

Dated: July 18, 2013



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Sarah S. Curley, Bankruptcy Judge

8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re:
11 OPPENHEIMER PARTNERS PROPERTIES,
12 LLP, an Arizona limited liability partnership,
13 Debtor.

CASE NO.: 2:11-bk-33139-SSC

CHAPTER 11 PROCEEDINGS

Date:
Time:

14 CONFIRMATION ORDER

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16
17 Oppenheimer Partners Properties, LLP ("Debtor") filed its *Plan of Reorganization*
18 *Proposed by the Debtor Dated March 21, 2012* ("Plan") [ECF No. 65]. The Court
19 approved *Debtor's Third Amended Disclosure Statement in Support of Plan of*
20 *Reorganization Proposed by the Debtor Dated March 21, 2012* ("Disclosure Statement")
21 [ECF No. 81] as containing adequate information as defined in 11 U.S.C. § 1125. See
22 ECF No. 83. The Disclosure Statement, Plan and ballots were sent to Creditors and
23 Parties in Interest by the Debtor. The Debtor filed an *Amended Ballot Report* [ECF
24 No.191] on August 6, 2012. The Debtor proposed modifications to the Plan as stated in
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1 the *Notice of Filing Modifications to Plan of Reorganization Dated March 21, 2012* filed
2 on October 19, 2012 (“Modifications”) [ECF No. 192].¹

3
4 MidFirst Bank (“MidFirst”) filed an objection to the confirmation of the Debtor’s
5 Plan on August 1, 2012 [ECF No. 119]. The Court held a contested evidentiary hearing
6 (“Confirmation Hearing”) on the Debtor’s Plan on February 12, 13, 19 and March 6, 2013.
7 During the Confirmation Hearings the Court issued some preliminary rulings on the
8 Debtor’s Plan. Based on the Court’s preliminary rulings and the Debtor’s negotiations
9 with MidFirst, Debtor and MidFirst have agreed to modifications to the plan to allow for
10 the consensual entry of this Order approving the Debtor’s *Plan of Reorganization*
11 *Proposed by the Debtor Dated March 21, 2012 as Modified* (“Modified Plan”).
12

13
14 The Court having reviewed the Modifications, the Plan, the Disclosure Statement,
15 the order approving the Disclosure Statement, the certificates of service, objections filed
16 in this matter, the Amended Ballot Report, the Modified Plan and all the other papers
17 before the Court in connection with the confirmation of the Modified Plan, and all of the
18 exhibits to each of the foregoing; the Court having taken judicial notice of the papers and
19 pleadings in this Chapter 11 case; the Court finding that notice of the confirmation hearing
20 and the opportunity for any party in interest to object to confirmation were adequate and
21 appropriate, in accordance with Bankruptcy Rule 2002(b) and the order approving the
22 Disclosure Statement, as to all parties to be affected by the Modified Plan and the legal
23 and factual bases set forth at the Confirmation Hearing and as set forth in this
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28 ¹ Any capitalized term not defined in the Order shall have the meaning given to it in the Modified Plan.

1 Confirmation Order establish just cause for the relief granted herein; the Court makes the
2 following Findings of Fact and Conclusions of Law:
3

4 1. On December 2, 2011, Debtor filed a voluntary petition for relief in this
5 Court under Chapter 11 of the 11 U.S.C. § 101-1330, the Bankruptcy Code. Debtor was
6 and is qualified to be a debtor under Section 109(a). This Court has jurisdiction over this
7 Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28
8 U.S.C. § 1408 and 1409. Confirmation of the Modified Plan is a core proceeding under
9 28 U.S.C. § 157(b)(2) and this Court has exclusive jurisdiction to determine whether the
10 Modified Plan complies with the applicable provisions of the Bankruptcy Code and should
11 be confirmed.

12 2. The notice of the confirmation hearing, Disclosure Statement, Modified
13 Plan, order approving the Disclosure Statement, and the ballots for voting on the Modified
14 Plan were transmitted in accordance with Bankruptcy Rule 3017(d) and the order
15 approving the Disclosure Statement. Due, adequate and sufficient notice of the Disclosure
16 Statement, Modified Plan, and the Confirmation Hearing, along with all deadlines for
17 voting on or filing objections to the Modified Plan has been given to all known holders of
18 Claims. The Disclosure Statement, Modified Plan, Ballots and order approving the
19 Disclosure Statement were filed, transmitted and served in substantial compliance with the
20 order approving the Disclosure Statement and the Bankruptcy Rules, and the transmittal
21 and service were adequate and sufficient. Adequate and sufficient notice of the
22 Confirmation Hearing and the other dates and hearings described in the order approving
23 the Disclosure Statement was provided in compliance with the Bankruptcy Rules and
24 orders of this Court, and no other or further notice is required.

