

1 John J. Hebert (#010633)
Mark W. Roth (#010708)
2 Mary B. Martin (#019196)
POLSINELLI SHUGHART PC
3 CityScape Plaza
One E. Washington, Suite 1200
4 Phoenix, AZ 85004
Telephone: (602) 650-2000
5 Facsimile: (602) 264-7033
E-Mail: PhoenixBankruptcyECF@polsinelli.com
6 E-Mail: jhebert@polsinelli.com
E-Mail: mroth@polsinelli.com
7 E-Mail: mmartin@polsinelli.com

8 *Attorneys for Debtor*

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

11 In re:
12 BATAA/KIERLAND, LLC,
13 Debtor.

Chapter 11 Proceedings

Case No. 2-11-BK-05850-RJH

**AMENDED DISCLOSURE STATEMENT
RELATING TO AMENDED PLAN OF
REORGANIZATION DATED
SEPTEMBER 2, 2011**

16
17 **I. INTRODUCTION**

18 BATAA/KIERLAND, LLC, debtor and debtor-in-possession in the above captioned
19 bankruptcy case (“Debtor”), hereby submits to the Court and creditors of the Debtor’s estate the
20 following “Amended Disclosure Statement Relating to Amended Plan of Reorganization Dated
21 September 2, 2011” (the “Disclosure Statement”). This Disclosure Statement is submitted pursuant
22 to 11 U.S.C. § 1125. The sources of the factual information in this Disclosure Statement are David
23 Calvin and Anne Calvin.

24 11 U.S.C. § 1125(b) prohibits the solicitation of acceptances or rejections of a Plan of
25 Reorganization unless such Plan is accompanied by a copy of the Disclosure Statement which has
26 been approved by the Bankruptcy Court.

27 The purpose of this Disclosure Statement is to provide creditors and interested parties in this
28

1 bankruptcy proceeding with such information as may reasonably be deemed sufficient to allow
2 creditors and interested parties to make an informed decision regarding the Debtor's "Amended
3 Plan of Reorganization Dated September 2, 2011" (the "Plan").

4 Unless otherwise noted, those portions of the Plan and this Disclosure Statement providing
5 factual information concerning the Debtor, its assets and liabilities, have been prepared from
6 information submitted by the Debtor and its retained professionals.

7 This Disclosure Statement contains information that may influence your decision to accept
8 or reject the Debtor's proposed Plan. Please read this document with care.

9 The financial information contained in this Disclosure Statement has not been subjected to
10 an audit by an independent certified public accountant. For that reason, the Debtor is not able to
11 warrant or represent that the information contained in this Disclosure Statement is without any
12 inaccuracy. To the extent practicable, the information has been prepared from the Debtor's
13 financial books and records and great effort has been made to ensure that all such information is
14 fairly represented.

15 This Disclosure Statement and the Plan will classify all creditors into Classes. The treatment
16 of each Class of creditors will be set forth in this Disclosure Statement and in the Plan. You should
17 carefully examine the treatment of the Class to which your Claim will be assigned.

18 This Disclosure Statement requires approval by the Bankruptcy Court after notice and a
19 hearing pursuant to 11 U.S.C. §1125(b). Once approved, the Disclosure Statement will be
20 distributed with the Debtor's proposed Plan for voting. Approval of the Disclosure Statement by
21 the Bankruptcy Court does not constitute either certification or approval of the Debtor's Plan by the
22 Bankruptcy Court or that the Disclosure Statement is without any inaccuracy.

23 The Bankruptcy Court will confirm the Plan if the requirements of §1129 of the Bankruptcy
24 Code are satisfied. The Bankruptcy Court must determine whether the Plan has been accepted by
25 each impaired Class entitled to vote on the Plan. Impaired Classes entitled to vote on the Plan are
26 those Classes of claims whose legal, equitable, or contractual rights are altered, as defined under
27 §1124 of the Bankruptcy Code. An impaired Class of claims is deemed to have accepted the Plan if
28 at least two-thirds (2/3) in amount of those claims who vote and more than one-half (1/2) in number

1 of those claims who vote have accepted the Plan. An impaired Class of interests is deemed to have
2 accepted the Plan if the Plan has been accepted by at least two-thirds (2/3) in amount of the allowed
3 interests who vote on the Plan.

4 Even if each Class of creditors does not accept the Plan, the Plan can be confirmed under
5 §1129(b) of the Bankruptcy Code, so long as one impaired Class of creditors accepts the Plan. This
6 is referred to as the “cram down” provision of the Bankruptcy Code. The failure of each Class to
7 accept the Plan could very well result in a conversion of this case to Chapter 7 or dismissal of the
8 Chapter 11.

9 Only the votes of those creditors or interested parties whose ballots are timely received will
10 be counted in determining whether a Class has accepted the Plan.

11 **II. DEFINITIONS**

12 The definitions set forth in Article I of the Plan apply in this Disclosure Statement except to
13 the extent other definitions are set forth in this Disclosure Statement.

14 **III. THE DEBTOR, BACKGROUND, AND EVENTS PRECIPITATING THE 15 CHAPTER 11**

16 **A. Background**

17 The Debtor is an Arizona limited liability company that was formed in April 2001. The
18 Debtor’s sole member is Bataa Oil, Inc., a Colorado corporation (“Bataa Oil”). Bataa Oil is
19 discussed in more detail below.

20 The Debtor’s primary asset consists of a Class “A” office building, and associated surface
21 parking area, known as Kierland Corporate Center located at 7047 E. Greenway Parkway, in
22 Scottsdale, Arizona (the “Property”). The building contains approximately 109,811 square feet of
23 net rentable area. The Property is/will be occupied by 10 tenants in approximately 59,469 square
24 feet of the building (54.54% occupancy).

25 The Property is managed by Calvin Enterprises, Inc. (“Calvin Enterprises”) an established
26 manager of commercial real properties. David J. Calvin and Anne Calvin each hold a fifty percent
27 interest in Calvin Enterprises.

28 JPMCC 2007-CIBC 19 East Greenway, LLC (“JPMCC”) has asserted a claim against the

Debtor, allegedly secured by the Property, in the amount of \$28,023,082.82, according to a proof of claim filed by JPMCC. JPMCC's asserted claim includes, among other charges, over \$760,000 in default interest and nearly \$3.8 million for a "prepayment premium." The Debtor intends to dispute the allowance of, at least, these portions of JPMCC's asserted claim. Indeed, it appears that the asserted "pre-payment premium" is, facially, an improper penalty under applicable state law. If the default interest and "pre-payment premium" are excluded from the calculation of the amount of JPMCC's claim, then the amount of JPMCC's claim is approximately \$23,461,480.

On or about February 25, 2011, JPMCC initiated a lawsuit in the Maricopa County Superior Court against the Debtor (the "State Court Action"). Specifically, the State Court Action sought the appointment of a receiver over the Property and damages for breach of contract. A trustee's sale of the Property was scheduled for May 25, 2011.

The Debtor filed its voluntary bankruptcy petition for relief under Chapter 11 of the Bankruptcy Code on March 9, 2011 (the "Petition Date") for the purposes of (a) staying the foreclosure proceeding, and (b) providing time to allow the Debtor to formulate a plan of reorganization which will maximize distributions to all relevant parties.

B. The Debtor's Potential Challenges to JPMCC's Asserted Lien

The Debtor believes that it has certain potential challenges to JPMCC's asserted lien in the Debtor's assets. These challenges arise by virtue of the recordation and filing of the documents relating to JPMCC's asserted by JPMCC's predecessors in interest. The following timeline is helpful in understanding the Debtor's concerns:

Document Name	Collateral Identified in Document (generally)	Parties	Date of Execution	Date of Recordation or Filing
Original Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing Statement (missing Exhibit "B")	Exh. A (collateral): Parcel No. 1 (Lot 3 of Kierland Commerce South) and Parcel No. 2 (certain easements) Exh. B (missing)	Bataa/Kierland, LLC, as Borrower and Canadian Imperial Bank of Commerce, as Lender	April 26, 2007	Recorded at Maricopa County Recorder on April 26, 2007

1 2 3 4 5 6 7 8	UCC-1 Financing Statement	Personal Property identified in the Deed of Trust	Bataa/Kierland, LLC, as Debtor and CIBC Inc. , as secured party	April 27, 2007	Filed with Arizona Secretary of State on April 27, 2007 (nearly two months before CIBC Inc. was assigned the Deed of Trust and became a secured party of the Debtor)
9 10 11 12 13 14 15 16	Assignment of Deed of Trust, Assignment of Leases and Rents and Security Agreement	Same as Original Deed of Trust-- Exh. A (collateral): Parcel No. 1 (Lot 3 of Kierland Commerce South) and Parcel No. 2 (certain easements)	Canadian Imperial Bank of Commerce, as Assignor and CIBC Inc., as Assignee	June 8, 2007	Recorded at Maricopa County Recorder on December 20, 2010 (over three years after execution and after original deed of trust had already been assigned twice, as discussed below)
17 18 19 20 21 22	Assignment of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement and Assignment of Lease and Rents	Same as Original Deed of Trust-- Exh. A (collateral): Parcel No. 1 (Lot 3 of Kierland Commerce South) and Parcel No. 2 (certain easements)	CIBC Inc., as Assignor and LaSalle Bank National Association, as Trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Securities Trust 2007-CIBC19, Commercial Mortgage Pass-Through Certificates, Series 2007-CIBC19, Assignee	June 14, 2007	Recorded at Maricopa County Recorder on January 8, 2008
23 24 25 26 27 28	UCC-3 Assignment of Financing Statement	(None identified)	CIBC Inc., as Assignor to LaSalle Bank National Association, as Trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Securities Trust 2007-CIBC19, Commercial Mortgage Pass-Through	January 7, 2008	Filed with the Arizona Secretary of State on January 7, 2008

1			Certificates, Series 2007-CIBC19, as Assignee		
2					
3	Re-Recordation of Original Deed of Trust to include Exhibit B (but misidentified as Exhibit A)	Attaches new, misidentified Exhibit A to the Deed of Trust which describes the "Outparcel," that is subject to being released pursuant to § 1.31 of the Deed of Trust, as the South Portion of Lot 3		February 21, 2008	Recorded at Maricopa County Recorder on February 21, 2008
4					
5					
6					
7					
8					
9					
10	Second Re- Recordation of Original Deed of Trust	Attaches correctly identified Exhibit B to the Deed of Trust, again which describes the "Outparcel," that is subject to being released pursuant to § 1.31 of the Deed of Trust, as the South Portion of Lot 3		February 22, 2008	Recorded at Maricopa County Recorder on February 22, 2008
11					
12					
13					
14					
15					
16					
17	Deed of Partial Release and Partial Reconveyance Beneficial	Releases the "Outparcel," the South Portion of Lot 3 from the Deed of Trust,	LaSalle Bank National Association, as Trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Securities Trust 2007-CIBC19, Commercial Mortgage Pass-Through Certificates, Series 2007-CIBC19	July ____, 2008	Recorded at Maricopa County Recorder on July 10, 2008
18					
19					
20					
21					
22					
23	Assignment of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Financing Statement and Other Loan Documents	Exh. A (collateral): Parcel No. 1 (Lot 3 of Kierland Commerce South) and Parcel No. 2 (certain easements) <i>less and except</i> the South Portion of Lot 3 now known as Lot 1 of	Bank of America, N.A., successor by merger to LaSalle Bank National Association, as Trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Securities Trust 2007-CIBC19, Commercial Mortgage Pass-Through	December 21, 2010	December 23, 2010
24					
25					
26					
27					
28					

1		Kierland Corporate Center 2 and certain easements relating thereto (i.e. the Outparcel released in July 2008)	Certificates, Series 2007-CIBC19, as Assignor and JPMCC 2007-CIBC19 East Greenway, LLC, as Assignee		
6	UCC-3 Assignment of Financing Statement	(None identified)	Bank of America, N.A., successor by merger to LaSalle Bank National Association, as Trustee for the Registered Holders of JPMorgan Chase Commercial Mortgage Securities Trust 2007-CIBC19, Commercial Mortgage Pass-Through Certificates, Series 2007-CIBC19, as Assignor and JPMCC 2007-CIBC19 East Greenway, LLC, as Assignee	January 28, 2011	Filed with the Arizona Secretary of State on January 28, 2011
16	Notice of Trustee's Sale	Lot 3, Kierland Commerce South, now known as Lot 1 of Kierland Corporate Center 2 (i.e., the same property that was released in July 2008 and is specifically excepted from the Assignment of the Deed of Trust to JPMCC)	Jeffrey Pitcher, Trustee for JPMCC 2007-CIBC19 East Greenway, LLC, as beneficiary	February 23, 2011	February 23, 2011

The foregoing timeline reflects several potential problems with the validity of JPMCC's alleged liens on the Debtor's Property. For example, it does not appear that the original lender, Canadian Imperial Bank of Commerce, ever perfected its alleged lien in the Debtor's personal property by filing a UCC-1 Financing Statement. Rather, CIBC Inc. filed a UCC-1 Financing Statement, but did so *before* its alleged security interest in the personal property attached to the

1 personal property by virtue of the assignment of the security agreement from Canadian Imperial
2 Bank of Commerce to CIBC Inc. Consequently, it appears that neither Canadian Imperial Bank of
3 Commerce nor CIBC Inc. ever had a valid, properly perfected security interest in the personal
4 property because (1) Canadian Imperial Bank of Commerce never filed a UCC-1 Financing
5 Statement and (2) CIBC Inc. filed a UCC-1 Financing Statement before its alleged lien had
6 attached. Consequently, all subsequent assignments of the security interest in the personal
7 property, all the way through to JPMCC, may not be properly perfected.

