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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 In re

13 HACIENDA GARDENS, LLC,

14
15 Debtor.

Chapter 11

Case No.: 10-55423 CN

Date: April 21, 2011

Time: 11:00 a.m.

Place: Courtroom 3070

280 South First Street
San Jose, California

16
17 **DEBTOR'S DISCLOSURE STATEMENT (MARCH 10, 2011)**

18 THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE UNITED
19 STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AS
20 CONTAINING ADEQUATE INFORMATION FOR SOLICITATION OF ACCEPTANCES OF
21 THE DEBTOR'S PLAN OF REORGANIZATION (MARCH 10, 2011). DISTRIBUTION OF
22 THIS DISCLOSURE STATEMENT TO CREDITORS IS AUTHORIZED BY ORDER OF THE
23 UNITED STATES BANKRUPTCY COURT DATED APRIL __, 2011.

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28 DEBTOR'S DISCLOSURE STATEMENT

Page 1

1 I. INTRODUCTION.

2 A. Plan Summary.

3 The Plan provides for extension of the obligations currently due to FHB and Heritage
4 Bank for 36 months each after the Effective Date (unless repaid paid sooner) with payments
5 monthly As set forth below. Payments to Chase Bank will continue without modification.
6 Unsecured claimants are to receive the Center's net profits for three years with a minimum
7 dividend paid of \$72,000 which will, depending upon whether the insider claim of Mark Tersini
8 is voluntarily subordinated or not, provide a dividend of either 8.7% (if not) to 25.9% (if it is)
9 and the Rite Aid Lease is not rejected. Priority and administrative claims, if any, will be paid in
10 full at the Effective Date unless they agree to another treatment.

11 B. The Purpose Of A Disclosure Statement:

12 Debtor and debtor in possession Hacienda Gardens, LLC prepared this Debtor's
13 Disclosure Statement. It is distributed to creditors to solicit acceptances of the Debtor's Plan.
14 The Plan is served with the Disclosure Statement. The Disclosure Statement's purpose is to
15 provide all persons who hold claims against the Debtor with information adequate to enable them
16 to make informed judgments about the Plan in voting to accept or reject it.

17 C. Definitions:

18 The Disclosure Statement uses terms which are defined in the Plan. A term used in the
19 Disclosure Statement or the Plan that is defined in the Bankruptcy Code has the meaning given to
20 that term in the Bankruptcy Code. The rules of construction contained in the Bankruptcy Code
21 and the Federal Rules of Bankruptcy Procedure apply in this Disclosure Statement. To the extent
22 that terms defined in the Plan or Disclosure Statement are inconsistent with definitions or
23 meanings provided by the Bankruptcy Code or Rules, the Bankruptcy Code and Rules shall
24 control.

25 D. How to Vote.

26 A vote for acceptance or rejection of the Plan may be cast by completing and signing the
27 ballot which accompanies the Plan and mailing it to Binder & Malter, 2775 Park Avenue, Santa
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1 Clara, CA 95050, to the attention of Robert G. Harris, Esq. in an envelope marked "Hacienda
2 Gardens Ballot" in the lower left hand corner. Only the Ballot should be mailed. For your vote
3 to be counted, your completed Ballot must be received no later than May __, 2011, by 5:00 p.m.
4 Pacific Daylight Savings Time. Upon its Confirmation, the Plan will be binding on all creditors
5 regardless of whether a creditor has voted in favor of or rejected the Plan.

6 E. Enclosures.

7 Enclosed with this Disclosure Statement is a copy of the Plan, a ballot (if your claim is to
8 be impaired under the Plan) and the order approving this Disclosure Statement.

9 II. GENERAL BACKGROUND

10 A. Property and Value

11 The Center is a commercial shopping center consisting situated upon 12.097 acres of land
12 in San Jose, California. Included in this 12.097 acres is approximately 124,246 square feet of
13 commercial leasable space as well as acreage zoned for a sizeable residential development.

14 The Debtor leases the Center under the Ground Leases from the Rajkovich Family who
15 own the underlying land. The Ground Leases commenced in 2009 and run through the year
16 2037.

17 The Debtor in its Schedules of Assets and Liabilities listed total personal property assets
18 of \$173,160.11. The Debtor listed its leasehold interest in the Center plus the improvements that
19 secure the Secured Creditors' respective debts as having a value of \$29,050,000. The Debtor's
20 appraiser has completed an appraisal which shows that the total value of the Center exceeds \$32
21 million.

22 B. Secured Debt Borrowings, Security, And Monthly Payments

23 The Debtor in its Schedules of Assets and Liabilities listed secured debt totaling
24 \$13,734,945.44 and unsecured debt totaling \$812,784.77.

25 The Trust has a lien against lots 2, 5, 7, 8, 9, and 10 at the Center and claims to be the
26 senior lienholder thereon with an assignment of rents clause that extends to the proceeds of the
27 Ground Leases of these lots and all sub-leases thereof.

1 In June, 2006, FHB, approved a secured line of credit in the amount of \$11,400,000 to
2 Debtor. Debtor's promissory note to FHB was secured with a deed of trust recorded against lots
3 2, 5, 9, and 10 at the Center. FHB claims that it recorded in October, 2008 a supplemental deed
4 of trust granting it a lien against lots 7 and 8 at the Center. The Debtor is a signatory to both
5 deeds of trust along with the Rajkovich Family. FHB's debt is also secured by a lien against the
6 Ground Leases of these lots. Garrett Rajkovich, Kenneth Tersini, and Mark Tersini, the Debtor's
7 responsible individual, are all personal guarantors of the amounts owing to FHB by Debtor.

