

1 **163 PAGES**

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13 Member, LLC; Capitol Station Holdings, LLC and
14 Township Nine Owners, LLC, Debtors-in-Possession

15 **UNITED STATES BANKRUPTCY COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**
17 **SACRAMENTO DIVISION**

18 In re: Case No.: 17-23627-B-11
19 **CAPITOL STATION 65, LLC,**
20 **A California Limited Liability Company**
21 **Debtor.** Chapter 11
22 **DC No. NH-5**

23 In re: Case No.: 17-23629-B-11
24 **CAPITOL STATION MEMBER, LLC**
25 **Debtor.** Chapter 11

26 In re: Case No.: 17-23628-B-11
27 **CAPITOL STATION HOLDINGS, LLC**
28 **Debtor.** Chapter 11

In re: Case No.: 17-23630-B-11
TOWNSHIP NINE OWNERS, LLC
Debtor. Chapter 11

- Affects CS 65
- Affects CS Members
- Affects CS Holdings
- Affects T9 Owners
- Affects all DEBTORS

**CAPITOL STATION 65, LLC AND
AFFILIATED DEBTORS FIRST
AMENDED DISCLOSURE STATEMENT
FOR FIRST AMENDED JOINT PLAN OF
REORGANIZATION
(Dated September 12, 2017)**

Date: December 7, 2017
Time: 10:00 a.m.
Place: 501 I Street, 6th Fl., Courtroom 32
Sacramento, CA 95814
Judge: Hon. Christopher Jaime

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1 Copia’s loan matured in December 2015. The Debtors engaged Copia throughout 2016
 2 in an attempt to restructure the obligation, but those efforts were unsuccessful. Consequently, on
 3 January 31, 2017, Copia recorded a Notice of Default. On May 5, 2017, Copia recorded a Notice
 4 of Sale, setting a Trustee’s Sale for May 31, 2017. The Debtors filed the instant proceedings on
 5 May 30, 2017 to prevent foreclosure on the Township Nine project.

6 The Plan proposes to restructure Copia’s loan to allow the Debtors the time to negotiate
 7 sales to individual builders to develop projects within Township Nine consistent with existing
 8 entitlements and the master development plan. The Debtors believe these sales will generate
 9 sufficient funds to pay Copia and all other creditors in full, and provide a return for Interest
 10 Holders.

11 The Debtors have obtained an agreement from Serene Investments, LLC to provide up to
 12 \$10 million in DIP Financing to fund the Debtors’ pre-confirmation and post confirmation
 13 operating costs. In addition, the Debtors have signed a purchase and sale agreement (“Anthem
 14 Sale Agreement”) with Anthem United Homes, Inc. for the development of approximately 6
 15 parcels within the Township Nine project. The Anthem Sale Agreement will generate
 16 approximately \$21 million over the next 20 months. During this period, the Debtors believe they
 17 will be successful in reaching additional similar agreements with other developers, generating
 18 sufficient funds to pay all creditors in full and providing a recovery for Interest Holders. [As](#)
 19 [described more fully below, an example of how proceeds of sale of one of the Parcels to be](#)
 20 [purchased by Anthem will be distributed is as follows:](#)

		<u>Notes</u>
Gross Sale Price (Parcels 8A/8B, 15A/15B)	\$3,632,000	See Plan Budget, Month 4, April 2018
Cost of Sales	(\$217,920)	
Available Proceeds	\$3,414,080	
DIP Loan Payment	(\$567,500)	Per DIP Loan
Net Sale Proceeds	\$2,846,580	As defined in Article 1.1.42 of Plan
Parcel Release Price Paid to Copia	(\$2,134,935)	75.00% of Net Sale Proceeds as defined

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		in Article 1.1.45 of Plan
<u>Mechanics Lien Payments</u>	\$27,738(principal) \$728(interest) (\$28,465)	1% of Excess Net Sale Proceeds per Article 1.1.33 of Plan and treatment set forth in Articles 4.6.1 and 4.6.2.
<u>Unsecured Creditors Fund Payments</u>	\$48,421 (principal) \$8,510 (interest) (\$56,931)	2% of Excess Net Sale Proceeds as defined in Article 1.1.33 of Plan and treatment set forth in Article 4.1
<u>Remaining Cash</u>	\$626,248	

The Debtors project that the sale of the remaining parcels in conjunction with the Anthem Sale Agreement will generate sufficient funds to pay Copia and all other creditors in full within three (3) years of the Effective Date.

After the Effective Date, the Debtors will be obligated to reimburse their ultimate parent company, First Capital Real Estate Trust, Inc., for the costs of two of its employees working on the Township Nine development and certain overhead expenses of First Capital allocable to the project. Those project management and overhead reimbursement costs initially will be \$96,866 per month, but decline over time. The Debtors believe that it is appropriate for it to bear these costs because the costs are directly related to furthering the development of Township Nine, the Debtors will have the financial wherewithal to cover the costs, and these costs would otherwise be borne directly by them.

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1 A summary of the how the Plan proposes to treat creditors' claims is set out in the
 2 following table:

Type of Claim	Amount	Treatment
Unclassified Administrative Claims	\$495,000.00	To the extent any remain outstanding, paid in full on effective date or due date under contract, unless holder of claim agrees otherwise.
Unclassified Professional Fees	\$975,000.00	Paid in full after court approval of allowed fees and costs.
Unclassified Real Property and Other Taxes	\$315,000.00	To the extent any remain outstanding, paid in full on the effective date <u>or shall receive deferred cash payments that shall satisfy such Allowed Priority Tax Claim in full on or before May 30, 2023, with interest on the unpaid portion of such Claim at the statutory rate determined under applicable non-bankruptcy law.</u>
Unclassified Assumed Contract Liabilities -Capitol Utilities Specialists, Inc. (\$3,782.26, of which \$2,296.75 estimated to be paid from Grant Funds) -City of Sacramento (\$0.00) -DCM Group (\$11,758.05, of which \$4,842.45 estimated to be paid from Grant Funds) -Lund Construction (\$300,796.00, of which \$299,556.65 estimated to be paid from Grant Funds); -Project Mgmt. Applications Inc. (\$25,283.00, of which \$20,195.46 estimated to be paid from Grant Funds) -Teichert Construction (\$228,462.00, of which \$80,985.22 estimated to be paid from Grant Funds);	\$5,568,394.00	Paid in part from Grant Funds with amounts not covered by Grant Funds paid, on effective date.
Class 1(a) Unsecured Non-Priority Claims (excluding assumed contracts)	\$1,571,157.00	Paid in full at 6.5% interest over 36 months. The repayment period may be shorter if the Court approves use of DIP loan to pay Class 1(a) claims, or out of proceeds of unencumbered assets.
Class 1(b) Unsecured Non-Priority Claims in which a Claimholder is a designated recipient of Grant Funds	\$385,421.00	Paid with Grant Funds that have been earmarked to pay these claims. To the extent any claim is not paid in full out of the Grant

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		<u>Funds, the balance of any remaining Claim shall be paid as provided for in the Plan.</u>
Class 2 Unsecured Claims > \$2,500	\$16,680.00	Paid in full on <u>Effective Date</u> .
Class 3 Serene Investment Management, LLC	\$10,000,000.00	Paid in full at 10% interest over 12-24 months.
Class 4 Township Nine Avenue, LLC (assignee of Copia Lending, LLC)	\$43,739,412.00 (amount disputed)	Paid in full at 5% interest over 36 months.
Class 5(a) The Growing Company	\$24,909.00	Paid in full at 5% interest over 36 months. <u>The repayment period may be shorter if the Court approves use of DIP loan to pay the Class 5(a) claim, or out of proceeds of unencumbered assets.</u>
Class 5(b) Teichert Construction	\$228,462.00	Paid in full <u>due to</u> assumption of contract. <u>If the Court does not approve assumption of the Teichert contract, then it will be paid in full as either a Class 5(b) or Class 1(b) over 36 months. (Treatment of the claim as Class 1(b) or Class 5(b) will depend upon whether its mechanics lien is valid.) The repayment period may be shorter if the Court approves use of DIP loan to pay the claim, or out of proceeds of unencumbered assets.</u>
Class 5(c) Studebaker Brown Elec., Inc.	\$33,434.00	Paid in full at 5% interest over 36 months. <u>The repayment period may be shorter if the Court approves use of DIP loan to pay the Class 5(c) claim, or out of proceeds of unencumbered assets.</u>
Classes 6(a)-(d) Member Interests	n/a	Retained

B. PURPOSE OF THE DISCLOSURE STATEMENT

This Disclosure Statement contains information with respect to the Debtors and the Plan. Except as otherwise provided herein, capitalized terms used in this Disclosure Statement shall have the meanings set forth in the Plan, which is attached hereto as **Exhibit A**. If there is any conflict between this Disclosure Statement and the Plan, the Plan controls. This Disclosure

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1 Statement is being distributed to you for the purpose of enabling you to make an informed
 2 judgment about whether to support or oppose the Plan. Debtors have examined various
 3 alternatives and, based on information contained in this Disclosure Statement, and for the
 4 reasons set forth below, have concluded that the Plan provides the best prospect for maximizing
 5 creditor recoveries.

6 The Disclosure Statement describes the Plan and contains information concerning, among
 7 other matters: (1) the history, business, results of operations, management, and liabilities of the
 8 Debtors; (2) the transactions entered into by the Debtors thus far during these proceedings; and
 9 (3) the cash, claims and other assets that are available for distribution under the Plan. The
 10 Debtors urge you to review carefully the contents of this Disclosure Statement and the Plan
 11 (including the exhibits to each) before making a decision to accept or reject the Plan. Particular
 12 attention should be paid to the provisions affecting or impairing your rights as a Creditor or
 13 Interest Holder.

14 Generally speaking, creditors who are not getting paid in full when the Plan becomes
 15 “effective” are entitled to vote to accept or reject the Plan. Your vote on the Plan is important.
 16 In order for the Plan to be accepted by a Class of Claims, the holders of two-thirds (2/3) in dollar
 17 amount and more than one-half (1/2) in number of Allowed Claims in such Class who vote on
 18 the Plan must vote for acceptance.

19 Non-acceptance of the Plan may lead to conversion of the case to a proceeding under
 20 chapter 7 of the Bankruptcy Code, to the confirmation of another plan, or a dismissal of these
 21 proceedings. The Debtors believe these alternatives will result in a distribution that is less than
 22 the distribution projected through the Plan. Accordingly, the Debtors strongly encourage all
 23 creditors and interest holders to accept the Plan by completing and returning the enclosed ballot
 24 no later than 4:00 p.m. on _____, 2017.

25 **C. INFORMATION REGARDING THE PLAN**

26 1. **Exclusive Source of Information.**

27 No representations concerning the Debtors are authorized by the Debtors other
 28 than as set forth in this Disclosure Statement.

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2. **Plan Governs Disclosure Statement.**

Although the Debtors believe that this Disclosure Statement accurately describes the Plan, all summaries of the Plan contained in this Disclosure Statement are qualified by the Plan itself and the documents described therein which are controlling.

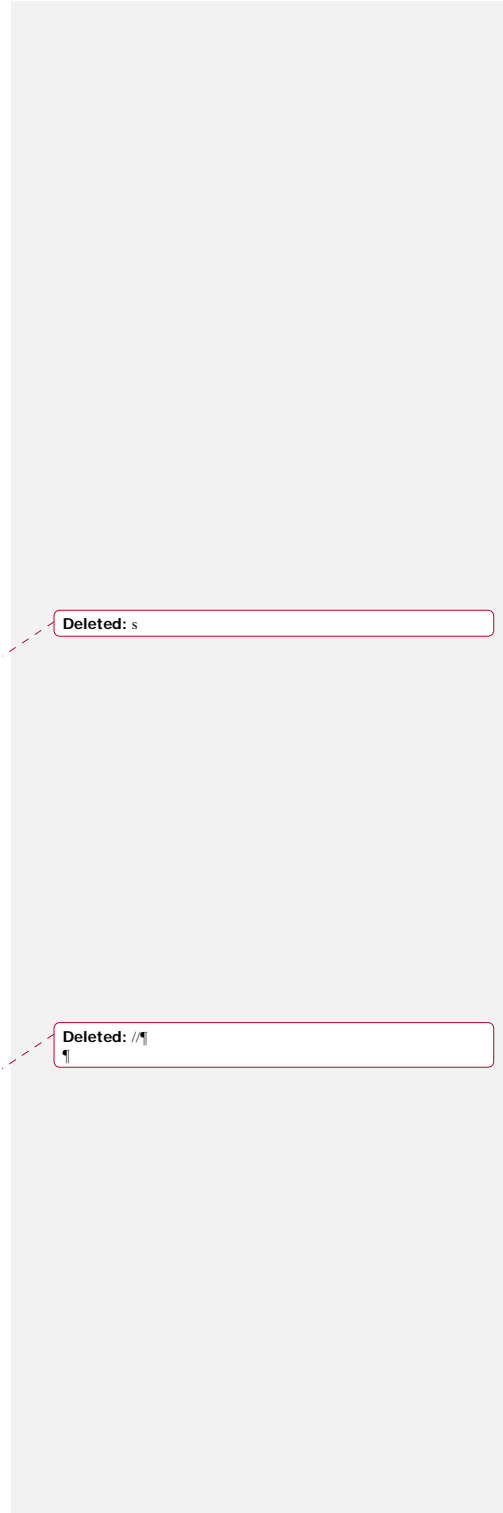
3. **Source of Information.**

Factual information contained in this Disclosure Statement has been provided by the Debtors and has been obtained from the Debtors' records, except where otherwise specifically noted. All financial information contained in this Disclosure Statement has been prepared by the Debtors. None of the Debtors' attorneys, accountants, or other professionals make any representation regarding that information. The Debtors, however, cannot and do not represent or warrant that the information contained in this Disclosure Statement is free from any inaccuracy. The Debtors have made great efforts to present the information accurately and fairly and believe that the information is substantially accurate. The assumptions underlying the projections contained in this Disclosure Statement concerning sources and amounts of payments to creditors represent the Debtors' best estimates. Because these are only assumptions about or predictions of future events, many of which are beyond the Debtors' control, there can be no assurance that the assumptions will in fact materialize or that the projected realizations will in fact be met. Except as otherwise provided herein, this Disclosure Statement does not reflect any events which occurred subsequent to the date that the Debtors submitted the Disclosure Statement to the Bankruptcy Court for approval.

