

1 **BURCH & CRACCHIOLO, P.A.**

2 702 East Osborn Road
3 Phoenix, Arizona 85014
4 Telephone (602)234-8762
5 Facsimile (602) 850-9762
6 hmeyers@bcattorneys.com

7 Howard C. Meyers, SBA #005007

8 Attorneys for Timothy Ray Wright

9
10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 TIMOTHY RAY WRIGHT,

14 Debtor.

Chapter 11 Proceedings

Case No. 2:09-bk-32244-SSC

15
16
17 **DISCLOSURE STATEMENT TO ACCOMPANY THE**
18 **DEBTOR'S FIRST PLAN OF REORGANIZATION**

19
20 **(Revised as of July 8, 2010)**
21
22
23
24
25
26

1 **I. INTRODUCTION**

2 Timothy Ray Wright ("Wright" or the "Debtor") Debtor and Debtor in
3 Possession in the above-captioned and numbered Chapter 11 case has prepared
4 this Disclosure Statement (hereinafter the "Disclosure Statement") to solicit
5 acceptances of his First Plan of Reorganization (the "Plan") filed with the United
6 States Bankruptcy Court for the District of Arizona. The Plan is attached hereto
7 as Exhibit 1.
8

9 **A. PURPOSE OF THE DISCLOSURE STATEMENT**

10 Debtor is disseminating this Disclosure Statement pursuant to Section 1125
11 of the Bankruptcy Code to provide holders of claims against and interests in the
12 Debtor with sufficient information to permit them to cast votes to accept or reject
13 the Plan. The Bankruptcy Court has approved this Disclosure Statement for use
14 in connection with this process and has also established deadlines for the casting
15 of ballots on the Plan and for estimating claims. These dates are set forth on the
16 Order and Notice sent with this Disclosure Statement.
17

18 **B. VOTING ON PLAN AND ELECTION OF TREATMENT.**

19 The Plan provides that each Claim against, or Interest in, the Debtor will be
20 placed into one of several Classes. The Plan also specifies the treatment
21 provided for each such Class. The Classes and their treatment are described in
22 the Plan and below, in Section IV. Only holders of Claims or Interests in Classes
23 that are "impaired" under the Plan are entitled to vote on the Plan.
24

25 If a holder of a Claim or Interest is entitled to vote, such holder may do so
26

1 by completing and delivering the accompanying ballot form in the manner and
2 within the time specified in the accompanying notice. If you are a holder of a
3 Claim or Interest entitled to vote, your vote on the Plan is important.
4

5 **C. OVERVIEW OF THE DISCLOSURE STATEMENT.**

6 This Disclosure Statement is designed to afford creditors and holders of
7 equity interests in the Debtor with adequate information to make an informed
8 judgment about the Plan. Creditors and Interest holders are urged to read the
9 Plan in its entirety. In the event of a conflict between the Plan and the Disclosure
10 Statement, the terms of the Plan, and the order of the Bankruptcy Court
11 confirming the Plan, shall control.
12

13 The Disclosure Statement provides historical information regarding the
14 Debtor's businesses, assets and liabilities, and the circumstances surrounding the
15 filing of the bankruptcy proceeding. The Disclosure Statement summarizes
16 developments during the course of this Chapter 11 case. The Disclosure
17 Statement summarizes the provisions of the Plan, including the classification and
18 treatment of Claims and Interests. The Disclosure Statement contains financial
19 information regarding the Debtor. The Disclosure Statement identifies the current
20 and intended future business operations of the Debtor. The Disclosure Statement
21 discusses the legal requirements for the confirmation of the Plan. The Disclosure
22 Statement discusses the tax aspects of the Plan. The Disclosure Statement also
23 addresses other material information and disclosures relative to the Plan.
24
25
26

1 **D. DEFINITIONS**

2 Most words or phrases used in this Disclosure Statement have their usual
3 and customary meanings. Words or phrases with initial capital letters have the
4 definitions set forth in the Plan or in the Bankruptcy Code.
5

6 **E. MATTERS MERITING SPECIAL ATTENTION.**

7 Creditors and other interested parties are urged to read the entire
8 Disclosure Statement and the Plan. The following matters are considered of
9 special importance:

10 **DEADLINE FOR SUBMITTING BALLOTS**

11 **EXECUTED BALLOTS MUST BE RECEIVED NO LATER THAN 5:00**
12
13 **P.M., MOUNTAIN STANDARD TIME ON THE DUE DATE SET BY THE COURT.**
14 **SINCE MAIL DELAYS MAY OCCUR, BALLOTS SHOULD BE MAILED OR**
15 **DELIVERED WELL IN ADVANCE OF THE SPECIFIED DATE. ANY BALLOTS**
16 **RECEIVED AFTER THE DUE DATE MAY NOT BE INCLUDED IN ANY**
17 **CALCULATION TO DETERMINE WHETHER CREDITORS HAVE VOTED TO**
18 **ACCEPT OR REJECT THE PLAN.**
19

20 **VOTING AND IMPAIRMENT**

21 **THE PLAN AND THIS DISCLOSURE STATEMENT IDENTIFY DEBTOR'S**
22 **JUDGMENT AS TO WHETHER EACH CLASS OF CLAIMS OR INTERESTS IS**
23 **"IMPAIRED" UNDER THE BANKRUPTCY CODE, BUT THE COURT**
24 **ULTIMATELY DETERMINES WHETHER A CLASS IS IMPAIRED. THE**
25
26

1 BANKRUPTCY CODE PROVIDES THAT CLAIMS OR INTERESTS IN A CLASS
2 THAT IS NOT IMPAIRED SHALL BE CONCLUSIVELY DEEMED TO ACCEPT
3 THE PLAN. ACCORDINGLY, IF YOU DISAGREE WITH DEBTOR'S
4 JUDGMENT THAT YOUR CLASS IS NOT IMPAIRED, YOU SHOULD SUBMIT
5 A BALLOT AND SEEK A DETERMINATION BY THE COURT OF YOUR RIGHT
6 TO VOTE ON THE PLAN.
7

8 IMPORTANCE OF VOTE

9 YOUR VOTE IS IMPORTANT AND MAY DETERMINE WHETHER THE
10 PLAN IS CONFIRMED. YOU ARE URGED TO STUDY THE PLAN
11 CAREFULLY AND TO CONSULT WITH YOUR COUNSEL ABOUT ITS
12 IMPACT UPON YOUR LEGAL RIGHTS BEFORE VOTING.
13

14 HEARING ON CONFIRMATION OF PLAN

15 THE BANKRUPTCY COURT WILL HOLD A HEARING ON
16 CONFIRMATION OF THE PLAN COMMENCING AT THE TIME AND PLACE
17 STATED IN THE ACCOMPANYING ORDER AND NOTICE. THE HEARING
18 MAY BE CONTINUED FROM TIME TO TIME THEREAFTER WITHOUT
19 FURTHER NOTICE EXCEPT AS GIVEN IN OPEN COURT.
20

21 CONFIRMATION ORDER NECESSARY FOR PLAN TO BE EFFECTIVE

22 THE PLAN SHALL NOT BE EFFECTIVE UNLESS THE COURT ENTERS
23 AN ORDER CONFIRMING THE PLAN.
24

25 NO OTHER REPRESENTATIONS AUTHORIZED

26 NO REPRESENTATIONS CONCERNING DEBTOR OR THE PLAN ARE

1 AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE
2 STATEMENT. YOU SHOULD NOT RELY ON ANY ADDITIONAL
3 REPRESENTATIONS OR INDUCEMENTS TO SECURE YOUR VOTE ON THE
4 PLAN.
5

6 ABSENCE OF AUDITED FINANCIAL INFORMATION

7 THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN
8 SUBJECTED TO A CERTIFIED AUDIT. SUCH INFORMATION AND OTHER
9 STATEMENTS ARE BASED UPON DEBTOR'S BOOKS AND RECORDS AND
10 THE ESTIMATES AND ASSUMPTIONS STATED. ALL INFORMATION IS
11 ACCURATE TO THE BEST KNOWLEDGE, INFORMATION AND BELIEF OF
12 DEBTOR, ALTHOUGH THE DEBTOR IS UNABLE TO WARRANT THAT NO
13 INACCURACIES EXIST.
14

15 NO OBLIGATION TO SUPPLEMENT

16
17 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT
18 ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS
19 SPECIFIED HEREIN. NEITHER DELIVERY OF THIS DISCLOSURE
20 STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION
21 WITH THE PLAN SHALL UNDER ANY CIRCUMSTANCES CREATE AN
22 IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION
23 SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE STATEMENT
24 AND THE MATERIAL RELIED UPON IN PREPARATION OF THIS
25
26

1 DISCLOSURE STATEMENT WERE COMPILED. DEBTOR ASSUMES NO
2 DUTY TO UPDATE OR SUPPLEMENT THE DISCLOSURES CONTAINED
3 HEREIN AND DOES NOT INTEND TO UPDATE OR SUPPLEMENT THE
4 DISCLOSURES.
5

6 **NO INDEPENDENT VERIFICATION BY COURT**

7 THE COURT HAS NOT VERIFIED THE ACCURACY OF THE
8 INFORMATION, AND THE COURT'S APPROVAL OF THIS DISCLOSURE
9 STATEMENT MEANS ONLY THAT, IF THE INFORMATION IS ACCURATE, IT
10 IS SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS AND
11 INTEREST HOLDERS TO MAKE INFORMED DECISIONS WHETHER TO
12 ACCEPT OR REJECT THE PLAN.
13

14 **NO SEC APPROVAL**

15 THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR
16 DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR
17 HAS THE COMMISSION PASSED ON THE ACCURACY OR ADEQUACY OF
18 THE STATEMENTS IN IT.
19

20 **F. OVERVIEW.**

21 **1. Background to the Reorganization.**

22 **a. Debtor's Biographical information.**

23
24 The Debtor was born on October 23, 1962 , in Juneau, Alaska. He is 47
25 years old. The Debtor graduated from high school in Okemos, Michigan. In the
26

1 1980s, the Debtor attended Michigan State University in Lansing, Michigan, for
2 one year where he studied a business and accounting curriculum and Arizona
3 State University in Tempe, Arizona, for 2 ½ years where he studied a finance and
4 accounting curriculum. The Debtor also lived in Europe where he studied Italian.

5
6 From 1984 through 1994, the Debtor worked as an account executive for
7 the Wilhelm Advertising Agency based in the firm's Los Angeles, California, office
8 but working on accounts throughout the United States and Europe. Starting in
9 1986, the Debtor started buying houses with his first such acquisition being
10 located in Hawaii. This part-time activity ultimately led the Debtor into the real
11 estate investment and rental field.
12

13 Starting in 1995, the Debtor left the advertising field and relocated to
14 Tempe, Arizona, for family reasons. At this time, he began to segue into real
15 estate investment on a full time basis specializing primarily in single family and
16 small multi-tenant properties in Tempe, Arizona. Because some of his properties
17 were in condominium projects subject to Conditions, Covenants and Restrictions
18 (hereafter "CC&Rs") and Home Owner's Associations (hereafter "HOAs") created
19 under the CC&Rs and horizontal property regimes, the Debtor became
20 knowledgeable about HOAs and served as a board member of certain HOAs to
21 protect his interests as an owner of units subject to the CC&Rs and HOAs. At his
22 peak, the Debtor owned upwards of 200 separate properties but the number rose
23 and fell from time to time. For instance, in 2003 and 2004, the Debtor sold 50
24 properties. At the time of the Chapter 11 filing, the Debtor owned approximately
25
26

1 160 separate parcels of real property.

2 **b. Financial Information Concerning the Debtor's**
3 **Business Operations**

4 Financial information relative to the Debtor's pre-petition business
5 operations for the five (5) calendar years from January 1, 2005, through
6 December 13, 2009, are essentially encapsulated in the Debtor's Form 1040 U.S.
7 Individual Income Tax Returns, true and correct excerpts of which are annexed
8 hereto as Exhibit "A" and incorporated by this reference which are as follows:
9 Exhibit "A-1" for 2005; Exhibit "A-2" for 2006; Exhibit "A-3" for 2007; Exhibit "A-4"
10 for 2008; and Exhibit "A-5" for 2009 from January 1, 2009, up to and through
11 December 13, 2009¹ (hereafter "Tax Returns"). The excerpts from the Tax
12 Returns are from the Debtor's actual income tax returns as filed with the Internal
13 Revenue Service except (a) social security numbers and other similar numbers
14 have been redacted to minimize the possibility of identity theft or other misuse;
15 and (b) the excerpts for the 2009 return are from a draft return prepared by
16 Westling & Eldridge, P.C. of Scottsdale, Arizona, which is under review but which
17 has not yet been filed with the Internal Revenue Service. The reason that
18 excerpts are used is that the individual returns themselves are very voluminous
19
20
21

22 ¹ Pursuant to Internal Revenue Code § 1398, the Debtor made a short year
23 election. Individual debtors may elect to close their taxable year as of the day
24 before the date bankruptcy commences. This election is available to individuals
25 in Chapter 11 cases such as the Debtor. Accordingly, the Debtor's taxable year
26 for calendar 2009 is divided into two "short" taxable years. The first "short" year
is from January 1 through December 13, 2009 (the day immediately prior to the
Petition Date). The second "short" year from December 14 (the Petition Date)
through December 31, 2009.

1 and it is not feasible for the returns in their entirety to be annexed as exhibits
2 hereto.²

3 The following is a summary of relevant information contained in the
4 Debtor's Form 1040 U.S. Individual Income Tax Returns for the time periods from
5 2005 through 2009 described above:
6

7 Year	Rents Received	Mortgage Interest Paid to Lenders	Expenses
8 2005	1,856,697	991,413	881,262
9 2006	2,281,023	1,196,927	532,554
10 2007	2,951,958	1,763,244	555,316
11 2008	2,853,356	2,297,855	925,660
12 2009	2,640,035	1,036,034 ³	1,030,595

13
14 The following is a summary of the depreciation reflected in the Tax Returns:

15 Year	Depreciation Expense
16 2005	502,879
17 2006	555,525
18 2007	731,466
19 2008	908,000
20 2009	857,780

21
22 ² By way of illustration, the 2008 Form 1040 of the Debtor is 158 pages
23 long. Annexing copies of all of the Debtor's Form 1040 U.S. Individual Income Tax
24 Returns for the period of 2005 through 2009 would literally require that hundreds
of pages be annexed to this Disclosure Statement.

25 ³ The Debtor went into default on many of his loan obligations in July, 2009.
26 This had the effect of reducing the amount of interest paid reportable with respect
to his 2009 income tax return.

1 The following is a summary of the adjusted gross income reflected in the
2 Tax Returns:

3 Year	Adjusted Gross Income
4 2005	771,125
5 2006	8,228
6 2007	(77,053)
7 2008	(1,167,859)
8 2009	(1,224,104)

9
10 The number of properties, the specific properties and the financing relative
11 to the specific properties varied from year to year so one calendar year cannot be
12 directly compared to another calendar year because of these variations.

13 **c. Market Conditions Which Precipitated the Chapter 11**
14 **Filing**

15 The instant Chapter 11 resulted from a combination of national and local
16 economic conditions. The Debtor's long time investment strategy focused upon
17 the acquisition, ownership and sale of single family residences, condominium
18 units and small multi-family properties. As of the few years immediately prior to
19 the Chapter 11 filing, the geographic focus of the Debtor's investment properties
20 were largely concentrated in and around the areas in close proximity to Arizona
21 State University (ASU) in Tempe, Arizona, a major suburb of Phoenix to take
22 advantage of high demand among persons connected with the ASU community
23 or persons who wanted to live in proximity to Mill Avenue, a major employment
24 and entertainment venue in Downtown Tempe. The Debtor's other areas of
25
26

1 geographic focus were (a) Paradise Valley, Arizona, a premier suburb not only of
2 the Phoenix Metropolitan area but also nationally, which had minimum one (1)
3 acre zoning; and (b) Encinitas, California, a beach town in northern San Diego
4 County, California, which has been in the process of gentrification characterized
5 by significant redevelopment and upgrading such as the entry of Whole Foods
6 into the neighborhood in which the Debtor's holdings are located.
7

8 To cushion himself from the ups and downs of the real estate cycle, the
9 Debtor also developed a stock market portfolio of significant proportions. This was
10 intended to afford him with liquidity separate and apart from the cash flow of his
11 real estate holdings.
12

13 In 2007, a national and local recession took hold of significant
14 consequence. This recession had a profound impact on the Debtor's real estate
15 holdings. For example, historically the Debtor had maintained occupancy factors
16 at 97% or above in most years. As of the time of the filing, the Debtor's occupancy
17 factor had dropped to approximately between 87% and 88%.
18

19 The recession also had an impact on rent levels as well as on occupancy
20 rates. Due to serious job loss in Phoenix, attendance at ASU went down affecting
21 demand for the Tempe properties. Students who were normally prime tenants of
22 the Debtor were either living at home instead of moving near school or doubling
23 up with roommates, thus reducing the demand for units. Other competing
24 landlords cut rents and tenants were more cautious about the level of rent they
25 could afford in an uncertain economic time. The market rentals for the Debtor's
26

1 units went down.

