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10 Attorneys for Debtor  
11 8110 Aero Drive Holdings, LLC

12 **UNITED STATES BANKRUPTCY COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 In re  
15 8110 Aero Drive Holdings, LLC  
16 Debtor.

CASE NO. 16-03135-MM

Chapter 11

**[PROPOSED] SECONDED AMENDED  
DISCLOSURE STATEMENT FILED BY  
DEBTOR**

Date: January 4, 2017  
Time: 11:00 a.m.  
Dept: 1  
Judge: Hon. Margaret Mann

**I.**

**EXECUTIVE SUMMARY**

8110 Aero Drive Holdings, LLC (“Debtor” or “Proponent”), debtor and debtor-in-possession in the above-captioned Chapter 11 bankruptcy case, hereby submits this Disclosure Statement pursuant to Section 1125<sup>1</sup> of the Bankruptcy Code.<sup>2</sup> Debtor is the Proponent of its

<sup>1</sup> All further statutory references will be to Title 11 of the United States Code, the Bankruptcy Code, unless otherwise noted.

<sup>2</sup> A list of defined words, which are capitalized in this Disclosure Statement, is attached as Exhibit A of the Plan, and incorporated herein by this reference.

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1 Plan of Reorganization dated December 9, 2016 (the “Plan”), a true and correct copy of which is  
2 attached to this Disclosure Statement as **Exhibit “A.”**

3 The Plan provides for the reorganization of Debtor as a going concern. Debtor has  
4 procured capital and loan commitments from: (i) Debtor’s pre-petition member The Burni  
5 Family Trust dated October 10, 2007 and its companies (“Burni Family Trust”), and (ii) member  
6 The Ralph Burni Trust dated April 9, 1989 and its companies (“Burni Trust”) (collectively, the  
7 “Members”) to complete the capital improvements needed on Debtor’s property, cure the default  
8 with its secured lender and insure unsecured creditors are paid 100% of their claims under a plan,  
9 that, in Debtor’s opinion, is the best way to ensure that all of its creditors will be paid all of their  
10 Allowed Claims. WHILE THE BUSINESS TERMS AND PROVISIONS DESCRIBED  
11 HEREIN ARE GENERALLY ACCURATE, NEITHER SUCH TERMS NOR THE PLAN IS  
12 BINDING ON THE INVESTORS UNLESS AND UNTIL DEFINITIVE DOCUMENTATION  
13 IMPLEMENTING THE TERMS HEREIN AND THE PLAN AGREEABLE TO THE  
14 INVESTORS IS FINALIZED AND FULLY EXECUTED, AND THE PLAN IS CONFIRMED.

15 Subject to the preceding paragraph, the Plan contemplates an infusion of Cash of  
16 approximately \$1,800,000 (“Cash Contribution”). The Cash Contribution will be made up of  
17 two parts, a \$500,000 capital contribution, in exchange for a retention by the Members of a  
18 100% membership interest in Reorganized Debtor and a \$1,300,000 loan) from the Members  
19 wholly owned companies (“Affiliates”) to Debtor, which will not be repaid until all creditors  
20 have been paid under the plan . The Cash Contribution to Debtor will be paid within ten (10)  
21 Business Days after the Confirmation Date or sooner as may be needed to complete capital  
22 improvements, and will be used by Debtor to: (1) reinstate due and owing unpaid interest and  
23 principal, unfunded reserve, unpaid and allowable costs of approximately \$650,000 of the First  
24 Trust Deed holder on Debtor’s Hotel in an amount to be determined by the Court; (2)complete  
25 the renovations remaining on Debtor’s Hotel, costing approximately \$883,000; (3) reserve for  
26 fees and costs incurred by Professional Persons in pursuit of confirming the Plan, totally  
27 approximately \$157,500 to be paid as agreed to between Debtor and the Professional Persons;  
28 (4) pay an initial \$100,000 pro rata distribution to the Unsecured Priority Creditors on the

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1 Effective Date with the balance owing to Unsecured Priority Creditors and Unsecured Creditors  
2 to be paid over 24 months after the Effective Date of the Plan in quarterly distributions  
3 commencing four months from the Effective Date of \$50,000 per quarter and any additional  
4 sums owed upon the expiration of 24 months will be paid in a lump sum until the Allowed  
5 Unsecured Priority Creditors and Allowed Unsecured Creditors are paid 100% of their claims  
6 without interest .

7 The Plan deems Secured Creditor’s Class 1 Claim an “unimpaired” secured claim which  
8 is not entitled to vote for or against the Plan. As such, any Confirmation Order issued by the  
9 Court confirming the Plan must contain a specific finding that Secured Creditor’s Class 1 Claim  
10 is “unimpaired,” within the meaning of Section 1124, and that all the requirements and  
11 protections of Section 1124, have been applied to, and are in effect regarding, Secured Creditor’s  
12 Class 1 Claim. The most significant provision of the Plan will be the reinstatement of Debtor’s  
13 note with its first priority secured creditor, Wells Fargo, National Association, as Trustee for the  
14 Benefit of the Registered Holders of JPMBB Commercial Mortgage Securities Trust 2013-C-14,  
15 Commercial Mortgage Pass-Through Certificates, Series 2013-C-14 (“Secured Creditor”). On  
16 the Effective Date, Debtor as discussed above will transfer approximately \$650,000 or other sum  
17 deemed to be owing by the Court, of the Cash Contribution to Secured Creditor. It is Debtor’s  
18 position that pursuant to the terms of the Secured Creditor Loan, Debtor will on the Effective  
19 Date of the Plan owe Secured Creditor approximately \$650,000 in unpaid interest, reserve  
20 account funding, reasonable attorney fees and other costs. Such amounts will be paid to Secured  
21 Creditor on the Effective Date or when Debtor and Secured Creditor agree on those sums or the  
22 Court determines those sums that will fully cure and reinstate the Secured Creditor’s Loan. In  
23 contrast, Secured Creditor contends that its Class 1 Claim is impaired under the Plan, which in  
24 and of itself renders the Plan unconfirmable, and also that Debtor owes defeasance fees  
25 (approximately \$2.3 million), default interest (approximately \$600,000), penalties  
26 (approximately \$65,000) and possibly other default related charges to cure the Loan. Debtor  
27 disputes the amounts asserted by Secured Creditor to cure and reinstate the Loan, and responds  
28 that approximately \$650,000, cures all sums properly due to Secured Creditor to cure the Loan.

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1 In order to confirm the Plan, the Confirmation Order must contain a specific finding that Secured  
2 Creditor’s Class 1 Claim is unimpaired within the meaning of Section 1124, and that all the  
3 protections afforded to unimpaired claims by Section 1124 apply to Secured Creditor’s Class 1  
4 Claim.

5 The principal owing on the Loan is approximately \$9,100,000. In the event the amount  
6 of unpaid interest, past due principle, reasonable attorney fees and costs, exclusive of default  
7 interest, penalties, fees, costs and any alleged defeasance fees or prepayment penalties claimed,  
8 necessary to fully reinstate the Loan exceeds \$650,000, the Members will contribute additional  
9 Cash to Debtor to cover these amounts and reinstate the Loan With the Loan reinstated, Debtor,  
10 on the Effective Date of the Plan, will commence making the normal monthly payment due each  
11 month of approximately \$180,000 per month and perform each and every other provision of the  
12 any prepetition Loan Document in effect between Secured Creditor and Debtor, which includes  
13 the funding of any reserve accounts due under the Loan and the payment of rent to Debtor’s  
14 landlord. However, in the event the Court rules that Debtor is obligated to repay the defeasance  
15 fees or prepayment penalties claims, and/or default interest, fees and costs, Debtor will no longer  
16 seek to confirm the Plan, as attached hereto as Exhibit A.

17 The Unsecured Priority Claims will be paid their pro-rata share of the Allowed Claim  
18 amount from the \$100,000 made available through the Cash Contribution on the Effective Date  
19 and after the Unsecured Priority Claims have been paid in full the balance of the claims of the  
20 Unsecured Creditor Claims will be paid in full over 24 months via quarterly payments of  
21 \$50,000.

22 Any portion of the Cash Contribution not transferred to Secured Creditor, used to  
23 renovate Debtor’s property, paid to satisfy Debtor’s Administrative Claims, paid to Unsecured  
24 Priority Claims and Unsecured Creditors or as otherwise reserved in the Plan, will be used for  
25 operating expenses or as otherwise determined by Debtor in its full and absolute discretion.

26 **DEBTOR URGES THAT CREDITORS VOTE TO ACCEPT THE PLAN. BALLOTS**  
27 **ARE DUE BY FEBRUARY 2, 2017 AT 5:00 P.M., PACIFIC TIME.**

28 After carefully reviewing this Disclosure Statement, the Plan and the Plan Documents,

1 please indicate acceptance or rejection of the Plan by voting in favor of or against the Plan on the  
2 enclosed ballot. After voting, return the ballot to counsel for Debtor at the address set forth  
3 on the ballot, by 5:00 P.M., Pacific Time, on February 2, 2017 (the “the Ballot Deadline”).

4 **II.**  
5 **INTRODUCTION**

6 On May 25, 2016 (the “Petition Date”), Debtor filed a voluntary petition for relief under  
7 Chapter 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the  
8 Southern District of California (the “Court”). Chapter 11 allows Debtor, and under some  
9 circumstances, creditors and other parties, to propose a Plan of Reorganization.

10 **A. The Purpose of the Disclosure Statement**

11 Pursuant to § 1125 of the Bankruptcy Code, Debtor has prepared and filed this Disclosure  
12 Statement along with the Plan for the Court’s approval and submission to the holders of Claims  
13 and interests. However, before an acceptance or rejection of a plan may be solicited, the Court  
14 must find that the Disclosure Statement contains “adequate information.”

15 “Adequate Information” is defined in § 1125(a)(1) to mean “information of a kind, and in  
16 sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor  
17 and the condition of the debtor’s books and records, that would enable a hypothetical reasonable  
18 investor typical of the holders of claims or interests of the relevant class to make an informed  
19 judgment about the plan.” *In re Metrocraft Publishing Serv., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga.  
20 1984).

21 **READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW**  
22 **ABOUT: (1) WHO CAN VOTE OR OBJECT; (2) WHAT THE TREATMENT OF YOUR**  
23 **CLAIM IS, (i.e., if your Claim is Contested and what your Claim will receive if the Plan is**  
24 **confirmed) AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM**  
25 **WOULD RECEIVE IN LIQUIDATION; (3) THE HISTORY OF THE DEBTOR AND**  
26 **SIGNIFICANT EVENTS DURING THE BANKRUPTCY; (4) WHAT THINGS THE COURT**  
27 **WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN; (5) WHAT**  
28 **IS THE EFFECT OF CONFIRMATION; AND (6) WHETHER THIS PLAN IS FEASIBLE.**

1           THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE  
2 WITH THE PROVISIONS OF BANKRUPTCY CODE § 1125 FOR DEBTOR’S USE IN  
3 SOLICITING CONSENTS FROM CLAIMANTS TO ITS PROPOSED PLAN OF  
4 REORGANIZATION. NO REPRESENTATIONS CONCERNING DEBTOR, ITS BUSINESS,  
5 OR ASSETS ARE AUTHORIZED OTHER THAN THOSE CONTAINED OR REFERRED TO  
6 HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS OTHER THAN THOSE MADE  
7 OR REFERRED TO HEREIN SHOULD NOT BE RELIED ON. ALTHOUGH EVERY  
8 EFFORT HAS BEEN MADE BY DEBTOR TO BE ACCURATE, DEBTOR’S RECORDS  
9 ARE NOT WARRANTED TO BE WITHOUT INACCURACIES. THIS DISCLOSURE  
10 STATEMENT HAS BEEN MADE EXCLUSIVELY FOR USE IN CONNECTION WITH THE  
11 ABOVE-ENTITLED BANKRUPTCY REORGANIZATION CASE AND SHOULD BE  
12 RELIED UPON ONLY IN CONNECTION WITH THIS CASE.

13           After notice and a hearing, and in accordance with 11 U.S.C. § 1125, Debtor intends  
14 to request that the Court approve this Disclosure Statement as containing information, of a kind  
15 and in sufficient detail, adequate to enable a hypothetical reasonable investor typical of the  
16 holders of Claims against and Interests in Debtor to make an informed judgment with respect  
17 to acceptance or rejection of the Plan.

18           THE COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT WILL NOT  
19 CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS  
20 OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE  
21 PLAN.

22           Please read this Disclosure Statement, the Plan and the Plan Documents in their entirety  
23 prior to voting on the Plan. This Disclosure Statement describes various transactions  
24 contemplated under the Plan. No solicitation of acceptances may be made except pursuant to this  
25 Disclosure Statement and no person has been authorized to disseminate any information  
26 concerning Debtor or its business other than the information contained in this Disclosure  
27 Statement. Parties entitled to vote are urged to study the Plan and the Plan Documents in full and  
28 to consult with legal counsel about the Plan and its effect, including possible tax consequences,

1 upon legal rights.

