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Los Gatos Hotel Corporation
7

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re
12 LOS GATOS HOTEL CORPORATION,
13 Debtor in Possession.

Case No. 10-63135-DM

Chapter 11

**DEBTOR'S FOURTH AMENDED
CHAPTER 11 PLAN OF
REORGANIZATION (REVISED JULY 28,
2015)**

Plan Confirmation Hearing

Date: TBD
Time: TBD
Ctrm: TBD

Judge: Dennis Montali

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1 Debtor and debtor in possession LOS GATOS HOTEL CORPORATION proposes the
2 following Fourth Amended Plan of Reorganization pursuant to chapter 11 of title 11 of the United
3 States Code.

4 **I.**

5 **DEFINITIONS AND RULES OF CONSTRUCTION**

6 **A. Definitions**

7 The definitions contained in title 11 of the United States Code are incorporated herein by
8 reference. Unless otherwise noted, all statutory references are to title 11 of the United States Code.
9 The following terms, as used in the Plan, shall have the following meanings:

10 “Administrative Expense” means a cost or expense of administering the Debtor’s Case
11 entitled to priority in payment pursuant to Bankruptcy Code sections 503(b), 507(a)(2), 507(b),
12 and/or 1114(e)(2).

13 “Allowed” or “Allowance” means,

14 (1) when used with respect to a Claim, except for a Claim in Class 5 or Interest in
15 Class 6, to the extent that:

16 (A) either a proof of Claim was timely Filed or deemed timely Filed under
17 Bankruptcy Rule 3003(b)(1)-(2), or the Claim is listed on the Debtor’s
18 Schedules, and is not scheduled as disputed, contingent, or unliquidated; and

19 (B) either no objection to the Claim has been Filed, or the Claim has been
20 allowed by Final Order, a settlement between the Debtor and the Holder of
21 such Claim, or under this Plan.

22 (2) when used with respect to a Claim in Class 5 or Interest in Class 6, to the extent
23 that:

24 (A) either a proof of Claim or Interest was timely Filed or deemed timely
25 Filed under Bankruptcy Rule 3003(b)(1)-(2), or the Claim or Interest is listed
26 on the Debtor’s Schedules, and is not scheduled as disputed, contingent, or
27 unliquidated; and (B) either (1) an order has been entered determining such
28

1 Class 5 Claim or Class 6 Interest is Allowed; (2) a settlement has resolved any
2 disputes concerning such Class 5 Claim or Class 6 Interest; or (3) the Claim
3 Objection Deadline has expired, and no objection was filed to such Class 5
4 Claim or Class 6 Interest.

5 Unless otherwise specified in this Plan, an Allowed Claim does not include any portion of a Claim
6 that is satisfied or released during the Case.

7 “Allowed Administrative Expense” means an Administrative Expense that is or becomes
8 Allowed as set forth in this Plan.

9 “Assigned Contracts” means the executory contracts and unexpired leases set forth in Exhibit
10 B, which executory contracts and unexpired leases are to be assumed and assigned to the Purchaser
11 pursuant to the Contract Motion.

12 “Avoidance Action” means any claim, cause of action or right under chapter 5 of the
13 Bankruptcy Code, all fraudulent conveyance and fraudulent transfer laws, all non-bankruptcy laws
14 vesting in creditors’ rights to avoid, rescind, or recover on account of transfers, all preferential
15 transfer laws, the Uniform Fraudulent Transfer Act, California Civil Code sections 3440 and 3439
16 *et seq.*, and similar statutes, and the proceeds thereof.

17 “Bankruptcy Code” or “Code” means title 11 of the United States Code, 11 U.S.C. §§ 101
18 *et seq.*, as applicable in the Case.

19 “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the Northern
20 District of California, San Jose Division, or any other court that properly exercises jurisdiction over
21 the Case.

22 “Bankruptcy Rules” mean the Federal Rules of Bankruptcy Procedure, as applicable in the
23 Case.

24 “Bar Date” means May 3, 2011, the deadline for the Filing of all proofs of Claims required to
25 be Filed in accordance with Bankruptcy Rule 3003(c)(3).

26 “Business Day” means a day that is not a Saturday, Sunday or legal holiday.

27 “Case” means the Debtor’s case under chapter 11 of the Bankruptcy Code, Case
28 No. 10-63135.

1 “Cash” means cash and cash equivalents, including, but not limited to, bank deposits, wire
2 transfers, checks, and readily marketable securities, instruments, and legal tender of the United
3 States of America or instrumentalities thereof.

4 “Claim” means a claim as defined in Bankruptcy Code section 101(5) as against the Debtor’s
5 Estate or property of the Debtor’s Estate, whether asserted or unasserted.

6 “Claim Objection” means any right to object to, obtain the disallowance of, obtain
7 subordination of, or object to the priority of a Claim pursuant to the Bankruptcy Code or applicable
8 law.

9 “Claim Objection Deadline” means, unless extended by Final Order of the Bankruptcy Court,
10 the Effective Date; provided, however, that the deadline for a Holder of a Class 5 Claim or Class 6
11 Interest to object to any Class 5 Claim or Class 6 Interest shall be the date that is ninety days after
12 the Confirmation Date, unless this deadline is extended by written stipulation of all Holders of Class
13 6 Interests.

14 “Class” means a group of Claims or Interests as classified in Section III.C of this Plan.

15 “Class 6 Funds” has the meaning set forth in Section III.C.6 of this Plan.

16 “Closing Date” has the meaning set forth in Section V.A.1.

17 “Collateral” means property of the Estate that is encumbered by a Lien to secure payment or
18 performance of a Claim.

19 “Confirmation Date” means the date of entry of the Confirmation Order by the Bankruptcy
20 Court.

21 “Confirmation Hearing” means the hearing held by the Bankruptcy Court pursuant to
22 Bankruptcy Code section 1128(a) regarding confirmation of this Plan.

23 “Confirmation Order” means the Final Order entered by the Bankruptcy Court confirming
24 this Plan pursuant to Bankruptcy Code section 1129.

25 “Contract Motion” means the Debtor’s Motion to Assume or Reject Executory Contracts and
26 Unexpired Leases to be filed in conjunction with this Plan and heard at the Confirmation Hearing.

27 “Creditor” means any holder of a Claim against the Debtor’s Estate that arose on or prior to
28 the Petition Date.

1 “Cure Costs” has the meaning ascribed to it in Section IV.A of this Plan.

