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10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **FOR THE DISTRICT OF NEVADA**

13 In re:

14 Bishop Gorman Development Corporation,  
15 Debtor.

Case No.: 17-11942-abl

Chapter 11

**Hearing**

Date: TBD

Time: TBD

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18 **CREDITOR J.A. TIBERTI CONSTRUCTION, INC.'S AMENDED PLAN OF**  
19 **REORGANIZATION**  
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J.A. Tiberti Construction Company, Inc. (“JATCO” or “Proponent”) proposes this Plan of Reorganization (this “Plan”) for the resolution of outstanding Claims (as these terms are defined herein) of Bishop Gorman Development Corporation (“Debtor”). Creditors and other parties-in-interest should refer to the Disclosure Statement (as this term is defined herein) for a discussion of Debtor’s history, assets, historical financial data, and for a summary and analysis of this Plan and certain related matters. All Holders of Claims against Debtor entitled to vote on this Plan are encouraged to read this Plan, the Disclosure Statement, and any related solicitation materials in their entirety before voting to accept or reject this Plan.

Subject to the restrictions on modifications set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article 11 to this Plan, JATCO expressly reserves the right to alter, amend, strike, withdraw, or modify this Plan one or more times before its substantial consummation.

## **1. DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

**1.1. Definitions.** For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in this Article 1. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, in that order of priority. Whenever the context requires, such terms shall include the plural as well as the singular, the masculine gender shall include the feminine, and the feminine gender shall include the masculine. As used in this Plan, the following terms shall have the meanings specified below:

**1.1.1. 2003 Declaration.** The *Declaration of Development Covenants and Restrictions by Bishop Gorman Development Corporation* executed by HHP as Declarant and Debtor and recorded on December 19, 2003 with the Clark County Recorder as Instrument 2003121902025.

**1.1.2. 2011 Declaration.** The *Declaration of Development Covenants and Restrictions by Bishop Gorman Development Corporation* executed by Hughes and Debtor and recorded on March 15, 2011 with the Clark County Recorder as Instrument 201103150000302.

**1.1.3. Administrative Claim.** A Claim for any cost or expense of administration of the Chapter 11 Case allowed under Sections 503(b) or 507(b) of the Bankruptcy Code and entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, but not limited to: (i) fees payable pursuant to 28 U.S.C. § 1930; (ii) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate, including wages, salaries, or commissions for services rendered after the commencement of the Chapter 11 Case; and (iii) all Professional Fees approved by the Bankruptcy Court pursuant to interim and final allowances. To the extent that a Claim is allowed pursuant to Sections 365(d)(3) and (d)(5) of the Bankruptcy Code, such Claim shall also be deemed an “Administrative Claim” under this paragraph.

**1.1.4. Administrative Claim Bar Date** The end of the first Business Day occurring on or after the sixtieth (60th) calendar day after the Effective Date.

**1.1.5. Allowed Administrative Claim.** An Administrative Claim: (i) as to which no objection has been filed or, if an objection has been filed, has been resolved by the allowance

of such Administrative Claim by a Final Order of the Bankruptcy Court; or (ii) which requires payment in the ordinary course and as to which there is no Final Order of the Bankruptcy Court in effect which prohibits any such payment.

**1.1.6. Allowed Claim.** A Claim or any portion thereof that is not a Disputed Claim: (i) that is allowed pursuant: (w) to this Plan or Final Order of the Bankruptcy Court, (x) to any stipulation executed prior to the Confirmation Date and approved by the Bankruptcy Court, (y) to any stipulation with Debtor or Reorganized BGDC, as applicable, executed on or after the Confirmation Date and approved by the Bankruptcy Court, or (z) to any contract, instrument, or other agreement entered into or assumed in connection herewith; (ii) proof of which, requests for payment of which, or application for allowance of which, was filed or deemed to be filed on or before the Bar Date for filing proofs of Claim or requests for payment of Claims of such type against Debtor; or (iii) if no proof of Claim is filed, which has been or hereafter is listed by Debtor in their respective Schedules as liquidated in amount and not disputed or contingent; and in the case of (ii) or (iii), no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or the Bankruptcy Court has entered a Final Order Allowing all or a portion of such Claim.

**1.1.7. Amended Diocese Lease.** The Amended Diocese Lease as provided for in Section 4.10.2 below to be entered into on the Effective Date in an amount sufficient to pay in full all obligations due under the Reimbursement Agreement, the Bonds, the Bond Indenture, Special Assessment Claim, Allowed Administrative Claims in Article 2 below, Allowed General Unsecured Claims in Section 4.8 below, and the JATCO Claim in Section 4.9 below. The Amended Diocese Lease shall replace the Diocese Lease on the Effective Date.

**1.1.8. Assets.** All of the assets, property, interests, and effects, real and personal, tangible and intangible, wherever situated, of Debtor, as they exist on the Effective Date.

**1.1.9. Avoidance Actions.** All avoidance, recovery, subordination, and other similar actions preserved for the Estate under the Bankruptcy Code, including but not limited to those set forth in Sections 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code, regardless of whether or not such action has been commenced prior to the Effective Date.

**1.1.10. Ballot.** The form of ballot or ballots that will be distributed with the Disclosure Statement to Holders of Claims entitled to vote under this Plan in connection with the solicitation of acceptances of this Plan.

**1.1.11. Bankruptcy Code.** The Bankruptcy Reform Act of 1978, Title 11, United States Code, as applicable to the Chapter 11 Case, as now in effect or hereafter amended, 11 U.S.C. §§ 101, *et seq.*

**1.1.12. Bankruptcy Court.** The United States Bankruptcy Court for the District of Nevada having jurisdiction over the Chapter 11 Case and, to the extent of the withdrawal of any reference under Section 157 of Title 28 of the United States Code and/or the General Order of the United States District Court for the District of Nevada pursuant to Section 151 of Title 28 of the United States Code.

**1.1.13. Bankruptcy Rules.** Collectively, the Federal Rules of Bankruptcy



1 Procedure, as applicable to the Chapter 11 Case, promulgated under 28 U.S.C. § 2075 and the  
 2 general, local, and chamber rules of the Bankruptcy Court as applicable to the Chapter 11 Case, as  
 now in effect or hereinafter amended.

3 **1.1.14. Bar Date.** The date or dates established by the Bankruptcy Court, the  
 4 Bankruptcy Code, and/or the Bankruptcy Rules for the filing of proofs of Claim for all Creditors,  
 excepting therefrom, Administrative Claims.

5 **1.1.15. BofA.** Bank of America N.A., which on or about December 1, 2011,  
 6 entered into (a) the BofA Credit Facility, and (2) the BofA Construction Loan, together with each  
 7 bank, investment fund, financial institution, or other Person having a right of participation in,  
 8 under, or to the BofA Credit Facility Documents and/or BofA Construction Loan Documents or  
 any rights, title, or interest to or under the BofA Loan Documents.

9 **1.1.16. BofA Construction Loan.** The loan in the principal sum of \$12,500,000  
 10 by BofA, as lender, to Debtor, as borrower, as evidenced by the BofA Construction Loan  
 Documents which BofA Construction Loan was paid in full subsequent to the Petition Date.

11 **1.1.17. BofA Construction Loan Collateral Documents.** The BofA Construction  
 12 Loan Deed of Trust, the UCC-1 fixture filing recorded in the Office of the County Recorder,  
 Clark County, Nevada as Instrument No. 201112010002419, and (c) the Reimbursement  
 13 Agreement UCC.

14 **1.1.18. BofA Construction Loan Deed of Trust.** The Deed of Trust, Assignment  
 of Rents, Security Agreement and Fixture Filing executed by Debtor in favor of BofA to secure  
 15 the BofA Construction Loan Note, which BofA Construction Loan Deed of Trust was on the  
 Petition Date a Lien on the Real Property.

16 **1.1.19. BofA Construction Loan Documents.** The loan documents evidencing  
 17 the BofA Construction Loan, including, but not limited to, the BofA Construction Loan Note and  
 the BofA Construction Loan Collateral Documents.

18 **1.1.20. BofA Construction Loan Note.** The Promissory Note dated December 1,  
 19 2011, in the original principal sum of \$12,500,000 executed by Debtor in favor of BofA to  
 evidence the BofA Construction Loan.

20 **1.1.21. BofA Credit Facility.** The extension of credit enhancement by BofA in  
 21 favor of the County and the Indenture Trustee regarding the Bonds as evidenced by the BofA  
 Credit Facility Documents.

22 **1.1.22. BofA Credit Facility Claims.** All non-contingent and matured Claims of  
 23 BofA under the BofA Credit Facility Documents as of the Confirmation Date, including interest,  
 late charges and attorneys' fees and costs.

24 **1.1.23. BofA Credit Facility Collateral Documents.** The BofA Credit Facility  
 25 Deeds of Trust, and a UCC-1 financing statement filed with the NV SOS on December 1, 2011,  
 as Instrument Number 2011031777-7 (together with all amendments, modifications and  
 26 supplements thereto).

27 **1.1.24. BofA Credit Facility Deeds of Trust.** *The Deed of Trust, Assignment of*  
 28 *Rents, Security Agreement and Fixture Filing* executed by Debtor in favor of BofA which is  
 recorded as instrument number 2011120110002419 in the records of Clark County Recorder and

1 *The Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing* executed by  
 2 Debtor in favor of BofA which is recorded as instrument number 2011120110002417 in the  
 3 records of Clark County Recorder to secure the BofA LOC, Swap Agreement and Reimbursement  
 Agreement.

4 **1.1.25. BofA Credit Facility Documents.** The documents entered into by and  
 between BofA County, Debtor and the Diocese documenting and evidencing the BofA Credit  
 5 Facility, including the BofA LOC, the Reimbursement Agreement, the Swap Agreement, BofA  
 6 Credit Facility Guarantee, BofA Credit Facility Deeds of Trust, and the BofA Credit Facility  
 Collateral Documents.

7 **1.1.26. BofA Credit Facility Guarantee.** *The Continuing and Unconditional*  
 8 *Guaranty* dated December 1, 2011 (including all amendments, modifications and supplements)  
 dated as of December 1, 2011, executed by the Diocese, as the guarantor, in favor of BofA to  
 9 guarantee the obligation of the Debtor under the Reimbursement Agreement and the Swap  
 Agreement.

10 **1.1.27. BofA Garnishment Order.** The Findings of Fact, Conclusions of Law and  
 11 Order entered by the Eight Judicial District Court on April 4, 2017, which affirmed the validity  
 and enforceability of the First BofA Garnishment Lien which provided that BofA was required  
 12 to pay the \$5,410,128.42 in Garnished Funds to JATCO, less the approximate amount of \$135,000  
 due to BofA on the Diocese Lease.

13 **1.1.28. BofA LOC.** *The Irrevocable Transfer Direct Pay Letter of Credit No.*  
 14 *3118248* (as amended, supplemented and or modified from time to time) issued by BofA to the  
 Indenture Trustee authorizing the Indenture Trustee on behalf of the Bondholders to make one or  
 15 more draws on BofA for the outstanding amount due on the Bonds.

16 **1.1.29. Bond Claims.** Any and all Claims of the Bondholders and Indenture  
 Trustee arising under the Bonds and the Bond Indenture.

17 **1.1.30. Bond Indenture.** *The Indenture of Trust*, dated as of December 1, 2011  
 18 between the County and the Indenture Trustee.

19 **1.1.31. Bondholders.** Holders of the Bonds.

20 **1.1.32. Bonds.** *Clark County, Nevada Variable Rate Demand Economic*  
*Development Refunding Revenue Bonds (Bishop Gorman High School Project) Series 2011* in  
 21 the aggregate amount of \$25,000,00 issued by the County pursuant to the Bond Indenture, the net  
 proceeds thereof were loaned by the County to the Debtor pursuant to the County Loan  
 22 Agreement. The Bonds are non-recourse with regard to the County.

