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14 UNITED STATES BANKRUPTCY COURT

15 DISTRICT OF ARIZONA

16 In re:

17 CONQUEST SANTA FE, L.L.C.,

18 Debtor.

Chapter 11 Proceeding

No. 4:12-bk-24937-EWH

19 **DEBTOR'S FIRST AMENDED**

20 **DISCLOSURE STATEMENT**

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## 1 INTRODUCTION AND REPRESENTATIONS

### 2 **Introduction**

3 Conquest Santa Fe, LLC (“Conquest” or the “Debtor”) has proposed a First  
4 Amended Chapter 11 Plan (the “Plan”). The Debtor believes this First Amended Disclosure  
5 Statement contains information that is material, important, and necessary for creditors to  
6 arrive at an informed decision in exercising their right to vote for acceptance of the Plan.  
7 This Disclosure Statement is being disseminated in conjunction with the Plan proposed by  
8 the Debtor.

9 The United States Bankruptcy Court for the District of Arizona (“the Court”)  
10 has set a hearing on confirmation of the Plan in the U.S. Bankruptcy Court, 38 N. Scott  
11 Ave., Courtroom #446, Tucson, Arizona. The time and date of the hearing is set forth in the  
12 Order which accompanies this Disclosure Statement. Creditors may vote on the Plan by  
13 filling out and mailing the accompanying ballot in accordance with the procedure provided  
14 on the ballot and the Order Approving Disclosure Statement and Fixing Time for Filing  
15 Acceptance or Rejection of Plan, Combined with Notice Thereof, so that it is received at  
16 least five (5) business days prior to the date of the hearing. As a creditor, your vote is  
17 important. For a class of creditors’ claims to accept the Plan, acceptances must be filed by at  
18 least 2/3 in amount, and more than ½ in number of the allowed claims of each class that  
19 actually vote on the Plan. A failure to vote on the Plan does not constitute either an  
20 acceptance or rejection of the Plan.

### 21 **Ballot Procedures**

22 Creditors will receive an electronic or paper copy of this Disclosure  
23 Statement, the Plan of Reorganization, an Order setting the hearing on confirmation of the  
24 Plan, and a Ballot. The Debtor reserves the right to designate the correct Class, if any  
25 creditor submits a Ballot that fails to either identify a Class number or votes a Ballot in an  
26 incorrect Class. The Debtor also reserves the right to designate the treatment options

1 afforded any creditor who submits a Ballot and fails to designate any treatment option  
2 afforded that Class, but only if reasonable attempts to contact the creditor to discern its  
3 intent have failed.

#### 4 **Representations**

5 NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN  
6 ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE  
7 STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS TO OBTAIN YOUR  
8 ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD  
9 NOT BE RELIED UPON. THE INFORMATION CONTAINED HEREIN HAS NOT  
10 BEEN AUDITED. THE DEBTOR IS UNABLE TO REPRESENT THAT THE  
11 INFORMATION HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH THE  
12 INFORMATION DISCLOSED IS ACCURATE TO THE BEST OF THE DEBTOR'S  
13 KNOWLEDGE, INFORMATION AND BELIEF.

14 THE COURT HAS NOT VERIFIED THE ACCURACY OF THE  
15 INFORMATION CONTAINED HEREIN, AND THE COURT'S APPROVAL OF THIS  
16 DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE COURT ENDORSES OR  
17 APPROVES THE PLAN, BUT ONLY THAT IF THE INFORMATION IS ACCURATE,  
18 IT IS SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS TO  
19 MAKE AN INFORMED DECISION WHETHER TO ACCEPT OR REJECT THE PLAN.

#### 20 **Defined Terms**

21 Most words or phrases in this Disclosure Statement have their usual and  
22 customary meanings. Certain capitalized terms have the same meaning as defined in Exhibit  
23 A to the Plan, or as defined in this Disclosure Statement or the Plan. If not otherwise  
24 defined, certain terms in this Disclosure Statement have the meaning provided in the  
25 Bankruptcy Code or Bankruptcy Rules.

#### 26 **Source of Information for the Disclosure Statement**

1 This Disclosure Statement was prepared with information provided by  
2 representatives of the Debtor. All accounting information has been provided by The Rim  
3 Corporation, the professional management company employed by the Debtor to manage the  
4 hotel. RIM uses generally accepted accounting methods in the hotel industry.

## 5 **I. BACKGROUND**

6 The Debtor owns and operates the 92-room Hyatt Place Hotel on Cerrillos Road in  
7 Santa Fe, New Mexico (the "Hotel"). The Hotel was opened for business on May 25, 2010.

8 The Hotel is professionally managed by RIM Hospitality ("RIM"), headquartered in  
9 Newport Beach, California. RIM has been the manager of the hotel since its opening.

10 On or about October 10, 2009, Conquest entered agreed to a loan package with  
11 Charter Bank from New Mexico (the "Original Lender"). The Loan Commitment from the  
12 Original Lender included a construction loan (to build the Hotel), a letter of credit loan (for  
13 development of the Hotel site), and a commitment from Charter Bank for a 20-year mini-  
14 perm loan in the amount of \$7,630,824.00. The Loan Commitment also included an SBA  
15 Authorization for Debenture in the amount of \$2 million to be issued by the Enchantment  
16 Land Certified Development Company and used to fund a Section 504 loan, related to the  
17 Hotel, and to be repaid over 20 years. The SBA Debenture was intended to assist the  
18 borrower in purchasing and developing the collateral. It was always intended as part of the  
19 loan commitment that the SBA Debenture, along with the mini-perm loan, would provide  
20 20-year permanent financing for the Hotel, upon completion of construction.

21 On or about October 10, 2008, Conquest entered into a construction loan with the  
22 Original Lender in the principal amount of \$9,585,824.00. The construction loan had an  
23 original maturity date of October 10, 2009, which was later extended to April 10, 2010. The  
24 construction loan had an interest rate equal to prime plus one percent.

