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GCCFC 2006-GG7 LOS GATOS LODGING
9 LIMITED PARTNERSHIP

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.

Case No. 10-63135-ASW
Chapter 11

16 **DISCLOSURE STATEMENT IN SUPPORT**
17 **OF NOTEHOLDER'S CHAPTER 11 PLAN**
18 **OF LIQUIDATION DATED APRIL 23,**
19 **2015**

20 Ctrm: Courtroom 3020
280 S. First St.
San Jose, California

Judge: Arthur S. Weissbrodt

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1 Los Gatos Hotel Corporation, Debtor and debtor in possession in the above-captioned case
2 (“Debtor” or “LGHC”), filed a voluntary petition for relief under chapter 11 of title 11 of the
3 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
5 in the United States Bankruptcy Court for the Northern District of California, San Jose Division,
6 before the Honorable Arthur S. Weissbrodt (the “Bankruptcy Court” or “Court”). Since the
7 Petition Date, Debtor has managed its affairs as a debtor in possession pursuant to Bankruptcy
8 Code sections 1107 and 1108.

9 GCCFC 2006-GG7 Los Gatos Lodging Limited Partnership, a Delaware limited
10 partnership is the proponent (“Noteholder” or “Proponent”) of *NOTEHOLDER’S CHAPTER 11*
11 *PLAN OF LIQUIDATION DATED [__], 2014* (the “Plan”) that has been filed concurrently with
12 this Disclosure Statement.¹ **THE DOCUMENT THAT YOU ARE READING IS THE**
13 **DISCLOSURE STATEMENT FOR THE PLAN. FOR A COMPLETE**
14 **UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE**
15 **STATEMENT, THE PLAN, AND THE EXHIBITS TO THESE DOCUMENTS IN THEIR**
16 **ENTIRETY.**

17 The Plan is a liquidating plan. It provides for the liquidation and monetization of all of the
18 assets of Debtor’s Estate, and for treatment of the outstanding Allowed Claims against and
19 Interests in Debtor. The Plan is centered on a Court-supervised sale process pursuant to which
20 Debtor’s primary asset – a hotel property known as Hotel Los Gatos, located at 210 E. Main St.,
21 Los Gatos, CA 95030, and referred to herein as the “Hotel Property” – will be sold at an auction
22 held in the Bankruptcy Court at the hearing on confirmation of the Plan.

23 After the closing of the sale of the Hotel Property, the Plan appoints a Plan Administrator
24 as the sole officer and director of Debtor for the purposes of carrying out the terms of the Plan,
25

26 ¹ Capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings
27 ascribed to them in the Plan. The Plan is the legally operative document regarding the treatment
28 of Claims and Interests and the terms and conditions of Debtor’s liquidation. 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 including by making distributions to Holders of Allowed Claims and Interests. Such Claims and
2 Interests are categorized under the Plan as follows: Administrative Expenses and Priority Tax
3 Claims (unclassified), Secured Tax Claims (Class 1), Noteholder Secured Claim (Class 2), Priority
4 Unsecured Claims (Class 3), General Unsecured Claims (Class 4), Unsecured Claims Held by
5 Insiders (Class 5), and Interests (Class 6). The Plan provides that once the Plan Administrator has
6 carried out his or her duties under the Plan, Debtor shall be dissolved.

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

12 THE COURT HAS NOT YET APPROVED THIS DISCLOSURE STATEMENT AS
13 CONTAINING “ADEQUATE INFORMATION” OR CONFIRMED THE PLAN DESCRIBED
14 IN THIS DISCLOSURE STATEMENT. THEREFORE, THE TERMS OF THE PLAN ARE NOT
15 YET BINDING ON ANYONE. IF THE COURT APPROVES THIS DISCLOSURE
16 STATEMENT AND CONFIRMS THE PLAN, AND THE EFFECTIVE DATE OCCURS, THEN
17 THE PLAN WILL BE BINDING ON DEBTOR AND ON ALL CREDITORS AND INTEREST
18 HOLDERS IN THIS CASE.

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

23 I.

24 PURPOSE OF THE PLAN

25 The Debtor’s case was filed four years ago, and for the past two years has been centered
26 around a sale effort that has stalled time and again due to environmental issues at the Hotel
27 Property. While the Debtor has previously filed versions of plans and disclosure statements with
28 this Court, none of those are currently pending. Noteholder is concerned that the Debtor’s

1 equityholders may be delaying the sale process while lengthy environmental reviews are underway
2 in order to maximize potential return on their equity interests, all while the Estate's creditors
3 continue to go unsatisfied.

4 The purpose of the Noteholder's Plan is to create a Court-supervised sale process that will
5 liquidate the Hotel Property for the benefit of the Debtor's estate on a reasonable timetable, and
6 distribute the proceeds to the Debtor's creditors and equityholders according to the priorities
7 established in the Bankruptcy Code and set forth in the Plan.

8 II.

9 GENERAL DISCLAIMERS AND INFORMATION

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

19 The financial information used to prepare the Plan and Disclosure Statement was prepared
20 by the Proponent (and its professionals) from public information available on the docket of this
21 Case, and/or taken from the Debtor's own statements and an analyses set forth in the prior plans
22 and disclosure statements filed by the Debtor in this Case.

23 You may not rely on the Plan and Disclosure Statement for any purpose other than to
24 determine whether to vote to accept or reject the Plan. Nothing contained in the Plan or Disclosure
25 Statement constitutes an admission of any fact or liability by any party or may be deemed to
26 constitute evidence of the tax or other legal effects that Debtor's liquidation may have on entities
27 holding Claims or Interests.

28

1 Where a particular word (such as “Debtor”) or term (such as “Allowed Claim” or
2 “Allowed Interest”) is capitalized in this Disclosure Statement, that word or phrase has the
3 meaning ascribed to it in the Plan. Where, however, a particular word (such as “debtor”) or phrase
4 (such as “allowed claim” or “allowed interest”) is not capitalized in this Disclosure Statement, that
5 word or phrase is not intended to refer to the definitions provided in the Plan, but rather the word
6 or phrase is intended to have the general meaning ascribed to it in common bankruptcy parlance.

7 **III.**

8 **WHO MAY VOTE TO ACCEPT OR REJECT THE PLAN**

9 To vote to accept or reject the Plan, your Claim or Interest must be an impaired Claim or
10 Interest and not a Disputed Claim or Interest and the Plan must provide for you to receive or retain
11 some value on account of your Claim or Interest. Holders of unimpaired Claims and Interests are
12 deemed to have accepted the Plan and do not vote, though they may object to confirmation of the
13 Plan to the extent they otherwise have standing to do so. Holders of Claims and/or Interests who
14 do not receive or retain any value under the Plan on account of such Claim or Interest are deemed
15 to reject the Plan. As defined by the Bankruptcy Code, a claim generally includes all rights to
16 payment from Debtor, while an interest generally represents an ownership stake in Debtor.

17 **A. Allowed Claims and Interests**

18 Subject to the exceptions explained below, under the Bankruptcy Code, a claim or interest
19 is generally allowed only if a proof of the claim or interest is properly filed before the Bar Date for
20 doing so, and either no party in interest has objected to or the court has entered an order allowing
21 the claim or interest.² Under certain circumstances provided in the Bankruptcy Code, a creditor
22 may have an allowed claim even if a proof of claim was not filed and the bar date for filing a proof
23 of claim has passed. For example, a claim may be deemed allowed if the claim is listed on
24 Debtor’s schedules of assets and liabilities filed with the court, is not scheduled as disputed,
25 contingent, or unliquidated, and no party in interest has objected, or the court has entered an order
26 allowing the claim or interest after such an objection was filed.

27 _____

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

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

7 Under the Plan, a Creditor whose Claim is not an Allowed Claim nevertheless may be
8 entitled to vote to accept or reject the Plan if the Creditor has timely filed a proof of Claim that is
9 not the subject of an objection filed before the Confirmation Hearing or a Court order disallowing
10 the Claim entered before the Confirmation Hearing. An entity whose Claim is subject to an
11 objection is not eligible to vote on the Plan unless and until (1) that objection is resolved in such
12 entity's favor, provided, however, in the case of an objection which only seeks to reduce the
13 amount of such entity's Claim, the entity shall nonetheless still be eligible to vote the reduced
14 amount of its Claim or (2) after notice and a hearing under Bankruptcy Rule 3018(a), the
15 Bankruptcy Court temporarily allows the entity's Claim or portion thereof for the purpose of
16 voting to accept or reject the Plan. Any entity that seeks temporary allowance of its Claim for
17 voting purposes must promptly take steps necessary to arrange for an appropriate and timely
18 hearing with the Court.

19 **B. Impaired Claims and Interests**

20 Generally speaking, under the Bankruptcy Code, a class of claims or interests is impaired
21 if the plan alters the legal, equitable, or contractual rights of the members of the class, even if the
22 alteration is beneficial to the creditors or interest holders. Section IV.C of the Plan and Section
23 X.D of this Disclosure Statement, among other things, describe the Classes of Claims and Interests
24 that the Proponent believes to be impaired (or unimpaired) under the Plan.