23 **1.1.33. Business Day.** Any day, other than a Saturday, Sunday, or “legal holiday”  
 as defined in Bankruptcy Rule 9006(a).

24 **1.1.34. Cash.** The legal tender of the United States of America or the equivalent  
 25 thereof, including bank deposits, checks, negotiable instruments, wire transfers of immediately  
 available funds, or other cash equivalents.

26 **1.1.35. Chapter 11 Case.** The administered case under Chapter 11 of the  
 27 Bankruptcy Code involving Debtor, having case number 17-11942-abl, including all adversary  
 28 proceedings pending in connection therewith.

1           **1.1.36. Claim.** Any right to payment from Debtor, whether or not such right is  
 2 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
 3 undisputed, legal, equitable, secured, or unsecured arising at any time before the Effective Date or  
 4 relating to any event that occurred before the Effective Date, or any right to an equitable remedy  
 5 for breach of performance if such breach gives rise to a right of payment from Debtor, whether or  
 6 not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured,  
 7 unmatured, disputed, undisputed, secured, or unsecured.

8           **1.1.37. Class.** A category of Holders of Claims as classified in this Plan.

9           **1.1.38. Confirmation.** The entry by the Bankruptcy Court of the Confirmation  
 10 Order.

11           **1.1.39. Confirmation Date.** The date upon which the Bankruptcy Court enters the  
 12 Confirmation Order on the docket of the Chapter 11 Case.

13           **1.1.40. Confirmation Hearing.** The duly-noticed initial hearing held by the  
 14 Bankruptcy Court to confirm this Plan pursuant to Section 1128 of the Bankruptcy Code, and any  
 15 subsequent hearing held by the Bankruptcy Court from time to time to which the initial hearing is  
 16 adjourned without further notice other than the announcement of the adjourned dates at the  
 17 Confirmation Hearing or by a subsequent order of the Bankruptcy Court.

18           **1.1.41. Confirmation Order.** The findings of fact and conclusions of law and  
 19 order entered by the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the  
 20 Bankruptcy Code.

21           **1.1.42. Contingent Claim.** A Claim which is contingent, unmatured, or  
 22 unliquidated on or immediately before the Confirmation Date.

23           **1.1.43. Convenience Claim.** A General Unsecured Claim for which the Allowed  
 24 amount of such General Unsecured Claim is less than or equal to \$1000.

25           **1.1.44. County.** Clark County, a political subdivision of the State of Nevada.

26           **1.1.45. County Claims.** All Claims of Clark County related to and arising under  
 27 the County Loan Agreement.

28           **1.1.46. County Loan Agreement.** The *Loan Agreement* (as amended,  
 supplemented and or modified from time to time prior to the Petition Date) between the County  
 and Debtor dated as of December 1, 2011, providing for the loan by the County to Debtor of the  
 proceeds of the Bonds.

**1.1.47. County Loan Collateral.** The personal property of Debtor secured by a  
 Lien granted under the County Loan Agreement and perfected by a UCC-1 financing statement  
 filed with the NV SOS on December 19, 2011.

**1.1.48. County Promissory Note.** The *Note* dated December 1, 2011, in the amount  
 of \$25,000,000 executed by Debtor in favor of the County regarding the Bond proceeds loaned to  
 the County and which were in turn loaned to the Debtor in accordance with the County Loan  
 Agreement.

1 **1.1.49. Creditor.** Any Holder of a Claim, whether or not such Claim is an Allowed  
2 Claim.

3 **1.1.50. Cure.** The distribution on the Effective Date or as soon thereafter as  
4 practicable of Cash, or such other property as may be agreed upon by the parties or ordered by the  
5 Bankruptcy Court, with respect to the assumption of an Executory Contract or Unexpired Lease  
6 pursuant to Section 365(b) of the Bankruptcy Code, or with respect to any other debt instrument,  
7 in an amount equal to: (i) all unpaid monetary obligations due under such executory contract or  
8 unexpired lease or required to pay to bring current the debt instrument and thereby reinstate the  
9 debt and return to the pre-default conditions to the extent such obligations are enforceable under  
10 the Bankruptcy Code or applicable non-bankruptcy law; and (ii) with respect to any debt  
11 instrument, if a claim arises from Debtor's failure to perform any non-monetary obligation as set  
12 forth in Sections 1124(2)(C) and 1124(2)(D) of the Bankruptcy Code, payment of the dollar  
13 amount which compensates the Holder of such a claim for any actual pecuniary loss incurred by  
14 such Holder as a result of any such failure and the dollar amount of the Claim that is established  
15 by the Holder's sworn declaration and accompanying admissible evidence filed with the  
16 Bankruptcy Court and served upon Debtor's and Proponent's counsel on or before such date  
17 ordered by the Court for the filing of objections to the Disclosure Statement.

18 **1.1.51. Debtor.** Bishop Gorman Development Corporation, a Nevada non-profit  
19 corporation, the debtor and debtor-in-possession in the Chapter 11 Case pursuant to Section 1108  
20 of the Bankruptcy Code.

21 **1.1.52. Development Declarations.** Collectively, the 2011 Declaration and the  
22 2003 Declaration.

23 **1.1.53. Diocese.** The Roman Catholic Bishop of Las Vegas and His Successors, a  
24 Corporation sole. The Diocese is an insider of the Debtor, being the sole manager/member of the  
25 Debtor and the sole recipient of the residual Assets of Debtor in the event of a liquidation of the  
26 Debtor.

27 **1.1.54. Diocese Garnishment Lien.** The Lien created by the Writ of Execution  
28 and Writ of Garnishment served on or about February 13, 2017, upon the Diocese and Greenberg  
Taurig, counsel for Debtor, to which the Diocese filed its *Answer of Garnishee* acknowledging  
the Diocese Receivable.

**1.1.55. Diocese Lease.** The *Lease* entered into on December 1, 2011 between  
Debtor, as Landlord and the Diocese as Tenant for the lease by Tenant of the Real Property. The  
rent due under the Diocese Lease is adjustable under Section 5.2 of the County Loan Agreement,  
Section 10 of the Remarketing Agreement, and Section 2.2 of the Reimbursement Agreement so  
that it equals the periodic principal and interest payment on the Bonds. JATCO asserts that the  
Diocese is not an Executory Contract subject to assumption or rejection but acknowledges that  
such a determination will be made by the Bankruptcy Court as provided for in Section 5.2 below.

**1.1.56. Diocese Promissory Note.** The promissory note(s) to the order of Debtor  
evidencing the Diocese Receivable.

**1.1.57. Diocese Assignment.** The *Diocese Promissory Note Assignment* attached  
as an exhibit to the Disclosure Statement to be executed by Reorganized BGDC in favor of  
JATCO in accordance with this Plan on the Effective Date to evidence the JATCO Claim.

**1.1.58. Diocese Receivable.** The receivable due to Debtor from the Diocese which

1 according to the Schedules [ECF No. 148] was in the sum of \$4,859,567.42 as of the Petition Date.  
 2 Subsequent to the Petition Date Debtor received a payment of \$500,000 on the Diocese Receivable  
 3 which is proceeds of the Diocese Receivable.

4 **1.1.59. DIP Loan.** The loan by the Dip Loan Lender in a principal amount not to  
 5 exceed \$500,000 to Debtor approved by the Bankruptcy Court pursuant to the DIP Loan Order.

6 **1.1.60. DIP Loan Claim.** The outstanding principal and accrued interest at the  
 7 non-default rate due and owing by Debtor to the DIP Loan Lender under the DIP Loan Documents  
 8 as of the Effective Date plus: (i) any accrued and unpaid interest up to the Effective Date; and (ii)  
 9 reasonable attorney's fees, costs, and expenses incurred by the DIP Loan Lender up to the  
 10 Effective Date.

11 **1.1.61. DIP Loan Documents.** The Debtor in Possession Revolving Credit  
 12 Agreement executed by Debtor and the Dip Loan Lender in accordance with the DIP Loan Order  
 13 and any additional related documents consistent with the Dip Loan Order and the Debtor in  
 14 Possession Revolving Credit Agreement.

15 **1.1.62. DIP Loan Lender.** Service Campaign Corporation.

16 **1.1.63. DIP Loan Order.** The *Final Order Pursuant to 11 U.S.C. §§ 105, 362,*  
 17 *363 and 364, Fed R. Bankr. P. Rule 4001(c) and 9014 and L.R. 4001(B) and (C); (I) Authorizing*  
 18 *Debtor to Obtain Post-Petition Financing; (II) Granting Related Relief* entered on July 17, 2017  
 19 [ECF. No. 152].

20 **1.1.64. Disclosure Statement.** The disclosure statement that relates to this Plan,  
 21 as amended, supplemented, or modified from time to time, describing this Plan that is approved,  
 22 prepared and distributed in accordance with, among others, Sections 1125, 1126(b), and 1145 of  
 23 the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable law.

24 **1.1.65. Disclosure Statement Order.** The order of the Bankruptcy Court  
 25 approving the Disclosure Statement and providing for, among other matters, dates for the filing  
 26 of objections to confirmation of the Plan and approval of the Ballot.

27 **1.1.66. Disputed Claim.** A Claim which is: (i) subject to timely objection  
 28 interposed by Debtor, Reorganized BGDC, Proponent or any party-in-interest entitled to file and  
 prosecute such objection in the Chapter 11 Case, if at such time such objection remains  
 unresolved; or (ii) a Claim that is listed by Debtor as disputed, unliquidated, or contingent in the  
 Schedules; provided, however, that the Bankruptcy Court may estimate a Disputed Claim for  
 purposes of allowance pursuant to Section 502(c) of the Bankruptcy Code. The term "Disputed,"  
 when used to modify a reference in this Plan to any Claim or Class of Claims, shall mean a Claim  
 (or any Claim in such Class) that is a Disputed Claim as defined herein. In the event there is a  
 dispute as to classification or priority of a Claim, it shall be considered a Disputed Claim in its  
 entirety. Until a Contingent Claim becomes fixed and absolute, such Claim shall be treated as a  
 Disputed Claim and not an Allowed Claim for purposes related to allocations and distributions  
 under this Plan.

**1.1.67. Disputed Claim Reserve.** A reserve established to hold in one or more  
 accounts Cash or other Assets equal to the aggregate amount thereof that would have been  
 distributed in accordance with the terms of this Plan on account of a Disputed Claim.



1 **1.1.68. Distributable Assets.** The Assets distributable to Allowed Claims and  
2 unclassified Claims in accordance with this Plan by Reorganized BGDC.

3 **1.1.69. Distribution.** Any distribution by Debtor or Reorganized BGDC of  
4 Distributable Assets to the Holders of Allowed Claims as of the Record Date.

5 **1.1.70. Effective Date.** The latest to occur of: (i) the first Business Day that is at  
6 least fourteen (14) days after the Confirmation Date and on which no stay of the Confirmation  
7 Order is in effect; and (ii) the first (1st) Business Day on which all of the Conditions to  
8 Effectiveness in Section 8.2 to this Plan have been satisfied or waived.

9 **1.1.71. Estate.** The estate created for Debtor in their respective Chapter 11 Case  
10 pursuant to Section 541 of the Bankruptcy Code.

11 **1.1.72. Executory Contract.** A contract or Unexpired Lease to which either  
12 Debtor is a party that is subject to and capable of assumption or rejection under Section 365 of  
13 the Bankruptcy Code.

14 **1.1.73. Final Order.** An order, judgment, or other decree of the Bankruptcy Court,  
15 or other court of competent jurisdiction, entered on the docket of such court, that has not been  
16 reversed, reconsidered, stayed, modified, or amended, that is in full force and effect, and as to  
17 which order or judgment: (i) the time to appeal, seek review or rehearing, or petition for certiorari  
18 has expired and no timely filed appeal or petition for review, rehearing, remand, or certiorari is  
19 pending; or (ii) any appeal taken or petition for certiorari or request for reconsideration or further  
20 review or rehearing filed: (a) has been resolved by the highest court to which the order or  
21 judgment was appealed or from which review, rehearing, or certiorari was sought; or (b) has not  
22 yet been resolved by such highest court, but such order has not been stayed pending appeal.  
23 Notwithstanding the foregoing, the Confirmation Order shall specifically become a Final Order  
24 on the first Business Day that is fourteen (14) days after the entry of such Confirmation Order  
25 unless any appeal of such Confirmation Order was accompanied by a stay pending appeal.

