UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

IN RE:

LEXINGTON HOSPITALITY GROUP LLC.

DEBTOR IN POSSESSION

CASE NO. 17-51568
CHAPTER 11

DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ Laura Day DelCotto
Laura Day DelCotto, Esq.
KY Bar No. 81763
200 North Upper Street
Lexington, KY 40507
Telephone: (859) 231-5800
Facsimile: (859) 281-1179
ldelcotto@dlgfirm.com
COUNSEL FOR DEBTOR AND
DEBTOR IN POSSESSION

Dated: November 19, 2017

DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

TABLE OF CONTENTS

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

IN RE:

CASE NO. 17-51568

LEXINGTON HOSPITALITY GROUP LLC CHAPTER 11

DEBTOR IN POSSESSION

DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

Comes Lexington Hospitality Group LLC (the "Debtor"), as debtor and debtor in possession in the above-captioned bankruptcy case, and pursuant to 11 U.S.C. § 1125 and Fed. R. Bankr. P. 3016, hereby submits the following Disclosure Statement (the "Disclosure Statement") to provide holders of Claims against and Interests in the Debtor with adequate information in order to allow them to make an informed decision regarding their rights to vote on the Debtor's proposed Plan of Reorganization (the "Plan") filed contemporaneously herewith.

ARTICLE I

PRELIMINARY STATEMENTS AND DISCLAIMERS

1.1 **Introduction.** The Debtor is seeking approval of its Plan of Reorganization. The confirmation of a plan is the overriding purpose of a Chapter 11 case. Although referred to as a "plan of reorganization," a plan may provide for anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of assets. In either event, upon confirmation of a plan, the plan becomes binding on the debtor and all of its creditors and other parties in interest, and the obligations owed by the debtor to those parties are substituted for those outlined in the confirmed plan. In this Bankruptcy Case,[1] the Plan contemplates a restructuring of the Debtor's business in order to continue the Debtor's going-concern operations, and to seek to maximize the value of the ultimate recoveries of all Creditors by payment over time and from anticipated new capital injected into the business operations.

To assist all known Creditors, Interest Holders, and other parties in interest of the Debtor with their review of the Plan, the Debtor provides this Disclosure Statement to all such parties for the purpose of disclosing all information that the Debtor has deemed material, important, and necessary to the parties' ability to make a reasonably informed decision regarding their rights to

[1] All capitalized terms used in this Disclosure Statement and not otherwise specifically defined herein have the meanings given to them in the Plan. As used in this Disclosure Statement, any other terms defined in the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), shall have the meanings given to them in the Bankruptcy Code, unless the context clearly requires otherwise.

vote on the Plan. By an Order of the United States Bankruptcy Court for the Eastern District of Kentucky entered on _____ [Doc ___], this Disclosure Statement has been **CONDITIONALLY** approved as containing "adequate information" in accordance with 11 U.S.C. § 1125, in order to permit it to be presented to creditors along with the Plan. As stated in the Order setting the final approval hearing, objections to the adequacy of the information herein are preserved. The Bankruptcy Code defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor's books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan . . . ." 11 U.S.C. § 1125(a)(1).

All Creditors, Interest Holders, and Parties in Interest are encouraged to read and carefully consider this entire Disclosure Statement and to refer to the Plan during their review. THE PROVISIONS CONTAINED IN THE PLAN CONTROL OVER ANY STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.

1.2 **Debtor's Preliminary Statement.** The Debtor believes that the Plan is in the best interests of all Creditors and parties in interest. As a Creditor, your vote on the Plan is important. All Creditors entitled to vote are urged to vote in favor of the Plan. A summary of the voting instructions is set forth in Section 8.2.3 herein, and more detailed instructions are contained on the ballots distributed to each Creditor entitled to vote on the Plan. ***For your vote to be counted, your ballot must be duly completed, executed, and received by 5:00 p.m. (ET) on _____, 201_*** (the "Voting Deadline"), unless the Voting Deadline has been extended by the Debtor in writing prior to that time or by order of the Court.

The Plan will be confirmed by the Bankruptcy Court if it is accepted by the holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Creditors' Claims in each class voting on the Plan, along with other confirmation requirements. However, the provisions of 11 U.S.C. § 1129(b) may be invoked by the Debtor if necessary in order to obtain confirmation of the Plan by "cramdown" on non-consenting parties and classes. These provisions permit confirmation even though a class or classes reject the Plan, if the Bankruptcy Court finds that the Plan provides fair and equitable treatment for the rejecting class.

1.3 **Disclaimers.**

1.3.1 **Legal Effect of Statements Contained Herein.** The information contained in this Disclosure Statement—including, but not limited to, the information regarding the Debtor's history, business, and operations, the Debtor's financial information, and the Debtor's liquidation analysis—is included solely for the limited purpose of soliciting acceptances of the Plan. This information shall not be construed as an admission of any fact or liability, stipulation, or waiver by the Debtor in any contested matter, adversary proceeding, or other action or threatened action involving the Debtor, but rather as statements made in the course of settlement negotiations. Further, this information shall not be admissible in any non-bankruptcy proceeding involving the Debtor or any other third parties, nor shall it be construed to be conclusive advice on the tax or other legal effects of the Plan as to Creditors of the Debtor; provided, however, that in the event

that the Debtor defaults under the Plan, the Disclosure Statement may be admissible in a proceeding relating to such default for the purpose of establishing the existence of such default.

1.3.2 **No Other Representations Authorized Except as Provided Herein.** All representations contained herein are those of the Debtor. No other person is authorized by the Debtor to give any information or to make any representation other than as contained in this Disclosure Statement, the Plan, and the exhibits attached thereto, incorporated by reference, or referred to therein. If any such information is given or representations are made, such information or representations ***may not be relied upon*** as having been authorized by the Debtor. Further, any representations or inducements made to secure acceptance of the Plan which are *other than* as contained in this Disclosure Statement ***should not be relied upon*** by any person.

1.3.3 **No Involvement of Independent Public Accountant.** To the Debtor's knowledge, no information contained in this Disclosure Statement has been prepared by an independent public accountant, except as may be specifically noted.

1.3.4 **Forward-Looking Statements**. This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtor and projections about future events and financial trends affecting the financial conditions of the Debtor's business. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "expect," and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described in Article VII herein. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtor does not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise. In this case, concerns have been expressed by parties as well as the Court about reliability on forward-looking statements from the past.

Neither the Plan nor this Disclosure Statement has attempted to forecast consequences which follow from a general rejection of the Plan, although an attempt is made herein to state the consequences of a liquidation of the Debtor.

1.3.5 **Effect of Representation by Counsel.** The Debtor is represented by the law firm of DelCotto Law Group PLLC, 200 North Upper Street, Lexington, Kentucky 40507. DelCotto Law Group has not expressed an opinion on any information set forth herein.