25 The construction loan required monthly interest-only payments, with a lump sum  
26 payment of all principal and remaining interest due at maturity. The construction loan

1 authorized the lender to place \$480,758.00 of the stated principal amount in an interest  
2 reserve.

3 In connection with the construction loan, the loan package included a letter of credit  
4 note in the amount of \$712,502.00, to cover various development requirements to the City  
5 of Santa Fe. It had an original maturity of January 10, 2011. The line of credit was for site  
6 improvements and had a variable rate of interest equal to prime plus one percent.

7 On November 23, 2009, the borrower and lender entered into a Change in Terms  
8 Agreement. The agreement provided that the original promissory note, with a then current  
9 principal balance of \$2,683,998.70 would have a reduced credit limit of \$9.35 million. In  
10 addition, the letter of credit note in the original amount of \$712,502.00 was cancelled.

11 In January of 2010, the Original Lender was closed by the Office of Thrift  
12 Supervision, and the Federal Deposit Insurance Corporation ("FDIC") was named  
13 Receiver. The FDIC, as Receiver for the Original Lender promptly assigned all of the  
14 FDIC's right, title and interest in and to the loan (the "Loan") and the associated loan  
15 documents ("Loan Documents") to Charter Bank of Albuquerque, NM ("New Charter"  
16 which includes all of New Charter's successors and assigns) a subsidiary of Beal Financial  
17 Corp., effective January 22, 2010, pursuant to that certain "Purchase and Assumption  
18 Agreement Whole Bank All Deposits Among Federal Deposit Insurance Corporation,  
19 Receiver of Charter Bank, Santa Fe, New Mexico Federal Deposit Insurance Corporation  
20 and Charter Bank" (the "Charter Purchase Agreement").

21 The FDIC informed loan customers of the Original Lender that the terms of loans  
22 assigned to New Charter would "not change, because they are contractually agreed to." In  
23 addition, pursuant to the Charter Purchase Agreement, New Charter and its successors and  
24 assigns assumed liabilities for "Commitments," which were defined as the unfunded portion  
25 of a line of credit or other commitment reflected in the books and records of the Original  
26 Lender to make an extension of credit (or additional advances with respect to a loan) that

1 was legally binding on the Original Lender as of the Original Lender's closing.  
2 Problematically, New Charter was not an authorized SBA lender, so could not honor the  
3 loan commitment given for the Hotel.

4 Despite being at a critical point in the construction process, funding on the  
5 construction loan, and other expenditures related to completing construction and furnishing  
6 the hotel ceased with the closing of the Original Lender. The eventual result was that Brand  
7 and Morris Eigen, and the Debtor, were forced to expend more than \$3 million of liquid  
8 funds, plus unpaid work by American Construction Corp. in the amount of approximately  
9 \$2.7 million to complete construction of the Hotel. Despite the interruptions and delays  
10 caused by the bank's closing, and New Charter's silence with regard to funding, the Hotel  
11 opened just over 40 days behind schedule, on May 25, 2010.

12 On May 12, 2010, New Charter sent some of its first correspondence since acquiring  
13 the Original Lender—a letter to Conquest Santa Fe indicating the Original Lender had  
14 assigned and transferred all rights to New Charter. In the letter, New Charter agreed to  
15 advance proceeds for loan draw request no. 13 in the amount of \$197,950.00, and FF&E  
16 draw request no. 3 in the amount of \$316,885.00, “while it reviewed borrower's request that  
17 the loan be renewed and extended.” The failure by New Charter to fund for a significant  
18 period of time placed the Debtor in a state of duress during the final effort to complete  
19 construction. Conquest accepted the terms of the letter under duress, in order to get critical  
20 funding.

21 Despite a technical maturity in April 2010, there were numerous issues to be sorted  
22 out between the borrower and the lender, surrounding primarily the failure of New Charter  
23 to fund, and the associated delays it caused to the Hotel project. In connection with those  
24 processes, New Charter represented to Conquest that it would eventually meet all  
25 obligations in the loan commitment package, and fund as required under the construction  
26 loan. To facilitate New Charter's consideration, Conquest went to great lengths to provide

1 documents (in some cases numerous times), and even prepared and submitted a “Change  
2 Order” for furnishing the Hotel, even though the funding was always contemplated and  
3 included in the original construction loan budget.

4 On September 7, 2010, after significant efforts to obtain construction funding and  
5 permanent funding under the loan package, New Charter sent a letter indicating that a  
6 consultant had reviewed a series of pay requests totaling \$2,265,050.00, and determined that  
7 approximately \$900,000.00 of such amount would not be funded. The letter stated that New  
8 Charter was willing to advance obligated funds under the construction loan in the amount of  
9 \$1,364,655.41, upon receipt of final documentation.

10 Conquest provided the final information requested for this construction loan  
11 payment, but the additional amount was never funded by New Charter. Instead, on or about  
12 October 18, 2010, a demand letter was sent to Conquest indicating that the loan was in  
13 default and had an outstanding principal amount due and owing of \$6,864,487.33, the total  
14 funded, plus the interest taken by Charter Bank, on the over \$9.35 million construction loan.  
15 The letter incorrectly asserted that interest was accruing at the rate of 18 percent (the default  
16 rate), dating back to March 2010. Ironically, in March 2010, New Charter was non-  
17 communicative, and failing to fund as required under the construction loan documents. Also  
18 surprising to Conquest was that New Charter funded two draws following the claimed  
19 default, and made a commitment, approximately a month before the default letter, indicating  
20 that it was ready to fund an additional \$1.3 million.

21 By the time it became apparent that New Charter would not honor its funding  
22 commitments under the construction loan and the loan commitment package, the credit  
23 markets had significantly changed, and Conquest was unable to locate alternate financing.