26 **1.1.74. First BofA Garnishment.** The Writ of Execution and Writ of Garnishment  
27 served on or about February 13, 2017 upon BofA and Greenberg Traurig, counsel for Debtor.

28 **1.1.75. First BofA Garnishment Lien.** The Lien created by the First BofA  
Garnishment in the depository account with BofA containing \$5410,128.42.

**1.1.76. General Unsecured Claim.** A Claim that is not secured by a charge against  
or interest in property in which the Estates have an interest and is not an unclassified Claim,  
Administrative Claim, or Priority Unsecured Claims. General Unsecured Claims shall also  
include all Claims arising under Section 502(g) of the Bankruptcy Code.

**1.1.77. HHP.** Howard Hughes Properties, Inc., a Nevada Corporation.

**1.1.78. HHP Claims.** The contingent, unliquidated and unmatured Claims arising  
under the Development Agreements secured by the HHP Lien.

**1.1.79. HHP Lien.** The mortgage Lien granted pursuant to Sections 9.3 of the  
Development Declarations.

**1.1.80. Holder.** A Person holding a Claim.

1 **1.1.81. Hughes.** Collectively, HHP and Howard Hughes Company, LLC, a  
2 Delaware limited liability company.

3 **1.1.82. Impaired.** Impaired within the meaning of Section 1124 of the Bankruptcy  
4 Code.

5 **1.1.83. Indenture Trustee.** The Bank of New York Mellon Trust Company, N.A.,  
6 a national banking association.

7 **1.1.84. JATCO Arbitration Award.** On November 10, 2016, Judge Philip Pro  
8 (Ret.), as arbitrator, awarded the sum of \$28,749,663.34 in favor of JATCO and against BGDC  
9 for breach of contract and breach of the implied covenant of good faith and fair dealing.

10 **1.1.85. JATCO Avoidance Action.** The Avoidance Action commenced in the  
11 Bankruptcy Court by Debtor against JATCO, being ADV. No 17-01211-ABL, to determine that  
12 the JATCO Judgment Lien and the First BofA Garnishment Lien which is pending as of the date  
13 of the filing of this Plan.

14 **1.1.86. JATCO Deed of Trust.** The Deed of Trust and Security Agreement  
15 substantially in the form to be attached to the Plan Supplement to be executed by  
16 Reorganized BGDC in favor of JATCO in accordance with this Plan on the Effective Date to  
17 secure the JATCO Note.

18 **1.1.87. JATCO Judgment.** On January 19, 2017, the Eighth Judicial District Court  
19 confirmed the Final Award and entered the Judgment in favor of JATCO in the total  
20 amount of \$28,749,663.34.

21 **1.1.88. JATCO Judgment Lien.** An abstract of the Judgment was recorded in the  
22 official records of the Clark County, Nevada Recorder on January 19, 2017 as Document No.  
23 01340 and rerecorded on January 24, 2017 as Instrument No. 201701240003893.

24 **1.1.89. JATCO Claim.** The Claim of JATCO, evidenced by the JATCO Judgment,  
25 First BofA Garnishment Lien, Second BofA Garnishment Lien, BofA Garnishment Order and  
26 Diocese Garnishment Lien in an amount no less than that provided in the JATCO Proof of Claim  
27 treated in Class 9 of this Plan and to be evidenced by the JATCO Promissory Note, JATCO Deed  
28 of Trust and Diocese Assignment.

**1.1.90. JATCO Promissory Note.** The Secured Promissory Note substantially in  
the form to be attached to the Plan Supplement to be executed by Reorganized BGDC in favor of  
JATCO in accordance with this Plan on the Effective Date to evidence the JATCO Claim. The  
JATCO Note shall be payable in principal and interest monthly payments commencing 30 days  
from the Effective Date, with interest at the per annum rate of Six Percent (6%) and payments  
amortized over 25 years from the Effective Date with a balloon payment of all remaining principal  
and accrued interest due on the first Business Day eight (8) years following the Effective Date.  
Assuming a \$33,000,000 Allowed Claim on the Effective Date and a \$4,000,000 cash payoff  
on the Effective Date, the monthly payment on the remaining balance will be \$186,847.41 per  
month with a balloon payment of \$23,724,510 at the end of the eighth (8th) year following the  
Effective Date.

**1.1.91. JATCO Proof of Claim.** The proof of Claim filed with the Bankruptcy

1 Court as Claim #6 on August 21, 2017 in the amount of \$29,446,976.01.

2 **1.1.92. Lien.** This term shall have the meaning set forth in Section 101(37) of the  
3 Bankruptcy Code.

4 **1.1.93. Litigation Claims.** All rights, claims, torts, liens, liabilities, obligations,  
5 actions, causes of action, Avoidance Actions, derivative actions, proceedings, debts, contracts,  
6 judgments, damages and demands whatsoever in law or in equity, whether known or unknown,  
7 contingent or otherwise, that Debtor or their Estates may have against any Person, including but  
8 not limited to, those listed on Schedule 1.1.93 hereto. Failure to list a Litigation Claim on  
9 Schedule 1.1.93 shall not constitute a waiver or release by Debtor or Reorganized BGDC of such  
10 Litigation Claim.

11 **1.1.94. NRS.** The Nevada Revised Statutes, as amended from time to time.

12 **1.1.95. NV SOS.** The Secretary of State of the State of Nevada.

13 **1.1.96. Other Secured Claims.** Any Secured Claim other than the BofA Credit  
14 Facility, HHP Lien and JATCO Claim Lien.

15 **1.1.97. Person.** An individual, corporation, limited liability company, partnership,  
16 association, joint stock company, joint venture, estate, trust, unincorporated organization or  
17 government, governmental unit, or any subdivision thereof or any other entity.

18 **1.1.98. Petition Date.** April 17, 2017, the date on which voluntary Chapter 11  
19 petition was filed by Debtor, thereby commencing the Chapter 11 Case.

20 **1.1.99. Plan.** This Plan of Reorganization, either in its present form or as it may  
21 be amended, supplemented, or modified from time to time, including all exhibits and schedules  
22 annexed hereto, to the Plan Supplement or referenced herein.

23 **1.1.100. Plan Supplement.** The supplement to the Plan to be filed no later than  
24 the date of the entry of the Disclosure Statement Order.

25 **1.1.101. Priority Unsecured Claims.** Claims accorded priority in right of payment  
26 under Section 507(a) of the Bankruptcy Code.

27 **1.1.102. Professional Fees.** The Administrative Claims for compensation and  
28 reimbursement submitted pursuant to Sections 328, 330, 331, or 503(b) of the Bankruptcy Code  
of Persons: (i) employed pursuant to an order of the Bankruptcy Court under Section 327 or 328  
of the Bankruptcy Code; or (ii) for whom compensation and reimbursement has been allowed by  
the Bankruptcy Court pursuant to Section 503(b) of the Bankruptcy Code or by other Final Order.

**1.1.103. Pro Rata.** The ratio of an Allowed Claim in a particular class to the  
aggregate amount of all such Allowed Claims in any such Class.

**1.1.104. Real Property.** That certain real property located at 5959 S. Hualapai  
Way, in Clark County, Nevada being Clark County Assessor's Parcel No. 164-36-601-005, and  
all improvements thereto, consisting of a coeducational Catholic preparatory high school.



1 **1.1.105. Real Property Restrictions.** The Development Declarations setting forth  
2 covenants and restrictions regarding the development, use and conveyance of the Real Property  
as provided for therein.

3 **1.1.106. Reimbursement Agreement.** The Letter of Credit and Reimbursement  
4 Agreement, dated as of December 1, 2011 (as amended, supplemented and/or modified from time  
to time), by and between Debtor, BofA, and the Diocese providing for among other matters the  
5 issuance of the BofA LOC and the execution and recordation of the BofA Credit Facility Deeds  
of Trust.

6  
7 **1.1.107. Reimbursement Agreement Section 5.34.** This section of the  
Reimbursement Agreement provides in part that Debtor will not make any payments to JATCO  
8 “until and unless the Bank and JATCO enter into a subordination agreement” in a form attached  
to the Reimbursement Agreement as Exhibit C.

9  
10 **1.1.108. Reinstated or Reinstatement.** These terms shall mean: (i) leaving  
unaltered the legal, equitable, and contractual rights of the Holder of a Claim so as to leave such  
11 Claim Unimpaired in accordance with Section 1124 of the Bankruptcy Code; or (ii)  
notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim  
12 to demand or receive accelerated payment of such Claim after the occurrence of a default: (a)  
Curing any such default that occurred before or after the Petition Date, other than a default of a  
13 kind specified in Section 365(b)(2) of the Bankruptcy Code; (b) reinstating the maturity of such  
Claim as such maturity existed before such default; (c) compensating the Holder of such Claim  
14 for any damages incurred as a result of any reasonable reliance by such Holder on such contractual  
provision or such applicable law; and (d) not otherwise altering the legal, equitable, or contractual  
15 rights to which such Claim entitles the Holder of such Claim; provided, however, that any  
contractual right that does not pertain to the payment when due of principal and interest on the  
16 obligation on which such Claim is based, including, but not limited to, financial covenant ratios,  
negative pledge covenants, covenants, or restrictions on merger or consolidation, and affirmative  
17 covenants regarding corporate existence prohibiting certain transactions or actions contemplated  
by this Plan, or conditioning such transactions or actions on certain factors, shall not be required  
18 in order to accomplish Reinstatement.

19  
20 **1.1.109. Remarketing Agreement.** The Remarketing Agreement dated as of  
December 1, 2011, between Zions First National Bank as Remarketing Agent and Debtor.

21 **1.1.110. Reorganized BGDC.** Debtor as reorganized pursuant to this Plan.

22  
23 **1.1.111. Restated Reimbursement Agreement.** The Reimbursement Agreement  
as modified pursuant to this Plan to eliminate Reimbursement Agreement Section 5.34 and  
24 modify Section 5.16 to provide consent for the granting of Liens pursuant to this Plan, to be  
executed by Reorganized BGDC and BofA on the Effective Date.

25 **1.1.112. Schedules.** The schedules of assets and liabilities and any amendments  
26 thereto filed by Debtor with the Bankruptcy Court in accordance with Section 521(1) of the  
Bankruptcy Code.

27  
28 **1.1.113. Second BofA Garnishment.** The Writ of Execution and Writ of  
Garnishment served on April 13, 2017, upon BofA and Greenberg Traurig, counsel for Debtor.

1 **1.1.114. Second BofA Garnishment Lien.** The Lien created by the Second BofA  
2 Garnishment in the depository account with BofA containing \$5410,128.42.

3 **1.1.115. Section 363(f) Sale.** A sale of the Real Property pursuant to Section 363(f)  
4 of the Bankruptcy Code free and clear of all liens and interests, including the Diocese Lease. Any  
5 such sale shall not be free and clear of the (a) Development Declarations except for Sections 5.1  
6 and 8.1(c) of the 2003 Declaration and Section 5.1 and the last sentence of Section 8.1 of the 2011  
7 Declaration regarding permitted use and permittee assignees, and (b) the Special Assessment.

8 **1.1.116. Secured Claim.** A Claim that is secured by a Lien against property of the  
9 Estate to the extent of the value of any interest in such property of the Estate securing such Claim,  
10 which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a  
11 Bankruptcy Court order, or to the extent of the amount of such Claim subject to setoff in  
12 accordance with Section 553 of the Bankruptcy Code, in either case as determined pursuant to  
13 Section 506(a) of the Bankruptcy Code.

