

1 HEINZ BINDER, #87908
2 ROBERT G. HARRIS, #124678
3 ROYA SHAKOORI, #236383
4 Binder & Malter, LLP
5 2775 Park Avenue
6 Santa Clara, CA 95050
7 Telephone: (408)295-1700
8 Facsimile: (408) 295-1531

9 Attorneys for Debtor and Debtor-in-
10 Possession Hacienda Gardens, LLC

11
12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 In re

16 HACIENDA GARDENS, LLC,

17 Debtor.

Chapter 11

Case No.: 10-55423 CN

Date: February 17, 2011

Time: 11:00 a.m.

Place: Courtroom 3070
280 South First Street
San Jose, California

18 **DEBTOR'S DISCLOSURE STATEMENT (JANAURY 14, 2011)**

19 THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE UNITED
20 STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AS
21 CONTAINING ADEQUATE INFORMATION FOR SOLICITATION OF ACCEPTANCES OF
22 THE DEBTOR'S PLAN OF REORGANIZATION (JANUARY 14, 2011). DISTRIBUTION
23 OF THIS DISCLOSURE STATEMENT TO CREDITORS IS AUTHORIZED BY ORDER OF
24 THE UNITED STATES BANKRUPTCY COURT DATED FEBRUARY __, 2011.

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28 DEBTOR'S DISCLOSURE STATEMENT

Page 1

I. INTRODUCTION.

A. Plan Summary.

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

B. The Purpose Of A Disclosure Statement:

Debtor and debtor in possession Hacienda Gardens, LLC prepared this Debtor's Disclosure Statement (January 14, 2011). It is distributed to creditors to solicit acceptances of the Debtor's Plan of Reorganization (January 14, 2011). The Plan is served with the Disclosure Statement. The Disclosure Statement's purpose is to provide all persons who hold claims against the Debtor with information adequate to enable them to make informed judgments about the Plan in voting to accept or reject it.

C. Definitions:

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

D. How to Vote.

A vote for acceptance or rejection of the Plan may be cast by completing and signing the

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

7 E. Enclosures.

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

10 II. GENERAL BACKGROUND

11 A. Property and Value

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

15 The Debtor leases the Center under the Ground Leases from the Rajkovich Family who
16 own the underlying land. The Ground Leases commenced in 2009 and run through the year
17 2037.

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

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

24 The Debtor in its Schedules of Assets and Liabilities listed secured debt totaling
25 \$13,734,945.44 and unsecured debt totaling \$812,784.77.

26 The Trust has a lien against lots 2, 5, 7, 8, 9, and 10 at the Center and claims to be the
27 senior lienholder thereon with an assignment of rents clause that extends to the proceeds of the

1 Ground Leases of these lots and all sub-leases thereof.

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

9 Between May 25, 2007, and April 9, 2009, the FHB loan was modified five times, and its
10 term was extended to January 1, 2010. FHB at the commencement of the Bankruptcy Case
11 claimed to be owed \$8,591,000 in principal, \$231,957 in interest (at the default rate of 18%),
12 plus various fees and costs. The non-default contract rate payment to FHB under its loan
13 documents is \$45,000 per month which amount has been paid in full in each month since the
14 commencement of the Bankruptcy Case. The tenants on lots 2, 5, 7, 8, 9, and 10 pay \$37,378 in
15 rent each month. Both the Trust and FHB claim these rents as their cash collateral.

16 On July 9, 2010, Heritage Bank loaned the Debtor \$1,900,000. The current principal
17 amount owed to Heritage Bank is \$1,858,569.92. Debtor's promissory note to Heritage Bank is
18 secured with a deed of trust recorded against lots 4 and 6 at the Center. Debtor has improved
19 these lots with a 5,054 square foot building on Lot 6 as temporary premises for the Rite Aid
20 department store already a tenant at the Center and a 5,177 square foot building on Lot 4 for
21 Wells Fargo Bank. The latter is a permanent location that has commenced generating a monthly
22 rent payment of \$18,886.00 from Wells Fargo Bank. \$5,000.00 per month will be due from Rite
23 Aid at the commencement of the its occupancy of the temporary location unless the Rite Aid
24 Lease is rejected pursuant to Motion or failure to assume prior to Confirmation. The non-
25 default, contract rate payment to Heritage Bank under its loan documents is \$8,805.00 per month
26 HB has guarantees from various principals and their trusts, including Mark and Kenneth Tersini
27 and Garrett Rajkovich. HB's collateral also includes the Ground Lease and any payments made

1 under it.