8 Between May 25, 2007, and April 9, 2009, the FHB loan was modified five times, and its
9 term was extended to January 1, 2010. FHB at the commencement of the Bankruptcy Case
10 claimed to be owed \$8,591,000 in principal, \$231,957 in interest (at the default rate of 18%),
11 plus various fees and costs. The non-default contract rate payment to FHB under its loan
12 documents is \$45,000 per month which amount was paid each month since the commencement
13 of the Bankruptcy Case until December, at which time the payment was redirected to pay taxes
14 on lots 2, 5, 9, and 10 because income from those lots is not yet sufficient to pay a full \$45,000
15 payment and all taxes attributable to FHB collateral. The December, 2010, property tax payment
16 was made on time with the consensual use of excess rentals from other lots and tenants at the
17 Center.

18 The tenants on lots 2, 5, 7, 8, 9, and 10 pay \$37,378 in rent each month. Both the Trust
19 and FHB claim these rents as their cash collateral.

20 On July 9, 2010, Heritage Bank loaned the Debtor \$1,900,000. The current principal
21 amount owed to Heritage Bank is \$1,858,569.92. Debtor's promissory note to Heritage Bank is
22 secured with a deed of trust recorded against lots 4 and 6 at the Center. Debtor has improved
23 these lots with a 5,054 square foot building on Lot 6 as temporary premises for the Rite Aid
24 department store already a tenant at the Center and a 5,177 square foot building on Lot 4 for
25 Wells Fargo Bank. The latter is a permanent location that has commenced generating a monthly
26 rent payment of \$18,886.00 from Wells Fargo Bank. \$5,000.00 per month will be due from Rite
27 Aid at the commencement of the its occupancy of the temporary location unless the Rite Aid

1 Lease is rejected pursuant to Motion or failure to assume prior to Confirmation. The non-default,
2 contract rate payment to Heritage Bank under its loan documents is \$8,805.00 per month HB has
3 guarantees from various principals and their trusts, including Mark and Kenneth Tersini and
4 Garrett Rajkovich. HB's collateral also includes the Ground Lease and any payments made
5 under it.

6 On July 10, 2008, Washington Mutual Bank FA loaned the Debtor \$3,300,000. The loan
7 was subsequently transferred to Chase Bank. The current amount owing is \$3,235,945.44. The
8 debt to Chase Bank is secured by 2975 Meridian Avenue, which is improved by an 8,400 square
9 foot commercial building occupied by the Bank of America. The tenant at this property pays
10 \$28,351.65 in rent each month. The non-default, contract rate payment to Chase Bank under its
11 loan documents is \$20,663.31 per month.

12 C. Events Leading To Chapter 11 Filing

13 FHB declined to extend its loan term and thereafter began collection activity. On March
14 29, 2010, FHB recorded and posted its Notice of Default and Election to Sell under Deed of
15 Trust thereby commencing a non-judicial foreclosure of its lien against the Center. FHB then
16 commenced an action in the Santa Clara Superior Court seeking temporary and permanent
17 injunctive relief and appointment of a receiver for the Center entitled FIRST HORIZON HOME
18 LOANS, a division of FIRST TENNESSEE BANK NATIONAL ASSOCIATION, a national
19 banking association, successor-by-merger to FIRST HORIZON HOME LOAN
20 CORPORATION, a Kansas corporation, Plaintiff, vs. HACIENDA GARDENS, LLC, a
21 California limited liability company; GARRETT ALAN RAJKOVICH, an individual; NIKETTE
22 MARIE PUJALET, an individual; RANDALL P. RAJKOVICH, an individual; DAVID
23 NICHOLAS RAJKOVICH, an individual; KENNETH S. TERSINI, an individual; MARK E.
24 TERSINI, case number 110 CV 170312. On or about April 29, 2010, FHB participated in an ex
25 parte hearing in Superior Court and obtained a temporary restraining order and order to show
26 cause ("O.S.C.") as to why a receiver should not be appointed to take possession of the Center.
27 That O.S.C. hearing was set for May 25, 2010. The Debtor determined that it had to commence

1 this Bankruptcy Case prior to that date in order to preserve the equity in the Center for the benefit
2 of all secured and unsecured creditors and for its members and did so.

3 D. Case Commencement

4 The instant bankruptcy case was filed on May 24, 2010.

5 E. Relevant Events In Case

6 The Debtor's Section 341 Meeting of Creditors was commenced and concluded on June
7 30, 2010.

8 Debtor participated in its initial Chapter 11 Status Conference before the Bankruptcy
9 Court on July 19, 2010. At that time the Court set a deadline to file a plan and disclosure
10 statement of October 1, 2010. That deadline has since been extended to March 10, 2011, for
11 cause upon application by the Debtor.

12 The Debtor prosecuted a Motion To Approve Use Of Cash Collateral that was set for its
13 first interim hearing on June 24, 2010. The Motion was approved and continued over for interim
14 hearings until it was replaced after hearing on January 26, 2011, with a Stipulation for Use of
15 Cash Collateral from the 3041 and 3053 Meridian Avenue Property and for Adequate Protection.
16 The term of that Stipulation is through February, 2011. The parties may consent to extensions in
17 writing without further order of the Bankruptcy Court.

18 Heritage Bank and the Debtor are parties to a separate cash collateral stipulation which
19 permits consensual cash use.

