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Party in Interest

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII

In re:	)	Case No. 12-02279 (RJF)
	)	Chapter 11
HAWAII OUTDOOR TOURS, INC., dba	)	
Naniloa Volcanoes Resort and Naniloa	)	
Volcanoes Golf Club,	)	KEN DIRECTION
	)	CORPORATION'S
Debtor and Trustee in	)	DISCLOSURE STATEMENT RE:
Possession David Farmer	)	INTEREST PARTY'S PLAN OF
	)	REORGANIZATION DATED AS
	)	OF NOVEMBER 4, 2013;
	)	EXHIBITS "A" – "D"
	)	
	)	Date :
	)	Time :
	)	Place : United States Courthouse
	)	Judge : Honorable Robert J. Faris
_____	)	

**KEN DIRECTION CORPORATION'S  
DISCLOSURE STATEMENT RE: INTERESTED PARTY'S PLAN OF  
REORGANIZATION DATED AS OF NOVEMBER 4, 2013**

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ARTICLE I.  
INTRODUCTION

KEN DIRECTION CORPORATION, a Hawaii corporation (hereinafter referred to as the “Proponent” of the Plan), provides this Disclosure Statement to all of the Creditors, Equity Security Holder, and to other parties in interest in the Case.

The Debtor commenced its Bankruptcy case by filing a voluntary Chapter 11 petition under the United States Bankruptcy Code, (“Code”) Sections 101-1330, on November 20, 2012 (the “Petition Date”). The Debtor is continuing in operation with the management of its business being done by the Trustee David Farmer pursuant to Bankruptcy Code Sections 1107 and 1108.

Section 1125 of the Bankruptcy Code requires that, at the time when the Plan is delivered to Creditors, the Plan be accompanied by this Disclosure Statement<sup>1</sup>. The purpose of this Disclosure Statement is to provide information of a kind, and in sufficient detail, so far as is reasonably practicable, in light of the nature and history of the Debtor and the condition of the Debtor’s books and records, to enable a typical Creditor or Equity Security Holder to make an informed judgment about the Plan and to enable such Creditor or Equity Security Holder to determine whether it is in his best interest to vote for (accept) or against (reject) the Plan.

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<sup>1</sup> Section 1125(b) provides, in pertinent part, as follows: An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder of the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information .

..  
11 U.S.C. § 1125 (b) (2003).

Chapter 11 of the Bankruptcy Code allows debtors, and under some circumstances, creditors and other parties in interest, to propose a plan of reorganization. The plan may provide for Debtor to reorganize by securing new financing, continuing to operate, to liquidate by selling assets of the estate, or a combination of both. The Proponent is the party proposing the Plan sent to you in the same envelope as this document. **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ENCLOSED PLAN.** This Disclosure Statement contains a description of the Plan and other information relevant to the decision whether to vote to accept or to reject the Plan. The Proponent urges you to read this Disclosure Statement because it contains important information concerning the Debtor's history, business, assets, and liabilities and sets forth a summary of the Plan.

The Proponent's Plan is a reorganizing plan accomplished by securing new funds for the Debtor either by loan or investment. The secured creditors of the estate shall be paid 100% of their claim on the effective date. The unsecured priority claims and the unsecured claims will be paid 100% of their claims on the effective date. The effective date of this proposed plan is projected to be \_\_\_\_\_ . The confirmation date of this proposed Plan is to be \_\_\_\_\_ . The first payment due under this plan is based on the projected Effective Date of \_\_\_\_\_ .

All funds generated by the continuation of Debtor's primary business, the ownership, management and refinancing of the Debtors' Hotel will be used for the operations and remodeling of the Hotel. The Plan may provide for the

Proponent to reorganize by continuing to operate, to liquidate by selling assets of the estate, refinancing assets of the estate or a combination of all of the above. The Proponent, Ken Direction Corporation, is the party proposing the Plan sent to you in the same envelope as this document. THE DOUCMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ENCLOSED PLAN.

The source of about \$14,000,000.00 in new funds will be the proceeds from the sale of real estate owned by HPAC, LLC to Shalom Amar Revocable Trust 2000. HPAC, LLC is an affiliated company of the Proponent. The Purchase and Sale contract for that transaction is attached as Exhibit A. The Proof of Funds for that transaction is attached as Exhibit B.

The Plan will be implemented through the following means: The proceeds from HPAC, LLC's sale will be either loaned to or invested in the Debtor and used to fund the payments to both Secured and Unsecured Creditors provided for under the Plan on the Effective Date. The CEO of Debtor, Kenneth Fujiyama, will provide oversight and assistance in the operation of the Debtor's business and day-to-day management decisions. The Debtor will work to maintain and increase room sales, bar and restaurant revenue, golf course revenue, convention and banquet revenue, as well as to refinance the Naniloa Hotel Property.

- The proceeds from the HPAC, LLC's sale, the net income resultant from room sales, bar and restaurant revenues, golf course revenues, convention and banquet revenues of the Naniloa Hotel Property will be used to fund the payments to both Secured and Unsecured Creditors

provided for under the Plan. There will be sufficient funds from the above referenced sources to pay all Allowed Secured and Allowed Unsecured Claims as follows:

- The secured claims of the Director of Finance - RPT County of Hawaii, Hawaii State Tax Collector, Department of Taxation, and First Citizens Bank will be paid in full on the Effective Date, excepting that the Allowed Claims of Director of Finance - RPT County of Hawaii and Hawaii State Tax Collector , Department of Taxation shall be paid in full on the Effective Date should the State of Hawaii or its assignee as Lessor the Hawaii Outdoor Tours, Inc., as Lessee under General lease No. S-5844 effective February 1, 2006, determine that those allowed claims shall be paid in full on the Effective Date as a cure of monies due to maintain the terms and conditions due under General Lease No. S-5844.
- Unsecured Priority Claims other than Priority Tax Claims shall be paid in full on the Effective Date.
- Allowed Class 4 General Unsecured Claims will receive 100% of their allowed claim on the Effective Date

**A MORE COMPLETE DESCRIPTION OF THE PROVISIONS OF THE PLAN AND THE MEANS OF EFFECTUATING THE PLAN ARE LOCATED AT SECTION IV.D. BELOW.**

**1.01 Purpose of this Document.**



This Disclosure Statement summarizes what is in the Plan and tells you certain information relating to the Plan and the process the Court follows in determining whether or not to confirm the Plan. This Disclosure Statement does not purport to be a complete description of the Plan, the financial data pertaining to the Debtor's business operations, the applicable provisions of the Bankruptcy Code, or any other matter which may be deemed significant by Creditors or Interest Holders. Out of practical necessity, this Disclosure Statement represents an attempt to summarize extensive overall data, legal documents and legal principles, including provisions of the Bankruptcy Code, and to set them forth in understandable, readable form.

**READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW ABOUT:**

1. **WHO CAN VOTE OR OBJECT;**
2. **WHAT THE TREATMENT OF YOUR CLAIM IS, (i.e., what your claim will receive if the Plan is confirmed) AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION;**
3. **THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY;**
4. **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;**
5. **WHAT IS THE EFFECT OF CONFIRMATION; AND**
6. **WHETHER THE PLAN IS FEASIBLE.**

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how the Plan will affect you and what is the best course of action for you. Be sure to read the Plan as well as all of this Disclosure Statement.

The Code requires a Disclosure Statement to contain “adequate information” concerning the Plan. The Bankruptcy Court has conditionally approved this document as an adequate Disclosure Statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. Any party can now solicit votes for or against the Plan. However, the statements and conclusions set forth in this document are, unless otherwise noted, those of the Proponent of the Plan. The accuracy has not yet been determined by the Court, and the Court may determine such accuracy at the hearing regarding whether or not to confirm the Plan.

**1.02 Deadlines for Voting and Objecting: Date of Plan Confirmation Hearing.**

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON ALL CREDITORS AND INTEREST HOLDERS IN THE CASE.

**1.02.1 Time and Place of the Confirmation Hearing**

The hearing where the Court will determine whether or not to confirm the

Plan will take place on \_\_\_\_\_, 2013, at \_\_\_\_ a.m., 1132 Bishop Street, Suite 250, Honolulu, Hawaii.

### **1.02.2 Deadline for Objecting to the Confirmation of the Plan**

Objections to the confirmation of the Plan must be filed with the Court and served upon DONALD L. SPAFFORD, JR., 1003 Bishop Street, Suite 470, Honolulu, Hawaii 96813, Telephone (808) 532-6300, by \_\_\_\_\_, \_\_\_\_\_, 2013, at 5:00 p.m. Hawaii time.

At the Confirmation Hearing, the Bankruptcy Court will determine, pursuant to Section 11.29 of the Bankruptcy Code, whether the Plan has been accepted by the necessary Classes of Claims and Interests created under the Plan, and if not, whether the Bankruptcy Court should nevertheless confirm the Plan. If at the Confirmation Hearing the Bankruptcy Court determines that the Plan meets all of the requirements for confirmation prescribed by the Bankruptcy Code, the Bankruptcy Court will enter a Confirmation Order. Pursuant to Section 1141 of the Bankruptcy Code, the effect of the Confirmation Order will be to make the provisions of the Plan binding upon the Debtor and each of its Creditors and Interest Holders, regardless of whether each Creditor or Interest Holder voted to accept the Plan.

### **1.02.3 Identity of Person to Contact for More Information**

#### **Regarding the Plan**

Any interested party desiring further information about the Plan may contact Donald L. Spafford, Jr., 1003 Bishop Street, Honolulu, Hawaii 96813, Telephone (808) 532-6300.

### **1.03 Disclaimer**

The Plan involves the payment of Claims from available Cash, from the room sales, bar and restaurant revenue, golf course revenue, convention and banquet revenue, and or from the sale or refinance of the Naniloa Hotel Property. The Debtor projects that there will be sufficient funds available to make the payments called for under the Plan. The financial projections for the Debtor filed in support of the Plan are included in Exhibit C attached hereto and were prepared by the Proponent.

THE PROJECTIONS SET FORTH IN THIS DISCLOSURE STATEMENT REPRESENT A PREDICTION OF FUTURE EVENTS BASED UPON CERTAIN ASSUMPTIONS SET FORTH WITH SUCH PROJECTIONS. THESE FUTURE EVENTS MAY OR MAY NOT OCCUR, AND THE PROJECTIONS MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL RESULTS WHICH WILL OCCUR. BECAUSE OF THE UNCERTAINTIES INHERENT IN PREDICTIONS OF FUTURE EVENTS, THE REORGANIZED DEBTOR'S ACTUAL CASH FLOW MAY WELL BE DIFFERENT FROM THAT PREDICTED, AND SUCH DIFFERENCE MAY BE MATERIAL AND ADVERSE TO THE INTERESTS OF THE CREDITORS.