25 **IV.**

26 **VOTES NECESSARY TO CONFIRM THE PLAN**

27 Impaired claims or interests are placed in classes under the plan, and it is the class that
28 must accept the plan by the requisite majorities. Section IV.C of the Plan and Section X.D of this

1 Disclosure Statement summarize the classification of all Claims and Interests under the Plan.
2 There also are some types of claims that are unclassified because the Bankruptcy Code requires
3 that they be treated in a certain way. These claims are considered unimpaired, and their holders
4 cannot vote.

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

12 Even if a plan receives the requisite number of votes to confirm it, the plan will not
13 become binding unless and until, among other things, the Bankruptcy Court makes an independent
14 determination that confirmation is appropriate. This determination will be the subject of the
15 Confirmation Hearing. Also, as described in Article V below, even if all Classes do not vote in
16 favor of the Plan, the Plan may nonetheless be confirmed if the dissenting Classes are treated in a
17 manner prescribed by the Bankruptcy Code.

18 **V.**

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

20 The Plan may be confirmed, even if all Classes do not consent to the proposed treatment of
21 their claims under the Plan, if the dissenting Classes are treated in the manner prescribed by the
22 Bankruptcy Code. The process by which a plan is confirmed, notwithstanding the existence of a
23 dissenting class, is commonly referred to as “cramdown.” The Bankruptcy Code allows dissenting
24 classes to be crammed down if the plan does not “discriminate unfairly” and is “fair and
25 equitable.” The Bankruptcy Code does not define unfair discrimination, but it does set forth
26 certain minimum requirements for “fair and equitable” treatment. A plan is fair and equitable to
27 holders of secured claims if the holders are to receive property equal in value to the allowed
28 amount of the secured claims. For a class of unsecured claims, a plan is fair and equitable if the

1 claims in that class receive value equal to the allowed amount of the claims or, if the unsecured
2 claims are not fully paid, no claim or interest that is junior to such class receives or retains
3 anything under the plan. Accordingly, if a class of unsecured claims rejects a plan under which a
4 junior class (e.g., a class of interest holders) will receive or retain any property under the plan, the
5 plan cannot be confirmed (with certain possible exceptions not relevant to the Plan) unless the
6 plan provides that the class of unsecured creditors receives value equal to the allowed amount of
7 the claims in that class.

8 VI.

9 INFORMATION REGARDING VOTING

10 A. Voting Instructions

11 Classes 2, 4, 5, and 6 are impaired and the Holders of Claims in those Classes are entitled
12 to vote on the Plan. Classes 1 and 3 are not impaired and the Holders of Claims and Interests in
13 those Classes are not entitled to vote on the Plan and each of those Classes is deemed to accept the
14 Plan. Administrative Expenses are not classified under the Plan and the Holders thereof are not
15 entitled to vote.

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

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

27 If you nevertheless believe that you are entitled to vote on the Plan, you must file and serve
28 a motion requesting a determination that you are entitled to vote on the Plan and arrange for such

1 motion to be heard by the Court prior to the Confirmation Hearing. Before doing so, however,
2 you should first confirm that the absence of a Ballot was not inadvertent by contacting
3 Noteholder's counsel at the following address:

4 Sheppard, Mullin, Richter & Hampton LLP
5 Four Embarcadero Center, 17th Floor
6 San Francisco, California 94111
7 Attn: Michael Lauter, Esq.
8 Facsimile: (415) 434-3947
9 email: mlauter@sheppardmullin.com

10 If you wish to vote to accept or reject the Plan, your Ballot must be received by
11 Noteholder's counsel, at the address, email address or facsimile number listed in the paragraph
12 immediately above **no later than 5:00 p.m. (California time), on _____, 2015.** If
13 your Ballot is not timely received by Noteholder's counsel, it will not be counted. Ballots must be
14 provided to Noteholder's counsel by mail, email, overnight delivery, messenger, or facsimile.

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

19 VII.

20 OBJECTING TO PLAN CONFIRMATION

21 A Confirmation Hearing has been scheduled for _____, 2015, at _____ p.m.,
22 at the United States Bankruptcy Court, 280 South First Street, Room 3035, San Jose, California,
23 95113-3099, to determine whether the Bankruptcy Court will confirm the Plan. Any party that
24 objects to the confirmation of the Plan must file and serve its objection and evidence in support of
25 its objection, if appropriate, by _____, 2015. Any objection to confirmation of the Plan
26 must be in writing, specify the name and address of the party objecting, set forth the specific
27 grounds for the objection, and be accompanied by the evidence the objecting party intends to
28 present in support of its objection. Such objection and evidence in support thereof must be served
on Noteholder's counsel, the Debtor, 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

1 support of an objection to Plan confirmation must be present at the Confirmation Hearing for
2 cross-examination without the necessity of a subpoena. Failure to properly and timely file an
3 opposition to Plan confirmation or appear at the Confirmation Hearing may be deemed consent to
4 the Plan's confirmation.

5 VIII.

6 DESCRIPTION OF DEBTOR, ITS BUSINESS, THE EVENTS 7 PRECIPITATING THE FILING, AND SIGNIFICANT EVENTS IN THE 8 CHAPTER 11 CASE

9 A. Description of Debtor and Its Business

10 Debtor was formed in 2000 to build and operate the Hotel Property, a full-service boutique
11 hotel located in downtown Los Gatos, California. The Hotel Property, constructed in 2002, offers
12 72 guest rooms, over 2,000 square feet of meeting and conference space, a Michelin star
13 restaurant, and a 3,600 square foot spa and fitness facility. Debtor, through Folio Hospitality
14 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 Debtor.

15 B. Management and Ownership of LGHC

16 David Pinn, Alan Pinn (together with David Pinn, the "Pinns"), the Bypass Trust for the
17 Benefit of the Issue of DJ Ogilvie and the Bypass Trust for the Benefit of the Issue of Christiansen
18 (together with the Bypass Trust for the Benefit of the Issue of DJ Ogilvie, the "Ogilvies") each
19 own 25% of the shares of Debtor's stock. Jeff Curran, who is employed by entities related to the
20 Pinns, serves as president of Debtor. Folio Hospitality Management, Inc., an affiliate of the Pinns
21 and Mr. Curran, has managed the Hotel Property throughout most of the chapter 11 case, having
22 taken over management responsibilities from Joie de Vivre Hotels in April 2011.

23 C. Debt Structure

24 In 2006, Debtor refinanced its debt on the Hotel Property through a loan (the "Loan") from
25 Greenwich Capital Financial Products, Inc. ("Original Lender"), which is evidenced by a
26 promissory note in the amount of \$12,000,000 dated as of July 12, 2006 and payable to Original
27 Lender (the "Note").

28

1 The Note is secured by, among other things, (i) a Deed of Trust, Assignment of Rents and
 2 Security Agreement (Hotel) dated as of February 10, 2006, executed by Debtor, as trustor, in favor
 3 of First American Title Company, as trustee, for the benefit of Original Lender encumbering the
 4 Hotel Property (the “Deed of Trust”), which was recorded in the Official Records of Santa Clara
 5 County (the “Official Records”) on February 21, 2006 as document number 18813777 and (ii) an
 6 Assignment of Leases and Rents (Hotel) dated as of February 10, 2006, executed by Debtor in
 7 favor of Original Lender with respect to the Hotel Property (the “Assignment of Leases and
 8 Rents”), which was recorded in the Official Records on February 21, 2006 as document number
 9 18813778.

10 The Note, the Deed of Trust, the Assignment of Leases and Rents, and all other documents
 11 evidencing the Loan were subsequently assigned to Noteholder on or about February 17, 2010. As
 12 of May 6, 2015, the amounts owing under the Loan were as follows³:

Principal	\$11,214,367.72
Contract Rate Interest	\$2,398,680.98
Default Rate Interest	\$3,240,775.18
Fees, Costs, and Other Charges	\$1,391,178.23
Less Escrows, Reserves and Suspense Funds	(\$1,812,006.32)
Total Payoff as of 5/6/15	\$16,432,995.79
Per Diem	\$3,811.95

19 **D. Events Leading to Chapter 11 Filing**

20 In 2008, Debtor’s revenues began a steep decline. In fact, Debtor’s revenues declined by
 21 approximately 30% between 2007 and 2009, from \$5.2 million to \$3.6 million. As operating
 22 losses mounted, Debtor’s shareholders injected cash to service the Loan and to meet operating
 23 expense obligations. This additional capital, however, proved insufficient to meet the Hotel’s cash
 24 flow requirements.

27 ³ The breakdown provided herein of the Noteholder Secured Claim is an estimate of said Claim as
 28 of May 6, 2015, and is subject to revisions, changes, and updates. Noteholder will provide an
 updated estimate of the Noteholder Secured Claim prior to the Auction.

1 Noteholder recorded a Notice of Default and scheduled a trustee's sale of the Hotel
2 Property for December 7, 2010. That sale was rescheduled for January 31, 2011. To stop the
3 foreclosure, on December 27, 2010 (the "Petition Date") Debtor commenced this chapter 11 case.

4
5 **E. Significant Events in the Case**

6 1. Overview of Chapter 11 and the Plan Process

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

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

18 Obtaining approval of a plan is the principal objective of a chapter 11 case. A plan sets
19 forth the means for satisfying the claims against and interests in Debtor. The Plan provides for the
20 treatment of all Claims against and Interests in Debtor, including payment in full of all Allowed
21 Claims against Debtor.