ARTICLE II

NOTICES AND DEADLINES

2.1 **Voting Deadline.** For your vote to accept or reject the Plan to be counted, you must: (1) complete all required information on the ballot; (2) execute the ballot; and (3) return the completed ballot to the Debtor's counsel at DelCotto Law Group PLLC, c/o Linda Conner, 200 North Upper Street, Lexington, Kentucky 40507 so that it is ***received by 5:00 p.m. (ET) on the***

Voting Deadline, _____, by US mail, Fax to (859)-281-1179 or email to lconner @dlgfirm.com. Any failure to follow the voting instructions included with the ballot or to return a properly completed ballot so that it is received by the Voting Deadline may disqualify your ballot and your vote.

2.2 **Date of Confirmation Hearing and Final Disclosure Statement Hearing.** A hearing to consider the confirmation of the Plan along with the final approval of this Disclosure Statement will be held before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Second Floor, Lexington, Kentucky 40507, on _____ 201_ at the hour of ___ a.m. (ET). Whether or not you expect to be present at the Confirmation Hearing and Final DS Approval Hearing , you are urged to fill in, date, sign, and promptly return your ballot to the Debtor's counsel by the Voting Deadline.

2.3 **Deadline to Object to Confirmation of the Plan and to Final Approval of the Disclosure Statement.** Objections, if any, to confirmation of the Plan and/or to the final approval of the Disclosure Statement must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of the party; (c) state with particularity the basis and nature of any objection; and (d) be filed with the Court and served so that they are ***received no later than 5:00 p.m. (ET) on _____*** by the U.S. Trustee, the Debtor's counsel, and the ECF service list for this case.

2.4 **Deadline to Object to Claims.** Unless otherwise ordered by the Bankruptcy Court, all objections to Claims, including determinations regarding the secured status of any claim, shall be filed on or before ninety (90) days following the Effective Date, or forty five (45) days following the filing of any Claim, whichever is later (the "Claims Objection Bar Date"), without prejudice to the extension of such period upon proper application therefor. The objecting party shall serve a copy of each such objection upon the holder of the Claim in accordance with Fed. R. Bankr. P. 3007. Under the Plan, any Claim for which a timely objection is not filed shall be deemed Allowed as filed or scheduled.

2.5 **Requests for Copies of Disclosure Statement and Plan.** Requests for copies of the Disclosure Statement and the Plan, or any of the ECF filings referenced herein, by parties in interest may be made in writing to the Debtor's counsel by mail at DelCotto Law Group PLLC, c/o Linda Conner, 200 North Upper Street, Lexington, Kentucky 40507, by email to lconner@dlgfirm.com or by fax (859)281-1179. Please call Ms. Conner or Ms. DelCotto at (859) 231-5800 with any questions.

ARTICLE III

GENERAL INFORMATION ABOUT THE DEBTOR

3.1 **Initial Formation and Background.** The Debtor is a for-profit Limited Liability Company formed in the Commonwealth of Kentucky on or about May 27, 2015, for the express purpose of acquiring the Clarion Hotel property at 5532 Athens Boonesboro Road, Lexington KY. Janee Hotel Corporation, Inc. ("Janee"), acting by and through its President Kenneth Moore ("Mr. Moore") serves as the Managing Member of the Debtor. Upon the closing of the acquisition

transaction in late September, 2015, Janee originally owned a 60% membership interest in the Debtor; Debtor's secured lender, Private Capital Group Inc. ("PCG"), who services this specific loan on behalf of the PCG Credit Partners, LLC, through its subsidiary/affiliate entity, 5532 Athens LLC ("5532Athens") owned a 30% membership interest in the Debtor; and two private individuals owned a respective 5% each interest in the Debtor. Later changes to this structure are described below.

Mr. Moore had prior experience in the buying/selling of "value-add" properties, making improvements and reselling for a profit. Mr. Moore had also been involved in such properties before with PCG. PCG is a "niche" private lending and servicing company based out of Alpine UT. The acquisition of the Debtor's property was not the first dealings between Mr. Moore and PCG. PCG holds itself out as being a "team of lending experts (including former brokers, Realtors, title officers and attorneys)" having expertise in real estate investing and as a niche company "who makes large, private lending opportunities available to individuals and companies who want to diversify their portfolios to include real property." (PCG website, www.privatecapitalgroup.com). More information about PCG, its business and its team of individuals is located at its website. The 30 page "lender packet" of PCG (also available on its website) explains more about PCG's business model. Upon information and belief, approximately 30 or so individuals or companies comprise the "private lenders" who have invested, through PCG, in this particular real property endeavor.

3.2 **Debtor's Business Operations.** Debtor owns commercial real property located at 5532 Athens-Boonesboro Rd. Lexington, Kentucky consisting of a two-story full-service hotel building containing approximately 96,418 total sq. ft., commonly known as the "Clarion Hotel Conference Center South." The Hotel is operated under the Clarion Hotel franchise banner owned by Choice Hotels International, Inc. The Hotel contains a total of 149 guestrooms, lobby, offices, outdoor and indoor pool areas, approximately 5,300 sf. of meeting & conference rooms, exercise room, storage rooms, mechanical rooms, registration area, vestibule, dining area, bar area, dining prep area, vending, guest laundry, rest rooms, break rooms, and two elevators. For further detailed information about the Hotel facilities, two past appraisals, with photos and more detailed data, are located in the Court record [ECF No. 91(June 3, 2015 Appraisal); and ECF No. 196 (December 2, 2016 Appraisal)].

In addition to the Hotel, the Debtor owns and operates the approximate 5,000 sf. of restaurant space licensed and operated as a Bennigan's Restaurant. The Hotel and Restaurant are hereinafter referred to as "The Property." More recent photos, taken in November 2017, are located at ECF No. 207. The Bennigan's space began build-out construction in approximately July, 2016 and completed in approximately June, 2017.

3.3 **Debtor's Prepetition Assets and Liabilities.** The following subsections provide an overview summary of the Debtor's primary Assets and Liabilities according to the Debtor's books and records and its bankruptcy Schedules. This summary does *not* take into consideration any Proofs of Claim filed herein except as stated. The Asset values contained herein and/or in the Debtor's Schedules are based on the Debtor's best estimates of market values or historic book values on the Petition Date and may *not*, and in all likelihood *do not*, accurately reflect liquidation

values or what value may ultimately be obtained for these Assets.[2] ***Holders of Claims are encouraged to review the Schedules and related Amendments for a complete listing of the Debtor's Assets and Liabilities.*** *[ECF 71,78 and 115]*

3.3.1 **Prepetition Assets.** As of the Petition Date, the Debtor estimated the approximate fair market values of its prepetition Assets as follows: (a) the real Property – $9,500,000.00; (b) accounts – $57,656.79; (c) Goodwill $2,750,000.00; (c) Capital Improvements - $164,012.06; Cash and Cash Equivalents - $29,200.24; (d) Deposit and Prepayments - $15,159.03; (e) Inventory - $10,000; (f) Furniture, Fixtures and Equipment - $530,154.75. The total of Schedules A and B estimated by Debtor was approximately $13.05 million, including the goodwill (appx. $10.3 million excluding goodwill).