2 **III.**

3 **CONFIRMATION REQUIREMENTS:**  
4 **VOTE REQUIRED FOR APPROVAL OF THE PLAN**

5 **PERSONS OR ENTITIES CONCERNED WITH THE CONFIRMATION OF THIS**  
6 **PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON**  
7 **CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX.** The following  
8 discussion is intended solely for the purpose of alerting readers about basic confirmation issues,  
9 which they may wish to consider, as well as certain deadlines for filing Claims. Proponent  
10 CANNOT and DOES NOT represent that the discussion contained below is a complete summary  
11 of the law on this topic.

12 **A. Who May Vote or Object**

13 **1. Who May Object to Confirmation of the Plan**

14 Any party in interest may object to the confirmation of the Plan, but as explained below  
15 not everyone is entitled to vote to accept or reject the Plan.

16 **2. Who May Vote to Accept/Reject the Plan**

17 A creditor or interest holder has a right to vote for or against the Plan if that creditor or  
18 interest holder has a Claim which is both (1) allowed or allowed for voting purposes; and (2)  
19 classified in an impaired Class.

20 **a. What Is an Allowed Claim/Interest**

21 As noted above, a creditor or interest holder must first have an Allowed Claim or interest  
22 to have the right to vote. Some creditors have filed proofs of Claim. A creditor or interest  
23 holder with a Contested Claim may vote on the Plan, unless and until such Contested Claim  
24 becomes a Disallowed Claim. Generally, any proof of Claim or interest will be Allowed, unless  
25 a party in interest files an objection to the Claim and the Contested Claim holder establishes his  
26 Claim. When an objection to a Claim or interest is filed, the creditor or interest holder holding  
27 the Claim or interest cannot vote unless the Court, after notice and hearing, either overrules the  
28 objection or allows the Claim or interest for voting purposes.

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1 THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS SET AND  
2 PASSED ON OCTOBER 7, 2016. A creditor or interest holder may have an Allowed Claim or  
3 interest even if a proof of Claim or interest was not timely filed. A Claim is deemed an Allowed  
4 Claim if (1) it is scheduled on Debtor’s Schedules and such Claim is not scheduled as disputed,  
5 contingent, or unliquidated; and (2) no party in interest has objected to the Claim. An interest is  
6 deemed Allowed if it is scheduled and no party in interest has objected to the interest.

7 **b. What Is an Impaired Claim/Interest**

8 As noted above, an Allowed Claim or interest only has the right to vote if it is in a Class  
9 that is impaired under the Plan. A Class is impaired if the Plan alters the legal, equitable, or  
10 contractual rights of the members of that Class. For example, a Class comprised of general  
11 Unsecured Claims is impaired if the Plan fails to pay the members of that Class 100% of what  
12 they are owed in Cash upon confirmation of the Plan.

13 In this Case, Debtor believes that Classes 2, 3, and 5 are impaired. Parties who dispute  
14 Debtor’s characterization of their Claim or interest as being impaired or unimpaired may file an  
15 objection to the Plan contending that Debtor has incorrectly characterized the Class.

16 Section 1124 provides the terms and conditions under which the Court can find that a  
17 Class of Claims can be deemed unimpaired under a Plan. As such, any confirmation Order  
18 approved by the Court must find that Secured Creditor’s Class 1 claim is unimpaired within the  
19 meaning of Section 1124, and that all the protections afforded to creditors in an unimpaired class  
20 by Section 1124 apply to Secured Creditor’s Class 1 Claim.

21 **3. Who Is Not Entitled to Vote**

22 The following types of Claims are not entitled to vote: (1) Claims that have been  
23 Disallowed; (2) Claims entitled to priority pursuant to Bankruptcy Code §§ 507(a)(1), (a)(2) and  
24 (a)(8); and (3) Claims in Classes that do not receive or retain any value under the Plan. Claims  
25 entitled to priority pursuant to Bankruptcy Code §§ 507(a)(1), (a)(2), and (a)(8) are not entitled  
26 to vote because such Claims are not placed in Classes and they are required to receive certain  
27 treatment specified by the Bankruptcy Code. Claims in Classes that do not receive or retain any  
28 value under the Plan do not vote because such Classes are deemed to have rejected the Plan.



EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

**4. Who Can Vote in More than One Class**

A creditor whose Claim has been Allowed in part as a Secured Claim and in part as an Unsecured Claim is entitled to accept or reject a Plan in both capacities by casting one ballot for the Secured part of the Claim and another ballot for the Unsecured part of the Claim.

**5. Votes Necessary to Confirm the Plan**

If impaired Classes exist, the Court cannot confirm the Plan unless at least one (1) impaired Class has accepted the Plan without counting the votes of any Insiders within that Class.

**6. Votes Necessary for a Class to Accept the Plan**

A Class of Claims is considered to have accepted the Plan when more than one-half (1/2) in number and at least two-thirds (2/3) in dollar amount of the Claims which actually voted, voted in favor of the Plan. A Class of interests is considered to have accepted the Plan when at least two-thirds (2/3) in amount of the interest-holders of such Class which actually voted, voted to accept the Plan.

**7. Cram Down**

The Plan may be confirmed even if not accepted by all impaired Classes, if the Court finds that all other requirements of confirmation under § 1129(a) are satisfied and certain additional conditions are met. These conditions are set forth in § 1129(b), and require, generally, a showing that the Plan does not discriminate unfairly and that the Plan is “fair and equitable” with respect to each Class of Claims and interest that is impaired under, and has not accepted, the Plan. In order to be “fair and equitable” as required by § 1129(b), the Plan must provide that Claimants and interest-holders in non-consenting, impaired Classes will either receive or retain on account of their Claims or interests, property of a value, as of the Confirmation Date of the Plan, at least equal to the value of such Claims or interests or, if they receive less than full value, no Class with junior priority will receive anything on account of such junior Claim or interest.

These are complex statutory provisions and this summary is not intended to be a

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1 complete statement of the law. If the Plan is not accepted by an impaired Class or Classes,  
2 Proponent will rely on the “cram down” provisions of § 1129(b) and seek Plan confirmation.

3 **B. The Solicitation Process**

4 **1. The Solicitation Package**

5 The following documents and materials will constitute the solicitation package (the  
6 “Solicitation Package”):

- 7 • A cover letter;
- 8 • The order approving the Disclosure Statement;
- 9 • A Ballot with voting instructions (and a pre-addressed, postage prepaid  
10 return envelope);
- 11 • The Notice of Confirmation Hearing; The approved form of the  
12 Disclosure Statement (with the Plan attached as Exhibit “A” thereto);
- 13 • Any additional material as the Bankruptcy Court may direct, if necessary.

14 **2. Distribution of the Solicitation Package**

15 Debtor will distribute the Solicitation Packages prior to  
16 the Ballot Deadline (the “Solicitation Date”) to all Holders of Claims in the Bankruptcy Case as  
17 of January 19, 2017 in compliance with Bankruptcy Rules 3017(d) and 2002(b). The Solicitation  
18 Package may also be obtained from Debtor’s counsel by (i) writing to Jennifer Duty at Gordon  
19 Rees at 101 W. Broadway, Suite 2000, San Diego, Ca 92101, or (ii) emailing  
20 jduty@gordonrees.com; or for a fee via PACER at <http://www.uscourts.gov>.

21 **3. The Ballot Deadline**

22 The Ballot Deadline is February 2,2017 at 5:00 p.m., Pacific Time. To ensure that a vote  
23 is counted, Holders of Allowed Claims must: (a) complete the Ballot; (b) indicate a decision  
24 either to accept or reject the Plan; and (c) sign and return the Ballot to the address set forth on the  
25 enclosed pre-addressed envelope provided in the Solicitation Package or by delivery by first  
26 class mail, overnight courier or personal delivery, so that all Ballots are actually received no later  
27 than the Ballot Deadline.

28 **4. Voting Procedures**

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1 BEFORE COMPLETING THE BALLOT, PLEASE CAREFULLY READ ALL  
2 MATERIALS THAT MAY ACCOMPANY THE DISCLOSURE STATEMENT, PLAN, PLAN  
3 DOCUMENTS AND BALLOT. AFTER COMPLETING, DATING, AND SIGNING THE  
4 BALLOT, YOUR BALLOT MUST BE DELIVERED TO COUNSEL FOR THE DEBTOR AT  
5 THE FOLLOWING ADDRESS:

6 GORDON & REES

7 Attn: Jennifer Duty

8 101 W. Broadway, Suite 2000

9 San Diego, Ca 92101

10 TO BE COUNTED, A BALLOT WITH AN ORIGINAL SIGNATURE MUST BE  
11 RECEIVED AT THE FOREGOING ADDRESS NO LATER THAN February 2, 2017 AT 5:00  
12 P.M., PACIFIC TIME. IF A BALLOT IS RECEIVED AFTER THE BALLOT  
13 DEADLINE, IT WILL NOT COUNT UNLESS DEBTOR DETERMINES OTHERWISE.  
14 ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM, BUT  
15 THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE  
16 PLAN OR THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE  
17 PLAN, WILL NOT BE COUNTED.

18 It is important to follow the specific instructions provided on each ballot when submitting  
19 a vote.

20 **C. Confirmation Hearing On The Plan**

21 **1. Confirmation Hearing**

22 Section 1128(a) of the Bankruptcy Code requires the Court, after notice, to hold a hearing  
23 on confirmation of a plan of reorganization. The Confirmation Hearing on the Plan is scheduled  
24 for February 6-8, 2017 at 9:30 a.m., Pacific Time, at the United States Bankruptcy Court for the  
25 Southern District of California, United States Courthouse, before the Honorable Margaret M.  
26 Mann. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put  
27 in place additional procedures governing the Confirmation Hearing. The Plan may be modified,  
28

1 if necessary, prior to, or as a result of, the Confirmation Hearing without further notice to parties  
2 in interest.

3 **2. Plan Objection Deadline**

4 Section 1128(b) of the Bankruptcy Code provides that a party in interest may object to  
5 confirmation of a plan. The Court has directed that written objections to confirmation of the  
6 Plan, if any, must be filed with the Court and a copy of such written objections must be received  
7 by counsel for Debtor on or before 5:00 p.m. on February 2, 2017. In accordance with the  
8 Confirmation Hearing Notice filed with the Bankruptcy Court, Plan Objections or requests for  
9 modifications to the Plan, if any, must:

- 10 • Be in writing;
- 11 • Conform to the Bankruptcy Rules and the Local Bankruptcy Rules;
- 12 • State with particularity the basis and nature of the Plan Objection and, if  
13 practicable, a proposed modification to the Plan that would resolve such Plan  
14 Objection; and
- 15 • Be filed, contemporaneously with a proof of service, with the Bankruptcy  
16 Court and served so that it is actually received by the notice parties identified  
17 in the Confirmation Hearing Notice on or prior to the Ballot Deadline.

18 **IV.**

19 **OVERVIEW OF DEBTOR**

20 **A. Description and History of Debtor and Its Business**

21 **1. Pre-Petition Ownership of Debtor**

22 Debtor is a California limited liability company that operates the Four Points by Sheraton  
23 located at 8110 Aero Drive, San Diego, Ca 92123 (the “Hotel”). Debtor leases the real property  
24 from the City of San Diego and is currently in the fourth year of a forty (40) year land lease. The  
25 leases with the City have been amended and extended over the years with the various parties  
26 discussed below. The current lease with Debtor will expire by its own terms in 2052. The Hotel  
27 has 225 rooms and approximately 110 employees. The Hotel is operated by Debtor under  
28 licensing and franchise agreements with the Sheraton, LLC, a wholly owned subsidiary of

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1 Starwood. The Hotel was purchased by the Burni Trust and R & D Properties, LLC (“R&D”) in  
2 2007 with the Burni Trust originally owning 78% and R&D owning 22%. Debtor was formed in  
3 2010 and the property was transferred to Debtor from the Burni Trust and R&D in approximately  
4 2010. Upon the formation of Debtor in 2010, the Burni Trust owned 89% and the Burni Family  
5 Trust owned 11%.

6 In July of 2013, Debtor executed a Note, Deed of Trust and Loan Agreement (“the  
7 Loan”) in favor of Barclays Bank PLC (“Barclays”) in the amount of \$9,500,000 and at the  
8 behest of Barclays created Aero Drive Holdings, Inc. (“Holdings Inc.”) on May 8, 2013 and  
9 transferred a 2% membership interest in Debtor to that entity. As a result of that transfer in  
10 connection with the Barclays loan, the current membership interest of Debtor is owned 87.22%  
11 by the Burni Trust, 10.78% by the Burni Family Trust and 2% by Holdings, Inc.. Barclays  
12 assigned its rights under the Note, Deed of Trust, Loan Agreement and related agreements to  
13 Secured Creditor in August of 2013.