The projections are intended to assess the future cash flow available to the Debtor for making the distributions required by the Plan. Significant assumptions underlying the financial projections include the following:

1. Effective Date of the Plan

For the purpose of the Projections, the Debtor estimates that the Confirmation Date will occur in or about \_\_\_\_\_, 2013 and hence, that the Effective Date will occur in or about \_\_\_\_\_, 2013.

2. Earnings Generated by Naniloa Volcanoes Resort.

The Debtor's projection of the future earnings which will be generated by the Naniloa Hotel Property through the room sales, bar and restaurant revenue, golf course revenue, convention and banquet revenue, and or the sale/refinance of Naniloa Hotel Property is derived from Debtor's estimate of the revenue which the Naniloa Hotel Property will generate after the Confirmation Date.

3. Expenses of the Debtor

The Debtor has assumed, for the purpose of the Projections that their expenses will not increase by any significant amount, except as specifically set forth in the Projections, during the term of the Plan.

The information contained in this Disclosure Statement is provided by the Debtor. The Debtor represents that everything stated in the Disclosure Statement is true to the Proponent's best knowledge. The court has not yet determined whether or not the Plan is confirmable and makes no recommendation as to whether or not you should support or oppose the Plan.

The financial data relied upon in formulating the Plan is based on the Debtor's post-petition financial projections, the Debtor's Bankruptcy Schedules, and the financial information contained in pleadings filed with the Bankruptcy Court. This information was not audited or reviewed by an independent

accountant and the Debtor is unable to warrant or represent that such financial information is without any inaccuracies, although Debtor believes it has made reasonable efforts under the circumstances to present such financial information fairly and accurately. The Debtor represents that everything stated in the Disclosure Statement is true to the best of Debtor's knowledge. The Court has not yet determined whether or not the Plan is confirmable and makes no recommendation as to whether or not you should support or oppose the Plan.

THIS IS A SOLICITATION BY THE DEBTOR. THE REPRESENTATIONS HEREIN ARE THOSE OF THE DEBTOR AND NOT OF ITS ATTORNEYS OR CONSULTANTS. NO REPRESENTATIONS CONCERNING THE DEBTOR OR POST-CONFIRMATION DEBTOR, INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS AS TO THE POST-CONFIRMATION DEBTOR'S FUTURE ACTIVITIES, THE VALUE OF ITS PROPERTY, THE AMOUNT OF CLAIMS AGAINST THE DEBTOR'S ESTATE, OR ANY TAX EFFECT OF THE TRANSACTIONS PROPOSED UNDER THE PLAN, ARE AUTHORIZED BY THE DEBTOR, OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE OF THE PLAN THAT ARE IN ADDITION TO OR DIFFERENT FROM THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY ANY PARTY IN INTEREST. ANY SUCH ADDITIONAL REPRESENTATION OR INDUCEMENTS SHOULD BE REPORTED TO THE DEBTOR'S ATTORNEY WHO, IN TURN, WILL

DELIVER THE INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS THE BANKRUPTCY COURT MAY DEED TO BE APPROPRIATE.

UNLESS SPECIFICALLY SET FORTH HEREIN TO THE CONTRARY, THE INFORMATION CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT REGARDING THE DEBTOR HAS NOT BEEN SUBJECT TO CERTIFIED AUDIT. RECORDS KEPT BY THE DEBTOR RELY FOR THEIR ACCURACY ON BOOKKEEPING PERFORMED INTERNALLY BY THE DEBTOR. THE DEBTOR BELIEVES THAT EVERY REASONABLE EFFORT HAS BEEN MADE TO PRESENT FINANCIAL INFORMATION AS ACCURATELY AS IS REASONABLY PRACTICAL GIVEN THE NATURE AND HISTORY OF THE DEBTOR'S BUSINESS AND THE CONDITION OF THE DEBTOR'S BOOKS AND RECORDS. HOWEVER, THE FINANCIAL INFORMATION CONTAINED HEREIN REGARDING THE DEBTOR IS NEITHER WARRANTED NOR REPRESENTED TO BE FREE OF INACCURACY. COUNSEL FOR THE DEBTOR HAS NOT INDEPENDENTLY VERIFIED THE INFORMATION CONTAINED HEREIN AND MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ACCURACY THEREOF.

ALL PARTIES ENTITLED TO VOTE ON THE PLAN ARE URGED TO REVIEW CAREFULLY THE PLAN AND THIS DISCLOSURE STATEMENT PRIOR TO VOTING ON THE PLAN. THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED IN ANY MANNER TO BE LEGAL, BUSINESS, OR TAX ADVICE. EACH CREDITOR AND OTHER

PARTY IN INTEREST SHOULD CONSULT WITH HIS OWN LEGAL COUNSEL, BUSINESS ADVISOR, CONSULTANT, AND/OR ACCOUNTANT PRIOR TO VOTING TO ENSURE A COMPLETE UNDERSTANDING OF THE TERMS OF THE PLAN. THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF THE CREDITORS AND INTEREST HOLDERS OF THE DEBTOR TO ENABLE THEM TO MAKE AN INFORMED DECISION REGARDING THE PLAN.

THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT INDICATES ONLY THAT THE DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION FOR THE PURPOSE OF SOLICITATION OF ACCEPTANCES TO THE PLAN BY THE DEBTOR, ASSUMING IT IS ACCURATE. HOWEVER, THE BANKRUPTCY COURT HAS NOT YET DETERMINED THE ACCURACY OF SUCH INFORMATION. IT MAY DO SO AT THE CONFIRMATION HEARING.

#### **1.04 Definitions, Interpretations and Rules of Construction**

##### **1.04.1 Definitions**

1. “**Administrative Claim**” means a Claim for costs and expenses of the administration of the Case under Sections 503(b) or 507(b) of the Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of the Debtor (such as wages, salaries, or commissions for services); (b) all Claims of professionals employed at the expense of the Estate; and (c) any fees or charges assessed against the Estate under 28 U.S.C. §1930.



2. **“Allowed Administrative Claim”** means an Administrative Claim allowed pursuant to Sections 503(b) or 507(b) of the Bankruptcy Code.

3. **“Allowed Amount”** means the amount of any claim against the Debtor determined in accordance with Sections 502 and 506(a) of the Bankruptcy Code and any other applicable Section of the Bankruptcy Code, and recognized by the Debtor as value or allowed by Final Order of the Court, except to the extent described or defined otherwise herein.

4. **“Allowed Claim”** means a Claim: (a) with respect to which a Proof of Claim has not been filed but the Claim has been listed in the Schedules filed with the Bankruptcy Court by the Debtor and not listed as disputed, contingent, or unliquidated as to amount and as to which no objection is filed within the time period fixed by the Bankruptcy Court, or as to which any such objection has been determined by a Final Order; or (b) with respect to which a Proof of Claim has been filed within the time period fixed by the Bankruptcy Court, and as to which no objection is filed within the time period fixed by the Bankruptcy Court, or as to which any such objection has been determined by a Final Order. Class \_\_\_\_ Claim means an Allowed Claim in the particular Class described.

5. **“Allowed Class Interest”** means an Allowed Interest in a particular Class described

6. **“Allowed General Unsecured Claim”** means an unsecured Allowed Claim against the Debtor, however arising, not entitled to priority under Section 507(a) of the Bankruptcy Code, including, without limitation, an Allowed Claim based on the rejection of an executory contract or unexpired lease.

7. “**Allowed Priority Claim**” means an Allowed Administrative Claim, Allowed Priority Tax Claim, or Allowed Priority Unsecured Claim.

8. “**Allowed Priority Tax Claim**” means an Allowed Claim entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code.

9. “**Allowed Priority Unsecured Claim**” means an Allowed Claim entitled to priority pursuant to Sections 507(a)(3), 507(a)(4) or 507(a)(6) of the Bankruptcy Code.

10. “**Allowed Secured Claim**” means an Allowed Claim secured by a lien, security interest or other charge against property in which the Estate has an interest, or which is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value, determined in accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of such Allowed Secured Claim in the Estate’s interest in such property, or to the extent of the amount subject to any setoff, as the case may be.

11. “**Approved Date**” means the date on which an Order approving the Disclosure Statement, or an amended version thereof, is entered by the clerk on the Court’s docket.

12. “**Avoidance Action**” means any action which is filed or which may be filed pursuant to the provisions of Sections 510, 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code, any actions based on applicable non Bankruptcy law that may be incorporated or brought under the foregoing sections of the Bankruptcy Code, or any other similar action or proceeding filed to recover property for or on behalf of the Estate or to avoid a lien or transfer.

13. “**Ballot**” means the form distributed to holders of claims and interests on which is to be stated an acceptance or rejection of the Plan.

14. “**Bankruptcy Code**” means Title 11 of the United States Code, as now in effect or hereafter amended. All citations in the Plan to section numbers are to the Bankruptcy Code unless otherwise expressly indicated.

15. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Eastern District of Hawaii, which has jurisdiction over the Case and the Estate of the Debtor, or such successor court or tribunal as may hereafter be confirmed or created by lawful authority with power to confirm reorganization plans under Chapter 11 of the Bankruptcy Code and all applicable statutes, rules, and regulations pertaining thereto.

16. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for use in the Bankruptcy Court, as now in effect or hereafter amended.

17. “**Bar Date**” means the last date for filing Proofs of Claim other than Administrative Claims or Claims based upon the rejection of any executory contracts or unexpired leases. The Bar Date for filing Proofs of Claim was set by the Bankruptcy Court as April 8, 2013, for non-governmental creditors and May 20, 2013 for government units.

19. “**Business Day**” means any day other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

20. “**Case**” means the Debtor’s Chapter 11 case which was filed in the Bankruptcy Court, as Case No. 12-02279 (RJF).

21. “**Cash**” means cash and cash equivalents, including, but not limited to, checks or similar forms of payment or exchange.

22. “**Claim**” means: (a) a right to payment from the Debtor, whether or not such right is reduced to judgment, liquidation, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, liquidation, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

23. “**Claimant**” means the holder of a Claim.

24. “**Class**” means a grouping into which Claims or Interests which are substantially similar to other Claims or Interests have been classified pursuant to Article IV of the Plan.

25. “**Confirmation**” means the entry of the Confirmation Order by the Bankruptcy Court.

26. “**Confirmation Date**” means the date on which the Confirmation Order is entered by the Bankruptcy Court.

