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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 In re
14 LOS GATOS HOTEL CORPORATION,
15 Debtor in Possession.

16 Case No. 10-63135-ASW

17 Chapter 11

18 **THIRD AMENDED DISCLOSURE**
19 **STATEMENT IN SUPPORT OF DEBTOR'S**
20 **THIRD AMENDED CHAPTER 11 PLAN OF**
21 **REORGANIZATION (DATED DECEMBER**
22 **20, 2013)**

23 **Disclosure Statement Hearing**

24 Date: January 24, 2014
25 Time: 2:15 p.m.
26 Place: Courtroom 3020
27 280 S. First St.
28 San Jose, California

Plan Confirmation Hearing

Date: TBD
Time: TBD
Ctrm: Courtroom 3020
280 S. First St.
San Jose, California
Judge: Arthur S. Weissbrodt

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1 Los Gatos Hotel Corporation, the debtor and debtor in possession in the above-captioned
2 case (the “Debtor” or “LGHC”), filed a voluntary petition for relief under chapter 11 of title 11 of
3 the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) on December 27, 2010
4 (the “Petition Date”), thereby commencing this chapter 11 case (the “Case”). The Case is pending in
5 the United States Bankruptcy Court for the Northern District of California, San Jose Division, before
6 the Honorable Arthur S. Weissbrodt (the “Bankruptcy Court” or “Court”). Since the Petition Date,
7 the Debtor has managed its affairs as a debtor in possession pursuant to Bankruptcy Code
8 sections 1107 and 1108.

9 The Debtor is the proponent (the “Plan Proponent”) of the *THIRD AMENDED CHAPTER 11*
10 *PLAN OF REORGANIZATION (DATED DECEMBER 20, 2013)* (the “Plan”) that has been filed
11 concurrently with this Disclosure Statement.¹ **THE DOCUMENT THAT YOU ARE READING**
12 **IS THE DISCLOSURE STATEMENT FOR THE PLAN. FOR A COMPLETE**
13 **UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE**
14 **STATEMENT, THE PLAN, AND THE EXHIBITS TO THESE DOCUMENTS IN THEIR**
15 **ENTIRETY.**

16 The Plan sets forth the manner in which the remaining Claims against and Interests in the
17 Debtor will be treated upon the Debtor’s reorganization under chapter 11 of the Bankruptcy Code.
18 This Disclosure Statement describes the Debtor’s prior and current business operations and the
19 principal terms of the Plan, pursuant to which claims against the Debtor will be satisfied and monies
20 will be distributed to the holders of Allowed Claims under the Plan.

21 This Disclosure Statement sets forth the assumptions underlying the Plan, describes the
22 process that the Court will follow when determining whether to confirm the Plan, and describes how
23 the Plan will be implemented if it is confirmed by the Bankruptcy Court. Bankruptcy Code
24 section 1125 requires that a disclosure statement contain “adequate information” concerning a plan
25 of reorganization. *See* 11 U.S.C. § 1125(b).

26
27 ¹ Capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the
28 Plan. The Plan is the legally operative document regarding the treatment of Claims and Interests and the terms and
conditions of the Debtor’s reorganization. Accordingly, to the extent that there is any inconsistency between the
terms contained in this Disclosure Statement and those contained in the Plan, the terms of the Plan shall govern.

1 THE COURT HAS NOT YET APPROVED THIS DISCLOSURE STATEMENT AS
2 CONTAINING “ADEQUATE INFORMATION” OR CONFIRMED THE PLAN DESCRIBED IN
3 THIS DISCLOSURE STATEMENT. THEREFORE, THE TERMS OF THE PLAN ARE NOT
4 YET BINDING ON ANYONE. IF THE COURT APPROVES THIS DISCLOSURE STATEMENT
5 AND CONFIRMS THE PLAN, AND THE EFFECTIVE DATE OCCURS, THEN THE PLAN
6 WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST
7 HOLDERS IN THIS CASE.

8 The Plan Proponent believes that the Plan is appropriate and in the best interests of Creditors,
9 equity security holders and the Estate. In view of the foregoing, the Plan Proponent strongly
10 recommends that all eligible Creditors entitled to vote on the Plan cast their ballots to accept the
11 Plan.

12 **I.**

13 **GENERAL DISCLAIMERS AND INFORMATION**

14 Please carefully read this document and the Exhibits to this document. These documents
15 explain who may object to confirmation of the Plan, who is entitled to vote to accept or reject the
16 Plan, and the treatment that Creditors of the Debtor and Holders of Existing Equity Interests can
17 expect to receive if the Court confirms the Plan. This Disclosure Statement also describes the
18 Debtor’s history, the events precipitating the Case, the effect of Plan confirmation, and some of the
19 issues the Court may consider in deciding whether to confirm the Plan. The statements and
20 information contained in the Plan and Disclosure Statement, however, do not constitute financial or
21 legal advice. You therefore should consult your own advisors if you have questions about the
22 impact of the Plan on your Claims or Interests.

23 The financial information used to prepare the Plan and Disclosure Statement was prepared by
24 the Plan Proponent (and its professionals) from information in the Debtor’s books and records and is
25 the sole responsibility of the Debtor. The Plan Proponent’s professionals prepared the Plan and
26 Disclosure Statement at the direction of, and with the review, input and assistance of, the Debtor’s
27 management.
28

1 extent they otherwise have standing to do so. Holders of Claims and/or Interests who do not receive
2 or retain any value under the Plan on account of such Claim or Interest are deemed to reject the Plan.
3 As defined by the Bankruptcy Code, a claim generally includes all rights to payment from the
4 debtor, while an interest generally represents an ownership stake in the debtor.

5 **A. Allowed Claims and Interests**

6 Subject to the exceptions explained below, under the Bankruptcy Code, a claim or interest is
7 generally allowed only if a proof of the claim or interest is properly filed before the Bar Date for
8 doing so, and either no party in interest has objected to or the court has entered an order allowing the
9 claim or interest.² Under certain circumstances provided in the Bankruptcy Code, a creditor may
10 have an allowed claim even if a proof of claim was not filed and the bar date for filing a proof of
11 claim has passed. For example, a claim may be deemed allowed if the claim is listed on the debtor's
12 schedules of assets and liabilities filed with the court, is not scheduled as disputed, contingent, or
13 unliquidated, and no party in interest has objected, or the court has entered an order allowing the
14 claim or interest after such an objection was filed.

15 A Holder's Claim must be an Allowed Claim, or must be Allowed for purposes of voting, for
16 the Holder of such Claim to have the right to vote on the Plan. Generally, for voting purposes only,
17 a Claim is deemed Allowed to the extent that: (1) either (a) a proof of Claim was timely Filed, or
18 (b) a proof of Claim was deemed timely Filed either under Bankruptcy Rule 3003(b)(1)-(2) or by a
19 Final Order; and (2) (a) the Claim is not a Disputed Claim, or (b) the Claim is Allowed either by a
20 Final Order or under the Plan.

21 Under the Plan, a Creditor whose Claim is not an Allowed Claim nevertheless may be
22 entitled to vote to accept or reject the Plan if the Creditor has timely filed a proof of Claim that is not
23 the subject of an objection filed before the Confirmation Hearing or a Court order disallowing the
24 Claim entered before the Confirmation Hearing. An entity whose Claim is subject to an objection is
25 not eligible to vote on the Plan unless and until (1) that objection is resolved in such entity's favor,
26 provided, however, in the case of an objection which only seeks to reduce the amount of such
27 entity's Claim, the entity shall nonetheless still be eligible to vote the reduced amount of its Claim or
28

² See Section VIII.A.2 for specific information regarding the General Bar Date in the Case.

1 (2) after notice and a hearing under Bankruptcy Rule 3018(a), the Bankruptcy Court temporarily
2 allows the entity's Claim or portion thereof for the purpose of voting to accept or reject the Plan.
3 Any entity that seeks temporary allowance of its Claim for voting purposes must promptly take steps
4 necessary to arrange for an appropriate and timely hearing with the Court.

5 **B. Impaired Claims and Interests**

6 Generally speaking, under the Bankruptcy Code, a class of claims or interests is impaired if
7 the plan alters the legal, equitable, or contractual rights of the members of the class, even if the
8 alteration is beneficial to the creditors or interest holders. Section III.C of the Plan and Section IX.D
9 of this Disclosure Statement, among other things, describe the Classes of Claims and Interests that
10 the Plan Proponent believes to be impaired (or unimpaired) under the Plan.