20 F. Inter-Creditor Disputes

21 1. Senior Lien Position Of Trust

22 In 1990, Martha Sanfilippo sold partial interests in the improved real property underlying
23 the Center to the Rajkovich Family. The purchase was financed by Mrs. Sanfilippo and secured
24 by a recorded first deed of trust on the Center. There was no other debt on the property at the
25 time. When the loans from FHB, Heritage Bank, and Washington Mutual were made, the Trust's
26 position was not apparent, and the loans all closed and were insured for title without the Trust's
27 lien being listed as an exception.

1 The issue of lien priority is resolved through the Plan as to Heritage Bank: the Trust is
2 subordinating its lien position as to lots 4 and 6 to the Secured Claim of Heritage Bank. The
3 Trust's priority lien position and any disputes as between the Trust and any other creditor are
4 unaffected by the Plan.

5 2. Lot Line Adjustment Dispute

6 During the planning and development of the building on lot 4 on which a retail Wells
7 Fargo Bank now operates as a tenant, it was necessary for the Debtor to perform a lot line
8 adjustment due to a change in the law when San Jose adopted the 2007 California Building Code.
9 The new law requires a greater fire separation distance from building walls than had been
10 previously required. In order to meet this new requirement the lot lines were adjusted.
11 Unfortunately, FHB's approval for the adjustment was never obtained. A three foot strip of lot 4,
12 some 1,600 square feet of sidewalk and landscaping outside the Wells Fargo Bank location, is
13 therefore situated on a lot which is FHB's collateral. This dispute will be resolved by a sale or
14 refinance of the Center which pays off FHB or such arrangements as the Debtor, FHB, and HB
15 are able to achieve through negotiation prior to that time.

16 III. PLAN OF REORGANIZATION

17 A. Classification and Treatment of Claims

18 1. Unclassified Claims

19 Unclassified Claims shall be treated as follows:

20 a. Professionals who have Administrative Claims will, unless they
21 agree otherwise, be paid in cash, in full upon the later of (a) the Effective Date or (b) the date that
22 their claim, if disputed, is allowed by the Bankruptcy Court. Vendors who have incurred
23 amounts owing after the Petition Date in the ordinary course of the Debtor's business will be
24 paid within such time such payment are due in the ordinary course.

25 b. Any request for allowance of an Administrative Claim pursuant to
26 Section 503(a) of the Bankruptcy Code, other than by the Professionals, must be filed on or
27 before the Administrative Claims Bar Date, or the holder shall be forever barred from asserting

1 such Claim or receiving any payment on account of such Claim.

2 2. Unsecured Priority Tax Claims.

3 c. Holders of Tax Claims, unless they agree to a different treatment,
4 will receive payment of their Allowed Claims with interest under applicable non-bankruptcy law
5 in equal monthly payments concluding not more than 60 months after the Petition Date.

6 2. Classified Claims

7 a. Class 1

8 The Trust shall retain its lien against the Center and receive payment of all accrued
9 principal and interest at the contract rate upon the sale or refinance of the Center. The Trust may
10 consent to the sale of portions of the Center and payment of some, all, or none of the obligations
11 owing to it at such time. The Trust shall subordinate its lien to that of Heritage Bank on parcel
12 14 and parcel 15 at the Center within 5 days of the Effective Date. At the end of the third year
13 after the Effective Date all amounts owing to the Trust shall be due in full, and the Trust shall
14 then be entitled to foreclose its lien if not paid; provided, however that the Trust shall be
15 immediately entitled to proceed with foreclosure should any other lienholder be authorized to do
16 so by the Bankruptcy Court or pursuant to the Plan.

17 b. Class 2

18 FHB shall retain its lien against its collateral, lots 12, 16, 17, 18, and 19 at the Center and
19 related common area. FHB shall receive payments of \$35,000 per month after the Effective
20 Date. The loan to the Debtor from FHB is modified by this Plan such that (a) any pre-payment
21 penalty for sale of its collateral prior to expiration of the loan term is waived, and (b) the term of
22 the obligation is extended for a period of 36 months following the Effective Date, Except as
23 specifically modified by this Plan, all other terms of the applicable loan and security agreements
24 between the Debtor and FHB shall remain in full force and effect; Debtor may, at its option, pay
25 FHB all principal, contract rate interest, charges compensating FHB for economic detriment and
26 attorneys' fees by the Effective Date and thereby cure all defaults as to FHB, decelerate the debt,
27 and reinstate all obligations to FHB. All default rate interest, late charges, and interest thereon

1 claimed by FHB shall, upon such payment, no longer be due, owing, or payable to FHB.

2 c. Class 3

3 Heritage Bank shall retain its lien against its collateral, lots 4 and 6 at the Center, as well
4 as any related common area. Heritage Bank shall receive payments of principal and interest at a
5 rate of 7% per annum simple interest, and the payment amount shall be \$8,500. The loan to the
6 Debtor from Heritage Bank is modified by this Plan such that (a) any pre-payment penalty for
7 sale of its collateral prior to expiration of the loan term is waived, and (b) the term of the
8 obligation is extended for a period of 36 months following the Effective Date. Except as
9 specifically modified by this Plan, all other terms of the applicable loan and security agreements
10 between the Debtor and Heritage Bank shall remain in full force and effect. .

