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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re

1701 COMMERCE, LLC,

Debtor in Possession.

CHAPTER 11

CASE NO. 12-41748-DML-11

**DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION**

**ARTICLE I**

**INTRODUCTION TO THE DISCLOSURE STATEMENT  
AND IMPORTANT GENERAL INFORMATION**

**A. Purpose of the Disclosure Statement**

The Disclosure Statement (the “**Disclosure Statement**”) is to inform you of the proposed plan (the “**Plan**”) for the reorganization of 1701 Commerce, LLC (the “**Debtor**”). Unless otherwise noted, all capitalized terms herein shall have the definitions ascribed to them in the Plan.

There has been no independent audit of the financial information contained in the Disclosure Statement. The information in the Disclosure Statement was compiled from the Debtor’s books and records.

The Disclosure Statement addresses events prior to the Debtor’s formation, the Debtor’s acquisition of the Hotel Property (as defined below), events during the Debtor’s Chapter 11 case, including the Debtor’s sale of the Hotel Property, and the Debtor’s intended reorganization and the payment to Creditors on Allowed Claims.

**THE PLAN IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT 1 – INTERESTED PARTIES ARE STRONGLY URGED TO REVIEW THE PLAN CONCURRENTLY WITH REVIEWING THIS DISCLOSURE STATEMENT AS THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN TERMS**

**B. The Confirmation Hearing**

On [REDACTED], 2013, the Bankruptcy Court entered an Order, *inter alia*, approving this Disclosure Statement as containing “adequate information,” in accordance with Section 1125 of the Bankruptcy Code. The Bankruptcy Court will conduct a hearing to consider confirmation of the Plan on [REDACTED], 2013, at [REDACTED]:[REDACTED].m., prevailing Central Time

(the “**Confirmation Hearing**”). The Confirmation Hearing will be held before the Honorable D. Michael Lynn, United States Bankruptcy Judge, at the United States Bankruptcy Court, 501 W. Tenth Street, Fort Worth, Texas, 76102.

Objections, if any, to confirmation of the Plan must be filed and served so that they are received on or before                     , 2013, at            p.m., prevailing Central Time. Objections to Confirmation must be filed with the Clerk of the Court and must be served upon the Debtor’s Counsel, Michael D. Warner, Esq., Cole Schotz, 301 Commerce Street, Suite 1700, Fort Worth, TX 76102. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court, without notice except as provided at the Confirmation Hearing.

**C. Creditors are Not Entitled to Vote on the Plan**

THE BANKRUPTCY CODE GENERALLY REQUIRES THAT A DEBTOR, AFTER OBTAINING BANKRUPTCY COURT APPROVAL OF A DISCLOSURE STATEMENT, SOLICIT VOTES FROM CREDITORS ON THEIR ACCEPTANCE OR REJECTION OF A PLAN. THAT PROCESS IS ACHIEVED BY MAILING COPIES OF THE PLAN AND DISCLOSURE STATEMENT, TOGETHER WITH A BALLOT FOR VOTING ON THE PLAN, TO ALL CREDITORS. HOWEVER, ONLY THOSE CREDITORS WHOSE LEGAL, EQUITABLE AND/OR CONTRACTUAL RIGHTS ARE “IMPAIRED” – THAT IS, ALTERED IN ANY WAY – UNDER THE PLAN WILL BE ENTITLED TO VOTE. CREDITORS WHOSE RIGHTS ARE UNIMPAIRED ARE NOT ENTITLED TO VOTE ON A PLAN.

AS DESCRIBED IN DETAIL BELOW, THE PLAN PROPOSES TO PAY THE HOLDERS OF ALL ALLOWED CLAIMS, 100% OF THE AMOUNT OF THEIR ALLOWED CLAIMS, PLUS INTEREST ACCRUED SINCE THE PETITION DATE. BECAUSE THE

LEGAL, EQUITABLE AND CONTRACTUAL RIGHTS OF THE HOLDERS OF ALLOWED CLAIMS WILL NOT BE ALTERED UNDER THE PLAN, NO CREDITORS WILL BE IMPAIRED UNDER THE PLAN, AND THUS, NO CREDITORS WILL BE ENTITLED TO VOTE ON THE PLAN. ACCORDINGLY, THE PURPOSE OF THIS DISCLOSURE STATEMENT IS TO PROVIDE CREDITORS WITH GENERAL INFORMATION REGARDING THE DEBTOR AND ITS BUSINESS AND FINANCIAL AFFAIRS, BUT NOT TO SOLICIT VOTES ON THE PLAN.

HOWEVER, WHILE CREDITORS ARE NOT ENTITLED TO VOTE ON THE PLAN, CREDITORS MAY STILL FILE OBJECTIONS TO CONFIRMATION OF THE PLAN WITH THE BANKRUPTCY COURT, ON THE BASIS THAT THE PLAN FAILS TO SATISFY ONE OR MORE OF THE REQUIREMENTS FOR CONFIRMATION OF A PLAN PURSUANT TO SECTION 1129(a) OF THE BANKRUPTCY CODE.

The Disclosure Statement is not intended to provide you legal, business, financial or tax advice. It is strongly suggested that you consult your own legal, business, financial and tax advisors as to any such matters.