2 Historically, the Debtor could count on the relative ease of selling or
3 refinancing single family residences. However, as the recession went on, market
4 prices slid at least on a temporary or situational basis to below the amount of the
5 existing loans on many of the Debtor's properties. This made selling or refinancing
6 extremely problematic.
7

8 Adverse economic conditions caused the Debtor's stock market portfolio to
9 seriously decline in value. For example, but without limitation, the Debtor had
10 228,213 shares of stock in the publicly traded P.F. Changs restaurant chain with
11 a total cost basis of \$10,037,852. In 2008, these shares of stock were sold by the
12 Debtor for \$4,262,060.00 resulting in a capital loss of -\$5,775,792.00 reflected in
13 the Debtor's 2008 Schedule D - Capital Gains and Losses (See Exhibit "A-3"
14 annexed hereto). The Debtor experienced other sizeable losses and gradually
15 liquidated his stock market portfolio and devoted the funds to his real estate
16 business.
17

18 By the second half of 2009, the Debtor was having serious financial
19 problems which were mirrored by the entirety of the real estate and real estate
20 finance industries. These problems were generated due to the external market
21 conditions and not the overall business model of the Debtor which had been
22 successful for a period of at least 20 years prior to the extraordinary recession
23 which befell the national and local economies.
24

25 The Debtor sought nonbankruptcy workouts with his various lenders, most
26

1 of whom had granted the Debtor primarily residential deed of trust loans as
2 distinguished from commercial loans. Many of this lenders advised the Debtor that
3 they could not speak with him about a workout unless and until he went into
4 default of the loans. From July, 2009, to the Petition Date, the Debtor strove to
5 avoid bankruptcy but he was unable to achieve the level of workout resolution
6 necessary to avert the necessity of filing. At the time of the Petition Date, the
7 Debtor had many pending deed of trust sales in prospect.

9 **d. Service as Debtor In Possession**

10 Since the Chapter 11 filing on December 14, 2009, the Debtor has been
11 operating his business and managing his assets as a debtor-in-possession in
12 accordance with 11 U.S.C. §§ 1107 and 1108. Pursuant to 11 U.S.C. § 363(c)(1),
13 the Debtor is engaged in the rental of residential real property in the ordinary
14 course of his long standing business.

16 **2. Funding for the Plan and Plan Projections.**

17 The Debtor has total deposits in bank accounts as of April 30, 2010, of
18 \$2,150,640.87 (discussed *infra*). In addition to using these funds, the Debtor shall
19 continue to operate his business affairs in such a manner as to ensure that the
20 Debtor can adhere to the requirements of the Plan. Funds to be used to make
21 payments under the Plan shall derive from the following sources: (a) operation of
22 the business prior to the Effective Date including the collection of rents on the
23 Debtor's real properties leased to third-party tenants; (b) the operation of the
24 Debtor's business on and after the Effective Date including the collection of rents
25
26

1 on the Debtor's real properties leased to third-party tenants; (c) the sale of real
2 property in the ordinary course of the Debtor's business on and after the Effective
3 Date; (d) the refinancing of real property in the ordinary course of the Debtor's
4 business on and after the Effective Date; and (e) the enforcement of the Debtor's
5 rights as a creditor against debtor tenants and other debtors owing money to the
6 Debtor.
7

8 The Debtor in conjunction with David Birdsell, the duly appointed
9 accountant for the estate, has prepared a Five Year Pro-Forma Income/Expense
10 & Cash Flow Commencing June 1, 2010, which is annexed hereto as Exhibit "B"
11 and incorporated by this reference as if fully set forth herein (hereafter "Pro-
12 Forma"). You are urged to carefully review and analyze the Pro-Forma and the
13 Notes to the Pro-Forma entitled "Assumptions to Pro-Forma Cash Flow
14 Projections" which states the predicates upon which the Pro-Forma is based.
15

16 3. Treatment of Claims.

17 The Plan classifies claims in accordance with the provisions of the
18 Bankruptcy Code based upon priority, security and other factors. A true and
19 correct copy of the Debtor's Summary of Schedules is annexed hereto as Exhibit
20 "C" and incorporated by this reference (hereafter "Summary").
21

22 The Summary reflects the following assets:

23

24 Real Property	36,665,900.00
25 Personal Property	1,977,840.76
26 Total	41,643,740.76

1 The Summary reflects the following liabilities:

2 Creditors Holding Secured Claims	43,255,355.48
3 Creditors Holding Unsecured	224,340.04
4 Nonpriority Claims	
5 Total	43,477,695.52

6 Due to adjustments which were made from the books and records of the
7 Debtor after the Statement of Affairs and Schedules were constructed to reflect
8 the foreclosure of the two (2) MidFirst properties which had a total secured debt
9 of approximately \$3,000,000.00, the Pro-Forma is based upon a beginning
10 secured debt of \$40,255,355.00.

12 Significant additional detail on assets and liabilities of the Debtor is
13 contained in the Plan. The Plan should be consulted for this detail which is too
14 voluminous to be repeated herein. The real property valuations reflected in the
15 Schedules and the Plan for properties located in Maricopa County, Arizona, are
16 substantiated by written appraisals prepared in close proximity to the December
17 14, 2009, Chapter 11 filing date by appraisers licensed by the Arizona State
18 Board of Appraisal. The real property valuations reflected in the Schedules and
19 the Plan for the small pool of properties located in the City of Encinitas, San Diego
20 County, California, are the owner valuations of the Debtor based upon his
21 personal knowledge of that market place based upon many years of buying,
22 selling and leasing properties in the City of Encinitas and his current ownership
23 and leasing of multiple properties within the City of Encinitas. The real property
24
25
26

1 valuations contained in the Plan represent the position of the Debtor as to the
2 value of the individual real properties based upon said appraisals and owner
3 valuations. Each secured creditor is free to dispute these valuations with appraisal
4 evidence of their own.

5
6 The Plan details these classes and their treatments. In addition, while the
7 Debtor does not know of the existence of claims in certain other class categories,
8 the Plan provides for the treatment of these other class categories in the event
9 such claims arise. The following is a brief summary of the Plan and is not intended
10 to substitute for a careful reading of the Plan:

11
12 **a. Priority Claims.**

13 In accordance with the requirements for plan confirmation set forth in
14 §1129(a)(9), the Plan provides for the payment in full of all Priority Claims, as
15 follows:

16 **Class 1.A. Administrative Claims.**

17 **Class 1.B. Wage Claims.**

18 **Class 1.C. Benefit Plan Claims.**

19 **Class 1.D. Deposit Claims.**

20
21 Each holder of a Class 1.A., 1.B., 1.C., 1.D., to the extent such Claim is an
22 Allowed Claim, shall receive, on account of such Claim, payment of the Allowed
23 Amount of such Claim, in cash, on the later of (i) the Effective Date, (ii) the date
24 on which the Claim becomes Allowed, or (iii) the date upon which such obligation
25 becomes due in accordance with its terms unless the holder of such claims
26

1 agrees to other treatment. Cure Payments shall be made on the Effective Date
2 or as soon as reasonably practicable thereafter.

3 The Plan classifies all administrative claims and expenses allowable under
4 § 503(b) and entitled to priority under § 507(a)(2) as Class 1.A. Administrative
5 claims, as defined in § 503 of the Code and in the Plan, consist of the actual,
6 necessary costs and expenses of preserving the Estate, including taxes incurred,
7 salaries or commissions for services rendered after the commencement of the
8 case, fees of professionals employed by Debtor, and fees and charges assessed
9 against the Estate under Chapter 123 of Title 28 of the United States Code.
10 Notwithstanding the foregoing, in accordance with the requirements of the
11 Bankruptcy Code, professional fees classified within Class 1.A. shall be paid only
12 pursuant to Court authorization.

13 Under § 1129(a)(9)(A), administrative claims must be paid in full on the
14 Effective Date in order for a plan to be confirmed. The Plan complies with this
15 requirement: by providing that Class 1.A. claims will be paid in full on the Effective
16 Date of the Plan, or upon allowance, whichever occurs first, except to the extent
17 a holder of an administrative claim otherwise agrees. Amounts due to holders of
18 Class 1.A. Claims will be funded from the Initial Distribution on the Effective Date,
19 or as agreed to by the Debtor and the holder of the administrative claim.

20 Administrative expenses have accrued and will continue to accrue during
21 these proceedings and will be payable on the Effective Date of the Plan.

22 The Bankruptcy Code requires that fees and expenses of attorneys and other
23
24
25
26

1 professionals are subject to Court approval under § 330 of the Bankruptcy Code.
2 Accordingly, the Plan provides that the fees of such professionals shall not be
3 paid until Final Orders of the Bankruptcy Court have been entered approving and
4 authorizing payment of such fees. Debtor anticipates that these fees will include
5 the fees of Debtor's counsel, Debtor's accountants, special counsel, and ordinary
6 course counsel and other professionals. The Debtor anticipates that the
7 aggregate of such fees and expenses will approximate \$150,000 to \$200,000 but
8 cautions that this is an estimate. Because the Plan provides for payment in full of
9 Class 1.A. Claims as of the Effective Date, the Class 1.A. Claims are not
10 impaired. To date, Westling & Eldridge, P.C. has been paid fees of \$2,214.00 and
11 reimbursed costs of \$26.00 for accounting services relative to preparation of
12 the Debtor's 2009 federal and state income tax returns. Burch & Cracchiolo, P.A.
13 has made an interim fee application for service as attorneys for the Debtor in his
14 capacity as Debtor In Possession seeking compensation for professional services
15 rendered in the amount of \$99,987.37 and reimbursement of \$5,895.00 for actual
16 and necessary expenses advanced by said law firm. The Order Granting Application
17 of Attorneys for Debtor-in-possession for Interim Allowance of Professional Fees and
18 Costs was executed by the Bankruptcy Court on May 30, 2010, and entered on the
19 docket on June 1, 2010 (Dckt. # 450). The awarded fees and costs will be paid almost
20 in full from the \$ 99,961.00 prepetition retainer ⁴ paid by the Debtor to Burch &
21
22
23
24

25 ⁴ The amount of the retainer was \$101,000.00 from which the Chapter 11
26 filing fee of \$1,039.00 was deducted.

1 Cracchiolo, P.A. on hand as of the date of the entry of said order. The remaining
2 balance of \$5,921.37 will be paid from general funds on hand in the estate of the
3 Debtor.

4 **Classes 1.A., 1.B., 1.C., 1.D.** are not impaired.

5 **Class 1.E. Tax Claims.**

6
7 Each holder of a Class 1.E. Tax Claim, to the extent that such Claim is an
8 Allowed Claim, shall receive, on account of such Claim (i) payment of the Allowed
9 Amount of such Claim, first through the contribution of funds available from the
10 Initial Distribution on the Effective Date and then in quarterly cash payments, with
11 the first such payment being due on the later of (a) the first (1st) day of the
12 calendar month that is at least ninety (90) days after the Effective Date or (b)
13 ninety (90) days after such Claim is Allowed; and (ii) a final payment of the unpaid
14 balance (to the extent that such a balance exists) of the Allowed Amount of such
15 Claim, plus interest at the Tax Claim Rate, which shall be due on the fifth (5th)
16 anniversary of the Petition Date.
17

18 **Class 1.E.** Claims are treated in accordance with § 1129(a)(9)(C) of the
19 Bankruptcy Code and are, accordingly, not impaired for purposes of determining
20 voting rights.
21

22 **b. Secured Claims.**

23 ***i. Lender Secured Claims.***

24 Each holder of a class 2.A. through 2.V. Claim to the extent such Claim is
25 an Allowed Secured Claim, shall receive, on account of such Claim, (a) the full
26

1 amount of its Allowed Claim in accordance with the terms of the prior loan
2 documents and mortgage/deed of trust documents; (b) shall retain its lien(s), or
3 (c) deferred cash payments totaling at least the allowed amount of such claim, of
4 a value, as of the effective date of the Plan, of at least the value of such holder's
5 interest in the Debtor's interest in such property subject to the following terms and
6 conditions:

8 (a) Secured Claims which are secured by consensual first liens
9 shall be treated as fully secured and all payments thereon shall be computed in
10 accordance with the principal balance due and owing with reference to the
11 promissory note due and owing to each holder of such Secured Claims.
12

13 (b) Secured Claims which are secured by consensual second liens
14 shall be treated in accordance with § 506(a)(1) of the Bankruptcy Code which
15 provides that an allowed claim of a creditor secured by a lien on property in which
16 the estate has an interest is a secured claim to the extent of the value of such
17 creditor's interest in the estate's interest in such property and is an unsecured
18 claim to the extent that the value of such creditor's interest is less than the amount
19 of such allowed claim.
20

21 (c) Nothing contained herein shall be deemed to abridge the right of any
22 holder of Secured Claims eligible to make an election under § 1111(b)(2) of the
23 Bankruptcy Code right to make such an election. In the event that any holder of
24 Secured Claims makes an effective election under § 1111(b)(2) of the
25 Bankruptcy Code and does not assent to the Plan, pursuant to § 1129(b)(2)(A)(I)
26

1 of the Bankruptcy Code, the holders of Secured Claims making the election under
2 § 1111(b)(2) of the Bankruptcy Code shall receive a stream of payments equal to
3 its total claim and with a present value equal to the value of the collateral in which
4 such holder of Secured Claims making the election has a security interest.

5
6 Alternatively, each holder of a class 2.A. through 2.V. Claim shall receive
7 treatment in accordance with either:

8 (a) any Court-approved stipulation between the Debtor and the Claimant
9 providing for different treatment than is otherwise provided in this Plan; or

10 (b) any order lifting the automatic stay of 11 U.S.C. 362(a) permitting the
11 any holder of a class 2.A. through 2.V. claim to foreclose upon its collateral
12 security with any such order to be controlling over the rights of any holder of a
13 class 2.A. through 2.V. claim under this Plan subject to any potential deficiency
14 claims, if any, which shall be controlled by Arizona law and the terms of the loan
15 documents and which shall, if and when established, be deemed Class 3.A.
16 General Unsecured Claims.
17

18 The Debtor shall pay each holder of a Claim in Classes 2.A. through 2.V.
19 the full amount of its Allowed Claim in accordance with the terms of the prior loan
20 documents - those creditors shall retain their liens in accordance with the terms
21 of their security instruments (mortgages/deeds of trust).
22

23 The schematic for the payment of each holder of a Claim in Classes 2.A.
24 through 2.V. is as follows:

- 25 1. All net Cash Collateral held by the Debtor pursuant to Cash
26

1 Collateral Orders of the Bankruptcy Court (which shall be inclusive of both pre-
2 petition and post-petition rents if so ordered by the Bankruptcy Court), less any
3 permitted expenses authorized to be paid by Cash Collateral Orders of the
4 Bankruptcy Court and less any amounts necessary to pay the real property tax
5 secured claims of either Class 2.X or 2.Y in accordance with Section 4.2(B) hereof
6 with respect to the discrete real property generating the Cash Collateral, shall be
7 distributed to each holder of a Class 2.A. through 2.V. Claim as of the Effective
8 Date as part of their initial distribution under the Plan. All Cash Collateral Orders
9 of the Bankruptcy Court shall terminate as of the Effective Date of the Plan and
10 shall be superseded by the terms of the Plan.
11

12
13 2. The Debtor shall pay monthly interest only at the rate of 3.5% for
14 the first two (2) years(months 1 through 24) measured from the Effective Date.

15 3. The Debtor shall pay monthly interest only at the rate of 4.0% for
16 the next one (1) year (months 25 through 36) measured from the Effective Date.

17 4. The Debtor shall pay monthly interest only at the rate of 4.5% for
18 the next one (1) year (months 37 through 48) measured from the Effective Date.

19 5. The Debtor shall pay monthly interest only at the rate of 5.0% with
20 a thirty (30) year amortization for the next one (1) year (months 49 through 60)
21 measured from the Effective Date.
22

23 6. The loans secured by first deeds of trust shall either, at the
24 election of the Debtor, (i) become all due and payable at the end of the five (5)
25 years from the Effective Date of the Plan in the principal amount determined from
26

1 the amount of each Secured Creditor's Allowed Secured Claim with reference to
2 the subject property; and (ii) be fully reinstated at the end of the five (5) years
3 from the Effective Date of the Plan as if no default had occurred.