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

8 C. Events Leading To Chapter 11 Filing

9 FHB declined to extend its loan term and thereafter began collection activity. On March
10 29, 2010, FHB recorded and posted its Notice of Default and Election to Sell under Deed of
11 Trust thereby commencing a non-judicial foreclosure of its lien against the Center. FHB then
12 commenced an action in the Santa Clara Superior Court seeking temporary and permanent
13 injunctive relief and appointment of a receiver for the Center entitled FIRST HORIZON HOME
14 LOANS, a division of FIRST TENNESSEE BANK NATIONAL ASSOCIATION, a national
15 banking association, successor-by-merger to FIRST HORIZON HOME LOAN
16 CORPORATION, a Kansas corporation, Plaintiff, vs. HACIENDA GARDENS, LLC, a
17 California limited liability company; GARRETT ALAN RAJKOVICH, an individual; NIKETTE
18 MARIE PUJALET, an individual; RANDALL P. RAJKOVICH, an individual; DAVID
19 NICHOLAS RAJKOVICH, an individual; KENNETH S. TERSINI, an individual; MARK E.
20 TERSINI, case number 110 CV 170312. On or about April 29, 2010, FHB participated in an ex
21 parte hearing in Superior Court and obtained a temporary restraining order and order to show
22 cause as to why a receiver should not be appointed to take possession of the Center. That O.S.C.
23 hearing was set for May 25, 2010. The Debtor determined that it had to commence this case
24 prior to that date in order to preserve the equity in the Center for the benefit of all secured and
25 unsecured creditors and for its members.

26 D. Case Commencement

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

1 E. Relevant Events In Case

2 The Debtor's Section 341 Meeting of Creditors was commenced and concluded on June
3 30, 2010.

4 Debtor participated in its initial Chapter 11 Status Conference before the Bankruptcy
5 Court on July 19, 2010. At that time the Court set a deadline to file a plan and disclosure
6 statement of October 1, 2010.

7 The Debtor prosecuted a Motion To Approve Use Of Cash Collateral that was set for its
8 first interim hearing on June 24, 2010. The Motion was approved and continued over for interim
9 hearings that took place on July 15, 2010, August 22, 2010, and September 30, 2010. In each
10 instance the secured claimants have consented to the use of cash collateral to pay operating
11 expenses and adequate protection as requested. Heritage Bank and the Debtor are parties to a
12 separate cash collateral stipulation which permits consensual cash use through and including
13 November 23, 2010.

14 F. Inter-Creditor Disputes

15 1. Senior Lien Position Of Trust

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

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

26 2. Lot Line Adjustment Dispute

27 During the planning and development of the building on lot 4 on which a retail Wells
28

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

10 III. PLAN OF REORGANIZATION

11 A. Classification and Treatment of Claims

12 1. Unclassified Claims

13 Unclassified Claims shall be treated as follows:

14 a. Allowed Administrative Claims. Except to the extent that the
15 holder of a particular Administrative Claim has agreed to a different treatment of such Claim,
16 each holder of an Allowed Administrative Claim shall be paid in cash, in full upon the later of
17 (a) the Effective Date; (b) if such Claim is initially a Disputed Claim or an order of the Court is
18 required prior to any payment, upon the ultimate allowance of such Claim by a Final Order of
19 the Bankruptcy Court; and (c) if such Claim is incurred after the Petition Date in the ordinary
20 course of the Debtor's business, within such time as payment is due pursuant to the terms giving
21 rise to such Claim.

22 b. Any request for allowance of an Administrative Claim pursuant to
23 Section 503(a) of the Bankruptcy Code, other than by the Debtor's Professionals, must be filed
24 on or before the Administrative Claims Bar Date, or the holder shall be forever barred from
25 asserting such Claim or receiving any payment on account of such Claim.

26 .2 Unsecured Priority Tax Claims.

27 c. Except to the extent that the holder of a particular Tax Claim has

1 agreed to a different treatment of such Claim, after payment in of all Allowed Priority Claims,
2 each holder of an Allowed Tax Claim shall receive a cash payment equal to the Allowed Amount
3 of such Claim plus interest on such Allowed Claim at the rate of interest determined under
4 applicable non-bankruptcy law pursuant to Bankruptcy Code Section 511, from the Petition Date
5 through the date of payment in full; provided, however, that (a) no such payment shall be made
6 longer than five (5) years from the Petition Date, and (b) no holder of an Allowed Tax Claim
7 shall be treated in a manner less favorable than any general unsecured Allowed Claim.

8
9 2. Classified Claims

10 a. Class 1

11 The Trust shall receive full payment on its Class 1 Secured Claim as follows: the Trust
12 shall retain its lien against the Center; the Trust shall receive payment of all accrued principal
13 and interest at the contact rate upon the sale or refinance of the Center. The Trust may consent to
14 the sale of portions of the Center and payment of some, all, or none of the obligations owing to it
15 at such time; the Trust shall subordinate its lien to that of Heritage Bank on parcel 14 and parcel
16 15 at the Center within 5 days of the Effective Date; at the end of the third year after the
17 Effective Date the amount owing to the Trust shall be due in full, and the Trust shall be entitled
18 to foreclose its lien; provided, however that the Trust shall be immediately entitled to proceed
19 with foreclosure should any other lienholder be authorized to do so by the Bankruptcy Court or
20 pursuant to the Plan.