11 d. Class 4

12 Chase Bank shall retain its lien against its collateral, parcel number 442-44-020. Chase
13 Bank shall receive payments of \$20,661.33 per month according to the terms of its loan to the
14 Debtor. The loan to the Debtor from Chase Bank is modified by this Plan such that any pre-
15 payment penalty for sale of its collateral prior to expiration of the loan term is waived. Except as
16 specifically modified by this Plan, all other terms of the applicable loan and security agreements
17 between the Debtor and Chase Bank shall remain in full force and effect.

18 e. Class 5

19 Holders of Allowed Timely Filed Unsecured Claims shall receive payments of the
20 remainder of the Debtor's net income after payment of all higher priority claims under the Plan
21 for 3 years following the Effective Date. Distributions to Class 5 claimants shall be made semi-
22 annually and paid to holders of Allowed Claims *pro rata*. Class 5 claimants shall receive at least
23 the Minimum Dividend under the Plan.

24 f. Class 6

25 The members of the Debtor shall retain their Interests in the Debtor.

26 B. List of Impaired and Unimpaired Classes.

27 Class 1, Class 2, Class 3, Class 4, and Class 5 are impaired under the Plan and thereby

1 entitled to vote. Class 6 is unimpaired under the Plan.

2 1. Refinancing, Asset Sales, Joint Venture Authorization

3 The Debtor may sell or refinance any portion of or all of the Center without limitation
4 after the Effective Date in order to perform its obligations under the Plan. The Debtor may also
5 enter into a joint venture or any other form of cooperative business venture for the same purpose.
6 All sales of assets shall be approved by the Bankruptcy Court after a hearing on notice to
7 creditors. Such motions may be brought at any time before or after Confirmation. The Debtor
8 may but is not required to seek approval for refinancing or entry into a joint venture or
9 cooperative business venture from the Bankruptcy Court.

10 2. Objections to Claims.

11 Within 90 days after the Effective Date the Debtor shall bring objections to the claims
12 which they disputes and bring any actions to recover preferential transfers and fraudulent
13 conveyances under the avoiding powers under the Bankruptcy Code, or such other actions as it
14 deems appropriate.

15 3. Preservation of Retained Claims

16 Confirmation of the Plan effects no settlement, compromise, waiver or release of any
17 Retained Claim unless the Plan or Order of Confirmation specifically and unambiguously so
18 provides. The failure of the Plan to refer to any particular Retained Claim is not and shall not be
19 construed as a settlement, compromise, waiver, or release of any such Retained Claim. All
20 Retained Claims are hereby preserved and shall continue to remain valid after the Effective
21 Date.

22 Retained Claims include, without limitation, (a) all claims against Thrifty Payless under
23 the Rite Aid Lease , (b) claims against any lender on grounds of lender liability or other claims
24 and defenses to Secured Claims, and (c) Avoidance Actions defined in the Plan to mean causes
25 of action of the Debtor under Chapter 5 of the Bankruptcy Code.

26 4. Plan Conclusion.

27 The Plan will conclude 3 years after the Effective Date, when all objections to claims

1 have been determined by final order, all adversary proceedings have been resolved with a final
2 judgment or order of dismissal, applications for all professional fees have been heard and all
3 amounts allowed paid, and any final reserves and monies owing have been collected and
4 distributed to creditors. The Debtor and the Rajkovich Family may sell all of a portion of the
5 Center and conclude the Plan early by paying all secured and unsecured, administrative and
6 priority claims which are Allowed from escrow.

7 VII. ALTERNATIVES TO THE PLAN.

8 A. General.

9 The Debtor believes that the Plan provides creditors with the greatest value that can
10 likely be obtained on their respective claims. The alternative to Confirmation of the Plan is
11 liquidation of the estate under Chapter 7 of the Bankruptcy Code.

12 B. Best Interests Test

13 The “best interest” test of Bankruptcy Code section 1129(a)(7)(A)(ii) requires that a plan
14 provide to each dissenting member of each impaired class a recovery that has a present value at
15 least equal to the present value of the distribution which each such Creditor would receive if the
16 Debtor’s estate were liquidated under chapter 7 of the Bankruptcy Code. In performing this
17 analysis, the Bankruptcy Court must determine the amount that would be generated from a
18 chapter 7 liquidation of the Debtor’s assets after deducting the cost of liquidation. The cost of
19 liquidation would include a trustee’s commissions, a trustee’s expenses, fees for counsel and
20 other professionals retained by the Trustee, and Administrative Claims. Generally, no
21 distribution is made in a chapter 7 case until all assets of the Bankruptcy Estate and all claims
22 have been liquidated, a process that often can take many months and sometimes years.

23 C. Analytical Comparison To Chapter 7

24 Determining what unsecured claimants would receive in a liquidation requires an
25 analysis of each of the Debtor’s real property to determine (1) the price, if any, at which the
26 Chapter 7 trustee would be able to sell it, (2) what the net proceeds would be in the event of a
27 sale, and (3) what the deductions would be for Chapter 11 administrative and priority claims and

1 Chapter 7 fees and expenses.

2 1. Real Property Valuation

3 _____The Debtor's appraiser, Hulberg & Associates, has determined that the Center has a
4 value, when combined with the fee interest in its underlying real estate, of more than \$32
5 million. The Debtor holds only an interest under the Ground Leases and is not an owner of the
6 underlying real property. The Chapter 7 Trustee therefore has no right to sell the underlying
7 real estate on which the Center is situated. Based on the foregoing no sale of the Center would
8 be possible in the time frame indicated without the consent of the Rajkovich Family. However,
9 so long as the Ground Leases encumber the land underlying the Center, it could not be sold
10 without a trustee's cooperation either.

