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**Lewis Roca Rothgerber Christie LLP**

One South Church Avenue, Suite 2000  
Tucson, AZ 85701-1611

Robert M. Charles, Jr.  
Direct Dial: 520.629.4427  
Direct Fax: 520.879.4705  
Email: rcharles@lrc.com

Attorneys for River Road Properties, LLC; Carroll Properties, LLC; Villas at Hacienda Del Sol Condominium Association; Foothills Legacy, LLC; Maxwell Real Estate Holdings, L.L.C.; JJ 2498, LLC; and Gambel's Oak, LLC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re:  
  
River Hacienda Holdings, LLC,  
  
Debtor.

Case No. 4:18-bk-00136-SHG

Chapter: 11

**Second Amended Creditors Plan Of  
Reorganization Dated June 18, 2018**

One South Church Avenue, Suite 2000  
Tucson, AZ 85701-1611

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

Table of Contents

1  
2 I. Introduction ..... 1  
3 II. Classification And Treatment Of Claims And Interests..... 2  
4 A. Unclassified Claims..... 2  
5 1. Administrative Expenses..... 2  
6 2. Priority Tax Claims. .... 4  
7 B. The Classes Of Claims Designated Under This Plan And Treatment Of  
8 Such Claims Are As Follows: ..... 4  
9 1. Class 1. – Priority Claims..... 4  
10 2. Class 2. – Secured Tax Claims..... 4  
11 3. Class 3 – Secured Claim on Judgment ..... 4  
12 4. Class 4. – Unsecured Claims Concerning The Entry Drive ..... 4  
13 5. Class 5 – Unsecured Claims Concerning The Offices ..... 5  
14 6. Class 6 – Non-insider Unsecured Claims..... 6  
15 7. Class 7 – David Mason..... 6  
16 III. Treatment Of Executory Contracts And Unexpired Leases ..... 7  
17 A. Assumption of Contracts and Leases. .... 7  
18 B. Rejection of Contracts and Leases. .... 7  
19 C. Rejection Damages - Bar Date for Rejection Damage Claims. .... 8  
20 IV. Means Of Execution And Implementation Of The Creditors Plan ..... 8  
21 A. Entry Drive. .... 8  
22 B. Offices Common Areas ..... 8  
23 C. Sale Free and Clear..... 10  
24 D. Causes of Action..... 11  
25 E. Office Association Management. .... 12  
26 F. Cancellation of Existing Securities and Agreement..... 12  
27 G. Objections to Claims and Interests/Actions to Subordinate..... 12  
28 H. Compliance with Tax Requirements. .... 13  
I. Conditions to Effectiveness of the Creditors Plan..... 13  
1. Conditions. .... 13  
2. Waiver of Conditions. .... 14

1	J. Corporate Action .....	14
2	K. Effectuating Documents; Further Transactions.....	14
3	V. Distribution Of Property Under The Creditors Plan .....	14
4	A. Manner of Cash Payments under the Creditors Plan.....	15
5	B. No De Minimis Distributions. ....	15
6	C. No Distribution With Respect to Disputed Claims. ....	15
7	D. Delivery of Distributions and Undeliverable/Unclaimed Distributions.....	16
8	1. Delivery of Distributions in General. ....	16
9	2. Undeliverable and Unclaimed Distributions. ....	16
10	E. Estimation of Disputed Claims for Purposes of Distributions. ....	17
11	F. Claims Bar Dates. ....	17
12	VI. Effect Of The Creditors Plan On Claims And Interests .....	17
13	A. Discharged Claims and Terminated Interests.....	17
14	B. Compromises And Settlements. ....	18
15	C. Setoffs.....	18
16	D. Exculpation and Limitation of Liability. ....	19
17	VII. Miscellaneous Provisions .....	19
18	A. Binding Effect. ....	19
19	B. Injunction Against Interference With Plan.....	20
20	C. Statutory Fees and Case Closure. ....	20
21	D. Modification and Amendments. ....	20
22	E. Revocation of Plan/No Admissions. ....	20
23	F. Exemption from Certain Transfer Taxes.....	21
24	G. Post-Effective Date Effect of Evidences of Claims or Interests. ....	21
25	H. Deadlines. ....	21
26	I. Saturday, Sunday, or Legal Holiday. ....	22
27	J. Headings. ....	22
28	K. Severability of Plan Provisions. ....	22
	L. Governing Law.....	22

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Tucson, AZ 85701-1611

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1	M. Notices.....	22
2	N. Post-Confirmation Notice.....	23
3	O. Retention of Jurisdiction.....	23
4	P. Release.....	26
5	VIII. Definitions .....	26
6	A. Defined Terms .....	26
7	B. Rules of Interpretation.....	35
8	IX. Request for Confirmation, Recommendation and Cramdown .....	36
9		
10		
11		
12		
13		
14		
15		
16		
17		
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19		
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1 **I. Introduction**

2 River Road Properties, LLC; Carroll Properties, LLC; Villas at Hacienda Del Sol  
3 Condominium Association (the “HOA”); Foothills Legacy, LLC; Maxwell Real Estate  
4 Holdings, L.L.C.; JJ 2498, LLC; and Gambel’s Oak, LLC (together “Proponents”)  
5 propose this Second Amended Plan of Reorganization (the “Creditors Plan”) for the  
6 reorganization of River Hacienda Holdings, LLC (“Debtor” or “RHH”).

7 RHH has mismanaged the entry drive at the Villas and the Common Areas of the  
8 Offices for years. In doing so, RHH has taken hundreds of thousands of dollars from  
9 reserves for that project and spent the funds on litigation directed by RHH’s principal and  
10 owner – David Mason, and to make payments to him. RHH has overcharged for  
11 management fees and allowed excessive charges to be passed on by management  
12 companies.

13 Proponents intend to restructure RHH as follows:

- 14 • Terminate the appeal over the entry drive, thereby allowing the HOA to  
15 manage the drive;
- 16 • Conveying the Office Common Areas and assigning any declarant’s rights  
17 (if applicable) arising from the Original Office Declaration to an Office  
18 Association (defined below) incorporated as an Arizona non-profit  
19 corporation whose members are the Office Owners;
- 20 • Dismiss all pending litigation and release all claims;
- 21 • Pay claims of non-insider creditors in full, except for Proponents, Entry  
22 Drive beneficiaries and Office Owners, who shall exchange their claims for  
23 rights in the Office Association and will fund this Creditors Plan;
- 24 • Sell Office Lot 16, the well and water rights; and
- 25 • Release all claims against David Mason if he consents to the Plan and  
26 enters into a mutual release.

27 Accompanying this Plan is a Disclosure Statement approved by the Bankruptcy  
28 Court that provides adequate information for interested parties to make an informed

1 decision on whether to vote in favor or against the Creditors Plan. ALL CREDITORS  
2 ARE ENCOURAGED TO READ THE APPROVED DISCLOSURE STATEMENT  
3 BEFORE VOTING TO ACCEPT OR REJECT THE CREDITORS PLAN. THE  
4 DISCLOSURE STATEMENT INCLUDES INFORMATION REGARDING DEBTOR,  
5 ITS ASSETS, LIABILITIES, HISTORY, OPERATIONS, AND FINANCIAL  
6 ANALYSIS NOT INCLUDED IN THIS PLAN DOCUMENT. CREDITORS  
7 FURTHER ARE ENCOURAGED TO READ THIS PLAN AND ALL  
8 ACCOMPANYING SOLICITATION MATERIALS IN THEIR ENTIRETY BEFORE  
9 VOTING TO ACCEPT OR REJECT THE CREDITORS PLAN.

10 **II. Classification And Treatment Of Claims And Interests**

11 All Claims, including Administrative Expense Claims, and all Interests are  
12 classified under the Creditors Plan as set forth in this Article. At the time of  
13 Confirmation, any Class that does not contain an Allowed Claim (or a Claim temporarily  
14 or provisionally allowed by the Court for voting purposes) will be deleted from the  
15 Creditors Plan with respect to voting on confirmation of the Creditors Plan.

16 A Claim or Interest shall be deemed classified in a particular Class only to the  
17 extent that the Claim or Interest qualifies within the description of that Class and shall be  
18 deemed classified in a different Class to the extent that any remainder of the Claim or  
19 Interest qualifies within the description of such different Class. A Claim or Interest is in  
20 a particular Class only to the extent that the Claim or Interest is an Allowed Claim or an  
21 Allowed Interest in that Class and has not been paid, released or otherwise satisfied or  
22 dealt with prior to the Effective Date.

23 **A. Unclassified Claims**

24 The following parties in interest are not entitled to vote under the Creditors Plan.

25 **1. Administrative Expenses**

26 Administrative Expenses are not classified under the Creditors Plan.

27 Administrative Expenses are Claims against Debtor for any costs or expenses of the  
28 Reorganization Case allowed under Code §§ 503(b) and 507(a)(1), including all actual

1 and necessary expenses of preservation of the Estate, Court fees and Professional Fees for  
2 Professionals retained by Debtor.

