

1 Giovanni Orantes, SBN 190060
2 **ORANTES LAW FIRM, P.C.**
3 3435 Wilshire Blvd. Suite 2920
4 Los Angeles, CA 90010
5 Telephone: (213) 389-4362
6 Facsimile: (877) 789-5776
7 go@gobklaw.com

8 [Proposed] General Insolvency
9 Counsel for Debtor
10 LAGUNA BRISAS, LLC

11
12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **SANTA ANA DIVISION**

15 In re:

16 LAGUNA BRISAS, LLC,

17 Debtor

18 **Case No. 8:12-bk-12599-ES**

19 Chapter 11 Proceeding

20 **DEBTOR'S NOTICE OF MOTION AND**
21 **MOTION FOR ORDER APPROVING:**
22 **(1) BIDDING PROCEDURES FOR SALE OF**
23 **ASSETS;**
24 **(2) FORM AND MANNER OF NOTICE OF**
25 **AUCTION AND SALE HEARING;**
26 **(3) OTHER RELIEF AS THE COURT MAY**
27 **DEEM APPROPRIATE;**
28 **SUPPORTING MEMORANDUM &**
DECLARATIONS

[Seven days' notice sufficient under
LBR 6004-1(b)(1)]

Date: November 8, 2013
Time: 11:00 a.m.
Crtrm. 5C, 411 West Fourth Street,
Santa Ana, California

29 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY**
30 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND TO ALL OTHER**
31 **PARTIES-IN-INTEREST:**

32 **PLEASE TAKE NOTICE THAT** Laguna Brisas, LLC (hereinafter referred to as the
33 "Debtor") on November 8, 2013 at 11:00 a.m. in Courtroom 5C of the court, located at 411 West

1 Fourth Street, Santa Ana, California, will and hereby moves the court under Rule 6004-1(b) of the
2 Local Bankruptcy Rules (“LBR”), for an order:

- 3 (1) Approving bidding procedures in connection with the sale of assets;
- 4 (2) Approving the form of notice of sale for the real property attached to the
5 accompanying declaration of Giovanni Orantes as Exhibit A; and
- 6 (3) Such other further relief as the court deems just and appropriate in accordance with
7 the circumstances of this case.

8 As part of a global settlement agreement with the creditors with liens against its Hotel on
9 1600 S. Coast Highway in Laguna Beach, California (the “Hotel”), the Debtor proposes to sell the
10 Hotel pursuant to a motion for an order authorizing the sale to be filed in the future, but needs the
11 Court to approve now the sales procedures applicable to such sale so as to provide notice of them
12 to potential purchasers, the Hotel’s landlord under a ground lease, and other parties in interest.

13 In order to maximize value in this case, the Debtor seeks to auction the Hotel. In order to
14 ensure a fair and efficient auction, the Debtor seeks to establish uniform sale procedures with
15 which all interested parties must comply in order to purchase the Debtor’s Hotel.

16 This motion is made on the basis of the accompanying Memorandum of Points and
17 Authorities and Declaration of Dae In Kim (the “Kim Declaration”), and on such additional
18 authorities and evidence as the court elects to consider on or before the hearing on this matter.

19 **IF YOU DO NOT OPPOSE THE RELIEF REQUESTED BY THE MOTION, YOU**
20 **NEED TAKE NO FURTHER ACTION. HOWEVER, IF YOU OBJECT TO THE**
21 **MOTION, PURSUANT TO LOCAL BANKRUPTCY RULE 6004-1(b) OBJECTIONS AND**
22 **ACCOMPANYING MEMORANDUM OF POINTS AND AUTHORITIES AND**
23 **DECLARATIONS MUST BE FILED WITH THE COURT ON OR BEFORE ONE (1)**
24 **DAY PRIOR TO THE HEARING ON THE MOTION. YOU MUST FILE YOUR**
25 **OBJECTION WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT,**
26 **LOCATED AT 411 WEST FOURTH STREET, SANTA ANA, CALIFORNIA. PAPERS**
27 **FILED IN OPPOSITION TO THE MOTION MUST BE SERVED VIA FAX OR EMAIL**
28 **UPON THE DEBTOR’S PROPOSED COUNSEL AT THE MAILING ADDRESS**

1 INDICATED IN THE UPPER LEFT CORNER OF THIS NOTICE, THE OFFICE OF
2 THE UNITED STATES TRUSTEE LOCATED AT 411 WEST FOURTH STREET,
3 SANTA ANA, CALIFORNIA. A FILED COPY OF THE OPPOSITION MUST BE ALSO
4 SERVED ON THE COURT IN ACCORDANCE WITH LOCAL BANKRUPTCY RULE
5 5005-2(d). ANY FAILURE TO TIMELY FILE AND SERVE OBJECTIONS MAY
6 RESULT IN ANY SUCH OBJECTIONS BEING WAIVED.

7 Wherefore, the Debtor prays that the Court enter orders: (i) approving the proposed
8 bidding procedures for sale of the Hotel (the "Bidding Procedures"); and, (ii) approving the form
9 of notice of sale for the Hotel attached to the accompanying declaration of Giovanni Orantes as
10 Exhibit A; and (iii) such additional relief as the Court deems just and proper.

11 DATED: October 25, 2013

ORANTES LAW FIRM, P.C.

12
13 By: /s/ Giovanni Orantes
14 Giovanni Orantes
15 [Proposed] General Insolvency Counsel
16 for Debtor
17 Laguna Brisas, LLC
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The Debtor is a Delaware Limited Liability Company and its dba is Best Western Laguna
5 Brisas Spa Hotel (the "Hotel"). It is wholly owned by A & J Mutual, LLC, which in turn is wholly
6 owned by its two managing members, Dae In "Andy" Kim and his wife, Jane Kim. Mr. Kim
7 majored in hotel management in college and went into the hotel business in 1996. Since that time
8 he has purchased seven hotels and currently owns two hotels. The financial crisis beginning in
9 2008 has adversely affected the economics of the hotel operations and currently the two Hotel are
10 under Chapter 11 bankruptcy.

11 **II.**

12 **FACTUAL BACKGROUND**

13 1. As this Court is aware, on April 9, 2013 the Court held hearings on the following:
14 Status and Case Management Conference for the Chapter 11 case filed by Debtor LAGUNA
15 BRISAS, LLC (continued hearing); Debtor's Disclosure Statement Describing Chapter 11 Plan of
16 Reorganization (continued hearing); Wells Fargo Bank's Motion to Appoint a Chapter 11 Trustee;
17 and Debtor's Motion for Order Disallowing Portions of Claim of CW Capital Asset Management
18 and/or Wells Fargo Bank (continued hearing).

19 2. At the April 9 hearing, as reiterated by its order entered on April 30, 2013 (Docket
20 No. 344), the Court ordered the Debtor, Kay Nam Kim, and CW Capital Asset Management to
21 participate in mediation and ordered that Mehrdad Ellie may join the mediation but was not
22 required to attend.