2 “Debtor” means debtor and debtor in possession Los Gatos Hotel Corporation.

3 “Debtor’s Counsel” means Mintz Levin Cohn Ferris Glovsky and Popeo, PC, 3580 Carmel
4 Mountain Road, Suite 300, San Diego, California 92130, Facsimile: (858) 314-1501, Attn: Jeffry A.
5 Davis.

6 “Debtor’s Professionals” means Debtor’s Counsel and other professionals employed by the
7 Debtor pursuant to an order of the Bankruptcy Court.

8 “Disputed” means, with respect to a Claim or Interest, a Claim or Interest as to which: (a) a
9 proof of Claim or proof of Interest is Filed or is deemed Filed under Bankruptcy Rule 3003(b)(1);
10 and (b) either (i) an objection has been timely Filed and has not been denied by a Final Order or
11 withdrawn; or (ii) the Claim or Interest is listed in the Schedules as disputed, contingent, or
12 unliquidated and the Claim Objection Deadline has not occurred.

13 “Disputed Reserve Amount” has the meaning ascribed to it in Section V.C.1.a of this Plan.

14 “Eastdil” means Eastdil Secured Broker Services, Inc.

15 “Effective Date” means the Fifth Business Day after the date of the closing of the sale to
16 Purchaser described in Section V.A.1.

17 “Equity Interests” means all outstanding membership interests in the Debtor.

18 “Estate” means the Debtor’s chapter 11 estate, as defined in Bankruptcy Code section 541.

19 “Federal Rate” means the rate of interest as determined by 28 U.S.C. § 1961(a).

20 “File,” “Filed,” and “Filing” means duly and properly filed with the Bankruptcy Court and
21 reflected on the Bankruptcy Court’s official docket for the Case.

22 “Final Order” means an order or judgment of the Bankruptcy Court or such other court as
23 may have jurisdiction entered on the official docket of such court:

24 (a) that has not been reversed, rescinded, stayed, modified, or amended;

25 (b) that is in full force and effect; and

26 (c) with respect to which: (1) the time to appeal or to seek review, remand, rehearing,
27 or a writ of certiorari has expired and as to which no timely filed appeal or petition for review,
28 rehearing, remand, or writ of certiorari is pending; or (2) any such appeal or petition has been

1 dismissed or resolved by the highest court to which the order or judgment was timely appealed or
2 from which review, rehearing, remand, or a writ of certiorari was timely sought.

3 “General Unsecured Claim” means a Claim that is not an Administrative Expense, a Priority
4 Tax Claim, a Secured Claim, or an unsecured claim held by an Insider.

5 “Governmental Unit” has the meaning ascribed to it in Bankruptcy Code section 101(27).

6 “Holder” means the beneficial owner of any Claim or Interest.

7 “Hotel” means Hotel Los Gatos, a full-service boutique hotel located in downtown Los
8 Gatos, California.

9 “Insider” means an insider as defined in Bankruptcy Code section 101(31).

10 “Interest” means any equity security as defined in Bankruptcy Code section 101(16), whether
11 asserted or unasserted, of any Holder of any Equity Security of the Debtor, as defined in Bankruptcy
12 Code section 101(17).

13 “Lender” means GCCFC 2006-GG7 Los Gatos Lodging Limited Partnership.

14 “Lender Claim Objection” means the Objection to Claim of GCCFC 2006-GG7 Los Gatos
15 Lodging Limited Partnership filed by the Debtor on August 13, 2012, which is Docket No. 297 in
16 the Case.

17 “Lien” means a lien as defined in Bankruptcy Code section 101(37), except a lien that has
18 been avoided under chapter 5 of the Bankruptcy Code or other applicable non-bankruptcy law, or is
19 invalid or unenforceable under the Bankruptcy Code or other applicable law.

20 “Litigation Rights” mean the interest of the Debtor and/or the Estate in any and all claims,
21 rights and causes of action that may exist under bankruptcy or non-bankruptcy law, whether arising
22 prior to or after the Petition Date, for which a court or administrative action has been or may be
23 commenced by the Debtor or other authorized Estate representative, whether asserted or unasserted,
24 and the proceeds thereof, including, but not limited to, all Avoidance Actions and Claim Objections.

25 “Loan” means that certain loan in the original principal amount of \$12,000,000 from
26 Greenwich Capital Financial Products, Inc., as evidenced by that certain promissory note between
27 the Debtor and Greenwich Capital Financial Products, Inc. dated July 12, 2006.
28

1 “Local Rules” mean, collectively, the Local Rules of the United States Bankruptcy Court for
2 the Northern District of California, as applicable in the Case.

3 “Non-Ordinary Course Administrative Expenses” means any Administrative Expenses other
4 than Ordinary Course Administrative Expenses, Professional Fee Expenses, or U.S. Trustee Fees.

5 “Ordinary Course Administrative Expenses” means any Administrative Expenses based upon
6 liabilities that the Debtor incurs in the ordinary course of its business for goods and services and that
7 are unpaid as of the Effective Date. Ordinary Course Administrative Expenses do not include
8 Professional Fee Expenses or U.S. Trustee Fees.

9 “Petition Date” means December 27, 2010.

10 “Plan” means this *Fourth Amended Chapter 11 Plan of Reorganization (Revised July 28,*
11 *2015)*, as it may be subsequently amended or modified.

12 “Plan Objection Deadline” means _____, 2015.

13 “Priority Tax Claim” means a Claim entitled to priority under Bankruptcy Code
14 section 507(a)(8). Priority Tax Claims do not include any Claims incurred after the Petition Date,
15 except to the extent provided under Bankruptcy Code section 502(i).

16 “Professional Fee Expenses” means compensation for professional services rendered or
17 expenses incurred on behalf of the Estate by one of the Debtor’s Professionals on or before the
18 Effective Date and allowable under Bankruptcy Code sections 327, 328, 330, 331, 503, or 1103.

19 “Purchaser” or “IHA” means IHA Hotel Management Company, LLC, d/b/a Greystone
20 Hotels.

21 “Rejected Contracts” shall have the meaning ascribed to it in Section IV.4.C of this Plan.

22 “Rejection Damages Claim” means a claim arising under Bankruptcy Code section 365 from
23 the rejection by the Debtor of an unexpired lease or executory contract.

24 “Sale Agreement” means that Agreement of Purchase and Sale dated as of July 14, 2015
25 between the Debtor and the Purchaser.