11 Assuming a 90-150 days period for marketing and sale, the following conclusions of
12 value have been offered by the appraiser:

- 13 - Lots 2, 5, 6, 7, 8, and 10 (land and lease encumbered by First Horizon): Less than
14 \$8,600,000.
- 15 - Lots 4 and 6 (land and lease encumbered by Heritage): Less than \$1,900,000.
- 16 - Parcel 442-44-020 (land and lease encumbered by Chase Bank): Less than
17 \$3,300,000.
- 18 - Lots 1 and 3 (all land encumbered by Trust¹): less than \$1,500,000.

20 3. Chapter 11 and Chapter 7 Priority Obligations

21 The following is an analysis of the assets of the Debtor and result in a Chapter 7 derived
22 from the analysis set forth above:
23
24
25

26 ¹ The trust claims a first priority lien against all land: lots 1 2, 3, 4, 5, 6, 7, 8, ,10 and
27 Parcel 442-44-020

1	Estate Asset	Amount	Chapter 7 & Chapter	Amount
2			11 Priority and	
3			Administrative	
4			Obligations	
5	Center Real Estate	\$0.00	Chapter 7 Trustee's	<\$ 0>
6	Value		Fees ²	
7	Accumulated Cash	\$0.00	Chapter 7 Trustee	<\$ 10,000>
8	Collateral		Professionals' Fees	
9			Chapter 11	<\$150,000>
10			Reorganization	
11			Counsel Fees (Binder	
12			& Malter)	
13			Stonebrook Asset	<\$ 50,000>
14	TOTAL	\$0.00	TOTAL	<\$ 210,000>

4. Application Of Assets To Priority Liabilities/Comparison To Plan

The Debtor's projected Chapter 7 and Chapter 11 priority liabilities total \$210,000. No assets would be available were this case converted to Chapter 7 to pay any of those sums or anything to holders of unsecured claims. By contrast holders of Class 5 Allowed Claims, who have claims totaling \$822,893.71 (from a review of both the Claims Register and Schedule F) will receive an 8.7 percent distribution under the Plan. This dividend rises to 25.9 percent

² The fees and expenses of a Chapter 7 trustee are set by statute. 28 U.S.C. section 326(a) permits a trustee compensation of 25% of the first \$5,000 administered, 10% of the next \$45,000, 5% of the next \$950,000, and 3% of any amounts in excess of \$1 million. Application of that formula to this case would yield a Chapter 7 trustee's fee of \$127,757.00. Added to that total would be (a) fees and costs associated with a Chapter 7 trustee hiring his own professionals, (b) the costs associated with noticing new claims bar dates, and (c) the debt burden of new claims or different claims filed after such a new bar date.

1 should insider and responsible individual Mark Tersini waive or subordinate his claim in the
2 case.

3 X. FEASIBILITY

4 The Bankruptcy Code requires a finding that confirmation of the Plan is not likely to be
5 followed by either liquidation or the need for further reorganization. The Debtor's ability to
6 perform this Plan and avoid Plan failure and a Chapter 7 conversion requires them to prove their
7 ability to provide (a) the payments that will be required of them at the Effective Date, (b) the
8 payments that are required of them under the Plan, particularly at the end of the second full year
9 after the Effective Date, and (c) the payments required to complete the Plan.

10 The evidence that the Debtor will be able to meet each of the aforementioned obligations
11 is found in four sources: first, the value in the Debtor real estate such that, if sold over time, will
12 yield adequate net proceeds to meet obligations in the Plan; second, the ability of their real
13 estate holdings to generate adequate rent to pay expenses and service debt obligations over the
14 Plan's term based upon current occupancy and expected tenant move-ins; and, third, the ability
15 of the Debtor to acquire either through loans or capital contributions the sums required to
16 perform the Plan.

17 A. Projected Operations Over Plan Term

18 Attached hereto as Exhibit "C" are the Debtor's projections for operations through the
19 Plan term. The Debtor commences its projections with rental revenues of \$1,441,115 plus
20 recoverable expenses of \$361,250 for a total of \$1,802,365. Total expenses for the first year of
21 the Plan amount to \$1,781,244. Net profit in year one amounts to \$21,121. Debtor assumes that
22 Subway and Tutti Frutti pay for their own tenant improvements and therefore do not pay rent
23 until rent deductions to pay for those improvements have been recovered. Rent for Tutti Frutti
24 therefore commences in November, 2011. Rent for Subway will not commence until 2014.

25 In year two the Debtor assumes that it will have completed the Rite Aid construction and
26 that payments under the Rite Aid Lease will have commenced - or that Rite Aid has been
27 replaced with another tenant, such as CVS, which would pay a higher rent and cost a similar

1 amount for a building completed as a “build to suit.” Debtor also assumes the completion of
2 construction on tenant improvements for Woodcraft and Grocery Outlet on lots 9 and 10 results
3 in the commencement of rent in calendar year 2012. It is assumed that a further \$4 million
4 construction expense for each of the last two tenants would be required and that Debtor is able
5 to obtain a loan or loans to make the necessary improvements.

6 The Debtor believes these projections to be very conservative. Should the increased
7 rents in year two and three not be available for some reason the Debtor is able to make all plan
8 payments during the Plan term from the current levels of rent. All other assumptions are stated
9 within the margins of the projections themselves.