14 **1.1.117. Secured Tax Claims.** Claims for Taxes which are subject to Liens on the  
15 Real Property.

16 **1.1.118. Special Assessment.** The assessment for the amount of \$1,313,338.41 as  
17 of the Petition Date or such other amount which is due the Clark County Treasurer pursuant to  
18 the assessment and Lien against the Real Property related to Special Improvement District No.  
19 148.

20 **1.1.119. Special Assessment Claims.** Any and all periodic payment amounts due  
21 the Clark County Treasurer for the Special Assessment.

22 **1.1.120. Swap Agreement.** The interest rate swap transaction in conjunction with  
23 the BofA Credit Facility, effective as of November 28, 2011, between the Debtor and BofA,  
24 pursuant to the 2002 Master Agreement, dated as of November 28, 2011, published by the  
25 International Swaps and Derivatives Association, Inc.

26 **1.1.121. Taxes.** All income, gaming, franchise, excise, sales, use, employment,  
27 withholding, property, payroll, or other taxes, assessments of governmental charges, together with  
28 any interest penalties, additions to tax, fines, and similar amounts relating thereto, whether or not  
yet assessed or imposed, collected by, or due to any federal, state, local or foreign governmental  
authority.

**1.1.122. Unexpired Lease.** A lease of non-residential real property to which  
Debtor is a party that is subject to assumption and/or rejection under Section 365 of the  
Bankruptcy Code.

**1.1.123. Unimpaired.** Unimpaired shall have the meaning set forth in Section  
1124 of the Bankruptcy Code.

**1.1.124. Unsecured Interest Rate.** The Federal Judgment Rate as of the Effective  
Date.

**1.2. Computation of Time.** In computing any period of time prescribed or allowed by  
this Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall

1 apply.

2 **1.3. Rules of Interpretation.** For purposes of this Plan only; (i) any reference in this  
3 Plan to a contract, instrument, release, or other agreement or documents being in particular form  
4 or on particular terms and conditions means that such document shall be substantially in such form  
5 or substantially on such terms and conditions; (ii) any reference in this Plan to an existing  
6 document or exhibit filed or to be filed means such document or exhibit as it may have been or  
7 may be amended, modified, or supplemented; (iii) unless otherwise specified, all references in this  
8 Plan to Sections, Articles, Schedules and Exhibits are references to Sections, Articles, Schedules  
and Exhibits of or to this Plan; (iv) the words “herein,” “hereof,” “hereto,” and “hereunder” refer  
to this Plan in its entirety rather than to a particular portion of this Plan; (v) captions and headings  
to Articles and Sections are inserted for convenience of reference only and are not intended to be  
a part of or to affect the interpretation of this Plan; and (vi) the rules of construction and definitions  
set forth in Sections 101 and 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply  
unless otherwise expressly provided.

9 **1.4. Exhibits and Plan Schedules.** All exhibits and schedules attached to this Plan or  
10 the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full herein.

## 11 **2. TREATMENT OF UNCLASSIFIED CLAIMS**

12 **2.1. General.** Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Claims  
13 against Debtor set forth in this Article 2 are not classified within any Classes. The Holders of such  
Claims are not entitled to vote on this Plan. The treatment of the Claims set forth below is  
consistent with the requirements of Section 1129(a)(9)(A) of the Bankruptcy Code.

14 **2.2. Treatment of Administrative Claims.** Each Allowed Administrative Claim shall  
15 be paid by Reorganized BGDC (or otherwise satisfied in accordance with its terms) upon the latest  
16 of: (i) the Effective Date or as soon thereafter as is practicable; (ii) such date as may be fixed by  
the Bankruptcy Court, or as soon thereafter as practicable, (iii) the fourteenth (14<sup>th</sup>) Business Day  
after such Claim is Allowed, or as soon thereafter as practicable; and (iv) such date as the Holder  
of such Claim and Reorganized BGDC shall agree upon.

17 **2.3. Treatment of DIP Loan.** On the Effective Date, the DIP Loan shall be paid in full  
18 by the Reorganized BGDC unless otherwise agreed in writing by the Reorganized BGDC and the  
DIP Lender.

19 **2.4. Requests for Payment.** All requests for payment of Administrative Claims  
20 against Debtor and all final applications for allowance and disbursement of Professional Fees must  
21 be filed by the Administrative Claims Bar Date or the Holders thereof shall be forever barred from  
22 asserting such Administrative Claims against Debtor and the Reorganized BGDC. All  
Professional Fees applications must be in compliance with all of the terms and provisions of any  
23 applicable order of the Bankruptcy Court, including the Confirmation Order, and all other orders  
governing payment of Professional Fees. Unless otherwise ordered by the Bankruptcy Court, from  
24 and after the Effective Date, no professional shall be required to file fee applications with the  
Bankruptcy Court and Reorganized BGDC may pay all professionals in the ordinary course for  
fees and expenses incurred after the Effective Date.

## 25 **3. DESIGNATION OF CLASSES OF CLAIMS**

26 Pursuant to this Plan and in accordance with Section 1123(a)(1) of the Bankruptcy Code,  
27 all Claims of Creditors (except unclassified Claims) are placed in the Classes described below. A  
28 Claim is classified in a particular Class only to the extent that the Claim qualifies within the  
description of that Class and is classified in other Classes only to the extent that any remainder of

the Claim qualifies within the description of such other Classes. A Claim is also classified in a particular Class only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. With respect to Classes of Claims described as Unimpaired under this Plan, except as otherwise provided under this Plan, nothing shall affect the rights and legal and equitable defenses of Debtor and Reorganized BGDC regarding such Claims classified as Unimpaired under this Plan, including but not limited to, all rights in respect of legal and equitable defenses to setoff or recoupment against such Claims.

### 3.1. Classification Summary.

<u>Class</u>	<u>Description</u>	<u>Treatment</u>
Class 1	Clark County Treasurer	Unimpaired – Deemed Accepted No Solicitation required
Class 2	Bank of America – BofA Credit Facility Claims	Impaired Solicitation required
Class 3	Bank of New York Mellon – Indenture Trustee for Bonds	Unimpaired No Solicitation required
Class 4	Clark County – County Claim	Unimpaired No solicitation required
Class 5	Hughes Secured Claims	Unimpaired No solicitation required
Class 6	Other Secured Claims	Unimpaired No solicitation required
Class 7	Priority Unsecured Claims	Unimpaired No solicitation required
Class 8	General Unsecured Claims	Unimpaired No Solicitation required
Class 9	JATCO Claim	Impaired Solicitation required
Class 10	Diocese Lease Claim	Impaired Solicitation required

### 3.2. Specific Classifications.

**3.2.1. Class 1: Clark County Treasurer.** Class 1 consists of the Special Assessment Claim against the Real Property.

**3.2.2. Class 2: Bank of America.** Class 2 consists of the BofA Credit Facility

1 Claims.

2 **3.2.3. Class 3: Bank of New York Mellon.** Class 3 consists of the Claims related  
3 to the Bonds.

4 **3.2.4. Class 4: Clark County.** Class 4 consists of Claims related to the County  
5 Loan Agreement.

6 **3.2.5. Class 5: Hughes Secured Claims.** Class 5 consists of the Hughes Claims  
7 related to the Development Declarations.

8 **3.2.6. Class 6: Other Secured Claims.** Class 6 consists of the Other Secured  
9 Claims. Each Holder of Other Secured Claims shall be its own separate subclass within Class 6,  
10 and each subclass shall be deemed to be a separate class for purposes of this Plan. Debtor may  
11 add additional other Secured Creditors as an additional separate subclass.

12 **3.2.7. Class 7: Priority Unsecured Claims.** Class 7 consists of Priority Unsecured  
13 Claims.

14 **3.2.8. Class 8: General Unsecured Claims.** Class 8 consists of General  
15 Unsecured Claims, but in no event shall it include the JATCO Claim.

16 **3.2.9. Class 9: JATCO Claim.** Class 9 consists of the JATCO Claim.

17 **3.2.10. Class 10: Diocese Claim.** Class 10 consists of the Claim Related to the  
18 Diocese Lease.

#### 19 **4. DESIGNATION OF AND PROVISIONS FOR TREATMENT OF CLASSES OF** 20 **CLAIMS UNDER THIS PLAN**

21 **4.1. Class 1 – Clark County Treasurer.** The Special Assessment Claim shall be an  
22 Allowed Claim and paid in accordance with the Special Assessment. Any delinquent amounts due  
23 the Clark County Treasurer as of the Effective Date, shall be paid by Reorganized BGDC on the  
24 Effective Date. On the Effective Date, all pre-Effective Date defaults Documents as a result of the  
25 commencement of the Chapter 11 Case, if any, related to the Special Assessment shall be deemed  
26 to have been cured.

27 Class 1 is Unimpaired under this Plan, The Clark County Treasurer is deemed to have  
28 accepted this Plan and is not entitled to vote on this Plan.

**4.2. Class 2 – Bank of America.** On the Effective Date, with regard to the BofA Credit  
Facility Claims and BofA Credit Facility Documents:

**4.2.1.** The BofA Credit Facility Document shall remain in full force and effect,  
save and except that: (a) without any further action by Debtor, Reorganized BGDC, or BofA,  
Reimbursement Agreement Section 5.34 shall be stricken together with Exhibit C and shall be of  
no further force or effect; and (b) Section 5.16 of the Reimbursement Agreement shall be modified  
to provide consent for the granting of Liens pursuant to this Plan.

**4.2.2.** On the Effective Date, all pre-Effective Date defaults, if any, under the BofA  
Credit Facility Documents as a result of (a) the commencement of the Chapter 11 Case and (b) as

a result of the amendment of the Diocese Lease on the Effective Date shall be deemed to have been cured and/or waived, and Debtor and/or Reorganized BGDC shall be current and in good standing under the BofA Credit Facility Documents.

**4.2.3.** BofA shall not retain its Liens, if any, in the Garnished Funds and the Diocese Obligation.

Class 2 is Impaired under this Plan. The Holder of the BofA Credit Facility Claims is entitled to vote on this Plan.

**4.3. Class 3 – Bank of New York Mellon.** On the Effective Date with regard to the Bond Claims and the Indenture:

**4.3.1.** The Bond Indenture and Bonds shall remain in full force and effect, unaffected by the Chapter 11 Case, and shall continue to be paid on and after the Effective Date as provided form in the Bond Indenture and Bonds. Any delinquent amounts due the Indenture Trustee as of the Effective Date shall be paid by Reorganized BGDC within 2 Business Days of the Effective Date.

**4.3.2.** On the Effective Date, all pre-Effective Date defaults as a result of the commencement of this Chapter 11 Case, if any, under the Bond Indenture and the Bonds shall be deemed to have been cured.

Class 3 is Unimpaired under this Plan. The Indenture Trustee and Bondholders are deemed to have accepted this Plan, and are not entitled to vote on this Plan.

**4.4. Class 4 – Clark County.** On the Effective Date:

**4.4.1.** The Clark County Loan Agreement and County Promissory Note shall remain in full force and effect, unaffected by the Chapter 11 Case and performed as provided therein by BGDC on and after the Effective Date. Any delinquent amounts or Allowed Clark County Claims as of the Effective Date shall be paid by Reorganized BGDC within 2 Business Days of the Effective Date. On the Effective Date, all pre-Effective Date defaults.

**4.4.2.** On the Effective Date, all pre-Effective Date defaults as a result of the commencement of this Chapter 11 Case, if any, under Clark County Loan Agreement and County Promissory Note shall be deemed to have been cured.

Class 4 is Unimpaired under this Plan. Clark County is deemed to have accepted this Plan, and is not entitled to vote on this Plan.

**4.5. Class 5 – Hughes Secured Claims.** On the Effective Date:

**4.5.1.** The Hughes Secured Claims and the Development Declarations shall remain in full force and effect, unaffected by the Chapter 11 Case.