23 3. On May 13, 2013, the parties mentioned above, including Mehrdad Ellie, each with
24 counsel of their choosing, participated in the Bankruptcy Court-ordered mediation before the
25 Honorable Scott Clarkson, Bankruptcy Judge of the Central District of California ("Mediation").
26 The parties reached agreement and recorded its terms on the record of the Mediation. Counsel for
27 the Debtor circulated a written version of the settlement agreement reached at the Mediation on
28 May 17, 2013 (the "Settlement Agreement"). The Settlement Agreement was prepared over a

1 number of hours and with the benefit of the audio recording of the record of the Mediation.
2 However, the parties took several months and required a further motion to enforce the settlement,
3 which this Court transferred for all purposes to the Hon. Judge Scott Clarkson, to finally get the
4 parties to execute on October 24, 2013 a settlement agreement, of which the parties will seek
5 approval under Rule 9019 of the Bankruptcy Rules of Procedure forthwith.

6 4. As part of the global Settlement Agreement And Mutual Releases (the "Settlement
7 Agreement") between the Debtor and all the parties holding claims secured against the Hotel, the
8 Debtor has agreed to sell, with court approval, the Hotel, which consists of 66 rooms, 1,300 square
9 feet of meeting space, an outdoor pool and whirlpool, and a business center, located at 1600 S.
10 Coast Highway, Laguna Beach, California. The Hotel was built in 1985 and purchased by Mr. Kim
11 in 2002. While the Debtor does not currently have a purchaser for the hotel, it has already
12 engaged CBRE, Inc. as its broker to market the hotel and identify and coordinate the sale with
13 potential purchasers.

14 5. To provide certainty to all potential purchasers, the Debtor has formulated sales
15 procedures with input from CBRE, Inc. and the Secured Parties, especially CWCapital Asset
16 Management LLC, solely in its capacity as Special Servicer ("CW" and together with the Trust
17 and Trustee, "Wells Fargo" and/or "Lender"), the senior secured creditor in the above-
18 referenced bankruptcy case. The Debtor seeks to have sale procedures approved as soon as
19 possible as doing so is a material term of the Settlement Agreement and provides certainty. The
20 need for certainty in this case is particularly acute because the Hotel is subject to a ground lease,
21 which was already assumed by order of this Court (the "Ground Lease") with MBP Land, LLC
22 (the "Landlord") and the Landlord has a "Right of First Refusal" which enables it to purchase the
23 Hotel if the Debtor agrees to sell it to any party by simply matching the terms in such agreement
24 during a fifteen (15) business-day period.

25
26
27
28

III.

PROPOSED SALE PROCEDURES

In order to create a fair, orderly and competitive process for the bidding of the Hotel, the Debtor proposes that the Court establish and approve the Sale Procedures (the "Sales Procedures"), which are set forth in full after the following summary version of such Sales Procedures:

Summary of Procedures:

1. CBRE markets the property for sale.
2. Offers and required qualification documentation are due on the Call For Offer Date: TO BE ANNOUNCED
3. Offers are vetted and Debtor selects an acceptable buyer (the "Stalking Horse Bidder") and executes an LOI. The *Stalking Horse Bidder*:
 - a. Conducts due diligence for 15 days from LOI;
 - b. Has 15 days from LOI to negotiate and execute non-contingent Asset Purchase Agreement ("APA"); and
 - c. Deposits \$300,000 into escrow upon execution of APA.
4. Court sets date for *Auction*.
5. All *Qualified Bids* from *Qualified Bidders* must be received by the *Bid Deadline* which is 24 hours before the *Auction*.
 - a. *Qualified Bids* must be in an amount that is not less than \$150,000 more than the purchase price submitted by the *Stalking Horse Bidder*; and
 - b. *Qualified Bidders* must conform to the terms of the approved Sales Procedures.
6. If no *Qualified Bids* are received, Debtor seeks court authority to consummate the sale to the *Stalking Horse Bidder*.
7. If *Qualified Bids* are received, court conducts an *Auction* according to *Auction Rules*.
 - a. Only the *Stalking Horse Bidder*, *Qualified Bidders*, and the Secured Creditors may participate. They must be present or have a duly authorized representative present;
 - b. Initial bid must be no less than \$50,000 more than the highest purchase price submitted by the *Qualified Bidder*;
 - c. Incremental Overbids of no less than \$50,000;
 - d. Secured Creditors may credit bid up to their respective claims.
8. Debtor declares *Successful Bidder* and seeks court authority to consummate the sale to the *Successful Bidder*.
9. Debtor identifies *Back up Bidder*, who may purchase the property if neither the *Successful Bidder* or the *Landlord* purchase it.
10. Court conducts Sale Confirmation Hearing to approve *Successful Bidder*.
11. Secured Creditors have the right to object to Debtor's selection of *Stalking Horse Bidder* and *Successful Bidder*
12. Upon mutual execution of the APA by the Debtor and the *Successful Bidder*, Debtor gives notice to *Landlord* for *Landlord's Right of First Refusal* and delivers to *Landlord*:
 - a. Executed *Successful Bidder* APA with all schedules and exhibits attached;
 - b. Current Preliminary Title Report; and
 - c. Blank APA with same terms and conditions as *Successful Bidder* APA.
13. *Landlord* has 15 business days to accept or waive *Right of First Refusal*.
 - a. If accepted, *Landlord* has three business days to deliver an executed APA and deliver its deposit. *Landlord* consummates the transaction per the terms of the APA; or
 - d. If waived, Debtor files motion to approve sale to *Successful Bidder*.
14. *Stalking Horse Bidder* shall be entitled to a *Break-up Fee* should the property be purchased by a *Successful Bidder* (other than *Stalking Horse Bidder*) or by the *Landlord* under the terms and conditions defined in the approved Sale Procedures. The *Successful Bidder* (other than *Stalking Horse Bidder*) shall

also be entitled to a *Break-up Fee* should the property be purchased by the Landlord under the terms and conditions defined in the approved Sale Procedures.

