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Debtor and Debtor in Possession

8 Reorganization Counsel for the
9 Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re:
13 NEVADA CANCER INSTITUTE, a
14 Nevada nonprofit corporation,¹
15 Debtor.

Case No. 2:11-bk-28676 (MKN)
Chapter 11

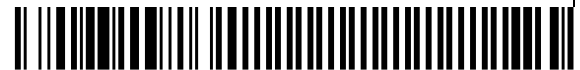
**NOTICE OF SUBMISSION OF: (1)
AMENDED CHAPTER 11 PLAN OF
REORGANIZATION FOR
NEVADA CANCER INSTITUTE (DATED
JANUARY 31, 2012); (2) [PROPOSED]
DISCLOSURE STATEMENT DESCRIBING
AMENDED CHAPTER 11 PLAN OF
REORGANIZATION FOR NEVADA
CANCER INSTITUTE (DATED JANUARY
31, 2012); (3) LIQUIDATION ANALYSIS;
AND (4) CREDITOR TRUST AGREEMENT**

Disclosure Statement Hearing

Hearing Date: February 3, 2012
Hearing Time: 11:00 a.m.
Place: Courtroom 2 (3rd Floor)
Foley Federal Building
300 Las Vegas Blvd. South
Las Vegas, NV 89101

26 _____
27 ¹ The Debtor's address and last four digits of its Federal Tax I.D. are: One Breakthrough Way,
28 Las Vegas, NV 89135 [EIN XX-XXX2553].

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1 **PLEASE TAKE NOTICE** that Nevada Cancer Institute, a Nevada nonprofit corporation,
2 hereby submits the following documents in connection with the disclosure statement hearing
3 scheduled for February 3, 2012 at 11:00 a.m.:

- 4 1. The *Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute*
5 (*Dated January 31, 2012*) (the “Amended Plan”) is annexed hereto as Exhibit 1.
- 6 2. A blacklined copy comparing the changes between the Amended Plan and the
7 *Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated December*
8 *6, 2011)* is annexed hereto as Exhibit 2.
- 9 3. The *[Proposed] Disclosure Statement Describing Amended Chapter 11 Plan of*
10 *Reorganization for Nevada Cancer Institute (Dated January 31, 2012)* (the
11 “Amended Disclosure Statement”) is annexed hereto as Exhibit 3.
- 12 4. A blacklined copy comparing the changes between the Amended Disclosure
13 Statement and the *[Proposed] Disclosure Statement Describing Amended Chapter*
14 *11 Plan of Reorganization for Nevada Cancer Institute (Dated December 6, 2011)*
15 is annexed hereto as Exhibit 4.
- 16 5. The proposed form of Creditor Trust Agreement, an Exhibit to the Amended Plan,
17 is annexed hereto as Exhibit 5.
- 18 6. The Liquidation Analysis, an Exhibit to the Amended Disclosure Statement, is
19 annexed hereto as Exhibit 6.

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DATED: February 1, 2012

/s/ Courtney E. Pozmantier (Admitted Pro Hac Vice)
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-and-

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Exhibit 1

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11 **DISTRICT OF NEVADA**

12 In re:
13 NEVADA CANCER INSTITUTE, a Nevada
14 nonprofit corporation,¹
15 Debtor.

Case No.: 2:11-bk-28676 (MKN)

Chapter 11

**AMENDED CHAPTER 11 PLAN OF
REORGANIZATION FOR
NEVADA CANCER INSTITUTE
(DATED JANUARY 31, 2012)**

KLEE, TUCHIN, BOGDANOFF & STERN LLP
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27 ¹ The Debtor's address and last four digits of its Federal Tax I.D. are: One Breakthrough Way, Las
28 Vegas, NV 89135 [EIN XX-XXX2553].

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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
A	Amended Articles of Incorporation and Bylaws
B	List of Directors and Officers for Reorganized Debtor
C	Creditor Trust Agreement
D	Schedule of Assumed Contracts
E	Schedule of Rejected Contracts
F	Preserved Claims

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1 This Plan of Reorganization is proposed by Nevada Cancer Institute, a Nevada nonprofit
2 corporation, the debtor and debtor in possession in the above-captioned chapter 11 case:

3 **I.**

4 **DEFINITIONS AND RULES OF CONSTRUCTION**

5 **A. Definitions.**

6 In addition to such other terms as are defined elsewhere in the Plan, the following terms
7 (which appear in the Plan as capitalized terms) have the following meanings as used in the Plan:

8 **“503(b)(9) Bar Date”** means January 30, 2012, the date established by the Court as the
9 deadline to file 503(b)(9) Claims.

10 **“503(b)(9) Claim”** means a claim against the Debtor entitled to treatment as an administrative
11 expense under Bankruptcy Code section 503(b)(9).

12 **“Administration Building Parcel”** means that certain real property identified by the Clark
13 County Assessor as APN 164-13-712-020.

14 **“Administrative Claim”** means a Claim against the Estate for administrative costs or
15 expenses entitled to priority under Bankruptcy Code section 507(a)(2) or (b).

16 **“Agent”** means Bank of America, N.A., as administrative agent under the Prepetition Credit
17 Agreement.

18 **“Aggregate Unsecured Creditor Consideration”** means the sum of \$750,000.

19 **“Allowed” or “Allowed _____ Claim”** means:

20 (a) with respect to a Claim against the Debtor arising prior to the Petition Date (including
21 a 503(b)(9) Claim):

22 (i) either: (1) a proof of claim was timely Filed; or (2) a proof of claim is deemed
23 timely Filed either under Bankruptcy Rule 3003(b)(1)-(2) or by a Final Order;
24 and

25 (ii) either: (1) the Claim is not a Disputed Claim; or (2) the Claim is allowed by a
26 Final Order or under the Plan; and

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1 (b) with respect to a Claim against the Estate arising on or after the Petition Date
2 (excluding a 503(b)(9) Claim), a Claim that has been allowed pursuant to Section
3 II.B.1.

4 Unless otherwise specified in the Plan, an Allowed Claim does not include interest on the
5 Claim accruing after the Petition Date. Moreover, any portion of a Claim that is satisfied, released or
6 waived during the Case is not an Allowed Claim.

7 “**Alta-Hualapai Parcel**” means approximately 19 acres of undeveloped land in Las Vegas,
8 Nevada, granted to the Borrower by the United States, through the Bureau of Land Management,
9 pursuant to Section 2603 of the Omnibus Public Land Management Act of 2009.

10 “**Amended Articles of Incorporation and Bylaws**” means the Articles of Incorporation and
11 Bylaws for the Reorganized Debtor which shall be in substantially the form Filed by the Exhibit Filing
12 Date. Upon such filing, the Amended Articles of Incorporation and Bylaws shall become Exhibit A to
13 the Plan (subject to any modifications made thereto prior to the Confirmation Date).

14 “**APA**” means that certain Asset Purchase Agreement by and between the Debtor and UCSD,
15 dated December 2, 2011.

16 “**Approving Lenders**” means the Lenders comprising holders owning more than 66 2/3% in
17 aggregate principal amount and representing more than 50% of the number of holders of the debt
18 under the Prepetition Credit Agreement.

19 “**Ballot**” means the ballot to vote to accept or reject the Plan.

20 “**Ballot Deadline**” means the deadline established by the Court for the delivery of executed
21 Ballots to the Ballot Tabulator.

22 “**Ballot Tabulator**” means Shanda D. Dahl, a paralegal with Debtor’s Counsel, or any other
23 person or entity designated by the Debtor’s Counsel to tabulate ballots.

24 “**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

25 “**Bankruptcy Rules**” means, collectively, (a) the Federal Rules of Bankruptcy Procedure and
26 (b) the Local Bankruptcy Rules for this Court, as applicable in the Case.

27 “**Bar Date Notice**” means the *Notice of Bar Dates for Filing Proofs of Claim (Including*
28 *Administrative Expense Claims Under Bankruptcy Code Section 503(b)(9)), Consequences for Failure*

1 to *Timely Comply, and Related Procedures* [Docket No. 101], which sets forth certain dates, deadlines
2 and procedures relevant to filing proofs of claim in this Case pursuant to the *Order (1) Fixing*
3 *Deadlines for Filing Proofs of Claim; (2) Establishing Consequences of Failing to Comply Therewith;*
4 *and (3) Approving Form and Manner of Notice Thereof* [Docket No. 73] and the Claims Agent
5 Guidelines.

6 “**Bill of Sale**” means the Assignment and Assumption and Bill of Sale executed and delivered
7 in connection with the UCSD Sale.

8 “**Board**” means the board of directors for the Debtor.

9 “**Business Day**” means a day that is not a Saturday, Sunday, or legal holiday.

10 “**Case**” means the Debtor’s case under chapter 11 of the Bankruptcy Code.

11 “**Cash Collateral Account**” means that certain cash collateral account established prior to the
12 Petition Date as collateral for the Lender Claims (and any successor account), referred to in the Cash
13 Collateral Orders as the “Blocked Account.”

14 “**Cash Collateral Orders**” means the Interim Cash Collateral Order and the Final Cash
15 Collateral Order.

16 “**Cash Collateral Stipulation**” means the *Stipulation Between Bank of America, N.A. as*
17 *Administrative Agent, and Debtor in Possession Re (A) Use of Cash Collateral Pursuant to 11 U.S.C.*
18 *§ 363 and (B) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, and 363 Nunc Pro*
19 *Tunc to the Petition Date* [Docket No. 9-1], as modified by the Final Cash Collateral Order.

20 “**Charitable Trust Funds**” means certain funds that are subject to donor restrictions limiting
21 the use of such funds for specified research, treatment, patient support and/or other charitable
22 purposes by the Debtor, and that are maintained in one or more segregated accounts of the Debtor, or
23 in one or more escrow accounts, in all cases subject to such restrictions. Charitable Trust Funds
24 include without limitation the Engelstad Endowment Fund, the Patient Cares Committee Fund, the
25 Saffer Endowment Fund, and the Escrowed Donations.

26 “**Claim**” means a claim, as Bankruptcy Code section 101(5) defines the term “claim.”

27 “**Claims Agent**” means Kurtzman Carson Consultants, LLC, the Debtor’s Court-appointed
28 claims and noticing agent pursuant to the *Order Approving Application of Debtor for Authorization to*

1 *Employ Kurtzman Carson Consultants LLC as Claims and Noticing Agent Pursuant to 28 U.S.C. §*
2 *156(c)* [Docket No. 86] and the Claims Agent Guidelines.

3 **“Claims Agent Guidelines”** means the *Guidelines for a Claims Agent* promulgated by the
4 United States Bankruptcy Court for the District of Nevada.

5 **“Claims Objection Deadline”** means the date that is the later of (a) 180 days after the
6 Effective Date, unless extended by the Court, and (b) 180 days after the date on which a proof of
7 claim in respect of a Claim against the Debtor has been Filed, unless extended by the Court.

8 **“Class”** means a group of Claims against the Debtor as classified in Section II.A, or any
9 subclass thereof.

10 **“Committee Administrative Expense Claims”** means the aggregate of (i) all Allowed
11 Professional Fee Claims of professionals employed by the Creditors’ Committee and (ii) all Allowed
12 Administrative Claims of members of the Creditors’ Committee for expenses incurred in the
13 performance of the duties of such committee.

14 **“Confirmation Date”** means the date of entry of the Confirmation Order.

15 **“Confirmation Documents”** means the briefs, memoranda, declarations, and other writings
16 and evidence submitted by the Debtor in support of confirmation of the Plan.

17 **“Confirmation Hearing”** means the hearing by the Court on confirmation of the Plan.

18 **“Confirmation Order”** means the Court order confirming the Plan.

19 **“Consenting Lenders”** means the Lenders signatory to the Plan Support Agreement.

20 **“Court”** means the United States Bankruptcy Court for the District of Nevada, or any other
21 court that exercises jurisdiction over the Case.

22 **“Creditor Trust”** means that certain creditor trust to be established on the Effective Date
23 pursuant to the Creditor Trust Agreement and this Plan.

24 **“Creditor Trust Agreement”** means the agreement pursuant to which the Creditor Trust will
25 be formed and implemented, the substantially final version of which shall be Filed by the Exhibit
26 Filing Date and become Exhibit C to the Plan.

27 **“Creditor Trust Assets”** means: (i) the Unsecured Creditor Cash, if any, (ii) the Preserved
28 Avoidance Actions, the Preserved Claims and any other Claims, rights and causes of action vested in

1 the Creditor Trust pursuant to Section IV.F, and (iii) any Charitable Trust Funds remitted to the
2 Creditor Trust with respect to a successful Trust Funds Challenge pursuant to Section II.C.4.

3 **“Creditor Trustee”** means a trustee of the Creditor Trust.

4 **“Creditors’ Committee”** means the official committee of unsecured creditors appointed
5 under Bankruptcy Code section 1102 by the U.S. Trustee.

6 **“Cure Payment”** means the payment of cash or the distribution of other property (as the
7 parties may agree or the Court may order), that is necessary to cure any and all defaults under an
8 executory contract or unexpired lease of the Debtor so that the contract or lease may be assumed, or
9 assumed and assigned, pursuant to Bankruptcy Code section 1123(b)(2).

10 **“Debtor”** means Nevada Cancer Institute, a Nevada nonprofit corporation.

11 **“Debtor’s Counsel”** means Klee, Tuchin, Bogdanoff & Stern LLP, reorganization counsel to
12 the Debtor.

13 **“Debtor’s Co-counsel”** means Lewis and Roca LLP, reorganization co-counsel to the Debtor.

14 **“Disallowed Claim”** means a Claim against the Debtor that: (a) is not listed on the Schedules,
15 or is listed therein as contingent, unliquidated, disputed, or in an amount equal to zero, and whose
16 holder has failed to timely File a proof of claim; or (b) the Court has disallowed pursuant to an order
17 of the Court.

18 **“Disclosure Statement”** means the disclosure statement to accompany the Plan, as it
19 subsequently may be modified or amended.

20 **“Disputed Claim”** means a Claim against the Debtor:

21 (a) as to which a proof of claim is Filed or is deemed Filed under Bankruptcy Rule
22 3003(b)(1); and

23 (b) as to which:

24 (i) An objection: (1) has been timely Filed; and (2) has not been denied
25 by a Final Order or withdrawn; or

26 (ii) That Claim is listed on the Debtor’s Schedules as disputed,
27 contingent or unliquidated.

28

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1 **“Donations Escrow”** means that certain escrow established postpetition by the Debtor with
2 Blackmore Escrow, Inc. for the purpose of holding certain donor-restricted contributions pursuant to
3 the *Order Granting Debtor’s Motion Pursuant To Bankruptcy Code Sections 105(a), 363(b) and*
4 *363(c) For Order Authorizing The Deposit Of Donor-Restricted Donations Into Escrow Account*
5 [Docket No. 141].

6 **“Donations Escrow Agreement”** means that certain Escrow Agreement by and between the
7 Debtor and Blackmore Escrow, Inc. dated as of December 15, 2011 governing the Donations Escrow.

8 **“Effective Date”** means the first Business Day on which the conditions set forth in Section
9 IV.M.1 have been satisfied or waived by the Debtor and on which no stay of the Confirmation Order
10 is in effect.

11 **“Engelstad Endowment Agreement”** means that certain Gift Agreement dated January 4,
12 2007 between the Debtor and the Engelstad Family Foundation, as modified by the Engelstad
13 Endowment Modification.

14 **“Engelstad Endowment Escrow”** means that certain escrow established prepetition by the
15 Debtor with Blackmore Escrow, Inc., pursuant to which the Engelstad Endowment Fund serves as a
16 financial backstop to a substantial portion of the Philanthropic Commitment, as authorized by the
17 Engelstad Endowment Modification.

18 **“Engelstad Endowment Escrow Agreement”** means the certain Escrow Agreement by and
19 among the Debtor, UCSD and Blackmore Escrow, Inc. dated December 2, 2011, which governs the
20 Engelstad Endowment Escrow.

21 **“Engelstad Endowment Fund”** means those certain segregated funds subject to the Engelstad
22 Endowment Agreement, which funds presently are held in the Engelstad Endowment Escrow.

23 **“Engelstad Endowment Modification”** means that certain First Amendment to Gift
24 Agreement dated November 15, 2011 between the Debtor and the Engelstad Family Foundation,
25 pursuant to which the Debtor was authorized to transfer (and did transfer) the Engelstad Endowment
26 Fund to the Engelstad Endowment Escrow.

27 **“Escrowed Donations”** means the funds held from time to time in the Donations Escrow.

28 **“Estate”** means the estate created in the Case under Bankruptcy Code section 541.

1 **“Exhibit Filing Date”** means the last Business Day that is at least ten (10) days before the
2 Confirmation Hearing.

3 **“Filed”** means duly and properly filed with the Court and reflected on the Court’s official
4 docket, except with respect to proofs of claim that must be filed with the Court-appointed Claims
5 Agent pursuant to the Bar Date Notice, in which case “Filed” means duly and properly filed with the
6 Claims Agent and reflected on the official claims docket maintained by the Claims Agent.

7 **“Final Cash Collateral Order”** means the *Final Order Authorizing (A) Use of Cash*
8 *Collateral Pursuant to 11 U.S.C. § 363 and (B) Grant Of Adequate Protection Pursuant to 11 U.S.C.*
9 *§§ 361, 362 and 363 Nunc Pro Tunc to the Petition Date* [Docket No. 281].

10 **“Final Order”** means an order or judgment of the Court entered on the Court’s official
11 docket:

- 12 (a) that has not been reversed, rescinded, stayed, modified, or amended;
- 13 (b) that is in full force and effect; and
- 14 (c) with respect to which: (1) the time to appeal or to seek review, remand, rehearing, or a
15 writ of certiorari has expired and as to which no timely filed appeal or petition for review, rehearing,
16 remand, or writ of certiorari is pending; or (2) any such appeal or petition has been dismissed or
17 resolved by the highest court to which the order or judgment was appealed or from which review,
18 rehearing, remand, or a writ of certiorari was sought.

19 **“Flagship Building”** means collectively the real property identified by the Clark County
20 Assessor as APN 164-13-712-010 and that certain treatment and research building constructed
21 thereon.

22 **“Funding Agreement”** means that certain Funding Agreement by and between the Debtor
23 and UCSD, executed and delivered in connection with the UCSD Sale.

24 **“General Unsecured Claim”** means a Claim against the Debtor that is not an Administrative
25 Claim, a Priority Claim, a Priority Tax Claim, a Secured Claim, a Secured Tax Claim, or an Other
26 Secured Claim.

27
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1 **“Interim Cash Collateral Order”** means the *Interim Order Authorizing (A) Use of Cash*
2 *Collateral Pursuant to 11 U.S.C. § 363 and (B) Grant Of Adequate Protection Pursuant to 11 U.S.C.*
3 *§§ 361, 362 and 363 Nunc Pro Tunc to the Petition Date* [Docket No. 65].

4 **“Lender” or “Lenders”** means any or all of the lenders holding debt under the Prepetition
5 Credit Agreement.

6 **“Lender Claims”** means all Claims of the Agent and the Lenders against the Debtor,
7 including Claims arising under the Prepetition Credit Agreement and all other Prepetition Credit
8 Documents and the Cash Collateral Orders.

9 **“Lender Deficiency Claims”** means Lender Claims that are not Secured Claims.

10 **“Lender Secured Claims”** means Lender Claims that are Secured Claims.

11 **“License Agreement”** means the Non-Exclusive License Agreement by and between UCSD,
12 as licensor, and the Debtor, as licensee, executed and delivered in connection with the UCSD Sale.

13 **“List of Directors and Officers”** means the list of individuals that will serve as directors and
14 officers of the Reorganized Debtor. On or before the Exhibit Filing Date, the Debtor will File the List
15 of Directors and Officers. Upon filing, such List shall become Exhibit B to the Plan (subject to any
16 modifications made prior to the Confirmation Date).

17 **“LR _____”** means a rule under the Local Rules of Bankruptcy Practice of the United States
18 District Court for the District of Nevada.

19 **“Net Trust Assets”** means all cash comprising and/or cash proceeds recovered in respect of
20 the Creditor Trust Assets, minus (i) all expenses of the Creditor Trust incurred in generating any cash
21 proceeds, including all attorneys’ fees and expenses, expert witness fees and expenses and court costs,
22 and (ii) all expenses incurred in prosecuting objections to Class 4 Claims and administering the
23 Creditor Trust, including all attorneys’ fees and expenses, expert witness fees and expenses and court
24 costs.

25 **“Non-Ordinary Course Administrative Claim”** means any Administrative Claim other than
26 an Ordinary Course Administrative Claim, a Professional Fee Claim, a 503(b)(9) Claim, a Cure
27 Payment, or a U.S. Trustee Fee.

28

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1 **“Ordinary Course Administrative Claims”** means Administrative Claims based upon
2 liabilities that the Debtor incurs in the ordinary course of its business for goods and services and that
3 are unpaid as of the Effective Date. Ordinary Course Administrative Claims do not include
4 Professional Fee Claims, 503(b)(9) Claims, Cure Payments or U.S. Trustee Fees.

5 **“Other Secured Claims”** means any Secured Claims that are not otherwise expressly
6 classified under the Plan.

7 **“Patient Cares Committee Fund”** means those certain segregated funds solicited by and
8 donated to the Debtor for the express charitable purpose of providing financial aid to Nevada cancer
9 patients in need of financial support.

10 **“Permanent Injunction”** has the meaning set forth in Section VII.A.

11 **“Petition Date”** means December 2, 2011.

12 **“Philanthropic Commitment”** means the obligation of the Debtor and Reorganized Debtor
13 under the Funding Agreement to raise and remit to UCSD philanthropic donations, in the amounts and
14 on the dates specified in the Funding Agreement.

15 **“Plan”** means this “Amended Chapter 11 Plan of Reorganization For Nevada Cancer Institute
16 (Dated January 31, 2012),” as it subsequently may be modified or amended.

17 **“Plan Support Agreement”** means that certain Plan Support Agreement dated as of
18 September 16, 2011 between the Debtor, the Agent and the Consenting Lenders, as such agreement
19 has been and subsequently may be amended.

20 **“Prepetition Credit Agreement”** means that certain Amended and Restated Credit and
21 Reimbursement Agreement dated as of April 23, 2008 (as amended from time to time) among the
22 Debtor, the lenders referred to therein and Bank of America, N.A., as administrative agent for such
23 lenders.

24 **“Prepetition Credit Documents”** means the Prepetition Credit Agreement, together with the
25 other agreements, instruments and documents contemplated thereby, including the Prepetition Deed of
26 Trust.

27 **“Prepetition Deed of Trust”** means that certain Amended and Restated Construction Deed of
28 Trust with Assignment of Rents, Security Agreement and Fixture Filing dated April 23, 2008,

1 executed by the Debtor in respect of the Prepetition Credit Agreement (as modified from time to
2 time).

3 **“Preserved Avoidance Actions”** means causes of action held by the Debtor or the Estate that
4 arise under chapter 5 of the Bankruptcy Code that are to be transferred to the Creditor Trust on the
5 Effective Date, as set forth on Schedule 4 to the Disclosure Statement.

6 **“Preserved Claims”** means the Claims identified on Exhibit F to the Plan, against the parties
7 identified thereon, which Claims are to be transferred to the Creditor Trust on the Effective Date.

8 **“Priority Claim”** means an Allowed Claim entitled to priority under Bankruptcy Code
9 sections 507(a)(4), 507(a)(5), or 507(a)(7). Priority Claims do not include any Claims that accrue
10 after the Petition Date.

11 **“Priority Tax Claim”** means an Allowed Claim entitled to priority under Bankruptcy Code
12 section 507(a)(8). Priority Tax Claims do not include any Claims that accrue after the Petition Date.

13 **“Pro Rata”** means proportionately so that the ratio of (a) the amount of consideration
14 distributed on account of a particular Allowed Claim to (b) the Allowed Claim, is the same as the ratio
15 of (x) the amount of consideration available for distribution on account of Allowed Claims in the
16 Class in which the particular Allowed Claim is included to (y) the amount of all Allowed Claims of
17 that Class.

18 **“Professional Fee Claim”** means a Claim under Bankruptcy Code sections 327, 328, 330,
19 331, 503, or 1103 for compensation for professional services rendered or expenses incurred for which
20 the Estate is liable for payment.

21 **“Rejection Damage Claim”** means a Claim against the Debtor arising under Bankruptcy
22 Code section 365 from the rejection by the Debtor of an unexpired lease or executory contract.

23 **“Released Parties”** means each of (1) the Agent, the Lenders, current and former donors to
24 the Debtor (in their capacity as donors), employees, officers and directors of the Debtor as of January
25 30, 2012, Stephen Cloobek, and Robert Melendres, and (2) as applicable, their respective
26 accountants, affiliates, agents, assigns, attorneys, bankers, consultants, directors, financial advisors,
27 heirs, members, officers, parent entities, partners, representatives, shareholders, subsidiaries, and
28 successors, provided, however, that the parties listed on Exhibit F (and their respective accountants,

1 affiliates, agents, assigns, attorneys, bankers, consultants, directors, financial advisors, heirs,
2 members, officers, parent entities, partners, representatives, shareholders, subsidiaries, and successors)
3 shall not constitute “Released Parties.”

4 **“Reorganized Debtor”** means the Debtor on and after the Effective Date, after giving effect
5 to the Plan.

6 **“Research Building”** means collectively the real property identified by the Clark County
7 Assessor as APN 164-13-618-001 and the research building constructed thereon.

8 **“Research Building Note”** means the note to be issued by the Reorganized Debtor on the
9 Effective Date, with the terms and conditions described in Section II.C.1.

10 **“Saffer Endowment Agreement”** means a certain Gift Agreement executed by the Debtor
11 and the donors thereof in December 2008 (as amended from time to time).

12 **“Saffer Endowment Fund”** means The Sandra and Morton Saffer Cancer Research
13 Endowment Fund, which comprises a fund of approximately \$350,000 governed by the Saffer
14 Endowment Agreement.

15 **“Schedule of Assumed Agreements”** means the schedule of executory contracts and
16 unexpired leases that the Debtor will assume on the Effective Date. On or before the Exhibit Filing
17 Date, the Debtor will File its initial Schedule of Assumed Agreements and serve it on the parties to
18 agreements listed on that schedule. Upon filing, such Schedule shall become Exhibit D to the Plan
19 (subject to any modifications made prior to the Confirmation Date).

20 **“Schedule of Rejected Agreements”** means the schedule of executory contracts and
21 unexpired leases that the Debtor will reject on the Effective Date. On or before the Exhibit Filing
22 Date, the Debtor will File its initial Schedule of Rejected Agreements and serve it on the parties to
23 agreements listed on that schedule. Upon filing, such schedule shall become Exhibit E to the Plan
24 (subject to any modification made prior to the Confirmation Date).

25 **“Schedules”** means the Schedules of Assets and Liabilities Filed by the Debtor as such
26 Schedules may have been, or may subsequently be, amended before the Effective Date.

27 **“Secured Claim”** means a Claim against the Debtor, including a Secured Tax Claim and
28 Other Secured Claim, that is secured by a lien on property of the Debtor. A Claim against the Debtor

1 is a Secured Claim only to the extent of the value of the claimholder’s interest in the Debtor’s interest
2 in the collateral or to the extent of the amount subject to setoff against a Claim held by the Debtor,
3 whichever is applicable, and as determined under Bankruptcy Code section 506(a).

4 **“Secured Tax Claim”** means a governmental unit’s Secured Claim against the Debtor for
5 unpaid taxes.

6 **“Sufficiency Determination Date”** means the date upon which it is determined, following
7 review and agreement by and among the Debtor, the Agent and the Creditors’ Committee or the
8 Creditor Trust (if after the Effective Date), whether there are sufficient funds in the Estate to satisfy
9 the Aggregate Unsecured Creditor Consideration after payment of, or adequate reserve for, all
10 Allowed Administrative Claims authorized to be paid under the Cash Collateral Stipulation; provided
11 that if the parties do not agree and the Court must resolve the issue pursuant to Section II.C.4, the
12 Sufficiency Determination Date shall be the date upon which the Court enters its order resolving the
13 issue.

14 **“Trust Funds Challenge”** means a civil action or other legal proceeding challenging whether
15 any of the Charitable Trust Funds are legally held in trust, or are available for general corporate
16 purposes of the Debtor, including the satisfaction of Administrative Claims, Priority Claims and
17 General Unsecured Claims.

18 **“UCSD”** means The Regents of the University of California on behalf of its UC San Diego
19 Health System.

20 **“UCSD Sale”** means the sale of the Flagship Building and substantially all of the Debtor’s
21 assets, properties and rights relating to the Debtor’s cancer business at the Flagship Building, and
22 certain other assets, pursuant to the *Order (1) Approving Sale of Debtor’s Assets Under Asset*
23 *Purchase Agreement Free And Clear of Liens, Claims and Encumbrances and (2) Approving*
24 *Assumption and Assignment of Unexpired Leases and Executory Contracts* [Docket No. 280].

25 **“Unsecured Creditor Cash”** means cash in an amount equal to (i) the Aggregate Unsecured
26 Creditor Consideration minus (ii) all Allowed Committee Administrative Expense Claims incurred in
27 the Case; provided that if the result of the foregoing calculation is a negative integer, the Unsecured
28 Creditor Cash shall be zero.

1 “U.S. Trustee” means the Office of the United States Trustee for the District of Nevada.

2 “U.S. Trustee Fees” means fees or charges assessed against the Estate pursuant to 28 U.S.C.
3 § 1930.

4 “Vacant Land” means approximately 9.24 acres of unimproved real property owned by the
5 Debtor and identified by the Clark County Assessor as APN 164-13-712-015.

6 **B. Rules of Construction.**

7 1. The rules of construction in Bankruptcy Code section 102 apply to this Plan to the
8 extent not inconsistent herewith.

9 2. Bankruptcy Rule 9006(a) applies when computing any time period under the Plan.

10 3. A term that is used in this Plan and that is not defined in this Plan has the meaning
11 attributed to that term, if any, in the Bankruptcy Code or the Bankruptcy Rules.

12 4. The definition given to any term or provision in the Plan supersedes and controls
13 any different meaning that may be given to that term or provision in the Disclosure Statement.

14 5. Whenever it is appropriate from the context, each term, whether stated in the
15 singular or the plural, includes both the singular and the plural.

16 6. Any reference to a document or instrument being in a particular form or on
17 particular terms means that the document or instrument will be substantially in that form or on
18 those terms. No material change to the form or terms may be made after the Confirmation Date
19 without the consent of any party materially negatively affected.

20 7. Any reference to an existing document means the document as it has been, or may
21 be, amended or supplemented.

22 8. Unless otherwise indicated, the phrase “under the Plan” and similar words or
23 phrases refer to this Plan in its entirety rather than to only a portion of the Plan.

24 9. Unless otherwise specified, all references to Sections or Exhibits are references to
25 this Plan’s Sections or Exhibits.

26 10. The words “herein,” “hereto,” “hereunder,” and other words of similar import refer
27 to this Plan in its entirety rather than to only a particular portion hereof.

28

1 **II.**

2 **DESIGNATION OF CLASSES AND TREATMENT OF CLAIMS**

3 **A. Summary and Classification of Claims.**

4 This Section classifies Claims against the Debtor — except for Administrative Claims and
 5 Priority Tax Claims, which are not classified — for all purposes, including voting, confirmation, and
 6 distribution under the Plan. A Claim against the Debtor is classified in a particular Class only to the
 7 extent that the Claim falls within the Class description. To the extent that part of the Claim against the
 8 Debtor falls within a different Class description, the Claim is classified in that different Class. The
 9 following table summarizes the Classes of Claims under the Plan:

10

11 CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
12 None	Administrative Claims and Priority Tax Claims	Unimpaired	Not Entitled to Vote
13 Class 1	Lender Secured Claims	Impaired	Entitled to Vote
14 Class 2	Other Secured Claims (includes Secured Tax Claims)	Unimpaired	Not Entitled to Vote Deemed to Accept
15 Class 3	Priority Claims (excludes Priority Tax Claims)	Unimpaired	Not Entitled to Vote Deemed to Accept
16 Class 4	General Unsecured Claims	Impaired	Entitled to Vote

17
18
19

20 **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, NO**
 21 **DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON**
 22 **ACCOUNT OF ANY CLAIM AGAINST THE DEBTOR OR THE ESTATE THAT IS NOT**
 23 **AN ALLOWED CLAIM.**

24 The treatment in this Plan is in full and complete satisfaction of the legal, contractual, and
 25 equitable rights (including any liens) that each entity holding a Claim may have against the Debtor or
 26 the Estate. This treatment supersedes and replaces any agreements or rights that any holder of a Claim
 27 may have with or against the Debtor, the Estate, or their respective property. All distributions in
 28 respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claim, as

1 determined for federal income tax purposes, and thereafter, to the remaining portion of such Allowed
2 Claim, if any.

3 **B. Allowance and Treatment of Unclassified Claims (Administrative Claims and**
4 **Priority Tax Claims).**

5 **1. Administrative Claims.**

6 **a. Allowance of Administrative Claims.**

7 **Allowance of Ordinary Course Administrative Claims:** An entity holding an Ordinary
8 Course Administrative Claim may, but need not, File a motion or request for payment of its Claim.
9 The Reorganized Debtor or any other party in interest may File an objection to an Ordinary Course
10 Administrative Claim in their discretion. Unless a party in interest objects to an Ordinary Course
11 Administrative Claim, such Claim will be an Allowed Claim in accordance with the terms and
12 conditions of the particular transaction that gave rise to the Claim.

13 **Allowance of Professional Fee Claims:** Unless otherwise expressly provided in the Plan, a
14 Professional Fee Claim will be Allowed only if:

15 (i) On or before 60 days after the Effective Date, the entity holding such Professional Fee
16 Claim both Files with the Court a final fee application or a motion requesting allowance of the
17 Professional Fee Claim and serves the application or motion on the Reorganized Debtor and the U.S.
18 Trustee; and

19 (ii) The Court determines it is an Allowed Claim.

20 The Reorganized Debtor or any other party in interest may File an objection to such
21 application or motion within the time provided by the Bankruptcy Rules or within any other period
22 that the Court establishes. Entities holding Professional Fee Claims that do not timely File and serve a
23 fee application or motion for payment will be forever barred from asserting those Claims against the
24 Debtor, the Reorganized Debtor, the Estate, the Creditor Trust, or their respective property.

25 **Allowance of Cure Payments:** Cure Payments shall be Allowed in accordance with the
26 procedures set forth in Section III.A.2.

27 **Allowance of Non-Ordinary Course Administrative Claims:** Unless otherwise expressly
28 provided in the Plan, Non-Ordinary Course Administrative Claims will be Allowed only if:

1 (i) On or before 60 days after the Effective Date, the entity holding such Non-Ordinary
2 Course Administrative Claim both Files with the Court a motion requesting allowance of the Non-
3 Ordinary Course Administrative Claim and serves the motion on the Reorganized Debtor and the U.S.
4 Trustee; and

5 (ii) The Court determines it is an Allowed Claim.

6 The Reorganized Debtor or any other party in interest may File an objection to such motion
7 within 60 days after the expiration of the deadline for the filing of a Non-Ordinary Course
8 Administrative Claim set forth in clause (i) above (*i.e.*, within 120 days after the Effective Date),
9 unless such time period for filing such objection is extended by the Court. Entities holding Non-
10 Ordinary Course Administrative Claims that do not timely File and serve a request for payment will
11 be forever barred from asserting those Claims against the Debtor, the Reorganized Debtor, the Estate,
12 the Creditor Trust, or their respective property.

13 **Allowance of 503(b)(9) Claims:** Unless otherwise expressly provided in the Plan, a 503(b)(9)
14 Claim will be Allowed only if:

15 (i) The 503(b)(9) Claim is Filed by the 503(b)(9) Bar Date, or is deemed timely Filed; and

16 (ii) If an objection to such 503(b)(9) Claim is Filed by a party in interest on or before the
17 Claim Objection Deadline, the Court determines it is an Allowed 503(b)(9) Claim.

18 Entities holding 503(b)(9) Claims that did not timely File such Claims by the 503(b)(9) Bar
19 Date will be forever barred from asserting those Claims against the Debtor, the Reorganized Debtor,
20 the Estate, the Creditor Trust, or their respective property.

21 **b. Treatment of Administrative Claims.**

22 **Treatment of Allowed Ordinary Course Administrative Claims:** Unless otherwise agreed,
23 Allowed Ordinary Course Administrative Claims will be paid by the Reorganized Debtor in
24 accordance with the terms and conditions of the particular transaction that gave rise to such Claim.

25 **Treatment of Professional Fee Claims:** Unless otherwise agreed or provided in the Plan, an
26 Allowed Professional Fee Claim will be paid by the Reorganized Debtor within 10 days after the date
27 on which the Court determines such Claim is an Allowed Claim.

28

1 **Treatment of Cure Payments:** Cure Payments will be made to the non-Debtor parties to the
2 executory contracts or unexpired leases in accordance with Section III.A.2.

3 **Treatment of U.S. Trustee Fees Under 28 U.S.C. § 1930:** The Reorganized Debtor will pay
4 to the U.S. Trustee all fees due and owing under 28 U.S.C. § 1930 in cash on the Effective Date.

5 **Treatment of Non-Ordinary Course Administrative Claims:** Unless the entity holding a
6 Non-Ordinary Course Administrative Claim Allowed by the Court agrees to different treatment or
7 unless a different payment date is ordered by the Court, the Reorganized Debtor will pay to that entity
8 cash in the full amount of such Allowed Non-Ordinary Course Administrative Claim, without interest,
9 on or before the later of: (i) 10 days after the Effective Date, or (ii) 10 days after the date any order
10 determining such Claim to be an Allowed Non-Ordinary Course Administrative Claim becomes a
11 Final Order.

12 **Treatment of 503(b)(9) Claims:** Unless the entity holding a 503(b)(9) Claim that is Allowed
13 by the Court agrees to different treatment, or already has been paid the full amount of such Allowed
14 503(b)(9) Claim pursuant to an order of the Court, the Reorganized Debtor will pay to that entity cash
15 in the full amount of such Allowed 503(b)(9) Claim, without interest, on or before the later of: (i) 10
16 days after the Effective Date, or (ii) 10 days after the date any order determining such Claim to be an
17 Allowed 503(b)(9) Claim becomes a Final Order.

18 **c. Payment of Committee Administrative Expense Claims.**

19 Notwithstanding any other provision of the Plan: (i) the professionals and members of the
20 Creditors' Committee (in their capacity as members of the Creditors' Committee and not in their
21 capacity as holders of Unsecured Claims) shall not receive (pursuant to the Plan or other otherwise)
22 more than \$750,000 on account of Allowed Committee Administrative Expense Claims incurred in
23 the Case; and (ii) if the Lenders are required to remit funds to the Creditor Trust to satisfy a deficiency
24 in respect of the Aggregate Unsecured Creditor Consideration pursuant to Section II.C.4, then the
25 Creditor Trust (rather than the Reorganized Debtor) shall be required to disburse that portion of such
26 funding that is necessary to satisfy Allowed Committee Administrative Expense Claims to the holders
27 thereof.

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1 **2. Priority Tax Claims.**

2 Unless otherwise agreed, the Reorganized Debtor will pay to an entity holding an Allowed
3 Priority Tax Claim cash in the full amount of the Allowed Priority Tax Claim, plus interest calculated
4 at the federal judgment rate, in equal, amortized, annual installments beginning on the first
5 anniversary of the Petition Date that falls on a date following the occurrence of the Effective Date and,
6 thereafter, on each anniversary of the Petition Date through the fifth anniversary of the Petition Date;
7 provided, however, that the Reorganized Debtor may prepay any Allowed Priority Tax Claim without
8 penalty, at any time.

9 **C. Classification and Treatment of Classified Claims.**

10 **1. Class 1 (Lender Secured Claims).**

11 **Classification:** Class 1 consists of the Lender Secured Claims.

12 **Treatment:** Class 1 is impaired under the Plan. If and to the extent any portion of
13 the \$18,000,000 in cash proceeds from the UCSD Sale has not been previously remitted to the Agent,
14 for the benefit of the Agent and the Lenders in accordance with the terms of the Prepetition Credit
15 Agreement, the Debtor shall so remit the balance of such proceeds on the Effective Date. Payment of
16 the \$18,000,000 in cash proceeds from the UCSD Sale (whenever remitted) shall reduce the debt
17 under the Prepetition Credit Agreement.

18 On the Effective Date, the Reorganized Debtor shall issue to the Agent, for the benefit of the
19 Agent and the Lenders in accordance with the terms of the Plan Support Agreement, the Research
20 Building Note in the amount of \$13,000,000, which shall be secured by the Research Building and the
21 Vacant Land. (For purposes of clarity, the Alta-Hualapai Parcel shall not be encumbered by such note
22 or any other obligation). The Research Building Note will be in form and substance satisfactory to the
23 Agent and the Approving Lenders and will:

24 (i) be payable to the Agent, for the benefit of the Agent and the Lenders in accordance
25 with the terms of the Research Building Note;

26 (ii) be secured by a first-priority deed of trust, in form and substance satisfactory to the
27 Agent and the Approving Lenders, on the Research Building (including all furniture, fixtures
28

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1 and equipment owned by the Borrower and contained in such building as of the date of the
2 Plan Support Agreement) and the Vacant Land;

3 (iii) be a non-recourse obligation of the Reorganized Debtor;

4 (iv) provide for annual principal amortization as follows: \$250,000 at the end of the
5 first year following the Effective Date, \$250,000 at the end of the second year following the
6 Effective Date, \$350,000 at the end of the third year following the Effective Date, and
7 \$400,000 at the end of the fourth year following the Effective Date (in each case payable on
8 the respective anniversary of the Effective Date, or if such date is not a Business Day, the first
9 Business Day thereafter);

10 (v) be payable in full (less any prior amortization payments) on the earlier of:

11 (x) the fifth anniversary of the Effective Date (or if such date is not a Business
12 Day, the first Business Day thereafter),

13 (y) default under such Note, and

14 (z) sale of the Research Building or the Vacant Land;

15 (vi) be non-interest bearing; and

16 (vii) be subject to prepayment at any time without penalty.

17 The Reorganized Debtor will continue to be obligated under the Prepetition Deed of Trust, as
18 modified or as amended and restated to secure only the Research Building Note. The Reorganized
19 Debtor also will provide an environmental indemnity to the Agent for the benefit of the Agent and the
20 Lenders. Agent's title insurance policy may be amended, at the expense of the Reorganized Debtor, to
21 show the change in vesting and modifications to the obligations secured by the Prepetition Deed of
22 Trust, or at Agent's discretion, a new title insurance policy may be required. Additionally, until such
23 time as the Research Building Note is paid in full or the Research Building and Vacant Land are no
24 longer owned by the Reorganized Debtor, the Agent shall have no obligation to provide any
25 subordination agreement, nondisturbance agreement or attornment agreement with any tenant,
26 licensee or other occupant under a lease, license or other occupancy agreement affecting all or any
27 portion of the Research Building property or the Vacant Land that is entered into without Agent's
28 consent.

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1 Until such time as the Research Building Note is paid in full or the Research Building and
2 Vacant Land are no longer owned by the Reorganized Debtor, the Reorganized Debtor will be solely
3 responsible for the costs and maintenance of the Research Building and the Vacant Land in a
4 condition at least as good as that existing on the date of the Plan Support Agreement. The
5 Reorganized Debtor shall be solely responsible for maintaining insurance with respect to such
6 properties, and paying all taxes applicable to such properties. The Reorganized Debtor will maintain
7 its status as a charitable 501(c)(3) entity.

8 Notwithstanding the foregoing provisions of this Section II.C.1, if the Research Building
9 and/or the Vacant Land are sold for an aggregate amount in excess of \$13,000,000 (the “Excess
10 Consideration”), whether during the term of the Research Building Note or at any time within one
11 year after repayment thereof, the Reorganized Debtor shall cause such Excess Consideration to be
12 shared with the Agent, for the benefit of the Agent and Lenders, on an 80/20 basis, *i.e.*, with 80% of
13 the Excess Consideration being paid to the Agent, for the benefit of the Agent and Lenders (in
14 accordance with the terms of the Research Building Note), and 20% of the Excess Consideration
15 being retained by the Reorganized Debtor.

16 If the Research Building and/or the Vacant Land are no longer owned by the Reorganized
17 Debtor, the Reorganized Debtor nevertheless will continue to operate as a nonprofit corporation
18 dedicated to raising funds, generating support for, and otherwise advancing its philanthropic
19 objectives.

20 At all times from the effectiveness of the Research Building Note until the date that is one year
21 after the repayment thereof, the Reorganized Debtor shall provide quarterly reports to the Agent
22 regarding the Research Building Note and the Vacant Land, in form and substance satisfactory to the
23 Agent, including without limitation as to any leasing of, sales offers with respect to, damage to and
24 maintenance status of such properties. So long as the Research Building Note is outstanding, the
25 Agent and the Lenders shall be entitled to inspect the Research Building and the Vacant Land on an
26 annual basis (or more frequently if a default has occurred and is continuing under the Research
27 Building Note).

28

1 The Agent and the Lenders are prohibited from commencing a Trust Funds Challenge with
2 respect to any Charitable Trust Funds. Further, none of the Charitable Trust Funds shall be treated as
3 collateral of the Agent or the Lenders with respect to the Prepetition Credit Agreement, the Research
4 Building Note or any Lender Claims.

5 **2. Class 2 (Other Secured Claims, including Secured Tax Claims).**

6 **Classification:** Class 2 consists of Other Secured Claims against the Debtor, including
7 Secured Tax Claims. Each Class 2 Claim shall constitute its own subclass.

8 **Treatment:** Class 2 is unimpaired under the Plan, and the legal, equitable, and contractual
9 rights of holders of the Allowed Class 2 Claims are unaltered by the Plan. Unless the holder of an
10 Allowed Class 2 Claim in a particular Class 2 subclass agrees to other treatment, on or as reasonably
11 practicable after the Effective Date, such holder shall receive, at the Reorganized Debtor's option: (i)
12 cash in the allowed amount of such holder's Allowed Class 2 Claim, (ii) the return of the collateral
13 securing such Allowed Class 2 Claim, or (iii) (a) the cure of any default, other than a default of the
14 kind specified in Bankruptcy Code section 365(b)(2), that Bankruptcy Code section 1124(2) requires
15 to be cured, with respect to such holder's Allowed Class 2 Claim, without recognition of any default
16 rate of interest or similar penalty or charge, and upon such cure, no default shall exist; (b) the
17 reinstatement of the maturity of such Allowed Class 2 Claim as the maturity existed before any
18 default, without recognition of any default rate of interest or similar penalty or charge; and (c) its
19 unaltered legal, equitable, and contractual rights with respect to such Allowed Class 2 Claim. Any
20 defenses, counterclaims, rights of offset or recoupment of the Debtor or the Estate with respect to such
21 Claims shall vest in and inure to the benefit of the Reorganized Debtor.

22 The Bankruptcy Court shall retain jurisdiction to determine the amount necessary to satisfy
23 any Allowed Class 2 Claim for which treatment is elected under clause (i) or clause (iii). With respect
24 to any Allowed Class 2 Claim for which treatment is elected under clause (i), any holder of such
25 Allowed Class 2 Claim shall release (and by the Confirmation Order shall be deemed to release) all
26 liens against property of the Estate.

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1 As set forth in Section IV.D, if not earlier abandoned or otherwise disposed of, the
2 Administration Building Parcel shall be deemed abandoned as of the Effective Date and the
3 Reorganized Debtor shall retain no interest in the Administration Building Parcel.

4 **3.** Class 3 (Priority Claims, other than Priority Tax Claims).

5 **Classification:** Class 3 consists of Priority Claims against the Debtor, other than Priority Tax
6 Claims.

7 **Treatment:** Class 3 is unimpaired under the Plan, and the legal, equitable, and contractual
8 rights of holders of Allowed Class 3 Claims are unaltered by the Plan. Unless a particular entity
9 holding an Allowed Class 3 Claim agrees otherwise, the Reorganized Debtor shall pay to each holder
10 of an Allowed Class 3 Claim, in full satisfaction of such Claim, cash in the full amount of the Allowed
11 Class 3 Claim on or before the latest of: (a) 10 days after the Effective Date; (b) 10 days after the date
12 on which the Class 3 Claim becomes an Allowed Class 3 Claim; and (c) the date on which the
13 Allowed Class 3 Claim first becomes due and payable in accordance with its terms.

14 **4.** Class 4 (General Unsecured Claims).

15 **Classification:** Class 4 consists of the General Unsecured Claims.

16 **Treatment:** Class 4 is impaired under the Plan. Allowed Class 4 Claims shall receive their
17 Pro Rata share of the Net Trust Assets. On the Effective Date, the Preserved Avoidance Actions, the
18 Preserved Claims and other Claims, rights and causes of action to be vested in the Creditor Trust
19 pursuant to Section IV.F shall be vested in the Creditor Trust.

20 To the extent there are sufficient funds in the Estate to satisfy the Aggregate Unsecured
21 Creditor Consideration, after payment of, or adequate reserve for, all other Allowed Administrative
22 Claims authorized to be paid in accordance with the Cash Collateral Stipulation, the Reorganized
23 Debtor shall remit such funds to the holders of Allowed Committee Administrative Expense Claims
24 (on account thereof) and the Creditor Trust (on account of the Unsecured Creditor Cash), as
25 applicable, no later than five (5) business days after the Sufficiency Determination Date. To the
26 extent there are insufficient funds in the Estate to satisfy the Aggregate Unsecured Creditor
27 Consideration, after payment of, or adequate reserve for, all other Allowed Administrative Claims
28 authorized to be paid in accordance with the Cash Collateral Stipulation, the Lenders shall satisfy such

1 deficiency (not to exceed \$750,000) by transferring the requisite funds to the Creditor Trust no later
2 than five (5) business days after the Sufficiency Determination Date. The determination of such
3 sufficiency and/or deficiency, as the case may be, (i) will not occur until after all Administrative
4 Claims to be paid under the Cash Collateral Stipulation, including all Committee Administrative
5 Expense Claims, are determined, and (ii) will be determined in consultation with and subject to the
6 agreement of the Debtor, the Agent and the Creditors' Committee, or pursuant to Court order if the
7 parties do not agree.² If some or all of the deficiency funded by the Lenders is on account of Allowed
8 Committee Administrative Expense Claims, the Creditor Trust shall be responsible for disbursing such
9 payments to the holders of such Claims, notwithstanding any contrary provision of the Plan.

10 The Creditors' Committee and the Creditor Trust are prohibited from commencing a Trust
11 Funds Challenge with respect to the Engelstad Endowment Fund or the Escrowed Donations. The
12 Creditors' Committee or the Creditor Trust may commence a Trust Funds Challenge with respect to
13 any Charitable Trust Funds other than the Engelstad Endowment Fund and the Escrowed Donations,
14 by way of an adversary proceeding. If the Creditors' Committee of the Creditor Trust fails to
15 commence such a proceeding, or to the extent a Trust Funds Challenge that is properly commenced by
16 the Creditors' Committee or the Creditor Trust is unsuccessful, the Reorganized Debtor shall retain its
17 rights and interests in the Charitable Trust Funds pursuant to Section IV.C. To the extent that a Trust
18 Funds Challenge that is properly commenced by the Creditors' Committee is successful, any funds
19 determined to be available for general corporate purposes that are not used to satisfy Allowed
20 Administrative Claims or Allowed Priority Claims, shall be transferred to the Creditor Trust within ten
21 (10) days following the later of (i) the date on which the order sustaining such Trust Funds Challenge
22 becomes a Final Order, and (ii) the date on which all Administrative Claims and Priority Claims have
23 been determined by Final Order and paid. If a Trust Funds Challenge that is properly commenced by

24 ² If any reserve for payment of disputed claims is established in connection with the Sufficiency
25 Determination Date, and, to the extent the Lenders are required to fund any portion of the
26 Aggregate Unsecured Creditor Consideration, then, to the extent any reserved funds are released
27 from the reserve other than for the payment of Administrative Claims and Priority Claims that are
28 the subject of such reserved funds, then such funds shall be remitted to the Agent for the benefit of
the Agent and the Lenders up to the amount that the Lenders were required to fund the Aggregate
Unsecured Creditor Consideration.

1 the Creditors' Committee is pending as of the Effective Date, the Creditor Trust shall be substituted
2 for the Creditors' Committee as plaintiff and shall have the exclusive authority to prosecute and/or
3 settle such proceeding.

4 The timing of payments to the holders of Allowed Class 4 Claims shall be determined by the
5 Creditor Trust and in accordance with the Creditor Trust Agreement.

6 On the Effective Date, the holders of the Lender Deficiency Claims shall be deemed to have
7 waived irrevocably all such Claims and, accordingly, the right to receive any consideration under
8 Class 4 on account of such Claims. Without limiting the foregoing in any way, neither the Agent nor
9 the Lenders shall share in any portion of the Aggregate Unsecured Creditor Consideration, the
10 Unsecured Creditor Cash or the Net Trust Assets.

11 **III.**

12 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

13 **A. Assumption of Executory Contracts and Unexpired Leases.**

14 **1. Assumption of Agreements.**

15 On the Effective Date, the Reorganized Debtor shall assume all executory contracts and
16 unexpired leases of the Debtor listed on the Schedule of Assumed Agreements.

17 The Debtor reserves the right to amend the Schedule of Assumed Agreements at any time prior
18 to the Effective Date to: (a) delete any executory contract or unexpired lease and provide for its
19 rejection under the Plan or otherwise, or (b) add any executory contract or unexpired lease and provide
20 for its assumption under the Plan. The Debtor will provide notice of any amendment to the Schedule
21 of Assumed Agreements to the party or parties to the agreement affected by the amendment.

22 The Confirmation Order will constitute a Court order approving the assumption, on the
23 Effective Date, of all executory contracts and unexpired leases identified on the Schedule of Assumed
24 Agreements.

25 **2. Cure Payments.**

26 Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default
27 under and compensate the non-debtor party to an executory contract or unexpired lease to be assumed
28 under the Plan, is identified as the Cure Payment on the Schedule of Assumed Agreements. Unless

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1 the parties mutually agree to a different date, such payment shall be made in cash, 10 days following
2 the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any dispute regarding (a)
3 the amount of any Cure Payment, (b) the ability of the Reorganized Debtor to provide “adequate
4 assurance of future performance” within the meaning of Bankruptcy Code section 365 with respect to
5 a contract or lease to be assumed, to the extent required, and/or (c) any other matter pertaining to
6 assumption.

7 Pending the Court’s ruling on any such dispute, the executory contract or unexpired lease at
8 issue shall be deemed assumed by the Reorganized Debtor unless otherwise agreed by the parties or
9 ordered by the Court.

10 **3. Objections to Assumption/Cure Payment Amounts.**

11 Any entity that is a party to an executory contract or unexpired lease that will be assumed
12 under the Plan and that objects to such assumption (including the proposed Cure Payment) must File
13 with the Court and serve upon parties entitled to notice a written statement and supporting declaration
14 stating the basis for its objection. This statement and declaration must be Filed and served by the
15 deadline fixed by the Court for such objection. Any entity that fails to timely File and serve such a
16 statement and declaration will be deemed to waive any and all objections to the proposed assumption
17 (including the proposed Cure Payment) of its contract or lease.

18 In the absence of a timely objection by an entity that is a party to an executory contract or
19 unexpired lease, the Confirmation Order shall constitute a conclusive determination as to the amount
20 of any cure and compensation due under the executory contract or unexpired lease, and that the
21 Reorganized Debtor has demonstrated adequate assurance of future performance with respect to such
22 executory contract or unexpired lease, to the extent required.

23 **4. Resolution of Claims Relating to Assumed Contracts and Leases.**

24 Payment of the Cure Payment established under the Plan, by the Confirmation Order or by any
25 other order of the Court, with respect to an assumed executory contract or unexpired lease, shall be
26 deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim against the Debtor
27 (including any asserted in a Filed proof of claim or listed in the Schedules) with respect to such
28 contract or lease (irrespective of whether the Cure Payment is less than the amount set forth in such

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1 proof of Claim or the Schedules). Upon the tendering of the Cure Payment, any such Filed or
2 scheduled Claim shall be disallowed, without further order of the Court or action by any party.

3 **B. Rejection of Executory Contracts and Unexpired Leases.**

4 **1. Rejected Agreements.**

5 On the Effective Date, all executory contracts and unexpired leases that (i) have not been
6 previously assumed or rejected and (ii) that are not set forth on the Schedule of Assumed Agreements,
7 (including all executory contracts and unexpired leases set forth on the Schedule of Rejected
8 Agreements) shall be rejected. For the avoidance of doubt, executory contracts and unexpired leases
9 that have been previously assumed or assumed and assigned pursuant to an order of the Court,
10 including those assumed and assigned in conjunction with the UCSD Sale, shall not be affected by the
11 Plan. The Confirmation Order will constitute a Court order approving the rejection, on the Effective
12 Date, of the executory contracts and unexpired leases to be rejected under the Plan.

13 **2. Bar Date for Rejection Damage Claims.**

14 Any Rejection Damage Claim or other Claim against the Debtor for damages arising from the
15 rejection under the Plan of an executory contract or unexpired lease must be Filed and served upon
16 counsel to the Reorganized Debtor and the Creditor Trust within 30 days after the mailing of notice of
17 the occurrence of the Effective Date. Any such Claims that are not timely Filed and served will be
18 forever barred and unenforceable against the Debtor, the Reorganized Debtor, the Estate, the Creditor
19 Trust and their respective property, and entities holding such Claims will be barred from receiving any
20 distributions under the Plan on account of such untimely Claims.

21 **C. Postpetition Contracts and Leases.**

22 Except as expressly provided in the Plan or the Confirmation Order, all contracts, leases, and
23 other agreements that the Debtor entered into after the Petition Date will be assumed and retained by
24 the Reorganized Debtor and will remain in full force and effect following the Effective Date,
25 including the APA, the License Agreement, the Funding Agreement, the Bill of Sale, the Parking
26 Agreement, the Research Building Note, and all other agreements and documents entered into in
27 conjunction with the foregoing.

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1 IV.

2 MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN

3 A. Funding of the Plan.

4 Unless otherwise provided in the Plan, payments required by the Plan on and after the
5 Effective Date will be satisfied from cash of the Debtor (which, consistent with the Cash Collateral
6 Orders, includes funds in the Cash Collateral Account) and the Reorganized Debtor; provided that
7 (i) the Lenders shall make all payments required pursuant to Section II.C.4 (up to \$750,000) to satisfy
8 the Aggregate Unsecured Creditor Consideration in the event of a deficiency, as specified in that
9 Section, and (ii) any distribution to the holders of Allowed Class 4 Claims shall be paid exclusively by
10 the Creditor Trust from the Net Trust Assets.

11 B. Vesting of Assets Generally.

12 Except as otherwise provided in the Plan, all property of the Debtor and the Estate, including
13 all cash held by the Debtor as of the Effective Date, shall vest in the Reorganized Debtor on the
14 Effective Date, free and clear of all Claims, liens, encumbrances, and interests. From and after the
15 Effective Date, the Reorganized Debtor may conduct its affairs and use, acquire and dispose of
16 property without supervision by the Court and free of any restrictions of the Bankruptcy Code or
17 Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation
18 Order.

19 C. The Charitable Trust Funds.

20 On and after the Effective Date, the Reorganized Debtor shall retain its interests in, its rights to
21 use and, where applicable, custody of the Charitable Trust Funds, consistent with all agreements and
22 restrictions governing the disposition and use of such funds, any modifications to such agreements and
23 restrictions that may be authorized by the donors of such Charitable Trust Funds, and otherwise
24 applicable non-bankruptcy law, subject to the right of the Creditors' Committee or the Creditor Trust
25 to commence a Trust Funds Challenge under Section II.C.4 with respect to Charitable Trust Funds
26 other than the Engelstad Endowment Fund or the Escrowed Donations. As provided in Section II.C.4,
27 the Creditors' Committee and the Creditor Trust are prohibited from commencing a Trust Funds
28 Challenge with respect to the Engelstad Endowment Fund or the Escrowed Donations. As provided in

1 Section II.C.1, the Agent and the Lenders are prohibited from commencing a Trust Fund Challenge
2 with respect to any Charitable Trust Funds.

3 **D. Abandonment of the Administration Building Parcel.**

4 Unless earlier abandoned or otherwise disposed of, upon the Effective Date, the Debtor's
5 interests in the Administration Building Parcel shall be deemed abandoned, and the Reorganized
6 Debtor shall retain no interest in the Administration Building Parcel. Notwithstanding the Permanent
7 Injunction set forth in the Section VII.A and the automatic stay under Bankruptcy Code section
8 362(a), to the extent applicable, any party with an interest in the Administration Building Parcel may,
9 without further order of the Court, exercise its rights and remedies against the Administration Building
10 Parcel, including any right to foreclose upon the Administration Building Parcel.

11 **E. Vesting of Causes of Action in Reorganized Debtor.**

12 The following shall be preserved and vest in the Reorganized Debtor on the Effective Date,
13 pursuant to Bankruptcy Code section 1123(b), to the extent not released pursuant to the Plan, the
14 Confirmation Order and any other order of the Court: (i) all Claims, rights, and causes of action of the
15 Debtor and the Estate against any person or entity arising from or relating to the real property and
16 personal property vested in and/or retained by the Reorganized Debtor under the Plan, including the
17 Research Building, the Vacant Land, and the Alta-Hualapai Parcel; (ii) all Claims, rights, and causes
18 of action of the Debtor and the Estate against any person or entity arising from or relating to the APA,
19 the License Agreement, the Funding Agreement, the Bill of Sale, the Parking Agreement, the
20 Research Building Note, the Charitable Trust Funds (subject to Sections II.C.1, II.C.4, IV.C); all other
21 contracts and leases entered into postpetition by the Debtor and/or the Estate that have not been
22 assigned, and all executory contracts and leases that have been assumed but not assigned, or that will
23 be assumed pursuant to the Plan; (iii) all defenses, offsets, rights of recoupment, rights of
24 disallowance, recharacterization and/or equitable subordination of the Debtor and the Estate with
25 respect to Claims against the Debtor other than Class 4 Claims; and (iv) all rights of the Debtor, the
26 Estate and the Reorganized Debtor arising from the Plan itself.

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1 **F. Vesting of Causes of Action in Creditor Trust.**

2 The following shall be preserved and vest in the Creditor Trust on the Effective Date, pursuant
3 to Bankruptcy Code section 1123(b), to the extent not released pursuant to the Plan, the Confirmation
4 Order and any other order of the Court: (i) all of the other Claims, rights, and causes of action of the
5 Debtor and the Estate against any person or entity that are not vested in the Reorganized Debtor under
6 Section IV.E, including the Preserved Avoidance Actions and Preserved Claims; (ii) all defenses,
7 offsets, rights of recoupment, rights of disallowance, recharacterization and/or equitable subordination
8 of the Debtor and the Estate with respect to Class 4 Claims; and (iii) all rights of the Creditor Trust
9 arising from the Plan itself.

10 **G. Creation of the Creditor Trust and Appointment of Creditor Trustee.**

11 The Confirmation Order shall approve, effective on the Effective Date, the Creditor Trust
12 Agreement, which agreement shall provide for the appointment of a Creditor Trustee to administer the
13 Creditor Trust. The Creditor Trustee shall be SltnTrst LLC (dba Solution Trust). The Creditor
14 Trustee shall serve without any bond and shall act in accordance with the Creditor Trust Agreement
15 and the Plan. The Creditor Trustee may be compensated for his or her service, as agreed upon in the
16 Creditor Trust Agreement.

17 The Creditor Trust may engage counsel and other professionals as it deems appropriate, and
18 compensate such professionals from the corpus of the Creditor Trust for reasonable fees and expenses
19 incurred by such professionals, in accordance with the Creditor Trust Agreement and without approval
20 of the Court. The Creditor Trustee shall serve for the duration of the Creditor Trust, subject to earlier
21 death, resignation, incapacity or removal as specifically provided in the Creditor Trust Agreement.

22 **1. Powers and Duties.**

23 The Creditor Trust, acting through the Creditor Trustee, shall have the following rights,
24 powers and duties:

25 (a) The Creditor Trust shall have full right, power and discretion to manage the Creditor
26 Trust Assets, and execute, acknowledge and deliver any and all instruments with respect thereto, as it
27 deems appropriate or necessary in its discretion;

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1 (b) Administer the collection, prosecution, settlement, and/or abandonment of the
2 Preserved Avoidance Actions, the Preserved Claims and all other Claims, rights, and causes of action
3 vested in the Creditor Trust pursuant to the Plan;

4 (c) Prosecute, settle and/or abandon objections to Class 4 Claims;

5 (d) Make interim and final distributions to the holders of Allowed Class 4 Claims;

6 (e) File all tax and regulatory forms, returns, reports and other documents required with
7 respect to the Creditor Trust; and

8 (f) File suit or any appropriate motion for relief in the Court or in any other court of
9 competent jurisdiction to resolve any disagreement, conflict, dispute or ambiguity in connection with
10 the exercise of its rights, powers or duties.

11 **2. Termination of the Creditor Trust.**

12 The Creditor Trust shall be irrevocable. The Creditor Trust shall terminate when the Creditor
13 Trustee has performed all of his/her duties under the Plan and the Creditor Trust Agreement, including
14 the final distribution of all the property of the Creditor Trust in respect of Allowed Class 4 Claims,
15 which date shall not be more than five (5) years after the Effective Date; provided, however, the Court
16 may upon good cause shown order the Creditor Trust to remain open so long as it may be necessary to
17 liquidate and distribute all of its property.

18 **3. Additional Provisions of the Creditor Trust Agreement.**

19 In addition to the provisions in the Plan with respect to the Creditor Trust, the Creditor Trust
20 Agreement will provide for, among other things, the replacement of the Creditor Trustee in the event
21 of death, incapacity or resignation, the liability of the Creditor Trustee, the effect of actions by the
22 Creditor Trustee, and the indemnification of the Creditor Trustee.

23 To the extent not set forth in the Plan, the functions and procedures applicable to the Creditor
24 Trust and the powers and duties of the Creditor Trustee and the rights of the holders of beneficial
25 interests in the Creditor Trust shall be governed by the provisions of the Creditor Trust Agreement;
26 provided, however, that in the event of any conflict, the terms of the Plan shall govern.

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1 **H. Objections to Claims.**

2 This Plan extends the deadline for filing objections to Claims against the Debtor set forth in
3 LR 3007(e). Specifically, except as otherwise provided in Section II.B (regarding allowance of
4 Administrative Claims), any objection to a Claim shall be Filed and served upon the holder of such
5 Claim no later than the Claims Objection Deadline. After the Effective Date, the Reorganized Debtor
6 shall have the sole right and authority to File, settle, compromise, withdraw or litigate to judgment
7 objections to Claims, other than Class 4 Claims. Following the Effective Date, the Creditor Trustee
8 on behalf of the Creditor Trust shall have the sole right and authority to File, settle, compromise,
9 withdraw or litigate to judgment objections to Class 4 Claims.

10 **I. Distribution of Property Under the Plan.**

11 Unless otherwise provided in the Plan, the following procedures apply to distributions made
12 pursuant to this Plan by the Reorganized Debtor or the Creditor Trust, as applicable.

13 **1. Responsibility for Making Distributions.**

14 The Reorganized Debtor shall be responsible for making all distributions required under the
15 Plan, with the exception of: (i) distributions on account of Allowed Class 4 Claims, which shall be
16 paid by the Creditor Trust, and (ii) distributions on account of Allowed Committee Administrative
17 Expense Claims, to the extent the Lenders are required to remit funds to the Creditor Trust in order to
18 fund such distributions pursuant to Section II.C.4, in which case the Creditor Trust shall distribute
19 such funds. To the extent applicable, the Reorganized Debtor and Creditor Trust shall comply with all
20 tax withholding and reporting requirements imposed on them by any governmental unit with respect
21 to such distributions, and all distributions pursuant to the Plan shall be subject to such withholding and
22 reporting requirements.

23 **2. Manner of Cash Payments Under the Plan.**

24 Cash payments to domestic entities holding Allowed Claims will be tendered in U.S. Dollars
25 and will be made by checks drawn on a domestic bank or by wire transfer from a domestic bank.
26 Payments made to any foreign creditors holding Allowed Claims may be paid, at the option of the
27 Reorganized Debtor or the Creditor Trust, as applicable, in such funds and by such means as are
28 necessary or customary in a particular foreign jurisdiction.

1 **3. No De Minimis Distributions.**

2 Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$25 will be
3 made to any person or entity pursuant to the Plan. No consideration will be provided in lieu of the de
4 minimis distributions that are not made pursuant to this Section.

5 **4. No Distribution With Respect to Disputed Claims.**

6 No payments of cash or distributions of other property or other consideration of any kind shall
7 be made on account of any Disputed Claim unless and until such Claim becomes an Allowed Claim,
8 or is deemed to be such for purposes of distribution, and then only to the extent that such Claim
9 becomes, or is deemed to be for distribution purposes, an Allowed Claim. Unless otherwise provided
10 herein, any holder of a Disputed Claim that becomes an Allowed Claim after the Effective Date will
11 receive its distribution no later than the next general distribution made by the Creditor Trust.

12 **5. Delivery of Distributions, Undeliverable/Unclaimed Distributions.**

13 **a. Delivery of Distributions in General.**

14 The Reorganized Debtor or the Creditor Trust, as applicable, shall make distributions to each
15 holder of an Allowed Claim by mail as follows: (a) at the address set forth on the proof of claim filed
16 by such holder in respect of such Allowed Claim, unless such holder has provided written notice of
17 address change to the Reorganized Debtor or Creditor Trust, as applicable; (b) at the address set forth
18 in any written notice of address change delivered to the Reorganized Debtor or Creditor Trust, as
19 applicable, after the date of any related proof of claim; and (c) at the address reflected in the Schedules
20 if no proof of claim is filed and the Reorganized Debtor or Creditor Trust, as applicable, has not
21 received a written notice of a change of address.

22 **b. Undeliverable and Unclaimed Distributions.**

23 If the Reorganized Debtor or Creditor Trust tenders a distribution check on account of an
24 Allowed Claim, and the check is returned as undeliverable (an “Undeliverable Distribution”), the
25 issuing entity may cancel the check and need not re-attempt delivery, unless it timely receives
26 notification of the holder’s new address before the deadlines described below. If a distribution check
27 is not returned as undeliverable, but is not cashed within 45 days of its issuance date (an “Unclaimed
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1 Distribution”), the issuer may cancel the check, and need not attempt redelivery, except as otherwise
2 provided herein.

3 Pending further disposition pursuant to this Section, the funds with respect to Undeliverable
4 Distributions and Unclaimed Distributions shall be held in held in unsegregated bank accounts in the
5 name of the Reorganized Debtor and/or Creditor Trust, as applicable. The funds need not be
6 segregated, but shall be accounted for separately. Neither the Reorganized Debtor nor the Creditor
7 Trust shall have any duty to deposit such funds in interest-bearing accounts, and the parties entitled to
8 such distributions shall not be entitled to any interest on those funds.

9 With respect to Allowed Claims for which the Reorganized Debtor bears the responsibility of
10 distribution pursuant to Section IV.I.1, the Reorganized Debtor shall reserve the funds with respect to
11 all Undeliverable Distributions and Unclaimed Distributions for one year following the Effective
12 Date. If the Reorganized Debtor does not receive prior to that date a written request from the holder
13 of the applicable Allowed Claim asserting entitlement to an Undeliverable Distribution or Unclaimed
14 Distribution and providing a current address, the Reorganized Debtor shall be authorized and
15 empowered to retain such funds for its own benefit.

16 With respect to Allowed Claims for which the Creditor Trust bears the responsibility of
17 distribution pursuant to Section IV.I.1, the Creditor Trust shall reserve all Undeliverable Distributions
18 and Unclaimed Distributions until 45 days after the Creditor Trust makes its final distribution. If the
19 Creditor Trust does not receive prior to that date a written request from the holder of the applicable
20 Allowed Claim asserting entitlement to an Undeliverable Distribution or Unclaimed Distribution and
21 providing a current address, the Creditor Trust shall be authorized and empowered to retain such funds
22 and dispose of them in accordance with Creditor Trust Agreement.

23 Any holder of an Allowed Claim that does not assert in writing its entitlement to an
24 Undeliverable Distribution or Unclaimed Distribution, by the applicable dates set forth in the
25 foregoing paragraphs, shall no longer have any interest in or be entitled to such undelivered or
26 unclaimed distribution and shall be barred forever from receiving any distributions under the Plan, or
27 from asserting a Claim against the Debtor, the Reorganized Debtor, the Estate, the Creditor Trust, or
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1 their respective property, and the right to such undeliverable or unclaimed distribution will be
2 discharged.

3 Nothing contained in the Plan shall require the Debtor, Reorganized Debtor or Creditor Trust
4 to attempt to locate any holder of an Allowed Claim.

5 **c. Estimation of Disputed Claims for Distribution Purposes.**

6 The Reorganized Debtor or Creditor Trust, as applicable, may move for a Court order
7 estimating a Disputed Claim. The estimated amount of any Disputed Claim so determined by the
8 Court shall constitute the maximum recovery that the holder thereof may recover after the ultimate
9 liquidation of its Disputed Claim, irrespective of the actual amount ultimately Allowed.

10 **J. Full Satisfaction.**

11 The Reorganized Debtor (or Creditor Trust, as the case may be) shall make, and each holder of
12 an Allowed Claim against the Debtor shall receive, the distributions provided for in the Plan, if any,
13 in full satisfaction and discharge of such holder's Claims against the Debtor.

14 **K. Compliance with Tax Requirements.**

15 The Reorganized Debtor (or Creditor Trust, as the case may be) shall comply with all
16 applicable withholding, payment and reporting requirements imposed on it by governmental units, if
17 any, and all distributions pursuant to the Plan shall be subject to such withholding, payment and
18 reporting requirements. The Reorganized Debtor and Creditor Trustee (on behalf of the Creditor
19 Trust) shall be authorized to take any and all actions that may be necessary or appropriate to comply
20 with such withholding, payment, and reporting requirements. All amounts properly withheld from
21 distributions to the holder of an Allowed Claim and paid over to the applicable governmental unit on
22 account of such holder shall be treated as part of the distributions to such holder.

23 For example, with respect to any employee-related withholding, if the Debtor is obligated by
24 law to withhold amounts from distributions to a present or former employee to satisfy such present or
25 former employee's tax and other payroll obligations, the Reorganized Debtor or Creditor Trustee may
26 withhold a portion of the distributions allocated to the Allowed Claim of such present or former
27 employee.

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1 Each person holding an Allowed Claim is required to provide any information necessary to
2 effect the necessary information reporting and withholding of applicable taxes with respect to
3 distributions to be made under the Plan. The Reorganized Debtor or the Creditor Trustee, as
4 applicable, shall be entitled in its sole discretion to withhold any distributions to a holder of an
5 Allowed Claim that fails to provide tax identification or social security information upon written
6 request.

7 Notwithstanding any other provision of this Plan, (a) each holder of an Allowed Claim that is
8 to receive a distribution on account thereof pursuant to this Plan shall have sole and exclusive
9 responsibility for the satisfaction and payment of any tax obligations imposed by any governmental
10 unit, including income, withholding, and other tax obligations, on account of such Distribution, and
11 (b) no distribution shall be made to or on behalf of such holder pursuant to this Plan unless and until
12 such Holder has made arrangements satisfactory to the Reorganized Debtor or Creditor Trustee, as
13 applicable, for the payment and satisfaction of such withholding tax obligations or such tax obligation
14 that would be imposed upon the Reorganized Debtor or Creditor Trustee in connection with such
15 distribution. Any property to be distributed pursuant to this Plan shall, pending the implementation of
16 such arrangements, be treated as an Unclaimed Distribution pursuant to Section IV.I.5.b.

