election is Not Made**

1 Pursuant to § 506(a)(1) of the Bankruptcy Code, the amount of JPMCC’s Allowed Secured
2 Claim shall be limited to the value of its collateral, which the Debtor believes to be in the range of
3 between approximately \$7 million and \$9 million. The remainder of JPMCC’s Allowed Claim
4 shall be treated as a general unsecured claim in Class ~~5.4~~. The Debtor intends to pay JPMCC’s
5 Allowed Secured Claim in full, with interest at the Plan Rate, over a period of ten (10) years.

6 Specifically, the Debtor will execute and deliver to JPMCC a promissory note (the “New
7 JPMCC Note”) in the principal face amount of JPMCC’s Allowed Secured Claim. The New
8 JPMCC Note will mature and become fully due and payable on the 10th anniversary of the
9 Effective Date (the “New JPMCC Note Maturity Date”). During the term of the New JPMCC
10 Note, the Debtor will make monthly principal and interest payments to JPMCC based upon a 25
11 year amortization schedule with interest at the Plan Rate. On the New JPMCC Note Maturity
12 Date, all remaining amounts of principal and interest due under the New JPMCC Note will be
13 immediately due and payable, and will be paid by the Debtor to JPMCC either through a sale of
14 the Real Property or through refinancing of the Real Property. The first payment of principal and
15 interest will be made on the Effective Date, and each monthly payment thereafter will be made on
16 the first business day of each month during the term of the New JPMCC Note.

17 JPMCC will retain its existing lien on the property that served as collateral for JPMCC’s
18 Claim pre-petition, except the Outparcel (as defined in the Disclosure Statement), until the New
19 JPMCC Note has been satisfied in full. As of the Effective Date, the Outparcel shall be
20 reconveyed by the Debtor, free and clear of any liens (except ~~to~~ real property taxes), to North
21 Scottsdale Medical Commons, L.L.C. pursuant to the terms of the Side Letter (as defined in the
22 Disclosure Statement). At any time prior to the end of the term, the Debtor may pay the balance of
23 the New JPMCC Note without penalty.

24 The Debtor anticipates that, during the first approximately 24 months following the
25 Effective Date of the Plan, before the occupancy of the Real Property becomes fully stabilized, the
26 Real Property may not generate sufficient net cash flow, after paying operating expenses, to make
27

1 the full amount of monthly principal and interest payments payable under the New JPMCC Note
2 (the “Monthly Note Payments”). Accordingly, on the Effective Date of the Plan, and as discussed
3 below, the Interest Holder(s) or the Successful Bidder will deposit the New Value into an interest
4 bearing reserve account (the “Reserve Account”) which can be used to, among other things, pay
5 any cash flow deficiency between the monthly net cash flow generated by the Real Property and
6 the Monthly Note Payments during the term of the New JPMCC Note (a “Cash Flow Deficiency”),
7 if any. To the extent that the use of the funds in the Reserve Accounts will result in the amount of
8 funds in the Reserve Account being reduced to an amount below \$50,000, at any time during the
9 term of the New JPMCC Note, the Reorganized Debtor (from any retained excess cash flow) or the
10 Interest Holder, or the Successful Bidder, if any, (from an additional contribution of capital) will
11 replenish the Reserve Account such that the Reserve Account shall always be maintained in the
12 total amount of \$50,000 until the New JPMCC Note matures.

13 The failure to maintain the Reserve Account in the total amount of at least \$50,000 will
14 constitute a default under the New JPMCC Note and the lien in the collateral securing the New
15 JPMCC Note.

16 Immediately upon payment, in full, of the New JPMCC Note, JPMCC’s Allowed Secured
17 Claim, and its secured interest in the Real Property, will be deemed satisfied, extinguished,
18 released and discharged, in full.

19 **(ii) JPMCC’s Treatment if the § 1111(b) Election is Made**

20 If JPMCC makes the § 1111(b) election, then JPMCC’s entire Allowed Claim will be
21 treated as fully secured, and JPMCC will not have any claims in Class 4.

22 In this event, the Debtor will treat JPMCC’s Allowed Claim as follows:

23 • Except with respect to the Outparcel, JPMCC will retain its lien on the Property and
24 its other pre-petition collateral in the full amount of its Allowed Claim, as such Allowed Claim is
25 determined by the Court. As of the Effective Date, the Outparcel shall be reconveyed by the

1 Debtor, free and clear of any liens (except real property taxes), to North Scottsdale Medical
2 Commons, L.L.C. pursuant to the terms of the Side Letter (as defined in the Disclosure Statement).