27. “**Confirmation Hearing**” means the hearing, including any continued or postponed session thereof, at which time the Bankruptcy Court will consider and determiner whether to confirm the Plan.

28. “**Confirmation Order**” means the order, as entered, of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

29. “**Creditor**” means the holder of an Allowed Claim.

30. “**Debtor or HOT**” means HAWAII OUTDOOR TOURS, INC., the debtor in the Case.

31. “**Disallowed Claim**” means a Claim against the Debtor, which Claim is disallowed pursuant to an order of the Bankruptcy Court as to which eleven (11) calendar days have passed following entry of such order and no stay pending an appeal of such order is obtained during such period.

32. “**Disbursing Agent**” means the person or entity charged with making Distributions pursuant to the terms of the Plan. Pursuant to the Plan, the Reorganized Debtor will serve as the Disbursing Agent under the Plan.

33. “**Disclosure Statement**” means the Disclosure Statement (and all exhibits or schedules annexed thereto or referenced thereto) which accompanies the Plan, as the Disclosure Statement may be amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code and Bankruptcy Rules.

34. “**Disputed Claim**” means any Claim: (a) listed on the Debtor’s Schedules as unliquidated, disputed, or contingent; or (b) as to which the Debtor, or any other party in interest, has interposed a timely objection or request for estimation or subordination in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation or subordination has

to been withdrawn or determined by a Final Order. A Claim will be considered a Disputed Claim in its entirety if an objection is timely filed to any portion of such Claim.

35. “**Disputed Claims Reserve Account**” means the segregated account to be created for holding the pro-rata share of any Disputed Claims pending final resolution of the Disputed Claim.

36. “**Distribution**” means the Cash which is required to be distributed under the Plan to the holders of Allowed Claims.

37. “**DLNR Fiscal Office**” means The State of Hawaii Department of Land and Natural Resources, the beneficiary of a \$1,000,000.00 performance bond dated February 1, 2012 by and between DLNR as beneficiary and Hawaii Outdoor Tours, Inc. as Obligor and which bond had a balance owing of \$740,028.97 on the petition date.<sup>2</sup>

38. “**Effective Date**” means the date not later than ninety (90) days following the date upon which the Confirmation Order becomes a Final Order; provided, however, that, if an appeal of the Confirmation Order is timely filed, the Debtor may elect to cause the Plan to become effective, notwithstanding the pendency of such appeal, so long as no stay of the Confirmation Order is in effect, by filing with the Bankruptcy Court a notice of such election, in which event the Plan will become effective as provided herein.

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<sup>2</sup> On October 5, 2012, the Lender made a payment of \$260,015.95 to cure the default on the performance bond. On November 20, 2012, the Debtor filed for bankruptcy. In December 2012, the Lender made lease payment for August 2012 rent in the amount of \$262,000 which is superpriority administrative claim. On May 10, 2013 the Board of Land and Natural Resources ruled to reinstate the performance bond to its original amount of \$1,000,000 from its current amount of \$500,000.00.

39. “**Equity Security Holder**” means the holder of an Interest in the Debtor.
40. “**Estate**” means the estate created under Section 541 of the Bankruptcy Code in the Case.
41. “**Exhibits**” means those exhibits annexed to the Plan or Disclosure Statement or incorporated by reference in the Plan or Disclosure Statement.
42. “**File**”, “**Filed**”, or “**Filing**” means filed with the Bankruptcy Court having jurisdiction over the Case.
43. “**Final Distribution**” means, for each Class, the last Distribution to be made to holders of Allowed Claims in that Class.
44. “**Final Order**” means an order or judgment of the Bankruptcy Court, or of any court of competent jurisdiction where there is pending an action in which the Reorganized Debtor is a party, which has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for reargument or rehearing shall then be pending; or (b) any right to appeal, petition for certiorari, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor; or (c) any appeal, petition for certiorari, reargument or rehearing has been resolved by the highest court to which the order or judgment was appealed timely or from which certiorari, reargument, or rehearing was sought.

45. **“Financial Projections”** means the financial statements prepared by the Debtor which sets forth, among other things, the Debtor’s cash flow projections, and which is attached as Exhibit “C” hereto.

46. **“First Citizens Bank”** means First Citizens Bank, the holder of the beneficial interest in: (1) Mortgage encumbering the Naniloa Hotel Property. First Citizens Bank is the successor in interest to First Regional Bank. On January 29, 2010 First Citizens Bank entered into an agreement with the Federal Deposit Insurance Corp (FDIC) to purchase substantially all the assets and assume the majority of the liabilities of First Regional Bank of Los Angeles, California.

47. **“First Citizens Bank Note 1”** means that certain Promissory Note secured by a Mortgage encumbering that Naniloa Hotel Property, of First Citizens Bank, as successor in interest to First Regional Bank, as of the petition date including all amendments and modifications thereto.

48. **“First Citizens Bank Note 1 Collateral”** means the mortgage on the leasehold interest of the Naniloa Hotel Property.

49. **“First Citizens Bank Note 1 Security Documents”** means hat certain first mortgage executed by the Debtor as mortgagor in favor of the current holder of the First Citizens Bank Note 1 creating the First Citizens Bank Note 1 Collateral and all security agreements and financing statements executed by the Debtor as grantor for the benefit of the holder of the First Citizens Bank Note 1 securing the Debtor’s obligations under that note.



50. “**General Lease No. S-5844**” means the State of Hawaii or its assignee as Lessor to Hawaii Outdoor Tours, Inc., as Lessee under General Lease No. S-5844 effective February 1, 2006.

51. “**General Unsecured Claim**” means an unsecured Claim against the Debtor that is not entitled to priority under Section 507(a) of the Bankruptcy Code, including, without limitation, a Claim based on the rejection of an executory contract or unexpired lease.

52. “**KDC**” means Ken Direction Corporation, the parent company of the Debtor.

53. “**Kenneth Fujiyama**” means Kenneth Fujiyama, the CEO of the Debtor.

54. “**Naniloa Hotel Property or Debtors Property**” means the Hotel and golf course located at 93 Banyan Drive, Hilo, Hawaii 96720, consisting of an area of 6.35 acres, more or less (“Naniloa Hotel”), and a nine-hole golf course and allied facilities site, containing a gross area of 63.775 acres, more or less, and a net area of 62.576 acres, more or less, after exclusions (“Golf Course”).

55. “**Net Sales Proceeds**” means all of the Cash proceeds from the sale of the assets of the Estate minus all costs of sale and administrative expenses of the Estate including, but not limited to, the fees and expenses of the Disbursing Agent and Professionals employed by the Estate, income taxes and payments pursuant to the Plan to creditors holding an Allowed claim.

56. “**New Value Contribution**” means any contribution by KDC for the benefit of the Debtor consisting of loan and/or equity contributions in cash to fund the plan on the Effective Date.

57. “**Order**” means an order or judgment of the Bankruptcy Court as entered on the Court’s docket.

58. “**Person**” means any individual, corporation, general partnership, limited partnership, association, joint stock company, joint venture, estate, trust, government or any political subdivision, governmental unit (as defined in the Bankruptcy Code) or official committee appointed by the United States Trustee.

59. “**Petition Date**” means November 20, 2012, the date on which the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code, commencing the Case.

60. “**Plan**” means the Debtor’s Chapter 11 Plan of Reorganization, as the Plan may be amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code and Bankruptcy Rules.

61. “**Post-Confirmation Estate Claims**” means any and all claims and causes of action which constitute property of the Estate including, but not limited to, any Avoidance Actions, whether or not such claims or causes of action are the subject of litigation pending as of the Effective Date.

62. “**Post-Petition Earnings**” means any funds received by Debtor since the Petition Date.

63. “**Priority Claim**” means an Administrative Claim, Priority Tax Claim, or Priority Unsecured Claim.

64. “**Priority Tax Claim**” means a Claim asserted to have priority under Section 507(a)(8), of the Bankruptcy Code.

65. “**Priority Unsecured Claim**” means a Claim asserted to have priority under Sections 507(a)(3), 507(a)(4), or 507(a)(6) of the Bankruptcy Code.

66. “**Professionals**” means professionals, such as attorneys, consultants or accountants employed by the Disbursing Agent in this case after the confirmation of the Plan, including but not limited to Donald L. Spafford, Jr.

67. “**Pro Rata**” means the proportional amount of any one Claim or Equity Interest in a Class or a group of Claims to the aggregate amount of all Claims or Equity Interests in the same Class or group, including Disputed Claims until disallowed.

68. “**Proof of Claim**” means a statement under oath filed in the Case by a Claimant in which the Claimant sets forth the amount claimed to be owed to it and sufficient detail to identify the basis for the Claim, in accordance with Federal Rule of Bankruptcy Procedure 3001.

69. “**Reorganized Debtor**” means the Debtor, Hawaii Outdoor Tours, Inc., on and after the Effective Date, who shall assume all of the rights and obligations of the Debtor together with title to and control of the Debtor’s assets and liabilities upon Confirmation of the Plan, as such rights, obligations, assets and liabilities are modified in the Plan.

70. “**Schedules**” means the Schedules of Assets and Liabilities and Statement of Financial Affairs filed by the Debtor in the Case, as amended, modified, or supplemented from time to time.

71. **“Secured Claim”** means a Claim secured by a lien, security interest or other charge against property in which the Estate has an interest, or which is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value, determined in accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of such Secured Claim in the Estate’s interest in such property, or to the extend of the amount subject to any setoff, as the case may be.

72. **“Secured Creditor”** shall mean the holder of an Allowed Secured Claim.

73. **“Shareholder Interest”** means a shareholder interest in the Debtor.

74. **“Tax Collector”** means the County Treasurer/Tax Collector or its successors-in-interest.

75. **“Unclaimed Distribution”** means any Distribution which is unclaimed as a result of any of the following: (a) checks which have been returned as undeliverable without a property forwarding address; (b) checks which were not mailed or delivered because of the absence of a proper address to which to mail or deliver the same; (c) checks which remain unnegotiated for a period of ninety (90) days after the date of issuance.

76. **“Unclassified Claims”** means the Allowed Amount of all Administrative Claims of the Debtor’s Case, allowed pursuant to Section 503(b) of the Bankruptcy Code; and (ii) all Priority Tax Claims entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code.

77. **“Unsecured Creditors”** means Creditors holding Allowed Unsecured Claims against the Debtor for which there are no assets of the Debtor serving as a security, but not including Priority Claims.

78. **“Wage Claimant”** means a Claimant asserting a Claim pursuant to Section 507(a)(3) or (a)(4) of the Bankruptcy Code.