17 **L. Setoff, Recoupment and Other Rights.**

18 Notwithstanding anything to the contrary contained in the Plan, the Reorganized Debtor or the
19 Creditor Trust may, but shall not be required to, setoff, recoup, assert counterclaims or withhold
20 against the distributions to be made pursuant to this Plan on account of any claims that the Debtor, the
21 Estate, or the Reorganized Debtor may have against the entity holding an Allowed Claim; provided,
22 however, that neither the failure to effect such a setoff or recoupment, nor the allowance of any Claim
23 against the Debtor or the Reorganized Debtor, nor any partial or full payment during the Case or after
24 the Effective Date in respect of any Allowed Claim, shall constitute a waiver or release by the Debtor,
25 the Estate, the Reorganized Debtor or the Creditor Trust of any Claim that any or all of them may
26 possess against such holder.

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1 **M. The Effective Date.**

2 The Plan shall not become binding unless and until the Effective Date occurs. The Effective
3 Date is the first Business Day, on which no stay of the Confirmation Order is in effect, on which all of
4 the following conditions have been satisfied as set forth below, or waived as set forth in Section
5 IV.M.2:

6 **1. Conditions to the Effective Date.**

7 a. The Confirmation Order shall have become a Final Order;

8 b. The Research Building Note and related instruments evidencing the liens and security
9 interests securing such note shall have been executed;

10 d. All other agreements, writings and undertakings required under the Plan shall be
11 executed.

12 **2. Waiver of Conditions.**

13 The requirement that the conditions to the occurrence of the Effective Date be satisfied may be
14 waived in whole or in part, and the time within which any such conditions must be satisfied may be
15 extended, by mutual agreement of the Debtor and the Agent. The failure to timely satisfy or waive
16 any of such conditions may be asserted by the Debtor regardless of the circumstances giving rise to
17 the failure of such condition to be satisfied, including any action or inaction by the Debtor. The
18 failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other
19 rights and each such right shall be deemed ongoing and subject to assertion at any time.

20 **3. Notice of the Effective Date.**

21 Promptly after the occurrence of the Effective Date, the Debtor shall File and mail a “Notice of
22 Occurrence of Effective Date” to all creditors of record as of the date of entry of the Confirmation
23 Order.

24 **N. Authorization of Corporate Action.**

25 Any matters provided for or required by the Plan that require corporate action by the Debtor or
26 Reorganized Debtor, including, without limitation, the adoption by the Reorganized Debtor of the
27 Amended Articles of Incorporation and Bylaws shall, as of the Effective Date, be deemed to have
28 occurred and be effective as provided herein, and shall be authorized, approved and ratified in all

1 respects without any requirement of further action by the directors of the Debtor or the Reorganized
2 Debtor.

3 **V.**

4 **THE REORGANIZED DEBTOR**

5 **A. Directors and Officers.**

6 As of the Effective Date, the individuals identified on the List of Directors and Officers for
7 Reorganized Debtor shall serve as the directors and officers of the Reorganized Debtor, in accordance
8 with the Amended Articles of Incorporation and Bylaws. The List of Directors and Officers for
9 Reorganized Debtor will be filed no later than the Exhibit Filing Date, and upon such filing shall
10 become Exhibit B to the Plan.

11 **B. Amended Articles of Incorporation and Bylaws.**

12 The Amended Articles of Incorporation and Bylaws of the Reorganized Debtor shall prohibit
13 the issuance of non-voting equity securities as required by Bankruptcy Code section 1123(a)(6).

14 **VI.**

15 **OTHER PLAN PROVISIONS**

16 **A. Exculpation Re Solicitation and Prosecution of Plan Confirmation.**

17 None of the Debtor, the Estate, the Reorganized Debtor, the Creditors' Committee, the Agent,
18 the Lenders or any of the foregoing parties' respective members, officers, directors, employees,
19 affiliates, advisors, professionals or agents shall have or incur any liability to any holder of a Claim for
20 any act or omission occurring on or after the Petition Date in connection with, related to, or arising out
21 of the Case, the pursuit of confirmation of the Plan, the consummation or administration of the Plan,
22 or property to be distributed under the Plan, except for willful misconduct, and in all respects, the
23 Debtor, the Estate, the Reorganized Debtor, the Creditors' Committee, the Prepetition Agent, the
24 Lenders or any of the foregoing parties' respective members, officers, directors, employees, affiliates,
25 advisors, professionals or agents shall be entitled to rely on the advice of their respective counsel with
26 respect to their duties and responsibilities in connection with the Case and the Plan.

27
28

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1 **B. Revocation of Plan/No Admissions.**

2 The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date.
3 Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the Effective Date
4 does not occur, the Plan will be null and void, and nothing contained in the Plan or the Disclosure
5 Statement will: (a) be deemed to be an admission by the Debtor with respect to any matter set forth in
6 the Plan, including liability on any Claim or the propriety of any Claim's classification; (b) constitute
7 a waiver, acknowledgment, or release of any Claims against the Debtor, or of any claims of the
8 Debtor; or (c) prejudice in any manner the rights of any party in any further proceedings.

9 **C. Modification of the Plan.**

10 Subject to the restrictions set forth in Bankruptcy Code section 1127, the Debtor reserves the
11 right to alter, amend, or modify the Plan before its substantial consummation.

12 **D. Dissolution of Creditors' Committee.**

13 Upon the Effective Date, the Creditors' Committee shall be released and discharged from the
14 rights and duties arising from or related to the Case, except with respect to final applications for
15 professionals' compensation. The professionals retained by the Creditors' Committee and the
16 members thereof shall not be entitled to compensation or reimbursement of expenses for any services
17 rendered or expenses incurred after the Effective Date, except for services rendered and expenses
18 incurred in connection with any applications by such professionals or Creditors' Committee members
19 for allowance of compensation and reimbursement of expenses pending on the Effective Date or
20 timely Filed after the Effective Date as provided in the Plan, to the extent the same may be approved
21 by the Court.

22 **E. Exemption from Certain Transfer Taxes.**

23 In accordance with Bankruptcy Code section 1146(c), the issuance, transfer or exchange of a
24 security, or the making or delivery of an instrument of transfer under the Plan with respect to any and
25 all property may not be taxed under any law imposing a stamp tax or similar tax. The Confirmation
26 Order shall direct all governmental officials and agents to forego the assessment and collection of any
27 such tax or governmental assessment and to accept for filing and recordation any of the foregoing
28 instruments or other documents without payment of such tax or other governmental assessment.

1 **F. Successors and Assigns.**

2 The rights, benefits, and obligations of any entity named or referred to in this Plan shall be
3 binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of
4 such entity.

5 **G. Saturday, Sunday or Legal Holiday.**

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

9 **H. Headings.**

10 The headings used in the Plan are inserted for convenience only and do not constitute a portion
11 of this Plan or in any manner affect the provisions of this Plan or their meaning.

12 **I. Severability of Plan Provisions.**

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

22 **J. Governing Law.**

23 Unless a rule of law or procedure is supplied by (a) federal law (including the Bankruptcy
24 Code and Bankruptcy Rules), or (b) an express choice of law provision in any agreement, contract,
25 instrument, or document provided for, or executed in connection with, the Plan, the rights and
26 obligations arising under the Plan and any agreements, contracts, documents, and instruments
27 executed in connection with the Plan shall be governed by, and construed and enforced in accordance
28 with, the laws of the State of Nevada without giving effect to the principles of conflict of laws thereof.

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1 VII.

2 EFFECT OF PLAN CONFIRMATION

3 A. Discharge and Injunction.

4 The rights afforded in the Plan and the treatment of all Claims shall be in exchange for
5 and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever
6 arising prior to the Effective Date against the Debtor and the Estate, including any interest
7 accrued on such Claims from and after the Petition Date.

8 Except as otherwise provided in the Plan or the Confirmation Order, on the Effective
9 Date, (a) the Debtor, the Estate, the Reorganized Debtor and their respective property are
10 discharged and released hereunder to the fullest extent permitted by Bankruptcy Code sections
11 524 and 1141 from all Claims and rights against them that arose before the Effective Date,
12 including all debts, obligations, demands, and liabilities, and all debts of the kind specified in
13 Bankruptcy Code sections 502(g), 502(h), or 502(i), regardless of whether or not (i) a proof of
14 Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such debt is allowed
15 pursuant to Bankruptcy Code section 502, or (iii) the holder of a Claim based on such debt has
16 or has not accepted the Plan; (b) any judgment underlying a Claim discharged hereunder is
17 void; and (c) all entities are precluded from asserting against the Debtor, the Estate, the
18 Reorganized Debtor and their respective property, any Claims or rights based upon any act or
19 omission, transaction, or other activity of any kind or nature that occurred prior to the Effective
20 Date.

21 Except as otherwise provided in the Plan or the Confirmation Order, on and after the
22 Effective Date, all entities who have held, currently hold, or may hold a Claim against the
23 Debtor, the Estate, or the Reorganized Debtor, that is based upon any act or omission,
24 transaction, or other activity of any kind or nature that occurred prior to the Effective Date,
25 that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged
26 pursuant to the Plan, are permanently enjoined from taking any of the following actions on
27 account of any such discharged Claim, (the "Permanent Injunction"): (a) commencing or
28 continuing in any manner any action or other proceeding against the Debtor, the Estate, the

1 Reorganized Debtor or their respective property, that is inconsistent with the Plan or the
2 Confirmation Order; (b) enforcing, attaching, collecting, or recovering in any manner any
3 judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor or
4 their respective property, other than as expressly permitted under the Plan; (c) creating,
5 perfecting, or enforcing any lien or encumbrance against property of the Debtor, the Estate, or
6 the Reorganized Debtor, other than as expressly permitted under the Plan; and (d) commencing
7 or continuing any action, in any manner, in any place that does not comply with or is
8 inconsistent with the provisions of the Plan, the Confirmation Order, or the discharge provisions
9 of Bankruptcy Code section 1141. Any person or entity injured by any willful violation of such
10 Permanent Injunction shall recover actual damages, including costs and attorneys' fees, and, in
11 appropriate circumstances, may recover punitive damages, from the willful violator.

12 **B. Estate Release.**

13 As of the Effective Date, the Debtor (on behalf of itself and the Estate) releases and
14 forever waives and discharges as against the Released Parties, all Claims, actions, costs, causes
15 of action, damages, demands, debts, expenses (including attorneys' fees), judgments, losses
16 (including any claims for contribution or indemnification), liabilities, obligations, rights, or
17 suits, whether past or present, liquidated or unliquidated, fixed or contingent, matured or
18 unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in
19 law, equity or otherwise that are based in whole or part on any act, omission, transaction, event
20 or other occurrence taking place on or prior to the Effective Date relating in any way to the
21 Debtor or the Case, including causes of action under chapter 5 of the Bankruptcy Code that are
22 not Preserved Avoidance Actions; provided, however, that the foregoing shall not effectuate a
23 release of any obligation of such parties: (1) arising under the agreements relating to the UCSD
24 Sale, the Plan (including the Research Building Note and any document relating thereto), or the
25 Confirmation Order, any other contract or lease entered into postpetition by the Debtor and/or
26 the Estate, and any executory contract or unexpired lease of the Debtor that has been assumed
27 during the Case or that will be assumed pursuant to the Plan, or (2) under the Engelstad
28 Endowment Agreement, the Engelstad Endowment Escrow Agreement, the Donations Escrow

1 **Agreement, the Saffer Endowment Agreement or any other agreement governing Charitable**
2 **Trust Funds; provided further, that the foregoing release shall not preclude the Creditor Trust**
3 **from asserting a Claim or cause of action of the Debtor or the Estate as a defense to and/or**
4 **offset against a Class 4 Claim asserted by a Released Party. The releases set forth in this**
5 **paragraph shall be binding upon the Reorganized Debtor, the Creditor Trust, and any chapter 7**
6 **trustee, if the Case is at any time converted to chapter 7.**

7 **C. Payment of U.S. Trustee Fees.**

8 The Reorganized Debtor shall pay all U.S. Trustee Fees due and owing under 28 U.S.C.
9 § 1930 until such time as it moves for entry of a final decree and the Court enters such a decree;
10 provided, however, that if the Creditor Trust opposes such motion, the Creditor Trust thereafter shall
11 bear the cost of any and all U.S. Trustee Fees until the Court enters a final decree closing the Case.
12 Notwithstanding LR 3022, the Clerk shall enter a final decree in the Case only upon an Order of the
13 Court following the Filing of a properly noticed motion.

14 **D. Retention of Jurisdiction.**

15 Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date,
16 the Court shall retain jurisdiction over the Case after the Effective Date to the fullest extent provided
17 by law, including the jurisdiction to:

- 18 1. Allow, disallow, determine, liquidate, classify, establish the priority or secured or
19 unsecured status of, estimate, limit, or subordinate any Claim;
- 20 2. Grant or deny any and all applications for allowance of compensation or
21 reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods
22 ending on or before the Effective Date;
- 23 3. Resolve any motions pending on the Effective Date to assume, assume and assign,
24 or reject any executory contract or unexpired lease to which the Debtor is a party or with respect to
25 which the Debtor may be liable and to hear, determine and, if necessary, liquidate, any and all
26 Claims arising therefrom;

1 4. Resolve any and all other applications, motions, adversary proceedings, and other
2 matters involving the Debtor that may be pending on the Effective Date or that may be instituted
3 thereafter in accordance with the terms of the Plan;

4 5. Ensure that distributions to holders of Allowed Claims, including but not limited to
5 Allowed Administrative Claims, are accomplished pursuant to the provisions of the Plan;

6 6. Enter such orders as may be necessary or appropriate to implement or consummate
7 the provisions of the Plan and all contracts, instruments, releases, and other agreements or
8 documents entered into in connection with the Plan;

9 7. Resolve any and all controversies, suits, or issues that may arise in connection with
10 the consummation, interpretation, or enforcement of the Plan and/or Confirmation Order, or any
11 entity's rights or obligations under the Plan and/or Confirmation Order;

12 8. Modify the Plan before or after the Effective Date pursuant to Bankruptcy Code
13 section 1127, or modify the Disclosure Statement or any contract, instrument, release, or other
14 agreement or document created in connection with the Plan or the Disclosure Statement; or
15 remedy any defect or omission or reconcile any inconsistency in any order of the Court, the Plan,
16 the Disclosure Statement or any contract, instrument, release, or other agreement or document
17 created in connection with the Plan or the Disclosure Statement, in such manner as may be
18 necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy
19 Code;

20 9. Issue injunctions, enter and implement other orders, or take such other actions as
21 may be necessary or appropriate to restrain interference by any entity with consummation or
22 enforcement of the Plan and/or the Confirmation Order;

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

25 11. Determine any other matters that may arise in connection with or relate to the Plan,
26 the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other
27 agreement or document created in connection with the Plan; and

28 12. Enter a final decree closing the Case.

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

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VIII.

RECOMMENDATION AND CONCLUSION

The Debtor believes that Plan confirmation and implementation is the best alternative under the circumstances and urges creditors to vote in favor of and support confirmation of the Plan.

DATED: January 31, 2012 Nevada Cancer Institute, a Nevada nonprofit corporation

By: _____

By: George Pillari
Its: Chief Restructuring Officer

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EXHIBIT A

EXHIBIT B

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EXHIBIT C

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EXHIBIT D

EXHIBIT E

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EXHIBIT F

Preserved Claims

1. All Claims against John C. Ruckdeschel
2. All Claims against James Rhodes
3. All Claims against Glynda Rhodes

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Exhibit 2

1 MICHAEL L. TUCHIN (CA State Bar No. 150375)
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Admitted Pro Hac Vice
2 MARTIN R. BARASH (CA State Bar No. 162314)
Verified Petition Pending
Admitted Pro Hac Vice
3 COURTNEY E. POZMANTIER (CA State Bar No. 242103)
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~~Proposed~~ Reorganization Co-Counsel for the Debtor and Debtor in Possession

~~Proposed~~ Reorganization Counsel for the Debtor and Debtor in Possession

11
12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re:
15 NEVADA CANCER INSTITUTE, a Nevada
16 nonprofit corporation,¹
17 Debtor.

Case No.: 2:11-bk-28676 (MKN)
Chapter 11

**AMENDED CHAPTER 11 PLAN OF
REORGANIZATION FOR
NEVADA CANCER INSTITUTE
(DATED ~~DECEMBER 6,~~
~~2011~~ JANUARY 31, 2012)**

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27 ¹ The Debtor's address and last four digits of its Federal Tax I.D. are: One Breakthrough Way,
28 Las Vegas, NV 89135 [EIN XX-XXX2553].

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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
A	Amended Articles of Incorporation and Bylaws
B	List of Directors and Officers for Reorganized Debtor
C	Creditor Trust Agreement
D	Schedule of Assumed Contracts
E	Schedule of Rejected Contracts
<u>F</u>	<u>Preserved Claims</u>

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1 This Plan of Reorganization is proposed by Nevada Cancer Institute, a Nevada nonprofit
2 corporation, the debtor and debtor in possession in the above-captioned chapter 11 case:

3 **I.**

4 **DEFINITIONS AND RULES OF CONSTRUCTION**

5 **A. Definitions.**

6 In addition to such other terms as are defined elsewhere in the Plan, the following terms
7 (which appear in the Plan as capitalized terms) have the following meanings as used in the Plan:

8 **“503(b)(9) Bar Date”** means January 30, 2012, the date established by the Court as the
9 deadline to file 503(b)(9) Claims.

10 **“503(b)(9) Claim”** means a claim against the Debtor entitled to treatment as an
11 administrative expense under Bankruptcy Code section 503(b)(9).

12 ~~**“Administration Building Parcel”** means that certain real property identified by the Clark
13 County Assessor as APN 164-13-712-020.~~

14 **“Administrative Claim”** means a Claim against the Estate for administrative costs or
15 expenses entitled to priority under Bankruptcy Code section 507(a)(2) or (b).

16 ~~**“Administration Building Parcel”** means that certain real property identified by the Clark
17 County Assessor as APN 164-13-712-020.~~

18 **“Agent”** means Bank of America, N.A., as administrative agent under the Prepetition Credit
19 Agreement.

20 **“Aggregate Unsecured Creditor Consideration”** means the sum of \$750,000.

21 **“Allowed”** or **“Allowed _____ Claim”** means:

22 (a) with respect to a Claim against the Debtor arising prior to the Petition Date
23 (including a 503(b)(9) Claim):

24 (i) either: (1) a proof of claim was timely Filed; or (2) a proof of claim is
25 deemed timely Filed either under Bankruptcy Rule 3003(b)(1)-(2) or by a
26 Final Order; and

27 (ii) either: (1) the Claim is not a Disputed Claim; or (2) the Claim is allowed by a
28 Final Order or under the Plan; and

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1 (b) with respect to a Claim against the Estate arising on or after the Petition Date
2 (excluding a 503(b)(9) Claim), a Claim that has been allowed pursuant to Section
3 II.B.1. ~~of the Plan.~~

4 Unless otherwise specified in the Plan, an Allowed Claim does not include interest on the
5 Claim accruing after the Petition Date. Moreover, any portion of a Claim that is satisfied, released
6 or waived during the Case is not an Allowed Claim.

7 **“Alta-Hualapai Parcel”** means approximately 19 acres of undeveloped land in Las Vegas,
8 Nevada, granted to the Borrower by the United States, through the Bureau of Land Management,
9 pursuant to Section 2603 of the Omnibus Public Land Management Act of 2009.

10 **“Amended Articles of Incorporation and Bylaws”** means the Articles of Incorporation
11 and Bylaws for the Reorganized Debtor which shall be in substantially the form Filed by the Exhibit
12 Filing Date. Upon such filing, the Amended Articles of Incorporation and Bylaws shall become
13 Exhibit A to the Plan (subject to any modifications made thereto prior to the Confirmation Date).

14 [“APA” means that certain Asset Purchase Agreement by and between the Debtor and](#)
15 [UCSD, dated December 2, 2011.](#)

16 **“Approving Lenders”** means the Lenders comprising holders owning more than 66 2/3%
17 in aggregate principal amount and representing more than 50% of the number of holders of the debt
18 under the Prepetition Credit Agreement.

19 **“Ballot”** means the ballot to vote to accept or reject the Plan.

20 [“Ballot Deadline” means the deadline established by the Court for the delivery of executed](#)
21 [Ballots to the Ballot Tabulator.](#)

22 **“Ballot Tabulator”** means Shanda D. Dahl, a paralegal with Debtor’s Counsel, or any other
23 person or entity designated by the Debtor’s Counsel to tabulate ballots.

24 ~~[“Ballot Deadline” means the deadline established by the Court for the delivery of executed](#)~~
25 ~~[Ballots to the Ballot Tabulator.](#)~~

26 **“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

27 **“Bankruptcy Rules”** means, collectively, (a) the Federal Rules of Bankruptcy Procedure
28 and (b) the Local Bankruptcy Rules for this Court, as applicable in the Case.

1 “Bar Date Notice” means the Notice of Bar Dates for Filing Proofs of Claim (Including
2 Administrative Expense Claims Under Bankruptcy Code Section 503(b)(9)), Consequences for
3 Failure to Timely Comply, and Related Procedures [Docket No. 101], which sets forth certain dates,
4 deadlines and procedures relevant to filing proofs of claim in this Case pursuant to the Order (1)
5 Fixing Deadlines for Filing Proofs of Claim; (2) Establishing Consequences of Failing to Comply
6 Therewith; and (3) Approving Form and Manner of Notice Thereof [Docket No. 73] and the Claims
7 Agent Guidelines.

8 “Bill of Sale” means the Assignment and Assumption and Bill of Sale executed and
9 delivered in connection with the UCSD Sale.

10 **“Board”** means the board of directors for the Debtor.

11 **“Business Day”** means a day that is not a Saturday, Sunday, or legal holiday.

12 **“Case”** means the Debtor’s case under chapter 11 of the Bankruptcy Code.

13 **“Cash Collateral Account”** means that certain cash collateral account established prior to
14 the Petition Date as collateral for the Lender Claims (and any successor account), referred to in the
15 Cash Collateral Orders as the “Blocked Account.”

16 **“Cash Collateral Orders”** means the ~~orders entered in the Case approving, among other~~
17 ~~things, the use by the Debtor of cash collateral in which the Estate and the Agent hold an~~
18 ~~interest~~ Interim Cash Collateral Order and the Final Cash Collateral Order.

19 “Cash Collateral Stipulation” means the Stipulation Between Bank of America, N.A. as
20 Administrative Agent, and Debtor in Possession Re (A) Use of Cash Collateral Pursuant to 11
21 U.S.C. § 363 and (B) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, and 363
22 Nunc Pro Tunc to the Petition Date [Docket No. 9-1], as modified by the Final Cash Collateral
23 Order.

24 **“Charitable Trust Funds”** means certain funds that are subject to donor restrictions
25 limiting the use of such funds for specified research, treatment, patient support and/or other
26 charitable purposes by the Debtor, and that are maintained in one or more segregated accounts of the
27 Debtor, or in one or more escrow accounts, in all cases subject to such restrictions. Charitable Trust
28

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1 Funds include without limitation the Engelstad Endowment Fund, the Patient Cares Committee
2 Fund, ~~and~~ the Saffer Endowment Fund, and the Escrowed Donations.

3 **“Claim”** means a claim, as Bankruptcy Code section 101(5) defines the term “claim.”

4 **“Claims Agent”** means Kurtzman Carson Consultants, LLC, the Debtor’s Court-appointed
5 claims and noticing agent pursuant to the *Order Approving Application of Debtor for Authorization*
6 *to Employ Kurtzman Carson Consultants LLC as Claims and Noticing Agent Pursuant to 28 U.S.C.*
7 *§ 156(c)* [Docket No. 86] and the Claims Agent Guidelines.

8 **“Claims Agent Guidelines”** means the *Guidelines for a Claims Agent* promulgated by the
9 United States Bankruptcy Court for the District of Nevada.

10 **“Claims Objection Deadline”** means the date that is the later of (a) 180 days after the
11 Effective Date, unless extended by the Court, and (b) 180 days after the date on which a proof of
12 claim in respect of a Claim against the Debtor has been Filed, unless extended by the Court.

13 **“Class”** means a group of Claims against the Debtor as classified in Section II.A, or any
14 subclass thereof.

15 **“Committee Administrative Expense Claims”** means the aggregate of (i) all Allowed
16 Professional Fee Claims of professionals employed by the Creditors’ Committee and (ii) all
17 Allowed Administrative Claims of members of the Creditors’ Committee for expenses incurred in
18 the performance of the duties of such committee.

19 **“Confirmation Date”** means the date of entry of the Confirmation Order.

20 **“Confirmation Documents”** means the briefs, memoranda, declarations, and other writings
21 and evidence submitted by the Debtor in support of confirmation of the Plan.

22 **“Confirmation Hearing”** means the hearing by the Court on confirmation of the Plan.

23 **“Confirmation Order”** means the Court order confirming the Plan.

24 **“Consenting Lenders”** means the Lenders signatory to the Plan Support Agreement.

25 **“Court”** means the United States Bankruptcy Court for the District of Nevada, or any other
26 court that exercises jurisdiction over the Case.

27 ~~**“Creditors’ Committee”** means the official committee of unsecured creditors appointed~~
28 ~~under Bankruptcy Code section 1102 by the U.S. Trustee.~~

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1 **“Creditor Trust”** means that certain creditor trust to be established on the Effective Date
2 pursuant to the Creditor Trust Agreement and this Plan.

3 **“Creditor Trust Agreement”** means the agreement pursuant to which the Creditor Trust
4 will be formed and implemented, the substantially final version of which shall be Filed by the
5 Exhibit Filing Date and become Exhibit C to the Plan.

6 **“Creditor Trust Assets”** means: (i) the Unsecured Creditor Cash, if any, (ii) the Preserved
7 Avoidance Actions, the Preserved Claims and any other Claims, rights and causes of action vested
8 in the Creditor Trust pursuant to Section IV.F, and (iii) any Charitable Trust Funds remitted to the
9 Creditor Trust with respect to a successful Trust Funds Challenge pursuant to Section II.C.4.

10 ~~(a) the Unsecured Creditor Cash, which is to be deposited into the Creditor Trust on the~~
11 ~~Effective Date; and~~

12 ~~(b) the Net Litigation Proceeds.~~

13 **“Creditor Trustee”** means a trustee of the Creditor Trust.

14 **“Creditors’ Committee”** means the official committee of unsecured creditors appointed
15 under Bankruptcy Code section 1102 by the U.S. Trustee.

16 **“Cure Payment”** means the payment of cash or the distribution of other property (as the
17 parties may agree or the Court may order), that is necessary to cure any and all defaults under an
18 executory contract or unexpired lease of the Debtor so that the contract or lease may be assumed, or
19 assumed and assigned, pursuant to Bankruptcy Code section 1123(b)(2).

20 **“Debtor”** means Nevada Cancer Institute, a Nevada nonprofit corporation.

21 **“Debtor’s Counsel”** means Klee, Tuchin, Bogdanoff & Stern LLP, reorganization counsel
22 to the Debtor.

23 **“Debtor’s Co-counsel”** means Lewis and Roca LLP, reorganization co-counsel to the
24 Debtor.

25 **“Disallowed Claim”** means a Claim against the Debtor that: (a) is not listed on the
26 Schedules, or is listed therein as contingent, unliquidated, disputed, or in an amount equal to zero,
27 and whose holder has failed to timely File a proof of claim; or (b) the Court has disallowed pursuant
28 to an order of the Court.

1 **“Disclosure Statement”** means the disclosure statement to accompany the Plan, as it
2 subsequently may be modified or amended.

3 **“Disputed Claim”** means a Claim against the Debtor:

4 (a) as to which a proof of claim is Filed or is deemed Filed under Bankruptcy
5 Rule 3003(b)(1); and

6 (b) as to which:

7 (i) An objection: (1) has been timely Filed; and (2) has not been denied
8 by a Final Order or withdrawn; or

9 (ii) That Claim is listed on the Debtor’s Schedules as disputed, contingent
10 or unliquidated.

11 **“Donations Escrow”** means that certain escrow established postpetition by the Debtor with
12 Blackmore Escrow, Inc. for the purpose of holding certain donor-restricted contributions pursuant
13 to the Order Granting Debtor’s Motion Pursuant To Bankruptcy Code Sections 105(a), 363(b) and
14 363(c) For Order Authorizing The Deposit Of Donor-Restricted Donations Into Escrow Account
15 [Docket No. 141].

16 **“Donations Escrow Agreement”** means that certain Escrow Agreement by and between
17 the Debtor and Blackmore Escrow, Inc. dated as of December 15, 2011 governing the Donations
18 Escrow.

19 **“Effective Date”** means the first Business Day on which the conditions set forth in Section
20 IV.L.M.1 have been satisfied or waived by the Debtor and on which no stay of the Confirmation
21 Order is in effect.

22 **“Engelstad Endowment Agreement”** means that certain Gift Agreement dated January 4,
23 2007 between the Debtor and the Engelstad Family Foundation, as modified by the Engelstad
24 Endowment Modification.

25 **“Engelstad Endowment Escrow”** means that certain escrow established prepetition by the
26 Debtor with Blackmore Escrow, Inc., pursuant to which the Engelstad Endowment Fund serves as a
27 financial backstop to a substantial portion of the Philanthropic Commitment, as authorized by the
28 Engelstad Endowment Modification.

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1 “Engelstad Endowment Escrow Agreement” means the certain Escrow Agreement by
2 and among the Debtor, UCSD and Blackmore Escrow, Inc. dated December 2, 2011, which governs
3 the Engelstad Endowment Escrow.

4 **“Engelstad Endowment Fund”** means those certain segregated funds subject to the
5 Engelstad Endowment Agreement, which funds presently are held in the Engelstad Endowment
6 Escrow.

7 “Engelstad Endowment Modification” means that certain First Amendment to Gift
8 Agreement dated ~~January 4, 2007~~ November 15, 2011 between the Debtor and the Engelstad Family
9 Foundation ~~(as modified from time to time)~~, pursuant to which the Debtor was authorized to transfer
10 (and did transfer) the Engelstad Endowment Fund to the Engelstad Endowment Escrow.

11 “Escrowed Donations” means the funds held from time to time in the Donations Escrow.

12 **“Estate”** means the estate created in the Case under Bankruptcy Code section 541.

13 **“Exhibit Filing Date”** means the last Business Day that is at least ten (10) days before the
14 Confirmation Hearing.

15 **“Filed”** means duly and properly filed with the Court and reflected on the Court’s official
16 docket, except with respect to proofs of claim that must be filed with the Court-appointed Claims
17 Agent pursuant to the Bar Date Notice, in which case “Filed” means duly and properly filed with the
18 Claims Agent and reflected on the official claims docket maintained by the Claims Agent.

19 “Final Cash Collateral Order” means the Final Order Authorizing (A) Use of Cash
20 Collateral Pursuant to 11 U.S.C. § 363 and (B) Grant Of Adequate Protection Pursuant to 11
21 U.S.C. §§ 361, 362 and 363 Nunc Pro Tunc to the Petition Date [Docket No. 281].

22 **“Final Order”** means an order or judgment of the Court entered on the Court’s official
23 docket:

- 24 (a) that has not been reversed, rescinded, stayed, modified, or amended;
- 25 (b) that is in full force and effect; and
- 26 (c) with respect to which: (1) the time to appeal or to seek review, remand, rehearing, or
27 a writ of certiorari has expired and as to which no timely filed appeal or petition for review,
28 rehearing, remand, or writ of certiorari is pending; or (2) any such appeal or petition has been

1 dismissed or resolved by the highest court to which the order or judgment was appealed or from
2 which review, rehearing, remand, or a writ of certiorari was sought.

3 **“Flagship Building”** means collectively the real property identified by the Clark County
4 Assessor as APN 164-13-712-010 and that certain treatment and research building constructed
5 thereon.

6 **“Funding Agreement”** means that certain Funding Agreement by and between the Debtor
7 and UCSD, ~~entered into~~ executed and delivered in connection with the UCSD Sale.

8 **“General Unsecured Claim”** means a Claim against the Debtor that is not an
9 Administrative Claim, a Priority Claim, a Priority Tax Claim, a Secured Claim, a Secured Tax
10 Claim, or an Other Secured Claim.

11 **“Interim Cash Collateral Order”** means the Interim Order Authorizing (A) Use of Cash
12 Collateral Pursuant to 11 U.S.C. § 363 and (B) Grant Of Adequate Protection Pursuant to 11
13 U.S.C. §§ 361, 362 and 363 Nunc Pro Tunc to the Petition Date [Docket No. 65].

14 **“Lender” or “Lenders”** means any or all of the lenders holding debt under the Prepetition
15 Credit Agreement.

16 **“Lender Claims”** means all Claims of the Agent and the Lenders against the Debtor,
17 including Claims arising under the Prepetition Credit Agreement and all other Prepetition Credit
18 Documents and the Cash Collateral Orders.

19 **“Lender Deficiency Claims”** means Lender Claims that are not Secured Claims.

20 **“Lender Secured Claims”** means Lender Claims that are Secured Claims.

21 **“License Agreement”** means the Non-Exclusive License Agreement by and between
22 UCSD, as licensor, and the Debtor, as licensee, executed and delivered in connection with the
23 UCSD Sale.

24 **“List of Directors and Officers”** means the list of individuals that will serve as directors
25 and officers of the Reorganized Debtor. On or before the Exhibit Filing Date, the Debtor will File
26 the List of Directors and Officers. Upon filing, such List shall become Exhibit B to the Plan (subject
27 to any modifications made prior to the Confirmation Date).

28

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1 “LR _____” means a rule under the Local Rules of Bankruptcy Practice of the United
2 States District Court for the District of Nevada.

3 “Net ~~Litigation Proceeds~~Trust Assets” means ~~the actual~~all cash comprising and/or cash
4 proceeds ~~of the Preserved Avoidance Actions vested in~~recovered in respect of the Creditor Trust
5 ~~pursuant to Section IV.E, less~~Assets, minus (i) all expenses of the Creditor Trust incurred in
6 generating ~~such proceeds~~any cash proceeds, including all attorneys’ fees and expenses, expert
7 witness fees and expenses and court costs, and (ii) all expenses incurred in prosecuting objections to
8 Class 4 Claims and administering the Creditor Trust, including all attorneys’ fees and expenses,
9 expert witness fees and expenses and court costs.

10 “~~Net Trust Assets~~” means ~~the Creditor Trust Assets minus the fees and expenses incurred~~
11 ~~by the Creditor Trust and its professionals in administering the trust.~~

12 “**Non-Ordinary Course Administrative Claim**” means any Administrative Claim other
13 than an Ordinary Course Administrative Claim, a Professional Fee Claim, a 503(b)(9) Claim, a Cure
14 Payment, or a U.S. Trustee Fee.

15 “**Ordinary Course Administrative Claims**” means Administrative Claims based upon
16 liabilities that the Debtor incurs in the ordinary course of its business for goods and services and that
17 are unpaid as of the Effective Date. Ordinary Course Administrative Claims do not include
18 Professional Fee Claims, 503(b)(9) Claims, Cure Payments or U.S. Trustee Fees.

19 “**Other Secured Claims**” means any Secured Claims that are not otherwise expressly
20 classified under the Plan.

21 “**Patient Cares Committee Fund**” means those certain segregated funds solicited by and
22 donated to the Debtor for the express charitable purpose of providing financial aid to Nevada cancer
23 patients in need of financial support.

24 “**Permanent Injunction**” has the meaning set forth in Section VII.A.

25 “**Petition Date**” means December 2, 2011.

26 “**Philanthropic Commitment**” means the obligation of the Debtor and Reorganized Debtor
27 under the Funding Agreement to raise and remit to UCSD philanthropic donations, in the amounts
28 and on the dates specified in the Funding Agreement.

1 “**Plan**” means this “Amended Chapter 11 Plan of Reorganization For Nevada Cancer
2 Institute (Dated ~~December 6, 2011~~January 31, 2012),” as it subsequently may be modified or
3 amended.

4 “**Plan Support Agreement**” means that certain Plan Support Agreement dated as of
5 September 16, 2011 between the Debtor, the Agent and the Consenting Lenders, as such agreement
6 has been and ~~may~~ subsequently may be amended.

7 “**Prepetition Credit Agreement**” means that certain Amended and Restated Credit and
8 Reimbursement Agreement dated as of April 23, 2008 (as amended from time to time) among the
9 Debtor, the lenders referred to therein and Bank of America, N.A., as administrative agent for such
10 lenders.

11 “**Prepetition Credit Documents**” means the Prepetition Credit Agreement, together with
12 the other agreements, instruments and documents contemplated thereby, including the Prepetition
13 Deed of Trust.

14 “**Prepetition Deed of Trust**” means that certain Amended and Restated Construction Deed
15 of Trust with Assignment of Rents, Security Agreement and Fixture Filing dated April 23, 2008,
16 executed by the Debtor in respect of the Prepetition Credit Agreement (as modified from time to
17 time).

18 “**Preserved Avoidance Actions**” means causes of action held by the Debtor or the Estate
19 that arise under chapter 5 of the Bankruptcy Code that are to be transferred to the Creditor Trust on
20 the Effective Date, as set forth on Schedule 4 to the Disclosure Statement.

21 “Preserved Claims” means the Claims identified on Exhibit F to the Plan, against the
22 parties identified thereon, which Claims are to be transferred to the Creditor Trust on the Effective
23 Date.

24 “**Priority Claim**” means an Allowed Claim entitled to priority under Bankruptcy Code
25 sections 507(a)(4), 507(a)(5), or 507(a)(7). Priority Claims do not include any Claims that accrue
26 after the Petition Date.

27 “**Priority Tax Claim**” means an Allowed Claim entitled to priority under Bankruptcy Code
28 section 507(a)(8). Priority Tax Claims do not include any Claims that accrue after the Petition Date.

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1 “Pro Rata” means proportionately so that the ratio of (a) the amount of consideration
2 distributed on account of a particular Allowed Claim to (b) the Allowed Claim, is the same as the
3 ratio of (x) the amount of consideration available for distribution on account of Allowed Claims in
4 the Class in which the particular Allowed Claim is included to (y) the amount of all Allowed Claims
5 of that Class.

6 **“Professional Fee Claim”** means a Claim under Bankruptcy Code sections 327, 328, 330,
7 331, 503, or 1103 for compensation for professional services rendered or expenses incurred for
8 which the Estate is liable for payment.

9 ~~“Pro Rata” means proportionately so that the ratio of (a) the amount of consideration~~
10 ~~distributed on account of a particular Allowed Claim to (b) the Allowed Claim, is the same as the~~
11 ~~ratio of (x) the amount of consideration available for distribution on account of Allowed Claims in~~
12 ~~the Class in which the particular Allowed Claim is included to (y) the amount of all Allowed Claims~~
13 ~~of that Class.~~

14 Rejection Damage Claim” means a Claim against the Debtor arising under
15 Bankruptcy Code section 365 from the rejection by the Debtor of an unexpired lease or executory
16 contract.

17 **“Released Parties”** means each of (1) the Agent, the Lenders, ~~the members of the Board,~~
18 ~~and,~~ current and former donors to the Debtor (in their capacity as donors), employees, officers and
19 directors of the Debtor as of January 30, 2012, Stephen Cloobek, and Robert Melendres, and (2) as
20 applicable, their respective accountants, affiliates, agents, assigns, attorneys, bankers, consultants,
21 directors, financial advisors, heirs, members, officers, parent entities, partners, representatives,
22 shareholders, subsidiaries, and successors, provided, however, that the parties listed on Exhibit F
23 (and their respective accountants, affiliates, agents, assigns, attorneys, bankers, consultants,
24 directors, financial advisors, heirs, members, officers, parent entities, partners, representatives,
25 shareholders, subsidiaries, and successors) shall not constitute “Released Parties.”

26 “Reorganized Debtor” means the Debtor on and after the Effective Date, after giving effect
27 to the Plan.

28 **“Research Building”** means collectively the real property identified by the Clark County Assessor as APN 164-13-618-001 and the research building constructed thereon.

1 **“Research Building Note”** means the note to be issued by the Reorganized Debtor on the
2 Effective Date, with the terms and conditions described in Section II.C.1.

3 ~~“Rejection Damage Claim” means a Claim against the Debtor arising under Bankruptcy~~
4 ~~Code section 365 from the rejection by the Debtor of an unexpired lease or executory~~
5 ~~contract.~~ **Saffer Endowment Agreement”** means a certain Gift Agreement executed by the Debtor
6 and the donors thereof in December 2008 (as amended from time to time).

7 ~~“Reorganized Debtor” means the Debtor on and after the Effective Date, after giving effect~~
8 ~~to the Plan.~~

9 **“Saffer Endowment Fund”** means The Sandra and Morton Saffer Cancer Research
10 Endowment Fund, which comprises a fund of approximately \$350,000 governed by ~~a certain Gift~~ the
11 Saffer Endowment Agreement ~~executed by the Debtor and the donors thereof in December 2008.~~

12 **“Schedule of Assumed Agreements”** means the schedule of executory contracts and
13 unexpired leases that the Debtor will assume on the Effective Date. On or before the Exhibit Filing
14 Date, the Debtor will File its initial Schedule of Assumed Agreements and serve it on the parties to
15 agreements listed on that schedule. Upon filing, such Schedule shall become Exhibit D to the Plan
16 (subject to any modifications made prior to the Confirmation Date).

17 **“Schedule of Rejected Agreements”** means the schedule of executory contracts and
18 unexpired leases that the Debtor will reject on the Effective Date. On or before the Exhibit Filing
19 Date, the Debtor will File its initial Schedule of Rejected Agreements and serve it on the parties to
20 agreements listed on that schedule. Upon filing, such schedule shall become Exhibit E to the Plan
21 (subject to any modification made prior to the Confirmation Date).

22 **“Schedules”** means the Schedules of Assets and Liabilities Filed by the Debtor as such
23 Schedules may have been, or may subsequently be, amended before the Effective Date.

24 **“Secured Claim”** means a Claim against the Debtor, including a Secured Tax Claim and
25 Other Secured Claim, that is secured by a lien on property of the Debtor. A Claim against the
26 Debtor is a Secured Claim only to the extent of the value of the claimholder’s interest in the Debtor’s
27 interest in the collateral or to the extent of the amount subject to setoff against a Claim held by the
28 Debtor, whichever is applicable, and as determined under Bankruptcy Code section 506(a).

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1 **“Secured Tax Claim”** means a governmental unit’s Secured Claim against the Debtor for
2 unpaid taxes.

3 **“Sufficiency Determination Date”** means the date upon which it is determined, following
4 review and agreement by and among the Debtor, the Agent and the Creditors’ Committee or the
5 Creditor Trust (if after the Effective Date), whether there are sufficient funds in the Estate to satisfy
6 the Aggregate Unsecured Creditor Consideration after payment of, or adequate reserve for, all
7 Allowed Administrative Claims authorized to be paid under the Cash Collateral Stipulation;
8 provided that if the parties do not agree and the Court must resolve the issue pursuant to Section
9 II.C.4, the Sufficiency Determination Date shall be the date upon which the Court enters its order
10 resolving the issue.

11 **“Trust Funds Challenge”** means a civil action or other legal proceeding challenging
12 whether any of the Charitable Trust Funds are legally held in trust, or are available for general
13 corporate purposes of the Debtor, including the satisfaction of Administrative Claims, Priority
14 Claims and General Unsecured Claims.

15 **“UCSD”** means The Regents of the University of California on behalf of its UC San Diego
16 Health System.

17 **“UCSD Sale”** means the sale of the Flagship Building and substantially all of the Debtor’s
18 assets, properties and rights relating to the Debtor’s cancer business at the Flagship Building, and
19 certain other assets, pursuant to ~~an order entered in the Case pursuant to Bankruptcy Code section~~
20 ~~363.~~ the Order (1) Approving Sale of Debtor’s Assets Under Asset Purchase Agreement Free And
21 Clear of Liens, Claims and Encumbrances and (2) Approving Assumption and Assignment of
22 Unexpired Leases and Executory Contracts [Docket No. 280].

23 **“Unsecured Creditor Cash”** means cash in ~~the amount of \$175,000 to be deposited by the~~
24 ~~Debtor or Reorganized Debtor into the Creditor Trust for the benefit of holders of Allowed Class 4~~
25 ~~Claims~~ an amount equal to (i) the Aggregate Unsecured Creditor Consideration minus (ii) all
26 Allowed Committee Administrative Expense Claims incurred in the Case; provided that if the result
27 of the foregoing calculation is a negative integer, the Unsecured Creditor Cash shall be zero.

28 **“U.S. Trustee”** means the Office of the United States Trustee for the District of Nevada.

1 **“U.S. Trustee Fees”** means fees or charges assessed against the Estate pursuant to 28
2 U.S.C. § 1930.

3 **“Vacant Land”** means approximately 9.24 acres of unimproved real property owned by the
4 Debtor and identified by the Clark County Assessor as APN 164-13-712-015.

5 **B. Rules of Construction.**

6 1. The rules of construction in Bankruptcy Code section 102 apply to this Plan to the
7 extent not inconsistent herewith.

8 2. Bankruptcy Rule 9006(a) applies when computing any time period under the Plan.

9 3. A term that is used in this Plan and that is not defined in this Plan has the meaning
10 attributed to that term, if any, in the Bankruptcy Code or the Bankruptcy Rules.

11 4. The definition given to any term or provision in the Plan supersedes and controls any
12 different meaning that may be given to that term or provision in the Disclosure Statement.

13 5. Whenever it is appropriate from the context, each term, whether stated in the singular
14 or the plural, includes both the singular and the plural.

15 6. Any reference to a document or instrument being in a particular form or on particular
16 terms means that the document or instrument will be substantially in that form or on those terms. No
17 material change to the form or terms may be made after the Confirmation Date without the consent
18 of any party materially negatively affected.

19 7. Any reference to an existing document means the document as it has been, or may
20 be, amended or supplemented.

21 8. Unless otherwise indicated, the phrase “under the Plan” and similar words or phrases
22 refer to this Plan in its entirety rather than to only a portion of the Plan.

23 9. Unless otherwise specified, all references to Sections or Exhibits are references to
24 this Plan’s Sections or Exhibits.

25 10. The words “herein,” “hereto,” “hereunder,” and other words of similar import refer
26 to this Plan in its entirety rather than to only a particular portion hereof.

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1 **II.**

2 **DESIGNATION OF CLASSES AND TREATMENT OF CLAIMS**

3 **A. Summary and Classification of Claims.**

4 This Section classifies Claims against the Debtor — except for Administrative Claims and
 5 Priority Tax Claims, which are not classified — for all purposes, including voting, confirmation,
 6 and distribution under the Plan. A Claim against the Debtor is classified in a particular Class only to
 7 the extent that the Claim falls within the Class description. To the extent that part of the Claim
 8 against the Debtor falls within a different Class description, the Claim is classified in that different
 9 Class. The following table summarizes the Classes of Claims under the Plan:

10

11 CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
12 None	Administrative Claims and Priority Tax Claims	Unimpaired	Not Entitled to Vote
13 Class 1	Lender Secured Claims	Impaired	Entitled to Vote
14 Class 2	Other Secured Claims (includes Secured Tax Claims)	Unimpaired	Not Entitled to Vote Deemed to Accept
15 Class 3	Priority Claims (excludes Priority Tax Claims)	Unimpaired	Not Entitled to Vote Deemed to Accept
16 Class 4	General Unsecured Claims	Impaired	Entitled to Vote

17

18

19

20 **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, NO**
 21 **DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON**
 22 **ACCOUNT OF ANY CLAIM AGAINST THE DEBTOR OR THE ESTATE THAT IS NOT**
 23 **AN ALLOWED CLAIM.**

24 The treatment in this Plan is in full and complete satisfaction of the legal, contractual, and
 25 equitable rights (including any liens) that each entity holding a Claim may have against the Debtor
 26 or the Estate. This treatment supersedes and replaces any agreements or rights that any holder of a
 27 Claim may have with or against the Debtor, the Estate, or their respective property. All distributions
 28 in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claim,

1 as determined for federal income tax purposes, and thereafter, to the remaining portion of such
2 Allowed Claim, if any.

3 **B. Allowance and Treatment of Unclassified Claims (Administrative Claims and Priority
4 Tax Claims).**

5 **1. Administrative Claims.**

6 **a. Allowance of Administrative Claims.**

7 **Allowance of Ordinary Course Administrative Claims:** An entity holding an Ordinary
8 Course Administrative Claim may, but need not, File a motion or request for payment of its Claim.
9 The Reorganized Debtor or any other party in interest may File an objection to an Ordinary Course
10 Administrative Claim in their discretion. Unless a party in interest objects to an Ordinary Course
11 Administrative Claim, such Claim will be an Allowed Claim in accordance with the terms and
12 conditions of the particular transaction that gave rise to the Claim.

13 **Allowance of Professional Fee Claims:** Unless otherwise expressly provided in the Plan, a
14 Professional Fee Claim will be Allowed only if:

15 (i) On or before 60 days after the Effective Date, the entity holding such Professional
16 Fee Claim both Files with the Court a final fee application or a motion requesting allowance of the
17 Professional Fee Claim and serves the application or motion on the Reorganized Debtor and the
18 U.S. Trustee; and

19 (ii) The Court determines it is an Allowed Claim.

20 The Reorganized Debtor or any other party in interest may File an objection to such
21 application or motion within the time provided by the Bankruptcy Rules or within any other period
22 that the Court establishes. Entities holding Professional Fee Claims that do not timely File and serve
23 a fee application or motion for payment will be forever barred from asserting those Claims against
24 the Debtor, the Reorganized Debtor, the Estate, the Creditor Trust, or their respective property.

25 **Allowance of Cure Payments:** Cure Payments shall be Allowed in accordance with the
26 procedures set forth in Section III.A. ~~2 of the Plan~~ 2.

27 **Allowance of Non-Ordinary Course Administrative Claims:** Unless otherwise expressly
28 provided in the Plan, Non-Ordinary Course Administrative Claims will be Allowed only if:

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1 (i) On or before 60 days after the Effective Date, the entity holding such Non-Ordinary
2 Course Administrative Claim both Files with the Court a motion requesting allowance of the
3 Non-Ordinary Course Administrative Claim and serves the motion on the Reorganized Debtor and
4 the U.S. Trustee; and

5 (ii) The Court determines it is an Allowed Claim.

6 The Reorganized Debtor or any other party in interest may File an objection to such motion
7 within 60 days after the expiration of the deadline for the filing of a Non-Ordinary Course
8 Administrative Claim set forth in clause (i) above (*i.e.*, within 120 days after the Effective Date),
9 unless such time period for filing such objection is extended by the Court. Entities holding
10 Non-Ordinary Course Administrative Claims that do not timely File and serve a request for payment
11 will be forever barred from asserting those Claims against the Debtor, the Reorganized Debtor, the
12 Estate, the Creditor Trust, or their respective property.

13 **Allowance of 503(b)(9) Claims:** Unless otherwise expressly provided in the Plan, a
14 503(b)(9) Claim will be Allowed only if:

15 (i) The 503(b)(9) Claim is ~~filed~~Filed by the 503(b)(9) Bar Date, or is deemed timely
16 ~~filed~~Filed; and

17 (ii) If an objection to such 503(b)(9) Claim is ~~filed~~Filed by a party in interest on or before
18 the Claim Objection Deadline, the Court determines it is an Allowed 503(b)(9) Claim.

19 Entities holding 503(b)(9) Claims that did not timely File such Claims by the 503(b)(9) Bar
20 Date will be forever barred from asserting those Claims against the Debtor, the Reorganized Debtor,
21 the Estate, the Creditor Trust, or their respective property.

22 **b. Treatment of Administrative Claims.**

23 **Treatment of Allowed Ordinary Course Administrative Claims:** Unless otherwise
24 agreed, Allowed Ordinary Course Administrative Claims will be paid by the Reorganized Debtor in
25 accordance with the terms and conditions of the particular transaction that gave rise to such Claim.

26 **Treatment of Professional Fee Claims:** Unless otherwise agreed or provided in the Plan,
27 an Allowed Professional Fee Claim will be paid by the Reorganized Debtor within 10 days after the
28 date on which the Court determines such Claim is an Allowed Claim.

1 **Treatment of Cure Payments:** Cure Payments will be made to the non-Debtor parties to
2 the executory contracts or unexpired leases in accordance with Section III.A.~~2 of the Plan.2.~~

3 **Treatment of U.S. Trustee Fees Under 28 U.S.C. § 1930:** The Reorganized Debtor will
4 pay to the U.S. Trustee all fees due and owing under 28 U.S.C. § 1930 in cash on the Effective Date.

5 **Treatment of Non-Ordinary Course Administrative Claims:** Unless the entity holding a
6 Non-Ordinary Course Administrative Claim Allowed by the Court agrees to different treatment or
7 unless a different payment date is ordered by the Court, the Reorganized Debtor will pay to that
8 entity cash in the full amount of such Allowed Non-Ordinary Course Administrative Claim, without
9 interest, on or before the later of: (i) 10 days after the Effective Date, or (ii) 10 days after the date any
10 order determining such Claim to be an Allowed Non-Ordinary Course Administrative Claim
11 becomes a Final Order.

12 **Treatment of 503(b)(9) Claims:** Unless the entity holding a 503(b)(9) Claim that is
13 Allowed by the Court agrees to different treatment, or already has been paid the full amount of such
14 Allowed 503(b)(9) Claim pursuant to an order of the Court, the Reorganized Debtor will pay to that
15 entity cash in the full amount of such Allowed 503(b)(9) Claim, without interest, on or before the
16 later of: (i) 10 days after the Effective Date, or (ii) 10 days after the date any order determining such
17 Claim to be an Allowed 503(b)(9) Claim becomes a Final Order.

18 **c. Payment of Committee Administrative Expense Claims.**

19 Notwithstanding any other provision of the Plan: (i) the professionals and members of the
20 Creditors' Committee (in their capacity as members of the Creditors' Committee and not in their
21 capacity as holders of Unsecured Claims) shall not receive (pursuant to the Plan or other otherwise)
22 more than \$750,000 on account of Allowed Committee Administrative Expense Claims incurred in
23 the Case; and (ii) if the Lenders are required to remit funds to the Creditor Trust to satisfy a
24 deficiency in respect of the Aggregate Unsecured Creditor Consideration pursuant to Section II.C.4,
25 then the Creditor Trust (rather than the Reorganized Debtor) shall be required to disburse that
26 portion of such funding that is necessary to satisfy Allowed Committee Administrative Expense
27 Claims to the holders thereof.

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2. Priority Tax Claims.

Unless otherwise agreed, the Reorganized Debtor will pay to an entity holding an Allowed Priority Tax Claim cash in the full amount of the Allowed Priority Tax Claim, plus interest calculated at the federal judgment rate, in equal, amortized, annual installments beginning on the first anniversary of the Petition Date that falls on a date following the occurrence of the Effective Date and, thereafter, on each anniversary of the Petition Date through the fifth anniversary of the Petition Date; provided, however, that the Reorganized Debtor may prepay any Allowed Priority Tax Claim without penalty, at any time.

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C. Classification and Treatment of Classified Claims.

1. Class 1 (Lender Secured Claims).

Classification: Class 1 consists of the Lender Secured Claims.

Treatment: Class 1 is impaired under the Plan. If and to the extent any portion of the \$18,000,000 ~~million~~ in cash proceeds from the UCSD Sale has not been previously remitted to the Agent, for the ~~ratable~~ benefit of the ~~Lenders~~ Agent and the Lenders in accordance with the terms of the Prepetition Credit Agreement, the Debtor shall so remit the balance of such proceeds on the Effective Date. Payment of the \$18,000,000 in cash proceeds from the UCSD Sale (whenever remitted) shall reduce the debt under the Prepetition Credit Agreement.

On the Effective Date, the Reorganized Debtor shall issue to the Agent, for the ~~ratable~~ benefit of the ~~Lenders~~ Agent and the Lenders in accordance with the terms of the Plan Support Agreement, the Research Building Note in the amount of \$13,000,000, which shall be secured by the Research Building and the Vacant Land. (For purposes of clarity, the Alta-Hualapai Parcel shall not be encumbered by such note or any other obligation). The Research Building Note will be in form and substance satisfactory to the Agent and the Approving Lenders and will:

(i) be payable to the Agent, for the ~~ratable~~ benefit of the ~~Lenders~~ Agent and the Lenders in accordance with the terms of the Research Building Note;

(ii) be secured by a first-priority deed of trust, in form and substance satisfactory to the Agent and the Approving Lenders, on the Research Building (including all furniture, fixtures and equipment owned by the Borrower and contained in such building as of the date of the Plan Support Agreement) and the Vacant Land;

(iii) be a non-recourse obligation of the Reorganized Debtor;

(iv) provide for annual principal amortization as follows: \$250,000 at the end of the first year following the Effective Date, \$250,000 at the end of the second year following the Effective Date, \$350,000 at the end of the third year following the Effective Date, and \$400,000 at the end of the fourth year following the Effective Date (in each case payable on

1 the respective anniversary of the Effective Date, or if such date is not a Business Day, the
2 first Business Day thereafter);

3 (v) be payable in full (less any prior amortization payments) on the earlier of:

4 (x) the fifth anniversary of the Effective Date (or if such date is not a
5 Business Day, the first Business Day thereafter);

6 (y) default under such Note; and

7 (z) sale of the Research Building or the Vacant Land;

8 (vi) be non-interest bearing; and

9 (vii) be subject to prepayment at any time without penalty.

10 The Reorganized Debtor will continue to be obligated under the Prepetition Deed of Trust,
11 as modified or as amended and restated to secure only the Research Building Note. The
12 Reorganized Debtor also will provide an environmental indemnity to the Agent for the benefit of the
13 Agent and the Lenders. Agent’s title insurance policy may be amended, at the expense of the
14 Reorganized Debtor, to show the change in vesting and modifications to the obligations secured by
15 the Prepetition Deed of Trust, or at Agent’s discretion, a new title insurance policy may be required.
16 Additionally, until such time as the Research Building Note is paid in full or the Research Building
17 and Vacant Land are no longer owned by the Reorganized Debtor, the Agent shall have no
18 obligation to provide any subordination agreement, nondisturbance agreement or attornment
19 agreement with any tenant, licensee or other occupant under a lease, license or other occupancy
20 agreement affecting all or any portion of the Research Building property or the Vacant Land that is
21 entered into without Agent’s consent.

22 Until such time as the Research Building Note is paid in full or the Research Building and
23 Vacant Land are no longer owned by the Reorganized Debtor, the Reorganized Debtor will be solely
24 responsible for the costs and maintenance of the Research Building and the Vacant Land in a
25 condition at least as good as that existing on the date of the Plan Support Agreement. The
26 Reorganized Debtor shall be solely responsible for maintaining insurance with respect to such
27 properties, and paying all taxes applicable to such properties. The Reorganized Debtor will
28 maintain its status as a charitable 501(c)(3) entity.

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1 Notwithstanding the foregoing provisions of this Section II.C.1, if the Research Building
2 and/or the Vacant Land are sold for an aggregate amount in excess of \$13,000,000 (the “Excess
3 Consideration”), whether during the term of the Research Building Note or at any time within one
4 year after repayment thereof, the Reorganized Debtor shall cause such Excess Consideration to be
5 shared with the Agent, for the ~~ratable~~ benefit of the Agent and Lenders, on an 80/20 basis, *i.e.*, with
6 80% of the Excess Consideration being paid to the Agent, for the ~~ratable~~ benefit of the
7 ~~Lenders~~ Agent and Lenders (in accordance with the terms of the Research Building Note), and 20%
8 of the Excess Consideration being retained by the Reorganized Debtor.

9 If the Research Building and/or the Vacant Land are no longer owned by the Reorganized
10 Debtor, the Reorganized Debtor nevertheless will continue to operate as a nonprofit corporation
11 dedicated to raising funds, generating support for, and otherwise advancing its philanthropic
12 objectives.

13 At all times from the effectiveness of the Research Building Note until the date that is one
14 year after the repayment thereof, the Reorganized Debtor shall provide quarterly reports to the
15 Agent regarding the Research Building Note and the Vacant Land, in form and substance
16 satisfactory to the Agent, including without limitation as to any leasing of, sales offers with respect
17 to, damage to and maintenance status of such properties. So long as the Research Building Note is
18 outstanding, the Agent and the Lenders shall be entitled to inspect the Research Building and the
19 Vacant Land on an annual basis (or more frequently if a default has occurred and is continuing under
20 the Research Building Note).

21 ~~Any funds that become property of the Debtor’s estate that are proceeds of the Lenders’~~
22 ~~collateral that are not necessary to satisfy the obligations of the Debtor, the Estate and the~~
23 ~~Reorganized Debtor under the Plan and the UCSD Sale, shall be distributed to the Agent for the~~
24 ~~ratable benefit of the Lenders thirty (30) days following the later of: (i) the bar date for the filing of~~
25 ~~proofs of claim by governmental entities; (ii) the expiration of the deadlines for filing objections to~~
26 ~~Administrative Claims, Priority Claims, Secured Tax Claims and Priority Tax Claims; (iii) the~~
27 ~~settlement or adjudication to a Final Order of any and all objections to Administrative Claims,~~
28 ~~Priority Claims, Secured Tax Claims and Priority Tax Claims. For purposes of clarity, neither the~~

1 ~~Charitable Trust Funds nor any other charitable donations generated by the Debtor or its~~
2 ~~representatives constitute the Lenders' collateral.~~ The Agent and the Lenders are prohibited from
3 commencing a Trust Funds Challenge with respect to any Charitable Trust Funds. Further, none of
4 the Charitable Trust Funds shall be treated as collateral of the Agent or the Lenders with respect to
5 the Prepetition Credit Agreement, the Research Building Note or any Lender Claims.

6 2. Class 2 (Other Secured Claims, including Secured Tax Claims).

7 **Classification:** Class 2 consists of Other Secured Claims against the Debtor, including
8 Secured Tax Claims. Each Class 2 Claim shall constitute its own subclass.

9 **Treatment:** Class 2 is unimpaired under the Plan, and the legal, equitable, and contractual
10 rights of holders of the Allowed Class 2 Claims are unaltered by the Plan. Unless the holder of an
11 Allowed Class 2 Claim in a particular Class 2 subclass agrees to other treatment, on or as reasonably
12 practicable after the Effective Date, such holder shall receive, at the Reorganized Debtor's option:
13 (i) cash in the allowed amount of such holder's Allowed Class 2 Claim, (ii) the return of the
14 collateral securing such Allowed Class 2 Claim, or (iii) (a) the cure of any default, other than a
15 default of the kind specified in Bankruptcy Code section 365(b)(2), that Bankruptcy Code section
16 1124(2) requires to be cured, with respect to such holder's Allowed Class 2 Claim, without
17 recognition of any default rate of interest or similar penalty or charge, and upon such cure, no
18 default shall exist; (b) the reinstatement of the maturity of such Allowed Class 2 Claim as the
19 maturity existed before any default, without recognition of any default rate of interest or similar
20 penalty or charge; and (c) its unaltered legal, equitable, and contractual rights with respect to such
21 Allowed Class 2 Claim. Any defenses, counterclaims, rights of offset or recoupment of the Debtor
22 or the Estate with respect to such Claims shall vest in and inure to the benefit of the Reorganized
23 Debtor.

24 The Bankruptcy Court shall retain jurisdiction to determine the amount necessary to satisfy
25 any Allowed Class 2 Claim for which treatment is elected under clause (i) or clause (iii). With
26 respect to any Allowed Class 2 Claim for which treatment is elected under clause (i), any holder of
27 such Allowed Class 2 Claim shall release (and by the Confirmation Order shall be deemed to
28 release) all liens against property of the Estate.

As set forth in Section IV.D, if not earlier abandoned or otherwise disposed of, the Administration Building Parcel shall be deemed abandoned as of the Effective Date and the Reorganized Debtor shall retain no interest in the Administration Building Parcel.

3. Class 3 (Priority Claims, other than Priority Tax Claims).

Classification: Class 3 consists of Priority Claims against the Debtor, other than Priority Tax Claims.

Treatment: Class 3 is unimpaired under the Plan, and the legal, equitable, and contractual rights of holders of Allowed Class 3 Claims are unaltered by the Plan. Unless a particular entity holding an Allowed Class 3 Claim agrees otherwise, the Reorganized Debtor shall pay to each holder of an Allowed Class 3 Claim, in full satisfaction of such Claim, cash in the full amount of the Allowed Class 3 Claim on or before the latest of: (a) 10 days after the Effective Date; (b) 10 days after the date on which the Class 3 Claim becomes an Allowed Class 3 Claim; and (c) the date on which the Allowed Class 3 Claim first becomes due and payable in accordance with its terms.

4. Class 4 (General Unsecured Claims).

Classification: Class 4 consists of the General Unsecured Claims.

Treatment: Class 4 is impaired under the Plan. Allowed Class 4 Claims shall receive their Pro Rata share of the Net Trust Assets. On the Effective Date ~~(i) the Unsecured Creditor Cash shall be remitted to the Creditor Trust, and (ii) all, the~~ Preserved Avoidance Actions ~~shall, the Preserved Claims and other Claims, rights and causes of action to~~ be vested in the Creditor Trust; pursuant to Section IV.E. ~~The timing of payments to the holders of Allowed Class 4 Claims shall be determined by the Creditor Trust and in accordance with the Creditor Trust Agreement~~ F shall be vested in the Creditor Trust.

To the extent there are sufficient funds in the Estate to satisfy the Aggregate Unsecured Creditor Consideration, after payment of, or adequate reserve for, all other Allowed Administrative Claims authorized to be paid in accordance with the Cash Collateral Stipulation, the Reorganized Debtor shall remit such funds to the holders of Allowed Committee Administrative Expense Claims (on account thereof) and the Creditor Trust (on account of the Unsecured Creditor Cash), as applicable, no later than five (5) business days after the Sufficiency Determination Date. To the

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1 extent there are insufficient funds in the Estate to satisfy the Aggregate Unsecured Creditor
2 Consideration, after payment of, or adequate reserve for, all other Allowed Administrative Claims
3 authorized to be paid in accordance with the Cash Collateral Stipulation, the Lenders shall satisfy
4 such deficiency (not to exceed \$750,000) by transferring the requisite funds to the Creditor Trust no
5 later than five (5) business days after the Sufficiency Determination Date. The determination of
6 such sufficiency and/or deficiency, as the case may be, (i) will not occur until after all
7 Administrative Claims to be paid under the Cash Collateral Stipulation, including all Committee
8 Administrative Expense Claims, are determined, and (ii) will be determined in consultation with and
9 subject to the agreement of the Debtor, the Agent and the Creditors' Committee, or pursuant to
10 Court order if the parties do not agree.² If some or all of the deficiency funded by the Lenders is on
11 account of Allowed Committee Administrative Expense Claims, the Creditor Trust shall be
12 responsible for disbursing such payments to the holders of such Claims, notwithstanding any
13 contrary provision of the Plan.

14 The Creditors' Committee and the Creditor Trust are prohibited from commencing a Trust
15 Funds Challenge with respect to the Engelstad Endowment Fund or the Escrowed Donations. The
16 Creditors' Committee or the Creditor Trust may commence a Trust Funds Challenge with respect to
17 any Charitable Trust Funds other than the Engelstad Endowment Fund and the Escrowed Donations,
18 by way of an adversary proceeding. If the Creditors' Committee of the Creditor Trust fails to
19 commence such a proceeding, or to the extent a Trust Funds Challenge that is properly commenced
20 by the Creditors' Committee or the Creditor Trust is unsuccessful, the Reorganized Debtor shall
21 retain its rights and interests in the Charitable Trust Funds pursuant to Section IV.C. To the extent
22 that a Trust Funds Challenge that is properly commenced by the Creditors' Committee is successful,
23 any funds determined to be available for general corporate purposes that are not used to satisfy

24
25 _____
26 ² If any reserve for payment of disputed claims is established in connection with the Sufficiency
27 Determination Date, and, to the extent the Lenders are required to fund any portion of the
28 Aggregate Unsecured Creditor Consideration, then, to the extent any reserved funds are released
from the reserve other than for the payment of Administrative Claims and Priority Claims that
are the subject of such reserved funds, then such funds shall be remitted to the Agent for the

(FOOTNOTE CONTINUED)

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1 Allowed Administrative Claims or Allowed Priority Claims, shall be transferred to the Creditor
2 Trust within ten (10) days following the later of (i) the date on which the order sustaining such Trust
3 Funds Challenge becomes a Final Order, and (ii) the date on which all Administrative Claims and
4 Priority Claims have been determined by Final Order and paid. If a Trust Funds Challenge that is
5 properly commenced by the Creditors' Committee is pending as of the Effective Date, the Creditor
6 Trust shall be substituted for the Creditors' Committee as plaintiff and shall have the exclusive
7 authority to prosecute and/or settle such proceeding.

8 The timing of payments to the holders of Allowed Class 4 Claims shall be determined by the
9 Creditor Trust and in accordance with the Creditor Trust Agreement.

10 ~~If Class 4 accepts the Plan within the meaning of Bankruptcy Code section 1126(e), then~~ On
11 the Effective Date, the holders of the Lender Deficiency Claims shall be deemed to have waived
12 ~~their~~ irrevocably all such Claims and, accordingly, the right to receive any consideration under Class
13 4 on account of such ~~Lender Deficiency Claims. If Class 4 rejects the Plan within the meaning of~~
14 ~~Bankruptcy Code section 1126(e), all Allowed Lender Deficiency Claims shall participate in the~~
15 ~~Class 4 distributions~~ Claims. Without limiting the foregoing in any way, neither the Agent nor the
16 Lenders shall share in any portion of the Aggregate Unsecured Creditor Consideration, the
17 Unsecured Creditor Cash or the Net Trust Assets.

18 **III.**

19 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

20 **A. Assumption of Executory Contracts and Unexpired Leases.**

21 **1. Assumption of Agreements.**

22 On the Effective Date, the Reorganized Debtor shall assume all executory contracts and
23 unexpired leases of the Debtor listed on the Schedule of Assumed Agreements.

24 The Debtor reserves the right to amend the Schedule of Assumed Agreements at any time
25 prior to the Effective Date to: (a) delete any executory contract or unexpired lease and provide for its

26
27 benefit of the Agent and the Lenders up to the amount that the Lenders were required to fund the
28 Aggregate Unsecured Creditor Consideration.

1 rejection under the Plan or otherwise, or (b) add any executory contract or unexpired lease and
2 provide for its assumption under the Plan. The Debtor will provide notice of any amendment to the
3 Schedule of Assumed Agreements to the party or parties to the agreement affected by the
4 amendment.

5 The Confirmation Order will constitute a Court order approving the assumption, on the
6 Effective Date, of all executory contracts and unexpired leases identified on the Schedule of
7 Assumed Agreements.

8 **2. Cure Payments.**

9 Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default
10 under and compensate the non-debtor party to an executory contract or unexpired lease to be
11 assumed under the Plan, is identified as the Cure Payment on the Schedule of Assumed Agreements.
12 Unless the parties mutually agree to a different date, such payment shall be made in cash, 10 days
13 following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any dispute
14 regarding (a) the amount of any Cure Payment, (b) the ability of the Reorganized Debtor to provide
15 “adequate assurance of future performance” within the meaning of Bankruptcy Code section 365
16 with respect to a contract or lease to be assumed, to the extent required, and/or (c) any other matter
17 pertaining to assumption.

18 Pending the Court’s ruling on any such dispute, the executory contract or unexpired lease at
19 issue shall be deemed assumed by the Reorganized Debtor unless otherwise agreed by the parties or
20 ordered by the Court.

21 **3. Objections to Assumption/Cure Payment Amounts.**

22 Any entity that is a party to an executory contract or unexpired lease that will be assumed
23 under the Plan and that objects to such assumption (including the proposed Cure Payment) must File
24 with the Court and serve upon parties entitled to notice a written statement and supporting
25 declaration stating the basis for its objection. This statement and declaration must be Filed and
26 served by the deadline fixed by the Court for such objection. Any entity that fails to timely File and
27 serve such a statement and declaration will be deemed to waive any and all objections to the
28 proposed assumption (including the proposed Cure Payment) of its contract or lease.

1 In the absence of a timely objection by an entity that is a party to an executory contract or
2 unexpired lease, the Confirmation Order shall constitute a conclusive determination as to the
3 amount of any cure and compensation due under the executory contract or unexpired lease, and that
4 the Reorganized Debtor has demonstrated adequate assurance of future performance with respect to
5 such executory contract or unexpired lease, to the extent required.

6 **4. Resolution of Claims Relating to Assumed Contracts and Leases.**

7 Payment of the Cure Payment established under the Plan, by the Confirmation Order or by
8 any other order of the Court, with respect to an assumed executory contract or unexpired lease, shall
9 be deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim against the
10 Debtor (including any asserted in a Filed proof of claim or listed in the Schedules) with respect to
11 such contract or lease (irrespective of whether the Cure Payment is less than the amount set forth in
12 such proof of Claim or the Schedules). Upon the tendering of the Cure Payment, any such Filed or
13 scheduled Claim shall be disallowed, without further order of the Court or action by any party.

14 **B. Rejection of Executory Contracts and Unexpired Leases.**

15 **1. Rejected Agreements.**

16 On the Effective Date, all executory contracts and unexpired leases that (i) have not been
17 previously assumed or rejected and (ii) that are not set forth on the Schedule of Assumed
18 Agreements, (including all executory contracts and unexpired leases set forth on the Schedule of
19 Rejected Agreements) shall be rejected. For the avoidance of doubt, executory contracts and
20 unexpired leases that have been previously assumed or assumed and assigned pursuant to an order
21 of the Court, including those assumed and assigned in conjunction with the UCSD Sale, shall not be
22 affected by the Plan. The Confirmation Order will constitute a Court order approving the rejection,
23 on the Effective Date, of the executory contracts and unexpired leases to be rejected under the Plan.

24 **2. Bar Date for Rejection Damage Claims.**

25 Any Rejection Damage Claim or other Claim against the Debtor for damages arising from
26 the rejection under the Plan of an executory contract or unexpired lease must be Filed and served
27 upon counsel to the Reorganized Debtor and the Creditor Trust within 30 days after the mailing of
28 notice of the occurrence of the Effective Date. Any such Claims that are not timely Filed and served

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1 will be forever barred and unenforceable against the Debtor, the Reorganized Debtor, the Estate, the
2 Creditor Trust and their respective property, and entities holding such Claims will be barred from
3 receiving any distributions under the Plan on account of such untimely Claims.

4 **C. Postpetition Contracts and Leases.**

5 Except as expressly provided in the Plan or the Confirmation Order, all contracts, leases, and
6 other agreements that the Debtor entered into after the Petition Date will be assumed and retained by
7 the Reorganized Debtor and will remain in full force and effect following the Effective Date, ~~as will~~
8 ~~the Funding Agreement that was assumed by the Debtor during the chapter 11 case~~ including the
9 APA, the License Agreement, the Funding Agreement, the Bill of Sale, the Parking Agreement, the
10 Research Building Note, and all other agreements and documents entered into in conjunction with
11 the foregoing.

12 **IV.**

13 **MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

14 **A. Funding of the Plan.**

15 ~~All~~ Unless otherwise provided in the Plan, payments required by the Plan on and after the
16 Effective Date, ~~including remittance of the Unsecured Creditor Cash to the Creditor Trust,~~ will be
17 satisfied from cash of the Debtor (which, consistent with the Cash Collateral ~~Order~~ Orders, includes
18 funds in the Cash Collateral Account) and the Reorganized Debtor. ~~Notwithstanding the foregoing,~~
19 provided that (i) the Lenders shall make all payments required pursuant to Section II.C.4 (up to
20 \$750,000) to satisfy the Aggregate Unsecured Creditor Consideration in the event of a deficiency, as
21 specified in that Section, and (ii) any distribution to the holders of Allowed Class 4 Claims shall be
22 paid exclusively by the Creditor Trust from the Net Trust Assets.

23 **B. Vesting of Assets Generally.**

24 Except as otherwise provided in the Plan, all property of the Debtor and the Estate, including
25 all cash held by the Debtor as of the Effective Date, shall vest in the Reorganized Debtor on the
26 Effective Date, free and clear of all Claims, liens, encumbrances, and interests. From and after the
27 Effective Date, the Reorganized Debtor may conduct its affairs and use, acquire and dispose of
28 property without supervision by the Court and free of any restrictions of the Bankruptcy Code or

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1 Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation
2 Order.