26 “Schedules” means the schedules of assets and liabilities Filed by the Debtor on or about
27 January 10, 2011, as amended or modified from time to time.
28

1 “Secured Claim” means a Claim that was secured by a Lien on Collateral as of the Petition
2 Date. A Claim is a Secured Claim only to the extent of the value of the claimholder’s interest in the
3 Collateral or to the extent of the amount subject to setoff, whichever is applicable, and as determined
4 under Bankruptcy Code section 506(a).

5 “Secured Tax Claim” means the Secured Claim of a Governmental Unit for unpaid taxes
6 arising before the Petition Date.

7 “Tentative Ruling” means the Tentative Ruling on Debtor’s Objections to Claims of
8 Creditors, GCCFC 2006-GG7 Los Gatos Lodging Limited Partnership and Joie de Vivre Hospitality,
9 Inc. entered on September 6, 2012 as Docket No. 323 in the Case.

10 “U.S. Trustee” means the United States Trustee for the Northern District of California,
11 San Jose Division.

12 “U.S. Trustee Fees” means fees or charges assessed against the Estate pursuant to 28 U.S.C.
13 § 1930.

14 **B. Rules of Construction**

- 15 1. The rules of construction in Bankruptcy Code section 102 apply to this Plan.
- 16 2. Bankruptcy Rule 9006(a) applies when computing any time period under this Plan.
- 17 3. A term that is used in this Plan and that is not defined in this Plan has the meaning, if
18 any, attributed to it in the Bankruptcy Code or Bankruptcy Rules.
- 19 4. Wherever it is appropriate from the context, each term in this Plan, whether stated in
20 the singular or the plural, includes both the singular and the plural.
- 21 5. Any reference to a document or instrument being in a particular form or on particular
22 terms means that the documents or instrument will be substantially in that form or on those terms.
23 No material change to the form or terms may be made after the Confirmation Date without the
24 consent of any party materially and negatively affected by the change.
- 25 6. Any reference to an existing document means the document as it has been, or may be,
26 amended or supplemented.
- 27 7. Unless otherwise indicated, any reference to a person or entity includes the successors
28 and assigns of such person or entity.

1 Bankruptcy Court or any party in interest, or to respond to or neutralize any objection to the Plan
2 advanced by any party in interest so long as the nature and extent of such modifications are disclosed
3 on the record during the Confirmation Hearing.

4 Post-Confirmation Modification: After entry of the Confirmation Order, with the approval of
5 the Bankruptcy Court, the Debtor (a) may, so long as it does not materially or adversely affect the
6 interest of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan, or
7 in the Confirmation Order, in such manner as may be necessary to carry out the purpose and intent
8 of the Plan; and (b) expressly reserves the right to modify the Plan, to the fullest extent provided or
9 permitted by the provisions Bankruptcy Code section 1127(b).

10 Cramdown: If any Class fails to accept the Plan by the requisite majorities in number and
11 amount required by Bankruptcy Code section 1126, the Debtor may invoke the provisions of
12 Bankruptcy Code section 1129(b) allowing for confirmation of the Plan notwithstanding such vote.

13 **III.**

14 **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

15 **A. General Overview**

16 This Section classifies Claims and Interests, except for Administrative Expenses and Priority
17 Tax Claims (which are not required to be classified), for all purposes, including voting, confirmation
18 and distributions under this Plan. A Claim or Interest is classified in a particular Class only to the
19 extent that the Claim or Interest falls within the Class description. To the extent that part of the
20 Claim or Interest falls within a different Class description, that part of the Claim or Interest is
21 classified in that different Class. A schedule of the Claims in each Class for purposes of treatment
22 under this Plan is attached hereto as Exhibit A. The following table summarizes unclassified Claims
23 and the Classes of Claims and Interests under this Plan:

CLASS/UNCLASSIFIED CLAIMS	DESCRIPTION ²	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: \$769,000	Paid in full in Cash within three (3) Business Days after Final Order Allowing such Expense, or, with respect to Eastdil, from escrow on the Closing Date	Unimpaired	Not Entitled to Vote
	Ordinary Course Administrative Expenses - Estimated Amount: \$300,000	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 three (3) 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 on the Effective Date	Unimpaired	Not Entitled to Vote
	Class 1	Secured Tax Claims - Estimated Amount: \$0.00	Paid in full in Cash on the Effective Date	Unimpaired
Class 2	Secured Claim Held by Lender - Estimated Claim Amount: \$11,696,042.38	<i>See discussion at Section III.C.2</i>	Unimpaired	Not Entitled to Vote
Class 3	Priority Unsecured Claims (other than Priority Tax Claims)	Consists of gift certificates and customer deposits, which will be honored upon presentation ³	Unimpaired	Not Entitled to Vote
Class 4	General Unsecured Claims Not Otherwise Classified - Estimated Amount: \$77,000 ⁴	<i>See discussion at Section III.C.4</i>	Unimpaired	Not Entitled to Vote
Class 5	Unsecured Claims Held by Insiders: \$7,121,666.00	<i>See discussion at Section III.C.5</i>	Unimpaired	Not Entitled to Vote

² The estimated amounts included in this chart are estimates based on the Debtor's Schedules, the proofs of Claims filed in the Debtor's Case, the Tentative Ruling and the Debtor's communications with its creditors. 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.

³ Under the Sale Agreement, Purchaser will honor the gift certificates and customer deposits, and will receive a credit against the purchase price for these amounts.

⁴ This estimated amount excludes the claim of Joie de Vivre in the amount of \$145,822.55, because the Court tentatively sustained, in large part, the Debtor's objection to this claim. [Docket no. 323.]

CLASS/UNCLASSIFIED CLAIMS	DESCRIPTION ²	TREATMENT	IMPAIRED/ UNIMPAIRED	VOTING STATUS
Class 6	Existing Equity Interests	<i>See discussion at Section III.C.6</i>	Unimpaired	Not Entitled to Vote

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

The treatment provided under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights (including any Liens) that each Holder of an Allowed Claim may have in or against the Debtor, the Estate, or their respective property. This treatment supersedes and replaces any agreements or rights those entities may have had against the Debtor, the Estate or their respective property prior to the Effective Date. All distributions in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claim, as determined for federal income tax purposes, and thereafter, to the remaining portion of such Allowed Claim, if any. No distributions shall be made in respect of any unpaid dividends with respect to which any Allowed Interest may be entitled.