22 2. Filing of Petition

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

26 3. Cash Collateral

27 On December 29, 2010, Debtor filed an emergency first day motion for interim and final
28 orders authorizing the use of cash collateral. [Dkt. No. 11.] The next day, Noteholder filed an

1 emergency motion for adequate protection. [Dkt. No. 18.] Shortly thereafter, Debtor commenced
2 negotiations with Noteholder regarding the use of cash collateral and the provision of adequate
3 protection. Ultimately, these negotiations resulted in an agreement permitting Debtor to use cash
4 collateral through October 5, 2011, subject to certain conditions, all as set forth in that Agreed
5 Final Order re Cash Collateral, Adequate Protection, Transition of Management, and Related
6 Matters (the “Agreed Final Order”) entered by the Court on March 29, 2011. [Dkt. No. 119.]
7 Through a number of Agreed Orders, Debtor’s use of Noteholder’s cash collateral has been
8 approved through June 30, 2015. [Dkt. Nos. 186, 205, 237, 278, 373, 402, 457, 478.]

9 4. Other First Day Motions

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

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

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

20 6. Debtor’s Plans, Disclosure Statements, and Sale Efforts

21 (a) *Debtor’s First Plan*

22 Debtor’s first plan was a reorganizing Plan that contemplated the existing equity holders
23 retaining ownership of the Debtor and its Hotel Property after the bankruptcy. The Debtor’s first
24 plan promised that Debtor would pay unsecured creditors in full over 24 months out of profits
25 Debtor expected to make from its operations. As to Noteholder, the Debtor’s first plan proposed
26 to pay Noteholder in seven years with a large balloon payment at the end.

27 The disclosure statement for the Debtor’s first plan whereby equity would retain its
28 interests and pay creditors through operations was approved on March 7, 2012, and votes on the

1 plan were solicited. Both Noteholder and the class of general unsecured creditors rejected the Plan
2 [See Dkt. No. 261], and Debtor then chose not to pursue that plan. At the same time, disputes
3 among Debtor's equity holders ensued, with the Ogilvies claiming that the filing of the Debtor's
4 first plan was unauthorized under Debtor's organizational documents [See Dkt. No. 188], leading
5 to an adversary proceeding.

6 (b) *Debtor's Second Plan*

7 On July 18, 2012, the Debtor filed its second plan in this case [Dkt. No. 282]. This second
8 plan was a conceptual break from the first plan in that it now contemplated a sale of the Debtor's
9 Hotel Property. The proposed sale at the heart of the Debtor's second plan was to a new company
10 owned 56% by a third party, IHA Hotel Group, and 44% by Debtor's current equity holders. This
11 Court conditionally approved the disclosure statement for the Debtor's second plan on July 27,
12 2012, and set deadlines in August 2012 for voting and plan objections. [See Dkt. No. 292.] The
13 Debtor's second plan was then further amended and an order approving the revised disclosure
14 statement and setting voting and objection deadlines in September 2012 was entered on September
15 4, 2012. [See Dkt. No. 320.] After litigating and then reaching a proposed settlement of Debtor's
16 objection to Noteholder's claim, Debtor then solicited votes on the Debtor's second plan and
17 asserted that it had received acceptances from all creditors entitled to vote on the plan. [See Dkt.
18 Nos. 330, 339.]

19 The plan confirmation hearing on the Debtor's second plan was initially set for
20 September 19, 2012. However, the Debtor then filed a status conference statement requesting a
21 continuance of the plan confirmation hearing so that environmental testing required by the buyer's
22 lender could be performed. [See, Dkt. No. 339] The plan confirmation hearing on the Debtor's
23 second plan was continued several times for the same reason, until finally on September 23, 2013,
24 the Debtor filed a status conference statement in which it stated that it no longer would be seeking
25 confirmation of its second amended plan. [See Dkt. No. 390.]

26 (c) *Debtor's Third Plan*

27 On December 20, 2013, the Debtor filed its Third Amended Plan based on a sale of the
28 property to the IHA Group for \$22.5 million in cash. [See Dkt. No. 404.] Unlike the second plan,

1 this third plan involved a sale to a third party buyer. To address the environmental issues, the
2 Debtor's third plan proposed to set aside funds in an escrow to pay the remaining costs of
3 remediation. (*Id.*) The hearing on the disclosure statement for the Debtor's third plan was set for
4 January 24, 2014, and then continued to February 3, 2014.

5 In the meantime, the Ogilvies, one of the two groups of equity holders in the Debtor, filed
6 a motion to compel Debtor to retain a broker and formally market the Hotel Property for sale. The
7 Court indicated its likely approval of the motion, and Debtor agreed to retain Eastdil Secured
8 Broker Services, Inc. ("Eastdil") as its broker in March 2014. [*See* Dkt. No. 434.] The retention
9 of Eastdil marked the launch of a new and more comprehensive marketing and sale process.

10 Before the hearing on the disclosure statement for the Debtor's third plan, the Debtor filed
11 a status conference statement on January 27, 2014 stating that IHA had determined additional
12 environmental testing to be necessary, and that given said testing and the imminent retention of
13 brokers pursuant to the Ogilvies' motion, Debtor would not be seeking approval of the disclosure
14 statement. [*See* Dkt. No. 419.] The disclosure statement hearing was thus continued to April 24,
15 2014.

16 On April 17, 2014, Debtor filed a status conference statement providing that it would not
17 be seeking approval of the disclosure statement for the Debtor's third plan because the Debtor
18 expected to file a Fourth Amended Plan based on a sale produced by Eastdil's marketing efforts,
19 which was expected to be complete within the next three weeks and to produce offers within a
20 month. [*See* Dkt. No. 441.]

21 Since that time, the Debtor has filed multiple status conference statements in which it has
22 stated that environmental testing is underway, and that a fourth plan will be filed after it is
23 completed. The next chapter 11 status conference in this Case is scheduled for January 30, 2015.

24 (d) *No Buyer Under Contract Eight Months Into Eastdil Marketing Process*

25 Despite having marketed the Hotel Property for sale for eight months with the assistance of
26 its Court-approved brokers, the Debtor has not reached agreement with any party for the sale of its
27 Hotel Property. As a result, no fourth plan has been filed by the Debtor, and there is no structure
28 in place to push this Case to an orderly conclusion. The Debtor's recent status conference

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

6 3. Claim Objections

7 Pursuant to the Plan, Debtor is authorized to file Claim Objections to Claims, through and
8 including the Claim Objection Deadline.

9 **B. Assets of Debtor**

10 On the Schedules, Debtor listed total assets in the amount of \$16,129,713. Debtor's
11 primary asset is the Hotel Property, valued at \$13,869,714.00 on the Debtor's Schedules. The
12 value of the Hotel Property has increased substantially in the past four years on account of the
13 increasingly strong real estate market and the general improvement of the economy.

14 **C. Litigation Rights**

15 Under the Plan, all Litigation Rights shall be retained, preserved and vested with Debtor as
16 of the Effective Date. From and after the Effective Date, the Plan Administrator on behalf of
17 Debtor may enforce any and all Litigation Rights that Debtor or the Estate may hold or have
18 against any person or entity, including (1) Avoidance Actions, (2) any legal or equitable rights to
19 subordinate and/or disallow Claims, (3) any causes of action that could be brought by Debtor,
20 whether arising prior to or after the Petition Date, and (4) any and all other claims, rights, or
21 causes of action of any kind or nature of Debtor or the Estate that may exist under applicable
22 bankruptcy law or nonbankruptcy law. To the extent any Litigation Claim is already pending on
23 the Effective Date, the Plan Administrator may continue the prosecution of such Litigation Rights.
24 Upon the Effective Date, the Plan Administrator as the sole officer and director of Debtor shall
25 have standing to assert any and all Litigation Claims and/or defenses vested in Debtor.

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2 **SUMMARY OF MATERIAL PLAN PROVISIONS**

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

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

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

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

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

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

4 This Section describes the classification of Claims and Interests under the Plan – except for
 5 Administrative Expenses and Priority Tax Claims, which are not classified – for all purposes,
 6 including voting, confirmation and distributions under the Plan. A Claim or Interest is classified
 7 in a particular Class only to the extent that the Claim or Interest falls within the Class description.
 8 In addition, this Section describes the treatment of Claims and Interests under the Plan. The
 9 following table (a) estimates Claim amounts, based on Debtor’s Schedules and proofs of Claim
 10 filed in Debtor’s Case, and (b) summarizes the classification and treatment of Claims and Interests
 11 under the Plan, to the extent Allowed, subject to the more specific provisions of the Plan and the
 12 following more detailed sections of this Disclosure Statement.

13 CLASS/UNCLASSIFIED CLAIMS	DESCRIPTION ⁴	TREATMENT	IMPAIRED/ UNIMPAIRED	VOTING STATUS
14 Unclassified Claims	U.S. Trustee Fees – Estimated Amount: \$0.00	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
16	Professional Fee Expenses – Estimated Amount: [175,000]	Paid in full in Cash within three(3) days after Final Order Allowing such Expense	Unimpaired	Not Entitled to Vote
18	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
21	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

26 ⁴ The estimated amounts included in this chart are estimates based on Debtor’s Schedules and the
 27 proofs of Claims filed in Debtor’s Case. All Claims, unless previously Allowed, remain subject to
 28 dispute and disallowance. The inclusion of the estimated amounts herein does not constitute an
 admission as to the validity of the Claims or the amounts thereof.