11 **III.**

12 **VOTES NECESSARY TO CONFIRM THE PLAN**

13 Impaired claims or interests are placed in classes under the plan, and it is the class that must
14 accept the plan by the requisite majorities. Section III.C of the Plan and Section IX.D of this
15 Disclosure Statement summarize the classification of all Claims and Interests under the Plan. There
16 also are some types of claims that are unclassified because the Bankruptcy Code requires that they
17 be treated in a certain way. These claims are considered unimpaired, and their holders cannot vote.

18 A bankruptcy court may confirm a plan if at least one class of impaired claims has voted to
19 accept that plan (without counting the votes of any insiders whose claims are classified within that
20 class) and if certain statutory requirements are met both as to non-consenting members within a
21 consenting class and as to rejecting classes. A class of claims has accepted the plan when at least a
22 majority in number and at least two-thirds in amount of the allowed claims actually voting in that
23 class vote to accept the plan. A class of interests has accepted the plan when at least two-thirds in
24 amount of the allowed interests actually voting in that class vote to accept the plan.

25 Even if a plan receives the requisite number of votes to confirm it, the plan will not become
26 binding unless and until, among other things, the Bankruptcy Court makes an independent
27 determination that confirmation is appropriate. This determination will be the subject of the
28 Confirmation Hearing. Also, as described in Article IV below, even if all Classes do not vote in

1 favor of the Plan, the Plan may nonetheless be confirmed if the dissenting Classes are treated in a
2 manner prescribed by the Bankruptcy Code.

3 IV.

4 **CRAMDOWN: TREATMENT OF NON-CONSENTING CLASSES**

5 The Plan may be confirmed, even if all Classes do not consent to the proposed treatment of
6 their claims under the Plan, if the dissenting Classes are treated in the manner prescribed by the
7 Bankruptcy Code. The process by which a plan is confirmed, notwithstanding the existence of a
8 dissenting class, is commonly referred to as “cramdown.” The Bankruptcy Code allows dissenting
9 classes to be crammed down if the plan does not “discriminate unfairly” and is “fair and equitable.”
10 The Bankruptcy Code does not define unfair discrimination, but it does set forth certain minimum
11 requirements for “fair and equitable” treatment. A plan is fair and equitable to holders of secured
12 claims if the holders are to receive property equal in value to the allowed amount of the secured
13 claims. For a class of unsecured claims, a plan is fair and equitable if the claims in that class receive
14 value equal to the allowed amount of the claims or, if the unsecured claims are not fully paid, no
15 claim or interest that is junior to such class receives or retains anything under the plan. Accordingly,
16 if a class of unsecured claims rejects a plan under which a junior class (*e.g.*, a class of interest
17 holders) will receive or retain any property under the plan, the plan cannot be confirmed (with
18 certain possible exceptions not relevant to the Plan) unless the plan provides that the class of
19 unsecured creditors receives value equal to the allowed amount of the claims in that class.

20 V.

21 **INFORMATION REGARDING VOTING**

22 **A. Voting Instructions**

23 Classes 5 and 6 are impaired and the Holders of Claims in those Classes are entitled to vote
24 on the Plan. Classes 1, 2, 3 and 4 are not impaired and the Holders of Claims and Interests in those
25 Classes are not entitled to vote on the Plan and each of those Classes is deemed to accept the Plan.
26 Administrative Expenses are not classified under the Plan and the Holders thereof are not entitled to
27 vote.

1 Any party that disputes the Plan Proponent's characterization of its Claim as unimpaired may
2 request a finding of impairment from the Bankruptcy Court to obtain the right to vote, but should file
3 and serve a motion requesting such a determination and arrange for such a motion to be heard by the
4 Court *prior* to the hearing on confirmation of the Plan.

5 In voting to accept or reject the Plan, please use only the Ballot (if any) sent to you with this
6 Disclosure Statement, and please carefully read the voting instructions on the Ballot for an
7 explanation of the applicable voting procedures and deadlines. If you have received this Disclosure
8 Statement without a Ballot, the Plan Proponent believes that you are: (i) a Holder of a Claim or
9 Interest that is unimpaired by the Plan and that you, therefore, are not entitled to vote on the Plan; or
10 (ii) otherwise not the Holder of a Claim or Interest that is entitled to vote to accept or reject the Plan.

11 If you nevertheless believe that you are entitled to vote on the Plan, you must file and serve a
12 motion requesting a determination that you are entitled to vote on the Plan and arrange for such
13 motion to be heard by the Court *prior* to the Confirmation Hearing. Before doing so, however, you
14 should first confirm that the absence of a Ballot was not inadvertent by contacting Abigail O'Brien,
15 Mintz Levin Cohn Ferris Glovsky and Popeo, PC, 2029 Century Park East, Suite 1370, Los Angeles,
16 California 90067, Facsimile: (310) 586-3202, email: avobrient@mintz.com.

17 If you wish to vote to accept or reject the Plan, your Ballot must be received by Debtor's
18 Counsel, at the address, e-mail address or facsimile number listed in the paragraph immediately
19 above **no later than 5:00 p.m. (California time), on _____, 2014**. If your Ballot is not timely
20 received by Debtor's Counsel, it will not be counted. Ballots must be provided to Debtor's Counsel
21 by mail, e-mail, overnight delivery, messenger, or facsimile.

22 Any interested party desiring further information with respect to the Plan, or seeking
23 additional copies of this document, should contact Debtor's Counsel. All pleadings and other papers
24 filed in this Case may be inspected during regular court hours at the United States Bankruptcy Court,
25 280 South First Street, Room 3035, San Jose, California, 95113-3099.

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VI.

OBJECTING TO PLAN CONFIRMATION

A Confirmation Hearing has been scheduled for _____, 2014, at _____ p.m., at the United States Bankruptcy Court, 280 South First Street, Room 3035, San Jose, California, 95113-3099, to determine whether the Bankruptcy Court will confirm the Plan. Any party that objects to the confirmation of the Plan must file and serve its objection and evidence in support of its objection, if appropriate, by _____, 2014. Any objection to confirmation of the Plan must be in writing, specify the name and address of the party objecting, set forth the specific grounds for the objection, and be accompanied by the evidence the objecting party intends to present in support of its objection. Such objection and evidence in support thereof must be served on Debtor's Counsel, the U.S. Trustee and parties that have requested special notice in the Case. Any affiant or declarant with respect to an affidavit or declaration filed in support of an objection to Plan confirmation must be present at the Confirmation Hearing for cross-examination without the necessity of a subpoena. Failure to properly and timely file an opposition to Plan confirmation or appear at the Confirmation Hearing may be deemed consent to the Plan's confirmation.

VII.

**DESCRIPTION OF THE DEBTOR, ITS BUSINESS, THE EVENTS
PRECIPITATING THE FILING, AND SIGNIFICANT EVENTS IN THE
CHAPTER 11 CASE**

A. Description of the Debtor and Its Business

Los Gatos Hotel Corporation, a California corporation ("LGHC" or the "Debtor"), was formed in 2000 to build and operate Hotel Los Gatos (the "Hotel"), a full-service boutique hotel located in downtown Los Gatos, California. The Hotel, constructed in 2002, offers 72 guest rooms, over 2,000 square feet of meeting and conference space, a Michelin star restaurant, and a 3,600 square foot spa and fitness facility. The Debtor, through Folio Hospitality Management, Inc., operates all aspects of the Hotel except for the restaurant, which is owned and operated by a third party under a lease of the restaurant space from the Debtor.

1 **B. Management and Ownership of LGHC**

2 David Pinn, Alan Pinn (together with David Pinn, the “Pinns”), the Bypass Trust for the
3 Benefit of the Issue of DJ Ogilvie and the Bypass Trust for the Benefit of the Issue of Christiansen
4 (together with the Bypass Trust for the Benefit of the Issue of DJ Ogilvie, the “Ogilvies”) each own
5 25% of the shares of the Debtor’s stock. Jeff Curran, who is employed by entities related to the
6 Pinns, serves as president of the Debtor. Folio Hospitality Management, Inc., an affiliate of the
7 Pinns and Mr. Curran, has managed the Hotel throughout most of the chapter 11 case, having taken
8 over management responsibilities from Joie de Vivre Hotels in April 2011.