3 **Treatment.** All requests for payment of Administrative Expenses that accrued  
4 during the Administrative Period, including Professional Fees, shall be filed by the  
5 Administrative Expenses Bar Date. Unless Proponents or Reorganized Debtor object to  
6 an Administrative Expense other than a Professional Fee claim within 60 days after the  
7 Administrative Expenses Bar Date (unless such objection period is extended by the  
8 Bankruptcy Court), such Administrative Expense shall be deemed Allowed in the amount  
9 requested. If Proponents or Reorganized Debtor objects to such an Administrative  
10 Expense, the Bankruptcy Court shall determine the Allowed amount of such  
11 Administrative Expense. Notwithstanding the foregoing, no request for payment of an  
12 Administrative Expense need be filed with respect to an Administrative Expense which is  
13 paid or payable to a non-insider in the ordinary course of business.

14 Except as specified above, all Allowed Administrative Expenses shall receive cash  
15 in the amount of such Allowed Administrative Expenses on the later of (i) the  
16 Distribution Date; or (ii) the date such Administrative Expense becomes an Allowed  
17 Administrative Expense, or at such other date and upon such other terms as may be  
18 agreed upon by the holder of the Allowed Administrative Expense and Proponents or  
19 ordered by the Court, and at such times as are mutually agreeable to the respective  
20 parties.

21 Notwithstanding the foregoing, (a) any Allowed Administrative Expense of a non-  
22 insider based on a liability incurred by Debtor in managing the Offices Common Areas in  
23 the ordinary course of business during the Reorganization Case may be paid in the  
24 ordinary course of business in accordance with the terms and conditions of any  
25 agreement relating thereto and (b) any Allowed Administrative Expense may be paid on  
26 such other terms as may be agreed on between the holder of such Claim and Proponents.

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**2. Priority Tax Claims.**

Debtor did not schedule any tax claims entitled to priority under § 507. Any such Allowed Claims shall be paid in full, in cash, on the Distribution Date.

**B. The Classes Of Claims Designated Under This Plan And Treatment Of Such Claims Are As Follows:**

**1. Class 1. – Priority Claims.**

This Class shall consist of Allowed Claims entitled to Priority under Code § 507(a), other than Priority Tax Claims. Debtor did not schedule any such claims. Any such Allowed Claims shall be paid in full, in cash, on the Distribution Date.

**2. Class 2. – Secured Tax Claims.**

This Class shall consist of the Allowed Secured Claims against Debtor held by Pima County. Debtor did not schedule any such claims. Any such Allowed Claims shall be paid in full, in cash, on the Distribution Date.

**3. Class 3 – Secured Claim on Judgment**

The Judgment was recorded on December 29, 2017 at Sequence No. 20173630672, Pima County. The HOA thereby has a lien on Debtor’s real property for \$45,158.00 plus fees, costs and interest.

**Treatment.** In consideration of the settlement concerning the Entry Drive provided in this Plan, the HOA will waive distribution on its Class 3 secured claim under the Creditors Plan and release the lien on the Effective Date.

**4. Class 4. – Unsecured Claims Concerning The Entry Drive**

This Class shall consist of Allowed Claims of persons or entities entitled to services from Debtor in connection with the Entry Drive or who were billed by Debtor or its agents for such services.

As a compromise of all disputes, Debtor shall execute and deliver to the HOA a limited, durable power of attorney empowering the HOA to take any action the HOA determines reasonable concerning the Entry Drive with respect to resolution of the State



1 Court Action or otherwise concerning the Entry Drive consistent with the goals of this  
2 Plan.

3 By confirmation of the Creditors Plan, Debtor will assign all of its title, right, and  
4 interest in connection with the Villas Entry Drive, now owned or hereafter acquired,  
5 including without limitation under the Villas CC&Rs, and together with any associated  
6 assets, including without limitation, all of Debtor's personal property relating to the  
7 Villas Entry Drive and the Villas CC&Rs and all related intangible property, to the HOA  
8 free and clear of liens, claims and interests. Debtor and the Proponents will be deemed to  
9 have stipulated that the HOA may manage the Entry Drive, in its discretion, subject to  
10 agreement with the other parties benefitted by the Entry Drive. Debtor's stipulation is  
11 irrevocable. Non-insiders with claims against Debtor arising out of Debtor's  
12 management of the Entry Drive will be deemed to have waived those claims in  
13 consideration of a full mutual release.

14 **5. Class 5 – Unsecured Claims Concerning The Offices**

15 This Class shall consist of Allowed Claims of persons or entities entitled to  
16 services from Debtor in connection with the Offices Common Areas or who were billed  
17 by Debtor or its agents for such services.

18 As a compromise of all disputes, Debtor shall execute and deliver to the Office  
19 Association a limited, durable power of attorney empowering the Office Association to  
20 take any action the Office Association determines reasonable with respect to concerning  
21 the Offices Common Areas, including either resolution of the State Court Action or  
22 otherwise relating to the Offices Common Areas consistent with the goals of this Plan, as  
23 well as any other actions not within the durable power of attorney granted to the HOA.

24 By confirmation of the Creditors Plan, Debtor will assign all of its title, right, and  
25 interest in connection with the Offices Common Areas, including without limitation  
26 under the Original Office Declaration, and together with any associated assets, including  
27 without limitation, all of Debtor's personal property relating to the Offices Common  
28 Areas and the Offices CC&Rs and all related intangible property, to the Office

1 Association free and clear of liens, claims and interests.<sup>1</sup> Non-insiders with claims  
2 against Debtor arising out of Debtor's management of the Offices Common Areas will be  
3 deemed to have waived those claims in consideration of a full mutual release.

4 **6. Class 6 – Non-insider Unsecured Claims**

5 All Allowed Claims held by non-insiders, other than Class 4 or 5 creditors, shall  
6 be paid in full, in cash, on the later of the Distribution Date or 30 days after entry of a  
7 final order determining the amount of any such claim that is Disputed.

8 **7. Class 7 – David Mason**

9 All rights of David Mason, who is Debtor's owner, are in this class.

10 **Treatment.** Mr. Mason shall receive the following treatment:

11 If Mr. Mason accepts the Creditors Plan, and provides the HOA with a limited,  
12 durable power of attorney by each of Hacienda Del Sol Partners, LLC, VHDS, LLC, and  
13 The Villas Of Hacienda Del Sol, Inc., conveying all rights and powers concerning the  
14 Villas CC&Rs and the Entry Drive to the HOA, he shall receive:

- 15 • A release of all claims by Debtor and Proponents in consideration of his  
16 execution and delivery of a mutual release;
- 17 • Dismissal of the State Court Action against Mr. Mason without recovery of  
18 additional attorneys' fees or costs;
- 19 • Retention of his ownership interest in RHH without payment;
- 20 • The net proceeds (if any) of sale of Office Lot 16 and Debtor's well water  
21 rights after the payments required by this Plan.

22 If Mr. Mason does not accept the Plan and grant the specified powers of attorney,  
23 and if at his direction Debtor objects to Plan confirmation, he shall not receive a release  
24 and shall not be dismissed from the State Court Action and he shall remain liable to  
25 claims for attorneys' fees and costs in the State Court Action.

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Proposed forms of Special Warranty Deed and Assignment are attached as Exhibits E  
and F.

1 **III. Treatment Of Executory Contracts And Unexpired Leases**

2 **A. Assumption of Contracts and Leases.**

3 As of the Effective Date, Debtor will assume and assign to the HOA all of its  
4 rights in connection with the Declaration and Establishment of Protective Covenants,  
5 Conditions and Restrictions and Grant of Easements by Hacienda Del Sol Partners,  
6 L.L.C., recorded August 15, 2002 at Docket 11864, Page 649, Pima County.

7 As of the Effective Date, Debtor will assume and assign to the Office Association  
8 all of its rights (including, if applicable, any declarant's rights) in connection with the  
9 Declaration and Establishment of Protective Covenants, Conditions, and Restrictions, by  
10 Fidelity National Title Agency, Inc., as Trustee under Trust No. 60,043 (Hacienda Del  
11 Sol Partners, LLC, beneficiary), recorded February 7, 2003 at Docket 11983, Page 434,  
12 as amended (the "Original Office Declaration").

13 **B. Rejection of Contracts and Leases.**

14 As of the Effective Date, Debtor will reject any executory contracts and unexpired  
15 leases listed on Debtor's Schedule G: Executory Contracts and Unexpired Leases, and  
16 any not identified in Section III(B), as that Schedule may be amended from time to time,  
17 to the extent that these agreements constitute executory contracts or unexpired leases  
18 under Code § 365, as well as any contracts or leases previously rejected pursuant to Court  
19 orders. This includes, without limitation, certain purported Monthly Covered Parking  
20 Agreement(s), Irrevocable Covered Parking License Agreement(s), and all Maintenance  
21 Agreements concerning the irrigation well and associated services. The Office  
22 Association will enter into new agreements for Office Owners that wish to reserve  
23 covered parking.

24 Proponents reserve the right to amend the Creditors Plan at any time before the  
25 Effective Date to: (a) provide for assumption and assignment of any executory contract or  
26 unexpired lease under the Creditors Plan, or (b) delete any executory contract or  
27 unexpired lease from the Schedule of Assumed Agreements and thus provide for its  
28 rejection under the Creditors Plan, pursuant to Code § 1127(b). Proponents will provide

1 notice of any modification to the Creditors Plan to the party or parties to the executory  
2 contracts or unexpired leases affected by the amendment.