B. Unclassified Claims

Certain types of obligations owed by the Debtor are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Debtor has not placed the following debts in a class. The treatment of these debts is provided below.

1. Administrative Expenses

Administrative Expenses are the costs or expenses of administering the Case which are allowed under Bankruptcy Code Section 507(a)(2). The Bankruptcy Code requires that all Allowed Administrative Expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

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a. U.S. Trustee Fees

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

Professional Fee Expenses will be Allowed only if (i) on or before one hundred and eighty (180) days after the Effective Date, the entity seeking payment of such Professional Fee Expense Files a fee application or a motion requesting Allowance of the Professional Fee Expense and serves the application or motion on the Debtor and the U.S. Trustee; and (ii) the Bankruptcy Court determines such Professional Fee Expense should be Allowed. Any party in interest may File an objection to such application or motion within the time provided by the Bankruptcy Rules, the Local Rules, or within any other period that the Bankruptcy Court may establish. The Debtor will reserve funds from the proceeds of the sale transaction (described below) to pay Allowed Professional Fee Expenses. Unless otherwise agreed, the Debtor will pay or cause to be paid an Allowed Professional Fee Expense, in Cash, within three (3) Business Days after the date on which the Bankruptcy Court order Allowing such Expense becomes a Final Order.

Notwithstanding the provisions in the foregoing paragraph, Eastdil will be paid its commission, in accordance with the order approving its employment, from escrow on the Closing Date.

c. Ordinary Course Administrative Expenses

Any entity seeking payment of an Ordinary Course Administrative Expense may, but need not, File a motion or request for payment of such Administrative Expense. The Debtor or any other party in interest may File an objection to an Ordinary Course Administrative Expense in its discretion. The Debtor will reserve funds from the proceeds of the sale transaction (described below) to pay Allowed Ordinary Course Administrative Expenses. Unless a party in interest objects to an Ordinary Course Administrative Expense, such Administrative Expense will be Allowed and paid by the Debtor in accordance with the terms and conditions of the particular transaction that gave rise to the Administrative Expense.

1 d. Non-Ordinary Course Administrative Expenses

2 A Non-Ordinary Course Administrative Expense will be Allowed only if: (i) the entity
3 asserting such Non-Ordinary Course Administrative Expense Files a motion requesting Allowance
4 of the Non-Ordinary Course Administrative Expense and serves the motion on Debtor's Counsel and
5 the U.S. Trustee, with such motion to be heard prior to or at the Confirmation Hearing, and (ii) the
6 Bankruptcy Court determines such Administrative Expense should be Allowed. The Debtor or any
7 other party in interest may File opposition to such motion within the time provided by the
8 Bankruptcy Rules, the Local Rules, or within any other period that the Bankruptcy Court may
9 establish.

10 Any entity seeking payment of a Non-Ordinary Course Administrative Expense that does not
11 timely File and serve a request for payment will be barred forever from asserting such
12 Administrative Expense against the Debtor, the Estate, the Purchaser or their property. Unless the
13 entity holding an Allowed Non-Ordinary Course Administrative Expense agrees to different
14 treatment, the Debtor will pay such entity Cash in the full amount of such Allowed Administrative
15 Expense on or before the later of: (i) the Effective Date, or (ii) the third Business Day after the date
16 on which the Bankruptcy Court order allowing such Administrative Expense becomes a Final Order.

17 2. Priority Tax Claims

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

21 **C. Classified Claims and Interests**

22 1. Class 1 (Secured Tax Claims)

23 Class 1 consists of all Secured Tax Claims. The Debtor is unaware of any prepetition
24 Secured Tax Claims. In accordance with the terms of the Sale Agreement, post-petition real
25 property taxes will be prorated as of the Closing Date and paid in full when due. Class 1 is
26 unimpaired under the Plan.

1 2. Class 2 (Secured Claim Held by Lender)

2 Class 2 consists of the Secured Claim presently held by the Lender. Class 2 is unimpaired
3 under the Plan because, on the Effective Date, the Debtor will use a portion of the sale proceeds to
4 pay the Lender the principal and non-default interest under the Loan, less any reserves or funds held
5 by Lender, thereby curing any defaults under the Loan on the Petition Date. *See Great Western*
6 *Bank & Trust v. Entz-White Lumber and Supply, Inc. (In re Entz-White Lumber and Supply, Inc.)*,
7 850 F. 2d 1338 (9th Cir. 1988) (holding that a secured creditor's claim is unimpaired if that creditor
8 is paid principal and non-default interest on the effective date of a plan of reorganization, and further
9 holding that when such payment is made, any default is cured, eliminating any obligation to pay
10 default interest or late charges). In addition to the amounts described in the preceding sentence, the
11 Debtor will pay the Lender any other amounts as ordered by the Court in a Final Order on the
12 Lender Claim Objection or as agreed by the Debtor and the Lender, on the later of (a) the Effective
13 Date or (b) the date that is three Business Days after the date such amount becomes Allowed. The
14 Debtor estimates that the amounts of principal, note rate interest and reserves are:

15 Category	Amount
16 Principal	\$11,109,367.72
17 Note Rate Interest	\$2,398,680.98
18 Less: Credit Suspense Funds and Escrow Funds	(\$1,812,006.32)
Total	\$11,696,042.38

19 Unless otherwise ordered by the Court or agreed by the Debtor and the Lender, any amounts
20 sought by the Lender for default interest, late fees, any prepayment premium or other penalty,
21 purchase of unsecured claims or payment of Lender's operating expenses not attributable to the Loan
22 will not be paid. The Debtor shall pay Lender's reasonable attorney fees as ordered by the Court or
23 as agreed by the Debtor and the Lender, on the later of (a) the Effective Date or (b) the date that is
24 three Business Days after the date such amount becomes Allowed. In accordance with Section
25 V.C.1, the Debtor shall reserve from the sale proceeds an amount sufficient to pay such disputed
26 amounts, which are estimated to be as follows:

27 **Disputed Amounts Included in Class 2 Claim**

28 Category	Amount
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1	Additional Principal ⁵	\$105,000.00
2	Default Interest ⁶	\$3,240,775.18
3	Late Fees ⁷	\$138,984.18
4	Other Charges ⁸	\$230,000.00
5	Title Expense ⁹	\$38,000.00
6	Attorneys' fees and costs (estimated) ¹⁰	\$984,194.05
7	Total	\$4,721,953.41

3. Class 3 (Priority Unsecured Claims)

Class 3 consists of Priority Unsecured Claims and is comprised of consumer deposits and gift certificates made or issued prior to the Petition Date and not yet used by the consumer. Class 3 is not impaired under the Plan and is not entitled to vote. Pursuant to the Sale Agreement, IHA will honor gift certificates when presented and will apply deposits towards the reservations for which they were paid. The Sale Agreement provides that IHA will receive a credit to the purchase price on account of these consumer deposits and gift certificates.