3 • For purposes of this analysis, the Debtor assumes that (i) JPMCC's Allowed Claim
4 will be established at no more than \$21,000,000, rather than the over \$29,000,000 asserted by
5 JPMCC in its pleadings filed in this case; and (ii) the value of JPMCC's collateral is \$8 million.
6 The actual amount of JPMCC's Allowed Claim, and the value of its collateral base, will be
7 established by the Court.

8 • The Reorganized Debtor will pay the total amount of JPMCC's Allowed Claim on
9 or before the end of the fifteenth year following the Effective Date of the Plan as follows:

10 (i) On the Effective Date, the Debtor will make a payment of \$57,000 to
11 JPMCC;

12 (ii) Each month thereafter, the Debtor shall make payments of \$57,000 each to
13 JPMCC, for a total annual payment to JPMCC of \$684,000 per year for a period of fifteen
14 years (the "Pre-Payoff Period");

15 (iii) On or before the end of the fifteenth year following the Effective Date of the
16 Plan (the "Pay-Off Date"), the Debtor will pay the remaining balance of JPMCC's Allowed
17 Claim, assumed to be \$10,740,000 (based upon an initial loan amount of \$21,000,000),
18 from either the sale of the Real Property or a refinancing of the Real Property.

19 • Notwithstanding the foregoing payment schedule, the Reorganized Debtor shall
20 have the right and ability to make additional principal reduction payments to JPMCC during the
21 Pre-Payoff Period, without penalty, from excess cash flow, if any, from the operations of the
22 Property, which payments will reduce the amount of JPMCC's Allowed Claim payable on the Pay-
23 Off Date.

24 • In the event the Court finds that JPMCC's Allowed Claim is greater than
25 \$21,000,000 and/or that the value of JPMCC's collateral is more than \$8 million, then (i) the
26 stream of payments on JPMCC's claim will remain the same as set forth above but (ii) any balance
27 of JPMCC's Allowed Claim remaining on the Pay-Off Date will be increased accordingly.

1 • The Debtor anticipates that, during the first approximately 24 months following the
2 Effective Date of the Plan, before the occupancy of the Property becomes stabilized, the Property
3 may not generate sufficient net cash flow, after paying operating expenses, to make the full amount
4 of monthly payments called for in the foregoing payment schedule. Accordingly, just as with the
5 Debtor's treatment of JPMCC's claim if JPMCC does not make the § 1111(b) election, on the
6 Effective Date of the Plan, as part of the New Value infused by the Interest Holder, if any, the
7 Interest Holder will deposit the New Value into the Reserve Account, which can be used to, among
8 other things, pay any cash flow deficiency between the net cash flow generated by the Property
9 and the amounts due to JPMCC under the foregoing payment schedule, if any. To the extent that
10 the use of the funds in the Reserve Accounts will result in the amount of funds in the Reserve
11 Account being reduced to an amount below \$50,000, at any time prior to the Pay-Off Date, the
12 Reorganized Debtor (from any retained excess cash flow) or the Interest Holder (from an
13 additional contribution of capital) will replenish the Reserve Account such that the Reserve
14 Account shall always be maintained in the total amount of \$50,000 until the Pay-Off Date. The
15 failure to maintain the Reserve Account in the total amount of at least \$50,000 will constitute a
16 default under the Plan and the loan documents contemplated herein. Further, any failure by the
17 Debtor to make the payments set forth in the foregoing schedule, or to pay the remaining unpaid
18 amount of JPMCC's Allowed Claim on the Pay-Off Date, will constitute a default under the Plan.

19 • Immediately upon payment, in full, of JPMCC's Allowed Claim, JPMCC's secured
20 interest in the Property and any other collateral securing its Allowed Claim will be deemed
21 satisfied, extinguished, released and discharged, in full.

22 • The Reorganized Debtor reserves its right and ability to sell or refinance the
23 Property at any time during the Pre-Payoff Period, so long as the net sale or loan proceeds (after
24 payment of costs of sale or loan) are sufficient to pay the remaining amount of JPMCC's Allowed
25 Claim in full.