3.3.2 **Overview of Total Prepetition Liabilities.** As of the Petition Date, the Debtor's estimated prepetition liabilities totaling approximately $9.7 million, which consists of: (a) secured claims totaling approximately $8,794,794.20; and (b) priority and unsecured claims totaling approximately $1,023,302.69. In addition, Debtor has a past-due "property improvement plan" (commonly known as the "PIP") with Choice Hotels under the franchise agreement. While certain of the PIP was completed prepetition, a large portion remains to be done, primarily being, replacement of bedding/linens in the guest rooms. The estimated cost of completion of the PIP is approximately $180,000. Following the Petition Date, certain parties in interest continued to record mechanics liens, so some claimants previously listed as unsecured claims may now be secured claimants.

3.3.3 **Additional Information about Prepetition Assets and Liabilities.** For more specific information about the Debtor's prepetition Assets and Liabilities, see the Debtor's Schedules [ECF No 71] and Amendments [ECF No 78, and 115] filed in the Bankruptcy Case. Also see the proofs of claim filed by certain parties in interest.

3.4 **Debtor's Postpetition Liabilities.** The following is an overview summary of the Debtors postpetition liabilities.

3.4.1 **Professional Fees.**

(a) **DelCotto Law Group PLLC.** As described in Section 5.2.1 herein, Debtor was authorized to employ DelCotto Law Group PLLC ("DLG") as its counsel in the Bankruptcy Case, following objection and briefing of certain issues. Prior to the filing, DLG received a retainer of $25,000, which was partially used pre-filing. After the filing, DLG has received $25,000. It holds approximately $41,000 in escrow subject to further orders regarding allowance of its fees and expenses, and estimates that its total fees and expenses as of October 31, 2017 to be approximately $70,000. The total fees and expenses incurred post-petition and pre-Confirmation Date are estimated to be approximately $125,000, but are unknown and subject to further actions in the case.

[2] *See* Section 8.3.1 of this Disclosure Statement and Exhibit E attached hereto for the Debtor's Liquidation Analysis.

3.4.2 **Ordinary Course**.

A certain dollar amount and number of postpetition ordinary course expenses may be past due and unpaid at any given point in time, which changes on a weekly basis. Debtor experiences operational shortfalls each year during certain months, as do many hotels in the central Kentucky market. These operational shortfalls must be addressed with cash reserves or capital infusions on an annual basis. In addition, Debtor has cut labor costs in the ordinary course of doing business during the shoulder months. All hotels across the market do the same, due to the seasonality of the business.

3.5 **Current Litigation Involving the Debtor.**

3.5.1 **Prepetition Litigation.** As of the Petition Date, the Debtor was involved in two state court actions, somewhat related to each other and arising from unpaid construction costs involving the build out of the Bennigan's Restaurant space. A summary of those actions and the Debtor's projected outcomes of same are as follows:

(a) **All Trades Action.** The case of All Trade Services *v. Lexington Hospitality LLC, Dogwood Hotels, Inc. et.al.*, , Civil Action No. 16-CI-04210 (the "All Trades Action") was commenced on November 16, 2016 in the Fayette Circuit Court, Kentucky. This Mechanics Lien suit arose out of a dispute regarding monies purportedly owed to All Trades Services by Debtor. Other lienholders were named in the lawsuit including PCG and it was proceeding on the Petition Date, including PCG's Motion for the appointment of a receiver. A notice of the Debtor's bankruptcy was filed in the All Trades Action on August 3 2017, and it is currently stayed due to the filing of the Bankruptcy Case. The Debtor believes that all issues involved in the All Trades Action will be resolved through the Plan.

(b) **Jerome Smyser Action.** The case of Jerome Smyser (the "Jerome Smyser Action") is a Mechanics' and Materialmen's Lien recorded on July 31, 2017 which arose out of a dispute regarding monies purportedly owed to Jerome Smyser by Debtor. A notice of the Debtor's bankruptcy was filed in the Jerome Smyser Action in August 3 2017, and it is currently stayed due to the filing of the Bankruptcy Case. The Debtor believes that all issues involved in the Jerome Smyser Action will be resolved through the Plan.

ARTICLE IV

CERTAIN EVENTS LEADING UP TO THE COMMENCEMENT OF THE DEBTOR'S CHAPTER 11 CASE

4.1 **Precipitating Factors.**

4.1.1 **Initial Operational Challenges Contributing to the Chapter 11 Filing.**

When Debtor initially purchased the Property, the business plan was to treat it as a "value-add" property, to make improvements including "face-lift" and "cosmetic" improvements and then to resale for a profit. The 2015 purchase price was $5,850,000, with a 2nd mortgage retained by

the sellers Dogwood Hotels for $450,000 dollars. At the time of purchase, the appraised value was $8.0 Million "as is" and $9.5 Million upon completion of the Bennigan's restaurant. Janee/Mr. Moore had past experience in hotel “value-add”transactions.

As a condition of agreeing to the initial acquisition loan, PCG obtained a 30% equity ownership in the Debtor at the time of the loan, as well as an added $500,000 - $800,000 “equity kicker” upon exiting and paying off the loan. This “equity kicker” (as the documents referred to it) was over and above the 12% interest rate on the borrowed amount. The Property at time of purchase in 2015 was cash flowing, with significant NOI revenue reported by the prior owner of approximately $821,000 annually in the prior year.

In the time period between May 2015 when the Debtor was formed, and the ultimate closing of the transaction in late September 2015, Janee and PCG, as the two primary LLC members, discussed the plans for the management and operations of the Property following the purchase, i.e., whether to hire a new competent General Manager (GM)/management company or keep the existing GM in place from the seller so there would be no immediate changes, in other words it would be business as usual with a continuation of the prior GM and property management team.

Debtor states that PCG demanded that it hire a different management company or PCG would not fund the acquisition loan. PCG denies this assertion. Debtor states that PCG insisted that the Property select Innisfree Hotels as a management company, since Janee had a prior relationship with Innisfree on another unrelated hotel property, which also involved Janee previously having a $4.52 million loan with PCG which had been paid off in full by Janee (under Innisfree management operations).

Although there was a prior successful relationship with Innisfree, Janee felt Innisfree was not the management company to operate the Clarion Property in central Kentucky because Innisfree specialized in managing hotels on the beaches in Florida or resort style hotels, not a Clarion full-service hotel in central Kentucky.

Janee interviewed several management companies in Kentucky and concluded it was in the Debtor’s best interest that the Clarion be self-managed by the prior GM who ran the hotel under the prior owner/seller, who was willing to stay on, or a competent GM who specialized in the central Kentucky market. Debtor states that, unfortunately in its opinion, PCG refused to consider management other than Innisfree and Innisfree was signed to a one-year contract on or about October 1, 2016. Debtor believes that PCG disagrees with this, and that PCG states that Janee is the party that picked Innisfree as the management, and that PCG did not influence the selection.