24 Effective October 14, 2011, New Charter was merged with and into Beal Bank, SSB  
25 ("Beal Bank"), with Beal Bank as the surviving entity. Beal Bank, as successor-by-merger  
26 to New Charter, then assigned all of its right, title, and interest in and to the Loan and the



1 Loan Documents, to Beal Nevada Corp. Beal Nevada Corp. then assigned all of its right,  
2 title, and interest in and to the Loan, the Deed of Trust, and the other Loan Documents to  
3 LPP Mortgage, Ltd. (“LLP”) Pursuant to the Charter Purchase Agreement, New Charter and  
4 its successors and assigns, assumed the role of the Original Lender with respect to the Loan.

5 LPP now claims it is owed in excess of \$10.2 million, based on an assertion that  
6 default interest has continued to accrue at the rate of 10% per annum since March 2010. The  
7 Debtor categorically disputes this claim.

8 The Debtor is currently in litigation before the Bankruptcy Court with LPP regarding  
9 the allowance of its claim, and regarding damages caused the Debtor by LPP (or its  
10 predecessors) actions. The Debtor asserts the accrual of interest and default interest is  
11 inappropriate based on the breach of contract and breach of duty of good faith and fair  
12 dealing by LPP. As a result, the Debtor believes the claim is properly allowed in the  
13 principal amount of the debt, \$6,864,487.33, and reduced by the amount of damages caused  
14 by LPP’s breach of contract and breach of its duty of good faith and fair dealing. Based on  
15 its claims, the Debtor believes the Hotel is worth more than the debt, and can repay the  
16 allowed claim in full, according to the contractually negotiated terms.

17 LPP disputes the claims of the Debtor, and asserts the amount of its claim exceeds  
18 \$10.2 million. LPP further asserts that its claim is accruing interest, going forward, at a rate  
19 of 18% per annum. LPP has denied that it breached any contractual obligation, or that it  
20 violated any duty to act in good faith.

21 The outcome of the Litigation will significantly impact the ability of the Debtor to  
22 reorganize its affairs and repay other creditors as proposed in this Plan. Depending on the  
23 allowed amount of LPP’s claim, the Debtor will ask the Court to conduct a valuation of  
24 LPP’s collateral, and bifurcate the claim into a secured and unsecured portion. The secured  
25 claim will be paid according to the treatment set forth below, and the unsecured claim paid  
26 pro rata, with other unsecured creditors.

1           **II. INCIDENTS WHICH LED TO THE FILING OF CHAPTER 11**

2           When a default notice was sent by New Charter, settlement efforts immediately  
3 began to attempt to find an acceptable resolution for all parties, with New Charter and then  
4 LPP. Unfortunately, settlement efforts broke down and LPP filed a lawsuit in New Mexico  
5 Federal District Court, asserting claims against the Debtor and its principals, and seeking  
6 appointment of a receiver to take control of the Hotel.

7           **III. ASSET DESCRIPTION AND INDEBTEDNESS**

8           The 92-room Hotel has a built area totaling of 58,541 square feet. Amenities include  
9 1260 square feet of meeting space, a business center, a breakfast area, a fitness center, and  
10 an indoor swimming pool. The Hotel site is a total of 87,120 square feet (appx. 2 acres).

11           In addition to the realty associated with the Hotel, the Debtor owns all equipment,  
12 fixtures, furnishings, and other appurtenances related to operation of a hotel. A detailed  
13 listing of the Debtor's assets, including real and personal property, is included in the  
14 Debtor's Schedules, DE # 26.

15           The Debtor has operated the Hotel, post-petition. Proceeds from rental activities are  
16 used to pay operating expenses, fund capital improvements, and any remaining funds are  
17 held in operating accounts. Following almost two years of revenues below projections, as a  
18 result of the weak economy and travel industry, trends suggest a very strong year for the  
19 Hotel's operations. For the first four months of this year, the Hotel has exceeded revenue  
20 projections by more than 17% during the historic low season. The Debtor believes the high  
21 season, which is just starting, will continue to demonstrate strong sales and improved  
22 performance. Conservatively, without adjusting revenues for May through December based  
23 on the trend observed for the first four months of this year, the current Hotel projects  
24 EBITDA of \$360,479 for the year. (See Attached Exhibit 1) If the revenue trends continue  
25 as the Debtor expects, Net Revenue will far exceed this amount.

1 The Debtor estimates that the value of the hotel at approximately \$8.5-9.0 million. In  
2 addition, the Debtor's furniture, fixtures and equipment have a value of approximately \$1-  
3 1.2 million. The Debtor also is currently holding cash of approximately \$250,000 in its  
4 various accounts. Based on the nature of the Debtor's business, it has very few accounts  
5 receivable. All accounts receivable that existed as of the filing have been collected.  
6 Accounts receivable are generally in the \$15,000-25,000 range, and are collected in the  
7 ordinary course of business. The Debtor does not anticipate that any of its accounts are bad  
8 debts.

#### 9 **IV.EVENTS SINCE THE FILING OF CHAPTER 11**

10 The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy  
11 Code on November 16, 2012.

12 Conquest obtained approval for the employment of Mesch, Clark & Rothschild, P.C.  
13 to represent it in this bankruptcy proceeding. Mesch, Clark & Rothschild is also  
14 representing the Debtor in the pending litigation by and against LPP.

15 The Debtor filed a Motion for Use of Cash Collateral, which was eventually  
16 stipulated to by LPP. The authorization to use Cash Collateral has since been extended, by  
17 stipulation. The Debtor continues to operate under an agreed budget for use of cash  
18 collateral. All ongoing operations are funded from the use of LPP's Cash Collateral.

19 The Debtor hired counsel and filed a motion in the New Mexico Federal District  
20 Court, asking that venue of the pending litigation be moved to the Bankruptcy Court. By  
21 Stipulation, LPP and the co-defendants each agreed to the Change of Venue. The Debtor has  
22 since answered and filed counterclaims against LPP. LPP filed a Motion to Dismiss, which  
23 was partially granted by the Court. The Debtor's counterclaims for Breach of Contract and  
24 Breach of the Duty of Good Faith and Fair Dealing remain pending against LPP.