**4.5.2.** On the Effective Date, all pre-Effective Date defaults as a result of the commencement of this Chapter 11 Case, if any, under the Development Declarations shall be deemed to have been cured.

Class 5 is Unimpaired under this Plan. Holders of Class 5 Hughes Secured Claims are deemed to have accepted this Plan and are not entitled to vote on this Plan.



1       **4.6. Class 6 – Other Secured Claims.** Each Allowed Other Secured Claim, if any,  
 2 shall, in full and final satisfaction of such Claim, be paid in full in Cash or otherwise left  
 3 Unimpaired by Debtor or Reorganized BGDC, as the case may be, upon the latest of: (i) the  
 4 Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy  
 Court; (iii) the fourteenth (14<sup>th</sup>) Business Day after such Claim is Allowed; and (iv) such date as  
 agreed upon by the Holder of such Claim and Debtor, and after the Effective Date, Reorganized  
 BGDC.

5       Class 6 is Unimpaired under this Plan. Holders of Class 6 Other Secured Claims are  
 6 deemed to have accepted this Plan and are not entitled to vote on this Plan.

7       **4.7. Class 7 – Priority Unsecured Claims.** Each Allowed Priority Unsecured Claim,  
 8 if any, shall, in full and final satisfaction of such Claims, be paid in full in Cash on the latest of:  
 9 (i) the Effective Date, or as soon thereafter as is practical; (ii) such date as may be fixed by the  
 Bankruptcy Court, or as soon thereafter as is practicable; (iii) the fourteenth (14<sup>th</sup>) Business Day  
 after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder  
 of such Claim and Reorganized BGDC have agreed or shall agree.

10       Class 7 is Unimpaired under this Plan. Holders of Class 7 Priority Unsecured Claims, if  
 11 any, are deemed to have accepted this Plan and are not entitled to vote on this Plan.

12       **4.8. Class 8 – General Unsecured Claims.** Each Allowed General Unsecured Claim  
 13 shall, in full and final satisfaction of such Allowed Claim, be paid in full in Cash on the latest of:  
 14 (i) the Effective Date, or as soon thereafter as is practical; (ii) such date as may be fixed by the  
 Bankruptcy Court, or as soon thereafter as is practicable; (iii) the fourteenth (14<sup>th</sup>) Business Day  
 after such Claim is Allowed, or as soon thereafter as is practicable; or (iv) such date as the Holder  
 15 of such Claim and Reorganized BGDC have agreed or shall agree, together with interest from the  
 Petition Date until paid at the Unsecured Interest Rate.

16       Class 8 is Unimpaired under this Plan. Holders of Class 8 General Unsecured Claims, if  
 17 any, are deemed to have accepted this Plan and are not entitled to vote on this Plan.

18       **4.9. Class 9 – JATCO Claim.** On the Effective Date;

19       **4.9.1.** In the event the JATCO Judgment Lien and First BofA Garnishment Lien  
 20 are determined in the JATCO Avoidance Action not to be avoided pursuant to Section 547  
 of the Bankruptcy Code, the JATCO Claim shall be an Allowed Secured Claim in the  
 21 amount set forth in the JATCO Proof of Claim plus post-Petition Date interest and  
 attorneys' fees as provided for in the JATCO Judgment and the NRS, which Allowed  
 Secured Claim shall be satisfied as follows;

22                   (i) BGDC shall pay the sum of Four Million Dollars (\$4,000,000) Cash  
 23 to JATCO;

24                   (ii) To the extent that proceeds of the First BofA Garnishment Lien are  
 available, such proceeds shall be paid to JATCO;

25                   (i) Pursuant to the Diocese Garnishment Lien, (a) in the event that the  
 26 Bankruptcy Court determines that the Diocese Promissory Note is effective, the Diocese  
 Promissory Note shall be assigned to JATCO and all proceeds of the Diocese Promissory  
 Note shall be paid to JATCO as provided for in the Diocese Promissory Note, or (b) in the  
 27 event that the Bankruptcy Court determines that the Diocese Promissory Note is not  
 effective as a post-petition transaction, JATCO shall receive the \$500,000 proceeds of the  
 28 Diocese Receivable and shall be entitled to proceed to enforce the Diocese Garnishment

Lien;

(iii) BGDC shall execute and deliver to JATCO the JATCO Note for the balance of the JATCO Allowed Secured Claim and the JATCO Deed of Trust and the UCC-1s evidencing the grant of a security interest in the personal property of BGDC as provided for in the JATCO Deed of Trust;

(iv) The Deed of Trust and UCC-1s shall be recorded or filed, as applicable, with the Clark County Recorder and NV SOS evidencing the Lien and Security Interest granted thereunder and pursuant to this Plan; and

(v) All net proceeds recovered by JATCO from the Diocese Garnishment Lien and Diocese Promissory Note shall be applied against the balance due on the JATCO Note.

**4.9.2.** In the event the JATCO Judgment Lien and First BofA Garnishment Lien are determined in the JATCO Avoidance Action to be avoidable pursuant to Section 547 of the Bankruptcy Code;

(i) The JATCO Claim shall be bifurcated between (a) an Allowed Secured Claim evidenced by and equal to the value of the collateral of the Diocese Garnishment Lien and the Second BofA Garnishment Lien and (b) an Allowed Unsecured Claim for the balance of the JATCO Judgment and treated as follows: and

(ii) With regard to the Allowed Secured Claim, on the Effective Date JATCO shall receive the proceeds subject to the Second BofA Garnishment Lien, and with regard to the Diocese Garnishment Lien, (a) in the event that the Bankruptcy Court determines that the Diocese Promissory Note is effective, the Diocese Promissory Note shall be assigned to JATCO and all proceeds of the Diocese Promissory Note shall be paid to JATCO as provided for in the Diocese Promissory Note, or (b) in the event that the Bankruptcy Court determines that the Diocese Promissory Note is not effective as a post-petition transaction, JATCO shall receive the \$500,000 proceeds of the Diocese Receivable and shall be entitled to proceed to enforce the Diocese Garnishment Lien.

(iii) Notwithstanding the treatment of the JATCO Claim as provided for in this Section 4.9.2, JATCO reserves the right to vote to reject this treatment and enforce its rights under Section 1129(b) regarding cramdown, including the right to seek enforcement of the absolute priority rule as provided for in Section 1129(b)(2)(B).

**4.9.3.** While Reorganized BGDC shall retain all Litigation Claims, any recoveries received by Reorganized BGDC after repayment of fees and costs incurred in any recovery shall upon receipt by Reorganized BGDC be paid to JATCO as an additional payment on the JATCO Note in Section 4.9.1 above, or alternatively, in addition to the payment due pursuant to Section 4.9.2 above.

**4.9.4.** JATCO shall recover as a Section 503(b)(3)(b) Administrative Claims, subject to Bankruptcy Court approval, attorneys' fees and costs incurred in the preparation of this Plan and the Disclosure Statement, the approval of the Disclosure Statement and the confirmation of this Plan.

Class 9 is Impaired under this Plan. The Holder of the Class 9 JATCO Claim is entitled to vote on this Plan.

**4.10. Diocese.** On the Effective Date:



1           **4.10.1** If it is determined that the Diocese Lease is not a true lease subject to  
 2 treatment pursuant to Section 365 of the Bankruptcy Code but is a disguised security  
 3 instrument intended to provide the source of payment and additional security for the  
 Reimbursement Agreement and the Bonds. See *In Re Moreggia & Sons, Inc.*, 852 F.2<sup>nd</sup>  
 1179 (9<sup>th</sup> Cir. 1988);

4           (i) The first paragraph of Section 3 of the Diocese Lease shall be  
 5 amended to provide that the annual lease shall be in a sum sufficient to pay all of  
 6 the obligations required to be paid by Reorganized BGDC pursuant to this Plan,  
 7 including Section 5.2 of the certain Loan Agreement dated December 1, 2011;  
 8 Section 10 of that certain Remarketing Agreement dated December 1, 2011;  
 9 Section 2.2 of that certain Letter of Credit and Reimbursement Agreement dated  
 December 1, 2011; and all payments required to be made by Landlord pursuant to  
 the Plan of Reorganization confirmed by order entered on \_\_\_\_\_, 2018, by the  
 United States Bankruptcy Court for the District of Nevada in case no. 17-11942-  
 abl, including Allowed Administrative Claims, Allowed General Unsecured Claims  
 and the JATCO Claim.

10           (ii) The second paragraph of Section 3 of the Diocese Lease shall be  
 11 amended to read as follows;

12           During each month of this Lease or such other period as determined by  
 13 Landlord, Landlord shall adjust any and each Monthly Installment (and thereby  
 14 adjust the total annual rental sum for the respective year to equal the payments due  
 15 pursuant to Section 5.2 of the certain Loan Agreement dated December 1, 2011;  
 16 Section 10 of that certain Remarketing Agreement dated December 1, 2011;  
 17 Section 2.2 of that certain Letter of Credit and Reimbursement Agreement dated  
 December 1, 2011; and all payments required to be made by Landlord pursuant to  
 the Plan of Reorganization confirmed by order entered on \_\_\_\_\_, 2018, by the  
 United States Bankruptcy Court for the District of Nevada in case no. 17-11942-  
 abl, including Allowed Administrative Claims, Allowed General Unsecured Claims  
 and the JATCO Claim.

18           (iii) The last paragraph of Section 3 of the Diocese Lease shall be  
 19 amended to read as follows:

20           In addition, Tenant covenants and agrees to pay to Landlord as rental  
 21 hereunder all amounts required to be paid by Landlord pursuant to Sections 8.5 and  
 22 10.4 of the Loan Agreement together with all payments required to be made by  
 Landlord pursuant to the Plan of Reorganization confirmed by order entered on  
 \_\_\_\_\_, 2018, by the United States Bankruptcy Court for the District of Nevada  
 in case no. 17-11942-abl, including Allowed Administrative Claims, Allowed  
 General Unsecured Claims and the JATCO Claim.

23           (iv) Subject to the amendments contained herein to be set forth in the  
 24 Amended Diocese Lease, the Diocese Lease shall remain in full force and effect on  
 and after the Effective Date.

25           **4.10.2.** If it is determined that the Diocese Lease is a true lease, the Diocese shall  
 26 on or before the Effective Date either (a) agree to execute the Amended Diocese Lease, or  
 27 (b) the Diocese Lease shall be rejected as provided for under Article 6 below and treated  
 as provided for in Section 5.2 below.

28           Class 10 is Impaired under this Plan. The Holder of the Diocese Claim is entitled to vote  
 on this Plan.

1 **5. MEANS FOR IMPLEMENTATION OF PLAN.**

2  
3 **5.1. Diocese Lease.** During the Confirmation Hearing the Bankruptcy Court shall  
4 determine whether the Diocese Lease is a true lease subject to treatment pursuant to Section 365  
or is a disguised security instrument not subject to treatment as an executory contract pursuant to  
Section 365.

5 **5.2. Section 363(f) Sale.** In the event that the Diocese Lease is determined to be a true  
6 lease and the Diocese, Debtor do not elect to enter into an Amended Diocese Lease on or before  
the Effective Date and the Diocese Lease is rejected, then within 14 days of the Effective Date,  
7 JATCO shall present to the Bankruptcy Court a procedure to conduct the Section 363(f) Sale free  
and clear of the any remaining rights and interests that the Diocese may retain under Section 365  
8 to remain in possession of the Real Property. Any such sale procedure shall provide for the sale  
to take place no later than 150 days of the Effective Date with the sale to close no later than 180  
9 days of the Effective Date.

10 **5.3. Organizational Documentation and Bylaws.** On or before the Effective Date, the  
Reorganized BGDC Organizational Documents shall be executed and, to the extent required, filed  
11 with the Nevada Secretary. The Reorganized BGDC Organizational Documents shall (i) include,  
pursuant to Section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of  
12 non-voting equity securities, but only to the extent required by Section 1123(a)(6) of the  
Bankruptcy Code; and (ii) to the extent necessary or appropriate, include such provisions as may  
be needed to effectuate and consummate this Plan and the transactions contemplated herein. After  
13 the Effective Date, Reorganized BGDC shall be responsible for the preparation of all reports, tax  
returns and other governmental filings required to be filed by the Debtor and Reorganized BGDC  
14 and all obligations related thereto.