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

Class 4 consists of General Unsecured Claims Not Otherwise Classified, including Rejection Damages Claims. Class 4 is not impaired under the Plan. Unless the Holder of a Class 4 Claim agrees to a different treatment, each Holder of a Class 4 Claim will be paid in full, with interest at the Federal Rate from the Petition Date to the date of payment of such Claim, on the later of (a) the Effective Date or (b) if an objection to such Class 4 Claim is Filed prior to the Effective Date, three Business Days after the date such Class 4 Claim is Allowed.

⁵ The Debtor has made principal payments of \$15,000 per month, or at least \$105,000, during 2015 pursuant to the Order Approving Seventh Stipulation (1) Extending Terms of Cash Collateral Provisions and (2) Modifying Payment Provisions of Agreed Final Order re Cash Collateral, Adequate Protection, Transition of Management, and Related Matters [Docket no. 480].

⁶ In the Tentative Ruling, the Court indicated that it was inclined to disallow this amount under *Entz-White*.

⁷ In the Tentative Ruling, the Court indicated that it was inclined to disallow this amount under *Entz-White*.

⁸ As explained in the Tentative Ruling, this "is the amount that Secured Creditor deposited with its counsel in order to purchase unsecured claims in this bankruptcy case", of which "\$160,806.00 was actually used to purchase claims and the rest remains in counsel's possession." In the Tentative Ruling, the Court indicated that it was inclined to disallow the portion of this amount, \$69,194.00, that remained in the possession of Lender's counsel, and requested further briefing on why the balance could be included in the Class 2 Claim.

⁹ In the Tentative Ruling, the Court indicated that the documentation submitted in support of the Lender's claim did not support the amount requested, and observed that amounts related to the Lender's corporate formation and reporting did not appear to be recoverable from the Debtor.

¹⁰ In accordance with 11 U.S.C. § 506(b), the Debtor will pay reasonable attorneys' fees and costs, as determined by a Final Order of the Court or by agreement with the Lender.

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5. Class 5 (Unsecured Claims Held by Insiders)

Class 5 consists of Unsecured Claims held by Insiders and is unimpaired. Proceeds of the sale to IHA (as described below in Section V.A) sufficient to pay all Class 5 Claims in full, with interest at the Federal Rate from the Petition Date to the dates of payment of the Class 5 Claims, will be reserved. Each Class 5 Claim will be paid three Business Days after (a) an order has been entered determining such Class 5 Claim is Allowed, (b) a settlement has resolved any disputes concerning such Class 5 Claim or (c) the Claim Objection Deadline has expired, and no objection was filed to such Class 5 Claim.

6. Class 6 (Existing Equity Security Interests)

Class 6 consists of all Existing Equity Security Interests. Class 6 is not impaired under this Plan. The Debtor will reserve all funds remaining after all distributions provided for under the Plan have been made to, or reserved for, Holders of Administrative Expense Claims, Priority Tax Claims, and Claims in Classes 1 through 5 (the “Class 6 Funds”). Each Holder of a Class 6 Interest will receive a distribution of the Class 6 Funds within three Business Days after (a) an order has been entered determining such Class 6 Interest is Allowed, and determining the percentage of the Class 6 Funds such Holder is entitled to receive, (b) a settlement has resolved any disputes concerning such Class 6 Interest or (c) the Claim Objection Deadline has expired, and no objection was filed to such Class 6 Interest. In addition, to the extent that the cash reserves or holdbacks established under the Sale Agreement or the Plan are not necessary to satisfy the claims or expenses for which they have been reserved, the Holders of Class 6 Interests will receive a distribution of the funds previously reserved or held in escrow after the conditions satisfied in the preceding sentence have been satisfied.

IV.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Assignment

The Debtor will file the Contract Motion to be heard at the Confirmation Hearing. As of the Effective Date, unless previously rejected by the Debtor, the Debtor shall assume the Assigned Contracts and assign them to IHA. The Confirmation Order shall constitute an order of the

1 Bankruptcy Court approving such assumption and assignment pursuant to sections 365 and
2 1123(b)(2) of the Bankruptcy Code. All monetary defaults under the Assigned Contracts shall be
3 cured on the Effective Date by payment of the amounts set forth on Exhibit B (the “Cure Costs”).

4 Any party to an Assigned Contract which objects to the assumption and assignment of such
5 contract or lease or to the Cure Cost set forth on Exhibit B must File and serve an objection to
6 assumption and assignment or the Cure Cost not later than the deadline to File opposition to the
7 Contract Motion. If the Debtor, the non-debtor counterparty and IHA determine that an objection
8 cannot be resolved without judicial intervention, then the determination of the assumption and
9 assignment of such executory contract or unexpired lease and/or the proposed Cure Cost with respect
10 to such contract or lease will be determined by the Court at the Confirmation Hearing. Any party to
11 an Assigned Contract which does not File an objection prior to the deadline to File opposition to the
12 Contract Motion shall be deemed to have consented and waived any and all objections to the
13 assumption of such contract or lease by the Debtor, the assignment of the contract or lease to IHA,
14 and the Cure Cost set forth on Exhibit B, if any.

15 **B. Adequate Assurance**

16 The Contract Motion will request that the Court find that IHA’s promise to perform its
17 obligations under each Assigned Contract will constitute adequate assurance of future performance
18 in accordance with Bankruptcy Code section 365(f)(2)(B) with respect to that Assigned Contract.