**D. Requirements for Confirmation of the Plan**

The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of Section 1129 of the Bankruptcy Code. Among the requirements for confirmation in this Chapter 11 Case are that the Plan be: (i) accepted by all impaired classes of Claims and Equity Interests or, if rejected by an impaired class, that the Plan “does not discriminate unfairly” against and is “fair and equitable” with respect to such class; and (ii) feasible. **As noted above, because the Holders of Allowed Claims will have their claims paid in full with interest accrued since the Petition Date, there will be no classes of impaired creditors under the Plan.** The Bankruptcy Court, however, must also find that:

- The Plan has classified claims and interests in a permissible manner;
- The Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and
- The Plan has been proposed in good faith.

Section 1122 of the Bankruptcy Code requires the Plan to place a claim or equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Plan creates separate classes to deal respectively with secured claims, unsecured claims and equity interests. The Debtor believes that the Plan's classifications place substantially similar claims or equity interests in the same class and thus, meet the requirements of Section 1122 of the Bankruptcy Code.

Classes of claims or equity interests that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote. The Plan contains two (2) separate classes of Claims and one class of Interests. The classification of Claims and Interests is addressed in detail in Article III below.

The "feasibility" test requires the Bankruptcy Court to find that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization of the Debtor. The Plan is being funded by Estate Cash (as defined below) already in the Debtor's possession, which is sufficient to satisfy the feasibility requirements of the Bankruptcy Code.

**E. Summary of the Plan Structure**

The structure of the Plan is the distribution, on the Effective Date of the Plan, of cash to the Holders of Allowed Claims, with any residual funds to remain with the Debtor. As of the date of this Disclosure Statement, the Debtor has sold its primary assets – the Hotel Property – and is holding approximately \$3,995,571, in cash (the "Estate Cash"). The amount of the Estate Cash as of the Effective Date of the Plan is not expected to adjust significantly, although certain

administrative obligations continue to be incurred and paid by the Debtor in the ordinary course of business.

The Estate Cash will be distributed by the Debtor, who will act as the Disbursing Agent under the Plan, to the Holders of Allowed Claims. The Plan provides for a *modified waterfall of funds*, in descending order of priority under the Bankruptcy Code: Secured Claims, Administrative Expense Claims, Priority Claims, and General Unsecured Claims. The distribution on Allowed Claims is “modified”, as a result of the agreement of Vestin - an insider of the Debtor - holding both Unsecured Claims and Administrative Claims – to subordinate its claims to the payment of Allowed General Unsecured Claims. In this way the Debtor has sufficient funds for the feasibility of its Plan.

**F. Summary of Claims – to Demonstrate Feasibility**

The amount of Claims on file (both those filed as Proofs of Claim and those Scheduled by the Debtor – as detailed below) are, in aggregate less than the Estate Cash on hand, and thus the Estate Cash on hand is sufficient to pay all Allowed Claims pursuant to the terms of the Plan.

Specifically, General Unsecured Claim represented by filed Proofs of Claim or Scheduled Claims that were not marked as either contingent, unliquidated or disputed (the “**Universe of Unsecured Claims**”), total \$2,978,043.06 (the “**Aggregate General Unsecured Claims**”). The Plan provides for payment in full, plus interest, of all Allowed General Unsecured Claims. Interest, is calculated on the Federal Post-Judgment Interest Rate<sup>1</sup>. Interest commences on the Petition Date of March 26, 2012 and is paid through the Distribution Date – which is estimated

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<sup>1</sup> Interest on Allowed Claims will be paid from the Petition Date through the Distribution Date. Interest is calculated at the Federal Post-Judgment Rate posted on the United States District Court for the Northern District of Texas' website, at <http://www.txnd.uscourts.gov/publications/pjrate.html>. The interest rate adjusts every 7 days. The Debtor assumes, for purposes of estimating interest, that the interest rate on and after October 7, 2013, through the estimated Distribution Date of December 30, 2013, will remain constant. Based on the foregoing, and pursuant to Schedule D, attached hereto and incorporated herein by this reference, the effective interest rate for the entire period is approximately .27041%.

to be the Effective Date of the Plan – anticipated to be on or before December 30, 2013. Interest on the Aggregate General Unsecured Claims is estimated to be \$81,628.16. The Debtor therefore estimates that the maximum payment on General Unsecured Claims could be as much as \$3,059,671.22. Schedule A attached hereto, and incorporated herein by this reference, is a complete listing of the Universe of Unsecured Claims, exclusive of those that are held by insiders or withdrawn.

The Debtor intends to object to various claims within the Universe of Unsecured Claims. Thus, the Debtor does not believe that all claims within the Universe of Unsecured Claims will be Allowed General Unsecured Claims. Nevertheless, assuming all claims within the Universe of Unsecured Claims were to be Allowed General Unsecured Claims, the Debtor has sufficient funds to pay all such Allowed General Unsecured Claims in full with interest, pursuant to the Plan.

Various filed Proofs of General Unsecured Claims and Scheduled Unsecured Claims are held by Vestin. Vestin has agreed to subordinate all of its held General Unsecured Claims to the payment of Allowed General Unsecured Claims pursuant to the Plan. In addition, Vestin has agreed to support the Plan, notwithstanding that it may not be paid in full on its subordinated Allowed General Unsecured Claims. Schedule B attached hereto, and incorporated herein by this reference, is a complete listing of all filed Proofs of General Unsecured Claims and Scheduled Unsecured Claims held by Vestin (the “**Vestin Unsecured Claims**”). As the Vestin Unsecured Claims will be subordinated to Allowed Unsecured Claims, and Vestin has agreed to the terms of the Plan, feasibility of the Plan does not require consideration of the Vestin Unsecured Claims.