4 7. Taxes and insurance shall also be paid by the Debtor with
5 appropriate loss payee coverage for the Lender.
6

7 The Class 2.A. through 2.V. Claims are impaired.

8 Nothing contained herein shall defeat the right of holder of a Class 2.A.
9 through 2.V. Claim to such Collateral Recovery as it is otherwise entitled.

10 "Collateral Recovery" means the total amount of recovery that the Secured
11 Creditors who have obtained a lifting of the automatic stay with respect to their
12 real property or personal property collateral or in whose favor real or personal
13 property has been abandoned pursuant to the orders of the Bankruptcy Court,
14 including but not limited to funds or property obtained from foreclosures and
15 trustee's sales subject to applicable state law including state law relating to
16 deficiency claims. To the extent a creditor has obtained a lifting of the automatic
17 stay with respect to their real property or personal property collateral or in whose
18 favor real or personal property has been abandoned pursuant to the orders of the
19 Bankruptcy Court, such orders and the rights conferred by such orders shall be
20 deemed incorporated into the Plan as if fully set forth herein and shall modify the
21 treatment provided to such Secured Creditors as may be entitled to pursue
22 Collateral Recovery notwithstanding the terms and provisions of the Plan.
23
24
25
26

1 ***ii. Interest Rate Issues.***

2 The above-stated interest rates are consistent with the Debtor's cash
3 flows and are deemed feasible by the Debtor. See Exhibit "B" hereto (Five Year
4 Pro-Forma Income/Expense & Cash Flow Commencing June 1, 2010). The
5 above-stated interest rates will be binding upon assenting classes of claims in the
6 event that the Plan is confirmed.
7

8 As to non-assenting classes of claims, the Debtor may seek confirmation
9 by cram down under § 1129(b) of the Bankruptcy Code. This requires an interest
10 rate which will ensure that the present value of the economic treatment is
11 equivalent to the secured portion of the creditor's claim. Thus for cram down
12 purposes, a determining factor is the effective interest rate applicable. However,
13 the Bankruptcy Code does not specify how to calculate the appropriate cram
14 down interest rate.
15

16 By way of necessary background, § 1129(a)(8) generally requires, with
17 respect to each class of claims or interests, that such class has accepted the plan,
18 or that such class is not impaired under the plan. If, with respect to a class of
19 secured claims, a plan meets all of the requirements for confirmation except those
20 of subsection eight, it may nevertheless be confirmed under § 1129(b)(1) if the
21 plan does not unfairly discriminate and is fair and equitable with respect to each
22 class of claims or interests that is impaired under, and has not accepted, the plan.
23

24 With respect to secured claims, "fair and equitable" is defined by §
25 1129(b)(2)(A) to include three alternative treatments. It provides:
26

1
2 "(A) With respect to a class of secured claims, the plan provides—

3 (i) (I) that the holders of such claims retain the liens securing such claims,
4 whether the property subject to such liens is retained by the debtor or
5 transferred to another entity, to the extent of the allowed amount of such
6 claims; and

7 (ii) that each holder of a claim of such class receive on account of such
8 claim deferred cash payments totaling at least the allowed amount of such
9 claim, of a value, as of the effective date of the plan, of at least the value
10 of such holder's interest in the estate's interest in such property;

11 (ii) for the sale, subject to section 363(k) of this title, of any property that is
12 subject to the liens securing such claims, free and clear of such liens, with
13 such liens to attach to the proceeds of such sale, and the treatment of such
14 liens on proceeds under clause (i) or (iii) of this subparagraph; or

15 (iii) for the realization by such holders of the indubitable equivalent of such
16 claims."

17 This statute thus defines three conditions under which a plan may be
18 confirmed, or "crammed down," over the objections of a secured creditor.
19 Subsection (b)(2)(A)(i) of § 1129 of the Bankruptcy Code in essence allows the
20 plan proponent to write a new loan for full payment at a market rate of interest
21 secured by the creditor's prepetition collateral. Subsection (b)(2)(A)(ii) permits a
22 plan that sells the creditor's collateral free and clear of the lien, so long as the lien
23 attaches to all net proceeds of the sale but this subsection is not implicated by the
24 instant . Finally, § 1129(b)(2)(A)(iii) allows a plan to alter the rights of the secured
25 creditor if, and only if, the creditor will receive the "indubitable equivalent" of its
26 claim.

 If the Debtor is required to utilize the cram down provisions to secure

1 confirmation of the Plan, it is likely that there may be confirmation issues related
2 to the appropriate cram down interest rate. This may impose an element of
3 uncertainty for both the creditors and the Debtor as to whether or not the Plan can
4 or cannot be confirmed and is considered a risk factor for creditors to consider
5 when making their decision to accept or reject the Plan.
6

7 The Supreme Court case of Till v. SCS Credit Corp., 541 U.S. 465, 124 S.
8 Ct. 1951, 158 L. Ed. 2d 787 (2004) was supposed to establish an objective
9 standard by which the cram down interest rate could be determined. However, it
10 fails to provide guidance as to important computational elements relating to
11 establishing cram down interest rates. First, Till fails to explain how the so called
12 "risk premium" (which is to added to the base rate of interest) is to be derived.
13 Additionally, the Till decision did not establish a clear precedent. The Supreme
14 Court advocated a formula approach and then diluted that position by suggesting
15 that a market based rate may be more appropriate. 541 U.S. at 477 at fn. 14
16 ("...when picking a cram down rate in a chapter 11 case, it might make sense to
17 ask what rate an efficient market would produce."").
18
19

20 In Till, to determine the cram down interest rate in a Chapter 13 case, the
21 plurality held the Bankruptcy Code is ambiguous but clearly permits modification
22 of secured debt, and that administrative factors call for an objective test. The
23 other methods -- coerced loan, presumptive contract rate, and creditor's cost of
24 funds -- are all based on subjective factors, could overcompensate creditors, and
25 are based on general financial circumstances rather than those of the creditor.
26

1 Moreover, the Court said that if the rate proves too high, this raises questions
2 about the feasibility of the plan. Justice Thomas, who provided the fifth vote,
3 would use the risk-free rate as being consistent with the statute. The dissenters
4 argued for the presumptive contract rate.

5
6 It is submitted by the Debtor that the acceptance of the Plan with its clearly
7 defined interest rate schematic is preferable to the prospect of possibly protracted
8 litigation over interest rates in a cram down scenario. This is particularly true since
9 Till does not provide definite or certain guidance as to the issue of how the cram
10 down interest rate is to be determined. The foregoing represents the views of the
11 Debtor on the interest rate issue and the Debtor asks that you consider these
12 views in making your decision to accept or reject the Plan.
13

14 ***iii. Deficiency Issues and Their Bearing on Whether the Plan***
15 ***Presents A Superior Outcome to Foreclosure.***

16 One of the issues confronting creditors in making their decision to accept
17 or reject the Plan is for them to consider whether or not the Plan presents a
18 superior outcome to foreclosure. The Plan essentially provides that the principal
19 balances of the first liens will not be adjusted downward if the subject properties
20 have a current fair market value arguably less than the amount of the principal
21 balance. This treatment contemplates a rebound in the fair market value and
22 stream of income of the real properties serving as collateral security for the
23 Debtor's real property lenders.
24

25 To the extent that a secured real estate lender weighs the possibility of
26

1 seeking to foreclose rather than to accept the Plan, the Debtor would submit that
2 it is important for each such secured real estate lender to consider the liquidation
3 analysis provided by the Debtor and the Debtor's consultant John P. Miller
4 (discussed *infra*) as well as to consider that, for reasons which will be explained,
5 most of the secured real estate lending of the Debtor is functionally nonrecourse
6 in the event of foreclosure due to the practical effect and applicability of various
7 anti-deficiency statutes arising under Arizona and California law. This is also
8 material information relative to any creditor's assessment of whether or not the
9 pool of unsecured creditors will be materially increased by a spill over of post-
10 foreclosure deficiency claims if the automatic stay is lifted as to certain properties
11 to permit foreclosure.
12

13
14 With certain limited exceptions, it is anticipated that most of the real
15 property loans to which the Debtor is a party giving rise to the Class 2.A. through
16 2.V. Claims are functionally nonrecourse because of the applicability of certain
17 Arizona or California anti-deficiency statutes which bar the recovery of post-
18 foreclosure deficiencies with regard to either (a) certain types of transactions; (b)
19 certain classes of property; and/or (c) certain types of foreclosure proceedings.
20 Most of the Debtor's real property loans are with respect to single family or duplex
21 properties located in Arizona or California.
22

23 The exceptions include, but are not limited to, an October 15, 2007,
24 \$1,000,000.00 loan with BBVA Compass Bank as lender secured by nineteen (19)
25 condominium units, a loan on a small office building in Tempe, Arizona, used as
26

1 the Debtor's business headquarters and loans secured by small multi-unit
2 apartment complexes such as three (3) loans with JP Morgan Chase Bank as
3 lender secured respectively by a five (5) unit apartment complex, a six (6) unit
4 apartment complex and an eight (8) unit apartment complex, all of which
5 complexes are located in Tempe, Arizona. The foregoing discussion is not
6 directed at these exceptions, all of which give rise to potential recourse or
7 deficiency liability in the event of foreclosure.

8
9 The Debtor's has certain single family and duplex properties in Arizona
10 which are subject to insulation from recourse liability because of the applicability
11 of the purchase money anti-deficiency provisions of A.R.S. § 33-729 which
12 provides as follows:
13

14 **"Purchase money mortgage; limitation on liability**

15 A. Except as provided in subsection B, if a mortgage is given to secure the
16 payment of the balance of the purchase price, or to secure a loan to pay all
17 or part of the purchase price, of a parcel of real property of two and
18 one-half acres or less which is limited to and utilized for either a single
19 one-family or single two-family dwelling, the lien of judgment in an action
20 to foreclose such mortgage shall not extend to any other property of the
21 judgment debtor, nor may general execution be issued against the
22 judgment debtor to enforce such judgment, and if the proceeds of the
23 mortgaged real property sold under special execution are insufficient to
24 satisfy the judgment, the judgment may not otherwise be satisfied out of
25 other property of the judgment debtor, notwithstanding any agreement to
26 the contrary.

B. The balance due on a mortgage foreclosure judgment after sale of the
mortgaged property shall constitute a lien against other property of the
judgment debtor, general execution may be issued thereon, and the
judgment may be otherwise satisfied out of other property of the judgment
debtor, if the court determines, after sale upon special execution and upon
written application and such notice to the judgment debtor as the court may
require, that the sale price was less than the amount of the judgment
because of diminution in the value of such real property while such property

1 was in the ownership, possession, or control of the judgment debtor
2 because of voluntary waste committed or permitted by the judgment debtor,
3 not to exceed the amount of diminution in value as determined by such
court."(Emphasis added).

4 The purchase money anti-deficiency statute trumps the provisions of A.R.S.
5 § 33-722 which otherwise provide that the holder of a note secured by a mortgage
6 or deed of trust may waive its security interest in the property and sue directly on
7 the note. See Universal Inv. Co. v. Sahara Motor Inn, Inc., 127 Ariz. 213, 619
8 P.2d 485 (App.1980) (trustee may elect to treat deed of trust as mortgage and
9 then may elect remedy pursuant to A.R.S. § 33-722); Resolution Trust Corp. v.
10 Freeway Land Investors, 798 F.Supp. 593 (D.Ariz.1992).

12 In Baker v. Gardner, 160 Ariz. 98, 770 P.2d 766 (Ariz. 1988), the Arizona
13 Supreme Court held that the mortgage and deed of trust anti-deficiency statutes,
14 which were enacted after A.R.S. § 33-722, limit a creditor's right to waive its
15 security. The court ruled in Baker that a lender may not waive its security and sue
16 directly on the note when Arizona's anti-deficiency statutes preclude a deficiency
17 judgment. 160 Ariz. at 104, 770 P.2d at 772.

19 The fact that the Debtor operated on a large scale does not affect the
20 applicability of the anti-deficiency statutes under the instant circumstances for it
21 is the character of the trust property and not the character of the owner of the trust
22 property which is controlling. While the anti-deficiency statutes have been held not
23 to apply to houses owned by developer that had never had been used as
24 dwellings and were not yet susceptible as being used as dwellings in Mid Kansas
25

1 Federal Sav. and Loan Ass'n of Wichita v. Dynamic Development Corp., 167 Ariz.
2 122, 804 P.2d 1310 (1991), here most of the properties are within the
3 antideficiency definition of properties "limited to" and "utilized for" single family or
4 two-family dwellings. Thus, a deficiency is impermissible because of the
5 undeniable character of most of the properties. Tanque Verde Anesthesiologists
6 L.T.D. Profit Sharing Plan v. Proffer Group, Inc. 172 Ariz. 311, 836 P.2d 1021
7 (App. Div.2 1992), *review denied* ("In this case, however, there is no question that
8 the property comes within the statutes." 836 P.2d at 1023). *Accord:* PNL Credit
9 L.P. v. Southwest Pacific Investments, Inc., 179 Ariz. 259, 877 P.2d 832, 837
10 (Ariz.App. Div. 1 1994) [A.R.S. section 33-814(G) (another similarly constructed
11 anti-deficiency statute) focuses on the nature of the "trust property".] Thus, the
12 anti-deficiency statute protects "trust property" that is "limited to and utilized" as
13 "single one-family or single two-family dwellings."

14
15
16 There are a large number of properties owned by the Debtor which have
17 been refinanced and thus are not within the purchase money financing protections
18 afforded by the anti-deficiency provisions of A.R.S. § 33-729. However, because
19 the deed of trust sale is the primary foreclosure mechanism employed by lenders
20 in Arizona to the exclusion of judicial foreclosures due to six (6) month redemption
21 periods and greater complexities which are triggered by judicial foreclosures of
22 deeds of trust in Arizona,⁵ there is another key anti-deficiency statute which is of
23

24
25 ⁵ "In Arizona a mortgagor in default may redeem his property within six
26 months following the foreclosure sale. Accordingly, when the beneficiary of a trust

likely applicability to the bulk of the single family and duplex properties owned by the Debtor within the State of Arizona. This is the anti-deficiency statutory provisions of § 33-814 which provides thusly:

"Action to recover balance after sale or foreclosure on property under trust deed

A. Except as provided in subsections F and G of this section, within ninety days after the date of sale of trust property under a trust deed pursuant to § 33-807, an action may be maintained to recover a deficiency judgment against any person directly, indirectly or contingently liable on the contract for which the trust deed was given as security including any guarantor of or surety for the contract and any partner of a trustor or other obligor which is a partnership....

G. If trust property of two and one-half acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling is sold pursuant to the trustee's power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses." (Emphasis added).

deed elects judicial foreclosure, the trustor has the same redemption right as does the mortgagor. If the beneficiary elects to foreclose through the trustee's sale, on the other hand, the trustor has no right of redemption after the sale." Chaparral Development v. RMED Intern., Inc., 170 Ariz. 309, 823 P.2d 1317, 1320-1321 (Ariz.App. Div. 1 1991) quoting Lawyer, The Deed of Trust: Arizona's Alternative to the Real Property Mortgagor, 15 ARIZ LAW REV 194 (1973).

1 Given the applicability of these two Arizona anti-deficiency statutes, it is
2 submitted that most, though not all, of the Debtor's Arizona property loans are
3 rendered functionally nonrecourse in nature. This greatly reduces the potential for
4 deficiency claims to be generated even as to any qualifying single family or duplex
5 properties with reference to which the automatic stay of 11 U.S.C. § 362(a) has
6 been lifted.

7
8 The Debtor has a relatively small number of mostly single family residences
9 located in Encinitas, California, in Northern San Diego County. The loans on these
10 properties are subject to the applicability of certain California anti-deficiency
11 statutes which, while not identical, are similar in their operative effect to the
12 above-described Arizona anti-deficiency statutes. As one California bankruptcy
13 court has noted:

14
15 "Under California law....a foreclosing creditor rarely has a right to a
16 deficiency. This arises from several statutory provisions, the most
17 important of which is that a lien creditor that proceeds by non-judicial
18 foreclosure (which is almost universal) waive any right to a deficiency. See
19 Cal.Civ.Code §§ 2924- 2924 (West 2001); *see generally* 4 HARRY D.
20 MILLER & MARVIN B. STARR, MILLER AND STARR CALIFORNIA REAL
21 ESTATE § 10:214 (3d ed.2000)." In re Enewally, 276 B.R. 643, 653
22 (Bkrtcy.C.D.Cal. 2002).

23
24 Under California law, a creditor that elects to exercise a power of sale under
25 a deed of trust, free of the involved and time-consuming procedures of judicial
26 foreclosure, forgoes any deficiency claim in exchange for the immediacy of private
sale and the extinguishment of the debtor's right of redemption. California Code
of Civil Procedure section 580a applies to shield a borrower from personal liability.