8 Additionally, the timing of the recordation of the Assignment of the Deed of Trust from
9 Canadian Imperial Bank of Commerce to CIBC Inc.—*i.e.*, over two years after the assignment was
10 executed and after the Deed of Trust had allegedly been assigned twice—raises concerns and issues
11 regarding the propriety of the perfection of, and the enforceability of, the assignments of the Deed
12 of Trust from CIBC Inc. all the way through to JPMCC.

13 Further, JPMCC’s Notice of Trustee’s sale apparently refers to property that was previously
14 released by JPMCC’s alleged predecessor, and was specifically excluded from the Deed of Trust
15 that was assigned to JPMCC. This raises issues regarding what property properly composes
16 JPMCC’s asserted collateral.

17 Ultimately, the Debtor continues to investigate these issues and, if appropriate following its
18 investigation, will formally challenge JPMCC’s alleged liens on these, or potentially other, bases.
19 In the meantime, the Debtor will continue to refer to JPMCC’s alleged liens as “alleged” or
20 “asserted” liens.

21 **C. Parking Issues With the Property and Parking Easement**

22 The Debtor acquired the Property, together with the real property adjacent to the Property,
23 in May 2001. At the time the Debtor acquired the Property, the building on the Property had
24 already been constructed, but there was no building on the adjacent property. Rather, the adjacent
25 property was used as surface parking for the building on the Property. There was no underground
26 parking on any portion of the Property or the adjacent property. This entire, single original parcel
27 was known as the Kierland Corporate Center.

1 In June 2008, the Kierland Corporate Center was split into two parcels. The Debtor retained
2 the Property and the building on the Property. However, the adjacent property (the “Kierland II
3 Property”) was transferred to Bataa/Kierland II, LLC (“Kierland II”) in 2008. Bataa Oil is the sole
4 member and manager of Kierland II. In 2008, Kierland II constructed a three story, Class “A”
5 office building with approximately 77,925 square feet of net rentable area on the Kierland II
6 Property. Kierland II also constructed an underground parking structure under the Kierland II
7 Property, a portion of which is under the building constructed on the Kierland II Property and a
8 portion of which is under the surface parking lot on the Kierland II Property. The construction of
9 the underground parking structure cost Kierland II approximately at least \$8 million.

10 When the Kierland Corporate Center was split into two parcels, and the building and
11 underground parking structure were constructed on the Kierland II Property, the Debtor’s Property
12 was left with only 76¹ parking spaces on-site. The 76 on-site parking spaces support only 24,900
13 square feet of net rentable area utilization based upon the combined Lot 1 and Lot 2 parking ratio of
14 3.05 spaces per 1,000 square feet of combined net rentable area for the Debtor’s building and the
15 building on the Kierland II Property. Therefore, 84,911 square feet of the Property’s 109,811
16 square feet of net rentable area is not legally parked, unless the Debtor has the use of at least 259
17 parking spaces located on or under the Kierland II Property.

18 The Kierland II Property has a total of 497 parking spaces, of which 339 spaces are located
19 underground (81 spaces under the building on the Kierland II Property and 258 under the surface
20 parking on the Kierland II Property) and 158 spaces are on the surface of the Kierland II Property
21 (77 of which are steel canopy covered).

22 Thus, the parking spaces provided on the Debtor’s Property and the Kierland II Property are
23 as follows:

24
25
26
27 ¹ Of the 76 parking spaces on the Property, 19 spaces are short-term delivery/customer spaces
28 which are not available to tenants; 18 spaces are earmarked specifically for the law firm tenant; and
10 spaces are specifically earmarked for the realty company tenant. Thus, total of 48 spaces are
not available for other tenants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Property</u>	<u>Kierland II Property</u>
Surface:	76	158
Underground (but not under building):	0	258
Under Building:	<u>0</u>	<u>81</u>
Totals Per Property:	76	497
Grand Total:	573	

On June 4, 2008, before the Kierland II Property was fully developed, the Debtor, as Declarant, recorded, with the Maricopa County Recorder at document number 20080494774, that certain Declaration of Covenants and Grant of Easements for Kierland Corporate Center (“CC&Rs”) relating to the Kierland Corporate Center. Generally, Section 2.1.4 of the CC&Rs govern the very limited parking relationship between the Debtor’s Property and the Kierland II Property. Section 2.1.4 provides each property owner with a non-exclusive easement to use parking ON both the Debtor’s Property and the Kierland II Property; provided, however, that up to 25% of the parking on a particular property may be reserved for use by and through the owner of that property. Accordingly, the user of the Debtor’s Property may park in the reserved spaces on the Debtor’s Property and the unreserved spaces on both the Debtor’s Property and the Kierland II Property; the users of the Kierland II Property may park in the reserved spaces on the Kierland II Property and the unreserved spaces on both the Debtor’s Property and the Kierland II Property. The resulting allocation of reserved and unreserved surface parking is as follows:

	<u>Property</u>	<u>Kierland II Property</u>
Reserved:	19	40
Unreserved:	57	118

Adding this allocation of surface parking to the underground parking results in the following allocation of parking rights per each property:

[chart on next page]

	<u>Property</u>	<u>Kierland II Property</u>
1		
2		
3	Surface Reserved:	19
4	Surface Unreserved Property:	57
5	Surface Unreserved KII Property:	118
6	Underground	
7	(but not under building):	0
8	Under Building:	<u>0</u>
9		<u>81</u>
10	Totals Per Property:	194
11		554

12 Putting aside that the unreserved spaces are counted twice, this allocation for the office
13 buildings constructed on the properties—as reflected on a per 1,000 square foot lease basis—is
14 approximately as follows:

15	Debtors' Property:	1.7 spaces/1,000 square feet
16	Kierland II Property:	6.8 spaces/1,000 square feet

17 Virtually all leases in the office buildings on both the Property and the Kierland II Property
18 provide for parking equivalent to 4 spaces per 1,000 square feet. Thus, absent some arrangement
19 between the Debtor and Kierland II regarding cooperation for allocation of parking spaces among
20 tenants, there is insufficient parking on the Debtor's Property for its tenants. In fact, there currently
21 exist far fewer contractual rights for parking than have been committed to the Property's tenants
22 under their respective leases (4 per 1,000). This parking issue is manageable so long as both the
23 Debtor's Property and the Kierland II Property are managed and operated in conjunction with each
24 other to ensure that the available parking spaces are properly allocated among tenants at both
25 buildings.

26 Ultimately, Kierland II controls the parking structure and access to the parking structure.
27 Kierland II has indicated that, if the Debtor ceases to own the Debtor's Property, Kierland II will
28 exercise its rights with respect to limiting the parking under and on its Property unless it is properly
29 compensated for the use of its parking structure. Because the CC&Rs are not definitive with
30 respect to the rights and remedies of the Debtor (or Kierland II) regarding the parking under and on
31 the Kierland II Property, and because there are the foregoing *practical* (aside from legal) issues
32 with the parking arrangement, the parking uncertainties have a distinct impact on the value of the
33 Debtor's Property. Nevertheless, in analyzing the negative impact of the inadequate parking, it is

1 assumed that the plausible solution is to enter into a long-term lease arrangement between the
2 Debtor and Kierland II. Accordingly, the Debtor's Plan addresses such a solution.

3 Notably, the senior secured lender holding a lien on the Kierland II Property, Banker's Trust
4 Company, N.A. ("Banker's Trust"), has recently notified the Debtor that it believes that it may
5 assert certain claims for damages and/or equitable claims against the Debtor and/or the Debtor's
6 Property in the event that the Debtor (or any subsequent owner of the Debtor's Property) attempts
7 to use or to control parking spaces on the Kierland II Property, which use or control could impede
8 or otherwise impair Kierland II's ability to provide adequate parking to Kierland II's tenants,
9 without appropriate compensation being provided to Kierland II. Again, the Debtor believes that
10 its Plan will address these potential claims by Banker's Trust, if confirmed.

11 JPMCC has asserted that it disagrees with the Debtor's concerns and positions regarding the
12 parking issues associated with the Property, and does not believe that there is any ambiguity in the
13 CC&Rs that could adversely affect the parking on the Property. JPMCC believes that the value of
14 the Property is not impacted by the parking issues, and that the value of the Property is substantially
15 higher than \$6.5 million (which the Debtor asserts is the Property's value, as discussed below).
16 JPMCC, however, has not provided the Debtor with an appraisal or any other evidence
17 demonstrating a different value for the Property, and has not articulated its belief as to the value of
18 the Property. In any event, JPMCC does not believe that a lease is necessary between the Debtor
19 and Kierland II.

20 **D. Bataa Oil, Inc.**

21 Bataa Oil is a Colorado corporation. Anne Calvin and David Calvin each own a 50%
22 interest in Bataa Oil. In addition to being the sole member and manager of the Debtor and Kierland
23 II, Bataa Oil owns and/or operates certain interests in oil and/or gas wells and leases in Wyoming
24 and Colorado. Bataa Oil does not receive any revenues from the operation of either the Debtor or
25 Kierland II. Between the end of December 2010 and the end of July 2011, Bataa Oil has generated
26 ordinary income totaling approximately \$46,000 from its other business ventures. As of July 30,
27 2011, Bataa Oil holds approximately \$160,000 in un-earmarked cash. Bataa Oil also holds an
28 additional approximately \$140,000 in cash that is specifically earmarked for payment of certain ad

1 valorem taxes due by Bataa Oil. In addition to its ordinary operating expenses and the ad valorem
2 taxes, Bataa Oil's only other material liability is a judgment in the amount of approximately \$3
3 million in favor of the Bank of Oklahoma. To date, Bank of Oklahoma has not taken any collection
4 action against Bataa Oil, and the judgment has not materially affected Bataa Oil's operations.

5 Additional information regarding Bataa Oil's assets and operations is set forth in the
6 disclosure statement filed, or to be filed, in David Calvin's personal Chapter 11 bankruptcy case,
7 discussed below. Any interested party desiring a copy of David Calvin's disclosure statement may
8 send a written request to Debtor's counsel, and a copy will be delivered to them.