Various filed Proofs of Claim, both unsecured and secured, have been withdrawn. Schedule C attached hereto, and incorporated herein by this reference is a complete listing of all filed Proofs of Claim that have been withdrawn (the “**Withdrawn Claims**”).

In addition to General Unsecured Claims, there are Secured Claims, Administrative Expense Claims, and Priority Non-Tax Claims against the Estate that are or will be, as of the Effective Date of the Plan, Allowed Claims. Some of these Claims will be paid on the Effective Date, and others, as noted below, will be paid in accordance with agreed upon terms or subordinated.

The following table summarizes the Estate Cash, the Claims against the Debtor that are not subordinated and must be considered in order to confirm that the Debtor has sufficient Estate Cash to pay all such Claims in full, plus interest, and thus confirm that such Claims are Unimpaired.

Estate Cash (est.)	\$3,995,571
Priority Non-Tax Claim – United States Trustee (est.)	-\$10,000
Administrative Claim – Professionals (est.)	-\$200,000
Administrative Claim – Richfield (est.)	-\$85,007
Secured Claim (inclusive of interest) – CapSource	-\$308,112
Aggregate General Unsecured Claims (inclusive of interest)	-\$3,059,671
Excess Estate Cash (prior to paying subordinated Claims)	\$332,781

The forgoing table does not address the Vestin Unsecured Claims nor Vestin’s Administrative Claim, both of which have, by agreement of Vestin, been subordinated to the payment of Allowed general Unsecured Claims. Thus, from the forgoing table it is clear that the Estate Cash is sufficient to pay all non-subordinated Claims in full, were all to be Allowed Claims.



**ARTICLE II**

**HISTORY REGARDING THE DEBTOR – BEFORE AND DURING THE  
BANKRUPTCY CASE**

**A. The Filing of the Bankruptcy Case**

On March 26, 2012 (the “**Petition Date**”), the Debtor commenced its Chapter 11 Case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court. No trustee, examiner or Official Committee of Unsecured Creditors has been appointed in the Chapter 11 Case. The Debtor has remained in possession of its assets and the management of its business as a debtor in possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

**B. The Debtor’s Organizational Structure**

The Debtor was formed in October 2011 and is a Nevada limited liability company. As of the Petition Date, the Debtor had three (3) members, holding the following membership interests: Vestin Fund III, LLC (1.70%), Vestin Realty Mortgage I, Inc. (7.93%), and Vestin Realty Mortgage II, Inc. (90.37%). The Debtor is managed by Vestin Mortgage, LLC, which is managed by Michael Shustek. After the Effective Date, the Post-Confirmation Debtor shall continue to exist in accordance with the applicable law in Nevada and pursuant to its organizational documents in effect prior to the Effective Date. The three members of the Debtor shall all retain their respective percentages of ownership on the Effective Date and Vestin Mortgage, LLC, managed by Mr. Shustek, shall continue to manage the Debtor.

**C. The Debtor’s Acquisition of the Hotel Property**

Presidio Hotel Fort Worth, L.P. (“**Presidio**”) was a Limited Partnership formed under the laws of the State of Texas on December 19, 2005. On its formation date, Presidio’s General Partner was Presidio Fort Worth Investors, LP. Presidio was the owner of real property and

improvements located at 1701 Commerce Street, Fort Worth Texas, 76102, commonly referred to as the Sheraton Fort Worth Hotel and Spa (the “**Hotel Property**”). The Hotel Property consists of approximately 431 guest rooms, 22,000 square feet of meeting and exhibit space, a fitness center, an 8,000 square foot luxury spa, a restaurant and bar, a covered parking garage, and an easement to additional open air parking. Presidio obtained title to the Hotel Property on February 28, 2006.

On or about March 16, 2007, Presidio received a loan (the “**Senior Loan**”) from Dougherty Funding, LLC and ten junior note holders (collectively, “**Dougherty**”) in the original principal amount of \$38,975,000. The Senior Loan was secured by a first priority mortgage on the Hotel Property. On April 30, 2008, Presidio entered into a \$10,600,000 Mezzanine Loan Agreement (the “**Mezzanine Loan**”) with Vestin, which was increased several months later to \$11,800,000. Presidio’s obligations to Vestin under the Mezzanine Loan were secured by, *inter alia*, a Mezzanine Deed of Trust (the “**Mezzanine Deed of Trust**”) covering the Hotel Property.

Vestin assigned the Mezzanine Deed of Trust to the Debtor *via* an Assignment of Deed of Trust dated November 30, 2011. Presidio defaulted on its obligations under both the Senior Loan and the Mezzanine Loan in December 2011. As a result, the Debtor posted the collateral – the Hotel Property - covered by the Mezzanine Deed of Trust for foreclosure on February 7, 2012. In lieu of an imminent foreclosure, and in exchange for, *inter alia*, releases from its principals’ personal guarantees, Presidio agreed to turn over to title to the Hotel Property to the Debtor, subject to the valid and enforceable superior lien and encumbrance, held by Dougherty. Presidio’s agreement was documented in that certain Deed in Lieu Agreement (the “**DILA**”) executed by the Debtor and Presidio on February 7, 2012. To implement and record the effect of

the DILA, Presidio executed a deed (the “**Deed**”) by which Presidio conveyed the Hotel Property to the Debtor. The Deed was recorded on February 8, 2012.

