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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON AT SPOKANE

11 In re

12 CENTURION PROPERTIES III,
13 LLC,

14 Debtor.

No. 10-04024-FLK 11

Chapter 11

14 **DISCLOSURE STATEMENT TO**
15 **ACCOMPANY DEBTOR'S PLAN OF**
16 **REORGANIZATION**

17
18 **I. OVERVIEW AND IDENTIFICATION OF PROPONENT**

19 Centurion Properties III, LLC, debtor and debtor-in-possession ("CPIII" or
20 "Debtor") submits this *Disclosure Statement to Accompany Plan of Reorganization* of
21 even date. The Debtor is the proponent of the Plan. A copy of the Plan will be served
22 with this Disclosure Statement. Capitalized terms in this Disclosure Statement have
23 the same meaning as provided in the Bankruptcy Code, Bankruptcy Rules, the Plan at
24 *Article 1- Definitions*, or as separately defined in this Disclosure Statement.
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II. PRELIMINARY STATEMENT

The Disclosure Statement and Plan are submitted pursuant to Chapter 11 of the Bankruptcy Code or Code. The Debtor submits this Disclosure Statement to all of its Creditors in order to comply with provisions of the Code requiring the submission of information necessary for Creditors to arrive at an informed decision in exercising their right to vote for acceptance or rejection of the Plan.

III. PLAN AND CODE PROVISIONS FOR VOTING

A. Relationship of Disclosure Statement to the Plan.

This Disclosure Statement provides relevant information about the Debtor, its financial condition, and the Plan. This Disclosure Statement contains a detailed discussion of the Plan and its implementation; however, the discussion of the Plan in this Disclosure Statement is only a summary of the Plan and should be read in conjunction with the Plan, which is a legal document and which upon confirmation will become binding upon the parties. Accordingly, this Disclosure Statement is qualified by the Plan. If there is any inconsistency between the Plan and this Disclosure Statement, the Plan is controlling.

The Debtor urges Creditors and other parties-in-interest to consult with independent counsel in connection with their decision to accept or reject the Plan. Your Claim will be assigned to a Class of Creditors, and the treatment of each Class is

1 set forth in this Disclosure Statement and in the Plan. The Debtor has used its best
2 efforts to comply with 11 U.S.C. § 1129 for this treatment. The only representations
3 the Debtor is authorized to make concerning the value of its assets or potential
4 distributions are contained in this Disclosure Statement.
5

6 The Debtor may not solicit acceptances or rejections of the Plan until the Court
7 conducts a hearing on the Disclosure Statement, with notice of the hearing given to all
8 Creditors of the Debtor, and the Court approves the Disclosure Statement as
9 containing sufficient information for a Creditor to make an informed decision with
10 respect to the Plan.
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13 B. Creditors Allowed to Vote: Deadline.

14 Creditors holding Allowed Claims are entitled to vote to accept or reject the
15 Plan, unless the Plan lists such Claims as unimpaired. The Court will fix a date that
16 will be the last date by which ballots upon the proposed Plan must be filed with the
17 Court.
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20 **VOTING AND CONFIRMATION PROCEDURES**

21 Accompanying this Disclosure Statement are copies of the following
22 documents: (1) the Plan, which is provided this Disclosure Statement; (2) a Notice to
23 Voting Classes; and (3) an applicable Ballot. This Disclosure Statement, the form of
24 Ballot, and the related materials delivered together herewith (collectively, the
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1 “Solicitation Package”), are being furnished to Holders of Claims for the purposes of
2 soliciting votes on the Plan. If you did not receive a Ballot in your Solicitation
3 Package, and believe that you should have received a Ballot, please contact John D.
4 Munding at Crumb & Munding, P.S., The Davenport Tower, 111 S. Post Street, PH
5 2290, Spokane, Washington 99201; or by telephone at (509) 624-6464.
6

7
8 **1. Who May Vote**

9 Pursuant to the provisions of the Bankruptcy Code, only classes of claims that
10 are “impaired” and that are not deemed as a matter of law to have rejected a plan of
11 organization under section 1126(g) of the Bankruptcy Code are entitled to vote to
12 accept or reject the Plan. Any class that is “unimpaired” is not entitled to vote to
13 accept or reject the plan of reorganization and is conclusively presumed to have
14 accepted the Plan. As set forth in section 1124 of the Bankruptcy Code, a class is
15 “impaired” if legal, equitable, or contractual rights attaching to the claims or equity
16 interests of that class are modified or altered. For purposes of the Plan only, holders
17 of Claims that are impaired are entitled to vote on the Plan.
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21 A Claim must be “allowed” for purposes of voting in order for such creditor to
22 have the right to vote. Generally, for voting purposes a Claim is deemed “allowed”
23 absent an objection to the Claim if (i) a proof of claim was timely filed, or (ii) if no
24 proof of claim was filed, the Claim is identified in the Debtor’s Schedules as other
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1 than "disputed," "contingent," or "unliquidated," and an amount of the Claim is
2 specified in the Schedules, in which case the Claim will be deemed allowed for the
3 specified amount. In either case, when an objection to a Claim is filed, the creditor
4 holding the Claim cannot vote unless the Bankruptcy Court, after notice and hearing,
5 either overrules the objection, or cannot vote unless the Bankruptcy Court, after notice
6 and hearing, either overrules the objection, or allows the Claim for voting purpose.
7
8 The Debtors reserve the right through the claim reconciliation process to object to or
9 seek to disallow any claim for distribution under the Plan.
10

11 **2. Voting Instructions and Voting Deadline**

12 All votes to accept or reject the Plan must be cast by using the Ballot enclosed
13 with this Disclosure Statement. No votes other than ones using such Ballots will be
14 counted, except to the extent the Bankruptcy Court orders otherwise. After carefully
15 reviewing the Plan and this Disclosure Statement, including the annexed exhibits,
16 please indicate your acceptance or rejection of the Plan on the Ballot and return such
17 Ballot in the enclosed envelope by the deadline set forth in the Notice served herewith
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19

20 to: U.S. Bankruptcy Court
21 Eastern District of Washington
22 904 W. Riverside Ave., Ste. 305
23 Spokane, WA 99201

24 Mailing Address

25 P.O. Box 2164
26 Spokane, WA 99210

1
2 With copy to undersigned counsel at:

3 John D. Munding
4 Crumb & Munding, P.S.
5 111 South Post, PH 2290
6 Spokane, WA 99201

7 Ballots must be completed and received by the date specified in the Notice
8 served herewith (the "Voting Deadline"). Any ballot that is not executed by a duly
9 authorized person shall not be counted. Any ballot that is executed by the holder of an
10 allowed claim but that does not indicate an acceptance or rejection of the Plan will be
11 deemed to be acceptance. Any ballot that is faxed shall be counted in the voting to
12 accept or reject the plan, unless that ballot is accepted in the Plan Proponents'
13 discretion.
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16 **3. Whom to Contact for More Information**

17 If you wish to obtain additional copies of the Plan, this Disclosure Statement, or
18 the exhibits to those documents, at your own expense, unless otherwise specifically
19 required by Bankruptcy Rule 3017(d), please contact John D. Munding at the address
20 indicated below or by telephone at (509) 624-6464.
21

22 **4. Acceptance or Rejection of the Plan**

23 The Bankruptcy Code defines "acceptance" of a plan by a class of claims as
24 acceptance by holders of impaired claims of at least two-thirds in dollar amount and
25 more than one-half in number of the Allowed claims in that class that cast ballots for
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1 acceptance or rejection of the plan and "acceptance" of a plan by a class of interests as
2 acceptance by Holders of at least two-thirds in dollar amount of the Allowed interests
3 in that class that cast ballots for acceptance or rejection of the plan. Assuming that at
4 least one Impaired Class votes to accept the Plan, the Plan Proponents will seek to
5 confirm the Plan under section 1129(b) of the Bankruptcy Code, which permits the
6 confirmation of a plan notwithstanding the non-acceptance by one or more impaired
7 classes of claims or interests. Under section 1129(b) of the Bankruptcy Code, a plan
8 may be confirmed if (a) the plan has been accepted by at least one Impaired class of
9 claims or interests and (b) the Bankruptcy Court determines that the plan does not
10 discriminate unfairly and is "fair and equitable" with respect to the non-accepting
11 classes.
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13 **5. Time and Place of the Confirmation Hearing**