9 **E. David Calvin's Personal Chapter 11 Case**

10 On January 10, 2011, David Calvin filed a voluntary petition under Chapter 11 of the
11 Bankruptcy Code in the United States Bankruptcy Court for the District of Arizona, commencing
12 case no. 2:11-bk-590-RJH (the "Calvin Bankruptcy"). David Calvin intends to confirm a plan of
13 reorganization in the Calvin Bankruptcy that will, among other things, allow him to retain his 50%
14 interest in Bataa Oil. The Calvin Bankruptcy has no effect on Bataa Oil's ability to properly and
15 effectively manage the Debtor. The Calvin Bankruptcy also does not have an effect on Calvin
16 Enterprises' ability to operate and manage the Debtor's Property. Furthermore, the Debtor believes
17 that Bataa Oil's ability to fund the new value contribution contemplated in the Plan is not, and will
18 not be, affected by the Calvin Bankruptcy.

19 However, to the extent that David Calvin is unable to confirm his reorganization plan in the
20 Calvin Bankruptcy, and/or David Calvin's 50% interest in Bataa Oil is liquidated or otherwise
21 disposed of through the Calvin Bankruptcy or otherwise, the Debtor anticipates that Anne Calvin,
22 the other 50% owner of Bataa Oil, will direct Bataa Oil to provide the new value contribution to the
23 Debtor as contemplated in the Plan.

24 **F. Current Operations**

25 The Debtor has operated, and intends to continue operating, the Property as a commercial
26 office building. The Debtor continues to receive income from tenants to pay for the ordinary and
27 necessary operating expenses of the Property, as well as any necessary repairs, from such income.
28 The Court has entered a series of orders authorizing the Debtor's use of asserted cash collateral,

1 pursuant to a Court-approved budget, for the payment of the ordinary and necessary expenses of
2 operating and maintaining the Property. The most recent cash collateral budget approved by the
3 Court, reflecting the anticipated revenues and expenses of the Property for the period from June 1,
4 2011 through August 31, 2011, is attached hereto as Exhibit "A." The most recent cash collateral
5 budget submitted to the Court, reflecting the anticipated revenues and expenses of the Property for
6 the period from September 1, 2011 through December 31, 2011, is attached hereto as Exhibit "B."

7 Additionally, the Debtor continues to market and lease vacant space in the Property and to
8 renew existing leases when appropriate. Since the Petition Date, the Debtor has entered into three
9 new leases for space at the Property, including (a) a 39-month lease with Allied Energy, LLC for
10 2,487 square feet of vacant space which will provide for additional monthly revenue of
11 approximately \$4,145 commencing in October, 2011; (b) a 26-month lease with Scott A. Smith
12 Chiropractic LLC for approximately 2,190 square feet of vacant space to commence on September
13 1, 2011 which will provide additional monthly revenue of approximately \$4,471.25 commencing in
14 December, 2011; and (c) a 26-month lease with AZ Sourcing LLC for approximately 3,907 square
15 feet of vacant space to commence on November 1, 2011 which will provide additional monthly
16 revenue of approximately \$7,500 commencing in January, 2012. The lessee shall also receive a
17 \$6,000 credit against Base Rental due for Month 4 (February, 2012) in lieu of a leasing
18 commission, leaving a balance of \$1,500.00, plus applicable taxes for Month 4.

19 In order to provide for efficient and productive operations, and to keep the Debtor's
20 business competitive, the Debtor intends to retain the same management team and structure that
21 existed pre-petition. Thus, Calvin Enterprises will continue to manage the Property in exchange for
22 a management fee of 5% of gross income. The Projections attached hereto as Exhibit "C" and
23 discussed below reflect the anticipated property management fees, on an annual basis, that may be
24 paid to Calvin Enterprises for the next 7 years based upon the Debtor's projected income. The
25 Debtor notes that the management fee charged by Calvin Enterprises is consistent with (and, in fact,
26 are lower than) management fees charged by other, third party property managers.

27 If David Calvin somehow loses his interests in Calvin Enterprises as a consequence of his
28 personal Chapter 11 bankruptcy case, or otherwise, the Debtor will terminate Calvin Enterprises as

1 its property manager and will hire David Calvin, or another entity controlled or managed by David
2 Calvin, to manage the Property in order to ensure continuity of management and a seamless
3 transition of management for the Property. Therefore, the Debtor does not anticipate that David
4 Calvin's personal Chapter 11 bankruptcy case will have any affect or impact on the Debtor or the
5 management of the Debtor's property at all.

6 Neither Bataa Oil nor David or Anne Calvin will receive any compensation from the Debtor
7 relating to Bataa Oil's role as manager of the Debtor.

8 The issues confronted by the Debtor that led to the bankruptcy filing were the product of
9 market changes and not the Debtor's management or its structure. Thus, a change in management
10 structure is not in the best interests of the Debtor or its creditors because the existing structure is
11 appropriate to meet the needs of the Debtor. By maintaining its current management and
12 operational structure, the Debtor will avoid the transactional costs associated with significant and
13 unnecessary change. In addition, the institutional knowledge of the management team will be
14 preserved.

15 The Debtor prepares, and files with the Court, Monthly Operating Reports reflecting the
16 Debtor's operations on a monthly basis. Each of these Monthly Operating Reports is available
17 from the Court's docket. The most recent Monthly Operating Report is attached hereto as Exhibit
18 "D."

19 **G. Projections of Future Operations**

20 The Debtor has prepared cash flow projections for the Property for the period beginning
21 September 2011 through September 2018 (the "Projections"). A copy of the Projections is attached
22 hereto as Exhibit "C." The Projections are based upon the Debtor's best estimates of future
23 revenue generated by the Property as the Property continues to reach stabilization, and future
24 expenses incurred in operating and maintaining the Property. The Projections also reflect the
25 anticipated costs of building out and leasing the currently vacant space at the Property, as well as
26 future costs and expenses associated with tenant turnover. The Debtor believes that the Projections
27 are conservative and based upon a realistic and logical lease-up period, and realistic and achievable
28 revenue and expense increases, including inflation factors for expenses. The Projections also reflect

1 debt service payments to JPMCC with two different loan amount assumptions--\$6.5 million and
2 \$11 million. Under either scenario, the Projections reflect that the Debtor will be able to service the
3 JPMCC debt as provided in the Plan.

4 **H. Preferences and Fraudulent Conveyances**

5 The Debtor is not aware of the existence of any preferential payments or fraudulent
6 conveyances that occurred prior to the Petition Date. Indeed, the Debtor's Statement of Financial
7 Affairs does not reflect any transfers within 90 days prior to the Petition Date. The Statement of
8 Financial Affairs reflects payments from the Debtor to Bataa Oil, as member distributions, in the
9 one year preceding the Petition Date in the total amount of \$55,000. These payments were made in
10 March 2010 (\$10,000), April 2010 (\$14,000), May 2010 (\$15,000) and June 2010 (\$16,000). The
11 Debtor believes that, at the time these distributions were made, the Debtor was solvent and,
12 therefore, the payments are not avoidable as either preferences or fraudulent conveyances. Indeed,
13 at the time those distributions were made, the Debtor's income was significantly more substantial
14 than as of the Petition Date and the Debtor was paying its obligations as they became due.

15 Nevertheless, the Debtor will continue to evaluate whether the distributions, or any other
16 payments, are avoidable and, to the extent that a preference or fraudulent conveyance occurred
17 before the bankruptcy filing, such transfer may be recoverable by the bankruptcy estate for the
18 benefit of the estate under §§ 544, 547, or 548 of the Bankruptcy Code. To the extent any such
19 claims exist, they will be analyzed for their potential value to the estate. These potential claims are
20 specifically preserved for the benefit of the bankruptcy estate. Any recovery that is obtained will
21 be obtained for the benefit of the estate.

22 **IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

23 **A. Administrative Proceedings**

24 The Debtor filed its Petition for Relief under Chapter 11 on March 9, 2011, and a first
25 meeting of creditors was held on April 12, 2011.

26 **B. Retention of Professionals**

27 The Debtor retained Polsinelli Shughart, P.C. ("PS") to act as its original bankruptcy
28 counsel. The Court signed an Order approving the retention of PS on March 28, 2011.

1 **C. Appointment of Unsecured Creditors Committee**

2 The United States Trustee’s Office filed a statement stating that, despite its efforts to contact
3 unsecured creditors, it was unable to appoint a Committee of Unsecured Creditors.

4 **D. Operating Reports**

5 The Debtor’s monthly operating reports are current and copies can be obtained from the
6 Court’s electronic docket.

7 **E. Other Bankruptcy Court Orders**

8 **1. Motion for Use of Cash Collateral**

9 At the request of the Debtor, the Court has entered a series of orders authorizing the
10 Debtor’s use of cash collateral to pay ordinary and necessary operating and maintenance expenses
11 of the Debtor pursuant to a Budget approved by the Court. The most recent order authorizing cash
12 collateral use expires on August 31, 2011. The Debtor has submitted a budget to JPMCC requesting
13 authority to continue using cash collateral through the December 31, 2011. The Court has not yet
14 set a hearing regarding this renewed request to use cash collateral.

15 **2. Motion to Transfer Related Case**

16 On March 10, 2011, David J. Calvin filed a motion to transfer the Debtor’s Chapter 11
17 bankruptcy proceedings, administered under Case No. 2:11-bk-05850-SSC, to the Honorable
18 Randolph J. Haines pursuant to Local Rule 1015-1(A), on the basis that the bankruptcy estates of
19 David Calvin and the Debtor are extremely intertwined. As discussed above, David Calvin has an
20 ownership interest in the entities that own and manage the Debtor. Calvin’s primary source of
21 income and any future shareholder distribution is and will be derived from the operation of the
22 Debtor’s Property. Consequently, any matters or claims that may arise in the Debtor’s estate will
23 impact the Calvin estate. An Order transferring the case was entered on March 24, 2011.

24 **3. Motion to Approve Lease Agreement**

25 On May 26, 2011, the Debtor filed a motion seeking approval of a lease agreement with
26 Allied Energy, LLC for 2,487 square feet of commercial space that is currently vacant. The lease
27 agreement sought to be approved will create additional revenue for use in the reorganization
28 process and increase the value of the Debtor’s property. The Debtor also sought the use of revenues

1 generated by the Property, which JPMCC asserts constitute its cash collateral, to pay for tenant
2 improvement expenses in the amount of approximately \$8,602 and to pay third party leasing
3 commissions in the total amount of \$11,506. The Court has entered an Order approving the lease
4 arrangement and the use of cash collateral for the tenant improvements and leasing commissions.

5 **V. DESCRIPTION OF ASSETS AND LIABILITIES OF THE DEBTOR**

6 **A. Assets**

7 The values ascribed to the Debtor's assets below are based on the Debtor's best estimate
8 and other factors such as the purchase price, comparable sales, tax assessments, and appraisals.

9 **1. Real Property** – The Debtor believes that the value of its Property, as of the
10 Petition Date, was approximately \$6.5 million. The Debtor has relied upon an appraisal dated
11 August 8, 2010, by NAI Horizon Valuation Services Group (“NAI Appraisal”) for this belief. A
12 copy of the executive summary of the NAI Appraisal is attached hereto as Exhibit “E.” A full copy
13 of the NAI Appraisal is available to any party requesting such a copy, in writing, from the Debtor's
14 counsel. The Debtor does not have a more recent appraisal or valuation of the Property, but
15 believes that the value of the Property as of the Petition Date is approximately \$6.5 million.

16 As discussed above, the Debtor believes that the parking issues associated with the Property
17 have an adverse affect on the value of the Property. Consequently, the foregoing value of the
18 Property assumes the existence of a long-term garage lease from Kierland II which would place the
19 Property in compliance with city zoning regulations and allow the Property to be competitive
20 within the market. Without such a long term lease or other arrangement to address the parking
21 issue, the value of the Property could be significantly less than \$6.5 million.

22 The NAI Appraisal also opines that the value of the Property, as of August 8, 2010, would
23 be \$11,000,000, *assuming adequate parking*. Because there is not adequate parking at the
24 Property, the Debtor does not rely upon this assumed value.