After the Deed to the Hotel Property was recorded in favor of the Debtor, Dougherty sought to foreclose on the Senior Mortgage, and on March 26, 2012, the Debtor filed its voluntary petition commencing the Chapter 11 Case. The Hotel Property was the Debtor’s primary asset as of the Petition Date.

**D. Certain Administrative Events During the Bankruptcy Case**

1. Retention of Counsel to Represent the Debtor and the Administrative Claim of Vestin Realty

From the Petition Date and for approximately seven months thereafter, the Debtor was represented by John P. Lewis, Jr. On November 6, 2012, the Debtor filed an application seeking the retention of new counsel - Cole, Schotz, Meisel, Forman & Leonard, P.A. (“**Cole Schotz**”) - and the Bankruptcy Court approved the retention on November 26, 2012.

Concurrent with the filing of the application to retain Cole Schotz, the Debtor also filed its *Motion for Authority to Incur Unsecured Administrative Debt Outside of the Ordinary Course of Business Pursuant to 11 U.S.C. § 364(b)* (the “**Motion to Borrow**”). As described in the Motion to Borrow, one of the Debtor’s members, Vestin Realty Mortgage II, Inc. (“**Vestin Realty**”), deposited \$420,000 into Cole Schotz’s attorney trust account (the “**Trust Account Funds**”). Through the Motion to Borrow, the Debtor sought authority to borrow from Vestin Realty, *inter alia*, the Trust Account Funds, to be used solely for the purpose of paying the Court-approved and allowed fees and expenses of Cole Schotz. The Bankruptcy Court granted the Motion to Borrow. Pursuant to various orders of the Bankruptcy Court approving Cole Schotz’s interim applications for compensation and reimbursement of expenses, Cole Schotz has exhausted the Trust Account Funds. As a result of the foregoing, Vestin Realty has an Allowed

Administrative Expense Claim of \$420,000, the payment of which Vestin has agreed to subordinate to all Allowed General Unsecured Claims under the Plan.

2. Scheduled Claims and Filed Claims

In a Chapter 11 case, pre-petition claims against a debtor are generally established either as a result of being listed in the debtor's schedules of liabilities as not being contingent, unliquidated, or disputed, or through assertion by the creditor in a timely filed proof of claim. Claims asserted by creditors are then either allowed or disallowed. If allowed, a claim will be recognized and treated pursuant to a plan. If disallowed, the creditor will have no right to obtain any recovery on, or to otherwise enforce, its claim against the debtor.

On April 23, 2012, the Debtor filed its Schedules with the Bankruptcy Court. The Schedules set forth, among other things, the pre-petition claims against the Debtor based on the Debtor's books and records. In addition, the Schedules listed various Claims out of an overabundance of caution, and for notice purposes only – notwithstanding such Claims may not be Allowed Claims.

The Bankruptcy Court established August 9, 2012 (the “**Claims Bar Date**”) as the deadline for filing Proofs of Claim with the Clerk of the Bankruptcy Court for any pre-petition Claim against the Debtor. The Bankruptcy Court maintains a register of the filed Proofs of Claim. Additionally, the Bankruptcy Court established November 29, 2013 (the “**Administrative Claims Bar Date**”) as the deadline for filing Administrative Claims with the Clerk of the Bankruptcy Court for any post-Petition Date Claim against the Debtor arising on or prior to October 31, 2013.

Article III, below, details the Claims listed in the Debtor's Schedules, Claims filed with the Clerk of the Court and Administrative Expense Claims that the Debtor anticipates to be filed, and the Debtor's proposed treatment of each Claim.

**E. Certain Litigation During the Bankruptcy Case**

1. Litigation, Settlement and Payment to Dougherty

Almost immediately following the Petition Date, Dougherty, the holder of the Senior Loan, filed various motions seeking, *inter alia*, relief from the automatic stay (to be able to foreclose on its Collateral – the Hotel Property), adequate protection of its collateral, and to dismiss the Debtor’s Chapter 11 Case. After several days of litigation, the Bankruptcy Court entered a Memorandum Opinion and Order, in which it denied Dougherty’s various motions, but ordered that the Debtor make monthly payments to Dougherty, and further ordered that the automatic stay under Section 362 of the Bankruptcy Code would terminate unless the Debtor or one of its affiliates deposited the sum of \$1,000,000 with the registry of the Bankruptcy Court as, *inter alia*, adequate protection against any diminution in the value of Dougherty’s collateral (the “**Adequate Protection Deposit**”). Vestin Realty posted the Adequate Protection Deposit, and the automatic stay remained in place. The Adequate Protection Deposit was never used by the Debtor for payment to Dougherty. As addressed below, however, in connection with a transaction with Prism (as defined below), \$190,000 of the Adequate Protection Deposit was used by the Debtor, and the balance thereof has been returned to Vestin Realty, pursuant to a Bankruptcy Court Order. The use of \$190,000 of the Adequate Protection Deposit resulted in Vestin having an Allowed Administrative Claim. Vestin has agreed to subordinate its \$190,000 Allowed Administrative Expense Claim to the payment of all Allowed General Unsecured Claims under the Plan.