Complete Sales Procedures

- A. Assets to Be Sold. The asset to be sold is the Laguna Brisas, LLC's (Debtor) leasehold interest in certain property commonly known as the Best Western Plus Hotel and Spa located at 1600 S Coast Hwy Laguna Beach, CA 92651, which consists of 66 hotel rooms, approximately 1,300 square feet of meeting space, an outdoor pool and whirlpool, a business center, and related fixtures, and certain personal property related thereto (the "Hotel" or the "Property"). The Hotel, which is subject to a ground lease that has been assumed by the Debtor, was built in 1985 and purchased by the Debtor in 2002. The Debtor also assumed a membership agreement with Best Western Plus which allows the Hotel to operate under the Best Western Plus "flag."
- B. Call for Offer Date. The Call for Offer Date shall be a date to be established by the Debtor in consultation with its broker (CBRE, Inc.) and the Secured Creditors (defined below) at which interested parties who have satisfied the requirements to be a Stalking Horse Bidder (defined below) shall submit offers, provided that The Call for Offer Date shall not be later than January 31, 2014.
- a. The Stalking Horse Bidder will sign a Letter of Intent ("LOI") within three business days after the Call for Offer Date;
 - b. The Stalking Horse Bidder will have 15 calendar days from selection and execution of the LOI to complete due diligence and execute a non-contingent Asset Purchase Agreement ("APA"), the form and substance of which will be acceptable to the Debtor and the Secured Creditors (defined below).
- C. Stalking Horse Qualified Bid and Stalking Horse Bidder Participation Requirements. In order to submit a bid (the "Stalking Horse Bid") to purchase the Property as a Stalking Horse Bidder, a person or entity (a "Potential Stalking Horse Bidder") must first deliver the following materials to the Debtor or comply with the following requirement, as applicable:
- a. deliver its bid on or before the Call For Offer Date;
 - b. deliver a written irrevocable offer and state that the Stalking Horse Bidder offers to consummate the sale pursuant to an APA, the form and substance of which are acceptable to the Debtor and CWCapital Asset Management, LLC, Kay Nam Kim and Mehrdad Elie (the "Secured Creditors") that is consistent with the Settlement Agreement and Mutual Releases (the "Settlement Agreement") entered into by and between the Debtor, the Debtor's counsel, and the Secured Creditors;
 - c. deliver a certified or bank check or wire transfer to an escrow account to be opened by a reputable duly-licensed escrow company (the "Escrow Account") in an amount equal to \$300,000 as a minimum good faith deposit ("Minimum Deposit"), which Minimum Deposit shall be used to (a) fund a portion of the purchase price provided for in the bid and/or (b) pay liquidated damages in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- event that the Potential Stalking Horse Bidder is selected as the Stalking Horse Bidder, but fails to close as a result of the Stalking Horse Bidder's breach of the APA, as more particularly set forth herein;
- d. be "as is, where is," and not be conditioned on obtaining financing or the outcome of any due diligence by the Stalking Horse Bidder;
 - e. include an acknowledgement and representation that the Stalking Horse Bidder:
 - (a) has had an opportunity to conduct any and all due diligence regarding the Property prior to making its offer, (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Property in making its bid, (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, other than regarding the Property, or the completeness of any information provided in connection therewith or the Auction, and (d) agrees that any non disclosure agreement or confidentiality agreement entered into with the Debtor shall be enforceable by the Successful Bidder(s) (defined below);
 - f. deliver admissible evidence in the form of affidavits or declarations establishing the Stalking Horse Bidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code;
 - g. confirm that the offer shall remain open and irrevocable as provided below;
 - h. state that the Stalking Horse Bidder is financially capable of consummating the transactions contemplated by the APA and provide evidence that the Stalking Horse Bidder has received debt and/or equity funding commitments, or has financial resources readily available sufficient in the aggregate to finance the purchase of the Property, which evidence is reasonably satisfactory to the Debtor and the Secured Parties;
 - i. fully disclose the identity of each person or entity that will be bidding for the Property or otherwise participating in connection with such bid, and the complete terms of any such participation;
 - j. deliver the most current audited and latest unaudited financial statements (collectively, the "Financials") of the Stalking Horse Bidder, or, if the Stalking Horse Bidder is an entity formed for the purpose of a sale transaction,
 - (a) Financials of the persons or entities who have an ownership interest in the Stalking Horse Bidder (the "Equity Holder(s)"), or such other form of financial disclosure as is acceptable to the Debtor and the Secured Creditors that demonstrates the Stalking Horse Bidder's financial ability to consummate a sale transaction and otherwise perform all requirements set forth in this Sale Procedures (defined below) and APA;
 - k. deliver a written commitment acceptable to the Debtor of such Equity Holder(s) who will be responsible for the Stalking Horse Bidder's obligations in connection with a sale transaction (including being bound by the terms and conditions of these Sale Procedures and the APA); provided, however, that if a Stalking Horse Bidder is unable to provide Financials, the Debtor may accept such other information sufficient to demonstrate to the Debtor's and the Secured Creditors' reasonable satisfaction that such Stalking Horse Bidder has the financial wherewithal to consummate a sale transaction; and

1 l. include evidence of authorization and approval from the Stalking Horse
2 Bidder's board of directors (or comparable governing body) with respect to the
3 submission, execution, delivery and closing of the APA.

3 D. Ground-Lease Landlord's Right of First Refusal After Sale to Stalking Horse
4 Bidder is Approved or the Selection of Successful Bid at the Auction.

4 Notwithstanding the foregoing, as has been disclosed to all Potential Bidders, the
5 Hotel is built on land subject to a ground lease (the "Ground Lease") with MBP
6 Land, LLC (the "Landlord"). Pursuant to such Ground Lease and the Right of First
7 Refusal therein, the Landlord has the right to acquire the Hotel by matching a bid
8 accepted by the Debtor in an APA, pursuant to the terms and conditions specified in
9 the Ground Lease. The Ground Lease sets forth a specific mechanism that must be
10 followed once the Debtor accepts an offer for the Hotel, which may take a certain
11 number of days as specified in the Ground Lease, which the Debtor estimates to be
12 approximately thirty (30) days. A copy of the Ground Lease shall be made available
13 to the Stalking Horse Bidder and each Potential Bidder. The Debtor will not accept
14 a bid in any APA until the Court approves the sale to such bidder at a Sale Hearing.

11 E. Qualified Bid and Qualified Bidder Participation Requirements: In order to submit a
12 bid to purchase the Property and otherwise participate in the bidding process, a
13 potential bidder (the "Potential Bidder") who submits a Qualified Bid (defined
14 below) must first deliver the following materials to the Debtor or comply with the
15 following requirements, as applicable:

- 14 a. Deliver its bid on or before the Bid Deadline (as defined below);
15 b. deliver a written irrevocable offer and state that the Potential Bidder offers to
16 consummate the sale pursuant to an APA acceptable to the Debtor and the
17 Secured Creditors that is consistent with the Settlement Agreement and Mutual
18 Releases entered into by and between the Debtor and the Secured Creditors;
19 c. be in an amount that is not less than \$150,000 more than the purchase price
20 submitted by the Stalking Horse Bidder (which will be disclosed in the Sale
21 Motion) (the "Minimum Bid"), which amount of \$150,000 consists of an initial
22 overbid amount of \$50,000 and a Break-Up Fee (as defined below) of up to
23 \$100,000;
24 d. enclose a clean, duly executed copy of the proposed APA that is substantially
25 similar to the APA entered into with the Stalking Horse Bidder, if any;
26 e. be accompanied with a certified or bank check or wire transfer to the Escrow
27 Account in an amount equal to \$300,000 as a minimum good faith deposit
28 ("Minimum Deposit"), which Minimum Deposit shall be used to fund a portion
 of the purchase price provided for in the bid;
 f. be "as is, where is," and not be conditioned on obtaining financing or the
 outcome of any due diligence by the Potential Bidder;
 g. include an acknowledgement and representation that the Potential Bidder:
 (a) has had an opportunity to conduct any and all due diligence regarding the
 Property prior to making its offer, (b) has relied solely upon its own independent
 review, investigation, and/or inspection of any documents and/or the Property in
 making its bid, (c) did not rely upon any written or oral statements,
 representations, promises, warranties, or guaranties whatsoever (other than those
 contained in substantially the form of the APA submitted by the Stalking Horse