14 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after
15 notice, to hold a confirmation hearing. Section 1128(b) of the Bankruptcy Code
16 provides that any party in interests may object to confirmation of the Plan. Pursuant
17 to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Bankruptcy
18 Court has scheduled the Confirmation Hearing to commence before the Honorable
19 Frank Kurtz, of the United States Bankruptcy Court for the Eastern District of
20 Washington, United States Bankruptcy Court, 402 East Yakima Avenue, Suite 200,
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1 Yakima, WA 98901. A notice setting for the time and date of the Confirmation
2 Hearing will be mailed as a separate pleading/document. The Confirmation Hearing
3 may be adjourned from time to time by the Bankruptcy Court or Plan Proponents
4 without further notice.
5

6 **6. Objections to the Plan**

7 Any objection to confirmation of the Plan must be in writing; must comply with
8 the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of the Bankruptcy
9 Court; and must be filed with the United States Bankruptcy Court for the Eastern
10 District of Washington in Spokane and served as described in the Notice served
11 herewith.
12

13 **C. Representations Limited.**

14 No representations concerning the Debtor, particularly regarding future
15 business operations or the value of the Debtor's assets, have been authorized by the
16 Debtor except as set forth in this Disclosure Statement. You should not rely on any
17 other representations or inducements proffered to you to secured your acceptance in
18 arriving at your decision in voting on the Plan. Any person making representations or
19 inducements concerning acceptance or rejection of the Plan should be reported to
20 counsel for the Debtor at the address above and to the United States Trustee.
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1 While every effort has been made to provide the most accurate information
2 available, the Debtor is unable to warrant or represent that all information is without
3 inaccuracy, although no known inaccuracies are present in this Disclosure Statement
4 or the Plan. Further, some of the information contained herein consists of projections
5 of future performance of an uncertain business. While every effort has been made to
6 ensure that the assumptions are valid and the projections are as accurate as can be
7 made under the circumstances, the Debtor does not undertake to certify or warrant the
8 absolute accuracy of the projections and other information contained herein.
9

10 The Court has not verified the accuracy of the information contained herein.
11
12 The Court's approval of the Disclosure Statement does not imply that the Court
13 endorses or approves the Plan, but only that, if the information is accurate, it is
14 sufficient to provide adequate information for Creditors to make an informed decision
15 to approve or reject the Plan.
16

17 IV. THE DEBTOR

18 A. History of the Debtor.

19 The Debtor is a Washington Limited Liability Company formed by its members
20 on August 1, 2006. The sole purpose of the Debtor was and is "the acquisition,
21 ownership, operation and management of the real estate project known as the Battelle
22 Leaseholds located in Richland, Washington, and such activities are necessary,
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1 incidental or appropriate in connection therewith." The Debtor's sole asset is its
2 leasehold interests in the Battelle Memorial Institute Campus ("Battelle Property")
3 and the improvements (i.e. the buildings) located thereof which, collectively, have
4 been valued in excess of \$90 million.
5

6 As of September 25, 2009, the Debtor's business records reflected ownership
7 interest of the Company to be held as follows:
8
9

10 <u>Members/Holders of Percentage Interests in Company</u>	<u>Percentage Interests</u>
11 Nicole M. Kelly	10%
12 Centurion Management III, LLC	63%
13 SMI Group XIV, LLC	25%
14 Barclays North, Inc.	1%
15 Patrick L. McCourt	1%
16	

17 The foregoing ownership is verified by a company document identified as "First
18 Amendment to the Limited Liability Company Agreement" dated September 25,
19 2009. This governance is recognized and supported by Benton County Superior Court
20 Order dated May 28, 2010. Additionally, in accordance with Benton County Superior
21 Court Order of February 12, 2010, Barclays North, Inc. and Patrick L. McCourt's
22 interests was transferred to SMI Group XIV, LLC ("SMI"), resulting in SMI obtaining
23 a 27 percent interest in CPIII.
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1 Even though Centurion Management III, LLC ("CM III") and Nicole M. Kelly
2 are on record as holding ownership interests in CPIII, it is the position of CPIII that
3 their membership status (i.e. their ability to vote and control CPIII's business affairs,
4 but not necessarily their base economic interest) has been terminated as a result of
5 their voluntary withdrawal from CPIII, transfers of membership interest in violation of
6 the Company Agreement, and complete disregard for the Company Agreement in
7 breach of the fiduciary obligations to CPIII by fellow members. As a result, the only
8 qualified and recognized Member, for purposes of governance and business
9 administration, is SMI. As previously mentioned, this governance is confirmed and
10 authorized by Benton County Superior Court Order dated May 28, 2010.
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14 B. Managing Member of LLC.
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16 Pursuant to its governing company agreements, the Debtor is managed by a
17 "Manager." The "Manager" of the Debtor is different than the property manager hired
18 by the Debtor to manage the Battelle Property. As described below, the actual
19 Battelle Property Manager is Sigma Management, Inc.
20

21 The Managing Member of the Debtor, for purposes of management and
22 governance of the Debtor, initially was CM III, the Debtor's majority interest holder.
23 CM III was operated variously under the direction of Aaron Hazelrigg and/or Thomas
24 Hazelrigg III.
25
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1 On September 24, 2009, by Company Resolution, CM III was replaced by SMI
2 as Managing Member. SMI's role as Managing Member was confirmed both by
3 Aaron and Tom Hazelrigg, and more recently by the Benton County Superior Court
4 by Court Order dated May 28, 2010.

6 The Debtor is presently managed by its sole managing member, SMI Group
7 XIV, LLC and governed by the Limited Liability Company Agreement dated August
8 1, 2006 as amended by subsequent documents dated September 24 and September 25,
9 2009.

11
12 C. History of the Battelle Property.

13 The Battelle Property consists of five buildings, related improvements and
14 common areas located on the Battelle Property. Four of the buildings comprising of
15 the Battelle Property are used as Class A office space and computer server/data
16 centers. The fifth building is an 84-bed facility for residential housing, used by the
17 tenant to accommodate both short and long term stay on the campus.

19 Originally, the Battelle Property was bare ground and was leased to Sigma
20 Financial Group VI - X, L.P.(s) ("Sigma Financial") under five separate, long-term
21 ground leases set to expire between September 30, 2051 and September 30, 2060.
22 Sigma Financial then built buildings and related improvements on the land, even
23 though it did not own the land. After completion of the buildings and improvements,
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1 Sigma Financial leased those buildings and improvements back to Battelle through
2 five separate shorter term facilities leases (the "Facilities Leases"). Accordingly,
3 Battelle is both the Ground Landlord and the Facilities Tenant for each of the five
4 buildings.
5

6 Under the Ground Leases, the ground tenant pays Battelle ground rent. Under
7 the Facilities Leases, Battelle pays its landlord (i.e., the ground tenant) a Base Rent
8 amount, and also a "Service Rent" which includes all actual, documented and
9 approved expenses incurred in connection with each portion of the property, including
10 management, fees, maintenance, etc.
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13 The original Base Rent was established in the Facility Lease for each facility
14 and the current Base Rent was established in Lease Supplements for each facility. The
15 following is a listing of the Facility Lease Agreement Numbers for each of the
16 facilities and the corresponding Lease Agreement Numbers for each of the facilities,
17 the corresponding Lease Supplements that established the current Base Rent rate,
18 along with extension of the lease terms for each facility to the current lease end date:
19
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21 ISB I – LEASE AGREEMENT NO. 052241-C-N2 – Lease Supplement No. 19

22 ISB II – LEASE AGREEMENT NO. 146541-D-N2 – Lease Supplement No. 19

23 NSB – LEASE AGREEMENT NO. 169833-D-N2 – Lease Supplement No. 23

24 ETB – LEASE AGREEMENT NO. 248370-D-N2 – Lease Supplement No. 16
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26

UHF – LEASE AGREEMENT NO. 430410-D-N2 – Lease Supplement No. 10

The Chart below depicts the breakdown of Ground Rent between the facilities.