9 **C. Debt Structure and Events Leading to Chapter 11 Filing**

10 In 2006, the Debtor refinanced its debt on the Hotel through a loan (the “Loan”) from
11 Greenwich Capital Financial Products, Inc., which was evidenced by a promissory note in the
12 amount of \$12,000,000, payable over a period of five (5) years, and coming due in full in March
13 2011. The Debtor is informed, but has not confirmed, that the Loan was subsequently bundled with
14 other loans and sold as part of a commercial mortgage-backed security to Greenwich Capital
15 Commercial Funding Corp. GCCFC 2006-GG7 Los Gatos Lodging Limited Partnership (“Lender”)
16 claims that it currently holds the Loan, which is serviced by LNR Partners, LLC (“LNR”). As of the
17 petition date, the principal balance of the Loan had been reduced to \$11,606,981. In addition,
18 Lender has claimed that penalties and interest in arrears total approximately \$1,500,000. The Loan
19 is allegedly secured by substantially all of the Debtor’s assets, including the real property on which
20 the Hotel operates (the “Real Property”).

21 From its inception in 2002, the Hotel thrived and was quickly established as one of the
22 premier hotels in the greater Los Gatos area. However, in 2008, after six years of successful
23 operations, the Hotel’s revenues declined precipitously due to the national economic crisis, and in
24 particular the collapse of the real estate and credit markets in 2008. In fact, the Hotel’s revenues
25 declined by approximately 30% between 2007 and 2009, from \$5.2 million to \$3.6 million. As
26 operating losses mounted, the Debtor’s shareholders injected cash to service the Loan and to meet
27 operating expense obligations. This additional capital, however, proved insufficient to meet the
28 Hotel’s cash flow requirements.

1 Lender recorded a Notice of Default and scheduled a trustee's sale of the Real Property for
2 December 7, 2010. That sale was rescheduled for January 31, 2011. Due in large part to the
3 impending foreclosure, on December 27, 2010 (the "Petition Date") the Debtor commenced this
4 chapter 11 case to protect the value of its assets for the Debtor's creditors and equity holders.

5 **D. Significant Events in the Case**

6 1. Overview of Chapter 11 and the Plan Process

7 Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under
8 chapter 11, the debtor attempts to reorganize its business for the benefit of itself, its creditors, its
9 shareholders, and other parties in interest, or, in the alternative, uses chapter 11 to effectuate an
10 orderly liquidation of its assets.

11 The commencement of a chapter 11 case creates an estate consisting of all of the legal and
12 equitable interests of the debtor in property as of the date that its bankruptcy petition is filed.
13 Bankruptcy Code sections 1107 and 1108 provide that a debtor may continue to operate its business
14 and remain in possession of its property as a "debtor in possession," unless the bankruptcy court
15 orders the appointment of a trustee. The Debtor has remained in possession of its property and is
16 operating its business as a debtor in possession.

17 The filing of a voluntary petition under chapter 11 also operates as an automatic stay of,
18 among other things, all attempts to collect on pre-petition claims from the debtor or otherwise
19 interfere with the debtor's property or business. Unless otherwise ordered by the bankruptcy court,
20 the automatic stay remains in full force and effect through the effective date of a confirmed
21 chapter 11 plan.

22 The formulation of a reorganization plan is the principal objective of a chapter 11 case. A
23 plan sets forth the means for satisfying the claims against and interests in the debtor. The Plan
24 provides for the treatment of all Claims against and Interests in the Debtor, including payment in full
25 of all Allowed Claims against the Debtor.

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2. Filing of Petition

On December 27, 2010, the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code. A first meeting of creditors was held, pursuant to Bankruptcy Code section 341, on February 2, 16 and 25, 2011.

3. Cash Collateral

On December 29, 2010, the Debtor filed an emergency first day motion for interim and final orders authorizing the use of cash collateral. [Docket no. 11.] The next day, Lender filed an emergency motion for adequate protection. [Docket no. 18.] Shortly thereafter, the Debtor commenced negotiations with Lender regarding the use of cash collateral and the provision of adequate protection. Ultimately, these negotiations resulted in an agreement permitting the Debtor to use cash collateral through October 5, 2011, subject to certain conditions, all as set forth in that Agreed Final Order re Cash Collateral, Adequate Protection, Transition of Management, and Related Matters (the "Agreed Final Order") entered by the Court on March 29, 2011. [Docket no. 119.] Through a number of Agreed Orders, the Debtor's use of Lender's cash collateral has been approved through May 15, 2014. [Docket Nos. 186, 205, 237, 278, 373, 402.]

4. Other First Day Motions

Shortly after the Petition Date, the Debtor filed a number of first day motions to allow it to continue operating Hotel Los Gatos without interruption, including motions for authorization to pay prepetition taxes and to honor certain prepaids, and a motion for an order prohibiting utility providers from discontinuing service.

5. Assumption of Hotel Management Agreement with Folio Hospitality Management, Inc. and Termination of Joie de Vivre

On March 29, 2011, the Court entered an order authorizing the Debtor to assume the amended and restated hotel management agreement with Folio Hospitality Management, Inc. ("Folio"), which the Debtor and Folio had entered into before the Petition Date. In mid-April, the Debtor replaced Joie de Vivre Hotels, the then-manager of Hotel Los Gatos, with Folio.

1 6. Plan and Disclosure Statement

2 On May 26, 2011, the Court granted the debtor a ninety day extension of the exclusive
3 periods set forth in section 1121 of the Bankruptcy Code to file and obtain acceptances of a plan of
4 reorganization, to July 25, 2011 and September 26, 2011, respectively. [Docket no. 133.] On July 7,
5 2011, the Debtor filed its Chapter 11 Plan of Reorganization (Dated July 7, 2011) and its Disclosure
6 Statement in Support of Chapter 11 Plan of Reorganization (Dated July 7, 2011). [Docket nos. 153,
7 154.] Joie de Vivre, Lender and Terry Ogilvie Christiansen, a member of the Debtor's board of
8 directors, each filed an objection to the Disclosure Statement. [Docket nos. 165, 166, 167.] The
9 Debtor resolved the objections filed by Joie de Vivre and Lender by filing its First Amended
10 Disclosure Statement in Support of Debtor's First Amended Chapter 11 Plan of Reorganization
11 (Dated August 25, 2011). [Docket no. 172.] On August 25, 2011, the Debtor also filed its First
12 Amended Chapter 11 Plan of Reorganization (Dated August 25, 2011). [Docket no. 171.] The
13 Court conducted a hearing on the Amended Disclosure Statement on August 26, 2011, and continued
14 the hearing to October 24, 2011, December 13, 2011 and February 3, 2012. At the hearing on
15 February 3, 2012, the Court approved the Amended Disclosure Statement as providing adequate
16 information, subject to the Debtor updating the Amended Disclosure Statement due to the amount of
17 time that had passed since it was filed. On February 29, 2012, the Debtor filed its Revised First
18 Amended Disclosure Statement in Support of Debtor's Revised First Amended Chapter 11 Plan of
19 Reorganization (Dated February 29, 2012) [docket no. 229] and its Revised First Amended Chapter
20 11 Plan of Reorganization (Dated February 29, 2012) [docket no. 228]. At a hearing on March 2,
21 2012, the Court approved the Revised First Amended Disclosure Statement as providing adequate
22 information. [Docket no. 233.] However, on July 18, 2012, the Debtor filed its Second Amended
23 Chapter 11 Plan of Reorganization (Dated July 18, 2012) and its Disclosure Statement in Support of
24 Second Amended Chapter 11 Plan of Reorganization (Dated July 18, 2012). [Docket nos. 282, 283.]
25 Lender objected to the Second Amended Disclosure Statement. [Docket No. 311.] In an effort to
26 resolve Lender's objections, on September 4, 2012 the Debtor filed its Revised Second Amended
27 Chapter 11 Plan of Reorganization (Dated August 31, 2012) and its Revised Second Amended
28 Disclosure Statement in Support of Revised Second Amended Chapter 11 Plan of Reorganization

1 (Dated August 31, 2012). [Docket nos. 317, 318.] That same day, the Court entered an order
2 approving the Revised Second Amended Disclosure Statement, and scheduled a hearing on
3 confirmation of the Revised Second Amended Plan for September 19, 2012. [Docket no. 320.] All
4 creditors entitled to vote on the plan voted to accept the Revised Second Amended Plan. [Docket
5 no. 330.] On September 11, 2012, Lender filed an objection to the Revised Second Amended Plan.
6 [Docket no. 325.] On October 19, 2012, the Debtor filed a Motion to Approve Non-Material
7 Modifications to Revised Second Amended Chapter 11 Plan of Reorganization (Dated August 31,
8 2012) to correct a typographical error. [Docket no. 335.] Confirmation of the Revised Second
9 Amended Plan was delayed while the Debtor discussed settlement with Lender and conducted
10 environmental soil testing required by the proposed purchaser of substantially all of the Debtor's
11 assets.