25 3. Votes for the acceptance or rejection of the Modified Plan were solicited in
26 good faith and in compliance with Sections 1125 and 1126 and Bankruptcy Rules 3017
27 and 3018, the Disclosure Statement, the order approving the Disclosure Statement, all
28

1 other applicable provisions of the Bankruptcy Code, and all other applicable rules, laws,
2 and regulations. All procedures used to distribute solicitation materials to holders of
3 Claims and Equity and to tabulate the Ballots were fair and conducted in accordance with
4 the order approving the Disclosure Statement, the Bankruptcy Code, the Bankruptcy
5 Rules, the local rules of this Court an all other applicable rules, laws, and regulations.
6 Three impaired classes of claims have accepted the Modified Plan without including any
7 acceptance of the Modified Plan by any insider holding a Claim in such class.
8
9

10 4. Debtor as the Modified Plan Proponent has met its burden of proving the
11 elements of 1129(a) and (b) as follows:

12 a. As set forth in the *Amended Ballot Report* [ECF No. 191] filed with
13 the Court, without consideration of insider claims, three unsecured Classes, Classes
14 2, 6 and 7, voted to accept the Modified Plan.
15

16 b. Debtor has complied with all applicable Bankruptcy Code provisions
17 and proposed its Modified Plan in a manner that complies with the Bankruptcy
18 Code;
19

20 c. Debtor has proposed the Modified Plan in good faith and not by any
21 means forbidden by law;

22 d. The Modified Plan provides for professional fee applications to be
23 submitted to the Court and approved as reasonable before being authorized for
24 payment, and the administrative expense claims will be paid, after approval, in
25 monthly payments as agreed in writing between the Debtor and Gordon Silver,
26 CBIZ and Sierra Consulting.
27
28

1 e. Debtor has identified who will continue to manage the Debtor after
2 confirmation and their continued management of Debtor is consistent with the
3 interest of creditors, equity security holders, and with public policy, and Debtor has
4 disclosed the identity of its insiders and the nature of their compensation;
5

6 f. Section 1129(a)(6) of the Bankruptcy Code is not applicable to this
7 Debtor or, to the minimal extent that it does apply, the Debtor has complied
8 sufficiently with such requirements;
9

10 g. The Modified Plan provides that each holder of a Claim or interest
11 will receive or retain on account of such claim or interest property of a value, as of
12 the Effective Date of the Modified Plan, that is not less than the amount that such
13 holder would receive or retain if the Debtor were liquidated under Chapter 7 of the
14 Bankruptcy Code on such date;
15

16 h. All creditors who have filed written objections to the Modified Plan
17 have withdrawn their objections, or failed to timely participate in the joint pretrial
18 statement on their objections to the Modified Plan as required by the Court and
19 consequently either no objections from any creditor to the Modified Plan were
20 presented at, or those that were presented were overruled, at the confirmation
21 hearing or resolved by negotiation;
22

23 i. The Modified Plan provisions regarding priority claims comply with
24 §1129(a)(9). With respect to Maricopa County Treasurer's Class 4 Secured Claim,
25 it will receive treatment in the Modified Plan that is consistent with 11 U.S.C. §
26 1129(9)(C).
27
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1 j. The real property securing MidFirst's Class 3 Secured Claim has a
2 value of \$9,200,000 and total Cash Collateral is \$807,532.11, making the total
3 Class 3 Secured Claim \$10,007,532.11.
4

5 (1) Debtor has funds on hand of \$800,043.27 (consisting of
6 monies Oppenheimer's DIP accounts (as of March 31, 2013) plus
7 \$150,516.08 in accounts at MidFirst) for a total of \$950,559.35. MidFirst
8 has a valid and enforceable security interest in the Cash Collateral and such
9 Cash Collateral may only be used by Debtor as set forth in this Order or as
10 may be mutually approved in writing by MidFirst and Debtor. The total
11 Cash Collateral is \$807,532.11 securing the Class 3 Secured Claim after the
12 following deductions:
13

14 (a) \$24,212.27 for deposits for tenants that moved out
15 during the pendency of the Chapter 11 case and before March 31,
16 2013,
17

18 (b) Recalculated United States Trustee's fees of \$7,804.73,
19

20 (c) \$21,010.24 to Maricopa County Treasurer for pro rata
21 2013 property taxes,
22

23 (d) A total of \$50,000.00 to Eric Hamburger and Karl
24 Haytcher as a management fee, which will not be paid, and shall be
25 contributed to the Debtor, and

26 (e) Property taxes owed to the Maricopa County Treasurer
27 of approximately \$40,000 for pre-petition real estate taxes (which
28

1 shall be paid on or before the Effective Date).

2 (2) Upon entry of this Order, Debtor shall pay from the DIP
3 accounts any amount from subparagraph (j)(1) that has not yet been paid and
4 is due, including taxes. Upon entry of the Confirmation Order, Debtor is
5 authorized and directed to immediately disburse from the DIP accounts
6 \$2,461.05 for pre-petition rent taxes that are due to the City of Phoenix. The
7 Debtor will be allowed to retain \$10,000.00 to facilitate the improvements
8 described in paragraph (3) infra as a "Revolving Fund Amount". The
9 balance of the Debtors funds in the DIP accounts and accounts in Debtor's
10 name at MidFirst, of approximately \$795,071.06, will be transferred to an
11 interest bearing account at MidFirst in the Debtor's name ("CC Account")
12 and which will earn interest at current market rates for accounts of a similar
13 size and type at MidFirst which is currently at .20% (as of 07/15/2013) for
14 Business Money Market Accounts, and at 0.10% for Premium Business
15 Checking Accounts. Regulation limits the total number of withdrawals or
16 transfers to no more than six (6) per statement cycle for a Business Money
17 Market Account and if that number is exceeded in any given cycle, then the
18 Parties hereby agree that the account type will be automatically converted to
19 a Premium Business Checking Account for the remaining life of the "CC
20 Account." Interest rates and Annual Percentage yields for the Business
21 Money Market Accounts and for the Premium Business Checking Accounts
22 are subject to change at any time and the CC Account shall earn interest at
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1 the given rates and under the given schedules and terms for the account size
2 and type in place for the respective cycle. Monthly maintenance fees and
3 transaction fees that would normally apply to the CC Account will be
4 waived by MidFirst. MidFirst shall provide monthly statements to Debtor
5 for the CC Account. Provided that no portion of the CC Account may ever
6 be used to pay any outstanding interest amounts owed on the A Note, in
7 conjunction with any other payments to arrive at a full payoff of the A Note,
8 the Debtor may cause the entire balance of the CC Account to be paid to
9 MidFirst, notwithstanding any language in subparagraph (4)(j)(5) limiting
10 the use of the CC Account. MidFirst shall have a security interest in the
11 funds held in the CC Account to secure the obligations owed under the A
12 Note and Debtor shall execute and deliver any and all documents necessary
13 to evidence and perfect such security interest including a UCC-1.
14
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16