1           **V. PRESENT CONDITION AND ANTICIPATED FUTURE OF THE DEBTORS**

2           Since the bankruptcy filing, the Debtor has continued operations uninterrupted. The  
3 franchise agreement with Hyatt required an upgrade to the breakfast area, which was  
4 completed for an approximate cost of \$21,000. The Hotel continues to be operated, and is  
5 experiencing a significant increase in occupancy and thus revenues. The Debtor expects  
6 operations during the summer months to be improved compared to last year, and that 2013  
7 performance and profitability will significantly exceed 2012.

8           **VI.EXISTENCE/NON-EXISTENCE OF AVOIDABLE TRANSFERS**

9           The Debtor does not believe that there are avoidable transfers that could be recovered  
10 for the benefit of any of the estate, or for funding under the Plan of Reorganization. The  
11 Statement of Financial Affairs for the Debtor indicates that the only payments which  
12 exceeded \$5,850.00 made in the ninety (90) days prior to the petition date, were payments  
13 made in the normal course of business and made as part of a contemporaneous exchange of  
14 value.

15           **VII. SUMMARY OF THE PLAN OF REORGANIZATION**

16           The goal of this Plan is to continue the operation of the Hotel which will allow the  
17 Debtor to repay creditors. The secured debt will be repaid consistent with the original Loan  
18 Commitment. The repayment of LPP's loan, according to previously agreed terms, will  
19 allow all other creditors to be repaid from future operations.

20           All claims and interests are placed into classes as set forth below. A claim or interest  
21 is placed in a particular class, only to the extent that the claim or interest falls within the  
22 description of that class, and is classified in all other classes to the extent that any portion of  
23 the claim or interest falls within the description of such other class.

24           A claim or interest is placed in a particular class for all purposes, including voting on  
25 this Plan, confirmation and receiving distributions pursuant to this Plan, only to the extent  
26

1 that such claim or interest is an Allowed Claim in that class, and such claim has not been  
2 paid, released or otherwise settled prior to the Effective Date.

3 Although the following is not a substitute for a careful reading of the Plan, it is a  
4 general discussion of the treatment of allowed claims and interests under the Plan. Through  
5 the Plan, the Debtor intends to modify the payment terms of secured and unsecured creditors  
6 to allow for substantial payments to all allowed prepetition claims over a period of years.

## 7 **VIII. CLASSIFICATION OF CLAIMS AND INTERESTS**

### 8 **Class 1 – Administrative Claims**

9 Class 1 is comprised of the holders of administrative expenses. Administrative  
10 expenses are those that have been incurred since the initiation of this bankruptcy case on  
11 November 16, 2012. The Bankruptcy Code at §507(a)(1) provides that administrative  
12 expenses are entitled to a first priority in payment. Administrative expenses are those set  
13 forth in §503 of the Bankruptcy Code and are estimated to include the following:

14 U.S. Trustee Fees (estimated to be zero). *Any amounts owing will be paid on the*  
15 *Effective Date. Debtor shall be responsible for timely payment of fees incurred pursuant to*  
16 *28 U.S.C. §1930(a)(6). The Debtor shall file with the Court, and serve on the United States*  
17 *Trustee, a quarterly financial report for each quarter (or portion thereof) that the case*  
18 *remains open in a format prescribed by the United States Trustee and provided to the*  
19 *Debtor by the United States Trustee, and shall pay such quarterly fees as due for each*  
20 *quarter post-confirmation that the case remains open.*

21 Mesch, Clark & Rothschild, P.C. (unpaid attorneys fees). It is estimated that the pre-  
22 petition retainer paid to counsel will cover all expenses of the reorganization. Fees incurred  
23 to date are less than the retainer amount. This estimate will depend largely, however, on the  
24 expense related to the adversary litigation pending before this Court. *Any amounts owing,*  
25  
26

1 *above and beyond the retainer held by counsel, will be paid on the Effective Date, or as the*  
2 *parties may agree.*

3        Ordinary Course Operating Expenses. (Estimated to be zero.) Expenses for the  
4 Debtor have generally been paid as they are incurred in the ordinary course of business. *To*  
5 *the extent they have not been paid or provided to be paid in the ordinary course of business,*  
6 *they will be paid in the ordinary course of the Debtor's business or on the Effective Date of*  
7 *the Plan.*

8        **This Class does not vote.**

9        **Class 2 – LPP Mortgage—Secured Claim**

10        Class 2 Consists of the Allowed Secured Claim of LPP Mortgage, in an amount to be  
11 determined by the Bankruptcy Court in the Adversary Proceeding currently pending before  
12 the Court (Adversary No. 4:13-ap-00081-EWH). The Claim asserted by LPP Mortgage is  
13 disputed and the Debtor asserts it is entitled to offset any damage claims awarded by the  
14 Court against LPP, against the secured claim allowed by the Court for LPP. To the extent  
15 the claim allowed by the Bankruptcy Court exceeds \$6,864,487.33 (including all interest,  
16 fees, costs and other amounts as of the Effective Date), the Debtor will request the Court  
17 conduct a valuation of LPP's collateral, to determine the secured and unsecured portion of  
18 the Claim, pursuant to 11 U.S.C. §506. The Secured amount of the claim will be treated in  
19 this class. Any resulting unsecured claim, will be treated in Class 6, and paid *pro rata* with  
20 allowed Class 6 creditors.