25 **2. Bank Accounts** – As of the Petition Date, the Debtor held approximately
26 \$481,603.43 in its bank account. Additionally, the Debtor has accumulated, and continues to
27 accumulate, net cash from operations of the Property since the Petition Date. The current amount
28 of cash held by the Debtor is reflected in the most recent Monthly Operating Report filed by the

1 Debtor and attached hereto. The funds in the Debtor's bank account were generated by the
2 operation of the Debtor's Property. Consequently, JPMCC asserts a lien in such funds. Therefore,
3 to the extent that JPMCC's lien in the Property and the revenues generated thereby is valid and
4 enforceable, the funds in the Debtor's bank accounts would not be available for distribution to
5 creditors in the event of a liquidation.

6 **3. Equipment and Office Furnishings** – The Debtor owns certain personal
7 property consisting of office furnishings and equipment, including certain computers and computer
8 related peripherals used in the operation of the Debtor's business. The Debtor has not had the
9 personal property appraised and has not obtained any other valuation of the personal property. The
10 Debtor estimates that the book value (*i.e.*, cost minus depreciation) of the personal property is
11 approximately \$102,030.43, as reflected in the Debtor's Schedules of Assets and Liabilities.
12 However, as a practical matter, the Debtor estimates that the current market value (*i.e.*, the amount
13 that the Debtor would be able to sell the personal property for at auction in a liquidation of the
14 Debtor's assets) of the personal property is no more than approximately \$20,000. This estimate of
15 the market value of the personal property is based solely on the Debtor's presumption that an
16 auction sale of the personal property consisting of office furniture and equipment will not result in a
17 significant recovery to the estate. While he is not an appraiser of personal property and does not
18 have experience liquidating personal property, David Calvin has observed that when tenants in
19 office buildings that he owns and or manages leave the premises, they have either completely
20 abandoned similar office furniture and equipment because of its nominal value or have auctioned
21 similar office furniture and equipment and recovered nominal amounts from such auctions.

22 The Debtor has not disposed of otherwise transferred, lost or destroyed any personal
23 property since the Petition Date. Rather, the difference in the value of the personal property
24 reflected in the Debtor's Schedules of Assets and Liabilities and the value reflected herein is solely
25 a function of the methodology by which the personal property is valued—*i.e.*, book value versus
26 estimated auction value.

27 The Debtor has not prepared and does not have a specific inventory of personal property nor
28 the estimated value of each item of personal property. To the extent any interested party desires to

1 inspect the Debtor's personal property or to have the personal property appraised, the Debtor will
2 provide reasonable access to the personal property upon request.

3 **4. Account Receivable** – The Debtor owns an account receivable from Anka,
4 LLC (“Anka”) in the amount of \$28,541.91. Anka is a Colorado limited liability company formed
5 in April 2009 whose members are David Calvin, Anne Calvin, and DJ Calvin. Anka owns an
6 approximately 6% interest in an oil and gas well in Colorado. In March 2010, the Debtor loaned
7 \$65,000 to Anka that Anka used to pay for its share of the drilling costs for the well. There is no
8 promissory note reflecting the loan; however, Anka has periodically repaid portions of the loan to
9 the Debtor. Specifically, in May 2010, Anka repaid approximately \$30,000 to the Debtor. In
10 December 2010, Anka repaid an additional approximately \$5,000 to the Debtor. However, in 2011,
11 the revenues to Anka have subsided considerably and, as of August 15, 2011, Anka has only
12 received less than \$3,000 in total income in 2011. Consequently, Anka does not have the current
13 ability to repay the loan to the Debtor. Nevertheless, Anka and the Debtor believe that Anka will
14 repay the loan over time as funds are available to Anka to do so. As the loan is repaid, the loan
15 payments will be added to the Debtor's revenue and used in connection with the Debtor's
16 continuing operations. The Debtor anticipates that, if the Debtor were liquidated, and collection
17 activities were directed at Anka, such collection activities would not produce any short term, or
18 even mid-term, recovery to the Debtor.

19 Additional information regarding Anka and its assets and operations is set forth in the
20 disclosure statement filed, or to be filed, in David Calvin's personal Chapter 11 bankruptcy case,
21 discussed below. Any interested party desiring a copy of David Calvin's disclosure statement may
22 send a written request to Debtor's counsel, and a copy will be delivered to them.

23 **5. Tenant Improvement** – The Debtor's Schedules of Assets and Liabilities list
24 tenant improvements in the amount of approximately \$1,002,273.24. These tenant improvements
25 are incorporated into the building and are subject to any valid liens encumbering the Debtor's
26 Property. If the Debtor were liquidated, the tenant improvements would be sold as part of the
27 Debtor's real property and improvements, and would not be available for distribution to unsecured
28 creditors.

1 **B. Liabilities**

2 The following is an overview of the Debtor's known liabilities.

3 **1. Priority Claims**

4 The Debtor estimates that it owes sales taxes to the City of Phoenix in the
5 approximate amount of \$7,250.15.

6 **2. Secured Claims**

7 a. As discussed above, JPMCC asserts a claim in the amount of
8 \$28,023,082.82, according to a proof of claim filed by JPMCC. JPMCC asserts that this claim is
9 secured by the Debtor's Property. However, even if JPMCC's claim is allowed in full and
10 determined to be properly secured by the Debtor's Property, then pursuant to § 506(a) of the
11 Bankruptcy Code, the amount of JPMCC's secured claim is limited to the value of its asserted
12 collateral, unless JPMCC makes the election under § 1111(b) of the Bankruptcy Code (as discussed
13 below). Consequently, because the Debtor estimates that the value of JPMCC's collateral is no
14 more than \$6.5 million, the amount of JPMCC's secured claim, if any, is no more than \$6.5 million.
15 The remaining amount of JPMCC's allowed claim is deemed to be, and is treated as, an unsecured
16 claim pursuant to § 506(a) of the Bankruptcy Code, unless JPMCC makes the § 1111(b) election, as
17 discussed below. Ultimately, the Court will determine the value of JPMCC's collateral and, hence,
18 the amount of JPMCC's allowed secured claim.

19 b. The County of Maricopa holds a claim for the second half of the 2010
20 real property taxes in the approximate amount of \$192,089.96, secured by a lien on the Debtor's
21 Property.

22 c. Bartels & Company holds a claim in the approximate amount of
23 \$1,650, secured by a cash retainer held by Bartels & Company. Bartels & Company is an
24 accounting firm in Colorado who performs accounting related services to the Debtor and other
25 Calvin-related entities. Prior to the Petition Date, on June 23, 2010, the Debtor provided a retainer
26 to Bartels & Company in the amount of \$5,000 to secure the Debtor's payment of accounting
27 services performed for the benefit of the Debtor.

1 d. Joseph D. Annoreno (“Annoreno”) holds a claim in the approximate
2 amount of \$5,000, secured by the Debtor’s personal property. Annoreno is a tenant in the Kierland
3 II Property and a business acquaintance of David and Anne Calvin who agreed to make a short term
4 loan to the Debtor to allow the Debtor to acquire some necessary office equipment. Other than as a
5 tenant of Kierland II and being an acquaintance of David and Anne Calvin, Annoreno has no
6 relationship at all to the Debtor, Bataa Oil, or David or Anne Calvin.

7 In July 2010, Annoreno loaned \$5,000 to the Debtor specifically to allow the Debtor
8 to purchase the following computers and computer related peripherals used in the operation of the
9 Debtor’s business (the “Annoreno Collateral”):

10 COMPUTER SYSTEM AS FOLLOWS:

MacBook Pro 17”	\$2,648.00
Canon All-In-One Printer	149.95
IPad	829.00
IPad	829.00
G-Tech G-Drive	169.95
Apple Earphones	29.00
Apple Earphones	29.00
Belkin Rockstar Headphone Splitter	69.00
Apple Service	99.00
Subtotal	\$4,802.85
Tax	389.76
Total	\$5,192.61

18 The Debtor granted a security interest in the Annoreno Collateral in exchange for the loan.

19 **3. Tenant Security Deposits**

20 The Debtor has collected tenant security deposits from its tenants totaling
21 approximately \$43,464.75. The Debtor is obligated to return these security deposits to its tenants
22 pursuant to the terms of the leases between the Debtor and the respective tenants and applicable
23 state law. The Debtor has not sequestered or otherwise escrowed funds for the repayment of the
24 security deposits.

25 **4. Unsecured Claims**

26 In addition to the foregoing tenant security deposits that are listed as unsecured
27 claims in Schedule F of the Debtor’s Schedules of Assets and Liabilities, the Debtor estimates that
28

1 the total amount of general unsecured claims against the Debtor's estate is approximately
2 \$41,881.01, as identified in the Debtor's Schedules of Assets and Liabilities (not including the
3 tenant security deposits or any potential unsecured deficiency claim of JPMCC arising by
4 application of § 506(a) of the Bankruptcy Code).

5 As discussed above, the amount of JPMCC's deficiency claim (*i.e.*, the amount of
6 the allowed claim in excess of the value of the collateral) is also deemed to be an unsecured claim,
7 unless JPMCC makes the § 1111(b) election. The Debtor estimates that the amount of JPMCC's
8 unsecured deficiency claim would be approximately \$21,523,082, if the entire amount of JPMCC's
9 asserted claim is allowed. If the default interest and "pre-payment premium" asserted by JPMCC
10 are excluded from the calculation of the amount of JPMCC's claim, then the amount of JPMCC's
11 unsecured deficiency claim is approximately \$16,961,480.

12 Therefore, not including the unsecured tenant security deposits discussed separately
13 above, and assuming that JPMCC does not make the § 1111(b) election, the total amount of
14 unsecured claims against the Debtor's estate is approximately between \$21,564,963 and
15 \$17,003,361.

16 **C. Administrative Expenses**

17 The Debtor continues to pay its post-petition operating expenses in the ordinary course of
18 business pursuant to the Court-approved Budget. Consequently, the Debtor does not anticipate that
19 it will incur any unpaid administrative claims against the estate other than the fees and costs of
20 attorneys, expert witnesses and other professionals retained by the Debtor in connection with the
21 administration of the estate and the confirmation of the Plan.

22 Therefore, the Debtor's administrative expenses will likely consist solely of the fees and
23 costs of attorneys and other potential professionals necessary to the Debtor's operations,
24 bankruptcy case, and plan of reorganization.

25 To date, the only professional retained by the Debtor and who may ultimately have an
26 administrative claim against the Debtor is Debtor's bankruptcy counsel, PS, as discussed below.
27 As set forth below, PS anticipates that the retainer it presently has will be sufficient to cover the
28 services it has rendered, and will render, in the Bankruptcy Case.

1 The Debtor's bankruptcy counsel is PS. PS is currently in possession of a retainer in the
2 amount of \$213,768. PS anticipates its fees and costs will be less than the amount of the retainer.
3 However, depending upon the extent and nature of objections to confirmation of the Plan and other
4 challenges to the Debtor's efforts to reorganize by JPMCC or other interested parties, the retainer
5 may not be sufficient to pay all of the fees and costs incurred by PS. To the extent that PS's fees
6 and costs exceed the amount of the retainer, PS's fees and costs will constitute administrative
7 claims against the Debtor's Estate. To the extent that PS's fees and costs are less than the amount
8 of the retainer, then following final approval of PS's fees and costs and application of the retainer
9 to such approved fees and costs, any remaining portion of the retainer will be returned to the Debtor
10 who will use the funds in the ordinary course of operating its business just as any other funds
11 received by the Debtor.

12 PS recently filed its first fee application requesting interim approval of fees and costs in the
13 total amount of approximately \$63,367 for the period from the Petition Date (March 9, 2011)
14 through June 30, 2011.

15 **VI. PLAN SUMMARY**

16 The following statements concerning the Plan are merely a summary of the Plan and are not
17 complete. The statements are qualified entirely by express reference to the Plan. Creditors are
18 urged to consult with counsel or each other in order to understand the Plan fully. The Plan is
19 complete, inasmuch as it proposes a legally binding agreement by the Debtor, and an intelligent
20 judgment cannot be made without reading it in full. With the exception of the Classes 1-A through
21 1-C (the "Priority Claims"), all the creditors of the Debtor are impaired under the terms of the Plan.
22 The Secured Creditors are impaired because they will be subjected to different treatment than they
23 had originally contracted for with the Debtor. The Unsecured Creditors will be impaired because
24 they will be subject to different treatment than they originally contracted for. Thus, the Debtor will
25 have numerous classes with the right to vote on its Plan of reorganization, as set forth herein.