17 (3) The Debtor may expend up to \$299,260 with the funds in the
18 CC Account (inclusive of the \$10,000 retained by Debtor as forth in
19 paragraph 4(j)(2) above) for renovations as described in the Disclosure
20 Statement and attached as Exhibit 7 to the Disclosure Statement, except for
21 the Jacuzzi, sauna and pool showers (which shall not be constructed with
22 funds in the CC Account), as follows:
23
24

25 (a) The total maximum funds to be expended for the
26 improvements out of the cash collateral contemplated herein shall not
27 exceed \$299,260 (inclusive of the \$10,000 retained by Debtor as set
28

1 forth on paragraph 4(j)(2) above) in the aggregate (“Maximum
2 Improvements Amount”). All funds will be disbursed to Debtor only
3 as provided by the Improvements Guidelines dated 6/19/2013, a copy
4 of which is attached hereto as Exhibit “A” (“Improvements
5 Guidelines”). The improvements may include any of the following
6 categories (each, a “Project”):
7

8 1. The following are “Primary Projects”: (i) interior
9 renovation of 7 units (ii) interior clubhouse renovation, (iii)
10 roof of mail area, (iv) studio buildings roofs, (v) clubhouse
11 roof, (vi) parking lot replacements and repairs, (vii) main pool
12 deck repair, (viii) replace Osborn entrance driveway, and (ix)
13 storage units (on site) .
14

15 2. The following are “Secondary Projects”: (i)
16 replacement of corporate apartment furnishings, (ii)
17 replacement of landscaping caused by freeze damage, (iii) site
18 lighting, and (iv) replacement of security gate systems –pool
19 fencing.
20

21 (b) MidFirst and Debtor agree that no funds from the CC
22 Account will be expended on Secondary Projects until all of the
23 Primary Projects specified are fully completed.
24

25 (c) Prior to beginning work on any Project to be paid from
26 funds from the CC Account, Debtor will provide a detailed budget for
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1 such Project. Each such budget shall be in a form and with sufficient
2 detail reasonably acceptable to MidFirst. MidFirst and Debtor may
3 mutually agree to exceed any such budget, based on the
4 circumstances. Debtor may exceed the budget of any category item
5 by 15% so long as the Maximum Improvements Amount is not
6 exceeded.
7

8 (d) Upon submission of a draw request pursuant to the
9 Improvements Guidelines, MidFirst shall replenish the Revolving
10 Fund Amount until the Maximum Improvements Amount has been
11 reached.
12

13 (e) All work will be performed by independent, third-party
14 contractors. Provided, however, that Debtor's principals may act as
15 either as general contractor or subcontractor for any of the Projects,
16 provided that they will not be entitled to reimbursement for such
17 services out of the CC Account. Provided, further, that Debtor may
18 use Debtor's employees to perform any work needed for any Project,
19 provided that no compensation to an employee will be reimbursed
20 from the CC Account.
21

22 (4) The Debtor may disburse up to \$70,965.67 from the CC
23 Account for the return of tenant deposits ("Tenant Deposits") and repairs to
24 units according to the terms of each rental agreement as described in
25 Debtor's Statement of Depository Account ("SODA") provided to each
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1 tenant after termination or expiration of the lease. Debtor will provide
2 MidFirst with the lease, SODA, and any third party invoices with a request
3 for the disbursement of a Tenant Deposit. Debtor will not be compensated
4 from the CC Account for charges to the Tenant Deposit for services
5 provided by Debtor's employees. Debtor shall not disburse from the CC
6 Account funds in excess of the security deposit applicable to the particular
7 unit as reflected on Exhibit "B" hereto. This paragraph pertains to tenants
8 existing as of the Effective Date, as identified in Exhibit "B" attached hereto,
9 who move out subsequent to the March 31, 2013.
10
11