14 Originally, the Burni Trust, a member of Debtor, entered into a license agreement with  
15 Sheraton in January of 2007, whereby Hotel would be allowed to brand itself as a Four Points by  
16 Sheraton Hotel and be able to obtain reservations processed through Sheraton’s system in  
17 exchange for Debtor’s payment of license and franchise fees.<sup>3</sup> The license agreement was  
18 subsequently amended several times, with the most current amendment being the Third  
19 Amendment to the Licensing Agreement (the original agreement and all amendments thereto are  
20 collectively referred to as the “License Agreement”).

21 Prior to the execution of the Third Amendment in November of 2013, Sheraton did an  
22 official inspection of the Hotel and wrote up as part of the Third Amendment a Property  
23 Improvement Plan (“PIP”). Pursuant to the terms of the PIP, Debtor was to make improvements  
24 to the exterior and interior of the Hotel in various phases, all of which were to be completed by  
25 December 2016. At the time the PIP was prepared, Debtor estimated the costs for the  
26 improvements to total approximately \$1.3 million.

27 • **Sheraton Required Use of an Ineffective Management Company**

28 \_\_\_\_\_  
<sup>3</sup> The License Agreement was assigned by the Ralph Burni Trust to Debtor.

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1 In May of 2014, after operating the Hotel as a Four Points by Sheraton for seven years  
2 without a management company, Sheraton notified Debtor that its guest satisfaction scores,  
3 referred to as “LC Scores,” did not reach the required benchmark of 8.0 and that Debtor was in  
4 default of the License Agreement. Throughout Debtor’s operation of the Hotel under the  
5 License Agreement, Sheraton has employed one version or another of its quantification of  
6 overall guest satisfaction to determine if the Hotel is meeting Sheraton’s brand expectations. In  
7 2013, Sheraton shifted the focus from a customer service based model to more a product based  
8 model, placing much more focus on the quality and condition of the Hotel as opposed to the  
9 friendliness and hospitality of the Hotel staff. Prior to Sheraton’s 2013 shift of its guest  
10 satisfaction scoring system, Debtor was meeting its guest satisfaction benchmarks and  
11 obligations under the License Agreement.

12 Upon Debtor’s inability to meet guest scores in 2014, Sheraton declared Debtor in  
13 Default but agreed to forbear on any termination so long as Debtor did or agreed to do certain  
14 things, including the hiring of an outside hotel management company. In this regard the  
15 Forbearance Agreement provides:

- 16 1. Licensor is willing to forbear from exercising its termination rights on or before  
17 December 31, 2014 provided each of the following forbearance conditions are  
18 satisfied:
- 19 • On or before October 1, 2014 License shall have the Hotel operated by a  
20 management company selected by Licensee from Licensor’s current list of  
21 preferred management companies. In addition Licensee shall execute and  
22 cause the management company to execute Licensor’s standard management  
23 consent letter.

24 This requirement was reiterated 20 days later, on September 29, 2014, in the Forbearance  
25 Agreement Amendment.

26 In accordance with Sheraton’s requirements under the terms of the Forbearance  
27 Agreement and Forbearance Agreement Amendment, Sheraton provided Debtor with a list of ten  
28 management companies approved and recommended by Sheraton to operate the Hotel. After

1 reviewing the list and determining that Hotel Management Group, LLC (“HMG”) was the only  
2 management company located in San Diego, Debtor selected HMG from Sheraton’s list to  
3 satisfy Sheraton’s management requirements. HMG began managing the Hotel in November of  
4 2014.

5 At the time HMG started managing hotel operations, the Hotel was still weathering the  
6 storm caused by the recession. This meant that although the Hotel wasn’t making marked  
7 profits, the Hotel was able to pay its operational expenses and consistently make sure its lender,  
8 employees and necessary vendors were being paid. However, once HMG took over operations,  
9 management of the Hotel and the financial stability of the Hotel dramatically declined:

- 10 • Under HMG’s management expenses for the Hotel’s operations increased by  
11 approximately 33-40% with no correlating increase in revenue.
- 12 • Under HMG’s management the Hotel’s catering and events revenue came to  
13 halt as not a single party, banquet or luncheon was booked during the 2015  
14 holiday season when in both the years prior and the upcoming 2016 season the  
15 Hotel’s banquet and catering spaces have been fully booked.
- 16 • Under HMG’s management there was significant turnover of upper  
17 management at the Hotel, including three different general managers in less  
18 than a year and a half, and HMG’s employment of personal who were not  
19 qualified to operate the Hotel.
- 20 • Under HMG’s management HMG did nothing to increase the Hotel’s LC  
21 Scores, despite being brought in to cure the defaults claimed by Sheraton.
- 22 • Under HMG’s management HMG did not allocate the funds or the resources  
23 to complete the PIP required by the Sheraton.
- 24 • Under HMG’s management HMG failed to pay the amounts due to the Hotel’s  
25 lender and the taxes due to the City of San Diego, something Debtor had  
26 always done in the seven years it had been operating the Hotel.
- 27 • Under HMG’s management HMG failed to pay numerous vendors for various  
28 items and services, including operational items (such as Starwood printed

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1 collateral), regular service bills (such as fire alarm monitoring and waste  
2 removal), professional services (such as repair providers), subscription  
3 services (such as The Knot and Quinceanera Magazine) and franchise fees due  
4 to the very franchise that required HMG’s management.

5 HMG’s management is a significant reason, if not the only reason, Debtor defaulted on  
6 its financial obligations and had to file for bankruptcy relief.

7 • **Secured Creditor’s Installation of a Lock Box and the Appointment of a Receiver**

8 As discussed above, in July of 2013, Debtor obtained a loan from Barclays in the amount  
9 of \$9.5 million secured by the Hotel. The Loan was subsequently assigned to Secured Creditor.  
10 Debtor timely made all payments due under the Loan from approximately 2013 until December  
11 of 2015 and it wasn’t until HMG elected not to pay the amounts due under the Loan that there  
12 was a default on the Loan.

13 Specifically, beginning in or about December 2015, HMG failed to make three monthly  
14 payments on the Loan to Secured Creditor, causing Secured Creditor to declare a default under  
15 the Loan. Secured Creditor initiated a lawsuit in San Diego Superior Court seeking, among other  
16 things, to appoint a receiver to assume control of and sell the Hotel to pay Debtor’s obligations to  
17 Secured Creditor. In an effort to restructure its debt to Secured Creditor and avoid bankruptcy,  
18 Debtor, through its counsel, voluntarily agreed to the use of a lockbox and eventually agreed to  
19 the appointment of a receiver. On or about April 12, 2016, Jeffrey Kolessar was appointed as  
20 receiver (“Receiver”) by Order of the San Diego Superior Court based on the agreement of the  
21 parties. By the Order of the San Diego Superior Court Receiver had the power and authority to  
22 market and sell the Hotel, subject to the Superior Court’s approval.

23 Receiver then hired GF Management to manage the Hotel’s operations up until and  
24 through Debtor’s bankruptcy filing. While Receiver was managing Debtor’s operations,  
25 Receiver did not make any payments on the loan with Secured Creditor. Concurrent with the  
26 appointment of Receiver, Secured Creditor also took control over certain accounts, including the  
27 Hotel’s designated “Furniture Fixtures & Equipment” account (“FFE Account”), which would  
28 normally be used to fund any and all improvements for the Hotel and created a lock box account,

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1 into which it deposited Debtor’s operating fund (the “Lock Box Account”). As of December 1,  
2 2016, based on information provided by Secured Creditor to Debtor, there was more than  
3 \$385,000 in the FFE Account and more than \$270,000 in the Lock Box Account (collectively  
4 “Accounts”). Secured Creditor disputes these factual contentions asserted above and claims that  
5 it exercised all rights available to it under the terms of the Loan.

6 On December 8, 2016, the Court approved Debtor and Secured Creditor’s Cash Collateral  
7 Stipulation, which provided for payment of \$528,402.24 to Secured Creditor and approximately  
8 \$131,000 to Debtor to be used to pay property taxes. The payment of \$528,402.24 from the  
9 Accounts to Secured Creditor under the Cash Collateral Stipulation amounts to the normal  
10 principal and interest (\$58,711.36) due under the Loan Agreement from the date of filing through  
11 the end of February 2017. With the appointment of the Receiver, Debtor not did have any  
12 control over the Hotel’s operations or Debtor’s operating funds and any request to release the  
13 funds held in the Accounts being refused, , Debtor had to file bankruptcy to allow Debtor to  
14 regain possession of the Hotel, attempt to prevent a sale of the property by Receiver which  
15 would not have paid all of its creditors and to take control of its future operating revenue.

16 • **Debtor’s Post-Petition Events and Appointment of Professionals**

17 Debtor commenced this Chapter 11 Case by filing a petition under Chapter 11 of Title 11  
18 of the United States Code (the “Bankruptcy Code”) on May 25, 2016 (“Petition Date”). As of  
19 the Petition Date, Debtor has operated its business and managed its operations as a debtor-in-  
20 possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

21 Shortly after the filing of the bankruptcy petition, Debtor with the express consent and  
22 agreement of Secured Creditor filed its application to employ FPCA Associates, LLC (“FPCA”)  
23 to act as the Hotel’s management company. FPCA was first employed as the management  
24 company for the Hotel when the Hotel was under the control of Receiver and the Secured  
25 Creditor. Upon Debtor’s filing of the bankruptcy petition, Secured Creditor refused to agree to  
26 Debtor’s use of cash collateral, unless Debtor continued using FPCA to managing the Hotel.

27 At the time Debtor sought to employ FPCA, Debtor understood that FPCA was approved  
28 by Sheraton because Secured Creditor, through Receiver, had previously retained FPCA and was

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1 responsible for getting Sheraton’s approval to replace HMG with FPCA. Sheraton filed a  
 2 “Limited Objection,” noting that the License Agreement required Sheraton to approve any  
 3 management company employed by Debtor but agreed to the use of FPCA on an interim basis  
 4 and to FPCA’s receipt of compensation for its services, pending Sheraton’s due diligence.  
 5 However, since then, Sheraton has expressed to FPCA that FPCA’s employment did not have to  
 6 be approved by Sheraton since they were brought in by a Receiver.

7           Regardless, since Debtor filed its petition and after FPCA took over as manager of the  
 8 Hotel, Debtor’s operations have completely turned around. First, FPCA has remedied the  
 9 staffing issues caused by HMG. Specifically, the positions of General Manager, Assistant  
 10 General Manager, Executive Chef, Executive Housekeeper, Human Resources Manager, Chief  
 11 Engineer, Accounting Clerk, Front Desk Supervisor, and Restaurant Supervisors have been  
 12 replaced since the takeover date.

13           Second, under the direction of FPCA, Debtor has dramatically increased its revenue and  
 14 occupancy levels from where they were in 2015 when the Hotel was under the management of  
 15 HMG, the chart below shows the increase in rooms occupied and the increase in revenue from  
 16 the Hotel since the Debtor filed Chapter 11 as compared to when HMG managed the Hotel the  
 17 previous year:

	May	June	July	August	September	YTD
Rooms Booked	+389	+287	+280	+800	+1,821	
Gross Revenues	+ \$46,735	+ \$22,346	- \$46,760 <sup>4</sup>	+ \$32,969	+ \$147,959	+\$599,149

21           With this extra revenue Debtor has been able to satisfy all of its monthly ongoing  
 22 operational expenses with additional cash remaining at the end of the month to be used to  
 23 complete Sheraton’s PIP.  
 24

25 <sup>4</sup> This decline in July revenue, even though monthly room bookings were up is due to the fact that HMG while in  
 26 control of the Hotel set a room rate below market value for the month of July and as a result of pre-booking, Hotel  
 27 guests were able to book a room in advance and the Hotel was obligated to honor those locked in rates. The rates set  
 28 by HMG for the moth of July were grossly below market rates for that month. For example, during the week of  
 Comic-Con when comparable San Diego hotels book rooms at \$300 or \$400 a night, HMG was allowing guests to  
 pre-book rooms at rates of only \$99 a night. Since HMG tied Debtor’s hands regarding the rates that were and could  
 charged during the month of July, the Hotel did less money this year than it had the year prior when the rooms were  
 not booked at the discounted rate.