12 On October 31, 2011, the Court granted the Debtor a ninety-five day extension of the
13 exclusive period to obtain acceptances of a plan of reorganization to December 30, 2011. [Docket
14 no. 193.] On December 30, 2011, the Debtor filed a motion seeking to further extend the exclusive
15 period to obtain acceptances of a plan of reorganization through April 30, 2012. [Docket no. 203.]
16 The Court granted this motion at a hearing held on January 26, 2012. On April 30, 2012, the Debtor
17 filed a motion seeking to further extend the exclusive period to obtain acceptances of a plan of
18 reorganization through August 27, 2012. [Docket no. 263.] At a hearing held on July 12, 2012, the
19 Court granted this motion. [Docket No. 287.]

20 7. Professionals Retained at the Expense of the Estate

21 The Debtor has retained the following professionals to assist with the administration of the
22 Estate:

- 23 • Mintz Levin Cohn Ferris Glovsky and Popeo, PC as the Debtor's bankruptcy counsel;
- 24 • OSAS, Inc. as the Debtor's financial advisor and investment banker;
- 25 • Sandra Haines and Lori Hensley as the Debtor's bookkeepers;
- 26 • Crawford, Pimentel & Co., Inc. as the Debtor's accountant; and
- 27 • Environmental Service by Papineau and R. Mark Armstrong as the Debtor's
28 environmental consultants.

Below is a chart which sets forth the estimated amount of Professional Fee Expenses incurred through November 30, 2013 by the Estate professionals and the amount projected to be incurred to and through the Effective Date:

Professionals	Estimated Fees and Costs through November 30, 2013	Projected Additional Fees and Costs through Effective Date	Total Projected Fees and Costs
Mintz Levin	\$475,000.00	\$100,000.00	\$575,000.00
OSAS	\$90,000.00	\$0.00	\$90,000.00
Sandra Haines	\$13,920.00	\$0.00	\$13,920.00
Lori Hensley	\$0.00	\$0.00	\$0.00
Crawford, Pimentel	\$8,640.50	\$1,500.00	\$10,140.50
Environmental Service by Papineau and R. Mark Armstrong	\$42,000.00	\$0.00	\$42,000.00
Totals	\$629,560.50	\$101,500.00	\$731,060.50

Note: All amounts in the above table are estimated amounts and are subject to change. These amounts are estimates either by the respective professional or by the Plan Proponent based upon the professional's historical trends. Certain assumptions were made regarding timing and the amount of resistance the Plan and Disclosure Statement would encounter and an estimated early June 2014 Effective Date was used. The actual amounts requested or Allowed by the Court may materially vary from the amounts shown here. The Plan Proponent's inclusion of these amounts in the Plan and Disclosure Statement should not and does not necessarily represent either an endorsement of or support for the amounts shown on this chart, and the Plan Proponent expressly reserves all rights to object to any or all of these amounts. Inclusion on this chart does not constitute a belief by the Plan Proponent that these amounts are authorized or reasonable.

8. Unexpired Leases and Executory Contracts

On the Petition Date, the Debtor was a party to certain unexpired leases and executory contracts. The Debtor intends to reject all unexpired leases and executory contracts listed on Exhibit B to the Plan, and all unexpired leases and executory contracts not listed on Exhibit A to the Plan.

VIII.

DESCRIPTION OF LIABILITIES (INCLUDING CLAIMS AND PROCEDURES FOR OBJECTING TO CLAIMS), EQUITY INTERESTS IN

1 **THE DEBTOR, AND ASSETS OF THE DEBTOR (INCLUDING**
2 **AVOIDANCE AND OTHER ACTIONS)**

3 **A. Claims**

4 1. Schedules

5 On February 25, 2011 the Debtor filed amended schedules, which list total Claims against it
6 as of the Petition Date in the amount of \$20,482,967.50, including: Secured Claims in the amount of
7 \$13,100,262.00, Priority Claims in the amount of \$226,541.91, and Unsecured Claims in the amount
8 of \$7,156,163.59.

9 2. The Bar Date for Pre-Petition Claims

10 On December 28, 2010, the Bankruptcy Court entered an order establishing a deadline of
11 May 3, 2011 for filing proofs of pre-petition claims against the Debtor [Docket No. 6]. The Court
12 subsequently sent notice of the General Bar Date by first-class mail to all creditors and parties in
13 interest. Prior to the deadline for filing proofs of prepetition claims, twenty-one proofs of claim
14 totaling \$13,856,545.55 were filed.

15 3. Claim Objections

16 Pursuant to the Plan, the Debtor is authorized to file Claim Objections to Claims, through and
17 including the Claim Objection Deadline, which occurred on August 3, 2012. The Debtor objected,
18 in part, to the claims of Lender and Joie de Vivre Hospitality, Inc. [Docket nos. 297, 302.] On
19 September 6, 2012, the Court entered a tentative ruling sustaining the Debtor's objections to
20 \$1,826,707.16 of Lender's claim and requesting additional briefing on additional components of
21 Lender's claim. [Docket no. 323.] The Court also tentatively sustained, in large part, the Debtor's
22 objection to Joie de Vivre's claim. [*Id.*]

23 **B. Assets of the Debtor**

24 On the Schedules, the Debtor listed total assets in the amount of \$16,129,713. The Debtor's
25 primary asset is the real property and hotel located at 210 East Main Street, Los Gatos, California
26 (the "Property"), valued at \$13,869,714.00. On June 14, 2012, PKF Consulting USA, which was
27 retained by the Debtor to appraise the Property and the Debtor's personal property (collectively, the
28 "Assets"), valued the Assets at \$20,000,000. On June 28, 2012, HVS Consulting and Valuation

1 Services, which was retained by Secured Creditor to appraise the Assets, valued the Assets at
2 \$18,600,000.

3 **C. Potential Avoidance Actions and Litigation Claims**

4 1. Potential Avoidance Actions

5 A debtor in possession has the right to bring actions on behalf of the bankruptcy estate to
6 avoid and recover certain pre-petition and post-petition transfers to creditors and others to ensure all
7 creditors receive as much of the amount of their claims as possible and no group of creditors
8 receives inappropriate preference to other groups of creditors. Given that the Debtor's Plan provides
9 for payment in full to all non-insider creditors, the Debtor does not anticipate that it will file any
10 Avoidance Actions.

11 2. Preservation of All Claims, Causes of Action, and Rights

12 Under the Plan, all Litigation Claims shall be retained, preserved and vested with the Debtor
13 and sold to IHA Hotel Management Company, LLC, d/b/a Greystone Hotels ("IHA") as of the
14 Effective Date. From and after the Effective Date, the Debtor and/or IHA may enforce any and all
15 Litigation Claims that the Debtor or the Estate may hold or have against any person or entity,
16 including (1) Avoidance Actions, (2) any legal or equitable rights to subordinate and/or disallow
17 Claims, (3) any causes of action that could be brought by the Debtor, whether arising prior to or after
18 the Petition Date, and (4) any and all other claims, rights, or causes of action of any kind or nature of
19 the Debtor or the Estate that may exist under applicable bankruptcy law or nonbankruptcy law. To
20 the extent any Litigation Claim is already pending on the Effective Date, the Debtor and/or IHA may
21 continue the prosecution of such Litigation Claim. Upon the Effective Date, the Debtor and/or IHA
22 shall have standing to assert any and all Litigation Claims and/or defenses vested in the Debtor.

23 **IX.**

24 **SUMMARY OF MATERIAL PLAN PROVISIONS**

25 The following is a narrative description of certain provisions of the Plan. The following
26 summary of the Plan is qualified in its entirety by the actual terms of the plan. In the event of any
27 conflict, the terms of the Plan will control over any summary set forth in this Disclosure Statement.
28

1 **A. Designation of Classes and Treatment of Claims and Interests Generally**

2 The Bankruptcy Code requires that a chapter 11 plan divide the different claims against, and
3 equity interests in, a debtor into separate classes based upon their legal nature. Claims of a
4 substantially similar legal nature are usually classified together, as are equity interests of a
5 substantially similar legal nature. The Bankruptcy Code does not require the classification of
6 administrative claims and certain priority claims, and they are typically denominated “unclassified
7 claims.”

8 Under Bankruptcy Code section 1124, a class of claims is “impaired” unless the plan
9 (i) leaves unaltered the legal, equitable, and contractual rights of the holders of claims in the class; or
10 (ii) cures all defaults (other than those arising from the debtor’s insolvency, the commencement of
11 the case, or nonperformance of a nonmonetary obligation) that occurred before or after the
12 commencement of the case, reinstates the maturity of the claims in the class, compensates the
13 holders for their actual damages incurred as a result of their reasonable reliance on any acceleration
14 rights, and does not otherwise alter their legal, equitable, and contractual rights. Except for any right
15 to accelerate the debtor’s obligations, the holder of an unimpaired claim will be placed in the
16 position it would have been if the case had not been commenced.