4. **Tax Consequences**

(a) Tax Consequences to Debtor

With respect to the tax consequences of the Plan to the Debtors, they do not expect confirmation of the Plan to have a material impact. The Plan does not seek to avoid payment of any valid claims, and therefore, the Plan will not affect the Debtors' net operating loss carry forwards, which will remain available to offset any post-bankruptcy income. Because of this, the Debtors do not anticipate having to recognize or pay state or federal taxes on any significant portion of its income and post-petition activities.



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1 (b) Potential Tax Consequences to Creditors

2 A few generalizations can be made as to the basic tax consequences, although none of the
 3 following statements can be treated as advice on the tax treatment to a specific creditor.

4 The Plan contemplates repayment in full to all holders of unclassified, secured, priority
 5 and unsecured "allowed" claims. Therefore, the Debtors are not of the view that any holder of
 6 these types of claims would be permitted to deduct the amount owed by the Debtors from the
 7 creditor's gross income on the basis that it constitutes an uncollectable debt.

8 In the event the Plan does not pay a creditor in full, the extent to which a creditor would
 9 be able to recognize loss on repayment of principal amounts owed by the Debtors depends upon
 10 the creditor's tax basis in the debt and overall financial situation. For example, if a creditor
 11 provided credit of \$10,000 and had a tax basis of \$10,000 in the credit advanced, repayment of
 12 25% the principal amount would trigger a 75% loss. In general, such a loss may be credited
 13 against income. Each Holder of an Allowed Claim is urged, however, to consult his, her, or its,
 14 own tax advisors as to the consequences and treatment of any loss, if any.

15 (c) Potential Tax Consequences to Interest Holders

16 The Plan provides Interest Holders shall retain their investment in the Debtors. As a
 17 general matter, this treatment should not trigger a taxable event. Each Interest Holder is urged to
 18 consult its own tax advisors as to the consequences and treatment of its investment.

19 *The foregoing discussion is intended to give general information, but each creditor and*
 20 *equity holder must be advised that the tax consequences of the Plan will vary based on the*
 21 *individual circumstances of each holder of a Claim. Accordingly, each creditor is strongly*
 22 *urged to consult with its own tax advisor regarding the federal, state, local and foreign tax*
 23 *consequences of the Plan.*

24 5. **Bankruptcy Court Approval.**

25 The Bankruptcy Court approved this Disclosure Statement as containing information of a
 26 kind and in sufficient detail adequate to enable a hypothetical, reasonable investor, to make an
 27 informed judgment about the Plan. Under section 1125 of the Bankruptcy Code, this approval
 28 enabled the Debtors to send you this Disclosure Statement and solicit your acceptance of the

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1 Plan. The Bankruptcy Court has not, however, passed on the Plan itself, nor conducted a
2 detailed investigation into the content of this Disclosure Statement.

3 **D. VOTING INSTRUCTIONS**

4 1. **How to Vote.**

5 A ballot is enclosed herewith for creditors entitled to vote on the Plan. To vote on the
6 Plan, indicate on the enclosed ballot that you accept or you reject the Plan and sign your name
7 and mail the ballot in the envelope provided for this purpose.

8 In order to be counted, ballots must be completed, signed and returned so that they are
9 received no later than 4:00 P.M. prevailing Pacific Time on _____, 2017 at the following
10 address:

11 **By U.S. Mail, By Overnight, Hand Delivery, or PDF Via E-mail:**

12 NUTI HART LLP
411 30TH Street, Suite 408
Oakland, CA 94609-3311
13 CS65ballot@nutihart.com

14 Re: In re Capitol Station 65, LLC, et. at.

15 Do not send your ballot via facsimile.

16 If your ballot is not properly completed, signed and returned as described, it will not be
17 counted. If your ballot is damaged or lost, you may request a replacement by sending a written
18 request to the foregoing address.

19 2. **Who May Vote.**

20 The Plan divides creditors' claims into Classes:

- 21 • Class 1(a), consisting of unsecured non-priority claims (typically, vendor or
22 contractor claims or other liabilities based upon goods, services, or other value
23 provided to the Debtors where the debt is not secured by a lien on the Debtors'
24 assets).
- 25 • Class 1(b), consisting of Claimholders whose claims are entitled to payment from
26 Grant Funds.
- 27 • Class 2, consisting of unsecured non-priority claims that are in an amount less
28 than \$2,500.00.

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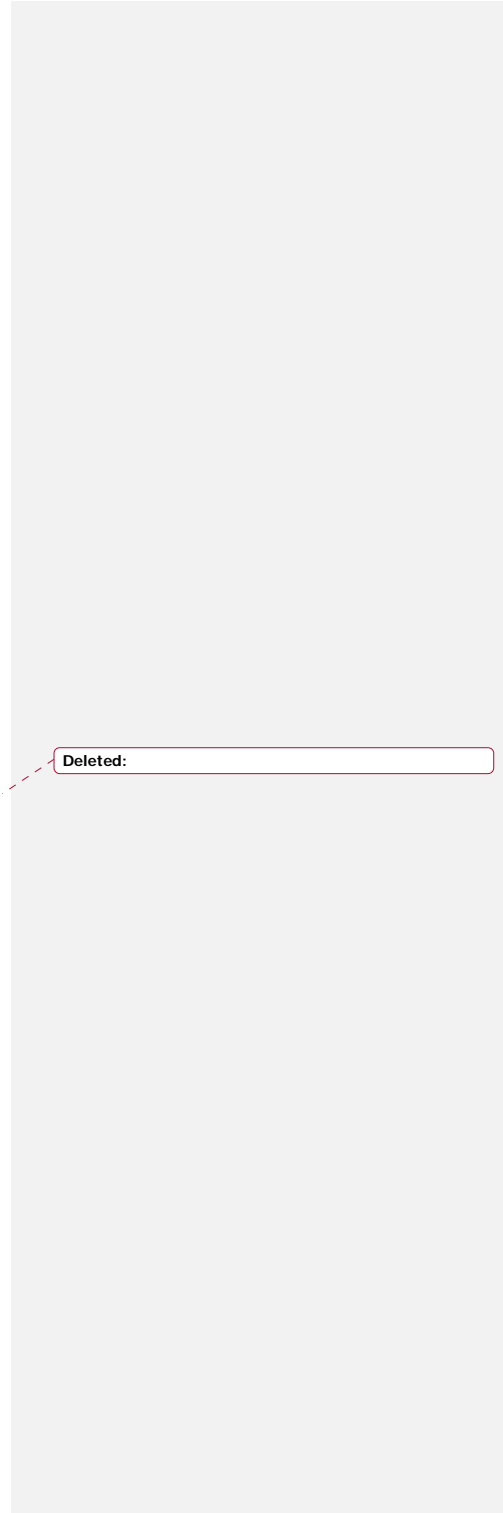
- Class 3 consists of the debt owed to [T9 SIM Investors, LLC, assignee of Serene Investment Management, LLC](#) secured by a first priority lien on substantially all of the Debtors’ assets.
- Class 4 consists of the claim held by Township Nine Avenue, LLC (assignee of Copia Lending, LLC) secured by a lien on substantially all of the Debtors’ assets junior in priority to Serene.
- Classes 5(a), 5(b), and 5(c) are claims held by parties that recorded mechanics liens against the Township Nine property (The Growing Company, Teichert Construction, and Studebaker Brown Elec.).
- Classes 6(a), 6(b), 6(c), and 6(d) consist of the holders of member interests in each of the Debtors.

Classes of creditors which are impaired by the Plan are entitled to vote. A Class is impaired if legal, equitable or contractual rights attaching to the claims or interest of the Class are modified, other than by curing defaults and reinstating maturities. Holders of Claims in Classes [1\(a\) \(Unsecured Non-Priority Claims\)](#), [1\(b\) \(Designated Recipients of Grant Funds\)](#), [4 \(Copia Lending\)](#) and [5\(a\) \(The Growing Company\)](#), and [5\(c\) \(Studebaker Brown Electric, Inc.\)](#) are impaired and entitled to vote on the Plan.

In determining acceptances of the Plan, the vote of a creditor will only be counted if submitted by a creditor whose claim is an “allowed” claim. Generally speaking, a creditor holds an allowed claim if such claim is duly scheduled by the Debtor as other than disputed, contingent or unliquidated, or the Creditor has timely filed with the Bankruptcy Court a proof of Claim which has not been objected to or disallowed prior to computation of the votes on the Plan. The Ballot form that you received does not constitute a proof of Claim.

3. Confirmation

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a Chapter 11 plan of reorganization/liquidation. At the Confirmation Hearing, in order to confirm the Plan, the Debtor must demonstrate that the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. If the Bankruptcy Court determines that all of the requirements of section



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1 1129 have been met, the Bankruptcy Court will enter an order confirming the Plan. The Debtors
 2 believe that the Plan satisfies all statutory requirements of Chapter 11 of the Bankruptcy Code
 3 for Confirmation of the Plan.

4 Voting is tabulated by class. As discussed above, a class of creditors has accepted a plan
 5 of reorganization if the plan has been accepted by 2/3 in dollar amount and more than 1/2 in
 6 number of creditors holding allowed claims in that class who actually vote to accept or reject
 7 such plan. Even if a class of creditors or interests votes against a plan of reorganization, that
 8 plan may nevertheless be confirmed by the Bankruptcy Court, notwithstanding the negative vote
 9 of that class, so long as certain statutory requirements are met by the plan. This is called a “cram
 10 down.” If necessary, the Debtor is prepared to seek confirmation of the Plan through a cram
 11 down.

12 The Bankruptcy Court has set a hearing on December 7 and 8, 2017 to determine whether
 13 the Plan has been accepted by the requisite number of Creditors and whether the other
 14 requirements for Confirmation of the Plan have been satisfied. The hearing may be continued
 15 from time to time and day to day without further notice. If the Bankruptcy Court confirms the
 16 Plan, it will enter the Confirmation Order. Any objections to Confirmation of the Plan must be
 17 in writing and must be filed with the Clerk of the Bankruptcy Court and served on counsel for
 18 the Debtors, the Official Committee of Unsecured Creditors, the Office of the United States
 19 Trustee and any other party in interest entitled to service on or before _____, 2017.

20 Counsel on whom objections must be served are:

21 **Counsel for the Debtors**

22 Nuti Hart LLP
 23 Attn: Gregory C. Nuti, Esq./Kevin W. Coleman, Esq.
 411 30th Street, Suite 408
 Oakland, CA 94609

24 **Counsel for the Official Committee of Unsecured Creditors**

25 Felderstein Fitzgerald Willoughby & Pascuzzi LLP
 26 Att: Donald W. Fitzgerald, Esq.
 400 Capitol Mall, Suite 1750
 Sacramento, CA 95814

27 and

28 **Office of the United States Trustee**

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1 Office of the United States Trustee
2 Attn: Allen C. Massey, Esq.
3 501 I Street, Suite 7-500
4 Sacramento, CA 95814

4 **E. Disclaimers**

5 This Disclosure Statement contains information which may bear upon your decision to
6 accept or reject the proposed Plan. Please read this document with care. The purpose of this
7 Disclosure Statement is to provide “adequate information” of a kind, and in sufficient detail, as
8 far as is reasonably practicable in light of the nature and history of the Debtors and the condition
9 of the Debtors’ books and records, that would enable a hypothetical reasonable investor typical
10 of holders of claims or interests of the relevant Class to make an informed judgment concerning
11 the Plan. *See* 11 U.S.C. § 1125(a).

12 For the convenience of creditors, this Disclosure Statement summarizes the terms of the
13 Plan, but the Plan itself qualifies any summary. If any inconsistency exists between the Plan and
14 this Disclosure Statement, the terms of the Plan are controlling.

15 No representations concerning the Debtors’ financial condition or any aspect of the Plan
16 are authorized by the Debtors other than as set forth in this Disclosure Statement. Any
17 representations or inducements made to secure your acceptance other than as contained in or
18 included with this Disclosure Statement should not be relied upon by you in arriving at your
19 decision.

20 The contents of this Disclosure Statement should not be construed as legal, business or
21 tax advice. Each Creditor or Interest Holder should consult his or her own legal counsel and
22 accountant as to legal, tax and other matters concerning his or her Claim.

23 **II. PLAN SUMMARY**

24 **A. The Plan Classifies Claims**

25 The following is a brief summary of the Plan, which is qualified in its entirety by
26 reference to the Plan, attached as **Exhibit A** to this Disclosure Statement.

27 All assets of the Estate shall be administered and distributed to creditors as set forth
28 under the terms of the Plan. Under the Plan, claims other than Administrative Claims and Tax

1 Claims entitled to priority are divided into several classes. The several classes of claims fall into
 2 two general categories: (i) secured claims, and (ii) general unsecured non-priority claims. There
 3 is also one class of Interests consisting of holders of membership, stock, or other equity interests
 4 in the Debtors, with four sub classes – one for each debtor.

5 **B. Actual Recoveries to Creditors Are Uncertain.**

6 At this time, the Debtors cannot predict precisely the timing of additional development
 7 transactions and the proceeds generated therefrom with any certainty, success inherently depends
 8 on facts not currently known and circumstances that may be beyond their control. The net
 9 amount of funds currently available, expected to be generated from the DIP Financing and
 10 Anthem Sale Agreement, and from subsequent sales and refinancing activities is set forth in the
 11 Plan Confirmation Budget attached as **Exhibit B**. As set forth in the Plan Confirmation Budget,
 12 the Debtors believe that there will be sufficient funds to pay all administrative claims, secured
 13 claims, priority claims and general unsecured claims in full with interest over a 36-month period.
 14 Interest Holders shall receive distributions consistent with their ownership rights in the Debtors
 15 after satisfaction of all higher priority claimants.

16 **III. OVERVIEW OF CHAPTER 11 CASE**

17 This section of the Disclosure Statement discusses the significant events in the Chapter
 18 11 case to date, including events leading up to the commencement of the case. Copies of all
 19 relevant court papers are on file with the Bankruptcy Court.