Building	Physical Address	Designation	Former Designation	Tenant	Square Feet	Lease End Date	Monthly NNN Base Rent	Annual Base Rate/sf
Information Sciences Building I	3350 Q. Avenue, Richland, WA	ISB I	SIGMA VI	Battelle	50,200	30-Sep-17	\$82,620.83	\$19.75
Information Sciences Building II	3320 Q. Avenue, Richland, WA	ISB II	SIGMA VII	Battelle	60,080	30-Sep-17	\$98,881.67	\$19.75
National Security Building	3230 Q. Avenue, Richland, WA	NSB	SIGMA VIII	Battelle	100,358	30-Sep-18	\$172,699.39	\$20.65
Environmental Technology Building	3200 Q. Avenue, Richland, WA	ETB	SIGMA IX	Battelle	100,358	30-Sep-18	\$172,699.39	\$20.65
User Housing Facility	620 Battelle Blvd., Richland, WA	UHF	SIGMA X	Battelle	29,108	30-Sep-18	\$29,108.00	\$12.00
Total Square Feet					340,104			

The monthly base rent on the property totals approximately \$556,009.28.

1. *Management by Sigma.*

Sigma Financial entered into a new Management Agreement with Sigma Management, Inc. ("Sigma"), on December 17, 2001 (Sigma Management provided project management services for the original construction of all five facilities and has managed the property ever since). Pursuant to the terms of the Management Agreement, and Management Agreement Supplement of October 1, 2005, Sigma is the exclusive manager of the Battelle Property and provides complete operational

1 services as well as all lease negotiations, accounting, recordkeeping and
2 administrative requirements. In addition to Ground Rent, Battelle pays all the actual
3 operating expenses for the operation of the facilities through a Service Rate. The
4 Service Rate is paid by Battelle on a monthly basis as "Service Rent," as per the terms
5 established in the Facility Lease Agreements, and as revised in the Lease Supplements
6 (listed above). The Service Rate is not revenue for the Debtor. 100 percent of the
7 monies paid by Battelle through the Service Rate are for the operation of the facilities.
8 Components of the Service Rate include utilities, maintenance, taxes, insurance,
9 ground rent, and management fees, including administrative overhead. Management
10 Fees on costs falling under Service Rate are negotiated and approved by Battelle and
11 contractually established and defined in the Facility Lease Agreements and
12 Supplements thereto, at 4.6 percent of gross rent; the entire Management Fee is paid to
13 Sigma, CPIII is merely a conduit for those fees and the other operating expenses and
14 has no claim or rights in the Service Rent.
15

16
17 Monthly Service Rate budgets are established yearly through negotiation with
18 Battelle. After conclusion of the Service Rate year for each facility, actual costs for
19 the operation of the facilities through the Service Rate year are compared to the
20 established budget for the same time period. To adjust for any difference between the
21 negotiated budget amount and actual expenses, a reconciliation payment is received
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1 from or a reconciliation credit is provided to Battelle. Projecting out for the balance
2 of this calendar year, actual operating expenses will likely exceed the Service Rate
3 budgeted and CPIII will be required to extend funds and receive a reconciliation
4 payment. This is the contractual arrangement under the Facility Leases Agreements,
5 but CPIII will be unable to perform as required unless the Court suspends GECC's
6 lock box.
7

8
9 In 2006, Sigma Financial decided to sell its interests in the Battelle Property.
10 SMI entered into an agreement to purchase the Original Ground Tenant's interest in
11 the Battelle Property, its leasehold interests as Ground Tenant under the Ground
12 Leases, and interests as the owner of the buildings and improvements located on the
13 land.
14

15
16 SMI entered into negotiations with General Electric Capital Corporation
17 ("GECC") as a potential lender for the purchase of the Battelle Property Ground
18 Tenant interests. As GECC required SMI to find additional investors, SMI associated
19 with Thomas R. Hazelrigg III in 2006. On August 1, 2006, the newly created
20 investment group formed the Debtor to complete financing with GECC and hold
21 ownership of the Battelle Property.
22

23
24 When the Debtor purchased Sigma Financial's interest in the Battelle Property,
25 it reaffirmed the original Management Agreement and Management Agreement
26

1 Supplement with Sigma. Sigma maintains the long term service and management
2 contracts with the Debtor.

3
4 2. *GECC Financing.*

5 On November 8, 2006, the newly formed Debtor entered into a Loan
6 Agreement with GECC. The Loan Agreement (the "Loan") for \$70,866,000.00 is
7 secured, among other things, by a Deed of Trust, Assignment of Rents and Leases,
8 Security Agreement and Fixture Filing (Leasehold Estates) dated November 28, 2006,
9 and recorded November 29, 2006, in the Official Records of Benton County,
10 Washington as Document No. 2006-039335. The Deed of Trust encumbers the
11 Property.
12

13
14 Pursuant to the terms of the loan, the Debtor was required to make monthly
15 payments based upon an interest rate of 6.36 percent which is roughly \$330,00.00 per
16 month. The loan matured by its terms on November 30, 2009. The Debtor did not
17 repay the loan on November 30, 2009.
18

19
20 D. Factors Precipitating Chapter 11.

21 1. *GECC Default.*

22 On September 23, 2008, GECC served a Default Notice on the Debtor. GECC
23 also demanded all rents be deposited into a "lockbox". Since October, 2008, GECC
24 collected all monies paid by Battelle in payment for all of CPIII facilities for Base
25
26

1 Rent, Service Rent, and Task Orders. Pursuant to the terms of the lockbox agreement,
2 GECC, in its sole discretion and upon proper application, had the ability to disburse
3 the Service Rate and Task Order income to CPIII and Sigma.
4

5 GECC posted a default notice on the subject property and CPIII on January 8,
6 2010 as a first step in foreclosing their deed of trust. On February 11, 2010 GECC
7 filed a Complaint in Benton County Superior Court, Case No.10-2-00372-7 against
8 the Debtor seeking appointment of a receiver. After continued negotiations with
9 GECC, the Debtor was able to avoid the appointment of a Receiver, continue the
10 pending Trustee's Sale, and continue with negotiations for forbearance of the loan.
11
12

13 2. *Disputed Secured Loan/Litigation.*

14 Almost immediately upon closing and funding of the GECC loan, Thomas
15 Hazelrigg and Aaron Hazelrigg, through the then managing member CM III, and to
16 the detriment of the company, began to orchestrate a series of ultra vires transactions
17 for their own personal financial gain. In one instance, Thomas Hazelrigg directed the
18 sum of \$2.1 million for closing proceeds of the GECC loan to his bank accounts under
19 his control. On another occasion, Thomas Hazelrigg directed the sum of \$3.22 million
20 for a GECC funding release to bank accounts under his control. The actions of Mr.
21 Hazelrigg deprived the Debtor of much needed cash, causing significant and
22 irreparable harm to the Debtor's financial future. Furthermore, at the time of the
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1 GECC loan, acting manager CM III, through its representative Aaron Hazelrigg,
2 confirmed that in consideration of the acquisition loan, both the GECC Loan
3 Agreements and governing company agreements would provide for restrictive
4 language preventing the Debtor from further encumbering the property without proper
5 unanimous consent.
6

7
8 Despite knowledge of the prohibitions against further encumbrance of the
9 Debtor's property, Aaron and Thomas Hazelrigg without authority, without
10 authorization, and through manipulation of managing member CM III and in
11 conjunction with Equity Funding, LLC, Centrum Financial Services and Trident
12 Investments, Inc., placed unauthorized encumbrances/liens against the property in the
13 form of four deeds of trust and a right to sale proceed instrument, including:
14

15
16 (1) a leasehold deed of trust signed by Aaron, for the benefit of CFS recorded
17 on July 10, 2007, which purposed to secure a loan from Centrum to CPIII for
18 \$10 million in principal made between February and July 2007, CPIII never
19 received any such loan, it is not in the Company's books.
20

21 (2) a leasehold deed of trust signed by Hazelrigg for the benefit of CFS
22 recorded on March 5, 2008 which purports to secure a continuing guaranty of
23 an unstated dollar amount CPIII allegedly gave on March 5, 2008 to benefit
24 CFS – no amount is stated in this deed of trust.
25
26

1 (3) a leasehold deed of trust signed by Hazelrigg for the benefit of Equity
2 Funding recorded on April 7, 2008 which purports to secure a continuing
3 guaranty of an unstated dollar amount CPIII allegedly gave to benefit Equity
4 Funding – no amount is stated in this deed of trust.
5

6 (4) a leasehold Deed of Trust signed by Hazelrigg for the benefit of Trident
7 recorded on November 5, 2008 which purports to secure a continuing guaranty
8 of an unstated dollar amount CPIII allegedly gave to benefit Trident – no
9 amount is stated in this deed of trust.
10

11 (5) a Memorandum of Agreement signed by Derek Edmonds, listing CPIII as
12 grantor and Trident as grantee recorded November 6, 2008, and describing an
13 underlying agreement whereby all “net sums” that would otherwise be paid to
14 CPIII in connection with the sale of the Subject Property were to be paid by
15 giving CPIII certain undefined “notes receivable.”
16
17

18 The Debtor’s company records indicate that such transactions were never authorized
19 and were not ratified by the Debtor, its members or its managers. These were ultra
20 vires acts. Furthermore, CPIII did not receive any consideration in exchange for this
21 unauthorized pledge of security.
22
23

24 Upon learning of the improper, unauthorized, and illegal activities and in
25 conjunction with the default of the GECC loan obligation, SMI, as manager of the
26

1 Debtor, commenced litigation in Benton County Superior Court, State of Washington,
2 identified by Case Number 10-00301-8.