21        *LPP's Allowed Secured Claim will be allowed in the amount determined by the*  
22 *Court, reduced by an offset of any damages awarded the Debtor by the Court, against LPP.*

23        *Thereafter, LPP's Allowed Secured Claim will be repaid, with interest, according to*  
24 *the same terms and conditions it previously agreed to in the Loan Commitment. The terms*  
25  
26

1 *were offered to the Debtor's by LPP's predecessor, which terms are hereby assumed and*  
2 *accepted by the Debtor.*

3 *Because LPP's Allowed Secured Claim will be repaid according to previously*  
4 *agreed loan terms, without modification, LPP's Allowed Secured Claim is not impaired.*

5 *If the Court determines LPP has an unsecured claim, in addition to its secured claim,*  
6 *and if LPP elects to have its claim treated as fully secured, pursuant to 11 U.S.C. § 1111(b),*  
7 *the Debtor will repay such claim, in full, over a period of time, such that the stream of*  
8 *payments equal or exceed the total amount of LPP's claim, and the present value of such*  
9 *payments exceeds the value of LPP's collateral as of the Effective Date. In such instance,*  
10 *and upon such election, LPP would not be impaired.*

11 **This Class is not impaired and does not vote.**

12 **Class 3 – Santa Fe County Treasurer—Personal Property Taxes.**

13 Class 3 consists of the allowed secured personal property tax claim of the Santa Fe  
14 County Treasurer against the Debtor, in the approximate amount of \$11,719. This claim is  
15 secured by a statutory lien against the personal property located at the Hotel.

16 *On the Effective Date, the Santa Fe County Treasurer's claim will be allowed in the*  
17 *principal amount of the tax due, with interest at the statutory rate and without penalties. The*  
18 *Allowed Claim will accrue interest post-confirmation at the applicable statutory rate. On*  
19 *the Effective Date, Conquest will make a payment equal to 10% of the indebtedness, with*  
20 *the remaining balance payable in equal payments of principal and interest. Principal and*  
21 *interest payments will be made bi-annually over a period of three years from the Effective*  
22 *Date, until paid in full.*

23 **This Class is impaired.**  
24  
25  
26

1           **Class 4 – Santa Fe County Treasurer—Real Property Taxes.**

2           Class 4 consists of the allowed secured real property tax claims of the Santa Fe  
3 County Treasurer against the Debtor, in the approximate amount of \$108,000, which is  
4 secured by a statutory lien against the real property which is the Hotel.

5           *On the Effective Date, the Santa Fe County Treasurer's claim will be allowed in the*  
6 *principal amount of the tax due, with interest at the statutory rate and without penalties. The*  
7 *Allowed Claim will accrue interest post-confirmation at the applicable statutory rate. On*  
8 *the Effective Date, Conquest will make a payment equal to 10% of the indebtedness, with*  
9 *the remaining balance payable in equal payments of principal and interest. Principal and*  
10 *interest payments will be made bi-annually over a period of three years from the Effective*  
11 *Date, until paid in full.*

12           **This Class is impaired.**

13           **Class 5 – Priority Tax Claims.**

14           Class 5 consists of the allowed unsecured priority tax claims held by the City of  
15 Santa Fe for lodging occupancy tax and the New Mexico Department of Taxation for State  
16 Occupancy Tax.

17           *Priority Tax Claims will be allowed in the principal amount of the claim plus interest*  
18 *through the Filing Date, at the statutory rate. The allowed claim shall not include any*  
19 *penalties, nor interest between the Filing Date and the Effective Date.*

20           *On the Effective Date, the holders of priority tax claims will receive a payment equal*  
21 *to 10% of the Allowed Claim. Thereafter, payments of principal, plus interest calculated at*  
22 *the prime rate as established by JPMorgan Chase Bank, or such rate as otherwise set by the*  
23 *Court, will be made in equal monthly installments over a period of three years from the*  
24 *Effective Date.*

25           **This Class is impaired.**

26



1           **Class 6 – General Unsecured Creditors.**

2           Class 6 consists of the allowed general unsecured claims.

3           *Conquest's allowed general unsecured creditors will be paid their pro rata share of*  
4 *the initial distribution, in the total amount of \$25,000 on the Effective Date. Beginning on*  
5 *the Effective Date, all unpaid amounts of Allowed Unsecured Claims will accrue interest at*  
6 *a rate equal to 2.00% per annum, or such rate as otherwise set by the Court. Beginning on*  
7 *the second anniversary of the Effective Date, and each year thereafter until the Fifth*  
8 *Anniversary of the Effective Date, each claimant will receive an annual distribution, equal*  
9 *to their pro rata share of the greater of \$25,000 or 25% of the Net Income of the Hotel, after*  
10 *payment of all other Plan payments. If LPP does not hold a general unsecured claim, it is*  
11 *estimated that all creditors will be repaid within 4 years from the Effective Date. If LPP is*  
12 *awarded a general unsecured claim, creditors will likely not be repaid in full. The amount*  
13 *of repayment will depend on the allowed amount of LPP's claim.       **This Class is***  
14 **impaired.**

15           **Class 7 – Equity Interests.**

16           Conquest's prepetition equity holders will continue their ownership of this company  
17 post confirmation.

18           **This Class is impaired.**

19           **IX.MEANS FOR FUNDING THE PLAN**

20           The Plan will be funded by future operation of the Debtor's business. During the  
21 course of the bankruptcy, there has been a focus on increasing revenues. It is anticipated that  
22 growth will be steady for the first year, post Effective Date, then continue for a few years  
23 thereafter, until the Hotel reaches a stabilized level. Most important, securing long term  
24 financing, according to the terms agreed with LPP will allow the Debtor to operate  
25 profitably, sufficient to make substantial and likely full repayment to all creditors over the  
26 term of the Plan.

1 The prior guarantors on the Construction Loan will sign new guarantees for the  
2 permanent financing. Additionally, they will contribute additional monies, as and when  
3 needed, to support operations and repay creditors.

#### 4 **X. FUTURE MANAGEMENT OF THE DEBTOR**

5 The current owners of the Debtor will continue to own the equity interests, post-  
6 confirmation. They will continue to employ a professional management company, to  
7 oversee the day to day operations of the Hotel. The current management Company, The  
8 RIM Corporation ("RIM"), will continue to be employed as property manager, post-  
9 confirmation. Equity reserves the right to negotiate a new contract with RIM, or hire an  
10 alternate property manager, in the business judgment of the owners.