3 The Confirmation Order will constitute a Court order approving the rejection, as  
4 of the Effective Date, of any and all executory contracts and unexpired leases not  
5 assumed under the Creditors Plan.

6 **C. Rejection Damages - Bar Date for Rejection Damage Claims.**

7 Any Claim for damages arising from the rejection under the Creditors Plan of an  
8 executory contract or unexpired lease must be filed and served by the Rejection Claims  
9 Bar Date. Any such Claims that are not timely filed and served will be forever barred  
10 and unenforceable against Reorganized Debtor or the Estate, and entities holding these  
11 Claims will be barred from receiving any distributions under the Creditors Plan on  
12 account of such untimely Claims.

13 **IV. Means Of Execution And Implementation Of The Creditors Plan**

14 **A. Entry Drive.**

15 On the Effective Date, Reorganized Debtor shall assign all of its title, right, and  
16 interest in connection with the Villas Entry Drive, now owned or hereafter acquired,  
17 including without limitation under the Villas CC&Rs, and together with any associated  
18 assets, including without limitation, all of Debtor's personal property relating to the  
19 Villas Entry Drive and the Villas CC&Rs and all related intangible property, to the HOA  
20 free and clear of liens, claims and interests, thereby confirming the right of the HOA to  
21 manage the entry drive. Reorganized Debtor and the parties who were billed by Debtor  
22 and its management companies for services will exchange mutual releases.

23 **B. Offices Common Areas**

24 Hacienda Del Sol Office Owners' Association, an Arizona non-profit corporation  
25 (the "Office Association") was incorporated on October 24, 2018.<sup>2</sup> On the Effective  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The Articles of Incorporation and Bylaws for the Office Association are attached as Exhibits B and C.

1 Date, Reorganized Debtor shall convey all of its title, right, and interest in connection  
2 with the Offices Common Areas, including without limitation under the Original Office  
3 Declaration, and together with any associated assets, including without limitation, all of  
4 Debtor's personal property relating to the Offices Common Areas and the Offices  
5 CC&Rs and all related intangible property, to the Office Association free and clear of  
6 liens, claims and interests. Pursuant to an Amended and Restated Declaration of  
7 Protective Covenants, Conditions and Restrictions (the "Amended and Restated Office  
8 Declaration")<sup>3</sup> governing the Offices at Hacienda Del Sol Office Complex, Lots 1-16 and  
9 Common Areas "A" (PAAL), "B" (Landscape), and "C" (Drainage) (the "Office  
10 Subdivision"), established pursuant to a Final Plat for the Office Subdivision recorded at  
11 Book 56, Page 87, of Maps and Plats, Pima County Recorder (the "Plat"), the Office  
12 Association, controlled by the Office Owners, will hire a professional property  
13 management firm to maintain, repair, and manage the Office Common Areas. Directors  
14 of the Office Association will be elected by the Office Owners with voting proportionate  
15 to the square footage of each Office lot as explained below.

16 By the order confirming the Creditors Plan, on the Effective Date, the Amended  
17 Declaration will be made and recorded with consent of the HOA for the residential  
18 parcel:

- 19 • Naming the Office Association as the new "Declarant".
- 20 • The retention of all cross easements for ingress, egress, utilities, drainage,  
21 and parking as established by the Plat.
- 22 • Use restrictions which are consistent with the Existing Declaration,  
23 including restrictions on new medical uses which could overburden  
24 parking.
- 25 • The establishment of controls over covered parking as determined by the  
26 Office Association.

27 <sup>3</sup> The current proposed draft is attached as Exhibit A and shall be attached in final form to  
28 the order confirming this Plan.

- 1       •     The Office Association, with input from the Office Owners, will evaluate  
2             and establish rules and regulations for the Office Subdivision, including but  
3             not limited to an evaluation of existing Design Guidelines.
- 4       •     The Office Association will establish annual assessments as necessary to  
5             repair and maintain the Common Areas. The Office Association will be  
6             authorized to levy special assessments for resurfacing of parking areas and  
7             any necessary capital improvements or repairs.
- 8       •     The Office Association will levy a special assessment to reimburse the  
9             actual out-of-pocket expenses of Office Owners that have funded litigation  
10            with Debtor, including attorneys' fees and expert witness fees, formation  
11            costs of the Office Association and documentation of the transactions  
12            required under the Creditors Plan, and which contribute the sums required  
13            for the Creditors Plan on the Effective Date.
- 14       •     The Office Association organizing documents allow for amendments as  
15             provided therein without modification of this Plan or order of the  
16             Bankruptcy Court.

17            The Office Association will hire a third-party property manager to provide day to  
18            day management of the Office Common Areas pursuant to the applicable Declaration.  
19            The likely manager is Paul Ash Management Co., which currently provides property  
20            management services for the adjacent residential condominiums (the Villas) and the  
21            Villas Entry Drive.

22            The Office Owners will contribute their claims against Debtor and additional cash  
23            required to fund this reorganization in consideration of these transactions. On the  
24            Effective Date, mutual releases as described in the Creditors Plan will be exchanged.

25            **C.     Sale Free and Clear**

26            Reorganized Debtor as directed by Proponents shall promptly sell at auction with  
27            Court approval to the highest cash bidder, free and clear of liens, claims or interests, all  
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1 right, title and interest of Debtor in Lot 16, the well thereon, and associated water rights.

2 The Court will approve sale procedures. Net proceeds shall be paid:

- 3 • First, to pay allowed expenses of administration, priority claims, secured  
4 tax claims, and Class 6 unsecured claims;
- 5 • Second, to reimburse the RHH accounts for the \$53,500 used to fund the  
6 retainer to Debtor’s counsel, and any other reserves collected by RHH or its  
7 managers, estimated to be \$335,000, reduced by reasonable repair and  
8 maintenance of the Entry Drive or the Offices Common Areas, which  
9 accounts shall be turned over to the HOA and the Office Association, as  
10 appropriate; and
- 11 • The balance retained by Reorganized Debtor pursuant to the Creditors Plan.

12 **D. Causes of Action.**

13 Confirmation of the Plan shall not terminate, release or bar claims or causes of  
14 action against:

- 15 • David Mason (and any Affiliates of Mr. Mason), including for withdrawals  
16 or transfers from Debtor, commingling of funds, diversion of reserves, and  
17 breach of fiduciary duty.
- 18 • Platinum Management for improper payments, including post-petition legal  
19 fees, aiding and abetting and conspiring with David Mason to divert funds  
20 paid to or for the benefit of RHH, and overcharging beneficiaries of the  
21 Entry Drive and Offices Common Areas.
- 22 • Jeffrey M. Neff, Neff & Boyer PC, including for aiding and abetting and  
23 conspiring with David Mason to divert funds paid to or for the benefit of  
24 RHH.

25 All of Debtor’s Causes of Action, including any potential Avoidance Causes of  
26 Action of any kind, except those released under the Plan, will be reserved and conveyed  
27 to a new Arizona liquidating trust (the “Liquidating Trust”) as of the Effective Date. The  
28

1 Trust will be managed by the Office Association. The Trust may waive assignment of  
2 causes of action to preserve rights of offset.

3 **E. Office Association Management.**

4 Pursuant to the Bylaws attached as Exhibit C, the Office Association shall initially  
5 be managed by the following three directors: (i) John Carroll of Carroll Properties, (ii)  
6 Lou Kahn of Foothills Legacy, LLC, and (iii) Terry J. Andolshek C.P.A. The officers will  
7 not be entitled to compensation other than ordinary indemnity and hold harmless. After  
8 the Effective Date, the Office Association will manage its affairs pursuant to Arizona  
9 law, which includes the right to amend the bylaws and elect different officers.

10 **F. Cancellation of Existing Securities and Agreement.**

11 On the Effective Date, and except as otherwise specifically provided for herein or  
12 as otherwise required in connection with any Cure:

13 All existing securities and any note, bond, indenture, or other instrument or  
14 document evidencing or creating any indebtedness or obligation of Debtor, except such  
15 notes or other instruments evidencing indebtedness or obligations of Debtor as are  
16 reinstated or unchanged under this Plan, shall be cancelled, provided however that  
17 security interests shall be released upon receipt of Distributions; and

18 The obligations of and/or, Claims against, Debtor under, relating, or pertaining to  
19 any agreements, indentures, certificates of designation, articles of organization, operating  
20 agreement, warrant, and any other note, bond, indenture, or other instrument or document  
21 evidencing or creating any such cancelled indebtedness or obligation of Debtor, shall be  
22 released.

23 **G. Objections to Claims and Interests/Actions to Subordinate.**

24 Except as otherwise provided above (regarding allowance of Administrative  
25 Expenses), objections to any Claims or Interests, and any action to subordinate a Claim or  
26 Interest, shall be filed and served upon the holder of such Claim or Interest no later than  
27 the Claims/Interests Objection Deadline. After the Effective Date, only the Liquidating  
28 Trust shall have the authority to file, settle, compromise, withdraw or litigate to judgment



1 objections to Claims and Interests, or any action to object to or subordinate the Claims of  
2 Insiders. All such actions, other than filing objections, will require Court approval.

