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8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10
 11 In re
 12 BISHOP GORMAN DEVELOPMENT
 13 CORPORATION, a Nevada nonprofit
 corporation,
 14 Debtor.

Case No. BK-17-11942-ABL

Chapter 11

**FIRST AMENDED DISCLOSURE
 STATEMENT FOR DEBTOR'S
 SECOND AMENDED PLAN OF
 REORGANIZATION DATED
 APRIL 27, 2018**

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1 regarding the allocation of consideration and the deductibility of unpaid
 2 interest for tax purposes. 62

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4 If a Holder of an Allowed Claim purchased the underlying security or debt obligation
 5 at a price less than its issue price, a portion or all of the difference may
 6 constitute “market discount” for United States federal income tax purposes.
 7 Any gain recognized by a Holder on the exchange of its Allowed Claim on the
 8 Effective Date should be treated as ordinary income to the extent of any
 9 market discount that accrued on the underlying securities or debt obligations
 10 while in the hands of the Holder. 62

11 (d) Information Reporting and Backup Withholding 62

12 Certain payments, including payments in respect of accrued interest or original issue
 13 discount, are generally subject to information reporting by the payor to the
 14 IRS. Moreover, such reportable payments are subject to backup withholding
 15 (currently at a rate of 24%) in certain circumstances. Under the backup
 16 withholding rules, a Holder of an Allowed Claim may be subject to backup
 17 withholding at the applicable rate with respect to certain distributions or
 18 payments pursuant to the Plan, unless the Holder (a) falls within certain
 19 exempt categories (which generally include corporations) or (b) provides a
 20 correct U.S. taxpayer identification and certifies under penalties of perjury
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- C Proforma Statements of Income and Expense
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- E Recovery Analysis

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1 This Disclosure Statement is submitted for approval in connection with the Second Amended
2 Chapter 11 Plan dated April 27, 2018 (the “Plan”) filed by Bishop Gorman Development
3 Corporation, a Nevada nonprofit corporation (“BGDC” or “Debtor”), Debtor and Debtor in
4 Possession in this chapter 11 case (the “Chapter 11 Case”).

5 Capitalized terms utilized in this Disclosure Statement, if not defined herein, shall have the
6 meaning used or defined in the Plan, the Bankruptcy Code, or the Bankruptcy Rules.

7 This Disclosure Statement is being provided to Holders of Impaired Claims, in connection
8 with the solicitation of their votes on the Plan, in order to provide adequate information to enable
9 them to make reasonably informed decisions in the exercise of their rights to vote on the Plan.

10 THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BASED
11 UPON FINANCIAL AND OTHER INFORMATION DEVELOPED BY DEBTOR. ALTHOUGH
12 DEBTOR HAS REASONABLY ENDEAVORED TO OBTAIN AND SUPPLY ALL MATERIAL
13 INFORMATION, THE INFORMATION PROVIDED HAS NOT BEEN SUBJECT TO
14 CERTIFIED AUDIT OR INDEPENDENT REVIEW EXCEPT WHERE EXPRESSLY
15 INDICATED. ACCORDINGLY, DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT
16 THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY OR IS
17 COMPLETE. NO REPRESENTATION CONCERNING DEBTOR IS AUTHORIZED OTHER
18 THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

19 The information presented in this Disclosure Statement includes forward-looking statements
20 in addition to historical information. These statements involve known and unknown risks and relate
21 to future events. Forward-looking statements are only predictions. Actual events or results may
22 differ materially from any forward-looking statement as a result of various factors. Although Debtor
23 believes that the expectations reflected in the forward-looking statements are reasonable, Debtor
24 cannot guarantee future results, events, performance or achievements. Debtor expressly disclaims a
25 duty to update any of the forward-looking statements.

26 AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER
27 ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT
28 CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY,

1 STIPULATION, OR WAIVER, BUT RATHER (IF AT ALL) AS A STATEMENT MADE IN
2 SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE
3 ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE
4 CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER
5 LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST DEBTOR.

6 **ARTICLE I**

7 **INTRODUCTION**

8 On April 17, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under
9 chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States
10 Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

11 BGDC is the owner of that certain real property and the improvements thereon located at
12 5959 S. Hualapai Way in Las Vegas, Nevada, bearing the Clark County Assessor's Parcel No. 164-
13 36-601-005 (the "Property"). BGDC was organized on February 6, 2003, to acquire and own the
14 Property, to raise funds for and construct Bishop Gorman High School's current campus, buildings,
15 and other related facilities on the Property (collectively the "Project"), and to lease the Property to
16 The Roman Catholic Bishop of Las Vegas and His Successors, a Corporation Sole (the "Diocese" or
17 the "Tenant") in order for the Diocese to operate Bishop Gorman High School ("BGHS" or the
18 "School") on the Property.

19 The majority of the Debtor's revenues come from rental income, charitable donations, and
20 fundraising events. Debtor is a not-for-profit corporation exempt from income taxes under Section
21 501(c)(3) of the Internal Revenue Code and is classified as a publically supported organization under
22 Internal Revenue Code section 509(a)(1).

23 BGDC has filed the Second Amended Plan. (ECF No. 459). This First Amended Disclosure
24 Statement was prepared by Debtor for use in conjunction with the Plan, a copy of which is attached
25 hereto as **Exhibit A**.

26 **Section A. Plan Overview**

27 The Plan separates Claims against BGDC into classes, based on their level of priority under
28 the Bankruptcy Code and the legal nature of the Claims.

1 Administrative Claims and Priority Tax Claims are not classified because the Bankruptcy
 2 Code requires that they receive specific treatment. Other than Professional Fees, U.S. Trustee Fees,
 3 and the DIP Loan, the Debtor is not aware of and does not anticipate any Administrative Expenses or
 4 Priority Tax Claims. Professional Fees will be paid when Allowed by the Bankruptcy Court and U.S.
 5 Trustee Fees will be paid when due. The Debtor and, as otherwise appropriate, the Reorganized
 6 Debtor will repay the DIP Loan in equal monthly payments of principal and interest over five years
 7 commencing on the first day of the month that is more than 30 days after the seventh (7th)
 8 anniversary of the Effective Date of the Plan. The Plan's classification and treatment of Claims are
 9 summarized below:

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|----------------|---------------------------|--|---|
| Class 1 | Priority Claims | There are no priority claims, other than Administrative Claims treated above. | \$0.00 |
| Class 2 | Bank Secured Claim | On the Effective Date, the Reorganized Debtor shall reinstate the Bank Loan Agreements, as amended hereby to provide that: (i) the expiration date of the Letter of Credit shall be extended from November 30, 2018 to November 30, 2020; (ii) the Bank shall have no right to seek from Debtor or Reorganized Debtor interest in excess of the non-default rate or penalties that accrued under the Bank Loan Agreements prior to the Effective Date; (iii) the Net Unencumbered Liquid Assets covenant of Section 5.2(b) of the Letter of Credit and Reimbursement Agreement requiring the Debtor and BGHS to maintain a minimum of Three Million Dollars (\$3,000,000.00) of Net Unencumbered Liquid Assets shall be reduced to Two Million Dollars (\$2,000,000.00) of Net | \$25,590,691.00 |

23 ¹ These amounts were compiled by combining: (a) the undisputed Claims listed on Debtor's
 24 Bankruptcy Schedules, (b) the Proofs of Claim filed that have neither been disallowed or settled yet,
 25 and (c) Debtor's books and records. As such, these amounts are estimates only, and may change as
 26 the adjudication or other resolution of Disputed Claims occurs. Attached as Exhibit E hereto is an
 27 estimated percentage for class recoveries. Please note that these are merely estimates based on the
 28 debtor's legal theories of valuation and that the actual distributions and recoveries may vary
 depending on the final amounts of all allowed claims, the results of the pending preference adversary
 proceeding against JATCO, and the Court's determination of the fair market value of the Debtor's
 Assets.

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|----------------|----------------------|--|---|
| | | <p>Unencumbered Assets; (iv) any amendments to the Reimbursement Agreement as proposed under the Plan shall not violate or constitute a breach of any of the Bank Loan Agreements; and (v) any payments to be made under the Plan, agreements contemplated by the Plan, or actions proposed to be taken under the Plan, including but not limited to amendment of the BGHS Lease, shall not violate or constitute a breach of the Bank Loan Agreements, including but not limited to Sections 5.34 and 5.16 of the Reimbursement Agreement. The Bank shall retain all Liens on the Bank's Collateral.</p> <p>The Reorganized Debtor shall continue to make payments on the Bonds through the Bank in the same manner as prepetition and the Bank shall continue to be entitled to all fees under the Bank Loan Agreements.</p> <p><i>Class 2 is Impaired. Therefore, the Holder of the Class 2 Allowed Bank Secured Claim is entitled to vote to accept or reject this Plan.</i></p> | |
| Class 3 | Trustee Claim | <p>On the Effective Date, the Reorganized Debtor shall reinstate the Credit Documents, <i>provided, however,</i> that the Trustee shall have no right to seek from Debtor or Reorganized Debtor interest in excess of the non-default rate or fees, expenses and penalties that accrued under the Credit Documents prior to the Effective Date. Any payments to be made under the Plan, agreements contemplated by the Plan, or actions proposed to be taken under the Plan, including but not limited to amendment of the BGHS Lease, shall not violate or constitute a breach under the Credit Documents.</p> <p><i>Class 3 is Impaired. Therefore, the Holder of the Class 3 Trustee Claim is entitled to vote to accept or reject this Plan.</i></p> | Unliquidated |
| Class 4 | County Claim | <p>On the Effective Date, the Reorganized Debtor shall reinstate the County Note, <i>provided, however,</i> that the County shall have no right to seek from Debtor or Reorganized Debtor interest in excess of the non-default rate or fees, expenses and penalties that accrued under the County Note</p> | Unliquidated |

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|----------------|--------------------|---|---|
| | | <p>prior to the Effective Date. Any payments to be made under the Plan, agreements contemplated by the Plan, or actions proposed to be taken under the Plan, including but not limited to amendment of the BGHS Lease, shall not violate or constitute a breach under the County Note.</p> <p><i>Class 4 is Impaired. Therefore, the Holder of the Class 4 County Claim is entitled to vote to accept or reject this Plan.</i></p> | |
| Class 5 | SAP Claim | <p>After the Effective Date, the Tenant shall assume all the Debtor's obligations under the SAP and shall continue to pay the SAP Claim according to its terms until its maturity, <i>provided, however</i>, that the County shall have no right to seek from Debtor or Reorganized Debtor interest in excess of the non-default rate or fees, expenses and penalties that accrued under the SAP prior to the Effective Date.</p> <p><i>Class 5 is Impaired. Therefore, the Holder of the Class 5 SAP Claim is entitled to vote to accept or reject this Plan.</i></p> | \$1,313,338.41 |
| Class 6 | JATCO Claim | <p>The JATCO Claim will be treated in one out of the four alternative ways described below, depending on the Bankruptcy Court's: (i) determination regarding the Avoidability of the JATCO Liens; and (ii) valuation of Debtor's Assets.</p> <p>(I) In the event that the Bankruptcy Court determines that the JATCO Liens are Avoidable and/or values the aggregate of all of Debtor's Assets at an amount that is equal to or less than the aggregate of the Allowed Senior Secured Claims, then JATCO shall have the Allowed JATCO Unsecured Claim which shall be included in Class 7, and JATCO shall receive, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO Unsecured Claim, the treatment provided to Allowed General Unsecured Claims in Class 7 (including, for the avoidance of doubt, the option to grant the Consensual Diocese Release). In this event, the JATCO Fund will be available for payment to Allowed General Unsecured Claims</p> | \$29,446,976.00 |

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|-------|-------------|--|---|
| | | <p>as provided in Class 7 herein.</p> <p>(II) In the event that the Bankruptcy Court determines that the JATCO Liens are not Avoidable and values the aggregate of all of Debtor's Assets at an amount in excess of the aggregate of the Allowed Senior Secured Claims, but less than the sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund, then JATCO shall have: (a) the Allowed JATCO Secured Claim in the amount that the value of the Assets exceeds the aggregate of the Allowed Senior Secured Claims; and (b) the Allowed JATCO Unsecured Claim for the difference between the Allowed JATCO Claim and the Allowed Secured JATCO Claim.</p> <p>In the event that JATCO does not make an election under Bankruptcy Code section 1111(b), then JATCO shall receive on the Effective Date, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO Secured Claim, that amount of the JATCO Fund equal to the Allowed JATCO Secured Claim; <i>provided, however</i>, that JATCO shall be entitled to receive the portion of the JATCO Fund that is attributable to the Additional Rent only in the event that JATCO elects to grant the Consensual Diocese Release; <i>and provided, further</i>, that to the extent that the JATCO Fund exceeds the amount of Allowed JATCO Secured Claim (the "<u>JATCO Fund Excess</u>"), the JATCO Fund Excess will be available for payment to Allowed General Unsecured Claims as provided in Class 7 herein. In the event that JATCO does not make an election under Bankruptcy Code section 1111(b), then the Allowed JATCO Unsecured Claim shall be included in Class 7, and JATCO shall receive, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO Unsecured Claim, the treatment provided to Allowed General Unsecured Claims in Class 7 (including, for the avoidance of doubt, the option to grant the Consensual Diocese Release).</p> <p>If JATCO timely makes an election under Bankruptcy Code section 1111(b), then JATCO</p> | |

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| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|-------|-------------|---|---|
| | | <p>shall receive on the Effective Date, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO Claim, the JATCO Secured Note. The JATCO Secured Note shall be in the principal amount of the Allowed JATCO Claim, shall bear non-compounded interest at the rate of 7.30% per annum (“<u>JATCO Interest</u>”), and shall be payable in monthly installments of approximately \$56,412.00, which include principal and JATCO Interest, for approximately forty-four (44) years following the Effective Date, until paid in full; <i>provided, however</i>, that JATCO shall not be entitled to receive, as payment for the JATCO Secured Note, funds attributable to the Additional Rent unless JATCO elects to grant the Consensual Diocese Release.</p> <p>(III) In the event that the Bankruptcy Court determines that the JATCO Liens are not Avoidable and values the aggregate of all of Debtor’s Assets at an amount that is greater than the sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund, but less than or equal to Forty-Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00), then JATCO shall have: (a) the Allowed JATCO Secured Claim in the amount that the value of the Assets exceeds the aggregate of the Allowed Senior Secured Claims; and (b) the Allowed JATCO Unsecured Claim for the difference between the Allowed JATCO Claim and the Allowed Secured JATCO Claim.</p> <p>In this event, the Diocese shall have a non-assignable option to purchase Debtor’s residual interest in the Property at the expiration of the BGHS Lease (the “<u>Diocese Option</u>”) for the amount that the value of the aggregate of all of Debtor’s Assets exceeds the sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund, but in no event more than Nine Million and No/100 Dollars (\$9,000,000.00) (the “<u>Additional Diocese Funding Amount</u>”). The Diocese shall have the right, but not the obligation, in its sole and absolute discretion, to exercise the Diocese</p> | |

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|-------|-------------|--|---|
| | | <p>Option at any time after the Bankruptcy Court renders its valuation up to and including the date of the Confirmation Hearing (the “<u>Diocese Option Period</u>”). For avoidance of doubt, the Additional Diocese Funding Amount, if any, will be in addition to any other funding that the Diocese is required to provide under the Diocese Plan Support Agreement.</p> <p>If the Diocese fails to exercise the Diocese Option during the Diocese Option Period, then: (a) the Diocese shall be deemed to have waived its right to exercise the Diocese Option and shall have no further right to purchase Debtor’s residual interest in the Property; and (b) Debtor shall seek dismissal of the Chapter 11 Case on terms acceptable to the Bankruptcy Court, including the payment of Allowed Administrative Claims. JATCO shall receive on the Effective Date, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO Secured Claim: (a) the JATCO Fund; and (b) the Additional Diocese Funding Amount, if any, but only in the event that the Diocese exercises the Diocese Option; <i>provided, however</i>, that JATCO shall be entitled to receive (i) the portion of the JATCO Fund that is attributable to the Additional Rent and (ii) the Additional Diocese Funding Amount, if any, only in the event that JATCO elects to grant the Consensual Diocese Release. The Allowed JATCO Unsecured Claim shall be included in Class 7, and JATCO shall receive, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO Unsecured Claim, the treatment provided to Allowed General Unsecured Claims in Class 7 (including, for the avoidance of doubt, the option to grant the Consensual Diocese Release).</p> <p>(IV) In the event that the Bankruptcy Court determines that the JATCO Liens are not Avoidable and values the aggregate of all of Debtor’s Assets at an amount that is greater than Forty-Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00), then Debtor shall seek dismissal of the Chapter 11 Case on terms acceptable to the Bankruptcy Court,</p> | |