12 (5) MidFirst will make automatic transfers from the CC Account
13 on each monthly due date of the A Note for the principal portion of the A
14 Note due that month, until the balance of the A Note or the CC account is
15 exhausted, regardless of whether the Maximum Improvements Amount has
16 been expended or all of the Tenant Deposits have been disbursed. Provided
17 however, MidFirst, on ten days written notice to the Debtor, may elect not to
18 pay out of the CC Account the principal portion of the A Note for a
19 particular monthly payment, but only to the extent the amount remaining in
20 the CC Account would be insufficient to fund the total of (i) the outstanding
21 Tenant Deposits for units that where the lease has not yet terminated or
22 expired, and (ii) the balance of a Project budget, for any Project that Debtor
23 has commenced but has not been completed, on which Debtor has provided
24 MidFirst a budget pursuant to subparagraph (4)(j)(3)(c) and the
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1 Improvements Guidelines. Notwithstanding anything to the contrary in the
2 Modified Plan or A Note, the first payment on the A Note is due on August
3 1, 2013 in the amount of \$59,976.74, and the next payment is due on
4 September 15, 2013 and monthly payments will be made thereafter on the
5 15th of each subsequent month until the A Note matures or is paid in full. In
6 addition to the August, 2013 monthly amortized payment amount, the
7 September 15, 2013 payment shall total \$80,097.08 to include all interest
8 accruing from September 1, 2013 to and including September 15, 2013.
9 Additionally, the A Note will have a 14 day grace period for payments and
10 MidFirst will not have to provide notice of a payment default. MidFirst will
11 designate a contact who shall be able to provide confirmation of receipt for
12 payment.
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16 k. MidFirst's Deficiency Claim is \$1,881,171.24. The amount of the B
17 Note is \$1,881,171.24. Additionally, the B Note will have a 14 day grace period
18 for payments and MidFirst will not have to provide notice of a payment default.
19

20 l. Except as specifically set forth in this Confirmation Order each of the
21 Classes identified in the Modified Plan shall be treated in accordance with the
22 terms of the Modified Plan and Modification, and the Creditors shall be bound by
23 the terms of the Modified Plan.
24

25 m. The Court finds that the Debtor's Modified Plan does not
26 discriminate unfairly and is fair and equitable with respect to each class of claims
27 or interests that is impaired under, and has not accepted, the Debtor's Modified
28

1 Plan pursuant to 11 U.S.C. §1129(b). Pursuant to § 1129(b)(2)(A)(i) and (ii), on its
2 Class 3 Secured Claim, MidFirst is either retaining its lien and being paid the
3 allowed amount of the value of its secured claim or MidFirst is receiving the
4 indubitable equivalent of its secured claim. As to the impaired unsecured claims,
5 and in compliance with 11 U.S.C. § 1129(b)(2)(B), the Creditors are being paid the
6 full amount of their claims. In addition, Debtor's Equity Holders, the Partners,
7 have subordinated their prepetition unsecured claims to all other claims and are
8 contributing \$50,000 due to them as an administrative expense claim to the Debtor
9 for use on the Effective Date. In addition, after confirmation the managers, who
10 are the Debtor's Partners, will not receive compensation or benefits, other than
11 incidental benefits not to exceed \$100 to each manager in value per calendar
12 month, in excess of the amounts listed for each year in the projections that are
13 Exhibit 8 to the Disclosure Statement, except that they may continue to occupy the
14 units that they currently occupy without cost. All restrictions on the managers'
15 compensation and benefits end when the A Note to MidFirst is paid in full.

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20 n. Based upon the evidence presented at the Confirmation Hearing, the
21 Modified Plan is feasible and is unlikely to be followed by either liquidation or the
22 need for further additional financial reorganization.

23
24 o. The Debtor has filed monthly operating reports and has testified to
25 payment of the Trustee's fees. The US Trustee did not appear, file an objection or
26 contend otherwise.

1 p. The sections of the Code at 11 U.S.C. § 1129(a)(13) through (16) are
2 not applicable to this case.

3
4 5. The Modification and the additional modifications to the Modified Plan in
5 this Order are not material and do not require re-solicitation.

6 6. All existing residential lease agreements and executory contacts are assumed
7 by Debtor.

8
9 7. Any provision in the deed of trust securing the A Note that is inconsistent
10 with this Order, the Modified Plan, or the A Note is void; however, all other provisions in
11 the deed of trust shall remain binding and enforceable, including any provision in the deed
12 of trust requiring the Debtor to maintain the condition of the Real Property.

13
14 8. To be clear, in addition to the retained jurisdiction in the Modified Plan the
15 Court will retain jurisdiction of any dispute between Debtor and MidFirst with regard the
16 Debtor's use of money securing MidFirst's claim that is authorized by this Order. The
17 prevailing party in any dispute brought to this Court over disbursements from the CC
18 Account will be entitled to its reasonable attorneys' fees, costs, and other damages.

19
20 9. Debtor shall pay Gordon Silver Ltd. its allowed administrative expense
21 claim on the Effective Date or according to the terms of a written agreement. If the Real
22 Property is sold or refinanced, Debtor shall pay the balance of any amount due to Gordon
23 Silver Ltd. on its allowed administrative expense claim up to the total of the net proceeds
24 of the sale or refinance after paying any outstanding amounts owed on the A Note.

25
26 10. Debtor and MidFirst are ordered to immediately dismiss Adversary ADV.
27 NO.: 2:12-ap-00421-SSC with prejudice. The Debtor's partners and MidFirst are ordered
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1 to immediately dismiss the lawsuit in Superior Court of Arizona, Maricopa County, styled
2 as *MidFirst Bank v. Karl D. Haytcher, et al.*, and identified as case number CV2012-
3 000637, with prejudice. Notwithstanding anything else contained herein, the Debtor's
4 Principals shall be subject to a new guaranty, as provided in Debtor's Modified Plan.
5

6 Based upon all the evidence presented and arguments of counsel made at the
7 confirmation hearing and the entire record of Debtor's Chapter 11 case; and after due
8 deliberation sufficient cause appearing therefore,
9

10 **IT IS HEREBY ORDERED** that Debtor's Modified Plan, as amended by this
11 Order is confirmed,
12

13 **IT IS FURTHER ORDERED**, that the Effective Date of the Plan shall be August
14 1, 2013.