10 B. Projected Increases In Income From Incoming Tenants

11 1. Wells Fargo Move-In and Rent Commencement

12 Wells Fargo Bank has possession of its completed shell building on Lot 4 and moved in.
13 Its rent obligations commenced on August 14, 2010. Full rent is being paid.

14 2. Rite Aid Lease.

15 The Debtor is a party to the Rite Aid Lease with Thrifty Payless. Thrifty Payless
16 currently occupies a building on Lot 3. Pursuant to the terms of its lease with Thrifty Payless the
17 Debtor built a multi-tenant building for temporary use by Thrifty Payless on Lot 6. Thrifty
18 Payless has not occupied this building on Lot 6 and will not do so until Debtor provides proof
19 that it has financing to build a contracted-for 17,000 square foot permanent Thrifty building on
20 Lot 3. The Debtor would then have to demolish all structures on Lot 3. When the new building
21 on Lot 3 is complete, Thrifty would move-in and rent will commence at the new lease rate of
22 \$33,333.33 per month. The Rite Aid Lease may be rejected as it contains restrictive covenants
23 that interfere with the ability of the Debtor to lease the rest of the Center’s unoccupied space.

24 The Debtor has been negotiating to secure \$4 million in needed construction financing,
25 complete the structure, and meet its lease obligations to Thrifty Payless to retain it as a tenant.
26 Recently one prominent bank indicated preliminarily that it may be willing on various
27 conditions including collateralization of debt of a principal to the bank to provide some or all of

1 this financing on condition that additional security be provided for related debt. As there is no
2 loan commitment yet, negotiation and formal credit approval would first have to occur for such
3 a loan to issue.

4 3. Other Tenants

5 The Debtor is in negotiations and is exchanging lease drafts with Grocery Outlet and
6 Woodcraft for portions of the buildings on Lot 9 and Lot 10, respectively. Rent for these
7 tenants is included in Exhibit "A" hereto.

8 C. Residential Land Sale

9 The Debtor initially signed a purchase and sale agreement with K Hovnanian for the sale
10 of lot 1, 2 and a portion of lot 3, but that sale will not proceed as the buyer reneged on its
11 commitment due to internal financial concerns. The Debtor has replaced the initial buyer with
12 Taylor-Morrison of California LLC. The purchase price for the same parcels is \$8,250,000.
13 The buyer is to close on said parcel upon receipt of a plan development permit and tentative
14 map. This entitlement process is expected to take 6 months to complete and will create a new
15 2.32 acre parcel. The projected close date of this sale is the end of December, 2011. IF THIS
16 SALE CLOSES THE DEBTOR WILL PAY ALL CLAIMS UNDER THE PLAN FROM
17 ESCROW AND COMPLETE THE PLAN THEREBY.

18 D. Sale Of Retail Portion Of Center

19 The Debtor is proceeding simultaneously with its efforts, in conjunction with the
20 Rajkovich Family, to sell the retail portions of Center not included within the prior paragraph.
21 The Debtor is in contract to sell the majority of the Center to Michael T. LaBarbera for \$17
22 million³. The sale contract, executed November 18, 2010, contained a 60-day "Study Period"

23 _____
24 ³ Debtor's counsel makes the following disclosure of a connection with Mr. LaBarbera: Binder &
25 Malter, LLP represents Terracommercial Management Corporation as a creditor and property
26 manager on behalf of property owner Anthony G. Pierce in the chapter 7 bankruptcy case of Gary
27 L. Newton. #09-51597-SLJ in which Mr. Pierce's lease was rejected and it has filed proofs of claim
28 on behalf of Terracommercial. Mr. Michael Labarbera is a principal of Terracommercial. The firm
has never represented Mr. LaBarbera individually.

Binder & Malter LLP also represented FACCHINO/LA BARBERA BERNAL PLAZA in the chapter

1 for buyer to determine the financial viability of the purchase for him. That period expired, after
2 extension, on March 4, 2011. The \$100,000 good faith deposit under the contract is has now
3 become non-refundable. This sale is presently required to close on March 25, 2011. The
4 Debtor plans to present a motion to dismiss the case conditioned upon the payment of all claims,
5 secured, unsecured, and administrative, from escrow. IF THIS SALE CLOSES PRIOR TO
6 CONFIRMATION THE DEBTOR WILL PAY ALL CLAIMS IN THE CASE FROM
7 ESCROW AND DISMISS ITS BANKRUPTCY.

8
9 XI. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

10 THE FOLLOWING IS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME
11 TAX CONSEQUENCES OF THE PLAN THAT MAY BE MATERIAL TO CREDITORS (EACH A
12 "HOLDER" AS REFERRED TO IN THIS ARTICLE). THIS DISCUSSION IS INCLUDED FOR
13 GENERAL INFORMATION PURPOSES ONLY AND IS NOT INTENDED TO BE, AND IS NOT,
14 LEGAL OR TAX ADVICE TO ANY PARTICULAR HOLDER. THIS SUMMARY IS BASED ON
15 THE CURRENT PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED
16 (THE "CODE" AS REFERRED TO IN THIS ARTICLE), THE INCOME TAX REGULATIONS (THE
17 "REGULATIONS") AND OTHER LEGAL AUTHORITIES, ALL OF WHICH ARE SUBJECT TO
18 CHANGE, POSSIBLY WITH RETROACTIVE EFFECT. NO RULINGS FROM THE INTERNAL
19 REVENUE SERVICE (THE "IRS") OR OPINIONS OF COUNSEL HAVE BEEN OR WILL BE
20 REQUESTED CONCERNING THE MATTERS DISCUSSED BELOW. THE TAX
21 CONSEQUENCES SET FORTH IN THE FOLLOWING DISCUSSION ARE NOT BINDING ON THE

22
23 11 case of In re Ritz Camera Centers, Inc., Bk. Delaware 09-10617 (MFW). Mr. LaBarbera is a
24 partial owner of FACCHINO/LA BARBERA BERNAL PLAZA which is a former landlord of that
25 debtor and holds a Proof of Claim against the debtor in that case. Representation concluded in
26 June 2010 with receipt of a distribution on the allowed proof of claim.