20 **A. EVENTS LEADING UP TO THE FILING OF THE CHAPTER 11**
 21 **CASE**

22 **1. The River District**

23 Over the past 14 years, the State of California, Sacramento Regional Transit, Sacramento
 24 Housing and Redevelopment Agency and the City of Sacramento have invested over \$100
 25 million in federal and local public dollars to transition the area adjacent to downtown
 26 Sacramento from an industrial area to a diverse, urban, mixed-use area dubbed the “River
 27 District”. The River District bounded roughly by the American River to the north; Sacramento
 28 River to the west; Union Pacific rail berm and C/D streets to the south; and 27th Street to the

1 east, comprising approximately 830 acres and 538 parcels (see **Exhibit C**). Township Nine is
 2 but one project within the broader River District Specific Plan (see <http://www.riverdistrict.net/>).

3 The River District has already finished numerous projects in its master plan, including
 4 new headquarters for California Highway Patrol and California Lottery, a new Greyhound
 5 Terminal, the Green Line Light Rail Station on Richards Boulevard at N. 7th Street, and
 6 associated infrastructure and street improvements. Among other projects, there are plans for a
 7 new Discovery Museum, Science and Space Center, additional office, retail and residential units
 8 in addition to Township Nine, and eventual expansion of the Green Line Light Rail to the
 9 Sacramento airport.

10 **2. The Township Nine Project**

11 The Township Nine project encompasses 65 acres, bound by North 5th Street on the
 12 West, North 7th Street on the East, Richards Blvd. on the South and the American River on the
 13 North. It is a mixed-use, transit-oriented development that does, and will include, high density
 14 rental and for sale housing, retail space, office space, and community open space and parks.
 15 More specifically, this includes 2,201 residential units, including apartments, condominiums,
 16 hotel and hospitality, and both attached and detached townhome projects. Further the Township
 17 Nine project contains 840,000 square feet of possible office space, 150,000 square feet of future
 18 retail and 20 acres of open space and parks, including an amphitheater.

19 As further described below, the Township Nine project is currently encumbered by a loan
 20 in favor of Copia with a current asserted outstanding balance of approximately \$44 million
 21 (which amount the Debtors dispute). In March 2016, an appraisal valued the property at
 22 \$78,150,000 (including development fee credits). The Debtors believe the Township Nine
 23 project has a current value above \$90 million against debts of approximately \$56 million.²

24 **3. Township Nine Grants**

25 The existing Township Nine project improvements have been funded by a combination of
 26 loan funds and government grants. The Debtors acquired 10 grants totaling approximately \$42

27 ² This includes \$44 million for Copia, \$10 million for DIP Financing (yet to be approved) and \$2
 28 million in other priority and other unsecured claims.

1 million. The first grant was in the amount of \$19.1 million. This came from Housing and
 2 Community Development (“HCD”), a department of the State of California, pursuant to
 3 Proposition 1-C, known as the “Infill Infrastructure Grant.” The City of Sacramento applied to
 4 HCD on the Debtors behalf. The application was granted and the City was the grantee of the
 5 funds, which were then transferred to Capitol Station 65, LLC (“CS 65”). Other significant
 6 grants include a second HCD Infill Infrastructure Grant for \$10.9 million. Approximately \$3
 7 million in grant funds remain unused and available to fund certain road and related
 8 improvements for the project.

9 **4. Debtors’ Previous History**

10 NCRF Holdings (“NCRF”) and Invision Holdings, Inc (“Invision”) (Invision and NCRF,
 11 collectively “Original Owners”) formed CS 65 in 2000. Steven M. Goodwin was the president.
 12 That same year, CS 65 purchased the Township Nine project property.

13 On or about December 23, 2008, CS 65 entered into a loan with Copia in the amount of
 14 \$20 million (the “Original Note” or “Loan”). At or prior to the closing of the Loan, Scott
 15 Syphax (“Syphax”) became an additional owner and third member of CS 65. The Loan was
 16 secured by a deed of trust against the Township Nine project property. Nehemiah Corporation of
 17 America provided a guarantee to Copia (“Original Guarantor”). Nfinit Solutions, Inc.
 18 (successor-by-merger to NCRF), Invision, and Syphax (collectively, “Revised Ownership
 19 Group”), pledged their respective membership interests in CS 65 (“Original Pledge Agreement”)
 20 to Copia as further security. The Loan had a 24-month term.

21 On August 1, 2011, the Revised Ownership Group entered the First Amendment to Loan
 22 Agreement (“First Amendment”), which extended the maturity date of the Loan to February 31,
 23 2013. (This date is obviously a typographical error in the First Amendment). At that time, CS
 24 65 became the wholly-owned subsidiary of Capitol Station Member, LLC (“CS Member”). CS
 25 Member, in turn, became the wholly-owned subsidiary of Capitol Station Holdings, LLC (“CS
 26 Holdings”). The Revised Ownership contributed all interests in CS 65, and became the owners
 27 of CS Holdings, and added as additional owners Nehemiah Community Reinvestment Fund
 28 (“Nehemiah Reinvestment”) and Nehemiah Corporation of America (“Nehemiah Corp.”)

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1 (collectively, “2nd Revised Ownership Group”). All entities again pledged their membership
2 interests to Copia as security for the Loan.

3 On June 20, 2012 and December 26, 2014, respectively, the 2nd Revised Ownership
4 Group executed the Second Amendment to Loan Agreement (the “Second Amendment”) and
5 Third Amendment to Loan Agreement (“Third Amendment”). The Second and Third
6 Amendments modified various loan terms and ultimately extended the maturity date of the Loan
7 to December 31, 2015.

8 In or about February 2016, the 2nd Revised Ownership Group entered into a transaction
9 with First Capital Real Estate Operating Partnership, LP (“FCRE OP”) that created Township
10 Nine Owners, LLC (“T9 Owners”) resulting in the current ownership structure. FCRE OP and
11 T9 Owners were unable to reach agreement with Copia to further restructure the Loan or for the
12 sale of any parcels for development to generate operating funds. Copia declared the Loan in
13 default in early 2017, and on May 5, 2017 recorded a notice of sale setting a foreclosure sale for
14 May 31, 2017. The Debtors filed their petitions on May 30, 2017 to preserve the Township Nine
15 project and avoid foreclosure.

16 5. **Construction/Development to Date**

17 The Debtors completed the first phase of development (“Phase 1”) in 2013 at an
18 approximate cost of \$27 million. This phase of infrastructure construction included street
19 improvements and underground utilities stubbed to parcels, relocation and rehabilitation of the
20 historic Old Cannery Scalehouse, and the North 7th Street transit station. With its own light rail
21 stop, the Township Nine project provides employees and residents with easy access to downtown
22 Sacramento. The Project is just two stops away from Golden 1 Center basketball arena. Portions
23 of Township Nine Avenue, Scalehouse Street, Cannery Avenue and Riverine Way were
24 completed as part of Phase 1.

25 Phase 1 also included the first housing constructed at the Township Nine project. The
26 Cannery Place Apartments were built on Parcel 11 and opened in May 2015. The housing
27 project was developed by a partnership group of UrbanCore, the Integral Group, and the John
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1 Stewart Company, dba T9 Affordable Housing Partners, LP at a cost of \$40 million. This
 2 fulfilled the 180-unit affordable housing requirement for the project.

3 At present, Phase 2 street work is nearly complete at a cost of \$5 million. This phase of
 4 infrastructure construction includes various surface and underground improvements and
 5 extensions of Cannery Avenue, North 6th Street and Chill Avenue, as well as, construction of
 6 Victory (central) Park and Victory Promenade Park.

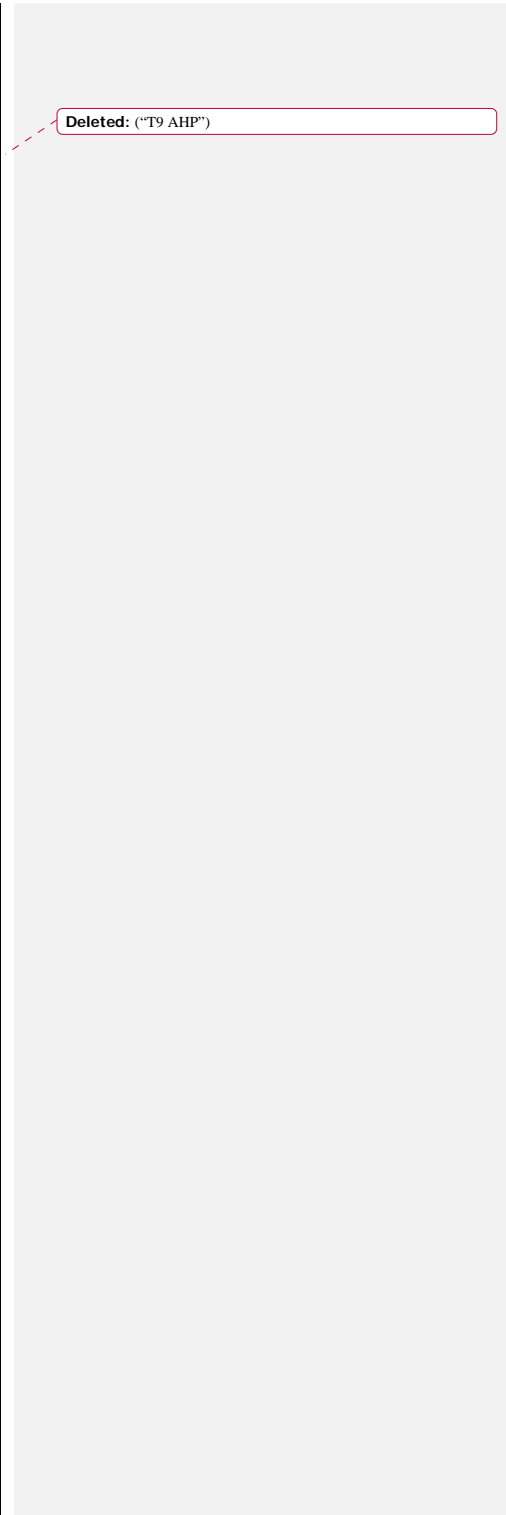
7 Phase 3 infrastructure construction remains in the design stage. The net cost is projected
 8 at \$16 million with the focus on parcels 1, 10, 8, 12 and 15.

9 The Township Nine project is entitled to permit concurrent marketing and development
 10 of project parcels for various uses. Specifically, as development occurs, values should be
 11 enhanced for all parcels and uses, causing sales to become more profitable. Developers will pay
 12 more when there is a track record of successful projects and colocation of complimentary uses.
 13 The last appraisal done on the property is over a year old. The appraised value was \$78,160,000,
 14 including \$13,211,494 in fee credits. This value does not include an additional \$7 million in
 15 park development fee credits plus remaining grant funds. Adding in these additional assets
 16 brings the total “as-is” value of the Town Nine project to approximately \$89.5 million. In the
 17 last year, commercial real estate values in the Sacramento region have increased significantly in
 18 the downtown area. Among other things, the old appraisal does not account for the full impact
 19 of the completion of Golden 1 Arena, which is 2 light rail stops from the Township Nine project.
 20 The Debtors’ recent agreement with Anthem for the development of approximately one third of
 21 the Township Nine project (discussed below) confirms the Debtors’ valuation of the overall
 22 project.

23 The Debtor has engaged AGI Valuations to provide an updated appraisal to support
 24 Confirmation of the Plan. Copia is also engaging its own appraiser to provide a valuation. The
 25 Court has ordered that the Debtors and Copia exchange their respective appraisals by September
 26 29, 2017.

27 **B. SIGNIFICANT POST-BANKRUPTCY DEVELOPMENTS**

28 **1. DIP Financing**



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1 On August 1, 2017, the Debtors filed their Motion to Approve Post Petition Financing,
 2 Grant Priming Lien and Related Relief (“DIP Financing”) which the Court considered at a
 3 hearing on August 29, 2017. At that hearing, the Court granted an interim order approving the
 4 Debtors to borrow up to \$1.9 million pending a final hearing to approve the DIP Financing. The
 5 Court set a final hearing on the DIP Financing for December 6, 2017 and further ordered that the
 6 Debtors need not make payments to Copia pursuant to 11 U.S.C. §362(d)(3) through December
 7 8, 2017. The DIP Financing will provide the Debtors the funds necessary to preserve and
 8 maximize the value of the Debtors’ estates, and make certain plan payments while the Debtors
 9 continue development efforts.

10 Although parcel maps have been approved for the majority of the T9 development, the
 11 Debtors will be required to make additional expenditures to complete mapping and obtain final
 12 parcel map approval for certain sections of the Township Nine project (currently identified as
 13 Remainder Parcel 1 and Remainder Parcel 2), in order to sell those parcels. The DIP Financing
 14 will allow the Debtors to obtain approval of the final parcel map, complete other development
 15 activities, and thereby significantly enhance the overall value of the project. Stated simply,
 16 developers will pay more when there is a track record of successful projects and colocation of
 17 complimentary uses

18 The Debtors must also fund operating expenses and other administrative expenses, e.g.
 19 professional fees, property maintenance, and potentially make adequate protection payments to
 20 Copia. CS 65’s ultimate parent company, First Capital Real Estate Trust, Inc., has been making
 21 capital contributions to fund the Debtors’ development costs and operating expenses up to this
 22 point, it does not anticipate that it will have the ability to continue doing so, particularly if it
 23 becomes necessary to commence making adequate protection payments to Copia on account of
 24 its asserted \$44 million lien.

25 **6. Anthem Sale Agreement**

26 CS 65 has entered into a Purchase and Sale Agreement with Anthem United Homes, Inc.
 27 (“Anthem”) under which Anthem will pay \$21,480,085.00 (including fee credits) for a subset of
 28 parcels in the Township Nine project comprising a total of 11.27 net developable acres in three

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1 phases over a period of 20 months. A copy of the Anthem Sale Agreement is attached as
 2 Appendix 1 to the Plan. \$17.677 million of the purchase price under the Anthem Sale
 3 Agreement is attributable to the land. The land purchase price under the Anthem Sale
 4 Agreement is \$3.2 million *higher* than the March 2016 appraised value for the same parcels.