Regardless of how Innisfree came to be hired as the contracted management company following the acquisition, the Hotel Property fell into demise almost immediately under their day to day control. During the one period under Innisfree management, the Net operating income went from a $821,000 net gain (under the prior owner) to a significant loss of over $500,000. Part of this time period overlaps the time period when construction was beginning on the Bennigan’s, which did cause some level of routine construction disruption.

Debtor, through its Managing Member Janee, believes that instead of immediately hiring a competent and talented GM, over the course of the year from October 1, 2015 to September 30, 2016, Innisfree placed numerous part-time bench managers at the Property, therefore, there was never any committed solid leadership because of the revolving door of bench managers over the course of the year, which led to the morale of the staff dropping to an all-time low. More significantly, Innisfree never hired a Director of Sales or trained any of existing employees for the position.

Debtor also believes that as a direct-result of the Innisfree mismanagement, no one at the Property conducted routine follow up on existing sales or looked to grow sales in any significant fashion. Further, no one on the Innisfree team instituted revenue management and the Property continued to fall further into demise. Additionally, under Innisfree's management no employee was either assigned to or ever given the responsibility to call on any of the existing business the property had secured over its prior-owner operating history for repeat business, which included golf groups, tour buses, business groups, holiday parties, family reunions and other local, regional and national sources of guest-stays.

After the fact, Janee was informed by some employees that Innisfree completely misrepresented to ownership the operational deficits they created at the property, and threatened termination to any employee who would share information with Debtor or Janee. When Janee as Managing Member would raise questions regarding the significant drop in sales revenue at the Property month over month, the response from Innisfree was that the entire market was down, which was not the case based on the Smith Travel Reports month over month. Subsequently, Innisfree contract was immediately terminated by the Debtor at the anniversary date of their contract September 30, 2016.

4.1.2. Disagreements and Disputes with PCG Contributing to Chapter 11 Filing.

The PCG initial Loan term was for a full pay off within 15 months, on or by December 31, 2016. Due to the significant losses in revenue in the initial year of operations under the Innisfree contract, the Debtor could not keep up with the $61,500.00 per month interest payment to PCG. Although Janee, as one of the members of LHG, made every effort to make the interest payments, even using its own cash rather than the cash flow from the Property during the 2015/2016 period, the debt service burden became onerous. Janee commenced negotiations with PCG to structure a forbearance agreement to address debt service shortfalls and an extended repayment term. Debtor, through Janee, believes that the poor operations and resulting loss of cash flow were a direct result of the Innisfree mismanagement issues, and that since Innisfree was appointed with input and insistence from PCG, that PCG should have worked towards a feasible and longer term resolution. PCG has stated that Janee’s actions were poor management, have harmed PCG, and have been the cause of the inability to pay off the Loan.

The Debtor and PCG worked to negotiate a forbearance agreement. Janee states that PCG threatened foreclosure if Janee didn't also agree, as part of any restructure of the secured debt portion of the PCG interests, to also turn over an additional 20% membership interest in the Debtor from Janee to PCG, with a further clause requiring the turnover of an additional 1% in the Debtor

to PCG if the Debtor didn't meet various benchmarks. The parties entered into a Forbearance Agreement in February, 2017. The full set of the PCG loan documents and the Forbearance Agreement can be found in PCG's proof of claim, POC No. 6 in the case. As part of the forbearance, Janee did transfer an additional 20% equity interest to PCG's subsidiary and affiliate, 5523 Athens, so that as of February, 2017, the membership interests changed to Janee at 40%; 5523 Athens at 50%; and the two private individuals at 5% each. Janee remained as Managing Member. The Operating Agreements and amendments may be found in the Court record at ECF Nos. 19 and 45].

Operations and the relationship between PCG and Janee did not improve following the Forbearance. During this time, the Bennigan's build out was also moving at full steam towards a completion and opening of the Restaurant operations, and there were also a growing number of unpaid suppliers and subcontractors associated with the Property improvements. Janee states that it felt constantly pressured to turn over "management control" of the Debtor to PCG/5523 Athens, including through ongoing threats of filing claims against the two personal guarantors, Mr. Moore and his adult daughter. Janee was not in favor of doing so, believing that PCG's only interest was to gain control of the Property and foreclose out all the junior creditors who had and were working in the build out, improving the value of the Property.

Despite multiple discussions, at the time of executing the forbearance agreement, part of maintaining the Clarion flag required LHG to pay for the Property Improvement Plan (PIP). PCG/5523 Athens would not fund any portion of the PIP or make it a part of the Forbearance Agreement, or pay its *pro rata* portion as 50% member of LHG. In July 2017, following the filing of a state court lawsuit by one of the mechanics' lienholders, PCG joined in the action, declared a default under the Forbearance Agreement, and sought a receiver to take over the Property.

4.2 **Prepetition Restructuring Efforts and Steps to Attempt to Improve Operations.**

Following the termination of Innisfree as of September 30, 2016, the Debtor self-managed the Property from October 1, 2016 until February 1, 2017, when it hired CUSA Hospitality to manage the operations pursuant to a written management agreement. The CUSA Management Agreement can be found in the Court record at ECF No. 197. During the time of the self- management, the financial books and records/financial input of data fell behind, as Janee searched for employees or contract parties to handle same along with day to day operations. While Janee thought that it might be capable of handling the overall management itself, it determined it was too short-staffed and unable to do so on its own and without adequate cash flow out of the Property, especially during the "shoulder months" of lesser operational revenues from November-March of each annual business cycle. PCG has asserted in this case that the self- management worsened the operating outcomes. Debtor admits that it was a time of ongoing losses, and it was also during the months of the year when revenues often drop below operating expenses, on a cyclical basis.

During this same time period, the construction had begun on Bennigan's in July of 2016 and was moving forward. Bennigan's officially opened on July 10, 2017. During the entire construction time period, operations were greatly affected. Routine construction disruptions, such

as dust, noise, and construction equipment sitting on site , led to less hotel guests. It also involved an extended time when the existing kitchen in the Hotel was closed and totally renovated, meaning no internal food service for some extended period of time. Events were catered during this time by an outside vendor, but the Hotel suffered some while the improvements were ongoing and in progress. Because of CUSA coming on board and starting to implement its operational plans for improving revenues, significant changes were being made at the Property during a hectic time period. CUSA has made changes which are now trending in an upward direction, such as hiring a full sales staff for both inside and outside sales, a chief engineer to properly maintain the Property and make significant repairs to the Property condition. There have been significant strides under the CUSA management in overall revenue year over year, a full time Revenue Manager is on board and the property is now trending in the right direction and has gained market share, RevPAR and Index under their management. Although the revenue has not gained as quickly as management and ownership would like, there are now signs of the Property trending back to the NOI of 2015 and under prior ownership.