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|----------------|---------------------------------|---|---|
| | | <p>including the payment of Allowed Administrative Claims.</p> <p><i>Class 6 is Impaired. Therefore, the Holder of the Class 6 JATCO Claim is entitled to vote to accept or reject this Plan.</i></p> | |
| Class 7 | General Unsecured Claims | <p>Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed General Unsecured Claim, its Pro Rata portion of: (a) the GUC Fund; (b) the JATCO Fund, in the event that the Bankruptcy Court determines that the JATCO Liens are Avoidable and/or values the aggregate of all of Debtor's Assets at an amount that is equal to or less than the aggregate of the Allowed Senior Secured Claims; and/or (c) the JATCO Fund Excess, if any, in the event that the Bankruptcy Court determines that the JATCO Liens are not Avoidable and values the aggregate of all of Debtor's Assets at an amount in excess of the aggregate of the Allowed Senior Secured Claims, but less than the sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund; <i>provided, however</i>, that only those Holders of Allowed General Unsecured Claims (including, for the avoidance of doubt, the Allowed JATCO Unsecured Claim) that elect to grant the Consensual Diocese Release shall be entitled to receive their pro rata share of the JATCO Fund or the JATCO Fund Excess (if any) that is attributable to the Additional Rent.</p> <p><i>Class 7 is Impaired. Therefore, the Holders of Class 7 General Unsecured Claims are entitled to vote to accept or reject this Plan.</i></p> | \$973,062.00 |
| Class 8 | Donor Claims | <p>If a Donor votes to accept the Plan, then that Donor's Donor Funds will become Authorized Donor Funds and that Authorizing Donor will not receive or retain any property on account of its Class 8 Donor Claim. If a Donor votes to reject the Plan, then that Donor's Allowed Donor Claim shall be included in Class 7, and that Donor shall receive, in full satisfaction, settlement, release and discharge of and in exchange for its Donor Claim,</p> | \$2,266,577.00 |

| Class | Description | Treatment | Estimated Amount of Claims ¹ |
|----------------|------------------|---|---|
| | | <p>the treatment provided to Allowed General Unsecured Claims in Class 7 (including, for the avoidance of doubt, the option to grant the Consensual Diocese Release).</p> <p><i>Class 8 is Impaired. Therefore, the Holders of Class 8 Donor Claims are entitled to vote to accept or reject this Plan.</i></p> | |
| Class 9 | HHP Claim | <p>The Reorganized Debtor shall continue to comply with the Development Declarations which shall remain in full force and effect, and HHP shall retain its Lien on the Property.</p> <p><i>Class 9 is Unimpaired. Therefore, the Holder of the Class 9 HHP Claim is not entitled to vote to accept or reject this Plan.</i></p> | Unliquidated |

Section B. Debtor's Principal Assets And Indebtedness

(1) Property

BGDC acquired the Property from Howard Hughes Properties, Inc. (“HHP”) in 2003 and 2011. The Property is subject to use restrictions set forth in that certain Declaration of Development Covenants and Restrictions, recorded December 19, 2003 (the “2003 Declaration”) and that certain Declaration of Development Covenants and Restrictions, recorded March 15, 2011 (the “2011 Declaration”) and together with the 2003 Declaration, the “Declarations”).

The 2003 Declaration encumbers the original portion of the Property acquired by BGDC in 2003 and the 2011 Declaration encumbers the additional portion of the Property acquired by BGDC in 2011, upon expansion of the School. The two parcels were consolidated into a single parcel in 2011. Certain of the restrictions set forth in the Declarations are summarized below:²

a. Recital C of the 2003 Declaration requires that the Property must be used exclusively for the construction, development and operation of a private, non-profit, Roman Catholic college

² This summary is provided for the convenience of the reader. To the extent of any inconsistency between this summary and the Declarations, the Declarations shall control.

1 preparatory high school (the “Purpose”).³ Recital D of the 2003 Declaration states that the price paid
2 by BGDC for the purchase of the Property from HHP would otherwise have been substantially
3 higher had the Property not been sold subject to the restrictive covenants limiting its use to the
4 Purpose. Recital E and Recital F of the 2011 Declaration are to the same effect.

5 b. Sections 2.1 and 6.1 of both Declarations state that all of the restrictive covenants in
6 the Declarations (“Restrictions”) shall run with the Property. Thus, should a third party acquire title
7 to the Property, that party would also be bound by the Restrictions.

8 c. Section 5.1 of both Declarations provides that the Property shall be used, developed,
9 maintained and operated only for the Purpose and the owner shall be permitted to conduct all
10 operations and uses that are standard and customary to the operation and development of such
11 Purpose. Thus, if a third party acquired the Property, such party’s use would also be restricted to the
12 Purpose.

13 d. Section 5.4 of both Declarations restricts subdivision of the Property. Thus, neither
14 BGDC nor any subsequent owner of the Property would be able to subdivide the Property without
15 HHP’s consent and approval. This Restriction substantially impairs future development of the
16 Property.

17 e. Upon a breach of any of the Restrictions, HHP may enforce any one or more
18 applicable remedy under the Declarations or available at law or equity at its sole option and
19 discretion, including the right to enter into the Property and remove any nonconforming use that is
20 inconsistent with the Purpose.

21 f. Section 7.1(d) of the 2003 Declaration provides that a default occurs under the
22 Declarations if the Property is occupied by any person other than the owner at any time during the 15
23 years following the date on which the Declarations were recorded.

24
25
26 ³ JATCO has taken the position that under N.R.S. § 111.237, the Purpose may not be enforceable as
27 a result of the reference to the Roman Catholic religion. The Debtor disagrees, but, in any event, the
28 Debtor believes N.R.S. § 111.237 would not nullify the balance of the Purpose, which requires that
the Property be used for a private, non-profit college preparatory high school.

1 g. Section 8.1 of the 2003 Declaration provides that, unless approved by HHP, BGDC
2 shall not sell, lease, transfer, exchange, or otherwise dispose of or convey its interest in the Property
3 for a period of 15 years following substantial completion of certain required improvements on the
4 Property. Section 8.1 of the 2011 Declaration provides for a similar covenant to hold. Under both
5 Declarations, upon the occurrence of a conveyance in violation of Section 8.1, BGDC shall pay to
6 HHP as “Price Participation” for the Property, an amount equal to 100% of the excess of the
7 consideration received by BGDC for the sale of the Property over the “Base Price” of the Property.
8 Base Price means the sum of cash paid by BGDC to Hughes plus all costs and expenses actually and
9 reasonably incurred by BGDC in development of the Project.

10 h. As an alternative to any other remedy for a violation of the Declarations, HHP may,
11 pursuant to Article 9, elect to be paid an “additional purchase price” equal to the then highest market
12 value of the Property minus the original price paid by BGDC to purchase the Property. Pursuant to
13 Section 8.2 of both Declarations, HHP may also elect to be paid such additional purchase price in the
14 case of an authorized conveyance of the Property.

15 i. In the event there is any proposed conveyance of the Property, HHP would have the
16 option to reacquire the Property pursuant to a formula set forth in Article 10 of the Declarations. The
17 repurchase price would be the amount of cash originally paid by BGDC, plus the (a) lower of actual
18 direct costs incurred by BGDC in constructing the Usable Improvements, as defined in the
19 Declarations, on the Property, or (b) the fair market value of such Usable Improvements, minus all
20 advances made by HHP under the Declarations. Therefore, should a third party acquire the Property,
21 HHP could invoke its right to repurchase the Property.

22 j. Section 11.1 of both Declarations contains a right of first refusal in favor of HHP.
23 This right extends for 25 years from the recording of each Declaration.

24 **(2) 2011 Expansion**

25 In 2011, BGHS desired to expand. Accordingly, BGDC acquired about 16 additional acres
26 from HHP adjacent to the existing School on which to construct, among other things, an athletic
27 training facility and the northern expansion of the School (the “2011 Expansion”). BGDC obtained
28 donations from Donors to fund the 2011 Expansion. The donations were evidenced by, among other

1 things, Charitable Contribution Agreement(s) and/or letter(s) of intent. The donations were
2 conditioned on being used in connection with the 2011 Expansion. The initial donations were used to
3 acquire the land and the additional donations were used to pay the 2011 Construction Loan
4 (described below) and for other purposes related to the 2011 Expansion.

5 **(3) BGHS Lease**

6 As indicated, BGDC owns the Property where BGHS is located. Debtor has a rental lease
7 agreement dated as of December 1, 2011⁴ with the Diocese, pursuant to which the Diocese leases the
8 Property from Debtor and operates BGHS thereon through a distinct canonical entity. The separate
9 ownership and leasing structure between the Debtor and the Diocese was adopted at the insistence of
10 donors, actual and prospective (including the long-time, former president of JATCO, Tito Tiberti),
11 based on their concerns that the Diocese might be subject to substantial tort claims wholly unrelated
12 to the Project that would place the solvency of the Diocese at risk. The donors did not want the funds
13 raised for the construction of the School, to which they expected to contribute millions of dollars, to
14 be exposed to the potential claims of the Diocese's creditors.

15 The initial monthly rent under the BGHS Lease was \$136,250 (or \$1,635,000 per year),
16 subject to adjustment in accordance with the terms of the BGHS Lease. The BGHS Lease expires in
17 November 2061. The BGHS Lease is a true "triple net" lease that provides for the Tenant to assume
18 and perform all duties and obligations with relation to the Property and the use, operation, and
19 maintenance thereof, including the payment of assessments, capital repairs and replacements, and
20 taxes.

21 **(4) Other Assets**

22 Debtor's Assets are identified in its bankruptcy schedules and discussed below.

23 **Section C. Effectiveness of the Plan.**

24 In order for the Plan to become effective, it must be confirmed by the Bankruptcy Court and
25 certain other conditions set forth in Section 7.1 of the Plan must be satisfied. In order for the
26

27 ⁴ This replaced an earlier Lease dated February 8, 2006. The terms of the 2006 Lease were
28 materially similar to the terms of the BGHS Lease.

1 Bankruptcy Court to confirm the Plan, the Plan must satisfy certain requirements of the Bankruptcy
2 Code.

3 Once the conditions to the Plan's effectiveness have occurred, the Plan will be implemented
4 according to its terms.

5 **ARTICLE II**

6 **BACKGROUND**

7 **Section A. Legal Structure**

8 BGDC is a Nevada non-profit corporation. The Diocese is its sole member, however BGDC
9 is governed by a board of directors. The manager of the corporation is the Diocese with power to
10 appoint the board of directors, historically the majority of whom are not Diocesan personnel.⁵ BGDC
11 was formed for the specific purposes of acquiring and owning the Property, constructing the School,
12 and leasing it to the Diocese consistent with the covenants and restrictions that encumber the
13 Property. BGDC maintains its own corporate formalities, including, among other things, maintaining
14 separate bank accounts,⁶ undergoing separate audits (conducted by a different accounting firm from
15 the firm employed by the Diocese),⁷ submitting separate and independent reports to the IRS and
16 preparing independent financial statements.⁸

17 **Section B. Events Leading Up To The Chapter 11 Case**

18 **(1) Initial Construction**

19 The Property was purchased and the School constructed with a combination of donated and
20 borrowed funds. The borrowing included sums from the sale of \$15,496,176.00 in bonds issued by
21 Clark County, a political subdivision of the State of Nevada (the "County") in 2005, with financial
22 support via a letter of credit and a construction and bridge loan from Allied Irish Bank. The School

23 ⁵ The current members of the board of directors are The Most Reverend Joseph A. Pepe (the Roman
24 Catholic Bishop of Las Vegas), Michael Gaughan, Deacon Aruna Silva, and Lorenzo J. Fertitta. The
25 Bishop did not join the board until following the passing of Frank Fertitta in 2009.

26 ⁶ Arbitration Transcripts, Vol. I, J. Kilduff, 102:9–11.

27 ⁷ Arbitration Transcripts, Vol. I, A. Silva.

28 ⁸ Arbitration Transcripts, Vol. I, A. Silva, 117:1–15; Arbitration Transcripts, Vol. III, H. Sanman,
400:19–401:5

1 was constructed and originally leased to the Tenant by a Lease dated February 8, 2006, which was
2 later replaced by the BGHS Lease.

3 **(2) Bond Debt**

4 As part of refinancing the Allied Irish Bank obligations, the County and The Bank of New
5 York Mellon Trust Company, N.A., a national banking association duly organized and existing
6 under the laws of the United States of America, as trustee (the "Trustee"), entered into and are
7 parties to the Indenture of Trust, dated as of December 1, 2011 (as amended, modified and/or
8 supplemented from time to time, the "Indenture").

9 The County issued the "Clark County, Nevada Variable Rate Demand Economic
10 Development Refunding Revenue Bonds (Bishop Gorman High School Project) Series 2011" in the
11 principal amount of \$25,000,000 (the "Bonds") pursuant to the Indenture. The proceeds of the Bonds
12 were loaned to BGDC, pursuant to a loan agreement between the County and BGDC dated as of
13 December 1, 2011 (the "Credit Documents").

14 BGDC used the proceeds of the Bonds to, among other things, refinance the Allied Irish
15 Bank obligations and for construction and other costs related to the North expansion of the School.

16 **(3) Bank of America – Bond Support**

17 In order to provide credit and liquidity support for the Bonds, Bank of America issued the
18 Irrevocable Transfer Direct Pay Letter of Credit No. 3118248 (as amended, supplemented and/or
19 modified from time to time, the "Letter of Credit") to the Trustee for the account of BGDC. The
20 Letter of Credit authorizes Trustee, among other things, to make one or more draws on Bank of
21 America, up to an aggregate of \$25,320,548.00 (as reduced and reinstated from time to time, the
22 "Letter of Credit Amount"). Of the total Letter of Credit Amount, \$25,000,000.00 would be in
23 respect of the principal amount of the Bonds and the balance of \$320,548.00 would be in respect of
24 interest on the Bonds.

25 In connection with issuance of the Letter of Credit and certain other financial
26 accommodations provided by Bank of America to BGDC, BGDC, the Diocese as Guarantor and
27 Bank of America entered into that certain Letter of Credit and Reimbursement Agreement, dated as
28 of December 1, 2011 (as amended, supplemented and/or modified from time to time, the

1 “Reimbursement Agreement”).

2 Pursuant to the Reimbursement Agreement, BGDC is required, among other things, to
3 reimburse Bank of America for any amounts paid by Bank of America pursuant to the terms of the
4 Letter of Credit.

5 BGDC and Bank of America entered into that certain interest rate swap transaction, effective
6 as of November 28, 2011, which transaction is subject to the terms and conditions of, or governed
7 by, that certain 2002 Master Agreement, dated as of November 28, 2011, published by the
8 International Swaps and Derivatives Association, Inc. (the “Swap Agreement”). The estimated
9 balance on the Swap Agreement on the Petition Date was \$1,720,691.

10 In order to guarantee the obligations of BGDC to Bank of America under the Reimbursement
11 Agreement and the Swap Agreement, the Diocese as Guarantor entered into that certain Continuing
12 and Unconditional Guaranty dated as of December 1, 2011 (the “Guaranty”).

13 All obligations of BGDC to Bank of America under the Reimbursement Agreement and the
14 Swap Agreement are secured by a lien perfected by a UCC-1 financing statement filed with the State
15 of Nevada Office of the Secretary of State on December 1, 2011, as Instrument Number
16 2011031777-7 (as amended, modified, continued and/or supplemented from time to time, the
17 “Reimbursement UCC”).

18 The BGHS Lease with the Tenant provides, among other things, that the Tenant shall pay to
19 BGDC rent in the amount of \$1,635,000.00 per year, payable in equal monthly installments except
20 as otherwise modified under the terms of the BGHS Lease. However, any rent due under the BGHS
21 Lease is impacted by the Indenture, such that upon any acceleration of amounts due under the
22 Indenture, the Tenant shall immediately pay to BGDC as rent under the BGHS Lease an amount of
23 money which, together with other moneys available under the Indenture, is sufficient to pay the
24 entire principal of and interest on the Bonds. Rent due under the BGHS Lease is also adjustable
25 under Section 5.2 of the Loan Agreement, Section 10 of that certain Remarketing Agreement dated
26 December 1, 2011, and Section 2.2 of the Reimbursement Agreement. Regardless of the impact of
27 the amount of rent due caused by the Indenture, BGHS is obligated to pay at least \$1,635,000.00 per
28 year under the terms of the Lease.

1 All obligations of BGDC to Bank of America under the Reimbursement Agreement and
2 Swap Agreement are secured by, among other things, that certain Deed of Trust, Assignment,
3 Security Agreement and Fixture Filing, dated as of December 1, 2011 (the “Reimbursement Deed of
4 Trust”), executed by BGDC, as grantor, to First American Title Company, as trustee, for the benefit
5 of Bank of America, as beneficiary, and recorded on December 1, 2011, as Instrument No.
6 201112010002417 in the Office of the County Recorder, Clark County, Nevada. The
7 Reimbursement Deed of Trust evidences a senior lien upon the Project and certain other assets of
8 BGDC described therein.