17 A chapter 11 plan must designate each separate class of claims and equity interests either as
18 “impaired” (affected by the plan) or “unimpaired” (unaffected by the plan). If a class of claims is
19 “impaired” under the Bankruptcy Code, the holders of claims in that class are entitled to vote on the
20 plan (unless the plan provides for no distribution to the class, in which case the class is deemed to
21 reject the plan), and to receive, under the plan, property with a value at least equal to the value that
22 the holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. If a
23 class of claims is unimpaired, the holders of claims in that class are deemed to accept the plan.

24 **B. Summary of Classification and Treatment of Claims and Interests Under the Plan**

25 This Section describes the classification of Claims and Interests under the Plan -- except for
26 Administrative Expenses and Priority Tax Claims, which are not classified -- for all purposes,
27 including voting, confirmation and distributions under the Plan. A Claim or Interest is classified in a
28 particular Class only to the extent that the Claim or Interest falls within the Class description. In

1 addition, this Section describes the treatment of Claims and Interests under the Plan. The following
 2 table (a) estimates Claim amounts, based on Debtor's Schedules and proofs of Claim filed in the
 3 Debtor's Case, and (b) summarizes the classification and treatment of Claims and Interests under the
 4 Plan, to the extent Allowed, subject to the more specific provisions of the Plan and the following
 5 more detailed sections of this Disclosure Statement. A schedule of the Claims in each Class for
 6 purposes of treatment under the Plan is attached hereto as Exhibit 1.

CLASS/UNCLASSIFIED CLAIMS	DESCRIPTION ³	TREATMENT	IMPAIRED/ UNIMPAIRED	VOTING STATUS
Unclassified Claims	U.S. Trustee Fees - Estimated Amount: \$0.00	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
	Professional Fee Expenses - Estimated Amount: <i>See Chart in Section VII.D.7</i>	Paid in full in Cash within three (3) days after Final Order Allowing such Expense	Unimpaired	Not Entitled to Vote
	Ordinary Course Administrative Expenses - Estimated Amount: \$0.00	Paid in full in Cash in accordance with terms and conditions of transaction giving rise to Expense	Unimpaired	Not Entitled to Vote
	Non-Ordinary Course Administrative Expenses - Estimated Amount: \$0.00	Paid in full in Cash on later of the Effective Date or ten (10) Business Days after Expense is Allowed by Final Order	Unimpaired	Not Entitled to Vote
	Priority Tax Claims - Estimated Amount: \$0.00	Paid in full in Cash in accordance with terms and conditions of transaction giving rise to Expense	Unimpaired	Not Entitled to Vote
Class 1	Secured Tax Claims - Estimated Amount: \$0.00	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
Class 2	Secured Claim Held by GCCFC 2006-GG7 Los Gatos Lodging Limited Partnership - Estimated Claim Amount: \$12,604,873.32	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
Class 3	Priority Unsecured Claims (other than Priority Tax Claims)	Consists of gift certificates and customer deposits, which will	Unimpaired	Not Entitled to Vote

27 ³ The estimated amounts included in this chart are estimates based on the Debtor's Schedules and the proofs of Claims
 28 filed in the Debtor's Case. The Debtor continues to analyze these Claims. All Claims, unless previously Allowed, remain subject to dispute and disallowance. The inclusion of the estimated amounts herein does not constitute an admission by the Debtor as to the validity of the Claims or the amounts thereof.

CLASS/UNCLASSIFIED CLAIMS	DESCRIPTION ³	TREATMENT	IMPAIRED/ UNIMPAIRED	VOTING STATUS
	- Estimated Amount: \$130,725.88 ⁴	be honored upon presentation		
Class 4	General Unsecured Claims Not Otherwise Classified - Estimated Amount: \$54,158.76	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
Class 5	Unsecured Claims Held by Insiders: \$7,121,666.00	<i>See discussion at Section IX.D.5</i>	Impaired	Entitled to Vote
Class 6	Existing Equity Interests	<i>See discussion at Section IX.D.6</i>	Impaired	Entitled to Vote

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR DISCLOSURE STATEMENT, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM OR INTEREST THAT IS NOT ALLOWED.

The treatment in the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights (including any Liens) that each Holder of an Allowed Claim or an Allowed Interest may have in or against the Debtor, the Estate, or their respective properties. This treatment supersedes and replaces any agreements or rights those entities may have in or against the Debtor, the Estate, or their respective properties.

C. Allowance and Treatment of Unclassified Claims

1. Administrative Claims

(a) U.S. Trustee Fees

U.S. Trustee Fees shall be allowed in accordance with 28 U.S.C. § 1930. The Plan provides that the Debtor will pay to the U.S. Trustee all U.S. Trustee Fees due and owing under 28 U.S.C. § 1930 in Cash on the Effective Date.

(b) Professional Fee Expenses

Unless otherwise expressly provided in the Plan, Professional Fee Expenses will be Allowed only if (i) on or before ninety (90) days after the Effective Date, the entity seeking payment of such

⁴ As of May 31, 2012.

1 Professional Fee Expense both Files with the Court a fee application or a motion requesting
2 Allowance of the Professional Fee Expense and serves the application or motion on the Debtor and
3 the U.S. Trustee; and (ii) the Bankruptcy Court determines such Professional Fee Expense should be
4 Allowed. Any party in interest may File an objection to such application or motion within the time
5 provided by the Bankruptcy Rules, the Local Rules, or within any other period that the Bankruptcy
6 Court may establish. The Debtor will reserve funds from the proceeds of the sale transaction
7 (described below) to pay Allowed Professional Fee Expenses. Unless otherwise agreed, the Debtor
8 will pay or cause to be paid an Allowed Professional Fee Expense, in Cash, within three (3) business
9 days after the date on which the Bankruptcy Court order Allowing such Expense becomes a Final
10 Order.

11 (c) Ordinary Course Administrative Expenses

12 Any entity seeking payment of an Ordinary Course Administrative Expense may, but need
13 not, File a motion or request for payment of such Administrative Expense. The Debtor or any other
14 party in interest may File an objection to an Ordinary Course Administrative Expense in its
15 discretion. The Plan provides that, unless a party in interest objects to an Ordinary Course
16 Administrative Expense, such Administrative Expense will be Allowed and paid by IHA in
17 accordance with the terms and conditions of the particular transaction that gave rise to the
18 Administrative Expense.

19 (d) Non-Ordinary Course Administrative Expenses

20 Unless otherwise expressly provided in the Plan, a Non-Ordinary Course Administrative
21 Expense will be Allowed only if: (i) the entity asserting such Non-Ordinary Course Administrative
22 Expense both Files with the Court a motion requesting Allowance of the Non-Ordinary Course
23 Administrative Expense and serves the motion on Debtor's Counsel and the U.S. Trustee, with such
24 motion to be heard prior to or at the Confirmation Hearing and (ii) the Bankruptcy Court determines
25 such Administrative Expense should be Allowed. The Debtor or any other party in interest may File
26 an objection to such motion within the time provided by the Bankruptcy Rules, the Local Rules, or
27 within any other period that the Bankruptcy Court may establish.
28

1 Any entity seeking payment of a Non-Ordinary Course Administrative Expense that does not
2 timely File and serve a request for payment will be barred forever from asserting such
3 Administrative Expense against the Debtor, the Debtor, the Estate, IHA or their property. Unless the
4 entity holding an Allowed Non-Ordinary Course Administrative Expense agrees to different
5 treatment, the Debtor will pay such entity Cash in the full amount of such Allowed Administrative
6 Expense, on or before the Effective Date.

7 2. Priority Tax Claims

8 As of the date of this Plan, the Debtor is not aware of any Priority Tax Claims. To the extent
9 any such Priority Tax Claims exist and have not been satisfied or extinguished as of the Effective
10 Date, they shall be paid by the Debtor on the Effective Date.

11 **D. Allowance and Treatment of Classified Claims and Interests**

12 1. Class 1 (Secured Tax Claims)

13 Class 1 consists of all Secured Tax Claims. As of the date of the Plan, the Debtor is not
14 aware of any Secured Tax Claims. To the extent any such Secured Tax Claims exist, the Debtor will
15 pay such entity in Cash in full on the Effective Date. Class 1 is unimpaired under the Plan.