11 The current equity holders have not ever taken a salary or distribution from the  
12 Debtor. They will not take any future distributions, unless and until net revenues are  
13 sufficient to make all plan payments, and fund appropriate reserves, in the business  
14 discretion of equity. RIM will be paid a management fee that is standard for the industry,  
15 according to the terms of their management contract on file at DE #17.

#### 16 **XI. TAX CONSEQUENCES**

17 The Debtor has not obtained a tax opinion and does not express any opinion as to the  
18 tax consequences to the creditors or equity security holders. Interested parties are  
19 encouraged to obtain their own professional counsel to determine the tax consequences of  
20 the Plan.

21 BECAUSE THE DEBTOR EXPRESSES NO TAX ADVICE, IN NO EVENT WILL  
22 THE DEBTOR OR ITS PROFESSIONAL ADVISORS BE LIABLE FOR ANY TAX  
23 CONSEQUENCES OF THE PLAN. CREDITORS MUST LOOK SOLELY TO AND  
24 RELY SOLELY UPON THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES  
25 OF THIS PLAN.  
26

1       **XII.       LIQUIDATION ANALYSIS**

2           Pursuant to 11 U.S.C. §1129(a)(7), the Plan must provide that creditors not accepting  
3 the Plan will receive at least as much under the Plan as they would receive in a liquidation  
4 of the Debtor under Chapter 7 of the Bankruptcy Code. The Debtor believes that the  
5 distributions to creditors under the Plan will exceed the recoveries which creditors would  
6 receive in Chapter 7 liquidation of the estates.

7           A liquidation in a Chapter 7 bankruptcy proceeding will not generate sufficient  
8 revenues to pay creditors beyond secured claims. Significant value is in the continued  
9 operation of the hotel as a going concern. A Chapter 7 bankruptcy proceeding is a breach of  
10 the Hyatt Franchise agreement, which value will be lost if forced into a Chapter 7  
11 liquidation. Personal property assets would likely be liquidated as part of a sale of the Hotel,  
12 but if not, for pennies on the dollar. Santa Fe County and LPP are secured creditors against  
13 both the real and personal property of the Debtor, and all proceeds will likely to go to  
14 secured creditors, with no amounts left to pay other creditors.

15          The Plan, by comparison, establishes an opportunity to repay all creditors in full,  
16 with interest, while maintaining the Debtor's operations as a going concern. The continued  
17 operation of the Hotel, and the repayment of the LPP debt according to the contractual terms  
18 originally negotiated with the Debtor will return significantly more to creditors than the  
19 liquidation alternative.

20          The Debtor's analysis of the liquidation value of its assets, and a comparison of the  
21 treatment of creditors in a hypothetical liquidation, as compared to the proposed Plan is set  
22 forth in Exhibit 2.

23          Accordingly, the "best interests of creditors" test has been satisfied, meaning that  
24 creditors receive more if the Debtors reorganize than if assets liquidated.  
25  
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1       **XIII.      RISK ANALYSIS**

2           The projections are the Debtor's best and most realistic projections of future  
3 performance. Based upon these projections, the payments contemplated by the Plan will be  
4 made. Inherent in this Chapter 11 Plan are standard business risks. In addition to the risk  
5 faced by most businesses, the business conducted by the Debtor is impacted by many other  
6 contingencies, including the following factors: the lack of available credit in today's  
7 economy both locally and nationally; the rising cost of living; inflation; changes in  
8 economic growth; changes to the projected growth in population; and, increased competition  
9 from other hotels. Despite these risks, the Debtor's Plan is workable and economically  
10 sound. The Plan will pay creditors more than they would receive if the Debtor's Plan were  
11 not confirmed, and this bankruptcy estate was liquidated instead.

12       **XIV.      CONFIRMATION IN SPITE OF REJECTION OF PLAN**

13           The Court will be asked to confirm the Plan as to any class of claims or interest that  
14 does not accept the Plan. To do so, the Court must find that the Plan is (1) fair and equitable  
15 to each class of claims or interests that is impaired and has not accepted the Plan, and that  
16 classification of claims is not discriminatory; and (2) that each claim or interest holder  
17 receives, under the Plan, property of a value as of the Effective Date, that is not less than  
18 what would be received or retained if the property was liquidated under Chapter 7 of the  
19 Code.

20           The second requirement is satisfied as demonstrated by the Liquidation Analysis set  
21 forth above. The first requirement is satisfied with respect to any class that might not accept  
22 the Plan, because the classification has not been designed in a discriminatory manner.

23           If a class of secured claims does not accept the Plan, the Code provides that the fair  
24 and equitable requirement is satisfied if the class retains its lien and receives deferred cash  
25 payments of a present value equal to the value of the claimant's secured interest in the  
26 collateral. This requirement may be satisfied as to each class treated as a secured claim,

1 because the Plan provides for them to receive the value of their interest in their collateral  
2 together with an interest at a current rate.

3 If a class of unsecured claims does not accept the Plan, the fair and equitable rule  
4 requires that each claimant be paid the allowed amount of the claim plus interest at a market  
5 rate; otherwise, no junior class of creditors can receive or retain any property under the Plan.  
6 The Plan proposes full payment to all classes of creditors over time with interest. As a  
7 result, the Plan complies with the absolute priority rule and permits current equity to retain  
8 its ownership of the Debtor.

9 **XV. REJECTION/ASSUMPTION OF LEASES AND EXECUTORY**  
10 **CONTRACTS**

11 Except as specified previously, all contracts which existed on the filing date of the  
12 Chapter 11 Petition, between the Debtor and any individual or entity, whether such contracts  
13 be written or oral, which have not heretofore been rejected or accepted by the Debtor, will  
14 be the subject of future court order as to assumption or rejection as the Debtor retains the  
15 right to assume or reject through substantial consummation of the Plan.

16 With regard to any executory contracts or unexpired lease not addressed, the Court  
17 shall retain jurisdiction and the Debtor will retain the ability to assume or reject upon  
18 realization of the existence of the contract or lease.