3 **C. The Charitable Trust Funds.**

4 On and after the Effective Date, the Reorganized Debtor shall retain its interests in, its rights
5 to use and, where applicable, custody of the Charitable Trust Funds, consistent with all agreements
6 and restrictions governing the disposition and use of such funds, any modifications to such
7 agreements and restrictions that may be authorized by the donors of such Charitable Trust Funds,
8 and otherwise applicable non-bankruptcy law, subject to the right of the Creditors' Committee or
9 the Creditor Trust to commence a Trust Funds Challenge under Section II.C.4 with respect to
10 Charitable Trust Funds other than the Engelstad Endowment Fund or the Escrowed Donations. As
11 provided in Section II.C.4, the Creditors' Committee and the Creditor Trust are prohibited from
12 commencing a Trust Funds Challenge with respect to the Engelstad Endowment Fund or the
13 Escrowed Donations. As provided in Section II.C.1, the Agent and the Lenders are prohibited from
14 commencing a Trust Fund Challenge with respect to any Charitable Trust Funds.

15 **D. Abandonment of the Administration Building Parcel.**

16 Unless earlier abandoned or otherwise disposed of, upon the Effective Date, the Debtor's
17 interests in the Administration Building Parcel shall be deemed abandoned, and the Reorganized
18 Debtor shall retain no interest in the Administration Building Parcel. Notwithstanding the
19 Permanent Injunction set forth in the Section VII.A and the automatic stay under Bankruptcy Code
20 section 362(a), to the extent applicable, any party with an interest in the Administration Building
21 Parcel may, without further order of the Court, exercise its rights and remedies against the
22 Administration Building Parcel, including any right to foreclose upon the Administration Building
23 Parcel.

24 **E. ~~D.~~ Vesting of ~~Rights~~ Causes of Action in Reorganized Debtor.**

25 ~~Except as provided in Section IV.E of the Plan with respect to Preserved Avoidance Actions,~~
26 ~~all Claims, rights, and causes of action of the Debtor or the Estate against any person or entity~~The
27 following shall be preserved and vest in the Reorganized Debtor on the Effective Date, pursuant to
28 Bankruptcy Code section 1123(b), ~~including causes of action that have been or may be brought by~~

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1 ~~or on behalf of the Debtor or the Estate, and the Debtor's and Estate's rights of disallowance,~~
2 ~~offset~~ to the extent not released pursuant to the Plan, the Confirmation Order and any other order of
3 the Court: (i) all Claims, rights, and causes of action of the Debtor and the Estate against any person
4 or entity arising from or relating to the real property and personal property vested in and/or retained
5 by the Reorganized Debtor under the Plan, including the Research Building, the Vacant Land, and
6 the Alta-Hualapai Parcel; (ii) all Claims, rights, and causes of action of the Debtor and the Estate
7 against any person or entity arising from or relating to the APA, the License Agreement, the
8 Funding Agreement, the Bill of Sale, the Parking Agreement, the Research Building Note, the
9 Charitable Trust Funds (subject to Sections II.C.1, II.C.4, IV.C); all other contracts and leases
10 entered into postpetition by the Debtor and/or the Estate that have not been assigned, and all
11 executory contracts and leases that have been assumed but not assigned, or that will be assumed
12 pursuant to the Plan; (iii) all defenses, offsets, rights of recoupment, rights of disallowance,
13 recharacterization and/or equitable subordination of the Debtor and the Estate with respect to
14 Claims against the Debtor other than Class 4 Claims; provided, however, that no claim, right or
15 ~~cause of action of the Debtor or the Estate that is released under the Plan, the Confirmation Order, or~~
16 ~~any other order of the Court shall be preserved or vested in~~ and (iv) all rights of the Debtor, the Estate
17 and the Reorganized Debtor arising from the Creditor Trust Plan itself.

18 **F.** ~~**E. Vesting of Preserved Avoidance Actions and other Rights**~~ **Causes of Action in**
19 **Creditor Trust.**

20 The ~~Preserved Avoidance Actions, and all of the Debtor's and Estate's rights of~~
21 ~~disallowance, offset, recharacterization and/or equitable subordination with respect to Class 4~~
22 ~~Claims~~ following shall be preserved and vest in the Creditor Trust on the Effective Date, pursuant to
23 Bankruptcy Code section 1123(b); ~~provided, however, that no Claim, right or cause of action of the~~
24 ~~Debtor or the Estate that is released under,~~ to the extent not released pursuant to the Plan, the
25 Confirmation Order, ~~or and~~ any other order of the Court shall be preserved or: (i) all of the other
26 Claims, rights, and causes of action of the Debtor and the Estate against any person or entity that are
27 not vested in the Reorganized Debtor ~~or the Creditor Trust~~ under Section IV.E, including the
28 Preserved Avoidance Actions and Preserved Claims; (ii) all defenses, offsets, rights of recoupment,

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1 rights of disallowance, recharacterization and/or equitable subordination of the Debtor and the
2 Estate with respect to Class 4 Claims; and (iii) all rights of the Creditor Trust arising from the Plan
3 itself.

4 **G.** ~~F.~~ **Creation of the Creditor Trust and Appointment of Creditor ~~Trustees~~Trustee.**

5 The Confirmation Order shall approve, effective on the Effective Date, the Creditor Trust
6 Agreement, which agreement shall provide for the appointment of ~~one (1) to three (3) members, to~~
7 ~~act as the~~ Creditor Trustee ~~or Creditor Trustees~~ to administer the Creditor Trust. The Creditor
8 Trustee ~~or Creditor Trustees shall be appointed by the Creditors' Committee prior to the~~
9 ~~Confirmation Date; provided that if no trustee is appointed by such date, the Debtor shall appoint the~~
10 ~~Creditor Trustee or Creditor Trustees. The Creditor Trustee or Creditor Trustees shall be SltnTrst~~
11 LLC (dba Solution Trust). The Creditor Trustee shall serve without any bond and shall act in
12 accordance with the Creditor Trust Agreement and the Plan ~~by majority vote.~~ ~~A~~The Creditor
13 Trustee ~~shall not~~may be compensated for his or her service, as ~~a Creditor Trustee, but may, if~~
14 ~~applicable retain a firm in which said trustee is employed~~agreed upon in the Creditor Trust
15 Agreement.

16 The Creditor Trust may engage counsel and other professionals as it deems appropriate, and
17 compensate such professionals from the corpus of the Creditor Trust for reasonable fees and
18 expenses incurred by such professionals, in accordance with the Creditor Trust Agreement and
19 without approval of the Court. ~~Each~~The Creditor Trustee shall serve for the duration of the Creditor
20 Trust, subject to earlier death, resignation, incapacity or removal as specifically provided in the
21 Creditor Trust Agreement.

22 **1. Powers and Duties.**

23 The Creditor Trust, acting through ~~a majority of~~ the Creditor ~~Trustees~~Trustee, shall have the
24 following rights, powers and duties:

- 25 (a) The Creditor Trust shall have full right, power and discretion to manage the Creditor
26 Trust ~~Property~~Assets, and execute, acknowledge and deliver any and all instruments with respect
27 thereto, as it deems appropriate or necessary in its discretion;

28

1 (b) Administer the collection, prosecution, settlement, and/or abandonment of the
2 Preserved Avoidance Actions, the Preserved Claims and all other Claims, rights, and causes of
3 action vested in the Creditor Trust pursuant to the Plan;

4 (c) Prosecute, settle and/or abandon objections to Class 4 Claims;

5 (d) Make interim and final distributions to the holders of Allowed Class 4 Claims;

6 (e) File all tax and regulatory forms, returns, reports and other documents required with
7 respect to the Creditor Trust; and

8 (f) File suit or any appropriate motion for relief in the Court or in any other court of
9 competent jurisdiction to resolve any disagreement, conflict, dispute or ambiguity in connection
10 with the exercise of its rights, powers or duties.

11 **2. Termination of the Creditor Trust.**

12 The Creditor Trust shall be irrevocable. The Creditor Trust shall terminate when the
13 Creditor ~~Trustees have~~Trustee has performed all of ~~their~~his/her duties under the Plan and the
14 Creditor Trust Agreement, including the final distribution of all the property of the Creditor Trust in
15 respect of Allowed Class 4 Claims, which date shall not be more than ~~two five (25) years and one (1)~~
16 ~~month~~ after the Effective Date; provided, however, the Court may upon good cause shown order the
17 Creditor Trust to remain open so long as it may be necessary to liquidate and distribute all of its
18 property.

19 **3. Additional Provisions of the Creditor Trust Agreement.**

20 In addition to the provisions in the Plan with respect to the Creditor Trust, the Creditor Trust
21 Agreement will provide for, among other things, the ~~removal~~replacement of the Creditor ~~Trustees or~~
22 ~~appointment of successor Creditor Trustees~~Trustee in the event of death, incapacity or resignation,
23 the liability of the Creditor ~~Trustees~~Trustee, the effect of actions by the Creditor ~~Trustees~~Trustee,
24 and the indemnification of the Creditor ~~Trustees~~Trustee.

25 To the extent not set forth in the Plan, the functions and procedures applicable to the Creditor
26 Trust and the powers and duties of the Creditor ~~Trustees~~Trustee and the rights of the holders of
27 beneficial interests in the Creditor Trust shall be governed by the provisions of the Creditor Trust
28 Agreement; provided, however, that in the event of any conflict, the terms of the Plan shall govern.

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1 **H.** ~~G.~~ **Objections to Claims.**

2 This Plan extends the deadline for filing objections to Claims against the Debtor set forth in
3 LR 3007(e). Specifically, except as otherwise provided in Section II.B (regarding allowance of
4 Administrative Claims), any objection to a Claim shall be Filed and served upon the holder of such
5 Claim no later than the Claims Objection Deadline. After the Effective Date, ~~only~~ the Reorganized
6 Debtor shall have the sole right and authority to File, settle, compromise, withdraw or litigate to
7 judgment objections to Claims, other than Class 4 Claims. Following the Effective Date, the
8 Creditor Trustee on behalf of the Creditor Trust shall have the sole right and authority to File, settle,
9 compromise, withdraw or litigate to judgment objections to Class 4 Claims.

10 **I.** ~~H.~~ **Distribution of Property Under the Plan.**

11 Unless otherwise provided in the Plan, the following procedures apply to distributions made
12 pursuant to this Plan by the Reorganized Debtor or the Creditor Trust, as applicable.

13 **1.** Responsibility for Making Distributions.

14 The Reorganized Debtor shall be responsible for making all distributions required under the
15 Plan, with the exception of: (i) distributions on account of Allowed Class 4 Claims, which shall be
16 ~~made by the Creditor Trust~~ paid by the Creditor Trust, and (ii) distributions on account of Allowed
17 Committee Administrative Expense Claims, to the extent the Lenders are required to remit funds to
18 the Creditor Trust in order to fund such distributions pursuant to Section II.C.4, in which case the
19 Creditor Trust shall distribute such funds. To the extent applicable, the Reorganized Debtor and
20 Creditor Trust shall comply with all tax withholding and reporting requirements imposed on them
21 by any governmental unit with respect to such distributions, and all distributions pursuant to the
22 Plan shall be subject to such withholding and reporting requirements.

23 **2.** ~~I.~~ **Manner of Cash Payments Under the Plan.**

24 Cash payments to domestic entities holding Allowed Claims will be tendered in U.S. Dollars
25 and will be made by checks drawn on a domestic bank or by wire transfer from a domestic bank.
26 Payments made to any foreign creditors holding Allowed Claims may be paid, at the option of the
27 Reorganized Debtor or the Creditor Trust, as applicable, in such funds and by such means as are
28 necessary or customary in a particular foreign jurisdiction.

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1 **3. ~~2.~~ No De Minimis Distributions.**

2 Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$25 will
3 be made to any person or entity pursuant to the Plan. No consideration will be provided in lieu of the
4 de minimis distributions that are not made pursuant to this Section.

5 **4. ~~3.~~ No Distribution With Respect to Disputed Claims.**

6 No payments of cash or distributions of other property or other consideration of any kind
7 shall be made on account of any Disputed Claim unless and until such Claim becomes an Allowed
8 Claim, or is deemed to be such for purposes of distribution, and then only to the extent that such
9 Claim becomes, or is deemed to be for distribution purposes, an Allowed Claim. Unless otherwise
10 provided herein, any holder of a Disputed Claim that becomes an Allowed Claim after the Effective
11 Date will receive its distribution no later than the next general distribution made by the Creditor
12 Trust.

13 **5. ~~4.~~ Delivery of Distributions, Undeliverable/Unclaimed Distributions.**

14 **a. Delivery of Distributions in General.**

15 The Reorganized Debtor or the Creditor Trust, as applicable, shall make distributions to each
16 holder of an Allowed Claim by mail as follows: (a) at the address set forth on the proof of claim filed
17 by such holder in respect of such Allowed Claim, unless such holder has provided written notice of
18 address change to the Reorganized Debtor or Creditor Trust, as applicable; (b) at the address set
19 forth in any written notice of address change delivered to the Reorganized Debtor or Creditor Trust,
20 as applicable, after the date of any related proof of claim; and (c) at the address reflected in the
21 Schedules if no proof of claim is filed and the Reorganized Debtor or Creditor Trust, as applicable,
22 has not received a written notice of a change of address.

23 **b. Undeliverable and Unclaimed Distributions.**

24 If the Reorganized Debtor or Creditor Trust tenders a distribution ~~to the holder~~ check on
25 account of any Allowed Claim, and the check is returned as undeliverable, ~~no further distribution~~
26 ~~shall be made to such holder unless and until the Reorganized Debtor or Creditor Trust, as~~
27 ~~applicable, is notified in writing of such~~ (an “Undeliverable Distribution”), the issuing entity may
28 cancel the check and need not re-attempt delivery, unless it timely receives notification of the

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1 holder's ~~then current address.~~ ~~Subject to the other provisions of the Plan, undeliverable~~
2 ~~distributions shall remain in the possession of the Reorganized Debtor or Creditor Trust, as~~
3 ~~applicable, pursuant to this Section until such time as a distribution becomes deliverable.~~ new
4 address before the deadlines described below. If a distribution check is not returned as
5 undeliverable, but is not cashed within 45 days of its issuance date (an "Unclaimed Distribution"),
6 the issuer may cancel the check, and need not attempt redelivery, except as otherwise provided
7 herein.

8 ~~All undeliverable cash distributions will be~~ Pending further disposition pursuant to this
9 Section, the funds with respect to Undeliverable Distributions and Unclaimed Distributions shall be
10 held in held in unsegregated bank accounts ~~for the benefit of the entities entitled to the distributions.~~
11 ~~These entities will not be entitled to any interest actually earned on account of the undeliverable~~
12 ~~distributions. The bank account will be maintained~~ in the name of the Reorganized Debtor and/or
13 Creditor Trust, as applicable, ~~but the undeliverable.~~ The funds will need not be segregated, but shall
14 be accounted for separately. Neither the Reorganized Debtor nor the Creditor Trust shall have any
15 duty to deposit such funds in interest-bearing accounts, and the parties entitled to such distributions
16 shall not be entitled to any interest on those funds.

17 With respect to Allowed Claims for which the Reorganized Debtor bears the responsibility
18 of distribution pursuant to Section IV.I.1, the Reorganized Debtor shall reserve the funds with
19 respect to all Undeliverable Distributions and Unclaimed Distributions for one year following the
20 Effective Date. If the Reorganized Debtor does not receive prior to that date a written request from
21 the holder of the applicable Allowed Claim asserting entitlement to an Undeliverable Distribution or
22 Unclaimed Distribution and providing a current address, the Reorganized Debtor shall be authorized
23 and empowered to retain such funds for its own benefit.

24 With respect to Allowed Claims for which the Creditor Trust bears the responsibility of
25 distribution pursuant to Section IV.I.1, the Creditor Trust shall reserve all Undeliverable
26 Distributions and Unclaimed Distributions until 45 days after the Creditor Trust makes its final
27 distribution. If the Creditor Trust does not receive prior to that date a written request from the holder
28 of the applicable Allowed Claim asserting entitlement to an Undeliverable Distribution or

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1 Unclaimed Distribution and providing a current address, the Creditor Trust shall be authorized and
2 empowered to retain such funds and dispose of them in accordance with Creditor Trust Agreement.

3 Any holder of an Allowed Claim ~~who~~that does not assert in writing its entitlement to an
4 ~~undeliverable distribution within one year after the Effective Date~~Undeliverable Distribution or
5 Unclaimed Distribution, by the applicable dates set forth in the foregoing paragraphs, shall no
6 longer have any interest ~~or entitlement in such undeliverable~~in or be entitled to such undelivered or
7 unclaimed distribution; and shall be barred forever ~~barred~~ from receiving any distributions under
8 ~~this~~the Plan, or from asserting a Claim against the Debtor, the Reorganized Debtor, the Estate, the
9 Creditor Trust, or their respective property, and the right to such undeliverable or unclaimed
10 distribution will be discharged. ~~The Reorganized Debtor or the Creditor Trust shall be enabled and~~
11 ~~empowered to retain all such undeliverable distributions, and, in the case of the Creditor Trust,~~
12 ~~distribute such funds in accordance with the Creditor Trust Agreement; any such undeliverable~~
13 ~~distributions shall not be subject to escheat to the State of Nevada or any other State.~~

14 Nothing contained in the Plan shall require the Debtor, Reorganized Debtor or Creditor
15 Trust to attempt to locate any holder of an Allowed Claim.

16 **c. Estimation of Disputed Claims for Distribution Purposes.**

17 The Reorganized Debtor or Creditor Trust, as applicable, may move for a Court order
18 estimating a Disputed Claim. The estimated amount of any Disputed Claim so determined by the
19 Court shall constitute the maximum recovery that the holder thereof may recover after the ultimate
20 liquidation of its Disputed Claim, irrespective of the actual amount ultimately Allowed.

21 **J. ~~I.~~ Full Satisfaction.**

22 The ~~Disbursing Agent~~Reorganized Debtor (or Creditor Trust, as the case may be) shall
23 make, and each holder of an Allowed Claim against the Debtor shall receive, the distributions
24 provided for in the Plan, if any, in full satisfaction and discharge of such holder’s Claims against the
25 Debtor.

26 **K. ~~J.~~ Compliance with Tax Requirements.**

27 The Reorganized Debtor (or Creditor Trust, as the case may be) shall comply with all
28 applicable withholding, payment and reporting requirements imposed on it by governmental units,

1 if any, and all distributions pursuant to the Plan shall be subject to such withholding, payment and
2 reporting requirements. The Reorganized Debtor and Creditor Trustee (on behalf of the Creditor
3 Trust) shall be authorized to take any and all actions that may be necessary or appropriate to comply
4 with such withholding, payment, and reporting requirements. All amounts properly withheld from
5 distributions to the holder of an Allowed Claim and paid over to the applicable governmental unit on
6 account of such holder shall be treated as part of the distributions to such holder.

7 For example, with respect to any employee-related withholding, if the Debtor is obligated by
8 law to withhold amounts from distributions to a present or former employee to satisfy such present
9 or former employee's tax and other payroll obligations, the Reorganized Debtor or Creditor Trustee
10 may withhold a portion of the distributions allocated to the Allowed Claim of such present or former
11 employee.

12 Each person holding an Allowed Claim is required to provide any information necessary to
13 effect the necessary information reporting and withholding of applicable taxes with respect to
14 distributions to be made under the Plan. The Reorganized Debtor or the Creditor Trustee, as
15 applicable, shall be entitled in its sole discretion to withhold any distributions to a holder of an
16 Allowed Claim that fails to provide tax identification or social security information upon written
17 request.

18 Notwithstanding any other provision of this Plan, (a) each holder of an Allowed Claim that is
19 to receive a distribution on account thereof pursuant to this Plan shall have sole and exclusive
20 responsibility for the satisfaction and payment of any tax obligations imposed by any governmental
21 unit, including income, withholding, and other tax obligations, on account of such Distribution, and
22 (b) no distribution shall be made to or on behalf of such holder pursuant to this Plan unless and until
23 such Holder has made arrangements satisfactory to the Reorganized Debtor or Creditor Trustee, as
24 applicable, for the payment and satisfaction of such withholding tax obligations or such tax
25 obligation that would be imposed upon the Reorganized Debtor or Creditor Trustee in connection
26 with such distribution. Any property to be distributed pursuant to this Plan shall, pending the
27 implementation of such arrangements, be treated as an Unclaimed Distribution pursuant to Section
28 IV.I.5.b.

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1 **L. ~~K.~~ Setoff, Recoupment and Other Rights.**

2 Notwithstanding anything to the contrary contained in the Plan, the Reorganized Debtor or
3 the Creditor Trust may, but shall not be required to, setoff, recoup, assert counterclaims or withhold
4 against the distributions to be made pursuant to this Plan on account of any claims that the Debtor,
5 the Estate, or the Reorganized Debtor may have against the entity holding an Allowed Claim;
6 provided, however, that neither the failure to effect such a setoff or recoupment, nor the allowance
7 of any Claim against the Debtor or the Reorganized Debtor, nor any partial or full payment during
8 the Case or after the Effective Date in respect of any Allowed Claim, shall constitute a waiver or
9 release by the Debtor, the Estate, the Reorganized Debtor or the Creditor Trust of any Claim that any
10 or all of them may possess against such holder.

11 **M. ~~L.~~ The Effective Date.**

12 The Plan shall not become binding unless and until the Effective Date occurs. The Effective
13 Date is the first Business Day, on which no stay of the Confirmation Order is in effect, on which all
14 of the following conditions have been satisfied as set forth below, or waived as set forth in Section
15 IV. ~~L.~~ M. 2:

16 **1. Conditions to the Effective Date.**

- 17 a. The Confirmation Order shall have become a Final Order;
- 18 b. The Research Building Note and related instruments evidencing the liens and
19 security interests securing such note shall have been executed;
- 20 d. All other agreements, writings and undertakings required under the Plan shall be
21 executed ~~and ready for consummation.~~

22 **2. Waiver of Conditions.**

23 The requirement that the conditions to the occurrence of the Effective Date be satisfied may
24 be waived in whole or in part, and the time within which any such conditions must be satisfied may
25 be extended, by mutual agreement of the Debtor and the Agent. The failure to timely satisfy or
26 waive any of such conditions may be asserted by the Debtor regardless of the circumstances giving
27 rise to the failure of such condition to be satisfied, including any action or inaction by the Debtor.

28

1 The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any
2 other rights and each such right shall be deemed ongoing and subject to assertion at any time.

3 **3. Notice of the Effective Date.**

4 Promptly after the occurrence of the Effective Date, the Debtor shall File and mail a “Notice
5 of Occurrence of Effective Date” to all creditors of record as of the date of entry of the Confirmation
6 Order.

7 **N. ~~M.~~ Authorization of Corporate Action.**

8 Any matters provided for or required by the Plan that require corporate action by the Debtor
9 or Reorganized Debtor, including, without limitation, the adoption by the Reorganized Debtor of the
10 Amended Articles of Incorporation and Bylaws shall, as of the Effective Date, be deemed to have
11 occurred and be effective as provided herein, and shall be authorized, approved and ratified in all
12 respects without any requirement of further action by the directors of the Debtor or the Reorganized
13 Debtor.

14 **V.**

15 **THE REORGANIZED DEBTOR**

16 **A. Directors and Officers.**

17 As of the Effective Date, the individuals identified on the List of Directors and Officers for
18 Reorganized Debtor shall serve as the directors and officers of the Reorganized Debtor, in
19 accordance with the Amended Articles of Incorporation and Bylaws. The List of Directors and
20 Officers for Reorganized Debtor will be filed no later than the Exhibit Filing Date, and upon such
21 filing shall become Exhibit B to the Plan.

22 **B. Amended Articles of Incorporation and Bylaws.**

23 The Amended Articles of Incorporation and Bylaws of the Reorganized Debtor shall
24 prohibit the issuance of non-voting equity securities as required by Bankruptcy Code section
25 1123(a)(6).
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VI.

OTHER PLAN PROVISIONS

A. Exculpation Re Solicitation and Prosecution of Plan Confirmation.

None of the Debtor, the Estate, the Reorganized Debtor, the Creditors’ Committee, the Prepetition Agent, the Lenders or any of the foregoing parties’ respective members, officers, directors, employees, affiliates, advisors, professionals or agents shall have or incur any liability to any holder of a Claim for any act or omission occurring on or after the Petition Date in connection with, related to, or arising out of the Case, the pursuit of confirmation of the Plan, the consummation or administration of the Plan, or property to be distributed under the Plan, except for willful misconduct, and in all respects, the Debtor, the Estate, the Reorganized Debtor, the Creditors’ Committee, the Prepetition Agent, the Lenders or any of the foregoing parties’ respective members, officers, directors, employees, affiliates, advisors, professionals or agents shall be entitled to rely on the advice of their respective counsel with respect to their duties and responsibilities in connection with the Case and the Plan.

B. Revocation of Plan/No Admissions.

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan or the Disclosure Statement will: (a) be deemed to be an admission by the Debtor with respect to any matter set forth in the Plan, including liability on any Claim or the propriety of any Claim’s classification; (b) constitute a waiver, acknowledgment, or release of any Claims against the Debtor, or of any claims of the Debtor; or (c) prejudice in any manner the rights of any party in any further proceedings.

C. Modification of the Plan.

Subject to the restrictions set forth in Bankruptcy Code section 1127, the Debtor reserves the right to alter, amend, or modify the Plan before its substantial consummation.

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1 **D. Dissolution of Creditors' Committee.**

2 Upon the Effective Date, the Creditors' Committee shall be released and discharged from
3 the rights and duties arising from or related to the Case, except with respect to final applications for
4 professionals' compensation. The professionals retained by the Creditors' Committee and the
5 members thereof shall not be entitled to compensation or reimbursement of expenses for any
6 services rendered or expenses incurred after the Effective Date, except for services rendered and
7 expenses incurred in connection with any applications by such professionals or Creditors'
8 Committee members for allowance of compensation and reimbursement of expenses pending on the
9 Effective Date or timely Filed after the Effective Date as provided in the Plan, to the extent the same
10 may be approved by the Court.

11 **E. Exemption from Certain Transfer Taxes.**

12 In accordance with Bankruptcy Code section 1146(c), the issuance, transfer or exchange of a
13 security, or the making or delivery of an instrument of transfer under the Plan with respect to any
14 and all property may not be taxed under any law imposing a stamp tax or similar tax. The
15 Confirmation Order shall direct all governmental officials and agents to forego the assessment and
16 collection of any such tax or governmental assessment and to accept for filing and recordation any
17 of the foregoing instruments or other documents without payment of such tax or other governmental
18 assessment.

19 **F. Successors and Assigns.**

20 The rights, benefits, and obligations of any entity named or referred to in this Plan shall be
21 binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of
22 such entity.

23 **G. Saturday, Sunday or Legal Holiday.**

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

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1 **H. Headings.**

2 The headings used in the Plan are inserted for convenience only and do not constitute a
3 portion of this Plan or in any manner affect the provisions of this Plan or their meaning.

4 **I. Severability of Plan Provisions.**

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

14 **J. Governing Law.**

15 Unless a rule of law or procedure is supplied by (a) federal law (including the Bankruptcy
16 Code and Bankruptcy Rules), or (b) an express choice of law provision in any agreement, contract,
17 instrument, or document provided for, or executed in connection with, the Plan, the rights and
18 obligations arising under the Plan and any agreements, contracts, documents, and instruments
19 executed in connection with the Plan shall be governed by, and construed and enforced in
20 accordance with, the laws of the State of Nevada without giving effect to the principles of conflict of
21 laws thereof.

22 **VII.**

23 **EFFECT OF PLAN CONFIRMATION**

24 **A. Discharge and Injunction.**

25 **The rights afforded in the Plan and the treatment of all Claims shall be in exchange for**
26 **and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever**
27 **arising prior to the Effective Date against the Debtor and the Estate, including any interest**
28 **accrued on such Claims from and after the Petition Date.**

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1 Except as otherwise provided in the Plan or the Confirmation Order, on the Effective
2 Date, (a) the Debtor, the Estate, the Reorganized Debtor and their respective property are
3 discharged and released hereunder to the fullest extent permitted by Bankruptcy Code
4 sections 524 and 1141 from all Claims and rights against them that arose before the Effective
5 Date, including all debts, obligations, demands, and liabilities, and all debts of the kind
6 specified in Bankruptcy Code sections 502(g), 502(h), or 502(i), regardless of whether or not
7 (i) a proof of Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such
8 debt is allowed pursuant to Bankruptcy Code section 502, or (iii) the holder of a Claim based
9 on such debt has or has not accepted the Plan; (b) any judgment underlying a Claim
10 discharged hereunder is void; and (c) all entities are precluded from asserting against the
11 Debtor, the Estate, the Reorganized Debtor and their respective property, any Claims or
12 rights based upon any act or omission, transaction, or other activity of any kind or nature that
13 occurred prior to the Effective Date.

14 Except as otherwise provided in the Plan or the Confirmation Order, on and after the
15 Effective Date, all entities who have held, currently hold, or may hold a Claim against the
16 Debtor, the Estate, or the Reorganized Debtor, that is based upon any act or omission,
17 transaction, or other activity of any kind or nature that occurred prior to the Effective Date,
18 that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged
19 pursuant to the Plan, are permanently enjoined from taking any of the following actions on
20 account of any such discharged Claim, (the "Permanent Injunction"): (a) commencing or
21 continuing in any manner any action or other proceeding against the Debtor, the Estate, the
22 Reorganized Debtor or their respective property, that is inconsistent with the Plan or the
23 Confirmation Order; (b) enforcing, attaching, collecting, or recovering in any manner any
24 judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor or
25 their respective property, other than as expressly permitted under the Plan; (c) creating,
26 perfecting, or enforcing any lien or encumbrance against property of the Debtor, the Estate,
27 or the Reorganized Debtor, ~~or their respective property~~, other than as expressly permitted
28 under the Plan; and (d) commencing or continuing any action, in any manner, in any place

1 that does not comply with or is inconsistent with the provisions of the Plan, the Confirmation
2 Order, or the discharge provisions of Bankruptcy Code section 1141. Any person or entity
3 injured by any willful violation of such Permanent Injunction shall recover actual damages,
4 including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive
5 damages, from the willful violator.

6 **B. Estate Release.**

7 As of the Effective Date, the Debtor (on behalf of itself and the Estate) releases and
8 forever waives and discharges as against the Released Parties, all Claims, actions, costs,
9 causes of action, damages, demands, debts, expenses (including attorneys' fees), judgments,
10 losses (including any claims for contribution or indemnification), liabilities, obligations,
11 rights, or suits, whether past or present, liquidated or unliquidated, fixed or contingent,
12 matured or unmatured, known or unknown, foreseen or unforeseen, then existing or
13 thereafter arising, in law, equity or otherwise that are based in whole or part on any act,
14 omission, transaction, event or other occurrence taking place on or prior to the Effective Date
15 relating in any way to the Debtor or the Case, including causes of action under chapter 5 of
16 the Bankruptcy Code that are not Preserved Avoidance Actions; provided, however, that the
17 foregoing shall not effectuate a release of any obligation of such parties: (1) arising under the
18 agreements relating to the UCSD Sale, the Plan (including the Research Building Note and
19 any document relating thereto), or the Confirmation Order, any other contract or lease
20 entered into postpetition by the Debtor and/or the Estate, and any executory contract or
21 unexpired lease of the Debtor that has been assumed during the Case or that will be assumed
22 pursuant to the Plan, or (2) under the Engelstad Endowment Agreement, the Engelstad
23 Endowment Escrow Agreement, the Donations Escrow Agreement, the Saffer Endowment
24 Agreement or any other agreement governing Charitable Trust Funds; provided further, that
25 the foregoing release shall not preclude the Creditor Trust from asserting a Claim or cause of
26 action of the Debtor or the Estate as a defense to and/or offset against a Class 4 Claim asserted
27 by a Released Party. The releases set forth in this paragraph shall be binding upon the
28

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1 **Reorganized Debtor, the Creditor Trust, and any chapter 7 trustee, ~~in the event~~if the Case is**
2 **at any time converted to chapter 7.**

3 **C. Payment of U.S. Trustee Fees.**

4 The Reorganized Debtor shall pay all U.S. Trustee Fees due and owing under 28 U.S.C. §
5 1930 until such time as it moves for entry of a final decree and the Court enters such a decree;
6 provided, however, that if the Creditor Trust opposes such motion, the Creditor Trust thereafter
7 shall bear the cost of any and all U.S. Trustee Fees until the Court enters a final decree closing the
8 Case. Notwithstanding LR 3022, the Clerk shall enter a final decree in the Case only upon an Order
9 of the Court following the Filing of a properly noticed motion.

10 **D. Retention of Jurisdiction.**

11 Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective
12 Date, the Court shall retain jurisdiction over the Case after the Effective Date to the fullest extent
13 provided by law, including the jurisdiction to:

- 14 1. Allow, disallow, determine, liquidate, classify, establish the priority or secured or
15 unsecured status of, estimate, limit, or subordinate any Claim;
- 16 2. Grant or deny any and all applications for allowance of compensation or
17 reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods
18 ending on or before the Effective Date;
- 19 3. Resolve any motions pending on the Effective Date to assume, assume and assign, or
20 reject any executory contract or unexpired lease to which the Debtor is a party or with respect to
21 which the Debtor may be liable and to hear, determine and, if necessary, liquidate, any and all
22 Claims arising therefrom;
- 23 4. Resolve any and all other applications, motions, adversary proceedings, and other
24 matters involving the Debtor that may be pending on the Effective Date or that may be instituted
25 thereafter in accordance with the terms of the Plan;
- 26 5. Ensure that distributions to holders of Allowed Claims, including but not limited to
27 Allowed Administrative Claims, are accomplished pursuant to the provisions of the Plan;

28

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1 6. Enter such orders as may be necessary or appropriate to implement or consummate
2 the provisions of the Plan and all contracts, instruments, releases, and other agreements or
3 documents entered into in connection with the Plan;

4 7. Resolve any and all controversies, suits, or issues that may arise in connection with
5 the consummation, interpretation, or enforcement of the Plan and/or Confirmation Order, or any
6 entity's rights or obligations under the Plan and/or Confirmation Order;

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

14 9. Issue injunctions, enter and implement other orders, or take such other actions as
15 may be necessary or appropriate to restrain interference by any entity with consummation or
16 enforcement of the Plan and/or the Confirmation Order;

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

19 11. Determine any other matters that may arise in connection with or relate to the Plan,
20 the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other
21 agreement or document created in connection with the Plan; and

22 12. Enter a final decree closing the Case.

23 If the Court abstains from exercising jurisdiction or is otherwise without jurisdiction over
24 any matter, this ~~section~~[Section](#) shall have no effect upon and shall not control, prohibit, or limit the
25 exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

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VIII.

RECOMMENDATION AND CONCLUSION

The Debtor believes that Plan confirmation and implementation is the best alternative under the circumstances and urges creditors to vote in favor of and support confirmation of the Plan.

DATED: ~~December 6, 2011~~ January 31, 2012 Nevada Cancer Institute, a Nevada nonprofit corporation

By: _____

By: George Pillari
Its: Chief Restructuring Officer

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EXHIBIT A

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EXHIBIT B

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EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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EXHIBIT F

Preserved Claims

1. All Claims against John C. Ruckdeschel

2. All Claims against James Rhodes

3. All Claims against Glynda Rhodes

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Reorganization Co-Counsel for the
Debtor and Debtor in Possession

8 Reorganization Counsel for the
9 Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re
13 NEVADA CANCER INSTITUTE, a Nevada
nonprofit corporation,¹
14
15 Debtor.

Case No. 2:11-bk-28676 (MKN)

Chapter 11

**[PROPOSED] DISCLOSURE STATEMENT
DESCRIBING AMENDED CHAPTER 11
PLAN OF REORGANIZATION FOR
NEVADA CANCER INSTITUTE (DATED
JANUARY 31, 2012)**

Disclosure Statement Hearing

Hearing Date: February 3, 2012
Hearing Time: 11:00 a.m.
Place: Courtroom 2 (3rd Floor)
Foley Federal Building
300 Las Vegas Blvd. South
Las Vegas, NV 89101

Plan Confirmation Hearing

Hearing Date: TBD
Hearing Time: TBD
Place: Courtroom 2 (3rd Floor)
Foley Federal Building.
300 Las Vegas Blvd. South
Las Vegas, NV 89101

26 _____
27 ¹ The Debtor's address and last four digits of its Federal Tax I.D. are: One Breakthrough Way,
28 Las Vegas, NV 89135 [EIN XX-XXX2553].

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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
1	Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated January 31, 2012)
2	Pending Prepetition Lawsuits
3	Plan Support Agreement
4	Preserved Avoidance Actions
5	Annual Projected Budget for Reorganized Debtor
6	Liquidation Analysis

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SUMMARY INFORMATION¹

Debtor: Nevada Cancer Institute, a Nevada nonprofit corporation

Recommendation: The Debtor and the Creditors’ Committee recommend that you vote in favor of the Plan.

Vote Required to Accept the Plan: Acceptance of the Plan requires the affirmative vote of two-thirds in amount and a majority in number of the Allowed Claims actually voted in each Class of impaired Claims entitled to vote. Only entities holding Claims in Classes 1 and 4 are impaired and therefore entitled to vote. If any of these Classes rejects the Plan, however, the Court nevertheless may confirm the Plan if the “cramdown” requirements of Bankruptcy Code section 1129(b) are satisfied with respect to such Class.

Voting Information: If you are entitled to vote, you should have received a Ballot with this Disclosure Statement: After completing and signing your Ballot, you should return it to:

Klee, Tuchin, Bogdanoff & Stern LLP
Attn: Shanda Dahl
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067

For your Ballot to be counted, the Ballot Tabulator must receive it not later than 5:00 p.m. Pacific time on [_____], 2012.

Confirmation Hearing: The Confirmation Hearing will be held on [_____], 2012 at __:__.m. Pacific time. The Confirmation Hearing may be continued from time to time without further notice. Pursuant to LR 3019, the Court may consider modifications to the Plan at the Confirmation Hearing, which may be incorporated in the Confirmation Order.

Treatment of Claims: The treatment that creditors will receive if the Court confirms the Plan is set forth in the Plan and summarized in Section IX of this Disclosure Statement. The terms of the Plan are controlling, and all creditors and interested parties are urged to read the Plan in its

¹ Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the *Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated January 31, 2012)* (the “Plan”), a true and correct copy of which is attached hereto as Exhibit 1. The Plan, once confirmed, is the legally binding document regarding the treatment of Claims against the Debtor and the terms and conditions of the Debtor’s reorganization. Accordingly, to the extent that there is any inconsistency between the terms contained herein and those contained in the Plan, the terms of the Plan will govern.

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entirety.

The Effective Date: The Effective Date of the Plan will be the first Business Day on which the conditions set forth in the Plan have been satisfied or waived by the Debtor and the Agent and on which no stay of the Confirmation Order is in effect.

Questions: All inquiries about the Plan and Disclosure Statement should be in writing and should be sent to:

Klee, Tuchin, Bogdanoff & Stern LLP
Attn: Courtney E. Pozmantier, Esq.
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067
Facsimile: (310) 407-9090

IMPORTANT NOTICE: THE PLAN, DISCLOSURE STATEMENT, AND BALLOTS CONTAIN IMPORTANT INFORMATION THAT IS NOT INCLUDED IN THIS SUMMARY. THAT INFORMATION COULD MATERIALLY AFFECT YOUR RIGHTS. YOU SHOULD THEREFORE READ THE PLAN, DISCLOSURE STATEMENT, AND BALLOTS IN THEIR ENTIRETY. YOU ALSO SHOULD CONSULT WITH YOUR LEGAL AND FINANCIAL ADVISORS BEFORE VOTING ON THE PLAN.

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SUMMARY OF CLASSIFICATION AND TREATMENT OF CLAIMS

CLASS AND/OR CLAIM TYPE	TREATMENT	IMPAIRED STATUS/ VOTING STATUS
Unclassified Claims		
Ordinary Course Administrative Claims	The Reorganized Debtor may pay any Administrative Claim that it reasonably determines is an Ordinary Course Administrative Claim without the necessity of a motion or request for payment thereon. The Reorganized Debtor anticipates payment of Ordinary Course Administrative Claims on the later of the (i) Effective Date and (ii) date on which such Ordinary Course Administrative Claim becomes due in accordance with its terms. The holder of an Ordinary Course Administrative Claim does not need to file a motion seeking allowance and payment in order to be paid, but may do so in order to preserve its rights.	Not Entitled to Vote
Professional Fee Claims	Unless the professional holding a Professional Fee Claim allowed by the Court agrees to different treatment, it will receive cash in the full amount of its Allowed Professional Fee Claim, without interest, within ten (10) days after the date on which the Court allows such Claim. Such holder is required under the Plan to file a motion seeking allowance of its Professional Fee Claim no later than 60 days after the Effective Date.	Not Entitled to Vote
Executory Contract and Lease Cure Amounts	Cure Payments as to executory contracts or unexpired leases assumed under the Plan will be paid in cash ten (10) days following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any dispute regarding (a) the amount of any proposed Cure Payment; (b) the ability of the Reorganized Debtor to provide adequate assurance of future performance to the extent required under the Bankruptcy Code; and/or (c) any other matter pertaining to such assumption.	Not Entitled to Vote
Non-Ordinary Course Administrative Claims	The holder of a Non-Ordinary Course Administrative Claim will receive cash in the full amount of its Allowed Non-Ordinary Course Administrative Claim, without interest,	Not Entitled to Vote

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	on or before the later of: (i) ten (10) days after the Effective Date, or (ii) ten (10) days after the date any order determining such Claim to be an Allowed Non-Ordinary Course Administrative Claim becomes a Final Order.	
503(b)(9) Claims	The holder of an Allowed 503(b)(9) Claim will receive cash in the full amount of its Allowed 503(b)(9) Claim, without interest, on or before the later of: (i) ten (10) days after the Effective Date, or (ii) ten (10) days after the date any order determining such Claim to be an Allowed 503(b)(9) Claim becomes a Final Order. Such holder is required under the Plan to have filed a 503(b)(9) Claim by the 503(b)(9) Bar Date.	Not Entitled to Vote
Committee Administrative Expense Claims	Notwithstanding any other provision of the Plan, the professionals and members of the Creditors' Committee (in their capacity as members of the Creditors' Committee and not in their capacity as holders of Unsecured Claims) shall not receive (pursuant to the Plan or otherwise) more than \$750,000 on account of Allowed Committee Administrative Expense Claims incurred in the Case.	Not Entitled to Vote
Priority Tax Claims	The Reorganized Debtor will pay to each entity holding an Allowed Priority Tax Claim cash in the full amount of the Allowed Priority Tax Claim, plus interest calculated at the federal judgment rate, in equal, amortized, annual installments beginning on the first anniversary of the Petition Date that falls on a date following the occurrence of the Effective Date and, thereafter, on each anniversary of the Petition Date through the fifth anniversary of the Petition Date. An allowed Priority Tax Claim may be prepaid at any time without penalty.	Not Entitled to Vote
Secured Claims		
Class 1 Lender Secured Claims	The remaining cash proceeds of the UCSD Sale, if any, will be remitted to the Agent on the Effective Date, to reduce the debt under the Prepetition Credit Agreement. On the Effective Date, the Reorganized Debtor	Impaired Entitled to Vote

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	<p>shall issue to the Agent, for the benefit of the Agent and Lenders, the Research Building Note in the amount of \$13 million.</p> <p>The Research Building Note will (i) be secured by a first-priority deed of trust on the Research Building (including all personal property located thereon as of the date of the Plan Support Agreement), and the Vacant Land; (ii) be a non-recourse obligation of the Reorganized Debtor; (iii) provide for annual principal amortization payments; (iv) be payable in full on the earlier of (x) the fifth anniversary of the Effective Date, (y) a default under the note, or (z) a sale of the Research Building or Vacant Land; (v) be non-interest bearing; and (vi) be subject to prepayment at any time without penalty.</p> <p>The Reorganized Debtor will continue to be obligated under the Prepetition Deed of Trust, as modified to secure the Research Building Note.</p> <p>Notwithstanding any of the foregoing, if the Research Building and/or the Vacant Land are sold for an aggregate amount in excess of \$13,000,000 (the "Excess Consideration"), whether during the term of the Research Building Note or at any time within one (1) year after repayment thereof, the Reorganized Debtor shall pay 80% of the Excess Consideration to the Agent for the benefit of the Agent and Lenders.</p>	
<p>Class 2 Other Secured Claims, including Secured Tax Claims</p>	<p>The Reorganized Debtor will, at its option, on or as soon as reasonably practicable after the Effective Date: (i) pay to such holder cash in the amount of such holder's Allowed Class 2 Claim; (ii) return the collateral securing such Allowed Class 2 Claim; or (iii) (a) cure any default, other than a default of the kind specified in Bankruptcy Code section 365(b)(2), with respect to such holder's Allowed Class 2 Claim, without recognition of any default rate of interest or similar penalty or</p>	<p>Unimpaired Not Entitled to Vote Deemed to Accept</p>

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	<p>charge, and upon such cure, no default will exist; (b) reinstate the maturity of such Allowed Class 2 Claim as the maturity existed before any default, without recognition of any default rate of interest or similar penalty or charge; and (c) leave unaltered all other legal, equitable, and contractual rights with respect to such Allowed Class 2 Claim.</p> <p>As set forth in Section IV.D of the Plan, if not earlier abandoned or otherwise disposed of, the Administration Building Parcel shall be deemed abandoned as of the Effective Date and the Reorganized Debtor shall retain no interest in the Administration Building Parcel.</p>	
Priority Claims		
<p>Class 3 Priority Claims, other than Priority Tax Claims</p>	<p>Unless the particular entity holding an Allowed Class 3 Claim agrees otherwise, each holder of an Allowed Class 3 Claim will receive, in full satisfaction of such Claim, cash in the amount of the Allowed Class 3 Claim, without interest, on or before the latest of: (i) ten (10) days after the Effective Date; (ii) ten (10) days after the date on which the Class 3 Claim becomes an Allowed Class 3 Claim; and (iii) the date on which the Allowed Class 3 Claim becomes due and payable in accordance with its terms.</p>	<p>Unimpaired Not Entitled to Vote Deemed to Accept</p>
Unsecured Claims		
<p>Class 4 General Unsecured Claims</p>	<p>Allowed Class 4 Claims will receive their Pro Rata share of the recoveries on the assets in the Creditor Trust, net of the fees and expenses incurred by the Creditor Trust and its professionals in realizing those recoveries, objecting to Class 4 Claims, and administering the trust.</p> <p>The timing of payment to the holders of Allowed Class 4 Claims shall be determined by the Creditor Trust in accordance with the Creditor Trust Agreement. All payments made to holders of Allowed Class 4 Claims will be made via the Creditor Trust pursuant to the Creditor Trust Agreement.</p> <p>On the Effective Date, the holders of the</p>	<p>Impaired Entitled to Vote</p>

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	<p>Lender Deficiency Claims shall be deemed to have waived irrevocably all such Claims and, accordingly, the right to receive any consideration under class 4 on account of such Claims. Without limiting the foregoing in any way, neither the Agent nor the Lenders shall share in any portion of the Aggregate Unsecured Creditor Consideration, the Unsecured Creditor Cash or the Net Trust Assets.</p>	
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I.

INTRODUCTION

Nevada Cancer Institute, a Nevada nonprofit corporation (the “Debtor”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) on December 2, 2011 (the “Petition Date”), thereby commencing the Case. The Case is pending before the Honorable Mike K. Nakagawa, Chief United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Nevada (the “Court”) under case number 2:11-bk-28676 (MKN). Pursuant to Bankruptcy Code sections 1107 and 1108, the Debtor is operating its business and managing its affairs as a debtor and debtor in possession.

The Debtor is the proponent of the *Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated January 31, 2012)* (the “Plan”) that is attached to this Disclosure Statement as Exhibit 1. **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ACCOMPANYING PLAN.** The Plan sets forth the manner in which the Claims against the Debtor will be treated if the Plan is confirmed by the Court and the Effective Date occurs. This Disclosure Statement describes certain aspects of the Plan, the Debtor’s current and future business operations, the proposed reorganization of the Debtor, and other related matters. Under the Plan, the Debtor will continue to operate as a nonprofit corporation on and after the Effective Date.

For a complete understanding of the Plan, you should read this Disclosure Statement, the Plan and the exhibits to these documents (the “Exhibits”) in their entirety.

This Disclosure Statement sets forth the assumptions underlying the Plan, describes the process that the Court will follow when determining whether to confirm the Plan, and describes how the Plan will be implemented if it is confirmed by the Court and the Effective Date occurs. Bankruptcy Code section 1125 requires that a disclosure statement contain “adequate information” concerning a plan of reorganization. 11 U.S.C. § 1125(a). [The Court has approved the form of this document as containing adequate information to enable creditors entitled to vote on the Plan to make an informed judgment when deciding whether to vote to accept or to reject the Plan. The Court’s approval of the adequacy of this Disclosure Statement, however, does not constitute a

1 determination by the Court with respect to the fairness or the merits of the Plan or the accuracy or
2 completeness of the information contained in the Plan or Disclosure Statement.] **THE COURT**
3 **HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE**
4 **STATEMENT. THEREFORE, THE PLAN'S TERMS ARE NOT YET BINDING ON**
5 **ANYONE. IF THE COURT LATER CONFIRMS THE PLAN AND THE EFFECTIVE**
6 **DATE OCCURS, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON**
7 **ALL PARTIES IN INTEREST IN THIS CASE, INCLUDING CREDITORS OF THE**
8 **DEBTOR.**

9 The Debtor and the Creditors' Committee believe that the Plan provides the best possible
10 recoveries to creditors under the circumstances, that acceptance of the Plan is in the best interests
11 of all parties in interest, and that any alternative would result in unnecessary delay, uncertainty,
12 and expense to the Estate. The Debtor and the Creditors' Committee therefore recommend that all
13 eligible creditors entitled to vote on the Plan cast their Ballots to accept the Plan.

14 **II.**

15 **GENERAL DISCLAIMERS AND INFORMATION**

16 Please carefully read this document and the Exhibits to this document. These documents
17 explain who may object to confirmation of the Plan, who is entitled to vote to accept or reject the
18 Plan, and the treatment that creditors can expect to receive if the Court confirms the Plan and the
19 Effective Date occurs. The Disclosure Statement also describes the history of the Debtor, the
20 events precipitating the Case, certain events in the Case, the effect of Plan confirmation, and some
21 of the things the Court may consider in deciding whether to confirm the Plan. It also addresses the
22 Plan's feasibility and how your treatment under the Plan compares to the hypothetical treatment
23 you would receive under a chapter 7 liquidation. The statements and information contained in the
24 Plan and Disclosure Statement, however, do not constitute financial or legal advice. You should
25 therefore consult your own advisors if you have questions about the impact of the Plan on your
26 Claims.

27 The financial information used to prepare the Plan and Disclosure Statement was prepared
28 by the Debtor from information in its books and records and is the sole responsibility of the

1 Debtor. The Debtor’s professionals and financial advisors have prepared the Plan and Disclosure
2 Statement at the direction of, and with the review, input, and assistance of, the Debtor’s
3 management. The Debtor’s professionals and financial advisors have not independently verified
4 this information.

5 The statements and information that concern the Debtor that are set forth in this document
6 constitute the only statements and information that the Court has approved for the purpose of
7 soliciting votes to accept or reject the Plan. Therefore, no statements or information that are
8 inconsistent with anything contained in this Disclosure Statement are authorized unless otherwise
9 ordered by the Court.

10 You may not rely on the Plan and Disclosure Statement for any purpose other than to
11 determine whether to vote to accept or reject the Plan. Nothing contained in the Plan or
12 Disclosure Statement constitutes an admission of any fact or liability by any party or may be
13 deemed to constitute evidence of the tax or other legal effects that the reorganization set forth in
14 the Plan may have on entities holding Claims.

15 Unless another time is expressly specified in this Disclosure Statement, all statements
16 contained in this document are made as of January 31, 2012. Under no circumstances will the
17 delivery of this Disclosure Statement or the exchange of any rights made in connection with the
18 Plan create an implication or representation that there has been no subsequent change in the
19 information included in this document. The Debtor assumes no duty to update or supplement any
20 of the information contained in this document, and it presently does not intend to undertake any
21 such update or supplement.

22 The Exhibits listed in the following table are attached to the Disclosure Statement. These
23 Exhibits are incorporated into the Disclosure Statement and will be deemed to be included in the
24 Disclosure Statement when they are Filed.

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EXHIBIT NO.	DESCRIPTION
1	Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated January 31, 2012)
2	Pending Prepetition Lawsuits
3	Plan Support Agreement
4	Preserved Avoidance Actions
5	Annual Projected Budget for Reorganized Debtor
6	Liquidation Analysis

III.

WHO MAY VOTE TO ACCEPT OR REJECT THE PLAN

This Section III¹ contains a general discussion of the rules governing the treatment and satisfaction of claims under a plan of reorganization proposed under the Bankruptcy Code. Where a particular word (such as “Debtor”) or a phrase (such as “Allowed Claim”) is capitalized in this Disclosure Statement, and not otherwise defined herein, that word or phrase has the meaning provided in Section I (Definitions) of the Plan. Where, however, a particular word (such as “debtor”) or phrase (such as “allowed claim”) is not capitalized in this Disclosure Statement, that word or phrase is not intended to refer to the definitions provided in Section I of the Plan, but rather, the word or phrase is intended to have the general meaning ascribed to it. To vote to accept or reject the Plan, your Claim must be: (a) an impaired Claim against the Debtor; (b) neither a Disputed Claim nor a Disallowed Claim; and (c) entitled to receive or retain some value under the Plan. Holders of unimpaired Claims against the Debtor are deemed to have accepted the Plan and do not vote, although they may object to Plan confirmation to the extent they otherwise have standing to do so. Holders of Claims against the Debtor that do not receive or retain any value

¹ Unless otherwise indicated, Section references are to sections of this Disclosure Statement.

1 under the Plan are deemed to reject the Plan. As defined by the Bankruptcy Code, a claim against
2 a debtor generally includes all rights to payment from that debtor.

3 **A. Allowed Claims.**

4 With the exceptions explained below, under the Bankruptcy Code, a claim generally is
5 allowed only if a proof of the claim is properly filed before any applicable bar date, and either no
6 party in interest has objected or the bankruptcy court has entered an order allowing the claim.
7 Under certain circumstances, as provided in the Bankruptcy Code, a creditor may have an allowed
8 claim even if a proof of claim was not filed and the applicable bar date for filing a proof of claim
9 has passed. For example, a claim may be deemed allowed if the claim is listed on a debtor's
10 schedules and is not scheduled as disputed, contingent, or unliquidated.

11 A holder's claim must be an allowed claim for the holder of such claim to have the right to
12 vote on a plan. Generally, for voting purposes, a claim is deemed allowed to the extent that: (a)
13 either (1) a proof of claim is timely filed; or (2) a proof of claim is deemed timely filed either
14 under Bankruptcy Rule 3003(b)(1)-(2) or by an order of the bankruptcy court; and (b) either (1)
15 the claim is not subject to an objection; or (2) the claim is allowed by an order of the bankruptcy
16 court notwithstanding that objection.

17 A creditor whose claim is not allowed may still be entitled to vote to accept or reject a plan
18 if the creditor has timely filed a proof of claim that is not the subject of an objection filed before
19 the hearing on plan confirmation or a bankruptcy court order disallowing the claim entered before
20 the confirmation hearing. An entity whose claim is subject to an objection is not eligible to vote
21 on the plan unless and until that objection is resolved in the entity's favor or, after notice and a
22 hearing under Bankruptcy Rule 3018(a), a bankruptcy court temporarily allows the entity's claim
23 for the purpose of voting to accept or reject the plan. Any entity that seeks temporary allowance
24 of its claim for voting purposes must promptly file an appropriate motion and take the steps
25 necessary to arrange an appropriate and timely hearing. Please refer to Section VI.A for
26 information regarding voting in this Case.

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1 **B. Impaired Claims.**

2 Generally speaking, under the Bankruptcy Code, a class of claims is impaired if the plan
3 alters the legal, equitable or contractual rights of the members of the class, even if the alteration is
4 beneficial to the creditors in the class. A contract provision that entitles a creditor to accelerated
5 payment upon default, however, does not necessarily render a claim impaired, even if the debtor
6 defaulted and the plan does not provide the creditor with accelerated payment. Instead, the claim
7 is deemed unimpaired if, for example, the plan cures the default, reinstates the maturity of the
8 claim as it existed before the default, and compensates the creditor for any damages incurred as a
9 result of reasonable reliance upon the acceleration provision. Section IX.A.2 of this Disclosure
10 Statement and Section II.A of the Plan identify among other things, the Classes of Claims that the
11 Debtor believes to be impaired under the Plan.

12 **IV.**

13 **VOTES NECESSARY FOR PLAN CONFIRMATION**

14 Under the Bankruptcy Code, impaired claims are placed in classes under a plan, and each
15 class accepts or rejects the plan as a class. Certain types of claims are not classified because the
16 Bankruptcy Code requires that they be treated in a specific way. These claims are considered
17 unimpaired, and their holders cannot vote. Section IX.A of this Disclosure Statement and Section
18 II.A of the Plan set forth a summary of the types of Claims against the Debtor, their treatment
19 under the Plan, and, where applicable, the classes in which they have been classified.

20 Under the Bankruptcy Code, a bankruptcy court may confirm a plan if at least one class of
21 impaired claims has voted to accept that plan (without counting the votes of any insiders whose
22 claims are classified within that class) and if certain statutory requirements are met both as to non-
23 consenting members within a consenting class and as to dissenting classes. A class of claims has
24 accepted the plan only when at least a majority in number and at least two-thirds in amount of the
25 allowed claims actually voting in that class vote to accept the plan.

26 Even if a debtor receives the requisite number of votes to confirm a proposed plan, the plan
27 will not become binding unless and until, among other things, the bankruptcy court makes an
28

1 independent determination that confirmation is appropriate. This determination will be the subject
2 of the hearing on confirmation of the plan.

3 **V.**

4 **CRAMDOWN: TREATMENT OF NON-CONSENTING CLASSES**

5 Even if all classes do not consent to the proposed treatment of their claims under a plan,
6 the plan nonetheless may be confirmed if each dissenting class is treated in the manner prescribed
7 by the Bankruptcy Code. The process by which a dissenting class is forced to abide by the terms
8 of a plan is commonly referred to as “cramdown.” The Bankruptcy Code allows a dissenting class
9 to be crammed down if the plan does not “discriminate unfairly” and is “fair and equitable” as to
10 such class. The Bankruptcy Code does not define unfair discrimination, but it does set forth
11 certain minimum requirements for “fair and equitable” treatment. For a class of secured claims,
12 “fair and equitable” can mean that the secured claimants retain their liens and receive deferred
13 cash payments, the present value of which equals the value of their interests in the collateral. For
14 a class of unsecured claims, a plan is fair and equitable if the claims in that class receive value
15 equal to the allowed amount of the claims, or, if the unsecured claims are not fully satisfied, no
16 claim or interest that is junior to such claims receives or retains anything under the plan.²

17 **VI.**

18 **INFORMATION REGARDING VOTING IN THIS CASE**

19 **A. Voting Instructions.**

20 The Debtor believes that Classes 1 and 4 are impaired and that holders of Allowed Claims
21 in those Classes are therefore entitled to vote on the Plan. The Debtor believes that Classes 2 and
22 3 are unimpaired and that the holders of claims in such classes are therefore not entitled to vote on
23 the Plan. Entities holding Administrative Claims and Priority Tax Claims are not classified and
24 are not entitled to vote on the Plan. Any party that disputes the Debtor’s characterization of its
25 Claim as unimpaired may request a finding of impairment from the Court to obtain the right to

26 _____

27 ² This paragraph does not purport to explain fully the applicable statutes or case law, which are
28 complex.

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1 vote, but such party must promptly take action to request such a finding and arrange for the Court
2 to hold a hearing and adjudicate such request no later than seven (7) days prior to the Ballot
3 deadline (*i.e.*, no later than [_____], 2012).

4 In voting to accept or reject the Plan, please use only the Ballot sent to you with this
5 Disclosure Statement, and please carefully read the voting instructions on the Ballot for an
6 explanation of the applicable voting procedures and deadlines. If, after reviewing this Disclosure
7 Statement, you believe that you hold an impaired Claim and that you are entitled to vote on the
8 Plan, but you did not receive a Ballot, or if your Ballot is damaged or lost, please send a written
9 request for a Ballot to the Ballot Tabulator at the following address:

10 Klee, Tuchin, Bogdanoff & Stern LLP
11 Attn: Shanda Dahl
12 1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067

13 If you wish to vote to accept or reject the Plan, your Ballot must be returned to the Ballot
14 Tabulator at the address listed above so that it is actually received by the Ballot Tabulator no later
15 than 5:00 p.m. Pacific time, on [_____], 2012 (the “Balloting Deadline”). If your Ballot is not
16 timely received by the Ballot Tabulator, it will not be counted. Ballots sent by facsimile or email
17 will not be accepted by the Ballot Tabulator and will not be counted in tabulating votes accepting
18 or rejecting the Plan.

19 If your Claim is a Disputed Claim and you nevertheless wish to vote on the Plan, you will
20 be required to move the Court to temporarily allow your Claim for voting purposes. In order to do
21 so, you must promptly take action to make such a motion and arrange for the Court to hold a
22 hearing and adjudicate such motion no later than seven (7) days prior to the Ballot Deadline (*i.e.*,
23 no later than [_____], 2012).

24 Any interested party desiring further information with respect to the Plan or seeking an
25 additional copy of this document should contact in writing: Klee, Tuchin, Bogdanoff & Stern LLP,
26 Attn: Courtney E. Pozmantier, Esq., 1999 Avenue of the Stars, 39th Floor, Los Angeles, CA
27 90067, Facsimile: (310) 407-9090. All pleadings and other papers Filed in this Case may be
28 inspected free of charge during regular court hours at the Office of the Clerk, United States

1 Bankruptcy Court, Foley Federal Building, 300 Las Vegas Blvd., South, Las Vegas, NV 89101.
2 Documents may be accessed for a fee through the Court's electronic records system at
3 <http://ecf.nvb.uscourts.gov>, and certain documents pertaining to the Case are available on the
4 website of the Debtor's proposed claims agent at <http://www.kccllc.net/NevadaCancerInstitute>.

5 **VII.**

6 **WHO MAY OBJECT TO PLAN CONFIRMATION**

7 A hearing has been scheduled for [____], 2012, at __:___.m. (Pacific time) at the
8 United States Bankruptcy Court, 300 Las Vegas Boulevard South, Courtroom 2, Las Vegas,
9 Nevada 89101, to determine whether the Court will confirm the Plan. If, after tabulating the
10 Ballots, it appears that entities holding a sufficient number and amount of Claims have voted to
11 accept the Plan, the Debtor will file a memorandum of points and authorities supporting the entry
12 of the Confirmation Order. This memorandum will be served on the U.S. Trustee, counsel for the
13 Creditors' Committee, counsel for the Agent, all entities that have requested special notice in the
14 Case, and all parties that have timely objected to confirmation of the Plan.

15 Any party in interest in the Case—including any creditor that voted (or was deemed to
16 have voted) to accept or reject the Plan—may File an objection to confirmation of the Plan
17 assuming such party has standing to do so. Any such objection must be Filed and served on the
18 Debtor and its counsel; the U.S. Trustee; counsel for the Creditors' Committee; and counsel for
19 the Agent by [____], 2012. If you fail to properly and timely File and serve an objection to
20 Plan confirmation, you may be deemed to have consented to the confirmation of the Plan. If you
21 wish to obtain more information, you should contact in writing:

22 Klee, Tuchin, Bogdanoff & Stern LLP
23 Attn: Courtney E. Pozmantier, Esq.
24 1999 Avenue of the Stars, 39th Floor
25 Los Angeles, CA 90067
26 Facsimile: (310) 407-9090
27
28

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1 **VIII.**

2 **BACKGROUND ON THE DEBTOR, THE DEBTOR’S BUSINESS, EVENTS**
3 **PRECIPITATING THE BANKRUPTCY FILING, AND THIS CASE**

4 **A. Description and History of the Debtor’s Business.**

5 Founded in 2002, the Debtor is a nonprofit cancer institute committed to advancing the
6 frontiers of knowledge of cancer and reducing the burden of cancer on the people of Nevada. The
7 Debtor previously operated and maintained a state-of-the-art outpatient cancer treatment and
8 research facility in the Summerlin community of Las Vegas (the “Flagship Building”) and
9 provided comprehensive management services to physicians employed by the oncology medical
10 group, Ruckdeschel Manno, Ltd. dba Nevada Cancer Institute Medical Group (the “Medical
11 Group,” and together with the Debtor, “NVCI”). This cancer treatment facility was designated by
12 the State of Nevada as the State’s official cancer institute.

13 As described in detail in this Disclosure Statement, the Debtor underwent a significant
14 prepetition operational restructuring, and, after commencing this case, sold the Flagship Building
15 (i.e., the Debtor’s cancer treatment facility), and certain other assets to the Regents of the
16 University of California on behalf of its UC San Diego Health System (“UCSD” and the “UCSD
17 Sale”) in a Court-approved sale pursuant to Bankruptcy Code section 363 that closed on January
18 31, 2012. The Debtor is seeking to restructure its remaining obligations pursuant to the Plan, and
19 emerge from chapter 11 expeditiously. If the Plan is confirmed and the Effective Date occurs, the
20 Debtor will be able to continue its important philanthropic mission of increasing cancer
21 knowledge and funding cancer research and treatment.

22 Prior to the UCSD Sale, NVCI provided professional medical services, infusion therapy,
23 radiation therapy, diagnostic imaging, and related ancillary services, at the Flagship Building and
24 at leased premises located at the University Medical Center in central Las Vegas (“UMC”). The
25 Flagship Building houses its own diagnostic equipment including PET, CT, MRI, and digital
26 mammography, and provides a place for patients to obtain psychosocial and nutrition counseling,
27 participate in a survivorship clinic, and obtain pain management services.

1 In addition to providing a center for high quality patient care, the Flagship Building was
2 home to scientific research activities into the causes, prevention, and treatment of cancer. One
3 aspect of these research activities involved laboratory research, which resulted in a variety of adult
4 stem cell and biomarker-related discoveries, although none has yet been commercialized. Another
5 aspect of these research activities involved the participation of patients treated in clinical drug
6 trials. These clinical trials, and prior studies, made novel drugs available to Nevadans suffering
7 from cancer that otherwise would not have been available to them. NVC I participated in a total of
8 176 trials including 13 first in human trials, which drew patients from other states and countries .
9 UCSD has indicated to the Debtor that it intends to continue participating in clinical trials.

10 Prior to the UCSD Sale, the Debtor also conducted educational programs and outreach
11 throughout Nevada at schools, workplaces, community centers, senior centers, faith-based
12 organizations, union halls, community activities, health fairs and support group meetings,
13 organizes, trained “patient navigators” to help arrange treatment and follow-up care, and provide
14 referrals to community resources, and maintained a mobile diagnostic unit or “Hope Coach” that
15 brought digital mammography directly to Nevadans, including those living in rural areas without
16 nearby access to mammograms. The Hope Coach has been acquired by UCSD.

17 **B. The Debtor’s Corporate Structure, Board of Directors and Management.**

18 The Debtor is a Nevada nonprofit corporation. It has no members or equity holders. The
19 Debtor is governed by a board of directors (the “Board”), which is comprised of 11 distinguished
20 business and medical professionals, who volunteer their service without compensation. The
21 members of the Board are as follows:

- 22 • Dr. Javaid Anwar is the chief executive officer of Quality Care Consultants, LLC.
23 Dr. Anwar is also the president of the Nevada State Board of Medical Examiners
24 and the vice president of Health Care Services for MGM Resorts International.
- 25 • James D. Hammer is a founding principal of “StorageOne,” the largest privately
26 owned self-storage company in the Las Vegas Valley. Mr. Hammer also founded
27 Westar Development Company and Westar Properties Inc.

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- 1 • Justine Harrison, Esq. was a founding member of the staff of the Debtor and served
2 in a variety of progressive leadership roles for the Debtor prior to joining the
3 Board. Before joining NVCI, Ms. Harrison served in management roles in the
4 hospitality and wireless communications industries.
- 5 • Dr. Ikram U. Khan currently serves as the president of Quality Care Consultants,
6 LLC and is the medical director for MGM Resorts International and Employers
7 Occupational Health.
- 8 • William Lerner is a principal of Union Gaming Group, a global gaming research
9 and advisory firm with offices in Las Vegas and Macau. Prior to Union Gaming,
10 Mr. Lerner spent 16 years on Wall Street as a financial analyst in equity research.
- 11 • Heather H. Murren, CFA is a cofounder of the Debtor and the former chairman of
12 the Board. Ms. Murren was formerly a managing director, Global Securities
13 Research and Economics, of Merrill Lynch and also served on the Financial Crisis
14 Inquiry Commission (FCIC), a 10-member Federal commission established to
15 examine the domestic and global causes of the financial crisis.
- 16 • James J. Murren, CFA is a cofounder of the Debtor. Mr. Murren currently serves
17 as the chairman of the board and chief executive officer of MGM Resorts
18 International. Prior to joining MGM Resorts International, Mr. Murren spent 14
19 years on Wall Street as a top-ranked equity analyst.
- 20 • John Ritter is chairman of the board and chief executive officer of Focus Property
21 Group, and has been actively involved in the real estate industry for more than 28
22 years, specializing in investments in land throughout the southwest region of the
23 country, principally in Southern Nevada.
- 24 • Corey Sanders is chief operating officer of MGM Resorts International and
25 oversees the company's wholly owned properties. Mr. Sanders served in other
26 senior management positions with MGM Resorts International prior to becoming
27 chief operating officer.
- 28

- 1 • William Scott IV is executive vice president – corporate strategy and special
2 counsel of MGM Resorts International. Mr. Scott also serves on the board of
3 MGM China Holdings Limited.
- 4 • Michael Yackira, the chairman of the Board, is president and chief executive
5 officer of NV Energy, Inc., a holding company that owns Nevada Power Company
6 and Sierra Pacific Power Company.

7 The firm of Alvarez & Marsal Healthcare Industry Group, LLC (“A&M”) has been
8 providing management advisory services to the Debtor since March of 2011 in connection with its
9 operations, finances, and restructuring efforts, all in close consultation with the Board. Effective
10 as of the Petition Date, the Board appointed the following personnel from A&M as officers of the
11 Debtor: (i) George D. Pillari as Chief Restructuring Officer for the Debtor; (ii) Steven Kraus as
12 Chief Financial Officer and Treasurer for the Debtor; (iii) Diane Rafferty as Vice President,
13 Outcomes & Quality for the Debtor; and (iv) Raul Smith, Milen Hayriyan, Erica Lister and Brian
14 Frank as Assistant Vice Presidents, Finance. Shortly after the Petition Date, the Board also
15 appointed Mr. Pillari as President of the Debtor, and both Joshua Zazulia and Roger Gorog, of
16 A&M, as Assistant Vice Presidents, Finance.

17 **C. The Medical Group.**

18 Prior to the UCSD Sale, the physicians employed by the non-debtor Medical Group were
19 responsible for treating patients at the Flagship Building and the UMC location. Just prior to the
20 closing of the UCSD Sale, the Medical Group employed six physicians. The Medical Group was
21 organized for the sole purpose of compliance with the corporate practice of medicine doctrine
22 under Nevada law, in effect at the time it began providing patient care. Under the doctrine, the
23 Debtor was not permitted to directly employ physicians. The Medical Group is a Nevada
24 professional corporation, whose stated purpose (according to its amended and restated articles of
25 incorporation) is to “provide medical services to support Nevada Cancer Institute [and its] mission
26” The physicians employed by the Medical Group do not hold any equity interest in the
27 Medical Group and the articles of incorporation for the Medical Group mirror those of a nonprofit
28 entity.

1 The shares of the Medical Group are held by Dr. Ikram U. Khan and Dr. Javaid Anwar,
2 two distinguished physicians who are licensed to practice medicine in the State of Nevada and
3 who are members of the Board of the Debtor. Dr. Khan serves as one of two members of the
4 board of directors for the Medical Group, and as president, secretary and treasurer for the Medical
5 Group. Dr. Anwar is the other member of the board of directors for the Medical Group and vice
6 president of the Medical Group. Dr. Khan and Dr. Anwar have not and will not receive any
7 distributions, dividends or compensation on account of the various positions they hold with the
8 Medical Group. The Debtor does not hold an equity interest in the Medical Group.

9 Historically, the activities of the Debtor and the Medical Group were closely coordinated.
10 All of the managed care contracts for services provided to patients at the Flagship Building and the
11 UMC location were between managed care payor entities and the Medical Group. The Debtor was
12 not a party to any payor contracts. In addition, pursuant to a long-established practice, the
13 Medical Group regularly transferred to the Debtor one-hundred percent of the revenues collected
14 from those managed care contracts and Medicare. In turn, the Debtor paid the compensation of,
15 and provided benefits to, the physicians employed by the Medical Group, and handled all billing,
16 administration and management related to patient services provided by those physicians. This
17 longstanding practice was memorialized in that certain Management Services Agreement dated as
18 of November 2, 2011.

19 **D. The Debtor's Capital Structure.**

20 The Debtor's unaudited balance sheet as of November 30, 2011 shows, on a book value
21 basis, the following approximate amounts: assets of \$169.9 million, liabilities of \$100.0 million,
22 and net assets of \$66.2 million.³

23 The balance sheet reflects the following assets, on a book value basis, in the following
24 approximate amounts: (i) real property of \$138 million; (ii) assets limited as to use of \$18.1
25 million; (iii) pledge receivables of \$13.8 million; (iv) clinical accounts receivable (net of doubtful

26 _____
27 ³ Based on information available to the Debtor, the book value of the assets does not reflect the
28 market value of such assets.

1 accounts) of \$2.4 million; (v) equipment of \$10.7 million; (vi) grant and other receivables of \$1.2
2 million; (vii) inventories of \$494,000; and (viii) cash of \$2.3 million.

3 The balance sheet reflects the following liabilities, on a book value basis, in the following
4 approximate amounts: (i) \$91 million in secured debt; (ii) accounts payable of \$6.1 million;
5 (iii) other accrued liabilities of \$2.4 million; (iv) current lease payments due of \$647,000; and (v)
6 other long-term debt of \$3.7 million.

7 **1. Secured Debt.**

8 **a. The Credit Facility.**

9 The Debtor is the borrower under that certain Amended and Restated Credit and
10 Reimbursement Agreement, dated as of April 23, 2008 among the Debtor, Bank of America, N.A.
11 as Administrative Agent (“Bank of America” or the “Agent”), JPMorgan Chase Bank, National
12 Association as Syndication Agent, Bank of Scotland PLC and UBS Loan Finance LLC, as Co-
13 Documentation Agents and other lenders party thereto (as amended or modified, the “Credit
14 Agreement”).

15 The Credit Agreement amended and restated the then-existing credit agreement (dated as
16 of December 1, 2003), under which Bank of America, on behalf of the lenders thereunder (the
17 “Lenders”), had issued a letter of credit (“Letter of Credit”) to support \$50 million in principal
18 amount of public bonds issued by the State of Nevada to fund the construction of the Flagship
19 Building (the “Public Bonds”). In connection with that amendment and restatement, the Lenders
20 agreed to provide an additional \$100 million in credit facilities, consisting of \$85 million under a
21 construction facility and \$15 million under a revolving facility.

22 As of the commencement of the Debtor’s Case, the principal balance under the Credit
23 Agreement was approximately \$91 million, comprised of approximately \$44.4 million in
24 reimbursement obligations in respect of the Letter of Credit (which was drawn in April 2011) and
25 approximately \$46.6 million in respect of the construction facility. There were no loans made
26 under the revolving facility and there are no amounts outstanding thereunder. The maturity date
27 under the Credit Agreement was April 23, 2011. As of that date, the Debtor had not reimbursed
28

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1 the Lenders on account of the Letter of Credit draw or repaid the other amounts due under the
2 Credit Agreement.