3 **H. Compliance with Tax Requirements.**

4 Reorganized Debtor shall comply with all withholding and reporting requirements  
5 imposed on such debtor by Governmental Units, and all distributions pursuant to the  
6 Creditors Plan shall be subject to such withholding and reporting requirements, if any.  
7 Notwithstanding any other provision of this Plan, Debtor, each holder of an Allowed  
8 Claim that has received a distribution pursuant to this Plan, and each holder of an  
9 Interest, shall have sole and exclusive responsibility for the satisfaction or payment of  
10 any tax obligation imposed by any Governmental Unit, including income, withholding  
11 and other tax obligations on account of its respective receipt of such distribution or on  
12 account of the transactions undertaken with respect to its Claim or Interest pursuant to the  
13 Creditors Plan.

14 **I. Conditions to Effectiveness of the Creditors Plan.**

15 **1. Conditions.**

16 The Creditors Plan shall not become binding unless and until the Effective Date  
17 occurs. The Effective Date is the first Business Day (a) that is at least 14 days after the  
18 Confirmation Date; (b) on which no stay of the Confirmation Order is in effect; (c) no  
19 request for revocation of the Confirmation Order under Code § 1144 shall have been  
20 made, or, if made, shall remain pending; and (d) on which all of the following conditions  
21 have been satisfied or waived by Proponents:

- 22 a. The Bankruptcy Court shall have approved by Final Order a  
23 Disclosure Statement with respect to this Plan;
- 24 b. The Confirmation Order shall be in form and substance acceptable to  
25 Proponents, and be recordable against title to the Common Area and Lots within the Office  
26 Subdivision;
- 27 c. Any outstanding fees of the United States Trustee under 28 U.S.C.  
28 § 1930 have been paid in full; and

1           d. All other agreements, writings and undertakings required under the  
2 Creditors Plan shall be executed and ready for Consummation.

3                           **2. Waiver of Conditions.**

4           The conditions to the occurrence of the Effective Date, as specified above, may be  
5 satisfied may be waived in whole or in part, and the time within which any such  
6 conditions must be satisfied may be extended, by the written direction of Proponents.  
7 The failure to satisfy or waive any of such conditions may be asserted by Proponents  
8 regardless of the circumstances giving rise to the failure of such condition to be satisfied,  
9 including any action or inaction by Proponents. Proponents' failure to exercise any of the  
10 foregoing rights shall not be deemed a waiver of any other rights and each such right  
11 shall be deemed ongoing and assertable at any time.

12                           **J. Corporate Action**

13           Each of the matters provided for under this Plan involving the corporate structure  
14 of Debtor, or corporate action to be taken by or required of Debtor shall, as of the  
15 Effective Date, be deemed to have occurred and be effective as provided herein, and shall  
16 be authorized, approved, and to the extent taken prior to the Effective Date, ratified in all  
17 respects without any requirement of further action by members, creditors, or managers of  
18 Debtor.

19                           **K. Effectuating Documents; Further Transactions.**

20           John Carroll, or the officers of Reorganized Debtor, or their respective designees,  
21 shall be authorized to execute, deliver, file, or record such contracts, instruments,  
22 releases, indentures, and other agreements or documents, and take such actions as may be  
23 necessary or appropriate to effectuate and further evidence the terms and conditions of  
24 this Plan or to otherwise comply with applicable law, including, but not limited to  
25 recording the Order confirming this Plan.

26                           **V. Distribution Of Property Under The Creditors Plan**

27           The following procedures set forth in the Creditors Plan apply to distributions  
28 made pursuant to this Plan.

1           **A. Manner of Cash Payments under the Creditors Plan.**

2           With respect to distributions, cash payments to domestic entities holding Allowed  
3 Claims will be tendered in U.S. Dollars and will be made by checks drawn on a domestic  
4 bank, by wire transfer from a domestic bank. Payments made to foreign creditors holding  
5 Allowed Claims may be paid in such funds and by such means as are necessary or  
6 customary in a particular foreign jurisdiction.

7           **B. No De Minimis Distributions.**

8           Notwithstanding anything to the contrary in this Plan, no cash payment of less  
9 than \$5 will be made to any entity holding an Allowed Claim for less than such amount.  
10 No consideration will be provided in lieu of the de minimis distributions that are not  
11 made under this Section.

12           **C. No Distribution With Respect to Disputed Claims.**

13           Notwithstanding any other provisions of the Creditors Plan governing  
14 distributions, no payments of cash or distributions of other property or other  
15 consideration of any kind shall be made on account of any Disputed Claim unless and  
16 until such Claim becomes an Allowed Claim or is deemed to be such for purposes of  
17 distribution, and then only to the extent that the Claim becomes, or is deemed to be for  
18 distribution purposes, an Allowed Claim. The presence of a Disputed Claim in any Class  
19 will not be a cause to delay distribution to Allowed Claims in that Class or in other  
20 Classes, so long as a reserve is created for the Disputed Claim. Any holder of a Claim  
21 that becomes an Allowed Claim after the Effective Date will receive its distribution  
22 within 10 Business Days after the date that such Claim becomes an Allowed Claim.  
23 Unless otherwise specifically provided for in this Plan or as otherwise required by Code  
24 § 506(b), interest shall not accrue or be paid on any Disputed Claim in respect of the  
25 period from the Effective Date to the date a final distribution is made when and if such  
26 Disputed Claim becomes an Allowed Claim.

1           **D.      Delivery of Distributions and Undeliverable/Unclaimed Distributions.**

2                   **1.           Delivery of Distributions in General.**

3           John Carroll (or such other person as is approved by the Court) shall serve as the  
4 Disbursing Agent for all payments due on the Effective Date and shall make distributions  
5 to each holder of an Allowed Claim by mail as follows: (a) at the address set forth on the  
6 proof of Claim filed by such holder of an Allowed Claim; (b) at the address set forth in  
7 any written notice of address change delivered after the date of any related proof of  
8 Claim; and (c) at the address reflected in the Schedules if no proof of Claim is filed and a  
9 written notice of a change of address is not provided.

10                   **2.           Undeliverable and Unclaimed Distributions.**

11           If the distribution to the holder of any Allowed Claim is returned as undeliverable,  
12 no further distribution shall be made to such holder unless and until the Disbursing Agent  
13 is notified in writing of such holder's then current address. Undeliverable distributions  
14 shall remain in the possession of the Disbursing Agent until such time as a distribution  
15 becomes deliverable, or the obligation to deliver is discharged pursuant to this section of  
16 the Creditors Plan. The Disbursing Agent will hold undeliverable cash distributions in an  
17 unsegregated, interest-bearing bank account for the benefit of the entities entitled to the  
18 distributions. These entities will be entitled to any interest actually earned on account of  
19 the undeliverable distributions if and when distributions are subsequently made pursuant  
20 to this section of the Creditors Plan.

21           Any holder of an Allowed Claim that does not notify the Disbursing Agent in  
22 writing of its asserted entitlement to an undeliverable distribution within 1 year after the  
23 Effective Date shall no longer have any claim to or interest in such undeliverable  
24 distribution, and shall be forever barred from receiving any distributions under this Plan,  
25 or from asserting a Claim against Reorganized Debtor, or its property, or the Disbursing  
26 Agent, and the Claim giving rise to the undeliverable distribution will be discharged.

27           Any undeliverable distributions that are not claimed under this section will be used  
28 by the Disbursing Agent to satisfy any remaining obligations under the Creditors Plan,

1 and if all such obligations are fully satisfied, shall be paid to the Reorganized Debtor free  
2 from any restrictions thereon. Nothing contained in the Creditors Plan shall require the  
3 Disbursing Agent to attempt to locate any holder of an Allowed Claim.

4 **E. Estimation of Disputed Claims for Purposes of Distributions.**

5 Proponents or the Reorganized Debtor may move for a Court order estimating the  
6 amount, priority and security for any Disputed Claim. The estimated amount of any  
7 Disputed Claim so determined by the Court shall constitute the maximum recovery that  
8 the holder thereof may recover after the ultimate liquidation of its Disputed Claim,  
9 irrespective of the actual amount ultimately allowed.

10 **F. Claims Bar Dates.**

11 Any Claim filed after (i) the Bar Date for Claims and Interests (and any  
12 amendment to such timely-filed Claim or Interest filed no later than the Effective Date),  
13 (ii) with respect to Claims for rejection damages, the Rejection Claims Bar Date, or (iii)  
14 with respect to Claims that are Administrative Expenses, the Administrative Expenses  
15 Bar Date, shall not be recognized, or recorded on the claims register, by the Disbursing  
16 Agent and Reorganized Debtor and shall be disallowed automatically without the need  
17 for any objection from the Reorganized Debtor or Proponents unless such untimely filing  
18 is expressly authorized by an order of the Bankruptcy Court. Nothing herein shall in any  
19 way alter, impair, or abridge the legal effect of the order approving the Bar Date for  
20 Claims and Interests, and the Reorganized Debtor's or Proponents', and other parties in  
21 interests' rights to object to such Claims on the grounds that they are time barred or  
22 otherwise subject to disallowance or modification.