#### **1.04.2 Undefined Terms**

Any term used in the Disclosure Statement that is not defined in the Disclosure Statement, either in Section II.A (Definitions) or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules.

#### **1.05 Interpretations, Computation of Time and Governing Law**

##### **1.05.1 Rules of Interpretation**

For the purposes of the Disclosure Statement:

1. Whenever, from the context, it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural.
2. Any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions.
3. Any reference in the Plan to an existing document or Exhibit Filed or to be Filed means such document or Exhibit, as it may have been or may be amended, modified, or supplemented as of the Confirmation Date.

4. Unless otherwise specified in a particular reference in the Plan, all references in the Plan to Sections, Articles or Exhibits are references to Sections, Articles and Exhibits of or to the Plan.

5. Unless otherwise specified in a particular reference in the Plan, the words “herein”, “hereof”, “hereto”, “hereunder”, and others of similar import refer to the Plan in its entirety rather than only to a particular paragraph, subparagraph, or clause contained in the Plan.

6. Captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan.

7. The rules of construction set forth in Bankruptcy Code Section 102 shall apply.

8. The provisions of the Plan will control over any description thereof contained in the Disclosure Statement.

9. Any term used in the Plan that is not defined in the Plan, but that is used in the Bankruptcy Code or in the Bankruptcy Rules shall have the meaning assigned to that term in (and shall be construed in accordance with the rules on construction under) the Bankruptcy Code or the Bankruptcy Rules. Without limiting the foregoing, the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply hereto. The definitions and rules of construction contained herein do not apply to the Disclosure Statement or to the exhibits to the Plan except to the extent expressly so stated in the Disclosure Statement or in each exhibit to the Plan.

10. Except to the extent that federal law, including the Bankruptcy Code or the Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced for all purposes in accordance with, the laws of the State of Hawaii, without giving effect to any principles of conflict of laws thereof. All exhibits to the Plan are incorporated into the Plan and will be deemed to be included in the Plan, regardless of when they are filed.

#### **1.05.2 Computing Time Periods**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

#### **1.05.3 Section Numbers**

References in the Plan and Disclosure Statement to a Code section are references to the United States Bankruptcy Code (Title 11 of the United States Code) except as otherwise indicated.

#### **1.05.4 Notices and Delivery of Documents**

All notices, correspondence, and other deliveries under this Disclosure Statement must be directed as follows:

To the Proponent:	Ken Direction Corporation Attn: Kenneth Fujiyama P.O. Box 743 Hilo, Hawaii 96721
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With a Copy to: Donald L. Spafford, Jr.  
1003 Bishop Street  
Honolulu, Hawaii 96813

**ARTICLE II**  
**BACKGROUND**

**2.01 Description and History of the Reorganized Debtor's Business**

The Debtor Hawaii Outdoor Tours, Inc. is a Corporation formed under the laws of the State of Hawaii.

Debtor, which is the owner of the Naniloa Volcanoes Resort, was formed by KDC on December 6, 1991 to create a tour company to provide activities on some 5,000 acres of land the Debtor leased from the State of Hawaii intended to complement the services provided at the Volcano House Hotel. Debtor had requested a special use permit to allow horseback riding and camping on the property; however, the State of Hawaii took over 5 years to respond to Debtor's request, and Debtor finally decided to drop its tour activities plan.

The Debtor acquired the Naniloa Hotel Property on September 30, 2005, by placing the high bid of \$500,000 per annum lease rent and other consideration to acquire the ground leasehold rights under the State of Hawaii General Lease No. S-5844 ("General Lease"), which auction included a provision that the successful bidder pay the former lessee \$6,000,000 for its leasehold improvements, FF&E, and related assets. In addition, the Debtor agreed to pay the former lessee \$130,000 for personal property.

In conjunction with acquiring the leasehold rights, on or about January 20, 2006, the State of Hawaii and the Debtor entered into the General Lease which



covers a resort site, containing an area of 6.35 acres, more or less (“Nanihoa Hotel”), and a nine-hole Golf course and allied facilities site, containing a gross area of 63.775 acres, more or less, and a net area of 62.576 acres, more or less, after exclusions (“Golf Course”). The General Lease is for a term of 65 years, commencing February 1, 2006, and provides for a total ground rent for the first ten years of \$500,000 annually (or 2% of gross revenues, whichever is greater), payable by two semi-annual payments of \$250,000.

The Debtor acquired the Nanihoa Hotel Property with the understanding that the property was in disrepair and required significant renovations in order for it to achieve its highest and best use. To that end, a condition of the State in auctioning the General Lease rights was the requirement for the successful bidder to complete \$5 million in Hotel improvements within approximately 3 years of the successful bid, which outside date was agreed to be no later than January 31, 2009. As part of its investment analysis, the Debtor understood that along with the significant renovations to the Nanihoa Volcanoes Resort Property, there was major deferred maintenance that also required capital infusion and that the physical plant would be in a state of flux requiring its operations to be limited while the rehabilitation took place; hence, the Debtor anticipated incurring operating losses for 5 years while managing the Nanihoa Hotel Property until the scheduled renovations and deferred maintenance work were completed.

On or about January 23, 2006, the Debtor executed a Note in favor of First Regional Bank in the principal amount of \$10,000,000 (the “Note”), and executed a Construction Mortgage and Security Agreements in favor of First Regional

Bank under which the Naniloa Volcanoes Resort was collateral securing the indebtedness. The Debtor used its own cash plus some of the loan proceeds to acquire the leasehold improvements. The Debtor also paid to the prior Lessee \$300,000 to assume a lease for 2 acres of land and the former Banyan Broiler Restaurant from the Eleanor Benda Trust. The Debtor applied the remaining balance of funds from the loan from First Regional towards paying for costs for improvement, acquisition of upgraded furniture, fixtures, and equipment (“FFE”), and operating costs for the Naniloa Hotel Property. Besides the \$10,000,000 loan from First Regional Bank, the Debtor estimates that it has invested an additional approximately \$11,500,000 of its own cash by way of invested capital and loan proceeds from its parent company, KDC, and a sister corporation.

The property is comprised of 3 towers connected by an interior lobby and consists of 383 rooms totaling 138,521 square feet of living space out of a total of 229,018 square feet of hotel space which includes ancillary uses dedicated to food service areas, a spa, administrative offices and a gift shop. In addition to the hotel space and ancillary uses, the property contains special use, convention and restaurant space totaling 30,716 square feet as well as 195 parking spaces, a pool and the nine hole golf course.

## **2.02 Principals/Affiliates of Debtor’s Business**

The Debtor, Hawaii Outdoor Tours, Inc., has 1 shareholder, KDC who is the Proponent, as listed in Section 21 of the Schedules.

### **2.03 Management of the Debtor Before and After the Bankruptcy**

Management of the Debtor and the Debtor's Naniloa Hotel Property both before and after the filing of the Bankruptcy was by the Debtor until May 14, 2013. Now the management is by David C. Farmer, Chapter 11 Trustee.

### **2.04 Events Leading to Chapter 11 Filing**

Here is a brief summary of the circumstances that led to the filing of this Chapter 11 case:

The Debtor acquired the leasehold interest in the Property for the purpose of re-posturing the property and remodeling the Naniloa Hotel Property into a destination resort. After the closing of the leasehold purchase and execution of the 65 year lease with the State of Hawaii, in February, 2006, construction commenced on the remodeling of the property and in mid 2006, the Debtor started demolition work and commenced its renovation plan. The Debtor's planned renovation project included significant work on all 3 towers located on the Naniloa Hotel Property: Mauna Kea Tower, Mauna Loa Tower and the Kilauea Tower. The Debtor successfully made \$5 million in improvements to the Naniloa Hotel Property by the State's January 31, 2009 deadline. From 2007 to 2009, the State of Hawaii conducted inspections of the Naniloa Hotel Property confirming the Debtor's expenditure of more than \$5,000,000 in improvements by the January 31, 2009 deadline. As of 2009, the Debtor's expenditure of \$5 million had funded a significant portion of the Debtor's renovation plan. However, the Debtor's satisfaction of the State's \$5 million renovation value requirement was not the completion of the Debtor's planned renovation project which had an

estimated budget of approximately \$10,000,000 or more. Instead, the Debtor was only about half way through its renovation plan.

As the Debtor was diligently performing its renovation plan, which envisioned a “complete remodel” of all the rooms in the Naniloa Hotel Property, the Debtor anticipated obtaining additional funding from KDC to fund the remaining renovation costs. In 2009 and 2010, the Debtor expected to receive additional funding from KDC in the approximate amount of \$5 million to finish the renovation plan for the Naniloa Hotel Property. In 2009-2010, KDC expected to close a sale of land in Kau to the National Park Service for approximately \$4 million, and expected to have another subsidiary refinance and sell another real property asset to generate an additional \$1 million. However, the sale of the Kau land to the National Park Service did not close due to the National Park Service’s budget problems and the deal was not consummated. Additionally, by 2009 and 2010, as a result of the historic “credit crunch” and the subsequent Great Recession, the real estate market had crashed which prevented KDC’s other subsidiary from refinancing and selling its other real property asset.

Although the Debtor was expecting to incur operating losses during the renovation of the Naniloa Hotel, due to the lack of financing from KDC, the delay in completing the renovation plan has been much longer than anticipated and the Debtor has incurred net operating losses for a longer period than expected.

Although the first \$5 million in renovations were finished on schedule, the completion of the first phase of the remodeling coincided with the onset of the great recession and the general economic decline that has been a drag on the

overall economy since the recession began in December, 2007; therefore, the Debtor's projected revenues from room sales plummeted and the Debtor experienced difficulties in meeting its debt service obligations to First Citizens Bank and in meeting its land lease payment obligations to the State of Hawaii.

Throughout 2009, 2010 and 2011, the Debtor attempted to negotiate a loan restructure with First Regional Bank. First Regional Bank never notified the Debtor that it was insolvent and was taken over by First Citizens Bank. To that end, First Regional Bank and First Citizens Bank had made assurances to the Debtor that it would extend the loan including written e-mails in September of 2011 and December of 2011 wherein First Citizens acknowledged by that it was preparing final documents to extend the loan.