26 **2. Class 2-B –Allowed Secured Claim of Maricopa County**

1 This Class consists of the Allowed Secured Claim of Maricopa County, Arizona
2 (“Maricopa County”), if any, that is secured by a tax lien on the Real Property. This Class is
3 impaired.

4 Commencing on the Effective Date, the Allowed Secured Claim of Maricopa County, if
5 any, will be paid in equal quarterly payments of principal and interest over a term of 1 year.
6 Interest will accrue and will be paid at the statutory rate plus 2%. The County will retain its
7 existing secured interest in the Real Property until this claim has been satisfied in full.

8 If funds generated from the normal operations of the Real Property are insufficient to pay
9 the secured real property tax claims as provided herein, the payments required herein to Maricopa
10 County will be made from the New Value contributed by the Interest Holder(s) or the Successful
11 Bidder, if any.

12 **3. Class 2-C –Allowed Secured Claim of Leclere**

13 This Class consists of the Allowed Secured Claim of Leclere in the amount of
14 approximately \$6,000 secured by a service vehicle (“Leclere Collateral”) used by the Debtor in
15 connection with the operation and maintenance of the Real Property. This Class is impaired.

16 Leclere’s Allowed Secured Claim shall be limited to the value of the Leclere Collateral as
17 of the Confirmation Date. The remainder of Leclere’s Allowed Claim shall be treated as a general
18 unsecured claim in Class ~~5.4~~. The Debtor intends to pay Leclere’s Allowed Secured Claim in full,
19 with interest at the Plan Rate, over a period of three (3) years.

20 Specifically, the Debtor will execute and deliver to Leclere a promissory note (the “New
21 Leclere Note”) in the principal face amount of Leclere’s Allowed Secured Claim. The New
22 Leclere Note will mature and become fully due and payable on the 3rd anniversary of the Effective
23 Date (the “New Leclere Note Maturity Date”). During the term of the New Leclere Note, the
24 Debtor will make monthly principal and interest payments to Leclere based upon a three year
25 amortization schedule with interest at the Plan Rate such that the New Leclere Note will be paid in
26 full as of the New Leclere Note Maturity Date. The first payment of principal and interest will be
27

1 made on the Effective Date, and each monthly payment thereafter will be made on the first
2 business day of each month during the term of the New Leclere Note.

3 Leclere will retain its existing lien on the Leclere Collateral until the New Leclere Note has
4 been satisfied in full. At any time prior to the end of the term, the Debtor may pay the balance of
5 the New Leclere Note without penalty.

6 Immediately upon payment, in full, of the New Leclere Note, Leclere's Allowed Secured
7 Claim, and its secured interest in the Leclere Collateral, will be deemed satisfied, extinguished,
8 released and discharged, in full.

9 **4. Class 2-D –Allowed Secured Claim of Forrest & Trapp**

10 This Class consists of the Allowed Secured Claim of Forrest & Trapp in the amount of
11 approximately \$1,500.00. This Class is impaired.

12 Notwithstanding anything to the contrary in the retention agreement between Forrest &
13 Trapp, Forrest & Trapp's Allowed Secured Claim shall include interest at the Plan Rate from the
14 date that the amount due and owing to Forrest & Trapp first became 60 days past due until the
15 Effective Date of the Plan. On the Effective Date of the Plan, Forrest & Trapp will be entitled to
16 apply its collateral (consisting of a cash retainer) to the principal amount of Forrest & Trapp's
17 claim plus any such accrued interest. Regardless of the total amount of Forrest & Trapp's claim,
18 Forrest & Trapp's application of its retainer to the principal amount of the claim and any accrued
19 interest shall be deemed to be in full and final satisfaction of Forrest & Trapp's claims against the
20 Debtor. To the extent that the amount of the retainer is greater than the amount of Forrest &
21 Trapp's claim, including accrued interest, Forrest & Trapp shall deliver any excess funds to the
22 Debtor after application of the retainer to Forrest & Trapp's claim.