21 b. Class 2

22 FHB shall receive full payment on his Class 2 Secured Claim as follows: FHB shall
23 retain its lien against its collateral, parcels 12, 16, 17, 18, and 19 at the Center and related
24 common area; FHB shall receive deferred cash payments equal to the amount of its Allowed
25 Secured Claim of a value, as of the Effective Date, of its interest in the estate's interest in its
26 collateral. Specifically, FHB shall continue to receive payment of principal and interest in the
27 amount of \$45,000 per month; The loan to the Debtor from FHB is modified by this Plan such

1 that (a) any pre-payment penalty for sale of its collateral prior to expiration of the loan term is
2 waived, and (b) the term of the obligation is extended for a period of 36 months following the
3 Effective Date, Except as specifically modified by this Plan, all other terms of the applicable
4 loan and security agreements between the Debtor and FHB shall remain in full force and effect;
5 Debtor may, at its option, pay FHB all principal, contract rate interest, charges compensating
6 FHB for economic detriment and attorneys' fees by the Effective Date and thereby cure all
7 defaults as to FHB, decelerate the debt, and reinstate all obligations to FHB. All default rate
8 interest, late charges, and interest thereon claimed by FHB shall, upon such payment, no longer
9 be due, owing, or payable to FHB.

10 c. Class 3

11 Heritage Bank shall receive full payment on its Class 3 Secured Claim as follows:
12 Heritage Bank shall retain its lien against its collateral, lots 4 and 6 at the Center, as well as any
13 related common area. Heritage Bank shall receive deferred cash payments equal to the amount
14 of its Allowed Secured Claim of a value, as of the Effective Date, of its interest in the estate's
15 interest in its collateral. Specifically, the Debtor shall make payments of principal and interest on
16 the Allowed Claim of Heritage Bank on a 20-year amortization. The rate of interest is 7% per
17 annum simple interest. The loan to the Debtor from Heritage Bank is modified by this Plan such
18 that (a) any pre-payment penalty for sale of its collateral prior to expiration of the loan term is
19 waived, and (b) the term of the obligation is extended for a period of 36 months following the
20 Effective Date. Except as specifically modified by this Plan, all other terms of the applicable
21 loan and security agreements between the Debtor and Heritage Bank shall remain in full force
22 and effect. .

23 d. Class 4

24 Chase Bank shall receive full payment on its Class 4 Secured Claim as follows: Chase
25 Bank shall retain its lien against its collateral, parcel number 442-44-020. Chase Bank shall
26 receive deferred cash payments equal to the amount of its Allowed Secured Claim of a value, as
27 of the Effective Date, of its interest in the estate's interest in the collateral. Specifically, the

1 Debtor shall make payments in the amount of \$20,661.33 per month to Chase Bank according to
2 the terms of its loan to the Debtor. The loan to the Debtor from Chase Bank is modified by this
3 Plan such that any pre-payment penalty for sale of its collateral prior to expiration of the loan
4 term is waived. Except as specifically modified by this Plan, all other terms of the applicable
5 loan and security agreements between the Debtor and Chase Bank shall remain in full force and
6 effect.

7 e. Class 5

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

13 f. Class 6

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

15 B. List of Impaired and Unimpaired Classes.

16 Class 1, Class 2, Class 3, Class 4, and Class 5 are unimpaired under the Plan and thereby
17 entitled to vote. Class 6 is unimpaired under the Plan.

18 C. Means For Implementation Of The Plan.

19 1. Sources of Funding.

20 The Debtor shall, as set forth below, utilize rents from the Center to operate it and make
21 all required payments under the Plan. To the extent that such funds are inadequate the Debtor
22 shall borrow or its members shall contribute adequate sums to perform the Plan.

23 2. Distribution Account.

24 Prior to the Effective Date the Debtor shall establish the Claims Trust Account. On or
25 before the Effective Date, the Debtor shall fund said Claims Trust Account with monies adequate
26 to make all payments due on the Effective Date. Thereafter the Debtor shall deposit sufficient
27 funds into the Claims Trust Account to make all other payments owing under the Plan. At a

1 minimum the Debtor shall deposit \$2,000 per month into the Claims Trust Account for the
2 Plan's term which shall comprise the Minimum Dividend. The amount deposited to pay the
3 Minimum Dividend shall not be available to pay any expense or claim other than the Allowed
4 Claims held by Class 5 claimants.

5 3. Effective Date Payments.

6 On the Effective Date, the Debtor shall pay any all Allowed Administrative Claims for
7 professional fees and costs allowed by order of the Court unless the claimant agrees to another
8 treatment, from the Claims Trust Account. Professional fees and costs incurred after
9 Confirmation shall be paid from the sums reserved for professional fees in accordance with the
10 procedures set forth below.

11 4. Payment Of Unclassified Claims.

12 The Debtor shall pay any State and Federal tax claims which may exist on the later of the
13 Effective Date of when they are due.

14 5. Plan Payments.

15 The Debtor shall issue and transmit payments to all holders of Secured Claims under the
16 Plan such that payment is received not later than the fifteenth (15th) day of each calendar month
17 in which a payment is due. The Debtor shall pay the holders of Class 6 general unsecured
18 Allowed Claims twice each year, commencing six months after the Effective Date and
19 continuing for a period of 3 years after Confirmation.