1 See Roseleaf Corp. v. Chierighino, 59 Cal.2d 35, 27 Cal.Rptr. 873, 378 P.2d 97,
2 102 (Cal.1963). There is no distinction made between purely consumer borrowers
3 versus borrowers like the instant Debtor who are engaged in business. The focus
4 is merely whether or not a non-judicial deed of trust sale is employed to effect the
5 foreclosure.
6

7 Given the likely applicability of this California anti-deficiency provision, it is
8 submitted that the Debtor's California property loans are also rendered
9 functionally nonrecourse in nature. This greatly reduces the potential for
10 deficiency claims to be generated as to these California properties.
11

12 Based upon the foregoing, the Debtor would submit that the instant Plan
13 represents a superior outcome for most secured real property lenders as
14 distinguished from a foreclosure scenario. The Debtor would also suggest that
15 the foregoing anti-deficiency principals will have the effect of reducing the amount
16 of potential unsecured claims arising from post-foreclosure deficiencies.
17

18 ***ii. Real Property Tax Secured Claims.***

19 Class 2.X. consisting of the secured real property tax claims of the
20 Maricopa County, Arizona, Treasurer which are secured by statutory tax liens and
21 Class 2.Y. consisting of the secured real property tax claims of the San Diego
22 County, California, shall be treated as follows:
23

24 **ii. REAL PROPERTY TAX SECURED CLAIMS.**

25 Class 2.X. consisting of the secured real property tax claims of the
26 Maricopa County, Arizona, Treasurer which are secured by statutory tax liens and

1 Class 2.Y. consisting of the secured real property tax claims of the San Diego
2 County, California, are unimpaired.

3 The Debtor has brought the 2009 1st half and 2nd half real property taxes
4 current for all properties owned by the Debtor as of April 30, 2010⁶, in both
5 Maricopa County, Arizona, and Sand Diego County, Arizona. Thus, the Debtor is
6 current on all applicable real property taxes and said Class 2.X. and 2.Y. creditors
7 are unimpaired.
8

9 **A. Direct Pay Real Property Tax Secured Claims.**

10 The installments becoming due for the 1st half of 2010 and for
11 all installments becoming due thereafter for the term of the Plan shall be paid in
12 accordance with the applicable deadlines provided under Arizona or California
13 law.
14

15 **B. Escrow or Impound Account Paid Real Property**
16 **Tax Secured Claims.**

17 All secured real property tax claims which are paid indirectly by the
18 Debtor by means of payments to an escrow or impound account shall be paid as
19 follows: The installments becoming due for the 1st half of 2010 and
20 for all installments becoming due thereafter for the term of the Plan shall be paid
21 in accordance with the terms of the escrow or impound requirements.
22

23 ***iii. Ford Motor Credit Secured Claim.***

24 Class 2.X. shall be paid in accordance with the agreed upon terms
25

26 ⁶ This excludes the two MidFirst Bank financed properties which were
foreclosed upon on or about April 20, 2010.

1 providing for monthly installment payments as set forth in the retail installment
2 financing agreement and shall be secured by a lien upon the title of the Debtor's
3 2007 Ford F150 pickup truck until paid in full.

4 **e. Unsecured Claims Without Priority.**

5 The Plan provides for the following treatment of unsecured, non-priority
6 Claims.

7 **Class 3.A. General Unsecured Claims.**

8 Each holder of a Class 3.A. Claim, to the extent that such Claim is an
9 Allowed Claim, shall receive distributions from the Initial Distribution and the
10 Quarterly Distributions thereafter based on the following in the minimum amount
11 of one percent (1%) of their Allowed Claim. These Payments will be funded from
12 cash on hand in the estate as of the Effective Date and from Disposable Income
13 of the Debtor over the term of the Plan. Any Non-Dischargeable Claim which
14 otherwise is a Class 3.A. Claim shall receive the same distributions as the other
15 holders of Class 3.A. Claims. During the term of this Plan, any Non-Dischargeable
16 Claim which otherwise is a Class 3.A. Claim shall be subject to the automatic stay
17 of § 362(a) of the Bankruptcy Code and such other and further stay or stays as
18 are applicable under the terms of the Bankruptcy Code and/or this Plan. Any
19 excess available above and beyond the minimum amount of one percent (1%)
20 of the Allowed Claim paid quarterly shall be distributed pro rata to holders of Class
21 3.A. Claims until each holder of a Class 3.A. Claim has been satisfied in full by
22 being paid an amount equal to one hundred percent (100%) of their Allowed
23
24
25
26

1 Claim on or before five (5) years from the Effective Date of the Plan. Alternatively,
2 each holder of a Class 3.A. Claim shall receive treatment in accordance with a
3 Court-approved stipulation between the Debtor and the Claimant.

4 Class 3.A. Claims are impaired.

5 **f. Interests.**

6 **Class 4.A. Equity Interests.**

7 The Debtor shall retain his interest in the Debtor's property subject to the
8 terms of this Plan subject to the rights of creditors and the Debtor's compliance
9 with the obligations imposed upon him pursuant to the Plan. Section 2.1.22
10 of the Plan defines "Disposable Income" to mean the disposable income of the
11 Debtor, after payment of the Debtor's reasonable and necessary living expenses
12 which are fixed at \$8,000.00 per month (plus required medical expense
13 deductibles and anything not covered by the Debtor's medical insurance), that is
14 to be received during the five-year period beginning on the date that the first
15 payment is due under the Plan, and, in the case of Non-Dischargeable Claims,
16 that are to be received during the period beginning on the date that the first
17 payment is due under the Plan and ending when the Non-Dischargeable Claims
18 have been paid in full. Notwithstanding the foregoing definition, the Debtor's
19 "projected disposable income" under § 1129(a)(15) shall be calculated by the
20 Bankruptcy Court through a judicial determination of the expenses that are
21 reasonably necessary for the support of the Debtor. The Debtor shall abide by this
22 judicial determination and the definition of "Disposable Income" as set forth herein
23
24
25
26

1 shall be adjusted to whatever amount is judicially determined by the Bankruptcy
2 Court if said determination is different than the amount set forth in the definition of
3 "Disposable Income" as originally set forth herein. The Debtor shall contribute his
4 Disposable Income, after payment of the Debtor's reasonable and necessary
5 living expenses calculated by the Bankruptcy Court through a judicial determination of
6 the expenses that are reasonably necessary for the support of the Debtor, that is to be
7 received during the five-year period beginning on the date that the first payment
8 is due under the Plan, and, in the case of Non-Dischargeable Claims, if any, that
9 are to be received during the period beginning on the date that the first payment
10 is due under the Plan and ending when the Non-Dischargeable Claims have been
11 paid in full. The Debtor has no knowledge of any Non-Dischargeable Claims.
12

13
14 Class 4.A. Interests are impaired.

15 **g. The Distribution Scheme under the Plan.**
16 **Timing and Amount of Distributions.**

17 The Plan provides that the Debtor shall make an Initial Distribution on the
18 Effective Date to each Class entitled thereto, monthly payments to holders of
19 Lender Secured Claims in Classes 2.A. to 2.V., payments to or for the benefit of
20 the Secured Real Property Tax Classes 2.X and 2.Y as provided for in the Plan,
21 or sooner if authorized in the Reorganization Case, and by an Initial Distribution
22 and Quarterly Distribution from to Class 3.A General Unsecured Creditors.
23

24 **h. The Reserve Fund.**

25 The Debtor shall maintain a reserve fund of \$200,000.00 during the term
26

1 of the Plan. The purpose of the reserve fund is three-fold. First, to deal with the
2 seasonality in the Debtor's rental income which dips during the Summer months
3 from late May through August and which is anticipated to require a reserve of
4 \$50,000 for the Summer of 2010 and of \$50,000 for the Summer of 2011
5 (hereafter "Summer Reserves"). The bulk of the Debtor's real property holdings
6 are concentrated in Tempe, Arizona, in proximity to Arizona State University
7 ("ASU") and the tenant base is heavily oriented towards persons associated with
8 ASU. The peaks and valleys of the annual cash flow cycle with respect to these
9 Tempe properties mirrors the ASU school year with the Summer being the
10 weakest part of the rent cycle due to its status as a break time for a large portion
11 of the ASU community. Secondly, to have a fund on hand of \$75,000.00
12 necessary capital and cosmetic improvement projects (i.e to refurbish rental units
13 to increase rental income). Thirdly, to have a fund on hand of \$25,000.00 for
14 unanticipated expenses and emergencies (i.e. flooding and/or storm damage).
15
16

17 The following is a summary of the application to be made of the Reserve
18 Fund:
19

20 APPLICATION	AMOUNT
21 Summer 2010 Reserve	50,000.00
22 Summer 2011 Reserve	50,000.00
23 Capital and Cosmetic Improvements	75,000.00
24 Unanticipated Expenses and Emergencies	25,000.00
25 Total	\$200,000.00

1 **i. Provisions Relating to Plan Funding.**

2 ***i. Funding of the Initial Distribution.***

3 The Debtor shall fund the initial distribution under the Plan from cash
4 on hand and Cash Collateral in the Debtor's Possession.

5 ***ii. Rental Income Generated During the Term of the***
6 ***Plan.***

7 Under the Plan, the Debtor shall utilize rental income generated from his
8 real properties to facilitate the ongoing funding of the Plan.

9 ***iii. Refinancing And/or Liquidation of Real***
10 ***Property During the Term of the Plan.***

11 Following the Effective Date, the Debtor shall have the authority to to sell
12 or refinance individual real properties subject to the Secured Claims of Classes
13 2.A. through 2.Y. The Secured Claims of Classes 2.A. through 2.V. shall be
14 satisfied from such sales or refinancing of individual real properties. The Debtor
15 shall have the discretion to use the net proceeds from such sales or refinancing
16 of individual real properties in his business, including for the acquisition of
17 additional individual real properties, and also to ensure the availability of funds
18 necessary to pay any then outstanding Allowed Secured, Unsecured,
19 Administrative and Priority Claims and to ensure that the Debtor meets the annual
20 Liquidation Requirement.

21 Post-confirmation, the Debtor shall file a quarterly distribution report setting
22 forth hisr current income and the amount of all payments made under the Plan.

23 **j. Plan Implementation.**

1 ***i. Debtor to Continue Operations.***

2 The Debtor shall continue to operate his business affairs in such a manner
3 as to ensure that the Debtor can adhere to the requirements of the Plan. In
4 addition to funds on hand as of the Effective Date with the Debtor, the funds to be
5 used to make payments under the Plan shall derive from the following sources:
6
7 (a) operation of the business prior to the Effective Date including the collection of
8 rents on the Debtor's real properties leased to third-party tenants; (b) the
9 operation of the Debtor's business on and after the Effective Date including the
10 collection of rents on the Debtor's real properties leased to third-party tenants; (c)
11 the sale of real property in the ordinary course of the Debtor's business on and
12 after the Effective Date; (d) the refinancing of real property in the ordinary course
13 of the Debtor's business on and after the Effective Date; and (e) the enforcement
14 of the Debtor's rights as a creditor against debtor tenants and other debtors owing
15 money to the Debtor.
16

17 ***ii. Assumption of Residential Leases in Which the Debtor***
18 ***Holds the Landlord's Interest***

19 All residential leases in which the Debtor holds the landlord's interest in
20 existence as of the Effective Date shall be deemed assumed unless specifically
21 has taken prior action to reject any such lease prior to the Effective Date. All other
22 executory contracts not assumed on or prior to the Effective Date shall be rejected
23 as of the Effective Date, unless specific written notice of intent to assume is
24 mailed or delivered to the non-Debtor party or parties before the Effective Date.
25
26

1 In the event of assumption, all pre-petition defaults, if any, will be cured on the
2 Effective Date, or as soon thereafter as practicable.

3 **iii. Postpetition Earnings and Other Future Income of**
4 **Debtor Available for Funding of the Plan and the**
5 **Non-Applicability of the Absolute Priority Rule to**
6 **the Instant Individual Chapter 11 Case.**

7 Pursuant to § 1123(a)(8) of the Bankruptcy Code, the Debtor hereby
8 commits his postpetition earnings and other future income during the term of the
9 Plan as is reasonably necessary for the execution of the Plan. Postpetition
10 earnings and other future income constituting the Debtor's "projected disposable
11 income" under § 1129(a)(15) shall be calculated by the Bankruptcy Court through a
12 judicial determination of the expenses that are reasonably necessary for the support of
13 the Debtor. The Debtor shall abide by this judicial determination and the definition of
14 "Disposable Income" as set forth in the Plan shall be adjusted to whatever amount is
15 judicially determined by the Bankruptcy Court if said determination is different than the
16 amount set forth in the definition of "Disposable Income" as originally set forth herein.

17 The following is a summary of the Monthly Expenditures of the Debtor
18 excerpted from Schedule J - Current Expenses of Individual Debtors. To the
19 extent that the expenses total more than \$8000.00 per month, a certain portion
20 of the expenses (primarily transportation) are reimbursed due to the business
21 nature of the travel or expenses:
22

23 **PERSONAL MONTHLY EXPENDITURES OF DEBTOR**

24	25	26
Rental Payment	3,500.00	

1	Electricity and heating fuel	75.00
2	Water & sewer (included in rent)	0.00
3	Telephone	200.00
4	Home maintenance (repairs & upkeep)	100.00
5	Food	800.00
6	Clothing	400.00
7	Laundry & dry cleaning	150.00
8	Medical & dental expenses	1,000.00
9	Transportation (not including car payments)	1,000.00
10	Recreation, clubs and entertainment, periodical, etc.	145.00
11		
12	Renter's insurance	50.00
13	Health insurance	400.00
14	Auto insurance	169.00
15	Auto loan	646.00
16	TOTAL	8,635.00

17 The case of In re Roedemeier, 374 B.R. 264 (Bankr. D. Kan. 2007)
 18 holds that the section 707(b) "means test" expense allowances are not
 19 incorporated into the calculation of disposable income for individual Chapter 11
 20 debtors. *Id.* at 272. Instead, a Chapter 11 debtor's "projected disposable income"
 21 under section 1129(a)(15) is calculated by the court through "a judicial
 22 determination of the expenses that are reasonably necessary for the support of
 23 the debtor and his or her dependents." *Id.* at 272–73. Since the means test applies
 24 to the calculation of "projected disposable income" in Chapter 13 cases, this
 25
 26

1 decision creates a difference between the two chapters. Use of the “means test”
2 involves a stricter formula of determining income that in many cases would require
3 the debtor to contribute more income to funding the plan, thus creating an
4 incentive for debtors to file Chapter 11 in order to use the more flexible judicial
5 calculation.
6

7 This analysis is consistent with Collier’s view, See 7 *Collier on*
8 *Bankruptcy*, ¶ 1129.03, at 1129–74.9 (Alan N. Resnick et al. eds., 15th ed. rev.
9 2006) and is based on a close reading of the statutory language. Although §
10 1129(a)(15) of the Bankruptcy Code refers to chapter 13 for its projected
11 disposable income calculation, the cross reference is to § 1325(b)(2), which
12 merely requires expenses to be “reasonably necessary.” See 11 U.S.C. §
13 1325(b)(2) (2006).
14
15

16 § 1325(b)(2) of the Bankruptcy Code does not incorporate the § 707(b)
17 means test. That test is brought into chapter 13 by § 1325(b)(3) of the Bankruptcy
18 Code which says that the “reasonably necessary” determination in (b)(2) for
19 above-median income debtors shall be based on the means test. See 11 U.S.C.
20 § 1325(b)(3) (2006). The argument that the reference in § 1129(a)(15) to §
21 1325(b)(2) and its discussion of “disposable income” impliedly cross-references
22 paragraph (3) of the section as well is not well taken. See *also* Collier at ¶
23 1129.03, at 1129–74.9. As the Roedemeier court reasoned, Congress would have
24 made the cross reference explicit if that were its intention, and the lack of such
25
26

1 specification indicates that the means test of § 707(b) of the Bankruptcy Code is
2 inapplicable in a chapter 11. In re Roedemeier, 374 B.R. at 272.

3
4 The Roedemeier court's overall analysis in determining that the means test
5 was inappropriate appears sound as it is based overwhelmingly on the wording
6 of the Bankruptcy Code and the BAPCPA. See 11 U.S.C. § 1129(1)(15)(B)
7 (2006). Attempting to cross-reference paragraphs in separate sections under the
8 title, like the creditor in Roedemeier urged, requires too much of a leap to be
9 sensible. In re Roedemeier, 374 B.R. at 272. However, BAPCPA was clearly
10 drafted with a purpose, and that purpose was to prevent the abuse of the system
11 that occurred when debtors filed for chapter 11 specifically to avoid the means
12 test. Therefore, the understanding of what expenses are going to be excluded and
13 included under the reasonable judicial determination employed by the
14 Roedemeier court is what will define this new standard. *Id.* Individual business
15 debtors, such as in the Roedemeier case, are entitled to flexibility.