23 **VI. Effect Of The Creditors Plan On Claims And Interests**

24 **A. Discharged Claims and Terminated Interests.**

25 No Holder of a Claim against Debtor may, on account of such Claim, seek or  
26 receive any payment or other distribution from, or seek recourse against the Disbursing  
27 Agent, Reorganized Debtor, the HOA, the Office Association, or any of their property,  
28 except as expressly provided herein. Accordingly, except as otherwise provided herein,

1 the Confirmation Order shall provide, among other things, that no Holder of a Claim  
2 against Debtor may, on account of such Claim, seek or receive any payment or other  
3 distribution from, or seek recourse against, Reorganized Debtor, the Disbursing Agent,  
4 the HOA, or the Office Association, except that from and after the Confirmation Date, all  
5 Persons who have held, hold, or may hold Claims against or Interests in Debtor are  
6 permanently enjoined from taking any of the following actions against Reorganized  
7 Debtor, Disbursing Agent, the HOA, the Office Association, or any of their property on  
8 account of such Claims or Interests: (A) commencing or continuing, in any manner or in  
9 any place, any action or other proceeding; (B) enforcing, attaching, collecting, or  
10 recovering in any manner any judgment, award, decree, or order; (C) creating, perfecting,  
11 or enforcing any Lien or encumbrance; and (D) commencing or continuing, in any  
12 manner or in any place, any action that does not comply with or is inconsistent with the  
13 provisions of the Creditors Plan. Notwithstanding anything to the contrary in the  
14 Creditors Plan, creditors' rights of setoff and recoupment are preserved, and the  
15 injunctions referenced in the Creditors Plan shall not enjoin the valid exercise of such  
16 rights of setoff and recoupment. By accepting Distributions pursuant to the Creditors  
17 Plan, each holder of an Allowed Claim or Allowed Interest shall be deemed to have  
18 specifically consented to the injunctions set forth herein.

19 **B. Compromises And Settlements.**

20 Subject to Bankruptcy Rule 9019(a), the Reorganized Debtor or Proponents may  
21 compromise and settle various (a) Claims against, or Interests in, Debtor and (b) Causes  
22 of Action that Debtor has against other Persons up to and including the Effective Date.

23 **C. Setoffs.**

24 The Disbursing Agent and Reorganized Debtor may, but shall not be required to,  
25 set off against any Claim, and the payments or other distributions to be made pursuant to  
26 this Plan in respect of such Claim, claims of any nature whatsoever that Debtor may have  
27 against such holder of such Claim, but neither the failure to do so nor the allowance of  
28 any Claim hereunder shall constitute a waiver or release by Debtor or the Reorganized

1 Debtor of any such claim that Debtor or the Reorganized Debtor may have against such  
2 holder of such Claim. No Setoff shall be permitted against the holders of Class 3, 4 or 5  
3 Claims.

4 **D. Exculpation and Limitation of Liability.**

5 None of (a) the Reorganized Debtor; (b) Proponents, (c) Proponents' affiliates  
6 participating in the treatment of Claims under the Creditors Plan, (d) the HOA, (e) the  
7 Office Association, (f) the Disbursing Agent, and (g) with respect to each of the  
8 foregoing Persons, each of their respective existing and former directors, officers,  
9 employees, agents, representatives, shareholders, partners, members, fiduciaries,  
10 principals, managers, predecessors, successors and assigns, subsidiaries, parents,  
11 affiliates, affiliated and managed funds, attorneys, investment bankers, restructuring  
12 consultants and financial advisors in their capacities as such (collectively, the  
13 "Exculpated Parties"), shall have or incur any liability to any Person for any act or  
14 omission in connection with, relating to or arising out of the Chapter 11 Cases, the  
15 formulation, negotiation, implementation, confirmation or consummation of this Plan, the  
16 Disclosure Statement, or any contract, instrument, release or other agreement or  
17 document entered into during the Chapter 11 Cases or otherwise created in connection  
18 with this Plan; provided, however, that nothing in this section shall be construed to  
19 release or exculpate any Exculpated Party from willful misconduct or gross negligence as  
20 determined by a Final Order, or from compliance with Plan provisions.

21 **VII. Miscellaneous Provisions**

22 **A. Binding Effect.**

23 Upon the Effective Date, the Creditors Plan shall be binding upon and inure to the  
24 benefit of Debtor, Reorganized Debtor, all current and former holders of Claims, all  
25 current and former holders of Interests, and all other parties-in-interest and their  
26 respective heirs, successors, and assigns.  
27  
28

1           **B. Injunction Against Interference With Plan.**

2           Upon entry of the Confirmation Order, all holders of Claims and Interests and  
3 other parties in interest, including Debtor, along with its respective present or former  
4 employees, agents, officers, directors, or principals, shall be enjoined from taking any  
5 actions to interfere with the implementation or Consummation of the Creditors Plan.

6           **C. Statutory Fees and Case Closure.**

7           All fees payable pursuant to 28 U.S.C. § 1930, as of the entry of the Confirmation  
8 Order as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid  
9 on or by the Effective Date. The Disbursing Agent shall continue to pay fees pursuant to  
10 28 U.S.C. § 1930 until the Reorganization Case is closed.

11           **D. Modification and Amendments.**

12           As Plan Proponents, Proponents may alter, amend, or modify this Plan under Code  
13 § 1127(a) at any time prior to the conclusion of the Confirmation Hearing. Proponents  
14 may alter, amend, or modify any Exhibits to the Creditors Plan under Code § 1127(a) at  
15 any time prior to entry of the Confirmation Order, may alter, amended or modify the list  
16 of executory contracts and unexpired leases subject to rejection prior to the Effective  
17 Date in accordance with the Creditors Plan. After entry of the Confirmation Order and  
18 before the Effective Date of the Creditors Plan with respect to Debtor, Proponents or  
19 Reorganized Debtor may, under Code § 1127(b), institute proceedings in the Bankruptcy  
20 Court to remedy any defect or omission or reconcile any inconsistencies in the Creditors  
21 Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be  
22 necessary to carry out the purposes and effects of the Creditors Plan.

23           **E. Revocation of Plan/No Admissions.**

24           Proponents reserve the right to revoke or withdraw the Creditors Plan before entry  
25 of the Confirmation Order. Notwithstanding anything to the contrary in the Creditors  
26 Plan, if a Confirmation Order is not entered or the Effective Date does not occur, the  
27 Creditors Plan will be null and void, and nothing contained in the Creditors Plan or the  
28 Disclosure Statement will: (a) be deemed to be an admission by Proponents with respect



1 to any matter set forth in the Creditors Plan, including liability on any Claim or the  
2 propriety of any Claim's classification; (b) constitute a waiver, acknowledgment, or  
3 release of any Claims against, or any Interests in, Debtor, or of any Debtor's Assets; or  
4 (c) prejudice in any manner the rights of Proponents in any further proceedings.

5 **F. Exemption from Certain Transfer Taxes.**

6 In accordance with Code § 1146(c), neither (i) the issuance, transfer or exchange  
7 of a security, nor (ii) the delivery of an instrument or transfer under the Creditors Plan  
8 shall be taxed under any law imposing a stamp or similar tax. The Confirmation Order  
9 shall direct all governmental officials and agents to forego the assessment and collection  
10 of any such tax or governmental assessment and to accept for filing and recordation any  
11 of the foregoing instruments or other documents without payment of such tax or other  
12 governmental assessment.

13 **G. Post-Effective Date Effect of Evidences of Claims or Interests.**

14 Commencing on the Effective Date, notes, certificates, warrants, and other  
15 evidences of Claims against Debtor will represent only the right to receive the  
16 distributions contemplated under the Creditors Plan.

17 **H. Deadlines.**

18 Each post-Effective Date deadline for any action of Proponents, the Disbursing  
19 Agent, or the Reorganized Debtor established by the Creditors Plan, other than those  
20 imposed by applicable provisions of the Bankruptcy Code, Bankruptcy Rules, or this  
21 Court's Local Rules, may be extended in the discretion of the Proponents or the  
22 Disbursing Agent, without order of the Court. Notice of such extension shall be promptly  
23 filed with the Court.

24 Each post-Effective Date deadline for Proponents', the Disbursing Agent's, or the  
25 Reorganized Debtor's action established by applicable provisions of the Bankruptcy  
26 Code, Bankruptcy Rules, or this Court's Local Rules, may be extended with the Court's  
27 approval, upon an application filed with the Court, but with notice limited to those  
28 Persons requesting special notice after the Effective Date of the Creditors Plan.

1           **I. Saturday, Sunday, or Legal Holiday.**

2           If any payment or act under the Creditors Plan is required to be made or performed  
3 on a day that is not a Business Day, then the payment or act may be completed on the  
4 next day that is a Business Day, in which event the payment or act will be deemed to  
5 have been completed on the required day.

6           **J. Headings.**

7           The headings used in the Creditors Plan are inserted for convenience only and  
8 neither constitute a portion of this Plan nor in any manner affect the provisions of this  
9 Plan or their meaning.