3 In conjunction with the Credit Agreement, the Debtor entered into that certain Amended
4 and Restated Construction Deed of Trust with Assignment of Rents, Security Agreement and
5 Fixture Filing (“Prepetition Deed of Trust”) and Security Agreement (“BofA Security
6 Agreement”), both dated April 23, 2008. The Prepetition Deed of Trust granted a lien in favor of
7 Bank of America, as Agent, to secure the indebtedness under the Credit Agreement, against
8 certain Las Vegas real estate that is owned by the Debtor, including any rents generated from that
9 real estate and all fixtures thereto.

10 The encumbered real estate comprised the following: (i) the Flagship Building and the land
11 on which it is situated (Clark County APN 164-13-712-010); (ii) the Ralph and Betty Engelstad
12 Cancer Research Building and the land on which it is situated (Clark County APN 164-13-618-
13 001) (the “Research Building”); and (iii) certain vacant land adjacent to the Flagship Building
14 (Clark County APN 164-13-712-015) (the “Vacant Land”). Additional detail on the Debtor’s real
15 estate is set forth in section VIII.E.3 below.

16 The BofA Security Agreement granted a lien in favor of Bank of America, as Agent, to
17 secure the indebtedness under the Credit Agreement, against substantially all of the Debtor’s
18 personal property, including cash, accounts receivable, and a certain cash collateral account
19 established to provide additional collateral to the Lenders in respect of the Credit Agreement (the
20 “Cash Collateral Account”). As discussed below in Section VIII.F, certain funds that were
21 previously on deposit in the Cash Collateral Account were consensually released by the Agent and
22 Lenders prepetition, in order to permit the Debtor to continue operating and to reduce debt under
23 the Credit Agreement.

24 As of the commencement of the Debtor’s Case, the balance of the Cash Collateral Account
25 was approximately \$2.8 million. Pursuant to the Cash Collateral Stipulation negotiated between
26 the Debtor and the Lenders and approved by the Court, *see* Docket Nos. 65 and 281, funds in the
27 Cash Collateral Account have been used postpetition to fund the Debtor’s operations and the costs
28 and expenses associated with this Case. The balance of the Cash Collateral Account was

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1 approximately \$1.97 million as of January 31, 2012. The remaining funds will be used to fund
2 solicitation, confirmation and implementation of the Plan, and the administrative expenses of the
3 estate.

4 **b. The Administration Building Parcel Loan.**

5 In 2007, the Debtor borrowed approximately \$3.7 million (the “Administration Building
6 Parcel Loan”) from NCI Admin Bldg., LLC (“NAB”) to acquire a fourth parcel of Summerlin real
7 estate (Clark County APN 164-13-712-020) (the “Administration Building Parcel”), which serves
8 as security for that loan under a deed of trust in favor of NAB (the “NAB Deed of Trust”). NAB
9 is an affiliate of The Greenspun Corporation, a Las Vegas-based real estate development
10 company. The Greenspun family and the Greenspun Family Foundation, which are related to that
11 entity, have in the past provided philanthropic support to the Debtor. The Debtor owns the
12 Administration Building Parcel, but its only interest in the administration building itself was a
13 leasehold interest, which was vacated on or before May 18, 2011. As of the Petition Date, the
14 outstanding balance of the Administration Building Parcel Loan was approximately \$3.7 million.

15 Pursuant to the Plan, unless earlier abandoned or otherwise disposed of, the Debtor’s
16 interests in the Administration Building Parcel will be deemed abandoned upon the Effective Date
17 of the Plan, and the Reorganized Debtor will not retain any interest in the Administration Building
18 Parcel. After the occurrence of the Effective Date, any party with an interest in the Administration
19 Building Parcel will be able to exercise its rights and remedies against the Administration
20 Building Parcel, including any right to foreclose upon the Administration Building Parcel, without
21 further order of the Court.

22 **c. Oncology Supply.**

23 Prior to the UCSD Sale, Oncology Supply was the Debtor’s principal provider of oncology
24 medication. Oncology Supply and the Debtor are parties to a certain Application for New
25 Account, the terms and conditions of which include the grant of a security interest on substantially
26 all of the Debtor’s personal property to secure the Debtor’s “existing and future liabilities to
27
28

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1 Oncology Supply.” On October 5, 2009, Oncology Supply filed a UCC-1 financing statement
2 with the Nevada Secretary of State asserting a security interest in “all assets” of the Debtor.⁴ As
3 such, it appears that the security interests Oncology Supply may assert in assets of the Debtor are
4 junior and subordinate to those of the Agent, whose claims exceed \$91 million – substantially
5 more than the value of the Debtor’s assets. As of the Petition Date, the Debtor owed Oncology
6 Supply approximately \$1,000,000, approximately \$450,000 of which is on account of goods
7 delivered within 20 days of the commencement of the Case. The Debtor’s cash collateral budget
8 provides for Oncology Supply to be paid the full amount of its balance for goods delivered within
9 20 days of commencement of the Case, and the full amount incurred with respect to goods
10 delivered postpetition.

11 **d. The CMS Claim.**

12 NVCI has identified a potential error in certain billing practices related to clinical drug
13 trials that may have resulted in the receipt of overpayments from the Center for Medicare and
14 Medicaid Services (“CMS”). NVCI self-reported these potential overpayments to the Department
15 of Health and Human Services in July 2011. CMS has not conducted any reconciliations with
16 respect to NVCI and there has not been any determination of liability by CMS related to the
17 overpayments.

18 In addition to asserting a Claim against the Debtor, CMS could assert a right of offset or
19 recoupment in the future against accounts receivable owed to NVCI. It is not clear whether
20 CMS’s claim for offset or recoupment would be discharged by confirmation of the Plan. The
21 Budget provides for payment of the overpayments as determined by the Debtor.

22 **2. Unsecured Debt.**

23 As of the Petition Date, the Debtor had unsecured accounts payable due and owing in
24 respect of goods and services utilized in the ordinary course of its business of approximately \$6.05
25

26
27 ⁴ Oncology Supply does not have a control agreement or otherwise exercise control over any of
28 the Debtor’s deposit accounts.

1 million.⁵ In addition, as of the Petition Date, the Debtor: (a) had unsecured obligations in respect
2 of prepetition employee compensation, related payroll taxes and accrued obligations under certain
3 of its employee benefit programs, (b) had pending against it litigation by certain former NVCI
4 employees asserting claims against the Debtor, and (c) had certain contingent and/or unmatured
5 obligations under executory contracts and unexpired leases.

6 Although the Debtor is not aware of any amounts outstanding thereunder, the Debtor is a
7 party to a certain Finance Agreement and Promissory Note dated as of December 23, 2003,
8 pursuant to which the Debtor borrowed \$50 million from the Director of the State of Nevada
9 Department of Business and Industry, representing the proceeds of the public bonds issued to fund
10 construction of the Flagship Building. As noted above, the indenture trustee for the Public Bonds
11 made a draw on the Letter of Credit in April 2011, to satisfy the debt outstanding under the Public
12 Bonds. On or about April 15, 2011, Bank of America invoiced the Debtor in respect of its
13 obligation to reimburse the Lenders for that draw.

14 **E. Assets.**

15 **1. Unrestricted Cash.**

16 As of the Petition Date, the Debtor had approximately \$496,142 in “Unrestricted Cash” on
17 deposit. Unrestricted Cash comprises revenues, charitable donations that are not held in trust or
18 otherwise subject to restrictions that would prevent such funds from being used to fund the
19 Debtor’s operations, and funds released from the Cash Collateral Account by the Agent for use in
20 operations. Unrestricted cash does not include the funds presently on deposit in the Cash
21 Collateral Account, the Engelstad Endowment Fund, the Patient Cares Committee Fund, the Saffer
22 Endowment Fund, and the Other Donor Restricted Funds, which terms are defined and described
23 below (to the extent not defined above).

24
25
26 _____
27 ⁵ Claims that are not related to goods and services utilized in the ordinary course of business,
28 such as the Lenders’ deficiency claims, are not included in this approximate amount.

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2. Restricted Cash/Trust Funds.⁶

a. Cash Collateral Account.

As noted, the balance of the Cash Collateral Account was approximately \$2.8 million as of the Petition Date, and approximately \$1.97 million as of January 31, 2012.

b. Engelstad Endowment Fund.

The Debtor is the beneficiary of the Engelstad Endowment Fund, a \$15 million endowment fund given by the Engelstad Family Foundation, subject to the terms of that certain agreement dated January 4, 2007, between the Debtor and the Engelstad Family Foundation (the “Gift Agreement”). The Gift Agreement authorizes the Debtor to use the interest generated by the principal in the Engelstad Endowment Fund only to establish and support a lung cancer program.

If the interest earned on the Engelstad Endowment Fund cannot be used for the approved charitable purposes, the Gift Agreement provides that the Engelstad Endowment Fund and all income earned thereon reverts to the Engelstad Family Foundation, for such other charitable purposes as the foundation may, in its sole discretion, determine and direct. Until shortly before the filing of the Debtor’s voluntary petition, the charitable trust funds comprising the Engelstad Endowment Fund were maintained in two segregated bank accounts of the Debtor.⁷

The Gift Agreement was modified as of November 15, 2011 by that certain First Amendment to Gift Agreement (the “Gift Amendment”) to provide that the Engelstad Endowment Fund (including the interest thereon) will serve as a financial backstop for a substantial portion of

⁶ Except with respect to (i) any and all donations of the Engelstad Family Foundation, including the Engelstad Endowment Fund discussed herein and (ii) funds raised and deposited into escrow (the ‘Donations Escrow Account’) pursuant to the *Order Granting Debtor’s Motion Pursuant to Bankruptcy Code Sections 105(a), 363(b) and 363(c) For Order Authorizing the Deposit of Donor-Restricted Donations Into Escrow Account* [Docket No. 141], the Creditors’ Committee has reserved its right to assert that the funds held and identified by the Debtor as “Donor-Restricted Funds” and/or “Charitable Trust Funds” are not legally held in trust, and are available for the general corporate purposes of the Debtor (including the satisfaction of nonpriority unsecured claims of the Debtor).

⁷ One of these two accounts still holds the funds comprising the Saffer Endowment Fund, described below.

1 the Philanthropic Commitment (as defined in section VIII.G below) to UCSD, pursuant to the
2 Funding Agreement. Any amounts not expended for this purpose shall be used for the original
3 purpose of the Engelstad Endowment Fund.

4 The funds comprising the Engelstad Endowment Fund were transferred to an escrow in
5 accordance with the Gift Amendment shortly before the commencement of the Debtor’s Case.

6 **c. Patient Cares Committee Fund.**

7 As of the Petition Date, the Debtor had possession of approximately \$176,711 in donor-
8 restricted funds comprising the “Patient Cares Committee Fund.” These funds are what remains
9 of approximately \$1.5 million donated by The Spector Family Foundation for the express
10 charitable purpose of providing financial aid to Nevada cancer patients in need. Among other
11 things, these funds have been used in the past to fund insurance premiums, COBRA payments,
12 and treatment-related transportation costs for patients that are in need of cancer treatment, but
13 have little or no means to pay expenses due to their employment and/or financial status. On or
14 about January 27, 2012, the Spector Family Foundation authorized the release to the Debtor the
15 balance of these restricted funds, i.e., approximately \$173,000, to the Debtor.⁸ The Debtor
16 thereafter transferred those funds to its operating account to satisfy the Debtor’s administrative
17 expenses.

18 **d. The Saffer Endowment Fund.**

19 As of the Petition Date, the Debtor had possession of approximately \$350,000 pursuant to
20 a certain Gift Agreement executed in December 2008 (the “Saffer Endowment Agreement”)
21 establishing the Sandra and Morton Saffer Cancer Research Endowment Fund (the “Saffer
22 Endowment Fund”). Pursuant to the Saffer Endowment Agreement, the Debtor is permitted to use
23 the net investment income from this fund for specified cancer research purposes. The Saffer
24 Endowment Agreement provides that if the Debtor ceases to fund or pursue cancer research, the
25 funds comprising the Saffer Endowment Fund shall be transferred to another entity that delivers

26 _____
27 ⁸ The difference between the \$176,711 held as of the Petition Date and the final balance of approximately
28 \$173,000 released to the Debtor on or about January 27, 2012 is attributable to the use of the funds in
accordance with the terms of the applicable restrictions.

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1 cancer research as a primary objective. The funds comprising the Saffer Endowment Fund are
2 maintained in a segregated bank account as charitable trust funds.

3 **e. Other Donor-Restricted Funds.**

4 In addition to the foregoing, the Debtor held on the Petition Date approximately \$1.7
5 million in other donor-restricted funds (“Other Donor-Restricted Funds”). These funds constitute
6 charitable donations, grants, scholarships and other funds that are subject to donor-imposed
7 restrictions on their use. These restricted charitable funds were transferred to the Debtor, subject
8 to these restrictions, by at least 30 different entities, most of which are charitable or educational
9 institutions. The Other Donor-Restricted Funds, which have been treated by the Debtor as
10 charitable trust funds, are on deposit in a segregated bank account.

11 As of January 31, 2012, the Debtor estimates that it is holding Other Donor-Restricted
12 Funds of approximately \$793,000. The Debtor estimates that from the Petition Date through
13 January 31, 2012, the Debtor used approximately \$40,000 in accordance with the donor
14 restrictions applicable thereto. In addition, on January 27, 2012, the Lincy Foundation modified
15 the restrictions applicable to \$941,976 of Other Donor-Restricted Funds, permitting the transfer of
16 those funds to UCSD, in partial satisfaction of the Philanthropic Commitment upon the closing of
17 the UCSD Sale.⁹

18 **3. Real Estate.**

19 **a. The Flagship Building.**

20 The Flagship Building comprises a 142,000 square foot structure situated on a 5.67 acre lot
21 located at One Breakthrough Way, Las Vegas, NV 89135. Prior to the UCSD Sale, the Debtor
22 owned both the land and building. Pursuant to the Sale Order, discussed below in Section
23 VIII.J.7, both have been sold to UCSD pursuant to the UCSD Sale, which closed on January 31,
24 2012.

25 The building was designed and outfitted for the diagnosis and treatment of cancer patients
26 on an outpatient basis and related research activities. The Flagship Building is home to a medical

27 _____
28 ⁹ At closing, those funds were in fact remitted to UCSD.

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1 oncology suite, a radiation oncology suite, a pathology lab, research laboratories, a 24-seat
2 chemotherapy suite, a cafeteria, a library, administrative space, and a specialty boutique aimed at
3 the needs and comfort of cancer patients. The Flagship Building was custom-built to house the
4 foregoing facilities.

5 The Debtor purchased the underlying parcel from Howard Hughes Properties, Inc.
6 (“HHP”) in 2003. The real property is subject to a variety of covenants, conditions and
7 restrictions regarding use of the real estate. These include restrictions granted for the respective
8 benefit of each of HHP and the UHS Holding Company, Inc. (“UHS”). UHS is affiliated with
9 Universal Health Services, Inc., a subsidiary of which owns and operates Summerlin Hospital
10 Medical Center. HHP and/or UHS assert that use of this real estate is limited by those restrictions
11 to that of a nonprofit cancer treatment and research center, and UHS asserts that the real property
12 may not be utilized for in-patient care.

13
14 **b. The Research Building.**

15 The Research Building comprises a 184,000 square foot structure situated on a 5.09 acre
16 lot located at 10530 Discovery Drive, Las Vegas, NV 89135. The Debtor owns both the land and
17 the building. The three-story structure with a full basement contains 24 biosafety level (BSL)-2
18 laboratories. One floor of the Research Building has not yet been built out.

19 The Research Building is named in honor of Ralph and Betty Engelstad, in recognition of a
20 \$20 million gift from the Engelstad Family Foundation in honor of Mr. Engelstad, the long-time
21 owner of the Imperial Palace, who died of lung cancer in 2002, of which \$15 million had been
22 funded as of the Petition Date. The Debtor’s operations in the Research Building were, in large
23 part, transferred to the Flagship Building in May 2011 in connection with the Debtor’s operational
24 restructuring. The Debtor is informed that HHP and/or UHS assert that use of this real estate is
25 limited to research and that UHS asserts that the real property may not be utilized for in-patient
26 care. The Research Building is subject to the Prepetition Deed of Trust.

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c. The Vacant Land.

The Vacant Land, which is adjacent to the Flagship Building, comprises 9.24 acres that were purchased from HHP in 2005. HHP and/or UHS assert that use of this real estate is limited in the same manner as the Flagship Building. The Vacant Land also is subject to the Prepetition Deed of Trust.

d. The Administration Building Parcel.

The Debtor owns the Administration Building Parcel, but not the structures situated on that land. The Debtor’s acquisition of the Administration Building Parcel was part of a related series of transactions in which: (i) the Debtor leased the Administration Building Parcel to NAB, (ii) NAB agreed to construct a three-story administrative services building (the “Administration Building”) and a 500-space parking structure (the “Parking Structure”) on that parcel, and (iii) the parties agreed that the Debtor would lease a substantial portion of the Administration Building and Parking Structure (the “Administration Building Lease”).

Pursuant to these agreements, NAB constructed and currently owns the Administration Building and Parking Structure. In order to finance the construction, NAB obtained a loan from Wells Fargo Bank, N.A. (“Wells Fargo”) in an original principal amount of \$30 million, the balance of which is \$21 million. In connection with that transaction, Wells Fargo obtained a deed of trust against the Administration Building Parcel (the “Wells Fargo Deed of Trust”) and a subordination of the NAB Deed of Trust against that parcel. Wells Fargo also took an assignment of rents from NAB under the Administration Building Lease.

HHP asserts that use of this real estate is limited to that of a commercial office building, of which 60% of the leasable space is to be occupied by the Debtor for administrative use, and only 40% by third parties, and that UHS asserts no more than 20% of the leaseable space may be used for medical purposes.

Pursuant to the Administration Building Lease, the Debtor previously occupied a portion of the Administration Building to house staff members from a variety of administrative departments. On or about April 19, 2011, American Nevada Realty, an affiliate of NAB, served a certain “Five (5) Day Notice to Quit or Pay Rent,” asserting that \$144,732.33 was in default under

1 the Administration Building Lease and demanded payment. The Debtor did not pay that amount
2 and has not paid any amount to NAB since then.

3 On or before May 18, 2011, the Debtor moved its personnel out of the Administration
4 Building, surrendered possession of the Administration Building, and consolidated its operations
5 into the Flagship Building. The Debtor no longer occupies any part of the Administration
6 Building.

7 On or about November 12, 2011, American Nevada Company, LLC (“ANC”), on behalf of
8 NAB, issued a letter purporting to exercise rights under the Administration Building Lease to treat
9 the Debtor’s payment default under the Lease as an election by the Debtor to purchase the
10 structures on the Administration Building Parcel and pay NAB as much as approximately \$39
11 million under a separate option agreement to which NAB and the Debtors are parties. The Debtor
12 reserves all of its rights with respect to this asserted liability.

13 The Debtor filed a motion to reject the Administration Building Lease on the Petition Date,
14 pursuant to Bankruptcy Code section 365, which motion was granted on January 18, 2012. *See*
15 Docket No. 286.

16 As described above, unless earlier abandoned or otherwise disposed of, the Debtor’s
17 interests in the Administration Building Parcel will be deemed abandoned upon the Effective Date
18 of the Plan, and the Reorganized Debtor will not retain any interest in the Administration Building
19 Parcel.

20 **e. The Alta-Hualapai Parcel.**

21 Pursuant to an act of Congress — Section 2603 of the Omnibus Public Land Management
22 Act of 2009 (“Act”) — the United States, through the Bureau of Land Management, granted to the
23 Debtor approximately 19 acres of undeveloped land near the intersection of Alta Drive and
24 Hualapai Road, in the City of Las Vegas, for the development of a nonprofit cancer institute (the
25 “Alta-Hualapai Parcel”). This parcel is subject to reversion to the Bureau of Land Management if
26 (i) it is not owned by the Debtor, or (ii) it is not used for this specified purpose. At this time, the
27 Alta-Hualapai Parcel remains undeveloped. This parcel is not subject to any lien or deed of trust,
28 other than a lien for real property taxes.

1 **F. Events Leading to the Debtor's Restructuring and Chapter 11.**

2 Like many nonprofit organizations across the country and many providers of medical
3 services generally (not-for-profit and for-profit), the Debtor faced significant financial pressures.
4 These pressures arose from the protracted decline in the economy, decreases in medical
5 reimbursement rates from managed care payor entities, increases in operational costs, decreases in
6 the amount and availability of charitable donations, a reduction in research funding opportunities
7 and increased competition.

8 According to the Debtor's unaudited statement of operations and changes in net assets
9 ("Operating Statement"), for the 12 months ended December 31, 2010, the Debtor generated
10 unrestricted revenues and other support, including federal grants, state grants, and other grants, of
11 approximately \$49.9 million and had expenses of approximately \$73.4 million, resulting in a loss
12 from operations of approximately \$23.4 million. By contrast, the Debtor's audited Operating
13 Statements for 2009 and 2008 reflect income from operations of approximately \$706,000 and
14 approximately \$2.5 million, respectively. These financial statements likewise reflect that the
15 Debtor generated approximately \$2.9 million in temporarily restricted donations, grants and
16 investment income during 2010, down from approximately \$4.8 million and \$20.0 million in 2009
17 and 2008, respectively.

18 Beginning in 2010, the Debtor sought to address its financial situation by pursuing a
19 strategic partnership or other transaction. In March 2010, the Debtor engaged Cain Brothers, an
20 investment banking firm with particular expertise in the healthcare industry, to locate a suitable
21 strategic partner or other transaction. During the following one-year period, Cain Brothers
22 conducted a search for potential strategic partners or other transactions and helped to conduct due
23 diligence. During that period, the Debtor engaged in negotiations with several parties, but
24 ultimately was not able to reach an agreement on a transaction with any of them.

25 By March 2011, the Debtor faced an acute liquidity shortage and the prospect that the
26 Debtor would default under both its Credit Agreement and the indenture governing the Public
27 Bonds. In response to these developments, the Debtor retained A&M to assess the Debtor's
28 operations, develop a business plan for stabilizing the Debtor's liquidity situation, assist the

1 Debtor's counsel in negotiating a forbearance with the Lenders, and assist the Debtor in
2 developing a restructuring aimed at maximizing value and preserving the philanthropic mission of
3 the Debtor (including maintaining high quality patient care).

4 Working together with A&M and the Debtor's counsel, the Debtor negotiated a
5 forbearance agreement dated March 29, 2011, which agreement thereafter was amended on April
6 25, 2011 and July 18, 2011 (as amended from time to time, the "Forbearance Agreement").
7 Pursuant to the Forbearance Agreement and the subsequent Plan Support Agreement (defined and
8 discussed below), the Agent and the consenting lenders agreed to forbear from exercising
9 remedies through the Petition Date. Pursuant to those agreements, as well as certain written
10 consents (the "Consents") the Agent released an aggregate \$8.55 million from the Cash Collateral
11 Account to fund the Debtor's operating losses, including its restructuring costs prior to the
12 bankruptcy filing.

13 At the insistence of the Board, the Forbearance Agreement also included a commitment by
14 the Agent to release millions of dollars of additional funds from the Cash Collateral Account in
15 order to conduct an orderly wind down of the Debtor's operations and preserve patient safety in
16 the event a liquidation became necessary.

17 Pursuant to the foregoing agreements with the Agent and the Lenders, the Debtor was
18 required to: (i) obtain an additional \$2.5 million in charitable donations that could be used to fund
19 operations; (ii) limit its expenditures to those specified in a budget developed by A&M and
20 approved by the Agent; (iii) agree to the release of an aggregate \$11.5 million from the Cash
21 Collateral Account to permanently reduce the outstanding indebtedness under the Credit
22 Agreement (i.e. to its current principal balance of approximately \$91 million); (iv) implement an
23 operational restructuring plan that was developed by A&M; and (v) develop a contingency plan
24 for winding down the Debtor's operations if its efforts to find a strategic partner were not
25 successful. The Debtor satisfied all of these requirements.

26 The operational restructuring, which was approved by the Board and implemented
27 beginning on April 8, 2011, involved: (i) the reduction of research activities that were not funded
28 by outside sources; (ii) the discontinuation of services that were not economically self-sustaining;

1 (iii) the termination of certain physicians whose salaries and other costs were not economically
2 justified by the size or profitability of their practice; (iv) the reduction of operating costs through
3 the outsourcing, downsizing, elimination and/or consolidation of employment positions; (v) the
4 consolidation of all operations into the Flagship Building by vacating both the Administration
5 Building and the Research Building; and (vi) the elimination of the employer match component of
6 the 401(k) and 403(b) retirement plans.

7 In the aggregate, the operational restructuring involved the termination of approximately
8 160 employees of NVCI, all of whom were given notice on April 8, 2011, and most of whom were
9 terminated as of that date. A relatively small number of those terminations were effectuated in
10 subsequent weeks.

11 The operational restructuring was designed to, and ultimately succeeded in, quickly
12 bringing expenses more in line with revenues, reducing operating expenditures by at least \$10
13 million on an annualized basis, and permitting a slimmed-down organization to continue its
14 important work, while it developed a solution to its financial situation.

15 **G. Negotiation of the UCSD Sale.**

16 In April 2011, the Debtor and Cain Brothers mutually terminated their investment banking
17 relationship, and the Debtor hired a new investment banking team at J.P. Morgan Securities LLC
18 (“JP Morgan”), which team specializes in transactions in the not-for-profit healthcare field. JP
19 Morgan assisted with the preparation of a confidential information memorandum, surveyed the
20 marketplace to identify potentially interested parties and reached out to those parties it determined
21 were most likely to be interested in a transaction with the Debtor.

22 In the aggregate, JP Morgan contacted approximately 20 public and private entities, three
23 of which executed non-disclosure agreements and received confidential information memoranda.
24 Several entities also conducted site visits. As part of its comprehensive process, JP Morgan
25 identified and reached out to parties who might have interest in acquiring the Debtor’s real estate,
26 in addition to parties interested in its operations. The level of interest in the Debtor and its assets,
27 however, was very limited. The Debtor’s principal assets (*i.e.*, cancer treatment and research
28

1 buildings) were highly specialized, subject to significant land use restrictions (as noted above),
2 and simply were not in great demand – particularly in the current economic climate.

3 Nevertheless, as a result of these efforts, two entities interested in the Debtor’s clinical and
4 research operations conducted due diligence and thereafter presented the Debtor with written
5 expressions of interest. On July 25 and 26, 2011, these two entities made presentations regarding
6 their respective proposals to a group comprised of members of the Board, the Debtor’s counsel, JP
7 Morgan representatives, and A&M. At the request of the Agent, a subsequent meeting was held
8 with one of those entities the following week. Based upon these meetings, representatives of JP
9 Morgan and the Debtor thereafter negotiated with both entities in an effort to improve their
10 respective proposals and negotiate a mutually acceptable, non-binding letter of intent setting forth
11 the material terms of a transaction. These negotiations continued throughout August 2011.

12 As a result of these efforts, and with the input of the Agent and Lenders, the Board
13 determined to proceed with the acquisition proposal presented by UCSD, pursuant to that certain
14 executed Letter of Intent dated August 30, 2011 (the “Letter of Intent”). The Letter of Intent
15 indicated the parties’ mutual interest in negotiating a transaction under which UCSD would
16 acquire the Flagship Building and substantially all of the Debtor’s assets, properties and rights
17 relating to the Debtor’s cancer business at the Flagship Building, and certain other assets, for \$18
18 million in cash (subject to higher and better offers) pursuant to Bankruptcy Code section 363 (the
19 “UCSD Sale”). The Letter of Intent contemplated that UCSD would use those assets to operate a
20 nonprofit cancer center and continue the philanthropic mission of the Debtor.

21 A critical component of the Letter of Intent was the Debtor’s commitment to raise up to
22 \$15 million in philanthropic support over a five-year period to support UCSD’s efforts post-
23 closing. UCSD was not willing to proceed without this philanthropic commitment.

24 Following execution of the Letter of Intent, the Debtor and UCSD engaged in extensive
25 negotiations regarding the form of a definitive asset purchase agreement for the proposed UCSD
26 Sale (“Asset Purchase Agreement”). These negotiations were undertaken in good faith and at
27 arm’s length. In accordance with the terms of the Plan Support Agreement (defined in Section
28 VIII.H below), the Agent and the Lenders were given an opportunity to review and comment on

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1 drafts of the Asset Purchase Agreement, and the Approving Lenders (as such term is defined in the
2 Plan Support Agreement) agreed to the form of Asset Purchase Agreement negotiated by the
3 Debtor and UCSD.

4 One significant issue that arose in connection with negotiation of the Asset Purchase
5 Agreement was the amount of the Debtor’s philanthropic commitment to UCSD. Although the
6 Letter of Intent contemplated an aggregate philanthropic commitment of \$15 million over 5 years,
7 UCSD subsequently required that such commitment total \$20.8 million over that period, as
8 specified in the form of “Funding Agreement” attached to the Asset Purchase Agreement (the
9 “Philanthropic Commitment”).

10 Another significant issue was the requirement of UCSD that a substantial portion of the
11 Philanthropic Commitment be backed by some form of financial assurance. The Debtor did not
12 (and does not) have a means of providing such assurance on its own. Given the Debtor’s financial
13 circumstances, and the prospect that the cancer services at the Flagship Building would need to be
14 shut down if the Debtor could not timely consummate the UCSD Sale, the Engelstad Family
15 Foundation agreed that the \$15 million Engelstad Endowment Fund would serve as a financial
16 “backstop” for a substantial portion of the Philanthropic Commitment, as specifically set forth in
17 the Gift Amendment and the Funding Agreement. *See also* Section VIII.E.2.b above. As noted
18 above, in accordance with the Gift Amendment, the Debtor transferred the funds comprising the
19 Engelstad Endowment Fund into an escrow account.

20 Additionally, the Plan Support Agreement required a deposit by UCSD. Pursuant to the
21 Asset Purchase Agreement, UCSD funded a deposit of \$1.8 million into escrow upon entry of the
22 Bid Procedures Order (as defined in Section VIII.J.4 below). The deposit was applied to the
23 purchase price in connection with the closing of the sale.

24 The Asset Purchase Agreement was executed on December 2, 2011 and on December 2,
25 2011, the Debtor filed its voluntary chapter 11 petition in the Court, in order to implement the
26 UCSD Sale, and to seek confirmation of a chapter 11 plan with respect to its remaining assets.

27
28

1 **H. The Plan Support Agreement.**

2 In conjunction with its negotiation of the Letter of Intent, the Debtor also entered into
3 negotiations with the Agent and the Lenders regarding the restructuring of the Debtor's
4 obligations to the Lenders, the disposition of those assets that are not included in the UCSD Sale,
5 and the reorganization of the Debtor as a go-forward, philanthropic entity. These negotiations
6 resulted in the execution of that certain Plan Support Agreement dated September 16, 2011 which
7 incorporates as an exhibit a certain term sheet setting forth the material terms upon which the
8 Lenders would support such efforts (as such agreement has been and may subsequently be
9 amended, the "Plan Support Agreement"). The Plan Support Agreement was executed by the
10 Debtor, the Agent and seven of eight Lenders (the "Consenting Lenders") holding in excess of
11 80% of the debt.

12 By the Plan Support Agreement and the Consents, the Agent and the Consenting Lenders
13 extended the forbearance period under the Forbearance Agreement through the filing of this Case,
14 released the additional sum of \$2.75 million from the Cash Collateral Account to fund the
15 Debtor's operations and restructuring expenses through the Petition Date (for a total of \$8.55
16 million release from the date the Forbearance Agreement was first executed to the Petition Date),
17 and provided for the release of additional funds from the Cash Collateral Account, to be used in
18 accordance with the Budget, after UCSD funded into escrow the \$1.8 million Deposit required by
19 the Asset Purchase Agreement.

20 Pursuant to the Plan Support Agreement, the Agent and the Consenting Lenders consented
21 to the UCSD Sale provided that they receive \$18 million in immediately available funds upon the
22 consummation of the sale and that the terms of the sale otherwise conformed to the Letter of
23 Intent, and further provided that the Agent would have the right to consent to the procedures for
24 such sale, the terms of any auction and the form and substance of any order approving such sale.
25 In addition, subject to certain terms and conditions specified in the Plan Support Agreement, the
26 Consenting Lenders agreed to, among other things: (i) support the Plan; (ii) not to vote for,
27 consent to, support or participate in the formulation of any plan of reorganization other than the
28 Plan; (iii) not to take any action that could delay successful implementation of the UCSD Sale, the

1 restructuring of the Debtor, or the transactions contemplated under the Plan; and (iv) not to object
2 to the solicitation of the Plan, support any such objection by a third party or otherwise take any
3 action that would materially delay the confirmation or consummation of the Plan. The Debtor is
4 required to comply with the various sale and Plan confirmation milestones set forth in the Plan
5 Support Agreement, unless such milestones are extended in accordance with the Plan Support
6 Agreement. Specifically, the Plan Support Agreement could terminate if the Confirmation Order
7 is not entered one-hundred twenty (120) calendar days after the Petition Date or the Effective Date
8 of the Plan does not occur within thirty (30) calendar days following entry of the Confirmation
9 Order.

10 Under the terms of the Plan Support Agreement, the Consenting Lenders agreed: (i) to
11 accept the \$18 million of cash proceeds from the UCSD Sale and release the liens on the assets
12 sold; and (ii) to accept the Research Building Note in satisfaction of the Lenders' remaining
13 secured debt, pursuant to the Plan. Additionally, pursuant to a postpetition amendment to the Plan
14 Support Agreement and the Global Stipulation (as defined in and described in further detail in
15 Section VIII.J.6 below), the Lenders agreed to waive any unsecured deficiency claim they may
16 have upon the Effective Date of the Plan, and to fund any deficiency (up to \$750,000) in the
17 Aggregate Unsecured Creditor Consideration that will be used to fund the administrative expenses
18 of the Creditors' Committee and the Creditors Trust.

19 The Plan Support Agreement and all amendments and exhibits thereto are collectively
20 attached hereto as Exhibit 3.

21 **I. Overview of the Plan.**

22 The Plan represents the culmination of the Debtor's restructuring effort. After undertaking
23 a significant operational restructuring pre-petition, and effectuating a sale of the Flagship Building
24 and certain other assets to UCSD, the Debtor is poised to consensually restructure its remaining
25 obligations to the Lenders pursuant to the Plan and emerge from chapter 11.

26 The Plan provides for the Debtor to continue as a philanthropic entity, to preserve the
27 Debtor's important mission of increasing cancer knowledge and funding cancer research and
28 treatment. After emerging from chapter 11, the Reorganized Debtor will continue to hold and

1 maintain certain assets for future use, including the Research Building, the Alta-Hualapai parcel,
2 and the Vacant Land, and will explore ways to utilize these assets in support of its philanthropic
3 mission. The Reorganized Debtor also will fundraise in support of UCSD. The Reorganized
4 Debtor will use charitable donations to meet the Philanthropic Commitment to UCSD, and to meet
5 the Reorganized Debtor's annual carrying costs, including maintenance of its real property, the
6 required payments to the Lenders under the Research Building Note (as defined below), and
7 compensation of an employee to assist the Reorganized Debtor with fundraising and
8 administrative needs. The Debtor expects to have obtained a fundraising commitment prior to the
9 Effective Date that will provide at least one year of funding for the Reorganized Debtor.

10 As discussed above and set forth in the Funding Agreement, the Engelstad Endowment
11 Fund will be kept in escrow as a backstop for a substantial portion of the Reorganized Debtor's
12 Philanthropic Commitment to UCSD, and any funds remaining in the escrow at the end of each
13 year in excess of the Reorganized Debtor's fundraising commitment will revert back to the control
14 of the Reorganized Debtor to be used for Engelstad Endowment Fund purposes. The Reorganized
15 Debtor will have ample funding from a variety of sources, and will emerge a streamlined, self-
16 sufficient entity capable of functioning outside of chapter 11.

17 The Plan also provides for the creation of the Creditor Trust for the benefit of holders of
18 Allowed General Unsecured Claims (other than the Lenders). The Creditor Trust will be vested
19 on the Effective Date with the Preserved Avoidance Actions, the Preserved Actions, and other
20 potential Claims or causes of action. The Creditor Trust also will receive the Unsecured Creditor
21 Cash, if any. The Unsecured Creditor Cash will be equal to the difference between \$750,000 and
22 the total of all Allowed Committee Administrative Expense Claims incurred by the Creditors'
23 Committee and its professionals in the Case. The holders of Allowed General Unsecured Claims
24 will share pro-rata in the Net Trust Assets, i.e., any Unsecured Creditor Cash, any cash realized
25 from the Claims, rights and causes of action vested in the Creditor Trust, less the costs of realizing
26 those recoveries, objecting to General Unsecured Claims, and administering the Trust.

27 In addition, under the Global Stipulation and the Plan, the Creditors' Committee (or
28 Creditor Trust) has the right to commence a "Trust Funds Challenge" with respect to any

1 Charitable Trust Funds other than the Engelstad Endowment Fund and the Escrowed Donations,
 2 by way of an adversary proceeding.¹⁰ As of the close of business on January 31, 2012, the Debtor
 3 holds Charitable Trust Funds, other than the Engelstad Endowment Fund and the Escrowed
 4 Donations, of approximately \$1.1 million (i.e., the Saffer Endowment Fund and the Other Donor-
 5 Restricted Funds).

6 To the extent that a Trust Funds Challenge that is properly commenced by the Creditors'
 7 Committee (or the Creditor Trust) is successful, any funds determined to be available for general
 8 corporate purposes that are not used to satisfy Allowed Administrative Claims or Allowed Priority
 9 Claims will be transferred to the Creditor Trust. Any Trust Funds Challenge properly commenced
 10 by the Creditors' Committee that is pending as of the Effective Date will be vested in and may be
 11 prosecuted or settled by the Creditor Trust. The Agent and the Lenders are prohibited under the
 12 Plan from commencing a Trust Funds Challenge or sharing in any recovery distributed to the
 13 Creditor Trust based on a Trust Funds Challenge.

14 **J. The Chapter 11 Case.**

15 **1. First Day Motions.**

16 On the Petition Date, the Debtor Filed a number of emergency motions designed primarily
 17 to minimize the impact of the chapter 11 filings on the Debtor's operations and to facilitate the
 18 Debtor's compliance with the requirements of chapter 11. Specifically, the Debtor Filed the
 19 following motions, which were granted by the Court, pursuant to the noted orders:

- 20 • *Emergency Motion for Interim and Final Use of Cash Collateral* (the "Cash
 21 Collateral Motion"), Docket Nos. 9 (Motion), 65 (Interim Order) and 281 (Final
 22 Order);
- 23 • *Emergency Motion for Order Pursuant to Local Bankruptcy Rule 4001(c)*
 24 *Authorizing the Debtor to Pay Outstanding Employee Compensation and Honor*

26
 27 ¹⁰ The Debtor believes that all of the Charitable Trust Funds are held in trust to be used solely as designated by
 28 the applicable donors and that the Creditors' Committee and/or the Creditor Trust will not succeed with
 respect to any Trust Funds Challenge.

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- 1 *Obligations Associated With Employee Benefit Programs And Policies*, Docket
2 Nos. 13 (Motion) and 67 (Order);
- 3 • *Emergency Motion Pursuant to Local Bankruptcy Rule 4001(c) for Order*
4 *Establishing Notice Procedures and Permitting Debtor and Debtor in Possession*
5 *to Serve Insured Depository Institutions by First-Class Mail*, Docket Nos. 16
6 (Motion) and 68 (Order);
 - 7 • *Emergency Motion Pursuant to Local Bankruptcy Rule 4001(e) for Order*
8 *Authorizing Maintenance of Certain Prepetition Bank Accounts and Related Relief*,
9 Docket Nos. 14 (Motion), 66 (Interim Order), and 285 (Final Order);
 - 10 • *Emergency Motion for Interim and Final Orders Pursuant to Local Bankruptcy*
11 *Rule 4001(c) for Order Determining Adequate Assurance of Payment for*
12 *Postpetition Utility Services*, Docket Nos. 15 (Motion), 69 (Interim Order), and 287
13 (Final Order);
 - 14 • *Emergency Motion for Interim and Final Orders Pursuant to Local Bankruptcy*
15 *Rule 4001(c) for Order Regarding Patient Care Ombudsman Under Section*
16 *333(a)(1) of the Bankruptcy Code*, Docket Nos. 17 (Motion), 70 (Interim Order),
17 and 288 (Final Order); and
 - 18 • *Emergency Motion Pursuant to Local Bankruptcy Rule 4001(c) For Order (1)*
19 *Fixing Deadlines for Filing Proofs of Claim; (2) Establishing Consequences of*
20 *Failing to Comply Therewith; and (3) Approving Form and Manner of Notice*
21 *Thereof*, Docket Nos. 18 (Motion) and 73 (Order).

22 Detailed information regarding each of the above-listed motions is not contained in this
23 Disclosure Statement. These pleadings may be obtained by accessing PACER through the Court’s
24 website (<http://www.nvb.uscourts.gov>), by accessing the website maintained by Kurtzman Carson
25 Consultants LLC (<http://www.kcellc.net/NevadaCancerInstitute>), or by sending a written request
26 to Klee, Tuchin, Bogdanoff & Stern LLP, Attn: Courtney E. Pozmantier, Esq., 1999 Avenue of the
27 Stars, 39th Floor, Los Angeles, CA 90067, Facsimile: (310) 407-9090.

28

1 **2. Appointment of the Creditors' Committee.**

2 On December 16, 2011, the U.S. Trustee appointed an Official Committee of Unsecured
3 Creditors (the "Creditors' Committee"). The three members appointed to the Creditors'
4 Committee were: (1) College of Southern Nevada; (2) NCI Admin Bldg., LLC, and (3) Maximus
5 Consulting Services, Inc. ("Maximus"). Shortly thereafter, Maximus resigned from the Creditors'
6 Committee.

7 **3. Use of Cash Collateral.**

8 Shortly before the Petition Date, the Debtor reached agreement with the Agent and the
9 Lenders on the terms of a stipulation permitting the Debtor's use of cash collateral on a consensual
10 basis during the Case (the "Cash Collateral Stipulation"). On the Petition Date, the Debtor filed
11 its *Emergency Motion For Interim And Final Use Of Cash Collateral* (the "Cash Collateral
12 Motion"). See Docket No. 9. The Court held an interim hearing on the Cash Collateral Motion on
13 December 6, 2011, and thereafter entered an order approving the Debtor's use of cash collateral in
14 accordance with the Cash Collateral Stipulation and setting a final hearing for January 11, 2012.
15 See Docket No. 65. As discussed below in Section VIII.J.6, after the Creditors' Committee was
16 appointed, it negotiated with the Debtor and the Agent regarding, *inter alia*, its concerns regarding
17 the Cash Collateral Order. As a result of those negotiations, the parties reached a compromise and
18 agreed upon a consensual order granting the Cash Collateral Motion on a final basis, which order
19 was entered on January 12, 2012 (the "Final Cash Collateral Order"). See Docket No. 281.

20 **4. Bid Procedures.**

21 As contemplated by the Asset Purchase Agreement and the Plan Support Agreement, the
22 Debtor filed its *Motion for Orders: (1) Approving Sale of Debtor's Assets Under Assets Purchase*
23 *Agreement Free And Clear of Liens, Claims and Interests, (2) Approving Assumption and*
24 *Assignment of Unexpired Leases and Executory Contracts, (3) Approving Certain Bid and Auction*
25 *Procedures, Including a Break-Up Fee, (4) Setting Date and Time for Hearing on Proposed Sale,*
26 *and (5) Approving Form of Notice of Auction and Sale Hearing* (the "Sale Motion"). See Docket
27 No. 10. The Sale Motion sought relief in two stages: (i) first, approval of bid procedures and a
28 break up fee in favor of UCSD, and (ii) second, approval of the UCSD sale itself.

1 The Court held its hearing on the first stage of relief on December 6, 2011, and thereafter
2 entered its *Order Establishing Bidding Procedures and Deadlines, Approving Break-Up Fee and*
3 *Expense Reimbursement* [Docket No. 64] (the “Bid Procedures Order”) on December 7, 2011.
4 Pursuant to the Bid Procedures Order, the Court established dates, deadlines and procedures for
5 providing notice of the sale, the filing of objections, the submission and consideration of potential
6 overbids and, if qualified overbids were timely received, for an auction. Among other dates, the
7 Court set December 30, 2011 as the deadline for the submission of qualified overbids, and
8 scheduled a hearing on the balance of the relief in the Sale Motion for January 11, 2012. The
9 Court also approved a break-up fee in favor of UCSD equal to 4% of the purchase price proposed
10 by UCSD, plus its reasonable out-of-pocket legal and other fees and expenses not to exceed
11 \$250,000.

12 **5. The Plan and Disclosure Statement.**

13 On December 6, 2011, the Debtor filed the original versions of its plan and disclosure
14 statement: the *Chapter 11 Plan of Reorganization For Nevada Cancer Institute (Dated December*
15 *6, 2011)* (the “Original Plan”), and the *[Proposed] Disclosure Statement Describing Chapter 11*
16 *Plan of Reorganization For Nevada Cancer Institute (Dated December 6, 2011)*. On the same
17 date, the Debtor also filed its motion requesting an order (i) approving the disclosure and related
18 solicitation procedures, and (ii) scheduling a hearing on confirmation of the Plan and related
19 briefing and objection deadlines (the “Solicitation Procedures Motion”). The Court scheduled a
20 hearing on the Solicitation Procedures Motion for February 3, 2012. These versions of the
21 Debtor’s plan and disclosure statement were subsequently modified to reflect the settlement
22 described in the following Section and other developments – resulting in the Plan and this
23 Disclosure Statement.

24 **6. Settlement with the Creditors’ Committee.**

25 Shortly after the appointment of the Creditors’ Committee, it initiated discussions with the
26 Debtor and the Agent in order to discuss various concerns and potential objections of the
27 Creditors’ Committee with respect to the Sale Motion, the Cash Collateral Motion, and the
28 Original Plan. The Debtor, the Creditors’ Committee, and the Agent thereafter engaged in good

1 faith, arm's length negotiations aimed at reaching a consensual resolution of the issues raised by
2 the Creditors' Committee. Further, in response to the requests of counsel for the Creditors'
3 Committee, the Debtor provided documents and information to the Creditors' Committee
4 regarding these and other matters pertaining to the Debtor's estate.

5 As a result of these efforts, the Debtor, the Creditors' Committee, and the Agent reached a
6 comprehensive agreement regarding the Sale Motion, the Cash Collateral Motion and the Plan, as
7 set forth in the *Stipulation Regarding Sale Motion, Cash Collateral Motion, and Plan of*
8 *Reorganization* [Docket No. 247-1] (the "Global Stipulation"). Pursuant and subject to the terms
9 of the Global Stipulation, the Creditors' Committee agreed to support approval of the UCSD Sale
10 (as proposed), entry of a final order on the Cash Collateral Motion, approval of the Disclosure
11 Statement, and confirmation of the Plan (including without limitation the releases contained in the
12 Plan). The terms of the Global Stipulation are reflected in the Final Cash Collateral Order, the
13 Plan, this Disclosure Statement, and the Plan Support Agreement, which was modified for the
14 purpose of facilitating the Global Stipulation.

15 The Global Stipulation provides that an aggregate of \$750,000 in cash will be made
16 available to satisfy Allowed Committee Administrative Expense Claims and to fund the Creditor
17 Trust established under the Plan (the "Aggregate Unsecured Creditor Consideration"), whether
18 provided during the Case or pursuant to the Plan. Whatever portion of the Aggregate Unsecured
19 Creditor Consideration, if any, is not utilized for the payment of Allowed Committee
20 Administrative Expense Claims will constitute the Unsecured Creditor Cash under the Plan.
21 Neither the Agent nor the Lenders are permitted to share in the Aggregate Unsecured Creditor
22 Consideration and shall be deemed to have waived the Lender Deficiency Claims (i.e., the
23 Lenders' unsecured deficiency claims that are treated as Class 4 Claims under the Plan) upon the
24 Effective Date. Further, to the extent there are insufficient funds in the Estate to pay the
25 Aggregate Unsecured Creditor Consideration, after payment of all other expenses authorized and
26 paid under the Cash Collateral Stipulation, the Lenders are severally (but not jointly) obligated to
27 fund up to \$750,000 of such deficiency following the Effective Date of the Plan.

28

1 Pursuant to the Global Stipulation, the parties also agreed: (1) that the adequate protection
 2 liens and superpriority claims granted the Agent for the benefit of the Agent and Lenders under the
 3 Cash Collateral Stipulation would not extend to or have recourse against the Administration
 4 Building Parcel, the Alta-Hualapai Parcel, any avoidance actions under chapter 5 of the
 5 Bankruptcy Code (“Avoidance Actions”) or any “Donor Restricted Funds” as defined in the Cash
 6 Collateral Stipulation; (2) that the “Investigation Period” granted the Creditors’ Committee under
 7 the Cash Collateral Stipulation with respect the liens and claims asserted by the Agent and
 8 Lenders and any claims of the Estate against the Agent and lenders would expire on the effective
 9 date of the Global Stipulation; (3) except with respect to any and all donations of the Engelstad
 10 Family Foundation and funds raised and deposited into the Donations Escrow Account, *see*
 11 Section VIII.J.8, the parties reserved their rights as to whether the funds held and identified by the
 12 Debtor as “Donor Restricted Funds” or “Charitable Trust Funds” are legally held in trust, or are
 13 available for general corporate purposes, including the satisfaction of nonpriority unsecured
 14 claims;¹¹ and (4) that the Creditor Trust Assets under the Plan would include all causes of action
 15 not released by the Debtor under the Plan, or released during the case with the approval of the
 16 Bankruptcy Court, other than, specifically, the Claims, rights and causes of action vested in
 17 and/or retained by the Reorganized Debtor under Section IV.E of the Plan, including, without
 18 limitation, causes of action of the Debtor and the Estate against any person or entity arising from
 19 or relating to the Asset Purchase Agreement and all agreements entered into by the Debtor in
 20 connection with the UCSD Sale.¹²

21 **7. Approval of the UCSD Sale.**

22 In accordance with the Bid Procedures Order, the Debtor provided notice of the hearing on
 23 the Sale Motion and the bid procedures approved by the Court to thousands of parties, including

24 _____
 25 ¹¹ Under the Plan, the Agent and Lenders are not preserving such a right, as they are waiving their General
 26 Unsecured Claims under the Plan and acknowledging thereunder (as they did in the Cash Collateral
 Stipulation) that they hold no interest in any Charitable Trust Funds as collateral for their Claims against the
 Debtor.

27 ¹² Among other things, Section VII.B of the Plan releases causes of action under chapter 5 of the Bankruptcy
 28 Code that do not constitute Preserved Avoidance Actions.

1 parties whose interest in a transaction with the Debtor previously had been solicited by the
2 Debtor’s investment bankers, all known creditors of the Debtor and all parties to executory
3 contracts and unexpired leases of the Debtor (including those potentially to be assumed and
4 assigned to UCSD in conjunction with the UCSD Sale).

5 Pursuant to the Bid Procedures Order, the Court established December 30, 2011 as the
6 deadline for parties in interest to complete due diligence and submit a competing “Qualifying Bid”
7 for the assets to be acquired by USCD pursuant to the Asset Purchase Agreement. No Qualifying
8 Bids were submitted in advance of the bid deadline, and UCSD was deemed the “Winning
9 Bidder” without the need for an auction. *See Notice Of Selection Of UC San Diego Health System
10 As Winning Bidder Pursuant To Bid Procedures And Notice Of Cancellation Of Auction*, Docket
11 No. 216.

12 December 28, 2011 was the deadline under the Bid Procedures Order for the filing of
13 objections in respect of the Sale Motion. The only objections filed to the Sale Motion were
14 limited objections pertaining to the assumption and assignment of particular contracts and leases,
15 and the appropriate cure amounts with respect thereto. All of these objections were subsequently
16 resolved and withdrawn; several of them pursuant to written stipulations on file with the Court,
17 *see* Docket Nos. 239, 266, 267, 268, and the remainder by agreement to the insertion of specific
18 language in the order approving the sale.

19 The Court held the Sale Hearing on January 11, 2012 and approved the Sale Motion. On
20 January 12, 2012, the Court entered its *Order (1) Approving Sale of Debtor’s Assets Under Asset
21 Purchase Agreement Free and Clear of Liens, Claims and Encumbrances and (2) Approving
22 Assumption and Assignment of Unexpired Leases and Executory Contracts* (the “Sale Order”) on
23 January 12, 2012. In accordance with the Plan Support Agreement, the Sale Order provided that
24 the \$18 million in sale proceeds from UCSD would be remitted, upon closing, to the Agent, for
25 the benefit of the Agent and Lenders.

26 As noted above, the UCSD Sale closed on January 31, 2012.
27
28

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1 **8. The Restricted Donations Motion.**

2 In conjunction with the Debtor's restructuring effort, some donors indicated their
3 willingness to make donations to (i) help fund the Debtor's Philanthropic Commitment to UCSD,
4 and (ii) support the Reorganized Debtor following the confirmation and implementation of the
5 Plan. In doing so, these donors wish to ensure that the charitable mission of the Debtor is
6 preserved and continued. In order to facilitate these philanthropic donations and honor the intent
7 of these donors, the Debtor Filed a motion for entry of an order authorizing it to receive and
8 deposit any such donor-restricted donations into an escrow account (as previously defined, the
9 "Donations Escrow Account"). *See* Docket No. 95. The Court thereafter granted the motion, *see*
10 Docket No. 141, and the Debtor began receiving and depositing philanthropic donations restricted
11 to the foregoing purposes into the Donations Escrow Account.

12 Upon the closing of the UCSD Sale, in satisfaction of the first \$4.5 million installment of
13 the Philanthropic Commitment, the sum of \$3,558,024 was released from the Donations Escrow
14 Account and remitted to UCSD.¹³ The amount remaining in the Donations Escrow Account
15 immediately following that release was approximately \$4,201,976. The funds in the Donations
16 Escrow Account on and after the Effective Date will be released to the Reorganized Debtor.

17 **9. Leases and Executory Contracts.**

18 **a. Assumed/Rejected Leases and Executory Contracts.**

19 As of the Petition Date, the Debtor was a lessee under several unexpired leases of non-
20 residential real property and party to hundreds of executory contracts and personal property leases.
21 The Court approved the Debtor's rejection of the following agreements, effective as of the Petition
22 Date:

- 23 • The executory contract between the Debtor and The Advisory Board Company;
- 24 • The sublease between the Debtor and Catholic Healthcare West, dba Saint Mary's
25 Regional Medical Center;

26 ¹³ The balance of that \$4.5 million obligation was satisfied by the transfer to UCSD upon the closing of
27 \$941,976 in Charitable Trust Funds donated by the Lincy Foundation, as to which the restricted uses were
28 modified by the Lincy Foundation on January 27, 2012. *See* Section VIII.E.2.e above.

- 1 • The executory contract between the Debtor and OnTargetJobs, Inc., dba
- 2 HEALTHeCAREERS;
- 3 • The executory contract between the Debtor and Time Warner Telecom Holdings
- 4 Inc.;
- 5 • The executory contract between the Debtor and Tractmanager Inc., a Delaware
- 6 corporation also known as MediTract Inc.; and
- 7 • The lease between the Debtor and NCI Admin Bldg., LLC.

8 In addition, pursuant to the Sale Order, the Court approved the assumption and assignment
 9 to UCSD of the contracts and leases listed on Exhibit 1 to the Sale Order. Prior to the closing, the
 10 list of contracts and leases to be assumed and assigned to UCSD was modified as permitted by the
 11 Sale Order and Asset Purchase Agreement to incorporate changes requested by UCSD. As
 12 reflected on the final schedules to the Asset Purchase Agreement, over 100 contracts and leases
 13 were assigned to UCSD on the closing date of the UCSD Sale. With respect to each of such
 14 contracts and leases, the cure cost (if any) determined by the Court and set forth on Exhibit 1 to
 15 the Sale Order, was remitted to each of the non-debtor parties to such contracts and leases.

16 **b. Other Leases and Executory Contracts.**

17 The Debtor will make decisions regarding assumption or rejection of its remaining
 18 executory contracts and unexpired leases as soon as practicable. Those decisions will be
 19 effectuated through one or more motions Filed with the Court or under the Plan. To the extent a
 20 decision to assume is effectuated through the Plan, it will be reflected in the Schedule of Assumed
 21 Agreements to be filed in accordance with the Plan. Pursuant to the Plan, all contracts that are not
 22 previously disposed of or listed on the Schedule of Assumed Agreements will be rejected under
 23 the Plan. *See* Section IX.B below.

24 **10. Claims Filed by Creditors.**

25 **a. The Schedules and the Bar Dates.**

26 The Debtor Filed its Schedules of Assets and Liabilities (the “Schedules”) and Statement
 27 of Financial Affairs (“SOFA”) on December 6, 2011. Pursuant to the Schedules, the Debtor
 28 estimated that the total amount of the non-contingent, undisputed, liquidated Claims against the

1 Debtor as of the petition Date was approximately \$99,801,251.27. Secured claims accounted for
2 approximately \$95,201,076.00 and General Unsecured Claims accounted for approximately
3 \$4,600,175.60.¹⁴

4 Upon a motion filed by the Debtor, the Court set (i) January 30, 2012 as the last day or
5 “bar date” for filing proofs of Claim generally; (ii) April 4, 2012 as the bar date for filing proofs of
6 Claim by any patient of the Debtor or any entity asserting a claim on behalf of a patient relating to
7 services provided by the Debtor, and (iii) June 27, 2012 as the bar date for filing proofs of Claim
8 by any governmental unit.

9 **THE DEBTOR, THE REORGANIZED DEBTOR AND THE CREDITOR TRUST**
10 **RESERVE ANY AND ALL RIGHTS, EXCEPT AS EXPRESSLY STATED IN THE PLAN,**
11 **TO OBJECT TO, DEFEND AGAINST, AND REQUEST DISALLOWANCE,**
12 **REDUCTION, SUBORDINATION AND/OR RECHARACTERIZATION OF ANY CLAIM**
13 **ASSERTED AGAINST THE DEBTOR OR ITS ESTATE. THE DEBTOR ANTICIPATES**
14 **THAT SOME CLAIM OBJECTIONS WILL BE FILED AFTER CONFIRMATION OF**
15 **THE PLAN.**

16 **b. Claim Objections.**

17 The Plan extends the deadline for filing objections to Claims against the Debtor set forth in
18 LR 3007(e). Specifically, except as otherwise provided in Section II.B of the Plan (regarding
19 allowance and payment of Administrative Claims), Section IV.G of the Plan provides that
20 objections to Claims against the Debtor shall be Filed and served upon the holders of the affected
21 Claims no later than the Claims Objection Deadline: the date that is the later of (a) 180 days after
22 the Effective Date, unless extended by the Court, and (b) 180 days after the date on which a proof
23 of claim in respect of a Claim against the Debtor has been Filed, unless extended by the Court.

24
25 _____
26 ¹⁴ This figure does not include any unsecured deficiency claim that may be asserted by the Lenders or any
27 other secured creditor or the litigation claims asserted by certain of the Debtor’s former employees against
28 the Debtor. In addition, while this amount includes \$1,275,172.98 for the claim of ANC relating to the
Administration Building Lease, no other amounts for the claims of ANC or NAB relating to the
Administration Building Parcel, *see* Section VIII.D.1.b *infra*, are included in this figure.

1 Creditors should assume that the Debtor, the Reorganized Debtor or the Creditor Trust
2 may File an objection to any proof of claim that differs in amount or priority from the amount or
3 priority of that creditor's Claim against the Debtor as listed in the Schedules, or if such creditor's
4 Claim against the Debtor is listed in the Schedules as disputed, contingent, or unliquidated.
5 Therefore, in voting on the Plan, no creditor may rely on the absence of an objection to its proof of
6 claim as any indication that the Debtor, the Reorganized Debtor, the Creditor Trust or other parties
7 in interest ultimately will not object to the amount, priority, security, or allowability of its Claim
8 against the Debtor. Moreover, the Debtor, the Reorganized Debtor and the Creditor Trust reserve
9 their rights with respect to all objections to Claims and counterclaims they may have with respect
10 to Claims asserted against the Debtor and, except as specifically set forth in the Plan, reserve their
11 rights to prosecute Claims of the Debtor and the Estate (including rights to affirmative recoveries,
12 rights to subordinate Claims against the Debtor, as well as other rights).

13 **11. Litigation.**

14 **a. Prepetition Litigation.**

15 As of the Petition Date, the Debtor was a party to litigation pending in non-bankruptcy
16 forums. That litigation is set forth on Exhibit 2 hereto. The litigation in which the Debtor is a
17 defendant was stayed by Bankruptcy Code section 362(a). If the Plan is confirmed by the Court,
18 then pursuant to, and in furtherance of, the discharge provisions of section 1141(d) of the
19 Bankruptcy Code and the Plan, the commencement or continuation of litigation against the Debtor
20 based on a Claim against the Debtor, its estate or property of the Debtor that arose prior to the
21 Confirmation Date will be enjoined from proceeding except in conformity with the discharge
22 provision of section 1141(d) of the Bankruptcy Code and the Plan (or, as applicable, the claim
23 adjudication process).

24 **NO PERSON SHOULD VOTE TO ACCEPT OR REJECT THE PLAN IN THE**
25 **EXPECTATION THAT THE REORGANIZED DEBTOR AND/OR THE CREDITOR**
26 **TRUST WILL REFRAIN FROM PURSUING ANY ACTION, WHETHER OR NOT THAT**
27 **ACTION WAS COMMENCED PRE-PETITION. EXCEPT AS SPECIFICALLY SET**
28 **FORTH IN THE PLAN, THE PLAN RELEASES NONE OF THE DEBTOR'S RIGHTS**

1 **TO COMMENCE ANY ACTIONS. INSTEAD, PURSUANT TO SECTIONS IV.D AND**
2 **IV.E OF THE PLAN, ALL OF THE RIGHTS OF THE DEBTOR AND THE ESTATE TO**
3 **PURSUE THESE ACTIONS ARE PRESERVED UNDER THE PLAN AND REVESTED**
4 **IN THE REORGANIZED DEBTOR OR THE CREDITOR TRUST, AS APPLICABLE.**

5 **b. Avoidance Actions**

6 Payments made by the Debtor within 90 days (as to non-insiders) and one-year (as to
7 insiders) prior to the Petition Date may be recoverable under Bankruptcy Code section 547 as
8 preferential transfers. Also, the Debtor may have other potential avoidance actions, including
9 actions to set aside and/or recover fraudulent transfers arising under Bankruptcy Code sections
10 544 and 548 and applicable state law, which may apply to transfers preceding the Petition Date by
11 four or more years. As specifically provided in Section IV.E of the Plan, the Preserved Avoidance
12 Actions will vest in the Creditor Trust on the Effective Date. *See* Section IX.C.4 below. Exhibit 4
13 to the Disclosure Statement lists all Preserved Avoidance Actions. Recipients of Preserved
14 Avoidance Actions should assume that they may be pursued for recovery of the Preserved
15 Avoidance Actions.

16 **c. Retention of Claims, Causes of Action and Other Rights.**

17 As discussed below in Sections IX.C.5 and IX.C.6, sections IV.D and IV.E of the Plan vest
18 certain other Claims, causes of action and rights of the Debtor and the Estate in the Reorganized
19 Debtor or Creditor Trust, as set forth in those Sections.

20 **12. Engagement of A&M.**

21 The Debtor has engaged Alvarez & Marsal Healthcare Industry Group, LLC pursuant to
22 Bankruptcy Code section 363(b) to furnish personnel to serve as the Debtor's Chief Restructuring
23 Officer, Chief Financial Officer and Treasurer, Vice President Outcomes & Quality, and Assistant
24 Vice Presidents, Finance. *See also* Section VIII.B above.

25 **13. Professionals Retained by the Estate.**

26 The Court has approved the Debtor's retention of the following professionals:

- 27
- Klee, Tuchin, Bogdanoff & Stern LLP as the Debtor's reorganization counsel;
 - Lewis & Roca LLP as the Debtor's reorganization co-counsel; and
- 28

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- Kurtzman Carson Consultants, LLC as the Debtor’s noticing and claims Agent.

[In addition, the Debtor and the Creditors’ Committee have filed applications to employ the following professionals, which applications are pending:]

- Hooper, Lundy and Bookman, Inc. as the Debtor’s healthcare and regulatory counsel;
- Kamer Zucker Abbott as the Debtor’s labor and employment counsel;
- RB Muskin LLC as the Debtor’s intellectual property consultant;
- HelixIP as the Debtor’s special patent counsel;
- Pachulski, Stang, Ziehl & Jones as counsel to the Creditors’ Committee; and
- Schwartzer & McPherson Law Firm as Local Counsel to the Creditors’ Committee.

The Court has approved interim fee procedures for professionals seeking compensation from the estate. Under the procedures, subject to the Debtor’s cash availability and absent a timely objection, professionals are eligible to receive 85% of their monthly fees and 100% of their monthly costs upon passage of an objection period following service of a monthly fee statement upon certain parties, with the opportunity for professionals to request and obtain the “hold back” amounts at an interim or final fee hearing.

**IX.
SUMMARY OF MATERIAL PLAN PROVISIONS**

The Plan is the result of extensive, good faith negotiations and embodies a settlement among the Debtor, the Agent, the Consenting Lenders and the Creditors’ Committee, each of which is supportive of the Plan and the Debtor’s expeditious emergence from chapter 11. Specifically, the Plan provides for continuation of the Debtor as a philanthropic entity, replacement of the Debtor’s remaining outstanding obligations to the Lenders (after payment of the \$18 million in cash proceeds of the UCSD Sale to the Lenders) with a \$13 million note secured by the Research Building (including all personal property therein as of the date of the Plan Support Agreement) and the Vacant Land (the “Research Building Note”), and the payment of fees and costs in favor of the Agent. Under the Plan, holders of Allowed General Unsecured Claims will share Pro Rata in the proceeds of the Creditor Trust, which will be funded with the

1 Unsecured Creditor Cash, if any, the Preserved Avoidance Actions, the Preserved Claims, and
2 other potential Claims and causes of action.

3 The following is a narrative description of certain provisions of the Plan, which is attached
4 hereto as Exhibit 1 for reference. This summary of the Plan is qualified in its entirety by the actual
5 terms of the Plan. In the event of any conflict, the terms of the Plan will control over any
6 summary set forth in this Disclosure Statement.

7 **A. Classification and Treatment of Claims Under the Plan.**

8 The Bankruptcy Code requires that a plan divide the different claims against, and equity
9 interests in, the debtor into separate classes based upon their legal nature. Claims of a
10 substantially similar legal nature are usually classified together. The Bankruptcy Code does not
11 require the classification of administrative claims and certain priority claims, and they are
12 typically denominated “unclassified claims.” Because the Debtor is a nonprofit corporation, there
13 are no equity interests in the Debtor.

14 The Debtor believes that the classification of Claims specified in the Plan is appropriate
15 and consistent with the requirements of the Bankruptcy Code. The Court will determine the
16 appropriateness of the classification of the Claims under the Plan in conjunction with the hearing
17 on confirmation of the Plan.

18 Under Bankruptcy Code section 1124, a class of claims is “impaired” unless the plan
19 leaves unaltered the legal, equitable, and contractual rights of the holders of claims or interests, as
20 applicable, in the class. In addition, a class of claims is “impaired” unless the plan cures all
21 defaults (other than those arising from the debtor’s insolvency, the commencement of the case, or
22 non-performance of a non-monetary obligation, which need not be cured) that occurred before or
23 after the commencement of the case, reinstates the maturity of the claims in the class, compensates
24 the claimants for their actual damages incurred as a result of their reasonable reliance on any
25 acceleration rights, and does not otherwise alter their legal, equitable, and contractual rights.
26 Except for any right to accelerate the debtor’s obligations, the holder of an unimpaired claim will
27 be placed in the position in which it would have been, inter alia, if the debtor’s case had not been
28 commenced.

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1 A plan must designate each separate class of claims and interests either as “impaired”
2 (affected by the plan) or “unimpaired” (unaffected by the plan). If a class of claims or interests is
3 “impaired,” under the Bankruptcy Code, the holders of claims or interests, as applicable, in that
4 class are entitled (i) to vote to accept or reject the plan (unless the plan provides for no distribution
5 to the class, in which case the class is deemed to reject the plan), and (ii) to receive property with a
6 value at least equal to the value that the claimant would receive if the debtor were liquidated under
7 chapter 7 of the Bankruptcy Code. If a class of claims is unimpaired, the holders of claims in that
8 class are deemed to accept the plan.

9 The following describes whether and how Claims against the Debtor are classified under
10 the Plan, whether the holders thereof are entitled to vote, and the treatment accorded such Claims
11 under the Plan.

12 **1. Unclassified Claims.**

13 Certain types of Claims are not placed into voting classes; instead, they are unclassified.
14 They are not considered impaired, and they do not vote to accept or reject a plan of reorganization
15 because they are automatically entitled to specific treatment provided for them in the Bankruptcy
16 Code. Therefore, the Debtor has not placed the following categories of Claims into a Class.

17 **a. Administrative Claims**

18 **(1) Allowance of Administrative Claims**

19 Administrative Claims are Claims against the Estate for administrative costs or expenses
20 entitled to priority under Bankruptcy Code section 507(a)(2) or (b). The Bankruptcy Code
21 requires that all Administrative Claims be paid on the date that a plan of reorganization becomes
22 effective, unless a particular claimant agrees to a different treatment.

23 **Allowance of Ordinary Course Administrative Claims:** An entity holding an Ordinary
24 Course Administrative Claim may, but need not, File a motion or request for payment of its Claim.
25 The Reorganized Debtor or any other party in interest may File an objection to an Ordinary Course
26 Administrative Claim in their discretion. Unless a party in interest objects to an Ordinary Course
27 Administrative Claim, such Claim will be an Allowed Claim in accordance with the terms and
28 conditions of the particular transaction that gave rise to the Claim.

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1 **Allowance of Professional Fee Claims:** Unless otherwise expressly provided in the Plan,
2 a Professional Fee Claim will be allowed only if:

3 (i) On or before 60 days after the Effective Date, the entity holding such Professional
4 Fee Claim both Files with the Court a final fee application or a motion requesting allowance of the
5 Professional Fee Claim and serves the application or motion on the Reorganized Debtor and the
6 U.S. Trustee; and

7 (ii) The Court determines it is an Allowed Claim.

8 The Reorganized Debtor or any other party in interest may File an objection to such
9 application or motion within the time provided by the Bankruptcy Rules or within any other period
10 that the Court establishes. Entities holding Professional Fee Claims that do not timely File and
11 serve a fee application or motion for payment will be forever barred from asserting those Claims
12 against the Debtor, the Reorganized Debtor, the Estate, the Creditor Trust, or their respective
13 property.

14 **Allowance of Cure Payments:** Cure Payments shall be allowed in accordance with the
15 procedures set forth in Section III.A.2 of the Plan.

16 **Allowance of Non-Ordinary Course Administrative Claims:** Unless otherwise
17 expressly provided in the Plan, Non-Ordinary Course Administrative Claims will be allowed only
18 if:

19 (i) On or before 60 days after the Effective Date, the entity holding such Non-Ordinary
20 Course Administrative Claim both Files with the Court a motion requesting allowance of the Non-
21 Ordinary Course Administrative Claim and serves the motion on the Reorganized Debtor and the
22 U.S. Trustee; and

23 (ii) The Court determines it is an Allowed Claim.

24 The Reorganized Debtor or any other party in interest may File an objection to such
25 motion within 60 days after the expiration of the deadline for the filing of a Non-Ordinary Course
26 Administrative Claim set forth in clause (i) above (*i.e.*, within 120 days after the Effective Date),
27 unless such time period for filing such objection is extended by the Court. Entities holding Non-
28 Ordinary Course Administrative Claims that do not timely File and serve a request for payment

1 will be forever barred from asserting those Claims against the Debtor, the Reorganized Debtor, the
2 Estate, the Creditor Trust, or their respective property.

3 **Allowance of 503(b)(9) Claims:** Unless otherwise expressly provided in the Plan, a
4 503(b)(9) Claim will be allowed only if:

5 (i) The 503(b)(9) Claim is Filed by the 503(b)(9) Bar Date or is deemed timely Filed; and

6 (ii) If an objection to such 503(b)(9) Claim is Filed by a party in interest on or before the
7 Claim Objection Deadline, the Court determines it is an Allowed 503(b)(9) Claim.

8 Entities holding 503(b)(9) Claims that did not timely File such Claims by the 503(b)(9)
9 Bar Date will be forever barred from asserting those Claims against the Debtor, the Reorganized
10 Debtor, the Estate, the Creditor Trust, or their respective property.

11 **(2) Treatment of Administrative Claims.**

12 **Treatment of Allowed Ordinary Course Administrative Claims:** Unless otherwise
13 agreed, Allowed Ordinary Course Administrative Claims will be paid by the Reorganized Debtor
14 in accordance with the terms and conditions of the particular transaction that gave rise to such
15 Claims.

16 **Treatment of Professional Fee Claims:** Unless otherwise agreed or provided in the Plan,
17 an Allowed Professional Fee Claim will be paid by the Reorganized Debtor within 10 days after
18 the date on which the Court determines such Claim is an Allowed Claim.

19 **Treatment of Cure Payments:** Cure Payments will be made to the non-Debtor parties to
20 the executory contracts or unexpired leases in accordance with Section III.A.2 of the Plan.

21 **Treatment of U.S. Trustee Fees Under 28 U.S.C. § 1930:** The Reorganized Debtor will
22 pay to the U.S. Trustee all fees due and owing under 28 U.S.C. § 1930 in cash on the Effective
23 Date.

24 **Treatment of Non-Ordinary Course Administrative Claims:** Unless the entity holding
25 a Non-Ordinary Course Administrative Claim allowed by the Court agrees to different treatment
26 or unless a different payment date is ordered by the Court, the Reorganized Debtor will pay to that
27 entity cash in the full amount of such Allowed Non-Ordinary Course Administrative Claim,
28 without interest, on or before the later of: (i) 10 days after the Effective Date, or (ii) 10 days after

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1 the date any order determining such Claim to be an Allowed Non-Ordinary Course Administrative
2 Claim becomes a Final Order.

3 **Treatment of 503(b)(9) Claims:** Unless the entity holding a 503(b)(9) Claim that is
4 allowed by the Court agrees to different treatment, or already has been paid the full amount of
5 such Allowed 503(b)(9) Claim pursuant to an order of the Court, the Reorganized Debtor will pay
6 to that entity cash in the full amount of such Allowed 503(b)(9) Claim, without interest, on or
7 before the later of: (i) 10 days after the Effective Date, or (ii) 10 days after the date any order
8 determining such Claim to be an Allowed 503(b)(9) Claim becomes a Final Order.

9 **(3) Payment of Committee Administrative Expense Claims.**

10 Notwithstanding any other provision of the Plan: (i) the professionals and members of the
11 Creditors' Committee (in their capacity as members of the Creditors' Committee and not in their
12 capacity as holders of Unsecured Claims) shall not receive (pursuant to the Plan or otherwise)
13 more than \$750,000 on account of Allowed Committee Administrative Expense Claims incurred
14 in the Case; and (ii) if the Lenders are required to remit funds to the Creditor Trust to satisfy a
15 deficiency in respect of the Aggregate Unsecured Creditor Consideration pursuant to Section
16 II.C.4 of the Plan, then the Creditor Trust (rather than the Reorganized Debtor) shall be required to
17 disburse that portion of such funding that is necessary to satisfy Allowed Committee
18 Administrative Expense Claims to the holders thereof.