16
17
18 The Debtor would as part of his disclosures note that the BAPCPA
19 reforms of 2005 had a substantial impact on individual Chapter 11 cases such as
20 that of the Debtor and in fact repealed the applicability of the Absolute Priority
21 Rule to individual Chapter 11 cases. Since the Debtor's Plan proposes to pay all
22 creditors in full, it is submitted that the Debtor's Plan is generally consistent with
23 the Absolute Priority Rule even though it does not apply with mandatory effect to
24 the Chapter 11 Plan of the Debtor.
25
26

1 A helpful summary of the changes effected by BAPCPA to individual
2 Chapter 11 cases is contained in In re Johnson, 402 B.R. 851 (Bkrtcy.N.D.Ind.
3 2009) as follows:

4
5 "The bankruptcy reforms of 2005 changed many things. Some of those
6 changes make an individual debtor's Chapter 11 case look a lot more like
7 Chapter 13. Property of the estate is not limited to the debtor's interests in
8 property as of the date of the petition. 11 U.S.C. § 541. It now includes
9 property the debtor acquires after the commencement of the case and the
10 debtor's post-petition earnings. *Compare*, 11 U.S.C. § 1115 with 11 U.S.C.
11 § 1306. To the extent necessary, the debtor's post-petition earnings and
12 future income must be used to fund a plan. *Compare*, 11 U.S.C. §
13 1123(a)(8) with 11 U.S.C. § 1322(a)(1). An individual debtor's plan does
14 not need to satisfy the absolute priority rule, 11 U.S.C. 1129(b)(2)(B), and,
15 even though unsecured creditors will not be paid in full, can be confirmed
16 over their objection so long as the plan satisfies the disposable income test
17 of § 1325(b)(2). 11 U.S.C. § 1129(a)(15). Substantial consummation is no
18 longer a bar to the modification of a confirmed plan. 11 U.S.C. § 1127(b).
19 Instead, an individual debtor's plan can be modified any time prior to the
20 completion of payments and modification may be sought, not just by the
21 plan proponent and the reorganized debtor, *id.*, but by the debtor, the
22 trustee, the United States Trustee, or an unsecured creditor. *Compare*, 11
23 U.S.C. § 1127(e) with 11 U.S.C. § 1329(a). Finally, unless the court orders
24 otherwise, the individual debtor does not receive a discharge upon
25 confirmation but must wait until all payments under the plan have been
26 completed. *Compare*, 11 U.S.C. § 1141(d)(5) with 11 U.S.C. § 1328(a).
These similarities have led one commentator to suggest that 'individual
Chapter 11 cases can now be characterized as "big Chapter 13" cases...."
Robert J. Landry, III, Individual Chapter 11 Reorganizations: Big Problems
with the New 'Big' Chapter 13, 29 U. ARK. LITTLE ROCK L.REV. 251, 252
(2006-07)." *Id.* at 852-853.

21
22 **THE FOREGOING IS ONLY A SUMMARY OF THE PLAN. CREDITORS**
23 **ARE URGED TO READ THE PLAN IN FULL AND TO CONSULT WITH THEIR**
24 **COUNSEL AND/OR FINANCIAL ADVISERS REGARDING THE PLAN'S TERMS**
25 **AND LEGAL EFFECT. CREDITORS ARE ADVISED THAT, SHOULD THE**
26 **PLAN BE CONFIRMED, THE PLAN AND THE ORDER CONFIRMING THE**
PLAN SHALL BE BINDING ON CREDITORS, THE DEBTOR, AND THE
REORGANIZED DEBTOR.

1 **II. DEBTORS BUSINESSES OPERATIONS**

2 **A. OWNERSHIP AND OPERATION OF PRIMARILY, BUT NOT**
3 **EXCLUSIVELY, RENTAL PROPERTIES**

4
5 The Debtor owns approximately 240 units of rental housing, the
6 overwhelming bulk of which is located in Maricopa County, Arizona. Although the
7 Debtor owns some small multi-unit properties, many of the Debtor's properties are
8 single family units or condominium units. Thus, the Debtor owns approximately
9 160 separate parcels of real property, most of which are devoted to residential
10 rental purposes and rented to tenants pursuant to written leases. With the
11 exception of a few isolated instances (i.e. the few small apartment complexes and
12 a multiple unit condominium loan with Compass Bank), most of these loans are
13 documented as "stand alone" residential loans secured by form residential deeds
14 of trust and assignment of rents and not by commercial loan documentation.
15

16 The Debtor has an interest in an other real property valued at \$214,500.00.
17 These interests include 3 unimproved lots: (a) 2 lots in Montana each valued at
18 \$27,000.00 which are each owned free and clear; and (b) an interest in another
19 lot outside Colorado Springs, Colorado, valued at \$74,000 which is owned free
20 and clear. The Debtor also has a 1/3 partnership interest in an improved property
21 located on Flathead Lake in Montana with an estimated value of \$650,000.00,
22 Ron Potthoff of Whitefish Montana is the managing partner and the Debtor owes
23 money to the partnership due to disproportionate advances by the other partners.
24 The estimated current value of his 1/3 interest in the partnership is \$86,500.00.
25
26

1 The Debtor intends to sell these interests during the course of the Plan. Currently,
2 the market for these properties is depressed and the Debtor's business judgment
3 is that the disposition of these properties should be deferred until there is a
4 discernible general economic recovery and in particularly a recovery in the market
5 for vacation type property in Montana and Colorado.
6

7 The bulk of these properties are currently occupied by tenants pursuant to
8 written lease agreements entered prepetition. As the landlord, the Debtor is
9 required to maintain a leasing, management, accounting, maintenance, property
10 inspection and administrative apparatus and a 24 hour, 7 days a week
11 emergency repair reporting and monitoring capability to fulfill its obligations due
12 and owing to the tenants and to maintain the subject properties (hereafter "the
13 Management Apparatus"). In the ordinary course of business, the Debtor buys
14 new appliances for use in his properties and later sells these appliances to
15 tenants and third parties as the appliances are replaced or no longer needed.
16
17

18 As the landlord, the Debtor is required to provide necessary repairs as and
19 when required to maintain the habitability and rentability of the properties. If a
20 property is vacant and such repair or maintenance is necessary, this is performed
21 by the Management Apparatus. The maintenance of vacant properties requires
22 landscaping service (which ordinarily in the case of single family rental properties
23 is an obligation of tenants) and water service so that the landscaping can be
24 maintained. Third party management companies tend to outsource all repair work
25 to higher priced licensed contractors which are changed frequently. The Debtor's
26

1 Management Apparatus has a longstanding relationship with an independent
2 contractor who charges \$20.00 per hour for his services and who provides
3 coverage on a 24 hour, 7 days a week basis. Using this independent contractor
4 in the first instance is a cost reduction measure which has been very effective. If
5 the repair is beyond the capabilities of the independent contractor, it is then
6 referred (depending on the particular nature of the repair required) to one of five
7 (5) specialty (i.e. HVAC, electrical, etc.) licensed contractors with whom the
8 Management Apparatus has had long term relationships, some of which go back
9 as far as 20 years. These long term relationships are based upon the
10 Management Apparatus's careful monitoring of both the cost effectiveness and
11 the quality of the work of these specialty licensed contractors.
12
13

14 **B. UTILITIES REQUIRED TO BE PROVIDED TO TENANTS**
15 **OR TO PRESERVE LANDSCAPING**

16 Some, but not all, of the lease agreements with the tenant obligate the
17 Debtor as landlord to furnish the tenants with various types of utility
18 service. The pricing of these "utilities included" leases takes into account the cost
19 of these utility services so this is functionally a pass through. The Debtor had no
20 prepetition liabilities to its utility providers. When a property with landscaping is
21 vacant, water service must be maintained to the specific property to keep the
22 landscaping alive. Allowing landscaping to die adversely impacts on the value and
23 rentability of the units.
24
25
26

1 **C. INSURANCE OF THE INDIVIDUAL PROPERTIES**

2 The Debtor maintains discrete policies of property insurance with lender
3 loss payee coverage for each of its real property. It also maintains general liability
4 coverage, workmens compensation coverage and general liability coverage. Such
5 insurance is essential to protect the interests of each lienholder in the property
6 and the interests of the estate and its creditors.
7

8 **D. RENTAL SALES TAXES**

9 The monthly rental stream from each of the properties is subject to the
10 payment of the sales taxes on rents collected. The exact applicable rate varies
11 by the particular municipality in which the properties are located. This tax is
12 included in the monthly rent for each of the Rental Units so that the sales tax is
13 functionally a pass through (paid by the tenant and then "passed through" to the
14 particular taxing authority). The Debtor is obligated to pay taxes on rents collected
15 pursuant to applicable nonbankruptcy law. This tax is added to the base monthly
16 rent of the units. The Debtor was current on all such sales taxes as of the Petition
17 Date and has remained current post-petition.
18
19

20 **E. HOMEOWNERS'S ASSOCIATION FEES**

21 Certain of the properties are subject to recorded declarations of HOAs
22 pursuant to either Covenants, Conditions and Restrictions ("CC & R's") or
23 Horizontal Property Regimes ("HPRs"). These CC & R's or HPRs are often prior
24 to the liens of the Secured Creditors and may give the home owners' associations
25
26

1 rights superior to the rights of the Secured Creditors whose liens may be
2 subordinate to the liens of the CC&R's or HPRs. The Debtor was current on all
3 obligations due to HOAs prepetition and has stayed current on these obligations
4 post-petition.
5

6 **F. PROPERTY MANAGEMENT**

7 The Management Apparatus requires a staff of five (5) full time employees
8 and one (1) part-time employee and an office of approximately 1200 square feet
9 located at 727 W, University Drive, Tempe, Arizona 85281 in connection with this
10 apparatus as well as one (1) vehicle.
11

12 The Management Apparatus is superior to the use of third party
13 management firms in many ways. A first point of superiority is that the employees
14 of the Management Apparatus are highly experienced and very motivated.
15

16 A second point of superiority is that the employees of the Management
17 Apparatus can respond to potential tenant inquiries and requests to view the units
18 in literally minutes instead of several hours or even days. The bulk of the DIP's
19 units are located in Tempe where the Management Apparatus is based so that
20 prospective tenants can literally be given almost instantaneous tours of multiple
21 properties and leasing opportunities can be maximized. Historically, the
22 Management Apparatus has maintained a 97% to 98% occupancy factor. In
23 today's economically depressed environment, the Management Apparatus is still
24 managing to maintain an 87% to 88% occupancy factor despite considerable
25 competition and adverse market conditions which have seen occupancy rates
26

1 markedly decline.

2 A third point of superiority is that the Management Apparatus engages in
3 extensive inspection and monitoring of vacant units including at least weekly
4 inspections. This level of vigilance is not available from third party contract
5 managers. A large portion of the DIP's properties are located in the City of
6 Tempe, Arizona, which is particularly stringent about the requirements for the
7 maintenance of vacant dwelling units, thus necessitating the at least weekly
8 inspection and monitoring.
9

10 **G. EVICTION COSTS**

11
12 Unless defaulting tenants are served with eviction proceedings, defaulting
13 tenants can remain in the Rental properties without paying rent. The
14 commencement and prosecution of eviction proceedings causes tenants to cure
15 their rent defaults or to vacate the premises so that the premises can be relet to
16 performing tenants who pay the agreed upon rental.
17

18 The Debtor has been granted authority by order of the Bankruptcy Court to
19 retain Andrew M. Hull, attorney at law, and his Of Counsel attorneys Denise M.
20 Holliday and Kevin W. Holliday as ordinary course professionals. These lawyers
21 are recognized specialists in these matters and very cost effective.
22

23 **III. MAJOR LITIGATION CLAIMS PREDATING THE CHAPTER 11 CASE**

24 **A. THE INSURANCE LITIGATION CLAIM**

25
26 The Debtor is the Plaintiff in Maricopa County, Arizona, Superior Court

1 Case No. CV2009-002285 ("Pending Suit") which action was filed on January
2 23, 2009, and the case is pending therein against Country Mutual Insurance
3 Company, Anthony Waltenburg Insurance Agency, Inc. and its principal, Anthony
4 Waltenburg, arising out of claims for damages and insurance proceeds under
5 Policy No. A02K6384937 for fire damage at the residence located at 9121 N. 69th
6 St., Paradise Valley, Arizona, on or about January 25, 2008 ("the Claims"). The
7 fire caused substantial damage to the residence and its contents. The dispute
8 includes, but is not limited to, the following:
9

10
11 The Debtor's Chapter 11 estate has a claim for \$747,942.18 for the cost of
12 restoring the residence to its pre-fire condition. A contractor's estimate of the cost
13 of restoration was \$1,259,104.02 (excluding landscaping) and the insurer Country
14 Mutual only paid \$511,161.34. The Debtor's Chapter 11 estate claims the
15 difference which is \$747,942.18.
16

17 The Debtor's Chapter 11 estate has a claim for \$92,938.86 for personal
18 property damage and loss. The total personal property submission was
19 \$657,640.86 and the insurer Country Mutual only paid \$564,702.00. The DIP's
20 estate claims the difference which is \$92,938.86.
21

22 The Debtor's Chapter 11 estate claims a \$15,000 per month additional
23 living expense benefit which Country Mutual stopped paying in November, 2008.
24 As of January, 2010, approximately fourteen (14) months have accrued to date
25 on this portion of the claim totaling \$210,000.00 plus \$15,000.00 for each
26 additional month to be added for the amount of this claim.

1 The Debtor's Chapter 11 estate has a claim for claims adjustment
2 expenses relating to the costs of retaining a public adjuster. The Debtor's Chapter
3 11 estate has a claim of \$8,500.00 for landscaping expenses. The Debtor's
4 Chapter 11 estate has a claim for pre-judgment interest. The
5
6 Debtor's Chapter 11 estate has a bad faith claim against the insurer Country
7 Mutual. The Debtor's Chapter 11 estate has a claim for errors and omissions
8 against its captive agent Anthony Waltenburg Insurance Agency, Inc. and its
9 principal, Anthony Waltenburg, arising out of the agent's failure to ensure that
10 adequate coverages were in place for Plaintiff's dwelling, contents and additional
11 living expense at the time of the fire. Other damages are also implicated including
12 emotional distress, punitive damages as to certain claims (bad faith) and the like.
13 There is a breach of contract component to some of the Claims and thus the
14 Debtor's Chapter 11 estate has a claim for attorneys' fees pursuant to either the
15 terms of the insurance contract or state statute.
16
17

18 The law firm of Peshkin & Kotalik, P.C. of Phoenix, Arizona ("the Firm"), has
19 been appointed as special litigation counsel by order of the Bankruptcy Court to
20 represent the Debtor as the estate representative in this litigation. The Fee
21 Agreement provides for a contingent fee of 25% of any recovery prior to 30 days
22 before trial and 33-1/3% of Wright's total recovery (including any award of
23 attorneys' fees) if there is any recovery within 30 days of any trial date, during trial
24 or at the conclusion of trial. The Fee Agreement provides for the Debtor to
25 reimburse the Firm for all costs and expenses related to the prosecution of the
26

1 Claims. The Firm has advanced and shall continue to advance costs in
2 connection with the Claims and the lawsuit on the Claims hereinafter described.
3 The Fee Agreement has an hourly component in the event that the Debtor is the
4 prevailing party at trial against Country Mutual. In such event, the Firm would
5 apply for attorneys' fees at the rate of \$250.00 per hour from Country Mutual and,
6 if successful, the awarded attorneys' fees would be considered part of the
7 recovery for purposes of calculating the contingent fee. The Firm's compensation
8 for fees would be the larger of either the defined contingent fee or the attorneys'
9 fees awarded by the court in connection with the Claims.
10

11 **B. HYMAS LITIGATION CLAIM**

12
13 The Debtor was the Plaintiff in Maricopa County, Arizona, Superior Court
14 Case No. CV2006-003485 brought against Nicole Paige Hymas (hereafter
15 "Hymas") as Defendant. The Debtor was represented by Polsinelli Shugart, P.C.
16 of Phoenix, Arizona, in this case. The case involved the claim for partition of what
17 was claimed to be a jointly owned residential real property located in Paradise
18 Valley, Arizona. Hymas was a former girlfriend of the Debtor. There is a dispute
19 about whether or not an enforceable settlement arose which essentially required
20 the Debtor to buy back the subject residential real property. At all times material
21 herein, it was the position of the Debtor that it was entirely within his discretion to
22 decide whether or not to close escrow on the purchase of the property. Pursuant
23 to an order to show cause brought on for hearing by Hymas, the trial court
24 concluded that the settlement obligated the Debtor to purchase the subject real
25
26

1 property. On July 30, 2009, the trial court entered an order directing that the
2 Debtor proceed with the settlement subject to securing the financing or funds to
3 complete the settlement. The order also awarded \$13,611.00 in attorneys fees.
4 The Debtor appealed the order to Division One of the Arizona Court of Appeals
5 where the appeal was pending as Case No. 1 CA-CV 09- 0610 at the time of the
6 commencement of the Chapter 11 case. The issues on appeal were as follows:
7 (1) Whether any settlement requires the Debtor to actually close escrow on the
8 purchase of the subject property?; (2) Whether the trial court issued an injunction
9 that lacks the form and specificity required by Arizona Rule of Civil Procedure
10 65(h)?; (3) Whether the trial court abused its discretion in entering a judgement
11 for attorneys' fees against the Debtor for purportedly violating an injunction that
12 lacked the form and specificity required by Arizona Rule of Civil Procedure 65(h)?;
13 and (4) Whether the trial court substituted its judgment for the Debtor's on an
14 issue that, under the settlement, was in his sole discretion? The appeal was
15 stayed by order of the Court of Appeals due to the automatic stay of the
16 Bankruptcy Code. It is obvious that the Debtor no longer has the capability to
17 securing the financing or funds to complete the settlement due to the pendency
18 of this Chapter 11 case.