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Bidder), whether express, implied, by operation of law or otherwise, other than regarding the Property, or the completeness of any information provided in connection therewith or the Auction, and (d) agrees that any non disclosure agreement or confidentiality agreement entered into with the Debtor shall be enforceable by the Successful Bidder(s);
- h. be accompanied with admissible evidence in the form of affidavits or declarations establishing the Potential Bidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code;
 - i. keep offer open during the time in which the Landlord may exercise its Right of First Refusal, and the time in which the Bankruptcy Court enters an order approving the sale to the Landlord;
 - j. state that the Potential Bidder is financially capable of consummating the transactions contemplated by the APA and provide evidence that the bidder has received debt and/or equity funding commitments, or has financial resources readily available sufficient in the aggregate to finance the purchase of the Property, which evidence is reasonably satisfactory to the Debtor and the Secured Parties;
 - k. fully disclose the identity of each person or entity that will be bidding for the Property or otherwise participating in connection with such bid, and the complete terms of any such participation;
 - l. the most current Financials of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a sale transaction, (a) Financials of Equity Holder(s), or such other form of financial disclosure as is acceptable to the Debtor that demonstrates the Potential Bidder's financial ability to consummate a sale transaction and otherwise perform all requirements set forth in the Sale Procedures and APA; and
 - m. a written commitment acceptable to the Debtor of such Equity Holder(s) who will be responsible for the Potential Bidder's obligations in connection with a sale transaction (including being bound by the terms and conditions of these Sale Procedures and the APA); provided, however, that if a Potential Bidder is unable to provide Financials, the Debtor may accept such other information sufficient to demonstrate to the Debtor's and Secured Creditors' reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a sale transaction; and
 - n. include evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the APA.

A person meeting the requirements set forth in this paragraph shall be considered a "Qualified Bidder." Upon entry of an order approving this Motion, the Stalking Horse Bidder shall also be deemed a Qualified Bidder.

F. Bid Deadline and Submission: All bids (other than the APA from the Stalking Horse Bidder) must be received no later than 12:00 noon (prevailing Pacific time) fifteen (15) calendar days after service by the Debtor, through counsel or CBRE, of a notice of the deadline to submit bids, which notice shall be served on all Potential Bidders by no later than two business days after the Debtor selects the Stalking Horse Bidder ("Bid Deadline"). All bids must be received by CBRE, Inc. at 3501

1 Jamboree Road, Suite 100, Newport Beach CA 92660, Attention Rod Apodaca and
2 Bob Kaplan, which shall immediately transmit a true and complete copy of each bid
3 to counsel to the Debtor, the Law Offices of Giovanni Orantes, 3435 Wilshire
4 Boulevard, Suite 2920, Los Angeles, California; e-mail: go@gobklaw.com.
5 Counsel for the Debtor shall immediately email copies of all bids received by the
6 Bid Deadline to counsel for the Secured Creditors.

7 G. Auction. If one or more Qualified Bids (other than the Stalking Horse Bid) are received by
8 the Bid Deadline, the Auction shall take place on a date and time to be established by
9 the Court on or before the hearing on the Sale Motion, and shall be conducted by the
10 court, CBRE, Inc. or its designated agent at the United States Bankruptcy Court,
11 Central District of California, Santa Ana Division, located at 401 West Fourth Street,
12 Santa Ana, California 92701, or at such other place and time as the Debtor shall notify
13 reasonably in advance to all Qualified Bidders, including the Stalking Horse Bidder.
14 The Debtor shall serve notice of the Auction (which identifies the date, time, and
15 location of the Auction) on all Qualified Bidders, counsel for the Secured Creditors, the
16 20 largest unsecured creditors, the Office of the United States Trustee, counsel for the
17 Ground Lessor, counsel for Best Western, all parties requesting special notice, and all
18 parties required to be served under Federal Rule of Bankruptcy Procedure 2002.

19 H. If no Qualified Bids are received by the Bid Deadline, then the Auction will be
20 cancelled, the APA from the Stalking Horse Bidder shall be deemed the highest and
21 best bid, the Debtor will transmit a copy of the APA from the Stalking Horse Bidder
22 to the Landlord for the Landlord to consider whether to exercise its Right of First
23 Refusal and the Debtor will seek authority to consummate the sale to the Stalking
24 Horse Bidder as contemplated by the APA or to the Landlord if it exercises its Right
25 of First Refusal not later than three (3) court days after the Bid Deadline but so as to
26 be heard as soon as possible after the earlier of the time the Landlord notifies the
27 Debtor that it waives its Right of First Refusal or the expiration of the fifteen
28 business-day period for the Landlord to exercise its Right of First Refusal, and shall
submit a declaration of CBRE's efforts to market the Property for sale, along with
the proposed order approving the sale to the Stalking Horse Bidder or the Landlord,
as applicable, in a form and substance acceptable to counsel for the Stalking Horse
Bidder or the Landlord and the Secured Creditors, a copy of the APA, and such
other evidence and documents as required to obtain Bankruptcy Court approval of
the sale to the Stalking Horse Bidder, and to consummate the sale.

I. Auction Rules.

- a. Only the Stalking Horse Bidder and Qualified Bidders who have submitted a Qualified Bid and/or their authorized representatives shall be eligible to appear in person, participate and bid at the Auction;
- b. All bids shall be made and received in one room, on an open basis, and all material terms of each bid shall be fully disclosed to all other Qualified Bidders;
- c. Bidding at the Auction shall commence at the purchase price stated in the highest offer received. The initial bid must be at least \$150,000 higher than the Stalking Horse Bid. Qualified Bidders may then submit successive bids in increments of at least \$50,000 higher than the initial bid, and then continue bidding in minimum increments of \$50,000 higher than the previous bid;

- 1 d. All Qualifying Bidders shall have the right to submit additional bids;
2 e. The Secured Creditors shall have the right to credit bid the allowed amount of
3 their respective claims, and shall be deemed to be a Qualified Bidder as to such
4 amount only;
5 f. The Auction may be adjourned as the Debtor deems appropriate. Reasonable
6 notice of such adjournment and the time and place for the resumption of the
7 Auction shall be given to all Qualified Bidders that have submitted a Qualified
8 Bid and counsel to the Creditors' Committee, if any; and
9 g. Each Qualified Bidder participating at the Auction will be required to confirm
10 that it has not engaged in any collusion with respect to the bidding or the sale.

11 J. Successful Bidder at the Auction. The Auction shall continue in one or more
12 rounds until there is only one Qualified Bid that the Debtor determines, after a
13 review of such bid on the bases of its financial and contractual terms, is the highest
14 and best offer for the Property (the "Successful Bid" and the bidder making such
15 Successful Bid, the "Successful Bidder"). The Debtor shall be deemed to have
16 accepted such Successful Bid only when (i) such bid is declared the Successful Bid
17 at the Auction, (ii) definitive documentation has been executed in respect thereof
18 (which documentation shall be completed and executed within two (2) business
19 days of the Auction), and (iii) the Court has approved the sale to the Successful
20 Bidder. Such acceptance by the Debtor is conditioned upon approval by the Court
21 of the Successful Bid, the failure of the Landlord to exercise its Right of First
22 Refusal timely, and the entry of an order approving such Successful Bid. Provided
23 the Successful Bid is not a credit bid from CWCapital, the Debtor shall then
24 determine and identify the next highest or otherwise best Qualified Bid after the
25 Successful Bid (the "Back-Up Bid"), and the Qualified Bidder submitting such bid
26 (which may be the Stalking Horse Bidder if its bid is the next highest or otherwise
27 best Qualified Bid after the Successful Bid) (the "Back-Up Bidder"). The Debtor
28 and/or CBRE shall consult with counsel for the Secured Creditors prior to selection
of the Successful Bid. The Secured Creditors shall have the right to object to the
Debtor's selection of the Successful Bid and request that the Court resolve any
disputes in connection with such selection, the Auction and proposed sale.