3
4 *3. Court Enjoins Equity Funding, Centrum Financial, and GECC from*
5 *Foreclosing on Debtor's Property.*

6 On February 19, 2010, in the Benton County matters, the Court granted the
7 Debtor's Motion enjoining the Defendants Equity Funding from foreclosing on their
8 purported deeds of trust.

9
10 Although Equity Funding was enjoined from foreclosing, GECC continued with
11 its Trustee's Sale. Subsequently, Equity Funding moved to stay GECC's proposed
12 Trustee's Sale. After briefing and hearing, the Benton County Court stayed GECC's
13 proposed June 25, 2010 Trustee's Sale, until further Order of Court.

14
15 Although the pending Trustee's Sale and the Debtor's property have been
16 enjoined, its financial issues have not been solved, necessitating the filing of this
17 Chapter 11 bankruptcy proceeding.

18
19 E. Events Since the Petition Date.

20 No trustee or examiner has been appointed in the case, nor has any official
21 committee of creditors been appointed. On July 13, 2010, CPIII filed a motion
22 seeking the use of cash collateral. (Docket No. 3). CPIII and GECC later agreed to
23 the terms of a Cash Collateral order and on September 19, 2010, the Court entered a
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26

1 stipulated order authorizing the use of cash collateral through December 31, 2010.
2 (Doc. No. 79).

3
4 The Stipulated Order included a Budget, which detailed the use of the cash
5 collateral. Among other things, the Order permits continued day to day management
6 and operations of the Battelle Property. The Order also provided for monthly
7
8 adequate assurance payments to GECC of \$330,000.00.

9 Prior to the December 31, 2010, expiration of the Cash Collateral Order, CPIII
10 requested GECC agree to extend the Order another three months subject to a proposed
11
12 second budget. Subsequently, the Debtor and GECC agreed to the entry of a Second
13 Stipulated Order, entered by the Court on December 30, 2010, extending the use of
14 cash collateral through March 31, 2011, subject to the proposed second budget. (Doc.
15
16 No. 147).

17 The Claims Bar Date in this Chapter 11 proceeding passed on November 24,
18
19 2010. In addition to the foregoing events, the following events and/or relief have been
20
21 sought or granted post-petition:

- 22 • Order Approving Crumb & Munding, P.S. as counsel for the Estate
23 (Docket No. 44)
 - 24 • Order Approving/Assuming Management Contract with Sigma
25 Management, Inc. (Docket No. 84)
- 26

- Motion to Assume Leases with Battelle (Docket No. 84)
- Order Approving Special Litigation Counsel for Jeff Sperline (Docket No. 107)
- Order Approving Accountants Marple & Marple, P.S. (Docket No.108)
- Order Determining Single Asset Real Estate Status (Docket No. 133)
- Order Approving Special Finance Counsel (Docket No. 157)

F. Litigation.

1. *Centurion Properties III, LLC v. Thomas Hazelrigg III*, Case No.80118-FLK, United States Bankruptcy Court Eastern District of Washington.

On February 4, 2010, CPIII in conjunction with SMI Group XIV, LLC commenced litigation in Benton County Superior Court, State of Washington. The Complaint named alleged secured claimants, interest holders and equity interest holders as defendants, including Tom Hazelrigg III, Aaron Hazelrigg, Barclay's North, Inc., Centrum Financial, Jim Denton, Equity Funding, LLC, Evergreen Bank, John Does, Nicole Kelly, Daniel Kirby, Patrick McCourt and Trident Investments. The suit plead and sought relief on ten (10) separate Causes of Action varying from injunctive relief for RICCO. The underlying factual premise for the Complaint is

1 based upon the improper, unauthorized, and illegal activities surrounding the
2 encumbrance of the Debtor's interest in the Battelle Property.

3
4 This case was removed and is now being pursued in the Bankruptcy Court for
5 the benefit of the Estate.

6 2. *Centurion Properties III, LLC v Equity Funding, LLC et al*, Case No.
7 10-80137-FLK, United States Bankruptcy Court Eastern District of
8 Washington.

9 Post-Petition, the Debtor was informed that certain entities, individuals, and
10 disputed creditors were engaged in certain conduct, including attempts to market,
11 convey, and sell the Debtor's interest in the Battelle Property. As such, The Debtor
12 prose commenced litigation for a declaratory judgment that the automatic stay had
13 been violated and sought an injunctive preventing such further activities. The
14 Defendants deny they have engaged in such activity.

15
16 An agreed "Order Approving Stipulation to Agree Injunctive Relief and
17 Declaratory Judgment as to Automatic Stay Violation" has been entered (Docket No.
18 14). The Debtor continues to pursue this Cause of Action to prevent further harm to
19 the Estate.
20
21
22
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1 **V. SUMMARY OF THE DEBTOR'S FINANCIAL STATUS**

2 The Debtor's financial status is summarized as follows:

3 A. Operations. The Debtor continues to operate its business affairs and is
4 compliant with U.S. Trustee Reporting requirements. The post-petition
5 operating reports reflect:
6

7 **Centurion Operating Report Net Profit Summary**

8

Month	Dates	Docket #	Net Profit (Loss)
July	7/01/10 - 7/31/10	45	\$ 853,314.33
August	8/01/10 - 8/31/10	73	\$ 532,811.39
September	9/01/10 - 9/31/10	83	\$ (936,212.20)
October	10/01/10 - 10/31/10	106	\$ 372,061.11
November	11/01/10 - 11/31/10	128	\$ (506,650.08)

9

TOTAL	\$ 315,324.55
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10

11 B. Assets.

- 12 1. Real Property. The Battelle Property Per Appraisal June 9, 2008 –
13 approximately 98,000,000.
14 2. Personal Property. The Debtor's personal property is subject to the
15 Security Interest of GECC. However, the personal property is
16 identified as of December 31, 2010:
17
 - 18 • Estimated Cash Reserves As of \$1,884,798.77

19

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21

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- Accounts Receivable Current to 30 days \$187,170.62

3. Contingent Claims/Litigation.

- *Centurion Properties III, LLC, et al., v. Thomas Hazelrigg III, et al.*, Adversary No. 10-80118-FLK. Value to be determined.
- *Centurion Properties III, LLC v. Equity Funding, et al.*, Adversary No. 10-80137-FLK. Value to be determined.

A detailed listing of the Debtor's assets is attached hereto as Exhibit "A."

C. Claims and Interests.

1. Administrative Expenses.

There are two categories of Administrative Expenses. The first is for the costs of operating the Estate and the Battelle Property and U.S. Trustee fees. The Debtor currently estimates this liability to be less than \$1,000.00 as the Debtor has been paying these expenses in the ordinary course pursuant to the Cash Collateral Order.

The additional management fee was approximately \$45,000.00 through December 31, 2010, which was budgeted for and has accrued. However, application for payment will be made to the Court prior to payment. The second is Estate professionals, who also remain subject to Court review and approval. The Estate professionals include CPIII's bankruptcy counsel John D. Munding of Crumb &

1 Munding, P.S. and other professionals employed for the benefits of the Estate who
2 included:

- 3
- 4 • Special Finance Counsel – Randy Stamper of Stamper Rubens, P.S.
- 5 • Accountants – Marple & Marple, Inc.
- 6 • Special Counsel – Jeff Sperline of Sperline Raekes, PLLC

7 Code Section 1129(a)(4) requires that all costs for services incurred by the Plan
8 proponent be disclosed and approved by the Court. Since the Petition Date and
9 through December 31, 2010, the Estate professionals have incurred fees and costs
10 which, to the extent not previously approved, will be approved as part of the
11 confirmation process. An estimate of such fees is attached hereto as **Exhibit "B."**

12

13 2. Prepetition Claims.