20 6. Refinancing, Asset Sales, Joint Venture Authorization

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

1 7. Objections to Claims.

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

6 8. Treatment of Executory Contracts and Unexpired Leases.

7 The Debtor reserves the right to move the Bankruptcy Court prior to Confirmation for
8 authority to assume, assume and assign, or reject, pursuant to Bankruptcy Code Section 365, any
9 and all contracts that are executory and leases that are unexpired and to enter into any new
10 contracts or leases they may require to operate their businesses.

11 All executory contracts and unexpired leases assumed prior to Confirmation or pursuant
12 to the Plan and not otherwise rejected pursuant to the Plan shall remain in full force and effect,
13 be unimpaired by the Plan except as specifically modified by the Plan and the Order of
14 Confirmation, and be binding on the parties thereto.

15 Unless other treatment is agreed to between the parties to each assumed contract or lease,
16 if there has been a default in an assumed executory contract or unexpired lease other than the
17 kind specified in Section 365(b)(2) of the Bankruptcy Code, the Debtor shall, on or before the
18 Effective Date: (a) cure, or provide adequate assurance that they will promptly cure, any such
19 default; (b) compensate, or provide adequate assurance that they will promptly compensate, the
20 other party to such contract or lease, for any actual pecuniary loss to such party resulting from
21 such default; and (c) provide adequate assurance of future performance under such contract or
22 lease.

23 Without admitting the validity of any other executory contracts and unexpired leases, all
24 executory contracts and unexpired leases of the Debtor that are not: (a) assumed or rejected prior
25 to Confirmation; (b) the subject of a pending motion to assume filed prior to Confirmation; or (c)
26 assumed pursuant to the Plan, shall be rejected by the Debtor as of the Effective Date.

27 Confirmation of the Plan shall be deemed to constitute Bankruptcy Court approval of such

1 rejection.

2 Rejection Claims shall be classified as Class 5 general unsecured Claims. The holder of a
3 Rejection Claim shall file with the Bankruptcy Court, and serve on counsel for the Reorganized
4 Debtor, a Proof of Claim relative to such Rejection Claim on or before the Rejection Claims Bar
5 Date or be forever barred from asserting any such Claim or receiving any payment or other
6 Distribution on account of such Claim.

7 The Debtor by operation of the Plan assumes the terms of the Ground Leases with the
8 Rajkovich Family.

9 9. Preservation of Retained Claims

10 Confirmation of the Plan effects no settlement, compromise, waiver or release of any
11 Retained Claim unless the Plan or Order of Confirmation specifically and unambiguously so
12 provides. The failure of the Plan to refer to any particular Retained Claim is not and shall not be
13 construed as a settlement, compromise, waiver, or release of any such Retained Claim. All
14 Retained Claims are hereby preserved and shall continue to remain valid after the Effective
15 Date.

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

20 10. Plan Conclusion.

21 The Plan will conclude 3 years after the Effective Date, when all objections to claims
22 have been determined by final order, all adversary proceedings have been resolved with a final
23 judgment or order of dismissal, applications for all professional fees have been heard and all
24 amounts allowed paid, and any final reserves and monies owing have been collected and
25 distributed to creditors.

26 VII. ALTERNATIVES TO THE PLAN.

27 A. General.

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

4 B. Best Interests Test

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

16 C. Analytical Comparison To Chapter 7

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

22 1. Real Property Valuation

23 The Debtor’s appraiser, Hulberg & Associates, has determined that the Center has a
24 value, when combined with the fee interest in its underlying real estate, of more than \$32
25 million. The Debtor holds only an interest under the Ground Leases and is not an owner. The
26 Chapter 7 Trustee therefore has no right to sell the underlying real estate on which the Center is
27 situated.

1 Given a 90-150 days period for marketing and sale which a Chapter 7 trustee typically
2 has, the following conclusions of value have been offered by the appraiser:

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

8 Based on the foregoing no sale of the Center would be possible in the time frame
9 indicated without the consent of the Rajkovich Family.

10 3. Chapter 11 and Chapter 7 Priority Obligations

11 The following is an analysis of the assets of the Debtor and result in a Chapter 7
12 derived from the analysis set forth above:

13	Estate Asset	Amount	Chapter 7 & Chapter	Amount
14			11 Priority and	
15			Administrative	
16			Obligations	
16	Center Real Estate	\$0.00	Chapter 7 Trustee's	<\$ 0>
17	Value		Fees ²	
18	Cash Collateral	\$0.00	Chapter 7 Trustee	<\$ 10,000>
19	Collected		Professionals' Fees	

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

24 ² The fees and expenses of a Chapter 7 trustee are set by statute. 28 U.S.C. section
25 326(a) permits a trustee compensation of 25% of the first \$5,000 administered, 10% of
26 the next \$45,000, 5% of the next \$950,000, and 3% of any amounts in excess of \$1
27 million. Application of that formula to this case would yield a Chapter 7 trustee's fee of
28 \$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	Estate Asset	Amount	Chapter 7 & Chapter	Amount
2			11 Priority and	
3			Administrative	
			Obligations	
4			Chapter 11	<\$150,000>
5			Reorganization	
6			Counsel Fees (Binder	
7			& Malter)	
			Stonebrook Asset	<\$ 50,000>
			Management	
8	TOTAL	\$0.00	TOTAL	<\$ 210,000>