5 In summary, apart from conveying the property, the Debtors' obligations under
 6 the Anthem sale Agreement consist of:

- 7 a. Obtaining approval for and recording the final map for parcels that are the
 8 subject of phase 1 (the "8/15 Final Map") within ninety (90) days after the sale is
 9 approved (Anthem Sale Agreement, at Recital D, ¶7.1(h) - p. 17, ¶10.4 - p.21);
- 10 b. Assigning grant funding from the City of Sacramento in the approximate
 11 amount of \$700,000.00 to complete construction of parks ("Park Work Grant") to
 12 Anthem (Anthem Sale Agreement, at Recital F, ¶7.1(g) - p.17, ¶7.2.6 - p. 16, ¶10.5 - p.
 13 21);
- 14 c. Assigning grant funding from the City of Sacramento in the approximate
 15 amount of \$2,250,000.00 to complete construction of streets ("Street Grant") to Anthem
 16 (Anthem Sale Agreement, at Recital G, ¶7.1(g) - p.17, ¶10.6 - p. 21);
- 17 d. Assigning its rights to certain development fee credits related to the
 18 parcels Anthem is purchasing (Anthem Sale Agreement, at ¶2.2 - p. 6); and
- 19 e. Assigning its plans and construction contracts related to the parcels
 20 Anthem is purchasing (Anthem Sale Agreement, at ¶10.7.3(a)).

21 Anthem in turn is undertaking to construct the parks and streets that are the subject of the
 22 Park Work Grant and the Street Grant, to pay for the construction of an extension of Chill
 23 Avenue, and to assume all other costs of readying the parcels it is purchasing for development.
 24 (Anthem Sale Agreement, at Recital H, ¶10.3 - p. 21). Anthem is also undertaking to pay the
 25 cost of obtaining final maps for phases 2 and 3 of the development. *Id.* Altogether, Anthem will
 26 be absorbing an estimated \$4.4 million in future development costs over and above amounts
 27 offset by the assignment of grant funding.

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1 Anthem had a 45-day period to conduct due-diligence to ascertain, among other things,
 2 whether the City of Sacramento will require construction of additional offsite improvements or
 3 the payment of additional fees as a condition to approving the final maps for phases 2 and 3
 4 and/or issuing building permits that could make the project financially infeasible. (Anthem sale
 5 Agreement, at Recital I, ¶1.11 – p. 4). The diligence period ran through September 1~~1~~, 2017, but
 6 was extended by agreement among the parties through September 13, 2017. Anthem has
 7 completed its due diligence and has indicated that it is prepared to go forward with the purchase
 8 agreement without any reduction in price subject to the Debtors’ agreement to delay the schedule
 9 of development for part of phase 2. The Anthem sale is therefore expected to close on
 10 substantially the same terms as set forth in the Anthem Sale Agreement, and the projections and
 11 post-confirmation budget attached hereto as Exhibit B reflect the adjustment to phase 2
 12 development schedule requested by Anthem.

13 The implications of the Anthem Sale Agreement are clear. First, it confirms that the
 14 March 2016 appraisal is a reliable basis to determine the value of the Township Nine project.
 15 Again, A.G.I. valued the parcels Anthem is purchasing at \$14.469 million, which represents 22%
 16 of the total land value of the March 2016 appraisal. Anthem is paying \$17.664 million for the
 17 land, and it is absorbing the vast majority of development costs going forward (some of which
 18 will be offset by assignment of grant funding).

19 **7. Transactions Subject to On Going Negotiations**

20 The revenue projections set forth in Exhibit B are based on the executed purchase
 21 and sale agreement with Anthem United Homes and also on expressions of interest that the
 22 Debtors have received from prospective buyers in recent months. The cash flow projection
 23 incorporates the scheduled closings included in the purchase and sale agreement and assuming
 24 Plan Confirmation in December 2017.

25 Parcel 1 (1A/1B/1C) has been of interest to national and regional apartment
 26 builders for the development of high density apartments. The value for Parcel 1 in the
 27 projections is assumed to be \$12.6 million. The Debtors believe that this value is moderately
 28 conservative in that it is the valuation attributed to this parcel for the land alone in March 2016,

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1 and does not account for the value of any associated development fee credits. As noted above,
2 the purchase price under the Anthem Sale Agreement is \$3.2 million higher than the March 2016
3 land valuation, plus it is also paying dollar-for-dollar value for the fee credits. Nevertheless,
4 while there is reason to think the actual sale price for Parcel 1 would be much higher, the
5 projections forecast a recovery of \$12.6 million. The Debtors estimate closing in April 2019,
6 allowing for an adequate due diligence period and land use entitlement processing.

7 Parcels 13, 14 and 17 have been of interest to a hotel developer, an unrelated
8 office developer, and an unrelated apartment developer. It is assumed that these parcels will be
9 sold at a value of \$20 million in December 2019, allowing for an adequate due diligence period
10 and land use entitlement processing. (These parcels were appraised for \$16.3 million in March
11 2016, without fee credits.)

12 Parcels 3 and 4 are considered prime parcels for condominium or luxury
13 apartment development. It is assumed that these parcels will be sold for \$10.38 million in June
14 2020. (These parcels were appraised in March 2016 for \$10.5 million, without fee credits.)

15 Remaining parcels (5 and 10) are assumed to be sold in December 2020 for
16 \$15.57 million. Alternatively, it is anticipated that the aggregate of these parcels could be
17 refinanced in 2020, thereby generating proceeds sufficient to pay any outstanding debt at that
18 time.

19 In addition to pursuing sales of the various parcels to developers, the Debtors are also in
20 discussion with at least two different investors interested in the Township Nine project at the
21 ownership level. The Debtors expect a term sheet from one investor within the next few weeks.
22 The preliminary negotiations focused on an equity investment in exchange for an ownership
23 interest in the Debtors.

24 A second similar transaction is being discussed with a second investor familiar with the
25 Township Nine project and the above described signed and pending transactions. This investor
26 has expressed willingness to provide equity financing in exchange for ownership interests, with
27 the amount of financing dependent upon the value of the remaining parcels owned by the
28 Debtors at the time of the transaction.

1 The Debtors believe that either transaction would yield sufficient cash to pay off existing
2 secured debt in full and provide working capital for on-going development costs. The
3 projections attached hereto as Exhibit B, however, are based upon the assumption that no equity
4 financing will occur.

5 IV. DESCRIPTION OF THE PLAN

6 A discussion of the principal provisions of the Plan as they relate to the treatment of
7 Classes of Allowed Claims is set forth below. The discussion of the Plan which follows
8 constitutes a summary only, and should not be relied upon for voting purposes. You are urged to
9 read the Plan in full in evaluating whether to accept or reject the Plan proposed by the Debtors.
10 If any inconsistency exists between this summary and the Plan, the terms of the Plan shall
11 control.

12 A. DESCRIPTION OF CLASSES

13 The Plan divides Creditors into seven (7) Classes. Creditors with similar Claims are
14 placed in the same Class. There are four (4) Classes of Interests under the Plan (one for each
15 debtor entity).

16 Unsecured Non-Priority Claims

17 Class 1(a) consists of all Allowed Unsecured Claims not entitled to priority under a
18 provision of Section 507 of the Bankruptcy Code in which a Claimholder provided goods,
19 services, or other value to the Debtors, and the where the underlying debt is not secured by a lien
20 on the Debtors' assets. Class 1 is impaired.

21 Designated Grant Funds Recipients

22 Class 1(b) consists of all Allowed Unsecured Claims not entitled to priority under a
23 provision of Section 507 of the Bankruptcy Code in which a Claimholder provided goods,
24 services, or other value to the Debtors, and the where the underlying debt is not secured by a lien
25 on the Debtors' assets. Creditors in this class are:

26 [Capitol Utility Specialists, Inc.](#)

27 [DCM Group](#)

28 [Geocon Consultants](#)

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[Jacobs Engineering](#)

[Lund Construction Co.](#)

[NV5 Inc.](#)

[Project Management Applications, Inc.](#)

[State Water Resources Control](#)

[Teichert Construction](#)

[Class 1 is impaired.](#)

Convenience Class – Claims Less Than \$2,500.00

Class 2 consists of Allowed Unsecured Claims which are in an amount less than \$2,500.00, or any other Allowed Unsecured Claim that elects to be treated as a Class 2 Claim Holder. Class 2 is unimpaired.

Secured Claim of Serene Investment Management, LLC

Class 3 consists of the Secured Claim held by Serene. Class 3 is unimpaired.

Secured Claim of COPIA

Class 4 consists of the Secured Claim asserted by [Copia](#). Class 4 is impaired.

Secured Claim of The Growing Company, Inc.

Class 5(a) consists of the mechanics lien claim of The Growing Company, Inc. Class 5(a) is impaired.

Secured Claim of Teichert Construction

Class 5(b) consists of the mechanics lien claim of Teichert Construction. Class 5(b) is unimpaired because the Debtors [are proposing to](#) assume the construction contract with Teichert. As a condition to assumption, the Debtors will be required to pay approximately \$228,000.00 to Teichert to cure monetary defaults under that contract.

Secured Claim of Studebaker Brown Elec., Inc.

Class 5(c) consists of the mechanics lien claim of Studebaker Brown Elec., Inc. Class 5(c) is impaired.

Interests- Township Nine Owner, LLC

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1 Class 6(a) consists of the member interests in Township Nine Owner, LLC. Class 6(a) is
2 unimpaired.

3 **Interests- Capitol Station Holdings, LLC**

4 Class 6(b) consists of the member interests in Capitol Station Holdings, LLC. Class 6(b)
5 is unimpaired.

6 **Interests- Capitol Station Member, LLC**

7 Class 6(c) consists of the member interests in Capitol Station Member, LLC. Class 6(c)
8 is unimpaired.

9 **Interests- Capitol Station 65, LLC**

10 Class 6(d) consists of the member interests in Capitol Station 65, LLC. Class 6(d) is
11 unimpaired.

12 **B. TREATMENT OF UNCLASSIFIED CLAIMS**

13 **1. Administrative Claims.**

14 Administrative Claims fall into one of three categories: (1) administrative claims that
15 arise in the ordinary course of the Debtors' business, (2) administrative claims that do not arise
16 in the ordinary course of business (other than professional fee claims), and (3) administrative
17 claims held by professionals employed by the Debtor in these proceedings. All administrative
18 claims arising in the ordinary course will be paid on the Effective Date of the Plan or when the
19 payment is due, unless the holder of the administrative claim agrees otherwise. The holders of
20 any other non-ordinary course administrative claim (for example, a claim based upon personal
21 injury allegedly caused by the Debtors) will be required to file a request for payment of that
22 claim with the Bankruptcy Court within 60 days after the Effective Date of the Plan. Failing to
23 timely assert the claim will bar the claim (unless the Court excuses the late-filing). If the
24 Administrative Claim is held by a professional employed by the Debtor in this case, a Fee
25 Application must be filed no later than sixty (60) days after entry of the Confirmation Order. An
26 Administrative Claim for professional fees will be paid if and to the extent that it is Allowed by
27 the Bankruptcy Court.

28

1 Aggregate unpaid Administrative Claims as of July 31,2017 are currently estimated be
 2 approximately \$176,920³. See CS 65 Monthly Operating Report for July 2017 [Docket No. 85.]

3 **2. Priority Tax Claims**

4 Allowed Priority Tax Claims not previously satisfied will be paid on the Effective
 5 Date out of proceeds of the DIP Loan. In the event the Bankruptcy Court does not authorize
 6 draws on the DIP Loan for this purpose, then Allowed Priority Tax Claims shall receive deferred
 7 cash payments that shall satisfy such Allowed Priority Tax Claim in full on or before May 30,
 8 2023, with interest on the unpaid portion of such Claim at the statutory rate determined under
 9 applicable non-bankruptcy law as of the calendar month in which this Plan is confirmed. Each
 10 Allowed Priority Tax Claim shall be paid in quarterly installments with the first installment due
 11 on the latest of: (i) the first business day following the end of the first full calendar quarter
 12 following the Effective Date (January 2, April 1, July 1, October 1, as applicable), (ii) the first
 13 business day following the end of the first full calendar quarter following the date an order
 14 allowing such claim becomes a Final Order, and (iii) such other time or times as may be agreed
 15 with the holder of such claim. Each installment shall be in an amount sufficient to pay accrued
 16 interest (but not any additional penalty based upon the failure to pay such tax at when due in the
 17 absence of filing this Case) plus one-twentieth (1/20) of the principal amount of such Allowed
 18 Priority Tax Claim until such Claims are paid in full, provided however, that the balance due and
 19 all accrued interest shall be paid in full on or before May 20, 2023. However, the Reorganized
 20 Debtors shall be permitted to pre-pay without premium or penalty a pro rata amount of Allowed
 21 Priority Tax Claims. In addition, if the Reorganized Debtors make distributions to Allowed
 22 Class 1 holders, the Debtors shall pay an amount necessary to amortize the Allowed Priority Tax
 23 Claims at a rate not less favorable than Allowed Class 1 Claim holders.

24 **3. U.S. Trustee Fees**

25 The Debtors shall pay in cash in full on the Effective Date any statutory fees then owing
 26 and unpaid to the U.S. Trustee, or to the Bankruptcy Court. After the Effective Date, the Debtors
 27

28 ³ Sum of Administrative Costs (\$37,395) and post-petition accrued Professional Fees (\$139,525) through July 2017.

Deleted: To the extent not paid prior to the Effective Date, all Tax Claims against the Debtors that are entitled to priority under Section 507(a)(8) shall be paid in full with interest at the applicable rate determined under non-bankruptcy law pursuant to 11 U.S.C. §511 out of proceeds of the DIP Loan on the later of: (a) the Effective Date, or (b) the date the Tax Claim is allowed by a Final Order. Aggregate unpaid Priority Tax Claims and Asserted Secured Tax Claims is approximately \$315,000.00. If, however, the Bankruptcy Court does not authorize draws on the DIP Loan for this purpose, all Priority Tax Claims will be paid in full with interest at the rate dictated by 11 U.S.C. §511 within three (3) years after the Effective Date on a schedule that maintains distributional parity with amounts paid to unsecured non-priority claim holders in Class 1.¶

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1 shall pay a quarterly fee to the U.S. Debtor, for deposit into the U.S. Treasury, for each quarter
 2 (including any fraction thereof) until this chapter 11 case is converted, dismissed, or closed by
 3 entry of a final decree, pursuant to Section 1930(a)(6) of Title 28, United States Code.

4 **C. TREATMENT OF CLASSIFIED CLAIMS**

5 The Plan contemplates repayment to most classes of creditors out of the proceeds of sale
 6 of the Township Nine parcels over a 36-month period after the Effective Date.