9 **(4) Bank of America – Construction Loan**

10 BGDC and Bank of America also entered into that certain Construction Loan Agreement
11 dated as of December 1, 2011 (the “Construction Loan Agreement”). Pursuant to the Construction
12 Loan Agreement, Bank of America issued a line of credit in the amount of \$12,500,000.00 in favor
13 of BGDC to allow BGDC to construct additional improvements to the Project (the “2011
14 Construction Loan”). As of the Petition Date, the Construction Loan had a balance of \$676,500.
15 Pursuant to an order of the Bankruptcy Court (ECF No. 51), Debtor has paid the Construction Loan
16 in full during this Chapter 11 Case.

17 **(5) Forbearance Agreement**

18 Entry of the JATCO Judgment discussed below caused a default under the obligations of
19 BGDC to the Bank. On January 11, 2017, BGDC, the Diocese as Guarantor and Bank of America
20 entered into that certain Forbearance Agreement (the “Forbearance Agreement”). Pursuant to the
21 Forbearance Agreement, in consideration of the Bank’s agreement to forbear from exercising its
22 remedies available to it as a result of the Judgment, BGDC granted Bank of America a lien in all
23 Assets of BGDC to secure repayment of all obligations of BGDC to Bank of America. On January
24 13, 2017, an amendment to the Reimbursement UCC (“Reimbursement UCC 2017 Amendment”)
25 was filed with the Nevada Secretary of State as Document Number 2017001268-4, which restated
26 the collateral description to the following: “ALL ASSETS OF DEBTOR (WHETHER NOW
27 OWNED OR HEREAFTER ACQUIRED OR ARISING), AND ALL PROCEEDS (IN
28 WHATEVER FORM OR NATURE) THEREOF” (together with all Debtor’s assets in which Bank

1 of America has an interest, lien, claim or encumbrance, including under the County UCC, the Bank
2 Reimbursement UCC, the Reimbursement Deed of Trust, the Construction Loan Deed of Trust,
3 and/or the Construction Loan Fixture Filing, the “Bank’s Collateral”).

4 **(6) BGHS**

5 The Clerics of St. Viator, a Roman Catholic religious order, in conjunction with a
6 predecessor of the Diocese, the Diocese of Reno-Las Vegas (from which the Diocese was split off in
7 1995) established the School in 1954, which operated continuously at 1801 S. Maryland Pkwy., Las
8 Vegas, until it moved to its present location in 2007. Since its inception, Debtor intended to lease
9 the Property to the Diocese to operate BGHS. Debtor entered into the BGHS Lease, Debtor’s current
10 lease with the Diocese, on or about December 1, 2011. The BGHS Lease provides for monthly rent
11 of \$136,250.00 (adjustable based upon the occurrence of certain events set forth in the BGHS
12 Lease), and the term of the BGHS Lease runs through November 2061. The BGHS Lease is a true,
13 triple-net lease under which the Tenant is obligated to make all capital repairs and replacements and
14 to pay for taxes and assessments.

15 BGHS has a long, rich history in Southern Nevada. BGHS began over sixty years ago as the
16 vision and dream of five outstanding individuals, Romy Hammes, Dorothy Hammes, Kathlyn
17 Hammes Mowbray, Bishop Robert J. Dwyer of Reno-Las Vegas, and Father John F. Brown,
18 Provincial Superior of the Clerics of St. Viator. On September 7, 1954, Bishop Gorman High School
19 opened its doors as the only Catholic high school in Southern Nevada. BGHS has been providing the
20 only Catholic college preparatory education to Las Vegas students for 63 years on the Project
21 property it now leases from the Debtor for its educational operations. BGHS has a student population
22 of approximately 1,500 students who come to the school from 59 different middle schools in the Las
23 Vegas valley. Thirty percent of the students come to BGHS from public schools. The school is
24 tuition based; however, to ensure BGHS provides a Catholic college preparatory education to as
25 many students as possible, BGHS gave \$1.3 million in tuition assistance to 30 percent of its students
26 last year. Moreover, some students receive scholarship funds under Assembly Bill 165, the Nevada
27 Educational Choice Scholarship, which allows families within a certain income bracket to receive
28 grants from state-approved scholarship organizations.

1 BGHS is known for many of its high-quality programs, including athletics; however, the
2 School is proudest of its established, strong, and rigorous academic program. Last year, 98 percent
3 of the graduating seniors were accepted at 220 four-year colleges and universities around the country
4 and received \$27 million in scholarship offers.

5 **(7) JATCO Dispute**

6 In the early 2000's, a group of individuals comprised of major donors and supporters of
7 BGHS came together to start the process of planning and fundraising for the construction of a new
8 campus for BGHS that would ultimately become the Project. Tito Tiberti, then President of a family-
9 owned construction company, the J.A. Tiberti Construction Co., Inc. ("JATCO"), was among those
10 major donors, and he also became a member of BGDC's Board of Directors.

11 As part of the process of planning for the construction of the Project, Debtor and JATCO
12 entered into a construction agreement, which included a related addendum, for the Project's
13 construction. Pursuant to the construction agreement, JATCO agreed to build the School and to
14 charge BGDC only for its costs, foregoing any profit. Debtor paid JATCO approximately \$54
15 million dollars pursuant to the construction agreement but was unable to pay the remaining \$20
16 million advanced by JATCO. On December 4, 2015, JATCO filed a Complaint in the Eighth
17 Judicial District Court seeking a judicial declaration compelling arbitration and appointing an
18 arbitrator. On January 22, 2016, the Court entered an order directing the parties to proceed with
19 arbitration. Thereafter, the parties conducted an arbitration regarding their dispute in June and July
20 2016.

21 On November 11, 2016, the Arbitrator issued a Final Award (the "Award") finding in favor
22 of JATCO. The Arbitrator awarded JATCO \$20,009,787.84 in damages; reflecting a \$2,000,000
23 setoff as a result of JATCO's conduct that deprived Debtor the opportunity to obtain certain
24 financing. The Arbitrator also awarded interest in the amount of \$8,356,100.57. Finally, the
25 Arbitrator also awarded JATCO attorneys' fees in the amount of \$353,064.77 and costs in the
26 amount of \$21,711.16. The Eighth Judicial District Court confirmed the Award and directed that
27 judgment be entered in the total amount of \$28,749,663.34. Judgment was entered in this amount on
28 January 19, 2017 (the "Judgment"). The Debtor does not dispute liability for the Judgment. JATCO

1 then recorded the Judgment with the Clark County Recorder's Office against certain Assessor Parcel
2 Numbers.

3 After recording the Judgment, JATCO served Writs of Execution and Writs of Garnishment
4 on several entities seeking to recover funds held by such parties owed to Debtor. Among the assets
5 that JATCO took action against were funds held in trust by Debtor in bank accounts with Bank of
6 America that were contributed by certain of BGDC's major donors for specific, restricted purposes,
7 namely the 2011 Expansion. JATCO also garnished all funds of BGDC on deposit with Bank of
8 America, leading to defaults on the Reimbursement Agreement and related documents. JATCO's
9 actions in seeking to enforce the Judgment severely limited BGDC's access to cash and necessitated
10 the filing of the Chapter 11 Case.

11 **ARTICLE III**

12 **CHAPTER 11 FILING**

13 **Section A. Bankruptcy Filing**

14 BGDC filed its chapter 11 petition on April 17, 2017.

15 **Section B. Initial Filings and Developments**

16 In its initial filings with this Court, Debtor sought and obtained an extension of the deadline
17 to file its bankruptcy schedules;⁹ sought and obtained relief from the ordinary requirements with
18 respect to debtor in possession bank accounts,¹⁰ in cooperation with the office of the United States
19 Trustee (UST); sought and was denied on an emergency basis authority to use cash collateral;¹¹ and
20 obtained expedited hearings with respect to these initial motions. Thereafter, pursuant to a
21 stipulation with JATCO, the Bankruptcy Court approved an agreement among JATCO, the Diocese,
22 Bank of America and BGDC concerning use of cash collateral and adequate protection.¹² Under the
23 cash collateral order, BGDC is authorized to use funds in its bank accounts, and to collect and use

24 _____
25 ⁹ ECF 45.

26 ¹⁰ ECF 11, 52. As requested by the Bankruptcy Court, BGDC provided a summary explanation of its
27 bank accounts by account number and purpose.

28 ¹¹ ECF 12, 44.

¹² ECF 50, 51.

1 rent payments from the Tenant, to pay expenses pursuant to a budget filed with the Bankruptcy
2 Court, with reasonable adjustments. That budget includes payments to third-party accountants as
3 approved by the Bankruptcy Court for audit preparation and financial statement preparation;
4 ordinary course obligations due under the County Loan Agreement, Reimbursement Agreement,
5 Swap Agreement, Remarketing Agreement between BGDC and Zion's First National Bank as
6 remarketing agent, dated as of December 1, 2011, and to rating agencies in connection with the
7 Bonds. Further, BGDC is authorized to pay periodic payments due on the 2011 Construction Loan,
8 miscellaneous bank maintenance fees, and periodic US Trustee Fees.

9 After BGDC filed its bankruptcy required schedules of assets and liabilities and statement of
10 financial affairs, BGDC sought Bankruptcy Court authority to: employ Greenberg Traurig, LLP as
11 special litigation counsel;¹³ employ Wallace Neumann & Verville, LLP as accountants;¹⁴ to enter
12 into post-petition financing pursuant to Bankruptcy Code § 364 to borrow up to \$500,000 from
13 Service Campaign Corporation, a Nevada non-profit corporation (the "DIP Lender"), which is an
14 affiliate of the Diocese;¹⁵ and to employ Fox Rothschild, LLP as counsel to the debtor in
15 possession.¹⁶ These motions were all granted.

16 **Section C. Other Important Events**

17 **(1) Repurchase and Remarketing of Bonds**

18 Since the bankruptcy filing, information was provided to the public bondholders. In response,
19 the Bonds were tendered for purchase, and were purchased by Bank of America as Bank Bonds
20 within the meaning of Section 2.9 of the Reimbursement Agreement. Thereafter, the Bank Bonds
21 were remarketed by the Remarketing Agent in whole.

22 ¹³ Application For Order Authorizing Retention And Employment Of Greenberg Traurig, LLP, As
23 Special Litigation Counsel Nunc Pro Tunc To The Petition Date [ECF No. 85].

24 ¹⁴ Application For Order Authorizing The Employment And Retention Of Wallace Neumann &
Verville, LLP As Accountant For Debtor To Provide Auditing Services [ECF No. 89].

25 ¹⁵ Motion For Final Order Pursuant To 11 U.S.C. §§ 105, 364, Fed R. Bankr. P. Rule 4001(c) And
26 L.R. 4001(b) And (c): (I) Authorizing Debtor To Obtain Post-Petition Financing; (II) Granting
Related Relief [ECF No. 93].

27 ¹⁶ Application For Order Authorizing Retention And Employment Of Fox Rothschild LLP As
28 Debtor's Counsel, Nunc Pro Tunc To The Petition Date [ECF No. 76].

1 **(2) Meeting of Creditors**

2 The meeting of creditors pursuant to Bankruptcy Code section 341 was held on May 25,
3 2017.

4 **(3) JATCO Adversary Proceeding**

5 The trial in the JATCO Adversary Proceeding was conducted on March 19th and 20th, 2018.
6 The Parties filed their closing briefs on April 4, 2018 (Adv. ECF Nos. 242 and 243) and the
7 Bankruptcy Court entertained oral argument on April 24, 2018. The Bankruptcy Court took the
8 matter under submission.

9 The primary issues at trial were (1) whether the Debtor was insolvent at the time the transfers
10 to JATCO occurred and (2) whether, as a result of the transfers, JATCO received more than it would
11 have if BGDC had filed a chapter 7 bankruptcy. Thus, the outcome of the adversary proceeding will
12 largely turn on the Court's determination of the fair market and liquidation values of Debtor's
13 Assets.

14 **(4) The Court-Ordered Settlement Conference in the JATCO Adversary Proceeding**

15 At the September 20, 2017 hearing on Debtor's motion seeking an extension of the exclusive
16 filing and solicitation periods (ECF No. 169) and JATCO's opposition thereto (ECF No. 180),
17 Debtor's counsel advised the Bankruptcy Court that a settlement conference may be of assistance to
18 the parties in their efforts to resolve the issues raised in the JATCO Adversary Proceeding without
19 the need for further litigation. In response, JATCO's counsel agreed with Debtor's counsel's
20 suggestion, and the Bankruptcy Court entered its *Order Scheduling Settlement and Status*
21 *Conference* on October 13, 2017 (the "Settlement Conference Order") (ECF No. 35). Pursuant to the
22 terms of the Settlement Conference Order, a two-day settlement conference was scheduled to take
23 place in Reno, Nevada on November 8 & 9, 2017 before the Honorable Gregg W. Zive, United
24 States Bankruptcy Judge. (*Id.* at pg. 1 of 4). The Debtor, JATCO, and the Diocese participated in the
25 settlement conference. The settlement conference ended after one day, and the parties did not reach a
26 settlement.

27 The Court has ordered the Debtor, JATCO, and the Diocese to attend a second settlement
28 conference which will take place on June 11 and 12 before the Honorable Gregg W. Zive. *See*

1 *Order Scheduling Settlement and Status Conference* on March 23, 2018 (the “Second Settlement
2 Conference Order”) (ECF No. 413).

3 **(5) Debtor’s Expert Evidentiary Support for Valuation and Insolvency Positions**

4 As discussed below, evaluation of Debtor’s Plan and whether to vote to accept Debtor’s Plan
5 hinges on the fair market and liquidation values of the Debtor’s Assets, the largest of which is its
6 interest in the Property. The Debtor’s appraiser, Gregory G. Gotthardt of FTI Consulting, Inc.
7 (“Gotthardt”), has appraised both the fair market and liquidation values of the Debtor’s leased fee
8 interest in the Property at \$8,650,000, taking into consideration the effect of the “Repurchase
9 Option,” among the Restrictions established by the Declarations in favor of Hughes, discussed in
10 detail below. Absent a negotiated agreement with HHP, the \$8,650,000 Repurchase Option price
11 represents the highest potential gross proceeds for the Property. Any sale transaction to a third-party
12 would require a negotiated agreement with HHP prior to consummation. Additionally, in the less
13 likely hypothetical scenario in which an agreement with HHP is reached to limit HHP’s rights under
14 the Declarations to the exercise of its “Price Participation” and “Additional Purchase Price”
15 remedies (but not its more favorable Repurchase Option remedy), then Gotthardt estimates that the
16 liquidation value of the Property would be \$12,500,000. Finally, as a further hypothetical, Gotthardt
17 appraised the fair market value of the Debtor’s leased fee interest in the Property at \$25,650,000, and
18 the liquidation value of the Debtor’s leased fee interest in the Property at \$21,615,000, both without
19 taking into consideration the Restrictions. The Debtor believes the Declarations impact the value of
20 the Property and would continue to bind any proposed purchaser of the Property, and thus believes
21 that any valuation of the Property must consider the Restrictions. A copy of the Appraisal is
22 attached hereto as **Exhibit D**.

23 The Debtor’s solvency expert, Michael A. Tucker of FTI Consulting, Inc. (“Tucker”), has
24 reported that the fair market value of the Debtor’s liabilities (\$59,798,832, including the JATCO
25 Claim) exceeded the fair market value of BGDC’s Assets (\$36,518,853, even including Gotthardt’s
26 hypothetical \$25,650,000 for the Debtor’s leased fee interest in the Property without taking into
27 consideration the Restrictions) on the dates that JATCO obtained the JATCO Liens. Thus rendering
28 the Debtor insolvent. Tucker has also concluded that, as a result of the JATCO Judgment, the

1 Debtor was unable to pay its debts as they became due as of January 19, 2017.

2 **Solvency.** As noted above, Tucker has concluded that, as a result of the JATCO Judgment,
3 the Debtor was insolvent because its liabilities exceeded the fair value of its Assets (the balance
4 sheet test) and because it was unable to pay its debts as they became due (on a cash flow basis).
5 JATCO did not designate a solvency expert or rebuttal solvency expert, and the only “evidence”
6 JATCO has offered to rebut the section 547(f) presumption of insolvency and Tucker’s opinion is
7 that, based upon Mr. DiFederico’s appraisal, the Debtor’s Assets exceed its liabilities by
8 \$65,201,168.

9 The Debtor is confident that the Bankruptcy Court will find that it was insolvent on the dates
10 that JATCO obtained the JATCO Liens.