Contemporaneously with the hiring of CUSA in February 2017, Debtor was attempting to negotiate with PCG to reach a longer term agreement to restructure its secured debt, as described above. At the same time, Debtor was attempting to refinance its loans through other lending sources. With the mechanics' lien litigation and claims, refinancing efforts outside of a bankruptcy were stymied. When the Bennigan's opened in mid-July, 2017, and without funding to add to the monthly contract payment to CUSA for the added work, CUSA did not undertake the bookkeeping work for the Restaurant. Those books and records fell behind from the start. After the chapter 11 filing, Janee has worked with a local accounting firm to get processes in place to assure adequacy of ongoing accounting processes. Those efforts have continued, but started from ground zero and have been difficult to move forward at the desired pace, without time, people, or money from the Debtor for the hiring needed. CUSA also loss the original bookkeeper who was thoroughly familiar with this Property, who fell suddenly seriously ill, shortly after the chapter 11 filing. While CUSA and the Debtor have worked diligently to get someone else at CUSA up to speed on the bookkeeping side, that has also been a challenge, with the multiple other time demands of the case. Considering the equity in the hard assets within the Property, as well as existing business opportunities to improve the occupancy rate of the Property, and the improvements of adding the Restaurant, the Debtor determined that filing a Chapter 11 petition was in the best interest of its creditors and parties in interest and filed for protection under Chapter 11 on August 3, 2017.

CUSA has informed the Debtor that it believes the Property has "great potential." CUSA has met many of its operating goals in turning around certain aspects of operations, in the less than a year it has been in place. It worked very hard to reestablish relationships with the golf community, and other sales blitzes to solicit sales. It implemented and developed other key marketing aspects with brochures and promotion piece updates, and has also jointly marketed both the Bennigan's and the Hotel, and the synergies created now that the Restaurant is opened. CUSA tracks and reports increased online "property views," revenue trends on general hotel standards, and conversion rates. CUSA also states that it has been successful in creating an organizational structure, through hiring, training and putting controls and systems in place for all departments, and have thereby successfully improved the guests' first impressions, through cleanliness, friendliness, uniforming, and curb appeal. While CUSA notes that the potential is there, it also notes that significant challenges have existed, many due to the lack of capital to complete the PIP

and conform to brand compliance. CUSA believes that added capital for completion of the PIP and certain items of deferred maintenance will freshen the Property and thereby grow revenues.

ARTICLE V

COMMENCEMENT OF AND EVENTS IN THE CHAPTER 11 CASE

5.1 **Commencement of Case.**

5.1.1 **Petition Date.** On August 3, 2017, the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code and thereby commenced the Bankruptcy Case.

5.1.2 **Chapter 11 Operating Order.** August 4, 2017, the Bankruptcy Court entered a Chapter 11 Operating Order [ECF No 12] in the Debtor's Bankruptcy Case evidencing that the Debtor had requested and been granted relief under Chapter 11 of the Bankruptcy Code and had thereby become a Debtor in Possession.

5.2 **Retention of Professionals.**

5.2.1 **Retention of Debtor's Counsel.** Pursuant to the final Order entered on October 13, 2017 [ECF No 134], the Debtor was authorized to employ the law firm of DelCotto Law Group PLLC as its counsel in the Bankruptcy Case, effective as of the Petition Date.

5.3 **Official Committee of Unsecured Creditors.** An official committee of unsecured creditors was appointed by the US Trustee on August 23, 2017 [ECF No 58] in this Bankruptcy Case consisting of C Worth Inc.—Interim Chair Patti Siwula, Smithers Sign Company, Inc. William or Robert Smithers and Graham Interiors, LLC Keith Graham. Primarily due to lack of funds to engage and pay professionals, the Debtor is informed that the Committee is following the case and staying informed, is having regular communications among its members, but without counsel for the Committee. Some of the members have their own counsel who are following the case and getting all the pleadings.

5.4 **Cash Collateral/Adequate Protection.** Debtor and PCG have had a number of disputes regarding the cash flow of the Property and Debtor's ability to use same. PCG would not agree to monthly operating budgets, and hearings were held on a monthly or more basis to consider cash use issues. The Court has entered a series of interim cash collateral orders without entry of a final order for operations during the months of August, September, and October. [ECF No. 54,90,111,124, and 150]. Thereafter, upon further legal briefing, the Court entered a Memorandum Opinion and Order [ECF No 163] holding that PCG did not have a perfected lien in room revenues or food revenues, and that certain cash could be used without further Court order. PCG does assert and does have some amount of a perfected lien in prepetition accounts and prepetition inventory, and proceeds of same, as well as some Replacement Lien regarding same.

5.5 **Monthly Operating Reports and Projections/Actual Financial Reporting.** The Court record reflects throughout that the Debtor has and continues to struggle to produce timely and accurate financial reporting, both on the side of the Hotel operations from CUSA, and the side of the Restaurant operations, produced by the Debtor without CUSA assistance. PCG has filed emergency motions to express its ongoing concerns, and has also objected and otherwise pointed out deficiencies in bookkeeping and financial reporting including multiple exhibits of prior financial and operational reporting.

PCG has expressed concerns that Debtor and CUSA produce different "projections" of future revenues and expenses. This is accurate that they do so. CUSA, as the Hotel management company, produces its own monthly projected P&L, based upon the various assumptions that it makes. Debtor, as the Property owner, then reviews and has the ability and right to make its own projections, different from those of CUSA. Further, CUSA does not include projections for the Restaurant, and since it doesn't track Restaurant operations, it doesn't make assumption of how the Hotel P&L may be affected by the Restaurant P&L. CUSA also assumes that the PIP should be completed, which has not occurred.

Post-confirmation, Debtor is recommending as part of its Plan certain steps to address the concerns surrounding its ability to generate more accurate projections and to move more quickly to produce various reports, including processes and timelines to adequately address concerns of parties in interest. Debtor is flexible on what reporting may be needed on a post- confirmation basis for ongoing monitoring, since the concerns in this case in this regard have been more serious than in other chapter 11 settings.

5.6 **Plan Formulation Process**. Debtor has worked diligently to prepare a plan of reorganization that it believes is the most fair and equitable among all of its Creditors and parties in interest, understanding that time is of the essence and that capital infusions are necessary under the current operations, to preserve the longer term value.

Janee, through funding out of its own coffers, retained an accounting firm, Enderle Besten Dieruf ("Enderle"), to make recommendations to improve bookkeeping at the Restaurant level and for setting up systems to go forward, which include the M3 software usage. Janee, through funding out of its own coffers, retained a corporate restructuring firm, Restructuring Advisory Group, acting through its principal Craig Brown, to assist in the Plan formulation and the formulation of the financial projections to support the Plan, including assistance with financing post-confirmation and negotiation with creditors over plan treatment and information needed to reach consensus towards confirmability. The Debtor has been diligently working on refinancing/preferred equity with Mungeon Capital representatives. In part, the refinancing/preferred equity is driven by the Plan terms, and vice versa. The restructuring needed also includes issuance of capital for a preferred equity contribution, and the post-confirmation equity structure needs to be in place to facilitate the exit strategy, which includes a secured loan as well as a preferred equity infusion. PCG has refused Debtors' efforts to calculate possible lesser pay offs on the loan side of its relationship, and Debtor has no ability to compel 5532 Athens to make a member capital contribution under the Operating Agreement. The Debtor submits that the Plan filed with the Court and served herewith represents the product of these efforts, and provides the best possible recovery

for all Creditors and parties interest, instead of the total value of the Property, including the Hotel and the Restaurant, going solely to PCG/5532 Athens.