19 **XVI. EFFECT OF CONFIRMATION**

20 Except for the continuing liens, claims, rights and interests of the secured creditors  
21 against the Debtor, its estate, and the property as described in the Plan and as permitted in  
22 the confirmation order, confirmation of a reorganization acts as a discharge, effective on the  
23 Effective Date, of any and all debts of the Debtor that arose any time before confirmation,  
24 including, but not limited to, all principal and all interest accrued thereon, pursuant to  
25 §1141(d)(1) of the Bankruptcy Code. Such a discharge shall be effective as to each claim,  
26

1 regardless of whether a proof of claim thereof was filed, whether the claim is an allowed  
2 claim or whether the holder thereof votes to accept the Plan.

3 **XVII. REVESTING**

4 Except as provided for in the Plan or confirmation order, on the Effective Date, the  
5 Debtor shall be vested with any remaining property or assets from its estate, free and clear  
6 of all claims, liens, charges, and other interests of creditors arising prior to the filing date,  
7 except as provided by this Plan of Reorganization.

8 **XVIII. RETENTION OF JURISDICTION**

9 Notwithstanding confirmation or the Effective Date having occurred, the Court shall  
10 retain and have full jurisdiction as is allowed under Title 28 of the United States Code, the  
11 Bankruptcy Code, or other applicable law to enforce the provisions, purposes, and intent of  
12 the Plan, including, without limitation, any proceedings which relate to:

13 A. Determination of the allowability, classification, or priority of claims and  
14 interests;

15 B. Construing, implementing, enforcing, executing, or consummating the Plan,  
16 the confirmation order, any other order of the Court, any document attached as an exhibit to  
17 the Plan or contemplated by the Plan, or any other matter referred to in the Plan;

18 C. Determination of all matters that are pending before the Court in the Chapter  
19 11 Case prior to the Effective Date or that may arise after the Effective Date;

20 D. Determination of any and all applications for allowance or requests for  
21 payment of administrative claims, including, without limitation, requests for allowance and  
22 payment of compensation and expense reimbursement of professional persons;

23 E. Determination of motions for the rejection, assumption, or assignment of  
24 executory contracts or unexpired leases, and determination of the allowance of any claims  
25 resulting from the rejection of executory contracts and unexpired leases.  
26

1 F. Determination of all applications, motions, adversary proceedings, contested  
2 matters, and any other litigated matters instituted prior to the closing of the Chapter 11 Case;

3 G. Modification of the Plan pursuant to §1127 of the Bankruptcy Code, prior to  
4 the Effective Date, remedy of any defect or omission in the Plan or confirmation order,  
5 reconciliation of any inconsistency within the Plan and the loan documents, so as to carry  
6 out the intent and purpose of the loan documents;

7 H. Issuance of injunctions or taking such other actions or making such other  
8 orders as may be necessary or appropriate to restrain interference with the Debtor by any  
9 party with the Plan or its execution or implementation by any person.

10 I. Issuance of such orders in aid of consummation of the Plan and the  
11 confirmation order, notwithstanding any otherwise applicable non-bankruptcy law, with  
12 respect to any person, to the full extent authorized by the Bankruptcy Code;

13 J. Ordering the assumption or rejection of executory contracts or leases to which  
14 the Debtor is a party, which have not previously been resolved.

15 K. Any determination necessary or appropriate under §505 of the Bankruptcy  
16 Code or any other determination relating to priority tax claims, taxes, tax refunds, tax  
17 attributes, and tax benefits affecting the Debtor, its estates, or the Property through the end  
18 of the fiscal year in which the Effective Date occurs;

19 L. Entry of a final decree closing the Chapter 11 Case; and

20 M. Determination of such other matters, and for such other purposes, as may be  
21 provided in the confirmation order.

22 **XIX. MODIFICATION OF PLAN**

23 The Plan may be corrected or modified, prior or subsequent to Confirmation, or prior  
24 to consummation, after notice to interested parties and by Court order as provided by law.  
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**DATED:** May 20, 2013.

CONQUEST SANTA FE, L.L.C.