16 2. Class 2 Secured Claim Held by GCCFC 2006-GG7 Los Gatos Lodging Limited
17 Partnership

18 Class 2 consists of the Secured Claim presently held by GCCFC 2006-GG7 Los Gatos
19 Lodging Limited Partnership (the "Lender"). Class 2 is unimpaired under this Plan because, on the
20 Effective Date, the Debtor will pay the Lender the principal and non-default interest under the Loan
21 and a settlement payment as set forth below, less any reserves or funds held by Lender, and such
22 payments will cure all defaults under the Loan. *See Great Western Bank & Trust v. Entz-White*
23 *Lumber and Supply, Inc. (In re Entz-White Lumber and Supply, Inc.)*, 850 F. 2d 1338 (9th Cir. 1988)
24 (holding that a secured creditor's claim is unimpaired if that creditor is paid principal and non-
25 default interest on the effective date of a plan of reorganization). The settlement payment will
26 compensate the Lender for its reasonable attorneys' fees, certain incidental expenses incurred in
27 connection with the Loan as set forth in Lender's proof of claim and the general unsecured claim
28 purchased by the Lender from Joie de Vivre Hospitality, Inc. To the extent Lender's proof of claim

1 seeks payment of default interest, late fees, any prepayment premium or other penalty, such amounts
2 will not be paid.

3 **Amounts to be Paid to Lender**

4 Category	Amount
5 Principal	\$11,606,980.82
Note Rate Interest	\$2,412,658.63
6 Settlement Payment ⁵	\$825,000.00
Less: Credit Suspense Funds and Escrow Funds	(\$2,239,766.13)
Total	\$12,604,873.32

7 3. Class 3 (Priority Unsecured Claims)

8 Class 3 consists of Priority Unsecured Claims and is comprised of consumer deposits and gift
9 certificates made or issued prior to the Petition Date and not yet used by the consumer. Class 3 is
10 not impaired under the Plan and is not entitled to vote. IHA will honor gift certificates when
11 presented and will apply deposits towards the reservations for which they were paid.

12 4. Class 4 (General Unsecured Claims Not Otherwise Classified)

13 Class 4 consists of General Unsecured Claims Not Otherwise Classified. Class 4 is
14 unimpaired under the Plan because Holders of Allowed Class 4 Claims will be paid in full on the
15 Effective Date, or as soon thereafter as such Class 4 Claim becomes an Allowed Class 4 Claim,
16 unless the Holder of such Claim agrees to different treatment.

17 5. Class 5 (Unsecured Claims Held by Insiders)

18 Class 5 consists of Unsecured Claims held by Insiders. Proceeds of the sale to IHA (as
19 described below in Section V.A. and in the Disclosure Statement) will be reserved pending (a) entry
20 of an order allowing such Class 5 Claim or (b) a settlement resolving any disputes concerning such
21 Class 5 Claim. Holders of Allowed Class 5 Claims will be paid the Allowed amounts of their
22 Claims within ten days after allowance or settlement of such Claims.

23 6. Class 6 (Existing Equity Securities)

24 Class 6 consists of all Existing Equity Security Interests. Class 6 is impaired under this Plan
25 because the Debtor will be dissolved and Holders of Class 6 Claims will receive a pro rata
26 distribution of the Debtor's remaining funds, based on their percentage ownership of the existing
27 equity security interests in the Debtor, after all distributions have been made to Holders of
28

⁵ The amount of this settlement payment remains subject to further negotiation.

1 Administrative Expense Claims, Priority Tax Claims, and Claims in Classes 1 through 5 and the
2 reserves described in Section XI.A. below have been established. The Debtor has agreed to bear the
3 cost of remediation of the environmental conditions on its property. In the event that the escrow
4 discussed in Section XI.A.1 below is insufficient to pay the costs of remediation, IHA may seek to
5 recover additional remediation costs from Holders of Class 6 Claims.

6 **X.**

7 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

8 **A. Assumption**

9 The Plan provides that the Debtor shall assume, as of the Effective Date, those executory
10 contracts and unexpired leases listed in Exhibit A to the Plan, unless previously rejected by the
11 Debtor. The Debtor will then assign these contracts to IHA. All monetary defaults under the
12 executory contracts and unexpired leases assumed by the Debtor under the Plan will be cured on the
13 Effective Date. The Confirmation Order shall constitute an order approving the assumption of each
14 lease and contract. Any party to an executory contract or unexpired lease to be assumed under the
15 Plan who objects to the assumption of such contract or lease must file and serve an objection to
16 assumption not later than the Plan Objection Deadline.

17 All executory contracts and unexpired leases listed on Exhibit B to the Plan and/or not listed
18 on Exhibit A to the Plan are deemed rejected as of the Effective Date. The Debtor will reserve funds
19 from the sale proceeds sufficient to pay any rejection damages claims.

20 **XI.**

21 **MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

22 **A. Execution of Plan**

23 1. Sale of All Assets of the Debtor

24 On the Effective Date, substantially all of the assets of the Debtor will be sold to IHA. The
25 letter of intent describing the sale is attached as Exhibit C to the Plan. The final purchase agreement
26 will be filed with the Bankruptcy Court and served on parties in interest requesting special notice
27 prior to the Confirmation Hearing. The purchase price will be \$22.5 million in cash. The sale
28 proceeds will be used by the Debtor (a) to pay Holders of Allowed Claims as set forth above; (b) to

1 create a reserve in an amount sufficient to pay Professional Fees after the hearing on such fees and to
2 pay Allowed Class 5 Claims after allowance or settlement of such Claims; and (c) to fund an escrow
3 in an amount equal to 150% of the remaining costs of remediation, but not less than \$300,000, to be
4 used for the remediation of any environmental contamination on the Debtor's property. An analysis
5 of the sources and uses of funds as of the Effective Date is attached hereto as Exhibit 2. IHA will
6 assume Ordinary Course Administrative Expense Claims and Class 3 Claims and will pay these
7 claims as they come due. The sale is contingent upon IHA obtaining a commitment from a lender to
8 provide financing for the sale in the amount of \$13 million within 45 days after the date of entry of
9 an order confirming the Plan.

10 2. Description of Purchaser

11 IHA comprises a small, tightly knit group of sophisticated high net worth real estate and
12 hotel investors based in San Francisco, California. IHA has acquired, owns and operates ten middle
13 market hotels in California and Oregon:

- 14 • Best Western Seven Seas Hotel, San Diego, California,
- 15 • King George Hotel, San Francisco, California,
- 16 • Creekside Inn, Palo Alto, California,
- 17 • Bristol Hotel, San Diego, California,
- 18 • The Inn at Union Square, San Francisco, California,
- 19 • Hotel Griffon, San Francisco, California,
- 20 • Elan Hotel, Los Angeles, California,
- 21 • Fairfield Inn & Suites by Marriott, Bend, Oregon,
- 22 • TownePlace Suites by Marriott, Bend, Oregon and
- 23 • Hotel Wilshire, Los Angeles, California.

24 IHA is a hotel investor with a long term horizon. Since its inception in 1995, IHA has not
25 sold any hotels that it has acquired. IHA has a pride of ownership philosophy which is executed by a
26 combination of selective acquisition, long term holds, an aggressive preventive maintenance
27 program as well as ongoing capital investment to improve and enhance its hotels. Since acquiring
28

1 the hotels listed above, IHA has invested approximately \$51.8 million on renovation, upgrades and
2 capital improvements to these hotels.

3 3. Management of Hotel Los Gatos

4 Following the sale of substantially all of the Debtor's assets, the Hotel will be managed by
5 the purchaser, IHA.

6 **B. Authority to Effectuate Plan**

7 Upon entry of the Confirmation Order by the Bankruptcy Court, all matters provided under
8 the Plan will be deemed to be authorized and approved without further approval from the
9 Bankruptcy Court. The Confirmation Order will act as an order modifying the Debtor's articles of
10 incorporation and bylaws, if necessary, such that the provisions of the Plan can be effectuated. The
11 Debtor will be authorized, without further application to or order of the Bankruptcy Court, to take
12 whatever action is necessary to consummate and carry out the Plan and to effectuate the distributions
13 provided for under the Plan.

14 **C. Distribution of Property Under the Plan**

15 The following procedures set forth in the Plan apply to distributions made pursuant to the
16 Plan by the Debtor:

17 1. Provision Regarding Disputed Claims

18 The Debtor shall implement the following additional procedures with respect to the
19 allocation and distribution of Cash in accordance with this Plan to the Holders of Disputed Claims
20 that become Allowed Claims:

21 (a) Cash on account of the disputed portion of Disputed Claims shall not be
22 distributed, but shall be withheld by the Reorganized Debtor in an amount equal to the distributions
23 that would have otherwise been made to the Holders of such Claims if such Claims had been
24 Allowed Claims, based on such disputed portion (the "Disputed Reserve Amount").