15 **IT IS FURTHER ORDERED** that the Debtor will be known as Oppenheimer
16 Partners Properties, LLC, an Arizona limited liability company (the "Reorganized
17 Debtor");
18

19 **IT IS FURTHER ORDERED** that except as otherwise provided in § 1141 of the
20 Bankruptcy Code or in the Modified Plan, this Order confirming the Modified Plan
21 discharges the Debtor from any debt that arose before the date of such confirmation and
22 any debt of a kind specified in 11 U.S.C. § 502(g), 502(h), or 502(i);
23

24 **IT IS HEREBY ORDERED** that this Order discharges the Debtor from the debts
25 as provided in 11 U.S.C. § 1141 and 11 U.S.C. § 524.

26 **IT IS HEREBY ORDERED** that the Debtor and each of the Creditors are bound
27 by and shall abide by the terms of the Modified Plan and this Order.
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DATED AND SIGNED ABOVE

Approved of as to Form and Content

GORDON SILVER

/s/ Robert C. Warnicke
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EXHIBIT “A”

EXHIBIT A

IMPROVEMENTS GUIDELINES

1. MidFirst designates Danny Hanson as its loan officer to act as liaison with Debtor for purposes of carrying out the Improvements to the Property.
2. The total maximum funds to be expended for the Improvements out of the cash collateral contemplated herein shall not exceed \$299,260 (the "Maximum Improvements Amount", inclusive of the \$10,000 to be retained by Debtor pursuant to the Confirmation Order as a "Revolving Fund Amount").
3. Subject to the Maximum Improvements Amount, the Debtor may undertake any of the following improvements projects (each, a "Project") on the Property:
 - a. The following Primary Projects:
 - i. Interior Renovation of 7 apartment units;
 - ii. Interior of the clubhouse;
 - iii. Roof of the mail area;
 - iv. Two studio buildings' roofs;
 - v. Clubhouse roof;
 - vi. Parking lot replacement and repair;
 - vii. Main pool deck repair;
 - viii. Replace Osborn driveway entrance; and
 - ix. Storage units on the Property.
 - b. The following Secondary Projects:
 - i. Replacement of corporate apartment furnishings;
 - ii. Replacement of landscape caused by freeze damage;
 - iii. Site lighting; and
 - iv. Replacement of security gate system and pool fencing.

MidFirst and the Debtor agree that no Secondary Project shall begin until all of the Primary Projects are fully completed.

4. Prior to beginning work on any Project, Debtor will provide a budget for the Project (a "Budget") in the form attached hereto as Exhibit 1. Each Budget shall be in a form and with sufficient detail acceptable to MidFirst. Subject to the Maximum Improvements Amount, Debtor may exceed the Budget for any particular Project by up to 15%. Further, subject to the Maximum Improvements Amount, MidFirst and Debtor may mutually agree to exceed any such Budget, based on the circumstances.
5. Except as provided paragraphs 6 and 7 hereof, all cash collateral for the Improvements will be held at MidFirst Bank.
6. At the Effective Date of the Plan, Debtor will be entitled to retain in an account within its control \$10,000 for expenses related to the Improvements. Upon submission of a draw request pursuant to the agreed procedures provided herein, MidFirst shall replenish the \$10,000 fund to Debtor.
7. Improvements Funding

- a. MidFirst and Debtor agree that the funds held by MidFirst for the Improvements will be paid upon Debtor providing a Request for Improvements Funding Advance in the form attached hereto as Exhibit 2. All Requests for Improvements Funding Advances shall be executed by Debtor.
 - b. Whenever any of the Improvements could result in a lien being placed on the Property, MidFirst may also require Debtor to provide a Conditional or Unconditional Waiver of Lien in the forms attached hereto as Exhibits 3 and 4, respectively. Waivers, at MidFirst's option, may be required from subcontractors.
 - c. MidFirst will provide funds only for completed work on site or purchased materials. MidFirst may advance funds for materials and/or deposits at MFB's discretion.
 - d. In addition to the Budget, Request for Improvement Funding, and Lien Waivers, the Debtor must provide invoices for all costs (collectively, the "Request Package"). Invoices for soft costs must be allocated to a line item or line items on the Budget.
 - e. When MidFirst receives a Request Package, MidFirst will (1) arrange for an inspection by Danny Hanson or other employee or site inspector within two business days, and (2) at MidFirst's sole discretion and cost, a date down endorsement from the title company in the amount of the total cumulative disbursements hereunder. Funding will occur within five business days following a completed Request Package. No more than two disbursement requests should be funded per calendar month.
8. Notwithstanding anything else contained herein, no new Project shall begin, if at the time there is an insufficient amount of money in the Cash Collateral account to fund (i) the outstanding unfunded Budget amounts for all Projects that have been commenced prior to that time; plus (ii) the Budget of such new Project.
 9. It is understood that Debtor may provide a sub-Budget for completion of less than all of the 7 apartment units as provided under paragraph 3(a)(i) hereof, so long as such sub-Budget is otherwise in conformance with these Improvements Guidelines. Nevertheless, for purposes of paragraph 8 above, as well as for purposes of Section 4(j)(5) of the Confirmation Order, the total Project Budget under paragraph 3(a)(i) (for Interior Renovation of 7 apartment units) shall be deemed to be \$190,000.00 until such time as Debtors may provide a Budget for the entire Project in compliance with paragraph 4 hereof.
 10. All work will be performed by independent, third-party contractors. Provided, however, that Debtor's Principals may act as either as general contractor or subcontractor for any of the Projects, provided that they will not be entitled to reimbursement for such services out of the cash collateral. Provided, further, that Debtor may use Debtor's employees to perform any work needed for any Project, provided that no compensation to an employee will be reimbursed out of the cash collateral.