9

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

11 The projected Chapter 7 and Chapter 11 priority liabilities total \$210,000. No assets

12 would be available were this case converted to Chapter 7 to pay any of those sums or anything

13 to holders of unsecured claims. By contrast holders of Class 5 Allowed Claims, who have

14 claims totaling \$822,893.71 (from a review of both the Claims Register and Schedule F) will

15 receive an 8.7% distribution under the Plan. This dividend rises to 25.9 percent should insider

16 and responsible individual Mark Tersini waive or subordinate his claim in the case.

17

18 X. FEASIBILITY

19 The Bankruptcy Code requires a finding that confirmation of the Plan is not likely to be

20 followed by either liquidation or the need for further reorganization. The Debtor's ability to

21 perform this Plan and avoid Plan failure and a Chapter 7 conversion requires them to prove their

22 ability to provide (a) the payments that will be required of them at the Effective Date, (b) the

23 payments that are required of them under the Plan, particularly at the end of the second full year

24 after the Effective Date, and (c) the payments required to complete the Plan.

25

26 The evidence that the Debtor will be able to meet each of the aforementioned

27 obligations is found in four sources: first, the value in the Debtor real estate such that, if sold

1 over time, will yield adequate net proceeds to meet obligations in the Plan; second, the ability of
2 their real estate holdings to generate adequate rent to pay expenses and service debt obligations
3 over the Plan's term based upon current occupancy and expected tenant move-ins; and, third,
4 the ability of the Debtor to acquire either through loans or capital contributions the sums
5 required to perform the Plan.

6 A. Projected Operations Over Plan Term

7
8 Attached hereto as Exhibit "C" are the Debtor's projections for operations through the
9 Plan term. The Debtor commences its projections with rental revenues of \$1,441,115 plus
10 recoverable expenses of \$361,250 for a total of \$1,802,365. Total expenses for the first year of
11 the Plan amount to \$1,781,244. Net profit in year one amounts to \$21,121. Debtor assumes
12 that Subway and Tutti Frutti pay for their own tenant improvements and therefore do not pay
13 rent until rent deductions to pay for those improvements have been recovered. Rent for Tutti
14 Frutti therefore commences in November, 2011. Rent for Subway will not commence until
15 2014.
16

17 In year two Debtor assumes that it will have completed the Rite Aid construction and
18 that payments under the Rite Aid Lease will have commenced - or that Rite Aid has been
19 replaced with another tenant, such as CVS which would pay a higher rent and cost a similar
20 amount for a building completed as a "build to suit." Debtor also assumes the completion of
21 construction on tenant improvements for Woodcraft and Grocery Outlet on lots 9 and 10 results
22 in the commencement of rent in calendar year 2012. It is assumed that a further \$4 million
23 construction expense for each of the last two tenants would be required and that Debtor is able
24 to obtain a loan or loans to make the necessary improvements.
25

26 The Debtor believes these projections to be very conservative. Should the increased
27

1 rents in year two and three not be available for some reason the Debtor is able to make all plan
2 payments during the Plan term from the current levels of rent. All other assumptions are stated
3 within the margins of the projections themselves.

4 B. Projected Increases In Income From Incoming Tenants

5 1. Wells Fargo Move-In and Rent Commencement

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

8 2. Rite Aid Lease.

9
10 The Debtor is a party to the Rite Aid Lease with Thrifty Payless. Thrifty Payless
11 currently occupies a building on Lot 3. Pursuant to the terms of its lease with Thrifty Payless
12 the Debtor built a multi-tenant building for temporary use by Thrifty Payless on Lot 6. Thrifty
13 Payless has not occupied this building on Lot 6 and will not do so until Debtor provides proof
14 that it has financing to build a contracted-for 17,000 square foot permanent Thrifty building on
15 Lot 3. The Debtor would then have to demolish all structures on Lot 3. When the new
16 building on Lot 3 is complete, Thrifty would move-in and rent will commence at the new lease
17 rate of \$33,333.33 per month. The Rite Aid Lease may be rejected as it contains restrictive
18 covenants that interfere with the ability of the Debtor to lease the rest of the Center's
19 unoccupied space.
20

21 The Debtor has been negotiating to secure \$4 million in needed construction financing,
22 complete the structure, and meet its lease obligations to Thrifty Payless to retain it as a tenant.
23 Recently one prominent bank indicated preliminarily that it may be willing on various conditons
24 including collateralization of debt of a principal to the bank to provide some or all of this
25 financing on condition that additional security be provided for related debt. As there is no loan
26
27

1 commitment yet, negotiation and formal credit approval would first have to occur.

