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Attorney for Creditors/Plan Proponents  
JCCHO HAWAII LLC and  
YEDANG ENTERTAINMENT, INC.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR DISTRICT OF HAWAII

In re CUZCO DEVELOPMENT  
U.S.A., LLC,

Debtor and  
Debtor-in-Possession

Case No. 16-00636  
(Chapter 11)

HEARING:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Judge: Robert J. Faris

**MOTION TO (1) APPROVE DISCLOSURE STATEMENT FOR FIRST  
AMENDED PLAN OF LIQUIDATION; (2) APPROVE BALLOTING  
PROCEDURES AND SCHEDULE A HEARING ON PLAN  
CONFIRMATION AND SET DEADLINES; EXHIBITS "1" – "4"**

Plan Proponents JCCHO HAWAII, LLC and YEDANG  
ENTERTAINMENT USA, INC. (collectively, the "Plan Proponents") hereby  
moves this Court, pursuant to sections 105(a), 502, 1125, 1126 and 1128  
of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended

(the "Bankruptcy Code"), Rules 2002, 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3017-1 of the Local Bankruptcy Rules (the "Local Rules"), for the entry of an order substantially in the form of Exhibit 1 hereto approving the Plan Proponent's Disclosure Statement for the First Amended Plan of Liquidation Dated January 18, 2017 (the "Disclosure Statement for the Plan of Liquidation"), a copy of which is attached hereto as Exhibit 2, as containing adequate information; (2) approving Balloting Procedures and Scheduling a Combined Hearing on the Final Approval of the Disclosure Statement for the Plan of Liquidation and the Confirmation of the Plan of Liquidation, and Setting Deadlines.

In support of this Motion, the Plan Proponents respectfully represent as follows:

### **Background**

1. On June 20, 2016, Cuzco Development USA, LLC ("Debtor" or "Cuzco") Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate and manage his business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No Committee of Unsecured Creditors has been appointed in this case.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor's chapter 11 case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On December 13, 2016, the Debtor filed its First Amended Disclosure Statement for its Plan of Reorganization dated December 5, 2016. Docket No. 313.

4. On December 16, 2016, this Court entered an order approving Debtor's Disclosure Statement to its First Amended Plan of Reorganization. Docket No. 323.

5. Debtor subsequently filed a Second Amended Plan of Reorganization (the "Debtor's Plan") dated December 27, 2016. Docket No. 334.

6. The Plan Proponents have submitted a competing Chapter 11 plan, the First Amended Plan of Liquidation (the "Plan of Liquidation"), which calls for the liquidation of Debtor's assets and projects full payment to the creditors, with interest, and a return to Debtor's equity holders of approximately \$3,000,000.

7. By this Motion, the Debtor requests, pursuant to sections 105(a), 502, 1125, 1126 and 1128 of the Bankruptcy Code, Rules 2002,

3016, 3017, 3018 and 3020 of the Bankruptcy Rules, and Local Rules 3017-1, that the Court: (i) approve the Disclosure Statement; (ii) approve the solicitation packages and procedures for distribution thereof; (iii) fix a deadline for voting on the Plan of Liquidation; and (v) schedule a hearing and establish notice and objection procedures with respect to confirmation of the Plan.

### **The Disclosure Statement for Plan of Liquidation Contains Adequate Information**

8. Section 1125(b) of the Bankruptcy Code requires a plan proponent to provide holders of impaired claims with "adequate information" regarding a proposed plan.

9. "Adequate information" is defined as:

"[I]nformation of a kind, and in sufficient detail, as 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan."

11 U.S.C. § 1125(a)(1). Here, the Disclosure Statement for the Plan of Liquidation Plan satisfies the "adequate information" standard.

10. A disclosure statement should provide a creditor with all of the information that the creditor needs to assess the merits and risks of the

plan. Duff v. Unites States Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. B.A.P. 1996) ("The purpose of the disclosure statement is to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan. At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate information about the plan before the creditor is asked for a vote.") (citing Century Glove, Inc. v. First Am. Bank of New York, 860 F.2d 94, 100 (3rd Cir. 1988)).

11. The Court has broad discretion in determining whether a disclosure statement contains adequate information. "The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under section 1125(a)." C.J. Kirk v. Texaco, Inc., 82 B.R. 678, 682 (Bankr. S.D.N.Y. 1988), (citing H.R. Rep. No. 595, 95th Cong, 1st Sess., 408-409 (1977)). Similarly, the Court here has broad discretion in determining whether the Disclosure Statement for the Plan of Liquidation contains adequate information.

12. Here, the Plan of Liquidation is simple and straightforward: A Plan Administrator will be appointed to liquidate Debtor's assets and distribute the proceeds to creditors to pay their allowed claims in full and return a meaningful distribution to Debtor's equity interest holders pursuant

to the terms of the Plan of Liquidation. The Plan provides for an immediate sale of Debtor's real property to a well-qualified buyer for the appraised value of \$45,000,000, with such sale to close within approximately sixty days of the plan confirmation hearing on February 13, 2017.