19 **b. Priority Tax Claims.**

20 Unless otherwise agreed, the Reorganized Debtor will pay to an entity holding an Allowed
21 Priority Tax Claim cash in the full amount of the Allowed Priority Tax Claim, plus interest
22 calculated at the federal judgment rate, in equal, amortized, annual installments beginning on the
23 first anniversary of the Petition Date that falls on a date following the occurrence of the Effective
24 Date and, thereafter, on each anniversary of the Petition Date through the fifth anniversary of the
25 Petition Date, provided, however, that the Reorganized Debtor may prepay any Priority Tax Claim
26 without penalty at any time.

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2. Classified Claims (Classes 1-4).

Claims, other than Administrative Claims and Priority Tax Claims, are classified under the Plan. Secured Claims are Claims that are secured by valid, enforceable and unavoidable liens against property in which the Estate has an interest or that are subject to setoff under Bankruptcy Code section 553. A Claim is a Secured Claim only to the extent of the value of the claimant’s interest in the collateral securing the Claim. Priority Claims are Claims arising under Bankruptcy Code sections 507(a)(4), 507(a)(5) and 507(a)(7). Priority Claims are not secured by Estate property, but have statutory priority over General Unsecured Claims. General Unsecured Claims are not secured by liens on Estate property and are not entitled to statutory priority.

* * *

The following section identifies the Plan’s treatment of the classified Claims against the Debtor’s Estate. All descriptions set forth in the following section are qualified in their entirety by the specific treatment of each of the classified Claims under the Plan.

a. Class 1 (Lender Secured Claims)

Classification: Class 1 consists of the Lender Secured Claims.

Treatment: Class 1 is impaired under the Plan. If and to the extent any portion of the \$18 million in cash proceeds from the UCSD Sale has not been previously remitted to the Agent, for the benefit of the Agent and the Lenders in accordance with the terms of the Prepetition Credit Agreement, the Debtor shall so remit the balance of such proceeds on the Effective Date. Payment of the \$18 million in cash proceeds from the UCSD Sale (whenever remitted) shall reduce the debt under the Prepetition Credit Agreement.

On the Effective Date, the Reorganized Debtor shall issue to the Agent, for the benefit of the Agent and the Lenders in accordance with the terms of the Plan Support Agreement, the Research Building Note, in the amount of \$13 million, which shall be secured by the Research Building and the Vacant Land. (For purposes of clarity, the Alta-Hualapai Parcel shall not be encumbered by such note or any other obligation). The Research Building Note will be in form and substance satisfactory to the Agent and the Approving Lenders and will:

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- 1 (i) be payable to the Agent, for the benefit of the Agent and the Lenders in accordance
2 with the terms of the Research Building Note;
- 3 (ii) be secured by a first-priority deed of trust, in form and substance satisfactory to the
4 Agent and the Approving Lenders, on the Research Building (including all furniture, fixtures and
5 equipment owned by the Borrower and contained in such building as of the date of the Plan
6 Support Agreement) and the Vacant Land;
- 7 (iii) be a non-recourse obligation of the Reorganized Debtor;
- 8 (iv) provide for annual principal amortization as follows: \$250,000 at the end of the first
9 year following the Effective Date, \$250,000 at the end of the second year following the Effective
10 Date, \$350,000 at the end of the third year following the Effective Date, and \$400,000 at the end
11 of the fourth year following the Effective Date (in each case payable on the respective anniversary
12 of the Effective Date, or if such date is not a Business Day, the first Business Day thereafter);
- 13 (v) be payable in full (less any prior amortization payments) on the earlier of:
- 14 (x) the fifth anniversary of the Effective Date (or if such date is not a Business Day,
15 the first Business Day thereafter),
- 16 (y) default under such Note, and
- 17 (z) sale of the Research Building or the Vacant Land;
- 18 (vi) be non-interest bearing; and
- 19 (vii) be subject to prepayment at any time without penalty.
- 20 The Reorganized Debtor will continue to be obligated under the Prepetition Deed of Trust,
21 as modified or as amended and restated to secure only the Research Building Note. The
22 Reorganized Debtor also will provide an environmental indemnity to the Agent for the benefit of
23 the Agent and the Lenders. Agent's title insurance policy may be amended, at the expense of the
24 Reorganized Debtor, to show the change in vesting and modifications to the obligations secured
25 by the Prepetition Deed of Trust, or at Agent's discretion, a new title insurance policy may be
26 required. Additionally, until such time as the Research Building Note is paid in full or the
27 Research Building and Vacant Land are no longer owned by the Reorganized Debtor, the Agent
28 shall have no obligation to provide any subordination agreement, nondisturbance agreement or

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1 attornment agreement with any tenant, licensee or other occupant under a lease, license or other
2 occupancy agreement affecting all or any portion of the Research Building property or the Vacant
3 Land that is entered into without Agent’s consent.

4 Until such time as the Research Building Note is paid in full or the Research Building and
5 Vacant Land are no longer owned by the Reorganized Debtor, the Reorganized Debtor will be
6 solely responsible for the costs and maintenance of the Research Building and the Vacant Land in
7 a condition at least as good as that existing on the date of the Plan Support Agreement. The
8 Reorganized Debtor shall be solely responsible for maintaining insurance with respect to such
9 properties, and paying all taxes applicable to such properties. The Reorganized Debtor will
10 maintain its status as a charitable 501(c)(3) entity.¹⁵

11 Notwithstanding the provisions of Section II.C.1 of the Plan, if the Research Building
12 and/or the Vacant Land are sold for an aggregate amount in excess of \$13 million (the “Excess
13 Consideration”), whether during the term of the Research Building Note or at any time within one
14 year after repayment thereof, the Reorganized Debtor will be required to share such Excess
15 Consideration with the Agent, for the benefit of the Agent and Lenders, on an 80/20 basis, *i.e.*,
16 with 80% of the Excess Consideration being paid to the Agent, for the benefit of the Agent and
17 Lenders (in accordance with the terms of the Research Building Note), and 20% of the Excess
18 Consideration being retained by the Reorganized Debtor.

19 If the Research Building and/or Vacant Land are no longer owned by the Reorganized
20 Debtor, the Reorganized Debtor nevertheless will continue to operate as a nonprofit corporation
21 dedicated to raising funds, generating support for, and otherwise advancing its philanthropic
22 objectives.

23 The Plan requires the Reorganized Debtor to provide quarterly reports to the Agent
24 regarding the Research Building Note and the Vacant Land, in form and substance satisfactory to
25 the Agent at all times from the effectiveness of the Research Building Note until the date that is

26 ¹⁵ Following the Effective Date, the Reorganized Debtor intends to make such filings as are necessary and
27 appropriate to modify the basis on which it is entitled to such status, to comport with the changes in its
28 operations since it was first granted such status.

1 one year after the repayment thereof, including, without limitation, as to any leasing of, sales
2 offers with respect to, damage to and maintenance status of such properties. So long as the
3 Research Building Note is outstanding, the Agent and the Lenders also will be entitled to inspect
4 the Research Building and the Vacant Land on an annual basis (or more frequently if a default has
5 occurred and is continuing under the Research Building Note).

6 The Agent and the Lenders are prohibited from commencing a Trust Funds Challenge with
7 respect to any Charitable Trust Funds. Further, none of the Charitable Trust Funds shall be treated
8 as collateral of the Agent or the Lenders with respect to the Prepetition Credit Agreement, the
9 Research Building Note or any Lender Claims.

10 **b. Class 2 (Other Secured Claims, Including Secured Tax Claims).**

11 **Classification:** Class 2 consists of Other Secured Claims against the Debtor, including
12 Secured Tax Claims. Each Class 2 Claim shall constitute its own subclass.

13 **Treatment:** Class 2 is unimpaired under the Plan, and the legal, equitable, and contractual
14 rights of holders of the Allowed Class 2 Claims are unaltered by the Plan. Unless the holder of an
15 Allowed Class 2 Claim in a particular Class 2 subclass agrees to other treatment, on or as
16 reasonably practicable after the Effective Date, such holder shall receive, at the Reorganized
17 Debtor's option: (i) cash in the allowed amount of such holder's Allowed Class 2 Claim, (ii) the
18 return of the collateral securing such Allowed Class 2 Claim, or (iii) (a) the cure of any default,
19 other than a default of the kind specified in Bankruptcy Code section 365(b)(2) that Bankruptcy
20 Code section 1124(2) requires to be cured, with respect to such holder's Allowed Class 2 Claim,
21 without recognition of any default rate of interest or similar penalty or charge, and upon such cure,
22 no default shall exist; (b) the reinstatement of the maturity of such Allowed Class 2 Claim as the
23 maturity existed before any default, without recognition of any default rate of interest or similar
24 penalty or charge; and (c) its unaltered legal, equitable, and contractual rights with respect to such
25 Allowed Class 2 Claim. Any defenses, counterclaims, rights of offset or recoupment of the
26 Debtor or the Estate with respect to such Claims shall vest in and inure to the benefit of the
27 Reorganized Debtor.

28

1 The Bankruptcy Court shall retain jurisdiction to determine the amount necessary to satisfy
2 any Allowed Class 2 Claim for which treatment is elected under clause (i) or clause (iii). With
3 respect to any Allowed Class 2 Claim for which treatment is elected under clause (i), any holder of
4 such Allowed Class 2 Claim shall release (and by the Confirmation Order shall be deemed to
5 release) all liens against property of the Estate.

6 As set forth in Section IV.D of the Plan, if not earlier abandoned or otherwise disposed of,
7 the Administration Building Parcel shall be deemed abandoned as of the Effective Date and the
8 Reorganized Debtor shall retain no interest in the Administration Building Parcel.

9 **c. Class 3 (Priority Claims, other than Priority Tax Claims).**

10 **Classification:** Class 3 consists of Priority Claims against the Debtor, other than Priority
11 Tax Claims.

12 **Treatment:** Class 3 is unimpaired under the Plan, and the legal, equitable, and contractual
13 rights of holders of Allowed Class 3 Claims are unaltered by the Plan. Unless a particular entity
14 holding an Allowed Class 3 Claim agrees otherwise, the Reorganized Debtor shall pay to each
15 holder of an Allowed Class 3 Claim, in full satisfaction of such Claim, cash in the full amount of
16 the Allowed Class 3 Claim on or before the latest of: (i) ten (10) days after the Effective Date; (ii)
17 ten (10) days after the date on which the Class 3 Claim becomes an Allowed Class 3 Claim; and
18 (iii) the date on which the Allowed Class 3 Claim first becomes due and payable in accordance
19 with its terms.

20 **d. Class 4 (General Unsecured Claims).**

21 **Classification:** Class 4 consists of the General Unsecured Claims.

22 **Treatment:** Class 4 is impaired under the Plan. Allowed Class 4 Claims shall receive
23 their Pro Rata share of the Net Trust Assets. On the Effective Date, the Preserved Avoidance
24 Actions, the Preserved Claims, and other Claims, rights and causes of action to be vested in the
25 Creditor Trust pursuant to Section IV.F of the Plan shall be vested in the Creditor Trust.

26 To the extent there are sufficient funds in the Estate to satisfy the Aggregate Unsecured
27 Creditor Consideration after payment of, or adequate reserve for, all other Allowed Administrative
28 Claims authorized to be paid in accordance with the Cash Collateral Stipulation, the Reorganized

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1 Debtor shall remit such funds to the holders of Allowed Committee Administrative Expense
2 Claims (on account thereof) and the Creditor Trust (on account of any Unsecured Creditor Cash),
3 as applicable, no later than five (5) business days after the Sufficiency Determination Date. Under
4 the Plan, the Unsecured Creditor Cash is cash equal to the difference between the Aggregate
5 Unsecured Creditor Consideration (i.e., \$750,000) and the amount of all Allowed Committee
6 Administrative Expense Claims; provided that if the Allowed Committee Administrative Expense
7 Claims exceed \$750,000, the amount of the Unsecured Creditor Cash will be zero.

8 To the extent there are insufficient funds in the Estate to satisfy the Aggregate Unsecured
9 Creditor Consideration, after payment of, or adequate reserve for, all other Allowed
10 Administrative Claims authorized to be paid in accordance with the Cash Collateral Stipulation,
11 the Lenders shall satisfy such deficiency (not to exceed \$750,000) by transferring the requisite
12 funds to the Creditor Trust no later than five (5) business days after the Sufficiency Determination
13 Date. The determination of such sufficiency and/or deficiency, as the case may be, (i) will not
14 occur until after all Administrative Claims to be paid under the Cash Collateral Stipulation,
15 including all Committee Administrative Expense Claims, are determined, and (ii) will be
16 determined in consultation with and subject to the agreement of the Debtor, the Agent and the
17 Creditors' Committee, or pursuant to Court order if the parties do not agree.¹⁶ If some or all of the
18 deficiency funded by the Lenders is on account of Allowed Committee Administrative Expense
19 Claims, the Creditor Trust shall be responsible for disbursing such payments to the holders of such
20 Claims, notwithstanding any contrary provision of the Plan.

21 The Creditors' Committee and the Creditor Trust are prohibited under the Plan from
22 commencing a Trust Funds Challenge with respect to the Engelstad Endowment Fund or the
23 Escrowed Donations. The Creditors' Committee (or the Creditor Trust, following the Effective
24

25 ¹⁶ If any reserve for payment of disputed claims is established in connection with the determination of the
26 sufficiency as described above, and, to the extent the Lenders are required to fund any portion of the
27 Aggregate Unsecured Creditor Consideration, then, to the extent any reserved funds are released from the
28 reserve other than for the payment of Administrative Claims and Priority Claims that are the subject of such
reserved funds, then such funds shall be remitted to the Agent for the benefit of the Agent and the Lenders
up to the amount that the Lenders were required to fund the Aggregate Unsecured Creditor Consideration.

1 Date) may commence a Trust Funds Challenge with respect to any Charitable Trust Funds other
2 than the Engelstad Endowment Fund and the Escrowed Donations, by way of an adversary
3 proceeding. If the Creditors' Committee (or Creditor Trust, as applicable) fails to commence such
4 a proceeding, or to the extent a Trust Funds Challenge that is properly commenced by the
5 Creditors' Committee or Creditor Trust is unsuccessful, the Reorganized Debtor shall retain its
6 rights and interests in the Charitable Trust Funds pursuant to Section IV.C of the Plan. To the
7 extent that a Trust Funds Challenge that is properly commenced by the Creditors' Committee or
8 Creditor Trust is successful, any funds determined to be available for general corporate purposes
9 that are not used to satisfy Allowed Administrative Claims or Allowed Priority Claims, shall be
10 transferred to the Creditor Trust within ten (10) days following the later of (i) the date on which
11 the order sustaining such Trust Funds Challenge becomes a Final Order, and (ii) the date on which
12 all Administrative Claims and Priority Claims have been determined by a Final Order and paid. If
13 a Trust Funds Challenge that is properly commenced by the Creditors' Committee is pending as of
14 the Effective Date, the Creditor Trust shall be substituted for the Creditors' Committee as plaintiff
15 and shall have the exclusive authority to prosecute and/or settle such proceeding.

16 On the Effective Date, the holders of the Lender Deficiency Claims shall be deemed to
17 have waived irrevocably all such Claims and, accordingly, the right to receive any consideration
18 under Class 4 on account of such Claims. Without limiting the foregoing in any way, neither the
19 Agent nor the Lenders shall share in any portion of the Aggregate Unsecured Creditor Cash or the
20 Net Trust Assets.

21 The timing and amount of payments to the holders of Allowed Class 4 Claims will be
22 determined by the Creditor Trust and in accordance with the Creditor Trust Agreement. The
23 amount available will depend on at least five variables. First, the amount of the Unsecured
24 Creditor Cash (if any) will determine the amount of cash initially available to the Creditor Trust.
25 As noted, this amount will depend upon a determination of the Allowed Committee
26 Administrative Expense Claims following the Effective Date. Second, the amount available for
27 distribution for holders of Allowed Class 4 Claims will depend on whether the Creditors'
28 Committee or Creditor Trust commences a Trust Funds Challenge, and the success of any such

1 challenge. Third, the cash realized by the Creditor Trust will depend upon its efforts to realize a
2 recovery on the Claims and causes of action vested in the Creditor Trust under the Plan, and the
3 success of those efforts. Fourth, the cash available to the holders of Allowed Class 4 Claims will
4 depend upon the costs incurred by the Creditor Trust. Fifth, the amount realized by each holder of
5 an Allowed Class 4 Claim will depend upon the nature, success and extent of the objections filed
6 by the Creditor Trust to *other* Class 4 Claims that otherwise would share in the net recoveries of
7 the Creditor Trust.

8 The Debtor has not undertaken an effort to determine what value, if any, the Claims and
9 causes of action to be vested in the Creditor Trust may have. Nevertheless, these causes of action
10 will vest in the Creditor Trust on the Effective Date and any proceeds thereof will be distributed
11 on a Pro Rata basis by the Creditor Trust as more fully set forth in the Plan.

12 **B. Treatment of Executory Contracts and Unexpired Leases.**

13 **1. Assumption of Executory Contracts and Unexpired Leases**

14 **a. Assumption of Agreements.**

15 On the Effective Date, the Reorganized Debtor shall assume all executory contracts and
16 unexpired leases of the Debtor listed on the Schedule of Assumed Agreements.

17 The Debtor reserves the right to amend the Schedule of Assumed Agreements at any time
18 prior to the Effective Date to: (a) delete any executory contract or unexpired lease and provide for
19 its rejection under the Plan or otherwise, or (b) add any executory contract or unexpired lease and
20 provide for its assumption under the Plan. The Debtor will provide notice of any amendment to
21 the Schedule of Assumed Agreements to the party or parties to the agreement affected by the
22 amendment.

23 The Confirmation Order will constitute a Court order approving the assumption, on the
24 Effective Date, of all executory contracts and unexpired leases identified on the Schedule of
25 Assumed Agreements.

26 **b. Cure Payments.**

27 Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default
28 under and compensate the non-debtor party to an executory contract or unexpired lease to be

1 assumed under the Plan, is identified as the Cure Payment on the Schedule of Assumed
2 Agreements. Unless the parties mutually agree to a different date, such payment shall be made in
3 cash, ten (10) days following the later of: (i) the Effective Date and (ii) entry of a Final Order
4 resolving any dispute regarding (a) the amount of any Cure Payment, (b) the ability of the
5 Reorganized Debtor to provide “adequate assurance of future performance” within the meaning of
6 Bankruptcy Code section 365 with respect to a contract or lease to be assumed, to the extent
7 required, and/or (c) any other matter pertaining to assumption.

8 Pending the Court’s ruling on such dispute, the executory contract or unexpired lease at
9 issue shall be deemed assumed by the Reorganized Debtor unless otherwise agreed by the parties
10 or ordered by the Court.

11 **c. Objections to Assumption/Cure Payment Amounts.**

12 Any entity that is a party to an executory contract or unexpired lease that will be assumed
13 under the Plan and that objects to such assumption (including the proposed cure payment) must
14 file with the Court and serve upon parties entitled to notice a written statement and supporting
15 declaration stating the basis for its objection. This statement and declaration must be Filed and
16 served by the deadline fixed by the Court for such objection. Any entity that fails to timely file
17 and serve such a statement and declaration will be deemed to waive any and all objections to the
18 proposed assumption (including the proposed Cure Payment) of its contract or lease.

19 In the absence of a timely objection by an entity who is a party to an executory contract or
20 unexpired lease, the Confirmation Order shall constitute a conclusive determination as to the
21 amount of any cure and compensation due under the executory contract or unexpired lease, and
22 that the Reorganized Debtor has demonstrated adequate assurance of future performance with
23 respect to such executory contract or unexpired lease, to the extent required.

24 **d. Resolution of Claims Relating to Assumed Contracts and Leases.**

25 Payment of the Cure Payment established under the Plan, by the Confirmation Order or by
26 any other order of the Court, with respect to an assumed executory contract or unexpired lease,
27 shall be deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim against
28 the Debtor (including any asserted in a Filed proof of claim or listed in the Schedules) with respect

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1 to such contract or lease (irrespective of whether the Cure Payment is less than the amount set
2 forth in such proof of Claim or the Schedules). Upon the tendering of the Cure Payment, any such
3 Filed or scheduled Claim shall be disallowed, without further order of the Court or action by any
4 party.

5 **2. Rejection of Executory Contracts and Unexpired Leases.**

6 **a. Rejected Agreements.**

7 On the Effective Date, all executory contracts and unexpired leases that (i) have not been
8 previously assumed or rejected and (ii) are not set forth on the Schedule of Assumed Agreements
9 (including all executory contracts and unexpired leases set forth on the Schedule of Rejected
10 Agreements), shall be rejected. For the avoidance of doubt, executory contracts and unexpired
11 leases that have been previously assumed or assumed and assigned pursuant to an order of the
12 Court, including those assumed and assigned in conjunction with the UCSD Sale, shall not be
13 affected by the Plan. The Confirmation Order will constitute a Court order approving the
14 rejection, on the Effective Date, of the executory contracts and unexpired leases to be rejected
15 under the Plan.

16 **b. Bar Date for Rejection Damage Claims.**

17 Any Rejection Damage Claim or other Claim against the Debtor for damages arising from
18 the rejection under the Plan of an executory contract or unexpired lease must be Filed and served
19 upon counsel to the Reorganized Debtor and Creditor Trust within 30 days after the mailing of
20 notice of the occurrence of the Effective Date. Any such Claims that are not timely Filed and
21 served will be forever barred and unenforceable against the Debtor, the Reorganized Debtor, the
22 Estate, the Creditor Trust and their respective property, and entities holding such Claims will be
23 barred from receiving any distributions under the Plan on account of such untimely Claims.

24 **3. Postpetition Contracts and Leases.**

25 Except as expressly provided in the Plan or the Confirmation Order, all contracts, leases,
26 and other agreements that the Debtor entered into after the Petition Date will be assumed and
27 retained by the Reorganized Debtor and will remain in full force and effect following the Effective
28 Date, including the APA, the License Agreement, the Funding Agreement, the Bill of Sale, the

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1 Parking Agreement, the Research Building Note, and all other agreements and documents entered
2 into in conjunction with the foregoing.

3 **C. Means of Execution and Implementation of Plan.**

4 **1. Funding of the Plan.**

5 Unless otherwise provided in the Plan, payments required by the Plan on and after the
6 Effective Date will be satisfied from cash of the Debtor (which, consistent with the Cash
7 Collateral Orders, includes funds in the Cash Collateral Account) and the Reorganized Debtor;
8 provided that (i) the Lenders shall make all payments required pursuant to Section II.C.4 of the
9 Plan (up to \$750,000) to satisfy the Aggregate Unsecured Creditor Consideration in the event of a
10 deficiency, as specified in that Section, and (ii) any distribution to the holders of Allowed Class 4
11 Claims shall be paid exclusively by the Creditor Trust from the Net Trust Assets.

12 **2. Vesting of Assets Generally.**

13 Except as otherwise provided in the Plan, all property of the Debtor and the Estate,
14 including all cash held by the Debtor as of the Effective Date, shall vest in the Reorganized Debtor
15 on the Effective Date, free and clear of all Claims, liens, encumbrances, and interests. From and
16 after the Effective Date, the Reorganized Debtor may conduct its affairs and use, acquire and
17 dispose of property without supervision by the Court and free of any restrictions of the Bankruptcy
18 Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the
19 Confirmation Order.

20 **3. The Charitable Trust Funds.**

21 On and after the Effective Date, the Reorganized Debtor shall retain its interests in, its
22 rights to use and, where applicable, custody of the Charitable Trust Funds, consistent with all
23 agreements and restrictions governing the disposition and use of such funds, any modifications to
24 such agreements and restrictions that may be authorized by the donors of such Charitable Trust
25 Funds, and otherwise applicable non-bankruptcy law, subject to the right of the Creditors'
26 Committee or the Creditor Trust to commence a Trust Funds Challenge under Section II.C.4 of the
27 Plan with respect to Charitable Trust Funds other than the Engelstad Endowment Fund or the
28 Escrowed Donations. As provided in Section II.C.4 of the Plan, the Creditors' Committee and the

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1 Creditor Trust are prohibited from commencing a Trust Funds Challenge with respect to the
2 Engelstad Endowment Fund or the Escrowed Donations. As provided in Section II.C.I of the
3 Plan, the Agent and the Lenders are prohibited from commencing a Trust Funds Challenge with
4 respect to any Charitable Trust Funds and from sharing in the proceeds of any successful
5 challenge.

6 **4. Abandonment of the Administration Building Parcel.**

7 Unless earlier abandoned or otherwise disposed of, upon the Effective Date, the Debtor's
8 interests in the Administration Building Parcel shall be deemed abandoned, and the Reorganized
9 Debtor shall retain no interest in the Administration Building Parcel. Notwithstanding the
10 Permanent Injunction set forth in Section VII.A of the Plan and the automatic stay under
11 Bankruptcy Code section 362(a), to the extent applicable, any party with an interest in the
12 Administration Building Parcel may, without further order of the Court, exercise its rights and
13 remedies against the Administration Building Parcel, including any right to foreclose upon the
14 Administration Building Parcel.

15 **5. Vesting of Causes of Action in Reorganized Debtor.**

16 The following shall be preserved and vest in the Reorganized Debtor on the Effective Date,
17 pursuant to Bankruptcy Code section 1123(b), to the extent not released pursuant to the Plan, the
18 Confirmation Order and any other order of the Court: (i) all Claims, rights, and causes of action of
19 the Debtor and the Estate against any person or entity arising from or relating to the real property
20 and personal property vested in and/or or retained by the Reorganized Debtor under the Plan,
21 including the Research Building, the Vacant Land, and the Alta-Hualapai Parcel; (ii) all Claims,
22 rights, and causes of action of the Debtor and the Estate against any person or entity arising from
23 or relating to the APA, the License Agreement, the Funding Agreement, the Bill of Sale, the
24 Parking Agreement, the Research Building Note, the Charitable Trust Funds (subject to Sections
25 II.C.1, II.C.4, and IV.C of the Plan), all other contracts and leases entered into postpetition by the
26 Debtor and/or the Estate that have not been assigned, and all executory contracts and leases that
27 have been assumed but not assigned or that will be assumed pursuant to the Plan; (iii) all defenses,
28 offsets, rights of recoupment, rights of disallowance, recharacterization and/or equitable

1 subordination of the Debtor and the Estate with respect to Claims against the Debtor other than
2 Class 4 Claims; and (iv) all rights of the Debtor, the Estate and the Reorganized Debtor arising
3 from the Plan itself.

4 **6. Vesting of Causes of Action in Creditor Trust.**

5 The following shall be preserved and vest in the Creditor Trust on the Effective Date,
6 pursuant to Bankruptcy Code section 1123(b), to the extent not released pursuant to the Plan, the
7 Confirmation Order and any other order of the Court: (i) all of the other Claims, rights, and causes
8 of action of the Debtor and the Estate against any person or entity that are not vested in the
9 Reorganized Debtor under Section IV.E of the Plan, including the Preserved Avoidance Actions
10 and Preserved Claims; (ii) all defenses, offsets, rights of recoupment, rights of disallowance,
11 recharacterization and/or equitable subordination of the Debtor and the Estate with respect to
12 Class 4 Claims; and (iii) all rights of the Creditor Trust arising from the Plan itself.

13 **7. Creation of the Creditor Trust and Appointment of Creditor Trustee.**

14 The Confirmation Order shall approve, effective on the Effective Date, the Creditor Trust
15 Agreement, which agreement shall provide for the appointment of a Creditor Trustee to administer
16 the Creditor Trust. The Creditor Trustee shall be SltnTrst LLC (dba Solution Trust). The Creditor
17 Trustee shall serve without any bond and shall act in accordance with the Creditor Trust
18 Agreement and the Plan. The Creditor Trustee may be compensated for his or her service, as
19 agreed upon in the Creditor Trust Agreement.

20 The Creditor Trust may engage counsel and other professionals as it deems appropriate,
21 and compensate such professionals from the corpus of the Creditor Trust for reasonable fees and
22 expenses incurred by such professionals, in accordance with the Creditor Trust Agreement and
23 without approval of the Court. The Creditor Trustee shall serve for the duration of the Creditor
24 Trust, subject to earlier death, resignation, incapacity or removal as specifically provided in the
25 Creditor Trust Agreement.

26 **a. Powers and Duties.**

27 The Creditor Trust, acting through the Creditor Trustee, shall have the following rights,
28 powers and duties:

1 (a) The Creditor Trust shall have full right, power and discretion to manage the
2 Creditor Trust Assets, and execute, acknowledge and deliver any and all instruments with respect
3 thereto, as it deems appropriate or necessary in its discretion;

4 (b) Administer the collection, prosecution, settlement, and/or abandonment of the
5 Preserved Avoidance Actions, the Preserved Claims and all other Claims, rights, and causes of
6 action vested in the Creditor Trust pursuant to the Plan;

7 (c) Prosecute, settle and/or abandon objections to Class 4 Claims;

8 (d) Make interim and final distributions to the holders of Allowed Class 4 Claims;

9 (e) File all tax and regulatory forms, returns, reports and other documents required
10 with respect to the Creditor Trust; and

11 (f) File suit or any appropriate motion for relief in the Court or in any other court of
12 competent jurisdiction to resolve any disagreement, conflict, dispute or ambiguity in connection
13 with the exercise of its rights, powers or duties.

14 **b. Termination of the Creditor Trust.**

15 The Creditor Trust shall be irrevocable. The Creditor Trust shall terminate when the
16 Creditor Trustee has performed all of his/her duties under the Plan and the Creditor Trust
17 Agreement, including the final distribution of all the property of the Creditor Trust in respect of
18 Allowed Class 4 Claims, which date shall not be more than five (5) years after the Effective Date;
19 provided, however, the Court may upon good cause shown order the Creditor Trust to remain open
20 so long as it may be necessary to liquidate and distribute all of its property.

21 **c. Additional Provisions of the Creditor Trust Agreement.**

22 In addition to the provisions in the Plan with respect to the Creditor Trust, the Creditor
23 Trust Agreement will provide for, among other things, the replacement of the Creditor Trustee in
24 the event of death, incapacity or resignation, the liability of the Creditor Trustee, the effect of
25 actions by the Creditor Trustee, and the indemnification of the Creditor Trustee.

26 To the extent not set forth in the Plan, the functions and procedures applicable to the
27 Creditor Trust and the powers and duties of the Creditor Trustee and the rights of the holders of
28 beneficial interests in the Creditor Trust shall be governed by the provisions of the Creditor Trust

1 Agreement; provided, however, that in the event of any conflict, the terms of the Plan shall
2 govern.

3 **8. Objections to Claims.**

4 Except as otherwise provided in Section II.B of the Plan (regarding allowance of
5 Administrative Claims), any objection to a Claim against the Debtor shall be Filed and served
6 upon the holder of such Claim no later than the Claims Objection Deadline. After the Effective
7 Date, the Reorganized Debtor shall have the sole right and authority to File, settle, compromise,
8 withdraw or litigate to judgment objections to Claims, other than Class 4 Claims. Following the
9 Effective Date, the Creditor Trustee on behalf of the Creditor Trust shall have the sole right and
10 authority to File, settle, compromise, withdraw or litigate to judgment objections to Class 4
11 Claims.

12 **9. Distribution of Property Under the Plan.**

13 The procedures for distributing property under the Plan are set forth in Section IV.I of the
14 Plan, except as otherwise provided in the Plan.

15 **10. Full Satisfaction.**

16 The Reorganized Debtor (or Creditor Trust, as the case may be) shall make, and each
17 holder of an Allowed Claim against the Debtor shall receive, the distributions provided for in the
18 Plan, if any, in full satisfaction and discharge of such holder's Claim against the Debtor.

19 **11. Compliance with Tax Requirements.**

20 The Reorganized Debtor (or Creditor Trust, as the case may be) shall comply with all
21 applicable withholding, payment and reporting requirements imposed on it by governmental units,
22 if any, and all distributions pursuant to the Plan shall be subject to such withholding, payment and
23 reporting requirements. The Reorganized Debtor and Creditor Trustee (on behalf of the Creditor
24 Trust) shall be authorized to take any and all actions that may be necessary or appropriate to
25 comply with such withholding, payment, and reporting requirements. All amounts properly
26 withheld from distributions to the holder of an Allowed Claim and paid over to the applicable
27 governmental unit on account of such holder shall be treated as part of the distributions to such
28 holder.

1 For example, with respect to any employee-related withholding, if the Debtor is obligated
2 by law to withhold amounts from distributions to a present or former employee to satisfy such
3 present or former employee's tax and other payroll obligations, the Reorganized Debtor or
4 Creditor Trustee may withhold a portion of the distributions allocated to the Allowed Claim of
5 such present or former employee.

6 Each person holding an Allowed Claim is required to provide any information necessary to
7 effect the necessary information reporting and withholding of applicable taxes with respect to
8 distributions to be made under the Plan. The Reorganized Debtor or the Creditor Trustee, as
9 applicable, shall be entitled in its sole discretion to withhold any distributions to a holder of an
10 Allowed Claim that fails to provide tax identification or social security information upon written
11 request.

12 Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim that
13 is to receive a distribution on account thereof pursuant to the Plan shall have sole and exclusive
14 responsibility for the satisfaction and payment of any tax obligations imposed by any
15 governmental unit, including income, withholding, and other tax obligations, on account of such
16 Distribution, and (b) no distribution shall be made to or on behalf of such holder pursuant to the
17 Plan unless and until such Holder has made arrangements satisfactory to the Reorganized Debtor
18 or Creditor Trustee, as applicable, for the payment and satisfaction of such withholding tax
19 obligations or such tax obligation that would be imposed upon the Reorganized Debtor or Creditor
20 Trustee in connection with such distribution. Any property to be distributed pursuant to the Plan
21 shall, pending the implementation of such arrangements, be treated as an Unclaimed Distribution
22 pursuant to Section IV.I.5.b of the Plan.

23 **12. Setoff, Recoupment and Other Rights.**

24 Notwithstanding anything to the contrary contained in the Plan, the Reorganized Debtor or
25 the Creditor Trust may, but shall not be required to, setoff, recoup, assert counterclaims or
26 withhold against the distributions to be made pursuant to the Plan on account of any claims that
27 the Debtor, the Estate, or the Reorganized Debtor may have against the entity holding an Allowed
28 Claim; provided, however, that neither the failure to effect such a setoff or recoupment, nor the

1 allowance of any Claim against the Debtor or the Reorganized Debtor, nor any partial or full
2 payment during the Case or after the Effective Date in respect of any Allowed Claim, shall
3 constitute a waiver or release by the Debtor, the Estate, the Reorganized Debtor or the Creditor
4 Trust of any Claim that any or all of them may possess against such holder.

5 **13. The Effective Date.**

6 The Plan shall not become binding unless and until the Effective Date occurs. The
7 Effective Date is the first Business Day, on which no stay of the Confirmation Order is in effect,
8 on which all of the following conditions have been satisfied or waived as set forth in the Plan:

9 **a. Conditions to the Effective Date.**

- 10 (1) The Confirmation Order shall have become a Final Order;
- 11 (2) The Research Building Note and related instruments evidencing the
12 liens and security interests securing such note shall have been
13 executed; and
- 14 (3) All other agreements, writings and undertakings required under the
15 Plan shall be executed.

16 **b. Waiver of Conditions.**

17 The requirement that the conditions to the occurrence of the Effective Date be satisfied
18 may be waived in whole or in part, and the time within which any such conditions must be
19 satisfied may be extended, by mutual agreement of the Debtor and the Agent. The failure to
20 timely satisfy or waive any of such conditions may be asserted by the Debtor regardless of the
21 circumstances giving rise to the failure of such condition to be satisfied, including any action or
22 inaction by the Debtor. The failure of the Debtor to exercise any of the foregoing rights shall not
23 be deemed a waiver of any other rights and each such right shall be deemed ongoing and subject to
24 assertion at any time.

25 **c. Notice of the Effective Date.**

26 Promptly after the occurrence of the Effective Date, the Debtor shall File and mail a
27 “Notice of Occurrence of Effective Date” to all creditors of record as of the date of entry of the
28 Confirmation Order.

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1 **14. Authorization of Corporate Action.**

2 Any matters provided for or required by the Plan that require corporate action by the
3 Debtor or the Reorganized Debtor, including, without limitation, the adoption by the Reorganized
4 Debtor of the Amended Articles of Incorporation and Bylaws, shall, as of the Effective Date, be
5 deemed to have occurred and be effective as provided herein, and shall be authorized, approved
6 and ratified in all respects without any requirement of further action by the directors of the Debtor
7 or the Reorganized Debtor.

8 **D. The Reorganized Debtor.**

9 **1. Directors and Officers.**

10 As of the Effective Date, the individuals identified on the List of Directors and Officers for
11 the Reorganized Debtor shall serve as the directors and officers of the Reorganized Debtor, in
12 accordance with the Amended Articles of Incorporation and Bylaws. The List of Directors and
13 Officers for Reorganized Debtor will be filed on or before the Exhibit Filing Date, and upon such
14 filing shall become Exhibit B to the Plan (subject to any modifications made prior to the
15 Confirmation Date).

16 **2. Amended Articles of Incorporation and Bylaws.**

17 The Amended Articles of Incorporation and Bylaws of the Reorganized Debtor shall
18 prohibit the issuance of non-voting equity securities as required by Bankruptcy Code section
19 1123(a)(6).

20 **3. Change of Corporate Name/Preservation of Charitable Status.**

21 Following the Effective Date, the Reorganized Debtor may modify its corporate name.
22 Further, following the Effective Date, the Reorganized Debtor intends to make such filings as are
23 necessary and appropriate to modify the basis on which it is entitled to treatment as a charitable
24 entity under section 501(c)(3) of the Internal Revenue Code, to comport with the changes in its
25 operations since it was first granted such status.

26 **E. Exculpation Regarding Solicitation and Prosecution of Plan Confirmation.**

27 None of the Debtor, the Estate, the Reorganized Debtor, the Creditors' Committee, the
28 Agent, the Lenders or any of the foregoing parties' respective members, officers, directors,

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1 employees, advisors, professionals or agents shall have or incur any liability to any holder of a
2 Claim for any act or omission occurring on or after the Petition Date in connection with, related to,
3 or arising out of the Case, the pursuit of confirmation of the Plan, the consummation or
4 administration of the Plan, or property to be distributed under the Plan, except for willful
5 misconduct, and in all respects, the Debtor, the Estate, the Reorganized Debtor, the Creditors'
6 Committee, the Agent, the Lenders or any of the foregoing parties' respective members, officers,
7 directors, employees, advisors, professionals or agents shall be entitled to rely on the advice of
8 their respective counsel with respect to their duties and responsibilities in connection with the
9 Case and the Plan.

10 **1. Dissolution of Creditors' Committee.**

11 Upon the Effective Date, the Creditors' Committee shall be released and discharged from
12 the rights and duties arising from or related to the Case, except with respect to final applications
13 for professionals' compensation. The professionals retained by the Creditors' Committee and the
14 members thereof shall not be entitled to compensation or reimbursement of expenses for any
15 services rendered or expenses incurred after the Effective Date, except for services rendered and
16 expenses incurred in connection with any applications by such professionals or Creditors'
17 Committee members for allowance of compensation and reimbursement of expenses pending on
18 the Effective Date or timely Filed after the Effective Date as provided in the Plan, to the extent the
19 same may be approved by the Court.

20 **2. Exemption from Certain Transfer Taxes.**

21 In accordance with Bankruptcy Code section 1146(c), the issuance, transfer or exchange of
22 a security, or the making or delivery of an instrument of transfer under the Plan with respect to any
23 and all property may not be taxed under any law imposing a stamp tax or similar tax. The
24 Confirmation Order shall direct all governmental officials and agents to forego the assessment and
25 collection of any such tax or governmental assessment and to accept for filing and recordation any
26 of the foregoing instruments or other documents without payment of such tax or other
27 governmental assessment.

28

1 **3. Modification of the Plan.**

2 Subject to the restrictions set forth in Bankruptcy Code section 1127, the Debtor reserves
3 the right to alter, amend, or modify the Plan before its substantial consummation.

4 **F. Effect of Confirmation of the Plan.**

5 **1. Discharge and Injunction.**

6 **The rights afforded in the Plan and the treatment of all Claims shall be in exchange**
7 **for and in complete satisfaction, discharge, and release of all Claims of any nature**
8 **whatsoever arising prior to the Effective Date against the Debtor and the Estate, including**
9 **any interest accrued on such Claims from and after the Petition Date.**

10 **Except as otherwise provided in the Plan or the Confirmation Order, on the Effective**
11 **Date, (a) the Debtor, the Estate, the Reorganized Debtor and their respective property are**
12 **discharged and released hereunder to the fullest extent permitted by Bankruptcy Code**
13 **sections 524 and 1141 from all Claims and rights against them that arose before the Effective**
14 **Date, including all debts, obligations, demands, and liabilities, and all debts of the kind**
15 **specified in Bankruptcy Code sections 502(g), 502(h), or 502(i), regardless of whether or not**
16 **(i) a proof of Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such**
17 **debt is allowed pursuant to Bankruptcy Code section 502, or (iii) the holder of a Claim based**
18 **on such debt has or has not accepted the Plan; (b) any judgment underlying a Claim**
19 **discharged hereunder is void; and (c) all entities are precluded from asserting against the**
20 **Debtor, the Estate, the Reorganized Debtor and their respective property, any Claims or**
21 **rights based upon any act or omission, transaction, or other activity of any kind or nature**
22 **that occurred prior to the Effective Date.**

23 **Except as otherwise provided in the Plan or the Confirmation Order, on and after the**
24 **Effective Date, all entities who have held, currently hold, or may hold a Claim, against the**
25 **Debtor, the Estate, or the Reorganized Debtor, that is based upon any act or omission,**
26 **transaction, or other activity of any kind or nature that occurred prior to the Effective Date,**
27 **that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged**
28 **pursuant to the Plan, are permanently enjoined from taking any of the following actions on**

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1 account of any such discharged Claim, (the “Permanent Injunction”): (a) commencing or
2 continuing in any manner any action or other proceeding against the Debtor, the Estate, the
3 Reorganized Debtor, or their respective property that is inconsistent with the Plan or the
4 Confirmation Order; (b) enforcing, attaching, collecting, or recovering in any manner any
5 judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor or
6 their respective property, other than as expressly permitted under the Plan; (c) creating,
7 perfecting, or enforcing any lien or encumbrance against property of the Debtor, the Estate,
8 or the Reorganized Debtor, other than as expressly permitted under the Plan; and (d)
9 commencing or continuing any action, in any manner, in any place that does not comply
10 with or is inconsistent with the provisions of the Plan, the Confirmation Order, or the
11 discharge provisions of Bankruptcy Code section 1141. Any person or entity injured by any
12 willful violation of such Permanent Injunction shall recover actual damages, including costs
13 and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages, from
14 the willful violator.

15 2. Estate Release.

16 As of the Effective Date, the Debtor (on behalf of itself and the Estate) releases and
17 forever waives and discharges as against the Released Parties, all Claims, actions, costs,
18 causes of action, damages, demands, debts, expenses (including attorneys’ fees), judgments,
19 losses (including any claims for contribution or indemnification), liabilities, obligations,
20 rights, or suits, whether past or present, liquidated or unliquidated, fixed or contingent,
21 matured or unmatured, known or unknown, foreseen or unforeseen, then existing or
22 thereafter arising, in law, equity or otherwise that are based in whole or part on any act,
23 omission, transaction, event or other occurrence taking place on or prior to the Effective
24 Date relating in any way to the Debtor or the Case, including causes of action under chapter
25 5 of the Bankruptcy Code that are not Preserved Avoidance Actions; provided, however,
26 that the foregoing shall not effectuate a release of any obligation of such parties: (1) arising
27 under the agreements relating to the UCSD Sale, the Plan (including the Research Building
28 Note and any document relating thereto), or the Confirmation Order, any other contract or

1 lease entered into postpetition by the Debtor and/or the Estate, and any executory contract
2 or unexpired lease of the Debtor that has been assumed during the Case or that will be
3 assumed pursuant to the Plan, or (2) under the Engelstad Endowment Agreement, the
4 Engelstad Endowment Escrow Agreement, the Donations Escrow Agreement, the Saffer
5 Endowment Agreement or any other agreement governing Charitable Trust Funds;
6 provided further, that the foregoing release shall not preclude the Creditor Trust from
7 asserting a Claim or cause of action of the Debtor or the Estate as a defense to and/or offset
8 against a Class 4 Claim asserted by a Released Party. The releases set forth in this
9 paragraph shall be binding upon the Reorganized Debtor, the Creditor Trust, and any
10 chapter 7 trustee, if the Case is at any time converted to chapter 7.

11 Under the Plan, "Released Parties" means each of (1) the Agent, the Lenders, current and
12 former donors to the Debtor (in their capacity as donors), employees, officers and directors of the
13 Debtor as of January 30, 2012, Stephen Cloobek, and Robert Melendres, and (2) as applicable,
14 their respective accountants, affiliates, agents, assigns, attorneys, bankers, consultants, directors,
15 financial advisors, heirs, members, officers, parent entities, partners, representatives, shareholders,
16 subsidiaries, and successors, provided, however, that the parties listed on Exhibit F (and their
17 respective accountants, affiliates, agents, assigns, attorneys, bankers, consultants, directors,
18 financial advisors, heirs, members, officers, parent entities, partners, representatives, shareholders,
19 subsidiaries, and successors) shall not constitute "Released Parties." Mr. Cloobek and Mr.
20 Melendres are past directors of the Debtor who have played an important ongoing role in the
21 debtor's fundraising efforts.

22 3. Payment of U.S. Trustee Fees.

23 The Reorganized Debtor shall pay all U.S. Trustee Fees due and owing under 28 U.S.C. §
24 1930 until such time as it moves for entry of a final decree and the Court enters such a decree;
25 provided, however, that if the Creditor Trust opposes such motion, the Creditor Trust thereafter
26 shall bear the cost of any and all U.S. Trustee Fees until the Court enters a final decree closing the
27 Case. Notwithstanding LR 3022, the Clerk shall enter a final decree in the Case only upon an
28 Order of the Court following the Filing of a properly noticed motion.

4. Retention of Jurisdiction.

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Court shall retain jurisdiction over the Case after the Effective Date to the fullest extent provided by law, as more particularly set forth in Section VII.D of the Plan.

X.

FEASIBILITY

The Bankruptcy Code provides that a plan may only be confirmed if confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor, unless such liquidation or reorganization is proposed in the Plan. 11 U.S.C. § 1129(a)(11). This is referred to as the “feasibility” requirement.

Following the Effective Date, the Reorganized Debtor will have discrete financial obligations. Specifically, the Reorganized Debtor will be required to meet its remaining Philanthropic Commitment to UCSD, pay the costs of maintaining the Research Building, the Vacant Land, and the Alta-Hualapai Parcel, make the specified amortization payments to the Lenders under the Research Building Note, and pay the salary of the administrative employee that will assist the Reorganized Debtor with its fundraising and other activities. As set forth in the annual projected budget for Reorganized Debtor attached hereto as Exhibit 5 (the “Annual Projected Budget”) the total cost of these obligations (other than the Philanthropic Commitment) is expected to be approximately \$925,000 each year.¹⁷

The Reorganized Debtor will have ample sources of funding with which to meet its obligations under both the Philanthropic Commitment and the Annual Projected Budget. The Reorganized Debtor intends for fundraising and charitable donations to be the primary source of funding for these obligations. The Debtor expects to have obtained fundraising commitments as

¹⁷ If, at any point in time, the Research Building and/or Vacant Land are no longer owned by the Reorganized Debtor, the Reorganized Debtor will not be required to fund the carrying costs of preserving those assets, although the Reorganized Debtor will continue as a nonprofit corporation dedicated to raising funds and generating support for and otherwise advancing its philanthropic objectives.

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1 of the Effective Date sufficient to fund at least one year of the Annual Projected Budget.
2 Additionally, the Debtor already has procured the commitment of the \$15 million Engelstad
3 Endowment Fund, which is now in escrow, to provide a financial backstop for a substantial
4 portion of the Philanthropic Commitment, as set forth in the Funding Agreement.

5 Under these circumstances, the Plan is not likely to be followed by the liquidation or the
6 need for further financial reorganization of the Reorganized Debtor. As a result, the Plan satisfies
7 the feasibility requirement set forth in Bankruptcy Code section 1129.

8 **XI.**

9 **LIQUIDATION ANALYSIS/BEST INTERESTS TEST**

10 Bankruptcy Code section 1129(a)(7) requires that each holder of a Claim against the
11 Debtor in an impaired Class either (i) vote to accept the Plan, or (ii) receive or retain under the
12 Plan cash or property of a value, as of the effective date of the Plan, that is not less than the value
13 such holder would receive or retain if the Debtor were liquidated under chapter 7 of the
14 Bankruptcy Code. This is commonly referred to as the “Best Interests Test.”

15 In a chapter 7 case, a trustee or trustees would be elected or appointed to liquidate the
16 debtor’s assets and make distributions to creditors in accordance with the priorities set forth in the
17 Bankruptcy Code. Secured creditors generally are paid from the proceeds of sale of the properties
18 securing their liens. If any assets are remaining after the satisfaction of secured claims,
19 administrative expenses generally are next to receive payments. Unsecured claims are paid from
20 any remaining sales proceeds or other estate assets, according to their rights to priority.
21 Unsecured claims with the same right to priority receive a pro rata distribution based on the
22 amount of their allowed claim in relation to the total amount of allowed unsecured claims with the
23 same right to priority. Finally, interest holders (if any) receive the balance that remains, if any,
24 after all creditors are paid.

25 Thus, for the Court to confirm the Plan, the Court must find that all creditors in impaired
26 Classes who do not accept the Plan will receive at least as much under the Plan as such creditors
27 would receive under a hypothetical chapter 7 liquidation.

28

1 The Debtor prepared the liquidation analysis attached hereto as Exhibit 6, reflecting the
2 estimated cash proceeds, net of liquidation-related costs, that would be realized if the Debtor was
3 liquidated in accordance with chapter 7 of the Bankruptcy Code. The liquidation analysis projects
4 that, under any scenario, all creditors would receive substantially less (or nothing) if the Debtor
5 were to be liquidated under chapter 7 of the Bankruptcy Code. Even under the best-case scenario,
6 which assumes the highest recoveries from the liquidation of the assets of the Estate, the proceeds
7 of these assets would go solely to satisfy the Lender Secured Debt, administrative expenses and
8 priority claims. Accordingly, all of the Debtor's creditors will receive at least as much under the
9 Plan as they would receive in a chapter 7 liquidation.

10 **THE LIQUIDATION ANALYSIS, INCLUDING THE CLAIMS ESTIMATES, WAS**
11 **PREPARED SOLELY TO ASSIST THE COURT IN MAKING THE FINDINGS**
12 **REQUIRED UNDER SECTION 1129(a)(7) OF THE BANKRUPTCY CODE AND MAY**
13 **NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.**

14 **THE DEBTOR BELIEVES THAT ANY ANALYSIS OF A HYPOTHETICAL**
15 **LIQUIDATION REQUIRES ESTIMATES AND ASSUMPTIONS ABOUT FUTURE**
16 **EVENTS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT ECONOMIC,**
17 **COMPETITIVE AND OPERATIONAL UNCERTAINTIES AND CONTINGENCIES**
18 **BEYOND THE CONTROL OF THE DEBTOR OR A CHAPTER 7 TRUSTEE. NEITHER**
19 **THE LIQUIDATION ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH**
20 **IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT**
21 **ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE**
22 **AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THERE CAN BE**
23 **NO ASSURANCE THAT ACTUAL RESULTS WOULD NOT VARY MATERIALLY**
24 **FROM THE HYPOTHETICAL RESULTS REPRESENTED IN THE LIQUIDATION**
25 **ANALYSIS.**

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XII.
RISK FACTORS

The Debtor’s ability to perform its obligations under the Plan is subject to various factors and contingencies, some of which are described in this section. The following discussion summarizes only some material risks associated with the Plan and the Reorganized Debtor, and is not exhaustive. Moreover, this section should be read in connection with the Plan and the other disclosures contained in this Disclosure Statement.

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PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR THAT ARE IMPAIRED SHOULD, WITH THEIR ADVISORS, READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT AND THE PLAN.

A. Bankruptcy Considerations.

1. Parties in Interest May Object to the Debtor’s Classification of Claims.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim in a particular class only if the claim is substantially similar to the other claims in that class. The Debtor believes that the classification of holders of Claims against the Debtor under the Plan complies with the requirements set forth in the Bankruptcy Code because the classes established under the Plan each encompass Claims that are substantially similar to similarly classified Claims. Nevertheless, there can be no assurance that the Court will reach the same conclusion.

2. Failure to Secure Confirmation of the Plan.

Bankruptcy Code section 1129 sets forth the requirements for confirmation of a chapter 11 plan, and requires the Court to make a series of specified, independent findings. There can be no assurance that the Court will find that the Plan meets these requirements and confirm the Plan. If the Plan is not confirmed, it is unclear what distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

The Plan may be modified as necessary for confirmation of the Plan. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

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1 **3. Non-Consensual Confirmation.**

2 In the event that any impaired class of claims does not accept a chapter 11 plan, the Court
3 may nevertheless confirm the plan under the procedure for non-consensual confirmation described
4 in Section V of this Disclosure Statement. The Debtor believes that the Plan would satisfy the
5 requirements for non-consensual confirmation. Nevertheless, there can be no assurance that the
6 Court will reach this conclusion.

7 **4. The Debtor May Object to the Amount or Classification of a Claim.**

8 Except as otherwise provided in the Plan, the Debtor, the Reorganized Debtor and the
9 Creditor Trust reserve the right to object to the amount or classification of any Claim against the
10 Debtor. The estimates set forth in this Disclosure Statement cannot be relied on by any holder of a
11 Claim against the Debtor.

12 **5. The Effective Date Might Not Occur.**

13 Even if the Court confirms the Plan, the Plan shall not become binding until the Effective
14 Date occurs. The Effective Date is the first Business Day on which the conditions set forth in
15 Section IV.L.1 of the Plan have been satisfied or waived by the Debtor and on which no stay of
16 the Confirmation Order is in effect. There can be no assurances as to whether or when the
17 Effective Date will occur.

18 **B. Risks Associated with the Reorganized Debtor.**

19 In addition to fundraising in support of UCSD, the Reorganized Debtor will have various
20 financial responsibilities after the Effective Date, including yearly amortization payments on the
21 Research Building Note, maintenance of the Research Building, the Vacant Land and the Alta-
22 Hualapai parcel, including insurance and taxes for these properties, and ultimately, repayment of
23 the Research Building Note. The Debtor expects to have obtained fundraising commitments as of
24 the Effective Date that will fund at least one year of the Annual Projected Budget for the
25 Reorganized Debtor, but there is no assurance that the Reorganized Debtor will be able to meet its
26 obligations thereafter.

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1 **C. Risks Associated with the Creditor Trust.**

2 As discussed herein, the Creditor Trust will be vested on the Effective Date with the
3 Preserved Avoidance Actions, the Preserved Actions, and other potential Claims and causes of
4 action, including any Trust Funds Challenge regarding Donor Restricted Funds or “Charitable
5 Trust Funds.” There is no assurance that the Creditor Trust will pursue or recognize a meaningful
6 recovery from any of these Claims or causes of actions.¹⁸

7 **XIII.**

8 **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

9 **A. Liquidation Under Chapter 7.**

10 If no plan of reorganization can be confirmed, the Case may be converted to a case under
11 chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to
12 liquidate the Debtor’s assets for distribution in accordance with the priorities established by the
13 Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the
14 recoveries of the holders of Claims against the Debtor is set forth in Section XI above and in the
15 liquidation analysis attached hereto as Exhibit 6.

16 As noted above and in the Liquidation Analysis, the Debtor believes that in a liquidation
17 under chapter 7, there would likely be no assets available to distribute to the holders of Allowed
18 General Unsecured Claims.

19 **B. Alternative Plan of Reorganization.**

20 If the Plan is not confirmed, the Debtor (or any other party in interest) could attempt to
21 formulate a different plan. Such a plan might involve a reorganization, or an orderly liquidation
22 of the Debtor’s remaining assets. Before and during the course of negotiations with the Agent, the
23 Lenders, and UCSD, and in consultation with its professionals, the Debtor explored various
24 alternatives. The Debtor believes that the Plan enables creditors to realize the most value under
25 the circumstances.

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28 ¹⁸ As indicated above, the Debtor believes that any Trust Funds Challenge will be unsuccessful.

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XIV.**TAX CONSEQUENCES OF PLAN**

The following is a summary of certain anticipated U.S. federal income tax consequences of the Plan to the Debtor, the Reorganized Debtor and certain holders of Claims against the Debtor that are entitled to vote to accept or reject the Plan. This summary is provided for informational purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations thereunder, and administrative and judicial interpretations and practice, all as in effect on the date hereof and all of which are subject to change, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. In addition, a substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement, including changes in law and changes in administrative positions, could affect the U.S. federal tax consequences of the Plan. No opinion of counsel has been obtained, and the Debtor and Reorganized Debtor do not intend to seek a ruling from the Internal Revenue Service ("IRS") as to any of such tax consequences, and there can be no assurance that the IRS will not challenge one or more of the tax consequences of the Plan described below.

This summary does not apply to holders of Claims that are not United States persons for U.S. federal income tax purposes or that are otherwise subject to special treatment under U.S. federal income tax law. This summary does not purport to cover all aspects of U.S. federal income taxation that may apply to the Debtor, the Reorganized Debtor and holders of Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under state, local or foreign tax law.

The following summary is not a substitute for careful tax planning and advice based on the particular circumstances of each creditor. All creditors are urged to consult their own tax advisors as to the U.S. federal income tax consequences, as well as any applicable state, local and foreign tax consequences, of the Plan.

1 **To ensure compliance with requirements imposed by the IRS, you must be informed**
2 **that any tax advice contained in this Disclosure Statement is not intended or written to be**
3 **used, and cannot be used, by any taxpayer for the purpose of avoiding tax-related penalties**
4 **under the Code. The tax advice contained in this Disclosure Statement was written to**
5 **support the promotion of the transactions described in this Disclosure Statement. Each**
6 **taxpayer should seek advice based on the taxpayer’s particular circumstances from an**
7 **independent tax advisor.**

8 **A. Certain U.S. Federal Income Tax Consequences of the Plan to the Debtor, the**
9 **Reorganized Debtor and Certain Holders of Claims.**

10 **1. Cancellation of Debt.**

11 The net proceeds from the UCSD Sale (the “UCSD Sale Proceeds”) were paid to the Agent
12 for the benefit of the Agent and Lenders in accordance with the Prepetition Credit Agreement, and
13 this payment reduced the debt (the “Existing Lender Debt”) under the Credit Agreement. In
14 addition, on the Effective Date, the Reorganized Debtor will issue to the Agent, for the benefit of
15 the Agent and Lenders, the Research Building Note. Whether the Research Building Note will
16 constitute a debt for U.S. federal income tax purposes will be determined based on all of the
17 relevant facts and circumstances. Some of the significant factors that courts have relied upon in
18 making a determination of whether an instrument is a debt for U.S. federal income tax purposes
19 are: (i) repayment terms, (ii) debt/equity ratio of the debtor, (iii) identity of the debt holders, (iv)
20 remedies of the debt holders, (v) the degree of subordination, (vi) convertibility, (vii) management
21 control, (viii) intention of the parties and (ix) similarity to independent creditor loans. The
22 following discussion assumes that, with respect to the Research Building Note, the parties intend
23 to create a debtor-creditor relationship and that the Research Building Note will be treated as debt
24 for U.S. federal income tax purposes. In addition, the following discussion assumes that the
25 Research Building and the Vacant Land will be: (a) treated as owned by the Reorganized Debtor
26 for U.S. federal income tax purposes and (b) used by the Reorganized Debtor in furtherance of its
27 tax-exempt purposes. The IRS is not bound by any position taken by the Debtor and/or the
28 Reorganized Debtor, and may characterize the Research Building Note, in whole or in part, as an

1 interest in property other than a debt instrument. Holders of the Research Building Note, including
2 holders that are foreign persons or tax-exempt entities should consult their own tax advisors
3 regarding the characterization of the Research Building Note for U.S. federal income tax purposes.

4 Ordinarily, the Debtor and/or Reorganized Debtor would recognize cancellation of debt
5 income (“CODI”) in an amount equal to the excess of: (i) the amount owed under the Existing
6 Lender Debt over (ii) the sum of the UCSD Sale Proceeds and the issue price of the Research
7 Building Note. However, because the Debtor and the Reorganized Debtor are, and are expected to
8 be, tax-exempt organizations under Code § 501(c)(3), the Debtor and the Reorganized Debtor
9 should not recognize CODI.

10 In addition, any other debts of the Debtor and the Reorganized Debtor that are satisfied
11 under the Plan and would otherwise give rise to CODI should not result in CODI to the Debtor
12 and/or the Reorganized Debtor because of their tax-exempt status.

13 **2. The UCSD Sale.**

14 Ordinarily, gain or loss would be recognized by the Debtor in an amount equal to the
15 difference between the UCSD Sale Proceeds and the Debtor’s adjusted tax basis in the property
16 sold pursuant to the UCSD Sale. However, because the Debtor is a tax-exempt organization under
17 Code § 501(c)(3), no gain or loss should be recognized by the Debtor in connection with the
18 UCSD Sale. In addition, because substantially all of the Debtor’s use of the Flagship Building and
19 other property sold in the UCSD Sale were in furtherance of its tax-exempt purposes, the income
20 generated by the UCSD Sale (if any) will not be treated as taxable unrelated business or debt-
21 financed income to the Debtor.

22 **B. Certain U.S. Federal Income Tax Consequences of the Plan to the Holders of Claims.**

23 **1. General.**

24 The federal income tax consequences of the Plan to a holder of a Claim against the Debtor
25 will depend, in part, on whether the Claim constitutes a “tax security” for federal income tax
26 purposes, what type of consideration was received in exchange for the Claim, whether the holder
27 reports income on the accrual or cash basis, whether the holder has taken a bad debt deduction or
28

1 worthless security deduction with respect to the Claim and whether the holder receives
2 distributions under the Plan in more than one taxable year.

3 **2. Definition of Securities.**

4 There is no precise definition of the term “security” under the federal income tax law.
5 Rather, all facts and circumstances pertaining to the origin and character of a Claim are relevant in
6 determining whether it is a security. Most authorities have held that the length of the term of a
7 debt instrument is an important factor in determining whether such instrument is a security for
8 U.S. federal income tax purposes. Generally, corporate debt instruments with maturities when
9 issued of less than five years are not considered securities, and corporate debt instruments with
10 maturities when issued of ten years or more are considered securities. The term of the Credit
11 Agreement was three years and, generally, a loan made thereunder would not be considered a
12 security for U.S. federal income tax purposes. The following discussion assumes that none of the
13 Claims against the Debtor are a security for U.S. federal income tax purposes. Holders of Claims
14 are urged to consult their tax advisors with respect to the possible treatment of their Claims as tax
15 securities.

16 **3. Holders of Claims not Constituting Tax Securities.**

17 Subject to reporting under the installment method, a holder of a Claim not constituting a
18 tax security should recognize gain or loss equal to the amount realized in satisfaction of the Claim
19 minus the holder’s tax basis in the Claim. The holder’s amount realized for this purpose generally
20 will equal the sum of cash and the fair market value of other property received (or the issue price
21 of the Research Building Note), if any, on the date of distribution by the Reorganized Debtor, less
22 any amount allocable to interest on the holder’s Claim. For a discussion of the issue price of the
23 Research Building Note, see “Original Issue Discount” below.

24 The holders of the Allowed Class 4 Claims will be the beneficiaries of the Creditor Trust
25 and will be entitled to distributions from the Creditor Trust in accordance with the Creditor Trust
26 Agreement. The Creditor Trust is intended to qualify as, and the discussion below assumes that
27 the Creditor Trust will be respected as, a liquidating trust for U.S. federal income tax purposes. In
28 general, a liquidating trust is not a separate taxable entity for U.S. federal income tax purposes, but

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1 is instead treated as a grantor trust, *i.e.*, a pass-through entity. For U.S. federal income tax
2 purposes, all parties (including the Debtor, the Reorganized Debtor, the Creditor Trustee and the
3 Creditor Trust beneficiaries) must treat the transfer of the Creditor Trust Assets to the Creditor
4 Trust as a transfer of such assets directly to the Creditor Trust beneficiaries, followed by the
5 beneficiaries' transfer of such assets to the Creditor Trust. Consistent therewith, all parties must
6 treat the Creditor Trust as a grantor trust of which the Creditor Trust beneficiaries are the owners
7 and grantors. Subject to the terms of the Creditor Trust Agreement, the Creditor Trustee will
8 determine the fair market value of the Creditor Trust Assets, as soon as possible after the Effective
9 Date, and the Creditor Trust beneficiaries and the Creditor Trustee must consistently use this
10 valuation for all U.S. federal income tax purposes, including for determining gain, loss or tax
11 basis. Assuming the Creditor Trust qualifies as a liquidating trust for U.S. federal income tax
12 purposes, each Creditor Trust beneficiary generally should be required to report on the
13 beneficiary's U.S. federal income tax return its allocable share of any income, gain, loss,
14 deduction or credit, recognized or incurred by the Creditor Trust, in accordance with such
15 beneficiary's relative beneficial interest in the trust. The character of the items of income, gain,
16 loss, deduction or credit to any Creditor Trust beneficiary, and such beneficiary's ability to benefit
17 from any deductions or losses, may depend on such beneficiary's particular situation.

18 Any gain or loss recognized by a holder of a Claim not constituting a tax security will be
19 capital or ordinary depending on the status of the Claim in the holder's hands. A holder's tax
20 basis in the Research Building Note should be the issue price of the Research Building Note on the
21 date of distribution by the Reorganized Debtor. The holding period for any property received
22 under the Plan by a holder of a Claim not constituting a tax security generally should begin on the
23 day following the day of receipt.

24 **4. Original Issue Discount and Contingent Payment.**

25 The Research Building Note will be treated as issued with original issue discount ("OID")
26 to the extent that its "stated redemption price at maturity" exceeds its "issue price."

27 An instrument's stated redemption price at maturity includes all payments required to be
28 made over the term of the instrument other than payments of "qualified stated interest," defined as

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1 interest payments required to be made at fixed periodic intervals of one year or less. Because the
2 Research Building Note is non-interest bearing and will not be publicly traded on an established
3 securities market, the issue price of this note will be its imputed principal amount. The Research
4 Building Note's imputed principal amount will be the sum of the present values of all payments
5 due under the note, determined as of the date of its issuance, using a discount rate equal to the
6 applicable federal rate, compounded semi-annually.

7 A holder of a debt instrument that bears OID is required to include in gross income an
8 amount equal to the sum of the daily portions of OID for each day during the taxable year in
9 which the debt instrument is held. The daily portions of OID are determined by allocating to each
10 day in an accrual period the prorata portion of the OID that is considered allocable to the accrual
11 period. The amount of OID that is allocable to an accrual period is generally equal to the product
12 of the adjusted issue price of the debt instrument at the beginning of the accrual period (the issue
13 price of the debt instrument increased by prior accruals of OID and decreased by prior cash
14 payments) and the debt instrument's yield-to-maturity (the discount rate which, when applied to
15 all payments under the debt instrument, results in a present value equal to the issue price of the
16 debt instrument).

17 The general effect of the OID rules is that holders may be required to include OID in
18 income in advance of the receipt of cash in respect of such income.

19 The Plan provides that if the Research Building and/or the Vacant Land are sold and there
20 is Excess Consideration, the Reorganized Debtor will pay 80% of the Excess Consideration to the
21 Agent for the benefit of the Agent and Lenders (the "Contingent Payment"). Assuming that the
22 Contingent Payment is made pursuant to the Research Building Note, part of the Contingent
23 Payment will be treated as a payment of principal and part of the payment will be treated as
24 interest for U.S. federal income tax purposes.

25 Under Treasury Regulation Section 1.1275-4(c), the portion of the Contingent Payment
26 that will be allocated to principal will be an amount equal to the present value of the Contingent
27 Payment determined by discounting the Contingent Payment from the date it was made to the
28 issue date of the Research Building Note at the applicable federal rate that would apply to a debt

1 instrument that was issued on the Research Building Note's issue date (*i.e.* the Effective Date) and
2 that matures on the date that the Contingent Payment is made. The remaining portion of the
3 Contingent Payment that is not allocated to principal will be treated as a payment of interest and
4 will be includable in gross income by the holder of the Research Building Note in the taxable year
5 in which the payment is made. Holders of the Research Building Note are urged to consult their
6 tax advisors with respect to the tax consequences of any disposition of the Research Building
7 Note.

8 **5. Accrued Interest**

9 To the extent that any amount received by a holder of a surrendered Allowed Claim under
10 the Plan is attributable to accrued but unpaid interest and such amount has not previously been
11 included in the holder's gross income, such amount should be taxable to the holder as ordinary
12 interest income. Conversely, a holder of a surrendered Allowed Claim may be able to recognize a
13 deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that
14 any accrued interest on the debt instruments constituting such Claim was previously included in
15 the holder's gross income but was not paid in full by the Debtor and/or Reorganized Debtor. Such
16 loss may be ordinary, but the tax law is unclear on this point.

17 The extent to which the consideration received by a holder of a surrendered Allowed Claim
18 will be attributable to accrued interest on the debts constituting the surrendered Allowed Claim is
19 unclear. Certain U.S. Treasury Regulations generally treat a payment under a debt instrument first
20 as a payment of accrued and untaxed interest and then as a payment of principal. Application of
21 this rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is
22 unclear. Pursuant to the Plan, distributions in respect of Allowed Claims will be allocated first to
23 the principal amount of such Allowed Claims (as determined for U.S. federal income tax
24 purposes) and thereafter, to the remaining portion of such Allowed Claims, if any. However, the
25 provisions of the Plan are not binding on the IRS nor a court with respect to the appropriate tax
26 treatment for creditors.

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1 **C. Bad Debt and/or Worthless Securities Deduction.**

2 A holder who, under the Plan, receives in respect of a Claim an amount less than the
3 holder's tax basis in the Claim may be entitled in the year of receipt (or in an earlier year) to a bad
4 debt deduction in some amount under Code § 166(a) or a worthless securities deduction under
5 Code § 165(g). The rules governing the character, timing and amount of the bad debt and/or
6 worthless securities deductions place considerable emphasis on the facts and circumstances of the
7 holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of
8 Claims against the Debtor, therefore, are urged to consult their tax advisors with respect to their
9 ability to take such a deduction.

10 **D. Information Reporting and Backup Withholding.**

11 All distributions under the Plan will be subject to applicable federal income tax reporting
12 and withholding. The Code imposes "backup" withholding on certain "reportable" payments to
13 certain taxpayers, including payments of interest. Under the Code's backup withholding rules, a
14 holder of a Claim may be subject to backup withholding with respect to distributions or payments
15 made pursuant to the Plan, unless the holder: (i) comes within certain exempt categories (which
16 generally include corporations) and, when required, demonstrates this fact or (ii) provides a
17 correct taxpayer identification number and certifies under penalty of perjury that the taxpayer
18 identification number is correct and that the taxpayer is not subject to backup withholding because
19 of a failure to report all dividend and interest income. Backup withholding is not an additional
20 tax, but merely an advance payment that may be refunded to the extent it results in an
21 overpayment of tax. A holder of a Claim may be required to establish an exemption from backup
22 withholding or to make arrangements with respect to the payment of backup withholding.

23 **E. Importance of Obtaining Professional Tax Assistance.**

24 THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF
25 CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A
26 SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE
27 ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX
28 ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY

1 VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES.
2 ACCORDINGLY, ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR
3 TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND
4 OTHER TAX CONSEQUENCES OF THE PLAN.

5 **XV.**

6 **RECOMMENDATION AND CONCLUSION**

7 The Debtor and the Creditors' Committee believe that Plan confirmation and
8 implementation are preferable to any feasible alternative. **Accordingly, the Debtor and the**
9 **Creditors' Committee urge entities who hold impaired Claims to vote to accept the Plan by**
10 **checking the box marked "Accept" on their Ballots and then returning the Ballots as**
11 **directed in the Plan and Disclosure Statement.**

12 DATED: January 31, 2012

NEVADA CANCER INSTITUTE, a Nevada
nonprofit corporation

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16

By: George D. Pillari
Its: President and Chief Restructuring Officer

17
18 SUBMITTED BY:

19 /s/ Courtney E. Pozmantier (Admitted Pro Hac Vice)

20 Michael L. Tuchin
21 Martin R. Barash
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Exhibit 4

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~~Proposed~~ Reorganization Co-Counsel for the Debtor and Debtor in Possession

~~Proposed~~ Reorganization Counsel for the Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re
NEVADA CANCER INSTITUTE, a Nevada
nonprofit corporation,¹
Debtor.

Case No. 2:11-bk-28676 (MKN)
Chapter 11

**[PROPOSED] DISCLOSURE STATEMENT
DESCRIBING AMENDED CHAPTER 11
PLAN OF REORGANIZATION FOR
NEVADA CANCER INSTITUTE (DATED
~~DECEMBER 6, 2011~~ JANUARY 31, 2012)**

Disclosure Statement Hearing

Hearing Date: ~~TBD~~ February 3, 2012
Hearing Time: ~~TBD~~ 11:00 a.m.
Place: Courtroom 2 (3rd Floor)
Foley Federal Building
300 Las Vegas Blvd. South
Las Vegas, NV 89101

Plan Confirmation Hearing

Hearing Date: TBD
Hearing Time: TBD
Place: Courtroom 2 (3rd Floor)

¹ The Debtor's address and last four digits of its Federal Tax I.D. are: One Breakthrough Way, Las Vegas, NV 89135 [EIN XX-XXX2553].

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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
1	Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated December 6, 2011 January 31, 2012)
2	Pending Prepetition Lawsuits
3	Plan Support Agreement
4	Preserved Avoidance Actions
5	Annual Projected Budget for Reorganized Debtor
6	Liquidation Analysis

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SUMMARY INFORMATION²

Debtor: Nevada Cancer Institute, a Nevada nonprofit corporation

Recommendation: **The Debtor ~~recommends~~ and the Creditors' Committee recommend that you vote in favor of the Plan.**

Vote Required to Accept the Plan: Acceptance of the Plan requires the affirmative vote of two-thirds in amount and a majority in number of the Allowed Claims actually voted in each Class of impaired Claims entitled to vote. Only entities holding Claims in Classes 1 and 4 are impaired and therefore entitled to vote. If any of these Classes rejects the Plan, however, the Court nevertheless may confirm the Plan if the "cramdown" requirements of Bankruptcy Code section 1129(b) are satisfied with respect to such Class.

Voting Information: If you are entitled to vote, you should have received a Ballot with this Disclosure Statement: After completing and signing your Ballot, you should return it to:

Klee, Tuchin, Bogdanoff & Stern LLP
Attn: Shanda Dahl
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067

For your Ballot to be counted, the Ballot Tabulator must receive it not later than 5:00 p.m. Pacific time on [_____], 2012.

Confirmation Hearing: The Confirmation Hearing will be held on [_____], 2012 at ____:____.m. Pacific time. The Confirmation Hearing may be continued from time to time without further notice. Pursuant to LR 3019, the Court may consider modifications to the Plan at the Confirmation Hearing, which may be incorporated in the Confirmation Order.

Treatment of Claims: The treatment that creditors will receive if the Court confirms the Plan is set forth in the Plan and summarized in Section IX of this Disclosure Statement. The terms of the Plan are controlling, and all creditors and interested parties are urged to read the Plan in its entirety.

² Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated ~~December 6, 2011~~ January 31, 2012) (the "Plan"), a true and correct copy of which is attached hereto as Exhibit 1. The Plan, once confirmed, is the legally binding document regarding the treatment of Claims against the Debtor and the terms and conditions of the Debtor's reorganization. Accordingly, to the extent that there is any inconsistency between the terms contained herein and those contained in the Plan, the terms of the Plan will govern.

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The Effective Date: The Effective Date of the Plan will be the first Business Day on which the conditions set forth in the Plan have been satisfied or waived by the Debtor and the Agent and on which no stay of the Confirmation Order is in effect.