In direct contradiction to the e-mail assurances that the loan would be extended, just a month and a half later on February 7, 2012, the Debtor was notified in writing by First Citizens Bank that unless the Debtor paid the loan in full within 7 days, that First citizens Bank would pursue all of its legal options which included foreclosure. Just 5 days later, on February 12, 2012 the Debtor negotiated an amendment to its Performance Bond with the DLNR whereby the DLNR withdrew and credited \$500,000 of the \$1,000,000 Performance Bond that was secured by \$1,000,000 in cash the Debtor had placed on deposit at First Citizens Bank in Torrance, California. The \$500,000 withdrawal by the State of Hawaii was credited to the payment of \$500,000 in past due bi-annual land lease payments (\$250,000 apiece) and reduced the Performance Bond to \$500,000.

After successfully negotiating the interim resolution with the DLNR, the Debtor continued in its attempts to negotiate a loan restructure with First Citizens Bank who continued to demand that the Debtor pay off the approximately \$9.7 million balance owing on the construction loan. On June 18, 2012, First Citizens Bank sent the Debtor a Notice of Default letter notifying Debtor that was in default and that all sums due under the promissory note were due and payable and that First Citizens Bank had the right to institute foreclosure proceedings. After June 18, 2012, the Debtor continued in its attempts to negotiate a loan restructure, with First Citizens Bank, but was unsuccessful.

On or about May 25, 2012, the DLNR withdrew an approximate additional \$259,971.03 from the performance bond on deposit with First Citizens Bank in Torrance, California for the payment of the bi-annual \$250,000 land lease payment and late fees, resulting in the \$500,000 performance bond being in default and requiring \$259,971.03 cash replenishment.

Unable to finalize negotiations with First Citizens Bank and needing to modify the terms of its performance bond with the State of Hawaii, on November 20, 2012, in order to protect its business and to reorganize its debt, the Debtor filed for protection under Chapter 11 of the Federal Bankruptcy Code.

### **Significant Events During the Bankruptcy**

#### **2.04.1 Bankruptcy Proceedings**

The following is a chronological list of significant events which have occurred during this case:

On or about November 20, 2012, the Debtor filed its Chapter 11 case.

12/20/12: The Debtor and the secured lender have reached a stipulation regarding the continued use of cash collateral;

12/20/12: Order Granting Application to Employ Wagner Choi & Verbrugge as Debtor's Bankruptcy Counsel;

12/20/12: Order Authorizing Debtor to Pay Pre-Petition Wages and Other Employment Related Costs and Expenses and to Honor Pre-Petition Employee Benefits;

12/20/12: Notice of Appointment of Committee of Creditors;

2/19/13: Motion to Appoint Trustee; Memorandum in Support of Motion; Filed by Dana R.C. Lyons on behalf of First Citizens Bank & Trust Company;

3/4/13: Motion for Order Extending Time for Debtor to Assume or Reject Non Residential Leases;

3/20/2013 Debtor filed a Chapter 11 plan and disclosure statement;

3/22/2013 Order extending time for Debtor to assume or reject non-residential leases;

4/2/2013 Order denying without prejudice motion to appoint trustee;

4/9/2013 Fifth stipulated order authorizing use of cash collateral;

4/30/2013 Second motion to appoint Chapter 11 trustee;

5/3/2013 Motion for order authorizing assumption of leases;

5/10/2013 Order granting motion to appoint trustee;

5/14/2013 Order approving appointment of David Farmer as Chapter 11 trustee;

6/4/2013 Stipulated order extending time for trustee to assume or reject State of Hawaii leases and Eleanor Rose Benda Trust lease;

6/10/2013 Seventh stipulated order authorizing use of cash collateral;

7/11/2013 Eighth stipulated order authorizing use of cash collateral;

9/6/2013 Ninth stipulated order authorizing use of cash collateral;

9/16/2013 Trustee's motion to assume State of Hawaii leases and Eleanor Rose Benda Trust lease;

9/17/2013 Third stipulated order extending time for trustee to assume or reject Eleanor Rose Benda Trust lease;

10/3/2013 Tenth stipulated order authorizing use of cash collateral;

10/3/2013 Order granting motion to establish overbid procedures;

10/21/2013 Trustee's motion to approve sale of hotel assets and assignment of State of Hawaii leases;

10/22/2013 Trustee's motion to reject Eleanor Rose Benda lease.

This Disclosure Statement and the accompanying Plan are part of substantial opposition to the Motion to Appoint Trustee.

#### **2.04.2 Other Legal Proceedings**

In addition to the proceedings discussed above, the Debtor is currently involved in the following non-bankruptcy legal proceeding:

Foreclosure Action : Case #12-1-2105-08: First Citizens Bank vs. Hawaii Outdoor Tours, Inc.

Rosenbaum Litigation: Deborah Rosenbaum vs. Hawaii Outdoor Tours, Inc.

Appointment of Receiver: First Citizens Bank vs. Hawaii Outdoor Tours, Inc.



### **2.04.3 Actual and Projected Recovery of Preferential or Fraudulent Transfers**

Nothing is estimated to be realized from the recovery of fraudulent and preferential transfers. The following is a summary of the fraudulent conveyance and preference actions filed or to be filed in this case: Because the Debtor's Plan of Reorganization proposes payment in full of all claims, the Debtor does not expect, at this time, to file any fraudulent conveyance or preference actions in this case.

### **2.04.4 Procedures Implemented to Resolve Financial Problems**

To attempt to fix the problems that led to the Bankruptcy filing, Debtor has implemented the following procedures:

The Debtor has jointly put in place a new marketing plan with a major Travel wholesaler who has travel offices in California, New York, Nevada, Canada and China to bring visitors to Hilo for 3 to 4 nights which up until instituting a new marketing plan had not been done in Hilo. Additionally, the Debtor changed its sales personnel to better fit the new marketing plan. The effects of this new marketing plan and sales personnel changes have greatly improved the hotel occupancy since the petition date. The Debtor also expanded its' restaurant and bar operations by operating both of them in-house since it had not been able to find viable tenants to run its' restaurants or bars. In order to bring profitability to the restaurant and bar, the Debtor scaled down its' banquet operations so it could rent the banquet facilities without long term commitments to customers, with the intention of building up the food and beverage business as

Ken Fujiyama had done in his prior experience in Hotel operation and management for almost 30 years.

In addition to the new marketing and staffing, the Debtor has cut expenses and increased efficiencies such that any increase in revenues will greatly enhance net income and will not require a major increase in staffing. To that end, the Debtors Monthly Operating Reports reflect payroll remaining fairly constant while major increases in room revenue have taken place. What increase there is in overall hourly time is mainly in housekeeping where the Debtor has added one housekeeper for every 15 to 20 rooms increase in occupancy. In order to maintain efficiencies as revenues grow the Debtor has cross trained most of its' employees so they can be moved within the organization to meet fluctuating demands which maximizes their abilities, streamlines daily operations, and reduces overhead.

The Debtor has re-estimated the monies required to complete the renovations to address the current and projected market conditions and determined that a \$1.5 million to \$3.5 million budget is sufficient to complete the renovation and meet market demand. The Debtor either intends to operate the Naniloa Hotel Property post confirmation by completing the renovation of the Property through utilization of excess net revenues, loans and infusion of investor capital.

### **Current and Historical Financial Conditions**

The Hotel's financial performance has improved since the filing of the bankruptcy petition. To that end, the Debtor's November 28, 2012, December 14, 2012, December 30, 2012, January 15, 2013, January 30, 2013 and February 28, 2013 Manager's Daily Report show increased room sales, revenues and occupancy.

The Debtor's November 28, 2012 Manager's Daily Report shows that November 2012 taxable room sales was \$179,199.33.

The Debtor's December 30, 2012 Manager's Daily Report shows: (i) December 2012 monthly taxable room sales of \$238,174.03 (a significant increase over last year's December 2011 monthly taxable room sales of \$168,120.12); (ii) December 2012 occupancy of 50.43% (an increase over December 2011 occupancy of 36.46%).

The Debtor's January 29, 2013 Manager's Daily Report shows: (i) January 2013 monthly taxable room sales of \$239,885.62 (a significant increase over last year's January 2012 monthly taxable room sales of \$186,967.71); (ii) January 2013 occupancy of 48.80% (an increase over January 2012 occupancy of 42.47%). January 2013 year to date taxable room sales are 28.30% higher than year to day January 2012 taxable room sales.

The Debtor's February 28, 2013 Manager's Daily Report shows (i) February 2013 monthly taxable room sales of \$342,177.17 (a significant increase over last year's February 2012 monthly taxable room sales of \$278,070.70); (ii) February 2013 occupancy of 71.84% (an increase over February 2012

occupancy of 60.54%). February 2013 year to date taxable room sales are 23.1% higher than year to date February 2012 taxable room sales.

In sum, each month post-petition, the Debtor has increased its monthly taxable room sales: November 2012: \$179,199.33; December 2012: \$239,174.03; January 2013: \$275,398.11; February 2013: \$342,177.17; March 2013: \$323,412.18; April 2013: \$333,500.72; May 2013: \$359,553.68.

The Debtor's January 2013 income statement shows actual revenue of \$379,739.65 and actual expenses \$416,280.64. The actual expenses are inclusive of the \$55,000 monthly payment to First Citizens.

The Debtor will meet its debt service obligations on the Naniloa Hotel Property on the Effective Date and will be able to pay its operating expenses through the term of the plan through cash flow generated by room sales, bar and restaurant revenue, golf course revenue, gift shop, convention and banquet revenue.

The list of estate's assets showing the cost and depreciation of each asset is attached hereto as Exhibit "D".

ON JULY 5, 2013 THE GUARANTORS OF THE NOTE AND MORTGAGE PAID TO FIRST CITIZENS BANK THE CASH SUM OF \$1,445,000 WHICH WAS APPLIED TO THE OUTSTANDING PRINCIPAL BALANCE.

### **ARTICLE III**

#### **SUMMARY OF THE PLAN OF REORGANIZATION**

##### **3.01 What Creditors and Interest Holders Will Receive Under the Proposed Plan**

As required by the Bankruptcy Code, the Plan classifies claims and interest in various classes according to their right to priority. The Plan states whether each class of claims or interest is impaired or unimpaired. The Plan provides the treatment each class will receive.

**3.02 Unclassified Claims**

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Proponent has not placed the following claims in a class.

**3.02.1 Administrative Expenses**

Administrative expenses are claims for costs or expenses of administering the Debtor’s Chapter 11 case which are allowed under Code section 507(a)(1). The Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists all of the Debtor’s §507(a)(1) administrative claims and their treatment under the Plan.