22 **IV. MAJOR CLAIMS ARISING AFTER OR AS A CONSEQUENCE OF THE** 23 **CHAPTER 11 CASE**

24 **A. THE DANZIK TRUST DISPUTE**

25 A luxury residence located 6939 E. Hummingbird, Paradise Valley, Arizona
26

1 85253 was formerly owned by the Debtor. The property is subject to a first deed
2 of trust in favor of Bank of America securing a note with a balance due of
3 approximately \$4,160,000.00 dated on or about June 12, 2007 (Loan No.
4 655166628).

5
6 The property was subsequently sold on a wraparound basis prepetition to
7 Dennis M. Danzik and Elizabeth J. Danzik, as Trustees of the DEJA II Family
8 Trust (hereafter "Buyers") on or about August 1, 2008. The purchase price was
9 \$6,200,000.00 of which \$250,000.00 was paid at the close of escrow with the
10 balance represented by a purchase money All Inclusive Note Secured By Deed
11 of Trust dated August 1, 2008, executed by the Buyers as makers in favor of the
12 Debtor as payee in the principal amount of \$5,950,000.00 providing for interest
13 at the rate of 6.0% per annum payable in monthly installments of interest only
14 beginning on September 25, 2008, and becoming all due and payable on August
15 25, 2011 (hereafter "Note"). In addition, the Note provides for principal reductions
16 of \$83,333.33 each which were due on November 30, 2008, January 31, 2009,
17 and March 31, 2009. The Note provides for default interest at the rate of 12.0%
18 on the unpaid principal from the date of default.
19
20

21 Security Title was the designated servicing agent but the Buyers sometimes
22 bypassed the servicing agent. The monthly payments from the Buyers were
23 \$29,000.00 per month and were being used to keep the Bank of America loan
24 current which had a monthly installment payment of approximately \$19,000.00 per
25 month.
26

1 The Debtor contends that the Buyers defaulted on their payment obligations
2 by failing to make scheduled payments and noncompliance with their obligations.
3 Post-petition the Buyers defaulted in the monthly payments under the Note. The
4 Debtor directed that a deed of trust sale be commenced by Security Title
5 Company of Phoenix, Arizona which was held on May 6, 2010. The Debtor was
6 the only bidder pursuant to a credit bid. In the aftermath of the completed deed of
7 trust sale, the Buyers have vacated the property.

9 The Buyers have raised various disputes which the Debtor does not believe
10 are valid. First, the Buyers erroneously assert that the principal reductions and the
11 excess portions of the monthly payments had to be used to pay down the senior
12 loan of Bank of America. There is nothing in the Note or the transactional
13 documentation to support thus. Second, the Buyers assert that they have not
14 been given proper credit for certain payments but the documentation submitted
15 by the Buyers does not substantiate their position.

17 Due to depressed market conditions, the fair market value of the subject
18 property is currently \$3,000,000.00 which is less than the balance due under the
19 Note. The Debtor cannot pursue the Buyer for a post-deed of trust sale deficiency
20 because the Note is a purchase money note secured by a single family residence
21 located on a site of less than 2 and ½ acres and for the further reason that a deed
22 of trust sale was employed to foreclose upon the property.

24 **B. CLAIMS ARISING UNDER §§ 544-551 OF THE BANKRUPTCY**
25 **CODE WHICH BEING CONVEYED TO A CREDITORS' TRUST**

26 There has been some question raised by at least one creditor about a

1 repayment of \$230,000.00 in July, 2009, by the Debtor to Jolene Hill of
2 Scottsdale, Arizona. The question arises in part because the Debtor took pains
3 to highlight in his Statement of Affairs that Ms. Hill was a former girlfriend.
4 However, it should be noted that the Debtor has known Ms. Hill for 25 years and
5 that she was only his girlfriend for a brief period of that time and that she was not
6 his girlfriend at the time of the unsecured loan transaction giving rise to the debt
7 from the Debtor to Ms. Hill and for which repayment was made. The Debtor does
8 not believe that Ms. Hill had insider status under § 101(31) of the Bankruptcy
9 Code as she was no longer his girlfriend and was merely one of several private
10 lenders the Debtor was dealing with at the time. The Debtor believes that the
11 applicable preference period is 90 days pursuant to § 547(b)(4)(A) of the
12 Bankruptcy Code and that the repayment in question occurred substantially
13 outside of that 90 day period.

16 However, the Debtor has dealt with this and any similar issue by providing
17 in the Plan for the creation of a Creditor's Trust to which all claims arising under
18 §§ 544-551 of the Bankruptcy Code are being assigned for the benefit of creditors
19 (hereafter "the Assigned Claims"). The Trustee of the Creditors' Trust shall have
20 sole discretion to determine in his or her business judgment which of the Assigned
21 Claims to investigate, which of the Assigned Claims to pursue in litigation and to
22 control such litigation, which of the Assigned Claims to settle, and the terms and
23 conditions of those settlements.

25 It is submitted that this Creditor's Trust arrangement removes the Debtor
26

1 from the decision making related to the investigation and determination of what
2 course of action to follow with these claims. This Creditor's Trust arrangement has
3 been carefully thought out by the Debtor to promote the best interests of creditors.
4 The form of Creditor's Trust Agreement is annexed as Exhibit "A" to the Plan
5 (Exhibit "1" hereto).
6

7 **V. POST PETITION OPERATIONS AND DEVELOPMENTS.**

8 **A. DEVELOPMENTS IN THE CHAPTER 11 CASE.**

9 **1. Continued Operations.**

10 The Chapter 11 case was filed on December 14, 2009. Since the filing, and
11 in consultation with his Court-approved professionals, the Debtor has continued
12 to manage his business affairs post-petition. The Debtor's most recent available
13 Individual Debtor Engaged In Business Monthly Report for the month of April,
14 2010, dated May 14, 2010, is annexed hereto as Exhibit "D" and incorporated by
15 this reference ("Operating Report"). The Operating Report reflects total deposits
16 in bank accounts as of April 30, 2010, of \$2,150,640.30 as follows:
17
18

Bank Account	Amount	Running Total
Rent Deposit Acct. # 8198	232,021.01	232,021.01
Operating Acct. # 8180	1,625,712.07	1,857,732.51
Rent Acct. # 8214	292,907.79	2,150,640.30

24 Additional separate sequestered accounts have been established pursuant
25 to the March 2, 2010, order of the Bankruptcy Court to hold cash collateral of the
26 various Secured Creditors. These accounts largely mirror but do not exactly

1 mirror⁷ the Cash Collateral Accountings for the Month of April, 2010, which are
2 annexed hereto as Exhibit "E" and incorporated by this reference (hereafter "Cash
3 Collateral Accountings"). The Cash Collateral Accountings reflect the income
4 derived from the Debtor from his various properties.

5
6 The Operating Report contains a Profit & Loss Statement for April, 2010,
7 which reflects the following:

8 Period	Total Income	Total Expense	Net Income
9 April, 2010	216,079.45 ⁸	122,903.51	93,630.27
10 Year to date 11 through April 30, 12 2010	772,122.41 ⁹	551,653.52	252,325.57

13 The Operating Report contains a Balance Sheet as of April 30, 2010, which
14 reflects the following asset profile:

15 Total Current Assets	2,433,573.34
16 Fixed Assets Buildings	37,621,000.00
17 Land	128,000.00

18
19
20 ⁷ The Debtor's cash collateral stipulation with Bank of America embodied in that
21 certain stipulated order dated February 2, 2010, calls for monthly disbursements of the
22 net cash collateral to Bank of America. The Debtor has turned over all cash collateral
23 in its hands collected up to and through March 31, 2010, to MidFirst Bank pursuant to
24 the order lifting stay and has left the collection of all rents accruing on or after April 1,
25 2010, from the two properties serving as collateral security to MidFirst Bank to said
26 secured two collateral. MidFirst Bank completed its deed of trust sale with respect to the
afore `described collateral security on or about April 20, 2010.

⁸ This figure does not include interest income of \$454.33 for the month of April,
2010, which is reflected in the Other Income category.

⁹ This figure does not reflect interest income of \$31,856.66 for the year to
date up to and through April 30, 2010, reflected in the Other Income category.

Unrealized Decreased Value	6,982,589.29
Total Fixed Assets	44,731,589.29
Other Assets	127,624.47
Total Assets	47,292,787.10

This Balance Sheet as of April 30, 2010, reflects the following profile of the Debtor's liabilities and equity:

TOTAL CURRENT LIABILITIES	807,704.61
TOTAL LONG TERM LIABILITIES	43,951,906.57
EQUITY	2,533,175.92
TOTAL LIABILITIES & EQUITY	47,292,787.10

2. Employment of Professionals.

Upon commencing these proceedings, the Debtor applied for approval to employ Burch & Cracchiolo, P.A., of Phoenix, Arizona, as bankruptcy counsel for the Debtor In Possession (Dkt #'s 3 and 12). The Bankruptcy Court granted the application by an Order signed on January 4, 2010 (Dkt # 34).

The Debtor sought approval for the employment of David Birdsell as the accountant for the Debtor. (Dkt #'s 6 and 13). The Bankruptcy Court granted such approval by an Order signed on January 4, 2010 (Dkt # 35).

The Debtor sought approval for the employment of the law offices of Andrew Hull as an ordinary course professional for forcible detainer/eviction services. (Dkt. # 26). The Bankruptcy Court granted such approval by an Order signed on March 25, 2010 (Dkt # 35).

The Debtor sought approval for the employment of Peshkin & Kotalik as

1 special litigation counsel on a contingency basis with respect to state court
2 insurance coverage litigation. (Dkt. # 37). The Bankruptcy Court granted such
3 approval by an Order signed on January 15, 2010 (Dkt # 67).

4 The Debtor sought approval for the employment of Westling & Eldridge,
5 P.C. to prepare the Debtor's 2009 federal and state income tax returns. (Dkt. #
6 131). The Bankruptcy Court granted such approval by an Order signed on March
7 2, 2010 (Dkt # 152).

9 The Debtor has also sought approval for the employment of J.P. Miller &
10 Associates, L.L.C., an Arizona limited liability company, to provide the
11 professional services of its principal John P. Miller who has expertise in liquidation
12 analysis and interest rate matters. The application to employ J.P. Miller &
13 Associates, L.L.C. was filed on June 1, 2010, but no order authorizing such
14 employment has been entered as of this date.

16 **3. Creditors' Meeting and Creditors' Committee.**

17 The United States Trustee ("UST") presided over an initial creditors'
18 meeting under § 341 of the Bankruptcy Code on January 19, 2010. (Dkt # 21).
19 The UST stated that it could not appoint an unsecured creditors committee on
20 January 26, 2010. (Dkt # 82).

22 **4. Cash Collateral Proceedings.**

23 Upon filing, the Debtor sequestered all post-petition rents. The Debtor
24 moved the Court for limited authorization to use cash collateral to maintain the
25 Debtor's business on a going concern basis. (Dkt. # 40). There were objections
26

1 to the Motion by certain secured creditors (Dkt.#'s 60, 73 and 83).

2 Hearings were held on the cash collateral issues on January 20, 2010,
3 February 16, 2010, and March 24, 2010 (Dkt.#'s 80, 138 and 206). A stipulated
4 form of order authorizing the limited use of cash collateral was signed by the
5 Court on March 2, 2010. (Dkt. # 152). Pursuant to the order, the Debtor
6 provides monthly cash collateral accountings on a creditor by creditor basis and
7 sequesters cash collateral pursuant to the terms of the order.
8

9 In addition, the secured creditor Bank of America stipulated with the Debtor
10 to the entry of an order granting the Debtor limited authorization to use cash
11 collateral which was signed on February 2, 2010 (Dkt.# 112).
12

13 **5. Stay Proceedings.**

14 A number of secured creditors have commenced contested proceedings by
15 filing motions which seek to lift the automatic stay. The Debtor has contested
16 these motions excepting the motion of MidFirst Bank with reference to which an
17 agreed order was entered on March 25, 2010, with respect to two properties. (Dkt.
18 # 211). Numerous preliminary hearings have been held. Some of the preliminary
19 hearings in these stay proceedings have been continued due to settlement
20 discussions. The Debtor has commenced making adequate protection payments
21 to Washington Federal Savings equal to the regular monthly payments pending
22 the final hearing in that contested matter. It is anticipated that stay proceedings
23 will be set for final hearings during the course of the Debtor's efforts to obtain plan
24 confirmation.
25
26

1 **6. Exclusivity.**

2 Under Section 1121(b) of the Bankruptcy Code, a Debtor has an exclusive
3 right to file a Chapter 11 plan during the first 120 days following the bankruptcy
4 filing. Debtor has filed its plan and disclosure statement within the exclusivity
5 period. The Debtor has not sought any additional extension of the exclusivity
6 period.
7

8 **7. Prepetition Rent Issues**

9 The issue arose as to what interest, if any, did secured creditors have in
10 prepetition rents. The matter was raised by way of a Motion for Determination (1)
11 That Secured Creditors Failed to Take Affirmative Action Prepetition as Required
12 under A.R.S. § 33-702(b) and Thus Failed to Perfect Any Choate Interest in
13 Prepetition Rents; (2) That Secured Creditors Whose Deeds of Trust Have No
14 Assignment of Rents Provisions Have No Interest in Either Prepetition or
15 Postpetition rents; and (3) That Strong Arm Powers of Dip Trump Interest of
16 Secured Creditors in Prepetition Rents filed by the Debtor (Dkt.. # 283) (hereafter
17 "Prepetition Rents Motion"). The Prepetition Rents Motion became a contested
18 matter with responses filed by multiple secured creditors. A hearing was held
19 before the Court on the Prepetition Rents Motion on April 29, 2010. On May 14,
20 2010, an Order Re Prepetition Rents was entered by the Court (Dkt. # 395), a true
21 and correct copy of which is annexed hereto as Exhibit "F" and incorporated by
22 this reference (hereafter "Prepetition Rents Order"). Excepting a limited pool of
23 secured creditors such as Northern Trust, N.A. who did not appear to have an
24
25
26

1 assignment of rents provision in their form of recorded deed of trust nor a
2 separate assignment of rents agreement which was recorded prepetition, the
3 Prepetition Rents Order held that all of the secured creditors with an assignment
4 of rents provision in their deeds of trust or with a separate assignment of rents
5 agreement became perfected in the prepetition rents upon the recordation of
6 those documents in the country recording offices in the counties within Arizona
7 and California in which the Debtor's various real properties are located.
8 (Prepetition Rents Order, ¶¶ 12 and 13). The Prepetition Rent Order provided that
9 concludes that the Debtor may use any rents collected prior to the time he was in
10 default with the secured creditors and that any such rents are not to be construed
11 as prepetition rents subject to the Prepetition Rents Order. (Prepetition Rents
12 Order, ¶ 14). The Debtor generally but not universally went into default on his
13 obligations owed to various secured creditors as of the installment payments due
14 as of July 1, 2009.

15
16
17 The Prepetition Rents Order left open the question of whether or not the
18 strong arm powers of 11 U.S.C. § 544(a)(1)-(3) would cause the Debtor in his
19 capacity as Debtor In Possession to prevail over the secured creditors and found
20 that the Debtor was required the commencement of an adversary proceeding
21 pursuant to FBR 7001 in order to raise this issue and dismissed the "strong arm"
22 portion of the Motion without prejudice so that it could be raised by the Debtor if
23 he so chooses in a separate adversary proceeding. (Prepetition Rents Order,
24 ¶15).