26 **VII. CLASSIFICATION OF CLAIMS AND INTERESTS.**

27 **A. Class 1: Priority Claims**

28 1. Class 1-A consists of Allowed Priority Claims under 11 U.S.C. § 503 and

1 § 507(a)(2) (Administrative Claims). Again, the Debtor anticipates that the only claims in this
2 Class will be those of estate professionals incurred in connection with the administration of the
3 estate and the confirmation of the Plan.

4 1. Class 1-B consists of Allowed Priority Claims under 11 U.S.C. §507(a)(8)
5 (Tax Claims). The Debtor anticipates that the only claims in this Class will consist of the sales
6 taxes owed to the City of Phoenix, unless paid prior to confirmation of the Plan.

7 **B. Class 2: Secured Claims**

8 1. Class 2-A consists of the Allowed Secured Claim of JPMCC 2007-CIBC 19
9 East Greenway, LLC, estimated to be in the amount of \$6.5 million.

10 2. Class 2-B consists of the Allowed Secured Claim of Maricopa County for
11 real property taxes, estimated to be in the amount of \$192,089.96.

12 3. Class 2-C consists of the Allowed Secured Claim of Bartels & Company,
13 estimated to be in the amount of approximately \$5,000.

14 4. Class 2-D consists of the Allowed Secured Claim of Joseph D. Annoreno,
15 estimated to be in the principal amount of \$5,000.

16 **C. Class 3: Tenant Security Deposits**

17 Class 3 consists of Allowed Claims by tenants for the return of tenant security deposits held
18 by the Debtor, estimated to be in the amount of approximately \$43,464.75.

19 **D. Class 4: Unsecured Claims**

20 Class 4 consists of the Allowed Unsecured Claims of Creditors not otherwise treated in the
21 Plan, estimated to be in the total amount of between approximately \$21,564,963 and \$17,003,361,
22 if JPMCC does not make the § 1111(b) election. If JPMCC does make the § 1111(b) election, then
23 the claims in this Class are estimated to be approximately \$41,881.01.

24 **E. Class 5: Kierland II**

25 Class 5 consists of the claims and rights of Kierland II with respect to the Debtor's use of
26 the parking spaces and structures located on the Kierland II Property. The Debtor estimates such
27 claims and rights to be at least \$4,168,000, representing a proportionate amount of the cost
28 incurred by Kierland II to construct the parking structure used by the Debtor. This class also

1 includes any injunctive or other equitable rights or claims that Kierland II has or may have against
2 the Debtor regarding the parking rights on Kierland II's property. Because of the unique nature of
3 Kierland II's potential equitable rights and claims against the Debtor, and because of the on-going,
4 post-confirmation relationship between the Debtor and Kierland II regarding the resolution of the
5 parking issues, as discussed below, the Debtor has separately classified Kierland II's claims from
6 other claims.

7 **F. Class 6: Banker's Trust**

8 Class 6 consists of the claims and rights of Banker's Trust with respect to the Debtor's use
9 of the parking spaces and structures located on the Kierland II Property. The Debtor anticipates
10 that such claims and rights are similar to those of Kierland II and consist of equitable rights (such
11 as an injunction to prohibit the Debtor's use Kierland II's property for parking without certain use
12 restrictions and/or payment for such use) and/or damages resulting from the Debtor's use of the
13 Kierland II Property. Because of the unique nature of Banker's Trust's potential equitable rights
14 and claims against the Debtor, and because of the on-going, post-confirmation relationship
15 between the Debtor and Kierland II regarding the resolution of the parking issues, as discussed
16 below, the Debtor has separately classified Banker's Trust's claims from other claims.

17 **G. Class 7: Interest Holders**

18 Class 7 consists of all Allowed Interests of the Debtor's Interest Holder, Bataa Oil.

19 **VIII. IMPAIRMENT OF CLASSES.**

20 Classes 1-A and 1-B are unimpaired under the Plan. All other Classes are Impaired, as that
21 term is defined in 11 U.S.C. § 1124.

22 **IX. TREATMENT OF CLASSES.**

23 **A. Class 1: Priority Claims**

24 **1. Class 1-A: Administrative Claims**

25 This Class consists of Allowed Priority Claims under 11 U.S.C. §§ 503 and 507(a)(2) –
26 administrative priority claims. Unless Claimants holding Claims in this Class agree to an
27 alternative form of treatment, the Allowed Claims of Class 1-A shall be paid in full, in cash, on or
28 before the Effective Date or as the same are Allowed and ordered paid by the Court. Any Class 1-

1 A Claim not allowed as of the Effective Date shall be paid as soon thereafter as it is allowed by the
2 Court according to the terms of this Class. This Class is not impaired.

3 **2. Class 1-B: Tax Claims**

4 This Class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8) – tax claims
5 which are not otherwise treated as secured claims herein. As provided in 11 U.S.C. §
6 1129(a)(9)(C), unless Claimants holding Claims in this Class agree to an alternative form of
7 treatment, the Allowed Priority Claims of Class 1-C shall be paid in full, in cash, on or before the
8 Effective Date, or, at the Debtor’s option, such Allowed Claims shall be paid, on account of such
9 Allowed Claim, deferred cash payments, over a period not exceeding five years after the date of
10 assessment of such Claim, of a value, as of the Effective Date of the Plan, equal to the allowed
11 amount of such Claim. Any Class 1-C Claims not allowed as of the Effective Date shall be paid as
12 soon thereafter as they are allowed by the Court according to the terms of this Class. This Class is
13 not impaired.

14 **B. Class 2: Secured Claims**

15 **1. Class 2-A – Allowed Secured Claims of JPMCC 2007-CIBC 19 East**
16 **Greenway, LLC**

17 This Class consists of the Allowed Secured Claim of JPMCC. This Class is impaired.

18 JPMCC asserts that it has the right to make an election under § 1111(b) of the Bankruptcy
19 Code. Accordingly, the following discussion sets forth alternate treatments of JPMCC’s secured
20 claim, depending upon whether JPMCC makes the § 1111(b) election or not.

21 **(i) JPMCC’s Treatment if the § 1111(b) Election is Not Made**

22 Pursuant to § 506(a)(1) of the Bankruptcy Code, the amount of JPMCC’s Allowed Secured
23 Claim shall be limited to the value of its collateral, which the Debtor believes to be no more than
24 \$6.5 million due to the parking issues described above. The remainder of JPMCC’s Allowed
25 Claim shall be treated as a general unsecured claim in Class 4. The Debtor intends to pay
26 JPMCC’s Allowed Secured Claim in full, with interest at the Plan Rate, over a period of seven (7)
27 years.

28 Specifically, the Debtor will execute and deliver to JPMCC a promissory note (the “New

1 Note”) in the amount of JPMCC’s Allowed Secured Claim. The New Note will mature and
2 become fully due and payable on the 7th anniversary of the Effective Date (the “Maturity Date”).
3 During the initial 24 months of the term of the New Note, the Debtor will make monthly interest-
4 only payments to JPMCC at the Plan Rate. Thereafter, the Debtor shall pay monthly payments of
5 principal and interest until the Maturity Date based upon a twenty-five year amortization with
6 interest at the Plan Rate. The first interest payment will be made 30 days after the Effective Date
7 and each monthly payment thereafter will be made on the first business day of each month during
8 the term of the New Note.

9 Any remaining principal balance and any interest due under the New Note will be paid to
10 JPMCC on the Maturity Date. Subject to the terms of this Plan and any Order confirming this
11 Plan, JPMCC will retain its existing lien on the Property, to the same extent, and with the same
12 validity and priority as it did pre-petition until the New Note has been satisfied in full. At any time
13 prior to the end of the term, the Debtor may pay the balance of the New Note without penalty.

14 Immediately upon payment, in full, of the New Note, JPMCC’s Allowed Secured Claim
15 and its secured interest in the Property will be deemed satisfied, extinguished, released and
16 discharged, in full.

17 **(ii) JPMCC’s Treatment if the § 1111(b) Election is Made**

18 If JPMCC makes the § 1111(b) election, then JPMCC’s entire Allowed Claim will be
19 treated as fully secured, and JPMCC will not have any claims in Class 4.

20 In this event, the Debtor will treat JPMCC’s Allowed Claim as follows:

21 • Subject to the terms of this Plan and any Order confirming this Plan, JPMCC will
22 retain its lien on the Property and its other pre-petition collateral in the full amount of its Allowed
23 Claim, as such Allowed Claim is determined by the Court.

24 • For purposes of this analysis, the Debtor assumes that (i) JPMCC’s Allowed Claim
25 will be established at no more than \$23,500,000, rather than the over \$28,000,000 asserted by
26 JPMCC in its pleadings filed in this case; and (ii) the value of JPMCC’s collateral is \$6.5 million.
27 The actual amount of JPMCC’s Allowed Claim, and the value of its collateral base, will be
28 established by the Court.

1 • The Reorganized Debtor will pay the total amount of JPMCC’s Allowed Claim on
2 or before the end of the twentieth year following the Effective Date of the Plan as follows:

3 (i) On the Effective Date, the Debtor will make a payment of \$42,000 to
4 JPMCC;

5 (ii) Each month thereafter for a total period of 35 months following the
6 Effective Date, the Debtor shall make monthly payments of \$42,000 each to JPMCC, for a
7 total annual payment to JPMCC of \$504,000 per year for the first three years following the
8 Effective Date;

9 (iii) Beginning on the fourth anniversary of the Effective Date, the Debtor will
10 make monthly payments of \$50,000 each to JPMCC for the next 204 months, for a total
11 annual payment to JPMCC of \$600,000 per year for the next seventeen years following the
12 Effective Date; and

13 (iv) On or before the twenty-first anniversary following the Effective Date of the
14 Plan (the “Pay-Off Date”), the Debtor will pay the remaining balance of JPMCC’s Allowed
15 Claim, assumed to be \$11,788,000 (based upon an initial loan amount of \$23,500,000),
16 from either the sale of the Property or a refinancing of the Property.

17 • Each of the foregoing monthly payments will be made on the fifteenth day of each
18 month.

19 • Notwithstanding the foregoing payment schedule, the Reorganized Debtor shall
20 have the right and ability to make additional principal reduction payments to JPMCC prior to the
21 Pay-Off Date, without penalty, from excess cash flow (if any) from the operations of the Property,
22 which payments will reduce the amount of JPMCC’s Allowed Claim payable on the Pay-Off Date.

23 • In the event the Court finds that JPMCC’s Allowed Claim is different than
24 \$23,500,000 and/or that the value of JPMCC’s collateral is different than \$6.5 million, then (i) the
25 stream of payments on JPMCC’s claim will remain the same as set forth above but (ii) any balance
26 of JPMCC’s Allowed Claim remaining on the Pay-Off Date will be adjusted accordingly.

1 • Immediately upon payment, in full, of JPMCC’s Allowed Claim, JPMCC’s secured
2 interest in the Property and any other collateral securing its Allowed Claim will be deemed
3 satisfied, extinguished, released and discharged, in full.

4 • The Reorganized Debtor reserves its right and ability to sell or refinance the
5 Property at any time prior to the Pay-Off Date, so long as the net sale or loan proceeds (after
6 payment of costs of sale or loan) are sufficient to pay the remaining amount of JPMCC’s Allowed
7 Claim in full.

8 **2. Class 2-B – Allowed Secured Claim of Maricopa County**

9 This Class consists of the Allowed Secured Claim of Maricopa County, Arizona
10 (“Maricopa County”), if any, that is secured by a tax lien on the Property. This Class is impaired.