23 **C. Class 3: ~~Allowed Claim of Cohen~~**

24 ~~This Class consists of the Allowed Claim of Cohen for unreimbursed tenant improvement~~
25 ~~costs and expenses owing by the Debtor to Cohen in the amount of approximately \$69,000~~
26 ~~("Cohen's Reimbursement Claim"). This Class is impaired.~~

~~Cohen's Reimbursement Claim shall not accrue interest. Cohen's Reimbursement Claim shall be satisfied and paid in full by Cohen setting off against the monthly rent owing by Cohen to the Debtor, beginning with the month following the Effective Date, pursuant to the following schedule until Cohen's Reimbursement Claim is paid in full:~~

~~Months 1-6 \$3,000 per month~~

~~Months 7-17 \$5,000 per month~~

~~Once Cohen's Reimbursement Claim is paid in full, Cohen will no longer receive a rental credit on the rent due to the Reorganized Debtor.~~

D. Class 4: Tenant Security Deposits

This Class consists of all Allowed Unsecured Claims of tenants for pre-petition security deposits held by the Debtor in the total aggregate amount of approximately \$26,431. This Class is impaired.

The Reorganized Debtor shall retain its right and ability to determine whether and what extent a tenant is entitled to the return of its security deposit pursuant to the terms of the lease between the Debtor and the tenant and applicable state law. However, notwithstanding anything to the contrary in the lease between the Debtor and its tenants or in applicable law, valid and enforceable tenant security deposits will be paid to tenants within 90 days of the later of either (a) the date that the Debtor determines the appropriate amount of the security deposit to be returned or (b) the date the tenant vacates its premises. This 90 day delay is necessary in order to ensure that the Debtor has sufficient funds on hand to return the security deposit to the tenant, either from the cash flow of the Real Property or from an infusion of cash from one or more of the New Interest Holders.

D. E. Class 54: Unsecured Claims

This Class consists of all Allowed Unsecured Claims of Creditors that are not specifically treated elsewhere in the Plan (e.g., this Class does not include ~~the Allowed Claim of Cohen~~, claims of tenants for security deposits, Construction Claims, [the City of Scottsdale claims under the](#)

1 Development Agreement, or any administrative or priority claims). JPMCC's ~~and Leclere's~~
2 ~~respective~~ unsecured deficiency ~~claims~~claim—i.e., the difference between the amount of ~~their~~
3 ~~respective~~its Allowed Claims and the value of ~~their~~ ~~respective~~its collateral, if any—will be
4 included in this Class if but only if JPMCC does not make the § 1111(b) election. If JPMCC does
5 make the § 1111(b) election, then it will not have any claims in this Class. This Class also
6 includes Leclere's unsecured deficiency claim—i.e., the difference between the amount of his
7 Allowed Claims and the value of his collateral, if any. This Class is impaired.

8 **(i) Treatment of Allowed Unsecured Claims if JPMCC Does Not**
9 **Make the § 1111(b) Election**

10 If JPMCC does not make the § 1111(b) election, then Allowed Unsecured Claims will be
11 treated as follows:

12 • If the Interest Holder(s) is the successful bidder at the auction discussed below, if
13 any, the Interest Holder(s) will waive their Unsecured Claims against the Debtor and the Debtor's
14 Estate, and will not participate in any distribution to Class ~~54~~ Claimants. However, if the Interest
15 Holder(s) is not the successful bidder at the auction, then the Interest Holder(s) shall participate in
16 the distributions to this Class to the extent of any ~~claims~~Claims they may have against the
17 ~~Debtor~~Debtors.

18 • The Allowed Unsecured Claims in this Class will be treated as follows:

19 (i) First, Allowed Unsecured Claims will share, pro-rata, in a distribution of the
20 sum of \$150,000 in cash (the "Unsecured Distribution Amount") paid by the Reorganized Debtor,
21 from the New Value contribution, on the 90th day following the Effective Date of the Plan.

22 (ii) Second, the Reorganized Debtor will issue to each holder of an Allowed
23 Unsecured Claim its pro rata portion of a \$500,000 subordinated debenture payable to holders of
24 Allowed Unsecured Claims (the "Subordinated Debenture"). The Subordinated Debenture will not
25 accrue interest. The Subordinated Debenture will be secured by a second position lien in and to
26 the Real Property, subject only to real property taxes and the Allowed Secured Claim of JPMCC.

1 The Reorganized Debtor shall not be required to make periodic payments to the holders of the
2 Subordinated Debenture. However, the Subordinated Debenture will be fully due and payable on
3 the 10th anniversary of the Effective Date of the Plan or upon the sale or refinancing of the Real
4 Property.