CLASS/UNCLASSIFIED CLAIMS	DESCRIPTION ⁴	TREATMENT	IMPAIRED/ UNIMPAIRED	VOTING STATUS
	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: \$73,000	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
Class 2	Noteholder Claim – Estimated Claim Amount: \$16,432,995.79	Paid in full in Cash on the Effective Date	Impaired	Not Entitled to Vote
Class 3	Priority Unsecured Claims (other than Priority Tax Claims) – Estimated Amount: \$131,000	Paid in full in Cash on the Effective Date	Unimpaired	Not Entitled to Vote
Class 4	General Unsecured Claims – Estimated Amount: \$200,000	<i>See discussion at Section X.D.4</i>	Impaired	Not Entitled to Vote
Class 5	Unsecured Claims Held by Insiders: \$7,121,666.00	<i>See discussion at Section X.D.5</i>	Impaired	Entitled to Vote
Class 6	Interests	<i>See discussion at Section X.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 Debtor, the Estate, or their respective properties.

Due to the difficulty in predicting the result of the Auction, the Noteholder does not provide estimates for distribution percentages to creditors. However, even if the Auction produces no Auction Proceeds for distribution to creditors, the Operating Cash will be made available for payment of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed

1 Priority Unsecured Claims, with all remaining Operating Cash available to fund a distribution to
2 Allowed General Unsecured Claims. As of the most recent operating report filed by the Debtor,
3 the Debtor's Operating Cash was \$986,397, which is sufficient to pay all Allowed Administrative
4 Expense Claims, Allowed Priority Tax Claims, and Allowed Priority Unsecured Claims in full,
5 with funds leftover for a distribution to Allowed General Unsecured Claims.
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7 **C. Allowance and Treatment of Unclassified Claims**

8 1. Administrative Claims

9 (a) *U.S. Trustee Fees*

10 U.S. Trustee Fees shall be allowed in accordance with 28 U.S.C. § 1930. The Plan
11 provides that the Plan Administrator will pay to the U.S. Trustee all U.S. Trustee Fees due and
12 owing under 28 U.S.C. § 1930 in Cash on the Effective Date from either the Operating Cash or the
13 Auction Proceeds if the Operating Cash is insufficient.

14 (b) *Professional Fee Expenses*

15 Unless otherwise expressly provided in the Plan, Professional Fee Expenses will be
16 Allowed only if (i) on or before ninety (90) days after the Effective Date, the entity seeking
17 payment of such Professional Fee Expense both Files with the Court a fee application or a motion
18 requesting Allowance of the Professional Fee Expense and serves the application or motion on the
19 Plan Administrator and the U.S. Trustee; and (ii) the Bankruptcy Court determines such
20 Professional Fee Expense should be Allowed. Any party in interest may File an objection to such
21 application or motion within the time provided by the Bankruptcy Rules, the Local Rules, or
22 within any other period that the Bankruptcy Court may establish. The Plan Administrator will
23 reserve funds from the Auction Proceeds to pay Allowed Professional Fee Expenses. Unless
24 otherwise agreed, the Plan Administrator will pay or cause to be paid an Allowed Professional Fee
25 Expense, in Cash, within three (3) business days after the date on which the Bankruptcy Court
26 order Allowing such Expense becomes a Final Order, which payment shall be made from either
27 the Operating Cash or the Auction Proceeds if the Operating Cash is insufficient.

28 (c) *Ordinary Course Administrative Expenses*

1 Any entity seeking payment of an Ordinary Course Administrative Expense may, but need
2 not, File a motion or request for payment of such Administrative Expense. Noteholder, the Plan
3 Administrator, Debtor or any other party in interest may File an objection to an Ordinary Course
4 Administrative Expense in its discretion. The Plan provides that, if no party in interest objects to
5 an Ordinary Course Administrative Expense, such Administrative Expense will be Allowed and
6 paid by the Plan Administrator from either the Operating Cash or the Auction Proceeds if the
7 Operating Cash is insufficient.

8 (d) *Non-Ordinary Course Administrative Expenses*

9 Unless otherwise expressly provided in the Plan, a Non-Ordinary Course Administrative
10 Expense will be Allowed only if: (i) on or before the Plan Objection Deadline, the entity asserting
11 such Non-Ordinary Course Administrative Expense both Files with the Court a motion requesting
12 Allowance of the Non-Ordinary Course Administrative Expense and serves the motion on
13 Noteholder, the Debtor, and the U.S. Trustee, with such motion to be heard prior to or at the
14 Confirmation Hearing and (ii) the Bankruptcy Court determines such Administrative Expense
15 should be Allowed. Noteholder, the Plan Administrator, Debtor or any other party in interest may
16 File an objection to such motion within the time provided by the Bankruptcy Rules, the Local
17 Rules, or within any other period that the Bankruptcy Court may establish.

18 Any entity seeking payment of a Non-Ordinary Course Administrative Expense that does
19 not timely File and serve a request for payment will be barred forever from asserting such
20 Administrative Expense against Debtor, the Estate, or Debtor's property. Unless the entity
21 holding an Allowed Non-Ordinary Course Administrative Expense agrees to different treatment,
22 the Plan Administrator will pay such entity Cash in the full amount of such Allowed
23 Administrative Expense, on or before the Effective Date from either the Operating Cash or the
24 Auction Proceeds if the Operating Cash is insufficient.

25 2. Priority Tax Claims

26 As of the date of the Plan, Noteholder is not aware of any Priority Tax Claims. To the
27 extent any such Priority Tax Claims exist and have not been satisfied or extinguished as of the
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1 Effective Date, they shall be paid by Plan Administrator on the Effective Date from either the
2 Operating Cash or the Auction Proceeds if the Operating Cash is insufficient.

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

4 1. Class 1 (Secured Tax Claims)

5 Class 1 consists of all Secured Tax Claims. As of the date of the Plan, Noteholder is not
6 aware of any Secured Tax Claims. To the extent any such Secured Tax Claims exist, the Plan
7 Administrator will pay such entity in Cash in full on the Effective Date from either the Operating
8 Cash or the Auction Proceeds, if the Operating Cash is insufficient. Class 1 is unimpaired under
9 the Plan.

10 2. Class 2 (Noteholder Secured Claim)

11 Class 2 consists of Noteholder Secured Claim. Class 2 is impaired under the Plan because
12 its recovery depends on the outcome of the Auction. As described in Section V of the Plan,
13 Noteholder's credit bid of Noteholder Secured Claim will serve as the Opening Bid at the Auction
14 unless a Qualified Bidder submits a Cash bid in a higher amount on or before the Qualified Bid
15 Deadline. In the event that Noteholder is the Successful Bidder with is credit bid of Noteholder
16 Secured Claim, Noteholder Secured Claim will be satisfied by receiving the Hotel Property in
17 exchange for Noteholder Secured Claim. If a Qualified Bidder making a Cash overbid at or before
18 the Auction such that the credit bid of Noteholder Secured Claim is not the Successful Bid at the
19 Auction, then Noteholder Secured Claim will be fully and finally satisfied by receiving payment in
20 full in Cash out of the escrow established for the sale of the Hotel Property, which payment in full
21 shall include default interest and all amounts owing under Bankruptcy Code section 502(b)(2). As
22 of May 6, 2015, payment in full of the Noteholder Secured Claim shall be in the following
23 amount⁵:

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27 ⁵ The breakdown provided herein of the Noteholder Secured Claim is an estimate of said Claim as
28 of May 6, 2015, and is subject to revisions, changes, and updates. Noteholder will provide an
updated estimate of the Noteholder Secured Claim prior to the Auction.

Principal	\$11,214,367.72
Contract Rate Interest	\$2,398,680.98
Default Rate Interest	\$3,240,775.18
Fees, Costs, and Other Charges	\$1,391,178.23
Less Escrows, Reserves and Suspense Funds	(\$1,812,006.32)
Total Payoff as of 5/6/15	\$16,432,995.79
Per Diem	\$3,811.95

Note that to the extent any portion of Noteholder Secured Claim, or any Claim, is Disputed, the Plan Administrator shall reserve for such Disputed portion in Cash pursuant to the procedures set forth in Section V.I of the Plan. Furthermore, if the Noteholder Secured Claim serves as the stalking horse bid in the Auction described in Section V.C, then the disputed portion of the Noteholder Secured Claim shall be retained in the Noteholder Secured Claim Reserve as provided in Section V.C.1 of the Plan.

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. Allowed Class 3 Claims will be paid in full by the Plan Administrator on the Effective Date from either the Operating Cash or the Auction Proceeds, if the Operating Cash is insufficient.

4. Class 4 (General Unsecured Claims)

Class 4 consists of General Unsecured Claims not otherwise classified. Class 4 is impaired under the Plan and is entitled to vote. Allowed Class 4 Claims will receive a Pro Rata distribution of the Cash (including Operating Cash) available in the Estate after payment of all unclassified Claims, Class 1 Claims, Class 2 Claims, and Class 3 Claims.