11 **(6) Diocese’s Adversary Proceeding**

12 On December 8, 2017, the Diocese filed a complaint for declaratory relief against JATCO
13 and the Debtor (the “Diocese Adversary Proceeding”). On, December 29, 2017, JATCO moved to
14 dismiss the Diocese’s Adversary Proceeding. *See Motion to Dismiss Complaint with Prejudice*
15 (Adv. ECF No 7). Both the Debtor and the Diocese opposed JATCO’s Motion and the Court heard
16 oral argument on JATCO’s Motion to Dismiss on February 26, 2018. On March 1, 2018, the Court
17 entered an order dismissing the Diocese’s Adversary Proceeding without prejudice and allowing the
18 Diocese to amend its complaint. (*See Adv. ECF No. 29.*)

19 The Diocese filed its First Amended Complaint on March 14, 2018 (the “Amended Diocese
20 Adversary Proceeding”). The Diocese seeks a judgment from the Bankruptcy Court declaring that
21 the BGHS Lease is a binding obligation according to its terms, and that the BGHS Lease is and,
22 subject to performance thereof by the Diocese, will remain valid and enforceable in accordance with
23 its terms through the end of its term on November 30, 2061. The time for the named defendants,
24 including Debtor, to answer this complaint has not yet expired.

25 The Amended Diocese Adversary Proceeding does not seek to question the Judgment (which
26 is final in any event) nor take any position with respect to the JATCO Adversary Proceeding,
27 including whether JATCO’s liens are avoidable. Rather, the Diocese initiated the Diocese’s
28 Adversary Proceeding because the dispute between BGDC and JATCO threatens to adversely affect

1 the School as a result of JATCO's claim that the BGHS Lease is not enforceable according to its
2 terms. The Diocese disputes this contention and believes it is problematic, for multiple reasons,
3 including because JATCO might contend that the BGHS Lease's validity had been determined in the
4 JATCO Adversary Proceeding. The Debtor and the Diocese believe that the validity of the BGHS
5 Lease cannot be determined in the JATCO Adversary Proceeding. Accordingly, the Amended
6 Diocese' Adversary Proceeding seeks to resolve this dispute as to the validity of the BGHS Lease
7 and to assure that the Diocese's rights are not determined in its absence in the JATCO Adversary
8 Proceeding.

9 JATCO filed its *Motion to Dismiss Amended Complaint with Prejudice* on April 5, 2018.
10 See Adv. ECF No. 42. HHP also filed its Motion to Dismiss. See Adv. ECF No. 47. Both Motions
11 are currently scheduled to be heard on June 18, 2018 at 1:30 p.m.

12 **(7) JATCO's Motion to Appoint a Trustee and Classification Motion**

13 On December 29, 2017 JATCO filed its *Motion For an Order Appointing a Chapter 11*
14 *Trustee* ("Trustee Motion") (ECF No. 251). The Debtor, the Diocese, and Bank of America each
15 filed its oppositions to JATCO's Trustee Motion (ECF Nos. 335, 330, and 348 respectively) and
16 JATCO filed its Omnibus Reply (ECF No. 372). The Court heard oral argument on the matter on
17 March 2, 2018 and took the matter under submission.

18 Also on January 29, 2018, JATCO filed its *Amended Motion Pursuant to Fed. R. Bankr. P.*
19 *3013 Determining Classification and Impairment of Claims* ("Classification Motion") seeking an
20 order determining that Debtor did not properly classify or impair its claims in Debtor's First
21 Amended Chapter 11 Plan of Reorganization Dated December 27, 2017 ("First Amended Plan").
22 The Debtor, the Diocese, and Bank of America each filed oppositions to the Classification Motion
23 (ECF Nos. 346, 329, and 349) and JATCO filed its reply (ECF No. 369). The Court heard oral
24 argument on March 2, 2018 and also took the matter under submission. Debtor asserts that the
25 Classification Motion is moot as the Debtor has filed its Second Amended Plan Dated April 27, 2017
26 (ECF No. 459).

1 **Section D. Case Administration**

2 **(1) Continuation as Debtor in Possession**

3 Debtor remains in control over its Assets as debtor in possession pursuant to Bankruptcy
4 Code section 1108 absent further order of the Bankruptcy Court. Debtor is authorized to continue to
5 operate day-to-day in the ordinary course of business without Bankruptcy Court approval.

6 **(2) Compliance With Statutory Requirements**

7 The Bankruptcy Code imposes certain reporting and compliance requirements on chapter 11
8 debtors in order to provide transparency and disclosure regarding their financial affairs both before
9 and during the course of the chapter 11 case. At the outset of the case, a debtor must: (1) file
10 Schedules of Assets and Liabilities; (2) file a Statement of Financial Affairs; (3) attend a meeting of
11 creditors under Bankruptcy Code section 341(a); and (4) provide certain initial financial information
12 to the UST, followed by additional post-petition reporting to the UST on a monthly basis. With the
13 goal of a smooth and expeditious resolution of the Chapter 11 Case, Debtor has fully and timely
14 complied with these requirements, including as follows:

15 **(i) Schedules of Assets and Liabilities**

16 For a chapter 11 debtor, the Schedules of Assets and Liabilities must include:

- 17 • Schedule A: Real Property Assets
- 18 • Schedule B: Personal Property Assets
- 19 • Schedule D: Secured Claims
- 20 • Schedule E: Priority Claims
- 21 • Schedule F: Unsecured Claims
- 22 • Schedule G: Executory Contracts and Unexpired Leases
- 23 • Schedule H: CoDebtors

24 Debtor filed its Schedules of Assets and Liabilities on May 17, 2017.¹⁷ Debtor amended its
25 schedules of Assets & Liabilities on July 12, 2017.¹⁸

26 _____
27 ¹⁷ ECF No. 80.

28 ¹⁸ ECF No. 148.

1 The Schedules identify Debtor's Assets. As a result of writs of garnishment served before the
2 Petition Date, BGDC's funds at Bank of America were frozen. On the petition date these were
3 \$4,016,033.14 in account ending in 6059 (includes donated restricted and unrestricted funds),
4 \$485,326.20 in account ending in 5127, and \$908,894.08 in account ending in 4652. BGDC had
5 \$138,696.86 in deposits.

6 The Schedules also identify Debtor's other Assets. The Diocese owed money to BGDC prior
7 to the Petition Date and subsequently executed an Unsecured Promissory Note on May 9, 2017 in
8 the original principal amount of \$4,859,567.42 (the "Diocese Note") to reflect that prepetition
9 obligation. In connection with Debtor's efforts to discharge its fiduciary duties to creditors and prior
10 to the commencement of Debtor's Chapter 11 Case, Debtor made demand upon the Diocese to remit
11 payment of the amount of outstanding indebtedness that was ultimately reflected in the Diocese
12 Note. The Debtor and the Diocese exchanged written correspondence to that effect on at least three
13 occasions, resulting ultimately in the parties' prepetition agreement to resolve the outstanding
14 receivable through the delivery of the Diocese Note, which the Diocese executed and delivered to
15 Debtor on or about May 9, 2017. JATCO has reserved any and all rights to contest the validity of the
16 Diocese Note and the prepetition agreement between Debtor and the Diocese in this regard.

17 In addition, Debtor may have contract and tort claims available against former officers and
18 directors of Debtor. Debtor does maintain appropriate directors and officers insurance. No such
19 claims have been asserted to date. All rights will be retained by Debtor under the Plan.

20 The Schedules also identify Debtor's liabilities, principally Clark County assessments on the
21 Property, the \$24 million County Bond debt, the 2011 Construction Loan, the Swap Agreement, the
22 JATCO Judgment, smaller unsecured claims and the claims of donors that contributed to the
23 School's 2011 expansion.

24 **(ii) Executory Contracts And Unexpired Leases**

25 Bankruptcy Code section 365 authorizes Debtor in possession to assume, assume and assign,
26 or reject executory contracts and unexpired leases, subject to certain conditions. Generally speaking,
27 an "executory contract" is a contract under which material obligations remain to be performed by the
28 Debtor and the counterparty.

1 As listed in Schedule G, BGDC is a party to the BGHS Lease with Tenant for the School,
2 Master Lease Agreements with De Lage Landen Financial Services, and a ground lease with Golden
3 State Towers LLC for a cell tower. The leases with Tenant, De Lage Landen Financial Services and
4 the cell tower lease will be assumed.

5 **(iii) Statement of Financial Affairs**

6 The Statement of Financial Affairs contains a series of questions to be completed by the
7 Debtor regarding various financial and corporate matters. The Debtor must provide information
8 regarding their income, payments to creditors, pending litigation, shareholders, and officers and
9 directors, among other items.

10 Debtor filed its Statements of Financial Affairs on May 17, 2017.¹⁹ Debtor filed its
11 Amended Statements of Financial Affairs on July 12, 2017.²⁰ Copies are on file with the Clerk of the
12 Court and available from Debtor's counsel.

13 **(iv) Office Of The United States Trustee Reporting.**

14 At the outset of a chapter 11 case, the UST requires a debtor in possession to provide certain
15 initial information regarding insurance coverage and other matters, which Debtor has done. The UST
16 also requires the debtor in possession to provide monthly post-petition financial reporting in a format
17 determined on a case-by-case basis. Debtor has timely filed its monthly operating reports since the
18 bankruptcy filing. Copies are on file with the Clerk of the Court and available from Debtor's
19 counsel.

20 **(v) Employment of Professionals**

21 The Bankruptcy Code has certain requirements for the employment and compensation of
22 professionals at the expense of a debtor's estate. In compliance with these requirements, Debtor filed
23 applications for approval to employ certain professionals.

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¹⁹ ECF No. 81.

28 ²⁰ ECF No. 148.

1 As recited above, Debtor has sought Bankruptcy Court approval for retention of Fox
2 Rothschild LLP as Debtor's general bankruptcy and reorganization counsel; Greenberg Traurig, LLP
3 as special litigation counsel; Wallace Neumann & Verville, LLP as accountants, and FTI Consulting,
4 Inc., to provide real estate valuation and consulting services. Each firm will bill Debtor for its
5 services on an hourly basis, plus reimbursement of necessary expenses incurred, but payment will
6 require Court approval.

7 **(3) Exclusivity**

8 The Debtor had an initial exclusive period to file a plan of reorganization until August 15,
9 2017. On that date, the Debtor filed a motion to extend its exclusive period to file a plan of
10 reorganization. JATCO opposed the motion. Before the Bankruptcy Court could hear the Debtor's
11 motion, JATCO filed its own plan of reorganization. (ECF No. 181). The Bankruptcy Court heard
12 argument on the Debtor's motion to extend exclusivity on September 20, 2017 and reserved
13 decision.

14 On October 23, 2017, the Bankruptcy Court announced its ruling in open court granting, in
15 part, Debtor's motion to extend the initial exclusivity periods for filing and soliciting acceptance of a
16 chapter 11 plan of reorganization. The Bankruptcy Court subsequently entered its order on October
17 30, 2017 granting, in part, Debtor's request to extend the exclusivity periods set forth in 11 U.S.C.
18 § 1121 (ECF No. 219). Debtor's initial period for filing a chapter 11 plan of reorganization was
19 extended through and including Monday, January 8, 2018, and the exclusive period during which
20 Debtor may solicit acceptance of a chapter 11 plan was extended to Friday, March 9, 2018. (*Id.* at
21 pg. 2 of 2).

22 On February 22, 2018 the Court entered an *Order Approving Stipulation Extending the*
23 *Solicitation Period to April 8, 2018* (ECF No 363). However, on March 16, 2018 the Court entered
24 its *Order Granting Motion for an Order Terminating the Exclusive period to Confirm the Debtor's*
25 *Chapter 11 Plan* (ECF No. 404) and its *Order Denying Motion for Further Extension of the*
26 *Debtor's Exclusive Solicitation Period* (ECF No. 405). Thus, the Debtor's exclusive periods within
27 which to file and to solicit acceptances of its Plan are terminated.

1 **ARTICLE IV**

2 **SUMMARY OF THE PLAN**

3 This section provides a summary of the structure and means for implementation of the Plan
4 and of the classification and treatment of claims under the Plan. It is qualified in its entirety by
5 reference to the Plan, which is annexed to this disclosure statement as **Exhibit A** and which shall
6 control in the event that it varies from the terms of this disclosure statement.

7 **Section A. Overall Structure of the Plan and the Plan Support Agreement.**

8 Debtor's Plan is one of reorganization. The Plan provides for BGDC to retain the Property
9 and other assets and continue to lease the Property to the Diocese for operation of the School. In
10 general, the Debtor's obligations to the Bank will be reinstated pursuant to the terms of the Plan, and
11 the Plan creates the GUC Fund for the benefit of General Unsecured Creditors. Debtor expects to
12 pay holders of General Unsecured Claims no less than they would obtain in a hypothetical chapter 7
13 liquidation of the assets comprising Debtor's bankruptcy estate.

14 Allowed Administrative Claims and Allowed Priority Claims will be paid in full, in cash, on
15 the Effective Date of the Plan unless otherwise agreed. Because it is a nonprofit corporation, BGDC
16 has no equity interest to be classified and treated under the Plan.

17 The Debtor, the Diocese and the DIP Lender are parties to the Diocese Plan Support
18 Agreement,²¹ which sets forth the material terms and conditions pursuant to which the Diocese and
19 the DIP Lender agree to support and provide funding for the Debtor's Plan. Subject to the terms and
20 conditions of the Diocese Plan Support Agreement, (a) the Diocese has agreed to (i) prepay the
21 Diocese Note to the Reorganized Debtor on the Effective Date unless JATCO timely makes an
22 election under Bankruptcy Code section 1111(b); (ii) pay, on behalf of the School, the Additional
23 Rent to the Reorganized Debtor in accordance with the terms of the Amended BGHS Lease; (iii) pay
24 the Additional Administrative Funding Amount to the Reorganized Debtor on or after the Effective
25 Date as needed by the Reorganized Debtor; and (iv) only in the event the Diocese timely exercises
26 the Diocese Option, pay the Additional Diocese Funding Amount to the Reorganized Debtor on the

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1 Effective Date and (b) the DIP Lender has agreed to defer the Debtor's obligation to repay the DIP
2 Loan until the first day of the month that is more than thirty (30) days after the seventh (7th)
3 anniversary of the Effective Date of the Plan. A true and correct copy of the Diocese Plan Support
4 Agreement shall be filed with the Plan Supplement.

5 **Section B. Classification And Treatment of Claims Under The Plan**

6 (1) **Unclassified Claims.**

7 (i) **Administrative Claims**

8 (1) Deadline to File Administrative Claims. The Holder of an
9 Administrative Claim, other than (i) the DIP Lender Claim, (ii) a Professional Fee Claim, or (iii) a
10 liability incurred and paid in the ordinary course of business by the Debtor, must file with the
11 Bankruptcy Court and serve on Debtor and its counsel, notice of such Administrative Claim on or
12 before the Administrative Claim Bar Date. Such notice must include, at minimum, (i) the name of
13 the Holder of such Claim, (ii) the basis of the Claim, and (iii) the amount of the Claim. Failure to file
14 such notice timely and properly shall result in the Administrative Claim being forever barred and
15 discharged.

16 (2) Payment Provisions. Subject to the provisions of Bankruptcy Code
17 sections 330(a), 331 and 503(b), each Holder of an Administrative Claim shall, either:

18 (A) be paid in Cash in the Allowed amount of any such Claim from
19 the Confirmation Funds on, or as soon as reasonably practicable after, the later of (i) the Effective
20 Date, (ii) the date upon which such Administrative Claim becomes Allowed, or (iii) such date as is
21 otherwise agreed by Debtor and the Holder of such Claim; or

22 (B) have such Claim assumed by the Reorganized Debtor, to be
23 paid by Reorganized Debtor in Cash in the Allowed amount of any such Claim on, or as soon as
24 reasonably practicable after, the later of (i) the date upon which such Administrative Claim becomes
25 Allowed, (ii) the date on which such Administrative Claim becomes due in the ordinary course of
26 business, or (iii) such date as is otherwise agreed by Debtor, Reorganized Debtor and the Holder of
27 such Claim.

1 (3) DIP Lender Claim. The DIP Lender Claim will be paid in equal
2 monthly installments of principal plus interest at the rate set forth in the DIP Loan Agreement over
3 five (5) years commencing on the first day of the month that is more than thirty (30) days after the
4 seventh (7th) anniversary of the Effective Date.