2 3. Other Tenants

3 The Debtor is in negotiations and is exchanging lease drafts with Grocery Outlet and
4 Woodcraft for portions of the buildings on Lot 9 and Lot 10, respectively. Debtor also has a
5 signed letter of intent from Potter-Taylor to locate a Wal-Mart in the existing building on Lot 9
6 under which the tenant would construct and finance all shell and interior improvements. The
7 letter of intent was scheduled to be approved by that entity's Real Estate Committee on July 12,
8 2010. The increased rent for these tenants is included in Exhibit "A" hereto.

9
10 C. Residential Land Sale

11 The Debtor has signed a purchase and sale agreement with K Hovnanian for the sale of
12 lot 1, 2 and a portion of lot 3. The buyer is to close on said parcel upon receipt of a plan
13 development permit and tentative map. This entitlement process is expected to take 6 months to
14 complete and will create a new 2.32 acre parcel. The Debtor has also received several letter of
15 intent from private and public builders alike.

16
17 D. Ability Of Debtor To Acquire Necessary Funds/Hard Money Loan

18 The Debtor has received a proposal for financing that would satisfy all of its obligations
19 to secured claimants other than the Trust and allow it to dismiss this Bankruptcy Case. Debtor
20 would receive from George Elkins Bank a loan of \$16 million which would be used to satisfy
21 the obligations owing to FHB, Heritage Bank, and Chase Bank. The balance of funds would be
22 used to complete the construction of the new building for Rite Aid, the tenant improvements for
23 Woodcraft and Grocery Outlet, and preparation of the residential land for sale. The terms of the
24 loan are as follows: the amount would be \$16 million. The term would be 24 months. The rate
25 would be 11% interest only. Signed leases would be required from both Grocery Outlet and
26
27

1 Woodcraft. The loan would be non-recourse as to the Rajkovich Family. A formal letter of
2 intent is in process, and the close would be 45-60 days from the opening of escrow. Under this
3 option the Trust would retain its lien unless and until there was a further disposition of the
4 Center or refinance.

5 E. Efforts At Sale Of Center

6 The Debtor is proceeding simultaneously with its efforts, in conjunction with the
7 Rajkovich Family, to sell the Center. The Debtor hopes to sell the Center in two parts and
8 dismiss this Chapter 11 case concurrently with the closing of escrow of either sale as both sales
9 provide sufficient net proceeds to pay all secured claims other than that of the Trust in full. The
10 sales are as follows:

11
12 i. LaBarbera Offer. The Debtor is in contract to sell the majority of the
13 Center to Michael T. LaBarbera for \$17 million³. The sale contract, executed November 18,
14 2010, contained a 60-day "Study Period" for buyer to determine the financial viability of the
15 purchase for him. That period was to have expired on January 7, 2011. The buyer, however,
16 requested an extension of the period to February 25, 2011, which the Debtor granted in a First
17

18
19 ³ Debtor's counsel makes the following disclosure of a connection with Mr. LaBarbera: Binder &
20 Malter, LLP represents Terracommercial Management Corporation as a creditor and property
21 manager on behalf of property owner Anthony G. Pierce in the chapter 7 bankruptcy case of Gary
22 L. Newton. #09-51597-SLJ in which Mr. Pierce's lease was rejected and it has filed proofs of claim
23 on behalf of Terracommercial. Mr. Michael Labarbera is a principal of Terracommercial. The firm
24 has never represented Mr. LaBarbera individually.

25 Binder & Malter LLP also represented FACCHINO/LA BARBERA BERNAL PLAZA in the chapter
26 11 case of In re Ritz Camera Centers, Inc., Bk. Delaware 09-10617 (MFW). Mr. LaBarbera is a
27 partial owner of FACCHINO/LA BARBERA BERNAL PLAZA which is a former landlord of that
28 debtor and holds a Proof of Claim against the debtor in that case. Representation concluded in
June 2010 with receipt of a distribution on the allowed proof of claim.
In the past, Binder & Malter LLP has represented Terracommercial as a creditor and property
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 Amendment To Agreement For Purchase And Sale Of Real Property. The amendment fixes the
2 required date for close of escrow as March 5, 2011.

3 ii. Hovnanian Homes Offer. On December 8, 2010, the Debtor entered into
4 a Purchase and Sale Agreement and Escrow Instructions with K. Hovnanian Homes Northern
5 California, Inc. to purchase two existing lots at the Center totaling 2.173 acres (the "Residential
6 Parcel"). The purchase price is \$8,250,000 subject to a possible reduction to a sum as low as
7 \$7,650,000. January 8, 2011, was the date for performance by buyer to have commenced.
8 Buyer approached the Debtor and indicated that it was not ready to proceed without approval of
9 a final map for the Residential Parcel. Obtaining a final map will take roughly three additional
10 months. Debtor and buyer are negotiating changes to the sale agreement which include an
11 increase in deposits, making the deposits non-refundable sooner, setting a January 31 date for
12 the completion of due diligence, and increasing the floor price for purchase. This sale is not
13 projected, under the new schedule envisioned, until some time in October, 2011.

