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9 Attorneys for Official Committee

10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **IN AND FOR THE DISTRICT OF ARIZONA**

12 In re:

13 Z'Tejas Scottsdale, LLC, et al.,  
14 Debtors.

15 Joint Administration With:

16 Z'Tejas 6th Street, LLC  
17 Z'Tejas Avery Ranch, LLC  
18 Z'Tejas Bellevue, LLC  
19 Z'Tejas Bethany Home LLC  
20 Z'Tejas Chandler, LLC  
21 Z'Tejas Costa Mesa, LLC  
22 Z'Tejas GP, LLC  
23 Z'Tejas Grill Gateway, L.L.C.  
24 Z'Tejas Holdings, Inc.  
25 Z'Tejas, Inc.  
26 Z'Tejas La Cantera, LLC  
Z'Tejas LP, LLC  
Z'Tejas of Arboretum, LLC  
Z'Tejas Restaurant Holdings, LP  
Z'Tejas Salt Lake City, LLC  
Z'Tejas Summerlin, LLC  
Z'Tejas Tempe, LLC  
Taco Guild Osborn LLC

Case No.: 2:15-bk-09178-PS

Chapter 11

Joint Administration With Case Nos.:

2:15-bk-09180-PS  
2:15-bk-09184-PS  
2:15-bk-09188-PS  
2:15-bk-09193-PS  
2:15-bk-09194-PS  
2:15-bk-09195-PS  
2:15-bk-09198-PS  
2:15-bk-09200-PS  
2:15-bk-09201-PS  
2:15-bk-09203-PS  
2:15-bk-09205-PS  
2:15-bk-09207-PS  
2:15-bk-09208-PS  
2:15-bk-09210-PS  
2:15-bk-09212-PS  
2:15-bk-09213-PS  
2:15-bk-09214-PS  
2:15-bk-09215-PS

This pleading applies to:

- All Debtors  
 Specified Debtors

**COMMITTEE'S OMNIBUS REPLY IN  
SUPPORT OF MOTION TO  
CONVERT CASES TO CHAPTER 7  
AND FOR OTHER RELATED RELIEF**

1 **Hearing Date: January 12, 2016**  
2 **Hearing Time: 1:30 P.M.**

3 The Official Committee of Unsecured Creditors (the “Committee”) hereby submits  
4 this Reply to the pleadings filed by various parties in response to its motion (the “Motion”)  
5 for entry of an order converting these cases to cases under Chapter 7 of the Bankruptcy  
6 Code and granting other related relief.<sup>1</sup>

7 ***Preliminary Statement***

8 None of the objections to the Motion go to the ultimate conversion of the cases, only  
9 to the timing of the conversion. The Committee filed the Motion when it did because it  
10 sought to conserve the estate’s remaining resources, and it was unable, through negotiation,  
11 to reach a mutually-acceptable agreement with the Debtors to limit certain post-sale  
12 expenditures.

13 Since filing the Motion, the Committee has engaged in communications with the  
14 Debtors to discuss their competing views about the timing of conversion and associated  
15 issues. Those discussions have been fruitful, and common ground has been reached  
16 regarding various items. For example, the Committee and Debtors agree that there are  
17 good reasons for certain things to occur prior to the conversion date, including the  
18 processing of a motion for payment of Code §503(b)(9) claims; the processing of final  
19 professional fee applications; the completion of the liquor license transfers and assignment  
20 of the leases; and the payment of any remaining cure amounts in connection with those  
21 leases. Completing these tasks pre-conversion will save a considerable amount of money,  
22 considering the commission that a Chapter 7 trustee would charge if it made those  
23 distributions post-conversion. In that context, the Committee and the Debtors have reached  
24 agreement on procedures calling for the completion of these tasks in time for a February  
25

26 <sup>1</sup> Unless otherwise stated, capitalized terms used herein shall have the same meaning as those used in the Motion.

1 15, 2016 conversion of the cases; and the two parties have worked cooperatively on a  
2 proposed order to effectuate that.

3 The Committee has negotiated a resolution with the Debtors embodied in the  
4 proposed form of order attached hereto as Exhibit A. As reflected therein, the Debtors  
5 agree to use their best efforts to complete the above open matters on or before February 15,  
6 2016. If they are not completed by that time, the Debtors may request an extension from  
7 the Committee. If the Committee does not agree, then the Debtors may request an  
8 extension from the Court by filing a separate motion on or before February 15, 2016.