20 K. Sale Hearing. The Successful Bid or the Stalking Horse Bid, if no Successful Bid is
21 received, or the sale to the Landlord, if it exercises its Right of First Refusal timely,
22 will be subject to approval by this Court. This Court shall conduct the Sale Hearing
23 within three (3) Court days after the date of the Auction, or, if such date is
24 unavailable, the earliest available hearing date (the "Sale Hearing"). The Sale
25 Hearing may be adjourned from time to time without further notice to creditors or
26 parties in interest other than by announcement of the adjournment in open court on
27 the date scheduled for the Sale Hearing. The Successful Bidder and Backup Bidder,
28 if any, should be represented by counsel at the Sale Hearing.

25 L. Irrevocability of Certain Bids. The Successful Bid shall remain irrevocable in
26 accordance with the terms of the purchase agreement executed by the Successful
27 Bidder. The Back-Up Bid of the Back-Up Bidder shall be irrevocable until the
28 earlier of: (i) 5:00 p.m. prevailing Pacific time on the date which is sixty (60) days
after the date of the Sale Hearing (the "Outside Back-Up Date"); (ii) closing of the
sale to the Successful Bidder or the Back-Up Bidder; or (iii) such date as the Debtor

1 affirms in writing that the Debtor does not intend to proceed with a sale to the
2 Successful Bidder or the Back-Up Bidder.

3 M. Acceptance of the Successful Bid. The Debtor shall present the results of the
4 Auction, if any, to this Court at the Sale Hearing, at which time the Debtor may
5 seek findings from this Court regarding the Auction, including, among other things,
6 that (i) the Auction was conducted and the Landlord or the Successful Bidder was
7 selected in accordance with the Order approving these Sale Procedures (the "Sale
8 Procedures Order"), (ii) the Auction was fair in substance and procedure, (iii) the
9 Successful Bid was a Qualified Bid as defined in the Sale Procedures Order, and
10 (iv) consummation of the sale contemplated by the Successful Bid or the Landlord
11 will provide the highest or otherwise best value for the Property and is in the best
12 interests of the Debtor and its estate.

13 N. Return of Deposit. Except as otherwise provided in this paragraph with respect to
14 any other Successful Bid and any Back-Up Bid, the Minimum Deposits of all
15 Qualified Bidders that submitted such a deposit under the Sale Procedures shall be
16 returned upon or within two (2) business days after the conclusion of the Sale
17 Hearing. The Minimum Deposit of the Successful Bidder shall be held until the
18 closing of the sale of the Property and applied in accordance with the Successful
19 Bid. The Minimum Deposit of the Back-Up Bidder shall be held in escrow until the
20 earlier of 48 hours after (a) the closing of the sale transaction with Successful
21 Bidder(s) or (b) the Outside Back-Up Date. Notwithstanding the foregoing, the
22 deposit made by the Stalking Horse Bidder shall be returned or applied pursuant to
23 the terms of the APA.

24 O. Failure to Close. If, following the entry of the order approving the sale, the
25 Successful Bidder fails to consummate the sale because of a breach or failure to
26 perform on the part of the Successful Bidder, the Back-Up Bid will be deemed to be
27 the new Successful Bid, and the Debtor will be authorized, but not required, to
28 consummate the sale with the Back-Up Bidder without further order of the Court
after complying with the procedure required by the Landlord's Right of First
Refusal, unless otherwise requested by the Secured Creditors. If the Landlord
exercises its Right of First Refusal with respect to the Back-Up Bid, the Debtor
shall instead sell the Hotel to the Landlord without further order of the Court. In
such case, the defaulting Successful Bidder's Minimum Deposit shall be forfeited to
the Debtor and the Debtor shall have the right to seek any and all other remedies
and damages from the defaulting Successful Bidder.

P. Reservation of Rights. The Debtor reserves the right as it may reasonably
determine to be in the best interests of its estate, subject to conformity with the Sale
Procedures and the Settlement Agreement entered into by and between the Debtor
and the Secured Parties, to: (i) determine which bidders are Qualified Bidders; (ii)
determine which bids are Qualified Bids; (iii) determine which Qualified Bid is the
highest or otherwise best proposal and which is the next highest or otherwise best
proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in
conformity with the requirements of the Sale Procedures or the requirements of the
Bankruptcy Code or (c) contrary to the best interests of the Debtor and its estate; (v)
waive terms and conditions set forth herein with respect to all Potential Bidders,

1 subject to the reasonable approval of the Stalking Horse Bidder; (vi) impose
2 additional terms and conditions with respect to all Potential Bidders, subject to the
3 reasonable approval of the Stalking Horse Bidder and the Secured Creditors;
4 (vii) extend the deadlines set forth herein subject to the reasonable approval of the
5 Stalking Horse Bidder and the Secured Creditors; and (viii) adjourn or cancel the
6 Auction and/or Sale Hearing without further notice, subject to the reasonable
7 approval of the Stalking Horse Bidder and the Secured Creditors.

8 Q. Expenses. Any bidders presenting bids shall bear their own expenses in connection
9 with the proposed sale, whether or not such sale is ultimately approved, in
10 accordance with the terms of the purchase agreement, provided, however, that the
11 Stalking Horse Bidder and/or the Successful Bidder may be entitled to Break-Up
12 Fee as set forth below.

13 R. Break-Up Fee. In addition to the return of its deposit under the APA, the Stalking
14 Horse Bidder shall be entitled to a break-up fee in an amount of \$50,000 (the
15 "Break-Up Fee"), plus expenses incurred by the Stalking Horse Bidder up to
16 \$50,000 (upon receipt of fee statements or invoices supporting such expenses), to be
17 payable from the sale proceeds generated from the sale of the Property to the
18 Landlord or the Successful Bidder if the Hotel is not sold to the Stalking Horse
19 Bidder. Likewise, if a Qualified Bidder submits a bid which is selected as the
20 highest and best offer and the Debtor executes an APA with such Successful Bidder
21 after the Court approves the sale to it and, after transmitting a copy of such executed
22 APA to the Landlord the Landlord decides to exercise its Right of First Refusal and
23 match such bid to acquire the Hotel, such Successful Bidder shall be entitled to a
24 break-up fee in an amount of \$25,000 plus expenses incurred by such Successful
25 Bidder up to \$25,000 (upon receipt of fee statements or invoices supporting such
26 expenses), to be payable from the sale proceeds generated from the sale of the
27 Property to the Landlord. If the Stalking Horse Bidder is also the Successful Bidder
28 as a result of its bidding at an Auction, it shall receive only the Break-Up fee to
which it is entitled as the Stalking Horse Bidder.

II.

LANDLORD'S RIGHT OF FIRST REFUSAL

For convenience, the actual language of the Landlord's right of first refusal is duplicated
hereinbelow:

XX

LANDLORD RIGHT OF FIRST REFUSAL

20.1 Grant of Right of First Refusal. Tenant, for itself and its
successors and assigns (whether by sale, merger, exchange; reorganization or
otherwise) (collectively "Grantor"), hereby grants to Landlord, and its owners,
successors and assigns, and/or a new entity composed of any of such persons
or entities (collectively "Grantee"), a right of first refusal to purchase all or
any portion of the Improvements and/or the Leasehold Estate (singularly and

collectively the “Property”) on the terms and conditions set forth herein.