7 1. **Class 1(a) - Unsecured Non-Priority Claims**

8 The Plan provides for several alternatives for payment of Allowed Class 1(a) Claims.

9 First, the Debtors will seek Bankruptcy Court approval to pay Class 1(a) creditors in full
 10 following the Effective Date by drawing on the \$10 million loan from Serene Investment
 11 Management, LLC for that purpose, and they will also explore whether any assets not subject to
 12 Copia’s security interest can provide a source of funding to Class 1(a) creditors. But even if no
 13 other funding source is found and the Bankruptcy Court does not approve use of the loan
 14 proceeds for that purpose, the Plan alternatively provides for payments to Class 1(a) creditors out
 15 of proceeds realized from Parcel sales.

16 If that provision of the Plan is triggered, so long as a Parcel can be sold for a minimum
 17 price, two (2%) percent of the net sale proceeds⁴ realized from sale of a parcel will be deposited
 18 into a fund from which payments to unsecured non-priority creditors will be made. The
 19 minimum prices are set forth in Schedule 1.1.33 to the Plan. The minimum prices on Schedule
 20 1.1.33 have been set to ensure that the lienholder against the Township Nine development
 21 (Copia, the holder of the Class 4 secured claim) will be paid in full with interest. Class 1 claim
 22 holders will receive periodic distributions from the general unsecured creditor fund until the
 23 claims are paid in full. After the Effective Date, claims in Class 1 will earn interest at the rate of
 24 6.5% until paid in full.

25
 26
 27 ⁴ The Plan defines “Net Sale Proceeds” as the gross sales price paid for a Parcel minus (a)
 28 any applicable costs of sale (including any brokers or other real estate commission), and
(b) amounts payable to Serene under the DIP Loan.

1 As described in Part III.B.3 above, the Debtors have forecasted the sales they expect to
 2 close within the 36-month period after the Effective Date, and believe that all allowed Class 1
 3 claims will be paid within that time frame. The projections attached hereto as Exhibit B are
 4 based upon the assumption that the Bankruptcy Court does not authorize any draws on the
 5 Serene loan to pay Class 1 claims, and no unencumbered assets are available, and hence,
 6 repayment of Class 1 claims will be made solely out of Parcel sale proceeds.

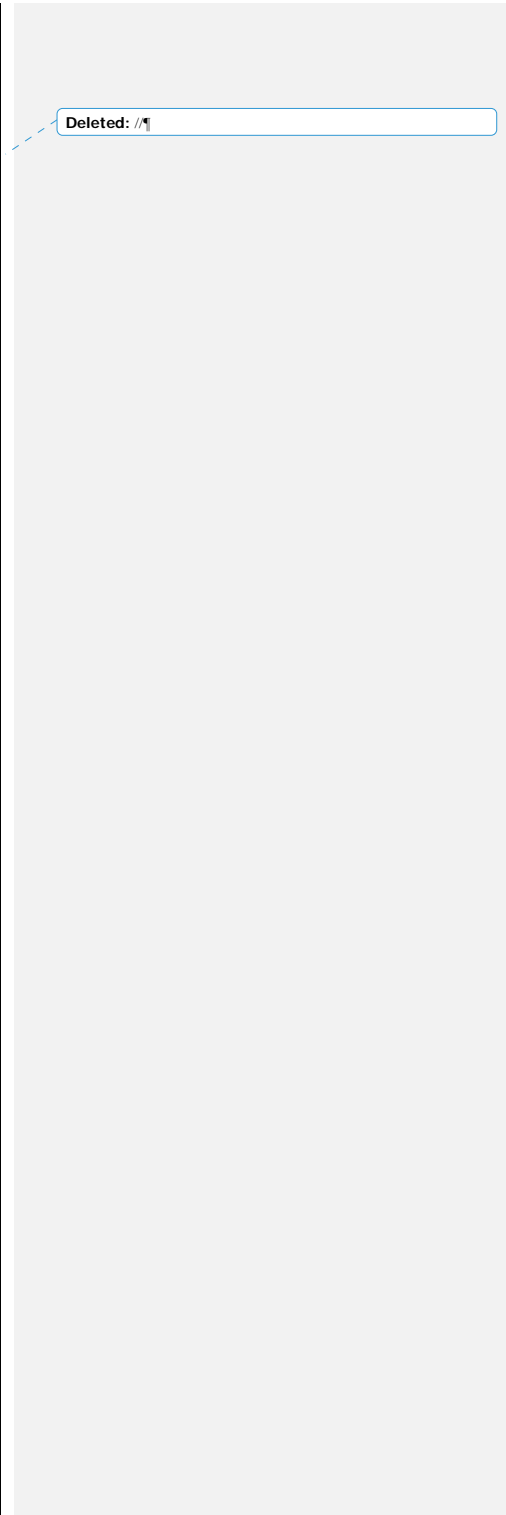
7 **2. Class 1(b) - Designated Recipients of Grant Funds**

8 Promptly after the Effective Date, the Debtors shall make an application to the
 9 City of Sacramento and California Department of Housing and Community Development (as
 10 applicable) to release Grant Funds that have been earmarked by those public entities to pay the
 11 following amounts to the Claimholders indicated:

	<u>Grant Amount</u>
	<u>(estimated)</u>
<u>Capitol Utility Specialists</u>	<u>\$2,296.75</u>
<u>DCM Group</u>	<u>\$4,842.45</u>
<u>Geocon Consultants</u>	<u>\$1,287.50</u>
<u>Jacobs Engineering</u>	<u>\$4,825.00</u>
<u>Lund Construction Co</u>	<u>\$299,556.65</u>
<u>NV5 Inc</u>	<u>\$2,640.00</u>
<u>Project Management App</u>	<u>\$20,195.46</u>
<u>State Water Resources Control</u>	<u>\$1,338.00</u>
<u>Teichert Construction</u>	<u>\$80,985.22</u>

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22
23 The foregoing amounts are based upon a communication from the City of
 24 Sacramento (the entity administering the grant program) stating that it was prepared to release
 25 the foregoing sums to these claimants if the Plan is confirmed and becomes effective. To the
 26 extent any Class 1(b) claim identified above is not paid in full out of the Grant Funds, the
 27 balance of any remaining Claim shall be paid as provided for in the Plan.

28 **3. Class 2 - Claims Less Than \$2,500.00**



1 Class 2 consists of Allowed Unsecured Claims which are in an amount less than
 2 \$2,500.00, or any other Allowed Unsecured Claim that elects to be treated as a Class 2 Claim
 3 Holder. All claims falling into this category will be paid in full on the Effective Date.

4 4. **Class 3 - Secured Claim of Serene Investment Management, LLC**

5 All terms and conditions of the DIP Credit Agreement are incorporated into and made a
 6 part of the Plan. The Class 3 Claim Holder shall retain all rights and lien priority granted in the
 7 Bankruptcy Court’s order approving the DIP Loan, and the Class 3 Claim Holder shall be paid in
 8 accordance with the terms of the DIP Credit Agreement.

9 5. **Class 4 - Secured Claim of Copia**

10 The pre-bankruptcy loan agreements between the Debtors and Copia will be cancelled
 11 and replaced by the terms of the Plan. On and after the Effective Date, the Class 4 claim will
 12 accrue simple interest at five (5%) percent until the claim is satisfied.

13 The Class 4 Claim shall be deemed fully secured. The Debtors and the Official
 14 Committee of Unsecured Creditors shall have until sixty (60) days after the Effective Date to
 15 object to the allowable amount of the Class 4 Claim (“Objection”). The Debtors, the Official
 16 Committee of Unsecured Creditors, and Copia shall retain all of their respective rights, claims,
 17 and defenses to the Class 4 Claim and may assert them in the Objection notwithstanding entry of
 18 the Confirmation Order. Without limiting the generality of the foregoing, the Debtors and the
 19 Official Committee of Unsecured Creditors shall retain and may assert in the Objection all
 20 defenses to allowance of such claim held under non-bankruptcy law, and/or any provision of
 21 Chapter 5 of Title 11 of the United States Code.

22 Regardless of whether an Objection is filed, no attorneys’ fees, default interest, late
 23 penalties or any similar charges shall be part of the Allowed amount of the Class 4 Claim,
 24 secured or unsecured, until Copia obtains a Court Order approving such penalties and charges.
 25 Such approval must be made through a motion for recovery of such fees, interest, penalties, or
 26 charges filed within thirty (30) days of the Effective Date and on not less than twenty-eight (28)
 27 days’ notice to the Reorganized Debtors and the Official Committee of Unsecured Creditors, or
 28 any such claim for penalties and charges shall be deemed barred.

Deleted: The terms of the DIP Credit Agreement and DIP Loan approved by the Bankruptcy Court on _____ are incorporated in full into the Plan. Serene will be repaid out of sales of Parcels on or before twenty-four (24) months after the DIP Loan was approved.

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1 The Allowed amount of Copia’s Class 4 Claim shall be determined by a Final Order and
2 treated in accordance with the provisions of the Plan.

3 In full satisfaction, settlement, release and discharge of, and in exchange for its Allowed
4 Class 4 Claim, Copia shall receive the following:

5 (a) Interest.

6 From an after the Effective Date, the Allowed Class 4 Claim shall accrue simple interest
7 at the rate of five (5.0%) percent, or such other rate as the Court shall determine is appropriate at
8 the Confirmation Hearing (“Post-Confirmation Interest Rate”). Interest shall begin accruing on
9 the Allowed amount of the Class 4 Claim on the Effective Date and continue until paid in full.

10 (b) Class 4 Payments

11 The Debtors shall pay Copia an amount equal to the Parcel Release Price⁵ out of
12 the Gross Sales Proceeds received from each Parcel sale. Such payments shall be applied first to
13 accrued interest, and then to principal, until the Allowed Class 4 Claim is paid in full.

14 (c) Maturity Date

15 Unless satisfied prior to that date, the Class 4 Claim shall be paid in full, with
16 interest on or before the last calendar day of the thirty-sixth (36) month after the Plan Effective
17 Date (the “Maturity Date”)

18 (d) Pre-Payment

19 The Debtors shall be permitted to pre-pay the Allowed Class 4 Claim at any time
20 without penalty or other premium.

21 (e) Escrow of Payments Pending Allowance

22 In the event an Objection is filed within the time permitted by Article 4.5.1,
23 pending a determination of whether the Class 4 Claim should be Allowed, the Debtors shall
24 deposit into a segregated account at Wells Fargo Bank all payments that would be due to Copia,
25 under Article 4.5.2.2 if the Class 4 Claim were an Allowed Claim on the Effective Date, and the

26
27 ⁵ The Plan defines “Partial Release Price” as the product of .75 multiplied by the Net Sale
28 Proceeds for a Parcel. Net Sale Proceeds in turn are defined as the gross sales price paid
for a Parcel minus (a) any applicable costs of sale (including any brokers or other real
estate commission), and (b) payments to Serene under the DIP Loan.

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1 funds deposited into said escrow account shall not be disbursed by the Debtors except as
2 provided in this Article 4.5.2.5. All deposits made to the escrow account at Wells Fargo Bank
3 shall be deemed received by Copia such that interest will cease accruing on the amount of any
4 principal reduction in the Class 4 Claim.

5 The Debtors shall provide instructions to Wells Fargo Bank not to permit any
6 withdrawals from the escrow account except upon receipt of joint written instructions from the
7 Class 4 Claim holder and the Debtors, or a Final Order of the Bankruptcy Court. If a Final Order
8 is entered Allowing the Class 4 Claim, all funds in the escrow account shall be promptly remitted
9 to Copia up to the Allowed Amount of the Class 4 Claim. If the Allowed Amount of the Class 4
10 Claim is less than the funds on deposit in the escrow account, any excess over what is required to
11 be paid to Copia under this Article 4.5.2.5 may be remitted to the Debtors

12 (f) Retention of Lien.

13 Copia shall retain a lien on the Debtors' assets in the same amount, and with the
14 same priority and validity, that such lien held in the Debtors' assets on the Effective Date. Such
15 lien shall be governed by and Copia shall have all of the rights of a secured party under Division
16 9 of the California Commercial Code, Cal. Comm. Code § 9101, et seq., and the rights of a
17 beneficiary under a deed of trust under California Civil Code § 2924, et seq. (as the case may
18 be), except that whenever a provision of Division 9 of the California Commercial Code makes
19 reference to or incorporates an agreement between the secured party and debtor, such agreement
20 shall be deemed to be exclusively this Plan.

21 Copia shall release its lien on a Parcel (and all assets associated with a Parcel,
22 including Fee Credits) upon tender by the Debtors of the Parcel Release Price realized upon sale
23 of such Parcel. Copia shall, subject to closing and payment of the Parcel Release Price, promptly
24 provide all documentation reasonably required by a title company for recording with the
25 Sacramento County Recorder's Office to effect a release of such lien on a Parcel, and allow title
26 to such Parcel to be conveyed to a Buyer free and clear of such lien at the closing of a Parcel
27 sale. In the event Copia fails or refuses to execute an instrument of reconveyance confirming the
28 release of its lien on a Parcel when required to do so under this Article 4.5.3, the Bankruptcy

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1 Court may issue an order ex-parte authorizing the sale of said Parcel to the Buyer free and clear
2 of the Copia⁷ lien.

3 (g) Rights Upon Default

4 In the event of a default by the Debtors under the Plan, and in the event Debtors fail to
5 cure such default within thirty (30) days after delivery of notice to the Debtors, the Official
6 Committee of Unsecured Creditors, Debtors' counsel, and counsel to the Official Committee of
7 Unsecured Creditors, COPIA shall be entitled to enforce all rights available under Division 9 of
8 the California Commercial Code and California Civil Code sections 2924 through 2924I. Either
9 the Reorganized Debtor or the Official Committee of Unsecured Creditors may seek relief from
10 the Bankruptcy Court for cause to extend the thirty (30) day cure period.

11 6. Class 5(a), 5(b) and 5(c) - Mechanics Lien Claims.

12 (a) Class 5(b) - Teichert Construction.