25 (b) The Bankruptcy Court may estimate the amount of any Disputed Claim
26 pursuant to Bankruptcy Code section 502(c), in which event the amounts so fixed or liquidated shall
27 be deemed to be Allowed Claims pursuant to Bankruptcy Code section 502(c) for purposes of
28 distribution under this Plan. In lieu of estimating the amount of any Disputed Claim, the

1 Bankruptcy Court or the Debtor may determine the amount to be reserved for such Disputed Claim,
2 or such amount may be fixed by agreement in writing by and between the Debtor and the Holder
3 thereof.

4 (c) When a Disputed Claim becomes an Allowed Claim, there shall be distributed
5 to the Holder of such Allowed Claim, in accordance with the provisions of this Plan, Cash equal to
6 what the Holder would have received on account of the disputed portion of the Claim which has
7 been Allowed through such a date.

8 (d) No Holder of a Disputed Claim shall have any Claim against the Cash
9 reserved with respect to such Claim until such Disputed Claim shall become an Allowed Claim. In
10 no event shall any Holder of any Disputed Claim be entitled to receive (under this Plan or
11 otherwise) any payment which is greater than the amount reserved for such Claim pursuant to this
12 Plan or, except as otherwise permitted under this Plan, of interest or other compensation for delays
13 in distribution. In no event shall the Reorganized Debtor have any responsibility or liability for any
14 loss to or of any amount reserved under this Plan.

15 (e) To the extent a Disputed Claim ultimately becomes an Allowed Claim in an
16 amount less than the Disputed Amount or Disputed Reserve Amount reserved for such Disputed
17 Claim (as applicable), then the resulting surplus of Cash shall be distributed among the Holders of
18 Allowed Claims until such time as each Holder of an Allowed Claim has been paid the Allowed
19 Amount of its Claim.

20 2. Objections to Claims

21 Unless another date is established by order of the Bankruptcy Court, any objection to a Claim
22 shall be filed with the Bankruptcy Court and served on the Creditor holding such Claim on or before
23 the Claim Objection Deadline. Any party in interest shall have the right to request that the
24 Bankruptcy Court extend the Claim Objection Deadline.

25 3. Disallowance of Claims Held by Avoidance Action Defendant

26 As set forth in the Plan, all Claims held by persons against whom an Avoidance Action has
27 been asserted shall be deemed disallowed pursuant to Bankruptcy Code section 502(d), and Holders
28 of such Claims may not vote to accept or reject the Plan, both consequences to be in effect until such

1 time as such Avoidance Action against the Holder has been settled or resolved by a Final Order and
2 all sums due to the Debtor by the Holder are turned over to the Debtor. As of the date of this
3 Disclosure Statement, the Debtor does not anticipate that it will file any Avoidance Actions.

4 4. Time When Distributions Deemed Made

5 The Plan provides that all distributions by check shall be deemed made at the time such
6 check is duly deposited in the United States mail, postage prepaid, and all distributions by wire
7 transfer shall be deemed made as of the date the Federal Reserve Bank deems the wire transfer is
8 made.

9 5. Delivery of Distributions and Undeliverable/Unclaimed Distributions

10 (a) Delivery of Distributions in General

11 The Plan provides that the Debtor shall make distributions to each Holder of an Allowed
12 Claim by mail as follows: (a) at the address set forth on the proof of Claim Filed by such Holder of
13 an Allowed Claim; or (b) at the address reflected in the Schedules if no proof of Claim is Filed,
14 provided, however, to the extent a Holder of an Allowed Claim notifies the Debtor of a new address,
15 the Distribution shall be sent to that new address.

16 The Debtor may withhold the entire distribution due to any Holder of an Allowed Claim until
17 such time as the Holder provides the Debtor with the information necessary to make a distribution to
18 such Holder in accordance with this Plan and applicable law, and Holders of Allowed Claims who
19 do not provide such information shall be barred from participating in distributions under the Plan.

20 (b) Undeliverable and Unclaimed Distributions

21 Under the Plan, if the distribution to the Holder of any Allowed Claim is returned as
22 undeliverable, the Debtor shall make reasonable efforts to locate the Holder's current address and
23 shall send distributions to that address. If, after these efforts, the Debtor is unable to locate the
24 Holder, no further distribution will be made to the Holder unless and until the Debtor is notified in
25 writing of the Holder's then current address. Subject to the other provisions of this Plan,
26 undeliverable distributions will remain in the possession of the Debtor pursuant to this Section until
27 the earlier of: (i) such time as a distribution becomes deliverable; or (ii) sixty (60) days following the
28 payment in full of all Allowed Claims in such Class for which distributions were deliverable. Any

1 undeliverable distributions that are not claimed within sixty (60) days following the payment in full
2 of Allowed Claims for which distributions were deliverable will be transferred to IHA.

3 **D. Effect of Confirmation**

4 On the Effective Date, except as otherwise specifically provided in the Plan, the Debtor, the
5 Debtor, and their property shall be discharged and released from any and all Claims, Administrative
6 Expenses, and other debts, demands and liabilities of any Creditor for which the Debtor is or is
7 alleged to be liable, including those which are contingent, unliquidated or disputed, that arose before
8 entry of the Confirmation Order and any and all debts of every kind, character and description
9 specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), whether or not (i) a proof of Claim
10 based on such debt has been filed under Bankruptcy Code section 501, (ii) such Claim is an Allowed
11 Claim under Bankruptcy Code section 502, (iii) such Claim has been listed in the Schedules, or (iv)
12 the Holder of such Claim has accepted the Plan, pursuant to Bankruptcy Code section 1141.

13 Pursuant to Bankruptcy Code section 524, this discharge shall, as of the Effective Date: (1) void any
14 judgment at any time obtained, to the extent that such judgment is a determination of such person's
15 liability with respect to any debt or Claim discharged, whether or not discharge of such debt is
16 waived; and (2) operate as an injunction against the commencement or continuance of any action,
17 the employment of any process, or any act, to collect, recover or offset any liability of such person
18 with respect to any debt discharged, whether or not discharge of such debt is waived.

19 **E. Revesting of Property in the Debtor**

20 The Plan provides that as of the Effective Date, the assets of the Debtor distributed under the
21 Plan shall be free and clear from any and all liens, encumbrances, debts, demands, liabilities or other
22 claims of the Holders of Claims and Interests except as otherwise provided under this Plan or the
23 Confirmation Order. All other property of the Estate shall revert in the Debtor and be sold to IHA,
24 including, but not limited to (i) claims, causes of action, and other Litigation Rights, (ii) rights to
25 pursue Claim Objections, (iii) rights to pursue affirmative relief against Creditors, Interest Holders
26 and others, including, but not limited to, Avoidance Actions, (iv) claims, causes of action and
27 litigation brought prior to the Effective Date, and (v) any other rights the Debtor may have.
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XII.

BEST INTERESTS OF CREDITORS AND FEASIBILITY

A. The “Best Interests” Test

In addition to the other requirements described in this Disclosure Statement, the Bankruptcy Code requires that a chapter 11 plan satisfy the “best interests of creditors” test (the “Best Interests Test”). Under this test, if the holder of an allowed claim or allowed interest is in an impaired class and does not vote to accept the plan, that holder must receive or retain property of a value not less than the amount that such entity would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code. In a chapter 7 case, a debtor’s assets are typically sold by a chapter 7 trustee. Secured creditors are paid first from the sales proceeds of property on which the secured creditors have liens. Any remaining proceeds from the sale of estate property are next distributed to satisfy administrative claims, including a fee to the trustee. Unsecured creditors are then paid from any remaining sales proceeds according to the priorities set forth in the Bankruptcy Code. Unsecured creditors with the same priority share on a pro rata basis with other unsecured creditors of the same priority. Finally, interest holders receive any remaining proceeds on a pro rata basis with other interest holders.

In order to confirm the Plan, the Bankruptcy Court must find that Creditors and Interest Holders in an impaired Class who do not accept the Plan will receive at least as much under the Plan as they would receive under a chapter 7 liquidation. Here, only Classes 5 and 6 are impaired. The recovery that may be realized by Holders of Class 5 Claims on account of their Claims is greater under the terms of the Plan than it would be in a chapter 7 liquidation because these creditors would suffer an approximately \$3.6 million deficiency in a chapter 7 liquidation. Under the Plan, they will receive a distribution from the proceeds of the sale to IHA after allowance of their Claims. As such, there is no reason to believe that Creditors of the Debtor would receive more in a chapter 7 liquidation than they would receive under the Plan.