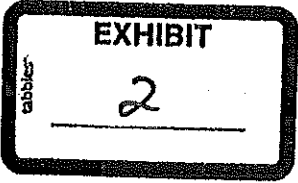
Project Budget

APPLICATION NO:
 APPLICATION DATE:
 PERIOD TO:
 ARCHITECT'S PROJECT NO:

In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	E WORK COMPLETED THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)
						TOTAL COMPLETED AND STORED	% (G + C)	
					0.00		0.00	
					0.00		0.00	
					0.00		0.00	
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					0.00		0.00	
					0.00		0.00	
					0.00		0.00	
					0.00		0.00	
					0.00		0.00	
GRAND TOTALS		\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	0.00%





REQUEST FOR IMPROVEMENTS FUNDING ADVANCE

TO: MidFirst Bank Improvements Funding Advance Request #. _____
3030 E Camelback Rd.
Phoenix, AZ 85016 Date: _____
Attention: Danny Hanson
 Vice President

Borrower: Oppenheimer Partners Properties, LP
Project Name: Park on Osborn; Zazu Panee Park Regent
Location: 1502 E. Osborn, Phoenix, AZ 85014

A.	Improvement Funds Available	\$299,260.00
B.	Total this Request.....	\$ _____
C.	Total Funds Advanced to Date (not including this disbursement)	\$ _____
D.	Current Funds Advanced, including this draw (B plus C).....	\$ _____
E.	Remaining Undisbursed Funds (A minus D).....	\$ _____

Disbursements pursuant to this Request for Improvements Advance will be made in accordance with the terms of that certain Improvement Guidelines dated 06/19/2013, between the undersigned and MidFirst Bank (the “**Improvement Guidelines**”), which Improvement Guidelines are incorporated herein. Except as otherwise defined herein, all capitalized terms used in this Request for Loan Advance will have the meanings ascribed to those terms in the Improvement Guidelines.

Borrower hereby authorizes and requests a disbursement of improvement funds in the amount of _____ for work done on the above Project. The undersigned further requests the above numbered draw request to be funded upon approval by you in the following manner:

- o Deposited into the Borrower’s disbursement account number _____ maintained by Lender.
- o To be wired to Borrower in accordance with the following wire instructions:

In connection with this Request for Improvements Funding Advance, the undersigned hereby warrants, represents and certifies to you, that:

1. All funds previously disbursed have been used for the purposes as set forth in the Improvement Guidelines.
2. All outstanding claims for labor, materials and/or services furnished prior to the draw period have been paid or will be paid from this disbursement.

3. Other than funds to replenish the \$10,000 Revolving Fund Amount set forth in the Improvements Guidelines, all sums advanced by Lender on account of this draw will be used solely for the purpose of paying obligations owing as detailed within this draw request and no item(s) for which payment is currently being requested has been the basis for any prior disbursement.

4. Other than real property taxes attributable to the subject property, there are no liens outstanding against the subject property or its equipment except for the Lender's liens and security interests.

5. All labor, services and/or materials have been performed upon or furnished to the captioned Project. Any materials not incorporated into the Project have been suitably stored and safeguarded and are insured.

6. Other than charges for labor for employees of Borrower, there is no extra work, labor or materials ordered or contracted for in excess of items and amounts reflected in the approved Budget except as permitted in paragraph 4 of the Improvements Guidelines or as previously approved by MidFirst in writing. Any charges for labor for employees of Borrower which have been incurred by Borrower but are not reimbursable from funds held by MidFirst have been paid or will be paid by Borrower within their normal pay periods.

7. Other than charges for labor for employees of Borrower, the payments to be made pursuant to this Request for Improvements Funding Advance will pay all bills received to date for any labor, materials and services furnished in connection with the Project. Any charges for labor for employees of Borrower which have been incurred by Borrower but are not reimbursable from funds held by MidFirst have been paid or will be paid by Borrower within their normal pay periods.

8. All conditions to the disbursement of funds under this Request for Improvements Funding Advance as set forth in the Improvements Guidelines have been fulfilled, and to the best knowledge and belief of Borrower, no Default or Event of Default has occurred and is continuing under the Note A or Note B executed in connection with the Bankruptcy Plan approved in Case No. 2-11-bk-33139 in the United States Bankruptcy Court for the District of Arizona.

Borrower hereby agrees to indemnify and hold harmless MidFirst Bank for any and all damages which it may sustain on account of being compelled to pay or defend against the claim or lien of any laborer, materialman, contractor or subcontractor, which may hereafter be filed against the Project for labor or materials furnished in the construction of the above Improvements to date, including attorneys fees and court costs expended in connection with the defense of any such claim.