During the course of the Chapter 11 Case, the Debtor and Dougherty continued to negotiate, at times litigate, and ultimately reach agreements on multiple issues, including the scope of Dougherty’s collateral to secure the Senior Loan, the Debtor’s use of cash collateral for operations of the Hotel Property, specific operating expenses of the Hotel Property, the use and

division of proceeds of the TOT Funds received from the City of Fort Worth (as defined and discussed below), required periodic reporting to Dougherty by the Debtor, the structure, timing, marketing, and terms of the sale of the Hotel Property, the division of the deposits received from the buyer of the Hotel Property pending the closing of the sale, and the division of the proceeds from the sale of the Hotel Property.

Ultimately, the sale of the Hotel Property closed (as addressed below), and Dougherty was paid in full on its secured debt. Pursuant to the Claims Bar Date Order, Dougherty filed various Proofs of Claim. As a result of the payment in full of Dougherty's Secured Claim, all Proofs of Claim filed by Dougherty have been withdrawn. See Schedule C attached hereto, for the list of Dougherty (and other entities') withdrawn Proofs of Claim.

2. Litigation and Settlement with Ebneter

Adjacent to the Hotel Property is a parking lot that was used by the Debtor exclusively pursuant to an easement agreement by and among the Debtor and a group of individuals (the "Ebneter Parties"). The Ebneter Parties asserted that when Presidio transferred title to the Hotel Property to the Debtor, the easement did not transfer. The Debtor was forced to first negotiate with, and, when that failed, file suit against the Ebneter Parties to determine the Debtor's rights in and to the easement agreement. Ultimately, on the eve of trial, the matter settled, and settlement agreements were drafted, negotiated, executed, and approved by the Bankruptcy Court. The effect of the settlement was to solidify the Debtor's rights in and to the easement agreement, thus allowing its transfer to an ultimate buyer of the Hotel Property.

3. Litigation and Settlements with Presidio

At the time the Debtor acquired the Hotel Property, it also believed that it acquired a contract with the City of Fort Worth, commonly referred to as the "TOT Agreement," which in essence was a long-term agreement tied to the Hotel Property that resulted in certain tax benefits

to the Debtor. The Debtor's ability to transfer the TOT Agreement to a third party buyer of the Hotel Property was questioned by multiple parties (including Presidio and Dougherty). As a result, the Debtor was forced to initially negotiate and then litigate its rights in and to the TOT Agreement with Dougherty (who asserted certain lien rights in and to the TOT Agreement), Presidio (who asserted it still owned the TOT Agreement), and the City of Fort Worth (who asserted that proceeds of the TOT Agreement could not be delivered to the Debtor, absent a resolution of the TOT Agreement ownership issue). Ultimately, the Debtor entered into an agreement consented to by all parties and approved by the Bankruptcy Court that provided for title to the TOT Agreement to be placed in trust with the escrow company handling the closing of the sale of the Hotel Property, to be delivered to the ultimate purchaser of the Hotel Property, in the event a sale closed, or to Dougherty, in the event Dougherty foreclosed on the Hotel Property.

In addition to the litigation with Presidio over the TOT Agreement, the Debtor and Presidio litigated Presidio's desire to be an alternative purchaser of the Hotel Property. Presidio filed multiple pleadings with the Bankruptcy Court, including motions seeking authority to make an alternative bid for the Hotel Property, a proposed plan of reorganization for the Debtor which encompassed a sale of the Hotel Property to Presidio, and various objections to the Debtor's attempted sale to Prism (as addressed below). After months of discovery, litigation, and negotiations, the Debtor and Presidio settled all of the issues between them, which settlement was approved by the Bankruptcy Court. The settlement with Presidio paved the way for the Debtor to sell the Hotel Property.

**F. The Sale of the Hotel Property**

On November 5, 2012, the Bankruptcy Court approved the Debtor's proposed sale of the Hotel Property to PHC Management, LLC ("**Prism**"). In connection with attempting to

complete the transaction with Prism, both Prism and the Debtor recognized several infirmities that stood in the way of completing the transaction for the sale of the Hotel Property to Prism, or, for that matter, to any buyer. In addition Prism was unable to find the necessary financial backing to complete a sale. Ultimately, some of these infirmities were insurmountable for Prism such that Prism terminated its intended acquisition of the Hotel Property. Following Prism's termination of its purchase of the Hotel Property, Prism asserted an Administrative Expense Claim pursuant to the terms of the agreements between Prism and the Debtor. Following informal discovery and negotiations, an Administrative Expense Claim amount was agreed upon, a settlement agreement was approved by the Court, and the amount paid by the Debtor. The Debtor paid \$190,000 to Prism from the Adequate Protection Deposit (i.e., the deposit posted by Vestin Realty).