9 ***Objection Filed by Cornbread Ventures, LP (“Cornbread”) and Joinder therein filed by***  
10 ***Macerich Company.***<sup>2</sup>

11 Cornbread does not take issue with the conversion of these cases, only the timing of  
12 the conversion. Specifically, it asserts that conversion should not occur “until all liquor  
13 licenses have been transferred and all Restaurant Leases have been assumed and assigned.”  
14 (Cornbread Objection at 2, lines 6-8.) It expects all liquor licenses to be transferred “by the  
15 first or second week of February 2016.” (Id. at 3, lines 13-14.)

16 Cornbread states that it does not know why conversion cannot be postponed until  
17 these steps have occurred. (Cornbread Obj. at 4, lines 8-10). As previously noted, the  
18 Committee is agreeable to extending the conversion of the cases to February 15, 2016 in  
19 order to allow these and the other items to occur. That is expected to provide sufficient  
20 time to allow Cornbread time to complete the transfer of the liquor licenses and send its  
21 Designation Notices pursuant to Sale Order ¶14(c). If the assignments are not completed  
22 by February 15, the proposed order contains a procedure for the Debtors to request an  
23 extension. (See Exhibit A.)  
24  
25

26 \_\_\_\_\_  
<sup>2</sup> Cornbread was given an extension to file its objection. Macerich was not given an extension; but its  
Joinder, which was filed late – on January 5, 2016 – does not add anything to Cornbread’s Objection.

1 While this presumably resolve's Cornbread's objection, the Committee will  
2 respond, out of an abundance of caution, to certain to certain other points raised by  
3 Cornbread.

4 Cornbread asserts that the Debtors would be in breach of the APA if the cases are  
5 converted before the liquor licenses are transferred. (Id. at 3, line 19.) The Committee  
6 disagrees. It is Cornbread's responsibility to take the necessary steps to obtain government  
7 authorization of the liquor license transfers; and all that is still needed from the Debtors, at  
8 most, is a written authorization. The Committee sees no reason why a Chapter 7 trustee is  
9 not an appropriate bankruptcy estate representative to provide that. Nothing in the APA or  
10 Sale Order prevents that. Nor do they prohibit conversion of the cases prior to the  
11 completion of that process. On the contrary, the Sale Order expressly contemplates the  
12 possibility of a conversion of the cases to Chapter 7 and states that the APA and Sale Order  
13 "shall be binding" notwithstanding conversion and, further, that it "shall be binding upon  
14 ... any chapter 7 ... trustee...." [Doc 177 at p. 18, lines 19-28.]<sup>3</sup> In sum, nothing in the  
15 APA or Sale Order prevent a chapter 7 trustee from completing any of the Debtors'  
16 remaining obligations under the APA or Sale Order.

17 Cornbread also asserts that having approved the form of the Sale Order, the  
18 Committee should not now be heard to complain about "what is currently happening." (Id.  
19 at 4, lines 23-27). The Sale Order, however, does not prohibit the conversion of the cases  
20 or proscribe or regulate, in any fashion, the timing of conversion. Nor did the Sale Order  
21 disclose, or the Committee know, the full nature and extent of the post-Sale expenditures  
22 which the Debtors wished to make.<sup>4</sup>

23  
24 <sup>3</sup> Additionally, the APA provides that it "shall bind and inure to the benefit of the respective ... successors  
25 and assigns of the Parties hereto. [APA Section 16.11, Doc. 175 at 28].

26 <sup>4</sup> The Committee sought disclosure of the Debtors' estimated winddown costs on September 24, 2015 –  
before the Sale Order was entered – but the Committee did not receive that information until October 22,  
2015 – after the Sale Order was entered.

1 ***Limited Objection filed by Pavilion Holdings, LLC (“PH”)***

2 PH also does not object to the relief requested in the Motion. Instead, it requests  
3 that the Cure Amount [for the PH Lease] be determined and paid, and the Notice [of  
4 assumption and assignment of the PH Lease] be filed by ZTC,<sup>5</sup> before these cases are  
5 converted.” (PH Objection at 3, lines 8-9.) Alternatively, PH requests that if conversion  
6 occurs before the Cure Amount has been paid, that “such conversion should be conditioned  
7 upon the setting aside of the full Cure Amount in a separate account, with the only  
8 condition to payment to PH being the determination of the Cure Amount by the Court.”  
9 (Id. at lines 13-15.)