Questions: All inquiries about the Plan and Disclosure Statement should be in writing and should be sent to:

Klee, Tuchin, Bogdanoff & Stern LLP
Attn: Courtney E. Pozmantier, Esq.
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067
Facsimile: (310) 407-9090

IMPORTANT NOTICE: THE PLAN, DISCLOSURE STATEMENT, AND BALLOTS CONTAIN IMPORTANT INFORMATION THAT IS NOT INCLUDED IN THIS SUMMARY. THAT INFORMATION COULD MATERIALLY AFFECT YOUR RIGHTS. YOU SHOULD THEREFORE READ THE PLAN, DISCLOSURE STATEMENT, AND BALLOTS IN THEIR ENTIRETY. YOU ALSO SHOULD CONSULT WITH YOUR LEGAL AND FINANCIAL ADVISORS BEFORE VOTING ON THE PLAN.

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SUMMARY OF CLASSIFICATION AND TREATMENT OF CLAIMS

CLASS AND/OR CLAIM TYPE	TREATMENT	IMPAIRED STATUS/ VOTING STATUS
Unclassified Claims		
Ordinary Course Administrative Claims	The Reorganized Debtor may pay any Administrative Claim that it reasonably determines is an Ordinary Course Administrative Claim without the necessity of a motion or request for payment thereon. The Reorganized Debtor anticipates payment of Ordinary Course Administrative Claims on the later of the (i) Effective Date and (ii) date on which such Ordinary Course Administrative Claim becomes due in accordance with its terms. The holder of an Ordinary Course Administrative Claim does not need to file a motion seeking allowance and payment in order to be paid, but may do so in order to preserve its rights.	Not Entitled to Vote
Professional Fee Claims	Unless the professional holding a Professional Fee Claim allowed by the Court agrees to different treatment, it will receive cash in the full amount of its Allowed Professional Fee Claim, without interest, within ten (10) days after the date on which the Court allows such Claim. Such holder is required under the Plan to file a motion seeking allowance of its Professional Fee Claim no later than 60 days after the Effective Date.	Not Entitled to Vote
Executory Contract and Lease Cure Amounts	Cure Payments as to executory contracts or unexpired leases assumed under the Plan will be paid in cash ten (10) days following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any dispute regarding (a) the amount of any proposed Cure Payment; (b) the ability of the Reorganized Debtor to provide adequate assurance of future performance to the extent required under the Bankruptcy Code; and/or (c) any other matter pertaining to such assumption.	Not Entitled to Vote
Non-Ordinary Course Administrative Claims	The holder of a Non-Ordinary Course Administrative Claim will receive cash in the full amount of its Allowed Non-Ordinary Course Administrative Claim, without interest,	Not Entitled to Vote

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	on or before the later of: (i) ten (10) days after the Effective Date, or (ii) ten (10) days after the date any order determining such Claim to be an Allowed Non-Ordinary Course Administrative Claim becomes a Final Order.	
503(b)(9) Claims	The holder of an Allowed 503(b)(9) Claim will receive cash in the full amount of its Allowed 503(b)(9) Claim, without interest, on or before the later of: (i) ten (10) days after the Effective Date, or (ii) ten (10) days after the date any order determining such Claim to be an Allowed 503(b)(9) Claim becomes a Final Order. Such holder is required under the Plan to have filed a 503(b)(9) Claim by the 503(b)(9) Bar Date.	Not Entitled to Vote
<u>Committee Administrative Expense Claims</u>	<u>Notwithstanding any other provision of the Plan, the professionals and members of the Creditors' Committee (in their capacity as members of the Creditors' Committee and not in their capacity as holders of Unsecured Claims) shall not receive (pursuant to the Plan or otherwise) more than \$750,000 on account of Allowed Committee Administrative Expense Claims incurred in the Case.</u>	<u>Not Entitled to Vote</u>
Priority Tax Claims	The Reorganized Debtor will pay to each entity holding an Allowed Priority Tax Claim cash in the full amount of the Allowed Priority Tax Claim, plus interest calculated at the federal judgment rate, in equal, amortized, annual installments beginning on the first anniversary of the Petition Date that falls on a date following the occurrence of the Effective Date and, thereafter, on each anniversary of the Petition Date through the fifth anniversary of the Petition Date. An allowed Priority Tax Claim may be prepaid at any time without penalty.	Not Entitled to Vote
Secured Claims		
Class 1 Lender Secured Claims	The remaining cash proceeds of the UCSD Sale, if any, will be remitted to the Agent on the Effective Date, to reduce the debt under the Prepetition Credit Agreement. On the Effective Date, the Reorganized Debtor shall issue to the Agent, for the ratable benefit	Impaired Entitled to Vote

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	<p>of the <u>Agent and</u> Lenders, the Research Building Note in the amount of \$13 million.</p> <p>The Research Building Note will (i) be secured by a first-priority deed of trust on the Research Building (including all personal property located thereon as of the date of the Plan Support Agreement), and the Vacant Land; (ii) be a non-recourse obligation of the Reorganized Debtor; (iii) provide for annual principal amortization payments; (iv) be payable in full on the earlier of (x) the fifth anniversary of the Effective Date, (y) a default under the note, or (z) a sale of the Research Building or Vacant Land; (v) be non-interest bearing; and (vi) be subject to prepayment at any time without penalty.</p> <p>The Reorganized Debtor will continue to be obligated under the Prepetition Deed of Trust, as modified to secure the Research Building Note.</p> <p>Notwithstanding any of the foregoing, if the Research Building and/or the Vacant Land are sold for an aggregate amount in excess of \$13,000,000 (the "Excess Consideration"), whether during the term of the Research Building Note or at any time within one (1) year after repayment thereof, the Reorganized Debtor shall pay 80% of the Excess Consideration to the Agent for the ratable benefit of the <u>Agent and</u> Lenders.</p> <p>Any funds that become property of the Debtor's estate that are proceeds of the Lenders' collateral that are not necessary to satisfy the obligations of the Debtor, the Estate and the Reorganization Debtor under the Plan and the UCSD Sale, and in which the Agent and the Lenders hold an interest, shall be distributed to the Agent for the ratable benefit of the Lenders thirty (30) days following the later of: (i) the bar date for the filing of proofs of claim by governmental entities; (ii) the expiration of the deadlines for filing objections to Administrative Claims, Priority Claims;</p>	
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	<p>Priority Tax Claims and Secured Tax Claims; and (iii) the settlement or adjudication to a Final Order of any and all objections to Administrative Claims, Priority Claims, Priority Tax Claims and Secured Tax Claims. Neither the Charitable Trust Funds nor any other charitable donations generated by the Debtor or its representatives constitute the Lenders' collateral.</p>	
<p>Class 2 Other Secured Claims, including Secured Tax Claims</p>	<p>The Reorganized Debtor will, at its option, on or as soon as reasonably practicable after the Effective Date: (i) pay to such holder cash in the allowed amount of such holder's Allowed Class 2 Claim; (ii) return the collateral securing such Allowed Class 2 Claim; or (iii) (a) cure any default, other than a default of the kind specified in Bankruptcy Code section 365(b)(2), with respect to such holder's Allowed Class 2 Claim, without recognition of any default rate of interest or similar penalty or charge, and upon such cure, no default will exist; (b) reinstate the maturity of such Allowed Class 2 Claim as the maturity existed before any default, without recognition of any default rate of interest or similar penalty or charge; and (c) leave unaltered all other legal, equitable, and contractual rights with respect to such Allowed Class 2 Claim.</p> <p><u>As set forth in Section IV.D of the Plan, if not earlier abandoned or otherwise disposed of, the Administration Building Parcel shall be deemed abandoned as of the Effective Date and the Reorganized Debtor shall retain no interest in the Administration Building Parcel.</u></p>	<p>Unimpaired Not Entitled to Vote Deemed to Accept</p>
<p>Priority Claims</p>		
<p>Class 3 Priority Claims, other than Priority Tax Claims</p>	<p>Unless the particular entity holding an Allowed Class 3 Claim agrees otherwise, each holder of an Allowed Class 3 Claim will receive, in full satisfaction of such Claim, cash in the full amount of the Allowed Class 3 Claim, without interest, on or before the latest of: (i) ten (10) days after the Effective Date; (ii) ten (10) days after the date on which the Class 3 Claim becomes an Allowed Class 3 Claim; and (iii) the date on which the Allowed Class 3 Claim</p>	<p>Unimpaired Not Entitled to Vote Deemed to Accept</p>

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	becomes due and payable in accordance with its terms.	
Unsecured Claims		
Class 4 General Unsecured Claims	<p>Allowed Class 4 Claims will receive their Pro Rata share of the <u>recoveries on the</u> assets in the Creditor Trust, net of the fees and expenses incurred by the Creditor Trust and its professionals in <u>realizing those recoveries, objecting to Class 4 Claims, and</u> administering the trust.</p> <p>The timing of payment to the holders of Allowed Class 4 Claims shall be determined by the Creditor Trust in accordance with the Creditor Trust Agreement. All payments made to holders of Allowed Class 4 Claims will be made via the Creditor Trust pursuant to the Creditor Trust Agreement.</p> <p>If Class 4 accepts the Plan within the meaning of Bankruptcy Code section 1126(e), then On the Effective Date, the holders of the Lender Deficiency Claims shall be deemed to have waived their irrevocably all such Claims and, accordingly, the right to receive any consideration under Classclass 4 on account of such Lender Deficiency Claims. If Class 4 rejects the Plan within the meaning of Bankruptcy Code section 1126(e) and the Plan nevertheless is confirmed, all Allowed Lender Deficiency Claims shall participate in the Class 4 distributions Claims. Without limiting the foregoing in any way, neither the Agent nor the Lenders shall share in any portion of the Aggregate Unsecured Creditor Consideration, the Unsecured Creditor Cash or the Net Trust Assets.</p>	Impaired Entitled to Vote

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~~I.~~

I.

INTRODUCTION

Nevada Cancer Institute, a Nevada nonprofit corporation (the “Debtor”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) on December 2, 2011 (the “Petition Date”), thereby commencing the Case. The Case is pending before the [Honorable Mike K. Nakagawa, Chief United States Bankruptcy Judge, in the](#) United States Bankruptcy Court for the District of Nevada (the “Court”) under case number 2:11-bk-28676 (MKN). Pursuant to Bankruptcy Code sections 1107 and 1108, the Debtor is operating its business and managing its affairs as a debtor and debtor in possession.

The Debtor is the proponent of the [Amended Chapter 11 Plan of Reorganization for Nevada Cancer Institute \(Dated ~~December 6, 2011~~ January 31, 2012\)](#) (the “Plan”) that is attached to this Disclosure Statement as Exhibit 1. **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ACCOMPANYING PLAN.** The Plan sets forth the manner in which the Claims against the Debtor will be treated ~~following the Debtor’s emergence from chapter 11~~ [if the Plan is confirmed by the Court and the Effective Date occurs](#). This Disclosure Statement describes certain aspects of the Plan, the Debtor’s current and future business operations, the proposed reorganization of the Debtor, and other related matters. Under the Plan, the Debtor will continue to operate as a nonprofit corporation on and after the Effective Date.

For a complete understanding of the Plan, you should read this Disclosure Statement, the Plan and the ~~Exhibits~~ [exhibits](#) to these documents [\(the “Exhibits”\)](#) in their entirety.

This Disclosure Statement sets forth the assumptions underlying the Plan, describes the process that the Court will follow when determining whether to confirm the Plan, and describes how the Plan will be implemented if it is confirmed by the Court [and the Effective Date occurs](#). Bankruptcy Code section 1125 requires that a disclosure statement contain “adequate information” concerning a plan of reorganization. 11 U.S.C. § 1125(a). [The Court has approved the form of this document as ~~an adequate disclosure statement that contains~~ [containing](#) adequate information to enable creditors entitled to vote on the Plan to make an informed judgment when deciding whether

1 to vote to accept or to reject the Plan. The Court’s approval of the adequacy of this Disclosure
2 Statement, however, does not constitute a determination by the Court with respect to the fairness or
3 the merits of the Plan or the accuracy or completeness of the information contained in the Plan or
4 Disclosure Statement.] **THE COURT HAS NOT YET CONFIRMED THE PLAN
5 DESCRIBED IN THIS DISCLOSURE STATEMENT. THEREFORE, THE PLAN’S
6 TERMS ARE NOT YET BINDING ON ANYONE. IF THE COURT LATER CONFIRMS
7 THE PLAN AND THE EFFECTIVE DATE OCCURS, THEN THE PLAN WILL BE
8 BINDING ON THE DEBTOR AND ON ALL PARTIES IN INTEREST IN THIS CASE,
9 INCLUDING CREDITORS OF THE DEBTOR.**

10 The Debtor ~~believes~~and the Creditors’ Committee believe that the Plan provides the best
11 possible recoveries to creditors under the circumstances, that acceptance of the Plan is in the best
12 interests of all parties in interest, and that any alternative would result in unnecessary delay,
13 uncertainty, and expense to the Estate. The Debtor and the Creditors’ Committee therefore
14 ~~recommends~~recommend that all eligible creditors entitled to vote on the Plan cast their Ballots to
15 accept the Plan.

16 **II.**

17 **GENERAL DISCLAIMERS AND INFORMATION**

18 Please carefully read this document and the Exhibits to this document. These documents
19 explain who may object to confirmation of the Plan, who is entitled to vote to accept or reject the
20 Plan, and the treatment that creditors can expect to receive if the Court confirms the Plan and the
21 Effective Date occurs. The Disclosure Statement also describes the history of the Debtor, the events
22 precipitating the Case, certain events in the Case, the effect of Plan confirmation, and some of the
23 things the Court may consider in deciding whether to confirm the Plan. It also addresses the Plan’s
24 feasibility and how your treatment under the Plan compares to the hypothetical treatment you would
25 receive under a chapter 7 liquidation. The statements and information contained in the Plan and
26 Disclosure Statement, however, do not constitute financial or legal advice. You should therefore
27 consult your own advisors if you have questions about the impact of the Plan on your Claims.

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1 The financial information used to prepare the Plan and Disclosure Statement was prepared
2 by the Debtor from information in its books and records and is the sole responsibility of the Debtor.
3 The Debtor's professionals and financial advisors have prepared the Plan and Disclosure Statement
4 at the direction of, and with the review, input, and assistance of, the Debtor's management. The
5 Debtor's professionals and financial advisors have not independently verified this information.

6 The statements and information that concern the Debtor that are set forth in this document
7 constitute the only statements and information that the Court has approved for the purpose of
8 soliciting votes to accept or reject the Plan. Therefore, no statements or information that are
9 inconsistent with anything contained in this Disclosure Statement are authorized unless otherwise
10 ordered by the Court.

11 You may not rely on the Plan and Disclosure Statement for any purpose other than to
12 determine whether to vote to accept or reject the Plan. Nothing contained in the Plan or Disclosure
13 Statement constitutes an admission of any fact or liability by any party or may be deemed to
14 constitute evidence of the tax or other legal effects that the reorganization set forth in the Plan may
15 have on entities holding Claims.

16 Unless another time is expressly specified in this Disclosure Statement, all statements
17 contained in this document are made as of ~~December 6, 2011~~ January 31, 2012. Under no
18 circumstances will the delivery of this Disclosure Statement or the exchange of any rights made in
19 connection with the Plan create an implication or representation that there has been no subsequent
20 change in the information included in this document. The Debtor assumes no duty to update or
21 supplement any of the information contained in this document, and it presently does not intend to
22 undertake any such update or supplement.

23 The Exhibits listed in the following table are attached to the Disclosure Statement. These
24 Exhibits are incorporated into the Disclosure Statement and will be deemed to be included in the
25 Disclosure Statement when they are Filed.

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EXHIBIT NO.	DESCRIPTION
1	<u>Amended</u> Chapter 11 Plan of Reorganization for Nevada Cancer Institute (Dated December 6, 2011 <u>January 31, 2012</u>)
2	Pending Prepetition Lawsuits
3	Plan Support Agreement
4	Preserved Avoidance Actions
5	Annual Projected Budget for Reorganized Debtor
6	Liquidation Analysis

III.

WHO MAY VOTE TO ACCEPT OR REJECT THE PLAN

This Section III³ contains a general discussion of the rules governing the treatment and satisfaction of claims under a plan of reorganization proposed under the Bankruptcy Code. Where a particular word (such as “Debtor”) or a phrase (such as “Allowed Claim”) is capitalized in this Disclosure Statement, and not otherwise defined herein, that word or phrase has the meaning provided in Section I (Definitions) of the Plan. Where, however, a particular word (such as “debtor”) or phrase (such as “allowed claim”) is not capitalized in this Disclosure Statement, that word or phrase is not intended to refer to the definitions provided in Section I of the Plan, but rather, the word or phrase is intended to have the general meaning ascribed to it. To vote to accept or reject the Plan, your Claim must be: (a) an impaired Claim against the Debtor; (b) neither a Disputed Claim nor a Disallowed Claim; and (c) entitled to receive or retain some value under the Plan. Holders of unimpaired Claims against the Debtor are deemed to have accepted the Plan and do not vote, ~~though~~although they may object to Plan confirmation to the extent they otherwise have standing to do so. Holders of Claims against the Debtor that do not receive or retain any value under

³ Unless otherwise indicated, Section references are to sections of this Disclosure Statement.

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1 the Plan are deemed to reject the Plan. As defined by the Bankruptcy Code, a claim against a debtor
2 generally includes all rights to payment from that debtor.

3 **A. Allowed Claims.**

4 With the exceptions explained below, under the Bankruptcy Code, a claim generally is
5 allowed only if a proof of the claim is properly filed before any applicable bar date, and either no
6 party in interest has objected or the bankruptcy court has entered an order allowing the claim. Under
7 certain circumstances, as provided in the Bankruptcy Code, a creditor may have an allowed claim
8 even if a proof of claim was not filed and the applicable bar date for filing a proof of claim has
9 passed. For example, a claim may be deemed allowed if the claim is listed on a debtor's schedules
10 and is not scheduled as disputed, contingent, or unliquidated.

11 A holder's claim must be an allowed claim for the holder of such claim to have the right to
12 vote on a plan. Generally, for voting purposes, a claim is deemed allowed to the extent that: (a)
13 either (1) a proof of claim is timely filed; or (2) a proof of claim is deemed timely filed either under
14 Bankruptcy Rule 3003(b)(1)-(2) or by an order of the bankruptcy court; and (b) either (1) the claim
15 is not subject to an objection; or (2) the claim is allowed by an order of the bankruptcy court
16 notwithstanding that objection.

17 A creditor whose claim is not allowed may still be entitled to vote to accept or reject a plan if
18 the creditor has timely filed a proof of claim that is not the subject of an objection filed before the
19 hearing on plan confirmation or a bankruptcy court order disallowing the claim entered before the
20 confirmation hearing. An entity whose claim is subject to an objection is not eligible to vote on the
21 plan unless and until that objection is resolved in the entity's favor or, after notice and a hearing
22 under Bankruptcy Rule 3018(a), a bankruptcy court temporarily allows the entity's claim for the
23 purpose of voting to accept or reject the plan. Any entity that seeks temporary allowance of its claim
24 for voting purposes must promptly file an appropriate motion and take the steps necessary to arrange
25 an appropriate and timely hearing. Please refer to Section VI.A for information regarding voting in
26 this Case.

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1 **B. Impaired Claims.**

2 Generally speaking, under the Bankruptcy Code, a class of claims is impaired if the plan
3 alters the legal, equitable or contractual rights of the members of the class, even if the alteration is
4 beneficial to the creditors ~~or interest holders~~ in the class. A contract provision that entitles a creditor
5 to accelerated payment upon default, however, does not necessarily render a claim impaired, even if
6 the debtor defaulted and the plan does not provide the creditor with accelerated payment. Instead,
7 the claim is deemed unimpaired if, for example, the plan cures the default, reinstates the maturity of
8 the claim as it existed before the default, and compensates the creditor for any damages incurred as
9 a result of reasonable reliance upon the acceleration provision. Section IX.A.2 of this Disclosure
10 Statement and Section II.A of the Plan identify among other things, the Classes of Claims that the
11 Debtor believes to be impaired under the Plan.

12 ~~IV.~~

13 IV.

14 **VOTES NECESSARY FOR PLAN CONFIRMATION**

15 Under the Bankruptcy Code, impaired claims are placed in classes under a plan, and each
16 class accepts or rejects the plan as a class. Certain types of claims are not classified because the
17 Bankruptcy Code requires that they be treated in a specific way. These claims are considered
18 unimpaired, and their holders cannot vote. Section IX.A of this Disclosure Statement and Section
19 II.A of the Plan set forth a summary of the types of Claims against the Debtor, their treatment under
20 the Plan, and, where applicable, the classes in which they have been classified.

21 Under the Bankruptcy Code, a bankruptcy court may confirm a plan if at least one class of
22 impaired claims has voted to accept that plan (without counting the votes of any insiders whose
23 claims are classified within that class) and if certain statutory requirements are met both as to
24 non-consenting members within a consenting class and as to dissenting classes. A class of claims
25 has accepted the plan only when at least a majority in number and at least two-thirds in amount of
26 the allowed claims actually voting in that class vote to accept the plan.

27 Even if a debtor receives the requisite number of votes to confirm a proposed plan, the
28 ~~Plan~~plan will not become binding unless and until, among other things, the bankruptcy court makes

1 an independent determination that confirmation is appropriate. This determination will be the
2 subject of the hearing on confirmation of the plan. ~~Also, even if all classes do not vote in favor of a~~
3 ~~plan, the plan nonetheless may be confirmed if the dissenting classes are treated in a manner~~
4 ~~prescribed by the Bankruptcy Code.~~

5 **V.**

6 **CRAMDOWN: TREATMENT OF NON-CONSENTING CLASSES**

7 Even if all classes do not consent to the proposed treatment of their claims under a plan, the
8 plan nonetheless may be confirmed if each dissenting class is treated in the manner prescribed by the
9 Bankruptcy Code. The process by which a dissenting class is forced to abide by the terms of a plan
10 is commonly referred to as “cramdown.” The Bankruptcy Code allows a dissenting class to be
11 crammed down if the plan does not “discriminate unfairly” and is “fair and equitable” as to such
12 class. The Bankruptcy Code does not define unfair discrimination, but it does set forth certain
13 minimum requirements for “fair and equitable” treatment. For a class of secured claims, “fair and
14 equitable” can mean that the secured claimants retain their liens and receive deferred cash payments,
15 the present value of which equals the value of their interests in the collateral. For a class of
16 unsecured claims, a plan is fair and equitable if the claims in that class receive value equal to the
17 allowed amount of the claims, or, if the unsecured claims are not fully satisfied, no claim or interest
18 that is junior to such claims receives or retains anything under the plan.⁴

19 **VI.**

20 **INFORMATION REGARDING VOTING IN THIS CASE**

21 **A. Voting Instructions.**

22 The Debtor believes that Classes 1 and 4 are impaired and [that holders of Allowed Claims in](#)
23 [those Classes are](#) therefore entitled to vote on the Plan ~~except to the extent such holders hold~~
24 ~~Disputed Claims.~~ The Debtor believes that Classes 2 and 3 are unimpaired and that the holders of
25 claims in such classes are therefore not entitled to vote on the Plan. Entities holding Administrative
26 _____

27 ⁴ This paragraph does not purport to explain fully the applicable statutes or case law, which are
28 complex.

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1 Claims and Priority Tax Claims are not classified and are not entitled to vote on the Plan. Any party
2 that disputes the Debtor’s characterization of its Claim as unimpaired may request a finding of
3 impairment from the Court to obtain the right to vote, but such party must promptly take action to
4 request such a finding and arrange for the Court to hold a hearing and adjudicate such request no
5 later than seven (7) days prior to the Ballot deadline (*i.e.*, no later than [_____], 2012).

6 In voting to accept or reject the Plan, please use only the Ballot sent to you with this
7 Disclosure Statement, and please carefully read the voting instructions on the Ballot for an
8 explanation of the applicable voting procedures and deadlines. If, after reviewing this Disclosure
9 Statement, you believe that you hold an impaired Claim and that you are entitled to vote on the Plan,
10 but you did not receive a Ballot, or if your Ballot is damaged or lost, please send a written request for
11 a Ballot to the Ballot Tabulator at the following address:

Klee, Tuchin, Bogdanoff & Stern LLP
Attn: Shanda Dahl
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067

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15 If you wish to vote to accept or reject the Plan, your Ballot must be returned to the Ballot
16 Tabulator at the address listed above so that it is actually received by the Ballot Tabulator no later
17 than 5:00 p.m. Pacific time, on [_____], 2012 (the “Balloting Deadline”). If your Ballot is not
18 timely received by the Ballot Tabulator, it will not be counted. Ballots sent by facsimile or email
19 will not be accepted by the Ballot Tabulator and will not be counted in tabulating votes accepting or
20 rejecting the Plan.

21 If your Claim is a Disputed Claim and you nevertheless wish to vote on the Plan, you will be
22 required to move the Court to temporarily allow your Claim for voting purposes. In order to do so,
23 you must promptly take action to make such a motion and arrange for the Court to hold a hearing
24 and adjudicate such motion no later than seven (7) days prior to the Ballot Deadline (*i.e.*, no later
25 than [_____], 2012).

26 Any interested party desiring further information with respect to the Plan or seeking an
27 additional copy of this document should contact in writing: Klee, Tuchin, Bogdanoff & Stern LLP,
28 Attn: Courtney E. Pozmantier, Esq., 1999 Avenue of the Stars, 39th Floor, Los Angeles, CA 90067,

1 Facsimile: (310) 407-9090. All pleadings and other papers Filed in this Case may be inspected free
2 of charge during regular court hours at the Office of the Clerk, United States Bankruptcy Court,
3 Foley Federal Building, 300 Las Vegas Blvd., South, Las Vegas, NV 89101. Documents may be
4 accessed for a fee through the Court's electronic records system at <http://ecf.nvb.uscourts.gov>, and
5 certain documents pertaining to the Case are available on the website of the Debtor's proposed
6 claims agent at <http://www.kccllc.net/NevadaCancerInstitute>.

7 **VII.**

8 **WHO MAY OBJECT TO PLAN CONFIRMATION**

9 A hearing has been scheduled for [____], 2012, at __:___.m. (Pacific time) at the
10 United States Bankruptcy Court, 300 Las Vegas Boulevard South, Courtroom ~~H2~~2, Las Vegas,
11 Nevada 89101, to determine whether the Court will confirm the Plan. If, after tabulating the Ballots,
12 it appears that entities holding a sufficient number and amount of Claims have voted to accept the
13 Plan, the Debtor will file a memorandum of points and authorities supporting the entry of the
14 Confirmation Order. This memorandum will be served on the U.S. Trustee, counsel for the
15 Creditors' Committee, counsel for the Agent, all entities that have requested special notice in the
16 Case, and all parties that have timely objected to confirmation of the Plan.

17 Any party in interest in the Case—including any creditor that voted (or was deemed to have
18 voted) to accept or reject the Plan—may File an objection to confirmation of the Plan assuming such
19 party has standing to do so. Any such objection must be Filed and served on the Debtor and its
20 counsel; the U.S. Trustee; counsel for the Creditors' Committee; and counsel for the Agent by
21 [____], 2012. If you fail to properly and timely File and serve an objection to Plan
22 confirmation, you may be deemed to have consented to the confirmation of the Plan. If you wish to
23 obtain more information, you should contact in writing:

24 Klee, Tuchin, Bogdanoff & Stern LLP
25 Attn: Courtney E. Pozmantier, Esq.
26 1999 Avenue of the Stars, 39th Floor
27 Los Angeles, CA 90067
28 Facsimile: (310) 407-9090

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~~VIII.—~~

VIII.

BACKGROUND ON THE DEBTOR, THE DEBTOR’S BUSINESS, EVENTS

PRECIPITATING THE BANKRUPTCY FILING, AND THIS CASE

A. Description and History of the Debtor’s Business.

Founded in 2002, the Debtor is a nonprofit cancer institute committed to advancing the frontiers of knowledge of cancer ~~through research, enabling affiliated physicians to provide world-class, research-linked clinical cancer services to patients, facilitating outreach and education programs aimed at raising cancer awareness,~~ and reducing the burden of cancer on the people of Nevada. The Debtor ~~has been designated by the State of Nevada as the State’s official cancer institute, and is qualified as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code.~~ ~~The Debtor maintains~~previously operated and maintained a state-of-the-art outpatient cancer treatment and research facility in the Summerlin community of Las Vegas (the “Flagship Building”) and ~~provides~~provided comprehensive management services to physicians employed by the ~~non-debtor~~ oncology medical group, Ruckdeschel Manno, Ltd. dba Nevada Cancer Institute Medical Group (the “Medical Group,” and together with the Debtor, “NVCI”). ~~The Flagship Building is located near the intersection of Clark County Route 215 and Town Center Drive.~~ This cancer treatment facility was designated by the State of Nevada as the State’s official cancer institute.

As described in detail in this Disclosure Statement, the Debtor underwent a significant prepetition operational restructuring, and, after commencing this case, sold the Flagship Building (i.e., the Debtor’s cancer treatment facility), and certain other assets to the Regents of the University of California on behalf of its UC San Diego Health System (“UCSD” and the “UCSD Sale”) in a Court-approved sale pursuant to Bankruptcy Code section 363 that closed on January 31, 2012. The Debtor is seeking to restructure its remaining obligations pursuant to the Plan, and emerge from chapter 11 expeditiously. If the Plan is confirmed and the Effective Date occurs, the Debtor will be able to continue its important philanthropic mission of increasing cancer knowledge and funding cancer research and treatment.

1 Prior to the UCSD Sale, NVCI ~~provides~~provided professional medical services, infusion
 2 therapy, radiation therapy, diagnostic imaging, and related ancillary services, at the Flagship
 3 Building and at leased premises located at the University Medical Center in central Las Vegas
 4 (“UMC”). The Flagship Building houses its own diagnostic equipment including PET, CT, MRI,
 5 and digital mammography, and provides a place for patients to obtain psychosocial and nutrition
 6 counseling, participate in a survivorship clinic, and obtain pain management services.

7 In addition to providing a center for high quality patient care, the Flagship Building ~~is~~was
 8 home to ~~ongoing~~ scientific research activities into the causes, prevention, and treatment of cancer.
 9 One aspect of these research activities ~~involves~~involved laboratory research, which ~~has~~
 10 variety of adult stem cell and biomarker-related discoveries, although none has yet been
 11 commercialized. Another aspect of these research activities ~~involves~~involved the participation of
 12 patients treated in clinical drug trials. These clinical trials, and prior studies, ~~have~~ made novel drugs
 13 available to Nevadans suffering from cancer that otherwise would not have been available to them.
 14 ~~Since its inception, NVCI has opened to enrollment~~NVCI participated in a total of 176 trials
 15 including 13 first in human trials ~~where,~~ which drew patients from other states and countries
 16 ~~traveled to NVCI to participate. As of December 1, 2011, there are 16 trials open to new enrollment,~~
 17 ~~and another 39 trials that are closed to new enrollment but open for purposes of patient follow-up.~~
 18 UCSD has indicated to the Debtor that it intends to continue participating in clinical trials.

19 ~~The~~Prior to the UCSD Sale, the Debtor also ~~conducts~~conducted educational programs and
 20 outreach throughout Nevada at schools, workplaces, community centers, senior centers, faith-based
 21 organizations, union halls, community activities, health fairs and support group meetings, organizes
 22 ~~and trains,~~ trained “patient navigators” to help arrange treatment and follow-up care, and provide
 23 referrals to community resources, and ~~maintains~~maintained a mobile diagnostic unit or “Hope
 24 Coach” that ~~brings~~brought digital mammography directly to Nevadans, including those ~~who~~
 25 ~~live~~living in rural areas without nearby access to mammograms. ~~Through these efforts, and others,~~
 26 ~~the Debtor has provided valuable information, support, diagnosis and education to thousands of~~
 27 ~~Nevadans.~~The Hope Coach has been acquired by UCSD.

1 **B. The Debtor’s Corporate Structure, Board of Directors and Management.**

2 The Debtor is a Nevada nonprofit corporation. It has no members or equity holders. The
3 Debtor is governed by a board of directors (the “Board”), which is comprised of 11 distinguished
4 business and medical professionals, who volunteer their service without compensation. The
5 members of the Board are as follows:

- 6 • Dr. Javaid Anwar is the chief executive officer of Quality Care Consultants, LLC.
7 Dr. Anwar is also the president of the Nevada State Board of Medical Examiners and
8 the vice president of Health Care Services for MGM Resorts International.
- 9 • James D. Hammer is a founding principal of “StorageOne,” the largest privately
10 owned self-storage company in the Las Vegas Valley. Mr. Hammer also founded
11 Westar Development Company and Westar Properties Inc.
- 12 • Justine Harrison, Esq. was a founding member of the staff of the Debtor and served
13 in a variety of progressive leadership roles for the Debtor prior to joining the Board.
14 Before joining NVCI, Ms. Harrison served in management roles in the hospitality
15 and wireless communications industries.
- 16 • Dr. Ikram U. Khan currently serves as the president of Quality Care Consultants,
17 LLC and is the medical director for MGM Resorts International and Employers
18 Occupational Health.
- 19 • William Lerner is a principal of Union Gaming Group, a global gaming research and
20 advisory firm with offices in Las Vegas and Macau. Prior to Union Gaming, Mr.
21 Lerner spent 16 years on Wall Street as a financial analyst in equity research.
- 22 • Heather H. Murren, CFA is a cofounder of the Debtor and the former chairman of the
23 Board. Ms. Murren was formerly a managing director, Global Securities Research
24 and Economics, of Merrill Lynch and also served on the Financial Crisis Inquiry
25 Commission (FCIC), a 10-member Federal commission established to examine the
26 domestic and global causes of the financial crisis.
- 27 • James J. Murren, CFA is a cofounder of the Debtor. Mr. Murren currently serves as
28 the chairman of the board and chief executive officer of MGM Resorts International.

1 Prior to joining MGM Resorts International, Mr. Murren spent 14 years on Wall
2 Street as a top-ranked equity analyst.

- 3 • John Ritter is chairman of the board and chief executive officer of Focus Property
4 Group, and has been actively involved in the real estate industry for more than 28
5 years, specializing in investments in land throughout the southwest region of the
6 country, principally in Southern Nevada.
- 7 • Corey Sanders is chief operating officer of MGM Resorts International and oversees
8 the company's wholly owned properties. Mr. Sanders served in other senior
9 management positions with MGM Resorts International prior to becoming chief
10 operating officer.
- 11 • William Scott IV is executive vice president – corporate strategy and special counsel
12 of MGM Resorts International. Mr. Scott also serves on the board of MGM China
13 Holdings Limited.
- 14 • Michael Yackira, the chairman of the Board, is president and chief executive officer
15 of NV Energy, Inc., a holding company that owns Nevada Power Company and
16 Sierra Pacific Power Company.

17 The firm of Alvarez & Marsal Healthcare Industry Group, LLC (“A&M”) has been
18 providing management advisory services to the Debtor since March of 2011 in connection with its
19 operations, finances, and restructuring efforts, all in close consultation with the Board. Effective as
20 of the Petition Date, the Board appointed the following personnel from A&M as officers of the
21 Debtor: (i) George D. Pillari as Chief Restructuring Officer for the Debtor; (ii) Steven Kraus as
22 Chief Financial Officer and ~~Treasurer~~Treasurer for the Debtor; (iii) Diane Rafferty as Vice President,
23 Outcomes & Quality for the Debtor; and (iv) Raul Smith, Milen Hayriyan, Erica Lister and Brian
24 Frank as Assistant Vice Presidents, Finance. ~~The Debtor currently does not have a chief executive~~
25 ~~officer or a chief operating officer. Julie Kestner, an employee of the Debtor, is the Debtor's Vice~~
26 ~~President, Finance. Lisa Madar is the Debtor's Corporate Secretary.~~Shortly after the Petition Date,
27 the Board also appointed Mr. Pillari as President of the Debtor, and both Joshua Zazulia and Roger
28 Gorog, of A&M, as Assistant Vice Presidents, Finance.

1 **C. The Medical Group.**

2 ~~There are seven~~ Prior to the UCSD Sale, the physicians employed by the ~~Medical Group,~~
 3 ~~which is not a debtor~~ non-debtor Medical Group were responsible for treating patients at the
 4 Flagship Building and the UMC location. Just prior to the closing of the UCSD Sale, the Medical
 5 Group employed six physicians. The Medical Group was organized for the sole purpose of
 6 compliance with the corporate practice of medicine doctrine under Nevada law, in effect at the time
 7 it began providing patient care. Under the doctrine, the Debtor was not permitted to directly employ
 8 physicians. The Medical Group is a Nevada professional corporation, whose stated purpose
 9 (according to its amended and restated articles of incorporation) is to “provide medical services to
 10 support Nevada Cancer Institute [and its] mission” The physicians employed by the Medical
 11 Group do not hold any equity interest in the Medical Group. ~~The~~ and the articles of incorporation
 12 for the Medical Group mirror those of a nonprofit entity. ~~The Medical Group was organized for the~~
 13 ~~sole purpose of compliance with the corporate practice of medicine doctrine under Nevada law, at~~
 14 ~~the time it began providing patient care. Under the doctrine, the Debtor was not permitted to~~
 15 ~~directly employ physicians.~~

16 The shares of the Medical Group are held by Dr. Ikram U. Khan and Dr. Javaid Anwar, two
 17 distinguished physicians who are licensed to practice medicine in the State of Nevada and who are
 18 members of the Board of the Debtor. Dr. Khan serves as one of two members of the board of
 19 directors for the Medical Group, and as president, secretary and treasurer for the Medical Group.
 20 Dr. Anwar is the other member of the board of directors for the Medical Group and vice president of
 21 the Medical Group. Dr. Khan and Dr. Anwar have not and will not receive any distributions,
 22 dividends or compensation on account of the various positions they hold with the Medical Group.
 23 The Debtor does not hold an equity interest in the Medical Group.

24 Historically, ~~but~~ the activities of the ~~two entities are~~ Debtor and the Medical Group were
 25 closely coordinated. All of the managed care contracts for services provided to patients at the
 26 Flagship Building and the UMC location ~~are~~ were between managed care payor entities and the
 27 Medical Group. The Debtor ~~is~~ was not a party to any payor contracts. ~~Although the Debtor recently~~
 28 ~~obtained a Medicare provider number, it has not billed any amounts under that~~

1 ~~number.~~ Nevertheless In addition, pursuant to a long-established practice, the Medical Group
 2 regularly ~~transfers~~ transferred to the Debtor one-hundred percent of the revenues collected from
 3 those managed care contracts and Medicare. In turn, the Debtor ~~pays~~ paid the compensation of, and
 4 ~~provides~~ provided benefits to, the physicians employed by the Medical Group, and ~~handles~~ handled
 5 all billing, administration and management related to patient services provided by those physicians.
 6 This longstanding practice, ~~which both the Debtor and the Medical Group intend to continue~~
 7 ~~postpetition has been~~ was memorialized in that certain Management Services Agreement dated as of
 8 November 2, 2011.

9 **D. The Debtor's Capital Structure.**

10 The Debtor's unaudited balance sheet as of ~~September~~ November 30, 2011 shows, on a book
 11 value basis, the following approximate amounts: assets of \$~~173.6~~ 169.9 million, liabilities of
 12 \$~~98.9~~ 100.0 million, and net assets of \$~~80~~ 66.2 million.⁵

13 The balance sheet reflects the following assets, on a book value basis, in the following
 14 approximate amounts: (i) real property of \$138 million; (ii) assets limited as to use of \$~~20.4~~ 18.1
 15 million; (iii) pledge receivables of \$~~18.87~~ 13.8 million; (iv) clinical accounts receivable (net of
 16 doubtful accounts) of \$~~3.0~~ 2.4 million; (v) equipment of \$10.7 million; (vi) grant and other
 17 receivables of \$~~1.3~~ 1.2 million; (vii) inventories of \$~~468,000~~ 494,000; and (viii) cash of \$~~2.1~~ 2.3
 18 million.

19 The balance sheet reflects the following liabilities, on a book value basis, in the following
 20 approximate amounts: (i) \$91 million in secured debt; (ii) accounts payable of \$~~5.1~~ 6.1 million; (iii)
 21 other accrued liabilities of \$~~2.0~~ 2.4 million; (iv) current lease payments due of \$~~783,000~~ 647,000; and
 22 (v) other long-term debt of \$3.7 million.

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 27 ⁵ Based on information available to the Debtor, the book value of the assets does not reflect the
 28 market value of such assets.

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1. Secured Debt.

a. The Credit Facility.

The Debtor is the borrower under that certain Amended and Restated Credit and Reimbursement Agreement, dated as of April 23, 2008 among the Debtor, Bank of America, N.A. as Administrative Agent (“Bank of America” or the “Agent”), JPMorgan Chase Bank, National Association as Syndication Agent, Bank of Scotland PLC and UBS Loan Finance LLC, as Co-Documentation Agents and other lenders party thereto (as amended or modified, the “Credit Agreement”).

The Credit Agreement amended and restated the then-existing credit agreement (dated as of December 1, 2003), under which Bank of America, on behalf of the lenders thereunder (the “Lenders”), had issued a letter of credit (“Letter of Credit”) to support \$50 million in principal amount of public bonds issued by the State of Nevada to fund the construction of the Flagship Building (the “Public Bonds”). In connection with that amendment and restatement, the Lenders agreed to provide an additional \$100 million in credit facilities, consisting of \$85 million under a construction facility and \$15 million under a revolving facility.

As of the commencement of the Debtor’s Case, the principal balance under the Credit Agreement was approximately \$91 million, comprised of approximately \$44.4 million in reimbursement obligations in respect of the Letter of Credit (which was drawn in April 2011) and approximately \$46.6 million in respect of the construction facility. There were no loans made under the revolving facility and there are no amounts outstanding thereunder. The maturity date under the Credit Agreement was April 23, 2011. As of that date, the Debtor had not reimbursed the Lenders on account of the Letter of Credit draw or repaid the other amounts due under the Credit Agreement.

In conjunction with the Credit Agreement, the Debtor entered into that certain Amended and Restated Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (“Prepetition Deed of Trust”) and Security Agreement (“BofA Security Agreement”), both dated April 23, 2008. The Prepetition Deed of Trust ~~grants~~granted a lien in favor of Bank of America, as Agent, to secure the indebtedness under the Credit Agreement, against certain Las

1 Vegas real estate that is owned by the Debtor, including any rents generated from that real estate and
2 all fixtures thereto.

3 The encumbered real estate ~~is~~ comprised ~~of~~ the following: (i) the Flagship Building and the
4 land on which it is situated (Clark County APN 164-13-712-010); (ii) the Ralph and Betty Engelstad
5 Cancer Research Building and the land on which it is situated (Clark County APN 164-13-618-001)
6 (the “Research Building”); and (iii) certain vacant land adjacent to the Flagship Building (Clark
7 County APN 164-13-712-015) (the “Vacant Land”). Additional detail on the Debtor’s real estate is
8 set forth in section VIII.E.3 below.

9 The BofA Security Agreement ~~grants~~granted a lien in favor of Bank of America, as Agent,
10 to secure the indebtedness under the Credit Agreement, against substantially all of the Debtor’s
11 personal property, including cash, accounts receivable, and a certain cash collateral account
12 established to provide additional collateral to the Lenders in respect of the Credit Agreement (the
13 “Cash Collateral Account”). As discussed below in Section VIII.F, certain funds that were
14 previously on deposit in the Cash Collateral Account were consensually released by the Agent and
15 Lenders prepetition, in order to permit the Debtor to continue operating and to reduce debt under the
16 Credit Agreement.

17 As of the commencement of the Debtor’s Case, the balance of the Cash Collateral Account
18 was approximately \$2.8 million. Pursuant to ~~a cash collateral stipulation~~the Cash Collateral
19 Stipulation negotiated between the Debtor and the Lenders, ~~substantially all of the~~ and approved by
20 the Court, see Docket Nos. 65 and 281, funds in the Cash Collateral Account have been used
21 postpetition to fund the Debtor’s operations and the costs and expenses associated with this Case.
22 The balance of the Cash Collateral Account was approximately \$1.97 million as of January 31,
23 2012. The remaining funds will be used to fund ~~operations and~~solicitation, confirmation and
24 implementation of the Plan, and the administrative expenses ~~during of~~ the ~~pendency of this Case.~~ As
25 discussed below in Section VIII.F, certain funds that were previously on deposit in the Cash
26 Collateral Account were consensually released by the Agent and Lenders prepetition, in order to
27 permit the Debtor to continue operating and to reduce debt under the Credit Agreement.estate.

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1 **b. The Administration Building Parcel Loan.**

2 In 2007, the Debtor borrowed approximately \$3.7 million (the “Administration Building
3 Parcel Loan”) from NCI Admin Bldg., LLC (“NAB”) to acquire a fourth parcel of Summerlin real
4 estate (Clark County APN 164-13-712-020) (the “Administration Building Parcel”), which serves
5 as security for that loan under a deed of trust in favor of NAB (the “NAB Deed of Trust”). NAB is
6 an affiliate of The Greenspun Corporation, a Las Vegas-based real estate development company.
7 The Greenspun family and the Greenspun Family Foundation, which are related to that entity, have
8 in the past provided philanthropic support to the Debtor. The Debtor owns the Administration
9 Building Parcel, but its only interest in the administration building itself was a leasehold interest,
10 which was vacated on or before May 18, 2011. As of the Petition Date, the outstanding balance of
11 the Administration Building Parcel Loan was approximately \$3.7 million.

12 Pursuant to the Plan, unless earlier abandoned or otherwise disposed of, the Debtor’s
13 interests in the Administration Building Parcel will be deemed abandoned upon the Effective Date
14 of the Plan, and the Reorganized Debtor will not retain any interest in the Administration Building
15 Parcel. After the occurrence of the Effective Date, any party with an interest in the Administration
16 Building Parcel will be able to exercise its rights and remedies against the Administration Building
17 Parcel, including any right to foreclose upon the Administration Building Parcel, without further
18 order of the Court.

19 **c. Oncology Supply.**

20 Prior to the UCSD Sale, Oncology Supply ~~is~~ was the Debtor’s principal provider of oncology
21 medication. Oncology Supply and the Debtor are parties to a certain Application for New Account,
22 the terms and conditions of which include the grant of a security interest on substantially all of the
23 Debtor’s personal property to secure the Debtor’s “existing and future liabilities to Oncology
24 Supply.” On October 5, 2009, Oncology Supply filed a UCC-1 financing statement with the Nevada
25 Secretary of State asserting a security interest in “all assets” of the Debtor.⁶ As such, it appears that

26 _____
27 ⁶ Oncology Supply does not have a control agreement or otherwise exercise control over any of
28 the Debtor’s deposit accounts.

1 the security interests Oncology Supply may assert in assets of the Debtor are junior and subordinate
 2 to those of the Agent, whose claims exceed \$91 million – substantially more than the value of the
 3 Debtor’s assets. As of the Petition Date, the Debtor ~~estimates that it owes~~owed Oncology Supply
 4 approximately ~~\$500,000, a substantial portion~~1,000,000, approximately \$450,000 of which is on
 5 account of goods delivered ~~with~~within 20 days of the commencement of the ~~case~~Case. The
 6 Debtor’s cash collateral budget ~~(the “Budget”)~~ provides for Oncology Supply to be paid ~~in full~~
 7 ~~during this chapter 11 case.~~the full amount of its balance for goods delivered within 20 days of
 8 commencement of the Case, and the full amount incurred with respect to goods delivered
 9 postpetition.

10 **d. The CMS Claim.**

11 NVCI has identified a potential error in certain billing practices related to clinical drug trials
 12 that may have resulted in the receipt of overpayments from the Center for Medicare and Medicaid
 13 Services (“CMS”). NVCI self-reported these potential overpayments to the Department of Health
 14 and Human Services in July 2011. CMS has not conducted any reconciliations with respect to
 15 NVCI and there has not been any determination of liability by CMS related to the overpayments.

16 In addition to asserting a Claim against the Debtor, CMS could assert a right of offset or
 17 recoupment in the future against accounts receivable owed to NVCI. It is not clear whether CMS’s
 18 claim for offset or recoupment would be discharged by confirmation of the Plan. The Budget
 19 provides for payment of the overpayments as determined by the Debtor.

20 **2. Unsecured Debt.**

21 As of ~~shortly before~~ the Petition Date, the Debtor had unsecured accounts payable due and
 22 owing in respect of goods and services utilized in the ordinary course of its business of
 23 approximately ~~\$5.5~~6.05 million.⁷ In addition, as of the Petition Date, the Debtor: (a) had unsecured
 24 obligations in respect of prepetition employee compensation, related payroll taxes and accrued
 25 obligations under certain of its employee benefit programs, (b) had pending against it litigation by

26 _____
 27 ⁷ Claims that are not related to goods and services utilized in the ordinary course of business, such
 28 as the Lenders’ deficiency claims, are not included in this approximate amount.

1 certain former NVCi employees asserting claims against the Debtor, and (c) had certain contingent
2 and/or unmatured obligations under executory contracts and unexpired leases.

3 Although the Debtor is not aware of any amounts outstanding thereunder, the Debtor is a
4 party to a certain Finance Agreement and Promissory Note dated as of December 23, 2003, pursuant
5 to which the Debtor borrowed \$50 million from the Director of the State of Nevada Department of
6 Business and Industry, representing the proceeds of the public bonds issued to fund construction of
7 the Flagship Building. As noted above, the indenture trustee for the Public Bonds made a draw on
8 the Letter of Credit in April 2011, to satisfy the debt outstanding under the Public Bonds. On or
9 about April 15, 2011, Bank of America invoiced the Debtor in respect of its obligation to reimburse
10 the Lenders for that draw.

11 **E. Assets.**

12 **1. Unrestricted Cash.**

13 As of ~~shortly before the commencement of the Debtor's Case~~ the Petition Date, the Debtor
14 had approximately \$~~226,742~~496,142 in "Unrestricted Cash" on deposit. Unrestricted Cash
15 comprises revenues, charitable donations that are not held in trust or otherwise subject to restrictions
16 that would prevent such funds from being used to fund the Debtor's operations, and funds released
17 from the Cash Collateral Account by the Agent for use in operations. Unrestricted cash does not
18 include the funds presently on deposit in the Cash Collateral Account, the Engelstad Endowment
19 Fund, the Patient Cares Committee Fund, the Saffer Endowment Fund, and the Other Donor
20 Restricted Funds, which terms are defined and described below (to the extent not defined above).

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1 **2. Restricted Cash/Trust Funds.⁸**

2 **a. Cash Collateral Account.**

3 As noted, the balance of the Cash Collateral Account ~~as of shortly before the commencement~~
4 ~~of this Case~~ was approximately \$2.8 million: as of the Petition Date, and approximately \$1.97
5 million as of January 31, 2012.

6 **b. Engelstad Endowment Fund.**

7 The Debtor is the beneficiary of the Engelstad Endowment Fund, a \$15 million endowment
8 fund given by the Engelstad Family Foundation, subject to the terms of that certain agreement dated
9 January 4, 2007, between the Debtor and the Engelstad Family Foundation (the “Gift Agreement”).
10 The Gift Agreement authorizes the Debtor to use the interest generated by the principal in the
11 Engelstad Endowment Fund only to establish and support a lung cancer program.

12 If the interest earned on the Engelstad Endowment Fund cannot be used for the approved
13 charitable purposes, the Gift Agreement provides that the Engelstad Endowment Fund and all
14 income earned thereon reverts to the Engelstad Family Foundation, for such other charitable
15 purposes as the foundation may, in its sole discretion, determine and direct. Until shortly before the
16 filing of the Debtor’s voluntary petition, the charitable trust funds comprising the Engelstad
17 Endowment Fund were maintained in two segregated bank accounts of the Debtor.⁸⁹

18 The Gift Agreement was modified as of November 15, 2011 by that certain First
19 Amendment to Gift Agreement (the “Gift Amendment”) to provide that the Engelstad Endowment
20

21 _____
22 ⁸ Except with respect to (i) any and all donations of the Engelstad Family Foundation, including
23 the Engelstad Endowment Fund discussed herein and (ii) funds raised and deposited into escrow
24 (the ‘Donations Escrow Account’) pursuant to the Order Granting Debtor’s Motion Pursuant to
25 Bankruptcy Code Sections 105(a), 363(b) and 363(c) For Order Authorizing the Deposit of
26 Donor-Restricted Donations Into Escrow Account [Docket No. 141], the Creditors’ Committee
has reserved its right to assert that the funds held and identified by the Debtor as
“Donor-Restricted Funds” and/or “Charitable Trust Funds” are not legally held in trust, and are
available for the general corporate purposes of the Debtor (including the satisfaction of
nonpriority unsecured claims of the Debtor).

27 ⁸⁹ One of these two accounts still holds the funds comprising the Saffer Endowment Fund,
28 described below.

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1 Fund (including the interest thereon) will serve as a financial backstop for a substantial portion of
2 the Philanthropic Commitment (as defined in section VIII.G below) to UCSD. ~~Specifically, to the~~
3 ~~extent the Debtor does not succeed in raising the funds necessary to make each payment required in~~
4 ~~respect of the Philanthropic Commitment to UCSD, the shortfall will be satisfied from the interest~~
5 ~~and principal of the Engelstad Endowment Fund, pursuant to the Funding Agreement.~~ Any amounts
6 not expended for this purpose shall be used for the original purpose of the Engelstad Endowment
7 Fund.

8 The funds comprising the Engelstad Endowment Fund were transferred to an escrow in
9 accordance with the Gift Amendment shortly before the commencement of the Debtor’s Case.

10 **c. Patient Cares Committee Fund.**

11 ~~The~~ As of the Petition Date, the Debtor ~~has had~~ possession of approximately \$176,711 in
12 donor-restricted funds comprising the “Patient Cares Committee Fund.” These funds ~~were solicited~~
13 ~~and donated~~ are what remains of approximately \$1.5 million donated by The Spector Family
14 Foundation for the express charitable purpose of providing financial aid to Nevada cancer patients
15 in need. Among other things, these funds have been used in the past to fund insurance premiums,
16 COBRA payments, and treatment-related transportation costs for patients that are in need of cancer
17 treatment, but have little or no means to pay expenses due to their employment and/or financial
18 status. ~~The funds comprising the Patient Cares Committee Fund are maintained in a segregated~~
19 ~~bank account as charitable trust funds.~~ On or about January 27, 2012, the Spector Family
20 Foundation authorized the release to the Debtor the balance of these restricted funds, i.e.,
21 approximately \$173,000, to the Debtor.¹⁰ The Debtor thereafter transferred those funds to its
22 operating account to satisfy the Debtor’s administrative expenses.

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¹⁰ The difference between the \$176,711 held as of the Petition Date and the final balance of approximately \$173,000 released to the Debtor on or about January 27, 2012 is attributable to the use of the funds in accordance with the terms of the applicable restrictions.

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d. The Saffer Endowment Fund.

~~The~~As of the Petition Date, the Debtor ~~has had~~ possession of approximately \$350,000 pursuant to a certain Gift Agreement executed in December 2008 (the “Saffer Endowment Agreement”) establishing the Sandra and Morton Saffer Cancer Research Endowment Fund (the “Saffer Endowment Fund”). Pursuant to the Saffer Endowment Agreement, the Debtor is permitted to use the net investment income from this fund for specified cancer research purposes. The Saffer Endowment Agreement provides that if the Debtor ceases to fund or pursue cancer research, the funds comprising the Saffer Endowment Fund shall be transferred to another entity that delivers cancer research as a primary objective. The funds comprising the Saffer Endowment Fund are maintained in a segregated bank account as charitable trust funds.

e. Other Donor-Restricted Funds.

In addition to the foregoing, the Debtor ~~is holding~~held on the Petition Date approximately \$1.7 million in other donor-restricted funds (“Other Donor-Restricted Funds”). These funds constitute charitable donations, grants, scholarships and other funds that are subject to donor-imposed restrictions on their use. These restricted charitable funds were transferred to the Debtor, subject to these restrictions, by ~~approximately~~at least 30 different entities, most of which are charitable or educational institutions. The Other Donor-Restricted Funds, which have been treated by the Debtor as charitable trust funds, are on deposit in a segregated bank account.

As of January 31, 2012, the Debtor estimates that it is holding Other Donor-Restricted Funds of approximately \$793,000. The Debtor estimates that from the Petition Date through January 31, 2012, the Debtor used approximately \$40,000 in accordance with the donor restrictions applicable thereto. In addition, on January 27, 2012, the Lincy Foundation modified the restrictions applicable to \$941,976 of Other Donor-Restricted Funds, permitting the transfer of those funds to UCSD, in partial satisfaction of the Philanthropic Commitment upon the closing of the UCSD Sale.¹¹

¹¹ At closing, those funds were in fact remitted to UCSD.

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3. Real Estate.

a. The Flagship Building.

The Flagship Building comprises a 142,000 square foot structure situated on a 5.67 acre lot located at One Breakthrough Way, Las Vegas, NV 89135. ~~The~~Prior to the UCSD Sale, the Debtor ~~owns~~owned both the land and ~~the~~ building. Pursuant to the Sale Order, discussed below in Section VIII.J.7, both have been sold to UCSD pursuant to the UCSD Sale, which closed on January 31, 2012.

The building was designed and outfitted for the diagnosis and treatment of cancer patients on an outpatient basis and related research activities. The Flagship Building is home to a medical oncology suite, a radiation oncology suite, a pathology lab, research laboratories, a 24-seat chemotherapy suite, a cafeteria, a library, administrative space, and a specialty boutique aimed at the needs and comfort of cancer patients. ~~The Flagship Building is subject to the Prepetition Deed of Trust. The Flagship Building was custom-built to house the foregoing facilities and is not suited for purposes other than cancer treatment and research.~~

The Debtor purchased the underlying parcel from Howard Hughes Properties, Inc. (“HHP”) in 2003. The real property is subject to a variety of covenants, conditions and restrictions regarding use of the real estate. These include restrictions granted for the respective benefit of each of HHP and the UHS Holding Company, Inc. (“UHS”). UHS is affiliated with Universal Health Services, Inc., a subsidiary of which owns and operates Summerlin Hospital Medical Center. HHP and/or UHS assert that use of this real estate is limited by those restrictions to that of a nonprofit cancer treatment and research center, and UHS asserts that the real property may not be utilized for in-patient care.

b. The Research Building.

The Research Building comprises a 184,000 square foot structure situated on a 5.09 acre lot located at 10530 Discovery Drive, Las Vegas, NV 89135. The Debtor owns both the land and the building. The three-story structure with a full basement contains 24 biosafety level (BSL)-2 laboratories. One floor of the Research Building has not yet been built out.

1 The Research Building is named in honor of Ralph and Betty Engelstad, in recognition of a
2 \$20 million gift from the Engelstad Family Foundation in honor of Mr. Engelstad, the long-time
3 owner of the Imperial Palace, who died of lung cancer in 2002, of which \$15 million ~~has had~~ been
4 funded ~~to date. On or before May 18, 2011, most~~as of the Petition Date. The Debtor's research
5 ~~activities were moved~~operations in the Research Building were, in large part, transferred to the
6 Flagship Building in May 2011 in connection with the Debtor's operational restructuring. The
7 Debtor is informed that HHP and/or UHS assert that use of this real estate is limited to research and
8 that UHS asserts that the real property may not be utilized for in-patient care. The Research
9 Building is subject to the Prepetition Deed of Trust.

10 **c. The Vacant Land.**

11 The Vacant Land, which is adjacent to the Flagship Building, comprises 9.24 acres that were
12 purchased from HHP in 2005. HHP and/or UHS assert that use of this real estate is limited in the
13 same manner as the Flagship Building. The Vacant Land also is subject to the Prepetition Deed of
14 Trust.

15 **d. The Administration Building Parcel.**

16 The Debtor owns the Administration Building Parcel, but not the structures situated on that
17 land. The Debtor's acquisition of the Administration Building Parcel was part of a related series of
18 transactions in which: (i) the Debtor leased the Administration Building Parcel to NAB, (ii) NAB
19 agreed to construct a three-story administrative services building (the "Administration Building")
20 and a 500-space parking structure (the "Parking Structure") on that parcel, and (iii) the parties
21 agreed that the Debtor would lease a substantial portion of the Administration Building and Parking
22 Structure (the "Administration Building Lease").

23 Pursuant to these agreements, NAB constructed and currently owns the Administration
24 Building and Parking Structure. In order to finance the construction, NAB obtained a loan from
25 Wells Fargo Bank, N.A. ("Wells Fargo") in an original principal amount of \$30 million, the balance
26 of which is \$21 million. In connection with that transaction, Wells Fargo obtained a deed of trust
27 against the Administration Building Parcel (the "Wells Fargo Deed of Trust") and a subordination
28

1 of the NAB Deed of Trust against that parcel. Wells Fargo also took an assignment of rents from
2 NAB under the Administration Building Lease.

3 HHP asserts that use of this real estate is limited to that of a commercial office building, of
4 which 60% of the leasable space is to be occupied by the Debtor for administrative use, and only
5 40% by third parties, and that UHS asserts no more than 20% of the leaseable space may be used for
6 medical purposes.

7 Pursuant to the Administration Building Lease, the Debtor previously occupied a portion of
8 the Administration Building to house staff members from a variety of administrative departments.
9 On or about April 19, 2011, American Nevada Realty, an affiliate of NAB, served a certain “Five (5)
10 Day Notice to Quit or Pay Rent,” asserting that \$144,732.33 was in default under the Administration
11 Building Lease and demanded payment. The Debtor did not pay that amount and has not paid any
12 amount to NAB since then.

13 On or before May 18, 2011, the Debtor moved its personnel out of the Administration
14 Building, surrendered possession of the Administration Building, and consolidated its operations
15 into the Flagship Building. The Debtor no longer occupies any part of the Administration Building.

16 On or about November 12, 2011, American Nevada Company, LLC (“ANC”), on behalf of
17 NAB, issued a letter purporting to exercise rights under the Administration Building Lease to treat
18 the Debtor’s payment default under the Lease as an election by the Debtor to purchase the structures
19 on the Administration Building Parcel and pay NAB ~~over~~ as much as approximately \$39 million
20 under a separate option agreement to which NAB and the Debtors are parties. The Debtor reserves
21 all of its rights with respect to this asserted liability.

22 The Debtor filed a motion to reject the Administration Building Lease on the Petition Date,
23 pursuant to Bankruptcy Code section ~~365~~ 365, which motion was granted on January 18, 2012. See
24 Docket No. 286.

25 As described above, unless earlier abandoned or otherwise disposed of, the Debtor’s
26 interests in the Administration Building Parcel will be deemed abandoned upon the Effective Date
27 of the Plan, and the Reorganized Debtor will not retain any interest in the Administration Building
28 Parcel.

1 **e. The Alta-Hualapai Parcel.**

2 Pursuant to an act of Congress — Section 2603 of the Omnibus Public Land Management
3 Act of 2009 (“Act”) — the United States, through the Bureau of Land Management, granted to the
4 Debtor approximately 19 acres of undeveloped land near the intersection of Alta Drive and Hualapai
5 Road, in the City of Las Vegas, for the development of a nonprofit cancer institute (the
6 “Alta-Hualapai Parcel”). This parcel is subject to reversion to the Bureau of Land Management if
7 (i) it is not owned by the Debtor, or (ii) it is not used for this specified purpose. At this time, the
8 Alta-Hualapai Parcel remains undeveloped. This parcel is not subject to any lien or deed of trust,
9 other than a lien for real property taxes.

10 **F. Events Leading to the Debtor’s Restructuring and Chapter 11.**

11 Like many nonprofit organizations across the country and many providers of medical
12 services generally (not-for-profit and for-profit), the Debtor ~~has been facing~~faced significant
13 financial pressures. These pressures ~~arise~~arose from the protracted decline in the economy,
14 decreases in medical reimbursement rates from managed care payor entities, increases in
15 operational costs, decreases in the amount and availability of charitable donations, a reduction in
16 research funding opportunities and increased competition.

17 According to the Debtor’s unaudited statement of operations and changes in net assets
18 (“Operating Statement”), for the 12 months ended December 31, 2010, the Debtor generated
19 unrestricted revenues and other support, including federal grants, state grants, and other grants, of
20 approximately \$49.9 million and had expenses of approximately \$73.4 million, resulting in a loss
21 from operations of approximately \$23.4 million. By contrast, the Debtor’s audited Operating
22 Statements for 2009 and 2008 reflect income from operations of approximately \$706,000 and
23 approximately \$2.5 million, respectively. These financial statements likewise reflect that the
24 Debtor generated approximately \$2.9 million in temporarily restricted donations, grants and
25 investment income during 2010, down from approximately \$4.8 million and \$20.0 million in 2009
26 and 2008, respectively.

27 Beginning in 2010, the Debtor sought to address its financial situation by pursuing a
28 strategic partnership or other transaction. In March 2010, the Debtor engaged Cain Brothers, an

1 investment banking firm with particular expertise in the healthcare industry, to locate a suitable
2 strategic partner or other transaction. During the following one-year period, Cain Brothers
3 conducted a search for potential strategic partners or other transactions and helped to conduct due
4 diligence. During that period, the Debtor engaged in negotiations with several parties, but
5 ultimately was not able to reach an agreement on a transaction with any of them.

6 By March 2011, the Debtor ~~was facing~~faced an acute liquidity shortage and the prospect that
7 the Debtor would default under both its Credit Agreement and the indenture governing the Public
8 Bonds. In response to these developments, the Debtor retained A&M to assess the Debtor's
9 operations, develop a business plan for stabilizing the Debtor's liquidity situation, assist the
10 Debtor's counsel in negotiating a forbearance with the Lenders, and assist the Debtor in developing
11 a restructuring aimed at maximizing value and preserving the philanthropic mission of the Debtor
12 (including maintaining high quality patient care).

13 Working together with A&M and the Debtor's counsel, the Debtor negotiated a forbearance
14 agreement dated March 29, 2011, which agreement thereafter was amended on April 25, 2011 and
15 July 18, 2011 (as amended from time to time, the "Forbearance Agreement"). Pursuant to the
16 Forbearance Agreement and the subsequent Plan Support Agreement (defined and discussed
17 below), the Agent and the consenting lenders agreed to forbear from exercising remedies through
18 the Petition Date. Pursuant to those agreements, as well as certain written consents (the "Consents")
19 the Agent released an aggregate \$8.55 million from the Cash Collateral Account to fund the
20 Debtor's operating losses, including its restructuring costs prior to the bankruptcy filing.

21 At the insistence of the Board, the Forbearance Agreement also included a commitment by
22 the Agent to release millions of dollars of additional funds from the Cash Collateral Account in
23 order to conduct an orderly wind down of the Debtor's operations and preserve patient safety in the
24 event a liquidation became necessary.

25 Pursuant to the foregoing agreements with the Agent and the Lenders, the Debtor was
26 required to: (i) obtain an additional \$2.5 million in charitable donations that could be used to fund
27 operations; (ii) limit its expenditures to those specified in a budget developed by A&M and
28 approved by the Agent; (iii) agree to the release of an aggregate \$11.5 million from the Cash

1 Collateral Account to permanently reduce the outstanding indebtedness under the Credit Agreement
2 (i.e. to its current principal balance of approximately \$91 million); (iv) implement an operational
3 restructuring plan that was developed by A&M; and (v) develop a contingency plan for winding
4 down the Debtor's operations if its efforts to find a strategic partner were not successful. The
5 Debtor satisfied all of these requirements.

6 The operational restructuring, which was approved by the Board and implemented
7 beginning on April 8, 2011, involved: (i) the reduction of research activities that were not funded by
8 outside sources; (ii) the discontinuation of services that were not economically self-sustaining; (iii)
9 the termination of certain physicians whose salaries and other costs were not economically justified
10 by the size or profitability of their practice; (iv) the reduction of operating costs through the
11 outsourcing, downsizing, elimination and/or consolidation of employment positions; (v) the
12 consolidation of all operations into the Flagship Building by vacating both the Administration
13 Building and the Research Building; and (vi) the elimination of the employer match component of
14 the 401(k) and 403(b) retirement plans.

15 In the aggregate, the operational restructuring involved the termination of approximately
16 160 employees of NVCI, all of whom were given notice on April 8, 2011, and most of whom were
17 terminated as of that date. A relatively small number of those terminations were effectuated in
18 subsequent weeks.

19 The operational restructuring was designed to, and ultimately succeeded in, quickly bringing
20 expenses more in line with revenues, reducing operating expenditures by at least \$10 million on an
21 annualized basis, and permitting a slimmed-down organization to continue its important work,
22 while it developed a solution to its financial situation.

23 **G. ~~The~~Negotiation of the UCSD Sale.**

24 In April 2011, the Debtor and Cain Brothers mutually terminated their investment banking
25 relationship, and the Debtor hired a new investment banking team at J.P. Morgan Securities LLC
26 ("JP Morgan"), which team specializes in transactions in the not-for-profit healthcare field. JP
27 Morgan assisted with the preparation of a confidential information memorandum, surveyed the
28

1 marketplace to identify potentially interested parties and reached out to those parties it determined
2 were most likely to be interested in a transaction with the Debtor.

3 In the aggregate, JP Morgan contacted approximately 20 public and private entities, three of
4 which executed non-disclosure agreements and received confidential information memoranda.
5 Several entities also conducted site visits. As part of its comprehensive process, JP Morgan
6 identified and reached out to parties who might have interest in acquiring the Debtor's real estate, in
7 addition to parties interested in its operations. The level of interest in the Debtor and its assets,
8 however, was very limited. The Debtor's principal assets (*i.e.*, cancer treatment and research
9 buildings) ~~are~~were highly specialized, subject to significant land use restrictions (as noted above),
10 and simply ~~are~~were not in great demand – particularly in the current economic climate.

11 Nevertheless, as a result of these efforts, two entities interested in the Debtor's clinical and
12 research operations conducted due diligence and thereafter presented the Debtor with written
13 expressions of interest. On July 25 and 26, 2011, these two entities made presentations regarding
14 their respective proposals to a group comprised of members of the Board, the Debtor's counsel, JP
15 Morgan representatives, and A&M. At the request of the Agent, a subsequent meeting was held
16 with one of those entities the following week. Based upon these meetings, representatives of JP
17 Morgan and the Debtor thereafter negotiated with both entities in an effort to improve their
18 respective proposals and negotiate a mutually acceptable, non-binding letter of intent setting forth
19 the material terms of a transaction. These negotiations continued throughout August 2011.

20 As a result of these efforts, and with the input of the Agent and Lenders, the Board
21 determined to proceed with the acquisition proposal presented by ~~The Regents of the University of~~
22 ~~California (the "Regents") on behalf of its UC San Diego Health System ("UCSD")~~UCSD, pursuant
23 to that certain executed Letter of Intent dated August 30, 2011 (the "Letter of Intent"). The Letter of
24 Intent ~~indicates~~indicated the parties' mutual interest in negotiating a transaction under which UCSD
25 would acquire the Flagship Building and substantially all of the Debtor's assets, properties and
26 rights relating to the Debtor's cancer business at the Flagship Building, and certain other assets, for
27 \$18 million in cash (subject to higher and better offers) pursuant to Bankruptcy Code section 363
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1 (the “UCSD Sale”). The Letter of Intent ~~contemplates~~contemplated that UCSD ~~will~~would use those
2 assets to operate a nonprofit cancer center and continue the philanthropic mission of the Debtor.

3 A critical component of the Letter of Intent was the Debtor’s commitment to raise up to \$15
4 million in philanthropic support over a five-year period to support UCSD’s efforts post-closing.
5 UCSD was not willing to proceed without this philanthropic commitment.

6 Following execution of the Letter of Intent, the Debtor and UCSD engaged in extensive
7 negotiations regarding the form of a definitive asset purchase agreement for the proposed UCSD
8 Sale (“Asset Purchase Agreement”). These negotiations were undertaken in good faith and at arm’s
9 length. In accordance with the terms of the Plan Support Agreement (defined in Section VIII.H
10 below), the Agent and the Lenders were given an opportunity to review and comment on drafts of
11 the Asset Purchase Agreement, and the Approving Lenders (as such term is defined in the Plan
12 Support Agreement) agreed to the form of Asset Purchase Agreement negotiated by the Debtor and
13 UCSD.

14 One significant issue that arose in connection with negotiation of the Asset Purchase
15 Agreement was the amount of the Debtor’s philanthropic commitment to UCSD. Although the
16 Letter of Intent contemplated an aggregate philanthropic commitment of \$15 million over 5 years,
17 UCSD subsequently required that such commitment total \$20.8 million over that period, as
18 specified in the form of “Funding Agreement” ~~entered into in connection with~~attached to the Asset
19 Purchase Agreement (the “Philanthropic Commitment”).

20 Another significant issue was the requirement of UCSD that a substantial portion of the
21 Philanthropic Commitment be backed by some form of financial assurance. The Debtor did not
22 (and does not) have a means of providing such assurance on its own. Given the Debtor’s ~~present~~
23 financial circumstances, and the prospect that the cancer services at the Flagship Building ~~will~~would
24 need to be shut down if the Debtor ~~cannot~~could not timely consummate the UCSD Sale, the
25 Engelstad Family Foundation agreed that the \$15 million Engelstad Endowment Fund would serve
26 as a financial “backstop” for a substantial portion of the Philanthropic Commitment, as specifically
27 set forth in the Gift Amendment and the Funding Agreement. *See also* Section VIII.E.2.b above. As
28

1 noted above, in accordance with the Gift Amendment, the Debtor transferred the funds comprising
2 the Engelstad Endowment Fund into an escrow account.

3 Additionally, the Plan Support Agreement required a deposit by UCSD ~~in an amount~~
4 ~~necessary to protect the Debtor in the event of a breach of the Asset Purchase Agreement by UCSD.~~
5 ~~The Debtor, the Agent and the Lenders were concerned that cash that would be necessary and~~
6 ~~otherwise available for a possible orderly wind-down of the Debtor's operations would be used for~~
7 ~~the Debtor's operations over the time necessary to pursue the sale to UCSD. The Asset Purchase~~
8 ~~Agreement now requires UCSD to fund a \$1.8 million deposit into escrow upon entry of an order of~~
9 ~~the Court approving bidding procedures and a break-up fee in favor of UCSD (the "Deposit"). The~~
10 ~~Deposit is part of the purchase price to be paid by UCSD, and will be credited against the amount~~
11 ~~due at the closing of the UCSD Sale. See Asset Purchase Agreement, § 2.1. The Asset Purchase~~
12 ~~Agreement provides for refund of the Deposit to UCSD upon termination of the Asset Purchase~~
13 ~~Agreement, provided, however, that if the Asset Purchase Agreement is terminated by the Debtor~~
14 ~~upon breach of or failure to perform in any material respect (which breach or failure cannot be or has~~
15 ~~not been cured within 30 days after the giving of notice of such breach or failure) any~~
16 ~~representation, warranty, covenant or agreement on the part of UCSD set forth in the agreement~~
17 ~~such that a condition precedent to the Debtor's obligation to perform under the Asset Purchase~~
18 ~~Agreement stated in section 8.2 of the agreement would not be satisfied, the Deposit shall remain in~~
19 ~~escrow pending (i) the escrow agent's receipt of a joint letter of instruction executed by both the~~
20 ~~Debtor and UCSD, or (ii) entry of an order of the Court regarding the disposition of the Deposit~~
21 ~~based on a determination by the Court of the actual damages caused by UCSD's breach or failure to~~
22 ~~perform. See Asset Purchase Agreement, §§ 8.2, 10.1(h) and 10.2(b).~~ Pursuant to the Asset
23 Purchase Agreement, UCSD funded a deposit of \$1.8 million into escrow upon entry of the Bid
24 Procedures Order (as defined in Section VIII.J.4 below). The deposit was applied to the purchase
25 price in connection with the closing of the sale.

26 The Asset Purchase Agreement was executed on December 2, 2011 and on December 2,
27 2011, the Debtor filed its voluntary chapter 11 petition in the Court, in order to implement the
28 UCSD Sale, and to seek confirmation of a chapter 11 plan with respect to its remaining assets.