10           **K. Severability of Plan Provisions.**

11           If before entry of the Confirmation Order the Court holds that any Plan term or  
12 provision is invalid, void, or unenforceable, the Court may alter or interpret that term or  
13 provision so that it is valid and enforceable to the maximum extent possible consistent  
14 with the original purpose of that term or provision. That term or provision will then be  
15 applicable as altered or interpreted. Notwithstanding any such holding, alteration, or  
16 interpretation, the Creditors Plan's remaining terms and provisions will remain in full  
17 force and effect and will in no way be affected, impaired, or invalidated. The  
18 Confirmation Order will constitute a judicial determination providing that each Plan term  
19 and provision, as it may have been altered or interpreted in accordance with this Section,  
20 is valid and enforceable under its terms.

21           **L. Governing Law.**

22           Except to the extent governed by the Bankruptcy Code or Rules, the Creditors  
23 Plan shall be governed by and construed in accordance with Arizona law, without regard  
24 to its conflict of law principles. To the extent that application of Arizona law would  
25 frustrate the purposes of the Creditors Plan, federal common law shall be applied.

26           **M. Notices.**

27           Any notice required or were permitted to be provided under this Plan shall be in  
28 writing and served by both (1) notice to Reorganized Debtor, and Proponents by (a)

1 certified mail, return receipt requested, postage pre-paid; (b) hand delivery; or (c)  
2 reputable overnight courier service, freight pre-paid, and (2) electronic mail (“e-mail”) to  
3 the Reorganized Debtor’s, and Proponents’ counsel, to be addressed as follows:

4 Proponents or Reorganized Debtor:  
5 c/o Carroll Properties, LLC  
6 Attn. John S. Carroll  
7 2496 E. River Road, Suite 150  
8 Tucson, AZ 85718

8 With a copy to:

9 Ted Hinderaker  
10 Hinderaker Rauh & Weisman, PLC  
11 2401 East Speedway Boulevard  
12 Tucson, Arizona 85719  
13 Email: ted@hrtucson.com

13 and

14 Robert M. Charles, Jr.  
15 Lewis Roca Rothgerber Christie LLP  
16 One South Church Avenue, Suite 2000  
17 Tucson, Arizona 85701  
18 Email: rcharles@lrrc.com

18 **N. Post-Confirmation Notice.**

19 Any Person requesting notice of filings in the Reorganization Cases after the  
20 Effective Date shall file and serve a request upon Proponents’ and the Reorganized  
21 Debtor’s counsel. Previous notices of appearance and requests for notice shall no longer  
22 be effective. All Persons requesting notice shall provide a valid email address and shall  
23 be deemed to consent to service by electronic means.

24 **O. Retention of Jurisdiction.**

25 Notwithstanding the entry of the Confirmation Order or the occurrence of the  
26 Effective Date, the Court shall retain jurisdiction over the Cases after the Effective Date  
27 to the fullest extent provided by law, including the jurisdiction to:  
28

- 1           1.       Allow, disallow, determine, liquidate, classify, establish the priority or  
2 secured or unsecured status of, estimate, or limit any Claim or Interest;
- 3           2.       Grant or deny any and all applications for allowance of compensation  
4 or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Creditors  
5 Plan, for periods ending on or before the Effective Date;
- 6           3.       Resolve any motions pending on the Effective Date to assume,  
7 assume and assign, or reject any executory contract or unexpired lease to which Debtor is a  
8 party or with respect to which Debtor may be liable and to hear, determine and, if  
9 necessary, liquidate, any and all Claims arising therefrom;
- 10          4.       Ensure that distributions to holders of Allowed Claims, including but  
11 not limited to Administrative Claims, are accomplished pursuant to the provisions of the  
12 Creditors Plan;
- 13          5.       Resolve any and all applications, motions, adversary proceedings, and  
14 other matters involving Debtor or the Reorganized Debtor that may be pending on the  
15 Effective Date or that may be instituted thereafter in accordance with the terms of the  
16 Creditors Plan;
- 17          6.       Enter such orders as may be necessary or appropriate to implement or  
18 consummate the provisions of the Creditors Plan and all contracts, instruments, releases,  
19 and other agreements or documents entered into in connection with the Creditors Plan;
- 20          7.       Resolve any and all controversies, suits, or issues that may arise in  
21 connection with the Consummation, interpretation, or enforcement of the Creditors Plan or  
22 any entity's rights or obligations in connection with the Creditors Plan;
- 23          8.       Hear and determine Causes of Action pursued or defended by the  
24 Liquidating Trust as the estate representative;
- 25          9.       Order the recording of documents and instruments against title to the  
26 Office Subdivision necessary or required to make the Office Common Areas and the  
27 Offices subject to the terms of the Court Order confirming the Creditors' Plan and the  
28 Amended and Restated Office Declaration.

1           10. Notwithstanding anything contained herein to the contrary, the  
2 Bankruptcy Court shall retain exclusive jurisdiction to adjudicate and to hear and  
3 determine disputes concerning Debtor's Causes of Action, and any motions to compromise  
4 or settle such disputes or Causes of Action. Despite the foregoing, if the Bankruptcy Court  
5 is determined not to have jurisdiction with respect to the foregoing, or if the Liquidating  
6 Trust chooses to pursue any such Cause of Action in another court of competent  
7 jurisdiction, the Liquidating Trust shall have authority to bring such action in any other  
8 court of competent jurisdiction without further order of this Court.

9           11. Modify the Creditors Plan pursuant to Bankruptcy Code § 1127, or  
10 modify the Disclosure Statement or any contract, instrument, release, or other agreement  
11 or document created in connection with the Creditors Plan or Disclosure Statement; or  
12 remedy any defect or omission or reconcile any inconsistency in any order of the Court,  
13 the Creditors Plan, the Disclosure Statement, or any contract, instrument, release, or other  
14 agreement or document created in connection with the Creditors Plan or Disclosure  
15 Statement, in such manner as may be necessary or appropriate to consummate the  
16 Creditors Plan, to the extent authorized by the Bankruptcy Code;

17           12. Issue injunctions, enter and implement other orders, or take such other  
18 actions as may be necessary or appropriate to restrain interference by any entity with  
19 Consummation or enforcement of the Creditors Plan, or violation of Plan injunctions;

20           13. Enter and implement such orders as are necessary or appropriate if the  
21 Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

22           14. Determine any other matters that may arise in connection with or  
23 relate to the Creditors Plan, the Disclosure Statement, the Confirmation Order, or any  
24 contract, instrument, release, or other agreement or document created in connection with  
25 the Creditors Plan or the Disclosure Statement;

26           15. Issue orders to be recorded against title to the Villas property, making  
27 title subject to the terms of this Creditors Plan and the Court Order; and

28           16. Enter an order closing the Case.

1 If the Court abstains from exercising jurisdiction or is otherwise without  
2 jurisdiction over any matter, this section shall have no effect upon and shall not control,  
3 prohibit, or limit the exercise of jurisdiction by any other court having competent  
4 jurisdiction with respect to such matter.

5 **P. Release.**

6 Effective upon the Effective Date of the Creditors Plan, each of (i) Proponents and  
7 Debtor, and (ii) the Reorganized Debtor, on behalf of Debtor's bankruptcy estate, shall be  
8 deemed to release the other and each of their respective agents, employees, members,  
9 managers, officers, directors, attorneys, and affiliates, from all claims and causes of  
10 action, known or unknown, of any kind or description, arising out of events occurring  
11 before this date, with respect to Debtor, the Entry Drive, or the Offices Common Areas,  
12 or matters relating to the Proof of Claim, except for performance of the obligations  
13 evidenced by the Creditors Plan (as modified herein) and exhibits thereto, as may be  
14 amended and restated from time to time.

15 **VIII. Definitions**

16 **A. Defined Terms**

17 Except as expressly provided otherwise herein, or unless the context otherwise  
18 requires, the following terms have the meanings defined as follows in the Creditors Plan.

19 1. **Administrative Expense** means: (a) every cost or expense of  
20 administration of the Reorganization Case, including any actual and necessary post-  
21 petition expenses of preserving the Estate; (b) any actual and necessary post-petition  
22 expenses of Debtor; (c) any Professional Fees allowed by the Bankruptcy Court pursuant  
23 to interim and final approvals in accordance with Bankruptcy Code §§ 330, 331, and  
24 503(b); and (d) all fees and charges assessed against the Estate under Chapter 123 of Title  
25 28, United States Code.

26 2. **Administrative Expenses Bar Date** means the first Business Day  
27 after the 14th day after the Effective Date.  
28

1                   3.     **Allowed Administrative Expense** means an Allowed Claim that is  
2 entitled to priority as an Administrative Expense.