14 A detailed listing of the Claims against the Debtor is attached hereto as **Exhibit B.** It
15 is anticipated that (a) not all of these Claims will be determined to be Allowed Claims
16 entitled to payment; and (b) others may be compromised in amount.

17

18

19

20 **VI. PLAN OF REORGANIZATION**

21 A. Summary of the Plan.

22 The Plan provides for the reorganization of Debts and the continued ownership
23 and operation of the Battelle Property. The Debtor will continue with litigation to
24 determine the nature, extent, and amount of the debt owed to certain Classes of
25

1 Creditors holding disputed Claims. The Plan provides for the refinancing of Allowed
2 Secured Claims and payment to other Classes of Claims using ongoing revenue
3 derived from lease payments. The Plan is intended to be fully consummated within
4 thirty six (36) months, with payment in full of all Allowed Claims.
5

6 B. Classification and Treatment of Expenses, Claims, and Interests.

7
8 1. Treatment of Unimpaired (Non-Voting) Classes.

9 a. Class 1 – Administrative Expenses. All Unimpaired Classes
10 and Allowed Claims in those Classes, unless paid sooner pursuant to an order entered
11 by the Court, will be paid on the first business day of the month following the
12 Effective Date. The following Classes of Administrative Expenses and Claims are
13 Unimpaired under the Plan. Pursuant to § 1126(f) of the Bankruptcy Code, each such
14 class, and each holder of an Administrative Expense or Claim in such class, is
15 conclusively presumed to have accepted the Plan, and the solicitation of acceptances
16 from such holders is not required.
17
18

19 b. Class 2 – Priority Claims. The holders of Allowed Class 7
20 Claims, if any, shall be paid in full on the first business day of the month following
21 the Effective Date, in accordance with their respective legal, equitable, and contractual
22 rights. The Debtor does not believe there are any Priority Claims. This Class is not
23 Impaired and is deemed to have accepted the Plan.
24
25
26

1 c. Class 3 – Membership Interests in the Debtor. CPIII
2 recognizes the following membership interests in the Debtor:

- 3
4 1. Nicole M. Kelly 10%
5 2. Centurion Management III, LLC 63%
6 3. SMI Group, XIV, LLC 27%

7
8 Although the interests of Kelly and Centurion Management III, LLC are subject
9 to offset and forfeiture, the ownership is of record and shall be retained pursuant to
10 this plan, subject only to offset, modification, or determination by Court order entered
11 in Adversary Proceeding 10-80118. This Class is not Impaired and is deemed to have
12 accepted the Plan.
13

14 2. Treatment of Impaired (Voting) Classes.
15

16 a. Class 4 – Secured Claim of GECC. This is a secured
17 consensual lien on the Battelle Property, leasehold interest of CPIII, as well as
18 specified personal property of CPIII. The holder of the claim in this class shall accrue
19 interest at the rate of six and thirty-sixths (6.36%) per annum on account of its
20 Allowed Claim. Beginning on the first business day of the month following the
21 Effective Date, the holder of the claim shall receive monthly payments of interest
22 only. At the end of 36 months GECC shall be paid in full any unpaid amount, if any,
23 of its Allowed Claim.
24
25
26

1 The monthly interest payment is calculated at $\$58,258,354.15 \times 6.36\% =$
2 $3,705,231.32 / 12 \text{ months} = \$308,769.28$. GECC shall retain its lien of security interest
3 in the real property/leasehold interests of CPIII, including cash collateral, until its
4 Allowed Claims is paid in full. However, so long as the Debtor makes each payment
5 described herein, the Debtor shall be entitled to use all Base Rents, Service Rents and
6 Task Order Payments received in the ordinary course of business affairs, and for
7 purposes of funding this Plan of Reorganization. The Debtor reserves the right to
8 challenge GECC's claim to default interest, penalties, and legal fees through the
9 claims objection process. This class is Impaired.
10
11
12

13 b. Class 5 – Secured Claim of Benton County Treasurer. This
14 is a secured tax. The County of Benton, Washington, is the only holder of a Class 5
15 claim. The County's claim is believed to have been paid, but additional taxes may be
16 due and owing by the time of confirmation. To the extent not paid. Class 5 shall be
17 paid in full within 60 days following the Effective date, with all statutory interest and
18 penalties. Until paid the amount of its Allowed Claim, the County shall retain any lien
19 that secured its claim. This class is Impaired.
20
21
22

23 c. Class 6 – Secured Umpqua Bank. Class 6 consists of the
24 disputed secured claim of Umpqua Bank. The nature and extent of this claim, amount,
25 and lien status are disputed. The holder of the claim shall accrue interest at the rate of
26

1 five (5%) per annum on account of its Allowed Claim. Beginning on the first business
2 date of the month following the Effective date, or the date upon entry of a final order
3 allowing this claim, whichever is later in time, the holder of the Class 6 claim shall
4 receive equal monthly payments of interest only. At the end of 36 months, Class 6
5 shall be paid in full in outstanding unpaid amount, if any of its allowed claim.
6

7 Umpqua Bank, to extent allowed, shall retain its security interests and lien
8 until its Allowed Claim is paid in full. This Class is Impaired.
9

10 d. Class 7 - Secured Claim of Centrum Financial Services, Inc.

11 Class 7 consists of the disputed secured claim of Centrum Financial Services, Inc. The
12 nature and extent of this claim, amount, and lien status are disputed. The holder of the
13 claim shall accrue interest at the rate of five (5%) per annum on account of its
14 Allowed Claim. Beginning on the first business date of the month following the
15 Effective date, or the date upon entry of a final order allowing this claim, whichever is
16 later in time, the holder of the Class 7 claim shall receive equal monthly payments of
17 interest only. At the end of 36 months, Class 7 shall be paid in full in outstanding
18 unpaid amount, if any of its allowed claim. This class is Impaired.
19

20 e. Class 8 - Secured Claim of Equity Funding, LLC. Class 8

21 consists of the disputed secured claim of Equity Funding, LLC. The nature and extent
22 of this claim, amount, and lien status are disputed. The holder of the claim shall accrue
23
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1 interest at the rate of five (5%) per annum on account of its Allowed Claim. Beginning
2 on the first business date of the month following the Effective date, or the date upon
3 entry of a final order allowing this claim, whichever is later in time, the holder of the
4 Class 8 claim shall receive equal monthly payments of interest only. At the end of 36
5 months, Class 8 shall be paid in full in outstanding unpaid amount, if any of its
6 allowed claim. This class is Impaired.
7

8
9 f. Class 9 – Insider Unsecured Claims Centurion Pacific, LLC
10 and Centurion Southwest, LLC. Class 9 consists of the unsecured claims of Centurion
11 Pacific, LLC and Centurion Southwest, LLC, who are believed to be insiders. Both
12 claims are disputed by CPIII as to the amount and nature. The holder of an allowed
13 Class 9 claim shall accrue interest at five (5%) percent per annum on account of its
14 Allowed Claim. Class 9 shall be paid in full with the outstanding unpaid amount, if
15 any, of their Allowed Claim within 36 months after the Effective date. This Class is
16 Impaired.
17
18

19
20 Equity Funding, LLC, to extent allowed shall retain its security interests and
21 lien until its Allowed Claim is paid in full. This Class is Impaired.
22

23 g. Class 10 – General Unsecured Creditors. The holder of an
24 allowed Class 10 claim shall accrue interest at the rate of six (6%) present per annum
25
26

1 on account of its Allowed Claim. The holder of an Allowed Class 10 Claim shall be
2 paid within ninety (90) days of the Effective date, with interest.

3
4 h. Class 11 – Insider Unsecured Claim Sigma Management,
5 Inc. The holder of an allowed Class 11 claim shall accrue interest at the rate of six
6 (6%) present per annum on account of its Allowed Claim. The holder of an Allowed
7 Class 8 Claim shall be paid within ninety (90) days of the Effective date, with interest.
8

9 C. Administration of the Plan.

10 The Plan provides for the appointment of the Debtor as the Plan Disbursing
11 Agent to collect, administer and distribute assets in accordance with the terms of the
12 Plan. The Debtor will receive no compensation for acting as the Plan Disbursing
13 Agent.
14

15 The Plan Disbursing Agent will be authorized to employ legal and accounting
16 professionals necessary to carry out the provisions of the Plan; provided, however,
17 that prior to Substantial Consummation, any such employment shall be subject to
18 Court approval. Whenever the Plan, Code, Rules or documents implementing the
19 Plan require or permit notice to the Debtor after the Effective Date, such notice shall
20 be effective only when also given to the Plan Disbursing Agent. Unless terminated
21 sooner, the Plan Disbursing Agent shall serve until the Plan is fully consummated.
22
23
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1 D. Unclaimed Funds and Interests.