13 The Debtors shall assume the construction contract with Teichert in order to facilitate
14 completion of the work contemplated by that contract in accordance with Article 6.1 of the Plan,
15 and consequently, Teichert Construction will be paid in full as provided for under Article 6.1
16 (i.e., out of Grant Funds when approved by the granting agency, or the Effective Date to the
17 extent the amount due to cure defaults under the Teichert contract will not be paid in full on the
18 Effective Date. In the event that the Bankruptcy Court does not approve assumption of the
19 Teichert construction contract, then the Debtors and any party in interest in the Chapter 11 Case
20 shall have thirty (30) days to object to the secured status of the Class 5(b) Claim. If an objection
21 is timely filed and the Bankruptcy Court enters a Final Order determining that the Class 5(b)
22 Claim is not secured, any balance owed to the Class 5(b) Claimholder (after deducting any Grant
23 Funds paid to it) shall be treated as a Class 1(a) Claim. If an objection to the secured status of
24 the Class 5(b) Claim is not timely filed or the Bankruptcy Court enters a Final Order determining
25 that the Class 5(b) Claim is secured, any balance owed to the Class 5(b) Claimholder (after
26 deducting any Grant Funds paid to it) shall be paid on a pro rata basis along with the Class 5(a)
27 Claim and Class 5(c) Claim out of the Mechanics Lien Claim Fund and otherwise receive the

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Class 5(a) - Mechanics Lien Claim of The Growing Company, Inc.[¶] So long as a parcel can be sold for a minimum price, one (1%) percent of the net sale proceeds realized from sale of a parcel will be deposited into a fund from which payments to The Growing Company and Stuebaker Brown Electric, Inc. (the holder of the Class 5(c) Claim) will be paid. The minimum prices are set forth in Schedule 1.1.33 to the Plan. The minimum prices on Schedule 1.1.33 have been set to ensure that the lienholder against the Township Nine development (Copia, the holder of the Class 4 secured claim) will be paid in full with interest. The Growing Company and Stuebaker Brown Electric will receive pro-rata periodic distributions from the mechanics lien claimant fund until the claims are paid in full. After the Effective Date, claims in Classes 5(a) and 5(c) will earn interest at the rate of 6.5% until paid in full.[¶] As described in Part III.B.3 above, the Debtors have forecasted the sales they expect to close within the 36-month period after the Effective Date, and believe that The Growing Company and Stuebaker Brown Electric will be paid within that time frame.[¶] Class 5(b) - Mechanics Lien Claim of Teichert Construction.[¶] The Debtors ability to qualify for certain park-related development fee credits depends upon completion of parks Teichert is under contract to construct. For that reason, the Debtors have concluded that the construction contract with Teichert should be assumed. As required by the Bankruptcy Code, the Debtors must pay all amounts owed to Teichert in order to cure the Debtors' monetary defaults under that agreement (a sum of approximately \$228,000.00). Accordingly, Teichert Construction will be paid in full on the Effective Date, and its mechanics lien against the Township Nine property will be released

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1 same treatment and be subject to the same obligations as the claims of the Growing Company
2 and Studebaker Brown Electric, Inc. described in the next section.

3 **(b) The Growing Company and Studebaker Brown Electric, Inc.**

4 To the extent Allowed, the holders of claims in Classes 5(a) (The Growing Company),
5 and 5(c) (Studebaker Brown Elec., Inc.) shall retain their liens in the same amount, and with the
6 same priority and validity held as of the Effective Date. The holders of claims in Classes 5(a),
7 5(b) (if required by Article 4.6.1 of the Plan), and 5(c) shall release their respective liens on a
8 Parcel in connection with any sale of such Parcel to a Buyer, and shall promptly provide all
9 documentation reasonably required by a title company for recording with the Sacramento County
10 Recorder's Office to effect a release of their liens on the Parcel in order to allow title to such
11 Parcel to be conveyed to a Buyer free and clear of such lien. In the event the holder of a claim in
12 Class 5(a), 5(b), and 5(c) fails or refuses to execute an instrument of reconveyance confirming
13 the release of its lien on a Parcel when required to do so under this Article 4.6.2, the Bankruptcy
14 Court may issue an order ex-parte authorizing the sale of said Parcel to the Buyer free and clear
15 of such lien.

16 Following the closing of a Parcel sale, the Debtors shall deposit 1/3 of all Excess Net
17 Sale Proceeds received into the Mechanics Lien Claim Fund. Holders of Allowed Claims in
18 Classes 5(a), 5(b) (if required by Article 4.6.1) and 5(c) shall be entitled to pro-rata distributions
19 of all funds deposited into the Mechanics Lien Claim Fund until such claims are paid in full.
20 From and after the Effective Date, the principal amount of each Allowed Claim within Classes
21 5(a), 5(b) (if required by Article 4.6.1), and 5(c) shall accrue simple interest at the rate of five
22 (5%) percent. Distributions to Allowed Claims in Classes 5(a), 5(b) (if required by Article
23 4.6.1), and 5(c) shall be applied first to accrued interest, and then principal. Distributions from
24 the Mechanics Lien Claim Fund may be made at any time at the discretion of the Disbursing
25 Agent, provided however, that the Disbursing Agent shall make a distribution to Class 5(a), 5(b)
26 (if required by Article 4.6.1), and 5(c) Claim Holders whenever the Mechanics Lien Claim Fund
27 holds sufficient funds to permit a pro-rata distribution of twenty-five (25%) percent to all Class 5
28 Claims.

1 The Debtors shall also be permitted to deposit into the Mechanics Lien Claim Fund: (a)
 2 any other funds it receives that are not subject to the lien and security interest asserted by Copia
 3 and (b) any other sums that are subject to the lien and security interest asserted by Copia if either
 4 (x) Copia consents, or (y) the Bankruptcy Court authorizes the Debtors to use such sums for that
 5 purpose. Any motion seeking authorization to use assets subject to Copia's lien and security
 6 interest shall be set on regular notice and served upon Copia.

7 All Allowed Class 5(a), 5(b) (if required by Article 4.6.1 of the Plan), and 5(c) Claim
 8 Holders shall be paid in full, with interest on or before the last calendar day of the thirty-sixth
 9 (36) month after the Plan Effective Date.

10 **7. Classes 6(a), 6(b), 6(c), and 6(d) – Interests**

11 Because the Debtors' Plan pays all creditors in full, all member interests in Township
 12 Nine Owner, LLC, Capitol Station Holdings, LLC, Capitol Station Member, LLC, and Capitol
 13 Station 65, LLC will be retained. No provision of this Plan with alter or affect the rights of any
 14 equity holder in the Debtors, with the exception that there will be a moratorium on any
 15 distributions to equity owners on account of their interests until after all creditors are paid in full.

16 **D. IMPLEMENTATION OF THE PLAN**

17 The Plan will be implemented as follows:

18 **1. Assets Shall Re-vest in the Debtors**

19 On the Effective Date, all assets of the Debtors and the Debtors' Estate shall re-vest in
 20 the Debtors free and clear of all liens, claims, or interests, except to the extent such lien, claim,
 21 or interest is preserved through a specific provision of this Plan. The Debtors shall be entitled to
 22 operate their business and/or dispose of its assets free of any restrictions or limitations contained
 23 in 11 U.S.C. §§ 345, 361, 363, 364, 365, and 366, and Rule 9019 of the Federal Rules of
 24 Bankruptcy Procedure. Entry of the Confirmation Order shall discharge the Debtors from all
 25 debts that arose prior to confirmation to the fullest extent permitted by 11 U.S.C. § 1141(d).

26 **2. Approval of the Anthem Sale Agreement**

27 The Plan incorporates and approves the Anthem Sale Agreement described in Part III.B.2
 28 above, and authorizes the Debtors to enter into and perform all obligations under the Anthem

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 As described in Part III.B.3 above, the Debtors have forecasted the sales they expect to close within the 36-month period after the Effective Date, and believe that The Growing Company and Studebaker Brown Electric will be paid within that time frame.

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1 Sale Agreement. Title to all Parcels sold to Anthem under the Anthem Sale Agreement shall be
 2 conveyed free and clear of any liens asserted by Copia and/or the holders of claims in Classes
 3 5(a), 5(b), and 5(c).

4 **3. Authorization to Sell Other Parcels**

5 After the Effective Date, the Debtors will be authorized to sell any Parcel to a Buyer free
 6 and clear of any liens asserted by Copia and/or the holders of claims in Classes 5(a), 5(b), and
 7 5(c), subject to distribution of the proceeds of such Parcel sales in accordance with Articles 4.1,
 8 4.4 and 4.5 of the Plan.

9 All transfers of Parcels under this Plan (including the Anthem Sale Agreement) shall be
 10 exempt from taxes to the extent provided in 11 U.S.C. § 1146(a).

11 **4. Cancellation of Pre-Petition Loan Documents**

12 On the Effective Date, all agreements between the Debtors and Copia which form
 13 the basis of Copia’s Class 4 Claim, and all rights of Copia thereunder shall be cancelled.
 14 Thereafter, such agreements shall be of no force and effect, and Copia’s rights under such
 15 agreements shall be replaced by the rights conferred upon it by this Plan.

16 **5. Continuation of Official Committee of Unsecured Credit**

17 Notwithstanding confirmation or effectiveness of the Plan, the Official Committee
 18 of Unsecured Creditors appointed in the Chapter 11 Case shall continue in existence and shall
 19 retain all of the powers and duties granted it under Bankruptcy Code section 1103 until all
 20 Allowed Class 1(a) and Class 1(b) Claims are paid in full

21
 22 **6. Retention Agreements With Court Appointed Professionals**

23 Confirmation or the effectiveness of the Plan shall not affect any retention
 24 agreements between the Debtors, the Official Committee of Unsecured Creditors, and any
 25 professional retained under 11 U.S.C. §§ 327 or 328. Except as provided in Article 3.4, all such
 26 professionals shall not be required to seek approval from the Bankruptcy Court for any
 27 compensation or expense reimbursement after the Effective Date.

28 **7. Corporate Organization**

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Moved up [1]: On the Effective Date, all agreements between the Debtors and Copia which form the basis of Copia’s Class 4 Claim, and all rights of Copia thereunder shall be cancelled. Thereafter, such agreements shall be of no force and effect, and Copia’s rights under such agreements shall be replaced by the rights conferred upon it by this Plan

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1 From and after the Effective Date, the Reorganized Debtors shall operate in
2 accordance with the by-laws and articles of organization of Capitol Station 65, LLC, Capitol
3 Station Member, LLC, Capitol Station Holdings, LLC, and Township Nine Owner, LLC in effect
4 as of the Petition Date. Each of the Debtors' by-laws and articles of organization shall be
5 deemed amended to prohibit issuance of non-voting securities and providing for an appropriate
6 distribution of voting power among the various classes of securities.

7 The identity and affiliations of individuals proposed to serve, after confirmation,
8 as managing member(s) and officers of the Debtors and compensation for any insiders is as
9 follows:

10 (a) Capitol Station Member, LLC, a Delaware limited liability
11 company, shall continue as Manager of Capitol Station 65, LLC;

12 (b) Capitol Station Holdings, LLC, a California limited liability
13 company, shall continue as Manager of Capitol Station Member, LLC;

14 (c) Township Nine Owner, LLC, a Delaware limited liability
15 company, shall continue as the sole Member and Manager of Capitol Station Holdings, LLC;

16 (d) First Capital Real Estate Operating Partnership, L.P., a Delaware
17 limited partnership, shall continue as Manager of Township Nine Owner, LLC;

18 (e) First Capital Real Estate Trust Incorporated, a Maryland
19 corporation, shall continue as General Partner of First Capital Real Estate Operating
20 Partnership, L.P.

21 (f) Suneet Singal shall continue as Chief Executive Officer,
22 Treasurer, Secretary and Chairman of the Board of Directors of First Capital Real Estate Trust
23 Incorporated. All compensation payable to Mr. Singal will be paid by First Capital Real Estate
24 Trust, Inc., and not the Debtors.

25 The Reorganized Debtors shall also be authorized to pay a project management
26 and overhead fee to First Capital Real Estate Trust, Inc. initially in the amount of \$96,866.00 per
27 month, but which sum declines over time. See Projections, attached hereto as Exhibit B. The
28 project management and overhead fee is intended to reimburse First Capital Real Estate for the

1 salary for two of its employees working on the Township Nine development, and cover other
 2 overhead expenses allocable to the Township Nine development. The Debtors believe that these
 3 expenses are reasonable insofar as the Debtors would be incurring this cost directly if First
 4 Capital Real Estate Trust did not do so on its behalf.

5 **8. Preservation of All Causes of Action**

6 The Debtors will retain and may exclusively enforce and prosecute any rights of action or
 7 claims for relief (including but not limited to claims for avoidance and recovery of transfer of the
 8 Debtors' assets under Chapter 5 of the Bankruptcy Code) that the Debtors or the Estate may have
 9 against any person or entity in accordance with section 1123(b) of the Bankruptcy Code
 10 ("Litigation Claims"). The Debtors may pursue such retained Litigation Claims in accordance
 11 with the best interests of the creditors or the Estate.

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12 **E. CLAIMS AND DISTRIBUTIONS**

13 **1. Disbursing Agent**

14 The Reorganized Debtor, or such entity as it may designate, shall act as the Disbursing
 15 Agent from and after the Effective Date. The Disbursing Agent shall serve without bond, and
 16 shall not be compensated for distribution services.

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17 **2. Deadline for Filing Claim Objections**

18 Except with respect to COPIA's Class 4 claim, any objections to Claims must be filed
 19 within ninety (90) days after the Effective Date.

20 **3. Distribution on Allowed Claims.**

21 The Debtors will make distributions only on account of Allowed Claims. No
 22 distributions will be made to holders of Disputed Claims.

23 **4. Reserves for Disputed Claims.**

24 The Debtors shall retain in a segregated account for the benefit of each holder of a
 25 Disputed Claim, an amount equal to the distributions that would have been made to the holder of
 26 such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i) the
 27 liquidated amount set forth in the filed proof of claim relating to such Disputed Claim, (ii) the
 28 amount in which the Disputed Claim was estimated by the Bankruptcy Court pursuant to Section

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1 502 of the Bankruptcy Code, which constitutes and represents the maximum amount in which
2 such Claim may ultimately become an Allowed Claim, or (iii) such other amount as may be
3 agreed upon by the holder of such Disputed Claim and the Reorganized Debtor.

4 **5. Settlement of Disputed Claims.**

5 The Reorganized Debtors are authorized to settle and compromise the Allowable amount
6 of a Disputed Claim without court approval or notice to other Claim holders.