<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
James A Wagner	\$0	Withdrawn from Cash Collateral
Priority Unsecured Claims <sup>3</sup>		

<sup>3</sup> The “various guest deposits” of \$109,328.29 referenced as Creditor 5 under Debtors Schedule E” Priority Unsecured Creditors” are deposits associated with room sales and each guest is credited the deposit amount upon final billing, meaning the guest deposits owed by the Debtor in any given week are

First Citizens Claim for Land Lease Payment Super Priority Administrative Claim	262,000 <sup>4</sup>	Paid in full on Effective Date
Clerk's Office Fees	500	Paid in full on Effective Date
Office of the U.S. Trustee Fees	\$6,500(3rd <sup>d</sup> qtr '013)	Paid in full on Effective Date
	TOTAL \$309,000	

### 3.02.1.1 Court Approval of Fees Required

The Court must rule on all fees listed in this chart before the fees will be owed. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees allowed by the Court will be owed and required to be paid under this Plan.

As indicated above, the Debtor will need to pay approximately \$309,000 worth of administrative claims on the Effective Date of the Plan unless the claimant has agreed to be paid later or the Court has not yet ruled on the claim. As indicated elsewhere in this Disclosure Statement, Debtor estimates that it will have \$375,000 in cash on hand on the Effective Date of the Plan. The source of this cash will be cash from lease revenue and or if needed,

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credited to the guest upon checking out and paid at that time; therefore the \$109,328.29 listed in Schedule E is a fluid amount that is collected by the Debtor and then paid back to the guest by way of room charge credit and is not an amount owing on the Effective Date. The security deposits referenced as Creditors 2, 3 and 4 in Schedule E are payable upon each lease maturing as referenced in Section 3.06.1 and the tenant vacating the premises and are not an amount owing on the Effective Date. Creditor 7 in Schedule E was reclassified in Class 3. Creditors 6 and 8 in Schedule E were listed in error and are not owed monies. Creditors 9 and 10 in Schedule E were listed in error and have been reclassified as Schedule F Unsecured Non-Priority Claims.

<sup>4</sup> On October 5, 2012, the Lender made a payment of \$260,015.95 to cure the default on the performance bond. On November 20, 2012, the Debtor filed for bankruptcy. In December 2012, the Lender made a lease payment in the amount of \$262,000 which is a superpriority administrative claim.

from a new value contribution from Kenneth Fujiyama. The cash will be utilized to pay administrative claims.

### **3.02.2 Priority Tax Claims**

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8). Except to the extent that the holder of a particular Allowed Priority Tax Claim agrees to a different treatment thereof, the Code requires that each holder of an Allowed Priority Tax Claim receive the present value of such Allowed Priority Tax Claim in deferred Cash payments over a period not exceeding five years from the date of assessment of such tax.

#### **3.02.2.1 Treatment of Allowed Priority Tax Claims**

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8). Except to the extent that the holder of a particular Allowed Priority Tax Claim agrees to a different treatment thereof, the Code requires that each holder of an Allowed Priority Tax Claim receive on account of such Claim regular installment payments.

- i. of a total value, as of the Effective Date of the Plan, equal to the allowed amount of such Claim;
- ii. over a period ending not later than 30 months after the Petition Date under Section 301, 302 or 303; and

iii. in a manner not less favorable than the most favored nonpriority Unsecured Claim provided for by the Plan (other than Cash payments made to a class of creditors under Section 1122(b)).

The Debtor has Section No 507(a)(8) Priority Tax Claims.<sup>5</sup>

The following chart lists all of the Debtor's Section 507(a)(8) priority tax claims and their treatment under the Plan: **There are no Section 507(a)(8) priority tax claims.**

**3.03 Classified Claims and Interests**

**3.03.1 Classes of Secured Claims**

Secured claims are claims secured by liens on property of the estate. The following chart lists all classes containing Debtor's secured pre-petition claims and their treatment under the Plan:

3.03.1.1 Class 1

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>INSIDERS</u> <u>(Y/N)</u>	<u>IMPAIRED</u> <u>(Y/N)</u>	<u>TREATMENT</u>
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<sup>5</sup> In the event any other taxing agencies file Priority Tax Claims, the Debtor reserves the right to file an objection to such Claims on any appropriate grounds.



1	Secured claim of: · Name = First Citizens Bank · Collateral description = (see Definitions: First Citizens Bank Note 1 Collateral) · Collateral value = Fully secured Priority of security int. = 1 <sup>st</sup> , subject to General Lease No. S-5844 Principal owed = \$8,414,655 <sup>6</sup> Pre-pet. Arrearage amount = \$ (included above) · Post-pet. arrearage amount = \$(unknown) · Total claim amount = \$8,414,655 (plus post-petition amounts)	N	Impaired, Claims in this class are entitled to vote on the Plan.	All to be paid on the effective date.
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Comments:

Class 1 consists of the Allowed Claims of First Citizens Bank or the holder of the First Citizens Bank Note 1. Class 1 is impaired under the Plan. As of the confirmation date, the First Citizens Bank Note 1 shall be deemed satisfied and paid in full. Within five (5) business days after the Confirmation Date (but coterminous with the payment of the amount due on First Citizens Bank First Note 1 as described below), First Citizens Bank or the holder of the First Citizens Bank Note 1 shall return to the Reorganized Debtor the First Citizens Bank Note

<sup>6</sup> On October 5, 2012, the Lender made a payment of \$260,015.95 to cure the default on the performance bond. On October 5, 2012, the Lender made a payment of \$260,015.95 to cure the default on the performance bond. On November 20, 2012, the Debtor filed for bankruptcy. In December 2012, the Lender made a lease payment for the August 2012 rent in the amount of \$262,000 which is a superpriority administrative claim under the terms of the Second Cash Collateral Stipulation. On or about July 5, 2013, the Guarantors of the Note (Ken Direction Corporation and Kenneth Fujiyama) liquidated assets they owned and paid \$1,445,000 to the Lender. Debtor was informed that this payment was applied to the outstanding Principal owed.

1 marked "Paid in Full." First Citizens Bank or the holder of the First Citizens Bank Note 1 Security Documents shall also return to the Reorganized Debtor the First Citizens Bank Note 1 Security Documents marked "Canceled" and deliver to the Reorganized Debtor a duly executed Release of Mortgage and UCC-3 financing statement terminating all security interests granted by Debtor for the benefit of First Citizens Bank or the holder of the First Citizens Bank Note 1 Security Documents.

**3.03.1.2 Class 2**

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>INSIDERS (Y/N)</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
2	Secured claim of:  · Name = Hawaii State Tax Collector, Department of Taxation  · Collateral description = General Excise Taxes, Transient Taxes secured by a Property Tax Lien  · Priority of security int. = 1st  Principal owed = \$471,861.15  · Post-pet. Arrearage amount = \$50,000 (est)  Total claim amount = \$521,861.15	N	Unimpaired, Claims in this class are not entitled to vote on the Plan.	Paid in full on the effective date.

Comments: Class 2 consists of any and all secured claims for General Excise Taxes and Transient Taxes and or assessments of Hawaii State Tax Collector, Department of Taxation pertaining to the Naniloa Hotel Property. Class 2 is unimpaired under the Debtor's Plan.

Payment Plan

All claims to be paid in full on the effective date.

**3.03.1.3 Class 3**

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>INSIDERS</u> <u>(Y/N)</u>	<u>IMPAIRED</u> <u>(Y/N)</u>	<u>TREATMENT</u>
3	Secured claim of:  · Name = Director of Finance, RPT County of Hawaii  · Collateral description = Real Property Taxes secured by a Property Tax Lien  · Priority of security int. = 1st  Principal owed = \$411,430.27  · Post-pet. Arrearage amount = \$40,000 (est)  Total claim amount = \$451,420.27	N	Unimpaired, Claims in this class are not entitled to vote on the Plan.	Paid in full on the effective date.

Comments: Class 3 consists of any and all secured claims for Real Property Taxes pertaining to the Naniloa Hotel Property. Class 3 is unimpaired under the Debtor's Plan.

Payment Plan

All claims to be paid on the effective date.

**3.03.2 Classes of Priority Unsecured Claims**

All claims to be paid on the effective date.

<u>Priority Unsecured Claims</u> <u>Description</u>	<u>Amount Owed</u>	<u>Treatment</u>
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None	None	N/A

### 3.03.3 Classes of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Code Section 507(a). All claims to be paid on the effective date.

#### 3.03.1.4 Class 4

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED( Y/N)</u>	<u>TREATMENT</u>
4	General unsecured claims  · Total amt of claims = \$405,723.33 <sup>7</sup>	y Impaired claims in this class are entitled to vote on the plan	Paid in full on the effective date.

Comments:

Class 4 consists of the Allowed Claims of the General Unsecured Creditors. Class 4 is impaired under the Plan.

### 3.03.4 Classes of Interest Holders

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the debtor. If the debtor is a corporation, entities holding preferred or common stock in the debtor are the interest holders. If the debtor is a partnership, the interest holders include both general and limited partners. If the

<sup>7</sup> The Debtors Insiders are waiving 100% of their Insider General Unsecured Claims totaling \$487,533.02

debtor is an individual, the debtor is the interest holder. The following chart identifies the Plan's treatment of the class of interest holders.

**3.03.4.1 Class 5**

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
5	Interest holders:  Ken Direction Corporation 100%	Insider; claims  in this class are  not entitled to  vote on the Plan	Class 5 is unimpaired under the Plan and  will retain its shares of stock in the  Debtor after payment to classes 1  through 4.

Notwithstanding any other provision of the Plan, no payments or Distributions shall be made on account of any Disputed Claim or Disputed Interest until such Claim or Interest becomes an Allowed Claim or Allowed Interest, and then only to the extent it becomes an Allowed Claim or Allowed Interest. Any Proof of Claim or Proof of Interest filed which differs from the Scheduled amount is deemed to be a Disputed Claim or Disputed Interest.

**3.03.5 Other of State Court Actions**

The Debtor believed the following state court action will be resolved prior to or shortly after the Effective Date and or will not interfere with the plan confirmation:

- Foreclosure Action: Case # 12-1-2105-08: First Citizens Bank vs. Hawaii Outdoor Tours Inc.
- Rosenbaum Litigation: Deborah Rosenbaum vs. Hawaii Outdoor Tours Inc.

A stipulation to modify the automatic stay was entered allowing this personal injury action to proceed against the Debtor's insurance.

Appointment of Receiver: First Citizens Bank vs. Hawaii Outdoor Tours Inc.