27 In the past, Binder & Malter LLP has represented Terracommercial as a creditor and property
28 manager in connection with other bankruptcy cases in which Mr. LaBarbera has held a partial
ownership interest in the underlying real property through various LLC's and partnerships. The last
such prior representation concluded in 2008 (Edward Deangelo, #08-55455-RLE, a pending
chapter 13 in which no proof of claim was filed for Terracommercial).

1 IRS OR THE COURTS, AND NO ASSURANCE CAN BE GIVEN THAT CONTRARY POSITIONS
2 WILL NOT BE SUCCESSFULLY ASSERTED BY THE IRS OR ADOPTED BY A COURT.

3 THIS SUMMARY DOES NOT ADDRESS STATE OR FEDERAL INCOME TAX
4 CONSEQUENCES TO INTEREST HOLDERS.

5 THE FOLLOWING DISCUSSION DOES NOT APPLY TO CERTAIN HOLDERS WHO,
6 DUE TO THEIR PARTICULAR CIRCUMSTANCES, MAY BE SUBJECT TO SPECIAL RULES.
7 THOSE HOLDERS INCLUDE HOLDERS WHO ARE DEALERS IN SECURITIES, FINANCIAL
8 INSTITUTIONS, INSURANCE COMPANIES, TAX-EXEMPT ORGANIZATIONS, OR FOREIGN
9 PERSONS.

10 A. IRS Circular 230.

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

21 EACH HOLDER SHOULD CONSULT THE HOLDER'S OWN TAX ADVISOR TO
22 DETERMINE THE HOLDER'S PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES
23 AND OTHER TAX CONSEQUENCES TO THE HOLDER OF THE PLAN, INCLUDING ANY
24 STATE, LOCAL AND FOREIGN TAX LAWS AND THE EFFECT OF ANY CHANGES IN SUCH
25 LAWS.

26 B. Consequences to Debtor.

27 In general, the Code provides that a debtor in a bankruptcy case is not taxable on cancellation of

1 debt ("COD") income, but must release certain of its tax attributes (such as its net operating loss
2 ("NOL") carry forwards and its tax basis in its assets) by the amount of COD income. COD income
3 results when the amount of debt discharged exceeds the consideration given in exchange therefore, and
4 is equal to such excess amount. Notwithstanding the absence of a bankruptcy discharge, it is likely that a
5 cancellation of debt will be deemed to have occurred on the Effective Date. Any reduction in tax
6 attributes does not occur, however until the end of the taxable year or, in the case of asset basis
7 reduction, the first day of the taxable year following the taxable year in which the COD is incurred.

8 C. Consequences to Creditors.

9 Generally, any amount received by a Creditor in satisfaction of an Allowed Claim, to the extent
10 such amount constitutes "gross income" within the meaning of Section 61 of the Code, will be taxable to
11 the Creditor in accordance with the Creditors method of accounting, if not previously included in the
12 Creditor's gross income. This would include, for example, payments of interest, rent or compensation
13 for services. If a Creditor previously reported as taxable income, their respective Allowed Claim then
14 the unpaid portion of the previously reported taxable income would be deductible as a business bad
15 debt. A Creditor may be subject to regular income tax withholding or backup withholding, as described
16 below, with respect to such payments. Creditors should consult with their own tax advisors as to the
17 character and timing of recognition of any gain, loss or deduction they are planning to include in their
18 tax return.

19 Any amount received by a Creditor in satisfaction of accrued interest on a Claim will be taxable
20 to the Creditor as interest income, if not previously included in the Creditors gross income. A Creditor
21 may be subject to backup withholding, as described below, with respect to such interest payments.

22 Each Creditor who receives cash in partial or complete satisfaction of the Creditor's Claim will
23 recognize gain or loss equal to the difference between the amount of cash received and the Creditor's
24 tax basis in the Creditor's Claim. Gain may be recognized, for example, by a Creditor who acquired a
25 Claim at a discount or who previously reported a bad debt deduction or worthless security loss with
26 respect to all or a portion of the Claim. Generally, any gain recognized will be considered capital gain if
27 the Claim is held as a capital asset, and generally will be ordinary income if the Claim is not held as a

1 capital asset. Capital gain will generally be long-term capital gain if the Claim has been held for more
2 than 12 months. Creditors should consult with their own tax advisors as to the character and timing of
3 recognition of any gain, loss or deduction they are planning to include in their tax return. Any loss will
4 generally be a capital loss if the Claim is a capital asset and if the payment is deemed a "retirement" of
5 the Claim within the meaning of Section 1271 of the Code. A Creditor who receives no payment with
6 respect to a Claim (and a Creditor who receives a payment which is not a "retirement" and incurs a loss)
7 should generally be able to claim a bad debt deduction to the extent of the Creditors tax basis in the
8 Claim (or, in the case of a Creditor receiving a payment, the excess of the tax basis in the Claim over the
9 payment received). A Creditor who holds a Claim as a non-business bad debt and who is not a corporate
10 Creditor will generally only be able to claim a short-term capital loss with respect to such Claim. A
11 Creditor who holds a Claim which is a "security" as defined in Section 165(g) of the Code will generally
12 only be able to claim a capital loss rather than a bad debt deduction. Limitations apply to the ability to
13 deduct capital losses. Creditors should consult with their own tax advisors as to the character and timing
14 of recognition of any gain, loss or deduction they are planning to include in their own tax returns.