7 **6. Addresses for Transmitting Payments**

8 Except as otherwise agreed with the holder of an Allowed Claim in respect thereof or as
9 provided in this Plan, any property to be distributed on account of an Allowed Claim shall be
10 distributed by mail, upon compliance by the holder with the provisions of this Plan, to (a) the
11 latest mailing address filed for the holder of an Allowed Claim entitled to a distribution under the
12 Plan, (b) the latest mailing address filed for a holder of a filed power of attorney designated by
13 the holder of such Claim to receive distributions, (c) the latest mailing address filed for the
14 holder's transferee as identified in a filed notice served on the Debtors pursuant to Bankruptcy
15 Rule 3001(e), or (d) if no such mailing address has been filed, the mailing address reflected on
16 the Schedules or in the Debtors' books and records.

17 **7. Unclaimed Distributions**

18 The Reorganized Debtors shall make commercially reasonable efforts to contact by
19 telephone or email any Creditor which has failed to negotiate any distribution within one
20 hundred twenty (120) days from the date upon which such distribution is made to verify that
21 such Creditor has received the distribution and determine if a replacement distribution should be
22 made. If the Reorganized Debtors are unable to contact such Creditor because it has moved and
23 not provided the Reorganized Debtors with a forwarding address, the Reorganized Debtors'
24 efforts shall be deemed commercially reasonable if Reorganized Debtors diligently searches
25 publicly available information (including internet searches), in order to locate the Creditor. The
26 Reorganized Debtors, however, shall not be required to incur costs to an outside vendor or
27 investigator to ascertain current contact information for the Creditor. If the Reorganized Debtors
28 are unable to contact such Creditor after making commercially reasonable efforts, the Creditor

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Executory Contract	Counterparty	Cure Amount
between the City of Sacramento and Capitol Station 65 LLC, dated March 17, 2010 <i>Declaration of Restrictive Covenants for the Development of Market Rate Housing and Affordable Housing</i> , by Capitol Station 65 LLC, recorded May 14, 2010		
HCD Infill Infrastructure Grant, Round 2 <i>Standard Agreement</i> by and between the State of California Housing and Community Development Department and the City of Sacramento dated March 30, 2011 <i>Standard Agreement Amendment No. 1</i> by and between the State of California Housing and Community Development Department and the City of Sacramento dated July 16, 2013 <i>Infill Infrastructure Grant Program Disbursement Agreement</i> by and between the State of California Housing and Community Development Department and the City of Sacramento dated March 30, 2011 <i>First Amendment to Assignment and Assumption Agreement</i> by and between the City of Sacramento and Capitol Station 65 LLC, dated September 13, 2011. <i>First Amendment to Declaration of Restrictive Covenant for the Development of Market Rate Housing and Affordable Housing</i> , by Capitol Station 65 LLC, recorded October 3, 2011	City of Sacramento	\$0
HCD Catalyst Grant <i>Standard Agreement</i> by and between the State of California Housing and Community Development Department and the City of Sacramento dated April 24, 2013 <i>Assignment and Assumption Agreement</i> by and between the City of Sacramento and Capitol Station 65 LLC, dated April 30, 2013	City of Sacramento	\$0
HCD Transit Oriented Development Grants <i>Assignment and Assumption Agreement</i> by and between the City of Sacramento and Capitol Station 65 LLC, dated June 4, 2015. Phase 2B - <i>Standard Agreement</i> by and between the State of California Housing and Community Development Department and the City of Sacramento, dated September 16, 2015. Phase 2A - <i>Standard Agreement</i> by and between the State of California Housing and Community Development Department and the City of Sacramento, dated September 16, 2015.	City of Sacramento	\$0

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Executory Contract	Counterparty	Cure Amount
Agreement for Design and Construction of Park Improvements For Township 9 Park and Park Development Impact Fee Waivers, dated May 1, 2014.	City of Sacramento	\$0
Construction Contract	Teichert Construction	\$228,462.38
Construction Contract	Lund Construction	\$300,796.64
Construction Management Agreement	Project Mgmt. Applications Inc.	\$25,283.00
Labor Compliance Monitor Agreement	DCM Group	\$11,758.05
Service Agreement	Capitol Utility Specialists, Inc.	\$3,782.26

The Debtors will be fully obligated on such assumed contracts from and after the Effective Date, and all counterparties shall be likewise obligated on such assumed contracts under section 365 of the Bankruptcy Code. The Debtors are financially stable and fully capable to operate as a going concern as reflected in the Plan and this Disclosure Statement and as will be proven to the extent any party with standing seeks such a demonstration with evidence at the Confirmation Hearing. The Debtors will provide evidence and legal arguments supporting its assumption of these contracts pursuant to 11 U.S.C. § 365 in connection with Plan Confirmation.

As a condition to assuming an executory contract requires a debtor to either cure or provide a "reasonable assurance of a prompt cure" of any defaults under that contract. As to the following entities who are counter-parties to an assumed executory contract, the City of Sacramento has acknowledged that such entities are entitled to be paid the amounts indicated below out of Grant Funds if the Plan is confirmed and becomes effective:

	Grant Amount (estimated)
<u>Capitol Utility Specialists, Inc.</u>	<u>\$ 2,296.75</u>
<u>DCM Group</u>	<u>\$ 4,842.45</u>
<u>Lund Construction Co.</u>	<u>\$ 299,556.65</u>
<u>Project Management Applications, Inc.</u>	<u>\$ 20,195.46</u>
<u>Teichert Construction</u>	<u>\$ 80,985.22</u>

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1 Accordingly, part of the cure amount due to these entities will be paid out of Grant Funds
 2 when released by the administrators of the grant program. The Debtors estimate that this will
 3 occur within ninety (90) days after the Effective Date. To the extent that any cure obligation will
 4 not be satisfied in whole or in part by Grant Funds, it will be paid in full on the Effective Date.
 5 If the Bankruptcy Court does not approve assumption of an executory contract, the counter-party
 6 will be treated as otherwise provided in the Plan. Specifically, Capitol Utility Specialists, Inc.,
 7 DCM Group, Lund Construction Co., and Project Management Applications, Inc. would be
 8 treated as Class 1(b) claim holders. See Section IV.C.2 above. Teichert Construction will be
 9 treated as a Class 5(b) claim holder. See Section IV.C.6 above.

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10 **ANY NON-DEBTOR PARTY TO ANY EXECUTORY CONTRACT OBJECTING**
 11 **TO THE ABOVE CURE AMOUNTS OR ADEQUATE ASSURANCE OF FUTURE**
 12 **PERFORMANCE AND THE ASSUMPTION AND ASSIGNMENT OF SUCH**
 13 **EXECUTORY CONTRACT OR UNEXPIRED LEASE MUST FILE AN OBJECTION IN**
 14 **THE BANKRUPTCY COURT AND SERVE IT ON THE DEBTORS AS SET FORTH IN**
 15 **THE ACCOMPANYING NOTICE OF HEARING ON PLAN CONFIRMATION.**

16 Any counterparty to the above executory contracts or unexpired leases who fails to file an
 17 objection to the proposed cure amounts, adequate assurance, assumption or assignment as set
 18 forth above will be deemed to have accepted such cure amount in full satisfaction and cure of all
 19 defaults and other amounts due through and including the Effective Date, and will have no
 20 further claim against the Debtors therefor; further such counterparties are deemed to accept the
 21 assumption and have adequate assurance of future performance of their executory contract or
 22 unexpired lease by the Debtors.

23 In the event of a dispute regarding (i) the amount of any payments to cure such a default,
 24 (ii) the ability of Debtors to provide “adequate assurance of future performance,” within the
 25 meaning of Bankruptcy Code section 365, under the executory contract or unexpired lease to be
 26 assumed, or (iii) any other matter pertaining to assumption, the cure payments required by
 27 Bankruptcy Code section 365(b)(1) shall be made following the entry of a Final Order or orders
 28 resolving the dispute and approving the assumption. Assumption of any executory contract or

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1 unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction
 2 of any Claims or defaults, whether monetary or nonmonetary, arising under any assumed
 3 executory contract or unexpired lease at any time before the effective date of the assumption.

4 If any executory contract has been inadvertently omitted from the above list of executory
 5 contracts to be assumed, the Debtors reserve their rights to modify the Plan to assume any such
 6 executory contract on appropriate notice to the counterparty to such contract, by filing an
 7 amended list of assumed executory contracts at any time up to and including the Effective Date.

8 Any other executory contracts or unexpired leases for which the Debtors have not filed a
 9 motion to assume or reject before the Confirmation Date, is rejected. Entry of the Confirmation
 10 Order by the Bankruptcy Court will constitute approval of such rejections pursuant to section
 11 365(a) of the Bankruptcy Code.

12 Notwithstanding the preceding paragraph, on the Effective Date, each Non-Disclosure
 13 Agreement and Common Interest and Joint Defense Agreement that exists between the Debtors
 14 and any person, to the extent that it constitutes an executory contract, is assumed pursuant to the
 15 Plan. Entry of the Confirmation Order by the Bankruptcy Court will constitute approval of such
 16 assumptions pursuant to section 365(a) of the Bankruptcy Code.

17 **G. CONDITIONS TO EFFECTIVENESS**

18 The Plan will not become Effective unless and until the Bankruptcy Court has entered the
 19 Confirmation Order approving the Plan in all respects.

20 **H. RETENTION OF JURISDICTION**

21 The Bankruptcy Court shall retain jurisdiction notwithstanding Confirmation of the Plan
 22 or the occurrence of the Effective Date, over proceedings including, without limitation:

- 23 • To resolve controversies and disputes regarding interpretation of the Plan or the
 24 Confirmation Order, including whether the Debtors has defaulted in performance
 25 of any Plan obligation and whether the time for performing any Plan obligation
 26 should be extended;

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- To implement the provisions of the Plan and Confirmation Order, and to enter orders in aid of Confirmation, including orders designed to protect the Debtors or the Reorganized Debtor, and to facilitate sales of Parcels free and clear of liens;
- To modify the Plan pursuant to section 1127 of the Bankruptcy Code.
- To determine the allowability and classification of Claims upon objection to such claims;
- To adjudicate any causes of action, including Avoidance Actions, brought by the Debtors or the Reorganized Debtor, or any party-in-interest designated to do so;
- To determine whether a trustee should be appointed or the case should be converted to one under chapter 7 (and proceedings following any such conversion); and
- To resolve disputes with COPIA.

I. POST CONFIRMATION ISSUES

1. Discharge.

Pursuant to Section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the rights afforded under this Plan and the Confirmation Order and the treatment of Claims and Interests thereunder shall be in exchange for, and in complete satisfaction, discharge and release of, all Claims. Except as otherwise expressly provided in the Plan or the Confirmation Order, upon the occurrence of the Effective Date, the Debtors shall be discharged, effective immediately, from any Claim and any "debt" (as that term is defined in Section 101(12) of the Bankruptcy Code), and the Debtors' liability in respect thereof shall be extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of the Debtors entered into or obligation of the Debtors incurred before the Effective Date, or from any conduct of the Debtors prior to the Effective Date, or that otherwise arose before the Effective Date, including, without limitation, all interest accrued and expenses incurred, if any, on any such debts, whether such interest accrued or such expenses were incurred before or after the

Deleted: The Plan will in no way limit the Bankruptcy Court's post-confirmation jurisdiction as provided under the Bankruptcy Code. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court will retain and have exclusive jurisdiction (to the extent granted by applicable law, including any provisions permitting mandatory or discretionary withdrawal of such jurisdiction) over any matter (i) arising under the Bankruptcy Code, (ii) arising in or related to the Chapter 11 Cases or the Plan, or (iii) that relates to the following:¶
 Allowance, disallowance, reconsideration, estimation, compromise, settlement, adjustment, treatment, or liquidation of claims and objections thereto;¶
 Allowance of Claims and requests for payment of Administrative Expenses of the Estate;¶
 The rights, title, or interest of the Debtors, as modified or specified under the Plan, in any property, including liens thereon;¶
 Resolution of controversies and disputes, including disputes regarding interpretation of the Plan and the Confirmation Order, and the correction of any mistake, defect, or omission regarding interpretation or enforcement of the Plan and the Confirmation Order;¶
 Modification(s) of the Plan pursuant to Section 1127 of the Bankruptcy Code;¶
 Adjudication of any actions brought by the Debtors or on behalf of the Debtors to enforce any right or recover any claim created, granted, or preserved under the Plan, including, but not limited to, Independent Claims and Causes of Action;¶
 Entry of orders in aid of implementation of this Plan;¶
 Entry of orders authorizing sale of the Debtors' assets free and clear of liens;¶
 Such other matters for which jurisdiction is provided under the Bankruptcy Code, the Plan the Confirmation Order, or other applicable law; and,¶
 Entry of a final decree closing the Chapter 11 Case

Deleted: ~~Payment of Statutory Fees~~¶
 <#>All fees payable through the Effective Date pursuant to section 1930 of Title 28 of the United States Code will be paid on or before the Effective Date. All fees payable after the Effective Date pursuant to section 1930 of Title 28 of the United States Code shall be paid by the Liquidating Debtor.¶
 <#>Exculpation¶

1 Petition Date, and including, without limitation, any liability of a kind specified in Sections
 2 502(g), 502(h) and 502(i) of the Bankruptcy Code, whether or not a proof of Claim was Filed or
 3 is deemed Filed under Section 501 of the Bankruptcy Code, such Claim is allowed under Section
 4 502 of the Bankruptcy Code or the Person holding such Claim has accepted the Plan. The
 5 discharge granted under this Section shall void any judgment obtained against the Debtors or the
 6 Post-Effective-Date Debtors at any time, to the extent that such judgment relates to a discharged
 7 Claim.

8 **2. Vesting of Property.**

9 On the Effective Date, all property of the estate will vest in the Reorganized Debtors
 10 pursuant to Section 1141(b) of the Bankruptcy Code free and clear of all claims and interests
 11 except as provided in this Plan; subject to revesting to the estate upon conversion of the Debtors'
 12 Case to chapter 7 as provided in Article 8.4 below.

13 **3. Plan Creates New Obligations.**

14 The obligations to creditors that Debtors undertakes in the confirmed Plan replace those
 15 obligations to creditors that existed prior to the Effective Date of the Plan. Debtors' obligations
 16 under the confirmed Plan constitute binding contractual promises that, if not satisfied through
 17 performance of the Plan, create a basis for an action for breach of contract under California law.