3                   4.     **Allowed Claim** means every Claim against Debtor's Estate as to  
4 which:

5                   a.     a proof of such Claim has been filed (or as to which an  
6 appropriate application for an Administrative Expense has been filed) on or before the Bar  
7 Date, the Administrative Expenses Bar Date, or the Rejection Claims Bar Date as  
8 applicable, but only to the extent that such Claim is identified in such proof of Claim in a  
9 liquidated and noncontingent amount, and

10                  b.     as to which no objection to the allowance of such Claim has  
11 been filed within any applicable time period fixed by the Creditors Plan or order of the  
12 Bankruptcy Court, or

13                  c.     as to which the order allowing such Claim has become final  
14 and non-appealable without any appeal, review, or other challenge of any kind to that order  
15 having been taken or being still timely; or

16                  d.     the Claim is scheduled in Debtor's or the Reorganized Debtor's  
17 schedule of Claims in an amount other than zero and not denoted as contingent,  
18 unliquidated, or disputed, and as to which no objection to the allowance of such Claim has  
19 been filed within the applicable time period fixed by the Creditors Plan or order of the  
20 Bankruptcy Court; or

21                  e.     the Claim is expressly allowed in a liquidated amount in this  
22 Plan, and as to which no objection to the allowance of such Claim has been filed within the  
23 applicable time period fixed by the Creditors Plan or order of the Bankruptcy Court.

24                  f.     Except as provided in the Creditors Plan, if any Claim or the  
25 Creditor asserting such Claim is subject to any defense, setoff, counterclaim, recoupment,  
26 or other adverse Claim of any kind of Debtor, including, but not limited to, any pending  
27 appeal or unexpired right to appeal, that Claim will be deemed a Disputed Claim and it  
28

1 will not become an Allowed Claim unless and until all disputes are resolved or adjudicated  
2 fully and finally, and all appellate rights have been exhausted.

3 5. **Allowed Priority Claim** means that portion of an Allowed Claim  
4 entitled to priority under Code § 507(a), except for Allowed Priority Tax Claims.

5 6. **Allowed Priority Tax Claim** means that portion of an Allowed  
6 Claim entitled to priority under Code § 507(a)(8).

7 7. **Allowed Unsecured Claim** means any Allowed Claim not otherwise  
8 entitled to priority and not secured against the property of Debtor.

9 8. **Amended and Restated Office Declaration** is defined in Article IV,  
10 Section 4(B).

11 9. **Assumed Agreements** are those contracts and leases assumed herein  
12 or listed on the Schedule of Assumed Agreements as amended from time to time.

13 10. **Avoidance Actions** means any and all causes of action that could be  
14 asserted by the Bankruptcy Estate under Bankruptcy Code §§ 502, 510, and 542 through  
15 553, or under similar or related state or federal statutes and common law, including  
16 fraudulent transfer laws, whether or not litigation has been commenced as of the  
17 Confirmation Date to prosecute such Causes of Action.

18 11. **Bankruptcy Code** or **Code** means Title 11 of the United States Code,  
19 11 U.S.C. § 101 et. seq., and related provisions under Title 28 and Title 15, U.S. Code, in  
20 effect on the Filing Date, as may be amended from time to time and applicable to this  
21 Case. (References to Code § \_\_\_\_ shall be to Title 11, United States Code.)

22 12. **Bankruptcy Court** or **Court** means the United States Bankruptcy  
23 Court for the District of Arizona, or such other court that exercises jurisdiction over all or  
24 part of the Reorganization Case, including the United States District Court for the District  
25 of Arizona to the extent that the reference of the Reorganization Case is withdrawn.

26 13. **Bankruptcy Estate** or **Estate** means the estate created pursuant to  
27 Code § 541 upon the Filing Date.  
28



1           14.    **Business Day** means any day other than a Saturday, Sunday or “legal  
2 holiday” as that term is defined at Bankruptcy Rule 9006(a).

3           15.    **Causes of Action** means any and all actions, proceedings, causes of  
4 action, suits, accounts, demands, controversies, agreements, promises, rights to legal  
5 remedies, rights to equitable remedies, rights to payment, and claims, whether known,  
6 unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed,  
7 contingent, non-contingent, matured, unmatured, disputed, undisputed, secured, or  
8 unsecured, and whether asserted or assertable directly or derivatively in law, equity, or  
9 otherwise, including Avoidance Actions, unless otherwise waived or released by the  
10 Proponents or the Liquidating Trust to the extent such Cause of Action is a Cause of  
11 Action held by Debtor, the Reorganized Debtor or the Liquidating Trust.

12           16.    **Claim** is defined in Bankruptcy Code § 101(5).

13           17.    **Claims/Interests Objection Deadline** means the date by which  
14 Reorganized Debtor, Proponents or any interested party must file objections to Claims,  
15 which shall be the later of the first Business Day that is (a) 30 days after the Effective  
16 Date, unless extended by the Court, and (b) 30 days after the date on which a proof of  
17 Claim or Interest has been Filed, unless extended by the Court, provided that after the  
18 Effective Date, only the Liquidating Trust or Proponents shall have authority to object to  
19 Claims and Interests.

20           18.    **Class** means each of the classifications of Claims and the Interests  
21 described in the Creditors Plan.

22           19.    **Confirmation** means entry of an Order confirming this Plan in  
23 accordance with Code § 1129.

24           20.    **Confirmation Date** means the date the Confirmation Order becomes  
25 a Final Order.

26           21.    **Confirmation Hearing** means the first date set for hearing on  
27 Proponents’ request for confirmation of the Creditors Plan.  
28

1                   22.     **Confirmation Order** means the order entered by the Bankruptcy  
2 Court confirming the Creditors Plan, pursuant to Code § 1129.

3                   23.     **Consummation** of the Creditors Plan means the commencement of  
4 distributions on the Effective Date by the Disbursing Agent in respect of its obligations  
5 under this Plan.

6                   24.     **Cure Payments** means sums required to satisfy the right to payment  
7 of cash or the distribution of other property (as the parties may agree or the Court may  
8 order), as necessary to cure defaults under an executory contract or unexpired lease of  
9 Debtor, or as otherwise required by Code § 365(b) as a condition of assumption, so that the  
10 contract or lease may be assumed and assigned pursuant to Code § 1123(b)(2).

11                  25.     **Day(s)** means, unless expressly otherwise provided, calendar day(s).

12                  26.     **Debtor** or **RHH** means River Hacienda Holdings, LLC.

13                  27.     **Disallowed Claim** means (a) a Claim, or any portion thereof, that has  
14 been disallowed by a Final Order or a settlement, (b) a Claim or any portion thereof that is  
15 Scheduled at zero or as contingent, disputed, or unliquidated and as to which a proof of  
16 claim bar date has been established but no proof of claim has been timely filed or deemed  
17 timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any  
18 Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable  
19 law, or (c) a Claim or any portion thereof that is not Scheduled and as to which a proof of  
20 claim bar date has been established but no proof of claim has been timely filed or deemed  
21 timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any  
22 Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable  
23 law.

24                  28.     **Disclosure Statement** means the “Disclosure Statement for Creditors  
25 Plan of Reorganization dated June 18, 2018,” in the form approved by the Bankruptcy  
26 Court or as it may be altered, amended, or modified thereafter from time to time, and all  
27 exhibits in connection herewith and any documents delivered in connection herewith, as  
28

1 the same may be amended from time to time by any duly authorized amendment or  
2 modification.

3           29.     **Disputed Claim** means every Claim that is not an Allowed Claim, but  
4 does not include any Claim or portion of such Claim to the extent that such Claim or a  
5 portion thereof has been disallowed by a Final Order or paid or otherwise satisfied. In the  
6 event that only a part of a Claim is a Disputed Claim, only the disputed part of the Claim  
7 shall be deemed to constitute a Disputed Claim for purpose of distribution under the  
8 Creditors Plan.

9           30.     **Distribution Date** means the first business day after the net proceeds  
10 of the sale of Lot 16 and the associated well and water rights are available for distribution.

11           31.     **Effective Date** is defined in Section IV.I of the Creditors Plan.

12           32.     **Entry Drive** means the a privately maintained access road running  
13 from River Road south past the Office Park to the Residential Property as described and  
14 depicted in the Villas CC&Rs.

15           33.     **Executory Contract** means every unexpired lease and other contract  
16 that is subject to being assumed or rejected under Bankruptcy Code § 365.

17           34.     **Exhibit** means an exhibit annexed either to this Plan or as an  
18 appendix to the Disclosure Statement.

19           35.     **Filing Date** or **Petition Date** means January 5, 2018.

20           36.     **Final Order** means an order or judgment of the Bankruptcy Court  
21 which shall not have been reversed, stayed, modified or amended, and the time to appeal  
22 from or to seek review or rehearing of, shall have expired, and as to which no appeal or  
23 petition for review, or rehearing is pending, or if appealed from, shall have been affirmed  
24 and no further hearing, appeal or petition can be taken or granted, or as to which no stay  
25 has been entered to affect the operative provisions of such order or judgment.

26 Notwithstanding the foregoing, the possibility that a motion under Rule 59 or Rule 60 of  
27 the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules  
28

1 may be filed with respect to any such order shall not prevent such order from being a  
2 “Final Order.”

3           37.     **Governmental Unit** means the United States of America; the State of  
4 Arizona; Pima County, Arizona; the City of Tucson; and any other state, commonwealth,  
5 district, territory, municipality or foreign state; and any department, agency or  
6 instrumentality (including but not limited to any regulatory or administrative authority or  
7 agency, court or arbitrational tribunal thereof) of the foregoing; or other foreign or  
8 domestic government.