5 (4) Professional Fee Claims. Notwithstanding the foregoing or anything to
6 the contrary in this Plan:

7 (A) all final applications for Professional Fee Claims constituting
8 amounts due for services rendered on or before thirty (30) days prior to the Confirmation Hearing
9 (the "Fee Cutoff Date") shall be filed no later than fifteen (15) days prior to the Confirmation
10 Hearing, and shall include an estimate of Professional Fee Claims that will arise for services to be
11 rendered between the Fee Cutoff Date and the Effective Date;

12 (B) all final applications for Professional Fee Claims constituting
13 amounts due for services rendered between the Fee Cutoff Date and the Effective Date shall be filed
14 no later than twenty (20) days after the Effective Date, unless otherwise ordered by the Bankruptcy
15 Court;

16 (C) Debtor shall pay all Allowed Professional Fee Claims upon
17 entry of an order allowing such claims

18 (5) U.S. Trustee Fees

19 (A) Debtor shall pay, or cause to be paid, all accrued U.S. Trustee
20 Fees on or before the Effective Date of the Plan; and following the Effective Date, the Reorganized
21 Debtor shall be responsible for timely payment of all U.S. Trustee Fees until such time as the Final
22 Decree closing this Chapter 11 Case is entered and all U.S. Trustee Fees due are paid in full; and

23 (B) Debtor or Reorganized Debtor (as applicable) shall File with
24 the Bankruptcy Court and serve on the United States Trustee a quarterly financial report for each
25 quarter (or portion thereof) that the Chapter 11 Case remains open in such format as reasonably may
26 be required by the United States Trustee

27 (ii) **Priority Tax Claims.**

28 Debtor estimates that there are no Priority Tax Claims.

1 **(2) Classified Claims.**

2 **Class 1 - Priority Claims**

3 There are no priority claims, other than Administrative Claims treated above.

4 **Class 2 – Bank Secured Claim**

5 Class 2 consists of the Allowed Bank Secured Claim.

6 *Treatment.* On the Effective Date, the Reorganized Debtor shall reinstate the Bank
7 Loan Agreements, as amended hereby to provide that: (i) the expiration date of the Letter of Credit
8 shall be extended from November 30, 2018 to November 30, 2020; (ii) the Bank shall have no right
9 to seek from Debtor or Reorganized Debtor interest in excess of the non-default rate or penalties that
10 accrued under the Bank Loan Agreements prior to the Effective Date; (iii) the Net Unencumbered
11 Liquid Assets covenant of Section 5.2(b) of the Letter of Credit and Reimbursement Agreement
12 requiring the Debtor and BGHS to maintain a minimum of Three Million Dollars (\$3,000,000.00) of
13 Net Unencumbered Liquid Assets shall be reduced to Two Million Dollars (\$2,000,000.00) of Net
14 Unencumbered Assets; (iv) any amendments to the Reimbursement Agreement as proposed under
15 the Plan shall not violate or constitute a breach of any of the Bank Loan Agreements; and (v) any
16 payments to be made under the Plan, agreements contemplated by the Plan, or actions proposed to be
17 taken under the Plan, including but not limited to amendment of the BGHS Lease, shall not violate
18 or constitute a breach of the Bank Loan Agreements, including but not limited to Sections 5.34 and
19 5.16 of the Reimbursement Agreement. The Bank shall retain all Liens on the Bank’s Collateral.

20 The Reorganized Debtor shall continue to make payments on the Bonds through the
21 Bank in the same manner as prepetition and the Bank shall continue to be entitled to all fees under
22 the Bank Loan Agreements.

23 *Impairment and Voting:* Class 2 is Impaired. Therefore, the Holder of the Class 2
24 Allowed Bank Secured Claim is entitled to vote to accept or reject this Plan.

25 **Class 3 – Trustee Claim**

26 Class 3 consists of the Allowed Trustee Claim,

27 *Treatment.* On the Effective Date, the Reorganized Debtor shall reinstate the Credit
28 Documents, *provided, however,* that the Trustee shall have no right to seek from Debtor or

1 Reorganized Debtor interest in excess of the non-default rate or fees, expenses and penalties that
2 accrued under the Credit Documents prior to the Effective Date. Any payments to be made under the
3 Plan, agreements contemplated by the Plan, or actions proposed to be taken under the Plan, including
4 but not limited to amendment of the BGHS Lease, shall not violate or constitute a breach under the
5 Credit Documents..

6 *Impairment and Voting:* Class 3 is Impaired. Therefore, the Holder of the Class 3
7 Trustee Claim is entitled to vote to accept or reject this Plan.

8 **Class 4- County Claim**

9 Class 4 consists of the Allowed County Claim.

10 *Treatment.* On the Effective Date, the Reorganized Debtor shall reinstate the County
11 Note, *provided, however,* that the County shall have no right to seek from Debtor or Reorganized
12 Debtor interest in excess of the non-default rate or fees, expenses and penalties that accrued under
13 the County Note prior to the Effective Date. Any payments to be made under the Plan, agreements
14 contemplated by the Plan, or actions proposed to be taken under the Plan, including but not limited
15 to amendment of the BGHS Lease, shall not violate or constitute a breach under the County Note

16 *Impairment and Voting:* Class 4 is Impaired. Therefore, the Holder of the Class 4
17 County Claim is entitled to vote to accept or reject this Plan.

18 **Class 5 – SAP Claim**

19 Class 5 consists of the Allowed SAP Claim.

20 *Treatment.* After the Effective Date, the Tenant shall assume all the Debtor's
21 obligations under the SAP and shall continue to pay the SAP Claim according to its terms until its
22 maturity, *provided, however,* that the County shall have no right to seek from Debtor or Reorganized
23 Debtor interest in excess of the non-default rate or fees, expenses and penalties that accrued under
24 the SAP prior to the Effective Date.

25 *Impairment and Voting:* Class 5 is Impaired. Therefore, the Holder of the Class 5 SAP Claim
26 is entitled to vote to accept or reject this Plan.

1 **Class 6 – JATCO Claim**

2 Class 6 consists of the JATCO Claim

3 *Treatment:* The JATCO Claim will be treated in one out of the four alternative ways
4 described below, depending on the Bankruptcy Court's: (i) determination regarding the Avoidability
5 of the JATCO Liens; and (ii) valuation of Debtor's Assets.

6 (I) In the event that the Bankruptcy Court determines that the JATCO Liens are
7 Avoidable and/or values the aggregate of all of Debtor's Assets at an amount that is equal to or less
8 than the aggregate of the Allowed Senior Secured Claims, then JATCO shall have the Allowed
9 JATCO Unsecured Claim which shall be included in Class 7, and JATCO shall receive, in full
10 satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO
11 Unsecured Claim, the treatment provided to Allowed General Unsecured Claims in Class 7
12 (including, for the avoidance of doubt, the option to grant the Consensual Diocese Release). In this
13 event, the JATCO Fund will be available for payment to Allowed General Unsecured Claims as
14 provided in Class 7 herein.

15 (II) In the event that the Bankruptcy Court determines that the JATCO Liens are not
16 Avoidable and values the aggregate of all of Debtor's Assets at an amount in excess of the aggregate
17 of the Allowed Senior Secured Claims, but less than the sum of (i) the aggregate of the Allowed
18 Senior Secured Claims and (ii) the JATCO Fund, then JATCO shall have: (a) the Allowed JATCO
19 Secured Claim in the amount that the value of the Assets exceeds the aggregate of the Allowed
20 Senior Secured Claims; and (b) the Allowed JATCO Unsecured Claim for the difference between
21 the Allowed JATCO Claim and the Allowed Secured JATCO Claim.

22 In the event that JATCO does not make an election under Bankruptcy Code
23 section 1111(b), then JATCO shall receive on the Effective Date, in full satisfaction, settlement,
24 release and discharge of and in exchange for the Allowed JATCO Secured Claim, that amount of the
25 JATCO Fund equal to the Allowed JATCO Secured Claim; *provided, however,* that JATCO shall be
26 entitled to receive the portion of the JATCO Fund that is attributable to the Additional Rent only in
27 the event that JATCO elects to grant the Consensual Diocese Release; *and provided, further,* that to
28 the extent that the JATCO Fund exceeds the amount of Allowed JATCO Secured Claim (the

1 “JATCO Fund Excess”), the JATCO Fund Excess will be available for payment to Allowed General
2 Unsecured Claims as provided in Class 7 herein. In the event that JATCO does not make an election
3 under Bankruptcy Code section 1111(b), then the Allowed JATCO Unsecured Claim shall be
4 included in Class 7, and JATCO shall receive, in full satisfaction, settlement, release and discharge
5 of and in exchange for the Allowed JATCO Unsecured Claim, the treatment provided to Allowed
6 General Unsecured Claims in Class 7 (including, for the avoidance of doubt, the option to grant the
7 Consensual Diocese Release).

8 If JATCO timely makes an election under Bankruptcy Code section 1111(b), then
9 JATCO shall receive on the Effective Date, in full satisfaction, settlement, release and discharge of
10 and in exchange for the Allowed JATCO Claim, the JATCO Secured Note. The JATCO Secured
11 Note shall be in the principal amount of the Allowed JATCO Claim, shall bear non-compounded
12 interest at the rate of 7.30% per annum (“JATCO Interest”), and shall be payable in monthly
13 installments of approximately \$56,412.00, which include principal and JATCO Interest, for
14 approximately forty-four (44) years following the Effective Date, until paid in full; *provided*,
15 *however*, that JATCO shall not be entitled to receive, as payment for the JATCO Secured Note,
16 funds attributable to the Additional Rent unless JATCO elects to grant the Consensual Diocese
17 Release

18 (III) In the event that the Bankruptcy Court determines that the JATCO Liens are not
19 Avoidable and values the aggregate of all of Debtor’s Assets at an amount that is greater than the
20 sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund, but less
21 than or equal to Forty-Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00),
22 then JATCO shall have: (a) the Allowed JATCO Secured Claim in the amount that the value of the
23 Assets exceeds the aggregate of the Allowed Senior Secured Claims; and (b) the Allowed JATCO
24 Unsecured Claim for the difference between the Allowed JATCO Claim and the Allowed Secured
25 JATCO Claim.

26 In this event, the Diocese shall have a non-assignable option to purchase Debtor’s
27 residual interest in the Property at the expiration of the BGHS Lease (the “Diocese Option”) for the
28 amount that the value of the aggregate of all of Debtor’s Assets exceeds the sum of (i) the aggregate

1 of the Allowed Senior Secured Claims and (ii) the JATCO Fund, but in no event more than Nine
2 Million and No/100 Dollars (\$9,000,000.00) (the “Additional Diocese Funding Amount”). The
3 Diocese shall have the right, but not the obligation, in its sole and absolute discretion, to exercise the
4 Diocese Option at any time after the Bankruptcy Court renders its valuation up to and including the
5 date of the Confirmation Hearing (the “Diocese Option Period”). For avoidance of doubt, the
6 Additional Diocese Funding Amount, if any, will be in addition to any other funding that the
7 Diocese is required to provide under the Diocese Plan Support Agreement.

8 If the Diocese fails to exercise the Diocese Option during the Diocese Option Period,
9 then: (a) the Diocese shall be deemed to have waived its right to exercise the Diocese Option and
10 shall have no further right to purchase Debtor’s residual interest in the Property; and (b) Debtor shall
11 seek dismissal of the Chapter 11 Case on terms acceptable to the Bankruptcy Court, including the
12 payment of Allowed Administrative Claims.

13 JATCO shall receive on the Effective Date, in full satisfaction, settlement, release and
14 discharge of and in exchange for the Allowed JATCO Secured Claim: (a) the JATCO Fund; and (b)
15 the Additional Diocese Funding Amount, if any, but only in the event that the Diocese exercises the
16 Diocese Option; *provided, however*, that JATCO shall be entitled to receive (i) the portion of the
17 JATCO Fund that is attributable to the Additional Rent and (ii) the Additional Diocese Funding
18 Amount, if any, only in the event that JATCO elects to grant the Consensual Diocese Release. The
19 Allowed JATCO Unsecured Claim shall be included in Class 7, and JATCO shall receive, in full
20 satisfaction, settlement, release and discharge of and in exchange for the Allowed JATCO
21 Unsecured Claim, the treatment provided to Allowed General Unsecured Claims in Class 7
22 (including, for the avoidance of doubt, the option to grant the Consensual Diocese Release).

23 (IV) In the event that the Bankruptcy Court determines that the JATCO Liens are not
24 Avoidable and values the aggregate of all of Debtor’s Assets at an amount that is greater than Forty-
25 Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00), then Debtor shall seek
26 dismissal of the Chapter 11 Case on terms acceptable to the Bankruptcy Court, including the
27 payment of Allowed Administrative Claims.

28

1 *Impairment and Voting:* Class 6 is Impaired. Therefore, the Holder of the Class 6
2 JATCO Claim is entitled to vote to accept or reject this Plan.

3 **Class 7- Unsecured Claims**

4 Class 7 consists of Allowed General Unsecured Claims, including the Allowed
5 JATCO Unsecured Claim, as applicable.

6 *Treatment:* Each Holder of an Allowed General Unsecured Claim shall receive, in full
7 satisfaction, settlement, release and discharge of and in exchange for such Allowed General
8 Unsecured Claim, its Pro Rata portion of: (a) the GUC Fund; (b) the JATCO Fund, in the event that
9 the Bankruptcy Court determines that the JATCO Liens are Avoidable and/or values the aggregate
10 of all of Debtor's Assets at an amount that is equal to or less than the aggregate of the Allowed
11 Senior Secured Claims; and/or (c) the JATCO Fund Excess, if any, in the event that the Bankruptcy
12 Court determines that the JATCO Liens are not Avoidable and values the aggregate of all of
13 Debtor's Assets at an amount in excess of the aggregate of the Allowed Senior Secured Claims, but
14 less than the sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO
15 Fund; *provided, however,* that only those Holders of Allowed General Unsecured Claims (including,
16 for the avoidance of doubt, the Allowed JATCO Unsecured Claim) that elect to grant the Consensual
17 Diocese Release shall be entitled to receive their pro rata share of the JATCO Fund or the JATCO
18 Fund Excess (if any) that is attributable to the Additional Rent.

19 *Impairment and Voting:* Class 7 is Impaired. Therefore, the Holders of Class 7
20 General Unsecured Claims are entitled to vote to accept or reject this Plan.

21 **Class 8 – Donors**

22 Class 8 consists of all Allowed Donor Claims.

23 *Treatment:* If a Donor votes to accept the Plan, then that Donor's Donor Funds will
24 become Authorized Donor Funds and that Authorizing Donor will not receive or retain any property
25 on account of its Class 8 Donor Claim. If a Donor votes to reject the Plan, then that Donor's
26 Allowed Donor Claim shall be included in Class 7, and that Donor shall receive, in full satisfaction,
27 settlement, release and discharge of and in exchange for its Donor Claim, the treatment provided to
28

1 Allowed General Unsecured Claims in Class 7 (including, for the avoidance of doubt, the option to
2 grant the Consensual Diocese Release).

3 *Impairment and Voting:* Class 8 is Impaired. Therefore, the Holders of Class 8 Donor
4 Claims are entitled to vote to accept or reject this Plan.

5 **Class 9- HHP Claims**

6 The Reorganized Debtor shall continue to comply with the Development Declarations
7 which shall remain in full force and effect, and HHP shall retain its Lien on the Property.

8 *Impairment and Voting:* Class 9 is Unimpaired. Therefore, the Holder of the Class 9
9 HHP Claim is not entitled to vote to accept or reject this Plan.

10 **(3) Executory Contracts Assumption.**

11 To the extent not previously assumed or rejected, the Debtor shall be deemed to have
12 assumed all of its executory contracts and unexpired leases, including the BGHS Lease, the Cell
13 Tower Lease and the De Lage Landen Master Lease Agreements.

14 **Section C. Means of Implementation of Plan.**

15 **(1) Plan Implementation.**

16 (a) This Plan shall be implemented in all respects in a manner that is consistent
17 with the terms and conditions of the Operative Documents (including the Diocese Plan Support
18 Agreement), DIP Financing Order, and the requirements of section 1123(a) and other applicable
19 provisions of the Bankruptcy Code. Disbursements under the Plan shall be funded from the
20 Confirmation Funds, which are comprised of: (i) the prepayment of the Diocese Note; (ii) the
21 Additional Rent; (iii) up to \$2,000,000 from the Diocese as needed to fund Administrative Claims
22 (the "Additional Administrative Funding Amount"); (iv) the Additional Diocese Funding Amount, if
23 any; (v) the Authorized Donor Funds; and (vi) Debtor's other Cash.

24 (b) Pursuant to the Diocese Plan Support Agreement, and to the extent required
25 thereby, the Diocese shall: (i) prepay the Diocese Note to the Reorganized Debtor on the Effective
26 Date unless JATCO timely makes an election under Bankruptcy Code section 1111(b); (ii) pay, on
27 behalf of the School, the Additional Rent to the Reorganized Debtor in accordance with the terms of
28 the Amended BGHS Lease; (iii) pay the Additional Administrative Funding Amount to the

1 Reorganized Debtor on or after the Effective Date as needed by the Reorganized Debtor; and
2 (iv) only in the event the Diocese timely exercises the Diocese Option, pay the Additional Diocese
3 Funding Amount to the Reorganized Debtor on the Effective Date. Additionally, pursuant to the
4 Diocese Plan Support Agreement and to the extent required thereby, the DIP Lender has agreed to
5 defer the Debtor's obligation to repay the DIP Loan until the first day of the month that is more than
6 thirty (30) days after the seventh (7th) anniversary of the Effective Date of the Plan.

7 (c) Accordingly, Confirmation Funds are estimated to be in the total amount of
8 approximately \$14,400,000 plus the Additional Diocese Funding Amount, if any. The JATCO Fund
9 is a subset of the Confirmation Funds in the amount of \$10,000,000 that is comprised of: (i) the
10 assignment and prepayment of the Diocese Note; (ii) the Additional Rent; and (iii) other Cash from
11 the Confirmation Funds. The GUC Fund is a subset of the Confirmation Funds that is comprised of
12 \$100,000 in other Cash from the Confirmation Funds.