20.2 Term. The term (the “Term”) of the Right (as defined hereinbelow) shall commence on the date of this Lease, and shall expire (the “Expiration Date”) on the earlier of the termination or the expiration of the term of this Lease.

20.3 Definition and Restriction on Transfer. During the Term, (a) Grantor shall not sell, transfer, sublease, distribute (in liquidation or otherwise), exchange or otherwise convey (other than Leasehold Mortgages) the Property, or any portion or interest therein, or (b) more than twenty-five percent (25 %), in the aggregate, of the ownership interest in Grantor or the entity (or its parent, whether directly or indirectly) which owns the Property (whether in one or a series of transactions) shall not be sold, exchanged, transferred or otherwise conveyed (whether by merger, reorganization or otherwise, and whether or not tax deferred), to any third person or entity (a “Purchaser”) (whether or not an affiliate, parent, subsidiary or otherwise of Grantor) (collectively a “Transfer”) without first offering Grantee the first right of refusal and option (the “Right”) to acquire the Property on (i) the same terms, value and conditions as agreed upon by Grantor with such Purchaser in a bona fide arm’s length transaction, and (ii) if not a bona fide arm’s length transaction, then at the then fair market value of the Property less outstanding balances on all liens and encumbrances thereon on reasonable and arm’s length terms and conditions all pursuant to the terms hereof.

Notwithstanding the foregoing, however, irrespective of the terms of the transaction with the Purchaser, Grantee may require Grantor to permit Grantee to acquire the Property as a part of a tax-deferred like-kind exchange pursuant to Internal Revenue Code Section 1031, or any successor thereto (an “Exchange”), and Grantor shall cooperate with Grantee in connection therewith, in which case (A) Grantor shall not be required to acquire or hold title to any other property subject to the Exchange transaction, and (B) Grantee shall hold Grantor harmless from any liability, costs and expenses arising out of the Exchange to the extent such liability, cost or expense exceeds that which would have been incurred if the Transfer was consummated as a purchase and sale rather than as an Exchange.

20.4 Grantor’s Offer. In the event Grantor accepts an offer to Transfer the Property, Grantor shall promptly deliver to Grantee the following:

(a) Written notice of the Transfer, and stating that such written notice constitutes the notice required of Grantor to Grantee under this Section 20.4 (the “Grantor’s Offer”);

(b) A copy of the executed purchase and sale, exchange, conveyance or other Transfer documentation memorializing all of the terms and conditions of the Transfer, which has been executed by Grantor and the Purchaser, with all schedules and exhibits attached;

(c) A current Preliminary Title Report pertaining to the Property; and

(d) Three (3) duplicate original copies of the purchase and sale, exchange, conveyance or other Transfer documents (the “Purchase Agreement”) for Grantee’s execution in the exercise of the Right, which will

1 have the same terms and conditions, in all respects (except as otherwise
required herein), as the Transfer documentation with the Purchaser.

2 Grantee shall have fifteen (15) business days after receipt of the
3 Grantor's Offer to exercise the Right and deliver to Grantor a written notice of
acceptance thereof ("Grantee's Acceptance")

4 20.5 Grantee's Acceptance and Exercise of the Right. If Grantee
5 delivers Grantee's Acceptance to Grantor, then Grantee shall, within three (3)
6 business days after delivery of Grantee's Acceptance, deliver to such escrow
company as Grantee shall reasonably designate ("Escrow Holder"), three (3)
7 executed copies of the Purchase Agreement together with the earnest money
deposit (the "Deposit") specified therein.

8 Within two (2) business days from the date Grantee delivers the
Purchase Agreement and the Deposit to Escrow Holder, Grantor shall deliver
9 three (3) fully executed copies of the Purchase Agreement to Escrow Holder.

10 If any portion of the purchase price for the Property shall be other than
11 cash or purchase money promissory notes, Grantee shall have the right to
12 substitute therefor a cash amount equivalent to the fair market value of such
13 other consideration. Grantee shall give written notice to Grantor of the fair
market value of such other consideration as determined by Grantee, in its
14 reasonable and good faith determination, upon delivery of the Grantee's
Acceptance.

15 In the event that other property or interests are the subject of the
16 Transfer then Grantor and Grantee shall fairly and appropriately allocate the
17 aggregate purchase price therefor between the Property and such other
18 property or interest. If Grantee does not agree with the allocation proposed by
Grantor, and if Grantor and Grantee cannot agree on the apportioned value of
19 the Property, each of Grantor and Grantee shall appoint a hospitality broker or
20 appraiser familiar with the Property, and those two brokers or appraisers shall
21 appoint a third such broker or appraiser, the three of whom shall. Within sixty
(60) days thereafter, agree, by majority vote, on the apportioned value of the
Property.

22 20.6 Waiver of the Right. Subject to the provisions of this
23 Agreement; if Grantee fails to exercise the Right as to the Grantor's Offer
24 within fifteen (15) business days after the receipt thereof, the Right shall be
25 waived as to such Grantor Offer only, and the Right shall not terminate, but
shall continue as to Subsequent Transfers.

26 Notwithstanding the foregoing, however, the Right shall be reinstated
27 and shall be deemed to have remained in full force and effect if:

28 (a) Any of the purchase price, closing date, contingency
periods of oilier terms and conditions of the Transfer subject to the Grantor's
Offer, or the documentation memorializing the same, are modified or changed
in any regard; or

(b) The Transfer which is the subject of the Grantor's Offer
fails to close, and title to the Property is not conveyed in accordance with the
Transfer documentation delivered to Grantee pursuant to Section 20.4 above,
within sixty (60) days of the closing date specified in the Transfer documents.

1 In the event of any such reinstatement, Grantor shall be obligated to promptly
2 provide to Grantee a new Grantor's Offer with respect to the subject Transfer,
and Grantee shall have the right to exercise the Right in accordance with the
provisions of Section 20.4 and 20.5 above.

3 20.7 Exchange Transaction. If the Transfer described in the
4 Grantor's Offer involves an Exchange of the Property or such interest held by
a third person, and if Grantee elects to exercise the Right, Grantee shall
5 cooperate with Grantor in acquiring the third person's property described by
Grantor in order that Grantee may then effect the desired Exchange; provided,
6 however, that (a) Grantee shall not be required to acquire or hold title to any
property subject to the Exchange transaction unless contemplated in the
7 Transfer which triggered the Right, and (b) Grantor shall hold Grantee
harmless from any liability, costs or expenses arising out of the Exchange to
8 the extent such liability, cost or expense exceeds that which would have been
incurred if the transaction were consummated as a purchase and sale rather
9 than an exchange, if contemplated in the Transfer which triggered the Right.