11 Commencing on the Effective Date, the Allowed Secured Claim of Maricopa County, if
12 any, will be paid in equal quarterly payments of principal and interest over a term of 2 years.
13 Interest will accrue and will be paid at the statutory rate plus 2%. The County will retain its
14 existing secured interest in the Property until this claim has been satisfied in full.

15 **3. Class 2-C –Allowed Secured Claim of Bartels & Company, LLC**

16 This Class consists of the Allowed Secured Claim of Bartels & Company, LLC (“Bartels &
17 Company”) in the amount of approximately \$5,000 secured by the pre-petition retainer held by
18 Bartels & Company. This Class is impaired.

19 The Allowed Secured Claim of Bartels & Company shall be equal to the principal amount
20 of Bartels & Company’s claim reduced by twenty-five percent (25%). On the Effective Date of the
21 Plan, Bartels & Company shall be entitled to apply the collateral (consisting of a cash retainer) to
22 the Allowed Secured Claim. To the extent that the amount of the retainer is greater than Bartels &
23 Company’s Allowed Secured Claim, Bartels & Company shall deliver any excess funds to the
24 Debtor after application of the retainer to Bartels & Company’s Allowed Secured Claim.

25 **4. Class 2-D –Allowed Secured Claim of Joseph D. Annoreno**

26 This Class consists of the Allowed Secured Claim of Joseph D. Annoreno (“Annoreno”) in
27 the amount of approximately \$5,000.00, which is secured by the Annoreno Collateral. This Class
28 is impaired.

1 Annoreno's Allowed Secured Claim shall be limited to the value of his collateral as of the
2 Confirmation Date which the Debtor estimates to be no more than \$5,000. The remainder of
3 Annoreno's Allowed Claim shall be treated as a general unsecured claim in Class 4. The Debtor
4 intends to pay Annoreno's Allowed Secured Claim in full, with interest at the Plan Rate, over a
5 period of three (3) years. The first payment of principal and interest will be made 30 days after the
6 Effective Date, and each monthly payment thereafter will be made on the first business day of each
7 month during the term. Annoreno will retain his existing lien on the collateral until Annoreno's
8 Allowed Secured Claim has been paid in full. At any time prior to the end of the term, the Debtor
9 may pay the balance of the Allowed Secured Claim without penalty. Immediately upon payment,
10 in full, Annoreno's Allowed Secured Claim, and his secured interest in the collateral, will be
11 deemed satisfied, extinguished, released and discharged, in full.

12 **C. Class 3: Tenant Security Deposits**

13 This Class consists of all Allowed Unsecured Claims of tenants for pre-petition security
14 deposits held by the Debtor in the total aggregate amount of \$43,464.75. This Class is impaired.

15 The Reorganized Debtor shall retain its right and ability to determine whether and what
16 extent a tenant is entitled to the return of its security deposit pursuant to the terms of the lease
17 between the Debtor and the tenant and applicable state law. However, notwithstanding anything to
18 the contrary in the lease between the Debtor and its tenants or in applicable law, valid and
19 enforceable tenant security deposits will be paid to tenants within 60 days of the later of either (a)
20 the date that the Debtor determines the appropriate amount of the security deposit to be returned or
21 (b) the date the tenant vacates its premises. This 60 day delay is necessary in order to ensure that
22 the Debtor has sufficient funds on hand to return the security deposit to the tenant, either from the
23 cash flow of the Property or from an infusion of cash from one or more of the New Interest
24 Holders.

25 **D. Class 4: Unsecured Claims**

26 This Class consists of all Allowed Unsecured Claims of Creditors that are not specifically
27 treated elsewhere in the Plan (*e.g.*, this Class does not include claims of tenants for security
28 deposits or any administrative or priority claims). This Class is impaired.

1 JPMCC's unsecured deficiency claim—*i.e.*, the difference between the amount of its
2 Allowed Claims and the value of its collateral, if any—will be included in this Class ***if but only if***
3 JPMCC does not make the § 1111(b) election. If JPMCC does make the § 1111(b) election, then it
4 will not have any claims in this Class. This Class also includes Annoreno's unsecured deficiency
5 claim—*i.e.*, the difference between the amount of his Allowed Claim and the value of the
6 Annoreno Collateral, if any. This Class is impaired.

7 (i) **Treatment of Allowed Unsecured Claims if JPMCC Does Not**
8 **Make the § 1111(b) Election**

9 If JPMCC does ***not*** make the § 1111(b) election, then Allowed Unsecured Claims will be
10 treated as follows:

11 (i) First, Allowed Unsecured Claims will share, pro-rata, in a distribution of the sum of
12 \$42,000 in cash (the "Unsecured Distribution Amount") paid by the Reorganized Debtor, from the
13 New Value contribution, on the 90th day following the Effective Date of the Plan.

14 (ii) Second, Allowed Unsecured Claims will share, pro rata, in seven (7) annual
15 distributions of 25% of the net revenues from the operations of the Property ***after*** payment of (a)
16 all operating expenses of the Property, (b) debt service payments to JPMCC as set forth above, (c)
17 tenant improvement costs, (d) leasing commissions, (e) actual costs associated with HVAC
18 upgrades and maintenance and other capital expenditures, and (f) a \$25,000 annual distribution to
19 a capital reserve account ("Annual Percentage Distributions"). These Annual Percentage
20 Distributions will be made on each anniversary of the Effective Date of the Plan until the seventh
21 anniversary of the Effective Date. Based upon the Debtor's projections, it is anticipated that these
22 total Annual Percentage Distributions will exceed approximately \$400,000.

23 (iii) Third, the Reorganized Debtor will issue to each holder of an Allowed Unsecured
24 Claim its pro rata portion of a \$500,000 subordinated debenture payable to holders of Allowed
25 Unsecured Claims (the "Subordinated Debenture"). The Subordinated Debenture will not accrue
26 interest. The Subordinated Debenture will be secured by a second position lien in and to the Real
27 Property, subject only to real property taxes and the Allowed Secured Claim of JPMCC. The
28 Reorganized Debtor shall not be required to make periodic payments to the holders of the

1 Subordinated Debenture. However, the Subordinated Debenture will be fully due and payable on
2 the 7th anniversary of the Effective Date of the Plan or upon the sale or refinancing of the Real
3 Property.

4 • The Interest Holder(s), or the Successful Bidder, if any, will contribute the
5 Unsecured Distribution Amount, as part of the New Value contribution, into an account created by
6 the Reorganized Debtor for the receipt of such funds (the “Unsecured Reserve Account”).

7 • Upon their receipt of (a) their respective pro rata portions of the Unsecured
8 Distribution Amount, (b) their respective pro rata portions of the Annual Percentage Distributions,
9 and (c) their pro rata distributions from the payment of the Subordinated Debenture, all Allowed
10 Unsecured Claims in this Class shall be deemed paid and discharged in full.

11 It is anticipated that, if JPMCC does *not* make the § 1111(b) election, unsecured creditors
12 in this Class will receive a pro rata distribution of approximately 5.5% of their unsecured claims.

13 **(ii) Treatment of Allowed Unsecured Claims if JPMCC Does Make**
14 **the § 1111(b) Election**

15 If JPMCC makes the § 1111(b) election, then JPMCC will not have any claims in this
16 Class, and Allowed Unsecured Claims will be treated as follows:

17 • The Allowed Unsecured Claims in this Class (again, not including any claim by
18 tenants for security deposits or administrative priority claims) will be paid their pro rata
19 distribution of a cash distribution in the total amount of \$42,000 (*i.e.*, Unsecured Distribution
20 Amount) on the 90th day following the Effective Date of the Plan.

21 • Upon their receipt of the funds from the Reorganized Debtor, all Allowed
22 Unsecured Claims in this Class shall be deemed paid and discharged in full.

23 It is anticipated that, if JPMCC *does* make the § 1111(b) election, unsecured creditors in
24 this Class will receive a pro rata distribution of approximately 100% of their unsecured claims.

25 **E. Class 5: Kierland II**

26 Class 5 consists of the Allowed Claims (including equitable and contractual rights) of
27 Kierland II against the Debtor and the Debtors Property relating to the parking issues described
28 above. This Class is impaired.

1 Upon the Effective Date of the Plan, and so long as Bataa Oil is the owner of the interests
2 in the Reorganized Debtor following confirmation of the Plan, the Debtor will enter into a long
3 term lease agreement with Kierland II to resolve the parking issues associated with the Debtor's
4 Property and the Kierland II Property ("Parking Lease"). The Parking Lease has not been
5 negotiated between the Debtor and Kierland II; however, among other things, the Parking Lease
6 will address the necessary cooperation between the Debtor and Kierland II with respect to the grant
7 of parking spaces to tenants of each entity; the allocation of maintenance costs for the parking
8 structure; and remuneration to Kierland II for the Debtor's use of the parking structure.

9 In the event that Bataa Oil is not the owner of the interests in the Reorganized Debtor, there
10 will not be a Parking Lease between the Debtor and Kierland II, and both the Reorganized Debtor
11 and Kierland II will retain whatever current rights they have or may have with respect to the
12 parking issue at the Property.

13 **F. Class 6: Banker's Trust**

14 Class 6 consists of the claims and rights of Banker's Trust with respect to the Debtor's use
15 of the parking spaces and structures located on the Kierland II Property. This Class is impaired.

16 Upon the Effective Date of the Plan, and so long as Bataa Oil is the owner of the interests
17 in the Reorganized Debtor following confirmation of the Plan, the Debtor will enter into a long
18 term lease agreement with Kierland II to resolve the parking issues associated with the Debtor's
19 Property and the Kierland II Property ("Parking Lease"). The Parking Lease has not been
20 negotiated between the Debtor and Kierland II; however, among other things, the Parking Lease
21 will address the necessary cooperation between the Debtor and Kierland II with respect to the grant
22 of parking spaces to tenants of each entity; the allocation of maintenance costs for the parking
23 structure; and remuneration to Kierland II for the Debtor's use of the parking structure.

24 By entering into the Parking Lease, the Debtor will satisfy and negate any and all claims or
25 rights, equitable or otherwise, that Banker's Trust has or may have with respect to the Debtor's use
26 of the Kierland II Property for parking, and any all such claims or rights by Banker's Trust will be
27 discharged upon confirmation of the Plan and the execution of the Parking Lease by the Debtor
28 and Kierland II.

1 In the event that Bataa Oil is not the owner of the interests in the Reorganized Debtor, there
2 will not be a Parking Lease between the Debtor and Kierland II, and Banker's Trust, as well as
3 both the Reorganized Debtor and Kierland II, will retain whatever current rights they have or may
4 have with respect to the parking issue at the Property.

5 **G. Class 7: Interest Holders**

6 Class 7 consists of all Allowed Interests of Bataa Oil, the Interest Holder in the Debtor.
7 The Interest Holder will purchase the equity interests in the Reorganized Debtor by the
8 contribution of cash to the Reorganized Debtor in the total amount of \$240,000, payable on the
9 Effective Date of the Plan (*i.e.*, the New Value). The New Value will be used to:

- 10 (a) pay the amount necessary to pay all Class 1 Allowed Priority Claims as set forth above;
11 (b) pay the amounts to Maricopa County as set forth above, to the extent that the cash on
12 hand or cash flow from the Property is insufficient to pay the taxes;
13 (c) pay the Unsecured Distribution Amount of \$42,000;
14 (d) fund the Reserve Account to pay, as necessary, among other things, (1) interest-only
15 payments to JPMCC as set forth above and, debt service payments, to the extent that cash flow is
16 insufficient to make debt service payments, (2) tenant improvements, (3) broker's commissions,
17 and (4) other necessary and appropriate capital expenses of the Property to ensure that the value of
18 the Property is maintained.

19 If the Court determines that, under the circumstances, the New Value to be contributed by
20 the Interest Holder is insufficient, **or** that other parties-in-interest should be allowed to bid for the
21 equity interests in the Reorganized Debtor, then other interested parties may bid for the equity
22 interests in the Reorganized Debtor by meeting all of the terms and conditions identified below.
23 Such bids shall be made pursuant to the following auction procedures and terms:

24 a. The auction ("Auction") of the equity interests in the Reorganized Debtor will be
25 held thirty days after the Confirmation Hearing, in the courtroom, with the Court presiding over
26 the bidding.