2 For a period of two months from the date of the disbursement, the Plan
3
4 Disbursing Agent shall retain any distribution hereunder, which remains unclaimed.
5 Thereafter, the Claims giving rise to the right to distribution of such unclaimed funds
6 will be deemed disallowed and any unclaimed funds, net of expenses, will be
7
8 redistributed pro rata to the remaining creditors, except that (i) no redistribution will
9 be made to any creditor whose pro rata share of the funds to be distributed does not
10 exceed \$50 and (ii) no further distribution shall be made if the total amount of
11 unclaimed funds do not exceed \$500 plus the costs of distribution. If the amount of
12 unclaimed funds does not exceed \$500 plus the costs of distribution, such funds will
13 be retained by the Plan Disbursing Agent as reimbursement for expenses in
14 administering such unclaimed funds.
15
16

17 E. Disputed Claims.

18 Not later than sixty (60) days after the Effective Date, the Debtor may file with
19
20 the Bankruptcy Court, and serve on the holder of each Disputed Claim (i) an objection
21 to any Claim, or (ii) a motion to determine the extent, priority, or amount of any
22 secured or other Claim. All such Claims are preserved in the Plan. Any Creditor,
23
24 including those expressly discussed above, that wishes to have its Claim determined
25 by the Court to be a secured or priority Claim, must file with the Court a motion
26

1 seeking that determination not later than the Confirmation Date or file a timely
2 response to the Debtor's objection if such objection is filed. To the extent that (a) the
3 Debtor objects to any filed Claim or (b) a Creditor seeks to have a Claim that the Plan
4 treats as a general unsecured Claim determined to be secured or to have priority,
5 sufficient funds shall be withheld from distributions for the estimated payment of such
6 claim under the Plan until any such objection or determination has been resolved by
7 an order of the Court. No distributions will be made on any Disputed Claim until such
8 Claim is Allowed or the secured or priority status is determined.
9
10
11

12 FUNDING OF THE PLAN

13 F. Initial Plan Funding

14
15 1. Replacement Financing. The Plan will be funded from
16 encumbered and encumber cash on hand, the continued operating revenue of the
17 Battelle Property, the net proceeds of any causes of action, and replacement financing
18 for Allowed Claims. CPIII has employed the services of Randal Stamper to assist it in
19 its quest to obtain commercial financing in an amount necessary to satisfy all allowed
20 secured debt obligations and other obligations under this Plan. Such efforts are under
21 way and continuing. The foregoing will either be conventional financing or bond
22 financing. Interest rates are presently at historical lows. Although the commercial
23 credit market is tight at this time, the historical cash flow and financial strength of the
24
25
26

1 tenant make a strong candidate for refinancing. Distributions under the Plan shall be
2 made to the Allowed Claimants by the Disbursing Agent, who shall report on actively
3 in this account in periodic reports to the Court.
4

5 2. Rents. Upon confirmation the Debtor shall commence making
6 monthly interest payments to secured lender GECC in the amount of \$308,769.28.
7 This payout shall be made from monthly Base Rents and Service Rents received from
8 Battelle. Any Rents received in excess of the \$308,769.28 GECC payment shall be
9 available to and utilized by the Debtor for the Plan Funding, as well as operations. The
10 Debtor's projections for the cash flow to be received from the operations of the
11 Battelle Property are attached as **Exhibit C**.
12

13 3. Litigation Claims. Any sums recovering by causes of action
14 brought by the Estate, net of the attorney fees and costs associated with bringing the
15 cause of action shall be used to fund the Plan, unless all payments required by the Plan
16 have been made, in which case those sums shall accrue to the Reorganized Debtor.
17

18 4. Claims Adjustment. The Debtor reserves the right to object to any
19 claims, pursuant to the procedures set forth in the Plan. Distributions under this Plan
20 shall be made to Allowed Claimants by the Debtor or Reorganized Debtor, as
21 appropriate, who shall report on activity in this account in periodic reports to the
22 Court.
23
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1 G. Contingency Plan Funding.

2 In the event that all causes of action brought by the Estate is not resolved within
3
4 36 months of the Effective date, or in the event that the allowed secured and/or
5 allowed unsecured cause replacement financing to be unattainable, the Debtor shall
6 immediately commence efforts to market and sell the above referenced property in a
7
8 commercially agreeable manner that is acceptable and agreeable to all allowed
9 secured claimants.

10 At such time, this will become a liquidating plan, with distribution of assets
11
12 being made in accordance with priority of liens and 11 USC Section 507 of the
13 Bankruptcy Code.

14 H. Feasibility of the Plan and Best Interests Test.

15
16 The Bankruptcy Code requires that, for the Plan to be confirmed, the Debtors
17
18 must demonstrate that consummation of the Plan is not likely to be followed by
19
20 liquidation or the need for further financial reorganization of the Debtors. The Debtors
21
22 believe that they will be able to timely perform all obligations described in the Plan
23
24 and, therefore, that the Plan is feasible. To demonstrate the feasibility of the Plan, the
25
26 Debtors have prepared financial information contained herein. The Debtors believe
27
28 the Plan satisfies the feasibility requirement of Section 1120(a)(11) of the Bankruptcy

1 Code as it provides for payment of allowed claims using financial resource in an
2 expeditious manner.

3
4 I. Risks of the Plan.

5 Risks involve various market risks. One involves the rental market risk, *i.e.*,
6 whether the Property will continue to produce the same rents and cash flow going
7 forward. If this does not occur, there is a risk that the cash flow from operations will
8 be inadequate to fund the Plan over its term.

9
10 Another involves the real estate and credit markets generally, *i.e.*, whether or
11 not the values of real estate will stabilize and result in a market where purchases are
12 again common and whether credit markets will stabilize so that lending to these types
13 of business ventures again becomes readily available. If these do not occur, the
14 balloon payments required by the Plan may not be possible.

15
16
17 J. Alternatives to Reorganization – Liquidation Analysis.

18 The Bankruptcy Code requires that each holder of an impaired claim either (i)
19 accepts the Plan, or (ii) receives or retains under the Plan property of a value, as of the
20 Effective Date, that is not less than the value such holder would receive or retain if the
21 Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective
22 Date.
23
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1 The first step in meeting this test is to determine the dollar amount that would
2 be generated from the liquidation of the Debtors' assets and properties in the context
3 of a chapter 7 liquidation case. The gross amount of cash available would be the sum
4 of the proceeds from the disposition of the Debtors' assets and the cash held by the
5 Debtors at the time of the commencement of the chapter 7 case. The next step is to
6 reduce that total amount by the amount of any claims secured by such assets, the costs
7 and expenses of liquidation, and such additional administrative expenses and priority
8 claims that may result from the termination of the Debtors' business and the use of
9 chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated
10 to creditors in strict priority in accordance with section 726 of the Bankruptcy Code.
11 Finally, the present value of such allocations (taking into account the time necessary
12 to accomplish the liquidation) is compared to the value of the property that is
13 proposed to be distributed under the Plan on the Effective Date.

14 The debtor estimates the fair market value of the Property to be approximately
15 \$98,000,000.00 based upon its most recent appraisal. GECC may assert that the fair
16 market value is less and asserts a Secured Claim in excess of \$58 million, plus
17 accruing interests and costs. If the Estate were liquidated, the Property would either
18 be sold by the Debtor or taken back by GECC and sold at Trustee's sale (if sold by
19 GECC presumably for less than 98,000,000.00).