ARTICLE VI

OVERVIEW OF THE DEBTOR'S PLAN OF REORGANIZATION

6.1 **General Summary**. The Plan contemplates the continued business operations of the Debtor and the payment of all Allowed Claims to the extent possible, in varying amounts based on priority, over the life of the Plan. Funds to pay creditors and have adequate reserves to support operations will come from several sources: future revenues; a new value contribution from member(s); and the anticipated Post-Confirmation Facility (the "Facility"), which includes both a secured loan and a preferred equity capital infusion. In general, all Allowed Claims will be paid on or before the fifth year after the Effective Date of the Plan, with Classes 1 through 16 to be paid from the above sources and All other Allowed unclassified Claims to be paid as described more fully in Section 6.5 below. The Debtor believes that this provides a reasonable and conservative approach to its emergence from Chapter 11, while providing some fresh capital to alleviate ongoing risk.

6.2 **Debtor's Recommendation.** Debtor believes that the Plan is in the best interests of all of its constituencies and will permit the maximum recovery possible for all classes and types of Claims, greater than any possible recovery in a Chapter 7, a dismissal of the case, or any other liquidation setting.

6.3 **Description of Certain Key Plan Terms.** Debtor provides this general summary and description of what it believes to be certain of the key terms of the Plan. This is not a full and complete description of everything contained in the Plan, only of various general and specific Plan provisions. THE PLAN AND THE EXACT LANGUAGE THEREIN CONTROL OVER THIS GENERAL DESCRIPTION AND SHOULD BE REVIEWED CAREFULLY.

6.3.1 **Continued Existence of the Debtor**. The Plan provides for the Debtor to continue to operate post-Confirmation as the "Reorganized Debtor" in the ordinary course of its business, receiving ongoing income from its operations in order to fund Plan payments to its Creditors. While operating, the Reorganized Debtor may also seek and consummate offers to purchase any of the Debtor's Assets, and/or any of its member interests, to raise added funds for Creditors as its business needs dictate.

6.3.2 **Funding the Plan.** The Reorganized Debtor will fund the Plan payments to Creditors in the ordinary course and according to the Plan treatment terms from post-Confirmation net profits, from the new-value contribution of member(s) as well as from the potential post-confirmation Facility. Under the Plan, Confirmation of the Plan shall be deemed approval of a future Facility in accordance with the written Facility Statement as it exists at the time of Confirmation, to be attached to the Confirmation Order, or as may be amended at a later date, subject to ongoing Court oversight only in the event the Facility terms change after Confirmation to yield a lesser amount of capital than currently expressed at the time of Confirmation. As of the Effective Date, and as long as the Reorganized Debtor continues

operation, the Reorganized Debtor shall have the right to collect and use all of its revenues for operations, provided however, that a portion of the remaining "Net Cash Flow" each month shall be segregated and held solely for funding Plan payments.

6.3.3 **Vesting of the Debtor's Assets.** At the Confirmation Date, all Assets of the Debtor and the Estate, including all Avoidance Actions and Causes of Action (if any), will revest in and remain with the Reorganized Debtor, free and clear of all liens, claims, interests, and encumbrances, except for those liens specifically provided for in the Plan. If the Reorganized Debtor liquidates any of its Assets which remain subject to a lien post-Confirmation, then it will seek the consent of any Creditor holding a lien upon the particular Asset. If the Secured Creditors and the Reorganized Debtor cannot agree to the terms for a private, ordinary-course sale, then the Reorganized Debtor may seek authority for any such sale from this Court. The Reorganized Debtor and its Assets will remain subject to the jurisdiction of this Court until the Bankruptcy Case is closed or dismissed.

6.3.4 **Post-Confirmation Liabilities of the Reorganized Debtor.** The Reorganized Debtor will not have any prepetition liabilities except those expressly assumed and/or addressed under the Plan. The Reorganized Debtor will be responsible for all ongoing business expenses and payments due and owing or contemplated under the Plan.

6.3.5 **Injunctions.** Except as may be otherwise provided in the final and entered Confirmation Order, the Plan provides generally that the entry of the Confirmation Order will constitute an **injunction** against all Persons from taking any actions to commence or continue any action or proceeding that arose before the Effective Date against or affecting the Debtor, the Estate, or the Assets, **and against any guarantor or other person who might be obligated on any Claim along with the Reorganized Debtor,** so long as the Reorganized Debtor is in compliance with the Plan provisions. That is to say, no party in interest may take any steps to collect or otherwise proceed on its claim against any Person obligated on a Claim, so long as the Reorganized Debtor is performing and in compliance with the Plan as confirmed. No guarantor is being released, but no party can pursue any such person so long as the Reorganized Debtor is in Plan compliance.

6.3.6 **Term of Injunction for any Claim not Treated and Allowed in the Plan.** **Except as may be otherwise provided in the final Confirmation Order, the Plan provides that the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released or modified pursuant to the Plan, except for the treatment as provided for in the Plan.**

6.3.7 **Discharge of Claims.** The Plan provides that the payments, distributions, and other treatment provided in respect to each Allowed Claim in the Plan shall be in complete satisfaction of such Allowed Claim, and said Claim shall be discharged in accordance with the provisions of 11 U.S.C. § 1141. The Confirmation Order shall discharge the Debtor from all Claims and other debts that arose before the Confirmation Date and all debts of the kind specified in 11 U.S.C. §§ 502(g), 502(h), or 502(i), whether or not: (i) a Claim based on such debt is allowed pursuant to 11 U.S.C. § 502, or (ii) the holder of a Claim based on such debt has accepted the Plan.

6.3.8 **Objections to Claims.** Unless otherwise ordered by the Bankruptcy Court, all objections to Claims, including determinations regarding the priority/type of status of any Claim, shall be filed on or before ninety (90) days following the Effective Date, or forty-five (45) days following the filing of any Claim, whichever is later, without prejudice to the extension of such period upon proper application therefor. The objecting party shall serve a copy of each such objection upon the holder of the Claim in accordance with Fed. R. Bankr. P. 3007.