27 b. Any party wishing to bid on the equity interests of the Reorganized Debtor must
28 satisfy the following requirements to be a "Qualified Bidder":

1 i. The bidder must be a current Creditor or Interest Holder of the Debtor. This
2 requirement is necessary to avoid any potential registration or like requirements of any
3 applicable securities laws or regulations.

4 ii. The bidder must deposit \$50,000 in cash (“Deposit”) with the Debtor’s
5 counsel at least twenty-five days prior to the Auction. Any Deposits will be returned to any
6 unsuccessful bidder on the day following the Auction. The Deposit, plus any additional
7 amounts bid by the Successful Bidder at the Auction for the equity interests in the
8 Reorganized Debtor, will be delivered to the Reorganized Debtor on the Effective Date of
9 the Plan.

10 iii. At least twenty-five days prior to the Auction, all bidders must provide
11 satisfactory evidence to the Debtor of their ability to make a cash payment to the Debtor,
12 on the Effective Date of the Plan, in the amount of no less than \$240,000. To the extent
13 that the Debtor contests the sufficiency of the evidence submitted regarding a bidder’s
14 ability to pay such amount, the evidence will be presented to the Court at the Auction, prior
15 to bidding, and the Court will make a determination as to the sufficiency of the evidence
16 and whether the bidder should be deemed to be a Qualified Bidder.

17 iv. At least twenty-five days prior to the Auction, all bidders must provide
18 satisfactory evidence to the Debtor of their ability to operate the Reorganized Debtor in
19 such a manner as to satisfy the requirements of this Plan, including payments to
20 administrative claimants, secured creditors and unsecured creditors, on the terms and
21 conditions set forth herein. To the extent that the Debtor contests the sufficiency of the
22 evidence submitted regarding a bidder’s ability to make payments as required by the Plan,
23 the evidence will be presented to the Court at the Auction, prior to bidding, and the Court
24 will make a determination as to the sufficiency of the evidence and whether the bidder
25 should be deemed to be a Qualified Bidder.

26 v. At least twenty-five days prior to the Auction, all bidders must provide
27 satisfactory evidence to the Debtor that they are authorized to do business in the State of
28 Arizona, and have, or have the ability to obtain, any and all necessary permits and/or

1 licenses to operate the Property. To the extent that the Debtor contests the sufficiency of
2 such evidence, the evidence will be presented to the Court at the Auction, prior to bidding,
3 and the Court will make a determination as to the sufficiency of the evidence and whether
4 the bidder should be deemed to be a Qualified Bidder.

5 c. All bids for the interests in the Reorganized Debtor shall be in increments of no less
6 than \$50,000.

7 d. In order for a Qualified Bidder's bid to be determined to be higher and better than
8 the New Value to be contributed by the Interest Holder as set forth above, the Qualified Bidder's
9 bid must:

- 10 i. Exceed, by at least \$50,000, the Interest Holder's bid; and
- 11 ii. Provide that the Qualified Bidder will comply with and perform under the
12 terms of this Plan, including the payments to creditors (including tenant security deposits)
13 as provided herein.

14 e. The Interest Holder(s) shall have the right and ability to bid at the Auction.

15 Competing bids will be assessed by the Court for their relative merits including, but not
16 limited to, the amount of the bid and the expertise of the would-be New Interest Holder to manage
17 and guide the Reorganized Debtor after the Effective Date and to satisfy the requirements of this
18 Plan, including its ability to make the payments to creditors required herein and to satisfy the
19 assumed obligations as required herein.

20 On the Effective Date, if the Interest Holder is not the successful bidder at the auction, then
21 the Successful Bidder at the auction must deliver its cash bid to the Reorganized Debtor and, upon
22 such delivery, the Successful Bidder will be deemed to hold the equity interests in the Reorganized
23 Debtor, subject to all terms and conditions of this Plan, including the obligations to other creditors
24 as provided herein and the assumption of liabilities as provided herein.

25 **X. MEANS FOR EXECUTING THE PLAN.**

26 **A. Funding**

27 The Plan will be funded by the Debtor's funds on hand, operations of the Property, and a
28 capital infusion in the amount of the New Value by the Interest Holder or the Successful Bidder, if

1 an auction as described above is held.

2 Bataa Oil intends to fund the New Value contribution through existing cash that Bataa Oil
3 currently has on hand, and any additional cash received by Bataa Oil prior to the Confirmation
4 Date. The Debtor is informed and believes that Bataa Oil will have sufficient cash on hand to
5 make the New Value Contribution as provided in the Plan because (a) it currently has
6 approximately \$160,000 in cash available to make the New Value contribution, and (b) it
7 anticipates receiving at least an additional \$80,000 Bataa Oil's revenue sources between the date of
8 this Disclosure Statement and the Confirmation Date.

9 To the extent that Bataa Oil does not have sufficient funds to make the New Value
10 contribution by the Confirmation Date, Bataa Oil has arranged for the receipt of a loan, up to
11 \$200,000, from Banker's Trust that can be drawn upon by Bataa Oil to make the New Value
12 contribution. Such loan will be secured by real property that is not owned by the Debtor, David
13 Calvin, Anne Calvin or Bataa Oil. Rather, the real property to secure the loan from Banker's Trust
14 is a house owned by David Calvin's wife, Marie Colarusso-Calvin ("Colarusso-Calvin") which
15 Colarusso-Calvin has agreed to supply as collateral to Banker's Trust for the loan.

16 **B. Liquidation of Estate Property**

17 The Reorganized Debtor shall have the authority to retain such brokers, agents, counsel, or
18 representatives as it deems necessary to market, lease and/or sell assets of the Reorganized Debtor.

19 **C. Management**

20 The Plan will be implemented by the retention of the Debtor's existing management—
21 Calvin Enterprises. This implementation will also include the management and disbursement of
22 the New Value infused by the Interest Holder as set forth above and in accordance with the terms
23 of this Plan.

24 **D. Disbursing Agent**

25 The Reorganized Debtor shall act as the Disbursing Agent under the Plan.

26 **E. Documentation of Plan Implementation**

27 In the event any entity which possesses an Allowed Secured Claim or any other lien in any
28 of the Debtor's property for which the Plan requires the execution of any documents to incorporate

1 the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to
2 satisfy the requirements of the Plan, the Debtor may record a copy of this Plan or the Confirmation
3 Order with the appropriate governmental agency and such recordation shall constitute the lien
4 release and creation of any necessary new liens to satisfy the terms of the Plan. If the Debtor
5 deems advisable, it may obtain a further Order from the Court that may be recorded in order to
6 implement the terms of the Plan.

7 **F. New Obligations**

8 Any Allowed Claims which are otherwise impaired herein, and which are paid in deferred
9 payments, shall be a New Obligation of the Reorganized Debtor under the terms described herein
10 and completely replace any pre-confirmation obligations of the Debtor.

11 **XI. EFFECT OF CONFIRMATION.**

12 Except as otherwise provided in the Plan or the Confirmation Order, Confirmation acts as a
13 Discharge, effective as of Confirmation, of any and all debts of the Debtor that arose any time
14 before the entry of the Confirmation Order including, but not limited to, all principal and all
15 interest accrued thereon, pursuant to § 1141(d)(1) of the Bankruptcy Code. The Discharge shall be
16 effective as to each Claim, regardless of whether a Proof of Claim thereon was filed, whether the
17 Claim is an Allowed Claim, or whether the Holder thereof votes to accept the Plan.

18 In addition, any pre-confirmation obligations of the Debtor dealt with in this Plan shall be
19 considered New Obligations of the Debtor, and these New Obligations shall not be considered in
20 default unless and until the Reorganized Debtor defaults on the New Obligations pursuant to the
21 terms of the Plan. The New Obligations provided for in the Plan shall be in the place of, and
22 completely substitute for, any pre-Confirmation obligations of the Debtor. Once the Plan is
23 confirmed, the only obligations of the Debtor shall be such New Obligations as provided for under
24 the Plan.

25 **XII. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS.**

26 **A. Objections and Bar Date for Filing Objections.**

27 As soon as practicable, but in no event later than 90 days after the Effective Date,
28 objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each

1 of the Claims to which objections are made pursuant to the Bankruptcy Code and the Bankruptcy
2 Rules. Objections filed after such date will be barred.

3 **B. Settlement of Claims.**

4 Settlement of any objection to a Claim not exceeding \$10,000 shall be permitted on the
5 eleventh (11th) day after notice of the settlement has been provided to the Debtor, the Creditors,
6 the settling party, and other persons specifically requesting such notice, and if on such date there is
7 no written objection filed, such settlement shall be deemed approved. In the event of a written
8 objection to the settlement, the settlement must be approved by the Court on notice to the objecting
9 party.

10 **C. Estimation of Claims.**

11 For purposes of making distributions provided for under the Plan, all Claims objected to
12 shall be estimated by the Disbursing Agent at an amount equal to (i) the amount, if any,
13 determined by the Court pursuant to § 502(c) of the Bankruptcy Code as an estimate for
14 distribution purposes; (ii) an amount agreed to between the Debtor and the Claimant; or, (iii) that
15 amount set forth as an estimate in the Plan or Disclosure Statement. Notwithstanding anything
16 herein to the contrary, no distributions shall be made on account of any Claim until such Claim is
17 an Allowed Claim.

18 **D. Unclaimed Funds and Interest.**

19 Distribution to Claimants shall be mailed by the Reorganized Debtor to the Claimants at
20 the address appearing on the master mailing matrix unless the Claimant provides the Reorganized
21 Debtor with an alternative address. For a period of one year from the date that a distribution was
22 to be made by the disbursing agent but has gone uncollected by the Claimant, the disbursing agent
23 shall retain any distributions otherwise distributable hereunder which remain unclaimed or as to
24 which the disbursing agent has not received documents required pursuant to the Plan. Thereafter,
25 the unclaimed funds shall be deposited in the appropriate distribution account for distribution to
26 other Claimants entitled to participate in such respective fund.

27 **XIII. NON-ALLOWANCE OF PENALTIES AND FINES.**

28 No distribution shall be made under this Plan on account of, and no Allowed Claim,

1 whether Secured, Unsecured, Administrative, or Priority, shall include any fine, penalty,
2 exemplary or punitive damages, late charges, default interest or other monetary charges relating to
3 or arising from any default or breach by the Debtor, and any Claim on account thereof shall be
4 deemed Disallowed, whether or not an objection was filed to it.

5 **XIV. CLOSING OF CASE.**

6 Until this case is officially closed, the Reorganized Debtor will be responsible for filing
7 pre- and post-confirmation reports required by the United States Trustee and paying the quarterly
8 post-confirmation fees of the United States Trustee, in cash, pursuant to 28 U.S.C. § 1930, as
9 amended. Pursuant to 11 U.S.C. § 1129(a)(12), all fees payable under § 1930 of Title 28, as
10 determined by the Court at the hearing on confirmation of the Plan, will be paid, in cash, on the
11 Effective Date.

12 **XV. MODIFICATION OF THE PLAN.**

13 In addition to its modification rights under § 1127 of the Bankruptcy Code, the Debtor may
14 amend or modify this Plan at any time prior to Confirmation without leave of the Court. The
15 Debtor may propose amendments and/or modifications of this Plan at any time subsequent to
16 Confirmation with leave of the Court and upon notice to Creditors. After Confirmation of the
17 Plan, the Debtor may, with approval of the Court, as long as it does not materially or adversely
18 affect the interests of Creditors, remedy any defect or omission or reconcile any inconsistencies of
19 the Plan, or in the Confirmation Order, if any may be necessary to carry out the purposes and
20 intent of this Plan.