1 The Plan provides for the payment of all Allowed Claims, both secured and
2 unsecured, in full with interest. A liquidation sale, including a foreclosure type sale,
3 with normal costs of sale, would certainly generate net sales proceeds far less than the
4 estimated \$98 Million FMV (which value assumes a more orderly sales process, with
5 a willing buyer – and a willing seller). Liquidation could produce sales proceeds
6 inadequate to provide any payment to junior lien holders and unsecured creditors, as
7 called for in this Plan. A summary of this analysis is contained in the attached
8

9 **Exhibit D.**

10 **K. Executory Contracts and Unexpired Leases.**

11
12 1. Prepetition. Prior to confirmation, the following leases and
13 Executory Contracts have been or will be assumed:
14

- 15 • Sigma-Management, Inc., Management Contract Order (Docket No. 84)
- 16 • Battelle Ground and Property Leases, Motion pending (Docket No. 81)
- 17

18 These contracts and leases are assumed on the effective date as part of this Plan
19 to extent not assumed by prior order. The Debtor does not believe it has any other
20 leases or Executory Contracts. Any Claims filed pursuant to a rejected prepetition
21 Executory Contract (if any) shall be subject to objection by the Debtor and to
22 consideration by the Court. If any such Claim becomes an Allowed Claim, it shall be
23 a Class 8 General Unsecured Claim.
24
25
26

1 2. Post-Petition. All post-petition leases and executory contracts are
2 assumed as of the Effective Date. Any Claims resulting from the rejection of a post-
3 petition Executory Contract (if any) shall be filed within thirty (30) days of entry of
4 the Confirmation Order or such Claims are waived and deemed not allowed. any such
5 Claims shall be subject to objection by the Debtor and to consideration by the Court.
6 If any such Claim becomes an Allowed claim, it shall be a Class 8 General Unsecured
7 Claim.
8

9
10 L. Causes of Action.

11 The Debtor or Reorganized Debtor retains the Causes of Action to be enforced post-
12 confirmation, including but not limited to:
13

- 14 1. Any avoidance recovery action, preferential transfer action, or
15 fraudulent transaction for the benefit of the Estate.
16
17 2. Those claims and causes of action as plead in Adversary Case No.
18 10-80118.
19
20 3. Those claims and causes of action as plead in Adversary Case No.
21 10-80137.

22 M. Post-Petition Management, Employees, and Professionals.

- 23 1. CPIII will continue to be managed by Sigma Management, Inc.
24 pursuant to the management agreement assumed pre-confirmation and as part of this
25
26

1 Plan. Sigma Management, Inc. will continue to manage the financial affairs of CPIII,
2 its property interests, and oversell Plan consummation. CPIII, through management by
3 Sigma Management, Inc. shall have full and complete authority to implement and
4 consummate the provisions of this Plan, including financing and disposition of assets.
5 CPIII, through management shall have the authority to continue, prosecute,
6 compromise, and settle without further Court approval on any and all pending
7 litigations or claims. Furthermore, CPIII, through management shall act as claims
8 resolution agent relate to liquidation of disputed claims asserted in this bankruptcy
9 proceeding. CPIII shall be authorized to compromise, prosecute and settle all disputed
10 claims against the Estate.
11

12
13
14 2. The Debtor shall retain and pay the following professionals post
15 confirmation:
16

- 17 • Crumb & Munding, P.S. – Attorneys
- 18 • Jeff Sperline, Sperline Raekes, PLLC, Special Counsel
- 19 • Randall Stamper, Stamper Rubens, P.S., Special Finance Counsel
- 20 • Marple & Marple, P.S. - Accountants
- 21
- 22

23 If necessary, CPIII may employ professionals to sell real or personal property
24 interest. CPIII shall seek Court approval and secured lender approval if such
25 employment becomes necessary.
26

1 3. Unsecured Creditors Committee.

2 No unsecured Creditors Committee was appointed in this case.

3
4 4. Payment of Management and Professionals.

5 Pre-Confirmation professionals shall be paid based upon allowed claims or
6 approved fees by Court Order as Administrative Expense Claims. Post-Confirmation
7 professional fees and expenses incurred after the date of Confirmation shall be paid
8 directly by CPIII from available Excess Rents.

9
10 N. Continuation of Business.

11 CPIII will continue to hold, operate, and manage its real and personal property
12 interests as an ongoing business.

13
14 O. Insider Transactions/Avoidance Actions.

15 CPIII has not yet completed investigation of any/all insider transactions subject
16 to avoidance under sections 547, 548, and 550. Prior to the hearing on Disclosure
17 Statement, CPIII shall supplement this section of the Disclosure Statement.

18
19 P. Payment of Professionals.

20 As of the date of this Disclosure Statement, no professionals have sought nor
21 have they received payment of professional fees. All pre-confirmation fees shall be
22 subject to application and Court approval.
23
24
25
26

1 Q. Plan Modification.

2 The Debtor may modify or amend the Plan at any time prior to Confirmation
3
4 with Court approval if such modifications do not adversely or materially affect the
5 rights of the Creditors, or to remedy any defect or omission or to correct any
6 inconsistency of the Plan.

7
8 R. Court Jurisdiction.

9 The Court shall retain jurisdiction over this Estate as set forth in the Plan. This
10 jurisdiction includes, but is not limited to, matters involving interpretation, correction,
11 modification or reconciliation of any inconsistencies in the Plan, entry of any order
12 deemed necessary and appropriate by the Court to implement the Plan, and
13 adjudication of all causes of Action, including but not limited to all pending adversary
14 proceedings, litigation, and claim objections.
15
16

17 S. Retention of Documents.

18 The Plan Disbursing Agent shall retain records of disbursements under the Plan for
19 such time as attorneys are generally required to maintain records of distributions from
20 their trust accounts, after which time they will be destroyed, unless ordered retained
21 for cause.
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VII. ACCEPTANCE AND CONFIRMATION

A. Acceptance of Plan by Impaired Class.

The "cram down" provisions of § 1129(b) of the Code are applicable to Confirmation because there are several Impaired Classes in the Plan.

B. Alternatives to the Plan and Liquidation Analysis.

1. The Alternatives to the Debtor's Plan of Reorganization is Liquidation Under Chapter 7. See § VI-J above for a discussion of the liquidation analysis.

2. United States Trustee Fees. Until the Chapter 11 case is closed, the Debtor must file post-confirmation reports and pay quarterly fees under 28 U.S.C. § 1930(a)(6) which are paid for with Estate funds. However, the Debtor will act to close the case as quickly as possible, thereby reducing the amount of such fees.

VIII. SOURCE OF INFORMATION

The primary source of information for this Disclosure Statement is the Debtor. Other sources include documents provided by Sigma Management, Inc., an agent of CPIII.

IX. TAX CONSEQUENCES

A summary description of certain United States federal income tax consequences of the Plan follows. This description is for informational purposes only and, owing to a lack of definitive judicial or administrative authority or interpretation,

1 substantial uncertainties exist with respect to various tax consequences of the Plan
2 discussed below. This disclosure describes only the principal United States federal
3 income tax consequences of the Plan to the Debtor and to holders of Claims and
4 Equity Interest. No opinion of counsel has been sought or obtained with respect to
5 any tax consequences of the Plan. No rulings or determinations of the Internal
6 Revenue Service ("IRS") or any other tax authorities have been sought or obtained
7 with respect to any tax consequences of the Plan, and the discussion below is not
8 binding on the IRS or other authorities. No representations are being made to the
9 Debtor or any holder of a Claim or Equity interest regarding the particular tax
10 consequences of the Confirmation and Consummation of the Plan. No assurance can
11 be given that the IRS would not assert, or that a court would not sustain, a different
12 position from any discussed here.

13 The following discussion of the United States federal income tax consequences
14 is based on the Internal Revenue Code of 1986, as amended, Treasury Regulations,
15 judicial authorities, published positions of the IRS and other applicable authorities, all
16 as in effect on the date of this document and all of which are subject to change or
17 differing interpretations (possibly with retroactive effect).

18 The following discussion does not address foreign, state or local tax
19 consequences of the Plan, nor does it purport to address the United States federal
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1 income tax consequences of the Plan to special classes of taxpayers (*e.g.*, banks and
2 certain other financial institutions, insurance companies, tax-exempt organizations,
3 governmental entities, persons that are, or hold their Claims through, pass-through
4 entities, persons whose functional currency is not the United States dollar, foreign
5 persons, dealers in securities or foreign currency, employees of a debtor, persons who
6 received their Claims by exercising an employee stock option or otherwise as
7 compensation, and persons holding Claims that are a hedge against, or that are hedged
8 against, currency risk or that are part of a straddle, constructive sale, or conversion
9 transaction). Furthermore, the following discussion does not address United States
10 federal taxes other than income taxes.