5. Class 5 (Unsecured Claims Held by Insiders)

Class 5 consists of Unsecured Claims held by Insiders. Class 5 is impaired under the Plan and is entitled to vote. Allowed Class 5 Claims will receive a Pro Rata distribution of the Cash (including Operating Cash) available in the Estate after payment of all unclassified Claims, Class 1 Claims, Class 2 Claims, Class 3 Claims, and Class 4 Claims.

1 6. Class 6 (Interests)

2 Class 6 consists of all Interests in Debtor. Class 6 is impaired under the Plan and entitled
3 to vote. On the Effective Date, all Interests in Debtor shall be cancelled. Holders of Allowed
4 Class 6 Interests will receive a Pro Rata distribution of the Cash available in the Estate (including
5 Operating Cash) after payment of all unclassified Claims, Class 1 Claims, Class 2 Claims, Class 3
6 Claims, Class 4 Claims, and Class 5 Claims.

7 **XI.**

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

9 **A. Management of Hotel Property Pending Closing of Sale Approved at Auction.**

10 Until the sale approved by the Bankruptcy Court at the Auction, Debtor shall continue to
11 manage the Hotel Property, including through the use of any property managers currently in place.

12 **B. General Structure of Sale Process.**

13 The Hotel Property has been listed for sale since approximately March 2014 when this
14 Court approved Debtor's retention of Eastdil as its brokers. The sale process proposed in the Plan
15 seeks to utilize and capitalize upon the exposure garnered by Eastdil's marketing efforts. As a
16 general matter, and as specified in greater detail below, the Hotel Property will be sold through a
17 Court-supervised Auction process that will utilize either Noteholder Secured Claim or such higher
18 Cash bid as may be received prior to the Qualified Bid Deadline as the stalking horse bid, and
19 culminate in a live Auction held in Bankruptcy Court at the Confirmation Hearing.

20 **C. Bidding Procedures.**

21 The Auction process shall be governed by Noteholder according to the following Bidding
22 Procedures:

23 1. Opening Bid: Either a credit bid of Noteholder Secured Claim by Noteholder, or a
24 Cash bid submitted by a third party Qualified Bidder on or before the Qualified Bid Deadline. For
25 the purposes of calculating the amount of the Noteholder's credit bid, the Noteholder Secured
26 Claim shall be the maximum amount of the Noteholder Secured Claim that may be Allowed after
27 all claim objections, adversary proceedings, and appeals of the foregoing are resolved. To the
28 extent that any portion of the Noteholder Secured Claim either remains disputed in the Bankruptcy

1 Court or is disallowed by the Bankruptcy Court but remains the subject of a pending appeal, and
2 there are any Qualified Bids received in excess of the maximum potential amount of the
3 Noteholder Secured Claim, then a portion of the Auction Proceeds equal in amount to the disputed
4 or appealed portion of the Noteholder Secured Claim shall be reserved by the Plan Administrator
5 in a segregated reserve account (the “Noteholder Secured Claim Reserve”) until the resolution of
6 all claim objections or adversary proceedings and the exhaustion of all appeals. For the purposes
7 of illustration only, if the undisputed Allowed amount of the Noteholder Secured Claim was
8 \$13,000,000.00, the disputed portion was \$2,000,000, and the Hotel Property was sold at Auction
9 to a Qualified Bid of \$20,000,000, then \$2,000,000 would be retained by the Plan Administrator in
10 the Noteholder Secured Claim Reserve until the resolution of all claim objections, adversary
11 proceedings and appeals regarding the allowance of the disputed \$2,000,000 portion of the
12 Noteholder Secured Claim.

13 2. Qualified Bid Deadline: Seven (7) calendar days prior to the Confirmation
14 Hearing.

15 3. Qualified Bidder Requirements: Any party making a bid at the Plan Confirmation
16 Hearing must be designated as a “Qualified Bidder” by Noteholder in order for said party’s bid to
17 be accepted. The requirements to become a Qualified Bidder are as follows, and the satisfaction
18 of each of them shall be determined by Noteholder in its sole and absolute discretion:

- 19 (a) The interested bidder must submit an offer to purchase the Hotel Property
20 in Cash, on an “as is, where is” basis.
- 21 (b) The offer must be in an amount that equals or exceeds the sum of
22 Noteholder Secured Claim plus \$100,000.
- 23 (c) The offer must be submitted along with or as part of a mark-up with the
24 form APA attached to the Plan Supplement to be filed with the Court prior
25 to the hearing on the Disclosure Statement.
- 26 (d) The interested bidder must provide proof of funds to close the transaction
27 in form and substance acceptable to Noteholder.
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(e) The interested bidder must wire a good faith Cash deposit in an amount equal to 5% of the purchase price reflected in the bid into an escrow established by Debtor and Noteholder for the sale, either at the time the bid is submitted or within three (3) business days thereafter. The deposit shall be returned in the event that the bid is not selected as the Successful Bid or the Back-Up Bid. Upon a bid being selected as the Successful Bid, the deposit shall become non-refundable and credited to the purchase price. Upon a bid being selected as the Back-Up Bid, the deposit shall be retained in escrow but shall only become non-refundable if the Successful Bidder fails to close the Sale and the Back-Up Bidder is given the notice set forth in Section XI.C.8. If the Successful Bidder closes the Sale, the Back-Up Bidder's deposit shall be promptly returned. If the Successful Bidder fails to close the Sale and the Back-Up Bidder is given the notice in Section XI.C.8, then the Back-Up Bidder's deposit becomes non-refundable and credited towards the purchase price upon delivery of said notice.

4. Other Rules for Bidding at the Auction. All Qualified Bidders may submit bids at the Auction held at the Confirmation Hearing. The following rules shall apply to the submission of bids at the Auction:

- (a) Minimum Bid: The sum of the Opening Bid plus \$100,000.
- (b) Overbids: All bids submitted by a Qualified Bidder shall be subject to overbid until the conclusion of the auction held at the Plan Confirmation Hearing.
- (c) Minimum Increments for Overbids: \$10,000 (i.e., each overbid must exceed the highest previously submitted by bid by no less than \$10,000).
- (d) Cash Requirement: All bids submitted must be fully payable in Cash on the Effective Date of the Plan.
- (e) Bids Irrevocable. The bids submitted at the Auction must satisfy the requirements of bids submitted to become a Qualified Bidder, including

1 that they must be irrevocable and in all Cash. The bids will incorporate the
2 terms of the mark-up of the APA submitted by the bidder in the Qualified
3 Bidder process.

4 (f) No Contingencies. The bids submitted shall not contain any financing or
5 due diligence contingencies. Each such bid shall be a binding and
6 unconditional commitment to close the sale on or before an outside date
7 that is thirty (30) days after the date of the Auction (the “Outside Date”),
8 subject only to entry of appropriate orders by the Bankruptcy Court.

9 5. Data Room, Due Diligence, and Marketing Efforts. Immediately following
10 approval of this Disclosure Statement, the Debtor and the Debtor’s Court-approved brokers shall
11 establish an electronic data room with information available to interested bidders who agree to
12 sign a non-disclosure agreement in form and substance acceptable to the Noteholder and the
13 Debtor. The Debtor’s brokers shall continue to market the Hotel Property for sale in a manner
14 suitable for the size, price, and type of property. The Debtor shall also cooperate in the marketing
15 efforts, in site inspections and other reasonable due diligence requests made by interested parties.
16 Parties interested in bidding at the auction are entitled to conduct due diligence up until, but not
17 after, the Qualified Bid Deadline.

18 6. Other Bid Procedures: Noteholder, in its business judgment, may set such other
19 deadlines or requirements in connection with the Auction as it deems appropriate or necessary.

20 7. Selection of Successful Bid: The decision regarding the highest and best bid (the
21 “Successful Bid”) shall be made by Noteholder and Debtor in their sole discretion, provided that
22 no bid may be considered unless it is made by a Qualified Bidder and it meets the Minimum Bid
23 and other requirements of this Section XI.C. If Noteholder and Debtor cannot agree on the highest
24 and best bid, then Noteholder and Debtor will present their choices for the highest and best bid to
25 the Bankruptcy Court who shall make such determination at the Confirmation Hearing.

26 8. Extension of Outside Date: Notwithstanding anything to the contrary set forth in
27 Section XI.C, Noteholder, Debtor, and the party who submitted the Bankruptcy Court-approved
28 Successful Bid may agree to extend the Outside Date by up to 90 days without obtaining further

1 Bankruptcy Court approval of such extension. Any extension of the Outside Date beyond 90 days
2 shall require approval of the Bankruptcy Court, which may be obtained by a motion jointly filed
3 by Noteholder and Debtor on three (3) days' notice. Entry of the Confirmation Order shall
4 constitute the Bankruptcy Court's approval of said shortened period of notice for such a motion
5 and the hearing thereon.