13 (d) All Liens on the Debtor's bank accounts shall be void and the Debtor shall use
14 the unrestricted funds in its bank accounts to make the Confirmation Payments. Payments due after
15 the Effective Date to the Bank, the DIP Lender, and to counterparties on Assumed Contracts and
16 Leases shall be paid from the rents received by the Reorganized Debtor under the Amended BGHS
17 Lease and the Cell Tower Lease. Payments due after the Effective Date to the County on account of
18 the SAP shall continue to be paid by the Tenant directly to the County.

19 (e) The manner and amount of disbursements to Allowed Claims in Class 6 and
20 Class 7 under the Plan will vary, depending on: (a) the Bankruptcy Court's (i) determination
21 regarding the Avoidability of the JATCO Liens, and (ii) valuation of Debtor's Assets; and (b) the
22 Creditor's election to grant the Consensual Diocese Release, if applicable.

23 *First*, in the event that the Bankruptcy Court determines that the JATCO Liens are
24 Avoidable and/or values the aggregate of all of Debtor's Assets at an amount that is equal to or less
25 than the aggregate of the Allowed Senior Secured Claims, then the JATCO Fund and the GUC Fund
26 shall be available for payment of Allowed General Unsecured Claims (including, for the avoidance
27 of doubt the Allowed JATCO Unsecured Claim) in accordance with sections 2.3(e)(I) and 2.3(f) of
28 the Plan.

1 *Second*, in the event that the Bankruptcy Court determines that the JATCO Liens are
2 not Avoidable and values the aggregate of all of Debtor's Assets at an amount in excess of the
3 aggregate of the Allowed Senior Secured Claims, but less than the sum of (i) the aggregate of the
4 Allowed Senior Secured Claims and (ii) the JATCO Fund, then the JATCO Fund shall be available
5 for payment of the Allowed JATCO Secured Claim in accordance with section 2.3(e)(II) of this Plan
6 and the JATCO Fund Excess, if any, and the GUC Fund shall be available for payment of the
7 Allowed General Unsecured Claims (including, for the avoidance of doubt the Allowed JATCO
8 Unsecured Claim, if any) in accordance with sections 2.3(e)(II) and 2.3(f) of this Plan. For the
9 avoidance of doubt, in the event that JATCO timely makes an election under Bankruptcy Code
10 section 1111(b), then the JATCO Fund shall be available for payment of the Allowed JATCO Claim,
11 and in this event, the Diocese Note will be paid according to its terms and the Additional Rent shall
12 be modified, pursuant to a further amendment to the Amended BGHS Lease, as necessary to fund
13 the payments of the JATCO Secured Note in accordance with the Plan.

14 *Third*, in the event that the Bankruptcy Court determines that the JATCO Liens are
15 not Avoidable and values the aggregate of all of Debtor's Assets at an amount that is greater than the
16 sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund, but less
17 than or equal to Forty-Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00),
18 then the JATCO Fund and the Additional Diocese Funding Amount, if any, shall be available for
19 payment of the Allowed JATCO Secured Claim in accordance with section 2.3(e)(III) of this Plan
20 and the GUC Fund shall be available for payment of the Allowed General Unsecured Claims
21 (including, for the avoidance of doubt the Allowed JATCO Unsecured Claim, if any) in accordance
22 with sections 2.3(e)(III) and 2.3(f) of the Plan.

23 *Fourth*, in the event that the Bankruptcy Court determines that the JATCO Liens are
24 not Avoidable and values the aggregate of all of Debtor's Assets at an amount that is greater than
25 Forty-Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00), then Debtor shall
26 seek dismissal of the Chapter 11 Case on terms acceptable to the Bankruptcy Court, including the
27 payment of Allowed Administrative Claims, and the Diocese shall not make the contributions
28 provided for in the Diocese Plan Support Agreement.

1 *Finally*, for avoidance of doubt, (i) only those Holders of Allowed Claims in Class 6
2 or Class 7 that elect to grant the Consensual Diocese Release shall be entitled to receive any share of
3 the portion of the JATCO Fund or the JATCO Fund Excess (if any), as applicable, that is attributable
4 to the Additional Rent as provided in Sections 2.3(e) and 2.3(f) of the Plan, and (ii) in the event that
5 the Diocese exercises the Diocese Option, then JATCO shall be entitled to receive the Additional
6 Diocese Funding Amount only in the event that JATCO elects to grant the Consensual Diocese
7 Release, as provided in Section 2.3(e) of the Plan.

8 **(2) Disposition of Assets, Properties and Equity Interests.**

9 On the Effective Date, without any further action, the Reorganized Debtor will be vested
10 with all of Properties, free and clear of all Claims, and Liens (except for Liens provided or
11 authorized pursuant to the Plan).

12 **(3) Preservation of Causes of Action.**

13 Pursuant to Bankruptcy Code section 1123(b), Debtor as Reorganized Debtor shall retain and
14 reserve the right to enforce all rights to commence and pursue causes of action whether arising prior
15 to or after the Petition Date, and whether pending as of or filed after the Effective Date, in any court
16 or other tribunal. Unless a cause of action is expressly waived, relinquished, released, compromised
17 or settled in the Plan, or any Final Order, the Debtor on behalf of itself and as the Reorganized
18 Debtor expressly reserve all causes of action for later adjudication and, therefore, no preclusion
19 doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue
20 preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to any
21 causes of action upon confirmation or the Effective Date of the Plan.

22 **(4) Assumption of Liabilities.**

23 On the Effective Date, unless such Claims shall be paid on or prior to such date, Reorganized
24 Debtor shall be deemed to have assumed any Administrative Claim.

25 **(5) The Reorganized Debtor's Management.**

26 Following the Effective Date, Reorganized Debtor shall be managed by the same Persons as
27 before the Effective Date, whom shall comprise the Reorganized Debtor's Board of Directors: The
28

1 Most Reverend Joseph A. Pepe, or his successor, President; Michael Gaughan, Secretary; Deacon
2 Aruna Silva, Executive Director/Treasurer; and Lorenzo J. Fertitta, Director.

3 **(6) Exemption from Certain Transfer Taxes and Further Transactions.**

4 Pursuant to Bankruptcy Code section 1146(a), the issuance or exchange of any security, or
5 the making or delivery of any instrument of transfer under, in furtherance, or in connection with this
6 Plan, including, but not limited to, any deeds, bills of sale, assignments or other instruments of
7 transfer (including those with respect to the Property), shall not be subject to any stamp tax, real
8 estate transfer tax or similar tax.

9 **(7) Post Effective Date Fees.**

10 (a) From and after the Effective Date, the Reorganized Debtor shall, in the
11 ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay
12 any Post Effective Date Fees.

13 (b) In order to seek payment of Post Effective Date Fees, each respective
14 Professional will send its invoice to the Reorganized Debtor and the Reorganized Debtor shall have
15 ten (10) business days thereafter within which to notify the Professional in writing that it objects to
16 the invoice. If no objection is made within that time frame, Reorganized Debtor shall pay the invoice
17 within thirty (30) days thereafter. In the event the Reorganized Debtor objects and the parties are
18 unable to resolve the objection, the Professional may bring the matter before the Bankruptcy Court
19 on a motion for determination.

20 The members of Reorganized Debtor's board of directors and officers shall be as follows as
21 of the Effective Date:

22 The Most Reverend Joseph A. Pepe, President

23 Michael Gaughan, Secretary

24 Deacon Aruna Silva, Executive Director/Treasurer

25 Lorenzo J. Fertitta, Director

26 The member of the board of directors and officers shall not be entitled to compensation for
27 such service, although reasonable expenses will be reimbursed.

28

1 **Section D. Exculpation, Release, and Injunction Provisions.**

2 **(1) Exculpation.**

3 None of the Exculpees nor any of their respective Representatives shall have or incur any
4 liability to any Holder of a Claim against or Interest in Debtor, or any other party-in-interest, or any
5 of their Representatives, or any of their successors or assigns, for any act, omission, transaction or
6 other occurrence in connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of
7 confirmation of the Plan, or the consummation of the Plan, except and solely to the extent such
8 liability is based on fraud, gross negligence or willful misconduct. The Exculpees shall be entitled to
9 reasonably rely upon the advice of counsel with respect to any of their duties and responsibilities
10 under the Plan or in the context of the Chapter 11 Case. No Holder of a Claim against the Debtor, or
11 any other party-in-interest, including their respective Representatives, shall have any right of action
12 against the Exculpees or any of their Representatives, for any act, omission, transaction or other
13 occurrence in connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of
14 confirmation of the Plan, the consummation of the Plan or the administration of the Plan, except to
15 the extent arising from fraud, gross negligence or willful misconduct. Nothing in this Section shall
16 be deemed an exculpation by any Exculpator of any Exculpee or any of its Representatives for any
17 acts, omissions, transactions, events or other occurrences taking place after the Effective Date.

18 **(2) Release of the Diocese Released Parties.**

19 (a) As of the Effective Date, for good and valuable consideration, the adequacy of which
20 is hereby confirmed, Debtor and its Bankruptcy Estate hereby release, waive and forever discharge
21 the Diocese Released Parties from all Diocese Released Liabilities.

22 (b) As of the Effective Date, for good and valuable consideration, the adequacy of which
23 is hereby confirmed, each Voluntary Releasor hereby releases, waives and forever discharges the
24 Diocese Released Parties from all Diocese Released Liabilities.

25 **(3) Injunctions.**

26 (a) Injunction Protecting Exculpation of Exculpees. ALL HOLDERS OF CLAIMS
27 AGAINST THE DEBTOR AND ANY OTHER PARTIES-IN-INTEREST, ALONG WITH ANY
28 OF THEIR REPRESENTATIVES AND ANY OF THEIR SUCCESSORS OR ASSIGNS ARE

1 PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM (I)
2 COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER
3 PROCEEDING OF ANY KIND AGAINST EXCULPEES OR ANY OF THEIR RESPECTIVE
4 REPRESENTATIVES IN RESPECT OF ANY POTENTIAL LIABILITY FOR WHICH
5 EXCULPATION IS GRANTED PURSUANT TO THIS PLAN, (II) ENFORCING, ATTACHING,
6 COLLECTING OR RECOVERING BY ANY MANNER OR MEANS OF ANY JUDGMENT,
7 AWARD, DECREE OR ORDER AGAINST EXCULPEES OR ANY OF THEIR RESPECTIVE
8 REPRESENTATIVES IN RESPECT OF ANY POTENTIAL LIABILITY FOR WHICH
9 EXCULPATION IS GRANTED PURSUANT TO THIS PLAN, (III) CREATING, PERFECTING,
10 OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST EXCULPEES OR ANY
11 OF THEIR RESPECTIVE REPRESENTATIVES IN RESPECT OF ANY POTENTIAL
12 LIABILITY FOR WHICH EXCULPATION IS GRANTED PURSUANT TO THIS PLAN, OR (IV)
13 ASSERTING ANY RIGHT OF SETOFF, SUBROGATION OR RECOUPMENT OF ANY KIND
14 AGAINST ANY EXCULPEE OR ANY OF THEIR RESPECTIVE REPRESENTATIVES OR
15 AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF ANY EXCULPEE OR ANY
16 OF THEIR RESPECTIVE REPRESENTATIVES, IN RESPECT OF ANY POTENTIAL
17 LIABILITY FOR WHICH EXCULPATION IS GRANTED PURSUANT TO THIS PLAN;
18 PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE ANY
19 HOLDER OR OTHER PARTY-IN-INTEREST FROM EXERCISING ITS RIGHTS PURSUANT
20 TO AND CONSISTENT WITH THE TERMS HEREOF AND THE CONTRACTS,
21 INSTRUMENTS, RELEASES AND OTHER AGREEMENTS AND DOCUMENTS DELIVERED
22 UNDER OR IN CONNECTION WITH THIS PLAN.

23 (b) Injunction Against Voluntary Releasors. ALL OF THE VOLUNTARY
24 RELEASORS, ALONG WITH ANY OF THEIR SUCCESSORS OR ASSIGNS, ARE
25 PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM
26 (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER
27 PROCEEDING OF ANY KIND AGAINST THE DIOCESE RELEASED PARTIES OR ANY OF
28 THEIR RESPECTIVE REPRESENTATIVES IN RESPECT OF ANY DIOCESE RELEASED

1 LIABILITIES, (II) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY
2 MANNER OR MEANS OF ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE
3 DIOCESE RELEASED PARTIES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES IN
4 RESPECT OF ANY DIOCESE RELEASED LIABILITIES, (III) CREATING, PERFECTING, OR
5 ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST THE DIOCESE RELEASED
6 PARTIES OR ANY OF THEIR RESPECTIVE REPRESENTATIVES IN RESPECT OF ANY
7 DIOCESE RELEASED LIABILITIES, OR (IV) ASSERTING ANY RIGHT OF SETOFF,
8 SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE
9 FROM THE DIOCESE RELEASED PARTIES OR ANY OF THEIR RESPECTIVE
10 REPRESENTATIVES OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF
11 THE DIOCESE RELEASED PARTIES OR ANY OF THEIR RESPECTIVE
12 REPRESENTATIVES, IN RESPECT OF ANY DIOCESE RELEASED LIABILITIES;
13 PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE SUCH
14 VOLUNTARY RELEASORS FROM EXERCISING THEIR RIGHTS PURSUANT TO AND
15 CONSISTENT WITH THE TERMS HEREOF AND THE CONTRACTS, INSTRUMENTS,
16 RELEASES AND OTHER AGREEMENTS AND DOCUMENTS DELIVERED UNDER OR IN
17 CONNECTION WITH THIS PLAN.

18 **Section E. Conditions to Effective Date.**

19 Section 7.1 of the Plan sets forth the following conditions to be met on or before the
20 Effective Date of the Plan, which conditions must be satisfied or waived in writing by the Debtor
21 and the Diocese:

22 (a) That the Confirmation Order shall be entered by the Bankruptcy Court and
23 shall have become a Final Order;

24 (b) There are sufficient funds to make up the required Confirmation Funds;

25 (c) To the extent Confirmation Funds are insufficient to satisfy the Allowed
26 Administrative Claims, the Reorganized Debtor has assumed or will pay the remaining amounts
27 unless otherwise agreed by the Holder of such Allowed Administrative Claim(s);

28 (d) Any outstanding U.S. Trustee Fees shall have been paid in full;

1 (e) The BGHS Lease shall have been assumed by Debtor pursuant to an order of
2 the Bankruptcy Court under 11 U.S.C. § 365, and shall have been amended to reflect the Additional
3 Rent;

4 (f) Either (i) the JATCO Liens shall have been Avoided; or (ii) the Bankruptcy
5 Court has valued the aggregate of all of the Debtor's Assets at an amount less than or equal to Forty-
6 Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00); and

7 (g) If the Bankruptcy Court has valued the aggregate of all of Debtor's Assets at
8 an amount that is greater than the sum of (i) the aggregate of the Allowed Senior Secured Claims and
9 (ii) the JATCO Fund, but less than or equal to Forty-Six Million Eight Hundred Thousand and
10 No/100 Dollars (\$46,800,000.00), the Diocese has exercised the Diocese Option and contributed to
11 Debtor the Additional Diocese Funding Amount.

12 Debtor, in its sole discretion, may waive the final order condition in subpart (a) above at any
13 time from and after the Confirmation Date; *provided, however*, that the Debtor shall first obtain the
14 written consent of the Diocese pursuant to the Diocese Plan Support Agreement. In that event,
15 Debtor will be entitled to render any or all performance under the Plan prior to what otherwise
16 would be the Effective Date if the above-referenced condition was not waived, including, but not
17 limited to, the right to perform under any circumstances which would moot any appeal, review or
18 other challenge of any kind to the Confirmation Order if the Confirmation Order is not stayed
19 pending such appeal, review or other challenge.

20 ARTICLE V

21 **RESERVATION OF RIGHTS PENDING CONFIRMATION AND EFFECTIVE DATE**

22 **Section A. No Admissions or Waiver.**

23 Nothing contained in the Plan, or in the Disclosure Statement shall be deemed an admission
24 by Debtor or any Person with respect to any matter set forth herein. No statement contained in the
25 Plan or in the Disclosure Statement may be used or relied on in any manner in any suit, action,
26 proceeding or controversy within or outside of the Chapter 11 Case against Debtor. The Debtor
27 reserves any and all rights as against all Persons.

1 **ARTICLE VI**

2 **CONFIRMATION OF THE PLAN**

3 The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with
4 the technical requirements of Chapter 11.

5 **Section A. Voting Eligibility.**

6 Under the Bankruptcy Code, only holders of Claims in Classes that are “Impaired” (as that
7 term is defined in Bankruptcy Code section 1124) under the Plan are entitled to vote to accept or
8 reject the Plan. Classes of Claims that are unimpaired are conclusively presumed to have accepted
9 the Plan and are not entitled to vote on the Plan.