13. Because the Plan of Liquidation provides for all creditors, except for the Plan Proponents, to be paid in full, and projects a meaningful return to equity, the only two impaired claims are (i) the Plan Proponents' (Class 5); and (ii) Debtor's Equity Interest holders (Class 6).

14. The Plan Proponents have adequate information to determine whether or not to vote for their own Plan of Liquidation.

15. Debtor only has one holder of its Equity Interest, CUZCO Korea Development, Inc., which is also controlled by Debtor's manager, Dong Woo Lee.

16. Further, much of the Disclosure Statement for the Plan of Liquidation is virtually word for word from Debtor's First Amended Disclosure Statement for Debtor's Plan that was previously approved by the Court as containing adequate information.

17. Thus, the Disclosure Statement for the Plan of Liquidation should be approved because it contains adequate information, and because the only two classes voting on the Plan of Liquidation already

have all the information necessary to make an informed judgment on how to vote with respect to the Plan of Liquidation.

### **Approving Balloting Procedures and Scheduling Plan Confirmation Deadlines**

#### **Approving the Form of Ballots, Fixing a Date for Voting on the Plan and Tabulation Procedures**

##### **(1) Form of Ballots**

18. Rule 3017(d) of the Bankruptcy Rule states that plan proponents are required to mail “a form of ballot conforming to the appropriate Official Form” and such form of ballot shall be mailed to “creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). The Plan Proponents propose to distribute to certain creditors, as previously referenced and more fully described below, Ballot(s) substantially in the form attached hereto as Exhibit 3. The form and structure of the Ballots are based upon Official Form 314.

19. The Ballots, as part of the Solicitation Package, will be distributed to (i) creditors holding Class 5 claims (which is only the Plan Proponents); and (ii) Class 6 holders of the equity interest in the Debtor.

##### **(2) Fixing a Date for Voting**

20. Rule 3017(c) of the Bankruptcy Rules provides that, on or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan.

Fed. R. Bankr. P. 3017(c). The Plan Proponents propose that in order to provide sufficient time to review each vote to accept or reject the Plan, the Ballots must be properly executed, completed and transmitted to Christopher J. Muzzi, Esq., Tsugawa Biehl Lau & Muzzi, 1132 Bishop Street, Suite 2400, Honolulu, Hawaii 96813, facsimile (808) 534-0202 so as to be received by no later than 5:00 p.m. prevailing Hawaii Standard Time on the day that is seven business days before the confirmation hearing (the "Voting Deadline"). The Plan Proponents propose that this solicitation process provides sufficient time and notice within which creditors and equity interest holders can make an informed decision with respect to the Plan and, further, provides the Plan Proponent sufficient time to review each vote to accept or reject the Plan.

**Scheduling a Hearing and Establishing Notice and Objection Procedures with Respect to Confirmation of the Plan**

**(1) Scheduling a Hearing**

21. The Plan Proponents request that a hearing on confirmation of the Plan of Liquidation (the "Confirmation Hearing") be scheduled for a date that is no more than sixty days from the hearing date on this Motion.

**(2) Deadline to File Confirmation Brief and Declarations**

22. The Plan Proponents propose that the Confirmation brief and declarations in support of confirmation be filed twenty-one (21) days prior to



the Confirmation Hearing.

**(3) Deadline to File Objections to Confirmation of Plan**

23. The Plan Proponents propose that any Objections, Expert Reports or Declarations in Opposition to Confirmation shall be filed seven (7) days prior to the Confirmation Hearing.

**(4) Deadline to File Reply Brief and Rebuttal Declarations**

24. The Plan Proponents propose that any reply briefs and rebuttal declarations be filed three (3) days before the Confirmation Hearing.

**(5) Balloting Deadline**

25. The Plan Proponents propose that the Balloting Deadline be 5:00 p.m. Hawaii Standard Time on the day that is seven business days before the confirmation hearing.

**(6) Deadline to Submit Ballot Tabulation**

26. The Plan Proponents propose that the deadline to submit the ballot tabulation be on the day that is five business days before the confirmation hearing.

27. The Plan Proponents request that the Court approve the form of the Plan Confirmation Hearing Notice attached hereto as Exhibit 4.

## CONCLUSION

WHEREFORE, the Plan Proponents respectfully request that this Court: (a) enter an order approving the Disclosure Statement as containing adequate information; (ii) approving the form of Ballots; (iii) fixing a deadline for voting on the Plan; and (iv) scheduling a hearing on confirmation of the Plan of Liquidation and schedule deadlines related thereto; and (b) grant to the Plan Proponents such other and further relief as the Court may deem proper.

Dated: Honolulu, Hawaii, January 18, 2017.

/s/ Christopher J. Muzzi

CHRISTOPHER J. MUZZI

Attorney for Plan Proponents

JCCHO HAWAII LLC and

YEDANG ENTERTAINMENT, INC.