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14 Holders of Claims and Equity Interests are strongly urged to consult their own
15 tax advisor regarding the United States federal, state, local and foreign tax
16 consequences of the transactions described in this Disclosure Statement and in the
17 Plan.
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20 A. United States Federal Income Tax Consequences to the Debtor.

21 Under the Plan, the Debtor's outstanding indebtedness will be satisfied by
22 payment in cash (the "Value"). The satisfaction of a debt obligation for an amount of
23 cash less than the "adjusted issue price" of the debt obligation generally gives rise to
24 cancellation of indebtedness ("COD") income to the debtor.
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1 A debtor does not, however, recognize COD income if the debt discharge
2 occurs in a Title 11 bankruptcy case. Instead, the debtor reduces its tax attributes to
3 the extent of its COD income in the following order: 1) net operating losses ("NOLs")
4 and NOL carryforwards; 2) general business credit carryforwards; 3) minimum tax
5 credit carryforwards; 4) capital loss carryforwards; 5) the tax basis of the Debtor's
6 depreciable and nondepreciable assets (but not below the amount of their liabilities
7 immediately after the discharge); and 6) foreign tax credit carryforwards.
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10 A debtor may elect to alter the preceding order of attribute reduction and,
11 instead, first reduce the tax basis of its depreciable assets. The reduction in tax
12 attributes occurs only after the tax for the year of the debt discharge has been
13 determined (*i.e.*, such attributes may be available to offset taxable income that accrues
14 between the date of discharge and the end of the debtor's tax year). Because the
15 Debtor does not hold NOLs, it is not expected that the debtor will be required to
16 reduce their tax attributes materially.
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20 B. Federal Income Tax Consequences to Creditors.

21 The following discusses certain United States federal income tax consequences
22 of the transactions contemplated by the Plan to Creditors that are "United States
23 Holders," as defined below. The United States federal income tax consequences of
24 the transactions contemplated by the Plan to Creditors (including the character,
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1 timing, and amount of income, gain, or loss recognized) will depend on, among other
2 things: 1) whether the Claim and the consideration received in respect of it are
3 “securities” for federal income tax purposes; 2) the manner in which a Creditor
4 acquired a Claim; 3) the length of time the Claim has been held; 4) whether the Claim
5 was acquired at a discount; 5) whether the Creditor has taken a bad debt deduction
6 with respect to the Claim (or any portion of it) in the current tax year or any prior tax
7 year; 6) whether the Creditor has previously included in its taxable income accrued by
8 unpaid interest with respect to the Claim; 7) the holder’s method of tax accounting;
9 and 8) whether the Claim is an installment obligation for federal income tax purposes.
10 Creditors, therefore, should consult their own tax advisors regarding the particular tax
11 consequences to them of the transactions contemplated by the Plan.
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16 For purposes of the following discussion, a “United States holder” is a Creditor
17 that is 1) a citizen or individual resident of the United States; 2) a partnership or
18 corporation created or organized in the United States or under the laws of the United
19 States, a political subdivision of the United States, or a State of the United States; 3)
20 an estate whose income is subject to United States federal income taxation regardless
21 of its source; or 4) a trust if (i) a court within the United States is able to exercise
22 primary supervision over the administration of the trust and one or more United States
23 fiduciaries have the authority to control all substantial decisions of the trust, or (ii) the
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1 trust was in existence on August 20, 1996, and properly elected to be treated as a
2 United States person.

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4 1. Sale or Exchange of Claims.

5 Under the Plan, Creditors will receive Value in exchange for their Claims. A
6 Creditor who receives Value or an interest in exchange for its Claim under the Plan
7 will generally recognize gain or loss for United States federal income tax purposes in
8 an amount equal to the difference between the Value received and the Creditor's
9 adjusted tax basis in its Claim. The character of the gain or loss as capital gain or loss
10 or as ordinary income or loss will be determined by a number of factors, including the
11 nature of the Claim as held by the Creditor, whether the Claim constitutes a capital
12 asset in the hands of the Creditor, whether the Claim was purchased at a discount,
13 whether any amount received in respect of a Claim constitutes accrued interest, and
14 whether and to what extent the Creditor has previously claimed a bad debt deduction
15 with respect to its Claim. A Creditor who recognizes a loss on a transaction
16 conducted under the Plan may be entitled to a bad debt deduction, either in the taxable
17 year of the Effective Date or a prior taxable year.

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22 2. Accrued Interest.

23 Under the Plan, Value may be distributed or deemed distributed to certain
24 Creditors with respect to their Claims for accrued interest. Holders of Claims for
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1 accrued interest that previously have not included such accrued interest in taxable
2 income will be required to recognize ordinary income equal to the amount of Value
3 received with respect to such Claims for accrued interest. Holders of Claims for
4 accrued interest that have included such accrued interest in taxable income generally
5 may take an ordinary deduction to the extent that such Claim is not fully satisfied
6 under the Plan (after allocating the distribution between principal and accrued
7 interest), even if the underlying Claim is held as a capital asset. The adjusted tax basis
8 of any Value received in exchange for a Claim for accrued interest will equal the
9 amount of Value on the Effective Date, and the holding period for the property will
10 begin on the day after the Effective Date. It is not clear the extent to which
11 consideration that may be distributed under the Plan will be allocable to interest.
12 Creditors are advised to consult their own tax advisors to determine the amount, if
13 any, of consideration received under the Plan that is allocable to interest

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18 3. Other Claimholders.

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20 If a Creditor reaches an agreement with the Debtor to have its Claim satisfied,
21 settled, released, exchanged, or otherwise discharged in a manner other than as
22 described in the Plan, that Creditor should consult with its own tax advisors regarding
23 the tax consequences of that satisfaction, settlement, release, exchange or discharge.
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1 C. Federal Income Tax Consequences to Holders of Equity Interests.

2 The Plan contemplates that the Equity Interests in the Debtor will be retained
3 under the Plan. The character of the gain or the loss as capital gain or loss or as
4 ordinary income or loss will be determined by a number of factors, including whether
5 the equity interest constitutes a capital asset in the hands of the holder. Each equity
6 holder should consult their own tax advisory to determine tax consequences of this
7 Plan.
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9 D. Importance of Obtaining Professional Tax Assistance.

10 The foregoing discussion is intended only as a summary of certain United
11 States federal income tax consequences of the Plan and is not a substitute for careful
12 tax planning with a tax professional. The above discussion is for informational
13 purposes only and is not tax advice. The tax consequences are in many cases
14 uncertain and may vary depending on a Creditor's or Equity Interest holder's
15 particular circumstances. Accordingly, Creditors and Equity interest holders are
16 strongly urged to consult their tax advisors about the United States federal, state and
17 local and applicable foreign income and other tax consequences of the Plan, including
18 with respect to tax reporting and record keeping requirements.
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20 ***IRS Circular 230 Notice:*** to comply with U.S. Treasury Regulations, be
21 advised that any U.S. federal tax advice included in this communication (and it is not
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1 intended that any such advice be given in this Disclosure Statement) is not intended or
2 written to be used, and cannot be used, to avoid any U.S. federal tax penalties or to
3 promote, market, or recommend to another party any transaction or matter. Claimants
4 are advised to consult with their tax advisers respecting the individual tax
5 consequences of the transactions contemplated by the Plan, including state and local
6 tax consequences.
7

8 9 **X. DISCLAIMER**

10 Court approval of this Disclosure Statement and accompanying Plan, including
11 exhibits, is not a certification of the accuracy of the contents thereof. Furthermore,
12 Court approval of these documents does not constitute the Court's opinion as to
13 whether the Plan should be approved or disapproved.
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16 17 **XI. CONFIRMATION OF THE PLAN**

18 **A. Voting Procedures.**

19 The ballot to be used for voting for the rejection or acceptance of the Plan is
20 being mailed to the holders of Claims in Classes One through Four. The holders of
21 impaired claims should carefully read the instructions printed on the ballot, complete,
22 date and sign the ballot, and transmit the completed ballot to the Court and the Debtor.
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1 The ballot should be returned to the address indicated in Section II (B) of this
2 Disclosure Statement.

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4 Dated this 20th day of January, 2011.

5 CRUMB & MUNDING, P.S.

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7
8 JOHN D. MUNDING, WSBA #21734
9 Attorneys for Debtor-in-Possession.