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1 Third, under the management of FPCA, Debtor has also improved the Hotel’s guest  
2 relation scores. Prior to the employment of FPCA, the Hotel did not meet the certain  
3 benchmarks outlined in the Forbearance Agreement due primarily to the physical state of the  
4 Hotel. However, since the physical state of the Hotel has improved and continues to improve,  
5 the Hotel’s marks and guest survey scores have continued to improve. The latest reviews of the  
6 guest satisfaction scores show that the Hotel is the most improved Hotel throughout the Sheraton  
7 brand. The Hotel also was able to increase its Tripadvisor positioning from a ranking of 221 of  
8 285 hotels in San Diego to a ranking 194 as of November 7, 2016 due to increased focus on  
9 guest service, separate and apart from any property or capital improvements that have been done  
10 to the Hotel. Debtor’s LC scores improved from July of 2016 when the score was 4.63, (Note at  
11 that time the Debtor had not yet completed its new air conditioning system in the Hotel lobby), to  
12 6.0 in September, 5.85 in October and 6.93 in November. This is a 33% increase from July 2016  
13 to November 2016, while the Debtors was making improvements to the Hotel and 87% of the  
14 score of 8.0 that Sheraton had requested be attained through December or 2016.

15 • **Debtor’s Post-Petition Negotiations with Secured Creditor and Sheraton to explore**  
16 **other Brands**

17 During the first four months of this Chapter 11, Debtor explored a possible sale of the  
18 Hotel with the Secured Creditor,<sup>5</sup> and during that same time period Sheraton requested that  
19 Debtor explore a brand change to settle prepetition defaults claimed by Sheraton.

20 Pursuant to negotiations with Secured Creditor, Debtor contacted a broker and received a  
21 letter of intent from a potential buyer but any sale was deemed to be impossible to pay off all its  
22 creditors when secured creditor demanded a defeasance fee/yield maintenance calculation/pre-  
23 payment penalty of \$2,691,887.16, default interest of \$337,614, late charges of \$50,319, a  
24 liquidation fee of \$100,806 and other fees and principal of approximately \$12.9 million in  
25 August of 2016. Factoring these sums together with a broker’s commission, closing costs, taxes  
26 and the unsecured claims the letter of intent purchase price, if pursued, would not have been  
27 enough to satisfy these sums and be able to pay anything to the Creditors.

28 \_\_\_\_\_  
<sup>5</sup> Secured Creditor disputes this contention.

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1 Post-Petition, Debtor, with the agreement of Sheraton, explored a possible brand change.  
2 Debtor with the assistance from its current management company and Court approved consultant  
3 Randy Hulce, spent the first four months after filing its petition focusing its efforts on meeting  
4 with most national hotel brands to explore the possibility of switching the Hotel from a Four  
5 Points Sheraton to another hotel brand. Debtor even received and negotiated a draft stipulation  
6 with Sheraton to seek a possible new brand but the parties could not agree on the final terms.

7 Determining if a change in the brand would be in Debtor's best interest and what brand  
8 would be comparable to Sheraton has required to Debtor to evaluate the hotel brand saturation in  
9 the San Diego market: namely, what hotel brands would be open to having another hotel under  
10 their flag in the space occupied by the Hotel. This analysis led to the determination that none of  
11 the strongest hotel brands, Hilton, Hyatt and Marriot, would not be interested in having the Hotel  
12 operate under their brand because they have other hotels in the immediate vicinity.

13 After taking those brands off the table, the only brands comparable to what Debtor has  
14 now and who have the capacity to maintain Debtor's banquet and catering services are  
15 Wyndham, Best Western, Holiday Inn/Crowne Plaza and Red Lion. Debtor had discussions with  
16 each of these brands. Debtor has showed the Hotel to these brands through onsite meetings,  
17 discussed terms of a licensing agreement and have or expect to receive property improvement  
18 plans provided by the prospective brand. Debtor has to look at what property improvements  
19 would be required by a new brand and what the prospective brand will contribute to the Hotel's  
20 operations through a strong hotel loyalty program and use of a reservation system in order to  
21 determine if a brand change is economically viable and in Debtor's best interest. After just  
22 recently completing this laborious analysis, Debtor has determined it is currently in Debtor's best  
23 interest to remain with the Sheraton brand. This mutually agreeable effort to explore a brand  
24 change delayed the completion of the property improvement plan (PIP) by Debtor because if  
25 there was a brand change there would likely be a different PIP required by the new brand. More  
26 importantly, Sheraton knew that the exploration of a possible brand change would result in the  
27 delay in completion in the PIP and would continue the low LC guest scores until the  
28 improvements were completed.

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1 • **Debtor's Completion of the PIP and the Sheraton Motion to Terminate the Stay**  
2 Sheraton filed a Motion to Terminate the Automatic Stay on October 17, 2016 and  
3 asserted that Debtor has failed to complete the PIP, been given past notices of default under the  
4 License Agreement, breached the License Agreement with the Debtor and alleged that its brand  
5 has been harmed by Debtor's action. Sheraton also claims that as a result of these defaults,  
6 Debtor is not permitted to assume the License Agreement. Debtor has opposed Sheraton's  
7 motion and contended that Sheraton filed its motion without having inspected the Hotel since the  
8 Debtor filed its petition and without any understanding of what improvements have been done by  
9 the Debtor to since the filing of its petition. Specifically, Debtor, in accordance with the PIP  
10 provided by Sheraton has completed the following property improvements to the Hotel: (1)  
11 ensured all entry door frames have sound/smoke seals installed, (2) replaced existing knobs with  
12 lever handles, (3) installed sound seals to connecting doors, (4) repaired all HVAC units to  
13 excellent condition, (5) repainted ceilings, (6) installed new battery operated key cards to exit  
14 only doors, (7) replaced showers with new wall-mounted showers with lever handles, (8)  
15 replaced the pool deck, (9) installed ADA ramps at the exterior sidewalk, (10) repaired and  
16 repainted trellis with moisture resistant, semi-gloss paint, (11) sanded and repainted or replaced  
17 existing light poles, (12) repaired cracks and resealed asphalt, (13) restriped markings for roads,  
18 traffic flow and parking/non-parking areas, (14) replaced lobby carpet, (15) replaced lobby  
19 ceiling tiles, (16) reupholstered all soft goods to match new design scheme, (17) repaired existing  
20 pods to have ADA counter height access, (18) incorporated existing computers into the lobby  
21 area, (19) replaced carpet in the event spaces, meeting rooms and ballrooms, (20) expanded the  
22 size and increased the access to the fitness center, (21) installed new store front and door to the  
23 fitness center, (22) relocated power, TV and data outlets to coordinate with equipment in the  
24 fitness center, (23) replaced fitness center lighting with recessed lighting and decorative lighting,  
25 (24) installed new wallpaper in the fitness center, (25) replaced ceiling tiles in the fitness center,  
26 (26) replaced work out equipment in the fitness center, (27) replaced soffit in fitness center with  
27 new gypsum board soffit, (28) repaired, cleaned and maintained all back of house areas  
28 including, locker rooms, cafeteria and office spaces, (29) repainted existing walls with smooth

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1 semi-gloss paint, (30) installed additional signage, (31) replaced hall and guestroom corridor  
2 light lenses, (32) replaced ballroom ceiling tiles and ordered and paid for new TVs to be installed  
3 in all rooms.

4 Debtor has made many of the improvements required by the PIP and expects to have the  
5 remainder of the PIP completed no more than three months following approval of its plan now  
6 that it has determined that a brand change is not in the best interest of creditors and despite  
7 facing the significant obstacles that have prevented the PIP from being completed. Pointedly, as  
8 discussed above, during Debtor’s brand evaluation, at the specific request of Sheraton, Debtor  
9 was precluded from finalizing the PIP with Sheraton because if Debtor went with another brand,  
10 there would be a whole new and different PIP which would call for totally different  
11 improvements at differing costs. Accordingly, until Debtor finished its good faith negotiations  
12 with Sheraton it made no sense to finish Sheraton’s PIP. Also, HMG, the management company  
13 required and recommended by Sheraton failed to undertake any actions to complete the PIP and  
14 mismanaged Debtor’s operations to provide for the funds necessary to complete the PIP. Then,  
15 once HMG was ousted by Receiver in April of 2016, Debtor had to wait for the busy summer  
16 months to pass before it could under make the larger repairs, such as installing a new air  
17 conditioning system, new carpet, ordering new TVs and replacing the wallpaper in the common  
18 areas and lobby of the Hotel.

19 Debtor also has had to make the improvements within the confines of what is available  
20 in the monthly operating budget because Debtor’s FFE Account, with funds in excess of  
21 \$385,000, was not being released by Secured Creditor as its Cash Collateral The FFE account is  
22 supposed to be used to pay for improvements at the Hotel such as the PIP, but until the Cash  
23 Collateral Stipulation was approved on December 8, 2016 Secured Creditor had prohibited  
24 Debtor from taking out the funds necessary to make those improvements.

25 In 2015, the year prior to Debtor’s bankruptcy filing, Debtor had been making a monthly  
26 contribution amount of approximately \$26,655.52 to the FFE Account. This resulted in an annual  
27 FFE reserve amount of \$312,000. The payments held by Secured Creditor prior to entering into  
28 the Cash Collateral Stipulation were in excess of \$385,000. This amount being held by Secured

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1 Creditor was in excess of the amount required to be held on an annual basis. Secured Creditor  
2 disputes these factual contentions.

3 Since the Petition Date, any property improvements have been made with monthly  
4 operating profits. The Cash Contribution under the plan, if approved, will allow for the  
5 remaining improvements required by the PIP to be completed within three months of Plan  
6 confirmation.

7 When the Hotel is able to complete the PIP-related items and brand improvements, such  
8 as replacing the guestroom carpet and wallpaper, replacing and replacing the soft goods, such as  
9 bed linens, Debtor believes there will be a significant increase in the LC scores. Historically  
10 speaking, properties that undergo room upgrades see a significant lift in guest scores for all key  
11 areas and since here, the guest LC Scores show the biggest complaint being the condition of the  
12 Hotel's guest rooms and its amenities an improvement in the condition of the Hotel will likewise  
13 increase these scores. As discussed above the LC scores have already increased 33% between  
14 July and November of 2016 and in November the score of 6.93 was 87% of the scores requested  
15 of the Debtor as of December 2016.

16 Sheraton objects to Debtor's assumption of the License Agreement by Debtor and  
17 contends that Debtor has historically breached the License Agreement by failing to complete the  
18 PIP and failing to meet the LC Score requirements. Sheraton contends that these historic  
19 defaults prevent Debtor from assuming the License Agreement under the Bankruptcy Code.  
20 Debtor disputes this contention and asserts that because of its ability to cure the purported  
21 defaults, Debtor can assume the License Agreement.

## 22 2. Completion of Renovation of the Hotel

23 Since commencement of the renovations on the Hotel as required by the PIP, Debtor will  
24 have approximately \$883,000 to finish the PIP agreed to by Sheraton through the Contribution.  
25 Debtor has a schedule and listing of the PIP improvements remaining and a schedule for  
26 completion which is attached hereto as **Exhibit B**. Debtor's members will immediately  
27 commence providing the \$883,000 to fund these improvements upon the Effective Date in  
28 accordance with the schedule attached and within three months after the Plan is confirmed.

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1 **B. POST-PETITION DEVELOPMENTS**

2 **1. Post-Petition Activities**

3 Debtor has made progress on the renovations and maintained the value of the Hotel.  
4 Debtor and Secured Creditor have entered into a stipulation for use of cash collateral (Docket  
5 No.158 , the “Cash Collateral Stipulation”), and Debtor has made all post-petition payments of  
6 principal and interest to Secured Creditor under the terms of the Cash Collateral Stipulation (the  
7 “Cash Collateral Protection Payments”). Debtor was authorized to retain and compensate FPCA  
8 as Debtor’s property manager. Docket No. 54 (the “Management Order”). A committee of  
9 unsecured creditors (the “Committee”) has not been appointed.

10 **2. Employment of Professionals**

11 Debtor has employed Gordon & Rees LLP as Chapter 11 counsel. (Docket No.104.)  
12 Debtor employed FPCA to manage the Hotel. Debtor has also employed a consultant to help  
13 monitor operations and explore a possible brand change. (Docket No. 102.)

14 **3. Claims Bar Date and Claim Objections**

15 The Claims Bar Date has been set and passed on October 7, 2016. (Docket No. 83.) A  
16 summary of the scheduled Claims, filed Claims, and Contested Claims is attached hereto as  
17 **Exhibit C**. However, Debtor has not completed its investigation of all Claims. Debtor  
18 anticipates filing objections to certain Claims and will file Claim objections within 180 days after  
19 the Confirmation Date.