10 A Ballot to be used to accept or reject the Plan will be send to all Holders of Claims in
11 Impaired Classes.

12 **Section B. Voting Instructions.**

13 THE PERIOD DURING WHICH BALLOTS WILL BE ACCEPTED WILL TERMINATE
14 AT 4:00 P.M. PREVAILING PACIFIC TIME, ON [____], 2018 (THE “VOTING DEADLINE”).

15 TO BE COUNTED, YOUR BALLOT MUST BE COMPLETELY FILLED IN, SIGNED,
16 AND TRANSMITTED IN THE MANNER SPECIFIED IN THE BALLOT SO THAT IT IS
17 RECEIVED BY THE VOTING DEADLINE. PLEASE FOLLOW CAREFULLY ALL
18 INSTRUCTIONS CONTAINED IN THE BALLOT. ANY BALLOTS RECEIVED WHICH DO
19 NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE
20 COUNTED AS ACCEPTING THE PLAN.

21 If you have any questions about the procedure for voting, or if you did not receive a Ballot,
22 received a damaged Ballot, or have lost your Ballot, or if you would like any additional copies of
23 this Disclosure Statement, please contact:

24 FTI Consulting
25 Attn: Michael Tucker
26 One Renaissance Square
27 Two North Central Ave. #1200
28 Phoenix, AZ 85004

1 BALLOTS MUST BE DELIVERED BY FIRST CLASS MAIL, OVERNIGHT DELIVERY
2 OR HAND DELIVERY AT THE FOLLOWING ADDRESS:

3 By First Class Mail, Overnight Delivery or Hand Delivery:

4 FTI Consulting
5 Attn: Michael Tucker
6 One Renaissance Square
7 Two North Central Ave. #1200
8 Phoenix, AZ 85004

8 **Section C. Confirmation Hearing.**

9 Bankruptcy Code section 1128(a) requires the Bankruptcy Court to hold a hearing on
10 Confirmation of the Plan. Bankruptcy Code section 1128(b) provides that any party in interest may
11 object to Confirmation of the Plan.

12 THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION HEARING TO
13 COMMENCE ON [____], 2018 AT # __.m. PREVAILING PACIFIC TIME BEFORE THE
14 HONORABLE AUGUST B. LANDIS, UNITED STATES BANKRUPTCY JUDGE IN THE
15 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA, IN
16 COURTROOM 1, FOLEY FEDERAL BUILDING AND U.S. COURTHOUSE, 300 LAS VEGAS
17 BOULEVARD SOUTH, LAS VEGAS, NEVADA 89101. THE CONFIRMATION HEARING
18 MAY BE ADJOURNED FROM TIME TO TIME BY THE BANKRUPTCY COURT WITHOUT
19 FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT OF THE ADJOURNED DATE
20 MADE AT THE CONFIRMATION HEARING OR ANY ADJOURNMENT THEREOF.

21 OBJECTIONS TO CONFIRMATION MUST BE FILED AND SERVED ON OR BEFORE
22 [____], 2017. UNLESS OBJECTIONS ARE TIMELY SERVED, THEY MAY NOT BE
23 CONSIDERED BY THE BANKRUPTCY COURT.

24 **Section D. Confirmation Requirements.**

25 **(1) Best Interests of Creditors / Liquidation Analysis.**

26 Often called the “best interests” test, Bankruptcy Code section 1129(a)(7) requires that the
27 Bankruptcy Court find as a condition to confirmation, that a chapter 11 plan provides, with respect to
28 each impaired class of claims, that each holder of a claim such class either (i) has accepted the plan

1 or (ii) will receive or retain under the plan property of a value that is not less than the amount that
2 the holder would receive or retain if the debtor's assets were liquidated under chapter 7 of the
3 Bankruptcy Code.

4 To make this finding, the Bankruptcy Court must, among other things, compare each
5 rejecting holder's distribution under a chapter 7 liquidation with the distribution that such holder
6 would receive if the plan is confirmed.

7 In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for
8 distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code.
9 Generally, secured creditors are paid first from the proceeds of sales of the properties securing their
10 liens. If any assets are remaining in the estate after satisfaction of secured creditors' claims from
11 their collateral, administrative expenses are next to receive payment. Unsecured creditors are paid
12 from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with
13 the same priority share in proportion to the amount of their allowed claims in relationship to the total
14 amount of allowed claims held by all unsecured creditors with the same priority.

15 Attached hereto as **Exhibit B** is a liquidation analysis showing that as of July 31, 2018, the
16 Debtor's Assets have a liquidation value of \$18,398,822, should HHP exercise its Repurchase
17 Option (the "Minimum Liquidation Value"). However, if HHP declines to exercise its options under
18 the Declarations, the liquidation value will be no greater than \$31,363,822.00 million (the
19 "Maximum Liquidation Value"). Regardless of whether HHP exercises its options under the
20 Declarations, the Minimum and Maximum Liquidation Values of the Assets are less than the Senior
21 Secured Claims, Priority Claims, and Chapter 7 Fees and Administrative Claims. Accordingly, a
22 chapter 7 liquidation would leave no assets for distribution to Unsecured Creditors or to JATCO,
23 regardless of whether its Liens are Avoidable. Thus, the Plan proposes better treatment for all
24 Creditors than they would receive in a chapter 7 liquidation. Debtor submits that the Plan satisfies
25 the "best interests" test in Bankruptcy Code section 1129(a)(7).

1 **(2) Feasibility of the Plan.**

2 Bankruptcy Code section 1129(a)(11) requires a finding that confirmation of the Plan is not
3 likely to be followed by the liquidation, or the need for further financial reorganization, of the
4 Debtor or any successor-in-interest.

5 Disbursements under the Plan shall be funded from the Confirmation Funds, which are
6 comprised of: (i) the prepayment of the Diocese Note in the amount of approximately
7 \$4,300,000.00; (ii) the Additional Rent in the aggregate amount of \$3,000,000; (iii) payment by the
8 Diocese of the Additional Administrative Funding Amount of up to \$2,000,000; (iv) the Additional
9 Diocese Funding Amount, if any, of up to \$9,000,000; (v) the Authorized Donor Funds of up to
10 approximately \$2,200,000.00; and (vi) Debtor's other Cash of up to approximately \$2,900,000.00.

11 Pursuant to the Diocese Plan Support Agreement, and to the extent required thereby, the
12 Diocese shall: (i) prepay the Diocese Note to the Reorganized Debtor on the Effective Date unless
13 JATCO timely makes an election under Bankruptcy Code section 1111(b); (ii) pay, on behalf of the
14 School, the Additional Rent to the Reorganized Debtor in accordance with the terms of the Amended
15 BGHS Lease; (iii) pay the Additional Administrative Funding Amount to the Reorganized Debtor on
16 or after the Effective Date as needed by the Reorganized Debtor; and (iv) only in the event the
17 Diocese timely exercises the Diocese Option, pay the Additional Diocese Funding Amount to the
18 Reorganized Debtor on the Effective Date.

19 Accordingly, Confirmation Funds are estimated to be in the total amount of approximately
20 \$14,400,000 plus the Additional Diocese Funding Amount, if any. The JATCO Fund is a subset of
21 the Confirmation Funds in the amount of \$10,000,000 that is comprised of: (i) the assignment and
22 prepayment of the Diocese Note; (ii) the Additional Rent; and (iii) other Cash from the Confirmation
23 Funds. The GUC Fund is a subset of the Confirmation Funds that is comprised of \$100,000 in other
24 Cash from the Confirmation Funds.

25 Attached hereto as **Exhibits C-1, C-2 & C-3** are pro forma projections (the "Projections")
26 for each of the three alternative JATCO Claim treatments described in Sections 5.3(e)(I)-(III) of the
27 Plan. The Projections demonstrate that the Reorganized Debtor will be able to make all payments
28 required under the Plan.

1 According, Debtor submits that the Plan is feasible within the meaning of Bankruptcy Code
2 section 1129(a)(11).

3 **(3) Confirmation Without Acceptance of All Impaired Classes - “Cramdown.”**

4 The Bankruptcy Code contains provisions which could enable the Bankruptcy Court to
5 confirm the Plan, even though the Plan has not been accepted by all Impaired Classes, provided that
6 the Plan has been accepted by at least one Impaired Class of Claims. Debtor believes that the Plan
7 will be able to meet the statutory standards set forth in the Bankruptcy Code.

8 Bankruptcy Code section 1129(b)(1) states:

9 Notwithstanding section 510(a) of this title, if all of the applicable
10 requirements of subsection (a) of this section other than paragraph (8) [requiring that
11 all impaired classes have accepted the plan] are met with respect to a plan, the court,
12 on request of the proponent of the plan, shall confirm the plan notwithstanding the
13 requirements of such paragraph if the plan does not discriminate unfairly, and is fair
14 and equitable, with respect to each class of claims that is impaired under, and has not
15 accepted the plan.

16 This section makes clear that a plan must be confirmed notwithstanding the failure of an
17 impaired class to accept the plan, so long as the plan “does not discriminate unfairly” and it is “fair
18 and equitable” with respect to each rejecting class.

19 **(i) No Unfair Discrimination.**

20 A plan does not “discriminate unfairly” if the plan does not treat any rejecting class of claims
21 in a manner that is materially less favorable than the treatment afforded to another class with similar
22 legal claims against the debtor. However, a plan also may satisfy this requirement even if classes of
23 claims that are of equal priority receive different treatment. The test does not require that the classes
24 of equal priority receive identical treatment, but instead only that if there is a difference in treatment
25 that such difference be “fair.”

26 Here, the Plan here separates the Claims by priority, and no Class of Claims is equal in
27 priority or similar to any other Class, with the possible exception of Class 7 (General Unsecured
28 Claims) and Class 8 (Donor Claims). Holders of Class 8 Allowed Donor Claims are given the
choice of either (i) voting to accept the Plan and authorizing their Donor Funds to become part of the
Confirmation Funds, in which event they will not receive any distribution on account of their
Claims, or (ii) voting to reject the Plan, in which event their Claims will be included in Class 7 and

1 receive the treatment afforded Allowed General Unsecured Claims. Thus, the Plan does not
2 discriminate unfairly between Classes 7 and 8, or any other Classes, and Debtor submits that the
3 Plan satisfies the “no unfair discrimination” requirement.

4 **(ii) Fair And Equitable Test.**

5 The Bankruptcy Code sets forth three different standards for establishing that a plan is “fair
6 and equitable” with respect to a rejecting class, depending on whether the class is comprised of
7 secured or unsecured claims. In general, Bankruptcy Code section 1129(b) permits confirmation
8 notwithstanding non-acceptance by an impaired class if that class and all classes junior to it are
9 treated in accordance with the “absolute priority” rule, which requires either that the dissenting class
10 be paid in full, or if it is not, that no junior class receives or retains property under the plan. In
11 addition, the “fair and equitable” standard has been interpreted to prohibit any class senior to a
12 rejecting class from receiving under a plan more than 100% of its allowed claims.

13 Class 9 (HHP Claim) is not Impaired under the Plan, and therefore its treatment is fair and
14 equitable.

15 The Plan is fair and equitable with respect to Class 2 (Bank Claim), Class 3 (Trustee Claim),
16 Class 4 (County Claim) and Class 5 (SAP Claim) because each Holder of a Secured Claim in those
17 Classes will retain its Lien on its respective Collateral and will receive deferred cash payments of a
18 value, as of the Effective Date of the Plan, equal to the allowed amount of the such Secured Claim.
19 See Bankruptcy Code section 1129(b)(2)(A)(i).

20 The Plan is fair with respect to Class 7 (General Unsecured Claims) and Class 8 (Donor
21 Claims) because no junior class will receive or retain any property under the Plan. See Bankruptcy
22 Code section 1129(b)(2)(B)(ii). Interests in the Debtor are not classified or treated in this Plan
23 because the Debtor is a not-for-profit corporation. See, e.g., In re Gen. Teamsters, Warehousemen &
24 Helpers Union, Local 890, 265 F.3d 869, 873–74 (9th Cir. 2001).

25 Finally, the Plan is fair and equitable to Class 6 (JATCO Claim) in each of the following
26 three alternative treatment provisions set forth in Section 2.3(e)(I)-(III) of the Plan.

27 (I) In the event that the Bankruptcy Court determines that the JATCO Liens are Avoidable
28 and/or values the aggregate of all of Debtor’s Assets at an amount that is equal to or less than the

1 aggregate of the Allowed Senior Secured Claims, then JATCO shall have the Allowed JATCO
2 Unsecured Claim which shall be included in Class 7, and receive the treatment provided to Allowed
3 General Unsecured Claims in Class 7. See Plan § 2.3(e)(I). As discussed above, the Plan is fair and
4 equitable with respect to Class 7 Claims because no junior class will receive or retain any property
5 under the Plan. See Bankruptcy Code section 1129(b)(2)(B)(ii).

6 (II) In the event that the Bankruptcy Court determines that the JATCO Liens are not
7 Avoidable and values the aggregate of all of Debtor's Assets at an amount in excess of the aggregate
8 of the Allowed Senior Secured Claims, but less than the sum of (i) the aggregate of the Allowed
9 Senior Secured Claims and (ii) the JATCO Fund, then JATCO shall have: (a) the Allowed JATCO
10 Secured Claim in the amount that the value of the Assets exceeds the aggregate of the Allowed
11 Senior Secured Claims; and (b) the Allowed JATCO Unsecured Claim for the difference between
12 the Allowed JATCO Claim and the Allowed Secured JATCO Claim. See Plan § 2.3(e)(II).

13 In the event that JATCO does not make an election under Bankruptcy Code section 1111(b),
14 then JATCO shall receive on the Effective Date, in exchange for the Allowed JATCO Secured
15 Claim, that amount of the JATCO Fund equal to the Allowed JATCO Secured Claim; *provided,*
16 *however,* that JATCO shall be entitled to receive the portion of the JATCO Fund that is attributable
17 to the Additional Rent only in the event that JATCO elects to grant the Consensual Diocese Release.
18 See Plan § 2.3(e)(II). Accordingly, the Plan is fair and equitable because JATCO will receive cash
19 on the Effective Date equal to the amount of the Allowed JATCO Secured Claim from the JATCO
20 Fund, including, if JATCO elects to grant the Consensual Diocese Release, that portion of the
21 JATCO Fund attributable to the Additional Rent." If you're not comfortable with it, leave as
22 drafted.

23 In the event that JATCO does not make an election under Bankruptcy Code section 1111(b),
24 then the Allowed JATCO Unsecured Claim shall be included in Class 7, and receive the treatment
25 provided to Allowed General Unsecured Claims in Class 7. See Plan § 2.3(e)(II). As discussed
26 above, the Plan is fair and equitable with respect to Class 7 Claims because no junior class will
27 receive or retain any property under the Plan. See Bankruptcy Code section 1129(b)(2)(B)(ii).

28

1 If JATCO timely makes an election under Bankruptcy Code section 1111(b), then JATCO
2 shall receive on the Effective Date, in exchange for the Allowed JATCO Claim, the JATCO Secured
3 Note. The JATCO Secured Note shall be in the principal amount of the Allowed JATCO Claim,
4 shall bear non-compounded interest at the rate of 7.30% per annum (“JATCO Interest”), and shall be
5 payable in monthly installments of approximately \$56,412.00, which include principal and JATCO
6 Interest, for approximately forty-four (44) years following the Effective Date, until paid in full;
7 *provided, however*, that JATCO shall not be entitled to receive, as payment for the JATCO Secured
8 Note, funds attributable to the Additional Rent unless JATCO elects to grant the Consensual Diocese
9 Release. See Plan § 2.3(e)(II). As set forth in **Exhibit C** hereto, the Plan is fair and equitable
10 because the JATCO Secured Note provides JATCO with deferred cash payments of a value, as of
11 the Effective Date of the Plan, equal to the allowed amount of the Allowed JATCO Secured Claim
12 from the JATCO Fund, including, if JATCO elects to grant the Consensual Diocese Release, that
13 portion of the JATCO Fund attributable to the Additional Rent.

14 (III) In the event that the Bankruptcy Court determines that the JATCO Liens are not
15 Avoidable and values the aggregate of all of Debtor’s Assets at an amount that is greater than the
16 sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the JATCO Fund, but less
17 than or equal to Forty-Six Million Eight Hundred Thousand and No/100 Dollars (\$46,800,000.00),
18 then JATCO shall have: (a) the Allowed JATCO Secured Claim in the amount that the value of the
19 Assets exceeds the aggregate of the Allowed Senior Secured Claims; and (b) the Allowed JATCO
20 Unsecured Claim for the difference between the Allowed JATCO Claim and the Allowed Secured
21 JATCO Claim. See Plan § 2.3(e)(III).