15 **5.4. Additional Reorganized BGDC Provisions.** The Reorganized BGDC  
16 Organizational Documents, and resolutions or similar documents related to the formation and  
governance of Reorganized BGDC under this Plan shall be subject to applicable bankruptcy and/or  
17 Nevada law. Reorganized BGDC shall remain a Nevada non-profit corporation.

18 **5.5. Plan Implementation Occurring on the Effective Date.** On the Effective Date  
19 the following events shall occur in the following sequence:

20 **5.5.1.** The Restated Reimbursement Agreement shall be executed by Reorganized  
Debtor and BofA and delivered to BofA.

21 **5.5.2.** Reorganized BGDC shall execute and deliver the JATCO Note, JATCO  
22 Deed of Trust and Diocese Promissory Note Assignment to JATCO.

23 **5.5.3.** The JATCO Deed of Trust and UCC-1s shall be recorded or filed, as  
applicable, with the Clark County Recorder and NV SOS evidencing the Lien and Security  
24 Interest granted thereunder and pursuant to this Plan.

25 **5.5.4.** The JATCO Avoidance Action shall be dismissed with prejudice unless not  
already decided by the Bankruptcy Court with a Final Order.

26 **5.5.5.** If the Diocese elects to execute the Amended Diocese Lease, the Reorganized  
27 Debtor and Diocese shall execute the Amended Diocese Lease.

28 **5.6. Articles of Organization, By-Laws, Operating Agreement.** The articles of  
organization, by-laws, and/or operating agreement, as applicable, of Debtor shall be amended as

1 necessary to satisfy the provisions of this Plan and the Bankruptcy Code and shall include, among  
 2 other things, pursuant to Section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the  
 3 issuance of non-voting equity securities, but only to the extent required by Section 1123(a)(6) of  
 the Bankruptcy Code.

4 **5.7. Post-Effective Date Management of Reorganized BGDC.** From and after the  
 5 Effective Date, Reorganized BGDC will continue to be managed by Debtor's pre-petition  
 6 managers, which management may subsequently be modified to the extent provided by  
 Reorganized BGDC's articles of organization, by-laws, and operating agreement (as amended,  
 supplemented, or modified).

7 **5.8. Effectuation of Transactions.** On and after the Effective Date, the appropriate  
 8 managers or members of Debtor are authorized to issue, execute, deliver, and consummate the  
 9 transactions contemplated by or described in this Plan in the name of and on behalf of Reorganized  
 10 BGDC without further notice to or order of the Bankruptcy Court, act or action under applicable  
 law, regulation, order, rule, or any requirements of further action, vote, or other approval or  
 authorization by any Person.

11 **5.9. Notice of Effectiveness.** When all of the steps contemplated by Section 8.2 to this  
 12 Plan have been completed or waived, Reorganized BGDC shall file with the Bankruptcy Court  
 13 and serve upon all Creditors and all potential Holders of Administrative Claims known to  
 Reorganized BGDC (whether or not disputed), a notice of Effective Date of Plan. The notice of  
 Effective Date of Plan shall include notice of the Administrative Claim Bar Date.

14 **5.10. No Governance Action Required.** As of the Effective Date: (i) the adoption,  
 15 execution, delivery, and implementation or assignment of all contracts, leases, instruments,  
 16 releases, and other agreements related to or contemplated by this Plan, including the Development  
 17 Agreement and SUP Approval, if applicable; and (ii) the other matters provided for under or in  
 18 furtherance of this Plan involving corporate action to be taken by or required of Debtor shall be  
 deemed to have occurred and be effective as provided herein, and shall be authorized and approved  
 in all respects without further order of the Bankruptcy Court or any requirement of further action  
 by the member of Debtor.

19 **5.11. Filing with Secretary of State.** On or as soon as reasonably practical after the  
 20 Effective Date, a certified copy of this Plan and the Confirmation Order shall be filed with the NV  
 21 SOS. Again, to the extent applicable, Debtor, from the Confirmation Date until the Effective Date,  
 22 is authorized and directed to take any action or carry out any proceeding necessary to effectuate  
 this Plan pursuant to the NRS.

## 23 **6. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

24 **6.1. Executory Contracts.** Except for Executory Contracts and Unexpired Leases  
 25 specifically addressed in this Plan or set forth on the schedule of Rejected Executed Contracts and  
 26 Unexpired Leases attached as Schedule 6.1 to this Plan (which may be supplemented and amended  
 27 up to the date the Bankruptcy Court enters the Confirmation Order), all Executory Contracts and  
 Unexpired Leases that exist on the Confirmation Date shall be deemed assumed by Debtor on the  
 Effective Date.

28 **6.2. Approval of Assumption or Rejection.** Entry of the Confirmation Order shall

1 constitute as of the Effective Date: (i) approval, pursuant to Bankruptcy Code Section 365(a), of  
 2 the assumption by Reorganized BGDC of each Executory Contract and Unexpired Lease to which  
 3 Debtor are a party that is not listed on Schedule 6.1, not otherwise provided for in this Plan, and  
 4 neither assigned, assumed and assigned, nor rejected by separate order of the Bankruptcy Court  
 5 prior to the Effective Date; and (ii) rejection by Debtor of each Executory Contract and Unexpired  
 6 Lease to which Debtor is a party that is listed on Schedule 6.1 to this Plan. Upon the Effective  
 7 Date, each counter party to an assumed Executory Contract or Unexpired Lease listed shall be  
 8 deemed to have consented to an assumption contemplated by Section 365(c)(1)(B) of the  
 9 Bankruptcy Code, to the extent such consent is necessary for such assumption. To the extent  
 10 applicable, all Executory Contracts or Unexpired Leases of Reorganized BGDC assumed pursuant  
 11 to Article 6 shall be deemed modified such that the transactions contemplated by this Plan shall  
 12 not be a “change of control,” regardless of how such term may be defined in the relevant Executory  
 13 Contract or Unexpired Lease and any required consent under any such Executory Contract or  
 14 Unexpired Lease shall be deemed satisfied by confirmation of this Plan.

15  
 16 **6.3. Cure of Defaults.** Reorganized BGDC shall Cure any defaults respecting each  
 17 Executory Contract or Unexpired Lease assumed pursuant to Section 6.1 to this Plan upon the  
 18 latest of: (i) the Effective Date or as soon thereafter as practicable; (ii) such dates as may be fixed  
 19 by the Bankruptcy Court or agreed upon by Debtor, and after the Effective Date, Reorganized  
 20 BGDC; or (iii) the fourteenth (14<sup>th</sup>) Business Day after the entry of a Final Order resolving any  
 21 dispute regarding: (a) a Cure amount; (b) the ability of Debtor or Reorganized BGDC to provide  
 “adequate assurance of future performance” under the Executory Contract or Unexpired Lease  
 assumed pursuant to this Plan in accordance with Section 365(b)(1) of the Bankruptcy Code; or  
 (c) any matter pertaining to assumption, assignment, or the Cure of a particular Executory Contract  
 or an Unexpired Lease.

16  
 17 **6.4. Objection to Cure Amounts.** Any party to an Executory Contract or Unexpired  
 18 Lease who objects to the Cure amount determined by Debtor to be due and owing must file and  
 19 serve an objection on Reorganized Debtor’s counsel no later than thirty (30) days after the  
 20 Effective Date. Failure to file and serve a timely objection shall be deemed consent to the Cure  
 21 amounts paid by Reorganized BGDC in accordance with Section 6.3 to this Plan. If there is a  
 dispute regarding: (i) the amount of any Cure payment; (ii) the ability of Reorganized BGDC to  
 provide “adequate assurance of future performance” under the Executory Contract or Unexpired  
 Lease to be assumed or assigned; or (iii) any other matter pertaining to assumption, the Cure  
 payments required by Section 365(b)(1) of the Bankruptcy Code will be made following the entry  
 of a Final Order resolving the dispute and approving the assumption.

22  
 23 **6.5. Confirmation Order.** The Confirmation Order will constitute an order of the  
 24 Bankruptcy Court approving the assumptions described in this Article 6 pursuant to Section 365  
 25 of the Bankruptcy Code as of the Effective Date. Notwithstanding the forgoing, if, as of the date  
 26 the Bankruptcy Court enters the Confirmation Order, there is pending before the Bankruptcy Court  
 a dispute concerning the Cure amount or adequate assurance for any particular Executory Contract  
 or Unexpired Lease, the assumption of such Executory Contract or Unexpired Lease shall be  
 effective as of the date the Bankruptcy Court enters an order resolving any such dispute and  
 authorizing assumption by Debtor.

27  
 28 **6.6. Post-Petition Date Contracts and Leases.** Executory Contracts and Unexpired  
 Leases entered into and other obligations incurred after the Petition Date by Debtor shall be

assumed by Debtor on the Effective Date. Each such Executory Contract and Unexpired Lease shall be performed by Debtor or Reorganized BGDC, as applicable, in the ordinary course of its business.

**6.7. Bar Date.** All proofs of Claims with respect to Claims arising from the rejection of any Executory Contract or Unexpired Lease shall be filed no later than thirty (30) calendar days after the Effective Date. Any Claim not filed within such time shall be forever barred.

## **7. MANNER OF DISTRIBUTION OF PROPERTY UNDER THIS PLAN**

**7.1. Distributions.** Reorganized BGDC shall be responsible for making the Distributions described in this Plan. Reorganized BGDC may make such Distributions before the allowance of each Claim has been resolved if Reorganized BGDC have a good faith belief that the Disputed Claims Reserve is sufficient for all Disputed Claims. Except as otherwise provided in this Plan or the Confirmation Order, the Cash necessary for Reorganized BGDC to make payments pursuant to this Plan may be obtained from existing Cash balances and Debtor's operations.

**7.2. Reserves.** Reorganized BGDC shall establish and maintain the Disputed Claims Reserve.

**7.3. Statements.** Reorganized BGDC shall maintain a record of the names and addresses of all Holders of Allowed General Unsecured Claims as of the Effective Date for purposes of mailing Distributions to them. Reorganized BGDC may rely on the name and address set forth in Debtor's Schedules and/or proofs of Claim as being true and correct unless and until notified in writing. Reorganized BGDC shall file all tax returns and other filings with governmental authorities on behalf of Reorganized BGDC and the Assets it holds.

**7.4. Further Authorization.** JATCO, Debtor and Reorganized BGDC shall be entitled to seek such orders, judgments, injunctions, and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions of this Plan.

## **8. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

### **8.1. Conditions to Confirmation.**

**8.1.1.** The Bankruptcy Court shall have entered a Final Order regarding the Diocese Lease as provided for in Section 5.1 above.

**8.1.2.** The Confirmation Order shall have been entered and be in form and substance reasonably acceptable to JATCO.

**8.2. Conditions to Effectiveness.** The following are conditions precedent to the occurrence of the Effective Date:

**8.2.1.** The Confirmation Order shall be a Final Order, except that JATCO reserves the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the Confirmation Order, under circumstances that would moot such appeal;

**8.2.2.** No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending, including any



1 appeal; and

2 **8.2.3.** All documents necessary to implement the transactions contemplated by this  
3 Plan shall be in form and substance reasonable acceptable to JATCO.

4 **8.3. Waiver of Conditions.** JATCO, in its sole discretion, may waive any and all of  
5 the conditions set forth in Section 8.2 above without leave of or order of the Bankruptcy Court and  
6 without any formal action.