### **3.04 Means of Effectuating Plan**

#### **3.04.1 Funding for the Plan**

The Plan will be funded by the following: The source of the \$15,000,000.00 funding for the Plan will be the proceeds from the sale of real estate owned by HPAC, LLC to the Shalom Amar Revocable Trust 2000 by way of a 1031 exchange. HPAC, LLC is an affiliated company of the Proponent. Proponent will contribute cash to the Reorganized Debtor either by way of loan or investment. The Reorganized Debtor shall make all payments due under the Plan out of the funds on hand in the Debtor's Estate as of the Effective Date, and through the Income generated by the Naniloa Hotel Property through room sales, operation of the Hotel Restaurant, club, bar, and or the eventual refinance or sale of the Naniloa Hotel Property.

#### **Post-Confirmation Management**

Kenneth Fujiyama, will be retained as post-confirmation management. His duties will include supervision of the on-site management, contracting with contractors for construction, and maintaining books and records for the Naniloa Hotel Property.

#### **3.04.2 Disbursing Agent**

Kenneth Fujiyama shall act as the Disbursing Agent for the purpose of making all distributions provided for under the Plan. The Disbursing Agent

shall serve without bond and shall receive no fee for distribution services rendered and expenses incurred pursuant to the Plan. In his capacity as Disbursing Agent, Kenneth Fujiyama shall be responsible for all actions necessary to maintain and maximize the Debtor's business affairs. The Disbursing Agent shall be responsible for the operation of the Debtor's business, preservation of assets, and pursuit of any claims held by the Debtor's bankruptcy estate, including any Avoidance Actions and Post-Confirmation Estate Claims, and for the Distribution of the Debtor's Cash or any recoveries to Creditors pursuant to the provisions of the Bankruptcy Code and the Plan. The duties of the Disbursing Agent shall also include preparing and filing the post-confirmation status reports with the Office of the United States Trustee and paying all post-confirmation quarterly fees of the Office of the United States Trustee until the bankruptcy case is dismissed or a final decree has been entered, whichever occurs first.

### **3.05 Risk Factors**

The proposed Plan has the following risks which could adversely impact the Debtor's ability to make Plan payments: (1) there is a possibility of default, i.e., possibility of inability to pay Plan payments, (2) the financial projections provided by the Debtor may not be realized, (3) the business environment and real estate sale market may decline from its present level, (4) competition with the Debtor in the real estate market may increase, (5) the legal environment in terms of laws and regulations could change and have a negative impact upon the

Debtor, (6) the reorganized Debtor could be sued and the costs and expenses of litigation could impact the Debtor's financial circumstances.

**3.06 Other Provisions of the Plan**

**3.06.1 Executory Contracts and Unexpired Leases**

**3.06.1.1 Assumptions**



The State of Hawaii has informed the Debtor that it requires the Debtor to file its reorganization plan and disclosure statement in order for the State of Hawaii to consider any proposal to pay any and all arrearages and deficiencies that caused State Lease No S-5844 to be in default. To that end, any payment schedule different than that called for in State Lease No S-5844 is a proposal only and must be approved by the State of Hawaii and or DLNR. As of the writing of this Disclosure Statement, the Debtor is in default under State Lease No S-5844 because of the sums due to the Class 2 and Class 3 Claimants were supposed to have been paid in full and are events of default under Lease No S-5844. In addition, the \$500,000 Performance Bond balance to be maintained by the Debtor on deposit at First Citizens Bank in Torrance, California has been reduced to approximately \$240,028.97 by way of the State of Hawaii withdrawing approximately \$259,971.03 as payment of a scheduled lease payment plus late fees due under Lease No S-5844 that the Debtor failed to make. This also is an event of default under Lease No S-5844. In addition to proposing the payment schedules to the Class 2 and 3 Claimants as detailed in the Classes of Secured Claims” section (Section 3.03) of this Disclosure Statement, the Debtor proposes in this Disclosure Statement that all past due accounts will be brought current as of the effective date and the accompanying plan to replenish the Performance Bond such that its balance is brought back to \$1,000,000 on the effective date.

The following are the unexpired leases to be assumed as obligations of the reorganized Debtor under this Plan:

<u>LEASES</u>	<u>ARREARS/DMGS</u>	<u>METHODS OF CURE</u>
Lessor: State of Hawaii Lease No. S-5844 ·Description = Land Lease	·Default amt = up to \$973,383 in taxes owed Class 2 and Class 3.  Claimants plus \$259,971.03  To replenish performance bond (See Executory Contracts to be assumed)	Paid on the effective date.
Lessor: State of Hawaii Lease No. S-5372 ·Description = Land Lease/	Default amt ·None	
Lessor: Benda Trust	Default amt ·None	

On the Effective Date, the unexpired leases listed above if any shall be assumed as obligations of the reorganized Debtor. The Order of the Court confirming the Plan shall constitute an Order approving the assumption of the lease listed above. If you are a party to a lease or contract to be assumed and you object to the assumption of your lease or contract, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan. See Section {I.B.3.} of this document for the specific date.

The following are the executory contracts to be assumed as obligations of the reorganized Debtor under this Plan:

<u>Executory Contract</u>	<u>ARREARS/DMGS</u>	<u>METHODS OF CURE</u>
Beneficiary: DLNR Description = Performance Bond posted as part of DLNR Lease	·Default amt = \$259,971.03	

Contract: Hawaiian Telcom dated 4/11/07 Contract: Hawaiian Telcom dated 5/15/07 Contract: KONE Contract: Ohana Control System Control		

### 3.06.1.2 Rejections

On the Effective Date, the following executory contracts and unexpired leases will be rejected: Dawn Patterson, Traditional Chinese Medicine, Sprint PCS, T-Mobile, and Total Health of Hawaii.

The Order Confirming the Plan shall constitute an Order approving the rejection of the lease or contract. If you are a party to a contract or lease to be rejected and you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan. See Section {I.B.3.} of this document for the specific date.

THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS not applicable. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court later orders otherwise.

### 3.06.2 Changes in Rates Subject to Regulatory Commission

This Debtor is not subject to governmental regulatory commission approval of its rates.

### **3.06.3 Retention of Jurisdiction**

The Court will retain jurisdiction to the extent provided by law.

### **3.07 Tax Consequences of Plan**

The following are the anticipated tax consequences of the Plan:

The following disclosure of possible tax consequences is intended solely for the purpose of alerting readers about possible tax issues the Plan may present to the Debtor. The Debtor CANNOT and DO NOT represent that the tax consequences contained below are the only tax consequences of the Plan because the Tax Code embodies many complicated rules which make it difficult to state completely and accurately all the tax implications of any action on Debtors' tax liability.

The following are the tax consequences which the Plan will have on the Debtors' tax liability:

DUE TO THE UNSETTLED AND COMPLEX NATURE OF SOME OF THE TAX ISSUES, AS WELL AS THE POSSIBILITY THAT DEVELOPMENTS SUBSEQUENT TO THE DATE HEREOF COULD AFFECT THE TAX CONSEQUENCES OF THE PLAN, THE FOLLOWING DISCUSSION SHOULD NOT BE REGARDED AS DEFINITIVE OR AS COVERING ALL POSSIBLE TAX CONSEQUENCES. ADDITIONALLY, THIS SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR CREDITOR OR HOLDER OF AN EQUITY INTEREST IN

LIGHT OF ITS INDIVIDUAL CIRCUMSTANCES OR TO CERTAIN CREDITORS AND HOLDERS OF EQUITY INTERESTS SUBJECT TO SPECIAL TREATMENT UNDER THE FEDERAL INCOME TAX LAWS (FOR EXAMPLE, LIFE INSURANCE COMPANIES, TAX-EXEMPT ORGANIZATIONS, FOREIGN CORPORATIONS AND INDIVIDUALS WHO ARE NOT CITIZENS OR RESIDENTS OF THE UNITED STATES). THIS SUMMARY DOES NOT DISCUSS ANY ASPECT OF STATE, LOCAL OR FOREIGN TAXATION. HOLDERS OF CLAIMS ARE STRONGLY URGED TO CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES (FEDERAL, STATE, LOCAL, AND FOREIGN) TO THEM OF THE PLAN.

This summary is based upon the laws, regulations, rulings, and decisions in effect on the date hereof and upon certain proposed and temporary regulations, all of which are subject to change (possibly with retroactive effect) by legislation, administrative action or judicial decision. Moreover, due to a lack of definitive judicial or administrative authority and interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. No rulings have been or are expected to be requested from the IRS or any state tax agency concerning any of the tax matters described herein. There can be no assurance that the IRS or any state tax agency will not challenge the positions taken by the Debtor with respect to any of the issues addressed herein or that a court of competent jurisdiction would not sustain such a challenge. The amount of tax liabilities, if any, will be affected by any

deductions the Debtor will be entitled to during the year. Thus, at this time, the Debtor cannot estimate the amount of tax liabilities that will be incurred.

General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation cannot be quantified by the Debtor and creditors and interest holders are advised to consult with their own tax advisors respecting to the tax consequences, if any, of the Plan, including State and local tax consequences.

#### **ARTICLE IV**

#### **CONFIRMATION REQUIREMENTS AND PROCEDURES**

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

Many requirements must be met before the Court can confirm a Plan. Some of the requirements include that the Plan must be proposed in good faith, acceptance of the Plan, whether the Plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and whether the Plan is feasible. These requirements are not the only requirements for confirmation.

#### **4.01 Who May Vote or Object**

##### **4.01.1 Who May Object to Confirmation of the Plan**

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

##### **4.01.2 Who May Vote to Accept/Reject the Plan**

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

###### **4.01.2.1 What Is an Allowed Claim/Interest**

As noted above, a creditor or interest holder must first have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest brings a motion objecting to the claim. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE HAS NOT BEEN DETERMINED AS OF THE WRITING OF THIS DISCLOSURE STATEEMNT.

A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtor's schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in

interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest.

### **What Is an Impaired Claim/Interest**

As noted above, an allowed claim or interest only has the right to vote if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class. For example, a class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that Class 90% of what they are owed.

In this case, the Proponent believes that classes 1 and 4, are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Proponent believes that classes 2 and 3 are unimpaired. Holders of claims in unimpaired classes do not have the right to vote to accept or reject the Plan. Parties who dispute the Proponent's characterization of their claim or interest as being impaired or unimpaired may file an objection to the Plan contending that the Proponent has incorrectly characterized the class.

### **4.01.3 Who Is Not Entitled to Vote**

The following four types of claims are not entitled to vote: (1) claims that have been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to Code sections 507(a)(1), (a)(2), and (a)(8); and (4) claims in classes that do not receive or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to Code sections



507(a)(1), (a)(2), and (a)(7) are not entitled to vote because such claims are not placed in classes and they are required to receive certain treatment specified by the Code. Claims in classes that do not receive or retain any 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.