19 **C. Rejection**

20 Through the Contract Motion, the Debtor will reject all executory contracts and unexpired
21 leases not listed on Exhibit B to the Plan, including all executory contracts and unexpired leases
22 listed on Exhibit C to the Plan, as of the Effective Date (the “Rejected Contracts”). The Debtor will
23 reserve funds from the proceeds of the sale sufficient to pay Rejection Damages Claims in the
24 amounts reflected on Exhibit C to the Plan. Any party to a Rejected Contract which objects to the
25 rejection of such contract or lease or to the amount of its Rejection Damages Claim set forth on
26 Exhibit C must File and serve an objection not later than the deadline to File opposition to the
27 Contract Motion. Any counterparty to Rejected Contracts not listed on Exhibit C must File and
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1 serve a Rejection Damages Claim no later than thirty days after the Confirmation Date. IHA will
2 have no obligations to the Debtor or any counterparty as to any Rejected Contract.

3 **D. Amendment of Assumption and Rejection Exhibits**

4 The Debtor shall have the right, with the prior written approval of IHA, to amend or
5 supplement Exhibits A and B at any time on or before fourteen (14) days prior to the Confirmation
6 Date (or such other date as may be required by the Court). The Debtor shall promptly give notice of
7 such amendments or supplements to the counterparties to the contracts or leases affected by such
8 amendments or supplements and to IHA, and shall promptly File any such amendment or
9 supplement.

10 **V.**

11 **MEANS OF EXECUTION OF THE PLAN**

12 **A. Execution of Plan**

13 1. Sale of Substantially All Assets of the Debtor to IHA

14 This section summarizes the principal terms of the Sale Agreement, a copy of which is
15 attached hereto as Exhibit D. This description of the provisions of the Sale Agreement is qualified in
16 its entirety by the actual terms of the Sale Agreement and the schedules and exhibits thereto.

17 The Sale Agreement provides that within thirty days after the Confirmation Order is entered
18 (the "Closing Date"), the Debtor's assets related to ownership and operation of the Hotel will be sold
19 to IHA pursuant to the Sale Agreement. The sale is contingent upon IHA obtaining a commitment
20 from a lender to provide financing for the sale in the amount of \$18.5 million. The sale to IHA shall
21 be free and clear of all liens, claims, encumbrances and other interests under Bankruptcy Code
22 sections 105(a) and 363.

23 The purchase price will be \$29.5 million in cash, payable on the Closing Date, subject to
24 certain adjustments and prorations as set forth in the Sale Agreement. The sale proceeds will be
25 used by the Debtor to make distributions to, or reserve for, Administrative Expense Claims, Priority
26 Tax Claims, and Claims in Classes 1 through 6, and to create a \$375,000 reserve for payment of any
27 of the Debtor's obligations that survive the closing of the Sale Agreement.

1 2. Management of Hotel Los Gatos and the Debtor

2 Beginning on the Closing Date, the Hotel will be managed by IHA. Prior to the Closing
3 Date, the Hotel will continue to be managed by its president, Jeff Curran, who is employed by
4 entities related to Alan and David Pinn (who are unsecured creditors and equity holders of the
5 Debtor), and operated by Folio Hospitality Management, Inc. These entities will continue to pay
6 Mr. Curran’s salary. Mr. Curran will continue to manage the Debtor following the Closing Date.

7 **B. Authority to Effectuate Plan**

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

15 **C. Distribution of Property Under this Plan**

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

18 1. Provision Regarding Disputed Claims

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

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

26 b. When a Disputed Claim becomes an Allowed Claim, there shall be distributed
27 to the Holder of such Allowed Claim, in accordance with the provisions of this Plan, Cash equal to
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1 what the Holder would have received on account of the disputed portion of the Claim which has
2 been Allowed through such a date.

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

10 2. To the extent a Disputed Claim ultimately becomes an Allowed Claim in an amount
11 less than the Disputed Reserve Amount reserved for such Disputed Claim, then the resulting surplus
12 of Cash shall be distributed among the Holders of Allowed Claims until such time as each Holder of
13 an Allowed Claim has been paid the Allowed amount of its Claim.

14 3. Objections to Claims

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

19 4. Disallowance of Claims Held by Avoidance Action Defendant

20 All Claims held by persons against whom an Avoidance Action has been asserted shall be
21 deemed disallowed pursuant to Bankruptcy Code section 502(d), and Holders of such Claims may
22 not vote to accept or reject this Plan, both consequences to be in effect until such time as such
23 Avoidance Action against the Holder has been settled or resolved by a Final Order and all sums due
24 to the Debtor by the Holder are turned over to the Debtor. The Debtor does not anticipate that it will
25 file any Avoidance Actions.

26 5. Time When Distributions Deemed Made

27 All distributions by check shall be deemed made at the time such check is duly deposited in
28 the United States mail, postage prepaid. All distributions by wire transfer shall be deemed made as

1 of the date the Federal Reserve Bank deems the wire transfer is made.

2 6. Delivery of Distributions and Undeliverable/Unclaimed Distributions

3 a. Delivery of Distributions in General

4 The Debtor shall make distributions to each Holder of an Allowed Claim by mail as follows:

5 (a) at the address set forth on the proof of Claim Filed by such Holder of an Allowed Claim; or (b) at
6 the address reflected in the Schedules if no proof of Claim is Filed, provided, however, to the extent
7 a Holder of an Allowed Claim notifies the Debtor of a new address, the Distribution shall be sent to
8 that new address.

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

13 b. Undeliverable and Unclaimed Distributions

14 If the distribution to the Holder of any Allowed Claim is returned as undeliverable, the
15 Debtor shall make reasonable efforts to locate the Holder's current address and shall send
16 distributions to that address. If, after these efforts, the Debtor is unable to locate the Holder, no
17 further distribution will be made to the Holder unless and until the Debtor is notified in writing of
18 the Holder's then current address. Subject to the other provisions of this Plan, undeliverable
19 distributions will remain in the possession of the Debtor pursuant to this Section until the earlier of:
20 (i) such time as a distribution becomes deliverable, or (ii) sixty (60) days following the payment in
21 full of all Allowed Claims for which distributions were deliverable. Any undeliverable distributions
22 that are not claimed within sixty (60) days following the payment in full of Allowed Claims for
23 which distributions were deliverable will be transferred to the Debtor.