14
15
16 iii. Regency Center Offer. The Debtor has also been in negotiations with
17 Regency Center for either an outright purchase or joint venture to purchase the Center.
18 Regency's proposed purchase price for the Center and underlying land exclusive of the
19 Residential Parcel is \$22,100,000. The Debtor would explicitly be permitted to sell the
20 Residential Portion of the Center separately which, as set forth above, is projected to generate
21 \$8,250,000. Sale of the Center and land underlying it would therefore generate \$30,350,000.
22 From these proceeds the Debtor would pay in full the obligations owing to FHB, Heritage Bank,
23 Chase Bank, the Trust, and unsecured claimants. \$13,595,000 in potential equity, at least, would
24 remain under this option for the members of the Debtor. Negotiations have reached the letter of
25 intent stage. A 60-day due diligence period would be followed by a 180-day close.
26
27

1 XI. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

2 THE FOLLOWING IS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME
3 TAX CONSEQUENCES OF THE PLAN THAT MAY BE MATERIAL TO CREDITORS (EACH A
4 "HOLDER" AS REFERRED TO IN THIS ARTICLE). THIS DISCUSSION IS INCLUDED FOR
5 GENERAL INFORMATION PURPOSES ONLY AND IS NOT INTENDED TO BE, AND IS NOT,
6 LEGAL OR TAX ADVICE TO ANY PARTICULAR HOLDER. THIS SUMMARY IS BASED ON
7 THE CURRENT PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED
8 (THE "CODE" AS REFERRED TO IN THIS ARTICLE), THE INCOME TAX REGULATIONS (THE
9 "REGULATIONS") AND OTHER LEGAL AUTHORITIES, ALL OF WHICH ARE SUBJECT TO
10 CHANGE, POSSIBLY WITH RETROACTIVE EFFECT. NO RULINGS FROM THE INTERNAL
11 REVENUE SERVICE (THE "IRS") OR OPINIONS OF COUNSEL HAVE BEEN OR WILL BE
12 REQUESTED CONCERNING THE MATTERS DISCUSSED BELOW. THE TAX CONSEQUENCES
13 SET FORTH IN THE FOLLOWING DISCUSSION ARE NOT BINDING ON THE IRS OR THE
14 COURTS, AND NO ASSURANCE CAN BE GIVEN THAT CONTRARY POSITIONS WILL NOT
15 BE SUCCESSFULLY ASSERTED BY THE IRS OR ADOPTED BY A COURT.

16 THIS SUMMARY DOES NOT ADDRESS STATE OR FEDERAL INCOME TAX
17 CONSEQUENCES TO INTEREST HOLDERS.

18 THE FOLLOWING DISCUSSION DOES NOT APPLY TO CERTAIN HOLDERS WHO,
19 DUE TO THEIR PARTICULAR CIRCUMSTANCES, MAY BE SUBJECT TO SPECIAL RULES.
20 THOSE HOLDERS INCLUDE HOLDERS WHO ARE DEALERS IN SECURITIES, FINANCIAL
21 INSTITUTIONS, INSURANCE COMPANIES, TAX-EXEMPT ORGANIZATIONS, OR FOREIGN
22 PERSONS.

23
24 A. IRS Circular 230.

25 TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230,
26 HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES
27 IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON,

1 AND CANNOT BE RELIED UPON BY HOLDERS FOR THE PURPOSE OF AVOIDING
2 PENALTIES THAT MAY BE IMPOSED ON HOLDERS UNDER THE INTERNAL REVENUE
3 CODE; (B) SUCH DISCUSSION IS INCLUDED HEREIN BY DEBTOR IN CONNECTION WITH
4 THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY
5 DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS
6 SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN
7 INDEPENDENT TAX ADVISOR.

8 EACH HOLDER SHOULD CONSULT THE HOLDER'S OWN TAX ADVISOR TO
9 DETERMINE THE HOLDER'S PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES
10 AND OTHER TAX CONSEQUENCES TO THE HOLDER OF THE PLAN, INCLUDING ANY
11 STATE, LOCAL AND FOREIGN TAX LAWS AND THE EFFECT OF ANY CHANGES IN SUCH
12 LAWS.

13 B. Consequences to Debtor.

14 In general, the Code provides that a debtor in a bankruptcy case is not taxable on cancellation of
15 debt ("COD") income, but must release certain of its tax attributes (such as its net operating loss
16 ("NOL") carry forwards and its tax basis in its assets) by the amount of COD income. COD income
17 results when the amount of debt discharged exceeds the consideration given in exchange therefore, and
18 is equal to such excess amount. Notwithstanding the absence of a bankruptcy discharge, it is likely that a
19 cancellation of debt will be deemed to have occurred on the Effective Date. Any reduction in tax
20 attributes does not occur, however until the end of the taxable year or, in the case of asset basis
21 reduction, the first day of the taxable year following the taxable year in which the COD is incurred.