21 **XVI. JURISDICTION OF THE COURT.**

22 The Court will retain jurisdiction until this Plan has been fully consummated for, including
23 but not limited to, the following purposes:

24 1. The classification of the Claims of any Creditors and the re-examination of any
25 Claims which have been allowed for the purposes of voting, and for the determination of such
26 objections as may be filed to the Creditor's Claims. The failure by the Debtor to object to or
27 examine any Claim for the purpose of voting shall not be deemed to be a waiver of the Debtor's
28 rights to object to or to re-examine the Claim in whole or in part.

1 2. To determine any Claims which are disputed by the Debtor, whether such
2 objections are filed before or after Confirmation, to estimate any Un-liquidated or Contingent
3 Claims pursuant to 11 U.S.C. § 502(c)(1) upon request of the Debtor or any holder of a Contingent
4 or Un-liquidated Claim, and to make determination on any objection to such Claim.

5 3. To determine all questions and disputes regarding title to the assets of the Estate,
6 and determination of all causes of action, controversies, disputes or conflicts, whether or not
7 subject to action pending as of the date of Confirmation, between the Debtor and any other party,
8 including but not limited to, any rights of the Debtor to recover assets pursuant to the provisions of
9 the Bankruptcy Code.

10 4. The correction of any defect, the curing of any omission or any reconciliation of
11 any inconsistencies in this Plan, or the Confirmation Order, as may be necessary to carry out the
12 purposes and intent of this Plan.

13 5. The modification of this Plan after Confirmation, pursuant to the Bankruptcy Rules
14 and the Bankruptcy Code.

15 6. To enforce and interpret the terms and conditions of this Plan.

16 7. The entry of an order, including injunctions, necessary to enforce the title, rights
17 and powers of the Debtor, and to impose such limitations, restrictions, terms and conditions of
18 such title, right and power that this Court may deem necessary.

19 8. The entry of an order concluding and terminating this case.

20 **XVII. RETENTION AND ENFORCEMENT OF CLAIMS.**

21 Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtors shall retain and
22 may enforce any and all claims of the Debtor, except those claims specifically waived herein. Any
23 retained causes of action include, but are not limited to, all avoidance actions, fraudulent
24 conveyance actions, preference actions, and other claims and causes of action of every kind and
25 nature whatsoever, arising before the Effective Date which have not been resolved or disposed of
26 prior to the Effective Date, whether or not such claims or causes of action are specifically
27 identified in the Disclosure Statement.

28 Any recovery obtained from retained causes of action shall become an additional asset of

1 the Debtor, unless otherwise ordered by the Court, and shall be available for distribution in
2 accordance with the terms of this Plan.

3 **XVIII. EXECUTORY CONTRACTS and unEXPIRED leases.**

4 The Debtor hereby expressly assumes any and all tenant leases in existence as of the
5 Confirmation Date and all executory contracts listed in the Debtor's Schedules of Assets and
6 Liabilities. Every other executory contract and/or unexpired lease of the Debtor not expressly
7 assumed by this Plan is hereby rejected. Claims under § 502(g) of the Code arising as a result of
8 the rejection of executory contracts or unexpired leases shall be filed no later than 30 days after the
9 Confirmation Date. Any such Claims not timely filed and served shall be disallowed.

10 **XIX. REVESTING.**

11 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date the
12 Reorganized Debtor shall be vested with all the property of the Estate free and clear of all claims,
13 liens, charges, and other interests of Creditors, arising prior to the Effective Date. Upon the
14 Effective Date, the Reorganized Debtor shall operate their business free of any restrictions.

15 **XX. LIQUIDATION ANALYSIS.**

16 If the Plan is not confirmed, and the Debtor's assets were liquidated instead, it is likely that
17 only the secured creditors would recover anything from such liquidation, and all other creditors will
18 not recover anything from the Debtor or the Debtor's Estate. This is because all assets of the
19 Debtor (other than the Annoreno Collateral and the retainer held by Bartels & Company) are,
20 according to JPMCC, subject to JPMCC's asserted lien in the alleged amount of over \$28,000,000.
21 The current value of all of the Debtor's assets is currently significantly less than \$28,000,000 (and
22 even the principal amount of JPMCC's claim of approximately \$22.2 million). Therefore, if the
23 Debtor's assets were liquidated, JPMCC would recover all proceeds from such liquidation (other
24 than the proceeds from the Annoreno Collateral, which would be paid to Annoreno), and there
25 would be no recovery to unsecured creditors.

26 The Debtor's Plan provides a better recovery than such liquidation. Indeed, as opposed to
27 recovering nothing in the event of a liquidation, under the Plan, Allowed Unsecured Creditors will
28 share in a *pro rata* distribution of (a) \$42,000, (b) the Annual Percentage Distributions and (c) the

1 Subordinated Debenture. Thus, the Plan provides for a better recovery to creditors than a
2 liquidation.

3 **XXI. TAX CONSEQUENCES.**

4 Pursuant to §1125(a)(1) of the Bankruptcy Code, the Debtor is to provide a discussion of
5 the potential material tax consequences of the Plan to the Debtor, any successor to the Debtor, and a
6 hypothetical investor typical of the holders of claims or interests in the case, that would enable such
7 a hypothetical investor of the relevant Class to make an informed judgment about the Plan.
8 However, the Debtor need not include such information about any other possible or proposed plan.
9 In determining whether the Disclosure Statement provides adequate information, the Court shall
10 consider the complexity of the case, the benefit of additional information to creditors and other
11 parties in interest, and the cost of providing additional information. The following discussion
12 summarizes certain considerations that may affect the anticipated federal income tax consequences
13 of the Plan's implementation to Creditors and to the Debtor. It does not address all federal income
14 tax consequences of the Plan nor does it address the state or local income tax or other state or local
15 tax consequences of the Plan's implementation to Creditors or to the Debtor.

16 This description of the federal income tax consequences of implementing the Plan is based
17 on Debtor's interpretation of the applicable provisions of the Internal Revenue Code of 1986, as
18 amended (the "IRC"), the regulations promulgated thereunder, and other relevant authority.
19 Debtor's interpretation, however, is not binding on the IRS or any court. The Debtor has not
20 obtained, nor does it intend to obtain, a private letter ruling from the IRS, nor has the Debtor
21 obtained an opinion of counsel with respect to any of these matters. The discussion below is
22 general in nature and is not directed to the specific tax situation of any particular interested
23 taxpayer. **For these reasons, all Creditors and the Interest Holder should consult with their
24 own tax advisors as to the tax consequences of implementation of the Plan to them under
25 applicable federal, state, and local tax laws.**

26 **A. Tax Consequences to the Debtor**

27 In general, pursuant to IRC Section 108, the amount of any debt of a corporation that is
28 partially or totally discharged pursuant to a Title 11 bankruptcy case is excluded from gross

1 income. According to IRC Section 108(b), the amount of debt discharge income (“DDI”) that is
2 excluded from gross income must be applied to reduce the tax attributes of the Debtor. The
3 Debtor’s tax attributes are reduced in the following order: (1) net operating losses (“NOLs”); (2)
4 general business credits; (3) minimum tax credit; (4) capital loss carryovers; (5) reduction in tax
5 basis of the Debtor’s property; (6) passive activity loss and credit carryovers; and (7) foreign tax
6 credit carryovers. The Debtor may elect to apply the debt discharge exclusion first to depreciable
7 property and thereafter to the tax attributes in the above-prescribed order.

8 **B. Tax Consequences to the Secured and Unsecured Creditors**

9 Both the Secured Claimants and/or the Unsecured Claimants may be required to report
10 income or be entitled to a deduction as a result of implementation of the Plan. The exact tax
11 treatment depends on, among other things, each Claimant’s method of accounting, the nature of
12 each Claimant’s claim, and whether and to what extent such Claimant has taken a bad debt
13 deduction in prior taxable years with respect to the particular debt owed to it by one of the Debtors.

14 **Each Holder of a secured claim or an unsecured claim is urged to consult with his, her, or its**
15 **own tax advisor regarding the particular tax consequences of the treatment of his, her, or its**
16 **claim under the Plan.**

17 **XXII. DISCLAIMER.**

18 Court approval of this Disclosure Statement and the accompanying Plan of Reorganization,
19 is not a certification of the accuracy of the contents thereof. Furthermore, Court approval of these
20 documents does not constitute the Court’s opinion as to whether the Plan should be approved or
21 disapproved.

22 **XXIII. RISKS.**

23 The risk of the Plan lies with the Debtor’s ability to fund the Plan. If the funds to be infused
24 by the Interest Holder are infused, this will lessen the risk accordingly. However, the success of the
25 Debtor depends in large part on the recovery of the national economy over the next several years
26 following confirmation.

27 **XXIV. PROPONENT’S RECOMMENDATION/ALTERNATIVES TO THE PLAN.**

28 The Debtor recommends that all creditors entitled to vote for the Plan do so. The Debtor’s

1 Plan will pay JPMCC the full amount of its Allowed Secured Claim and provide funds to pay
2 unsecured creditors. The alternatives to confirmation of the Plan would be either conversion of this
3 case to a case under Chapter 7 of the Bankruptcy Code or its dismissal.

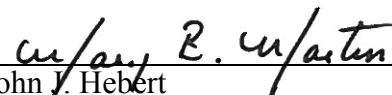
4 Dismissal of this case would result in the foreclosure of the Property by JPMCC. In such a
5 case, Unsecured Creditors will receive nothing on account of their claims.

6 Conversion will result in the appointment of a Chapter 7 trustee and, most likely, the hiring
7 of an attorney by the trustee. Expenses incurred in administering the Chapter 7 case would take
8 priority in the right to payment over allowed, administrative expenses incurred in the Chapter 11
9 case. Both Chapter 7 and Chapter 11 administrative expenses take priority over the payment of
10 unsecured claims without priority. In other words, conversion would likely decrease the net
11 amount available to pay currently existing creditors. The most likely effect of conversion of the
12 case to a Chapter 7 would be a foreclosure on the Property by JPMCC, and, as a result, Unsecured
13 Creditors would receive nothing.

14 For all these reasons, the Debtor urges you to vote to accept the Plan and to return your
15 ballots in time to be counted.

16 DATED: September 2, 2011.

17 POLSINELLI SHUGHART PC

18 By: 
19 John Y. Hebert
20 Mark W. Roth
21 Mary B. Martin
22 CityScape Plaza
23 One E. Washington., Suite 1200
24 Phoenix, AZ 85004
25 Attorneys for Debtor
26
27
28

1 **COPY** of the foregoing mailed (or served via
2 electronic notification if indicated by an “*”) on September 2, 2011, to:

3 Jennifer Gaiamo * Jennifer.a.gaiamo@usdoj.gov
4 U.S. TRUSTEE’S OFFICE
5 230 N. 1st Avenue, Suite 204
6 Phoenix, AZ 85003

Ethan B. Minkin * minkine@ballardspahr.com
Andrew A. Harnisch *
HarnischA@ballardspahr.com
Jaclyn D. Foutz * foutzj@ballardspahr.com
BALLARD SPAHR LLP
One E. Washington Street, Suite 2300
Phoenix, AZ 85004-2555
*Attorneys for JPMCC 2007-CIBC 19 East
Greenway, LLC*

8 Jon T. Pearson * pearsonj@ballardspahr.com
9 BALLARD SPAHR LLP
10 100 N. City Parkway, Suite 1750
11 Las Vegas, NV 89106
*Attorneys for JPMCC 2007-CIBC 19 East
Greenway, LLC*

Dean C. Waldt * waltdt@ballardspahr.com
BALLARD SPAHR LLP
210 Lake Drive East, Suite 200
Cherry Hills, NJ 08002-1163
*Attorneys for JPMCC 2007-CIBC 19 East
Greenway, LLC*

12 Lori A. Lewis * LewisL01@mcao.maricopa.gov
13 MARICOPA COUNTY ATTORNEY’S OFFICE
14 Civil Services Division
15 222 N. Central Ave., Suite 1100
16 Phoenix, AZ 85004-2206
Attorneys for Maricopa County Treasurer

17
18
19
20
21
22
23
24
25
26
27
28
By: /s/ Cathie Bernales