24 **D. Preservation of Litigation Rights**

25 Except as otherwise provided in this Plan, all Litigation Rights shall be retained, preserved
26 and vested with the Debtor as of the Effective Date. From and after the Effective Date, the Debtor
27 may enforce any and all Litigation Rights that the Debtor or the Estate may hold or have against any
28 person or entity, including (1) Avoidance Actions, (2) any legal or equitable rights to subordinate

1 and/or disallow Claims, (3) any causes of action that could be brought by the Debtor, whether arising
2 prior to or after the Petition Date, and (4) any and all other claims, rights, or causes of action of any
3 kind or nature of the Debtor or the Estate that may exist under applicable bankruptcy or non-
4 bankruptcy law. To the extent any Litigation Rights are already pending on the Effective Date, the
5 Debtor may continue the prosecution of such Litigation Rights. Upon the Effective Date, the
6 Debtor, and its successors and assigns, shall have standing to assert any and all Litigation Rights
7 and/or defenses vested in the Debtor.

8 VI.

9 EFFECT OF CONFIRMATION OF PLAN

10 A. Discharge

11 On the Effective Date, except as otherwise provided in the Plan, the Debtor, its Estate, and
12 their property shall be discharged and released from any and all Claims, Administrative Expenses,
13 and other debts, demands and liabilities of any Creditor for which the Debtor is or is alleged to be
14 liable, including those which are contingent, unliquidated or disputed, that arose before entry of the
15 Confirmation Order and any and all debts of every kind, character and description specified in
16 Bankruptcy Code sections 502(g), 502(h) or 502(i), whether or not (i) a proof of Claim based on
17 such debt has been Filed under Bankruptcy Code section 501, (ii) such Claim is an Allowed Claim
18 under Bankruptcy Code section 502, (iii) such Claim has been listed in the Schedules, or (iv) the
19 Holder of such Claim has accepted the Plan, pursuant to Bankruptcy Code section 1141. Pursuant to
20 Bankruptcy Code section 524, this discharge shall, as of the Effective Date: (1) void any judgment
21 at any time obtained, to the extent that such judgment is a determination of such person's liability
22 with respect to any debt or Claim discharged, whether or not discharge of such debt is waived; and
23 (2) operate as an injunction against the commencement or continuance of any action, the
24 employment of any process, or any act, to collect, recover or offset any liability of such person with
25 respect to any debt discharged, whether or not discharge of such debt is waived.

26 B. Revesting of Property in the Debtor

27 As of the Effective Date, the assets of the Debtor distributed under the Plan shall be free and
28 clear from any and all liens, encumbrances, debts, demands, liabilities or other claims of the Holders

1 of Claims and Interests except as otherwise provided under this Plan or the Confirmation Order. All
2 other property of the Estate shall revert in the Debtor, including, but not limited to (i) claims, causes
3 of action, and other Litigation Rights, (ii) rights to pursue Claim Objections, (iii) rights to pursue
4 affirmative relief against Creditors, Interest Holders and others, including, but not limited to,
5 Avoidance Actions and (iv) claims, causes of action and litigation brought prior to the Effective
6 Date.

7 **C. Sale Agreement**

8 Upon entry of the Confirmation Order, (i) the Debtor and the Purchaser shall be bound by the
9 Sale Agreement to the extent provided therein, and (ii) the Debtor shall be authorized to perform its
10 obligations under the Sale Agreement, to execute and deliver any documents reasonably required,
11 and to take such steps as are necessary, reasonable or convenient to effect the closing. Subject to the
12 terms of the Confirmation Order and to any conditions to the closing that remain to be satisfied, the
13 Sale Agreement and the transactions contemplated therein are approved. In the event of any
14 inconsistency between the Plan and the Sale Agreement, the terms and provisions of the Sale
15 Agreement shall control with respect to the subject matter thereof.

16 **VII.**

17 **OTHER PLAN PROVISIONS**

18 **A. Conditions Precedent to Effectiveness**

19 The Plan shall not become effective unless and until (1) the Bankruptcy Court has entered the
20 Confirmation Order; (2) the sale to Purchaser described in Section V.A.1 has closed; and (3) the
21 Effective Date has occurred.

22 **B. The Effective Date**

23 The Plan will not become binding or effective until and unless the Effective Date occurs.
24 The Debtor shall File a notice of the Effective Date.

25 **C. Exemption from Certain Transfer Taxes**

26 Pursuant to Bankruptcy Code section 1146(c), the issuance, transfer or exchange of a security
27 or the making or delivery of an instrument of transfer under this Plan, including the Sale Agreement,
28 shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar

1 tax. Transfers under this Plan that are exempt from taxes under Bankruptcy Code section 1146(c)
2 include all transfers to and by the Debtor. For the avoidance of doubt, the transfer of the Debtor's
3 real and personal property pursuant to the Sale Agreement is subject to the transfer tax exemption
4 under 11 U.S.C. § 1146.

5 **D. Post-Effective Date Effect of Evidence of Claims**

6 Commencing on the Effective Date, notes, certificates, warrants, and other evidence of
7 Claims against the Debtor constitute only the right to receive the distributions, if any, to the extent
8 set forth under this Plan.

9 **E. Post-Effective Date Notices**

10 Following the Effective Date, all parties who wish to receive, or continue to receive, notices
11 of all pleadings Filed must File a new request for special notice and serve it on the Debtor and its
12 counsel, and the U.S. Trustee. The Debtor shall maintain and keep current the post-Effective Date
13 special notice list, and make it available to all parties in interest upon written request. All pleadings,
14 notices and other papers Filed following the Effective Date (other than the notice of Effective Date)
15 must be served on the parties on the post-Effective Date special notice list maintained by the Debtor.

16 **F. Successors and Assigns**

17 The rights, benefits, and obligations of any entity named or referred to in this Plan shall be
18 binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of
19 such entity, whether or not such entity is impaired under this Plan and whether or not such entity has
20 voted to accept the Plan.

21 **G. Saturday, Sunday or Legal Holiday**

22 If any payment or act under this Plan is required to be made or performed on a day that is not
23 a Business Day, then the payment or act may be completed on the next day that is a Business Day, in
24 which event the payment or act will be deemed to have been completed on the required day.

25 **H. Headings**

26 The headings used in this Plan are inserted for convenience only and do not constitute a
27 portion of this Plan or in any manner affect the provisions of this Plan or their meaning.
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1 **I. Severability of Plan Provisions**

2 If before confirmation the Bankruptcy Court determines that any Plan term or provision is
3 invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so
4 that it is valid and enforceable to the maximum extent possible consistent with the original purpose
5 of that term or provision. That term or provision will then be applicable as altered or interpreted.
6 Notwithstanding any such holding, alteration, or interpretation, this Plan's remaining terms and
7 provisions will remain in full force and effect and will in no way be affected, impaired, or
8 invalidated. The Confirmation Order will constitute a judicial determination providing that each
9 Plan term and provision, as it may have been altered or interpreted in accordance with this Section,
10 is valid, enforceable, and, as of the Effective Date, binding under its terms.