20 **4. Motions to Lift Automatic Stay**

21 As discussed above Sheraton filed a motion to lift the automatic stay and terminate the  
22 Debtor’s license agreement with Sheraton (Docket No. 122 &123), which Debtor, Secured  
23 Creditor and the largest unsecured creditor, the City of San Diego opposed (Docket Nos.  
24 136,137,138,139 & 140). The Court is tracking Sheraton’s relief from stay motion with the plan  
25 confirmation and will hear arguments and decide whether relief from the automatic stay will be  
26 granted and whether Debtor can assume the License Agreement in light of the alleged past  
27 defaults, in connection with whether the Plan should be confirmed. This is because it is  
28 important for Debtor’s reorganization efforts for Debtor to know whether it is going to be able to



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1 maintain and assume its License Agreement with Sheraton. If Sheraton’s motion for relief from  
2 the automatic stay is granted and the License Agreement is not assumed by Debtor, Debtor may  
3 not have the revenue necessary to pay its debt obligations and the value of the Hotel may  
4 decrease, which may affect the payment of unsecured debt. The Plan, attached as Exhibit A, is  
5 based on Debtor’s ability to retain the License Agreement with Sheraton and receive the revenue  
6 associated with Sheraton’s brand marketing efforts. Therefore, if the Court grants relief from the  
7 automatic stay to allow Sheraton to terminate the License Agreement, Debtor will have to  
8 change its brand and file a new plan of reorganization. Secured Creditor also contends that if the  
9 Court permits the Sheraton License Agreement to be terminated, an additional (and incurable)  
10 event of default will be triggered under the Loan Documents which would render the Plan  
11 unconfirmable and entitle Secured Creditor to immediate relief from the automatic stay.

12 **5. Extensions of Exclusive Periods to File Plan of Reorganization and Solicit**  
13 **Acceptances Thereto**

14 Debtor requested for one extension of its exclusive period to file a Plan pursuant to §  
15 1121(c)(2) (the “Plan Filing Period”) and its exclusive period during which only Debtor may  
16 solicit acceptances of a plan under § 1121(c)(3) (the “Plan Solicitation Period,” collectively with  
17 the Plan Filing Period, the “Exclusive Period”). (See Docket No.110 (the “ Extension Motion”).)  
18 An Order approving the Extension Motion was entered by this Court on November 14, 2016.  
19 (Docket No. 1135 (the “Order Extending Exclusive Periods”).) The Order Extending Exclusive  
20 Periods was without prejudice, and extended Debtor’s rights under the Exclusive Periods through  
21 December 9, 2016 for the Plan Filing Period, and February 9, 2017 for the Plan Solicitation  
22 Period.

23 **V.**

24 **FINANCIAL CONDITION OF ESTATE**

25 **A. Liabilities Disclosed in Debtors’ Schedules and Claims and Interests**

26 Debtor filed its original schedules and two Amended Schedules (Docket No. 42, 70  
27 &78), which listed liabilities totaling \$10,066,883.23. In addition, certain proofs of Claim have  
28 been filed by creditors in this Case, as listed in the Court’s Claims Register. Scheduled and filed

1 Claims, include: Priority Claims of \$552,541.96, which includes claim #3 from the City of San  
2 Diego for \$481,379.35; Non-Priority Unsecured Claims total \$228,982.03 after removing insider  
3 claims; and Secured Claim of \$9,022,000 (Claim #9 filed for \$10,334,128.34)(see Schedules A,  
4 B, D, E and F, Docket Nos. 42.70 & 78; see also Claims Register). None of these Claims are  
5 necessarily Allowed Claims, and Debtor reserves the right to object to any and all Claims until  
6 180 days the Confirmation Date, and until such date, unless otherwise provided by the Plan or  
7 Court order, these Claims shall not be regarded by the Plan as Allowed Claims.

8 **B. Assets Scheduled**

9 Debtor has listed the following assets in his Schedules (Docket No. 80):

Description of Asset	Scheduled Value of Asset
Real Property	\$16,800,000 <sup>6</sup>
Personal Property	\$1,645,863.09
Total	\$18,445,863.09

13 **C. Estimated Administrative Expenses at Time of Confirmation**

14 Debtor paid a \$65,000.00 retainer to Gordon & Rees, for post-petition services. No other  
15 Professional Persons received retainers. Debtor estimates that the unpaid Administrative Claims  
16 at the time of confirmation will be as follows: (1) Gordon & Rees - \$150,000.00; and (2) any  
17 unpaid U.S. Trustee’s fees (estimated at \$7,500.00) will be paid on or before the Confirmation  
18 Date, and continue to be paid as required by 28 U.S.C. § 1930(a)(6). Administrative Claim owed  
19 to Gordon & Rees will be paid from accumulated income, Cash Contribution, or other available  
20 sources upon confirmation of the Plan as Debtor and Professional Persons may otherwise agree.

21 THE FINANCIAL PROJECTIONS PROVIDED HEREIN ARE BASED UPON THE  
22 BEST INFORMATION AVAILABLE AT THE TIME THE DISCLOSURE STATEMENT  
23 WAS PREPARED. FIGURES UTILIZED HEREIN HAVE NOT BEEN AUDITED. WHILE  
24 EVERY EFFORT HAS BEEN MADE TO VERIFY THE ACCURACY OF THE  
25 INFORMATION AND ESTIMATES MADE HEREIN, NEITHER DEBTOR NOR ITS  
26 COUNSEL GUARANTEE THE ACCURACY OF SUCH INFORMATION.

27  
28 <sup>6</sup> As discussed in the liquidation analysis, the Hotel was appraised for \$16,800,000 in June of 2015 but is assumed to be sold for \$13,000,000 in a Chapter 7 liquidation.

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VI.

**LIQUIDATION**

**A. Treatment of Non-Consenting Members of Consenting Class**

The Plan must provide that a non-consenting impaired Claimant or interest holder of a consenting Class receives at least as much as would be available had Debtor filed a Chapter 7 petition instead. In a Chapter 7 case, the general rule is that the debtor’s assets are sold by a trustee. Upon liquidation by a Chapter 7 trustee, Unsecured Claims receive a Distribution only if there are proceeds in excess of the Secured Claims, Priority Claims, and the Administrative Claims.

*Unsecured Claimants would receive a return of 0% if the Case was converted to Chapter 7* (the “Estimated Liquidation Return”). Conversely, under the Plan, Unsecured Priority Creditors and Unsecured Claims will receive Distributions of **100%** of their Allowed Claims. The primary advantage of the Plan over Chapter 7 liquidation is that Debtor will receive the Cash Contribution, which will result in the completion of the renovations on the Hotel, increased revenue for the Hotel and current experienced management will assist with profitably managing the Hotel. Debtor will maintain its Assets and place increased income generated from the operation of the fully renovated Hotels into the General Account to pay off Allowed Claims for an amount greater than the Estimated Liquidation Return.

Another advantage of the Plan over Chapter 7 liquidation is that the Hotel will not have to be foreclosed, liquidated or auctioned off. Due to the existence of a ground lease and not fee ownership, the failure to complete PIP, economic conditions, the existing threat of termination by Sheraton, the unpredictable nature of large real estate sales in Southern California, and the current challenges associated with obtaining financing from large financial institutions, there is a risk that a distressed sale of the Hotel in a Chapter 7 liquidation could result in the sale of the Hotel for a price near, or even below, the outstanding amounts due to the Secured Creditor if the case was converted. If the Hotel was sold for approximately \$13 million the balance due on the Secured Creditor Loan, with the defeasance fee, default interest and other attendant fees, Unsecured Claimants would likely receive \$0.00 under a Chapter 7.

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1 Under a Chapter 7 liquidation, the Secured Claim would not be guaranteed to be paid in  
2 full. The Hotel was appraised for \$16,800,000.00 in June of 2015 before the Debtor defaulted  
3 with the Secured Creditor and before the Debtor was unable to complete the PIP with Sheraton.  
4 See **Exhibit “D”**. As explained more extensively in **Exhibit “D”**, in June of 2015 Debtor  
5 received, per its request, an appraisal of the Hotel (the “Appraisal”). CRBE (the “Appraiser”), is  
6 a Certified General Appraiser, a member of the Foundation of Real Estate Appraisers, and an  
7 associate member of the Appraisal Institute. The Appraisal reflects a fair market value analysis  
8 of the Hotel, with the purpose of estimating the Hotels’ market value “As Is”, as a Fee Simple  
9 Estate, with those terms defined therein. Debtor believes that the Hotel is not currently worth  
10 \$16,800,000 because of the defaults with its lender, the failure to complete the PIP and the threat  
11 of termination of its license agreement with Sheraton. Accordingly, the Debtor has assumed a  
12 Chapter 7 liquidation sale to be \$13,000,000.

13 Thus, even assuming the Hotel was sold for the amount allegedly due its lender in a  
14 liquidation, the Secured Creditor might not receive the full amount of their Secured Claim due to  
15 trustee fees in any foreclosure, an estimated 8% cost of sale expenses if all Assets are liquidated  
16 and the potential administrative expenses in Chapter 7. ***In such an event, Unsecured Claims***  
17 ***would receive nothing.*** Debtor contends that the Plan, in contrast, will cure and fully reinstate  
18 the Secured Creditor Loan. The operating revenue after the Hotel is renovated and the license  
19 agreement with Sheraton assumed will satisfy all non-default related Secured Creditor Loan  
20 payments, as required by the terms thereof. And Priority Unsecured Creditors will receive an  
21 immediate pro-rata distribution of \$100,000 of their Allowed Claims on the Effective Date and  
22 the balance of their allowed claims over 24 months, by way of quarterly pro-rata distributions  
23 from \$50,000 provided by Debtor. If any balance is due on either the Priority Tax Claims or  
24 General Unsecured Claims after 24 months, Claimants holding a Priority Tax Claim or General  
25 Unsecured Claim will receive a lump sum payment, paying the Allowed Claim Amount in full.

26 **B. Chapter 7 Liquidation Analysis**

27 **1. Income Sources**

28 Debtor’s liquidation analysis assumed a distress sale without the completion of the PIP

1 and a net liquidation value of Debtor’s Assets of \$13,000,000, with income sources primarily  
2 from selling the Hotel and non-real property Assets.

3 **2. Liability**

4 Debtor would likely incur liabilities in a Chapter 7 liquidation currently estimated in the  
5 following amounts: Administrative Claims of approximately \$1080,000, which is comprised of  
6 commissions and closing costs based on a sale of \$13,000,000 (i.e. \$1,040,000 for a 8% cost of  
7 sale) and \$40,000.00 for a Chapter 7 liquidation; no Priority Claims; Secured Claims of  
8 approximately \$13,000,000; Priority Unsecured Claims of approximately \$450,000; general  
9 Unsecured Claims of approximately \$598,000 and Chapter 11 Administrative Claims of  
10 \$157,500. All of these figures are conservative, and should not be binding on Debtor.

11 Regardless, even under these conservative assumptions, after payment of the Claims discussed  
12 above, Secured Creditor would recover less than the Scheduled Secured Claim, leaving nothing  
13 for any lower priority Claims.

14 **C. Comparison to Chapter 11 Plan/Best Interest of Creditors Test**

15 The Chapter 7 liquidation provides that after a payment of the Secured Claim there will  
16 be no payments to the Priority Unsecured Claims, and the Unsecured Claims. By comparison,  
17 the Chapter 11 Plan will provide Unsecured Creditors with a Distribution of 100% of their  
18 Allowed Claims. Moreover, the Chapter 7 administrative expenses (including professional fees,  
19 closing costs, and broker’s commissions at 8%, estimated to be \$1,080,000.00), will be avoided  
20 under the Chapter 11 Plan, which will result in a substantial Distribution to Unsecured Creditors.  
21 Debtor’s Chapter 11 Plan will require no additional costs after the Confirmation Date, other than  
22 Administrative Claims of Professional Persons. Furthermore, the renovations to the Hotel  
23 pursuant to the Property Improvement Plan make it likely that Debtor will be profitable with  
24 increasing net income over the Term of the Plan.

25 Debtor’s Chapter 11 Plan will eliminate the need for, and cost of, a Chapter 7 Trustee and  
26 other Professional Persons. Debtor’s Chapter 11 Plan will increase the present fair market value  
27 of the Hotel, and going concern value of its business due to the estimated \$883,000 in PIP  
28 renovation expenditures. Debtor’s Chapter 11 Plan proposes to contribute new value in the form

1 of the \$500,000 capital contribution and \$1,300,000 loan, and increased income from the  
2 renovated Hotels. A Chapter 7 liquidation would result in the liquidation of a Hotel that has not  
3 been renovated in exchange for an immediate, albeit less predictable and smaller, payment of the  
4 Secured Claim.

5 **VII.**

6 **ESTATE FINANCIAL DATA**

7 **A. Post-Petition Income**

8 Debtor’s gross revenue from operating the Hotels from May 25, 2016 until October 31,  
9 2016<sup>7</sup> was approximately \$4,600,000. The average monthly income over this time period was  
10 approximately \$653,000.