5 • The Interest Holder(s), or the Successful Bidder, if any, will contribute the
6 Unsecured Distribution Amount, as part of the New Value contribution, into an account created by
7 the Reorganized Debtor for the receipt of such funds (the “Unsecured Reserve Account”).

8 • Upon their receipt of (a) their respective pro rata portions of the Unsecured
9 Distribution Amount and (b) their pro rata distributions from the payment of the Subordinated
10 Debenture, all Allowed Unsecured Claims in this Class shall be deemed paid and discharged in
11 full.

12 **(ii) Treatment of Allowed Unsecured Claims if JPMCC Does Make**
13 **the § 1111(b) Election**

14 If JPMCC makes the § 1111(b) election, then Allowed Unsecured Claims will be treated as
15 follows:

16 • Corporate Center and/or any other affiliates of the Debtor holding Unsecured
17 Claims, will waive their Unsecured Claims against the Debtor and the Debtor’s Estate, and will not
18 participate in any distribution to Class 4 Claimants.

19 • The Allowed Unsecured Claims in this Class (again, not including any claim by
20 tenants for security deposits, Construction Claims, or the City of Scottsdale’s claims under the
21 Development Agreement) will be paid their pro rata distribution of a cash distribution in the total
22 amount of \$150,000 (i.e., the Unsecured Distribution Amount) on the 90th day following the
23 Effective Date of the Plan.

24 • Upon their receipt of the funds from the Reorganized Debtor, all Allowed
25 Unsecured Claims in this Class shall be deemed paid and discharged in full.

26 **E. Class 5: City of Scottsdale Development Agreement Claims**

1 This Class consists of the allowed claims of the City of Scottsdale for water and wastewater
2 development fees under the Development Agreement. The Debtor is in the process of engaging a
3 consultant to determine the amount of the City of Scottsdale's claims in this regard. The Debtor
4 will pay the full Allowed amount of the City of Scottsdale's pre-petition claims arising under the
5 Development Agreement, with interest at the rate of 5% per annum, by making equal quarterly
6 payments to the City of Scottsdale such that the Allowed amount of this claim is paid no later than
7 the 6th anniversary of the Effective Date of the Plan. Upon payment in full of the Allowed amount
8 of this Claim, with interest at the rate of 5% per annum, the City of Scottsdale's claims arising
9 under the Development Agreement will be deemed satisfied and discharged in full. This Class is
10 impaired.

11 **F. Class 6: Construction Claims**

12 This Class-6 consists of all Allowed Construction Claims. The Debtor is currently engaged
13 in litigation, or pre-litigation discussions, with the holders of the Construction Claims. The Debtor
14 believes that it has counter-claims, set-off rights and other defenses to the Construction Claims. To
15 the extent that any holder of a Construction Claim is determined to have an Allowed Claim against
16 the Debtor, after all rights of the Debtor and the holder of such Construction Claim have been fully
17 adjudicated or resolved, then the Debtor will pay each such holder of an Allowed Construction
18 Claim a total payment of 5% of the Allowed Amount of such Construction Claim in equal
19 quarterly payments over a period of two years from either the Effective Date or the date that the
20 Allowed Construction Claim is finally adjudicated or settled and, thereby, becomes Allowed.
21 Upon payment of such amount, the Allowed Construction Claim will be deemed satisfied and
22 discharged in full. This Class is impaired.

23 **G. Class 7: Interest Holders**

24 This Class-7 consists of all Allowed Interests of the Interest Holder in the Debtor. The
25 Interest Holder(s) will purchase the equity interests in the Reorganized Debtor by the contribution
26
27

1 of cash to the Reorganized Debtor, on the Effective Date, in the amount of \$500,000¹ (*i.e.*, the
2 New Value). The New Value will be used to:

3 (a) pay the amount necessary to pay all Class 1 Allowed Priority Claims as set forth above;

4 (b) pay the amounts to Maricopa County as set forth above, to the extent that cash flow
5 from the Real Property is insufficient to pay the taxes;

6 (c) pay the Unsecured Distribution Amount of \$150,000;

7 (d) fund the Reserve Account to pay, as necessary, among other things, (1) debt service
8 payments to JPMCC, to the extent that cash flow is insufficient to make debt service payments, (2)
9 tenant improvements, (3) broker's commissions, and (4) other necessary and appropriate capital
10 expenses of the Real Property to ensure that the value of the Real Property is maintained;

11 (e) pay the amount(s) due to Allowed Construction Claims, if any, as such amounts become
12 due and payable, and only to the extent that cash flow from the operation of the Real Property is
13 insufficient to pay such Allowed Construction Claims.