22 C. Consequences to Creditors.

23 Generally, any amount received by a Creditor in satisfaction of an Allowed Claim, to the extent
24 such amount constitutes "gross income" within the meaning of Section 61 of the Code, will be taxable to
25 the Creditor in accordance with the Creditors method of accounting, if not previously included in the
26 Creditor's gross income. This would include, for example, payments of interest, rent or compensation for
27

1 services. If a Creditor previously reported as taxable income, their respective Allowed Claim then the
2 unpaid portion of the previously reported taxable income would be deductible as a business bad debt. A
3 Creditor may be subject to regular income tax withholding or backup withholding, as described below,
4 with respect to such payments. Creditors should consult with their own tax advisors as to the character
5 and timing of recognition of any gain, loss or deduction they are planning to include in their tax return.

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

9 Each Creditor who receives cash in partial or complete satisfaction of the Creditor's Claim will
10 recognize gain or loss equal to the difference between the amount of cash received and the Creditor's tax
11 basis in the Creditor's Claim. Gain may be recognized, for example, by a Creditor who acquired a Claim
12 at a discount or who previously reported a bad debt deduction or worthless security loss with respect to
13 all or a portion of the Claim. Generally, any gain recognized will be considered capital gain if the Claim
14 is held as a capital asset, and generally will be ordinary income if the Claim is not held as a capital asset.
15 Capital gain will generally be long-term capital gain if the Claim has been held for more than 12 months.
16 Creditors should consult with their own tax advisors as to the character and timing of recognition of any
17 gain, loss or deduction they are planning to include in their tax return. Any loss will generally be a
18 capital loss if the Claim is a capital asset and if the payment is deemed a "retirement" of the Claim within
19 the meaning of Section 1271 of the Code. A Creditor who receives no payment with respect to a Claim
20 (and a Creditor who receives a payment which is not a "retirement" and incurs a loss) should generally
21 be able to claim a bad debt deduction to the extent of the Creditors tax basis in the Claim (or, in the case
22 of a Creditor receiving a payment, the excess of the tax basis in the Claim over the payment received). A
23 Creditor who holds a Claim as a non-business bad debt and who is not a corporate Creditor will
24 generally only be able to claim a short-term capital loss with respect to such Claim. A Creditor who
25 holds a Claim which is a "security" as defined in Section 165(g) of the Code will generally only be able
26 to claim a capital loss rather than a bad debt deduction. Limitations apply to the ability to deduct capital
27

1 losses. Creditors should consult with their own tax advisors as to the character and timing of recognition
2 of any gain, loss or deduction they are planning to include in their own tax returns.

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

7 XII. DISCLOSURE OF MANAGEMENT COMPENSATION

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

16 XIII. CONFIRMATION STANDARDS.

17 A. Voting.

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

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

24 B. Confirmation Standards.

25 For the Plan to be confirmed and binding on all creditors and shareholders, the Court must
26 determine that the following requirements under Sections 1129(a)(1) through (12) of the Bankruptcy
27

1 Code has been satisfied:

- 2 1. The Plan complies with the provisions of the Code;
- 3 2. The Plan proponent (the “Debtor”) has complied with the provisions of the
4 Code;
- 5 3. The Plan has been proposed in good faith and not by any means forbidden by
6 law;
- 7 4. Any payment made or to be made by the Debtor for services or costs in
8 connection with the Bankruptcy Case has been or will be subject to approval by the Court as reason-
9 able;
- 10 5. The Debtor has disclosed the identity of any individual to serve after
11 Confirmation as an officer or director;
- 12 6. Any rate change provided for the Plan has been or subject to approval by the
13 regulatory commission with jurisdiction over such rates, if any;
- 14 7. The holder of each claim or interest in each class of impaired claims or interest
15 has accepted the Plan or will receive under the Plan not less than the holder would receive if Debtor’s
16 estate were liquidated under Chapter 7 of the Code;
- 17 8. Each class of claims or interest has accepted or is not impaired by the Plan;
- 18 9. Holders of allowed claims entitled to administrative priority under the Code will
19 receive Cash in the full amount of their claims on the Effective Date, unless the holder thereof agrees to
20 a different treatment;
- 21 10. At least one impaired class of claims is accepting the Plan;
- 22 11. Confirmation is not likely to be followed by liquidation or further
23 reorganization of the Debtor unless such liquidation or reorganization of Debtor’s property is proposed
24 in the Plan;
- 25 12. All fees payable to the U.S. Trustee under 11 U.S.C. §1930 have been paid or
26 the Plan provides for the payment of such fees;
- 27
- 28

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

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

5 C. Modification.

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

14 XIV. CONCLUSION.

15 A. Effect of Confirmation.

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

17 B. Recommendation.

18 This Disclosure Statement has been presented for the purpose of enabling you to make an
19 informed judgment to accept or reject the Plan. You are urged to read the Plan in full and consult with
20 counsel if you have questions. The Debtor believes that acceptance of the Plan is in the best interest of
21 all creditors, and will provide the best recovery in this Bankruptcy Case.

22 Dated: January 14, 2011

HACIENDA GARDENS, LLC

24 By: /s/ Mark Tersini

25 Mark Tersini

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Dated: January 14, 2011

BINDER & MALTER, LLP

By: /s/ Robert G. Harris

Robert G. Harris

Attorneys for Debtor

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DEBTOR'S DISCLOSURE STATEMENT

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