As a result of the termination of Prism's acquisition of the Hotel Property, the Debtor sought out alternative buyers. Among the potential buyers the Debtor negotiated with were affiliates and insiders of Presidio. Such negotiations were in conformity with the settlements between Presidio and the Debtor. Ultimately, 1701 Commerce Acquisition, LLC ("**Acquisition LLC**"), an affiliate of Presidio, entered into an asset purchase agreement with the Debtor, which was approved by the Bankruptcy Court. Over the course of several months, the Debtor sought to close the sale of the Hotel Property to Acquisition LLC. The delays in closing the transaction were caused by multiple issues, including loan funding requirements of the proposed lenders to Acquisition LLC, real property tax assessments for the Hotel Property, and easements on the roof of the Hotel Property. During the delay period, the Debtor negotiated with both Acquisition LLC and Dougherty to continue to extend the closing date, and obtain further deposits towards the purchase price. On July 17, 2013, the Debtor closed the sale of the Hotel Property to



Acquisition LLC. On the same date, Dougherty was paid in full from the proceeds of the sale. A summary of the use of the proceeds (extracted from the closing statement prepared by the title company) from the sale of the Hotel Property follows:

Sale Price	\$49,308,000
TOT Proceeds to Debtor	\$311,584
Executory Contract Payments to Debtor	\$42,765
Payoff of Dougherty Obligation	- \$46,254,774
Real Property Taxes Paid	- \$479,541
Net Miscellaneous line items	- \$49,449
Net proceeds to Debtor at Closing	\$2,878,585

**G. Cash On-Hand and Other Assets of the Estate**

As of the date of this Disclosure Statement, the Debtor is holding Estate Cash in the approximate amount of \$3,995,571 in its various bank accounts.

**H. The Estate also has the following non-cash assets:**

1. A potential recovery of up to \$96,608.33 with respect to real property taxes for the Hotel Property for the calendar year 2013, as a result of an appeal of the real property tax assessment being pursued by Acquisition LLC. Pursuant to the sale transaction for the Hotel Property, the Debtor retains a right to a portion of the real property taxes paid for the period of 2013 in which the Debtor owned the Hotel Property, in the event the assessment challenge is successful. The funds that would inure to the Debtor are currently being held by Stewart Title. The assessment challenge and the determination of the amount due back to the Debtor must be completed by November 6, 2013. All amounts received pursuant to the tax assessment challenge will be added to the Estate Cash.
2. Potential Causes of Action against entities with which the Debtor transacted business before and after the Petition Date, including, but not limited to avoidance actions arising under Sections 544 through 552 of the Bankruptcy Code.

**ARTICLE III**

**SUMMARY OF THE PLAN**

**A. Overview**

This Article describes and classifies Claims and Equity Interests -- except for Administrative Expense Claims and Priority Claims, which are not classified -- for the purposes of confirmation and distribution under the Plan, **but not for voting purposes, given that, as noted above, there are no impaired classes of creditors that are entitled to vote on the Plan.**<sup>2</sup> This Section also provides the treatment each Class will receive under the Plan. References in this Disclosure Statement to the amount of Claims, Administrative Expense Claims and Priority Claims are based on information reflected in the Debtor's books and records, Schedules or in filed Proofs of Claim, and are not intended to be admissions regarding the Allowed amount of the Claims, Administrative Expense Claims, or Priority Claims, or waivers of the Debtor or its successors' rights to assert any otherwise available objection, defense, recoupment, setoff, claim, or counterclaim against any Claim, Administrative Expense Claim, or Priority Claim.

**B. Unclassified Claims**

Certain types of Claims are not placed into voting classes; instead, they are unclassified. Such Claims are not considered Impaired, and Holders of such Claims do not vote on the Plan because their Claims are automatically entitled to specific treatment provided under the

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<sup>2</sup> Except as otherwise provided in the Plan, nothing shall affect the Debtor's rights and defenses, both legal and equitable, with respect to any Claim, Administrative Claim or Priority Claim (including Claims that are Allowed pursuant to the Plan), including, without limitation, all rights with respect to legal and equitable defenses to setoffs or recoupments against any Claims, and the Debtor's failure to object to such Claims in the Chapter 11 Case shall be without prejudice to the Post-Confirmation Debtor's right to contest or defend against such Claims in (i) any appropriate non-bankruptcy forum as if such Chapter 11 Case had not been commenced or (ii) the Bankruptcy Court (such forum to be selected at the Debtor's or the Post-Confirmation Debtor's option).

Bankruptcy Code. These Claims are either Priority Claims or Administrative Expense Claims.

The treatment of these Claims is provided below:

1. Priority Claims

- a. Fees Due to the United States Trustee. All fees payable pursuant to Section 1930 of Title 28 of the United States Code, to the extent unpaid through the Confirmation Date, shall be paid in Cash within seven (7) Business Days after the Effective Date. The Debtor estimates that \$10,000 will be due to the United States Trustee.

2. Administrative Claims

- a. Administrative Expense Bar Date. Requests for payment of Administrative Expense Claims that arose prior to October 31, 2013, other than those asserted by Professionals, must be filed no later than the Administrative Expense Bar Date – November 29, 2013. Since the Administrative Expense Bar Date has not passed as of the filing of the Disclosure Statement, the Debtor can only estimate the amount of such claims.
- b. Estimated Administrative Expense Claims<sup>3</sup>:
- (i) Richfield Management Company. Richfield was the Debtor's management company handling the day to day operations of the Hotel Property through the closing of the sale of the Hotel Property. Pursuant to certain agreements between the Debtor and Richfield, the Debtor is required to indemnify Richfield against certain claims that may be brought against Richfield arising from Richfield's management and operation of the Hotel Property. Pursuant to a *Stipulation and Agreed Order Regarding Richfield Hospitality, Inc.'s Request for Allowance of Administrative Claim* dated June 25, 2013 (the "**Richfield Stipulation**"), the Debtor agreed to reimburse Richfield up to a maximum of \$100,000 for deductibles that Richfield is required to pay in connection with two lawsuits filed by former employees of Richfield that worked at the Hotel Property (a maximum deductible of \$50,000 for each lawsuit), and consented to the allowance of an Administrative Expense Claim to Richfield for such reimbursement obligations (the "**Richfield Administrative Expense Claim**"), so long as Richfield has provided the Debtor with written