EXECUTED this _____ day of _____, 2013

By: _____
Name:
Title:



**General Contractor's Affidavit
And Conditional Partial Waiver of Lien**

In consideration of payment in the amount of \$ _____, for any labor, material, supplies, equipment, and work furnished to the construction project through _____ the undersigned hereby waives, releases and relinquishes to the amount sent forth above, any and all claims or rights of lien which the undersigned may now have by reason of any labor, material, supplies, equipment, or work furnished to the construction project commonly known as:

**Project: Park on Osborn; Zazu Lanee Park Regent
 1502 E. Osborn, Phoenix, AZ**

Further, the undersigned, in consideration of the payment of the said sum, does hereby release and forever discharge, **MidFirst Bank** (the Project Lender), and their respective subsidiaries, general partners, lenders, and employees from any and all claims, demands, suits, causes of action of whatever kind of nature, whether based on contract, tort or otherwise, which now exist or which arise out of or which are in any way connected to the construction of this project.

It is expressly understood that this waiver has been given prior to receipt of payment at the request of and for the convenience of the Payer and is, therefore, contingent upon receipt in due course of payment in full of the amount set forth above. The waiver is limited to the labor, materials, supplies, equipment and work furnished to the date hereof.

General Contractor: Oppenheimer Partners Properties LLP

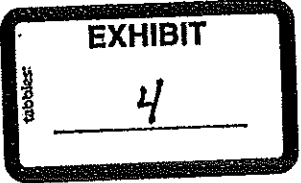
BY: _____
Name: _____ Title: _____

Subscribed and sworn to before me this _____ day of _____
My commission Expires:

Notary Public's Signature

Notary's Printed Name

County & State of Notary



**General Contractor's Affidavit
And Unconditional Partial Waiver of Lien**

In consideration of payment in the amount of \$ _____, for any labor, material, supplies, equipment, and work furnished to the construction project through _____ the undersigned hereby waives, releases and relinquishes to the amount sent forth above, any and all claims or rights of lien which the undersigned may now have by reason of any labor, material, supplies, equipment, or work furnished to the construction project commonly known as:

**Project: Park on Osborn; Zazu Lanee Park Regent
 1502 E. Osborn, Phoenix, AZ**

Further, the undersigned, in consideration of the payment of the said sum, does hereby release and forever discharge, **MidFirst Bank** (the Project Lender), and their respective subsidiaries, general partners, lenders, and employees from any and all claims, demands, suits, causes of action of whatever kind of nature, whether based on contract, tort or otherwise, which now exist or which arise out of or which are in any way connected to the construction of this project.

General Contractor: Oppenheimer Partners Properties LLP

BY: _____
Name: _____ Title: _____

Subscribed and sworn to before me this _____ day of _____
My commission Expires:

Notary Public's Signature

Notary's Printed Name

County & State of Notary

EXHIBIT “B”

Exhibit B

Security Deposit Listing

Properties: 01 - Annual

Tuesday April 30, 2013 Deposit Types Selected: 'DP', 'KeyDep', 'PetDep', 'Remote'

Customer Name	Unit	Deposits Held
01 - Annual		
Adams, Jeffrey	100	285.00
Olson, Vance	102	495.00
Savage, Diane	104	637.00
Gonzalez, Mary Ann	105	345.00
Guadalupe Lopez, J	107	285.00
Green, Alisha	109	285.00
Price, Richard	110	669.00
Nunley, Mary Lu	111	285.00
James, Benjamin	112	285.00
Castillo, Jose	113	495.00
Mathis, David	114	255.00
Miller, Ashley	115	600.00
Williams, Samantha	116	225.00
Olson, Michael	117	200.00
Healthcare Staffing,	118	525.00
Waters, David	118	622.00
Wachtor, Shella	121	285.00
Villanueva, Maria	122	225.00
Radosavljevic, Daja	123	992.00
Cook, Lynette	124	495.00
Delgado, Adriana	125	683.00
Kirsch, Melvin	129	345.00
Owen, Laura	130	992.00
Sanders, Rebecca	131	285.00
Combs, Sarah	132	285.00
Stair, Shelly Brooks	134	673.00
Jones, Caronda	135	685.00
Masood, Faeza	136	651.60
DeMik, Lindsay	137	435.00
Coyne, Shannon	139	495.00
Peters, Veronica	141	255.00
Morey, Peter	142	1,324.00
Palmasano, Alice	146	555.00
Vargas, Rosa	147	285.00
White, Thea	148	645.00
Mo Adams, William	151	450.00
Read, Melissa	201	450.00
Carr, Angela	202	285.00
Conner, Robert	204	495.00
Betts, Richard Frank	205	285.00
Hoard, Britney	206	435.00
Gelsler, Carrie	207	495.00
Forster, Glenn	208	285.00
Patton, Matthew	209	962.00
Rosemond, Kristin	210	617.00
Garcla, Yolanda	211	345.00
Scholz, Jennifer	213	495.00
Razowski, Katarzyn	215	414.00
Chavez, Nanelle	216	285.00