10 The hearing regarding the PH Cure Amount was held on December 10, 2015 and  
11 taken under advisement; and the Committee fully expects a ruling prior to conversion. The  
12 Committee further expects the Chandler location liquor license to be transferred, the Notice  
13 filed, and the Cure Amount paid prior to conversion.

14 In sum, these things are all expected to occur prior to conversion. Even if they do  
15 not, however, and for the reasons discussed at page 4 *supra*, the Committee does not see  
16 why conversion should prevent their occurrence, including PH’s right to receive any court-  
17 determined Cure Amount.

18 ***Response filed by the United States Trustee (“UST”)***

19 In its Response, the UST also does not object to the conversion of these cases.  
20 Rather, she objects to that portion of the related relief requesting that (i) the Committee be  
21 allowed to “continue in effect” post-conversion (UST Response at 2) and (ii) “the court ...  
22 appoint a second (additional) hybrid trustee.” (UST Response at 3, lines 14-15).

23 As to (i), the Committee hereby withdraws its request to continue post-conversion.  
24 As the UST points out, Code §705 authorizes the formation of a Chapter 7 Creditors’  
25  
26

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<sup>5</sup> ZTC is the entity formed by Cornbread Ventures to own and operate the Z’Tejas Chandler location.

1 Committee; and the Committee deems that (and other creditor rights upon conversion) to  
2 be sufficient.

3 As to (ii), the Committee has not asked *the court* to appoint a second trustee. The  
4 Committee has (or, prior to conversion, will have) appointed the GUC Trustee to see to the  
5 distribution of the GUC Trust Account funds for the benefit of non-insider general  
6 unsecured creditors and thereby implement the court-approved Settlement.<sup>6</sup>

7 Nor has the Committee requested that the GUC Trustee “be granted duties which  
8 would either be taken away from or shared with the Chapter 7 trustee.” (UST Response at  
9 3, lines 18-19.) The Committee has neither requested that any duties be “taken away  
10 from” the Chapter 7 trustee or “shared” with the GUC Trustee.<sup>7</sup> There will be no effect on  
11 the Chapter 7 trustee’s ability to object to claims or independently exercise any other rights  
12 or responsibilities. The Committee merely has requested that the Court confirm that the  
13 GUC Trustee has the right to object to claims against the Debtors’ estates – the same right  
14 that any creditor or other party in interest otherwise would have.

15 The Committee believes that the GUC Trustee would have such standing as a “party  
16 in interest,” in any event, to bring such claim objections pursuant to Bankruptcy Code §  
17 502(a). The term “party in interest,” is not limited by the small list of examples, or  
18 otherwise defined, in Code §502(a) or elsewhere in the Bankruptcy Code. Courts have  
19 defined “party in interest” as one who “has a sufficient stake in the proceeding as to require  
20 representation.” *See, e.g., In re Amatex Corp.*, 755 F.2d 1034 (3d Cir.1985)(holding that  
21 “future claimants” were parties in interest). A party with a contractual duty to determine  
22

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23 <sup>6</sup> The Settlement provided that from the proceeds of the Sale in which KRI held a first priority security  
24 interest, \$250,000 would be paid and go into a trust account for the benefit of non-insider general unsecured  
25 creditors (the “GUC Trust Account”). The Settlement was approved by the court’s order dated November  
26 16, 2015 [Doc. 234], and the payment was made. Without limitation, the court’s order authorizes the  
parties “to take such steps as may be necessary or appropriate to implement” it. Nowhere in its Response  
does the UST argue that the Committee may not do so.

<sup>7</sup> The GUC Trustee will not receive any fees from, or owe any duties to, the bankruptcy estate.

1 the validity of claims and distribute funds in accordance therewith has a sufficient interest  
2 in the litigation and thereby qualifies as a party in interest. *See, e.g., In re Black, Davis,*  
3 *and Shue Agency, Inc.* 460 B.R. 407 (Bankr. M. D. Pa. 2011)(holding that insurance  
4 company with contractual duty to contest claim was a party in interest with standing to  
5 object); *see also, In re Highway Technologies, Inc.,* Case No. 13-11326 (KJC)(Bankr. D.  
6 Del. Dec. 20, 2013)(ordering that a liquidating trustee selected by the creditors' committee  
7 had standing to object to claims upon conversion of the debtors' chapter 11 cases to  
8 chapter 7)[Docket No. 812].