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<sup>3</sup> The Debtor does not anticipate any other Administrative Claims, except for those disclosed herein. Nevertheless, the Debtor reserves all of its rights to object to any asserted Administrative Claim. See Footnote 2, above.

proof that it has incurred reasonable and necessary out of pocket legal fees, costs, and expenses in connection with such lawsuits. As of the date of this Disclosure Statement, the Debtor has paid Richfield the sum of \$14,992.67 on account of the Richfield Administrative Expense Claim. Therefore, the maximum remaining amount to be paid to Richfield is \$85,007.33. The Debtor shall pay so much of this amount as is substantiated by Richfield through the provision of written proof of its reasonable and necessary out of pocket legal fees, costs, and expenses, and the Confirmation Order shall constitute allowance of such amount as an Administrative Expense Claim without further Order of the Bankruptcy Court; provided, however, that if the Debtor, within five (5) Business Days of receiving Richfield's written request for payment, disputes any portion of Richfield's requested legal fees, costs, and expenses, the Debtor shall make no payment to Richfield pending the Bankruptcy Court's adjudication of such dispute, for which the Bankruptcy Court retains jurisdiction after the Effective Date.

(ii) Cole Schotz. Cole Schotz is the Debtor's counsel, and the only Professional currently employed by an Order of the Bankruptcy Court to represent a party in interest in the Bankruptcy Case. Cole Schotz shall be required to file a Fee Application pursuant to Section 330 of the Bankruptcy Code for all fees and reimbursement of expenses incurred through and including the Effective Date, within 60 days of the Effective Date. The Debtor estimates that Cole Schotz's unpaid Professional fees and reimbursable expenses through the Effective Date is approximately \$200,000.

(iii) Vestin Realty. As described above, Vestin Realty holds Allowed Administrative Claims in the aggregate amount of \$610,000, based on the Debtor's use of \$190,000 of the Adequate Protection Deposit, and the \$420,000 Trust Account Funds. No further Order of the Bankruptcy Court is necessary to approve these Administrative Expense Claims.

c. Treatment of Administrative Expense Claims. Except to the extent that any entity entitled to payment of an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the Effective Date, or as soon thereafter as practicable, or seven (7) Business Days after the entry of a Final Order Allowing such Administrative Expense Claim, or as soon thereafter as is practicable; provided, however:

(i) that Richfield shall be paid its Allowed Richfield Administrative Expense Claim in accordance with the terms of the Richfield Stipulation; and

(ii) that Vestin's \$610,000 Administrative Expense Claim will be paid, in full after the payment or establishment of a reserve for the payment of all Allowed General Unsecured Claims pursuant to the Plan.

**C. Classified Claims and Equity Interests.**

1. Class 1: Secured Claim of CapSource

- a. Classification & Basis of Claim: Class 1 consists of the Secured Claim of CapSource, Inc. ("**CapSource**"). Prior to the Petition Date, CapSource loaned the Debtor \$300,000 based upon a promissory note, secured by the Hotel Property. The Hotel Property was sold free and clear of CapSource's lien. The Debtor estimates that the CapSource claim, inclusive of interest<sup>4</sup>, is \$308,112. The Debtor has no objection to this Secured Claim.
- b. Treatment of the Claim: CapSource shall, in full, final and complete satisfaction of its Class 1 Claim, be paid in Cash equal to one hundred percent (100%) of its Allowed Secured Claim, including interest accrued from and after the Petition Date through the Distribution Date, on the Effective Date, or as soon thereafter as is practicable.
- c. Impairment & Voting: Class 1 is Unimpaired under the Plan. Therefore, CapSource is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

2. Class 2: General Unsecured Claims

- a. Classification of Claims: Class 2 consists of all Allowed General Unsecured Claims against the Debtor. The Universe of Unsecured Claims consists of Scheduled General Unsecured Claims (not identified as contingent, unliquidated or disputed), and filed Proofs of General Unsecured Claims, in the following amounts<sup>5</sup>.
- b. Estimated Amount: Total Scheduled General Unsecured Claims that were not identified by the Debtor as disputed, contingent or unliquidated, (and not held by Vestin), plus all filed General Unsecured Proofs of Claim (that have not been withdrawn) aggregate \$2,978,043.06, and estimated

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<sup>4</sup> See Footnote number 1.

<sup>5</sup> The amounts that follow are rounded for discussion purposes, and are estimates only. Nothing herein is intended to bind the Debtor to be admissions regarding the Allowed amount of the Claims, or waivers of the Debtor or its successors' rights to assert any otherwise available objection, defense, recoupment, setoff, claim, or counterclaim against any Claim.

interest on such amount is \$81,628.16, for an aggregate of \$3,059,671.22. See Schedule A hereto.