In a chapter 7 liquidation, the Hotel would be abandoned to the secured creditor who would complete a foreclosure. The Debtor anticipates that the funds recovered through avoidance actions and the payments on accounts receivable would be minimal. The majority of the Debtor’s accounts

1 and notes receivable are owed by its affiliates and insiders. These entities, except for ARPCO and
2 the Ogilvies, are unable to make payments on these receivables. Certain entities have no assets
3 (Stonebridge, Hotel Investors, Bay Colony III, Adobe Investors, BWS, Inc., and DSC, Inc.). Others
4 are in default on their loans with their secured creditors (Monte Vista Apartment Homes, Maple
5 Grove, Orchard Heights Investors, II, PBC Inc., PBP LP and Northstate Equities) and are facing
6 foreclosure. Pfeiffer Ranch Investors Inc.'s secured creditor has foreclosed on its assets. Alan and
7 David Pinn have no unencumbered assets, and no net worth other than exempt assets.

8 The Debtor believes that pursuing avoidance actions against affiliates would be unproductive
9 for similar reasons, *i.e.*, Pfeiffer Ranch Investors' secured creditor foreclosed on its assets; Maple
10 Grove and PBP LP are in default on their loans from their secured creditors; Pfeiffer Ranch Investors
11 II has no assets. Nor does the Debtor anticipate significant recoveries from avoidance actions
12 against non-insider creditors because these payments were generally made by trade vendors in the
13 ordinary course of business. Because the Plan provides for repayment of creditors in full, the Debtor
14 has not evaluated the value of any potential avoidance actions against Joie de Vivre.

15 Attached hereto as Exhibit 3 is a schedule setting forth the Debtor's estimate as to the result
16 of a hypothetical chapter 7 liquidation. The values ascribed to the assets, claims, expenses and other
17 items on Exhibit 3 are the Debtor's estimates as to the liquidation value of such items only. The
18 Debtor's estimates are based on numerous assumptions, including those set forth in the notes to
19 Exhibit 3, the accuracy of which may significantly affect the actual liquidation value of such items.

20 BECAUSE OF THE UNCERTAIN NATURE OF THE PROJECTIONS AND VALUATIONS IN
21 EXHIBIT 3, AND THE FACTORS, BOTH KNOWN AND UNKNOWN, AFFECTING THE
22 ASSUMPTIONS ON WHICH EXHIBIT 3 IS BASED, CREDITORS SHOULD NOT RELY ON
23 EXHIBIT 3 AS AN ACCURATE PREDICTION OF THE POTENTIAL RESULTS OF A
24 CHAPTER 7 LIQUIDATION OF THE DEBTOR'S ASSETS OR THE DISTRIBUTION
25 CREDITORS WOULD RECEIVE UNDER SUCH A SCENARIO. THE PLAN PROPONENT
26 MAKES NO REPRESENTATIONS REGARDING THE ACTUAL LIQUIDATION VALUE OF
27 THE DEBTOR'S ASSETS OR THE DISTRIBUTION, IF ANY, CREDITORS WOULD RECEIVE
28 IN A CHAPTER 7 LIQUIDATION. THE PROJECTIONS IN EXHIBIT 3 ARE MADE FOR

1 PURPOSES OF ILLUSTRATING ONE POSSIBLE RESULT OF A CHAPTER 7 LIQUIDATION
2 ONLY, AND ARE NOT BINDING ON THE DEBTOR, THE DEBTOR, OR ANY SUCCESSOR-
3 IN-INTEREST.

4 A chapter 7 liquidation will also increase Administrative Expenses and other Claims against
5 the estate. In addition to having to pay the fees of a chapter 7 trustee, the chapter 7 trustee is likely
6 to hire separate counsel, an accountant, auctioneers, brokers, sales agents and/or other professionals
7 to assist in his or her duties. This will undoubtedly result in significant additional Professional Fee
8 Expenses which would likely offset any positive net value obtained from the Debtor's remaining
9 assets. The Administrative Expenses of the chapter 7 trustee and the trustee's professionals would
10 be paid prior to any distribution to General Unsecured Creditors. A liquidation may also give rise to
11 Claims against the Debtor for debts incurred during the ordinary course of the Debtor's operations
12 during the Case and any Claims arising under 11 U.S.C. § 502 from recoveries made in Avoidance
13 Actions.

14 In light of the foregoing, the Plan Proponent believes that the Plan is in the best interests of
15 Creditors and should be confirmed.

16 **B. Feasibility**

17 The Bankruptcy Code requires that, in order for the Plan to be confirmed by the Bankruptcy
18 Court, it must be demonstrated that consummation of the Plan is not likely to be followed by the
19 liquidation or the need for further financial reorganization of the Debtor, unless such liquidation or
20 reorganization is proposed in the Plan. "The feasibility test is firmly rooted in predictions based on
21 objective fact and looks at the probability of actual performance of the provisions of the proposed
22 plan." *In re Sound Radio, Inc.*, 93 B.R. 849, 855 (Bankr. D.N.J. 1988).

23 The sale to IHA will provide sufficient funds to pay all Holders of Allowed Claims in full on
24 the later of the Effective Date or the date their Claim becomes Allowed. Therefore, the Plan is
25 clearly feasible.

1 **XIII.**

2 **RISK FACTORS**

3 There exist certain risk factors which may affect consummation of the Plan and the payment
4 of amounts necessary to satisfy Allowed Claims.

5 The sale to IHA may not close due to an inability to secure the \$13 million loan necessary to
6 finance the sale. This would prevent the sale from closing, and the Debtor would be unable to make
7 payments on account of Allowed Claims under the Plan.

8 IHA may decide not to complete the purchase of the Debtor's assets, thereby preventing the
9 Debtor from making payments on account of Allowed Claims under the Plan.

10 The cost of environmental remediation may exceed the amount reserved for such
11 remediation, preventing the Debtor from making payments to Holders of Allowed Class 5 and Class
12 6 Claims under the Plan.

13 Finally, certain unforeseen circumstances may prevent the Debtor from meeting its
14 obligations under the Plan. These circumstances generally involve risks associated with doing
15 business, including, but not limited to, unforeseen litigation or liability and the unlikely possibility of
16 a catastrophic event, making the hotel, or a significant portion of it, unfit for use.

17 **XIV.**

18 **CERTAIN FEDERAL INCOME TAX AND OTHER TAX CONSEQUENCES**
19 **OF PLAN**

20 The following discussion is a summary of certain U.S. federal income tax consequences of
21 the Plan to the Debtor. This discussion is based on the Internal Revenue Code, Treasury
22 Regulations, judicial decisions and published administrative rules and pronouncements of the IRS as
23 in effect on the date hereof. Due to the possibility of changes in the law and the potential for
24 disputes as to legal and factual matters with the IRS, the tax consequences described in the Plan are
25 subject to significant uncertainties. No legal opinions have been requested from counsel with
26 respect to any tax aspects of the Plan and no rulings have been or will be requested from the IRS
27 with respect to any of the issues discussed below. Furthermore, legislative, judicial or administrative
28 changes may occur, perhaps with retroactive effect, which could affect the accuracy of the
statements and conclusions set forth below as well as the tax consequences to the Debtor.

1 THE FOREGOING IS INTENDED ONLY TO BE A SUMMARY OF TAX
2 CONSEQUENCES TO THE DEBTOR AND IS NOT INTENDED TO CONSTITUTE A
3 DISCUSSION OF TAX CONSEQUENCES APPLICABLE TO HOLDERS OF CLAIMS AND
4 INTERESTS. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ON
5 HOLDERS OF CLAIMS AND INTERESTS MAY BE COMPLEX. EACH HOLDER OF A
6 CLAIM OR INTEREST IS URGED TO CONSULT SUCH HOLDER'S TAX ADVISORS
7 CONCERNING THE U.S. FEDERAL, STATE, LOCAL, AND OTHER TAX
8 CONSEQUENCES APPLICABLE TO SUCH HOLDERS UNDER THE PLAN.

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10 **XV.**

11 **RECOMMENDATION AND CONCLUSION**

12 The Plan Proponent believes that acceptance of the Plan is in the best interests of the parties,
13 and that any alternative would likely result in a reduced or delayed recovery to Holders of Allowed
14 Claims, as well as additional expense. Accordingly, the Plan Proponent urges Holders of impaired
15 Claims (and which are entitled to vote), to vote to accept the Plan, by so indicating on their Ballots,
16 and returning them as specified in this Disclosure Statement and on their Ballots.

17 Date: December 20, 2013

18 **LOS GATOS HOTEL CORPORATION**
19 Debtor in Possession

20 By: 
21 Jeff Curran
22 President