9           38.     **HOA** means Villas at Hacienda Del Sol Condominium Association.

10           39.     **Impaired** refers to any Claim or Interest that is impaired within the  
11 meaning of Code § 1124.

12           40.     **Insider** means an individual or entity that is an insider under  
13 Bankruptcy Code § 101(31).

14           41.     **Interest** means the legal, equitable, contractual, and other rights of  
15 any Person with respect to the interest of a member of or owner of equity securities or  
16 ownership interests in Debtor.

17           42.     **Lawsuit or State Court Action** means a lawsuit pending in Pima  
18 County Superior Court entitled *Villas at Hacienda Del Sol Condominium Association, et*  
19 *al. v. River Hacienda Holdings, LLC and David Mason*, No. C20163400.

20           43.     Each of the 16 Office lots created by the Plat is a **Lot**.

21           44.     **Office Association** means Hacienda Del Sol Office Owners’  
22 Association, an Arizona non-profit corporation, formed on October 24, 2018 by articles of  
23 incorporation in the form attached as Exhibit B, subject to the Bylaws in the form attached  
24 as Exhibit C.

25           45.     **Offices Common Areas** means Common Area “A”, which consists of  
26 all parking and driveways within the Office Subdivision (approximately 2.26 acres);  
27 Common Area “B”, which consists of certain landscaping areas (approximately 4,151 sf),  
28

1 and Common Area “C”, which consists of certain drainage easements and facilities,  
2 (approximately 8,222 sf), all as shown on the Plat.

3           46.     **Offices CC&Rs or Original Office Declaration** means the  
4 Declaration and Establishment of Protective Covenants, Conditions and Restrictions  
5 recorded for the Office Subdivision on February 7, 2003, at Docket 11983, page 434,  
6 amended by a First Amendment recorded April 17, 2003 in Docket 12031, page 663; a  
7 Second Amendment recorded July 17, 2007 at Docket 13098, Page 4250; and a Third  
8 Amendment recorded November 18, 2008, at Docket 13436, Page 2258, records of the  
9 Pima County Recorder.

10           47.     **Person** has the meaning defined in Code § 101(41).

11           48.     The **Plan** or **Creditors Plan** means this Plan of Reorganization along  
12 with every modification or amendment thereof or thereto filed by Proponents.

13           49.     **Plat** means Final Plat for the Office Subdivision recorded at Book 56,  
14 Page 87, of Maps and Plats, Pima County Recorder.

15           50.     **Priority Claim** means every Unsecured Claim that is not a Priority  
16 Tax Claim, and which is entitled to priority under any applicable provisions of Bankruptcy  
17 Code § 507.

18           51.     **Priority Tax Claim** means a Claim of a Governmental Unit entitled  
19 to priority treatment under Code § 507(a)(8).

20           52.     **Professional** means any Person retained in the Chapter 11 Cases by  
21 separate Bankruptcy Court order pursuant to Code §§ 327 and 1103 or otherwise.

22           53.     **Professional Fees** means all allowances of compensation and  
23 reimbursement of expenses Allowed, or to be Allowed, pursuant to Code §§ 330, 331 or  
24 503(b), to any Professional retained pursuant to Code § 327.

25           54.     **Proponents** means River Road Properties, LLC; Carroll Properties,  
26 LLC; Villas at Hacienda Del Sol Condominium Association; Foothills Legacy, LLC;  
27 Maxwell Real Estate Holdings, L.L.C.; JJ 2498, LLC; and Gambel’s Oak, LLC.  
28

1           55.     **Pro Rata** means in a proportionate share, such the ratio of  
2 consideration distributed on account of an Allowed Claim in a Class to the amount of such  
3 Allowed Claim is equal to the ratio of the amount of the consideration distributed or  
4 reserved on account of all Allowed Claims in such Class to the amount of all Allowed  
5 Claims and Disputed Claims in such Class.

6           56.     **Rejected Contracts** are all contracts and leases of Debtor other than  
7 Assumed Agreements.

8           57.     **Rejection Claim** means a Claim arising under Code § 365 from the  
9 rejection by any Debtor of a lease or contract.

10          58.     **Rejection Claims Bar Date** means the earlier of: (1) a bar date  
11 applicable to the filing of rejection Claims by a lessor or other non-debtor party to any  
12 lease or Executory Contract as set forth in a prior order of the Bankruptcy Court pertaining  
13 to the respective lease or contract, or (2) 20 days after the Effective Date as to any and all  
14 leases or Executory Contracts not previously assumed or rejected prior to the Effective  
15 Date.

16          59.     **Reorganization Case** means Debtor's chapter 11 case pending in the  
17 Bankruptcy Court commenced in the Bankruptcy Court on the Filing Date.

18          60.     **Schedule of Assumed Agreements** means the schedule of executory  
19 contracts, unexpired leases, and other Assumed Agreements to be assumed pursuant to  
20 Code §§ 365(a) and 1123, described in this Plan, if any, and, to the extent that each  
21 executory contract or unexpired lease listed in the Schedule of Assumed Agreements  
22 relates to the use or occupancy or real property, (i) any modifications, amendments,  
23 supplements, restatements, or other agreements made directly or indirectly by any  
24 agreement, instrument, or other document that in any manner affects such executory  
25 contract or unexpired lease, without regard to whether such agreement, instrument, or  
26 other document is listed in the Schedule of Assumed Agreements, and (ii) any executory  
27 contracts or unexpired leases appurtenant to the premises listed in the Schedule of  
28 Assumed Agreements, including all easements, licenses, permits, rights, privileges,

1 immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements,  
2 and any other interests in real estate or rights in rem relating to such premises to the extent  
3 any of the foregoing are executory contracts or unexpired leases, unless any of the  
4 foregoing agreements are expressly rejected by Debtor prior to the Effective Date.

5           61.     **Unsecured Claim** means every Claim, regardless of the priority of  
6 such Claim, which is not a Secured Claim.

7           62.     **Villas CC&Rs** or **Villas Declaration** means Declaration and  
8 Establishment of Protective Covenants, Conditions and Restrictions and Grant of  
9 Easements, recorded August 15, 2002 as amended.

10           **B.     Rules of Interpretation**

11           For purposes of this Plan, unless otherwise provided herein, (a) whenever from the  
12 context it is appropriate, each term, whether stated in the singular or the plural, shall  
13 include both the singular and the plural; (b) each pronoun stated in the masculine,  
14 feminine, or neuter includes the masculine, feminine, and neuter; (c) any reference in this  
15 Plan to an existing document or schedule filed or to be filed means such document or  
16 schedule, as it may have been or may be amended, modified, or supplemented; (d) any  
17 reference to an entity as a holder of a Claim or Interest includes that entity's successors  
18 and assigns; (e) all references in this Plan to Sections, Articles, and Exhibits are  
19 references to Sections, Articles, and Exhibits of or to this Plan; (f) the words "herein,"  
20 "hereunder," and "hereto" refer to this Plan in its entirety rather than to a particular  
21 portion of this Plan; (g) captions and headings to Articles and Sections are inserted for  
22 convenience of reference only and are not intended to be a part of or to affect the  
23 interpretation of this Plan; (h) subject to the provisions of any contract, certificates of  
24 incorporation, by-laws, instrument, release, or other agreement or document entered into  
25 in connection with this Plan, the rights and obligations arising under this Plan shall be  
26 governed by, and construed and enforced in accordance with, federal law, including the  
27 Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in  
28 Code § 102 shall apply.

1 **IX. Request for Confirmation, Recommendation and Cramdown**

2 Proponents believe that confirmation and implementation of this Creditors Plan  
3 are preferable to any feasible alternative because the Creditors Plan will provide entities  
4 holding Claims with substantially greater recoveries than the alternatives. Accordingly,  
5 Proponents urges Persons that hold Impaired Claims to vote to accept the Creditors Plan  
6 by checking the box marked "Accept" on their Ballots and then returning the Ballots as  
7 directed in the Creditors Plan and Disclosure Statement. Proponents request confirmation  
8 of the Creditors Plan pursuant to Bankruptcy Code § 1129(b) with respect to any  
9 Impaired Class that does not accept the Creditors Plan pursuant to Code § 1126, and  
10 reserve the right to modify the Creditors Plan to the extent, if any, that Code § 1129(b)  
11 requires such modification.

12 DATED this 26th day of October, 2018.

13 LEWIS ROCA ROTHGERBER CHRISTIE LLP

14 By: /s/ Robert M. Charles, Jr.  
15 Robert M. Charles, Jr.  
16 Attorneys for River Road Properties, LLC;  
17 Carroll Properties, LLC; Villas at Hacienda Del  
18 Sol Condominium Association; Foothills Legacy,  
19 LLC; Maxwell Real Estate Holdings, L.L.C.; JJ  
20 2498, LLC; and Gambel's Oak, LLC

One South Church Avenue, Suite 2000  
Tucson, AZ 85701-1611

**Lewis Roca**  
**ROTHGERBER CHRISTIE**