- c. Treatment of the Class 2 Claims: Holders of Allowed Class 2 Claims shall, in full, final and complete satisfaction of their Class 2 Claims, be paid in Cash equal to one hundred percent (100%) of their Allowed Class 2 Claims, including interest accrued from and after the Petition Date through the Distribution Date, at the Federal Judgment Rate<sup>6</sup>. Distributions to Holders of Allowed Class 2 Claims will be made: (a) for any Class 2 Claims that are not Disputed as of the Effective Date, on the Effective Date, or as soon thereafter as is practicable; and (b) for any Class 2 Claims that are Disputed as of the Effective Date, seven (7) Business Days after the entry of a Final Order Allowing such Class 2 Claim, or as soon thereafter as is practicable. **For the avoidance of doubt, if any portion of a Class 2 Claim is Disputed, no payment or distribution shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.**

Vestin has agreed to subordinate payment of its Class 2 Claims to the payment or the establishment of a reserve for the payment of all other Allowed Class 2 General Unsecured Claims. See Schedule B for a list of the Vestin Unsecured Claims. Following payment, or the establishment of a reserve for payment of all other Allowed Class 2 Claims pursuant to the Plan, Vestin will be paid in full on its Allowed Class 2 Claims.

- d. Impairment & Voting: Holders of Class 2 Claims are Unimpaired under the Plan, and are therefore conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.
- e. Objections to Class 2 Claims: Pursuant to the Plan the Debtor reserves the right to file objections to Class 2 Claims.

3. Class 3: Equity Interests in the Debtor

- a. Classification & Basis of Claim: Class 3 consists of the Equity Interests in the Debtor.
- b. Treatment of the Claim: The Holders of the Class 3 Equity Interests shall retain their Equity Interests in the Debtor.
- c. Impairment & Voting: Class 3 is Unimpaired under the Plan. Therefore, the Holders of the Class 3 Equity Interests are conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

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<sup>6</sup> See Footnote number 1.

**ARTICLE IV**

**OTHER PLAN PROVISIONS**

The Plan contains various other provisions, including Means for Implementation of the Plan (Article IV of the Plan), Provisions Regarding Distributions (Article V), Procedures for Resolving Disputed Claims (Article VI), Treatment of Executory Contracts (Article VII), Retention of Jurisdiction (Article VIII), Releases and Related Provisions (Article IX), Conditions to Confirmation and Effective Date (Article X), and Miscellaneous Provisions (Article XI). Creditors and Holders of Equity Interests are directed to the Plan for a full and complete discussion of these provisions.

**THE PLAN IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT 1 – INTERESTED PARTIES ARE STRONGLY URGED TO REVIEW THE PLAN CONCURRENTLY WITH REVIEWING THIS DISCLOSURE STATEMENT AS THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN TERMS**

**ARTICLE V**

**TAX CONSIDERATIONS**

AS OF THE DATE OF THIS DISCLOSURE STATEMENT, NO RULING HAS BEEN OBTAINED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX CONSEQUENCES OF THE DISCLOSURE STATEMENT AND PLAN. THE DEBTOR HAS NOT OBTAINED AN OPINION OF COUNSEL WITH RESPECT TO ANY OF THE TAX CONSEQUENCES DESCRIBED BELOW. THEREFORE, NO REPRESENTATION IS BEING MADE WITH RESPECT TO THE PARTICULAR TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THE DISCLOSURE STATEMENT AND PLAN AS TO ANY CREDITOR. EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE DISCLOSURE STATEMENT AND PLAN.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH INTERNAL REVENUE SERVICE CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES

CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

## ARTICLE VI

### ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF PLAN

The Debtor believes that the Plan affords Holders of Claims and Equity Interests the greatest opportunity for recovery on account of their Claims and Equity Interests and, therefore, is in the best interests of such Holders. If the Plan is not confirmed, however, the only practical alternative is liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. Under that scenario, a trustee would be appointed to liquidate the remaining assets of the Debtor for distribution to the creditors in accordance with the priorities established by the Bankruptcy Code. This likely would result in a delay of the expeditious closing of the Debtor's Chapter 11 Case and added cost to the Debtor's estate, as a trustee would seek to familiarize him or herself with the Chapter 11 Case and retain his or her own bankruptcy counsel before making any distributions to creditors.

Because the Debtor already has sufficient Cash in its possession to pay all Claims, Administrative Claims and Priority Claims – and, by extension, the total of all Allowed Claims, plus interest accrued from and after the Petition Date through the date on which the Holder of an Allowed Claim receives a Distribution under the Plan, appointing a trustee would only serve to increase the costs of administration without any corresponding benefit to the Holders of Allowed




Claims, and would reduce, delay and possibly eliminate the distribution to holders of Equity Interests.

Absent confirmation of the Plan, Vestin's agreement to subordinate both its Allowed Administrative Claims of \$610,000 and its General Unsecured Claims, to the payment in full of Allowed General Unsecured Claims, will be eliminated. Thus, were this Case to be converted to a Chapter 7 case and a Trustee appointed, Vestin would be entitled to the payment of its \$610,000 Administrative Claim in advance of Allowed General Unsecured Claims, and would be entitled to treatment of its General Unsecured Claims in an identical fashion as all other General Unsecured Claims.

Thus, the Debtor has concluded that holders of Allowed Claims will receive an amount under the Plan that is more than the amount such holders would receive under a Chapter 7 liquidation, and that all stakeholders will benefit from the expeditious conclusion of the Chapter 11 Case that will result from confirmation of the Plan.

DATED: October 15, 2013

1701 COMMERCE, LLC

By:   
Name: Craig Burr  
Title: Senior Vice President