## 7 **9. TITLE TO PROPERTY; DISCHARGE; INJUNCTION**

8 **9.1. Vesting of Assets.** Subject to the provisions of this Plan and as permitted by  
9 Section 1123(a)(5)(B) of the Bankruptcy Code, the Assets, including the Litigation Claims and  
10 right, title, and interest being assumed by Reorganized BGDC in the assumed Executory Contracts,  
11 shall be transferred to Reorganized BGDC on the Effective Date. As of the Effective Date, all  
12 such property shall be free and clear of all Liens and Claims, except as otherwise provided herein.  
13 On and after the Effective Date, Reorganized BGDC may operate its business and may use,  
14 acquire, and dispose of property and compromise or settle any Claim without the supervision of  
15 or approval of the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code  
16 or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Confirmation  
17 Order.

18 **9.2. Preservation of Litigation Claims.** In accordance with Section 1123(b)(3) of the  
19 Bankruptcy Code, and except as otherwise expressly provided herein, all Litigation Claims shall  
20 be assigned and transferred to Reorganized BGDC pursuant to Section 5.3 of this Plan.  
21 Reorganized BGDC, as the successors in interest to Debtor and the Estate, may and shall have the  
22 exclusive right to sue on, settle, or compromise any and all Litigation Claims, including derivative  
23 actions existing against Debtor on the Effective Date.

24 **9.3. Discharge.** On the Effective Date, unless otherwise expressly provided in this Plan  
25 or the Confirmation Order, Debtor shall be discharged from any and all Claims to the fullest extent  
26 provided in the Bankruptcy Code, including Sections 524 and 1141. All consideration distributed  
27 under this Plan or the Confirmation Order shall be in exchange for, and in complete satisfaction,  
28 settlement, discharge, and release of all Claims of any kind or nature whatsoever against Debtor  
or any of their Assets or properties, including the assertion by any Person of any and all rights,  
entitlements or privileges to the Real Property, and regardless of whether any property shall have  
been distributed or retained pursuant to this Plan on account of such Claims. Except as otherwise  
expressly provided by this Plan or the Confirmation Order, upon the Effective Date, Debtor shall  
be deemed discharged and released under and to the fullest extent provided under Section  
1141(d)(1)(A) of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever,  
including, but not limited to, demands and liabilities that arose before the Confirmation Date, and  
all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**9.4. Injunction.** From and after the Effective Date, and except as provided in this Plan  
and the Confirmation Order, all Persons that (i) have held, currently hold, or may hold a Claim  
(whether or not for which a proof of Claim was filed) that is terminated pursuant to the terms of  
this Plan, or (ii) assert rights, entitlements or privileges to the Real Property which are addressed  
in this Plan or the Confirmation Order, are permanently enjoined from taking any of the following  
actions on account of any such Claims or rights, entitlements or privileges related thereto: (i)

1 commencing or continuing in any manner any action or other proceeding against Reorganized  
 2 BGDC or its property, including the Real Property; (ii) enforcing, attaching, collecting, or  
 3 recovering in any manner any judgment, award, decree, or order against Reorganized BGDC or its  
 4 property, including the Real Property; (iii) creating, perfecting, or enforcing any Lien or  
 5 encumbrance against Reorganized BGDC or its property, including the Real Property; (iv)  
 6 asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or  
 obligation due to Reorganized BGDC or its property, or Real Property; and (v) commencing or  
 continuing any action, in any manner or any place, that does not comply with or is inconsistent  
 with the provisions of this Plan or the Bankruptcy Code.

7 **9.5. Exculpation.** From and after the Effective Date, neither JATCO, the professionals  
 8 employed on its behalf, nor any of its respective present or future shareholders, directors, officers,  
 9 managers, employees, advisors, attorneys, or agents, shall have or incur any liability, including  
 10 derivative claims, but excluding direct claims, to any Holder of a Claim or any other party-in-  
 11 interest, or any of their respective agents, employees, representatives, financial advisors, attorneys,  
 12 or Affiliates, or any of their successors or assigns, for any act or omission in connection with,  
 relating to, or arising out of (from the Petition Date forward), the Chapter 11 Case, Reorganized  
 BGDC, the pursuit of confirmation of this Plan, or the consummation of this Plan, except for gross  
 negligence and willful misconduct, and in all respects shall be entitled to reasonably rely upon the  
 advice of counsel with respect to their duties and responsibilities under this Plan or in the context  
 of the Chapter 11 Case.

## 13 **10. RETENTION OF JURISDICTION**

14 **10.1. Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the  
 15 occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the  
 16 Chapter 11 Case and Reorganized BGDC after the Effective Date as is legally permissible,  
 including jurisdiction to:

17 **10.1.1.** Allow, disallow, determine, liquidate, classify, estimate, or establish the  
 18 priority or secured or unsecured status of any Claim or Disputed Claim, including the resolution  
 19 of any request for payment of any Administrative Claim and the resolution of any and all objections  
 to the allowance or priority of Claims or Disputed Claims;

20 **10.1.2.** Grant or deny any applications for allowance of compensation or  
 21 reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan for periods  
 ending on or before the Effective Date;

22 **10.1.3.** Resolve any matters related to the assumption, assignment, or rejection of  
 23 any Executory Contract or Unexpired Lease to which Debtor or Reorganized BGDC are a party  
 24 and to hear, determine, and, if necessary, liquidate any Claims arising there from or Cure amounts  
 related thereto;

25 **10.1.4.** Insure that distributions to Holders of Allowed Claims are accomplished  
 26 pursuant to the provisions of this Plan;

27 **10.1.5.** Decide or resolve any motions, adversary proceedings, contested or  
 28 litigated matters, including any asserted rights, entitlements or privileges to the Real Property or  
 other Assets, and any other matters and grant or deny any applications or motions involving Debtor

1 or Reorganized BGDC that may be pending on the Effective Date or commenced thereafter as  
2 provided for by this Plan;

3 **10.1.6.** Enter such orders as may be necessary or appropriate to implement,  
4 consummate or enforce the provisions of this Plan, except as otherwise provided by this Plan;

5 **10.1.7.** Decide or resolve any cases, controversies, suits, or disputes that may arise  
6 in connection with the consummation, interpretation, or enforcement of any Final Order, this Plan,  
7 the Confirmation Order, or any Person's obligations or claim rights to or against the Real Property  
8 or other Assets;

9 **10.1.8.** Modify this Plan before or after the Effective Date pursuant to Section 1127  
10 of the Bankruptcy Code and Section 11.1 of this Plan or modify any contract, instrument, release  
11 or other agreement or document created in connection with this Plan, the Disclosure Statement, or  
12 the Confirmation Order or the Reorganized BGDC; or remedy any defect or omission or reconcile  
13 any inconsistency in any Final Order, this Plan, the Confirmation Order, or any contract,  
14 instrument, release or other agreement or document created in connection with this Plan, the  
15 Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or  
16 appropriate to consummate this Plan, to the extent authorized by the Bankruptcy Code;

17 **10.1.9.** Issue injunctions, enter and implement other orders, or take such other  
18 actions as may be necessary or appropriate to restrain interference by any person with  
19 consummation, implementation, or enforcement of any Final Order, this Plan, or the Confirmation  
20 Order, except as otherwise provided herein;

21 **10.1.10.** Enter and implement such orders as are necessary or appropriate if a Final  
22 Order or the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

23 **10.1.11.** Determine any other matters that may arise in connection with or relate to  
24 this Plan, any Final Order, and the Confirmation Order except as otherwise provided herein;

25 **10.1.12.** Enter an order closing the Chapter 11 Case;

26 **10.1.13.** Hear and decide Litigation Claims and continue to hear and decide  
27 pending Litigation Claims and any other claim or cause of action of Debtor and Reorganized  
28 BGDC; and

**10.1.14.** Decide or resolve any matter over which the Bankruptcy Court has  
jurisdiction pursuant to Section 505 of the Bankruptcy Code.

## 29 **11. MODIFICATION AND AMENDMENT OF PLAN**

30 **11.1. Modification and Amendment.** Prior to Confirmation, JATCO may alter, amend,  
31 or modify this Plan under Section 1127(a) of the Bankruptcy Code at any time. After the  
32 Confirmation Date and prior to substantial consummation of this Plan as defined in Section  
33 1101(2) of the Bankruptcy Code, JATCO may, under Section 1127(b), (c), and (d) of the  
34 Bankruptcy Code, alter, amend, or modify this Plan or institute proceedings in the Bankruptcy  
35 Court to remedy any defect or omission or reconcile any inconsistencies in this Plan, the Disclosure  
36 Statement, or the Confirmation Order, to make appropriate adjustments and modifications to this



Plan or the Confirmation Order as may be necessary to carry out the purposes and effects of this Plan so long as such proceedings do not materially adversely affect the treatment of Holders of Claims under this Plan.

## **12. MISCELLANEOUS**

**12.1. Filing of Objections to Claims.** After the Effective Date, objections to Claims shall be made and objections to Claims made previous thereto shall be pursued by Reorganized BGDC or any other party properly entitled to do so after notice to Reorganized BGDC and approval by the Bankruptcy Court. Any objections to Claims made after the Effective Date shall be filed and served not later than the first Business Day that is ninety (90) calendar days after the Effective Date; provided, however, that such period may be extended by order of the Bankruptcy Court.

**12.1.1. Resolution of Objections after Effective Date.** From and after the Effective Date, Reorganized BGDC may litigate to judgment, propose settlements of, or withdraw objections to, all pending or filed Disputed Claims and may settle or compromise any Disputed Claim with notice and a hearing and approval of the Bankruptcy Court.

**12.1.2. Distributions and Disputed Claims Reserve.** In order to facilitate Distributions to Holders of Allowed Claims, and if and to the extent there are Disputed Claims in any Class, Reorganized BGDC shall set aside in a designated reserve account the payments or Distributions applicable to such Disputed Claims as if such Disputed Claims were Allowed Claims, pending the allowance or disallowance of such Disputed Claims. In the event that Reorganized BGDC wishes to deposit or hold a lesser amount than required herein and is unable to reach an agreement with the Holder of the Disputed Claim on the amount to be deposited or held, the Bankruptcy Court shall fix the amount after notice and hearing. Upon Final Order with respect to a Disputed Claim, the Holder of such Disputed Claim, to the extent it has been determined to be an Allowed Claim, shall receive on the next Quarterly Distribution Date from the Reorganized BGDC that payment or Distribution to which it would have been entitled if the portion of the Claim so allowed had been allowed as of the Effective Date.

**12.1.3. Late-Filed Claims.** No Claim filed after the Bar Date or, as applicable, the Administrative Claim Bar Date, shall be allowed, and all such Claims are hereby disallowed in full. After the Bar Date or the Administrative Bar Date, as applicable, no Creditor shall be permitted to amend any claim to increase the claimed amount and any such amendment shall be disallowed to the extent of the late-filed increase in the claimed amount.

**12.2. Effectuating Documents; Further Transactions; Timing.** Debtor and Reorganized BGDC are each authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan and any securities issued, transferred, or canceled pursuant to this Plan. All transactions that are required to occur on the Effective Date under the terms of this Plan shall be deemed to have occurred simultaneously. Debtor and Reorganized BGDC are authorized and directed to do such acts and execute such documents as are necessary to implement this Plan.

**12.3. Exemption from Transfer Taxes.** Pursuant to Section 1146 of the Bankruptcy Code: (i) the issuance, distribution, transfer, release, or exchange of Estate property, including the Real Property; (ii) the creation, modification, consolidation, or recording of any deed of trust or

1 other security interest, the securing of additional indebtedness by such means or by other means  
 2 in furtherance of, or connection with this Plan or the Confirmation Order; (iii) the making,  
 3 assignment, modification, or recording of any lease or sublease; or (iv) the making, delivery, or  
 4 recording of a deed or other instrument of transfer under, in furtherance of, or in connection with,  
 5 this Plan, Confirmation Order, or any transaction contemplated above, or any transactions arising  
 6 out of, contemplated by, or in any way related to the foregoing shall not be subject to any document  
 7 recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or  
 8 real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment  
 9 and the appropriate state of local government officials or agents shall be, and hereby are, directed  
 10 to forego the collection of any such tax or assessment and to accept for filing or recordation any  
 11 of the foregoing instruments or other documents without the payment of any such tax or  
 12 assessment.