14 If the Court determines that, under the circumstances, the New Value to be contributed by
15 the Interest Holder(s) is insufficient, or that other parties-in-interest should be allowed to bid for
16 the equity interests in the Reorganized Debtor, then other interested parties may bid for the equity
17 interests in the Reorganized Debtor by meeting all of the terms and conditions identified below.
18 Such bids shall be made pursuant to the following auction procedures and terms:

19 a. The auction ("Auction") of the equity interests in the Reorganized Debtor will be
20 held thirty days after the Confirmation Hearing, in the courtroom, with the Court presiding over
21 the bidding.

22 b. Any party wishing to bid on the equity interests of the Reorganized Debtor must
23 satisfy the following requirements to be a "Qualified Bidder":

24
25
26 _____
27 ¹ The amount of the New Value may be adjusted, as and if necessary, depending upon the ultimate
28 determination of the amount of JPMCC's Allowed Secured Claim.

1 v. At least twenty-five days prior to the Auction, all bidders must provide
2 satisfactory evidence to the Debtor that they are authorized to do business in the State of
3 Arizona, and have, or have the ability to obtain, any and all necessary permits and/or
4 licenses to operate the Real Property. To the extent that the Debtor contests the sufficiency
5 of such evidence, the evidence will be presented to the Court at the Auction, prior to
6 bidding, and the Court will make a determination as to the sufficiency of the evidence and
7 whether the bidder should be deemed to be a Qualified Bidder.

8 c. All bids for the interests in the Reorganized Debtor shall be in increments of no less
9 than \$50,000.

10 d. In order for a Qualified Bidder's bid to be determined to be higher and better than
11 the New Value to be contributed by the Interest Holder(s) as set forth above, the Qualified
12 Bidder's bid must:

- 13 i. Exceed, by at least \$50,000, the Interest Holder(s)'s bid; and
- 14 ii. Provide that the Qualified Bidder will comply with and perform under the
15 terms of this Plan, including the payments to creditors (including tenant security deposits)
16 as provided herein.

17 e. The Interest Holder(s) shall have the right and ability to bid at the Auction.

18 Competing bids will be assessed by the Court for their relative merits including, but not
19 limited to, the amount of the bid and the expertise of the would-be New Interest Holder to manage
20 and guide the Reorganized Debtor after the Effective Date and to satisfy the requirements of this
21 Plan, including its ability to make the payments to creditors required herein and to satisfy the
22 assumed obligations as required herein.

23 On the Effective Date, if the Interest Holder(s) is not the successful bidder at the auction,
24 then the Successful Bidder at the auction must deliver its cash bid to the Reorganized Debtor and,
25 upon such delivery, the Successful Bidder will be deemed to hold the equity interests in the
26

1 Reorganized Debtor, subject to all terms and conditions of this Plan, including the obligations to
2 other creditors as provided herein and the assumption of liabilities as provided herein.

3 **V. MEANS FOR EXECUTING THE PLAN.**

4 **A. Funding**

5 The Plan will be funded by operations of the Real Property and a capital infusion in the
6 amount of the New Value by the Interest Holder(s) or the Successful Bidder, if an auction as
7 described above is held. As a showing of good faith and commitment to the Plan, the Interest
8 Holder(s) will place \$100,000 in “escrow” in the trust account of the Debtor’s bankruptcy counsel
9 on or before the Auction. These funds will become a part of the Estate and will fund the New
10 Value contribution obligations set forth herein at confirmation ***only in the event that*** the Interest
11 Holder(s) is the successful bidder for the equity interests in the Reorganized Debtor. Additionally,
12 these funds will only be available to, and become a part of, the Estate if a Confirmation Order
13 confirming this Plan is entered and becomes a Final Order.

14 **B. Liquidation of Estate Property**

15 The Debtor shall have the authority to retain such brokers, agents, counsel, or
16 representatives as it deems necessary to market, lease and/or sell assets of the Reorganized Debtor.

17 **C. Management**

18 The Plan will be implemented by the retention of the Debtor’s existing management,
19 Steven Goodhue and John Rosso. This implementation will also include the management and
20 disbursement of the funds infused by the Interest Holder(s), or the Successful Bidder, if any, as set
21 forth above and in accordance with the terms of this Plan.