Pursuant to the Prepetition Rents Order, the Debtor has prepared accountings of net prepetition rents after deducting expenses by lender. The amounts of these prepetition rents are as set forth in the Recap of Debtor In Possession's Accountings of Net Prepetition Rent Collections From July, 2009, Through The Chapter 11 Filing collectively annexed hereto as Exhibit "G" and incorporated by this reference. The total of the net prepetition rent collections from July, 2009, through the Chapter 11 filing was \$617,261.83. The detail as to each of the lenders is annexed hereto as Exhibits "G-1" through "G-14" and incorporated by this reference.

The following summarizes the amount of these net prepetition rents as reflected in the annexed accountings by lender.

Secured Creditor	Exhibit	Net Prepetition Rents
Bank of America	G-1	171,896.24
Bank of Oklahoma	G-2	4,522.88
Chase Bank	G-3	62,764.63
Chase Commercial	G-4	50,515.87
Compass Bank	G-5	45,203.21
Cortez Financial	G-6	0.00
Countrywide Financial	G-7	63,689.20
Merrill Lynch	G-8	25,068.44
MidFirst Bank	G-9	33,826.75
Northern Trust	G-10	0.00
SLS GMC	G-11	5,903.00
Thornburg Mortgage	G-12	45,112.80

Washington Federal	G-13	89,155.85
Wells Fargo	G-14	19,602.71
TOTAL		\$617,261.83

The Prepetition Rents Order has the effect of reducing the amount of money available for general reorganization purposes. Accordingly, the Debtor has respectfully elected to file a Notice of Appeal with reference to the Prepetition Rents Order on May 28, 2010. Notwithstanding the filing of the Notice of Appeal, the Prepetition Rents Order continues to be a valid and subsisting order with controlling effect in these proceedings unless and until there are further developments, whether in this Court (i.e. the filing and successful prosecution of an adversary proceeding by the Debtor In Possession as to the prepetition rents asserting the strong arm powers of § 544(a) of the Bankruptcy Code and/or as to undersecured loans a preference action pursuant to Section 547 of the Bankruptcy Code which is contemplated) or in a court with proper appellate jurisdiction (i.e. the Ninth Circuit BAP).

The impact of the Prepetition Rents Order can be summarized as follows:

Description	Amount
Net Deposits in Financial Accounts as of 12-15-2009	\$1,850,340.76
Net Prepetition Rents as of the Filing Date (12-14-2009)	(\$ 617,261.83)
Total General Funds as of 12-15-2009	\$1,233,078.90

VI. DEBTOR'S CONTINUED OPERATION AND MANAGEMENT OF BUSINESSES AND INVESTMENTS.

1 Under the Plan, Debtor shall continue to operate and manage the
2 assets within his portfolio of real estate properties. The continued management
3 of these assets shall preserve the Debtor's ability to make the payments called for
4 under the Plan.

5 6 **VII. LEGAL REQUIREMENTS FOR CONFIRMATION.**

7 This Section of the Disclosure Statement discusses the legal requirements
8 for Confirmation of the Plan as established by § 1129 and other provisions of the
9 Bankruptcy Code.

10 **A. VOTING ON PLAN.**

11 The Bankruptcy Code contains detailed provisions regarding which
12 creditors and interest holders are entitled to vote on a plan or reorganization. In
13 general, the creditors and interest holders in classes that are not impaired under
14 the Plan are not entitled to vote and are conclusively presumed to accept a plan.
15 Creditors and interest holders in classes that receive nothing under the plan need
16 not vote and are conclusively presumed to reject a plan. Creditors and interest
17 holders whose claims or interests are "impaired" under the plan are entitled to
18 vote on the plan.

19 **B. ACCEPTANCE OF PLAN BY CREDITORS.**

20 A Class of Claims impaired under the Plan "accepts" the Plan only if (a)
21 more than one-half of the holders who submit ballots for Claims in that Class vote
22 to accept, and (b) the holders of Claims accepting the Plan hold at least
23 two-thirds, by dollar amount, of the voted Claims within that Class. A Class of
24
25
26

1 Interests impaired under the Plan "accepts" the Plan only if two-thirds of the voted
2 Interests in such Class have voted to accept the Plan. If the requisite
3 acceptances of each Class of Claims or Interests are obtained and the Plan is
4 confirmed, the Plan will be binding with respect to all holders of Claims and
5 Interests of each Class, including members who did not vote or who voted to
6 reject the Plan.
7

8 **C. BEST INTERESTS OF CREDITORS**

9 Section 1129(a)(7) provides that, as a condition to confirmation, a Plan
10 must provide that any creditor or interest holder not voting to accept the Plan must
11 receive, under the Plan, distributions of a value at least equal to that which such
12 creditor would receive if Debtor were liquidated under Chapter 7 of the Bankruptcy
13 Code. This provision is generally referred to as the "best interest test."
14

15 The Debtor believes that the best interests test is satisfied by the Plan. For
16 the purpose of applying the "best interest" test, the Debtor has prepared a
17 Liquidation Analysis which is attached as Exhibit "H" to this Disclosure Statement
18 and incorporated by this reference. The Liquidation Analysis indicates that the
19 Debtor's liquidation under Chapter 7 would likely result in considerably less funds
20 reaching the holders of unsecured claims against the Debtor than would occur
21 under the Plan which provides for payment in full to unsecured creditors.
22

23 The Debtor has also retained John P. Miller of J.P. Miller & Associates,
24 L.L.C. of Scottsdale, Arizona, an independent consultant, to prepare a liquidation
25 analysis. Mr. Miller's resume is annexed hereto as Exhibit "I" and incorporated by
26

1 this reference. Mr. Miller is a consultant focusing on current issues in the real
2 estate market. Mr. Miller was formerly in banking with the following institutions:
3 State Savings Bank, Fifth Third Bank and M&I Bank. As is reflected in his resume,
4 Mr. Miller's employment was continuous with the institutions he worked for being
5 acquired and renamed. He retired as a Senior Vice President of M&I Bank and an
6 executive management member responsible for the management of the
7 commercial real estate department in Arizona and he was also a member of the
8 regional loan committee. Previous positions for Mr. Miller included Commercial
9 Loan Officer, Loan Workout & Asset Management Specialist and Vice President.
10 Mr. Miller negotiated loan workouts with customers, lenders, attorneys and
11 governmental agencies. He also directed the sale and disposition of
12 nonperforming assets, notes and real property. In addition to his banking
13 background, Mr. Miller is a licensed Arizona real estate broker and has had real
14 estate experience with the Phoenix office of Marcus & Millichap, a commercial
15 real estate brokerage concern, and Prudential Management & Realty Services,
16 Inc. Where he was an Acquisitions and Sales Manager.

17
18
19
20 A two (2) page disclosure of assumptions and definitions entitled "Spread
21 Sheet information" prepared by Mr. Miller (hereafter "the Assumptions") to which
22 a four (4) page property by property Spreadsheet entitled "Analysis of Net Sales
23 in Market and Liquidation Scenario" also prepared by Mr. Miller is annexed thereto
24 as Exhibit "A" (hereafter "the Spread Sheet"). The Assumptions and Spread Sheet
25 are attached as Exhibit "J" to this Disclosure Statement and incorporated by this
26

1 reference (hereafter collectively "Miller Analysis"). The Miller Analysis provides a
2 separate Market Value Sales Analysis and a Liquidation Sales Analysis for each
3 of the Debtor's properties.

4 The Assumptions state that Market Value is defined as follows:

5
6 "...the most probable price which a property should bring in a
7 competitive and open market under all conditions requisite to a fair
8 sale, the buyer and seller, each acting prudently, knowledgeably and
9 assuming the price is not affected by undue stimulus. Implicit in this
10 definition is the consummation of a sale as of a specified date and
11 the passing of title from seller to buyer under conditions whereby: (1)
12 buyer and seller are typically motivated; (2) both parties are well
13 informed or well advised, and each acting in what he or she
14 considers his or her own best interest; (3) a reasonable time is
allowed for exposure in the open market; (4) payment is made in
terms of cash in U.S. dollars or in terms of financial arrangements
comparable thereto; and (5) the price represents the normal
consideration for the property sold unaffected by special or creative
financing or sales concessions granted by anyone associated with
the sale."

15 The Assumptions state that Liquidation Value is defined as follows:

16 "The most probable price which a specified interest in real property
17 is likely to bring under all of the following conditions:

- 18 1. Consummation of a sale will occur within a severely limited future
19 marketing period specified by the client.
- 20 2. Actual market conditions are those currently obtaining for the
21 property interest appraised.
- 22 3. The buyer is acting prudently and knowledgeably.
- 23 4. The seller is under extreme compulsion to sell.
- 24 5. The buyer is typically motivated.
- 25 6. The buyer is acting in what he or she considers his or her best
26 interests.

1 7. A limited marketing effort and time will be allowed for the
2 completion of a sale.

3 8. Payment will be made in cash in U.S. dollars or in terms of
4 financial arrangements comparable thereto.

5 9. The price represents the normal consideration for the property
6 sold, unaffected by special or creative financing or sales
7 concessions granted by anyone associated with the sale."

8 The source of these definitions are more particularly described in the
9 Assumptions. You are urged to carefully read the Assumptions in their entirety.

10 The Assumptions state as follows:

11 "Assumptions used in Net Sales in Market value and Liquidation Value

12 Selling cost used in both scenarios: real estate commissions 4.5%,
13 closing cost title and escrow fees 2%, other cost associated with
14 selling .5% for total selling cost of 7%.

15 Trustee and court cost for liquidation scenario 3%.

16 Liquidation discounts;

17 Tempe properties: 25%
18 Paradise Valley and Scottsdale properties: 20%
19 Encinitas California properties 10%
20 Montana house 25% and Montana lots 35%
21 Colorado property: 50%"

22 The conclusions reflected in the Miller Analysis are summarized as follows
23 but you are urged to read the full Miller Analysis and the supporting material
24 (discussed *infra*) in order to be fully apprised:

25 **Analysis of Net Sales in Market Value Sale Scenario**

26 Market Value	37,694,567
Selling Costs Market Value Sales Analysis	(2,638,620)

Net Sales Market Value Sales Analysis	35,055,947
---------------------------------------	------------

Analysis of Net Sales in Liquidation Value Sale Scenario

Liquidation Discount Liquidation Sales Analysis	(8,362,932)
Liquidation Value Liquidation Sales Analysis	29,331,635
Selling Costs Liquidation Sales Analysis	(2,053,214)
Trustee/Court Selling Costs Liquidation Sales Analysis	(879,949)
Net Sales Liquidation Sales Analysis	26,398,472

The Analysis of Net Sales: Market Value versus Liquidation Scenario prepared by Mr. Miller is annexed hereto as Exhibit "K" to this Disclosure Statement and incorporated by this reference (hereafter "Underlying Data"). The Underlying Data provides, among other information, a description of the assignment, the assumptions upon which the assignment was undertaken, the number of properties and market information including the source of information for each market in which the Debtor owns properties.

Certain data Mr. Miller obtained from the Arizona Regional MLS for Inventory and Sales in the Tempe Zip Code of 85281 and the Paradise Valley Zip Code of 85253 is annexed hereto as Exhibit "L" and incorporated by this reference (hereafter "MLS Data"). The MLS Data was the basis for certain of the information and assumptions contained in the Underlying Data and is an aid to an understanding of the Miller Liquidation Analysis with respect to the Arizona

1 properties which comprise the overwhelming bulk of the properties.

2 **D. CONFIRMATION POSSIBLE WITHOUT ACCEPTANCE BY**
3 **CREDITORS.**

4 Debtor intends to request the Bankruptcy Court to confirm the Plan even if
5 a Class of Claims or Interests does not accept the Plan. To do so, the Bankruptcy
6 Court must find that the Plan is fair and equitable with respect to each Class of
7 Claims or Interests that is impaired and has not accepted the Plan. Debtor
8 believes that the Plan will satisfy the fair and equitable requirements of the
9 Bankruptcy Code to the extent such requirements are applicable based upon the
10 vote of Creditors on the Plan.
11

12 **1. Fair and Equitable Treatment of Secured Claims.**

13 With respect to a Class of Secured Claims that does not accept the Plan,
14 the Bankruptcy Code's "fair and equitable" standard includes a requirement that
15 the holders of the Claims either (i) retain their liens on the collateral and receive
16 cash payments, on the Effective Date or in installments, of a value equal to the
17 amount of the Secured Claim, or (ii) receive the realization of the indubitable
18 equivalent of the Secured Claim. Debtor believes that this standard is satisfied by
19 the Plan, which provides that each holder of a Secured Claim will receive payment
20 of the full amount of its Claim on the Effective Date, or in accordance with the
21 terms of its agreement with the Debtor, and the secured creditor will retain the lien
22 on its collateral to secure payment of the amounts specified by the Plan.
23
24

25 **2. Fair and Equitable Treatment of Unsecured Claims.**

26 With respect to an unsecured, non-accepting Class of Claims, the

1 Bankruptcy Code's "fair and equitable" standard includes a requirement that either
2 (i) the holders of the Claims receive cash payments, on the Effective Date or in
3 installments, of a value equal to the amount of the Claim, or (ii) no Class of junior
4 Claims or Interests receives anything on account of such junior Claim or Interest.
5 Debtor believes that this standard is satisfied by the Plan, because all
6 administrative, priority, secured claims and unsecured claims are to be paid in full
7 in accordance with the applicable provisions of the Bankruptcy Code. To the
8 extent that the Debtor will retain his Interests, he does so not only on the basis of
9 payment in full but also as a result of his contribution of five years of his
10 Disposable Income as set forth in § 1129(a)(15) and 1129(b)(2)(b)(ii).
11

12 **VIII. TAX CONSEQUENCES OF PLAN.**

13
14 The filing of theses Chapter 11 proceedings and/or the consummation of
15 the Plan may have federal and state tax consequences on the Debtor and his
16 creditors. Some of the potential conveyances are summarized below.

17 Where as here the Debtor is an individual who files for bankruptcy under
18 chapter 11, the bankruptcy estate is treated as a new taxable entity, separate from
19 the individual taxpayer. In this Chapter 11 case, the Debtor remained responsible
20 for the assets of the bankruptcy as a "debtor in possession" and functionally acts
21 as the bankruptcy trustee.
22

23 Since the Debtor is in a Chapter 11 bankruptcy and has remain as the
24 debtor in possession, the Debtor must file both a Form 1040 and the Form 1041
25 for the bankruptcy estate. Because the Debtor is an individual Debtor in a Chapter
26

1 11 case, the Debtor was able to elect to close the Debtor's tax year for the year
2 in which the bankruptcy petition is filed, as of the day before the date on which the
3 bankruptcy case commenced (December 13, 2009 in light of the December 14,
4 2009, filing date). The Debtor's 2009 tax year was divided into 2 short tax years
5 of less than 12 months each. The first year ends on the day before the
6 commencement date and the second year begins on the commencement date.
7 (January 1 through December 13, 2009, and December 14 through December 31,
8 2009). Generally, if the election is made, the Debtor's federal income tax liability
9 for the first short tax year becomes an allowable claim against the bankruptcy
10 estate as a claim arising before the bankruptcy filing. The tax liability for the first
11 short tax year, not subject to discharge under the Bankruptcy Code, can be
12 collected from the estate. However, the Debtor does not have any tax liability for
13 this first short year based upon his draft 2009 Form 1040 (See Exhibit A-5
14 annexed hereto).

15
16
17 The commencement of this bankruptcy case created an estate, which
18 generally includes all legal or equitable interests in property of the Debtor as of
19 the commencement of the case. There are certain exceptions such as a very
20 limited amount of exempt property. Where as here an individual has filed a
21 bankruptcy petition under Chapter 11, the bankruptcy estate is treated as a
22 separate taxable entity from the Debtor. The debtor in possession is responsible
23 for preparing and filing the estate's tax returns and paying its taxes. The Debtor
24 also remains responsible for filing his or her own returns and paying taxes on
25
26

1 income that does not belong to the estate.