11 **B. Cash**

12 As of December 7, 2016, Debtor’s cash bank balance was \$171,965.

13 **C. Income Forecasting and Feasibility**

14 Debtor’s management company and its controller have prepared a Cash Flow Summary  
15 through February 29, 2017 attached as **Exhibit “E”** and an Income and Expense Forecast  
16 through December of 2017, attached as **Exhibit “F”** to this Disclosure Statement, which shows  
17 Debtor’s forecast for annual revenues for 2017 to be \$9,119,589. The projections are based on  
18 the Hotel’s operational history since 2015 and other assumptions discussed therein; such as the  
19 past reduced income due to renovations and the downturn in the economy, and the projected rise  
20 in future income after completion of the renovations, among other factors.

21 **D. Other Litigation Claims**

22 Debtor currently has filed no adversary actions in this Court. The Plan reserves Debtor’s  
23 right to file any adversary actions in this Court in compliance with the Plan and the Bankruptcy  
24 Code if the need arises.

25 **E. Tax Analysis**

26 In conducting its post-petition and post-confirmation business, Debtor anticipates  
27

28 <sup>7</sup> October 2016 was the last month for which Debtor was obligated to file a Monthly Operating Report before the filing of this amended Disclosure Statement.

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1 incurring and paying any liability due for taxes. All taxes have been paid on a current basis by  
2 Debtor, and will continue to be timely paid by Debtor during the Term of the Plan.

3 In general, Debtor’s federal taxes are based upon income from operating the Hotels, less  
4 deductible expenses related thereto. During the Term of the Plan, Debtor will remain responsible  
5 for all Federal and State taxes associated with or related to property in possession of or  
6 controlled by Debtor. The Plan provides for Debtor to maintain a “Tax Reserve,” in accordance  
7 with Plan Article 7.

8 **VIII.**

9 **SUMMARY OF THE PLAN**

10  
11 A summary of Debtor’s Plan is set forth below. You are encouraged to read the Plan  
12 itself, because the comments that follow are only a general description of the operation of the  
13 Plan. In the event there are discrepancies between the description below and the Plan itself, the  
14 terms of the Plan shall govern. WHILE THE BUSINESS TERMS AND PROVISIONS  
15 DESCRIBED HEREIN ARE GENERALLY ACCURATE, NEITHER SUCH TERMS NOR  
16 THE PLAN IS BINDING ON THE INVESTORS UNLESS AND UNTIL DEFINITIVE  
17 DOCUMENTATION IMPLEMENTING THE TERMS HEREIN AND THE PLAN  
18 AGREEABLE TO THE INVESTORS IS FINALIZED AND FULLY EXECUTED, AND THE  
19 PLAN IS CONFIRMED.

20 **A. Cash Contribution**

21 The Plan contemplates an infusion of Cash from the Members, who will transfer the Cash  
22 Contribution on the Effective Date. The Members will contribute \$500,000.00 as a capital  
23 contribution and a loan from its affiliates of \$1,300,000 which will be repaid only after all claims  
24 have been paid under the plan (“Subordinated Loan”). The Cash Contribution will be transferred  
25 from the Cash Contributors to Debtor’s General Account. Attached as **Exhibit G** is the proof of  
26 funds from the Members totaling \$1,800,000. Debtor will make Distributions to Allowed Claims  
27 as described in the Plan.  
28

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1           **1. Debtor’s Equity Structure After Receipt of the Cash Contribution**

2           Debtor is not issuing new membership interests to the Members. Thus, Debtor asserts  
3 that § 1145 does not apply.

4           **2 New Value Contributed by the Members**

5           **a. Absolute Priority Rule and “New Value Exception”**

6           In general, the “absolute priority rule” as defined in § 1129(b), provides that if an  
7 impaired Class has not accepted the Plan, the Court may not confirm the Plan unless it does not  
8 discriminate unfairly, and is fair and equitable, with respect to each class of Claims or interests.

9           The “new value exception” to the absolute priority rule provides that if a junior class  
10 contributes “new value” to Debtor, the junior class (i.e. the Members) may be permitted to retain  
11 its interest even though the senior creditors are not paid in full. *Bank of Am. Nat. Trust & Sav.*  
12 *Assn v. 203 N. LaSalle St. Partnership (In re 203 N. LaSalle St. Partnership)*, 526 U.S. 434  
13 (1999).

14           It is Debtor’s position that to be considered actual “new value,” the new value” (i.e., the  
15 Cash Contribution) must be “up front,” must consist of one or more assets that have more than  
16 nominal value, and must be necessary to the continued survival of the debtor certain creditors  
17 have contended that the “new value exception” is limited such that the equity holders of Debtor  
18 cannot contribute new capital and receive ownership interests in the reorganized entity in return  
19 without first allowing others to compete for that equity, or to propose a competing reorganization  
20 plan.

21           Debtor contends that the Plan satisfies the new value exception, and is confirmable  
22 despite the Members retention of an interest ahead of other Claimants, because the Members  
23 have offered new value that is: (i) new; (ii) substantial; (iii) money or money’s worth; (iv)  
24 necessary for a successful reorganization; and (v) reasonably equivalent to the value or interest  
25 received. *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 77 (B.A.P. 9th Cir. 1994).

26           On the Effective Date, the Cash Contribution will provide Debtor with approximately  
27 \$1.8M in new value. Debtor interprets Ninth Circuit law to support the conclusion that the Cash  
28 Contribution will provide new, substantial money, necessary for Debtor’s reorganization that is



1 reasonably equivalent to the Members’ post-petition interest in Debtor. The Plan proposes that  
2 the Members supply \$1,800,000.00 of the Cash Contribution (\$500,000 in capital contribution  
3 and \$1,300,000 loan). This Cash Contribution will permit Debtor to render Secured Creditor’s  
4 claim unimpaired as that term is referenced in section 1124, pay a portion of the claims held by  
5 unsecured creditors, finance Debtor’s renovations, and fund some anticipated Administrative  
6 Claims and other portions of the Plan.

7 THIS AREA OF PLAN CONFIRMATION IS HIGHLY COMPLEX AND THE  
8 COURT AND OTHER CREDITORS MAY DISAGREE WITH THE DEBTOR’S  
9 CONTENTIONS AND YOU SHOULD CONSULT YOUR OWN ATTORNEY FOR LEGAL  
10 ADVICE.

11 **B. License Agreements**

12 As discussed in detail in Article IV A, Debtor intends to assume its License Agreement  
13 and related agreements with Sheraton. The Debtor has made all payments under the License  
14 Agreement to date and intends to complete the PIP approved by Sheraton. Sheraton contests  
15 Debtor’s ability to assume the License agreement, as discussed more fully above, and the Court  
16 will determine Debtor’s ability to assume the License Agreement in connection with the hearing  
17 on Plan Confirmation set for February 6-8, 2017, commencing at 9:30 a.m. Again, Debtor’s plan  
18 of reorganization, attached as Exhibit A, is premised on Debtor’s ability to assume the License  
19 Agreement. In the event that Debtor is not permitted to assume the License Agreement, Debtor  
20 will have to change its brand and file a new plan of reorganization.

21 **C. Payments to Creditors**

22 The Plan provides for the payment to creditors via transfers received through the Cash  
23 Contribution, operating revenue over the Term of the Plan, and additional contributions from  
24 Members, to the extent necessary to meet the schedule Plan payments. After the initial payment  
25 on the Effective Date, Allowed Unsecured Claims will receive a quarterly pro-rata distribution  
26 based on collection of operating profits, Accounts Receivable, the Cash Contribution, and Cash  
27 under the assumptions discussed above, and as provided in more detail below.

28 **D. Classes of Claims and Claim Objections**

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1 It is important to note that the Plan does not provide for the full satisfaction of all  
 2 Scheduled Claims or Claims filed on the Claims Register. The Plan only provides for payment  
 3 of Allowed Claims. The Plan reserves Debtor’s right to complete the Claims objection analysis  
 4 within 180 days after entry of the Confirmation Order. A more detailed claims objection  
 5 analysis is discussed below. Debtor has noted herein those Claims which it contests in whole or  
 6 part with a “ \* ” symbol. As such, Claims with a “ \* ” symbol are not considered by Debtor to  
 7 be an Allowed Claim and thus are not deemed allowed to receive a Distribution under the Plan  
 8 until otherwise ordered by the Court. Debtor reasserts it has not yet reviewed all claims and  
 9 reserves its right to object to any Claim within 180 days after entry of the Confirmation Order.

10 **1. Unclassified Claims**

11 **a. Administrative Claims**

12 Administrative Claims are not classified under the Plan, and will not vote on the Plan.  
 13 The following chart lists all of Debtor’s § 507(a)(1) Administrative Claims and their treatment  
 14 under the Plan. The treatment of those estimated Administrative Claims is set out below:

Name	Estimated Amount	Treatment
Gordon & Rees, LLP	\$150,000.00	Paid in full, or as otherwise agreed
Clerk’s Office Fees	TBD	Paid in full on or before Confirmation Date
Office of the U.S. Trustee Quarterly Fees	\$7,500 (est.)	Paid in full on or before Confirmation Date
	\$157,500.00	

21 Unpaid Quarterly UST Fees, if any, will be paid in cash in full on the Effective Date.  
 22 The obligation to timely remit quarterly fees to the UST and to timely file quarterly post-  
 23 confirmation reports, pursuant to 28 U.S.C. § 1930(a)(6) shall continue until the Chapter 11  
 24 Cases are dismissed, converted or closed.

25 The Court must approve all professional fees listed in this chart. For all fees except the  
 26 Clerk’s Office fees and U.S. Trustee’s fees, the Professional Person in question must file and  
 27 serve a properly noticed Fee Application and the Court must rule on the application. Only the  
 28 amount of fees allowed by the Court will be required to be paid under the Plan. These fees will

1 be paid in full on the Confirmation Date, or as otherwise agreed by such Claimant. The  
 2 Members' commitment to fund professional fees or Administrative Expenses is conditioned and  
 3 contingent upon the Plan being confirmed.

4 **b. Priority Tax Claims**

5 Priority Tax Claims are certain unsecured income, employment, and other taxes  
 6 described by § 507(a)(8). The Code requires that each holder of such a § 507(a)(8) Priority Tax  
 7 Claim receive an account of such Claim, and the treatment described in § 1129(9)(a)(C) which  
 8 provides for regular installment payments in Cash, if: (i) a total value, as of the Confirmation  
 9 Date, equal to the Allowed amount of such Claim; (ii) over a period ending not later than five (5)  
 10 years after the date of the order for relief; and (iii) in a manner not less favorable than the most  
 11 favored non-priority Unsecured Claim provided for by the Plan. The Priority Tax Claims consist  
 12 of:

Name	Estimated Amount	Claim
California EDD	3,216.89	Payroll Taxes
California Office of Tourism	5,410.00	Tourism Tax
City of San Diego*	481,379.35	Claim No. 3, Transient Occupancy Tax
Board of Equalization	3,107.93	Sales Taxes
Franchise Tax Board	15,488.87	Claim No. 6, Tax Liability
Internal Revenue Service	100.00	Claim No. 1; Tax Liability
San Diego County Treasurer	37,514.42	Claim No. 5, Tax Liability
	\$552,541.96	

26 Except to the extent a Holder of an Allowed Priority Tax Claim agrees to a different  
 27 treatment, the Holders of such Claims shall be paid on the Effective Date on a pro rata basis from  
 28 \$100,000 made available through the Cash Contribution. Following the Effective Date, Holders

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1 of Allowed Priority Tax Claims will be paid quarterly on a pro-rata basis from \$50,000 made  
2 available by Debtor until all Allowed Priority Tax Claims are paid in full, within 24 months of  
3 the Effective Date. If any balance is due on Allowed Priority Tax Claims after 24 months,  
4 Claimants holding an Allowed Priority Tax Claim will receive a lump sum payment, paying the  
5 Allowed Priority Tax Claim Amount in full.

6 **2. Classified Claims**

7  
8 **c. Class 1 - Secured Creditor Claim**

9 The Debtor intends to render Secured Creditor’s Class 1 Claim as unimpaired as that term  
10 is referenced in Section 1124. Therefore the Confirmation Order requires a finding by the Court  
11 that Secured Creditor’s Class 1 Claim is “unimpaired” under the Plan, and that all the provisions  
12 and protections provided by Section 1124 are afforded to and are applicable to Secured  
13 Creditor’s Class 1 Claim. The Class 1 Claimant is Secured Creditor, with a scheduled Contested  
14 Secured Claim of \$9,022,000. Secured Creditor filed a Proof of Claim in the amount of  
15 approximately \$10,334,128.34. Proof of Claim No. 9 (the “Secured Claim Amount”). In  
16 December of 2016,<sup>8</sup> Secured Creditor provided Debtor with a breakdown of the Claim Amount,  
17 which is comprised of approximately the following Disputed amounts:

18	Principal:	\$ 9,077,863.64
19	Note rate interest:	\$231,022.14 (through January 6, 2017)
20	Default interest:	\$583,116.73
21	Defeasance fees as of 11/16/16:	\$2,248,526.02
22	Late fees:	\$ 64,997.51
23	Protective advances:	\$137,793.13
24	Liquidation/Special Service fees	\$21,224.20
25	Legal fees:	\$210,000 (approximately)
26	Other fees:	tbd

27  
28 <sup>8</sup> The most recent delineation of Secured Creditor’s claim is found in the Declaration of David Bornheimer (Dock. Nos. 175, 176, 177 & 178, filed with the Court on 12/28/16).