22 **D. Disbursing Agent**

23 The Reorganized Debtor shall act as the Disbursing Agent under the Plan.

24 **E. Documentation of Plan Implementation**

25 In the event any entity which possesses an Allowed Secured Claim or any other lien in any
26 of the Debtor’s property for which the Plan requires the execution of any documents to incorporate
27

1 the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to
2 satisfy the requirements of the Plan, the Debtor may record a copy of this Plan or the Confirmation
3 Order with the appropriate governmental agency and such recordation shall constitute the lien
4 release and creation of any necessary new liens to satisfy the terms of the Plan. If the Debtor
5 deems advisable, it may obtain a further Order from the Court that may be recorded in order to
6 implement the terms of the Plan.

7 **F. New Obligations**

8 Any Allowed Claims which are otherwise impaired herein, and which are paid in deferred
9 payments, shall be a New Obligation of the Reorganized Debtor under the terms described herein
10 and completely replace any pre-confirmation obligations of the Debtor.

11 **VI. EFFECT OF CONFIRMATION.**

12 Except as otherwise provided in the Plan or the Confirmation Order, Confirmation acts as a
13 Discharge, effective as of Confirmation, of any and all debts of the Debtor that arose any time
14 before the entry of the Confirmation Order including, but not limited to, all principal and all
15 interest accrued thereon, pursuant to § 1141(d)(1) of the Bankruptcy Code. The Discharge shall be
16 effective as to each Claim, regardless of whether a Proof of Claim thereon was filed, whether the
17 Claim is an Allowed Claim, or whether the Holder thereof votes to accept the Plan.

18 In addition, any pre-confirmation obligations of the Debtor dealt with in this Plan shall be
19 considered New Obligations of the Debtor, and these New Obligations shall not be considered in
20 default unless and until the Reorganized Debtor defaults on the New Obligations pursuant to the
21 terms of the Plan. The New Obligations provided for in the Plan shall be in the place of, and
22 completely substitute for, any pre-Confirmation obligations of the Debtor. Once the Plan is
23 confirmed, the only obligations of the Debtor shall be such New Obligations as provided for under
24 the Plan.

25
26 **VII. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS.**

1 which the disbursing agent has not received documents required pursuant to the Plan. Thereafter,
2 the unclaimed funds shall be deposited in the appropriate distribution account for distribution to
3 other Claimants entitled to participate in such respective fund.

4 **VIII. NON-ALLOWANCE OF PENALTIES AND FINES.**

5 No distribution shall be made under this Plan on account of, and no Allowed Claim,
6 whether Secured, Unsecured, Administrative, or Priority, shall include any fine, penalty,
7 exemplary or punitive damages, late charges, default interest or other monetary charges relating to
8 or arising from any default or breach by the Debtor, and any Claim on account thereof shall be
9 deemed Disallowed, whether or not an objection was filed to it.

10 **IX. CLOSING OF CASE.**

11 Until this case is officially closed, the Reorganized Debtor will be responsible for filing
12 pre- and post-confirmation reports required by the United States Trustee and paying the quarterly
13 post-confirmation fees of the United States Trustee, in cash, pursuant to 28 U.S.C. § 1930, as
14 amended. Pursuant to 11 U.S.C. § 1129(a)(12), all fees payable under § 1930 of Title 28, as
15 determined by the Court at the hearing on confirmation of the Plan, will be paid, in cash, on the
16 Effective Date.

17 **X. MODIFICATION OF THE PLAN.**

18 In addition to its modification rights under § 1127 of the Bankruptcy Code, the Debtor may
19 amend or modify this Plan at any time prior to Confirmation without leave of the Court. The
20 Debtor may propose amendments and/or modifications of this Plan at any time subsequent to
21 Confirmation with leave of the Court and upon notice to Creditors. After Confirmation of the
22 Plan, the Debtor may, with approval of the Court, as long as it does not materially or adversely
23 affect the interests of Creditors, remedy any defect or omission or reconcile any inconsistencies of
24 the Plan, or in the Confirmation Order, if any may be necessary to carry out the purposes and
25 intent of this Plan.