6 9. Selection of Back-Up Bid: In the event that multiple bids for the Hotel Property
7 are made by multiple Qualified Bidders at the Auction, then in addition to selecting a Successful
8 Bid, Noteholder and Debtor may also select a back-up bid (the "Back-Up Bid"). Such selection
9 shall be subject to the approval of the Back-Up Bidder and of the Bankruptcy Court. In the event
10 that the Successful Bidder fails to close the sale of the Hotel Property on or before the Outside
11 Date, then Noteholder and Debtor shall notify the Back-Up Bidder that Noteholder and Debtor
12 will pursue the closing of the sale pursuant to the terms of the Back-Up Bid. Upon receipt of such
13 notice, Noteholder, Debtor, and the Back-Up Bidder shall agree on any extension of the Outside
14 Date as they may deem reasonably necessary. No Bankruptcy Court approval of such extension
15 shall be necessary, unless the extended Outside Date is more than 180 days after the Outside Date
16 originally set forth in the Plan.

17 **D. Cooperation of Debtor in the Sale Process.**

18 Debtor shall cooperate in the Auction and the related sale process, including by
19 accommodating any and all reasonable due diligence requests made by interested bidders for the
20 Hotel Property, and by executing any documents and taking any other actions necessary to
21 consummate the sale of the Hotel Property pursuant to the terms of a Successful Bid or Back-Up
22 Bid approved by the Bankruptcy Court.

23 **E. Effect of Failure to Close Sale by Outside Date.**

24 If either (x) no sale of the Hotel Property is approved by the Bankruptcy Court at the
25 Confirmation Hearing, or (y) a sale of the Hotel Property is approved by the Bankruptcy Court at
26 the Confirmation Hearing but no such sale closes on or before the Outside Date, then Noteholder
27 may withdraw the Plan pursuant to this Section XI.E, continue the Confirmation Hearing, or take
28 such other action as it deems appropriate, in its sole discretion.

1 **F. Appointment of the Plan Administrator; Removal of Existing Officers and Directors;**
2 **Cancellation of Existing Interests.**

3 On the Effective Date, the appointment of the Plan Administrator shall become effective.
4 The Plan Administrator shall replace all of the current officers and directors of Debtor, and shall
5 either serve as (if the Plan Administrator is an individual) or appoint one of its members to be (if
6 the Plan Administrator is a corporate entity) the sole officer and director of Debtor from and after
7 the Effective Date of the Plan. Existing Interests in Debtor shall also be cancelled as of the
8 Effective Date, and shall instead receive the treatment provided for Class 6 Interests in the Plan.

9 Unless revised in a further supplement to or modification of the Plan, the initial Plan
10 Administrator shall be Sherwood Partners, Inc., who will appoint Andrew DeCamara to serve as
11 the sole officer and director of the Debtor pursuant to the preceding paragraph. From and after the
12 Effective Date, the Plan Administrator is appointed as the representative of Debtor under Section
13 1123(b)(3) of the Bankruptcy Code to carry out the Plan and shall have standing to appear and be
14 heard in this Case on any issue relating to the implementation of the Plan. The Plan Administrator
15 shall be authorized to: (a) make all distributions required to be made on or after the Effective Date
16 to the holders of Allowed Claims in the amounts, at the times, and according to the treatment
17 provisions of the Plan; (b) settle, resolve, object to and litigate Disputed Claims; (c) file any post-
18 confirmation reports required by the Bankruptcy Code or the Bankruptcy Court; (d) create and
19 maintain all reserves required by the Plan; and (e) close the Case.

20 In the event that for any reason the person initially appointed as Plan Administrator is
21 unable or unwilling to continue to serve as Plan Administrator, a successor Plan Administrator
22 shall be appointed by the Office of the United States Trustee. In the event that the Case has been
23 closed, it may be reopened for the purpose of appointing a successor Plan Administrator.

24 **G. Establishment of Reserves.**

25 On the Effective Date, the Plan Administrator shall establish all reserves called for by the
26 Plan, and shall maintain and distribute the reserves in accordance with the Plan. To the extent any
27 funds remain in any such reserve after the purpose of the reserve has been fulfilled, the Plan
28 Administrator may distribute it according to the priorities established in the Plan.

1 **H. Authority to Effectuate Plan**

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

9 **I. Distribution of Property Under the Plan**

10 The following procedures set forth in the Plan apply to distributions made pursuant to the
11 Plan by the Plan Administrator:

12 1. Provision Regarding Disputed Claims

13 The Plan Administrator shall implement the following additional procedures with respect
14 to the allocation and distribution of Cash in accordance with the Plan to the Holders of Disputed
15 Claims that become Allowed Claims:

16 a. Cash on account of the disputed portion of Disputed Claims shall not be
17 distributed, but shall be withheld by the Plan Administrator in a segregated reserve account (the
18 "Disputed Claim Reserve") in an amount equal to the distributions that would have otherwise been
19 made to the Holders of such Claims if such Claims had been Allowed Claims, based on such
20 disputed portion (the "Disputed Reserve Amount"). By way of example, if a Holder of a Claim
21 asserts a Claim in the amount of \$1,000,000, but the Plan Administrator believes the Claim should
22 be \$250,000 and objects to the amount over \$250,000, then the Plan Administrator may make a
23 distribution to the Holder of the Claim based on the \$250,000 undisputed portion, and then must
24 reserve an amount in Cash in the Disputed Claim Reserve equal to the amount of distribution on
25 the disputed \$750,000 portion. If the Plan Administrator is uncertain of the proper amount of the
26 Claim and objects to the Claim in its entirety, then the Plan Administrator shall simply reserve in
27 Cash in the Disputed Claim Reserve an amount equal to the entire distribution on the Claim if it
28 were Allowed in the greatest amount asserted by the Holder of the Claim.

1 b. The Bankruptcy Court may estimate the amount of any Disputed Claim
2 pursuant to Bankruptcy Code section 502(c), in which event the amounts so fixed or liquidated
3 shall be deemed to be Allowed Claims pursuant to Bankruptcy Code section 502(c) for purposes
4 of distribution under the Plan. In lieu of estimating the amount of any Disputed Claim, the
5 Bankruptcy Court or the Plan Administrator may determine the amount to be reserved for such
6 Disputed Claim, or such amount may be fixed by agreement in writing by and between Debtor and
7 the Holder thereof.

8 c. When a Disputed Claim becomes an Allowed Claim, there shall be
9 distributed to the Holder of such Allowed Claim, from the Disputed Claim Reserve and in
10 accordance with the provisions of the Plan, Cash equal to what the Holder would have received on
11 account of the Disputed portion of the Claim which has been Allowed through such a date.

12 d. No Holder of a Disputed Claim shall have any Claim against the Cash
13 reserved for such Claim in the Disputed Claim Reserve until such Disputed Claim shall become an
14 Allowed Claim. In no event shall any Holder of any Disputed Claim be entitled to receive (under
15 the Plan or otherwise) any payment which is greater than the amount reserved for such Claim
16 pursuant to the Plan or, except as otherwise permitted under the Plan, of interest or other
17 compensation for delays in distribution. In no event shall the Plan Administrator have any
18 responsibility or liability for any loss to or of any amount reserved under the Plan.

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

24 f. As provided in the Plan, the provisions regarding the Disputed Claim
25 Reserve in this Section XI.I.1 shall also apply to the Noteholder Secured Claim Reserve, except
26 where this Section XI.I.1 is inconsistent with Section XI.C.1.

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1 2. Objections to Claims.

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

6 3. Disallowance of Claims Held by Avoidance Action Defendant.

7 All Claims held by persons against whom an Avoidance Action has been asserted shall be
8 deemed disallowed pursuant to Bankruptcy Code section 502(d), and Holders of such Claims may
9 not vote to accept or reject the Plan, both consequences to be in effect until such time as such
10 Avoidance Action against the Holder has been settled or resolved by a Final Order and all sums
11 due to Debtor by the Holder are turned over to the Plan Administrator.

12 4. Time When Distributions Deemed Made.

13 All distributions by check shall be deemed made at the time such check is duly deposited
14 in the United States mail, postage prepaid. All distributions by wire transfer shall be deemed
15 made as of the date the Federal Reserve Bank deems the wire transfer is made.

16 5. Delivery of Distributions and Undeliverable/Unclaimed Distributions.

17 (a) *Delivery of Distributions in General*

18 The Plan Administrator shall make distributions to each Holder of an Allowed Claim by
19 mail as follows: (a) at the address set forth on the proof of Claim Filed by such Holder of an
20 Allowed Claim; or (b) at the address reflected in the Schedules if no proof of Claim is Filed,
21 provided, however, to the extent a Holder of an Allowed Claim notifies the Plan Administrator of
22 a new address, the Distribution shall be sent to that new address.

23 The Plan Administrator may withhold the entire distribution due to any Holder of an
24 Allowed Claim until such time as the Holder provides the Plan Administrator with the information
25 necessary to make a distribution to such Holder in accordance with the Plan and applicable law,
26 and Holders of Allowed Claims who do not provide such information shall be barred from
27 participating in distributions under the Plan.