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1 **TOTAL** **\$12,574,543.37**

2 Debtor disputes the Secured Claim Amount for the following items: Default interest;  
3 prepayment penalty (i.e. Defeasance Fees); late fees, liquidation/special service fees; protective  
4 advances, non-reasonable attorney fees and possibly a portion of the fees not incurred as a result  
5 of the default or allowed under the bankruptcy code or state law (collectively, the “Disputed  
6 Secured Claim Amount”). It is Debtor’s contention that Secured Creditor is not entitled to any  
7 portion of the Disputed Secured Claim Amount pursuant to the Bankruptcy Code or state law.

8 Initially, Debtor asserts that that the defeasance fee is objectionable because Debtor is not  
9 proposing to prepay the Loan. Rather, the Plan only will cure the Loan. Debtor does not  
10 therefore currently owe that amount to Secured Creditor. Secured Creditor contends that if, and  
11 only if, the Court makes a specific finding that Secured Creditor’s Class 1 Claim is rendered  
12 “unimpaired” under and through the Plan, and that the provisions and protections provided in  
13 Section 1124 are expressly applicable to Secured Creditor’s Class 1 Claim, that the Debtor’s  
14 Defeasance/Yield Maintenance obligations triggered by the pre-petition defaults are ostensibly  
15 cured under the Plan as required by Section 1124, then, and only then, will the Debtor’s  
16 Defeasance / Yield Maintenance obligations under the Loan Documents be “reinstated” and/or  
17 “returned to dormancy,” only to be triggered after confirmation in accordance with their terms if  
18 the Debtor seeks to pre-pay the loan or subsequently defaults on the Loan as provided in the  
19 Loan Documents which have been fully reinstated and remain applicable to the Debtor under  
20 Section 1124 until the Loan is fully paid in accordance with its original terms. Secured Creditor  
21 further contends that if the Court fails to make a specific finding that Secured Creditor is  
22 “unimpaired” within the meaning of Section 1124, the Plan, as proposed by the Debtor, cannot  
23 be confirmed.

24 The Debtor contends that the default interest and late fees portion of the Disputed  
25 Secured Claim Amount are also, pursuant to Debtor’s analysis of Ninth Circuit law,  
26 objectionable. Ninth Circuit courts consistently have declined to award the default rate of  
27 interest or penalties where doing so would diminish the recovery of junior creditors, which  
28 would occur here because the Hotel’s resale value is worth less than the Secured Claim Amount.

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1 See, e.g., *Foss v. Boardwalk Partners (In re Boardwalk Partners)*, 171 B.R. 87, 92 (Bankr. D.  
2 Ariz. 1994) (penalties disallowed). Bankruptcy Code section 1123 (d) states that “...if it is  
3 proposed in a plan to cure a default the amount necessary to cure the default shall be determined  
4 in accordance with the underlying agreement and applicable nonbankruptcy law.” The Loan  
5 Agreement provides for default interest of (a) the Maximum Legal Rate, or (b) 5% above the  
6 Applicable Interest Rate”. The “Applicable Interest Rate” is defined under the loan agreement as  
7 5.977 %. Therefore, excluding the legal rate analysis the default interest rate would be nearly  
8 double the regular interest rate or 10.97%, not including the defeasance fee or other fees. That  
9 takes us to California state law and California Civil Code section 1671 and the Ninth Circuit  
10 decision in *Cal. Bank & Trust v. Shilo Inn, Seaside East, LLC*, 2012 U.S. LEXIS 163134; 2012  
11 WL 5605589 (D. Or. 2015), which deals with an almost identical situation as the facts in this  
12 proceeding in which a lender with a lien on a hotel which was trying to enforce a default interest  
13 provision which increased the interest rate by 5% above the regular rate and sought penalties. In  
14 that case the Ninth Circuit citing Civil Code section 1671 and the California Supreme Court in  
15 *Ridgley v. Topa Thrift & Loan Ass’n*, 17 Cal.4<sup>th</sup> 970,977 (1998) denied the lender default interest  
16 of 5% of the contract interest rate and penalties as unenforceable penalties. Accordingly, Debtor  
17 believes the Disputed Secured Claim Amount is not properly owed to Secured Creditor by  
18 Debtor, and the Secured Claim Amount is accordingly reduced.

19 Secured Creditor disputes these contentions. Secured Creditor contends its position is  
20 supported by the Ninth Circuit’s holding in *Pacifica L51, LLC v. New Inves., Inc.*, 13-36194,  
21 2016 WL 6543520 (9th Cir. 2016). The Disputed Secured Claim Amount totals approximate  
22 \$3.5 million and Debtor’s Plan is based upon Debtor’s ability to reduce the Secured Claim  
23 Amount. As such, if the Court determines as part of the Plan Confirmation hearing that Debtor  
24 is required to pay these additional fees in order to reinstate the Loan, Debtor will have to file a  
25 new plan of reorganization.

26 The Plan is contingent on Debtor eliminating these additional fees through the Plan  
27 confirmation process as the payment under the Plan to unsecured creditors without first paying  
28 all amounts deemed due and owing to Secured Creditor would violate the absolute priority rule.

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1 However, if Debtor is able to strike these provisions as being unenforceable under California law  
2 pursuant to Civil Code section 1671 and the Ninth Circuit decision in *Cal. Bank & Trust v. Shilo*  
3 *Inn, Seaside East, LLC*, 2012 U.S. LEXIS 163134; 2012 WL 5605589 (D. Or. 2015), then  
4 Secured Creditor (Class 1) is unimpaired and not entitled to vote on the Plan as it is deemed to  
5 have approved the Plan.

6 Assuming Debtor is able to avoid the Disputed Secured Claim Amount, the Plan provides  
7 that the payment of approximately \$650,000.00 from the Cash Contribution for the Allowed  
8 portion of the Secured Claim Amount. Under the Plan, Debtor expects such payment will bring  
9 the Secured Creditor Loan current (the “Reinstatement Amount”), however, the exact amount of  
10 the Reinstatement Amount will not be known until the Court determines the Reinstatement  
11 Amount at the Confirmation Hearing. The Reinstatement Amount can be increased or decreased  
12 pursuant to Secured Creditor’s proof that the Secured Claim Amount has changed since Secured  
13 Creditor provided Debtor with the above figures. Regardless, the Plan provides that Debtor will  
14 adjust the Reinstatement Amount to cure the Secured Creditor Loan, after its objection to the  
15 Disputed Secured Creditor Claim Amount is sustained. If such an objection is overruled, and  
16 Debtor is required to pay default interest and/or the defeasance fee, Debtor will not be able to  
17 confirm or perform under the Plan. As such, the amount Debtor is required to pay will be  
18 decided prior to the Court’s ruling on confirming the Plan.

19 After confirmation of the plan and payment of the Reinstatement Amount, Debtor will  
20 owe approximately \$9,100,000.00 in principal under the Secured Creditor Loan.

21 Thereafter, and during the Term of the Plan, Debtor will make monthly principle and  
22 interest payments to Secured Creditor at the non-default, fully reinstated Secured Claim Loan  
23 amount until the maturity date thereof. Debtor and Secured Creditor will be subject to the terms  
24 of the Secured Creditor Loan for the remainder of the term thereof.

25 **d. Class 2 - Disputed Priority Claims**

26 Class 2 has various tax entities listed in section Article VII D (2) (b) above, including the  
27 City of San Diego, Claim No. 3 in the amount of \$481,379.35 for TOT taxes. Debtor disputes  
28 the amount of this claim at this time since an audit is under way to determine the exact amount

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1 owed. Since Debtor agrees that some money is owed to the City of San Diego for TOT taxes,  
 2 even though the exact amount is not yet certain, Debtor will make a pro-rata distribution to the  
 3 City of San Diego on Claim No. 3 from the \$100,000 made available on Plan Confirmation.  
 4 Debtor will continue to make Plan payments on Claim No. 3 until the exact amount of the Claim  
 5 is fully ascertained. These claims are unimpaired as an Unsecured Tax Priority Claimant  
 6 because the Allowed amount if this claims will be treated in accordance with § 1129(9)(a)(C)  
 7 and not entitled to vote.

8 **e. Class 3 - General Unsecured Claims**

9 Class 3 Claims are impaired, and are entitled to vote on the Plan. Claimants in this Class  
 10 holding Allowed Unsecured Claims will be paid 100% of their Allowed Claims over 24 months,  
 11 under the assumptions discussed above, on the Effective Date without interest. Claimants in this  
 12 class will receive a pro-rata distribution from the \$50,000 quarterly plan payments made by  
 13 Debtor until the Allowed Unsecured Claims are paid in full. If any balance is due on General  
 14 Unsecured Claims after 24 months, Claimants holding a General Unsecured Claim will receive a  
 15 lump sum payment, paying the Allowed Claim Amount in full.

16 Class 3 Claimants are comprised of the following, with the associated estimate of Claims:

Name	Estimated Amount	Claim
A1 Janitorial Supply	131.94	Trade Debt
Affordable Drain	801.00	Trade Debt
Airgas USA LLC	100.05	Trade Debt
All Team Staffing	522.50	Trade Debt
AM Asphalt	318.85	Trade Debt
AM Express	481.20	Trade Debt
Ambassador Uniform	346.36	Trade Debt
American Hotel Register Co.*	4,900.94	Claim No. 12, Trade Debt
Ant Busters, Inc.*	3,138.38	Claim No. 7, Trade Debt
ARS Rescue Rooter	3,825.00	Trade Debt
ASCAP	1,357.80	Trade Debt
Bearcom	1,676.00	Trade Debt
Cart Mart Inc.	184.00	Trade Debt



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Cendyn	625.00	Trade Debt
Central Dispatch Inc.	1,859.40	Trade Debt
Cenveo Corporation*	1,136.86	Claim No. 11, Trade Debt
City of San Diego*	67,602.35	Claim No. 10, Underpaid Rent
Classy Creations	275.00	Trade Debt
Consolidated Int'l Corp	377.50	Trade Debt
Cosco Fire Protection	350.00	Trade Debt
Dow Jones LP	751.68	Trade Debt
EDCO Disposal	644.14	Trade Debt
Edward Don & Co.	2,149.20	Trade Debt
Elavon	1,296.20	Trade Debt
Erwyn Products	403.83	Trade Debt
Fardan	160.00	Trade Debt
G&P Schick	19,360.37	Trade Debt
Gaslamp Portfolio Mgmt <sup>9</sup>	189,572.66	Line of Credit
Gaslamp Portfolio Mgmt 2 <sup>10</sup>	234,004.17	Line of Credit
Golden Baklava	320.00	Trade Debt
Golden State Laundry	182.50	Trade Debt
Grainger ("WW Grainger")*	6,324.50	Claim No. 4, Trade Debt
HD Supply Facilities*	24,702.77	Claim No. 2, Trade Debt
Heinz & Feinberg	85.50	Trade Debt
Helms Briscoe	878.80	Trade Debt
Hobart Service	257.00	Trade Debt
I Access	167.50	Trade Debt
IAG Travel	195.50	Trade Debt
Intercruises	1,851.30	Trade Debt
Jacks Cocktail.Com	240.97	Trade Debt
Johnson Controls, Inc.*	1,779.00	Claim No. 8, Trade Debt
Johnson Electric	2,565.00	Trade Debt
La Jolla Boiler	5,116.00	Trade Debt
Lexy Travel Tech	65.27	Trade Debt
Lure Agency	250.00	Trade Debt

<sup>9</sup> Insider claim that will not be paid until Plan payments on all Allowed Claims are completed.

<sup>10</sup> Insider claim that will not be paid until Plan payments on all Allowed Claims are completed.