9 The GUC Trustee appointed by the Committee will ensure that unsecured claims  
10 that have been satisfied (through, for example, first-day orders and other orders) will be  
11 expunged and other invalid, duplicative, or overstated claims will be objected to. As a  
12 result, the GUC Trustee will ensure that the GUC Trust Account funds will be maximized  
13 for the benefit of general unsecured creditors. It is important to ensure that the GUC  
14 Trustee has standing because he is agreeing to accept responsibility for making a *pro rata*  
15 distribution to the holders of valid claims and objecting to any claims which appear invalid.  
16 That is a "sufficient stake" to make it a party in interest. *See Id.*

17 Notably, the Debtors (through counsel) have represented to the Committee that they  
18 support the request to ensure that the GUC Trustee has standing to object to claims. They  
19 (like the Committee) believe that by allowing the GUC Trustee to review and object to  
20 claims at no cost to the estates, it will help administer them in a more expeditious and  
21 efficient manner.

22 In sum, the Committee believes that the GUC Trustee should be considered a party  
23 in interest who can object to claims under Bankruptcy Code § 502(a); and it merely seeks  
24 the court's confirmation that the GUC Trustee will be entitled to do so, out of an  
25 abundance of caution, so that this process can proceed smoothly and promptly. Doing so  
26 will help implement the Settlement and the court's November 16, 2015 order approving it

1 and authorizing the parties “to take such steps as may be necessary or appropriate to  
2 implement” the provisions of the Settlement [Doc. 234, p. 2, lines 22-23]; and it therefore  
3 would be an appropriate exercise of the court’s equitable power under Bankruptcy Code  
4 §105.

5 ***Concluding Comments***

6 The Committee seeks to maximize the funds remaining in the estate for distribution  
7 to creditors, conserve the estates’ remaining resources, and effectuate the court-approved  
8 Settlement as it relates to the GUC Trust Account funds. Accordingly, the Committee  
9 respectfully requests that the court overrule any and all objections to the Motion.

10 Dated January 8, 2016.

11 SCHNEIDER & ONOFRY, P.C.

12  
13 By /s/ Brian N. Spector

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# Exhibit A

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Chapter 11

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2:15-bk-09213-PS  
2:15-bk-09214-PS  
2:15-bk-09215-PS

This pleading applies to:

- All Debtors  
 Specified Debtors

**ORDER GRANTING MOTION TO  
CONVERT CASES FROM CHAPTER  
11 TO CHAPTER 7**

1           Upon consideration of the motion of the Official Committee of Unsecured  
2 Creditors (the “*Committee*”) to convert the above-captioned cases from chapter 11 to  
3 chapter 7 of the Bankruptcy Code (the “*Motion*”);<sup>1</sup> upon the record in these cases; notice  
4 of the Motion and the hearing thereon having been provided; following a hearing on the  
5 Motion, and good and sufficient cause appearing therefor;

6                           **THE COURT HEREBY FINDS AS FOLLOWS:**

- 7
- 8           A. Notice of the Motion and the hearing thereon was sufficient and proper under the  
9           circumstances.
- 10           B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and  
11           1334.
- 12           C. This is a core proceeding under 11 U.S.C. §157(b).
- 13           D. The Debtors, prior to the granting of relief pursuant to this Order, were debtors  
14           and debtors in possession in these cases pending under chapter 11 of the  
15           Bankruptcy Code.
- 16           E. The Debtors’ chapter 11 cases were not originally commenced as involuntary  
17           cases.
- 18           F. The above-captioned cases were not previously converted to cases under chapter  
19           11 of the Bankruptcy Code.

20                           **THE COURT HEREBY ORDERS AS FOLLOWS:**

- 21           1. The Motion is GRANTED as set forth herein.
- 22           2. The chapter 11 cases of the Debtors shall be converted, pursuant to Bankruptcy  
23           Code §1112, to cases under chapter 7 of the Bankruptcy Code upon satisfaction  
24           of the following conditions (collectively, the “*Conditions*”):

25

26                           \_\_\_\_\_

<sup>1</sup> Unless otherwise defined herein, capitalized terms used herein shall have the same meaning as set forth in the Motion.