18 **4. Effect of Conversion to Chapter 7.**

19 If the case is at any time converted to one under chapter 7:
 20 (a) All property of the Debtors as of the date of conversion, whether
 21 acquired pre-confirmation or post-confirmation, shall vest in the chapter 7 bankruptcy estate
 22 and such remaining property shall be administered by the chapter 7 trustee as prescribed in
 23 chapter 7 of the Bankruptcy Code.; and
 24 (b) All creditors, whether their claims arose pre-confirmation or
 25 post-confirmation, are prohibited from taking action against the chapter 7 bankruptcy estate or
 26 property of the estate by Section 362 of the Bankruptcy Code. To the extent permitted under 11
 27 U.S.C. § 1125(e), neither the Debtors nor any of their employees, attorneys, advisors,
 28 members, shareholders, fiduciaries or agents (including any professionals retained by such

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1 persons), nor any of their respective predecessors or successors, will have or incur any liability
 2 to any holder of a Claim or Interest or any other entity for any act or omission in connection
 3 with the pursuit of approval of the Disclosure Statement or the solicitation of votes for or
 4 confirmation of the Plan, except for willful misconduct or gross negligence. ▼

5 **5. Distributions in Satisfaction and Binding Effect of Plan**

6 The obligations to creditors that Debtors undertakes in the confirmed Plan replace
 7 those obligations to creditors that existed prior to the Effective Date of the Plan. Debtors'
 8 obligations under the confirmed Plan constitute binding contractual promises that, if not satisfied
 9 through performance of the Plan, create a basis for an action for breach of contract under
 10 California law,

11 **6. Final Order**

12 Except as otherwise expressly provided in the Plan, any requirement in the Plan for a
 13 Final Order may be waived by the Debtors upon written notice to the Bankruptcy Court. Such
 14 waiver will not prejudice the right of any party in interest to seek a stay pending appeal of any
 15 order that is not a Final Order.

16 **7. Amendments and Modifications**

17 The Debtors, as Plan proponent, may modify the Plan prior to Confirmation if the Plan,
 18 as modified, meets the requirements of the Bankruptcy Code. Such modification shall be
 19 deemed accepted or rejected by a holder of a Claim that has previously accepted or rejected the
 20 Plan.

21 The Reorganized Debtors shall also be permitted to modify this Plan to alter the treatment
 22 of Class 1 Claims, Class 2 Claims, Class 4 Claim, and Class 5 Claims provided that each creditor
 23 holding such Claim consents to such modification, and the modification does not violate the
 24 rights of any Allowed Claim holders that are equal to or senior in priority to such Claims,

25 **8. Withholding and Reporting Requirements**

26 In connection with the Plan and all instruments issued in connection therewith and
 27 distributions thereon, the Debtors will comply with all withholding and reporting requirements
 28

Deleted: Neither the Debtors, nor any of their employees, attorneys, advisors, members, shareholders, fiduciaries or agents (including any professionals retained by such persons), nor any of their respective predecessors or successors, will have or incur any liability as set forth in 11 U.S.C §1125(e) to any holder of a Claim or Interest or any other entity for any act or omission in connection with, or arising out of, the Chapter 11 case, the pursuit of approval of the Disclosure Statement or the solicitation of votes for or confirmation of the Plan or consummation or administration of the Plan or the property to be distributed under the Plan.

Deleted: Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan will bind any holder of a Claim against, or interest in, the Debtors, the Estate and their respective successors or assigns, whether or not the Claim or Interest of such holders is impaired under the Plan and whether or not such holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan, shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity (including, without limitation, any trustee appointed for the Debtors under Chapters 7 or 11 of the Bankruptcy Code). All creditors will continue to be barred from commencing or continuing legal action to collect the debts owed to them, however, all creditors will retain the right to commence legal actions in the Bankruptcy Court to enforce the rights granted to them under the Plan.

Deleted: To the fullest extent permitted under section 1127 of the Bankruptcy Code, the Plan may be altered, amended or modified at any time prior to the Effective Date by the Debtor. At any time after the Effective Date, the Debtors may amend or modify the terms of the Plan if such amendment or modification is approved by the Bankruptcy Court.

1 imposed by any federal, state, local or foreign taxing authority, and all distributions pursuant to
2 the Plan will be subject to any such withholding and reporting requirements.

3 **9. Tax Exemption**

4 Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of
5 any security under the Plan, or the execution, delivery or recording of an instrument of transfer
6 pursuant to, in implementation of or as contemplated by the Plan, including, without limitation,
7 any transfers to or by the Liquidating Debtor of the Debtors' property in implementation of or as
8 contemplated by the Plan will not be taxed under any state or local law imposing a stamp tax,
9 transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar
10 official for any county, city or governmental unit in which any instrument hereunder is to be
11 recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such
12 instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp
13 tax, transfer tax, intangible tax or similar tax.

14 **V. LIQUIDATION ANALYSIS**

15 Pursuant to Bankruptcy Code section 1129(a)(7), unless there is unanimous acceptance of
16 the Plan by an impaired Class, the Plan proponents must demonstrate that, and the Bankruptcy
17 Court must determine that, with respect to such Class, each holder of a Claim or Interest will
18 receive property of a value, as of the Effective Date of the Plan that is not less than the amount
19 that such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy
20 Code on the Effective Date of the Plan. This requirement is commonly referred to as the "best
21 interests test." For the reasons set forth below, the Debtors submit that the proposed Plan
22 satisfies the "best interests test" and therefore should be approved.

23 In a Chapter 7 liquidation, a trustee would be required to make interest payments to
24 Copia almost immediately, failing which, Copia would be granted relief from the automatic stay
25 allowing it to foreclose on the Township Nine property. The Debtors believe that it is highly
26 unlikely (but not impossible) for a Chapter 7 trustee to arrange the financing that would be
27 necessary to make those payments. Consequently, the Debtors believe that the most likely
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1 outcome if the cases converted to Chapter 7 is that the Township Nine property would be lost to
2 foreclosure.

3 In a foreclosure scenario, there are significant questions about whether creditors other
4 than Copia would receive anything. In a foreclosure, all of the Parcels would be sold as one lot
5 at one time. While the Debtors believe that there is significant value to selling the Parcels
6 separately based upon the level of interest shown by developers to date, it is unclear whether a
7 buyer of the entire project would be willing to step in to acquire the whole property. In light of
8 the fact that a foreclosure sale would likely take place within a few months after a conversion to
9 Chapter 7, any parties who would be interested in purchasing the whole project would have very
10 little time to conduct due diligence. For these reasons, the Debtors believe that if the case
11 converted to Chapter 7, no creditor other than Copia would receive anything on account of the
12 money owed to them.⁶

13 In contrast, the Plan would pay all creditors in full, with interest. Accordingly, the
14 Debtors believe the Plan satisfied the best interest of creditors test.

15 VI. CONFIRMATION OF THE PLAN

16 A. Best Interests of Creditors

17 As addressed in the section V above, the Debtors believe that confirmation of the Plan is
18 in the best interest of the holders of Claims because it provides to holders of Impaired Claims
19 distributions having a present value as of the Effective Date of not less than the value such
20 holders would likely receive if the Debtor were liquidated under chapter 7 of the Bankruptcy
21 Code.

22 In sum, the Plan proponents believe that the holders of Claims would realize less value if
23 the case were converted to a chapter 7 case at this point. Conversion would only create
24 unnecessary additional administrative expenses.

25 B. Feasibility

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28 ⁶ Liens senior to Copia's likely would get paid in full, however.

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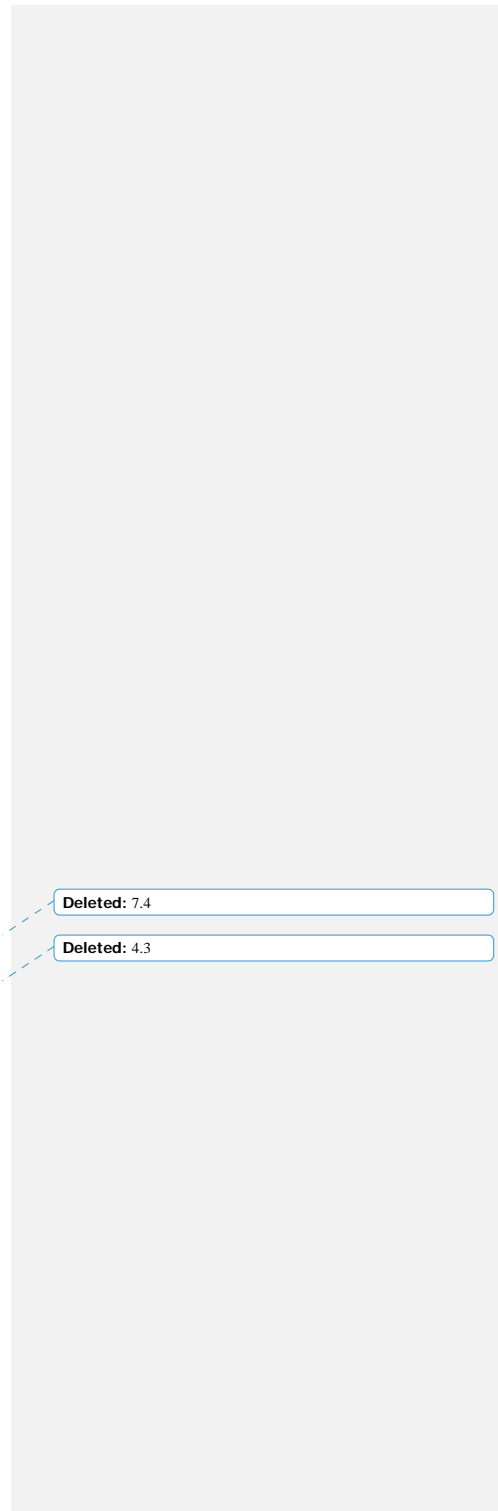
1 In order to confirm a plan, the Bankruptcy Code requires the Bankruptcy Court to find
 2 that confirmation of the Plan is not likely to be followed by liquidation or the need for further
 3 financial reorganization of the debtor, unless that liquidation is contemplated by the plan
 4 (“Feasibility Test”). The Debtors believe that the Plan meets the Feasibility Test because the
 5 Township Nine property is conservatively worth in excess of \$80 million if the Parcels can be
 6 sold separately under a normal marketing process. Even this conservative sum is well over the
 7 amount owed to creditors.

8 The success of the Plan depends upon the ability to move forward with development and
 9 selling individual Parcels, and the Debtors submit that they have shown an ability to do that.
 10 Again, the Debtors are in contract to sell several of the Parcels to Anthem – notably at price
 11 significantly above the March 2016 appraised value. The Debtors are also in negotiations with
 12 other serious potential purchasers of other parcels. Given the level of interest in Township Nine
 13 (and the generally improving market conditions in the Sacramento Area), the Debtors are
 14 confident that a sufficient number of Parcel sales can be closed within 36 months to pay all
 15 creditors in full, with interest.

16 Finally, the projections attached as Exhibit B allow for accumulation of cash reserves
 17 over and above what is paid to creditors. For example, in September 2020, Copia is expected to
 18 have been paid down to approximately \$5.4 million, and the Debtors will at that time have a
 19 \$12.9 million cash reserve. The Debtors believe that these funds will provide additional liquidity
 20 in order to meet unanticipated expenses, and these funds could also be used to satisfy any
 21 remaining obligations to creditors under the Plan.

22 **C. Acceptance By Impaired Classes**

23 Section 1129(a) of the Bankruptcy Code requires that each class of claims or interests
 24 that is impaired under a plan accept the plan subject to the “cramdown” exception contained in
 25 section 1129(b) of the Bankruptcy Code. Under section 1129(b) of the Bankruptcy Code, if at
 26 least one but not all impaired classes do not accept the Plan, the Court may nonetheless confirm
 27 the Plan if the non-accepting classes are treated in the manner required by the Bankruptcy Code.
 28 The process by which non-accepting classes are forced to be bound by the terms of the Plan is



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1 commonly referred to as “cramdown.” The Bankruptcy Code allows the Plan to be “crammed
2 down” on non-accepting classes of claims or interests if (i) the Plan meets all confirmation
3 requirements except the requirement of section 1129(a)(8) of the Bankruptcy Code that the Plan
4 be accepted by each class of claims or interests that is impaired and (ii) the Plan does not
5 “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted
6 to accept the Plan, as referred to in section 1129(b) of the Bankruptcy Code and applicable case
7 law.

8 A class of claims under a plan accepts the plan if the plan is accepted by creditors that
9 hold at least two-thirds in amount and more than one-half in number of the allowed claims in the
10 class that actually vote on the plan. A class of interests accepts the plan if the plan is accepted by
11 holders of interests that hold at least two-thirds in amount of the allowed interests in the class
12 that actually vote on a plan.

13 A class that is not “impaired” under a plan is conclusively presumed to have accepted the
14 plan. Solicitation of acceptances from such a class is not required. A class is “impaired” unless
15 (i) the legal, equitable and contractual rights to which a claim or interest in the class entitles the
16 holder are not modified or (ii) the effect of any default is cured and the original terms of the
17 obligation are reinstated.

18 Under the Plan, Class 1 (General Unsecured Claims) and Class 4 (Copia), Class 5(a) (The
19 Growing Company), and 5(c) (Studebaker Brown Electric, Inc.) are impaired under the Plan and
20 entitled to vote to accept or reject the Plan.

21 If any impaired Class fails to accept the Plan, the Debtors intend to request that the
22 Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code with
23 respect to those Classes.

24 VII. CONCLUSION

25 **THE DEBTORS URGE YOU TO VOTE TO ACCEPT THE PLAN AND TO**
26 **RETURN YOUR BALLOTS SO THAT THEY WILL BE RECEIVED AT THE**
27 **ADDRESS AND PURSUANT TO THE PROCEDURES DESCRIBED IN SECTION IN**

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1 THIS DISCLOSURE STATEMENT, NO LATER THAN 4:00 p.m. PACIFIC TIME ON
2 _____, 2017.

3
4 Dated: September 12, 2017

NUTI HART LLP

By: /s/ Kevin W. Coleman
Gregory C. Nuti
Kevin Coleman

Attorneys for Capitol Station 65, LLC; Capitol
Station Member, LLC; Capitol Station Holdings,
LLC and Township Nine Owners, LLC,
Debtors-in-Possession

Deleted: August 28

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