1 **H. The Plan Support Agreement.**

2 In conjunction with its negotiation of the Letter of Intent, the Debtor also entered into
 3 negotiations with the Agent and the Lenders regarding the restructuring of the Debtor's obligations
 4 to the Lenders, the disposition of those assets that are not included in the UCSD Sale, and the
 5 reorganization of the Debtor as a go-forward, philanthropic entity. These negotiations resulted in
 6 the execution of that certain Plan Support Agreement dated September 16, 2011 which incorporates
 7 as an exhibit a certain term sheet setting forth the material terms upon which the Lenders would
 8 support such efforts (as such agreement has been and may subsequently be amended, the "Plan
 9 Support Agreement"). ~~The Plan Support Agreement and the all amendments and exhibits thereto~~
 10 ~~are collectively attached hereto as Exhibit 3.~~ The Plan Support Agreement was executed by the
 11 Debtor, the Agent and seven of eight Lenders (the "Consenting Lenders") holding in excess of 80%
 12 of the debt.

13 Pursuant to ~~By~~ the Plan Support Agreement and the Consents, the Agent and the Consenting
 14 Lenders extended the forbearance period under the Forbearance Agreement through the filing of this
 15 Case ~~and~~ released the additional sum of \$2.75 million from the Cash Collateral Account to fund the
 16 Debtor's operations and restructuring expenses through the Petition Date (for a total of \$8.55
 17 million release ~~since from~~ the ~~date the~~ Forbearance Agreement was first executed). ~~Additional funds~~
 18 ~~will be released to the Petition Date), and provided for the release of additional funds~~ from the Cash
 19 Collateral Account, to be used in accordance with the Budget, after UCSD ~~funds funded~~ into escrow
 20 the \$1.8 million Deposit ~~pursuant to required by~~ the Asset Purchase Agreement. ~~The projections~~
 21 ~~underlying the Budget do not provide for continued operations at the Flagship Building or the UMC~~
 22 ~~location after January 20, 2012, the anticipated closing of the UCSD Sale.~~

23 ~~Importantly, by~~ Pursuant to the Plan Support Agreement, the Agent and the Consenting
 24 Lenders ~~have~~ consented to the ~~proposed sale to~~ UCSD ~~Sale~~ provided that they receive \$18 million in
 25 immediately available funds upon the consummation of the sale and that the terms of the sale
 26 otherwise ~~conform conformed~~ to the Letter of Intent, and ~~further~~ provided that the Agent ~~has would~~
 27 ~~have~~ the right to consent to the procedures for such sale, the terms of any auction and the form and
 28 substance of any order approving such sale. In addition, subject to certain terms and conditions

1 specified in the Plan Support Agreement, the Consenting Lenders agreed to, among other things: (i)
2 support the Plan; (ii) not to vote for, consent to, support or participate in the formulation of any plan
3 of reorganization other than the Plan; (iii) not to take any action that could delay successful
4 implementation of the UCSD Sale, the restructuring of the Debtor, or the transactions contemplated
5 under the Plan; and (iv) not to object to the solicitation of the Plan, support any such objection by a
6 third party or otherwise take any action that would materially delay the confirmation or
7 consummation of the Plan. The Debtor is required to comply with the various sale and Plan
8 confirmation milestones set forth in the Plan Support Agreement, unless such milestones are
9 extended in accordance with the Plan Support Agreement. Specifically, the Plan Support
10 Agreement could terminate if the Confirmation Order is not entered one-hundred twenty (120)
11 calendar days after the Petition Date or the Effective Date of the Plan does not occur within thirty
12 (30) calendar days following entry of the Confirmation Order.

13 Under the terms of the Plan Support Agreement, the Consenting Lenders ~~have~~ agreed: (i) to
14 accept the \$18 million of cash proceeds from the UCSD Sale ~~at closing as a condition to~~
15 ~~releasing and release~~ the liens on the assets sold; and (ii) to accept the Research Building Note in
16 satisfaction of the Lenders' remaining secured debt, pursuant to the Plan. Additionally, ~~if Class 4~~
17 ~~(General Unsecured Claims) votes to accept the Plan, the Consenting Lenders have agreed that the~~
18 ~~Agent and Lenders will not receive any consideration from the distribution to be made to Class 4 on~~
19 ~~account of the Lender Deficiency Claims~~ pursuant to a postpetition amendment to the Plan Support
20 Agreement and the Global Stipulation (as defined in and described in further detail in Section
21 VIII.J.6 below), the Lenders agreed to waive any unsecured deficiency claim they may have upon
22 the Effective Date of the Plan, and to fund any deficiency (up to \$750,000) in the Aggregate
23 Unsecured Creditor Consideration that will be used to fund the administrative expenses of the
24 Creditors' Committee and the Creditors Trust.

25 The Plan Support Agreement and all amendments and exhibits thereto are collectively
26 attached hereto as Exhibit 3.
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1 **I. Overview of the Plan.**

2 The Plan represents the culmination of the Debtor's restructuring effort. After undertaking a
3 significant operational restructuring pre-petition, and effectuating a sale of the Flagship Building
4 and certain other assets to UCSD, the Debtor is poised to consensually restructure its remaining
5 obligations to the Lenders pursuant to the Plan and emerge from chapter ~~11~~ expeditiously 11.

6 The Plan provides for the Debtor to continue as a philanthropic entity, to preserve the
7 Debtor's important mission of increasing cancer knowledge and funding cancer research and
8 treatment. After emerging from chapter 11, the Reorganized Debtor will continue to hold and
9 maintain certain assets for future use, including the Research Building, the Alta-Hualapai parcel,
10 and the Vacant Land, and will explore ways to ~~potentially~~ utilize these assets ~~for the public good~~ in
11 support of its philanthropic mission. The Reorganized Debtor ~~will~~ also will fundraise in support of
12 UCSD. The Reorganized Debtor will use charitable donations to ~~cover its~~ meet the Philanthropic
13 Commitment to UCSD, and to meet the Reorganized Debtor's annual carrying costs, including
14 maintenance of its real property, the required payments to the Lenders under the Research Building
15 Note (as defined below), and compensation of an employee to assist the Reorganized Debtor with
16 fundraising and administrative needs. The Debtor expects to have obtained a fundraising
17 commitment prior to the Effective Date that will provide at least one year of funding for the
18 Reorganized Debtor.

19 As discussed above and set forth in the Funding Agreement, the Engelstad Endowment Fund
20 will be kept in escrow as a backstop ~~to~~ for a substantial portion of the Reorganized Debtor's
21 Philanthropic Commitment to UCSD, and any funds remaining in the escrow at the end of each year
22 in excess of the Reorganized Debtor's fundraising commitment will revert back to the control of the
23 Reorganized Debtor to be used for Engelstad Endowment Fund purposes. The Reorganized Debtor
24 will have ample funding from a variety of sources, and will emerge a streamlined, self-sufficient
25 entity capable of functioning outside of chapter 11.

26 The Plan also provides for the creation of the Creditor Trust for the benefit of holders of
27 Allowed General Unsecured Claims (other than the Lenders). The Creditor Trust will be vested on
28 the Effective Date with the Preserved Avoidance Actions, the Preserved Actions, and other potential

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1 Claims or causes of action. The Creditor Trust also will receive the Unsecured Creditor Cash, if
2 any. The Unsecured Creditor Cash will be equal to the difference between \$750,000 and the total of
3 all Allowed Committee Administrative Expense Claims incurred by the Creditors' Committee and
4 its professionals in the Case. The holders of Allowed General Unsecured Claims will share pro-rata
5 in the Net Trust Assets, i.e., any Unsecured Creditor Cash, any cash realized from the Claims, rights
6 and causes of action vested in the Creditor Trust, less the costs of realizing those recoveries,
7 objecting to General Unsecured Claims, and administering the Trust.

8 In addition, under the Global Stipulation and the Plan, the Creditors' Committee (or Creditor
9 Trust) has the right to commence a "Trust Funds Challenge" with respect to any Charitable Trust
10 Funds other than the Engelstad Endowment Fund and the Escrowed Donations, by way of an
11 adversary proceeding.¹² As of the close of business on January 31, 2012, the Debtor holds
12 Charitable Trust Funds, other than the Engelstad Endowment Fund and the Escrowed Donations, of
13 approximately \$1.1 million (i.e., the Saffer Endowment Fund and the Other Donor-Restricted
14 Funds).

15 To the extent that a Trust Funds Challenge that is properly commenced by the Creditors'
16 Committee (or the Creditor Trust) is successful, any funds determined to be available for general
17 corporate purposes that are not used to satisfy Allowed Administrative Claims or Allowed Priority
18 Claims will be transferred to the Creditor Trust. Any Trust Funds Challenge properly commenced
19 by the Creditors' Committee that is pending as of the Effective Date will be vested in and may be
20 prosecuted or settled by the Creditor Trust. The Agent and the Lenders are prohibited under the Plan
21 from commencing a Trust Funds Challenge or sharing in any recovery distributed to the Creditor
22 Trust based on a Trust Funds Challenge.

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¹² The Debtor believes that all of the Charitable Trust Funds are held in trust to be used solely as designated by the applicable donors and that the Creditors' Committee and/or the Creditor Trust will not succeed with respect to any Trust Funds Challenge.

1 **J. The Chapter 11 Case.**

2 **1. First Day Motions.**

3 On the Petition Date, the Debtor Filed a number of emergency motions designed primarily to
4 minimize the impact of the chapter 11 filings on the Debtor's operations and to facilitate the
5 Debtor's compliance with the requirements of chapter 11. Specifically, the Debtor Filed the
6 following motions: which were granted by the Court, pursuant to the noted orders:

- 7 • *Emergency Motion for Interim and Final Use of Cash Collateral (the "Cash*
8 *Collateral Motion"), Docket Nos. 9 (Motion), 65 (Interim Order) and 281 (Final*
9 *Order);*
- 10 • *Emergency Motion for Order Pursuant to Local Bankruptcy Rule 4001(c)*
11 *Authorizing the Debtor to Pay Outstanding Employee Compensation and Honor*
12 *Obligations Associated With Employee Benefit Programs And Policies, Docket Nos.*
13 *13 (Motion) and 67 (Order);*
- 14 • *Emergency Motion Pursuant to Local Bankruptcy Rule 4001(c) for Order*
15 *Establishing Notice Procedures and Permitting Debtor and Debtor in Possession to*
16 *Serve Insured Depository Institutions by First-Class Mail, Docket Nos. 16 (Motion)*
17 *and 68 (Order);*
- 18 • *Emergency Motion Pursuant to Local Bankruptcy Rule 4001(e) for Order*
19 *Authorizing Maintenance of Certain Prepetition Bank Accounts and Related Relief,*
20 *Docket Nos. 14 (Motion), 66 (Interim Order), and 285 (Final Order);*
- 21 • *Emergency Motion for Interim and Final Orders Pursuant to Local Bankruptcy Rule*
22 *4001(c) for Order Determining Adequate Assurance of Payment for Postpetition*
23 *Utility Services, Docket Nos. 15 (Motion), 69 (Interim Order), and 287 (Final*
24 *Order);*
- 25 • *Emergency Motion for Interim and Final Orders Pursuant to Local Bankruptcy Rule*
26 *4001(c) for Order Regarding Patient Care Ombudsman Under Section 333(a)(1) of*
27 *the Bankruptcy Code, Docket Nos. 17 (Motion), 70 (Interim Order), and 288 (Final*
28 *Order); and*

- *Emergency Motion Pursuant to Local Bankruptcy Rule 4001(c) For Order (1) Fixing Deadlines for Filing Proofs of Claim; (2) Establishing Consequences of Failing to Comply Therewith; and (3) Approving Form and Manner of Notice Thereof, [Docket Nos. 18 \(Motion\) and 73 \(Order\)](#).*

Detailed information regarding each of the above-listed motions is not contained in this Disclosure Statement. These pleadings may be obtained by accessing PACER through the Court's website (<http://www.nvb.uscourts.gov>), by accessing the website maintained by Kurtzman Carson Consultants LLC (<http://www.kccllc.net/NevadaCancerInstitute>), or by sending a written request to Klee, Tuchin, Bogdanoff & Stern LLP, Attn: Courtney E. Pozmantier, Esq., 1999 Avenue of the Stars, 39th Floor, Los Angeles, CA 90067, Facsimile: (310) 407-9090.

2. Appointment of the Creditors' Committee.

On December 16, 2011, the U.S. Trustee appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee"). The three members appointed to the Creditors' Committee were: (1) College of Southern Nevada; (2) NCI Admin Bldg., LLC, and (3) Maximus Consulting Services, Inc. ("Maximus"). Shortly thereafter, Maximus resigned from the Creditors' Committee.

3. ~~2.~~ Use of Cash Collateral.

Shortly before the Petition Date, the Debtor reached agreement with the Agent and the Lenders on the terms of a stipulation permitting the Debtor's use of cash collateral on a consensual basis during the Case (the "Cash Collateral Stipulation"). ~~Use of cash collateral is of vital importance to the Debtor's continuing ability to ensure patient safety and operate and maintain its business. Under~~ On the Petition Date, the Debtor filed its *Emergency Motion For Interim And Final Use Of Cash Collateral* (the "Cash Collateral Motion"). See Docket No. 9. The Court held an interim hearing on the Cash Collateral Motion on December 6, 2011, and thereafter entered an order approving the Debtor's use of cash collateral in accordance with the Cash Collateral Stipulation, ~~the Debtor will fund its pre-sale operations, and the costs and expenses of this chapter 11 Case in accordance with the agreed upon budget under the Cash Collateral Stipulation (i.e. the Budget). Accordingly, the Debtor will be able to continue operations and preserve its going concern value pending the sale to UCSD. The Budget provides that the remaining funds in the estate will be used~~

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1 ~~to fund solicitation, confirmation and implementation of the Plan,~~ and setting a final hearing for
2 January 11, 2012. See Docket No. 65. As discussed below in Section VIII.J.6, after the Creditors’
3 Committee was appointed, it negotiated with the Debtor and the Agent regarding, *inter alia*, its
4 concerns regarding the Cash Collateral Order. As a result of those negotiations, the parties reached
5 a compromise and agreed upon a consensual order granting the Cash Collateral Motion on a final
6 basis, which order was entered on January 12, 2012 (the “Final Cash Collateral Order”). See Docket
7 No. 281.

8 ~~3. Appointment of the Creditors’ Committee.~~

9 ~~Information regarding appointment of an Official Committee of Unsecured Creditors (the~~
10 ~~“Creditors’ Committee”) and any professionals retained by any Committee may be obtained by~~
11 ~~accessing PACER through the Court’s website (<http://www.nvb.uscourts.gov>) or by contacting the~~
12 ~~U.S. Trustee.~~

13 ~~4. The UCSD Sale.~~ Bid Procedures.

14 As contemplated by the Asset Purchase Agreement and the Plan Support Agreement, the
15 Debtor filed ~~a motion on the Petition Date requesting that the Court (i) schedule a hearing on~~
16 ~~approval of the UCSD Sale, (ii) approve procedures for the submission and consideration of~~
17 ~~competing bids and the conduct of an auction in the event a qualified bid is received, (iii) approve~~
18 ~~the form and scope of notice associated with the sale, and (iv) authorize the break up fee and~~
19 ~~expense reimbursement for UCSD provided for in the Asset Purchase Agreement. Confirmation of~~
20 ~~the Plan is conditioned on the closing of the UCSD Sale.~~ its Motion for Orders: (1) Approving Sale
21 of Debtor’s Assets Under Assets Purchase Agreement Free And Clear of Liens, Claims and
22 Interests, (2) Approving Assumption and Assignment of Unexpired Leases and Executory Contracts,
23 (3) Approving Certain Bid and Auction Procedures, Including a Break-Up Fee, (4) Setting Date and
24 Time for Hearing on Proposed Sale, and (5) Approving Form of Notice of Auction and Sale Hearing
25 (the “Sale Motion”). See Docket No. 10. The Sale Motion sought relief in two stages: (i) first,
26 approval of bid procedures and a break up fee in favor of UCSD, and (ii) second, approval of the
27 UCSD sale itself.

1 The Court held its hearing on the first stage of relief on December 6, 2011, and thereafter
2 entered its *Order Establishing Bidding Procedures and Deadlines, Approving Break-Up Fee and*
3 *Expense Reimbursement* [Docket No. 64] (the “Bid Procedures Order”) on December 7, 2011.
4 Pursuant to the Bid Procedures Order, the Court established dates, deadlines and procedures for
5 providing notice of the sale, the filing of objections, **the submission and consideration of potential**
6 overbids and, if qualified overbids were timely received, for an auction. Among other dates, the
7 Court set December 30, 2011 as the deadline for the submission of qualified overbids, and
8 scheduled a hearing on the balance of the relief in the Sale Motion for January 11, 2012. The Court
9 also approved a break-up fee in favor of UCSD equal to 4% of the purchase price proposed by
10 UCSD, plus its reasonable out-of-pocket legal and other fees and expenses not to exceed \$250,000.

11 **5. Pleadings Relating to the Plan and Disclosure Statement. The Plan and**
12 **Disclosure Statement.**

13 ~~To facilitate the prompt confirmation and consummation of the Plan, the Debtor filed a~~
14 ~~motion shortly after the Petition Date seeking an order of the Court (i) approving this Disclosure~~
15 ~~Statement and related solicitation procedures, and (ii) scheduling a hearing on confirmation of the~~
16 ~~Plan and related briefing and objection deadlines (the “Solicitation Procedures Motion”). The~~
17 ~~Debtor also filed a request for an administrative order scheduling a hearing on the adequacy of the~~
18 ~~Disclosure Statement and the Solicitation Procedures Motion on or before January 30, 2011.~~

19 On December 6, 2011, the Debtor filed the original versions of its plan and disclosure
20 statement: the *Chapter 11 Plan of Reorganization For Nevada Cancer Institute (Dated December 6,*
21 *2011)* (the “Original Plan”), and the [*Proposed*] *Disclosure Statement Describing Chapter 11 Plan*
22 *of Reorganization For Nevada Cancer Institute (Dated December 6, 2011).* On the same date, the
23 Debtor also filed its motion requesting an order (i) approving the disclosure and related solicitation
24 procedures, and (ii) scheduling a hearing on confirmation of the Plan and related briefing and
25 objection deadlines (the “Solicitation Procedures Motion”). The Court scheduled a hearing on the
26 Solicitation Procedures Motion for February 3, 2012. These versions of the Debtor’s plan and
27 disclosure statement were subsequently modified to reflect the settlement described in the following
28 Section and other developments – resulting in the Plan and this Disclosure Statement.

1 6. Settlement with the Creditors' Committee.

2 Shortly after the appointment of the Creditors' Committee, it initiated discussions with the
3 Debtor and the Agent in order to discuss various concerns and potential objections of the Creditors'
4 Committee with respect to the Sale Motion, the Cash Collateral Motion, and the Original Plan. The
5 Debtor, the Creditors' Committee, and the Agent thereafter engaged in good faith, arm's length
6 negotiations aimed at reaching a consensual resolution of the issues raised by the Creditors'
7 Committee. Further, in response to the requests of counsel for the Creditors' Committee, the Debtor
8 provided documents and information to the Creditors' Committee regarding these and other matters
9 pertaining to the Debtor's estate.

10 As a result of these efforts, the Debtor, the Creditors' Committee, and the Agent reached a
11 comprehensive agreement regarding the Sale Motion, the Cash Collateral Motion and the Plan, as
12 set forth in the *Stipulation Regarding Sale Motion, Cash Collateral Motion, and Plan of*
13 *Reorganization* [Docket No. 247-1] (the "Global Stipulation"). Pursuant and subject to the terms of
14 the Global Stipulation, the Creditors' Committee agreed to support approval of the UCSD Sale (as
15 proposed), entry of a final order on the Cash Collateral Motion, approval of the Disclosure
16 Statement, and confirmation of the Plan (including without limitation the releases contained in the
17 Plan). The terms of the Global Stipulation are reflected in the Final Cash Collateral Order, the Plan,
18 this Disclosure Statement, and the Plan Support Agreement, which was modified for the purpose of
19 facilitating the Global Stipulation.

20 The Global Stipulation provides that an aggregate of \$750,000 in cash will be made
21 available to satisfy Allowed Committee Administrative Expense Claims and to fund the Creditor
22 Trust established under the Plan (the "Aggregate Unsecured Creditor Consideration"), whether
23 provided during the Case or pursuant to the Plan. Whatever portion of the Aggregate Unsecured
24 Creditor Consideration, if any, is not utilized for the payment of Allowed Committee Administrative
25 Expense Claims will constitute the Unsecured Creditor Cash under the Plan. Neither the Agent nor
26 the Lenders are permitted to share in the Aggregate Unsecured Creditor Consideration and shall be
27 deemed to have waived the Lender Deficiency Claims (i.e., the Lenders' unsecured deficiency
28 claims that are treated as Class 4 Claims under the Plan) upon the Effective Date. Further, to the

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1 extent there are insufficient funds in the Estate to pay the Aggregate Unsecured Creditor
2 Consideration, after payment of all other expenses authorized and paid under the Cash Collateral
3 Stipulation, the Lenders are severally (but not jointly) obligated to fund up to \$750,000 of such
4 deficiency following the Effective Date of the Plan.

5 Pursuant to the Global Stipulation, the parties also agreed: (1) that the adequate protection
6 liens and superpriority claims granted the Agent for the benefit of the Agent and Lenders under the
7 Cash Collateral Stipulation would not extend to or have recourse against the Administration
8 Building Parcel, the Alta-Hualapai Parcel, any avoidance actions under chapter 5 of the Bankruptcy
9 Code (“Avoidance Actions”) or any “Donor Restricted Funds” as defined in the Cash Collateral
10 Stipulation; (2) that the “Investigation Period” granted the Creditors’ Committee under the Cash
11 Collateral Stipulation with respect the liens and claims asserted by the Agent and Lenders and any
12 claims of the Estate against the Agent and lenders would expire on the effective date of the Global
13 Stipulation; (3) except with respect to any and all donations of the Engelstad Family Foundation and
14 funds raised and deposited into the Donations Escrow Account, see Section VIII.J.8, the parties
15 reserved their rights as to whether the funds held and identified by the Debtor as “Donor Restricted
16 Funds” or “Charitable Trust Funds” are legally held in trust, or are available for general corporate
17 purposes, including the satisfaction of nonpriority unsecured claims;¹³ and (4) that the Creditor
18 Trust Assets under the Plan would include all causes of action not released by the Debtor under the
19 Plan, or released during the case with the approval of the Bankruptcy Court, other than, specifically,
20 the Claims, rights and causes of action vested in and/or retained by the Reorganized Debtor under
21 Section IV.E of the Plan, including, without limitation, causes of action of the Debtor and the Estate

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¹³ Under the Plan, the Agent and Lenders are not preserving such a right, as they are waiving their General Unsecured Claims under the Plan and acknowledging thereunder (as they did in the Cash Collateral Stipulation) that they hold no interest in any Charitable Trust Funds as collateral for their Claims against the Debtor.

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1 against any person or entity arising from or relating to the Asset Purchase Agreement and all
2 agreements entered into by the Debtor in connection with the UCSD Sale.¹⁴

3 **7. Approval of the UCSD Sale.**

4 In accordance with the Bid Procedures Order, the Debtor provided notice of the hearing on
5 the Sale Motion and the bid procedures approved by the Court to thousands of parties, including
6 parties whose interest in a transaction with the Debtor previously had been solicited by the Debtor’s
7 investment bankers, all known creditors of the Debtor and all parties to executory contracts and
8 unexpired leases of the Debtor (including those potentially to be assumed and assigned to UCSD in
9 conjunction with the UCSD Sale).

10 Pursuant to the Bid Procedures Order, the Court established December 30, 2011 as the
11 deadline for parties in interest to complete due diligence and submit a competing “Qualifying Bid”
12 for the assets to be acquired by USCD pursuant to the Asset Purchase Agreement. No Qualifying
13 Bids were submitted in advance of the bid deadline, and UCSD was deemed the “Winning Bidder”
14 without the need for an auction. See Notice Of Selection Of UC San Diego Health System As
15 Winning Bidder Pursuant To Bid Procedures And Notice Of Cancellation Of Auction, Docket No.
16 216.

17 December 28, 2011 was the deadline under the Bid Procedures Order for the filing of
18 objections in respect of the Sale Motion. The only objections filed to the Sale Motion were limited
19 objections pertaining to the assumption and assignment of particular contracts and leases, and the
20 appropriate cure amounts with respect thereto. All of these objections were subsequently resolved
21 and withdrawn; several of them pursuant to written stipulations on file with the Court, see Docket
22 Nos. 239, 266, 267, 268, and the remainder by agreement to the insertion of specific language in the
23 order approving the sale.

24 The Court held the Sale Hearing on January 11, 2012 and approved the Sale Motion. On
25 January 12, 2012, the Court entered its Order (1) Approving Sale of Debtor’s Assets Under Asset

26 _____
27 ¹⁴ Among other things, Section VII.B of the Plan releases causes of action under chapter 5 of the Bankruptcy
28 Code that do not constitute Preserved Avoidance Actions.

1 Purchase Agreement Free and Clear of Liens, Claims and Encumbrances and (2) Approving
2 Assumption and Assignment of Unexpired Leases and Executory Contracts (the “Sale Order”) on
3 January 12, 2012. In accordance with the Plan Support Agreement, the Sale Order provided that the
4 \$18 million in sale proceeds from UCSD would be remitted, upon closing, to the Agent, for the
5 benefit of the Agent and Lenders.

6 As noted above, the UCSD Sale closed on January 31, 2012.

7 **8. The Restricted Donations Motion.**

8 In conjunction with the Debtor’s restructuring effort, some donors indicated their
9 willingness to make donations to (i) help fund the Debtor’s Philanthropic Commitment to UCSD,
10 and (ii) support the Reorganized Debtor following the confirmation and implementation of the Plan.
11 In doing so, these donors wish to ensure that the charitable mission of the Debtor is preserved and
12 continued. In order to facilitate these philanthropic donations and honor the intent of these donors,
13 the Debtor Filed a motion for entry of an order authorizing it to receive and deposit any such
14 donor-restricted donations into an escrow account (as previously defined, the “Donations Escrow
15 Account”). See Docket No. 95. The Court thereafter granted the motion, see Docket No. 141, and
16 the Debtor began receiving and depositing philanthropic donations restricted to the foregoing
17 purposes into the Donations Escrow Account.

18 Upon the closing of the UCSD Sale, in satisfaction of the first \$4.5 million installment of the
19 Philanthropic Commitment, the sum of \$3,558,024 was released from the Donations Escrow
20 Account and remitted to UCSD.¹⁵ The amount remaining in the Donations Escrow Account
21 immediately following that release was approximately \$4,201,976. The funds in the Donations
22 Escrow Account on and after the Effective Date will be released to the Reorganized Debtor.

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27 ¹⁵ The balance of that \$4.5 million obligation was satisfied by the transfer to UCSD upon the closing of
28 \$941,976 in Charitable Trust Funds donated by the Lincy Foundation, as to which the restricted uses were
modified by the Lincy Foundation on January 27, 2012. See Section VIII.E.2.e above.

1 9. ~~6.~~ **Leases and Executory Contracts.**

2 a. **Assumed/Rejected Leases and Executory Contracts.**

3 As of the Petition Date, the Debtor was a lessee under several unexpired leases of
4 non-residential real property and party to hundreds of executory contracts and personal property
5 leases. The Court approved the Debtor ~~sought to reject certain of these leases and contracts as part~~
6 ~~of its first day relief's rejection of the following agreements, effective as of the Petition Date:~~

- 7 • The executory contract between the Debtor and The Advisory Board Company;
- 8 • The sublease between the Debtor and Catholic Healthcare West, dba Saint Mary's
9 Regional Medical Center;
- 10 • The executory contract between the Debtor and OnTargetJobs, Inc., dba
11 HEALTheCAREERS;
- 12 • The executory contract between the Debtor and Time Warner Telecom Holdings
13 Inc.;
- 14 • The executory contract between the Debtor and Tractmanager Inc., a Delaware
15 corporation also known as MediTract Inc.; and
- 16 • The lease between the Debtor and NCI Admin Bldg., LLC.

17 In addition, ~~under the Asset Purchase Agreement, UCSD has the right to designate the~~
18 ~~agreements that will be assumed and assigned to it as part of the sale. The Debtor will file with the~~
19 ~~Bankruptcy Court and serve on the non-debtor parties to executory contracts and unexpired leases~~
20 ~~that may be assumed and assigned in connection with the proposed sale a "Cure Notice": (a)~~
21 ~~indicating the Debtor's estimate of the amounts, if any, required to satisfy the cure and~~
22 ~~compensation requirements of Bankruptcy Code section 365(b)(1) ("Cure Costs") with respect to~~
23 ~~such contracts and leases, (b) providing notice that UCSD or another qualified bidder may propose~~
24 ~~to take an assignment of any of the contracts and leases, (c) identifying those particular contracts~~
25 ~~and leases that UCSD proposes, at such time, to have assigned to it and (d) providing notice of the~~
26 ~~deadline for responses or objections to the proposed assumption and assignment of the contracts and~~
27 ~~leases and/or the Cure Costs with respect thereto.~~ pursuant to the Sale Order, the Court approved the
28 assumption and assignment to UCSD of the contracts and leases listed on Exhibit 1 to the Sale

1 Order. Prior to the closing, the list of contracts and leases to be assumed and assigned to UCSD was
 2 modified as permitted by the Sale Order and Asset Purchase Agreement to incorporate changes
 3 requested by UCSD. As reflected on the final schedules to the Asset Purchase Agreement, over 100
 4 contracts and leases were assigned to UCSD on the closing date of the UCSD Sale. With respect to
 5 each of such contracts and leases, the cure cost (if any) determined by the Court and set forth on
 6 Exhibit 1 to the Sale Order, was remitted to each of the non-debtor parties to such contracts and
 7 leases.

8 **b. Other Leases and Executory Contracts.**

9 ~~The Debtor is analyzing its remaining agreements that are subject to Bankruptcy Code~~
 10 ~~section 365 to help make assumption/rejection decisions.~~ The Debtor will make decisions regarding
 11 assumption or rejection of its remaining executory contracts and unexpired leases ~~under the Plan~~
 12 ~~and will file~~ as soon as practicable. Those decisions will be effectuated through one or more motions
 13 Filed with the Court or under the Plan. To the extent a decision to assume is effectuated through the
 14 Plan, it will be reflected in the Schedule of Assumed Agreements ~~and Schedule of Rejected~~
 15 ~~Agreements to reflect such decisions.~~ to be filed in accordance with the Plan. Pursuant to the Plan,
 16 all contracts that are not previously disposed of or listed on the Schedule of Assumed Agreements
 17 will be rejected under the Plan. See Section IX.B below.

18 **10. ~~7.~~ Claims Filed by Creditors.**

19 **a. The Schedules and the Bar Dates.**

20 The Debtor ~~expects to file~~ Filed its Schedules of Assets and Liabilities (the “Schedules”) and
 21 Statement of Financial Affairs (“SOFA”) ~~shortly after the Petition Date. In addition, as part of its~~
 22 ~~emergency first day relief, the Debtor filed a motion requesting that the Court set a bar date for~~
 23 ~~filing proofs of claim. Information regarding the Schedules and SOFA and any claims bar date that~~
 24 ~~has been set by the Court in this case may be obtained by accessing PACER through the Court’s~~
 25 ~~website (<http://www.nvb.uscourts.gov>) or by accessing the website maintained by Kurtzman Carson~~
 26 ~~Consultants LLC (<http://www.keelle.net/NevadaCancerInstitute>).~~ on December 6, 2011. Pursuant
 27 to the Schedules, the Debtor estimated that the total amount of the non-contingent, undisputed,
 28 liquidated Claims against the Debtor as of the petition Date was approximately \$99,801,251.27.

1 Secured claims accounted for approximately \$95,201,076.00 and General Unsecured Claims
2 accounted for approximately \$4,600,175.60.¹⁶

3 Upon a motion filed by the Debtor, the Court set (i) January 30, 2012 as the last day or “bar
4 date” for filing proofs of Claim generally; (ii) April 4, 2012 as the bar date for filing proofs of Claim
5 by any patient of the Debtor or any entity asserting a claim on behalf of a patient relating to services
6 provided by the Debtor, and (iii) June 27, 2012 as the bar date for filing proofs of Claim by any
7 governmental unit.

8 **THE DEBTOR, THE REORGANIZED DEBTOR AND THE CREDITOR TRUST**
9 **RESERVE ANY AND ALL RIGHTS, EXCEPT AS EXPRESSLY STATED IN THE PLAN,**
10 **TO OBJECT TO, DEFEND AGAINST, AND REQUEST DISALLOWANCE,**
11 **REDUCTION, SUBORDINATION AND/OR RECHARACTERIZATION OF ANY CLAIM**
12 **ASSERTED AGAINST THE DEBTOR OR ITS ESTATE. THE DEBTOR ANTICIPATES**
13 **THAT SOME CLAIM OBJECTIONS WILL BE FILED AFTER CONFIRMATION OF**
14 **THE PLAN.**

15 **b. Claim Objections.**

16 The Plan extends the deadline for filing objections to Claims against the Debtor set forth in
17 LR 3007(e). Specifically, except as otherwise provided in Section II.B of the Plan (regarding
18 allowance and payment of Administrative Claims), Section IV.G of the Plan provides that
19 objections to Claims against the Debtor shall be Filed and served upon the holders of the affected
20 Claims no later than the Claims Objection Deadline: the date that is the later of (a) 180 days after the
21 Effective Date, unless extended by the Court, and (b) 180 days after the date on which a proof of
22 claim in respect of a Claim against the Debtor has been Filed, unless extended by the Court.

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26 ¹⁶ This figure does not include any unsecured deficiency claim that may be asserted by the Lenders or any other
27 secured creditor or the litigation claims asserted by certain of the Debtor’s former employees against the
28 Debtor. In addition, while this amount includes \$1,275,172.98 for the claim of ANC relating to the
Administration Building Lease, no other amounts for the claims of ANC or NAB relating to the
Administration Building Parcel, see Section VIII.D.1.b *infra*, are included in this figure.

1 Creditors should assume that the Debtor, the Reorganized Debtor or the Creditor Trust may
 2 File an objection to any proof of claim that differs in amount or priority from the amount or priority
 3 of that creditor's Claim against the Debtor as listed in the Schedules, or if such creditor's Claim
 4 against the Debtor is listed in the Schedules as disputed, contingent, or unliquidated. Therefore, in
 5 voting on the Plan, no creditor may rely on the absence of an objection to its proof of claim as any
 6 indication that the Debtor, the Reorganized Debtor, the Creditor Trust or other parties in interest
 7 ultimately will not object to the amount, priority, security, or allowability of its Claim against the
 8 Debtor. Moreover, the Debtor, the Reorganized Debtor and the Creditor Trust reserve their rights
 9 with respect to all objections to Claims and counterclaims they may have with respect to Claims
 10 asserted against the Debtor and, except as specifically set forth in the Plan, ~~further~~ reserve their
 11 rights to prosecute Claims of the Debtor and the Estate (including rights to affirmative recoveries,
 12 rights to subordinate Claims against the Debtor, as well as other rights).

13 **11. ~~8.~~ Litigation.**

14 **a. Prepetition Litigation.**

15 As of the Petition Date, the Debtor was a party to litigation pending in non-bankruptcy
 16 forums. That litigation is set forth on Exhibit 2 hereto. The litigation in which the Debtor is a
 17 defendant was stayed by Bankruptcy Code section 362(a). If the Plan is confirmed by the Court,
 18 then pursuant to, and in furtherance of, the discharge provisions of section 1141(d) of the
 19 Bankruptcy Code and the Plan, the commencement or continuation of litigation against the Debtor
 20 based on a Claim against the Debtor, its estate or property of the Debtor that arose prior to the
 21 Confirmation Date will be enjoined from proceeding except in conformity with the discharge
 22 provision of section 1141(d) of the Bankruptcy Code and the Plan (or, as applicable, the claim
 23 adjudication process).

24 **NO PERSON SHOULD VOTE TO ACCEPT OR REJECT THE PLAN IN THE**
 25 **EXPECTATION THAT THE REORGANIZED DEBTOR AND/OR THE CREDITOR**
 26 **TRUST WILL REFRAIN FROM PURSUING ANY ACTION, WHETHER OR NOT THAT**
 27 **ACTION WAS COMMENCED PRE-PETITION. EXCEPT AS SPECIFICALLY SET**
 28 **FORTH IN THE PLAN, THE PLAN RELEASES NONE OF THE DEBTOR'S RIGHTS TO**

1 COMMENCE ANY ACTIONS. INSTEAD, PURSUANT TO SECTIONS IV.D AND IV.E
2 OF THE PLAN, ALL OF THE RIGHTS OF THE DEBTOR AND THE ESTATE TO
3 PURSUE THESE ACTIONS ARE PRESERVED UNDER THE PLAN AND REVESTED IN
4 THE REORGANIZED DEBTOR ~~AND~~ OR THE CREDITOR TRUST, AS APPLICABLE.

5 **b. Avoidance Actions**

6 Payments made by the Debtor within 90 days (as to non-insiders) and one-year (as to
7 insiders) prior to the Petition Date may be recoverable under Bankruptcy Code section 547 as
8 preferential transfers. Also, the Debtor may have other potential avoidance actions, including
9 actions to set aside and/or recover fraudulent transfers arising under Bankruptcy Code sections 544
10 and 548 and applicable state law, which may apply to transfers preceding the Petition Date by four
11 or more years. As specifically provided in Section IV.E of the Plan, the Preserved Avoidance
12 Actions will vest in the Creditor Trust on the Effective Date. See Section IX.C.4 below. Exhibit 4 to
13 the Disclosure Statement lists all Preserved Avoidance Actions. Recipients of Preserved Avoidance
14 Actions should assume that they may be pursued for recovery of the Preserved Avoidance Actions.

15 **c. ~~Retention of Claims, Causes of Action and Other Rights.~~ Retention of**
16 **Claims, Causes of Action and Other Rights.**

17 ~~Except as expressly released or otherwise provided in the Plan, pursuant to Bankruptcy Code~~
18 ~~section 1123(b), the Reorganized Debtor will be vested with, will retain and may enforce all Claims,~~
19 ~~rights, and causes of action of the Debtor or the Estate against any person or entity, all of which are~~
20 ~~preserved under the Plan, including rights of disallowance, offset, recharacterization and/or~~
21 ~~equitable subordination with respect to Claims.~~

22 ~~Notwithstanding the foregoing, the Creditor Trust will be vested with, will retain, and may~~
23 ~~enforce all of the Debtor's and the Estate's rights of disallowance, offset, recharacterization and/or~~
24 ~~equitable subordination with respect to Class 4 Claims.~~

25 As discussed below in Sections IX.C.5 and IX.C.6, sections IV.D and IV.E of the Plan vest
26 certain other Claims, causes of action and rights of the Debtor and the Estate in the Reorganized
27 Debtor or Creditor Trust, as set forth in those Sections.

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1 12. ~~9.~~ **Engagement of A&M.**

2 The Debtor has engaged Alvarez & Marsal Healthcare Industry Group, LLC pursuant to
3 Bankruptcy Code section 363(b) to furnish personnel to serve as the Debtor’s Chief Restructuring
4 Officer, Chief Financial Officer and Treasurer, Vice President Outcomes & Quality, and Assistant
5 Vice Presidents, Finance. *See also* Section VIII.B above.

6 13. ~~10. Retention of Professionals Retained by the Estate.~~

7 The Court has approved the Debtor ~~has retained~~ ’s retention of the following professionals;
8 ~~and has filed or will shortly file applications with the Court seeking approval of their employment:~~

- 9 • Klee, Tuchin, Bogdanoff & Stern LLP as the Debtor’s reorganization counsel;
- 10 • Lewis & Roca LLP as the Debtor’s reorganization co-counsel; and
- 11 • Kurtzman Carson Consultants, LLC as the Debtor’s noticing and claims Agent;

12 [In addition, the Debtor and the Creditors’ Committee have filed applications to employ the
13 following professionals, which applications are pending:]

- 14 • Hooper, Lundy and Bookman, Inc. as the Debtor’s healthcare and regulatory
15 counsel; ~~and~~
- 16 • Kamer Zucker Abbott as the Debtor’s labor and employment counsel;
- 17 • RB Muskin LLC as the Debtor’s intellectual property consultant;
- 18 • HelixIP as the Debtor’s special patent counsel;
- 19 • Pachulski, Stang, Ziehl & Jones as counsel to the Creditors’ Committee; and
- 20 • Schwartz & McPherson Law Firm as Local Counsel to the Creditors’ Committee.

21 The ~~Debtor intends to seek a~~ Court ~~order establishing~~ has approved interim fee procedures
22 for professionals seeking compensation from the estate. Under the ~~proposed~~ procedures, subject to
23 the Debtor’s cash availability and absent a timely objection, professionals are eligible to receive
24 85% of their monthly fees and 100% of their monthly costs upon passage of an objection period
25 following service of a monthly fee statement upon certain parties, with the opportunity for
26 professionals to request and obtain the “hold back” amounts at an interim or final fee hearing.

27 ~~Please refer to the Court’s docket for additional information on the retention of professionals~~
28 ~~and the proposed interim fee procedures, including orders that may have been entered with regard to~~

1 ~~these matters and any professionals retained by any Creditors' Committee at the expense of the~~
 2 ~~Debtor's estate.~~

3 **IX.**
 4 **SUMMARY OF MATERIAL PLAN PROVISIONS**

5 The Plan is the result of extensive, good faith negotiations and embodies a settlement among
 6 the Debtor, the Agent ~~and~~, the Consenting Lenders and the Creditors' Committee, each of which is
 7 supportive of the Plan and the Debtor's expeditious emergence from chapter 11. Specifically, the
 8 Plan provides for continuation of the Debtor as a philanthropic entity, replacement of the Debtor's
 9 remaining outstanding obligations to the Lenders (after payment of the \$18 million in cash proceeds
 10 of the UCSD Sale to the Lenders) with a \$13 million note secured by the Research Building
 11 (including all personal property therein as of the date of the Plan Support Agreement) and the
 12 Vacant Land (the "Research Building Note"), and the payment of fees and costs in favor of the
 13 Agent. Under the Plan, holders of Allowed General Unsecured Claims will share Pro Rata in the
 14 proceeds of the Creditor Trust, which will be funded with ~~\$175,000 in cash~~ the Unsecured Creditor
 15 Cash, if any, the Preserved Avoidance Actions, ~~and all of the Debtor's and the Estate's rights of~~
 16 ~~disallowance, offset, recharacterization and/or equitable subordination with respect to the General~~
 17 ~~Unsecured Claims~~ the Preserved Claims, and other potential Claims and causes of action.

18 The following is a narrative description of certain provisions of the Plan, which is attached
 19 hereto as Exhibit 1 for reference. This summary of the Plan is qualified in its entirety by the actual
 20 terms of the Plan. In the event of any conflict, the terms of the Plan will control over any summary
 21 set forth in this Disclosure Statement.

22 **A. Classification and Treatment of Claims Under the Plan.**

23 The Bankruptcy Code requires that a plan divide the different claims against, and equity
 24 interests in, the debtor into separate classes based upon their legal nature. Claims of a substantially
 25 similar legal nature are usually classified together. The Bankruptcy Code does not require the
 26 classification of administrative claims and certain priority claims, and they are typically
 27 denominated "unclassified claims." Because the Debtor is a nonprofit corporation, there are no
 28 equity interests in the Debtor.

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1 The Debtor believes that the classification of ~~Classes~~Claims specified in the Plan is
2 appropriate and consistent with the requirements of the Bankruptcy Code. The Court will determine
3 the appropriateness of the classification of the ~~Classes~~Claims under the Plan in conjunction with the
4 hearing on confirmation of the Plan.

5 Under Bankruptcy Code section 1124, a class of claims is “impaired” unless the plan leaves
6 unaltered the legal, equitable, and contractual rights of the holders of claims or interests, as
7 applicable, in the class. In addition, a class of claims is “impaired” unless the plan cures all defaults
8 (other than those arising from the debtor’s insolvency, the commencement of the case, or
9 non-performance of a non-monetary obligation, which need not be cured) that occurred before or
10 after the commencement of the case, reinstates the maturity of the claims in the class, compensates
11 the claimants for their actual damages incurred as a result of their reasonable reliance on any
12 acceleration rights, and does not otherwise alter their legal, equitable, and contractual rights. Except
13 for any right to accelerate the debtor’s obligations, the holder of an unimpaired claim will be placed
14 in the position in which it would have been, inter alia, if the debtor’s case had not been commenced.

15 A plan must designate each separate class of claims and interests either as “impaired”
16 (affected by the plan) or “unimpaired” (unaffected by the plan). If a class of claims or interests is
17 “impaired,” under the Bankruptcy Code, the holders of claims or interests, as applicable, in that
18 class are entitled (i) to vote to accept or reject the plan (unless the plan provides for no distribution to
19 the class, in which case the class is deemed to reject the plan), and (ii) to receive property with a
20 value at least equal to the value that the claimant would receive if the debtor were liquidated under
21 chapter 7 of the Bankruptcy Code. If a class of claims is unimpaired, the holders of claims in that
22 class are deemed to accept the plan.

23 The following describes whether and how ~~and whether~~ Claims against the Debtor are
24 classified under the Plan, whether the holders thereof are entitled to vote, and the treatment accorded
25 such Claims under the Plan.

26 **1. Unclassified Claims.**

27 Certain types of Claims are not placed into voting classes; instead, they are unclassified.
28 They are not considered impaired, and they do not vote to accept or reject a plan of reorganization

1 because they are automatically entitled to specific treatment provided for them in the Bankruptcy
2 Code. Therefore, the Debtor has not placed the following categories of Claims into a Class.

3 **a. Administrative Claims**

4 **(1) Allowance of Administrative Claims**

5 Administrative Claims are Claims against the Estate for administrative costs or expenses
6 entitled to priority under Bankruptcy Code section 507(a)(2) or (b). The Bankruptcy Code requires
7 that all Administrative Claims be paid on the date that a plan of reorganization becomes effective,
8 unless a particular claimant agrees to a different treatment.

9 **Allowance of Ordinary Course Administrative Claims:** An entity holding an Ordinary
10 Course Administrative Claim may, but need not, File a motion or request for payment of its Claim.
11 The Reorganized Debtor or any other party in interest may File an objection to an Ordinary Course
12 Administrative Claim in their discretion. Unless a party in interest objects to an Ordinary Course
13 Administrative Claim, such Claim will be an Allowed Claim in accordance with the terms and
14 conditions of the particular transaction that gave rise to the Claim.

15 **Allowance of Professional Fee Claims:** Unless otherwise expressly provided in the Plan, a
16 Professional Fee Claim will be allowed only if:

17 (i) On or before 60 days after the Effective Date, the entity holding such Professional
18 Fee Claim both Files with the Court a final fee application or a motion requesting allowance of the
19 Professional Fee Claim and serves the application or motion on the Reorganized Debtor and the
20 U.S. Trustee; and

21 (ii) The Court determines it is an Allowed Claim.

22 The Reorganized Debtor or any other party in interest may File an objection to such
23 application or motion within the time provided by the Bankruptcy Rules or within any other period
24 that the Court establishes. Entities holding Professional Fee Claims that do not timely File and serve
25 a fee application or motion for payment will be forever barred from asserting those Claims against
26 the Debtor, the Reorganized Debtor, the Estate, the Creditor Trust, or their respective property.

27 **Allowance of Cure Payments:** Cure Payments shall be allowed in accordance with the
28 procedures set forth in Section III.A.2 of the Plan.

1 **Treatment of Professional Fee Claims:** Unless otherwise agreed or provided in the Plan,
2 an Allowed Professional Fee Claim will be paid by the Reorganized Debtor within 10 days after the
3 date on which the Court determines such Claim is an Allowed Claim.

4 **Treatment of Cure Payments:** Cure Payments will be made to the non-Debtor parties to
5 the executory contracts or unexpired leases in accordance with Section III.A.2 of the Plan.

6 **Treatment of U.S. Trustee Fees: Under 28 U.S.C. § 1930:** The Reorganized Debtor will
7 pay to the U.S. Trustee all fees due and owing under 28 U.S.C. § 1930 in cash on the Effective Date.

8 **Treatment of Non-Ordinary Course Administrative Claims:** Unless the entity holding a
9 Non-Ordinary Course Administrative Claim allowed by the Court agrees to different treatment or
10 unless a different payment date is ordered by the Court, the Reorganized Debtor will pay to that
11 entity cash in the full amount of such Allowed Non-Ordinary Course Administrative Claim, without
12 interest, on or before the later of: (i) 10 days after the Effective Date, or (ii) 10 days after the date any
13 order determining such Claim to be an Allowed Non-Ordinary Course Administrative Claim
14 becomes a Final Order.

15 **Treatment of 503(b)(9) Claims:** Unless the entity holding a 503(b)(9) Claim that is allowed
16 by the Court agrees to different treatment, or already has been paid the full amount of such Allowed
17 503(b)(9) Claim pursuant to an order of the Court, the Reorganized Debtor will pay to that entity
18 cash in the full amount of such Allowed 503(b)(9) Claim, without interest, on or before the later of:
19 (i) 10 days after the Effective Date, or (ii) 10 days after the date any order determining such Claim to
20 be an Allowed 503(b)(9) Claim becomes a Final Order.

21 **(3) Payment of Committee Administrative Expense Claims.**

22 Notwithstanding any other provision of the Plan: (i) the professionals and members of the
23 Creditors' Committee (in their capacity as members of the Creditors' Committee and not in their
24 capacity as holders of Unsecured Claims) shall not receive (pursuant to the Plan or otherwise) more
25 than \$750,000 on account of Allowed Committee Administrative Expense Claims incurred in the
26 Case; and (ii) if the Lenders are required to remit funds to the Creditor Trust to satisfy a deficiency
27 in respect of the Aggregate Unsecured Creditor Consideration pursuant to Section II.C.4 of the Plan,
28 then the Creditor Trust (rather than the Reorganized Debtor) shall be required to disburse that

1 [portion of such funding that is necessary to satisfy Allowed Committee Administrative Expense](#)
2 [Claims to the holders thereof.](#)

3 **b. Priority Tax Claims.**

4 Unless otherwise agreed, the Reorganized Debtor will pay to an entity holding an Allowed
5 Priority Tax Claim cash in the full amount of the Allowed Priority Tax Claim, plus interest
6 calculated at the federal judgment rate, in equal, amortized, annual installments beginning on the
7 first anniversary of the Petition Date that falls on a date following the occurrence of the Effective
8 Date and, thereafter, on each anniversary of the Petition Date through the fifth anniversary of the
9 Petition Date, provided, however, that the Reorganized Debtor may prepay any Priority Tax Claim
10 without penalty at any time.

11 **2. Classified Claims (Classes 1-4).**

12 Claims, other than Administrative Claims and Priority Tax Claims, are classified under the
13 Plan. Secured Claims are Claims that are secured by valid, enforceable and unavoidable liens
14 against property in which the Estate has an interest or that are subject to setoff under Bankruptcy
15 Code section 553. A Claim is a Secured Claim only to the extent of the value of the claimant's
16 interest in the collateral securing the Claim. Priority Claims are Claims arising under Bankruptcy
17 Code sections 507(a)(4), 507(a)(5) and 507(a)(7). Priority Claims are not secured by Estate
18 property, but have statutory priority over General Unsecured Claims. General Unsecured Claims
19 are not secured by liens on Estate property and are not entitled to statutory priority.

20 * * *

21 The following section identifies the Plan's treatment of the classified Claims against the
22 Debtor's Estate. All descriptions set forth in the following section are qualified in their entirety by
23 the specific treatment of each of the classified Claims under the Plan.

24 **a. Class 1 (Lender Secured Claims)**

25 **Classification:** Class 1 consists of the Lender Secured Claims.

26 **Treatment:** Class 1 is impaired under the Plan. If and to the extent any portion of
27 the \$18 million in cash proceeds from the UCSD Sale has not been previously remitted to the Agent,
28 for the ~~ratable~~ benefit of the ~~Lenders~~ [Agent and the Lenders in accordance with the terms of the](#)

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1 Prepetition Credit Agreement, the Debtor shall so remit the balance of such proceeds on the
2 Effective Date. Payment of the \$18 million in cash proceeds from the UCSD Sale (whenever
3 remitted) shall reduce the debt under the Prepetition Credit Agreement.

4 On the Effective Date, the Reorganized Debtor shall issue to the Agent, for the ~~ratable~~
5 benefit of the ~~Lenders~~Agent and the Lenders in accordance with the terms of the Plan Support
6 Agreement, the Research Building Note, in the amount of \$13 million, which shall be secured by the
7 Research Building and the Vacant Land. (For purposes of clarity, the Alta-Hualapai Parcel shall not
8 be encumbered by such note or any other obligation). The Research Building Note will be in form
9 and substance satisfactory to the Agent and the Approving Lenders and will:

10 (i) be payable to the Agent, for the ~~ratable~~-benefit of the ~~Lenders~~Agent and the Lenders in
11 accordance with the terms of the Research Building Note;

12 (ii) be secured by a first-priority deed of trust, in form and substance satisfactory to the
13 Agent and the Approving Lenders, on the Research Building (including all furniture, fixtures and
14 equipment owned by the Borrower and contained in such building as of the date of the Plan Support
15 Agreement) and the Vacant Land;

16 (iii) be a non-recourse obligation of the Reorganized Debtor;

17 (iv) provide for annual principal amortization as follows: \$250,000 at the end of the first
18 year following the Effective Date, \$250,000 at the end of the second year following the Effective
19 Date, \$350,000 at the end of the third year following the Effective Date, and \$400,000 at the end of
20 the fourth year following the Effective Date (in each case payable on the respective anniversary of
21 the Effective Date, or if such date is not a Business Day, the first Business Day thereafter);

22 (v) be payable in full (less any prior amortization payments) on the earlier of:

23 (x) the fifth anniversary of the Effective Date (or if such date is not a Business Day,
24 the first Business Day thereafter),

25 (y) default under such Note, and

26 (z) sale of the Research Building or the Vacant Land;

27 (vi) be non-interest bearing; and

28 (vii) be subject to prepayment at any time without penalty.

1 The Reorganized Debtor will continue to be obligated under the Prepetition Deed of Trust,
 2 as modified or as amended and restated to secure only the Research Building Note. The
 3 Reorganized Debtor also will provide an environmental indemnity to the Agent for the benefit of the
 4 Agent and the Lenders. Agent's title insurance policy may be amended, at the expense of the
 5 Reorganized Debtor, to show the change in vesting and modifications to the obligations secured by
 6 the Prepetition Deed of Trust, or at Agent's discretion, a new title insurance policy may be required.
 7 Additionally, until such time as the Research Building Note is paid in full or the Research Building
 8 and Vacant Land are no longer owned by the Reorganized Debtor, the Agent shall have no
 9 obligation to provide any subordination agreement, nondisturbance agreement or attornment
 10 agreement with any tenant, licensee or other occupant under a lease, license or other occupancy
 11 agreement affecting all or any portion of the Research Building property or the Vacant Land that is
 12 entered into without Agent's consent.

13 Until such time as the Research Building Note is paid in full or the Research Building and
 14 Vacant Land are no longer owned by the Reorganized Debtor, the Reorganized Debtor will be solely
 15 responsible for the costs and maintenance of the Research Building and the Vacant Land in a
 16 condition at least as good as that existing on the date of the Plan Support Agreement. The
 17 Reorganized Debtor shall be solely responsible for maintaining insurance with respect to such
 18 properties, and paying all taxes applicable to such properties. The Reorganized Debtor will
 19 maintain its status as a charitable 501(c)(3) entity. ¹⁷

20 Notwithstanding the provisions of Section II.C.1 of the Plan, if the Research Building and/or
 21 the Vacant Land are sold for an aggregate amount in excess of \$13 million (the "Excess
 22 Consideration"), whether during the term of the Research Building Note or at any time within one
 23 year after repayment thereof, the Reorganized Debtor will be required to share such Excess
 24 Consideration with the Agent, for the ~~ratable~~ benefit of the Agent and Lenders, on an 80/20 basis,
 25

26
 27 ¹⁷ Following the Effective Date, the Reorganized Debtor intends to make such filings as are necessary and
 28 appropriate to modify the basis on which it is entitled to such status, to comport with the changes in its
operations since it was first granted such status.

1 *i.e.*, with 80% of the Excess Consideration being paid to the Agent, for the ~~ratable~~ benefit of the
2 Agent and Lenders (in accordance with the terms of the Research Building Note), and 20% of the
3 Excess Consideration being retained by the Reorganized Debtor.

4 If the Research Building and/or Vacant Land are no longer owned by the Reorganized
5 Debtor, the Reorganized Debtor nevertheless will continue to operate as a nonprofit corporation
6 dedicated to raising funds, generating support for, and otherwise advancing its philanthropic
7 objectives.

8 The Plan requires the Reorganized Debtor to provide quarterly reports to the Agent
9 regarding the Research Building Note and the Vacant Land, in form and substance satisfactory to
10 the Agent at all times from the effectiveness of the Research Building Note until the date that is one
11 year after the repayment thereof, including, without limitation, as to any leasing of, sales offers with
12 respect to, damage to and maintenance status of such properties. So long as the Research Building
13 Note is outstanding, the Agent and the Lenders also will ~~also~~ be entitled to inspect the Research
14 Building and the Vacant Land on an annual basis (or more frequently if a default has occurred and is
15 continuing under the Research Building Note).

16 ~~Any funds that become property of the Debtor's estate that are proceeds of the Lenders'~~
17 ~~collateral that are not necessary to satisfy the obligations of the Debtor, the Estate and the~~
18 ~~Reorganized Debtor under the Plan and the UCSD Sale, will be distributed to the Agent for the~~
19 ~~ratable benefit of the Lenders thirty (30) days following the later of: (i) the bar date for the filing of~~
20 ~~proofs of claim by governmental entities; (ii) the expiration of the deadlines for filing objections to~~
21 ~~Administrative Claims, Priority Claims, Secured Tax Claims and Priority Tax Claims; and (iii) the~~
22 ~~settlement or adjudication to a Final Order of any and all objections to Administrative Claims,~~
23 ~~Priority Claims, Secured Tax Claims and Priority Tax Claims. For purposes of clarity, neither the~~
24 ~~Charitable Trust Funds (which include, without limitation, the Engelstad Endowment Fund, the~~
25 ~~Patient Cares Committee Fund, the Saffer Endowment Fund, and the Other Donor Restricted~~
26 ~~Funds) nor any other charitable donations generated by the Debtor or its representatives constitute~~
27 ~~the Lenders' collateral~~

1 The Agent and the Lenders are prohibited from commencing a Trust Funds Challenge with
2 respect to any Charitable Trust Funds. Further, none of the Charitable Trust Funds shall be treated
3 as collateral of the Agent or the Lenders with respect to the Prepetition Credit Agreement, the
4 Research Building Note or any Lender Claims.

5 **b. Class 2 (Other Secured Claims, Including Secured Tax Claims).**

6 **Classification:** Class 2 consists of Other Secured Claims against the Debtor, including
7 Secured Tax Claims. Each Class 2 Claim shall constitute its own subclass.

8 **Treatment:** Class 2 is unimpaired under the Plan, and the legal, equitable, and contractual
9 rights of holders of the Allowed Class 2 Claims are unaltered by the Plan. Unless the holder of an
10 Allowed Class 2 Claim in a particular Class 2 subclass agrees to other treatment, on or as reasonably
11 practicable after the Effective Date, such holder shall receive, at the Reorganized Debtor's option:
12 (i) cash in the allowed amount of such holder's Allowed Class 2 Claim, (ii) the return of the
13 collateral securing such Allowed Class 2 Claim, or (iii) (a) the cure of any default, other than a
14 default of the kind specified in Bankruptcy Code section 365(b)(2) that Bankruptcy Code section
15 1124(2) requires to be cured, with respect to such holder's Allowed Class 2 Claim, without
16 recognition of any default rate of interest or similar penalty or charge, and upon such cure, no
17 default shall exist; (b) the reinstatement of the maturity of such Allowed Class 2 Claim as the
18 maturity existed before any default, without recognition of any default rate of interest or similar
19 penalty or charge; and (c) its unaltered legal, equitable, and contractual rights with respect to such
20 Allowed Class 2 Claim. Any defenses, counterclaims, rights of offset or recoupment of the Debtor
21 or the Estate with respect to such Claims shall vest in and inure to the benefit of the Reorganized
22 Debtor.

23 The Bankruptcy Court shall retain jurisdiction to determine the amount necessary to satisfy
24 any Allowed Class 2 Claim for which treatment is elected under clause (i) or clause (iii). With
25 respect to any Allowed Class 2 Claim for which treatment is elected under clause (i), any holder of
26 such Allowed Class 2 Claim shall release (and by the Confirmation Order shall be deemed to
27 release) all liens against property of the Estate.

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1 As set forth in Section IV.D of the Plan, if not earlier abandoned or otherwise disposed of,
2 the Administration Building Parcel shall be deemed abandoned as of the Effective Date and the
3 Reorganized Debtor shall retain no interest in the Administration Building Parcel.

4 **c. Class 3 (Priority Claims, other than Priority Tax Claims).**

5 **Classification:** Class 3 consists of Priority Claims against the Debtor, other than Priority
6 Tax Claims.

7 **Treatment:** Class 3 is unimpaired under the Plan, and the legal, equitable, and contractual
8 rights of holders of Allowed Class 3 Claims are unaltered by the Plan. Unless a particular entity
9 holding an Allowed Class 3 Claim agrees otherwise, the Reorganized Debtor shall pay to each
10 holder of an Allowed Class 3 Claim, in full satisfaction of such Claim, cash in the full amount of the
11 Allowed Class 3 Claim on or before the latest of: (i) ten (10) days after the Effective Date; (ii) ten
12 (10) days after the date on which the Class 3 Claim becomes an Allowed Class 3 Claim; and (iii) the
13 date on which the Allowed Class 3 Claim first becomes due and payable in accordance with its
14 terms.

15 **d. Class 4 (General Unsecured Claims).**

16 **Classification:** Class 4 consists of the General Unsecured Claims.

17 **Treatment:** Class 4 is impaired under the Plan. Allowed Class 4 Claims shall receive their
18 Pro Rata share of the Net Trust Assets. On the Effective Date ~~(i) the Unsecured Creditor Cash shall~~
19 ~~be remitted to the Creditor Trust, and (ii) all, the~~ Preserved Avoidance Actions ~~shall, the Preserved~~
20 Claims, and other Claims, rights and causes of action to be vested in the Creditor Trust; pursuant to
21 Section IV.~~EF~~ of the Plan. ~~The timing of payments to the holders of Allowed Class 4 Claims shall~~
22 ~~be determined by the Creditor Trust and in accordance with the Creditor Trust Agreement. shall be~~
23 vested in the Creditor Trust.

24 ~~If Class 4 accepts the Plan within the meaning of Bankruptcy Code section 1126(e), then~~

25 To the extent there are sufficient funds in the Estate to satisfy the Aggregate Unsecured
26 Creditor Consideration after payment of, or adequate reserve for, all other Allowed Administrative
27 Claims authorized to be paid in accordance with the Cash Collateral Stipulation, the Reorganized
28 Debtor shall remit such funds to the holders of Allowed Committee Administrative Expense Claims

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1 (on account thereof) and the Creditor Trust (on account of any Unsecured Creditor Cash), as
2 applicable, no later than five (5) business days after the Sufficiency Determination Date. Under the
3 Plan, the Unsecured Creditor Cash is cash equal to the difference between the Aggregate Unsecured
4 Creditor Consideration (i.e., \$750,000) and the amount of all Allowed Committee Administrative
5 Expense Claims; provided that if the Allowed Committee Administrative Expense Claims exceed
6 \$750,000, the amount of the Unsecured Creditor Cash will be zero.

7 To the extent there are insufficient funds in the Estate to satisfy the Aggregate Unsecured
8 Creditor Consideration, after payment of, or adequate reserve for, all other Allowed Administrative
9 Claims authorized to be paid in accordance with the Cash Collateral Stipulation, the Lenders shall
10 satisfy such deficiency (not to exceed \$750,000) by transferring the requisite funds to the Creditor
11 Trust no later than five (5) business days after the Sufficiency Determination Date. The
12 determination of such sufficiency and/or deficiency, as the case may be, (i) will not occur until after
13 all Administrative Claims to be paid under the Cash Collateral Stipulation, including all Committee
14 Administrative Expense Claims, are determined, and (ii) will be determined in consultation with and
15 subject to the agreement of the Debtor, the Agent and the Creditors' Committee, or pursuant to
16 Court order if the parties do not agree.¹⁸ If some or all of the deficiency funded by the Lenders is on
17 account of Allowed Committee Administrative Expense Claims, the Creditor Trust shall be
18 responsible for disbursing such payments to the holders of such Claims, notwithstanding any
19 contrary provision of the Plan.

20 The Creditors' Committee and the Creditor Trust are prohibited under the Plan from
21 commencing a Trust Funds Challenge with respect to the Engelstad Endowment Fund or the
22 Escrowed Donations. The Creditors' Committee (or the Creditor Trust, following the Effective
23 Date) may commence a Trust Funds Challenge with respect to any Charitable Trust Funds other

24 _____
25 ¹⁸ If any reserve for payment of disputed claims is established in connection with the determination of the
26 sufficiency as described above, and, to the extent the Lenders are required to fund any portion of the
27 Aggregate Unsecured Creditor Consideration, then, to the extent any reserved funds are released from the
28 reserve other than for the payment of Administrative Claims and Priority Claims that are the subject of such
reserved funds, then such funds shall be remitted to the Agent for the benefit of the Agent and the Lenders up
to the amount that the Lenders were required to fund the Aggregate Unsecured Creditor Consideration.

1 than the Engelstad Endowment Fund and the Escrowed Donations, by way of an adversary
 2 proceeding. If the Creditors' Committee (or Creditor Trust, as applicable) fails to commence such a
 3 proceeding, or to the extent a Trust Funds Challenge that is properly commenced by the Creditors'
 4 Committee or Creditor Trust is unsuccessful, the Reorganized Debtor shall retain its rights and
 5 interests in the Charitable Trust Funds pursuant to Section IV.C of the Plan. To the extent that a
 6 Trust Funds Challenge that is properly commenced by the Creditors' Committee or Creditor Trust is
 7 successful, any funds determined to be available for general corporate purposes that are not used to
 8 satisfy Allowed Administrative Claims or Allowed Priority Claims, shall be transferred to the
 9 Creditor Trust within ten (10) days following the later of (i) the date on which the order sustaining
 10 such Trust Funds Challenge becomes a Final Order, and (ii) the date on which all Administrative
 11 Claims and Priority Claims have been determined by a Final Order and paid. If a Trust Funds
 12 Challenge that is properly commenced by the Creditors' Committee is pending as of the Effective
 13 Date, the Creditor Trust shall be substituted for the Creditors' Committee as plaintiff and shall have
 14 the exclusive authority to prosecute and/or settle such proceeding.

15 On the Effective Date, the holders of the Lender Deficiency Claims shall be deemed to have
 16 waived ~~their~~ irrevocably all such Claims and, accordingly, the right to receive any consideration
 17 under Class 4 on account of such Lender Deficiency Claims. ~~If Class 4 rejects the Plan within the~~
 18 ~~meaning of Bankruptcy Code section 1126(e), all Allowed Lender Deficiency Claims shall~~
 19 ~~participate in the Class 4 distributions.~~

20 ~~The nature and amount of distributions to holders of Class 4 Claims under the Plan~~ Claims.
 21 Without limiting the foregoing in any way, neither the Agent nor the Lenders shall share in any
 22 portion of the Aggregate Unsecured Creditor Cash or the Net Trust Assets.

23 The timing and amount of payments to the holders of Allowed Class 4 Claims will be
 24 determined by the Creditor Trust and in accordance with the Creditor Trust Agreement. The amount
 25 available will depend on at least ~~four variables: (1) the outcome of objections to Claims, (2) the~~
 26 ~~recovery realized, if any, on causes of action of the Estate, (3) costs incurred by the Creditor Trust,~~
 27 ~~and (4) whether the Lender Deficiency Claims will share in distributions to holders of Class 4~~
 28 ~~Claims. As noted, the Debtor has engaged in only a preliminary analysis of claims. Under the Plan,~~

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~~the Creditor Trust will be charged with objecting to Class 4 Claims. The outcome of those objections will affect (perhaps materially so) the distributions to holders of Allowed Class 4 Claims.~~

~~The Plan provides for the holders of Allowed Class 4 Claims to share in any recoveries that may be realized by the Creditor Trust on Preserved Avoidance Actions (e.g., preference or fraudulent transfer claims against parties with which the Debtor engaged in transactions prepetition, to the extent not released under the Plan). Distribution of litigation proceeds is contingent on the success of such litigation.~~ five variables. First, the amount of the Unsecured Creditor Cash (if any) will determine the amount of cash initially available to the Creditor Trust. As noted, this amount will depend upon a determination of the Allowed Committee Administrative Expense Claims following the Effective Date. Second, the amount available for distribution for holders of Allowed Class 4 Claims will depend on whether the Creditors' Committee or Creditor Trust commences a Trust Funds Challenge, and the success of any such challenge. Third, the cash realized by the Creditor Trust will depend upon its efforts to realize a recovery on the Claims and causes of action vested in the Creditor Trust under the Plan, and the success of those efforts. Fourth, the cash available to the holders of Allowed Class 4 Claims will depend upon the costs incurred by the Creditor Trust. Fifth, the amount realized by each holder of an Allowed Class 4 Claim will depend upon the nature, success and extent of the objections filed by the Creditor Trust to other Class 4 Claims that otherwise would share in the net recoveries of the Creditor Trust.

The Debtor has not undertaken an effort to determine what value, if any, ~~such~~ the Claims and causes of action to be vested in the Creditor Trust may have. Nevertheless, these causes of action will vest in the Creditor Trust on the Effective Date and any proceeds thereof will be distributed on a Pro Rata basis by the Creditor Trust as more fully set forth in the Plan.

B. Treatment of Executory Contracts and Unexpired Leases.

1. Assumption of Executory Contracts and Unexpired Leases

a. Assumption of Agreements.

On the Effective Date, the Reorganized Debtor shall assume all executory contracts and unexpired leases of the Debtor listed on the Schedule of Assumed Agreements.

1 The Debtor reserves the right to amend the Schedule of Assumed Agreements at any time
2 prior to the Effective Date to: (a) delete any executory contract or unexpired lease and provide for its
3 rejection under the Plan or otherwise, or (b) add any executory contract or unexpired lease and
4 provide for its assumption under the Plan. The Debtor will provide notice of any amendment to the
5 Schedule of Assumed Agreements to the party or parties to the agreement affected by the
6 amendment.

7 The Confirmation Order will constitute a Court order approving the assumption, on the
8 Effective Date, of all executory contracts and unexpired leases identified on the Schedule of
9 Assumed Agreements.

10 **b. Cure Payments.**

11 Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default
12 under and compensate the non-debtor party to an executory contract or unexpired lease to be
13 assumed under the Plan, is identified as the Cure Payment on the Schedule of Assumed Agreements.
14 Unless the parties mutually agree to a different date, such payment shall be made in cash, ten (10)
15 days following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any dispute
16 regarding (a) the amount of any Cure Payment, (b) the ability of the Reorganized Debtor to provide
17 “adequate assurance of future performance” within the meaning of Bankruptcy Code section 365
18 with respect to a contract or lease to be assumed, to the extent required, and/or (c) any other matter
19 pertaining to assumption.

20 Pending the Court’s ruling on such dispute, the executory contract or unexpired lease at
21 issue shall be deemed assumed by the Reorganized Debtor unless otherwise agreed by the parties or
22 ordered by the Court.

23 **c. Objections to Assumption/Cure Payment Amounts.**

24 Any entity that is a party to an executory contract or unexpired lease that will be assumed
25 under the Plan and that objects to such assumption (including the proposed cure payment) must File
26 with the Court and serve upon parties entitled to notice a written statement and supporting
27 declaration stating the basis for its objection. This statement and declaration must be Filed and
28 served by the deadline fixed by the Court for such objection. Any entity that fails to timely File and

1 serve such a statement and declaration will be deemed to waive any and all objections to the
2 proposed assumption (including the proposed Cure Payment) of its contract or lease.

3 In the absence of a timely objection by an entity who is a party to an executory contract or
4 unexpired lease, the Confirmation Order shall constitute a conclusive determination as to the
5 amount of any cure and compensation due under the executory contract or unexpired lease, and that
6 the Reorganized Debtor has demonstrated adequate assurance of future performance with respect to
7 such executory contract or unexpired lease, to the extent required.

8 **d. Resolution of Claims Relating to Assumed Contracts and Leases.**

9 Payment of the Cure Payment established under the Plan, by the Confirmation Order or by
10 any other order of the Court, with respect to an assumed executory contract or unexpired lease, shall
11 be deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim against the
12 Debtor (including any asserted in a Filed proof of claim or listed in the Schedules) with respect to
13 such contract or lease (irrespective of whether the Cure Payment is less than the amount set forth in
14 such proof of Claim or the Schedules). Upon the tendering of the Cure Payment, any such Filed or
15 scheduled Claim shall be disallowed, without further order of the Court or action by any party.

16 **2. Rejection of Executory Contracts and Unexpired Leases.**

17 **a. Rejected Agreements.**

18 On the Effective Date, all executory contracts and unexpired leases that (i) have not been
19 previously assumed or rejected and (ii) are not set forth on the Schedule of Assumed Agreements
20 (including all executory contracts and unexpired leases set forth on the Schedule of Rejected
21 Agreements), shall be rejected. For the avoidance of doubt, executory contracts and unexpired
22 leases that have been previously assumed or assumed and assigned pursuant to an order of the Court,
23 including those assumed and assigned in conjunction with the UCSD Sale, shall not be affected by
24 the Plan. The Confirmation Order will constitute a Court order approving the rejection, on the
25 Effective Date, of the executory contracts and unexpired leases to be rejected under the Plan.

26 **b. Bar Date for Rejection Damage Claims.**

27 Any Rejection Damage Claim or other Claim against the Debtor for damages arising from
28 the rejection under the Plan of an executory contract or unexpired lease must be Filed and served

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1 upon counsel to the Reorganized Debtor and Creditor Trust within 30 days after the mailing of
2 notice of the occurrence of the Effective Date. Any such Claims that are not timely Filed and served
3 will be forever barred and unenforceable against the Debtor, the Reorganized Debtor, the Estate, the
4 Creditor Trust and their respective property, and entities holding such Claims will be barred from
5 receiving any distributions under the Plan on account of such untimely Claims.

6 **3. Postpetition Contracts and Leases.**

7 Except as expressly provided in the Plan or the Confirmation Order, all contracts, leases, and
8 other agreements that the Debtor ~~enters~~entered into after the Petition Date will be assumed and
9 retained by the Reorganized Debtor and will remain in full force and effect following the Effective
10 Date, including the ~~Funding Agreement that will be assumed by the Debtor~~APA, the License
11 Agreement, the Funding Agreement, the Bill of Sale, the Parking Agreement, the Research Building
12 Note, and all other agreements and documents entered into in conjunction with the ~~closing of the~~
13 ~~UCSD Sale~~foregoing.

14 **C. Means of Execution and Implementation of Plan.**

15 **1. Funding of the Plan.**

16 ~~All~~Unless otherwise provided in the Plan, payments required by the Plan on and after the
17 Effective Date, ~~including remittance of the Unsecured Creditor Cash to the Creditor Trust,~~ will be
18 satisfied from cash of the Debtor (which, consistent with the Cash Collateral ~~Order~~Orders, includes
19 funds in the Cash Collateral Account) and the Reorganized Debtor. ~~Notwithstanding the foregoing,~~
20 provided that (i) the Lenders shall make all payments required pursuant to Section II.C.4 of the Plan
21 (up to \$750,000) to satisfy the Aggregate Unsecured Creditor Consideration in the event of a
22 deficiency, as specified in that Section, and (ii) any distribution to the holders of Allowed Class 4
23 Claims shall be paid exclusively by the Creditor Trust from the Net Trust Assets.