- 1 a. The Debtors shall file a motion (the “503(b)(9) Motion”) for payment of  
2 Bankruptcy Code §503(b)(9) claims (the “**503(b)(9) Claims**”) on or  
3 before January 13, 2016. A hearing on the 503(b)(9) Motion shall be held  
4 on February \_\_\_, 2016, at \_\_\_ .m. If approved, the Debtors shall  
5 promptly pay the 503(b)(9) Claims in accordance with the Court’s  
6 disposition of such motion.
- 7 b. The deadline for Debtors’ counsel and Committee’s counsel to file final  
8 fee applications is January 13, 2016. A hearing on such final fee  
9 applications shall be held on February \_\_\_, 2016, at \_\_\_ .m. The Debtors  
10 shall promptly pay the professional fees in accordance with the Court’s  
11 disposition of such final fee applications.
- 12 c. After obtaining the necessary regulatory approvals relating to the  
13 Debtors’ transfer of their liquor licenses, the Debtors shall promptly  
14 effectuate the assignment of their real property leases pursuant to the  
15 “Sale Order” [Docket No. 177] and pay any outstanding cures arising  
16 under such leases.
- 17 d. The Debtors shall promptly complete the filing of their federal and state  
18 tax returns for the tax year ending June 30, 2015.
- 19 e. The Debtors shall promptly complete the audit for 2014 relating to their  
20 terminated 401(k) plan.
- 21 3. The Debtors shall exercise their best efforts to complete the Conditions on or  
22 before February 15, 2016.
- 23 4. If the Conditions are satisfied by February 15, 2016, counsel to the Debtors shall  
24 promptly upon satisfaction of the Conditions file a declaration with the Court  
25 that indicates the Conditions have been satisfied. In connection with the filing of  
26 such declaration, the Debtors and the Committee shall upload a proposed order  
that formally converts the Debtors’ chapter 11 cases to cases under chapter 7.
5. If, and at such time as it becomes apparent that, the Conditions are not going to  
be satisfied by February 15, 2016, counsel to the Debtors shall promptly notify  
counsel to the Committee. If the Debtors believe it will be in the estates’ best  
interest to extend the conversion of these cases beyond February 15, 2016, the  
Committee and Debtors may agree on an extension of the conversion date and

1 file a stipulation that sets forth the terms. Promptly upon satisfaction of the  
2 Conditions, counsel to the Debtors shall file a declaration with the Court that  
3 indicates the Conditions have been satisfied. In connection with the filing of  
4 such declaration, the Debtors and the Committee promptly shall upload a  
5 proposed order that formally converts the Debtors' chapter 11 cases to cases  
6 under chapter 7.

- 6 6. If, for any reason, the Committee and Debtors do not agree to an extension and  
7 the Debtors nevertheless believe that it will be in the estates' best interest to  
8 extend the conversion of the cases beyond February 15, 2016, the Debtors (on or  
9 prior to February 15, 2016) shall file a motion seeking an extension of the  
10 conversion of these cases and, subject to the Court's availability, seek to have it  
11 heard by the court on or before February 18, 2016; and the Court will decide on  
12 whether or not to grant the Debtors' motion to extend the conversion of the cases  
13 and the date of such conversion. In connection with such motion, the Debtors  
14 shall submit a Declaration in support of the motion.
- 13 7. After entry of an order converting the Debtors' chapter 11 cases to cases under  
14 chapter 7, the Debtors shall:
- 15 a. Promptly turn over to the chapter 7 trustee all records and property of the  
16 estate under its custody and control as required by Bank. Rule 1019(4).
  - 17 b. Within 14 days after entry of an order converting the cases, file a  
18 schedule of unpaid debts incurred after the Petition Date of the cases  
19 including the name and address of each creditor, as required by Bank.  
20 Rule 1019(5).
  - 21 c. Within 30 days after entry of an order converting the cases, file and  
22 transmit to the U.S. Trustee a final report and account as required by  
23 Bank. Rule 1019(5)(A).
- 22 8. To the extent the Debtors has any employees, a representative of the Debtors,  
23 shall appear at the first meeting of creditors after conversion of the Debtors'  
24 cases to chapter 7 pursuant to sections 341(a) and 343 of the Bankruptcy Code.
- 25 9. After conversion of these cases to chapter 7, GUC Trustee, the liquidating  
26 trustee selected by the Committee to administer the funds paid to the Committee  
in connection with the Settlement [Docket Nos. 190 and 234], shall have

1 standing to prosecute claim objections with respect to the claims filed against the  
2 Debtors' estates.

3 10. The Court retains jurisdiction to interpret and enforce the terms of this Order.  
4

5 **\*DATED AND SIGNED AS INDICATED ABOVE\***  
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