#### **4.01.4 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 claim.

#### **4.01.5 Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cramdown" on non-accepting classes, as discussed later in Section {IV.A.8.}.

#### **4.01.6 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.

#### **4.01.7 Treatment of Nonaccepting Classes**

As noted above, even if all impaired classes do not accept the proposed Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner required by the Code. The process by which nonaccepting classes are forced to be bound by the terms of a Plan is commonly referred to as "cramdown." The Code allows the Plan to be "crammed down" on nonaccepting classes of claims or interests if it meets all consensual requirements except the voting requirements of 1129(a)(8) and if the Plan does not "discriminate unfairly" and is "fair and equitable" toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law.

#### **4.01.8 Request for Confirmation Despite Nonacceptance by Impaired Class(es)**

The party proposing this Plan will ask the Court to confirm this Plan by cramdown on impaired classes 1 through 9 and 3 through 11B if any of these classes do not vote to accept the Plan.

#### **4.02 Liquidation Analysis**

Another confirmation requirement is the "Best Interest Test", which requires a liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must receive or

retain under the Plan property of a value not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

In a Chapter 7 case, the Debtor's assets are usually sold by a Chapter 7 trustee. Secured creditors are paid first from the sales proceeds of properties on which the secured creditor has a lien. Administrative claims are paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, interest holders receive the balance that remains after all creditors are paid, if any. For the Court to be able to confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a Chapter 7 liquidation. The Debtor maintains that this requirement is met here for the following reasons: The Debtor's primary asset is the Naniloa Hotel Property and the equipment located at the Naniloa Hotel Property. The Naniloa Hotel Property is encumbered by a mortgage in favor of First Citizens Bank. The balance of the notes securing the Naniloa Hotel Property as of the Petition Date was approximately \$9,860,000.

Based upon the Debtor's estimate, the liquidated value of the Naniloa Hotel Property is \$7,500,000. Assuming that in a Chapter 7 proceeding, the liquidation value could be obtained, and further assuming that there would be normal costs of sale and other costs of administration attendant to the Chapter 7

proceeding, there would not be sufficient proceeds generated by a sale of the Naniloa Hotel Property to pay all of the secured creditors. The conclusion that necessarily follows is that Unsecured Creditors of the Debtor's Estate would not receive any distribution were this Chapter 11 proceeding converted to one under Chapter 7 of the Code. The plan, which provides for a distribution to Unsecured Creditors, clearly provides a greater return to Unsecured Creditors than that which would be achieved in a Chapter 7. Consequently, the Debtor believe that the Plan, as proposed, provides to Unsecured Creditors more than they would receive were the Debtor's Case converted to one under chapter 7 of the Code. The Plan proposes to pay general unsecured creditors approximately 100% of their total claims while a liquidation of the Debtor's estate would result in a 0% dividend. In a Chapter 7 case, a trustee is appointed and entitled to compensation from the Bankruptcy estate in an amount not to exceed 25% on the first \$5,000 of moneys disbursed, 10% on any amount over \$5,000 but less than \$50,000, 5% on any amount over \$50,000 but not in excess of \$1 million and 3% on all amounts over \$1 million. In this case, the trustee's compensation is estimated to equal \$259,500 based upon a liquidated value of the Naniloa Hotel Property of \$7,500,000 which is equal to 50% of the fair market value of Naniloa Hotel Property. Through the Plan however, no trustee's compensation will be incurred.

Below is a demonstration, in balance sheet format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or interest holder would receive under a Chapter 7 liquidation. (See Exhibit A for a

detailed explanation of how the following assets are valued. This information is provided by the Debtor.)

**ASSETS VALUED AT LIQUIDATION VALUES**

ASSETS AT LIQUIDATION VALUE	LIQUIDATION VALUE	DEBTOR'S BASIS FOR LIQUIDATION VALUE
Cash on hand	275,000	Not applicable
Naniloa Hotel Property	<u>\$7,500,000</u>	The liquidation value is based on a 50% reduction of the approximated fair market value of the Naniloa Hotel Property.
Recovery From Avoidance Actions	\$0.00	The Debtor does not anticipate that there will be any Avoidance Actions filed.
<b>Total Assets At Liquidation Value</b>	\$7,500,000	
<b>LESS LIABILITIES IN CHAPTER 7 CASE</b>		
Less: Secured Creditor Recovery <sup>1</sup>	\$10,349,684	
Less: Chapter 7 trustee's fees and expenses	\$259,500	
Less: Chapter 11 administrative expenses WAGNER, CHOI & VERBRUGGE, PC Clerk of Court Fees \$250.00 UST Fees \$6,500.00 Administrative Claim due First Citizens Bank	\$40,000  \$6,750 \$262,000	
Less: Priority Claims	\$0	
<b>Balance for unsecured Claims</b>	\$0.00	

1


ASSETS AT LIQUIDATION VALUE	LIQUIDATION VALUE	DEBTOR'S BASIS FOR LIQUIDATION VALUE
<b>Total amount of Unsecured Claims</b>	\$405,723.33 Class 4	
<b>% OF THEIR CLAIMS WHICH UNSECURED CREDITORS <sup>9</sup>WOULD RECEIVE OR RETAIN IN A CHAPTER 7 LIQUIDATION:<sup>10</sup></b>	0.00%	
<b>% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WILL RECEIVE OR RETAIN UNDER THIS PLAN: 100%<sup>3</sup></b>		

Below is a demonstration, in tabular format, that all Creditors and interest holders will receive at least as much under the Plan as such Creditor or holder would receive under a Chapter 7 liquidation.

<u>CLAIMS AND CLASSES</u>	<u>PAYOUT PERCENTAGE UNDER THE PLAN</u>	<u>PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION</u>
Administrative Claims	100.00%	Estimated funds available for Administrative Claims would be \$0 (Chapter 7 Administrative Fees and Costs are estimated at \$259,500 and Chapter 11 Administrative Fees and Costs are estimated at \$10,750.00)
Classes 1 – 3	100.00%	100.00%
Class 4 General Unsecured Creditors	100.00%	0%

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Proceeds From Liquidation of the Naniloa Hotel Property	\$7,500,000
Balance Available for Chapter 7 Administrative Fees and Costs (\$259,500), Chapter 11 Administrative Fees and Costs (\$10,750.00)	\$0
Balance for Unsecured Claims	\$.00

<sup>10</sup> Note: If this percentage is greater than the amount to be paid to the unsecured Creditors on a "present value basis" under the Plan, the Plan is not confirmable unless Proponent obtains acceptance by every Creditors in an impaired class.

<u>CLAIMS AND CLASSES</u>	<u>PAYOUT PERCENTAGE UNDER THE PLAN</u>	<u>PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION</u>
Class 5– Interest Holders	To receive pro-rata distribution of remaining Net Sale Proceeds after payment of all Allowed Administrative Claims, all Allowed Secured Claims, all Allowed Priority Claims and all Allowed Unsecured Claims	00%

**4.03 Feasibility**

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Debtor maintains that this aspect of feasibility is satisfied as illustrated here:

Estimated Cash Debtor will have on hand	
by Effective Date	<u>\$15,000,000.00</u>
Balance after paying these amounts.....	<u>\$66,000</u>

The sources of the cash Debtor will have on hand by the Effective Date, as shown above are:

\$275,000 Cash in DIP Account (estimated) and if needed from a new value contribution by Kenneth Fujiyama and KDC.

\$15,000,000.00 **Total**<sup>11</sup>

The second aspect considers whether the Proponent will have enough cash over the life of the Plan to make the required Plan payments.

The Proponent has provided financial projections. Please refer to Exhibit C for the relevant financial projections. YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL PROJECTIONS.

In summary, the Plan proposes to pay the Class 1 through 4 creditors through the new loan plus the operations of the Hotel and Golf Course.

As Debtor's financial projections demonstrate, Debtor projects the Naniloa Hotel Property with its new loan and revenues from the operations will generate sufficient income to service all of the creditor's debts under the plan. The final payment under the Plan is expected to be paid on or before the Effective Date. The Debtor contends that Reorganized Debtor's financial projections are feasible.

## **ARTICLE V**

### **EFFECT OF CONFIRMATION OF PLAN**

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<sup>11</sup> As detailed in Sections 3.03 and 3.06 of this Disclosure Statement, the Debtor intends to negotiate with DLNR and the state of Hawaii for payments schedules to cure deficiencies and events of default under Lease No S-5844 has been informed by the state of Hawaii that they will only consider proposals by the Debtor after the Disclosure Statement and plan have been filed. The Debtor intends to commence negotiations timely once the Disclosure Statement and plan have been filed. In the event the state of Hawaii and or the DLNR require full payment to the Class 2 and Class 3 creditors on the Effective Date and full replenishment of the Performance Bond, the Debtor will raise the approximately \$522,000 due the Class 2 Creditor, \$451,420 due the Class 3 Creditor, and \$259,971.03 to replenish the Performance Bond prior to the Effective Date.



### **5.01 Discharge**

This Plan provides that upon confirmation of the plan, Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan to the extent specified in 11 U.S.C. § 1141. However, the discharge will not discharge any liability imposed by the Plan.

### **5.02 Revesting of Property in the Debtor**

Except as provided herein and except as provided elsewhere in the Plan, the confirmation of the Plan revests all of the property of the estate in the Reorganized Debtor.

### **5.03 Modification of Plan**

The Proponent of the Plan may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

The Proponent of the Plan may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

### **5.04 Post-Confirmation Status Report**

Within 120 days of the entry of the order confirming the Plan, Reorganized Debtor shall file a status report with the Court explaining what progress has been made toward consummation of the confirmed Plan. The status report shall be served on the United States Trustee, the twenty largest unsecured creditors, and

those parties who have requested special notice. Further status reports shall be filed every 120 days and served on the same entities.

#### **5.05 Post-Confirmation Conversion/Dismissal**

A creditor or party in interest may bring a motion to convert or dismiss the case under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7, estate. The automatic stay will be reimposed upon the revested property, but only to the extent that relief from stay was not previously authorized by the Court during this case.

The order confirming the Plan may also be revoked under very limited circumstances. The Court may revoke the order if the order of confirmation was procured by fraud and if a party in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry of the order of confirmation.

#### **5.06 Final Decree**

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

Respectfully submitted on this 4<sup>th</sup> day of November 2013.

KEN DIRECTION CORPORATION,  
a Hawaii corporation

By /s/Kenneth Fujiyama  
Kenneth Fujiyama  
Its: CEO

/s/Donald L. Spafford, Jr.  
Donald L. Spafford, Jr.  
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