2 Before filing tax returns for the bankruptcy estate, the debtor in possession
3 was required to obtain an employer identification number (EIN) for the estate. The
4 debtor in possession uses the EIN on any tax returns filed for the estate, including
5 estimated tax returns. The Debtor's individual income tax return will not include
6 the income, deductions, or credits that belong to the bankruptcy estate. It will also
7 do not include as income on the Debtor's return any debts canceled because of
8 bankruptcy. However, the bankruptcy estate must reduce certain losses, credits,
9 and the basis in property (to the extent of these items) by the amount of canceled
10 debt.
11

12 For cases such as this filed after October 16, 2005, earnings from services
13 performed by an individual Debtor after the commencement of the chapter 11
14 case are property of the bankruptcy estate under 11 U.S.C. section 1115. Under
15 IRC section 1398(e)(1), gross income of the estate includes income that the
16 Debtor earns for services performed after the bankruptcy petition date and should
17 be included on the bankruptcy estate's return.
18

19 The bankruptcy estate may take deductions or credits in the same way that
20 the Debtor would have deducted or credited them had he or she continued in the
21 same trade, business, or activity. Allowable expenses include administrative
22 expenses, such as attorney fees and court costs.
23

24 The bankruptcy estate figures its taxable income the same way as an
25 individual figures taxable income. Bankruptcy law determines which of a Debtor's
26

1 assets become part of a bankruptcy estate. A transfer (other than by sale or
2 exchange) of an asset from the Debtor to the bankruptcy estate is not treated as
3 a disposition for income tax purposes. Consequently, the transfer does not result
4 in gain or loss, recapture of deductions or credits, or acceleration of income or
5 deductions. For example, the transfer of an installment obligation to the estate
6 would not accelerate gain under the rules for reporting installment sales. The
7 estate is treated the same way the Debtor would be regarding the transferred
8 asset.
9

10 When the bankruptcy estate is terminated or dissolved, any resulting
11 transfer (other than by sale or exchange) of the estate's assets back to the Debtor
12 is also not treated as a disposition. The transfer does not result in gain or loss,
13 recapture of deductions or credits, or acceleration of income or deductions to the
14 estate.
15

16 The bankruptcy estate must treat its tax attributes the same way that the
17 Debtor would have treated them. These items must be determined as of the first
18 day of the Debtor's tax year in which the bankruptcy case begins. The bankruptcy
19 estate gets the following tax attributes from the Debtor:
20

- 21 **1. NOL carryovers;**
- 22 **2. Carryovers of excess charitable contributions;**
- 23 **3. Recovery of tax benefit items;**
- 24 **4. Credit carryovers;**
- 25 **5. Capital loss carryovers;**
- 26

- 1 **6. Basis, holding period, and character of assets;**
- 2 **7. Method of accounting;**
- 3 **8. Passive activity loss and credit carryovers,**
- 4 **9. Unused at-risk deductions; and**
- 5 **10. Other tax attributes as provided in regulations.**

7 Certain tax attributes of the estate must be reduced by any excluded
8 income from cancellation of debt occurring in a bankruptcy proceeding. When the
9 estate is terminated (for example, when the case ends), the Debtor assumes any
10 remaining tax attributes that were taken over by the estate and generally assumes
11 any of the listed attributes that arise during the administration of the estate.
12

13 For bankruptcy cases beginning after November 8, 1992, passive
14 activity carryover losses and credits and unused at-risk deductions as tax
15 attributes that the Debtor pass to the bankruptcy estate and the estate then
16 passes back to the Debtor when the estate terminates. Additionally, transfers to
17 the Debtor (other than by sale or exchange) of interests in passive or at-risk
18 activities are treated as exchanges that are not taxable.
19

20 The bankruptcy estate is allowed a deduction for administrative expenses
21 and fees or charges assessed it. These expenses are generally deductible as
22 itemized deductions and are not subject to the 2% floor on miscellaneous itemized
23 deductions. However, administrative expenses attributable to the conduct of a
24 trade or business by the bankruptcy estate or the production of the estate's rents
25 or royalties are deductible in arriving at adjusted gross income.
26

1 If the administrative expenses of the bankruptcy estate are more
2 than its gross income for a tax year, the excess amount may be carried back 3
3 years and forward 7 years. The amounts can only be carried to a tax year of the
4 estate and never to the Debtor's tax year. The excess amount to be carried back
5 or forward is treated like an NOL and must first be carried back to the earliest year
6 possible.
7

8 The Debtor cannot carry back any NOL or credit carryback from a tax
9 year ending after the bankruptcy case has begun to any tax year ending before
10 the case began. If the bankruptcy estate has an NOL that did not pass to the
11 estate from the Debtor under the attribute carryover rules, the estate can carry the
12 loss back not only to its own earlier tax years but also to the Debtor's tax years
13 before the year the bankruptcy case began. The estate may also carry back
14 excess credits, such as the general business credit, to the pre-bankruptcy years.
15

16 By following Rev. Proc. 2006-24, 2006-22 I.R.B. 943, the debtor in
17 possession may request a determination of any unpaid tax liability incurred
18 by the bankruptcy estate during the administration of the case by filing a tax return
19 and a request for such a determination with the IRS. For cases filed after October
20 16, 2005, unless the return is fraudulent or contains a material misrepresentation,
21 the estate, trustee, Debtor, and any successor to the Debtor are discharged from
22 liability for the tax upon payment of the tax:
23

24 **1. As determined by the IRS;**

25 **2. As determined by the bankruptcy court, after the completion of**
26

1 the IRS examination; or

2 **3. As shown on the return, if the IRS does not:**

3 Notify the trustee within 60 days after the request for the
4 determination that the return has been selected for examination, or Complete the
5 examination and notify the trustee of any tax due within 180 days after the request
6 (or any additional time permitted by the bankruptcy court).
7

8 For chapter 11 cases filed after October 16, 2005, a chapter 11 plan can
9 provide for payment of these taxes, with post-confirmation interest, over a period
10 of 5 years from the date of the bankruptcy order for relief (the bankruptcy petition
11 date in voluntary cases), in a manner not less favorable than the most favored
12 non-priority claims (except for convenience claims under section 1122(b) of the
13 Bankruptcy Code). However, the Debtor does not anticipate that there are any
14 such tax claims due and owing.
15

16 None of the debt canceled in a bankruptcy case is included in the Debtor's
17 gross income in the year it was canceled. Instead, certain losses, credits, and
18 basis of property must be reduced by the amount of excluded income (but not
19 below zero). However, the focus of the Debtor's Plan is not debt cancellation but
20 rather debt adjustment which will mitigate the requirement to adjust the basis in
21 the property of the Bankruptcy Estate because of debt cancellation. The Plan is
22 a 100% Plan.
23

24 However, the general rule is that, if a Debtor excludes canceled debt
25 from income because it is canceled in a bankruptcy case or during
26

1 insolvency, he must use the excluded amount to reduce certain "tax
2 attributes." Tax attributes include the basis of certain assets and the losses
3 and credits listed later. By reducing the tax attributes, the tax on the
4 canceled debt is partially postponed instead of being entirely forgiven. This
5 prevents an excessive tax benefit from the debt cancellation. Where as here
6 a separate bankruptcy estate has been created, the debtor in possession
7 must reduce the estate's attributes (but not below zero) by the canceled debt.
8

9 Generally, the amount of canceled debt is used to reduce the tax
10 attributes in the order listed below. However, the Debtor may choose to use all or
11 a part of the amount of canceled debt to first reduce the basis of depreciable
12 property before reducing the other tax attributes. The order of the reduction of tax
13 attributes is as follows:
14

15 Net operating loss. Reduce any NOL for the tax year in which the debt
16 cancellation takes place, and any NOL carryover to that tax year.

17 General business credit carryovers. Reduce any carryovers, to or from the
18 tax year of the debt cancellation, of amounts used to determine the general
19 business credit.
20

21 Minimum tax credit. Reduce any minimum tax credit that is available as of
22 the beginning of the tax year following the tax year of the debt cancellation.

23 Capital losses. Reduce any net capital loss for the tax year of the debt
24 cancellation, and any capital loss carryover to that year.
25

26 Basis. Reduce the basis of the Debtor's property as described under Basis

1 Reduction, later. This reduction applies to the basis of both depreciable and
2 nondepreciable property.

3 Passive activity loss and credit carryovers. Reduce any passive activity loss
4 or credit carryover from the tax year of the debt cancellation.

5 Foreign tax credit. Last, reduce any carryover, to or from the tax year of the
6 debt cancellation, of an amount used to determine the foreign tax credit or the
7 Puerto Rico and possession tax credit.

8 Except for the credit carryovers, the Debtor can reduce the tax
9 attributes listed earlier one dollar for each dollar of canceled debt that is excluded
10 from income. The Debtor can reduce the credit carryovers by 33 cents for each
11 dollar of canceled debt that is excluded from income.

12 The required reductions in tax attributes are made after figuring the
13 tax for the tax year of the debt cancellation. In reducing NOLs and capital losses,
14 first the Debtor reduces the loss for the tax year of the debt cancellation, and then
15 any loss carryovers to that year in the order of the tax years from which the
16 carryovers arose, starting with the earliest year. The Debtor then makes
17 reductions of credit carryovers in the order in which the carryovers are taken into
18 account for the tax year of the debt cancellation.

19 In this individual bankruptcy under Chapter 11, the required reduction of tax
20 attributes must be made to the attributes of the bankruptcy estate, a separate
21 taxable entity resulting from the filing of the case. The Debtor as the estate
22 representative must make the choice of whether to reduce the basis of
23
24
25
26

1 depreciable property first before reducing other tax attributes.

2 If any amount of the debt cancellation is used to reduce the basis of
3 assets as discussed under, the following rules apply to the extent indicated.
4 Reductions in basis due to debt cancellation are made at the beginning of the tax
5 year following the cancellation. The reduction applies to property held at that time.
6

7 The reduction in basis for canceled debt in bankruptcy or in insolvency
8 cannot be more than the total basis of property held immediately after the debt
9 cancellation, minus the total liabilities immediately after the cancellation. This limit
10 does not apply if an election is made to reduce basis before reducing other
11 attributes.
12

13 The estate, in the case of an individual bankruptcy under Chapter 11, may
14 choose to reduce the basis of depreciable property before reducing any other tax
15 attributes. However, this reduction of the basis of depreciable property cannot be
16 more than the total basis of depreciable property held at the beginning of the tax
17 year following the tax year of the debt cancellation.
18

19 Depreciable property means any property subject to depreciation, but
20 only if a reduction of basis will reduce the amount of depreciation or amortization
21 otherwise allowable for the period immediately following the basis reduction. The
22 Debtor must generally make this choice on the tax return for the tax year of the
23 debt cancellation, and, once made, the Debtor can only revoke it with IRS
24 approval. However, if the Debtor establishes reasonable cause, the Debtor may
25 make the choice with an amended return or claim for refund or credit.
26

1 If any basis in property is reduced under these provisions and is later
2 sold or otherwise disposed of at a gain, the part of the gain corresponding to the
3 basis reduction is taxable as ordinary income. The ordinary income part is figured
4 by treating the amount of the basis reduction as a depreciation deduction and by
5 treating any such basis-reduced property that is not already either IRC section
6 1245 or IRC section 1250 property as IRC section 1245 property. In the case of
7 IRC section 1250 property, the determination of what would have been straight
8 line depreciation is made as though there had been no basis reduction for debt
9 cancellation.
10

11 The major points of tax interest on a going forward basis are as follows:

12
13 **1. Rental income** - The rents collected will affect the tax
14 liability. Obviously, vacancy rates and market forces relative to rents achievable
15 within the markets in which the various properties are located will effect the rental
16 income.

17 **2. Depreciation** - The depreciation amounts have a significant
18 impact on the taxable income for the Debtor. The basis of many of his properties
19 may be reduced due to the forgiveness or relief of debt.
20

21 **3. Mortgage interest** - The mortgage interest is a major component of
22 the income tax deductions for the Debtor.

23 **4. Repairs/Improvements** - With the number of rental units the
24 Debtor owns, repairs and improvements are an annual expense giving rise to
25 income tax deductions for the Debtor depending on the category of the expense.
26

1 **5. NOL carryforward** - There has been a NOL carryforward in the
2 past. The amount is -\$1,308,693 per the 2009 income tax return of the Debtor.
3 (See Exhibit "A- 5" annexed hereto).

4 In general, creditors receiving cash under the Plan may recognize an
5 ordinary or capital loss based upon the difference between the amount of their
6 claim and the value of the assets received by them under the Plan. However, the
7 Plan has been devised to minimize or eliminate such losses to creditors.

8
9 **IN NO EVENT WILL DEBTOR OR ANY AFFILIATE OF PROFESSIONAL**
10 **ADVISORS ENGAGED BY ANY OF THEM BE LIABLE IF, FOR ANY REASON,**
11 **THE FEDERAL TAX CONSEQUENCES OF THE PLAN ARE OTHER THAN AS**
12 **ANTICIPATED. CREDITORS MUST LOOK SOLELY TO AND RELY SOLELY**
13 **UPON THEIR OWN ADVISORS AS TO THE FEDERAL TAX CONSEQUENCES**
14 **OF THIS PLAN.**

15
16
17 **IX. CLAIMS BAR DATES AND EFFECTIVE DATE.**

18
19 **A. BAR DATES.**

20 A bar date for the filing of proofs of claim has been set in the Order and
21 Notice of Time Within Which to File Proofs of Claim and for Hearing on Disclosure
22 Statement entered by the Bankruptcy Court.

23 **B. PLAN EFFECTIVE DATE.**

24 "Effective Date" means the date upon which all conditions to the
25 effectiveness of the Plan have been satisfied and the reorganized Debtor take
26

1 steps necessary to substantially consummate the Plan.

2 **X. RECOMMENDATIONS OF THE DEBTOR.**

3 Debtor recommends that the Plan of Reorganization be approved. Before
4 making this recommendation, Debtor considered, and rejected, the alternative of
5 proposing a Plan based upon one or more of the following different approaches:
6

7 **Equity Buyout/Recapitalization of Debtor.** The Debtor attempted various
8 other solutions including seeking capital for through the sale of equity. In the
9 extraordinary market conditions currently prevailing, the Debtor was unable to
10 attract investment capital. An equity buyout or a recapitalization investment to
11 resolve the instant debtor-creditor situation was simply not feasible.
12

13 **Total Liquidation.** Debtor also considered the option of total liquidation
14 under Chapter 7. Liquidation of the Debtor's interests in various assets, however,
15 held only a low chance for a substantial recovery for the Debtor's creditors. The
16 liquidation value of these assets is simply not equal to their income stream
17 potential and the prospects for future rebounding in values as the economy
18 improves both locally and nationally. In particular, the Arizona real estate market
19 has a historically demonstrable capacity to rebound. The liquidation of the
20 Debtor's real estate and business assets does not seem to hold the hope of any
21 significant recovery in the near term due to the terribly depressed market
22 conditions.
23

24 Finally, the Debtor has substantial assets and is contributing them to the
25 Plan in such a way that the value received by their creditors will exceed a
26

1 liquidation of their assets.

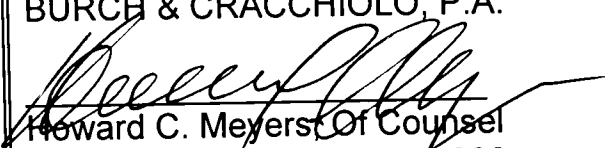
2 Given these parameters, Debtor believes that a structured reorganization
3 holds the best possible solution for creditors.

4 In light of these alternatives, Debtor believes that the Plan is in the best
5 interest of all creditors and parties in interest.

6 DATED this 15 day of July, 2010.

7
8 
9 Timothy Ray Wright, Debtor and Debtor In Possession

10 BURCH & CRACCHIOLO, P.A.

11 
12 Howard C. Meyers, Of Counsel
13 702 E. Osborn Road, Suite 200
14 P.O. Box 16882
15 Phoenix, AZ 85011
16 Attorneys for Timothy Ray Wright,
17 Debtor and Debtor In Possession
18
19
20
21
22
23
24
25
26

**EXHIBITS TO DISCLOSURE STATEMENT TO ACCOMPANY THE
DEBTOR'S FIRST PLAN OF REORGANIZATION**

(Revised as of July 8, 2010)

EXHIBIT NUMBER OR LETTER	DESCRIPTION
Exhibit "1"	First Plan of Reorganization
Exhibit "A"	Excerpts from Debtor's Form 1040 U.S. Individual Income Tax Returns from 2005 through 2009
Exhibit "B"	Five Year Pro-Forma Income/Expense & Cash Flow Commencing June 1, 2010
Exhibit "C"	Debtor's Summary of Schedules
Exhibit "D"	Debtor Engaged In Business Monthly Report for the month of April, 2010, dated May 14, 2010
Exhibit "E"	Cash Collateral Accountings for the Month of April, 2010, dated May 12, 2010
Exhibit "F"	Order Re Prepetition Rents entered May 14, 2010
Exhibit "G"	Debtor In Possession's Accountings of Prepetition Rent Collections From July, 2009, Through The Chapter 11 Filing
Exhibit "H"	Debtor's Liquidation Analysis
Exhibit "I"	John P. Miller Resume
Exhibit "J"	Miller Liquidation Analysis
Exhibit "K"	Miller Liquidation Net Sales
Exhibit "L"	MLS Data Supporting Miller Liquidation Analysis