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(b) *Undeliverable and Unclaimed Distributions*

If the distribution to the Holder of any Allowed Claim is returned as undeliverable, the Plan Administrator shall make reasonable efforts to locate the Holder’s current address and shall send distributions to that address. If, after these efforts, the Plan Administrator is unable to locate the Holder, no further distribution will be made to the Holder unless and until the Plan Administrator is notified in writing of the Holder’s then current address. Subject to the other provisions of the Plan, undeliverable distributions will remain in the possession of the Plan Administrator pursuant to this Section until the earlier of: (i) such time as a distribution becomes deliverable; or (ii) ninety (90) days following the payment in full of all Allowed Claims for which distributions were deliverable. Any undeliverable distributions that are not claimed within ninety (90) days following the payment in full of Allowed Claims for which distributions were deliverable will be transferred to the Plan Administrator.

J. Preservation of Litigation Rights.

Except as otherwise provided in the Plan, all Litigation Rights shall be retained, preserved and vested with Debtor as of the Effective Date. From and after the Effective Date, the Plan Administrator on behalf of Debtor may enforce any and all Litigation Rights that Debtor or the Estate may hold or have against any person or entity, including (1) Avoidance Actions, (2) any legal or equitable rights to subordinate and/or disallow Claims, (3) any causes of action that could be brought by Debtor, whether arising prior to or after the Petition Date, and (4) any and all other claims, rights, or causes of action of any kind or nature of Debtor or the Estate that may exist under applicable bankruptcy or non-bankruptcy law. To the extent any Litigation Rights are already pending on the Effective Date, the Plan Administrator may continue the prosecution of such Litigation Claim. Upon the Effective Date, the Plan Administrator as the sole officer and director of Debtor shall have standing to assert any and all Litigation Rights and/or defenses vested in Debtor.

1 **K. Amendment of Debtor’s Organizational Documents.**

2 Upon the Effective Date, Debtor’s organizational documents shall be deemed amended to
3 prohibit the issuance of nonvoting equity securities, as required by Bankruptcy Code
4 section 1123(a)(6).

5 **L. Dissolution of Debtor.**

6 Once the Plan Administrator has carried out his or her duties under the Plan, the Plan
7 Administer shall be discharged and Debtor shall be dissolved and Debtor’s charter or equivalent
8 thereof shall be revoked.

9 **XII.**

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

11 **A. Assumption.** On the Effective Date, pursuant to Bankruptcy Code section 1123(b)(2),
12 Debtor shall assume and assign to the Successful Bidder (or to the Back-Up Bidder, if applicable),
13 the executory contracts and unexpired leases of Debtor that: (a) have been expressly identified in
14 the Plan or in a Plan supplement for assumption, (b) are subject to a motion for assumption, or
15 (c) are identified in the Successful Bid (or the Back-Up Bid, as applicable). Each executory
16 contract and unexpired lease to be so assumed shall include any modifications, amendments and
17 supplements to such agreement. Promptly following the approval of a sale at the Confirmation
18 Hearing, Noteholder and Debtor shall file a notice of assumption (the “Notice of Assumption”)
19 that lists all of the foregoing executory contracts and unexpired leases of Debtor that are to be
20 assumed under Plan. Noteholder and Debtor may, if they choose, also file a Notice of Assumption
21 at an earlier date, subject to modification after the purchase agreement for Debtor’s Property is
22 executed.

23 **B. Rejection.** Except as set forth in Article VI of the Plan or the Notice of Assumption, on the
24 Effective Date, pursuant to Bankruptcy Code Section 1123(b)(2), the any and all executory
25 contracts and unexpired leases of Debtor not identified in the Notice of Assumption shall be
26 deemed rejected. Any Person asserting any Claim for damages arising from the rejection of an
27 executory contract or unexpired lease of Debtor under the Plan shall file such Claim on or before
28 the Rejection Claim Bar Date, or be forever barred from: (a) asserting such Claim against Debtor

1 or Debtor's assets (including the Hotel Property sold in the Auction, or the Auction Proceeds) ,
2 and (b) sharing in any distribution under the Plan.

3 **C. Assumption Obligations.** All Assumption Obligations, if any, shall be satisfied by a Cash
4 payment made out of the escrow established for the sale of the Hotel Property in the amount
5 specified as the cure amount in the Notice of Assumption, unless an objection to such proposed
6 cure amount is filed with the Bankruptcy Court and served on counsel to Noteholder and counsel
7 to Debtor within fourteen (14) days of the filing of the Notice of Assumption and the Bankruptcy
8 Court, after notice and hearing, determines that Debtor is obligated to pay a different amount
9 under Bankruptcy Code section 365, in which case, Noteholder and Debtor shall have the right to
10 remove such executory contract or lease from the list of assumed contracts, or, if following the
11 Effective Date, file a motion within ten (10) days after such determination to seek an order of the
12 Bankruptcy Court rejecting such executory contract or unexpired lease. Any Person that fails to
13 object to the Assumption Obligation specified in the Notice of Assumption on or prior to the date
14 that is fourteen (14) days following the filing of the Notice of Assumption shall be forever barred
15 from: (a) asserting any other, additional or different amount on account of such obligation against
16 Debtor, the Estate, or the assets of Debtor or the Estate, and (b) sharing in any other, additional or
17 different distribution under the Plan on account of such obligation. If Noteholder and Debtor elect
18 to file a Notice of Assumption before a sale of the Hotel Property is approved, which Notice is
19 then amended and modified as necessary after the sale of the Hotel Property is approved by the
20 Bankruptcy Court, then a counterparty to an assumed contract or lease shall be afforded an
21 additional fourteen (14) days following the filing of the amended Notice of Assumption to object
22 to the Assumption Obligation if, and only if, the amount of the Assumption Obligation on the
23 amended Notice of Assumption is lesser than on the original Notice of Assumption, or if the
24 executory contract or unexpired lease appears for the first time on the amended Notice of
25 Assumption. If the treatment of the executory contract or unexpired lease on the amended Notice
26 of Assumption is the same as that on the original Notice of Assumption, then no additional time to
27 object to the Assumption Obligation shall be afforded to the non-debtor counterparty.

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1 **D. Effect of Confirmation Order.** The Confirmation Order shall constitute an order of the
2 Bankruptcy Court: (i) approving, as of the Effective Date, the assumption or rejection pursuant to
3 Bankruptcy Code sections 365(a) and 1123(b)(2), of all executory contracts and unexpired leases
4 identified under Article VI of the Plan and/or the Notice of Assumption. The contracts and leases
5 identified in the Plan and the Notice of Assumption will be assumed or rejected, respectively, only
6 to the extent that such contracts or leases constitute pre-petition executory contracts or unexpired
7 leases of Debtor, and the identification of such agreements under the Plan does not constitute an
8 admission with respect to the characterization of such agreements or the existence of any
9 unperformed obligations, defaults, or damages thereunder. The Plan does not affect any executory
10 contracts or unexpired leases that: (a) have been assumed, rejected or terminated prior to the
11 Confirmation Date, or (b) are the subject of a pending motion to assume, reject or terminate as of
12 the Confirmation Date.

13 **E. Modifications to Notice of Assumption.** Noteholder and Debtor shall have the right, any
14 time prior to the Effective Date, to make additions, deletions, modifications and/or other revisions
15 to the identification of executory contracts and leases to be assumed or rejected in the Notice of
16 Assumption; provided, however, that any party to such contract or lease or affected by such action
17 shall be provided notice of such action and an opportunity to object, and if any objection is filed,
18 such action will not be effective until such objection is resolved by the parties or by order of the
19 Bankruptcy Court.

20 **XIII.**

21 **EFFECT OF CONFIRMATION OF PLAN**

22 **A. No Discharge of Debtor.**

23 As provided in Bankruptcy Code section 1141(d)(3), confirmation and effectiveness of the
24 Plan shall not release or discharge Debtor from any liabilities or obligations whatsoever, whether
25 related to, or arising from, the Case or otherwise.

26
27 **B. Binding Effect.**

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1 The rights afforded under the Plan and the treatment of all Claims and Interests under the
2 Plan shall be the sole and exclusive remedy on account of such Claims against, and Interests in,
3 the Estate and/or Debtor, including any interest accrued on such Claims from and after the Petition
4 Date or interest which would have accrued but for the commencement of the Case. Confirmation
5 of the Plan shall bind and govern the acts of the Estate, Debtor, and all holders of all Claims
6 against, and Interests in the Estate and/or Debtor, whether or not: (i) a proof of Claim or proof of
7 Interest is filed or deemed filed pursuant to Bankruptcy Code section 501; (ii) a Claim or Interest
8 is allowed pursuant to Bankruptcy Code section 502, or (iii) the holder of a Claim or Interest has
9 accepted the Plan.

10 **C. Revesting of Property in Debtor.**

11 Upon the Effective Date, title to all assets of the Estate remaining after the closing of the
12 sale of the Hotel Property shall revest in Debtor for the purposes contemplated under the Plan and
13 shall no longer constitute property of the Estate. Except as otherwise provided in the Plan, upon
14 the Effective Date, all assets of the Estate shall be free and clear of all Claims and Interests,
15 including Liens, charges or other encumbrances of creditors of Debtor.