11 **J. Governing Law**

12 Unless a rule of law or procedure is supplied by (a) federal law (including the Bankruptcy
13 Code and Bankruptcy Rules), or (b) an express choice of law provision in any agreement, contract,
14 instrument or document provided for, or executed in connection with, this Plan, including the Sale
15 Agreement, the rights and obligations arising under this Plan and any agreements, contracts,
16 documents, and instruments executed in connection with this Plan shall be governed by, and
17 construed and enforced in accordance with, the laws of the State of California without giving effect
18 to the principles of conflict of laws thereof.

19 **K. Good Faith**

20 Confirmation of this Plan shall constitute a finding that: (i) this Plan has been proposed in
21 good faith and in compliance with applicable provisions of the Bankruptcy Code; (ii) the solicitation
22 of acceptances or rejections of this Plan by all entities has been in good faith and in compliance with
23 applicable provision of the Bankruptcy Code, and (iii) the Sale Agreement and the transactions
24 contemplated thereunder were proposed, negotiated and entered into by and among the Debtor and
25 the Purchaser without collusion, and in good faith and at arm's length within the meaning of
26 Bankruptcy Code section 363(m).

1 **L. Injunctions and Stays**

2 All injunctions or stays provided for in the Case under Bankruptcy Code section 105 or 362,
3 or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until
4 the later of the Effective Date or the day such injunction or stay expires according to its own terms
5 or applicable law.

6 **M. Retention of Jurisdiction and Objection to Claims and Interests.**

7 Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date,
8 the Bankruptcy Court shall retain jurisdiction over the Case after the Effective Date to the fullest
9 extent provided by law, including the jurisdiction to:

10 1. Allow, disallow, determine, liquidate, classify, establish the priority or secured or
11 unsecured status of, estimate, or limit any Claim;

12 2. Grant or deny any and all applications for allowance of compensation or
13 reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods
14 ending on or before the Effective Date, or such later date as the Court shall determine upon a
15 showing of good cause;

16 3. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to
17 the provisions of this Plan;

18 4. Resolve any and all applications, motions, adversary proceedings, and other matters
19 involving the Estate that may be pending on the Effective Date or that may be instituted thereafter in
20 accordance with the terms of this Plan, including, but not limited to, Claim Objection proceedings,
21 provided that the Debtor shall reserve the right to prosecute claims and causes of action in any
22 proper jurisdiction;

23 5. Enter such orders as may be necessary or appropriate to implement and consummate
24 the provisions of this Plan and all contracts, instruments, releases, and other agreements or
25 documents entered into in connection with this Plan;

26 6. Resolve any and all controversies, suits, or issues that have arisen or may arise in
27 connection with the consummation, interpretation, or enforcement of this Plan or any entity's rights
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1 or obligations in connection with this Plan, including any and all controversies, suits or issues that
2 have arisen or may arise in connection with the Sale Agreement prior to the Effective Date;

3 7. Modify this Plan before or after the Effective Date pursuant to Bankruptcy Code
4 section 1127, or modify any contract, instrument, release, or other agreement or document created in
5 connection with this Plan; or remedy any defect or omission or reconcile any inconsistency in any
6 order of the Bankruptcy Court, this Plan, or any contract, instrument, release, or other agreement or
7 document created in connection with this Plan, in such manner as may be necessary or appropriate to
8 consummate this Plan, to the extent authorized by the Bankruptcy Code;

9 8. Issue injunctions, enter and implement other orders, or take such other actions as may
10 be necessary or appropriate to restrain interference by any entity with consummation or enforcement
11 of this Plan;

12 9. Enter and implement such orders as are necessary or appropriate if the Confirmation
13 Order is for any reason modified, stayed, reversed, revoked, or vacated;

14 10. Determine any other matters that may arise in connection with or related to this Plan,
15 the Confirmation Order, or any contract, instrument, release, or other agreement or document created
16 in connection with this Plan; and

17 11. Enter a final decree and order closing the Case.

18 12. If the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without
19 jurisdiction over any matter, this Section shall have no effect upon and shall not control, prohibit, or
20 limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to
21 such matter.

22 **N. Amendment of Articles of Incorporation and Bylaws**

23 Within thirty days after the Effective Date, the Debtor shall amend its Articles of
24 Incorporation and Bylaws, as appropriate, to provide that the Debtor is prohibited from issuing any
25 new nonvoting equity securities for the duration of this Plan, pursuant to Bankruptcy Code section
26 1123(a)(6).

1 **O. Post-Confirmation Operating Reports**

2 The Debtor shall timely file quarterly post-confirmation operating reports in the form
3 prescribed by the U.S. Trustee and pay quarterly U.S. Trustee fees until the case is converted, closed
4 or dismissed. The Debtor shall serve these reports on the U.S. Trustee.

5 **P. Post-Confirmation Conversion/Dismissal**

6 A Creditor or party in interest may bring a motion to convert or dismiss the Case under
7 Bankruptcy Code section 1112(b) after the Plan is confirmed if there is a default in performing the
8 Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all
9 property that had been property of the Chapter 11 Estate, and that has not been disbursed pursuant to
10 the Plan, will revert in the Chapter 7 estate, and the automatic stay will be reimposed upon the
11 revested property only to the extent that relief from stay was not previously granted by the Court
12 during this case.

13 **Q. Substantial Consummation**

14 On the Effective Date, the Plan shall be deemed substantially consummated under
15 Bankruptcy Code sections 1101 and 1127(b).

16 **R. Final Decree**

17 Once the estate has been fully administered pursuant to Bankruptcy Rule 3022, the Debtor, or
18 such other party as the Bankruptcy Court shall designate in the Confirmation Order, may file a
19 motion with the Bankruptcy Court to obtain a final decree to close the case.

20 **S. Objections to Confirmation**

21 Objections to confirmation of this Plan are governed by Bankruptcy Rule 9014. Unless an
22 objection to confirmation is timely Filed and served, it will not be considered by the Bankruptcy
23 Court.

24
25 Date: July 28, 2015

LOS GATOS HOTEL CORPORATION
Debtor in Possession

26
27 By: _____


Jeff Curran
President