By s/Brand Eigen  
Brand Eigen, Manager 366094



## **EXHIBIT 1**

Budget Item	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Days	31	28	31	30	31	30	31	31	30	31	30	31	365
Daily Rooms Available	92	92	92	92	92	92	92	92	92	92	92	92	92
Rooms Available	2,852	2,576	2,852	2,760	2,852	2,760	2,852	2,852	2,760	2,852	2,760	2,852	33,580
Rooms Sold	1,338	1,313	1,987	1,566	2,322	2,278	2,333	2,325	1,709	1,762	1,329	1,516	21,778
Avg. Daily Rate	78.49	76.93	84.27	82.30	85.65	103.21	107.84	110.65	96.67	100.56	85.53	86.44	93.32
Occ %	46.91%	50.97%	69.67%	56.74%	81.42%	82.54%	81.80%	81.52%	61.92%	61.78%	48.15%	53.16%	64.85%
RevPar	36.83	39.21	58.71	46.70	69.73	85.18	88.21	90.21	59.86	62.13	41.19	45.95	60.52
REVENUE													
Rooms	105,026	101,009	167,446	128,889	198,884	235,107	251,589	257,267	165,211	177,191	113,673	131,041	2,032,330
Food & Beverages	0	0	0	0	0	0	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0	0	0	0	0	0	0
Private Bar & Gift Shop	0	0	0	0	0	0	0	0	0	0	0	0	0
Spa	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Operated Departments	5,268	5,031	6,026	7,713	7,969	7,821	8,006	7,979	5,905	6,084	4,625	5,255	77,684
Transportation (& Cafe)	0	0	0	0	0	0	0	0	0	0	0	0	0
Rentals & Other Income	550	29	989	903	107	105	107	107	79	81	61	70	3,186
TOTAL REVENUES	110,843	106,068	174,461	137,504	206,960	243,033	259,703	265,353	171,194	183,356	118,359	136,366	2,113,200
DEPARTMENTAL EXPENSES													
Rooms	61,443	59,129	64,636	75,965	77,647	77,167	79,453	79,256	62,374	64,382	51,567	56,193	809,212
Food & Beverages	0	0	0	0	0	0	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0	0	0	0	0	0	0
Private Bar & Gift Shop	0	0	0	0	0	0	0	0	0	0	0	0	0
Spa	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Operated Departments	9,876	8,122	7,963	9,302	13,254	13,002	13,316	13,271	9,755	10,057	7,586	8,653	124,157
Transportation (& Cafe)	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL DEPARTMENTAL EXPENSES	71,319	67,251	72,600	85,267	90,900	90,170	92,769	92,527	72,128	74,439	59,153	64,846	933,369
TOTAL DEPARTMENTAL INCOME	39,524	38,818	101,861	52,237	116,060	152,863	166,934	172,826	99,066	108,916	59,206	71,520	1,179,831
UNDISTRIBUTED EXPENSES													
Administrative & General	19,580	16,701	23,783	23,743	18,973	20,599	20,272	20,378	17,637	17,961	16,146	16,662	232,434
Marketing	12,024	11,923	14,529	16,314	16,395	17,745	18,368	19,364	15,084	18,687	13,117	13,773	187,323
Franchise Fees	5,240	5,052	8,352	6,448	9,944	11,755	12,579	12,863	8,261	8,860	5,684	6,552	101,590
Facilities & Maintenance	6,113	7,018	6,069	11,036	8,141	7,977	8,140	8,115	7,278	7,438	6,806	7,127	91,258
Energy/Utilities	12,168	10,199	9,885	12,419	0	0	0	0	0	0	0	0	44,670
TOTAL UNDISTRIBUTED EXPENSES	55,124	50,893	62,619	69,960	53,454	58,077	59,360	60,720	48,259	52,945	41,753	44,114	657,276
GROSS OPERATING PROFIT	(15,600)	(12,075)	39,243	(17,723)	62,606	94,786	107,574	112,106	50,806	55,972	17,453	27,406	522,555
Management Fees	3,325	3,182	5,234	4,125	6,209	7,291	7,791	7,961	5,136	5,501	3,551	4,091	63,396
Earthquake Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0
Property Taxes	5,799	5,799	5,799	5,799	6,588	6,588	6,588	6,588	6,588	6,588	6,588	6,588	75,897
Insurance	1,636	1,636	1,636	1,636	2,030	2,030	2,030	2,030	2,030	2,030	2,030	2,030	22,783
EBITDA	(26,360)	(22,692)	26,574	(29,283)	47,779	78,878	91,165	95,527	37,053	41,853	5,285	14,698	360,479
Interest Expense-Mortgage	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest Expense-Other	0	0	0	0	0	0	0	0	0	0	0	0	0
NET FROM OPERATION	(26,360)	(22,692)	26,574	(29,283)	47,779	78,878	91,165	95,527	37,053	41,853	5,285	14,698	360,479
Extraordinary Items	395	0	0	0	0	0	0	0	0	0	0	0	395
Construction & Pre-receiver	0	0	0	0	0	0	0	0	0	0	0	0	0
Incentive Pay - Adjusted	0	0	0	0	0	0	0	0	0	0	0	0	0
Asset Mgmt Fees & Receiver Fees	0	0	0	0	0	0	0	0	0	0	0	0	0
Ownership Contract Services	0	325	0	0	0	0	0	0	0	0	0	0	325
Ownership Supplies	0	0	0	0	0	0	0	0	0	0	0	0	0
Ownership Professional Fees	0	0	0	0	0	0	0	0	0	0	0	0	0
Ownership Travel & Mtgs	0	0	0	0	320	320	320	320	320	320	320	320	2,560
Net after Ownership Expenses	(26,754)	(23,017)	26,574	(29,283)	47,459	78,558	90,845	95,207	36,733	41,533	4,965	14,378	357,199

## **EXHIBIT 2**

CONQUEST SANTA FE, LLC			
Assets	Chapter 7 Liquidation Value	Secured Creditor Amt	Unencumbered Value
Hyatt Place Hotel, Santa Fe, NM	\$6,120,000 *	\$108,000 (Santa Fe County) \$6,864,487.33 (LPP)	\$0
Cash on Hand after payment of accrued expenses	\$250,000	\$6,864,487.33 (LPP)	\$0
Equipment, Furniture, Furnishings	\$0.00 **	\$11,719 (Santa Fe County) \$6,864,487.33 (LPP)	\$0
Hyatt Hotels Franchise	\$0		\$0

\* Chapter 7 Liquidation Value assumes a 20% impairment to value in a Chapter 7 Liquidation, as compared to value to the Debtor as a going concern. Also, Liquidation expenses are estimated at 10% to include commissions and closing costs. ( $\$8,500,000 * 80\% = \$6,800,000 - 10\% = \$6,120,000$ )

\*\* In a liquidation, Equipment, Furniture and Furnishings would have no separate value and would be included in the value of the Hotel assets being sold.

Comparative Treatment of Claims Under Plan		
CONQUEST SANTA FE, LLC		
Claim	Chapter 7 Distribution	Plan Treatment
Class 1 - Administrative Priority Claims	Allowed claims paid in full	Allowed claims paid in full
Class 2 - LPP Mortgage	Allowed claim paid remaining proceeds after payment of Secured Tax Claims-- Likely less than full payment	Allowed claims paid in full with interest per Contractual Agreement
Class 3 -Personal Property Taxes	Allowed Claims Paid in Full	Allowed Claims paid in full
Class 4 - Real Property Taxes	Allowed Claims Paid in Full	Allowed Claims paid in full
Class 5 - Priority Tax Claims	Receives Nothing. All proceeds paid to secured creditors.	Allowed Claims paid in full
Class 6 - General Unsecured Creditors	Receives Nothing. All proceeds paid to secured creditors.	Allowed Claims paid in full
Class 7--Equity	Receives Nothing.	Retains equity after payment in full of all creditors.