15 Because a loss is allowed only for the tax year in which it is sustained, a Creditor that claims a
16 loss or deduction in the wrong tax year risks losing the benefit of such loss or deduction in its entirety.
17 Creditors should consult with their own tax advisors as to the character and timing of recognition of any
18 gain, loss or deduction they are planning to include in their own tax returns.

19 XII. DISCLOSURE OF MANAGEMENT COMPENSATION

20 No insider will receive any direct compensation from the Debtor after Confirmation.
21 Stonebrook Asset Management, Inc. will, for services currently rendered, continue to receive its
22 management fee of \$5,000 to \$8,000 per month. Stonebrook Asset Management, Inc. The
23 owners of this entity are Mark Osborn, Kenneth Tersini, and Mark Tersini. Moreover, it is
24 anticipated that Tersini Construction, owned by Kenneth and Mark Tersini, will continue to
25 receive payment for services rendered in continuing to develop the Center. Those payments
26 have, since the filing of this case, totaled \$15,000 per month.

27 XIII. CONFIRMATION STANDARDS.

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A. Voting.

In order to confirm the Plan, two-thirds in amount and a majority in number of Allowed Claims in each impaired class of creditors and two-thirds in number of shares in the Allowed Interests must vote in favor of the Plan. The majorities for each are determined by the number and amount of those who actually vote on the Plan and are entitled to vote on the Plan under Bankruptcy Rule 3018.

If a class which is impaired under the Plan does not vote in favor of the Plan, the Debtor may seek confirmation under Section 1129(b) of the Code.

B. Confirmation Standards.

For the Plan to be confirmed and binding on all creditors and shareholders, the Court must determine that the following requirements under Sections 1129(a)(1) through (12) of the Bankruptcy Code has been satisfied:

1. The Plan complies with the provisions of the Code;
2. The Plan proponent (the “Debtor”) has complied with the provisions of the Code;
3. The Plan has been proposed in good faith and not by any means forbidden by law;
4. Any payment made or to be made by the Debtor for services or costs in connection with the Bankruptcy Case has been or will be subject to approval by the Court as reasonable;
5. The Debtor has disclosed the identity of any individual to serve after Confirmation as an officer or director;
6. Any rate change provided for the Plan has been or subject to approval by the regulatory commission with jurisdiction over such rates, if any;
7. The holder of each claim or interest in each class of impaired claims or interest has accepted the Plan or will receive under the Plan not less than the holder would receive if Debtor’s estate were liquidated under Chapter 7 of the Code;
8. Each class of claims or interest has accepted or is not impaired by the Plan;

1 9. Holders of allowed claims entitled to administrative priority under the Code
2 will receive Cash in the full amount of their claims on the Effective Date, unless the holder thereof
3 agrees to a different treatment;

4 10. At least one impaired class of claims is accepting the Plan;

5 11. Confirmation is not likely to be followed by liquidation or further
6 reorganization of the Debtor unless such liquidation or reorganization of Debtor's property is proposed
7 in the Plan;

8 12. All fees payable to the U.S. Trustee under 11 U.S.C. §1930 have been paid or
9 the Plan provides for the payment of such fees;

10 13. The Plan provides after its Effective Date for the continuation of all retiree
11 benefits, as and when required by 11 U.S.C. §1129(a)(13); and

12 14. The principal purpose of the Plan is not avoidance of taxes or the avoidance of
13 the security laws of the United States.

14 C. Modification.

15 Under the Code and the Bankruptcy Rules, the Debtor may, subject to the Code and Bankruptcy
16 Rules and Bankruptcy Court approval, modify the Plan after the Plan has been submitted for acceptance
17 or rejection. In addition, the Plan may be modified after Confirmation and at any time until the Plan has
18 been substantially consummated by the Debtor or any creditor. The manner in which the Plan may be
19 modified is set forth in Section 1127 of the Code and Bankruptcy Rule 3019. In general, the Court may
20 approve a modification of the Plan without a re-solicitation, so long as (a) the Plan, as modified,
21 continues to comply with the applicable provisions of the Bankruptcy Code, and (b) modification does
22 not adversely change the treatment of creditors.

23 XIV. CONCLUSION.

24 A. Effect of Confirmation.

25 If the Plan is confirmed, its terms and conditions will be binding on all creditors and the Debtor.

26 B. Recommendation.

27 This Disclosure Statement has been presented for the purpose of enabling you to make an

1 informed judgment to accept or reject the Plan. You are urged to read the Plan in full and consult with
2 counsel if you have questions. The Debtor believes that acceptance of the Plan is in the best interest of
3 all creditors, and will provide the best recovery in this Bankruptcy Case.

4 Dated: March 10, 2011

HACIENDA GARDENS, LLC

5
6 By: /s/ Mark Tersini
Mark Tersini

7
8 Dated: March 10, 2011

BINDER & MALTER, LLP

9 By: /s/ Robert G. Harris
10 Robert G. Harris
11 Attorneys for Debtor

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