22 In this event, the Diocese shall have the Diocese Option, which gives it the right, but not the
23 obligation, in its sole and absolute discretion, to purchase Debtor’s residual interest in the Property at
24 the expiration of the BGHS Lease for the amount that the value of the aggregate of all of Debtor’s
25 Assets exceeds the sum of (i) the aggregate of the Allowed Senior Secured Claims and (ii) the
26 JATCO Fund, but in no event more than Nine Million and No/100 Dollars (\$9,000,000.00). Only in
27 the event that the Diocese elects to exercise the Diocese Option during the Diocese Option Period,
28 JATCO shall receive on the Effective Date, in exchange for the Allowed JATCO Secured Claim:

1 (a) the JATCO Fund; and (b) the Additional Diocese Funding Amount; *provided, however*, that
2 JATCO shall be entitled to receive (i) the portion of the JATCO Fund that is attributable to the
3 Additional Rent and (ii) the Additional Diocese Funding Amount, if any, only in the event that
4 JATCO elects to grant the Consensual Diocese Release. See Plan § 2.3(e)(III).

5 Accordingly, in the event that the Diocese elects to exercise the Diocese Option, the Plan is
6 fair and equitable because JATCO will receive cash on the Effective Date equal to the amount of the
7 Allowed JATCO Secured Claim from the JATCO Fund and the Additional Diocese Funding
8 Amount, including, if JATCO elects to grant the Consensual Diocese Release, that portion of the
9 JATCO Fund attributable to the Additional Rent and the Additional Diocese Funding Amount. See
10 Bankruptcy Code section 1129(b)(2)(A)(i). In this scenario, the Allowed JATCO Unsecured Claim
11 will be included in Class 7, and receive the treatment provided to Allowed General Unsecured
12 Claims in Class 7. See Plan § 2.3(e)(II). As discussed above, the Plan is fair and equitable with
13 respect to Class 7 Claims because no junior class will receive or retain any property under the Plan.
14 See Bankruptcy Code section 1129(b)(2)(B)(ii).

15 In the event that the Diocese does not exercise the Diocese Option in scenario (III) described
16 above, or the Bankruptcy Court determines that the JATCO Liens are not Avoidable and values the
17 aggregate of all of Debtor’s Assets at an amount that is greater than Forty-Six Million Eight Hundred
18 Thousand and No/100 Dollars (\$46,800,000.00), then Debtor shall seek dismissal of the Chapter 11
19 Case on terms acceptable to the Bankruptcy Court, including the payment of Allowed
20 Administrative Claims.

21 Finally, no Class of Claims will receive payments or property with an aggregate value greater
22 than the aggregate value of the Allowed Claims in such Class. Therefore, Debtor submits that the
23 Plan satisfies the “fair and equitable” requirement with respect to any rejecting Classes.

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1 **ARTICLE VII**

2 **RISK FACTORS**

3 **Section A. Risks Related to Bankruptcy.**

4 **(1) Parties May Object to the Plan’s Classification of Claims and Interests.**

5 Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in
6 a particular class only if such claim or interest is substantially similar to the other claims or interests
7 in such class. The Debtor believes that the classification of the Claims under the Plan complies with
8 the requirements set forth in the Bankruptcy Code because each Class encompasses Claims that are
9 substantially similar to the other Claims (if any) in such Class. Nevertheless, there can be no
10 assurance that the Bankruptcy Court will reach the same conclusion.

11 **(2) The Debtor May Not Be Able to Obtain Confirmation of the Plan.**

12 With regard to any proposed plan of reorganization, a debtor may not receive the requisite
13 acceptances to confirm a plan. In the event that votes from Claims in Classes entitled to vote are
14 received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the
15 Debtor intends to seek confirmation of the Plan by the Bankruptcy Court.

16 By way of example, if Bank of America does not approve the plan and consent to the
17 extension of the Letter of Credit, it is uncertain whether Debtor’s plan will be feasible.

18 However, if the requisite acceptances are not received, the Debtor may nevertheless seek
19 confirmation of the Plan notwithstanding the dissent of certain Classes of Claims. The Bankruptcy
20 Court may confirm the Plan pursuant to the “cramdown” provisions of the Bankruptcy Code, which
21 allow the Bankruptcy Court to confirm a plan that has been rejected by an Impaired Class of Claims
22 if it determines that the Plan satisfies section 1129(b) of the Bankruptcy Code. To confirm the Plan
23 over the objection of a dissenting Class, the Bankruptcy Court also must find that at least one
24 Impaired Class has accepted the Plan, with such acceptance being determined without including
25 acceptances of any “insider” in such Class. Even if the requisite acceptances of the Plan are received,
26 the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any
27 of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code have not
28 been met.

1 If the Plan is not confirmed by the Bankruptcy Court, it is unclear whether the Debtor would
2 be able to reorganize and what, if any, distributions Holders of Claims would ultimately receive with
3 respect to their Claims. There can be no assurance that the Debtor would be able to successfully
4 develop, prosecute, confirm, and consummate an alternative plan that is acceptable to the
5 Bankruptcy Court and to the Debtor's creditors.

6 **(3) The Conditions Precedent to the Effective Date of the Plan Many Not Occur.**

7 The Effective Date is subject to several conditions precedent, as described more fully above
8 and in the Plan. If such conditions are not met or waived, the Effective Date will not occur. For
9 instance, if the Court values all the Debtor's property in excess of \$46,800,000, Debtor will seek
10 dismissal of its case.

11 **ARTICLE VIII**

12 **CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

13 **Section A. Introduction.**

14 A summary description of certain material United States federal income tax consequences of
15 the Plan is provided below. This description is for informational purposes only and, due to a lack of
16 definitive judicial or administrative authority or interpretation, substantial uncertainties exist with
17 respect to various tax consequences of the Plan as discussed herein. Only the principal
18 consequences of the Plan for Holders of Claims who are entitled to vote to accept or reject the Plan
19 are described below. No opinion of counsel has been sought or obtained with respect to any tax
20 consequences of the Plan. No rulings or determinations of the Internal Revenue Service ("IRS")
21 have been or will be sought or obtained with respect to any tax consequences of the Plan, and the
22 discussion below is not binding upon the IRS or such other authorities. No representations are being
23 made regarding the particular tax consequences of the confirmation or implementation of the Plan as
24 to Debtor or any Holder of a Claim. No assurance can be given that the IRS would not assert, or that
25 a court would not sustain, a different position from any discussed herein.

26 The discussion of United States federal income tax consequences below is based on the
27 Internal Revenue Code of 1986, as amended (the "IRC"), the Treasury Regulations promulgated
28 thereunder, judicial authorities, published positions of the IRS, and other applicable authorities, all

1 as in effect on the date hereof and all of which are subject to change or differing interpretations
2 (possibly with retroactive effect).

3 The following discussion does not address foreign, state or local tax consequences of the
4 Plan, nor does it purport to address the United States federal income tax consequences of the Plan to
5 special classes of taxpayers, *e.g.*, banks and certain other financial institutions, insurance companies,
6 tax-exempt organizations, Holders of Claims who are (or who hold their Claims through) pass-
7 through entities, persons whose functional currency is not the United States dollar, foreign persons,
8 dealers in securities or foreign currency, and persons holding claims that are a hedge against, or that
9 are hedged against, currency risk or that are part of a straddle, constructive sale or conversion
10 transaction. The following discussion assumes that Holders of Claims hold their Claims as capital
11 assets for United States federal income tax purposes. Furthermore, the following discussion does not
12 address United States federal taxes other than income taxes.

13 The tax treatment of Holders and the character, amount and timing of income, gain or loss
14 recognized as a consequence of the Plan and the distributions and transactions provided for by the
15 Plan may vary, depending upon, among other things: (i) whether the Claim (or portion thereof)
16 constitutes a Claim for principal or interest; (ii) the type of consideration received by the Holder in
17 exchange for the Claim and whether the Holder receives distributions under the Plan in more than
18 one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax
19 purposes, is otherwise subject to United States federal income tax on a net basis, or falls into any
20 special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv)
21 the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been
22 held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad
23 debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (viii)
24 whether the Holder has previously included in income accrued but unpaid interest with respect to the
25 Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment
26 obligation for United States federal income tax purposes; and (xi) whether the “market discount”
27 rules are applicable to the Holder.

28

1 For purposes of the following discussion, a “United States person” is any of the following:

- 2 • an individual who is a citizen or resident of the United States;
- 3 • a corporation created or organized under the laws of the United States or any
4 state or political subdivision thereof;
- 5 • an estate, the income of which is subject to federal income taxation regardless
6 of its source; or
- 7 • a trust that (a) is subject to the primary supervision of a United States court
8 and which has one or more United States fiduciaries who have the authority to
9 control all substantial decisions of the trust, or (b) has a valid election in effect
10 under applicable United States Treasury regulations to be treated as a United
11 States person.

12 **HOLDERS OF CLAIMS ARE STRONGLY URGED TO CONSULT THEIR OWN**
13 **TAX ADVISORS REGARDING THE UNITED STATES FEDERAL, STATE, LOCAL AND**
14 **ANY FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN**
15 **OR IN THE PLAN.**

16 **Section B. Certain United States Federal Income Tax Consequences to Holders of Allowed**
17 **Claims.**

18 **(a) Generally**

19 Generally, a Holder of an Allowed Claim will realize gain or loss on the exchange under the
20 Plan of its Allowed Claim for Cash or other property, in an amount equal to the difference between
21 (i) the sum of the amount of any Cash and the fair market value on the date of the exchange of any
22 other property received by the holder (other than any consideration attributable to a Claim for
23 accrued but unpaid interest) and (ii) the adjusted tax basis of the Allowed Claim exchanged (other
24 than tax basis attributable to accrued but unpaid interest previously included in the Holder’s taxable
25 income). With respect to the treatment of accrued but unpaid interest and amounts allocable thereto,
26 please see Section VII.C.(b). When gain or loss is recognized, such gain or loss generally may be
27 long-term capital gain or loss if the Claim disposed of is a capital asset in the hands of the Holder
28 and is held for more than one year, except to the extent of any market discount. With respect to the

1 treatment of market discount, please see Section VII.C.(c).

2 Changing the terms of debt is sometimes treated for United States federal income tax
3 purposes as a deemed exchange, in which the original debt is satisfied with the modified debt, under
4 Treasury regulations section 1.1001-3. If so, the Holder would realize gain or loss, in the amount of
5 (a) the fair market value of the modified debt (generally determined in accordance with Treasury
6 regulations section 1.1274-2), and (b) the Holder's adjusted tax basis in the Allowed Claim. Also,
7 the modified debt may be subject to the "original issue discount" rules that would impute a certain
8 amount of interest that would be different in amount and timing from the interest that is actually paid
9 on the debt. Note that the original issue discount rules may apply to any debt instrument, note, or
10 other promise to pay money in the future received by any Holder with respect to its Allowed Claim
11 under the Plan. In addition, a Holder of an Allowed Claim that receives an Cash or other property as
12 well as any debt instrument, note, or other promise to pay money in the future generally will realize
13 gain or loss, in an amount equal to the difference, if any, between (a) the fair market value of all of
14 the items received under the Plan in respect of the Allowed Claim, other than amounts received in
15 respect of accrued but unpaid interest, and (b) the Holder's adjusted tax basis in the Allowed Claim.
16 Holders of the Allowed Bank Secured Claim, the Allowed Trustee Claim, the Allowed County
17 Claim, the Allowed SAP Claim, the Allowed DIP Lender Claim and the JATCO Claim are urged to
18 consult their own tax advisors on the potential application of the United States federal income tax
19 rules to the transactions and distributions contemplated by the Plan.

20 A distribution or payment to a Holder of an Allowed Claims contemplated by the Plan that is
21 contingent upon execution of a release by the Holder may be treated for United States federal
22 income tax purposes as an ordinary income to the Holder in exchange for the release. In addition, a
23 promise to make a series of payments of Additional Rent to a Holder of an Allowed Claim could be
24 treated for United States federal income tax purposes as a note that is distributed when the Plan is
25 confirmed, in which case (a) the Holder may be required to take into income the fair market value of
26 such note at the time when the Plan is confirmed, and (b) the note may be subject to the original
27 issue discount rules. Holders of Allowed General Unsecured Claims are urged to consult their own
28 tax advisors regarding the United States federal income tax treatment of receiving any amounts of

1 the Additional Rent.

2 A Donor who votes against confirmation of the Plan, and who is accorded the same treatment
3 as the Holder of an Allowed General Unsecured Claim and receives a distribution, would recognize
4 ordinary income and could be subject to additional excise taxes with respect to any distribution made
5 under the Plan. Donors who vote against confirmation of the Plan should consult with their own tax
6 advisors to determine the tax consequences of the Plan, including any distributions made to them
7 under the Plan.

8 Furthermore, each Holder of an Allowed Claim should consult its own tax advisors to
9 determine the tax consequences of the transactions and distributions contemplated by the Plan on
10 such Holder.

11 **(b) Interest Income With Respect to Allowed Claims**

12 In general, to the extent any amount received (whether cash or other consideration) by a holder of a
13 debt is received in satisfaction of accrued interest during its holding period, such amount will be
14 taxable to the holder as interest income (if not previously included in the holder's gross income).
15 Conversely, a holder generally recognizes a deductible loss to the extent any accrued interest
16 claimed was previously included in its gross income and is not paid in full. Each holder of an
17 Allowed Claim is urged to consult its own tax advisor regarding the allocation of consideration and
18 the deductibility of unpaid interest for tax purposes.

19 **(d) Market Discount**

20 If a Holder of an Allowed Claim purchased the underlying security or debt obligation at a
21 price less than its issue price, a portion or all of the difference may constitute "market discount" for
22 United States federal income tax purposes. Any gain recognized by a Holder on the exchange of its
23 Allowed Claim on the Effective Date should be treated as ordinary income to the extent of any
24 market discount that accrued on the underlying securities or debt obligations while in the hands of
25 the Holder.

26 **(d) Information Reporting and Backup Withholding**

27 Certain payments, including payments in respect of accrued interest or original issue
28 discount, are generally subject to information reporting by the payor to the IRS. Moreover, such

1 reportable payments are subject to backup withholding (currently at a rate of 24%) in certain
2 circumstances. Under the backup withholding rules, a Holder of an Allowed Claim may be subject
3 to backup withholding at the applicable rate with respect to certain distributions or payments
4 pursuant to the Plan, unless the Holder (a) falls within certain exempt categories (which generally
5 include corporations) or (b) provides a correct U.S. taxpayer identification and certifies under
6 penalties of perjury that the Holder is a United States person, the taxpayer identification number is
7 correct, and the Holder is not subject to backup withholding because of a failure to report all
8 dividend and interest income.

9 **Section C. Importance of Obtaining Professional Tax Assistance**

10 THE FOREGOING DISCUSSION IS NOT A SUBSTITUTE FOR CONSULTATION AND
11 CAREFUL TAX PLANNING AND CONSULTATION WITH A TAX PROFESSIONAL OF
12 YOUR CHOOSING. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES
13 ONLY AND IS NOT INTENDED TO BE, NOR DOES IT CONSTITUTE TAX ADVICE. THE
14 TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY
15 DEPENDING ON A HOLDER OF A CLAIM'S PARTICULAR CIRCUMSTANCES.
16 ACCORDINGLY, HOLDERS OF CLAIMS , AND OTHERS WHO MAY BE AFFECTED BY
17 THE PLAN, ARE CAUTIONED TO NOT RELY ON THE CONTENTS OF THIS MATERIAL AS
18 TO THE POTENTIAL TAX CONSEQUENCES TO THEM SPECIFICALLY, AND ARE URGED
19 TO CONSULT THEIR OWN TAX ADVISERS ABOUT THE UNITED STATES FEDERAL,
20 STATE, LOCAL AND APPLICABLE FOREIGN INCOME AND OTHER TAX
21 CONSEQUENCES OF THE PLAN AND ANY TRANSACTIONS ENTERED INTO IN
22 CONNECTION THEREWITH.

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ARTICLE IX

FURTHER INFORMATION

If you have any questions or require further information about the voting procedures for voting your Claim or Interest, or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, the Disclosure Statement, or any Exhibits to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d)), please contact:

FOX ROTHSCHILD LLP
Attn: Patricia Chlum
1980 Festival Plaza Drive, Suite 700
Las Vegas, NV 89135
Tel: (702) 699-5909

ARTICLE X

ALTERNATIVE TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan (or any alternative plan of reorganization proposed) is not confirmed and consummated, Debtor's Chapter 11 Case may be dismissed. In such event, the Bank would likely foreclose its liens and extinguish any unsecured creditor recovery.

ARTICLE XI

RECOMMENDATION AND CONCLUSION

Debtor believes that the Plan provides the best prospect for recoveries for Creditors that can be achieved in any reasonable timeframe and that possible alternatives are likely to result in delayed and/or diminished prospective recoveries for holders of Claims. Therefore, Debtor urges all holders of Claims to vote to accept the Plan.

DATED April 27, 2018.

BISHOP GORMAN DEVELOPMENT CORPORATION

By: 

Its: EXECUTIVE DIRECTOR