13 **12.4. Revocation or Withdrawal of This Plan.** JATCO reserve the right to revoke or  
 14 withdraw this Plan at any time prior to its substantial consummation. If this Plan is withdrawn or  
 15 revoked, then this Plan shall be deemed null and void and nothing contained herein shall be deemed  
 16 to constitute a waiver or release of any Claims by or against Debtor or any other Person nor shall  
 17 the withdrawal or revocation of this Plan prejudice in any manner the rights of Debtor or any  
 18 Person in any further proceedings involving Debtor. In the event this Plan is withdrawn or  
 19 revoked, nothing set forth herein shall be deemed an admission of any sort and this Plan and any  
 20 transaction contemplated thereby shall be inadmissible into evidence in any proceeding.

21 **12.5. Binding Effect.** This Plan shall be binding upon, and shall inure to the benefit of  
 22 Debtor, Reorganized BGDC, the Diocese and the Holders of all Claims and their respective  
 23 successors and assigns.

24 **12.6. Governing Law.** Except to the extent that the Bankruptcy Code or other federal  
 25 law is applicable or as provided in any contract, instrument, release, or other agreement entered  
 26 into in connection with this Plan or in any document which remains unaltered by this Plan, the  
 27 rights, duties, and obligations of Debtor, Reorganized BGDC, and any other Person arising under  
 28 this Plan shall be governed by, and construed and enforced in accordance with, the internal laws  
 of the State of Nevada.

**12.7. Modification of Payment Terms.** Reorganized BGDC reserves the right to  
 modify the treatment of any Allowed Claim in any manner adverse only to the Holder of such  
 Allowed Claim at any time after the Effective Date upon the prior written consent of the Holder  
 of the Allowed Claim whose treatment is being adversely affected, which consent is in the sole  
 discretion of the Holder.

**12.8. Providing for Claims Payments.** Distributions to Holders of Allowed Claims  
 shall be made by Reorganized BGDC: (i) at the addresses set forth on the proofs of Claim filed by  
 such Holders (or at the last known addresses of such Holders if no proof of Claim is filed or if  
 Debtor has been notified of a change of address); (ii) at the addresses set forth in any written  
 notices of address changes delivered to Reorganized BGDC after the date of any related proof of  
 Claim; or (iii) at the addresses reflected in the Schedules if no proof of Claim has been filed and  
 Reorganized BGDC has not received a written notice of a change of address. If any Holder's  
 distribution is returned as undeliverable, no further distributions to such Holder shall be made  
 unless and until Reorganized BGDC is notified of such Holder's then-current address, at which  
 time all missed Distributions shall be made to such Holder without interest. Amounts in respect

1 of undeliverable Distributions made through Reorganized BGDC shall be returned to Reorganized  
 2 BGDC until such Distributions are claimed. All claims for undeliverable Distributions shall be  
 3 made on or before the first anniversary of the Effective Date. After such date, all unclaimed  
 4 property shall revert to Reorganized BGDC and the Claim of any Holder or successor to such  
 5 Holder with respect to such property shall be discharged and forever barred notwithstanding any  
 6 federal or state escheat laws to the contrary. Nothing contained in this Plan shall require Debtor  
 7 or Reorganized BGDC to attempt to locate any Holder of an Allowed Claim.

8 **12.9. Set Offs.** Debtor and Reorganized BGDC may, but shall not be required to, set off  
 9 or recoup against any Claim and the payments or other distributions to be made pursuant to this  
 10 Plan in respect of such Claim (before any distribution is made on account of such Claim), claims  
 11 of any nature whatsoever that the applicable Debtor or Reorganized BGDC may have against the  
 12 Holder of such Claim to the extent such Claims may be set off or recouped under applicable law,  
 13 but neither the failure to do so nor the allowance of any Claim or hereunder shall constitute a  
 14 waiver or release by Debtor or Reorganized BGDC of any such Claim that it may have against  
 15 such Holder.

16 **12.10. Notices.** Any notice required or permitted to be provided under this Plan shall be  
 17 in writing and served by either: (i) certified mail, return receipt requested, postage prepaid; (ii)  
 18 hand delivery; or (iii) reputable overnight courier service, freight prepaid, to be addressed as:

19 If to JATCO:

J.A. Tiberti Construction Company  
 ATTN: Renaldo Tiberti  
 1806 Industrial Road  
 Las Vegas, NV 89102

20 With a copy to:

GERALD GORDON, ESQ.  
 GARMAN TURNER GORDON  
 650 White Drive, Suite 100  
 Las Vegas, NV 89119  
 Telephone (725) 777-3000  
 Facsimile (725) 777-3112

21 If to BGDC:

Bishop Gorman Development Corporation  
 PO Box 18316  
 Las Vegas, NV 89114

22 With a copy to:

BRETT A. AXELROD, ESQ.  
 FOX ROTHSCHILD LLP  
 1980 Festival Plaza Drive, Suite 700  
 Las Vegas, NV 89135  
 Telephone: (702) 262-6899  
 Facsimile: (702) 597-5503

23 **12.11. Severability.** If any provision of this Plan is determined by the Bankruptcy Court

1 to be invalid, illegal, or unenforceable or this Plan or any provision of this Plan is determined to  
 2 render this Plan not confirmable pursuant to Section 1129 of the Bankruptcy Code, the Bankruptcy  
 3 Court, at the request of JATCO shall have the power to (i) alter and interpret such term to make  
 4 it valid or enforceable to the maximum extent practicable, consistent with the original purpose of  
 5 the term or provision held to be invalid, void, or unenforceable, and such term or provision shall  
 6 then be applicable as altered or interpreted, or (ii) sever and delete such term or provision so as to  
 7 make this Plan confirmable. Notwithstanding any such holding, alteration, or interpretation, the  
 8 remainder of the terms and provisions of this Plan shall remain in full force and effect and will in  
 9 no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The  
 10 Confirmation Order shall constitute a judicial determination and shall provide that each term and  
 11 provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing,  
 12 is valid and enforceable pursuant to its terms.

13 **12.12. Withholding and Reporting Requirements.** In connection with this Plan and all  
 14 instruments and securities issued in connection therewith and Distributions thereon, Reorganized  
 15 BGDC shall comply with all withholding and reporting requirements imposed by any federal, state,  
 16 local, or foreign taxing authority and all Distributions hereunder shall be subject to any such  
 17 withholding and reporting requirements. Reorganized BGDC shall be authorized to take any and  
 18 all action that may be necessary to comply with such withholding and recording requirements.  
 19 Notwithstanding any other provision of this Plan, each Holder of an Allowed Claim that has  
 20 received a distribution pursuant to this Plan shall have sole and exclusive responsibility for the  
 21 satisfaction or payment of any tax obligation imposed by any governmental unit, including income,  
 22 withholding, and other tax obligation on account of such distribution.

23 **12.13. Post-Confirmation Reporting.** Until the entry of the final decree closing the  
 24 Chapter 11 Case, Reorganized BGDC shall comply with the Bankruptcy Code, Bankruptcy Rules,  
 25 and Local Rule's post-confirmation reporting requirements. Additionally, to the extent required,  
 26 Reorganized BGDC shall file post-confirmation quarterly operating reports in accordance with the  
 27 United States Trustee Guidelines, paragraph 7.2.

28 **12.14. Cramdown.** In the event that any Impaired Class is determined to have rejected  
 this Plan in accordance with Section 1126 of the Bankruptcy Code, JATCO may invoke the  
 provisions of Section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation  
 of this Plan. Debtor reserves the right to modify this Plan to the extent, if any, that Confirmation  
 pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

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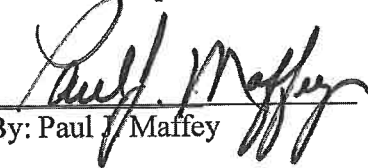
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1       **12.15. Quarterly Fees to the United States Trustee.** Prior to the Effective Date, Debtor,  
2 and after the Effective Date, Reorganized BGDC, shall pay all quarterly fees payable to the Office  
3 of the United States Trustee consistent with the sliding scale set forth in 28 U.S.C. § 1930(a)(6),  
4 and the applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

5               DATED this 30th day of March 2018.

6                               J.A. Tiberti Construction Company  
7                               a Nevada Corporation

8                                 
9                               By: Paul J. Maffey

10  
11       **Prepared and Submitted**

12       GARMAN TURNER GORDON

13  
14       By: /s/ Gerald M. Gordon

15       GERALD M. GORDON, ESQ.  
16       TERESA PILATOWICZ, ESQ.  
17       ERICK T, GJERDINGEN, ESQ.  
18       650 White Drive, Suite 100  
19       Las Vegas, NV 89119  
20       Attorneys for J.A. Tiberti Construction, Inc.

**SCHEDULE 1.1.93  
TO PLAN OF REORGANIZATION  
CERTAIN PRESERVED POTENTIAL CAUSES OF ACTION**

All defined terms used herein shall have the meanings set forth in this Plan. The following is a non-exhaustive list of potential parties against whom Debtor and/or Reorganized BGDC may hold a claim or cause of action. Debtor and Reorganized BGDC reserve their right to modify this list to amend or add parties or causes of action, but disclaim any obligation to do so. In addition to the possible causes of action and claims listed below, Debtor and Reorganized BGDC have or may have, in the ordinary course of their business, numerous causes of action and Claims or rights against contractors, subcontractors, vendors, suppliers, and others with whom they deal in the ordinary course of their business (the “Ordinary Course Claims”). Debtor and Reorganized BGDC reserve their right to enforce, sue on, settle, or compromise (or decline to do any of the foregoing) the Ordinary Course Claims, as well as the claims and causes of action listed below and all other claims and causes of action. Debtor and Reorganized BGDC also have, or may have, and are retaining, various claims or causes of action arising under or pursuant to its insurance policies, and all rights arising under, relating to, or in connection with such policies are expressly reserved and retained.

1. Avoidance Actions and Litigation Claims arising out of or in connection with Debtor’s business, property, or operations.

2. Avoidance Actions and Litigation Claims arising out of transactions involving, concerning, or related to Debtor.

3. All other rights, privileges, claims, actions, or remedies of Debtor and/or Reorganized BGDC existing on the Effective Date, whether arising at law or in equity.

There may also be other Avoidance Actions and Litigation Claims which currently exist or may subsequently arise that are not set forth herein because the facts underlying such Avoidance Actions or Litigation Claims are not currently known or sufficiently known by Debtor. The failure to list any such unknown Avoidance Action or Litigation Claim herein is not intended to limit the rights of Reorganized BGDC to pursue any unknown Avoidance Action or Litigation Claim to the extent the facts underlying such unknown Avoidance Action or Litigation Claim become more fully known in the future.

Unless Avoidance Actions or Litigation Claims against any individual or entity are expressly waived, relinquished, released, compromised, or settled by this Plan or any Final Order, Debtor expressly reserve for their benefit, and the benefit of Reorganized BGDC, all Avoidance Actions and Litigation Claims, including, without limitation, all unknown Avoidance Actions and Litigation Claims for later adjudication and therefore no preclusion doctrine (including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches) shall apply to such Avoidance Actions or Litigation Claims after the confirmation or consummation of this Plan. In addition, Debtor expressly reserve for their benefit and the benefit of Reorganized BGDC, the right to pursue or adopt any claims alleged in any lawsuit in which Debtor are a defendant or an interested party, against any individual or entity, including plaintiffs and co-defendants in such lawsuits

**SCHEDULE 6.1**  
**TO**  
**PLAN OF REORGANIZATION**  
**REJECTED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

1. The *Lease* entered into on December 1, 2011 between Debtor, as Landlord and the Diocese as Tenant for the lease by Tenant of the Real Property.