6.3.9 **Valuation of Secured Claims.** Under 11 U.S.C. § 506, a secured creditor has a "secured claim" to the extent of such creditor's interest in a Debtor's interest in the collateral, and an unsecured claim for the balance, if any. The "allowed" amount of the creditor's secured claim will be the lesser of value of the creditor's interest in the Debtor's interest in the property as determined under 11 U.S.C. § 506, or the allowed amount of the creditor's claim. Under the Plan, if any dispute over valuation occurs with any Secured Creditor, the Debtor reserves the right to request that the Court determine the value of the Creditor's interest in the collateral which secures the Creditor's Claim. Under the Plan, any Claim for which a timely objection is not filed shall be deemed Allowed as filed or scheduled.

6.3.10 **Procedure for Contingent and Unliquidated Claims.** The Plan provides that Creditors holding contingent or unliquidated Claims shall have sixty (60) days from the Confirmation Date to file a motion or adversary action with the Court to have their Claim allowed. Upon the allowance of a contingent or unliquidated Claim, the Plan provides that said Claim shall be entitled to distribution under the Plan consistent with the treatment of other Claims in the Class in which the contingent or unliquidated Claim is ultimately allowed. The contingent or unliquidated Claim of any Creditor who fails to initiate timely action pursuant to this provision for the allowance of its Claim shall have its Claim disallowed and be forever barred from seeking any recovery from the Reorganized Debtor, the Estate, or the Assets. The Debtor does not believe that there are any Contingent or Unliquidated Claims.

6.3.11 **Executory Contracts and Unexpired Leases.**

(a) **Generally.** Under the Plan, the Debtor reserves the right to apply to the Court at any time prior to Confirmation for authority to assume, assign, or reject any Executory Contracts and Unexpired Leases not expressly addressed in the Plan in whole or in part as provided in 11 U.S.C. §§ 365 and 1123. The Plan further provides that all remaining Executory Contracts and Unexpired Leases for which the Debtor has not so moved on or before the Confirmation Date shall be deemed rejected as of said date (the "Rejection Date"); provided, however, that any such motions, requests, proceedings, or actions to seek to assume or reject, or to determine Allowed Cure Claims, pending at the Confirmation Date shall be continued until determined by Final Order of the Bankruptcy Court. A chart describing the Debtor's Executory Contracts and Unexpired Leases is attached hereto as **Exhibit B**. The Debtor reserves the right to amend Exhibit B and/or move to assume, assign, or reject any other Executory Contracts or Unexpired Leases as described in this Section should it subsequently become aware of any agreements not listed on Exhibit B.

(b) **Specific Assumptions under the Plan.** Under the Plan, the Debtor proposes to assume the following Unexpired Leases and Executory Contracts upon Confirmation:

(i) CUSA Management Contract

(ii) Bennigans License Agreement, Craveable Brands, LLC

(iii) Clarion Franchise Agreement, Choice Hotels

(iv) others as stated on Exhibit B.

(c) **Bar Date for Rejection Damages Claims.** The Plan provides that any proof of claim that any third party has with respect to the rejection of any Unexpired Lease or Executory Contract must be filed no later than thirty (30) days after the later of: (i) entry of a Final Order of this Court authorizing such rejection, or (ii) the Rejection Date. Any such Claim for rejection damages shall be treated as a Class 16 Unsecured Claim.

(d) **Allowed Cure Claims on Assumed Unexpired Leases and Executory Contracts. If the Debtor applies for and receives the Court's authorization to assume an Unexpired Lease or Executory Contract as provided under 11 U.S.C. § 365, other than those Unexpired Leases and Executory Contract specifically addressed in the Plan, the Plan provides that the contract/lease parties shall work to agree to any Cure Claim and repayment terms of same, and either party shall have thirty (30) days following Confirmation to seek allowance of a Cure Claim from the Bankruptcy Court, provided that the Court has not already entered an order specifying the Cure Claim terms. If no such allowance of a Cure Claim is sought within that time period, all such Claims shall be barred. However, if a Cure Claim is timely sought and thereafter Allowed by the Court, the Plan requires that the Debtor will then consult with the Claimant to negotiate a repayment of the Allowed Cure Claim over a reasonable period, and no longer than over two (2) years. If the parties are unable to reach agreement on the amount or repayment terms of a Cure Claim, it will be submitted to the Court for determination.**

6.3.12 **Causes of Action.** The Plan provides that at the Confirmation Date, all Assets of the Debtor and its Estate, including all Avoidance Actions or other Causes of Action (if any), will revest in and remain with the Reorganized Debtor. The Debtor has conducted a preliminary analysis of potential Avoidance Actions and has determined that transferees appear to have valid defenses and most transfers appear to have been in the ordinary course of dealings. At present, Debtor has not thoroughly analyzed claims or made any determination about whether it intends to bring any avoidance actions. However, the Debtor reserves its rights to bring such an Avoidance Action or other Cause of Action (if any) prior to or following the Confirmation Date if it subsequently determines otherwise.

6.4 **General Summary of Plan Treatment of Unclassified Claims.** *The Plan provisions control over the following generalized summary.*

6.4.1 **Administrative Claims.**

(a) **Ordinary Course Administrative Claims.** The Plan provides that all Allowed Administrative Claims arising from obligations incurred by the Debtor in the ordinary course of its business prior to the Confirmation Date, including Administrative Trade Claims, will be paid and performed by the Reorganized Debtor in the ordinary course of its business in accordance with the terms of any agreements governing, instruments evidencing, or other documents relating to such transactions. The Debtor believes that there are certain "ordinary course" postpetition Administrative Claims which may be past due and not currently paid. Each such Allowed Claim shall be paid in full as agreed by the parties, or upon Confirmation or Claim Allowance, whichever occurs later, unless otherwise agreed. Debtor is projecting that the "new value" member contribution is sufficient to pay all such claims in full.

(b) **Other Allowed Administrative Claims.** The Plan states that all other holders of Allowed Administrative Claims, including, but not limited to Professional Claims and any other 11 U.S.C. § 503(b)(9) Allowed Claims, if any, shall be paid in full on the Effective Date or as agreed by any such Allowed Creditor. The Plan provides that Professionals shall retain any escrow funds in their possession to pay against their Allowed Claims. At present, the Debtor does not anticipate that there will be any other Allowed Administrative Claims, beyond those Allowed Administrative Claims for Professional fees and expenses, and that after allowance and escrow funds may be applied, that they will be paid in full following Confirmation from the new value member contribution.

6.4.2 **Bar Date for Administrative Claims.** The Plan provides certain time deadlines for certain administrative claimants to seek application for allowance and should be closely reviewed, as any claim that is not timely filed might be disallowed.

6.4.3 **Post-Confirmation Professional Claims.** Post-Confirmation Date Professional Claims will not require Bankruptcy Court approval and will be paid post-Confirmation in the ordinary course from the Reorganized Debtor's business operations.

6.4.4 **United States Trustee Fees.** The Plan provides that all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date of the Plan. Following Confirmation, the Reorganized Debtor's obligation to pay United States Trustee fees shall continue until the Bankruptcy Case is converted, dismissed, or closed, whichever occurs first, and said fees will be paid by the Reorganized Debtor in the ordinary course as they are incurred, with all fees to be paid before the Bankruptcy Case may be closed. The Reorganized Debtor shall also timely file and serve all reports required by the U.S. Trustee.