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1	Makaden, Inc.	271.40	Trade Debt
2	Many Circuit	2,052.00	Trade Debt
3	National Glazing Inc.	731.00	Trade Debt
4	Nemaco, Inc.	3,443.97	Trade Debt
5	Olympic Compactor	394.20	Trade Debt
6	Page Foods	153.90	Trade Debt
7	Paper Roll Supplies	42.00	Trade Debt
8	Pitney Bowes Global	1,172.10	Trade Debt
9	Precise Plumbing	85.00	Trade Debt
10	Raphaels	1,470.41	Trade Debt
11	Reeves Co. Inc.	573.50	Trade Debt
12	Rose Munns & Chin	6,338.71	Legal Services
13	RR Donnelly	948.79	Trade Debt
14	Salem Communication	208.27	Trade Debt
15	SDG&E	22,788.04	Utilities
16	SDI MGMT Inc.	575.60	Trade Debt
17	Sharp Electric Corp.	329.17	Trade Debt
18	Showtime Audio Video	100.00	Trade Debt
19	Solterra Lighting	75.60	Trade Debt
20	Sonifi Solutions, Inc	150.00	Trade Debt
21	Southwest Glassware	1,690.81	Trade Debt
22	Stanley Access Inc.	924.50	Trade Debt
23	Staples Advantage	1,356.80	Trade Debt
24	Tony Gomez Tree Service	12,600.00	Trade Debt
25	Travelclick Inc.	1,547.38	Trade Debt
26	Travelliance	136.70	Trade Debt
27	Ultra Chem Inc.	199.50	Trade Debt
28	Uniglobe Travel	928.50	Trade Debt
	Upscale Sales Inc.	138.15	Trade Debt
	Valley Industrial Specialties	666.79	Trade Debt
	Watkins & Perry	1,944.00	Trade Debt
	Wedding Pages	984.00	Trade Debt
	West Coast Conference	690.00	Trade Debt
	Windstream Comm. Inc.	300.00	Trade Debt
	YMS Supplies Inc.	3,214.08	Trade Debt

Total Unsecured Claims:	\$652,558.86	
Total Non-Insider Unsecured Claims:	\$228,982.03	

**f. Class 4 – Ally Financial**

Ally Financial, holds a secure claim for \$22,000 for a purchase money loan that is secured by a 2014 Chevy Express. Debtor is current on its payment obligations and during the Term of the Plan, Debtor will continue to make monthly payments to Ally in accordance with the terms of the note. Ally Financial is unimpaired under the Plan and is not eligible to vote to accept or reject the Plan.

**g. Class 5 – Members’ Loan Pursuant to Plan**

Pursuant to the Plan, Members are making a \$500,000 capital contribution and a \$1.3 million loan to Debtor at 3 % interest. This member loan is subordinated to the repayment of all Claims and after all Claims are paid it be repaid to the Members in accordance with the loan agreement. Attached as Exhibit H is an amendment to the line of credit agreement and a binding resolution from the members of the Debtor’s committing them to loan \$1.3 million and to make cash contribution.

**h. Class 6 Interests - Equity Interests in Debtor**

Equity interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. Here, all members of the Debtor will retain their equity interest in Debtor. As discussed above, it is Debtor’s contention that the Members are entitled to these interests pursuant to the “new value corollary” to the absolute priority rule. After the Confirmation Date, the Members will retain their membership interest after their capital contribution of \$500,000 and Subordinated Loan of \$1,300,000.

**D. Undetermined Claims**

Undetermined Claims may not be paid pending the outcome of the Claims objection proceedings. As a result of such Claims objection, a Contested Claim may become a Disallowed Claim and therefore not paid. Upon the determination that a Contested Claim is an Allowed

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1 Unsecured Claim, the Claim will be paid as provided in Plan Article Four. Payments on  
2 Undetermined Claims of Unsecured Claimants will be deposited in the General Account, as  
3 discussed above, pending determination of the Claim. Debtor has not completed its investigation  
4 of Undetermined Claims and therefore cannot present more specific information at this time.  
5 Debtor reserves the right to file objections to all Undetermined Claims and will file Claim  
6 objections within 180 days after the Confirmation Date.

7 As of the filing of this Disclosure Statement, and without waiving any rights to object  
8 further, Debtor intends to object to the Disputed Secured Claim Amount, and those Class 3  
9 Claims listed *supra*, in § VIII, D., 2., e.

10 **E. Source of Funding of Plan**

11 The primary source of Plan funding will be the Cash Contribution by the Members by  
12 way of a \$500,000 capital contribution and \$1,300,000 loan, collection of Accounts Receivables,  
13 and Cash. Debtor projects approximately \$12,652 in net ordinary income from operations of the  
14 Hotel starting from January 2017 through December 2017. *See* Exhibit “F.” Debtor anticipates  
15 that the net ordinary income on Exhibit “F” is extremely conservative and there will be funds  
16 available to make Plan payments. However, if there is a shortfall in net ordinary income the  
17 Members will contribute additional sums to make quarterly payments.

18 **F. Executory Contracts and Unexpired Leases**

19 All of the Executory Contracts and unexpired leases listed in Plan Article 5.1 will be  
20 renewed upon entry of the Confirmation Order. Executory Contracts not listed in Plan Article  
21 5.1 will be rejected upon entry of the Confirmation Order. The following Executory Contracts  
22 and unexpired leases will be assumed:

- 23 (1) Lease Agreement with the City of San Diego for the Hotel;
- 24 (2) Sheraton License Agreement (subject to the Court’s denial of Sheraton’s Motion  
25 for Relief from the Automatic Stay);
- 26 (3) Equipment Lease with GE Capital;
- 27 (4) Elevator Service and Repair Contract with Otis Maintenance; and
- 28 (5) Cable Services with Cox Communications.

1 All Executory Contracts and unexpired leases, other than those referred to herein will be  
2 rejected.

3 **G. Compensation to Insiders**

4 Luz Burni is the sole individual involved with the current equity interest holder in Debtor  
5 that is currently involved with the operation of the Hotel and she is not nor will she during the  
6 plan receive compensation from Debtor.

7 **IX.**

8 **GENERAL PROVISIONS APPLICABLE TO DEBTOR’S PLAN**

9 **A. Effect of Confirmation of Plan**

10 **1. General Comments**

11 The provisions of the Plan bind Debtor, any entity acquiring property under the Plan, and  
12 any creditor of Debtor. The confirmation of the Plan revests all property of the Estate in Debtor.  
13 The automatic stay will be lifted upon entry of the Confirmation Order as to property of the  
14 Estate. If the Court orders the Case converted to Chapter 7 after the Plan is confirmed, then all  
15 property that had been property of the Chapter 11 Estate, and that has not been disbursed  
16 pursuant to the Plan, will revert in the Chapter 7 estate. The automatic stay will prohibit  
17 collection or enforcement of pre-petition Claims against the revested property.

18 **2. Discharge**

19 Under § 1141(c) and (d), the Confirmation Order will discharge debts provided for in the  
20 Plan. Upon entry of the Final Decree, the property dealt with by the Plan will be free and clear  
21 of all Claims and interests of creditors, equity security holders, and interest holders of Debtor not  
22 otherwise provided for in the Plan.

23 No discharge provisions under Section 1141(c) and (d), or otherwise, shall be applicable  
24 to Secured Creditor’s Class 1 Claim. The Court’s findings made under Section 1124 regarding  
25 the “unimpairment” of Secured Creditor’s Class 1 Claim shall be all that apply regarding the  
26 cure and reinstatement of Secured Creditor’s Class 1 Claim. In accordance with Section 1124  
27 (2)(e), in order for Secured Creditor’s Claim to be deemed “unimpaired,” the Confirmation  
28 Order must provide that, except for as the Court finds in connection with Section 1124, “the Plan

1 does not otherwise alter the legal, equitable or contractual rights to which such claim or interest  
2 entitles the claim or holder of such interest.

3 Notwithstanding anything to the contrary set forth in the Plan, any Confirmation Order  
4 entered by the Court shall not enjoin, negatively impact or alter any rights Secured Creditor  
5 might have against, under or pursuant to any Guaranty executed by any third party for the  
6 obligations set forth in the Loan Agreement, including specifically the Guaranty executed by Luz  
7 Burni of the obligations set forth in the Loan Agreement and the currently pending San Diego  
8 County Superior Court lawsuit captioned and styled as: Wells Fargo Bank v. Luz (Lucy) Burni,  
9 etc., S.D.C.S.C. Case No. 37-2016-00026859 (“Action”). Debtor and Guarantor contend that the  
10 pursuit of that Action under the Guaranty bars any subsequent action against Debtor under  
11 California law and do not waive any defenses that they may have in connection with that Action.  
12 Secured Creditor disputes Debtor’s contentions.

13 **B. Modification of the Plan**

14 Debtor may modify the Plan at any time before entry of the Confirmation Order. Debtor  
15 may modify the Plan at any time after entry of the Confirmation Order and before the  
16 Consummation Date, but only if circumstances warrant, and after notice and hearing.

17 **C. Post-Confirmation Causes of Action**

18 To the best of its knowledge, Debtor is not aware of any other potential actions that exist  
19 against any third party, including but not limited to preference or fraudulent transfer actions  
20 under §§ 544, 547, 548 or 549. However, Debtor’s analysis of its rights to bring such actions is  
21 ongoing, and Debtor reserves the right to bring such actions. Reorganized Debtor may pursue  
22 such Claims as representative of the Estate under § 1123(b)(3) and shall have the right to assert  
23 any or all causes of action post-confirmation in accordance with applicable law, if any should be  
24 discovered or prosecuted.

25 **D. Final Decree**

26 Upon the Consummation Date, a Final Decree may be entered upon Debtor’s motion.  
27 The effect of the Final Decree is to close the bankruptcy Case. After such closure, a party  
28

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1 seeking any type of relief relating to a Plan provision can seek such relief in a state or federal  
2 court of general jurisdiction.

3 **E. Defaults Under the Plan and Remedies**

4 Debtor may fail to make timely Distributions or other payments required under the Plan.  
5 Any Distribution required to be made by a date certain in the Plan shall be made not later than  
6 (10) days following the date provided in the Plan for the payment to be made (the “Grace  
7 Period”). If, for any reason, Debtor fails to make a timely Distribution, other payment owing to  
8 the U.S. Trustee under 28 U.S.C. § 1930, or otherwise provided in the Plan after the expiration of  
9 the Grace Period, the Allowed Claimant entitled to such a Distribution or the U.S. Trustee may  
10 seek an order converting the Case to Chapter 7, dismissal of the Case, or, if after a Final Decree  
11 is entered, any other remedy available under any applicable law.

12 **F. Retained Bankruptcy Court Jurisdiction**

13 The jurisdiction of this Court shall continue after the Confirmation Date, whether or not  
14 the Case is closed with respect to the following:

- 15 1. Determination of the allowability of Contested Claims, together with the Claims  
16 of Debtor for affirmative relief;
- 17 2. Assumption or rejection of unexpired leases and Executory Contracts, and  
18 determination of Contested Claims arising out of rejections;
- 19 3. Determination of any tax liability under § 505;
- 20 4. Determinations of requests for payment of Claims entitled to priority under  
21 § 507(a)(1);
- 22 5. Resolution of any disputes regarding interpretation of the Plan; and
- 23 6. Implementation or modification of the provisions of the Plan and entry of orders  
24 in aid of consummation of the Plan, including, without limitation, appropriate orders to protect  
25 Reorganized Debtor from creditors’ actions and to enforce the discharge injunction.

26 **X.**

27 **ADDITIONAL SOURCES OF INFORMATION**

28 An additional source of information available to all creditors are the Schedules, Debtor’s

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1 monthly operating reports and other relevant documents, all of which are available for inspection  
2 in the Office of the Clerk of the United States Bankruptcy Court, 325 "F" Street, San Diego,  
3 California, during regular business hours.

4 **XI.**

5 **UNITED STATES TRUSTEE SYSTEM FUND FEES**

6  
7 A fee is required by the provisions of Title 28 United States Code § 1930(a)(6), to be paid  
8 quarterly to the United States Trustee by a debtor in a Chapter 11 case. The amount of the fee is  
9 based on Debtor's disbursements for the preceding quarter. Debtor's obligation to pay the fee  
10 continues after Plan confirmation and until the Chapter 11 Case is fully administered, closed, and  
11 a Final Decree is entered.

12 On the Confirmation Date, Debtor shall be current with all quarterly fees due as of that  
13 date. Any delinquent fees will be paid in full on the Confirmation Date of the Plan. Quarterly  
14 fees will be paid every calendar quarter thereafter as a first priority under the Plan until the Case  
15 is closed.

16 **XII.**

17 **RISKS TO CREDITORS UNDER THE PLAN**

18 Creditors will be paid in full under the terms of the Plan over a multi-year period. The  
19 primary risks to performance of the Plan is the ability to renovate the Hotel quickly, maintain  
20 maximum tenancy at the Hotel, and stay current under the terms of the Secured Creditor Loan  
21 and perform in accordance with the terms of the License Agreement with Sheraton.

22 **XIII**

23 **CONCLUSION**

24 Debtor believes that confirmation of the Plan is in the best interests of the creditors.

25 Dated: January 13, 2017

GORDON & REES LLP

26  
27 By: /s/ William M. Rathbone  
William M. Rathbone  
Attorneys for Debtor  
8110 Aero Drive Holdings, LLC  
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