16 **D. Permanent Injunction.**

17 Except as provided in the Plan or in the Confirmation Order, as of the Confirmation Date,
18 all Persons that have held, currently hold or may hold a Claim, Interest or other debt or liability
19 that is stayed, impaired or terminated pursuant to the terms of the Plan are permanently enjoined
20 from taking any of the following actions against the Plan Administrator, Debtor or their property
21 on account of all or such portion of any such Claims, Interests, debts or liabilities that are stayed,
22 impaired or terminated: (a) commencing or continuing, in any manner or in any place, any action
23 or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any
24 judgment, award, decree or order, (c) creating, perfecting or enforcing any lien or encumbrance;
25 (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or
26 obligation due; and (e) commencing or continuing, in any manner or in any place, any action that
27 does not comply with or is inconsistent with the provisions of the Plan. Unless otherwise provided
28 in the Plan or the Confirmation Order, all injunctions and stays provided for in the Case pursuant

1 to Bankruptcy Code sections 105 and 362 or otherwise in effect on the Confirmation Date, shall
2 remain in full force and effect until the Effective Date. From and after the Effective Date, except
3 as provided in the Plan or in the Confirmation Order, all Persons are permanently enjoined from,
4 and restrained against, commencing or continuing in any court any suit, action or other
5 proceeding, or otherwise asserting any claim or interest, (a) seeking to hold (i) the Plan
6 Administrator or Debtor, or (ii) the property of the Plan Administrator or Debtor, liable for any
7 Claim, obligation, right, interest, debt or liability that has been addressed or released pursuant the
8 Plan.

9 **E. Exculpation and Reliance.**

10 Noteholder and its Agents shall not be liable, other than for gross negligence or willful
11 misconduct, to any holder of a Claim or Interest or any other entity with respect to any action,
12 omission, forbearance from action, decision, or exercise of discretion taken at any time after the
13 Petition Date in connection with the Case or the negotiation, formulation, development, proposal,
14 disclosure, confirmation or implementation of the Plan. Noteholder and its Agents may
15 reasonably rely upon the opinions of its counsel, accountants, and other experts and professionals
16 and such reliance, if reasonable, shall conclusively establish good faith and the absence of gross
17 negligence or willful misconduct; *provided, however*, that a determination that such reliance is
18 unreasonable shall not, by itself, constitute a determination or finding of bad faith, gross
19 negligence or willful misconduct.

20 **XIV.**

21 **BEST INTERESTS OF CREDITORS AND FEASIBILITY**

22 **A. The “Best Interests” Test**

23 In addition to the other requirements described in this Disclosure Statement, the
24 Bankruptcy Code requires that a chapter 11 plan satisfy the “best interests of creditors” test (the
25 “Best Interests Test”). Under this test, if the holder of an allowed claim or allowed interest is in an
26 impaired class and does not vote to accept the plan, that holder must receive or retain property of a
27 value not less than the amount that such entity would receive or retain if Debtor was liquidated
28 under chapter 7 of the Bankruptcy Code. In a chapter 7 case, a debtor’s assets are typically sold

1 by a chapter 7 trustee. Secured creditors are paid first from the sales proceeds of property on
2 which the secured creditors have liens. Any remaining proceeds from the sale of estate property
3 are next distributed to satisfy administrative claims, including a fee to the trustee. Unsecured
4 creditors are then paid from any remaining sales proceeds according to the priorities set forth in
5 the Bankruptcy Code. Unsecured creditors with the same priority share on a pro rata basis with
6 other unsecured creditors of the same priority. Finally, interest holders receive any remaining
7 proceeds on a pro rata basis with other interest holders.

8 In order to confirm the Plan, the Bankruptcy Court must find that Creditors and Interest
9 Holders in an impaired Class who do not accept the Plan will receive at least as much under the
10 Plan as they would receive under a chapter 7 liquidation. Here, Classes 2, 4, 5, and 6 are
11 impaired.

12 Holders of Claims in Classes 4 and 5 may realize a greater recovery greater under the
13 terms of the Plan than in a chapter 7 liquidation because these creditors likely would suffer a
14 deficiency in a chapter 7 liquidation, leading to no distribution for the Holders of these Claims.
15 Under the Plan, they will receive a distribution from the proceeds of the sale of the Hotel Property
16 after allowance of their Claims. As such, there is no reason to believe that Creditors of Debtor
17 would receive more in a chapter 7 liquidation than they would receive under the Plan. Further, the
18 Class 6 equity holders likely will receive nothing under a chapter 7 liquidation or under the terms
19 of the Plan.

20 In a chapter 7 liquidation, Noteholder would likely foreclose on the Hotel Property, which
21 would leave no source of assets in the Debtor's Estate for distribution to creditors. In the Debtor's
22 prior plans and disclosure statements in this Case, the Debtor has asserted that the funds recovered
23 through avoidance actions and the payments on accounts receivable would be minimal. The
24 majority of Debtor's accounts and notes receivable are owed by its affiliates and insiders.
25 According to the Debtor's prior plans and disclosure statements, these entities, except for ARPCO
26 and the Ogilvies, are unable to make payments on these receivables. Certain entities have no
27 assets (Stonebridge, Hotel Investors, Bay Colony III, Adobe Investors, BWS, Inc., and DSC, Inc.).
28 Others are in default on their loans with their secured creditors (Monte Vista Apartment Homes,

1 Maple Grove, Orchard Heights Investors, II, PBC Inc., PBP LP and Northstate Equities) and are
2 facing foreclosure. Pfeiffer Ranch Investors Inc.'s secured creditor has foreclosed on its assets.
3 The Debtor has also asserted that Alan and David Pinn have no unencumbered assets, and no net
4 worth other than exempt assets.

5 In its prior plans and disclosure statements, the Debtor has also asserted that pursuing
6 avoidance actions against Debtor's affiliates would be unproductive for similar reasons, *i.e.*,
7 Pfeiffer Ranch Investors' secured creditor foreclosed on its assets; Maple Grove and PBP LP are
8 in default on their loans from their secured creditors; Pfeiffer Ranch Investors II has no assets.
9 The Debtor has also stated that it does not expect significant recoveries from avoidance actions
10 against non-insider creditors because these payments were generally made by trade vendors in the
11 ordinary course of business.

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

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

24 **B. Feasibility**

25 The Bankruptcy Code requires that, in order for the Plan to be confirmed by the
26 Bankruptcy Court, it must be demonstrated that consummation of the Plan is not likely to be
27 followed by the liquidation or the need for further financial reorganization of Debtor, unless such
28 liquidation or reorganization is proposed in the Plan. "The feasibility test is firmly rooted in

1 predictions based on objective fact and looks at the probability of actual performance of the
2 provisions of the proposed plan.” *In re Sound Radio, Inc.*, 93 B.R. 849, 855 (Bankr. D.N.J. 1988).

3 The sale as described herein and in the Plan will be on a set date following what has been
4 an extensive marketing process of the Hotel Property by Eastdil. Noteholder has agreed to be the
5 stalking horse bidder, but it is likely that at least one other Qualified Bidder will participate in the
6 Auction. The sale of the Hotel Property would likely result in funds in an amount Noteholder
7 believes will be sufficient to pay Holders of Allowed Claims in full on the later of the Effective
8 Date or the date their Claim becomes Allowed. Therefore, the Plan is clearly feasible.

9 XV.

10 RISK FACTORS

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

13 If no Qualified Bidders bid on the Hotel Property at the Auction, there may not be
14 sufficient Auction Proceeds to make any distributions to Holders of Allowed Claims and Interests
15 in Classes 5 and 6.

16 If the Successful Bidder and any Back-Up Bidder fail to close, the Plan will likely be
17 withdrawn.

18 Also, during the due diligence period provided for as part of the sale process, bidders may
19 discover negative information about the state of the Hotel Property, including information about
20 environmental contamination, though could impact the value of the Hotel Property and the ability
21 to sell it through the Plan or otherwise.

22 XVI.

23 CERTAIN FEDERAL INCOME TAX AND OTHER TAX CONSEQUENCES 24 OF PLAN

25 The following discussion is a summary of certain U.S. federal income tax consequences of
26 the Plan to Debtor. This discussion is based on the Internal Revenue Code, Treasury Regulations,
27 judicial decisions and published administrative rules and pronouncements of the IRS as in effect
28 on the date hereof. Due to the possibility of changes in the law and the potential for disputes as to

1 legal and factual matters with the IRS, the tax consequences described in the Plan are subject to
2 significant uncertainties. No legal opinions have been requested from counsel with respect to any
3 tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to
4 any of the issues discussed below. Furthermore, legislative, judicial or administrative changes
5 may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and
6 conclusions set forth below as well as the tax consequences to Debtor.

7 **THE FOREGOING IS INTENDED ONLY TO BE A SUMMARY OF TAX**
8 **CONSEQUENCES TO DEBTOR AND IS NOT INTENDED TO CONSTITUTE A**
9 **DISCUSSION OF TAX CONSEQUENCES APPLICABLE TO HOLDERS OF CLAIMS**
10 **AND INTERESTS. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE**
11 **PLAN ON HOLDERS OF CLAIMS AND INTERESTS MAY BE COMPLEX. EACH**
12 **HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT SUCH HOLDER'S**
13 **TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, AND OTHER**
14 **TAX CONSEQUENCES APPLICABLE TO SUCH HOLDERS UNDER THE PLAN.**

15 **XVII.**

16 **RECOMMENDATION AND CONCLUSION**

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

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