24 **2. Vesting of Assets Generally.**

25 Except as otherwise provided in the Plan, all property of the Debtor and the Estate, including
26 all cash held by the Debtor as of the Effective Date, shall vest in the Reorganized Debtor on the
27 Effective Date, free and clear of all Claims, liens, encumbrances, and interests. From and after the
28 Effective Date, the Reorganized Debtor may conduct its affairs and use, acquire and dispose of

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1 property without supervision by the Court and free of any restrictions of the Bankruptcy Code or
2 Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation
3 Order.

4 **3. The Charitable Trust Funds.**

5 On and after the Effective Date, the Reorganized Debtor shall retain its ~~interest~~interests in,
6 its rights to use and, where applicable, custody of the Charitable Trust Funds, consistent with all
7 agreements and restrictions governing the disposition and use of such funds, any modifications to
8 such agreements and restrictions that may be authorized by the donors of such Charitable Trust
9 Funds, and otherwise applicable non-bankruptcy law, subject to the right of the Creditors’
10 Committee or the Creditor Trust to commence a Trust Funds Challenge under Section II.C.4 of the
11 Plan with respect to Charitable Trust Funds other than the Engelstad Endowment Fund or the
12 Escrowed Donations. As provided in Section II.C.4 of the Plan, the Creditors’ Committee and the
13 Creditor Trust are prohibited from commencing a Trust Funds Challenge with respect to the
14 Engelstad Endowment Fund or the Escrowed Donations. As provided in Section II.C.I of the Plan,
15 the Agent and the Lenders are prohibited from commencing a Trust Funds Challenge with respect to
16 any Charitable Trust Funds and from sharing in the proceeds of any successful challenge.

17 **4. Abandonment of the Administration Building Parcel.**

18 Unless earlier abandoned or otherwise disposed of, upon the Effective Date, the Debtor’s
19 interests in the Administration Building Parcel shall be deemed abandoned, and the Reorganized
20 Debtor shall retain no interest in the Administration Building Parcel. Notwithstanding the
21 Permanent Injunction set forth in Section VII.A of the Plan and the automatic stay under Bankruptcy
22 Code section 362(a), to the extent applicable, any party with an interest in the Administration
23 Building Parcel may, without further order of the Court, exercise its rights and remedies against the
24 Administration Building Parcel, including any right to foreclose upon the Administration Building
25 Parcel.

26 **5. ~~4-~~ Vesting of ~~Rights~~ Causes of Action in Reorganized Debtor.**

27 ~~Except as provided in Section IV.E of the Plan with respect to Preserved Avoidance Actions,~~
28 ~~all Claims, rights, and causes of action of the Debtor or the Estate against any person or entity~~The

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1 following shall be preserved and vest in the Reorganized Debtor on the Effective Date, pursuant to
 2 Bankruptcy Code section 1123(b), ~~including causes of action that have been or may be brought by~~
 3 ~~or on behalf of the Debtor or the Estate, and the Debtor's and Estate's rights of disallowance,~~
 4 ~~offset~~ to the extent not released pursuant to the Plan, the Confirmation Order and any other order of
 5 the Court: (i) all Claims, rights, and causes of action of the Debtor and the Estate against any person
 6 or entity arising from or relating to the real property and personal property vested in and/or or
 7 retained by the Reorganized Debtor under the Plan, including the Research Building, the Vacant
 8 Land, and the Alta-Hualapai Parcel; (ii) all Claims, rights, and causes of action of the Debtor and the
 9 Estate against any person or entity arising from or relating to the APA, the License Agreement, the
 10 Funding Agreement, the Bill of Sale, the Parking Agreement, the Research Building Note, the
 11 Charitable Trust Funds (subject to Sections II.C.1, II.C.4, and IV.C of the Plan), all other contracts
 12 and leases entered into postpetition by the Debtor and/or the Estate that have not been assigned, and
 13 all executory contracts and leases that have been assumed but not assigned or that will be assumed
 14 pursuant to the Plan; (iii) all defenses, offsets, rights of recoupment, rights of disallowance,
 15 recharacterization and/or equitable subordination of the Debtor and the Estate with respect to
 16 Claims against the Debtor other than Class 4 Claims; provided, however, that no Claim, right or
 17 ~~cause of action of the Debtor or the Estate that is released under the Plan, the Confirmation Order, or~~
 18 ~~any other order of the Court shall be preserved or vested in~~ and (iv) all rights of the Debtor, the Estate
 19 and the Reorganized Debtor arising from the Creditor Trust Plan itself.

20 **6. ~~5.~~ Vesting of ~~Preserved Avoidance Actions and Other Rights~~ Causes of Action in**
 21 **Creditor Trust.**

22 The ~~Preserved Avoidance Actions, and all of the Debtor's and Estate's rights of~~
 23 ~~disallowance, offset, recharacterization and/or equitable subordination with respect to Class 4~~
 24 Claims following shall be preserved and ~~vested~~ vest in the Creditor Trust on the Effective Date,
 25 pursuant to Bankruptcy Code section 1123(b); ~~provided, however, that no Claim, right or cause of~~
 26 ~~action of the Debtor or the Estate that is released under,~~ to the extent not released pursuant to the
 27 Plan, the Confirmation Order, or and any other order of the Court shall be preserved or: (i) all of the
 28 other Claims, rights, and causes of action of the Debtor and the Estate against any person or entity

1 that are not vested in the Reorganized Debtor ~~or the Creditor Trust~~ under Section IV.E of the Plan,
 2 including the Preserved Avoidance Actions and Preserved Claims; (ii) all defenses, offsets, rights of
 3 recoupment, rights of disallowance, recharacterization and/or equitable subordination of the Debtor
 4 and the Estate with respect to Class 4 Claims; and (iii) all rights of the Creditor Trust arising from
 5 the Plan itself.

6 7. ~~6.~~ **Creation of the Creditor Trust and Appointment of Creditor**
 7 ~~Trustees~~ Trustee.

8 The Confirmation Order shall approve, effective on the Effective Date, the Creditor Trust
 9 Agreement, which agreement shall provide for the appointment of ~~one (1) to three (3) members, to~~
 10 ~~act as the~~ Creditor Trustee ~~or Creditor Trustees~~ to administer the Creditor Trust. The Creditor
 11 ~~Trustee or Creditor Trustees shall be appointed by the Creditors' Committee prior to the~~
 12 ~~Confirmation Date, provided that if no trustee is appointed by such date, the Debtor shall appoint the~~
 13 ~~Creditor Trustee or Creditor Trustees. The Creditor Trustee or Creditor Trustees shall be SltnTrst~~
 14 LLC (dba Solution Trust). The Creditor Trustee shall serve without any bond and shall act in
 15 accordance with the Creditor Trust Agreement and the Plan ~~by majority vote.~~ A The Creditor
 16 Trustee ~~shall not~~ may be compensated for his or her service, ~~as a Creditor Trustee but may, if~~
 17 ~~applicable, retain a professional firm in which said trustee is employed~~ agreed upon in the Creditor
 18 Trust Agreement.

19 The Creditor Trust may engage counsel and other professionals as it deems appropriate, and
 20 compensate such professionals from the corpus of the Creditor Trust for reasonable fees and
 21 expenses incurred by such professionals, in accordance with the Creditor Trust Agreement and
 22 without approval of the Court. ~~Each~~ The Creditor Trustee shall serve for the duration of the Creditor
 23 Trust, subject to earlier death, resignation, incapacity or removal as specifically provided in the
 24 Creditor Trust Agreement.

25 **a. Powers and Duties.**

26 The Creditor Trust, acting through ~~a majority of~~ the Creditor ~~Trustees~~ Trustee, shall have the
 27 following rights, powers and duties:
 28

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1 (a) The Creditor Trust shall have full right, power and discretion to manage the Creditor
2 Trust ~~Property~~Assets, and execute, acknowledge and deliver any and all instruments with respect
3 thereto, as it deems appropriate or necessary in its discretion;

4 (b) Administer the collection, prosecution, settlement, and/or abandonment of the
5 Preserved Avoidance Actions, the Preserved Claims and all other Claims, rights, and causes of
6 action vested in the Creditor Trust pursuant to the Plan;

7 (c) Prosecute, settle and/or abandon objections to Class 4 Claims;

8 (d) Make interim and final distributions to the holders of Allowed Class 4 Claims;

9 (e) File all tax and regulatory forms, returns, reports and other documents required with
10 respect to the Creditor Trust; and

11 (f) File suit or any appropriate motion for relief in the Court or in any other court of
12 competent jurisdiction to resolve any disagreement, conflict, dispute or ambiguity in connection
13 with the exercise of its rights, powers or duties.

14 **b. Termination of the Creditor Trust.**

15 The Creditor Trust shall be irrevocable. The Creditor Trust shall terminate when the
16 Creditor ~~Trustees have~~Trustee has performed all of ~~their~~his/her duties under the Plan and the
17 Creditor Trust Agreement, including the final distribution of all the property of the Creditor Trust in
18 respect of Allowed Class 4 Claims, which date shall not be more than ~~two~~five (25) years ~~and one (1)~~
19 ~~month~~ after the Effective Date; provided, however, the Court may upon good cause shown order the
20 Creditor Trust to remain open so long as it may be necessary to liquidate and distribute all of its
21 property.

22 **c. Additional Provisions of the Creditor Trust Agreement.**

23 In addition to the provisions in the Plan with respect to the Creditor Trust, the Creditor Trust
24 Agreement will provide for, among other things, the ~~removal~~replacement of the Creditor ~~Trustees or~~
25 ~~appointment of successor Creditor Trustees~~Trustee in the event of death, incapacity or resignation,
26 the liability of the Creditor ~~Trustees~~Trustee, the effect of actions by the Creditor ~~Trustees~~Trustee,
27 and the indemnification of the Creditor ~~Trustees~~Trustee.

28

1 To the extent not set forth in the Plan, the functions and procedures applicable to the Creditor
2 Trust and the powers and duties of the Creditor ~~Trustees~~Trustee and the rights of the holders of
3 beneficial interests in the Creditor Trust shall be governed by the provisions of the Creditor Trust
4 Agreement; provided, however, that in the event of any conflict, the terms of the Plan shall govern.

5 **8. ~~7.~~ Objections to Claims.**

6 Except as otherwise provided in Section II.B of the Plan (regarding allowance of
7 Administrative Claims), any objection to a Claim against the Debtor shall be Filed and served upon
8 the holder of such Claim no later than the Claims Objection Deadline. After the Effective Date, ~~only~~
9 the Reorganized Debtor shall have the sole right and authority to File, settle, compromise, withdraw
10 or litigate to judgment objections to Claims, other than Class 4 Claims. Following the Effective
11 Date, the Creditor Trustee on behalf of the Creditor Trust shall have the sole right and authority to
12 File, settle, compromise, withdraw or litigate to judgment objections to Class 4 Claims.

13 **9. ~~8.~~ Distribution of Property Under the Plan.**

14 The procedures for distributing property under the Plan are set forth in Section IV.~~HI~~ of the
15 Plan, except as otherwise provided in the Plan.

16 **10. ~~9.~~ Full Satisfaction.**

17 The ~~Disbursing Agent~~Reorganized Debtor (or Creditor Trust, as the case may be) shall
18 make, and each holder of an Allowed Claim against the Debtor shall receive, the distributions
19 provided for in the Plan, if any, in full satisfaction and discharge of such holder's Claim against the
20 Debtor.

21 **11. ~~10.~~ Compliance with Tax Requirements.**

22 The Reorganized Debtor (or Creditor Trust, as the case may be) shall comply with all
23 applicable withholding, payment and reporting requirements imposed on it by governmental units,
24 if any, and all distributions pursuant to the Plan shall be subject to such withholding, payment and
25 reporting requirements. The Reorganized Debtor and Creditor Trustee (on behalf of the Creditor
26 Trust) shall be authorized to take any and all actions that may be necessary or appropriate to comply
27 with such withholding, payment, and reporting requirements. All amounts properly withheld from
28

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1 distributions to the holder of an Allowed Claim and paid over to the applicable governmental unit on
2 account of such holder shall be treated as part of the distributions to such holder.

3 For example, with respect to any employee-related withholding, if the Debtor is obligated by
4 law to withhold amounts from distributions to a present or former employee to satisfy such present
5 or former employee's tax and other payroll obligations, the Reorganized Debtor or Creditor Trustee
6 may withhold a portion of the distributions allocated to the Allowed Claim of such present or former
7 employee.

8 Each person holding an Allowed Claim is required to provide any information necessary to
9 effect the necessary information reporting and withholding of applicable taxes with respect to
10 distributions to be made under the Plan. The Reorganized Debtor or the Creditor Trustee, as
11 applicable, shall be entitled in its sole discretion to withhold any distributions to a holder of an
12 Allowed Claim that fails to provide tax identification or social security information upon written
13 request.

14 Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim that is
15 to receive a distribution on account thereof pursuant to the Plan shall have sole and exclusive
16 responsibility for the satisfaction and payment of any tax obligations imposed by any governmental
17 unit, including income, withholding, and other tax obligations, on account of such Distribution, and
18 (b) no distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until
19 such Holder has made arrangements satisfactory to the Reorganized Debtor or Creditor Trustee, as
20 applicable, for the payment and satisfaction of such withholding tax obligations or such tax
21 obligation that would be imposed upon the Reorganized Debtor or Creditor Trustee in connection
22 with such distribution. Any property to be distributed pursuant to the Plan shall, pending the
23 implementation of such arrangements, be treated as an Unclaimed Distribution pursuant to Section
24 IV.I.5.b of the Plan.

25 12. ~~11.~~ **Setoff, Recoupment and Other Rights.**

26 Notwithstanding anything to the contrary contained in the Plan, the Reorganized Debtor or
27 the Creditor Trust may, but shall not be required to, setoff, recoup, assert counterclaims or withhold
28 against the distributions to be made pursuant to ~~this~~the Plan on account of any claims that the

1 Debtor, the Estate, or the Reorganized Debtor may have against the entity holding an Allowed
2 Claim; provided, however, that neither the failure to effect such a setoff or recoupment, nor the
3 allowance of any Claim against the Debtor or the Reorganized Debtor, nor any partial or full
4 payment during the Case or after the Effective Date in respect of any Allowed Claim, shall
5 constitute a waiver or release by the Debtor, the Estate, the Reorganized Debtor or the Creditor Trust
6 of any Claim that any or all of them may possess against such holder.

7 **13. ~~12.~~ The Effective Date.**

8 The Plan shall not become binding unless and until the Effective Date occurs. The Effective
9 Date is the first Business Day, on which no stay of the Confirmation Order is in effect, on which all
10 of the following conditions have been satisfied or waived as set forth in the Plan:

11 **a. Conditions to the Effective Date.**

- 12 (1) The Confirmation Order shall have become a Final Order;
- 13 (2) The Research Building Note and related instruments evidencing the
14 liens and security interests securing such note shall have been
15 executed; and
- 16 (3) All other agreements, writings and undertakings required under the
17 Plan shall be executed ~~and ready for consummation.~~

18 **b. Waiver of Conditions.**

19 The requirement that the conditions to the occurrence of the Effective Date be satisfied may
20 be waived in whole or in part, and the time within which any such conditions must be satisfied may
21 be extended, by mutual agreement of the Debtor and the Agent. The failure to timely satisfy or
22 waive any of such conditions may be asserted by the Debtor regardless of the circumstances giving
23 rise to the failure of such condition to be satisfied, including any action or inaction by the Debtor.
24 The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any
25 other rights and each such right shall be deemed ongoing and subject to assertion at any time.

1 **c. Notice of the Effective Date.**

2 Promptly after the occurrence of the Effective Date, the Debtor shall File and mail a “Notice
3 of Occurrence of Effective Date” to all creditors of record as of the date of entry of the Confirmation
4 Order.

5 **14. ~~13.~~ Authorization of Corporate Action.**

6 Any matters provided for or required by the Plan that require corporate action by the Debtor
7 or the Reorganized Debtor, including, without limitation, the adoption by the Reorganized Debtor of
8 the Amended Articles of Incorporation and Bylaws, shall, as of the Effective Date, be deemed to
9 have occurred and be effective as provided herein, and shall be authorized, approved and ratified in
10 all respects without any requirement of further action by the directors of the Debtor or the
11 Reorganized Debtor.

12 **D. The Reorganized Debtor.**

13 **1. Directors and Officers.**

14 As of the Effective Date, the individuals identified on the List of Directors and Officers for
15 the Reorganized Debtor shall serve as the directors and officers of the Reorganized Debtor, in
16 accordance with the Amended Articles of Incorporation and Bylaws. The List of Directors and
17 Officers for Reorganized Debtor will be filed on or before the Exhibit Filing Date, and upon such
18 filing shall become Exhibit B to the Plan (subject to any modifications made prior to the
19 Confirmation Date).

20 **2. Amended Articles of Incorporation and Bylaws.**

21 The Amended Articles of Incorporation and Bylaws of the Reorganized Debtor shall
22 prohibit the issuance of non-voting equity securities as required by Bankruptcy Code section
23 1123(a)(6).

24 **3. ~~E. Other Plan Provisions.~~ Change of Corporate Name/Preservation of**
25 **Charitable Status.**

26 Following the Effective Date, the Reorganized Debtor may modify its corporate name.
27 Further, following the Effective Date, the Reorganized Debtor intends to make such filings as are
28 necessary and appropriate to modify the basis on which it is entitled to treatment as a charitable

1 [entity under section 501\(c\)\(3\) of the Internal Revenue Code, to comport with the changes in its](#)
2 [operations since it was first granted such status.](#)

3 **E. ~~1-~~Exculpation Regarding Solicitation and Prosecution of Plan Confirmation.**

4 None of the Debtor, the Estate, the Reorganized Debtor, the Creditors' Committee, the
5 ~~Prepetition~~ Agent, the Lenders or any of the foregoing parties' respective members, officers,
6 directors, employees, advisors, professionals or agents shall have or incur any liability to any holder
7 of a Claim for any act or omission occurring on or after the Petition Date in connection with, related
8 to, or arising out of the Case, the pursuit of confirmation of the Plan, the consummation or
9 administration of the Plan, or property to be distributed under the Plan, except for willful
10 misconduct, and in all respects, the Debtor, the Estate, the Reorganized Debtor, the Creditors'
11 Committee, the ~~Prepetition~~ Agent, the Lenders or any of the foregoing parties' respective members,
12 officers, directors, employees, advisors, professionals or agents shall be entitled to rely on the
13 advice of their respective counsel with respect to their duties and responsibilities in connection with
14 the Case and the Plan.

15 **1. ~~2-~~Dissolution of Creditors' Committee.**

16 Upon the Effective Date, the Creditors' Committee shall be released and discharged from
17 the rights and duties arising from or related to the Case, except with respect to final applications for
18 professionals' compensation. The professionals retained by the Creditors' Committee and the
19 members thereof shall not be entitled to compensation or reimbursement of expenses for any
20 services rendered or expenses incurred after the Effective Date, except for services rendered and
21 expenses incurred in connection with any applications by such professionals or Creditors'
22 Committee members for allowance of compensation and reimbursement of expenses pending on the
23 Effective Date or timely Filed after the Effective Date as provided in the Plan, to the extent the same
24 may be approved by the Court.

25 **2. ~~3-~~Exemption from Certain Transfer Taxes.**

26 In accordance with Bankruptcy Code section 1146(c), the issuance, transfer or exchange of a
27 security, or the making or delivery of an instrument of transfer under the Plan with respect to any
28 and all property may not be taxed under any law imposing a stamp tax or similar tax. The

1 Confirmation Order shall direct all governmental officials and agents to forego the assessment and
2 collection of any such tax or governmental assessment and to accept for filing and recordation any
3 of the foregoing instruments or other documents without payment of such tax or other governmental
4 assessment.

5 **3. ~~4.~~ Modification of the Plan.**

6 Subject to the restrictions set forth in Bankruptcy Code section 1127, the Debtor reserves the
7 right to alter, amend, or modify the Plan before its substantial consummation.

8 **F. Effect of Confirmation of the Plan.**

9 **1. Discharge and Injunction.**

10 **The rights afforded in the Plan and the treatment of all Claims shall be in exchange for**
11 **and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever**
12 **arising prior to the Effective Date against the Debtor and the Estate, including any interest**
13 **accrued on such Claims from and after the Petition Date.**

14 **Except as otherwise provided in the Plan or the Confirmation Order, on the Effective**
15 **Date, (a) the Debtor, the Estate, the Reorganized Debtor and their respective property are**
16 **discharged and released hereunder to the fullest extent permitted by Bankruptcy Code**
17 **sections 524 and 1141 from all Claims and rights against them that arose before the Effective**
18 **Date, including all debts, obligations, demands, and liabilities, and all debts of the kind**
19 **specified in Bankruptcy Code sections 502(g), 502(h), or 502(i), regardless of whether or not**
20 **(i) a proof of Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such**
21 **debt is allowed pursuant to Bankruptcy Code section 502, or (iii) the holder of a Claim based**
22 **on such debt has or has not accepted the Plan; (b) any judgment underlying a Claim**
23 **discharged hereunder is void; and (c) all entities are precluded from asserting against the**
24 **Debtor, the Estate, the Reorganized Debtor and their respective property, any Claims or**
25 **rights based upon any act or omission, transaction, or other activity of any kind or nature that**
26 **occurred prior to the Effective Date.**

27 **Except as otherwise provided in the Plan or the Confirmation Order, on and after the**
28 **Effective Date, all entities who have held, currently hold, or may hold a Claim, against the**

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1 Debtor, the Estate, or the Reorganized Debtor, that is based upon any act or omission,
2 transaction, or other activity of any kind or nature that occurred prior to the Effective Date,
3 that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged
4 pursuant to the Plan, are permanently enjoined from taking any of the following actions on
5 account of any such discharged Claim, (the “Permanent Injunction”): (a) commencing or
6 continuing in any manner any action or other proceeding against the Debtor, the Estate, the
7 Reorganized Debtor, or their respective property that is inconsistent with the Plan or the
8 Confirmation Order; (b) enforcing, attaching, collecting, or recovering in any manner any
9 judgment, award, decree, or order against the Debtor, the Estate, the Reorganized Debtor or
10 their respective property, other than as expressly permitted under the Plan; (c) creating,
11 perfecting, or enforcing any lien or encumbrance against property of the Debtor, the Estate,
12 or the Reorganized Debtor, ~~or their respective property~~, other than as expressly permitted
13 under the Plan; and (d) commencing or continuing any action, in any manner, in any place
14 that does not comply with or is inconsistent with the provisions of the Plan, the Confirmation
15 Order, or the discharge provisions of Bankruptcy Code section 1141. Any person or entity
16 injured by any willful violation of such Permanent Injunction shall recover actual damages,
17 including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive
18 damages, from the willful violator.

19 2. Estate Release.

20 As of the Effective Date, the Debtor (on behalf of itself and the Estate) releases and
21 forever waives and discharges as against the Released Parties, all Claims, actions, costs,
22 causes of action, damages, demands, debts, expenses (including attorneys’ fees), judgments,
23 losses (including any claims for contribution or indemnification), liabilities, obligations,
24 rights, or suits, whether past or present, liquidated or unliquidated, fixed or contingent,
25 matured or unmatured, known or unknown, foreseen or unforeseen, then existing or
26 thereafter arising, in law, equity or otherwise that are based in whole or part on any act,
27 omission, transaction, event or other occurrence taking place on or prior to the Effective Date
28 relating in any way to the Debtor or the Case, including causes of action under chapter 5 of

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1 the Bankruptcy Code that are not Preserved Avoidance Actions; provided, however, that the
2 foregoing shall not effectuate a release of any obligation of such parties: (1) arising under the
3 agreements relating to the UCSD Sale, the Plan (including the Research Building Note and
4 any document relating thereto), or the Confirmation Order, any other contract or lease
5 entered into postpetition by the Debtor and/or the Estate, and any executory contract or
6 unexpired lease of the Debtor that has been assumed during the Case or that will be assumed
7 pursuant to the Plan, or (2) under the Engelstad Endowment Agreement, the Engelstad
8 Endowment Escrow Agreement, the Donations Escrow Agreement, the Saffer Endowment
9 Agreement or any other agreement governing Charitable Trust Funds; provided further, that
10 the foregoing release shall not preclude the Creditor Trust from asserting a Claim or cause of
11 action of the Debtor or the Estate as a defense to and/or offset against a Class 4 Claim asserted
12 by a Released Party. The releases set forth in this paragraph shall be binding upon the
13 Reorganized Debtor, the Creditor Trust, and any chapter 7 trustee, ~~in the event if~~ the Case is
14 at any time converted to chapter 7.

15 Under the Plan, “Released Parties” means each of (1) the Agent, the Lenders, current and
16 former donors to the Debtor (in their capacity as donors), employees, officers and directors of the
17 Debtor as of January 30, 2012, Stephen Cloobek, and Robert Melendres, and (2) as applicable,
18 their respective accountants, affiliates, agents, assigns, attorneys, bankers, consultants, directors,
19 financial advisors, heirs, members, officers, parent entities, partners, representatives, shareholders,
20 subsidiaries, and successors, provided, however, that the parties listed on Exhibit F (and their
21 respective accountants, affiliates, agents, assigns, attorneys, bankers, consultants, directors,
22 financial advisors, heirs, members, officers, parent entities, partners, representatives, shareholders,
23 subsidiaries, and successors) shall not constitute “Released Parties.” Mr. Cloobek and Mr.
24 Melendres are past directors of the Debtor who have played an important ongoing role in the
25 debtor’s fundraising efforts.

26 **3. Payment of U.S. Trustee Fees.**

27 The Reorganized Debtor shall pay all U.S. Trustee Fees due and owing under 28 U.S.C. §
28 1930 until such time as it moves for entry of a final decree and the Court enters such a decree;

1 provided, however, that if the Creditor Trust opposes such motion, the Creditor Trust thereafter
2 shall bear the cost of any and all U.S. Trustee Fees until the Court enters a final decree closing the
3 Case. Notwithstanding LR 3022, the Clerk shall enter a final decree in the Case only upon an Order
4 of the Court following the Filing of a properly noticed motion.

5 **4. Retention of Jurisdiction.**

6 Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective
7 Date, the Court shall retain jurisdiction over the Case after the Effective Date to the fullest extent
8 provided by law, as more particularly set forth in Section VII.D of the Plan.

9 **X.**

10 **FEASIBILITY**

11 The Bankruptcy Code provides that a plan may only be confirmed if confirmation is not
12 likely to be followed by the liquidation or the need for further financial reorganization of the debtor,
13 unless such liquidation or reorganization is proposed in the Plan. 11 U.S.C. § 1129(a)(11). This is
14 referred to as the “feasibility” requirement.

15 Following the Effective Date, the Reorganized Debtor will have discrete financial
16 obligations. Specifically, the Reorganized Debtor will be required to meet its remaining
17 Philanthropic Commitment to UCSD, pay the costs of maintaining the Research Building, the
18 Vacant Land, and the Alta-Hualapai Parcel, make the specified amortization payments to the
19 Lenders under the Research Building Note, and pay the salary of the administrative employee that
20 will assist the Reorganized Debtor with its fundraising and other activities. As set forth in the
21 annual projected budget for Reorganized Debtor attached hereto as Exhibit 5 (the “Annual Projected
22 Budget”) the total cost of these obligations (other than the Philanthropic Commitment) is expected
23 to be approximately \$925,000 each year.⁹¹⁹ ~~In addition, the Reorganized Debtor will make a
24 one time expenditure to purchase a malpractice tail insurance policy.~~

25
26
27 ⁹¹⁹ If, at any point in time, the Research Building and/or Vacant Land are no longer owned by the
28 Reorganized Debtor, the Reorganized Debtor will not be required to fund the carrying costs of
preserving those assets, although the Reorganized Debtor will continue as a nonprofit

(FOOTNOTE CONTINUED)

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1 The Reorganized Debtor will have ample sources of funding with which to meet its
 2 obligations under both the Philanthropic Commitment and the Annual Projected Budget. The
 3 Reorganized Debtor intends for fundraising and charitable donations to be the primary source of
 4 funding for these obligations. The Debtor expects to have obtained fundraising commitments as of
 5 the Effective Date sufficient to fund at least one year of the Annual Projected Budget. Additionally,
 6 the Debtor already has procured the commitment of the \$15 million Engelstad Endowment Fund,
 7 which is now in escrow, to provide a ~~substantial~~ financial backstop ~~to~~ for a substantial portion of the
 8 Philanthropic Commitment, as set forth in the Funding Agreement.

9 Under these circumstances, the Plan is not likely to be followed by the liquidation or the
 10 need for further financial reorganization of the Reorganized Debtor. As a result, the Plan satisfies
 11 the feasibility requirement set forth in Bankruptcy Code section 1129.

12 XI.

13 LIQUIDATION ANALYSIS/BEST INTERESTS TEST

14 Bankruptcy Code section 1129(a)(7) requires that each holder of a Claim against the Debtor
 15 in an impaired Class either (i) vote to accept the Plan, or (ii) receive or retain under the Plan cash or
 16 property of a value, as of the effective date of the Plan, that is not less than the value such holder
 17 would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. This
 18 is commonly referred to as the “Best Interests Test.”

19 In a chapter 7 case, a trustee or trustees would be elected or appointed to liquidate the
 20 debtor’s assets and make distributions to creditors in accordance with the priorities set forth in the
 21 Bankruptcy Code. Secured creditors generally are paid from the proceeds of sale of the properties
 22 securing their liens. If any assets are remaining after the satisfaction of secured claims,
 23 administrative expenses generally are next to receive payments. Unsecured claims are paid from
 24 any remaining sales proceeds or other estate assets, according to their rights to priority. Unsecured
 25 claims with the same right to priority receive a pro rata distribution based on the amount of their

26 _____
 27 corporation dedicated to raising funds and generating support for and otherwise advancing its
 28 philanthropic objectives.

1 allowed claim in relation to the total amount of allowed unsecured claims with the same right to
2 priority. Finally, interest holders (if any) receive the balance that remains, if any, after all creditors
3 are paid.

4 Thus, for the Court to confirm the Plan, the Court must find that all creditors in impaired
5 Classes who do not accept the Plan will receive at least as much under the Plan as such creditors
6 would receive under a hypothetical chapter 7 liquidation.

7 The Debtor prepared the liquidation analysis attached hereto as Exhibit 6, reflecting the
8 estimated cash proceeds, net of liquidation-related costs, that would be realized if the Debtor was
9 liquidated in accordance with chapter 7 of the Bankruptcy Code. The liquidation analysis projects
10 that, under any scenario, all creditors would receive substantially less (or nothing) if the Debtor
11 were to be liquidated under chapter 7 of the Bankruptcy Code. Even under the best-case scenario,
12 which assumes the highest recoveries from the liquidation of the assets of the Estate, the proceeds of
13 these assets would go solely to satisfy the Lender Secured Debt, administrative expenses and
14 priority claims. Accordingly, all of the Debtor's creditors will receive at least as much under the
15 Plan as they would receive in a chapter 7 liquidation.

16 **THE LIQUIDATION ANALYSIS, INCLUDING THE CLAIMS ESTIMATES, WAS**
17 **PREPARED SOLELY TO ASSIST THE COURT IN MAKING THE FINDINGS**
18 **REQUIRED UNDER SECTION 1129(a)(7) OF THE BANKRUPTCY CODE AND MAY**
19 **NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.**

20 **THE DEBTOR BELIEVES THAT ANY ANALYSIS OF A HYPOTHETICAL**
21 **LIQUIDATION REQUIRES ESTIMATES AND ASSUMPTIONS ABOUT FUTURE**
22 **EVENTS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT ECONOMIC,**
23 **COMPETITIVE AND OPERATIONAL UNCERTAINTIES AND CONTINGENCIES**
24 **BEYOND THE CONTROL OF THE DEBTOR OR A CHAPTER 7 TRUSTEE. NEITHER**
25 **THE LIQUIDATION ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH**
26 **IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT**
27 **ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE**
28 **AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THERE CAN BE**

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1 **NO ASSURANCE THAT ACTUAL RESULTS WOULD NOT VARY MATERIALLY**
2 **FROM THE HYPOTHETICAL RESULTS REPRESENTED IN THE LIQUIDATION**
3 **ANALYSIS.**

4 **XII.**
5 **RISK FACTORS**

6 The Debtor's ability to perform its obligations under the Plan is subject to various factors
7 and contingencies, some of which are described in this section. The following discussion
8 summarizes only some material risks associated with the Plan and the Reorganized Debtor, and is
9 not exhaustive. Moreover, this section should be read in connection with the Plan and the other
10 disclosures contained in this Disclosure Statement.

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PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR THAT ARE IMPAIRED SHOULD, WITH THEIR ADVISORS, READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT AND THE PLAN.

A. Bankruptcy Considerations.

1. Parties in Interest May Object to the Debtor’s Classification of Claims.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim in a particular class only if the claim is substantially similar to the other claims in that class. The Debtor believes that the classification of holders of Claims against the Debtor under the Plan complies with the requirements set forth in the Bankruptcy Code because the classes established under the Plan each encompass Claims that are substantially similar to similarly classified Claims. Nevertheless, there can be no assurance that the Court will reach the same conclusion.

2. Failure to Secure Confirmation of the Plan.

Bankruptcy Code section 1129 sets forth the requirements for confirmation of a chapter 11 plan, and requires the Court to make a series of specified, independent findings. There can be no assurance that the Court will find that the Plan meets these requirements and confirm the Plan. If the Plan is not confirmed, it is unclear what distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

The Plan may be modified as necessary for confirmation of the Plan. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

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1 **3. Non-Consensual Confirmation.**

2 In the event that any impaired class of claims does not accept a chapter 11 plan, the Court
3 may nevertheless confirm the plan under the procedure for non-consensual confirmation described
4 in Section V of this Disclosure Statement. The Debtor believes that the Plan would satisfy the
5 requirements for non-consensual confirmation. Nevertheless, there can be no assurance that the
6 Court will reach this conclusion.

7 **4. The Debtor May Object to the Amount or Classification of a Claim.**

8 Except as otherwise provided in the Plan, the Debtor, the Reorganized Debtor and the
9 Creditor Trust reserve the right to object to the amount or classification of any Claim against the
10 Debtor. The estimates set forth in this Disclosure Statement cannot be relied on by any holder of a
11 Claim against the Debtor.

12 **5. The Effective Date Might Not Occur.**

13 Even if the Court confirms the Plan, the Plan shall not become binding until the Effective
14 Date occurs. The Effective Date is the first Business Day on which the conditions set forth in
15 Section IV.L.1 of the Plan have been satisfied or waived by the Debtor and on which no stay of the
16 Confirmation Order is in effect. There can be no assurances as to whether or when the Effective
17 Date will occur.

18 ~~**B. Risks Associated with the UCSD Sale.**~~

19 ~~If the UCSD Sale is not approved by the Court and/or is not implemented by the Debtor, the~~
20 ~~Plan will not be feasible. First, the Plan is premised on a reduction of the Debtor's obligations to the~~
21 ~~Lenders debt by \$18 million from the cash consideration received from the UCSD Sale. Second, the~~
22 ~~agreed upon Budget assumes that the UCSD Sale will be closed, and that UCSD will commence its~~
23 ~~own operations at the Flagship Building, no later than the week ended January 13, 2012. The Plan~~
24 ~~Support Agreement does not provide for continued operations (i.e., the funding of continued~~
25 ~~operating losses) after that date absent closing of the UCSD Sale. Thus, if the Debtor is not able to~~
26 ~~consummate the UCSD Sale within this time frame, the Debtor may not have sufficient resources to~~
27 ~~pursue confirmation of the Plan.~~

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1 **B. ~~C.~~ Risks Associated with the Reorganized Debtor.**

2 In addition to fundraising in support of UCSD, the Reorganized Debtor will have various
3 financial responsibilities after the Effective Date, including yearly amortization payments on the
4 Research Building Note, maintenance of the Research Building, the Vacant Land and the
5 Alta-Hualapai parcel, including insurance and taxes for these properties, and ultimately, repayment
6 of the Research Building Note. The Debtor expects to have obtained fundraising commitments as of
7 the Effective Date that will fund at least one year of the Annual Projected Budget for the
8 Reorganized Debtor, but there is no assurance that the Reorganized Debtor will be able to meet its
9 obligations thereafter.

10 **C. ~~Risks Associated with the Creditor Trust.~~**

11 As discussed herein, the Creditor Trust will be vested on the Effective Date with the
12 Preserved Avoidance Actions, the Preserved Actions, and other potential Claims and causes of
13 action, including any Trust Funds Challenge regarding Donor Restricted Funds or “Charitable Trust
14 Funds.” There is no assurance that the Creditor Trust will pursue or recognize a meaningful
15 recovery from any of these Claims or causes of actions.²⁰

16 **XIII.**

17 **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

18 **A. Liquidation Under Chapter 7.**

19 If no plan of reorganization can be confirmed, the Case may be converted to a case under
20 chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate
21 the Debtor’s assets for distribution in accordance with the priorities established by the Bankruptcy
22 Code. A discussion of the effects that a chapter 7 liquidation would have on the recoveries of the
23 holders of Claims against the Debtor is set forth in Section XI above and in the liquidation analysis
24 attached hereto as Exhibit 6.

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²⁰ As indicated above, the Debtor believes that any Trust Funds Challenge will be unsuccessful.
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1 As noted above and in the Liquidation Analysis, the Debtor believes that in a liquidation
2 under chapter 7, there would likely be no assets available to distribute to the holders of Allowed
3 General Unsecured Claims.

4 **B. Alternative Plan of Reorganization.**

5 If the Plan is not confirmed, the Debtor (or any other party in interest) could attempt to
6 formulate a different plan. Such a plan might involve a reorganization ~~and continuation of the~~
7 ~~Debtor's business~~, or an orderly liquidation of the Debtor's remaining assets. Before and during the
8 course of negotiations with the Agent, the Lenders, and UCSD, and in consultation with its
9 professionals, the Debtor explored various alternatives. The Debtor believes that the Plan enables
10 creditors to realize the most value under the circumstances.

11 **XIV.**

12 **TAX CONSEQUENCES OF PLAN**

13 The following is a summary of certain anticipated U.S. federal income tax consequences of
14 the Plan to the Debtor, the Reorganized Debtor and certain holders of Claims against the Debtor that
15 are entitled to vote to accept or reject the Plan. This summary is provided for informational
16 purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Code"),
17 Treasury Regulations thereunder, and administrative and judicial interpretations and practice, all as
18 in effect on the date hereof and all of which are subject to change, with possible retroactive effect.
19 Due to the lack of definitive judicial and administrative authority in a number of areas, substantial
20 uncertainty may exist with respect to some of the tax consequences described below. In addition, a
21 substantial amount of time may elapse between the date of this Disclosure Statement and the receipt
22 of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement,
23 including changes in law and changes in administrative positions, could affect the U.S. federal tax
24 consequences of the Plan. No opinion of counsel has been obtained, and the Debtor and
25 Reorganized Debtor do not intend to seek a ruling from the Internal Revenue Service ("IRS") as to
26 any of such tax consequences, and there can be no assurance that the IRS will not challenge one or
27 more of the tax consequences of the Plan described below.

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1 This summary does not apply to holders of Claims that are not United States persons for U.S.
2 federal income tax purposes or that are otherwise subject to special treatment under U.S. federal
3 income tax law. This summary does not purport to cover all aspects of U.S. federal income taxation
4 that may apply to the Debtor, the Reorganized Debtor and holders of Claims based upon their
5 particular circumstances. Additionally, this summary does not discuss any tax consequences that
6 may arise under state, local or foreign tax law.

7 **The following summary is not a substitute for careful tax planning and advice based**
8 **on the particular circumstances of each creditor. All creditors are urged to consult their own**
9 **tax advisors as to the U.S. federal income tax consequences, as well as any applicable state,**
10 **local and foreign tax consequences, of the Plan.**

11 **To ensure compliance with requirements imposed by the IRS, you must be informed**
12 **that any tax advice contained in this Disclosure Statement is not intended or written to be**
13 **used, and cannot be used, by any taxpayer for the purpose of avoiding tax-related penalties**
14 **under the Code. The tax advice contained in this Disclosure Statement was written to support**
15 **the promotion of the transactions described in this Disclosure Statement. Each taxpayer**
16 **should seek advice based on the taxpayer’s particular circumstances from an independent tax**
17 **advisor.**

18 **A. Certain U.S. Federal Income Tax Consequences of the Plan to the Debtor ~~and, the~~ Reorganized Debtor and Certain Holders of Claims.**

19 **1. Cancellation of Debt.**

20 The net proceeds from the UCSD Sale (the “UCSD Sale Proceeds”) ~~shall be~~ were paid to the
21 Agent for the ~~ratable~~ benefit of the Agent and Lenders in accordance with the Prepetition Credit
22 Agreement, and this payment ~~shall reduce~~ reduced the debt (the “Existing Lender Debt”) under the
23 Credit Agreement. In addition, on the Effective Date, the Reorganized Debtor will issue to the
24 Agent, for the ~~ratable~~ benefit of the Agent and Lenders, the Research Building Note. Whether the
25 Research Building Note will constitute a debt for U.S. federal income tax purposes will be
26 determined based on all of the relevant facts and circumstances. Some of the significant factors that
27 courts have relied upon in making a determination of whether an instrument is a debt for U.S.
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1 federal income tax purposes are: (i) repayment terms, (ii) debt/equity ratio of the debtor, (iii)
 2 identity of the debt holders, (iv) remedies of the debt holders, (v) the degree of subordination, (vi)
 3 convertibility, (vii) management control, (viii) intention of the parties and (ix) similarity to
 4 independent creditor loans. The following discussion assumes that, with respect to the Research
 5 Building Note, the parties intend to create a debtor-creditor relationship and that the Research
 6 Building Note will be treated as debt for U.S. federal income tax purposes. In addition, the
 7 following discussion assumes that the Research Building and the Vacant Land will be: (a) treated as
 8 owned by the Reorganized Debtor for U.S. federal income tax purposes and (b) used by the
 9 Reorganized Debtor in furtherance of its tax-exempt purposes. The IRS is not bound by any
 10 position taken by the Debtor and/or the Reorganized Debtor, and may characterize the Research
 11 Building Note, in whole or in part, as an interest in property other than a debt instrument. Holders of
 12 the Research Building Note, including holders that are foreign persons or tax-exempt entities should
 13 consult their own tax advisors regarding the characterization of the Research Building Note for U.S.
 14 federal income tax purposes.

15 Ordinarily, the Debtor and/or Reorganized Debtor would recognize cancellation of debt
 16 income (“CODI”) in an amount equal to the excess of: (i) the amount owed under the Existing
 17 Lender Debt over (ii) the sum of the UCSD Sale Proceeds and the issue price of the Research
 18 Building Note. However, because the Debtor and the Reorganized Debtor are, and are expected to
 19 be, tax-exempt organizations under Code § 501(c)(3), the Debtor and the Reorganized Debtor
 20 should not recognize CODI.

21 In addition, any other debts of the Debtor and the Reorganized Debtor that are satisfied
 22 under the Plan and would otherwise give rise to CODI should not result in CODI to the Debtor
 23 and/or the Reorganized Debtor because of their tax-exempt status.

24 **2. The UCSD Sale.**

25 ~~The Debtor expects to consummate the UCSD Sale prior to the confirmation of the Plan.~~
 26 Ordinarily, gain or loss would be recognized by the Debtor in an amount equal to the difference
 27 between the UCSD Sale Proceeds and the Debtor’s adjusted tax basis in the property sold pursuant
 28 to the UCSD Sale. However, because the Debtor is a tax-exempt organization under Code §

1 501(c)(3), no gain or loss should be recognized by the Debtor in connection with the UCSD Sale. In
2 addition, because substantially all of the Debtor’s use of the Flagship Building and other property
3 ~~being~~ sold in the UCSD Sale ~~have been~~were in furtherance of its tax-exempt purposes, the income
4 generated by the UCSD Sale (if any) will not be treated as taxable unrelated business or
5 debt-financed income to the Debtor.

6 **B. Certain U.S. Federal Income Tax Consequences of the Plan to the Holders of Claims.**

7 **1. General.**

8 The federal income tax consequences of the Plan to a holder of a Claim against the Debtor
9 will depend, in part, on whether the Claim constitutes a “tax security” for federal income tax
10 purposes, what type of consideration was received in exchange for the Claim, whether the holder
11 reports income on the accrual or cash basis, whether the holder has taken a bad debt deduction or
12 worthless security deduction with respect to the Claim and whether the holder receives distributions
13 under the Plan in more than one taxable year.

14 **2. Definition of Securities.**

15 There is no precise definition of the term “security” under the federal income tax law.
16 Rather, all facts and circumstances pertaining to the origin and character of a Claim are relevant in
17 determining whether it is a security. Most authorities have held that the length of the term of a debt
18 instrument is an important factor in determining whether such instrument is a security for U.S.
19 federal income tax purposes. Generally, corporate debt instruments with maturities when issued of
20 less than five years are not considered securities, and corporate debt instruments with maturities
21 when issued of ten years or more are considered securities. The term of the Credit Agreement was
22 three years and, generally, a loan made thereunder would not be considered a security for U.S.
23 federal income tax purposes. The following discussion assumes that none of the Claims against the
24 Debtor are a security for U.S. federal income tax purposes. Holders of Claims are urged to consult
25 their tax advisors with respect to the possible treatment of their Claims as tax securities.

26 **3. Holders of Claims not Constituting Tax Securities.**

27 ~~A~~Subject to reporting under the installment method, a holder of a Claim not constituting a
28 tax security should recognize gain or loss equal to the amount realized in satisfaction of the Claim

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1 minus the holder's tax basis in the Claim. The holder's amount realized for this purpose generally
 2 will equal the sum of cash and the fair market value of other property received (or the issue price of
 3 the Research Building Note), if any, on the date of distribution by the Reorganized Debtor, less any
 4 amount allocable to interest on the holder's Claim. For a discussion of the issue price of the
 5 Research Building Note, see "Original Issue Discount" below.

6 ~~In connection with the foregoing, pursuant to the Plan, on the Effective Date, (i) the~~
 7 ~~Unsecured Creditor Cash shall be remitted to the Creditor Trust and (ii) all Preserved Avoidance~~
 8 ~~Actions shall be vested in the Creditor Trust (the Unsecured Creditor Cash and the Preserved~~
 9 ~~Avoidance Actions are referred to herein, collectively, as the "Class 4 Claim Assets").~~ The holders
 10 of the Allowed Class 4 Claims will be the beneficiaries of the Creditor Trust and will be entitled to
 11 distributions from the Creditor Trust in accordance with the Creditor Trust Agreement. The
 12 Creditor Trust is intended to qualify as, and the discussion below assumes that the Creditor Trust
 13 will be respected as, a liquidating trust for U.S. federal income tax purposes. In general, a
 14 liquidating trust is not a separate taxable entity for U.S. federal income tax purposes, but is instead
 15 treated as a grantor trust, *i.e.*, a pass-through entity. For U.S. federal income tax purposes, all parties
 16 (including the Debtor, the Reorganized Debtor, the Creditor ~~Trustees~~Trustee and the Creditor Trust
 17 beneficiaries) must treat the transfer of the ~~Class 4 Claim~~Creditor Trust Assets to the Creditor Trust
 18 as a transfer of such assets directly to the Creditor Trust beneficiaries, followed by the beneficiaries'
 19 transfer of such assets to the Creditor Trust. Consistent therewith, all parties must treat the Creditor
 20 Trust as a grantor trust of which the Creditor Trust beneficiaries are the owners and grantors.
 21 Subject to the terms of the Creditor Trust Agreement, the Creditor ~~Trustees~~Trustee will determine
 22 the fair market value of the ~~Class 4 Claim~~Creditor Trust Assets, as soon as possible after the
 23 Effective Date, and the Creditor Trust beneficiaries and the Creditor ~~Trustees~~Trustee must
 24 consistently use this valuation for all U.S. federal income tax purposes, including for determining
 25 gain, loss or tax basis. Assuming the Creditor Trust qualifies as a liquidating trust for U.S. federal
 26 income tax purposes, each Creditor Trust beneficiary generally should be required to report on the
 27 beneficiary's U.S. federal income tax return its allocable share of any income, gain, loss, deduction
 28 or credit, recognized or incurred by the Creditor Trust, in accordance with such beneficiary's

1 relative beneficial interest in the trust. The character of the items of income, gain, loss, deduction or
2 credit to any Creditor Trust beneficiary, and such beneficiary's ability to benefit from any
3 deductions or losses, may depend on such beneficiary's particular situation.

4 Any gain or loss recognized by a holder of a Claim not constituting a tax security will be
5 capital or ordinary depending on the status of the Claim in the holder's hands. A holder's tax basis
6 in the Research Building Note should be the issue price of the Research Building Note on the date of
7 distribution by the Reorganized Debtor. The holding period for any property received under the
8 Plan by a holder of a Claim not constituting a tax security generally should begin on the day
9 following the day of receipt.

10 **4. Original Issue Discount and Contingent Payment.**

11 The Research Building Note will be treated as issued with original issue discount ("OID") to
12 the extent that its "stated redemption price at maturity" exceeds its "issue price."

13 An instrument's stated redemption price at maturity includes all payments required to be
14 made over the term of the instrument other than payments of "qualified stated interest," defined as
15 interest payments required to be made at fixed periodic intervals of one year or less. Because the
16 Research Building Note is non-interest bearing and will not be publicly traded on an established
17 securities market, the issue price of this note will be its imputed principal amount. The Research
18 Building Note's imputed principal amount will be the sum of the present values of all payments due
19 under the note, determined as of the date of its issuance, using a discount rate equal to the applicable
20 federal rate, compounded semi-annually.

21 A holder of a debt instrument that bears OID is required to include in gross income an
22 amount equal to the sum of the daily portions of OID for each day during the taxable year in which
23 the debt instrument is held. The daily portions of OID are determined by allocating to each day in an
24 accrual period the prorata portion of the OID that is considered allocable to the accrual period. The
25 amount of OID that is allocable to an accrual period is generally equal to the product of the adjusted
26 issue price of the debt instrument at the beginning of the accrual period (the issue price of the debt
27 instrument increased by prior accruals of OID and decreased by prior cash payments) and the debt
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1 instrument's yield-to-maturity (the discount rate which, when applied to all payments under the debt
2 instrument, results in a present value equal to the issue price of the debt instrument).

3 The general effect of the OID rules is that holders may be required to include OID in income
4 in advance of the receipt of cash in respect of such income.

5 The Plan provides that if the Research Building and/or the Vacant Land are sold and there is
6 Excess Consideration, the Reorganized Debtor will pay 80% of the Excess Consideration to the
7 Agent for the ~~ratable~~-benefit of the Agent and Lenders (the "Contingent Payment"). Assuming that
8 the Contingent Payment is made pursuant to the Research Building Note, part of the Contingent
9 Payment will be treated as a payment of principal and part of the payment will be treated as interest
10 for U.S. federal income tax purposes.

11 ~~The~~Under Treasury Regulation Section 1.1275-4(c), the portion of the Contingent Payment
12 that will be allocated to principal will be an amount equal to the present value of the Contingent
13 Payment determined by discounting the Contingent Payment from the date it was made to the issue
14 date of the Research Building Note at the applicable federal rate that would apply to a debt
15 instrument that was issued on the Research Building Note's issue date (*i.e.* the Effective Date) and
16 that matures on the date that the Contingent Payment is made. The remaining portion of the
17 Contingent Payment that is not allocated to principal will be treated as a payment of interest and will
18 be includable in gross income by the holder of the Research Building Note in the taxable year in
19 which the payment is made. Holders of the Research Building Note are urged to consult their tax
20 advisors with respect to the tax consequences of any disposition of the Research Building Note.

21 5. Accrued Interest

22 To the extent that any amount received by a holder of a surrendered Allowed Claim under
23 the Plan is attributable to accrued but unpaid interest and such amount has not previously been
24 included in the holder's gross income, such amount should be taxable to the holder as ordinary
25 interest income. Conversely, a holder of a surrendered Allowed Claim may be able to recognize a
26 deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that any
27 accrued interest on the debt instruments constituting such Claim was previously included in the
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1 holder's gross income but was not paid in full by the Debtor and/or Reorganized Debtor. Such loss
2 may be ordinary, but the tax law is unclear on this point.

3 The extent to which the consideration received by a holder of a surrendered Allowed Claim
4 will be attributable to accrued interest on the debts constituting the surrendered Allowed Claim is
5 unclear. Certain U.S. Treasury Regulations generally treat a payment under a debt instrument first
6 as a payment of accrued and untaxed interest and then as a payment of principal. Application of this
7 rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is unclear.
8 Pursuant to the Plan, distributions in respect of Allowed Claims will be allocated first to the
9 principal amount of such Allowed Claims (as determined for U.S. federal income tax purposes) and
10 thereafter, to the remaining portion of such Allowed Claims, if any. However, the provisions of the
11 Plan are not binding on the IRS nor a court with respect to the appropriate tax treatment for
12 creditors.

13 **C. Bad Debt and/or Worthless Securities Deduction.**

14 A holder who, under the Plan, receives in respect of a Claim an amount less than the holder's
15 tax basis in the Claim may be entitled in the year of receipt (or in an earlier year) to a bad debt
16 deduction in some amount under Code § 166(a) or a worthless securities deduction under Code §
17 165(g). The rules governing the character, timing and amount of the bad debt and/or worthless
18 securities deductions place considerable emphasis on the facts and circumstances of the holder, the
19 obligor and the instrument with respect to which a deduction is claimed. Holders of Claims against
20 the Debtor, therefore, are urged to consult their tax advisors with respect to their ability to take such
21 a deduction.

22 **D. Information Reporting and Backup Withholding.**

23 All distributions under the Plan will be subject to applicable federal income tax reporting
24 and withholding. The Code imposes "backup" withholding on certain "reportable" payments to
25 certain taxpayers, including payments of interest. Under the Code's backup withholding rules, a
26 holder of a Claim may be subject to backup withholding with respect to distributions or payments
27 made pursuant to the Plan, unless the holder: (i) comes within certain exempt categories (which
28 generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct

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LOS ANGELES, CALIFORNIA 90067
TELEPHONE: 310-407-4000

1 taxpayer identification number and certifies under penalty of perjury that the taxpayer identification
2 number is correct and that the taxpayer is not subject to backup withholding because of a failure to
3 report all dividend and interest income. Backup withholding is not an additional tax, but merely an
4 advance payment that may be refunded to the extent it results in an overpayment of tax. A holder of
5 a Claim may be required to establish an exemption from backup withholding or to make
6 arrangements with respect to the payment of backup withholding.

7 **E. Importance of Obtaining Professional Tax Assistance.**

8 THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF
9 CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A
10 SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE
11 ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX
12 ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY
13 VARY DEPENDING ON A HOLDER’S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY,
14 ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS
15 ABOUT THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX
16 CONSEQUENCES OF THE PLAN.

17 **XV.**

18 **RECOMMENDATION AND CONCLUSION**

19 The Debtor ~~believes~~and the Creditors’ Committee believe that Plan confirmation and
20 implementation are preferable to any feasible alternative. Accordingly, the Debtor ~~urges~~and the
21 Creditors’ Committee urge entities who hold impaired Claims to vote to accept the Plan by
22 checking the box marked “Accept” on their Ballots and then returning the Ballots as directed
23 in the Plan and Disclosure Statement.

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DATED: ~~December 6,~~ January 31, 2011 ~~2012~~

NEVADA CANCER INSTITUTE, a Nevada nonprofit corporation

By: George D. Pillari
Its: President and Chief Restructuring Officer

SUBMITTED BY:

~~/s/ Dawn M. Cica (#4565)
Robert M. Charles, Jr.
Dawn M. Cica
LEWIS AND ROCA LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169
Proposed Reorganization Co-Counsel for the Debtor and Debtor in Possession~~

and/s/ Courtney E. Pozmantier (Admitted Pro Hac Vice)

Michael L. Tuchin
Martin R. Barash
Courtney E. Pozmantier
KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067
Proposed Reorganization Counsel for the Debtor and Debtor in Possession

and

Robert M. Charles, Jr.
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LEWIS AND ROCA LLP
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Reorganization Co-Counsel for the Debtor and Debtor in Possession

[Redacted signature block]

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LOS ANGELES, CALIFORNIA 90067
TELEPHONE: 310-407-4000

Exhibit 5

CREDITOR TRUST AGREEMENT

This Creditor Trust Agreement (the "Agreement") dated as of March __, 2012 is by and between Nevada Cancer Institute, a Nevada nonprofit corporation (the "Debtor"), and SlnTrst LLC (dba Solution Trust) as "Creditor Trustee" under the terms of the Amended Chapter 11 Plan of Reorganization of Nevada Cancer Institute (Dated January 31, 2012) (the "Plan") in the chapter 11 bankruptcy case currently pending in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") with a caption of In re Nevada Cancer Institute, a Nevada nonprofit corporation, Case No. 2:11-bk-28676 (MKN), to implement the Trust for the benefit of the Beneficiaries under the terms of the Plan, as confirmed by the Bankruptcy Court by Order dated March __, 2012.

WITNESSETH

WHEREAS, the Trust is created pursuant to, and to effectuate, the Plan;

WHEREAS, the Trust is created on behalf, and for the sole benefit, of the Beneficiaries pursuant to the Plan;

WHEREAS, the Trust is established for the purpose of collecting, holding, administering, distributing and liquidating the Trust Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan and with no objective to continue or engage in the conduct of a trade or business, except to the extent necessary to, and consistent with, the Plan and the liquidating and distribution purposes of the Trust;

WHEREAS, pursuant to the Plan, the Debtor, the Trustee, the Trust and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Trust Assets to the Trust as a transfer of the Trust Assets by the Debtor to the Beneficiaries in satisfaction of their Allowed Class 4 Claims, followed by a transfer of the Trust Assets by the Beneficiaries to the

Trust in exchange for the beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust for federal income tax purposes;

WHEREAS, pursuant to the Plan, the Trust is intended to be treated as a grantor trust for federal income tax purposes within the meaning of Sections 671-677 of the Internal Revenue Code of 1986 (as amended, the “IRC”);

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Debtor and the Trustee agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

1.1.1 “Allowed Class 4 Claims” shall have the same meaning as set forth in the Plan.

1.1.2 “Beneficiaries” shall collectively mean the holders of Allowed Class 4 Claims under the Plan, or any successors to such holders’ Allowed Claims pursuant to Article 10.1 herein.

1.1.3 “Effective Date” shall have the same meaning as set forth in the Plan.

1.1.4 “Notice Parties” shall mean Beneficiaries who have provided a written request to the Trustee pursuant to section 10.2 herein for notice for those actions requiring notice pursuant to the terms of this Trust.

1.1.5 “Trust” shall mean the Creditor Trust established pursuant to the terms of this Agreement and the Plan.

1.1.6 “Trust Assets” shall mean the Creditor Trust Assets (as defined in the Plan).

1.1.7 “Trustee” shall mean (x) initially, SltnTrst LLC and (y) any successor or replacement “Creditor Trustee,” as that term is defined under the Plan.

1.2 Use of Plan Definitions. All terms which are used in this Agreement and not defined herein shall have the same meaning set forth in the Plan.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

ARTICLE II

DECLARATION OF TRUST

2.1 Purpose of Trust. The Debtor and the Trustee, pursuant to the Plan and in accordance with Title 11 of the United States Code (the “Bankruptcy Code”), hereby create the Trust for the primary purpose of (i) collecting, holding, administering, distributing and liquidating the Trust Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan and (ii) administering the collection, prosecution, settlement, and/or abandonment of the Trust Assets. The activities of the Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan.

2.2 Trust Name. The name of the Trust shall be PR Creditor Trust.

2.3 Transfer of Trust Assets.

A. The Debtor hereby grants, releases, assigns, transfers, conveys and delivers, on behalf of the Beneficiaries, its interest in the Trust Assets to the Trustee as of the Effective Date in trust for the benefit of the Beneficiaries to be applied as specified in this

Agreement and the Plan. The Debtor shall from time to time as and when reasonably requested by the Trustee execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Debtor shall take or cause to be taken such further action as the Trustee may reasonably deem necessary or appropriate, to vest or perfect in or confirm to the Trustee title to and possession of the Trust Assets.

B. Pursuant to the Plan, all of the Debtor's right, title and interest in and to the Trust Assets are automatically vested in the Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, and such transfer is on behalf of the Beneficiaries (whether such Beneficiaries' Claims are Allowed Claims on or after the Effective Date of the Plan) to establish the Trust. To the extent any law or regulation prohibits the transfer of ownership of any of the Trust Assets from the Debtor to the Trustee and such law is not superseded by the Bankruptcy Code, the Trustee's interest shall be a lien upon and security interest in such Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in Section 2.1, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Trustee hereby accepts all of such property as Trust Assets, to be held in trust for the Beneficiaries, subject to the terms of this Agreement and the Plan.

C. For all federal income tax purposes, the Debtor, the Beneficiaries, the Trustee and the Trust shall treat this Trust as a liquidating trust within the meaning of Treasury Income Tax Regulation Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124 and transfer of the Trust Assets to the Trust shall be treated as a transfer of the Trust Assets by the Debtor to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Trust Assets by the Beneficiaries to the Trust in exchange for their beneficial

interests in the Trust. The Beneficiaries shall be treated as the grantors and owners of the Trust for federal income tax purposes.

2.4 Valuation of Trust Assets. After the Effective Date, but in no event later than the due date for timely filing of the Trust's first federal income tax return (taking into account applicable tax filing extensions), the Trustee shall (a) determine the fair market value of the Trust Assets as of the Effective Date, based on his good faith determination, and (b) establish appropriate means to apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including, without limitation, the Debtor, the Trust, the Trustee and the Beneficiaries) for all federal income tax purposes.

ARTICLE III

ADMINISTRATION OF THE TRUST

3.1 Rights, Powers and Privileges. The Trustee shall have the rights, powers and privileges expressly provided to the Trustee in this Agreement or in the Plan. In the event that any provisions of this Agreement are inconsistent with the Plan, the provisions of the Plan shall control. The Trustee shall not take any action which is inconsistent with the Plan. Without limiting the foregoing, the Trustee shall have the power to take any and all actions consistent with the terms of the Plan in addition to the powers granted in the Plan, and any powers reasonably incidental thereto, which the Trustee, in its reasonable discretion, deems necessary or appropriate to fulfill the liquidating purpose of the Trust, including, without limitation, the following:

A. administer the collection, prosecution, settlement, and/or abandonment of the Preserved Avoidance Actions and certain estate causes of action that are Trust Assets;

B. make interim and final distributions to the holders of Allowed Class 4 Claims;

C. file suit or any appropriate motion for relief in the Bankruptcy Court or in any other court of competent jurisdiction to resolve any disagreement, conflict, dispute, or ambiguity in connection with the exercise of its rights, power, or duties;

D. hold legal title to any and all rights of the Debtor and the Beneficiaries that constitute Trust Assets;

E. in reliance upon the Debtor's schedules and the official claims register (the "Register") maintained in the chapter 11 case, maintain on the Trustee's books and records a register evidencing the beneficial interest herein held by each Beneficiary;

F. protect and enforce the rights to the Trust Assets vested in the Trustee by this Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise;

G. make all distributions to the Beneficiaries provided for in, or contemplated by, the Plan and this Agreement;

H. open and maintain bank accounts on behalf of or in the name of the Trust;

I. make all tax withholdings, file tax information returns, make tax elections by and on behalf of the Trust and file tax returns for the Trust as a grantor trust under

IRC Section 671 and Treasury Income Tax Regulation Section 1.671-4 pursuant to and in accordance with the Plan and Article 7.9 hereof;

J. send annually to each Beneficiary a separate statement stating the Beneficiary's share of the Trust's income, gain, loss, deduction or credit, and instruct all such Beneficiaries to report such items on their federal tax returns;

K. establish such reserves for taxes, assessments and other expenses of administration of the Trust as may be necessary and appropriate for the proper operation of matters incident to the Trust;

L. pay all expenses and make all other payments relating to the Trust Assets;

M. retain and pay third parties and professionals pursuant to Article 3.2 of this Trust;

N. carry insurance coverage;

O. exercise all powers provided under the Plan, including the right to object to and settle objections to Class 4 Claims, subject to the limitations set forth in Article X hereof and the Plan; and

P. invest any moneys held as part of the Trust Assets in accordance with the terms of Article 3.3 hereof.

3.2 Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, accountants, appraisers, or other parties deemed by the Trustee to have qualifications necessary to assist in the proper administration of the Trust, including professionals previously retained by the Creditors' Committee. The Trustee may pay the

reasonable salaries, fees and expenses of such persons out of the Trust Assets in the ordinary course of business.

3.3 Investment and Safekeeping of Trust Assets. All moneys and other assets received by the Trustee from the Trust Assets or proceeds thereof after payment of expenses shall, until distributed or paid over as provided herein and in the Plan, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Trust Assets, unless, and then only to the extent, required by law or the Plan. The Trustee shall be under no liability for interest or producing income on any moneys received by it hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Trustee, which shall be distributed as provided in the Plan. Except as otherwise provided by the Plan, the powers of the Trustee to invest any moneys held by the Trustee, other than those powers reasonably necessary to maintain the value of the assets and to further the Trust's liquidating purpose, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills.

3.4 Consultation. The Trustee shall make reasonable efforts to consult with Beneficiaries upon request.

ARTICLE IV

DISTRIBUTIONS FROM THE TRUST

4.1 Timing of Distributions. Distributions to the Beneficiaries will be made from the Trust in accordance with the terms of the Plan.

4.2 Withholding from Distributions. The Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

4.3 Undeliverable Distributions. If a distribution is returned to the Trustee as undeliverable, such undeliverable distributions shall be governed by Section IV.I.5 of the Plan.

4.4 Priorities of Distribution. The Trustee must pay the operating expenses of the Trust before approving distributions to or for the benefit of the Beneficiaries.

ARTICLE V

BENEFICIARIES

5.1 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary to any title in or to the Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

5.2 Ownership of Beneficial Interests Hereunder. Each Beneficiary shall own a beneficial interest herein equal in proportion to the pro rata share of such Beneficiary's Allowed Claim in accordance with the Plan.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

5.4 Exemption from Registration. The rights of the Beneficiaries arising under this Trust Agreement may be deemed “securities” under applicable law. However, such rights have not been defined as “securities” under the Plan because (i) the parties hereto intend that such rights shall not be securities, and (ii) if the rights arising under the Trust Agreement in favor of the Beneficiaries are deemed to be “securities,” the exemption from registration under Section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No party to this Trust Agreement shall make a contrary or different contention.

5.5 Delivery of Distributions. The Trustee shall make distributions to Beneficiaries in the manner provided in the Plan.

ARTICLE VI

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee’s agents to act in connection with the Trust Assets. There is no obligation on any person dealing with the Trustee to inquire into the validity or expediency or propriety of any transaction by the Trustee or any agent of the Trustee.

6.2 Limitation of Trustee’s Liability. Anything herein to the contrary notwithstanding, in exercising its rights, duties and obligations under this Trust, the Trustee shall act in good faith and use its best efforts to properly manage the Trust and protect the interests of all the Beneficiaries; but the Trustee shall not incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this

Agreement, except to the extent that the same constitutes fraud, gross negligence or willful misconduct by the Trustee.

6.3 Indemnification. The Trustee and its firms, companies, partners, officers, directors, employees, professionals, advisors, attorneys, financial advisors, investment bankers or agents and any of such parties' successors and assigns (collectively, the "Indemnified Parties" and each an "Indemnified Party") shall be indemnified by and receive reimbursement from the Trust (and not the Debtor, its chapter 11 estate, or the Reorganized Debtor, or their property) for each and every loss, liability, expense (including counsel fees) or damage of any kind, type or nature, which the Indemnified Parties may incur or sustain in the exercise and performance of any of the Trustee's powers and duties under this Agreement, or in the rendering of services by Indemnified Party to the Trustee, to the full extent permitted by applicable law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result from the Trustee's or an Indemnified Person's fraud, gross negligence or willful misconduct. The amounts necessary for such indemnification and reimbursement shall be paid by the Trustee out of the Trust Assets only. The Trustee shall not be personally liable for the payment of any Trust expense or claim or other liability of the Trust, and no person shall look to the Indemnified Parties personally for the payment of any such expense or liability. This indemnification shall survive the death, dissolution, resignation or removal, as may be applicable, of the Trustee, or the termination of the Trust, and shall inure to the benefit of the Trustee's and the Indemnified Party's heirs and assigns.

ARTICLE VII

SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

7.1 Initial Trustee. The initial Trustee shall be SltnTrst LLC (dba Solution Trust).

7.2 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Trust in accordance with the terms of this Agreement and the Plan; or (c) the Trustee's resignation, death, incapacity or removal.

7.3 Removal of Trustee. Any person serving as Trustee may be removed by order of the Bankruptcy Court at any time for cause, and any Beneficiary shall have the standing and right to seek such relief from the Bankruptcy Court.

7.4 Resignation of Trustee. The Trustee may resign at any time. In the event of a resignation, the resigning Trustee shall render to the Beneficiaries a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (i) the date specified in the notice delivered to the Bankruptcy Court; (ii) the date that is thirty days (30) after the date such notice is delivered; or (iii) the date the accounting described in the preceding sentence is transmitted to the Beneficiaries by first class mail, postage pre-paid. In the event of any resignation or termination of the initial Trustee, the Trustee shall be entitled to any fees and expenses due for services rendered.

7.5 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, counsel to the Trustee or any Beneficiary of this Trust shall have the right to seek appointment of a Successor Trustee or the Bankruptcy Court may appoint a Successor

Trustee. Any Successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the Successor Trustee and all of his heirs and legal and personal representatives, successors or assigns.

7.6 Powers and Duties of Successor Trustee. A Successor Trustee shall have all the rights, privileges, powers, and duties of his predecessor under this Agreement and the Plan.

7.7 Trust Continuance. The resignation, death, incapacitation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee. In the event that a Successor Trustee is not appointed when required under this Agreement and the Plan, the Bankruptcy Court shall appoint a Successor Trustee.

7.8 Compensation of the Trustee and Costs of Administration. The Trustee shall receive reasonable compensation of (i) \$1,000 per month; (ii) 3% of the aggregate net distributable proceeds paid to the Beneficiaries of the Trust; and (iii) reimbursement for actual and necessary costs for the Trustee's services, which shall be a charge against and paid out of the Trust Assets. All costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust, in carrying out their other responsibilities under this Agreement, or in any manner connected, incidental, or related thereto) shall be paid by the Trustee from the Trust Assets prior to any distribution to the Beneficiaries.

7.9 Annual Reporting and Filing Requirements.

A. Within 180 days after the end of each calendar year, the Trustee shall furnish a report to the Beneficiaries of all assets received by the Trust, all assets disbursed to Beneficiaries, and all assets held by the Trust during the preceding calendar year.

B. Pursuant to and in accordance with the terms of the Plan and this Agreement, the Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Income Tax Regulation Section 1.671-4(a).

ARTICLE VIII

MAINTENANCE OF RECORDS

8.1 The Trustee shall maintain books and records containing a description of all property from time to time constituting the Trust Assets, the management thereof, all transactions undertaken by the Trustee, all expenses incurred by or on behalf of the Trust, and all disbursements. Said books shall be open to inspection by any Beneficiary at any reasonable time at the offices of the Trustee, or such other location identified by the Trustee, during normal business hours.

ARTICLE IX

DURATION OF TRUST

9.1 Duration. The Trust shall become effective upon the Effective Date of the Plan. Thereupon, the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

9.2 Termination Upon Distribution of All Trust Assets. The Trust shall terminate when the Trustee has performed all of its duties under the Plan and this Agreement, including the final distribution of all the property of the Trust in respect of Allowed Class 4 Claims, which

date shall not be more than five (5) years after the Effective date; provided, however, the Bankruptcy Court may upon good cause shown order the Trust to remain open so long as it may be necessary to liquidate and distribute all its property. Upon termination of the Trust, the Trustee shall have no further responsibility in connection therewith.

ARTICLE X

MISCELLANEOUS

10.1 Limitation on Transferability. It is understood and agreed that the beneficial interests herein shall be non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law shall not be effective unless and until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment by operation of law. The Trustee may rely upon such proof without the requirement of any further investigation.

10.2 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders of Allowed Class 4 Claims at the addresses appearing on the books kept by the Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust:

SltTrst LLC
Attn: Peter Kravitz
16830 Ventura Blvd., Suite 160
Encino, CA 91436

pkravitz@solutiontrust.net

with a copy to –

Pachulski Stang Ziehl & Jones LLP
Attention: Robert J. Feinstein, Esq.
780 Third Ave., 36th Floor
New York, NY 10017
Facsimile: (212) 561-7777

-and-

Pachulski, Stang, Ziehl & Jones LLP
Attention: Shirley Cho, Esq.
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Facsimile: (310) 201-0760

or to such other address as may from time to time be provided in written notice by the Trustee.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

10.4 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

10.5 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

10.6 No execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can execute upon, garnish or attach the Trust Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Payments will be solely governed by the Plan and this Agreement.

10.7 Amendment. This Agreement may be amended only by order of the Bankruptcy Court.

10.8 Severability. If any term, provision covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.9 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.10 Neither the Debtor, its chapter 11 estate, nor the Reorganized Debtor shall have any liability or responsibility under this Agreement, other than as expressly provided herein.

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

NEVADA CANCER INSTITUTE

By: _____
Name: George Pilari
Title: Chief Restructuring Officer

SltTrst LLC, as Trustee of the Trust

By: _____
Name: Peter Kravitz
Title: Principal

Exhibit 6

	Net Book Value 31-Dec	Low	High
Liquidation Proceeds			
1 Unrestricted Cash	872,717	0	500,000
2 Clinical A/R	2,303,416	1,036,537	2,073,074
3 Alta Hualapai Land	0	0	0
4 Vacant Land ¹	10,020,000	0	1,002,000
5 Admin. Bldg. Parcel ^{1&2}	3,690,895	0	0
6 Research Bldg. and Land	57,029,620	0	10,000,000
7 FF&E ^{1&3}	381,254	0	95,314
TOTAL ASSETS	<u>\$ 74,297,903</u>	<u>\$ 1,036,537</u>	<u>\$ 13,670,388</u>
8 Chap. 7 Trustee & Liquidation Costs		<u>103,654</u>	<u>1,367,039</u>
Proceeds Available for Distribution		932,883	12,303,349
9 Less: Senior Secured Claim			
Construction Facility		46,570,253	46,570,253
LC Reimbursement Agreement		44,393,117	44,393,117
Paydown from Asset Sale to UCSD		<u>(18,000,000)</u>	<u>(18,000,000)</u>
Total Senior Secured Claim		<u>72,963,370</u>	<u>72,963,370</u>
Proceeds Available to Satisfy Admin & Priority Claims		<u>\$0.00</u>	<u>\$0.00</u>
10 Potential Net Preference Recoveries ⁴		0	500,000
Total Available to Satisfy Admin & Priority Claims		0	500,000
Less:			
11 Unpaid Post-Petition AP		1,950,000	1,000,000
12 503(b)(9) Claims		550,000	550,000
13 Unpaid Ch. 11 Professional Fee Claims ⁵		980,000	490,000
14 Priority Claims		177,000	-
Total Admin & Priority Claims		<u>3,657,000</u>	<u>2,040,000</u>
Estimated Proceeds for General Unsecured Creditors		<u>\$0.00</u>	<u>\$0.00</u>

Notes

- 1 Values based on 12/31/2011 NVCI depreciation schedules.
- 2 The secured debt on the Admin Bldg. Parcel significantly exceeds the value of that parcel. As such, the Debtor assumes that the ch. 7 trustee would abandon the property as the Debtor proposes to do (if the property is not earlier abandoned or otherwise disposed of during the Case).
- 3 Estimate for FF&E that has not been sold to UCSD.
- 4 While the Debtor has not undertaken an effort to value the potential preference actions, the preference recoveries cannot possibly be expected to exceed the administrative and priority claims. Nothing contained herein shall be relied upon in connection with the pursuit of any preference actions.
- 5 This does not reflect the carve-out for professional fees that would be implemented pursuant to the Cash Collateral Stipulation.