<u>Customer Name</u>	<u>Unit</u>	<u>Deposits Held</u>
01 - Annual		
Guglielmo, Gina	220	345.00
Avilez, Jose	221	285.00
Gomes, Errol	222	315.00
Allen, Carla	223	270.00
Raines, Sean	224	843.50
Hill, Robert	225	285.00
Newland, Daniel	228	495.00
Duffy, Adam	229	315.00
Vinersar, Elizabeth	230	435.00
Steele, James	231	435.00
Brady, Kate	232	285.00
Tudor, Richard	233	467.00
Smith, Tyrone	234	315.00
Brekke, Arlen	235	225.00
Jones, Maria Jose	236	285.00
Dorame, Samuel	237	555.00
Stephens, Jenean	238	704.00
Za, Remie	240	480.00
Scholl-Rylee, Nichol	241	570.00
Trinidad, Fernando	242	285.00
Primus, Michael	243	435.00
Smith, Jarrod	244	285.00
Skolnekovich, Luke	246	495.00
Dodge, Gabriel	247	376.00
Regan, Hollie	300	547.50
Rodriguez, Joaquín	301	315.00
Balfey, Roger	302	345.00
Martin, Becky	303	450.00
Saputo III, Joseph	304	995.00
Martinez, Pilar Robt	305	345.00
Tibbitts, Amber	307	285.00
Hilzendegeer, Keith	308	1,189.00
White, Sara	309	345.00
Pokrass, Serena	310	859.00
Bobair, Renee	316	435.00
Murphy, James	318	285.00
Honanie, Jeffrey	319	390.00
Han, Patricia	320	435.00
Pflepson, Paula Ma	321	285.00
Turner, Dharshaun	350	575.00
Copplinger, Michael	351	285.00
Ng, Martin	352	1,137.00
Zambo, Jason	353	745.00
Williams, Janeen	354	980.00
Hall, Marisa	450	520.00
Stacla, Moser	453	463.00
Lensingor, Deldra	454	285.00
Jermonli, Curtis	455	605.00
Haynes, Dashawn	501	385.00
Hennessy, James	502	435.00
Markus, Tyler Ladd	503	1,042.00
Sloan, Jillian	504	693.00
Ybanez, Vivian	505	495.00

<u>Customer Name</u>	<u>Unit</u>	<u>Deposits Held</u>
01 - Annual		
Richards, Carrie	506	1,163.00
Frank, LaFrenda	507	992.00
Mattys, John	508	988.00
Fockler, Jordon Bra	509	996.00
Mescudi, Deen	510	460.00
Thomas, Shalorra	511	285.00
Motley, Donald	512	255.00
Gelb, Stephanie	514	285.00
Tucker, Mark	515	285.00
Hampton, Christoph	517	1,132.00
Harper, Robert	518	285.00
Pierce, Dustin Ryan	601	1,143.00
Robertson, John	602	463.92
Fortune, Johanthan	603	141.00
Maldonado, Arnaldc	604	285.00
Gurka, Amy	605	435.00
Palacios, Vanessa	606	285.00
Blair, Ronald	607	385.00
Ziegler, Marcus	608	285.00
Barnes, Dustin	609	404.25
Caudill, Richard	610	0.00
Piceno, Alberto	611	210.00
Skivington, Min	612	285.00
Kearney III, Robert	613	285.00
Hill, Joshua	614	770.00
Sandoval, Patrick	615	285.00
Faecke, Guldo	616	255.00
Cordova, Irene	617	285.00
Brice, Michelle	618	<u>344.00</u>
Totals for Property		62,468.67
		<u>62,468.67</u>

Security Deposit Listing

Properties: 02- Short Term

Tuesday April 30, 2013 Deposit Types Selected: 'DP', 'KeyDep', 'PetDep', 'Remote'

Customer Name	Unit	Deposits Held
02- Short Term		
Parker, Beth	103	327.00
Advantage RN, Adv	106	785.00
Graber, Mall	126	0.00
Barton, Alexander	128	285.00
AZ Theatre Co., Gle	133	0.00
Aramark PCC, Run	140	0.00
Kinlin, Stephen	145	285.00
Henderson, Sam	149	285.00
Informatix Inc, Leise	203	285.00
Informatix, Inc, Rich	212	285.00
Porto, Michael	214	0.00
Advantage RN, Ken	217	285.00
Guest Suite, Saputc	217	0.00
N. Hunter, Curastat	218	285.00
Pierron, Marie	219	1,625.00
Tipple, Cheryl	227	285.00
Seoana, Pablo	239	315.00
Zoerner, Jasmine	245	285.00
Bridge, Michael	249	285.00
Aramark Sport, Gur	311	285.00
AZ Theatre Co, Lee	311	0.00
Kelly, #1, Janice	312	285.00
AZ Theatre Co, Ger	312	0.00
Kircher, Kim	313	315.00
Guest Suite, Saputc	313	0.00
AZ Theatre Co., Tir	314	0.00
AZ Theatre Co, Mar	314	0.00
Kelley 2, Janice/Mic	315	285.00
AZ Opera, Laura W	322	285.00
AZ Theatre Co, Ash	323	0.00
AZ Theatre Co, Nev	323	0.00
AZ Theatre Co, Jon	324	0.00
Krtzovsky, Eugene	325	315.00
AZ Theatre Co, Bob	326	0.00
AZ Theatre Co, Antl	326	0.00
AZ Theatre Co, Dav	327	0.00
AZ Theatre Co, Goc	327	0.00
AZ Theatre Co., Pel	328	0.00
AZ Theatre Co, Gre	328	0.00
Guest Suite, Saputc	329	0.00
AZ Opera, Thomas	355	285.00
AZ Opera, Bevin Hill	451	285.00
AZ Opera, David Mi	452	285.00
Phoenix Theatre, C.	513	0.00
Totals for Property		8,497.00
		8,497.00