10 20.8 Acknowledgment by Grantor. Grantor acknowledges that a
breach or default by Grantor of any of the provisions, rights and restrictions of
11 this Agreement shall result in the incurrence by Grantee of substantial
damages and income tax liabilities (including interest and penalties) which
12 Grantee would not then otherwise incur, the scope and extent of which could
cause irreparable harm to Grantee. Accordingly, Grantor agrees that Grantee
13 shall be entitled to pursue, in addition to claims for monetary damages,
equitable remedies against Grantor, including, without limitation, injunctive
14 relief and specific performance without the necessity or requirement of
proving actual damages. Furthermore, Grantor covenants and agrees to
15 indemnify and hold harmless Grantee from and against any and all damages,
liabilities, costs, penalties and expenses, including attorneys' fees, which
16 Grantee may incur as a result of the breach or default of this Agreement by
Grantor, including, without limitation, any income tax liabilities (including
17 interest and penalties) arising as a result thereof.

18 20.9 Eminent Domain. Notwithstanding any provision of this
Article XX above to the contrary, Landlord shall have no right of first refusal
19 in the transfer of fee title to the Improvements or any portion thereof pursuant
to or in contemplation of the exercise of any power of eminent domain.

20 20.10. No Merger. No union of interests resulting from Landlord's
acquisition of the Leasehold Estate and the Improvements shall result in a
21 merger of this Lease into the fee interest of the Leased Land.

22 20.11 Defined Terms. The terms defined in this Article XX
23 pertain only to this Article XX.

24 **IV.**

25 **GOOD CAUSE EXISTS TO APPROVE THE SALE PROCEDURES AND**
26 **BREAK-UP FEES**

27 As set forth in the accompanying declarations, the Debtor believes that the overbid
28

1 procedures set forth above are reasonable. In the context of bankruptcy, sales such as the proposed
2 sales become even more challenging due in part to a debtor's duty to maximize the value of estate
3 assets and the obligation to encourage competitive bidding in order to achieve the highest and best
4 price. It is clear that few potential buyers of the Hotel would be willing to enter into a purchase
5 agreement in the context of a bankruptcy proceeding without some assurance that the bidding
6 process will be fair and equitable and will treat all parties equally.

7 The Debtor further believes that the aforementioned sale procedures are reasonable and
8 provide incentives for parties to make offers for the Hotel and become a "stalking horse" to entice
9 others to overbid despite the apparently onerous requirements that must be satisfied to obtain
10 approval from the Court of the sale of a Hotel of such magnitude. This should result in an
11 ultimately higher price than if these procedures and break-up fees were not established. In
12 addition, establishing uniform procedures for bidding on the Hotel will allow the Debtor and the
13 Court to promptly review, analyze and compare all bids, if any, received to determine which bid, if
14 any, is in the best interest of the Debtor. Additionally, the proposed Sale Procedures are fair and
15 equitable.

16 Based upon the foregoing, the Debtor respectfully requests that the Court approve the
17 overbid procedures outlined above.

18 **V.**

19 **FORM AND MANNER OF NOTICE OF AUCTION AND SALE HEARING**

20 The Debtor proposes to give notice of the Auction and Sale Hearing using form F6004-
21 2.NOTICE.SALE, "Notice of Sale of Estate Property" and attaching the Court's order approving
22 sale procedures and will also fill out and file at that time such form with the Clerk of the Court as
23 required by Local Bankruptcy Rule 6004-1(f) to allow the Court to publish the sale of such estate
24 property on its website.

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI.

CONCLUSION

For the reasons set forth, the Debtor respectfully requests that the Court grant the relief requested.

Dated: October 25, 2013

ORANTES LAW FIRM, P.C.

By: /s/ Giovanni Orantes
Giovanni Orantes
[Proposed] General Insolvency Counsel for Debtor
LAGUNA BRISAS, LLC

DECLARATION OF GIOVANNI ORANTES

I, Giovanni Orantes, declare:

1. I am a lawyer at the Orantes Law Firm, proposed insolvency counsel for the Debtor (the "Debtor"). I know the facts in this declaration of my personal knowledge and could and would testify competently to the facts in this declaration if called as a witness.

2. As this Court is aware, on April 9, 2013 the Court held hearings on the following: Status and Case Management Conference for the Chapter 11 case filed by Debtor LAGUNA BRISAS, LLC (continued hearing); Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization (continued hearing); Wells Fargo Bank's Motion to Appoint a Chapter 11 Trustee; and Debtor's Motion for Order Disallowing Portions of Claim of CW Capital Asset Management and/or Wells Fargo Bank (continued hearing).

3. At the April 9 hearing, as reiterated by its order entered on April 30, 2013 (Docket No. 344), the Court ordered the Debtor, Kay Nam Kim, and CW Capital Asset Management to participate in mediation and ordered that Mehrdad Ellie may join the mediation but was not required to attend.

4. On May 13, 2013, the parties mentioned above, including Mehrdad Ellie, each with counsel of their choosing, participated in the Bankruptcy Court-ordered mediation before the Honorable Scott Clarkson, Bankruptcy Judge of the Central District of California ("Mediation"). The parties reached agreement and recorded its terms on the record of the Mediation. Counsel for the Debtor circulated a written version of the settlement agreement reached at the Mediation on May 17, 2013 (the "Settlement Agreement"). The Settlement Agreement was prepared over a number of hours and with the benefit of the audio recording of the record of the Mediation. However, the parties took several months and required a further motion to enforce the settlement, which this Court transferred for all purposes to the Hon. Judge Scott Clarkson, to finally get the parties to execute on October 24, 2013 a settlement agreement, of which the parties will seek approval under Rule 9019 of the Bankruptcy Rules of Procedure forthwith.

5. As part of the global Settlement Agreement And Mutual Releases (the "Settlement Agreement") between the Debtor and all the parties holding claims secured against the Hotel, the

1 Debtor has agreed to sell, with court approval, the Hotel, which consists of 66 rooms, 1,300 square
2 feet of meeting space, an outdoor pool and whirlpool, and a business center, located at 1600 S.
3 Coast Highway, Laguna Beach, California. The Hotel was built in 1985 and purchased by Mr. Kim
4 in 2002. While the Debtor does not currently have a purchaser for the hotel, it has already
5 engaged CBRE, Inc. as its broker to market the hotel and identify and coordinate the sale with
6 potential purchasers.

7 6. To provide certainty to all potential purchasers, the Debtor has formulated sales
8 procedures with input from CBRE, Inc. and the Secured Parties, especially CWCapital Asset
9 Management LLC, solely in its capacity as Special Servicer (“CW” and together with the Trust
10 and Trustee, “Wells Fargo” and/or “Lender”), the senior secured creditor in the above-
11 referenced bankruptcy case. The Debtor seeks to have sale procedures approved as soon as
12 possible as doing so is a material term of the Settlement Agreement and provides certainty. The
13 need for certainty in this case is particularly acute because the Hotel is subject to a ground lease,
14 which was already assumed by order of this Court (the “Ground Lease”) with MBP Land, LLC
15 (the “Landlord”) and the Landlord has a “Right of First Refusal” which enables it to purchase the
16 Hotel if the Debtor agrees to sell it to any party by simply matching the terms in such agreement
17 during a fifteen (15) business-day period.