26 **XI. JURISDICTION OF THE COURT.**

1 The Court will retain jurisdiction until this Plan has been fully consummated for, including
2 but not limited to, the following purposes:

3 1. The classification of the Claims of any Creditors and the re-examination of any
4 Claims which have been allowed for the purposes of voting, and for the determination of such
5 objections as may be filed to the Creditor's Claims. The failure by the Debtor to object to or
6 examine any Claim for the purpose of voting shall not be deemed to be a waiver of the Debtor's
7 rights to object to or to re-examine the Claim in whole or in part.

8 2. To determine any Claims which are disputed by the Debtor, whether such
9 objections are filed before or after Confirmation, to estimate any Un-liquidated or Contingent
10 Claims pursuant to 11 U.S.C. § 502(c)(1) upon request of the Debtor or any holder of a Contingent
11 or Un-liquidated Claim, and to make determination on any objection to such Claim.

12 3. To determine all questions and disputes regarding title to the assets of the Estate,
13 and determination of all causes of action, controversies, disputes or conflicts, whether or not
14 subject to action pending as of the date of Confirmation, between the Debtor and any other party,
15 including but not limited to, any rights of the Debtor to recover assets pursuant to the provisions of
16 the Bankruptcy Code.

17 4. The correction of any defect, the curing of any omission or any reconciliation of
18 any inconsistencies in this Plan, or the Confirmation Order, as may be necessary to carry out the
19 purposes and intent of this Plan.

20 5. The modification of this Plan after Confirmation, pursuant to the Bankruptcy Rules
21 and the Bankruptcy Code.

22 6. To enforce and interpret the terms and conditions of this Plan.

23 7. The entry of an order, including injunctions, necessary to enforce the title, rights
24 and powers of the Debtor, and to impose such limitations, restrictions, terms and conditions of
25 such title, right and power that this Court may deem necessary.

26 8. The entry of an order concluding and terminating this case.

1 **XII. RETENTION AND ENFORCEMENT OF CLAIMS.**

2 Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtors shall retain and
3 may enforce any and all claims of the Debtor, including claims relating to the Construction Claims,
4 except those claims specifically waived herein. Any retained causes of action include, but are not
5 limited to, all avoidance actions, fraudulent conveyance actions, preference actions, and other
6 claims and causes of action of every kind and nature whatsoever, arising before the Effective Date
7 which have not been resolved or disposed of prior to the Effective Date, whether or not such
8 claims or causes of action are specifically identified in the Disclosure Statement.

9 Any recovery obtained from retained causes of action shall become an additional asset of
10 the Debtor, unless otherwise ordered by the Court, and shall be available for distribution in
11 accordance with the terms of this Plan.

12 **XIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

13 The Debtor hereby expressly assumes any and all tenant leases in existence as of the
14 Confirmation Date and all executory contracts listed in the Debtor’s Schedules of Assets and
15 Liabilities. Every other executory contract and/or unexpired lease of the Debtor not expressly
16 assumed by this Plan is hereby rejected.

17 Claims under § 502(g) of the Code arising as a result of the rejection of executory contracts
18 or unexpired leases shall be filed no later than 30 days after the Confirmation Date. Any such
19 Claims not timely filed and served shall be Disallowed.

20 **XIV. REVESTING.**

21 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date the
22 Reorganized Debtor shall be vested with all the property of the Estate free and clear of all claims,
23 liens, charges, and other interests of Creditors, arising prior to the Effective Date. Upon the
24 Effective Date, the Reorganized Debtor shall operate their business free of any restrictions.

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DATED: May ~~2~~,11, 2011.

POLSINELLI SHUGHART PC

By:  _____

Mark W. Roth
Philip R. Rudd
Mary B. Martin
CityScape Plaza
One E. Washington., Suite 1200
Phoenix, AZ 85004
Attorneys for Debtor

COPY of the foregoing mailed (or served via electronic notification if indicated by an “*”) on May ~~2~~,11, 2011, to:

U.S. TRUSTEE’S OFFICE
230 N. 1st Avenue, Suite 204
Phoenix, AZ 85003

Robert R. Kinas * rkinas@swlaw.com
Jonathan M. Saffer * jmsaffer@swlaw.com
SNELL & WILMER LLP
One S. Church Ave., Suite 1500
Tucson, AZ 85701-1630
Attorneys for JPMCC 2007-CIBC19 Shea Boulevard, LLC

By: /s/ Cathie Bernales _____

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Format changed	0
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