18 7. I believe that aforementioned sale procedures are reasonable and provide incentives
19 for parties to make offers for the Hotel and become a “stalking horse” to entice others to overbid
20 despite the apparently onerous requirements that must be satisfied to obtain approval from the
21 Court of the sale of a Hotel of such magnitude. In addition, establishing uniform procedures for
22 bidding on the Hotel will allow the Debtor and the Court to promptly review, analyze and compare
23 all bids, if any, received to determine which bid, if any, is in the best interest of the Debtor.
24 Additionally, the proposed Sale Procedures are fair and equitable.

25 8. In addition, the break-up fees for the Stalking Horse and a Successful Bidder were
26 established after consultation with Rod Apodaca and Bob Kaplan of CBRE, Inc. and with input
27 from counsel for CW to provide incentive to potential purchasers to bid on the Hotel while not
28 depleting estate assets unnecessarily. Therefore, I believe such break-up fees are reasonable and

1 are likely to enhance the ultimate sale price because without them potential purchasers (1) have
2 little incentive to be the first to put their time and money at risk by agreeing to be the “Stalking
3 Horse” and (2) may not bid for the Hotel as they may conclude that they will spend time and
4 efforts to acquire the Hotel in a Chapter 11 context, which is a more burdensome process than a
5 purchase of assets outside of bankruptcy, and ultimately not win at the auction, especially when
6 the Landlord can simply match their bid.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States that the foregoing is true and correct and that this declaration was executed on October 25,
9 2013.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Giovanni Orantes
Giovanni Orantes

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
The Orantes Law Firm, P.C. 3435 Wilshire Blvd., Ste. 2920, Los Angeles, CA 90010

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S NOTICE OF MOTION AND MOTION FOR ORDER APPROVING: (1) BIDDING PROCEDURES FOR SALE OF ASSETS; (2) FORM AND MANNER OF NOTICE OF AUCTION AND SALE HEARING; (3) OTHER RELIEF AS THE COURT MAY DEEM APPROPRIATE; SUPPORTING MEMORANDUM & DECLARATIONS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **10/25/2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Michaeline H Correa on behalf of Creditor Mehrdad Elie mcorrea@hopkinscarley.com , eknode@hopkinscarley.com	Craig S Ganz on behalf of Creditor Best Western International, Inc. craig.ganz@gknet.com	Thomas M Geher on behalf of Interested Party Byron Chapman tmg@jmbm.com , we1@jmbm.com ; fc3@jmbm.com
Richard H Golubow on behalf of Defendant Kay Nam Kim rgolubow@winthropcouchot.com , pj@winthropcouchot.com ; vcorbin@winthropcouchot.com	Richard H Golubow on behalf of Interested Party Courtesy NEF rgolubow@winthropcouchot.com , pj@winthropcouchot.com ; vcorbin@winthropcouchot.com	Richard H Golubow on behalf of Interested Party Kay Nam Kim rgolubow@winthropcouchot.com , pj@winthropcouchot.com ; vcorbin@winthropcouchot.com
Michael J Hauser on behalf of U.S. Trustee United States Trustee (SA) michael.hauser@usdoj.gov	Johnny Kim on behalf of Debtor Laguna Brisas LLC jkim@ikimlaw.com	Johnny Kim on behalf of Plaintiff Laguna Brisas LLC jkim@ikimlaw.com
Johnny Kim on behalf of Special Counsel Johnny Kim jkim@ikimlaw.com	Miyun Lim on behalf of Interested Party Courtesy NEF teribklaw@gmail.com	Elizabeth A Lossing on behalf of U.S. Trustee United States Trustee (SA) elizabeth.lossing@usdoj.gov
Jennifer L Nassiri on behalf of Creditor Wells Fargo Bank, N.A., as Trustee for the registered holders of BofA Commercial Mortgage Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-3, by and through CWCapital Asset Management inassiri@venable.com	Giovanni Orantes on behalf of Debtor Laguna Brisas LLC go@gobklaw.com , gorantes@orantes-law.com , cmh@gobklaw.com , tl@gobklaw.com	Giovanni Orantes on behalf of Interested Party Kay Nam Kim go@gobklaw.com , gorantes@orantes-law.com , cmh@gobklaw.com , tl@gobklaw.com
Keith C Owens on behalf of Creditor Wells Fargo Bank, N.A., as Trustee for the registered holders of BofA Commercial Mortgage Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-3, by and through CWCapital Asset Management kowens@venable.com , bclark@venable.com ; khogang@venable.com	Keith C Owens on behalf of Defendant Wells Fargo Bank, N.A., as Trustee for the registered holders of Banc of America Commercial Mortgage Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-3 kowens@venable.com , bclark@venable.com ; khogang@venable.com	Steven G Polard on behalf of Creditor MTB, LLC stevenpolard@dwt.com
Hamid R Rafatjoo on behalf of Creditor Wells Fargo Bank, N.A., as Trustee for the registered holders of BofA Commercial Mortgage Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-3, by and through CWCapital Asset Management hrafatjoo@venable.com , ataylor@venable.com ; inassiri@venable.com ; bclark@venable.com	Jay M Ross on behalf of Creditor Mehrdad Elie jross@hopkinscarley.com , kday@hopkinscarley.com	United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **10/25/2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first

class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

United States Bankruptcy Court
Chambers of Hon. Judge Erithe A. Smith
411 West Fourth Street, Suite 5040
Santa Ana, CA 92701-4593

Service information continued on attached page

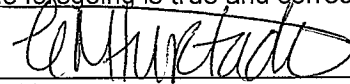
3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/25/2013
Date

Claudia M. Hurtado
Printed Name


Signature

Amenity Services 110 W. Dayton Street, Ste. 3-201 Edmonds, WA 98020	BP&G LLC 23881 Larkwood Lane Lake Forest, CA 92630
City of Laguna 505 Forest Ave. Laguna Beach, CA 92651	Cox Cable TV 29947 Avenida De Las Banderas Rancho Santa Margarita, CA 92688
Debinaire Co. 339 East Blaire Street Corona, CA 92879	Edison P.O. Box 600 Rosemead, CA 91771
Eli Merhmad 851 Burlway Road Burlingame, CA 94010	Eun Jim Kim 30 Country Walk Dr. Aliso Viejo, CA 92656
Great American Lease P.O. Box 660831 Dallas, TX 75266	JH Wells 12122 Royal Birkdale, # 225 San Diego, CA 92128
Kay Nam Kim 500 North Statecollege Blvd., Ste. 1200 Orange, CA 92868	KMK 9070 Rosecrans Ave. Bellflower, CA 90706
Laguna Beach Water P.O. Box 987 Laguna Beach, CA 92651	Merchant Services 6789 Quail Hill Parkway, # 432 Irvine, CA 92603
Metro Bank 9866 Garden Grove Garden grove, CA 92844	Paetec 600 Willowbrook Office Pkwy Fairport, NY 14450
Profittime 12031 Sherman Rd. North Hollywood, CA 91605	Rapid Plumbing 1196 N. Grove, Ste. B Anaheim, CA 92806
Woo Jung Il Ga 602 Shasta Dr. Encinitas, CA 92024	Andy Kim 16209 Paramount Blvd, Ste. 212 Paramount, CA 90723
U.S. trustee 411 West Fourth Street Suite 9041 Santa Ana, CA 92701	U.S. Bankruptcy Court Chambers of Hon. Judge Erithe Smith 411 West Fourth Street, Ste. 5040 Santa Ana, CA 92701