6.4.5 **Priority Tax Claims.** As set forth more fully in the Plan, unless otherwise agreed by the holder of a Priority Tax Claim and the Reorganized Debtor, each Tax Creditor will receive, in full satisfaction of its Allowed Priority Tax Claim, deferred cash payments totaling the Allowed amount of such Claim over a period not exceeding five (5) years from the Petition Date, as required by the Bankruptcy Code, which period shall conclude on or about August 3, 2022. The Plan provides that payments on the Allowed Priority Tax Claims will be made beginning on the first Semi-Annual Distribution Date following the Effective Date and shall continue to become

due on each subsequent Semi-Annual Distribution Date until the Priority Tax Claims are paid in full. The payments on the Allowed Priority Tax Claims shall be made in equal semi-annual installments of principal and simple interest accruing from the Effective Date at the current rate of interest required by law on the unpaid portion of each Allowed Priority Tax Claim (or upon such other terms determined by the Bankruptcy Court to provide the holders of Priority Tax Claims with deferred cash payments having a value, as of the Effective Date, equal to the Allowed amount of such Priority Tax Claims). No payments will be made on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim. The Reorganized Debtor will have the right and discretion to pay any Allowed Priority Tax Claim, or any remaining balance of such Priority Tax Claim, in full, at any time on or after the Effective Date, without premium or penalty and without further order of the Court if cash is available to do so. A chart describing all of the anticipated Priority Tax Claims against the Debtor as of the Petition Date is attached hereto as **Exhibit C**.

6.4.6 **Other Allowed Priority Non-Tax Claims.** Under the Plan, as soon as practicable after the later of the Effective Date and the date the Claim becomes an Allowed Claim, each holder of an Allowed Priority Non-Tax Claim against a Reorganized Debtor will receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Non-Tax Claim a Distribution from the applicable Reorganized Debtor: (i) in Cash equal to the unpaid portion of such Allowed Priority Non-Tax Claim against the Debtor, or (ii) in such amounts and on such other terms as may be agreed between the holder of the Allowed Priority Non-Tax Claim and the Debtor, or (iii) in accordance with the terms of the particular agreement under which such Priority Non-Tax Claim arose. To the extent that any Creditor's total Allowed Priority Non-Tax Claim exceeds the amount entitled to Priority treatment under 11 U.S.C. § 507, the remaining amount of such Claim shall be treated as a Class 16 Allowed Unsecured Claim. The Debtor does not believe that there are any unpaid Priority Non-Tax Claims to be paid under the Plan.

6.5 **General Summary of Plan Treatment of Classified Claims.** *The Plan provisions control over the following generalized summary.*

6.5.1 **Class 1: Allowed Secured Claim of Private Capital Group (PCG)** Class 1 shall consist of the Allowed Secured Claim of PCG. ("PCG") in the total disputed amount of $7,723,000 as of the Petition Date, plus non-default rate interest from the Petition Date through the Confirmation Date at the rate set forth in the loan documents underlying the Class 1 Claim, plus reasonable attorney's fees and expenses, less all payments received by PCG by the Effective Date. The Class 1 Claim is Disputed and Impaired, and the final Allowed Amount will need to be determined by order of the Court unless otherwise agreed by the parties. Debtor estimates the Class 1 Claimants Allowed Claim to be approximately $7,503,000 as of the petition date and $7,866,000 as of the Effective Date.

The Allowed Class 1 Claim is held by an "insider" of the Debtor and will be subjected to strict scrutiny in its ultimate Allowance determination.

(a) **Debts Comprising the Class 1 Claim.** The Class 1 Claim is comprised of indebtedness in the original principal amount of $6,150,000 that was incurred by the Debtor on or about September 28, 2015, which amount has since

been increased by interest accrued thereon, disputed late charges, disputed default interest rate charges and reasonable attorney's fees and expenses. The outstanding amount of the Class 1 Claim on the Petition Date according to the Class 1 Claimant was $8,633,153.10. A proof of claim was filed by the Class 1 Claimant on September 15, 2017[POC 6]. The Debtor filed an objection to the Class 1 Claimants' proof of claim on October 18, 2017, and will be refiling same prior to confirmation. The Debtor estimates the Class 1 Claimants Claim to be the principal amount of $6,150,000, plus accrued interest at the rate of 12% per annum resulting in an approximate amount of $7,626,000 as of September 15, 2017 plus any other reasonable costs of collection or charges.

(b) **Assets Securing the Class 1 Claim.** The Class 1 Claim is secured by a mortgage lien on the Debtor's Property and all buildings and improvements thereon. The Class 1 Claim is further secured by security interests in the personal property and FF&E owned by the Debtor and contained in or used in connection with such real Property.

(c) **Class 1 Treatment Under the Plan**

In summary, the Plan provides that PCG will retain its liens securing the Class 1 Claim until paid in full under the terms of the Plan. As set forth more fully in the Plan, Class 1 consists of the Allowed Claim of PCG. Class 1 is impaired under the Plan. In full and complete satisfaction of the Allowed Class 1 Claim, PCG or the holder of the Allowed Class 1 Claim shall receive the following:

Within five (5) business days after the Confirmation Date, or such date as the parties may agree, PCG and the Reorganized Debtor shall execute the PCG Replacement Loan Documents which shall amend the PCG Loan Documents to implement and reflect the terms of the Plan.

The PCG Replacement Loan Documents

The PCG Replacement Loan Documents shall be in substantially the same form as the PCG Loan Documents. In the event there is any provision of the PCG Replacement Loan Documents which is inconsistent with the terms of the Plan, the terms of the Plan shall control. The PCG Replacement Loan Documents shall secure a lien on the collateral that is subject to the PCG Loan Documents with the same priority and validity that existed prior to the Debtor's alleged pre-petition default(s). Said collateral is hereinafter referred to as the PCG Collateral. The PCG Collateral shall secure repayment of the PCG Replacement Loan Documents Any event of default that may have existed pre-petition with respect to the PCG Loan Documents shall be deemed cured and any lis pendens which may have been recorded pre or post-petition with respect to the PCG Loan Documents and the shall be deemed null and void and of no further force or effect, and PCG or the holder of the PCG Loan Documents shall execute any documents or instruments necessary to reflect the same, including the execution and recordation of a release of lis pendens

Payments on the PCG Replacement Loan Documents shall be made in monthly installments of interest only calculated at a fixed interest rate of six percent (6.0%) for the first 30 months, and then

amortized over 360 months for the final 30 months, calculated at a fixed interest rate of six percent (6.0%); provided, however, the Reorganized Debtor may prepay the Class 1 Allowed Claimant at any time, without penalty, and it is contemplated that the Debtor will pay the Allowed lass 1 Claimant through the Facility financing from Mungeon Statutory Trust.

Interest shall begin to accrue on the PCG Replacement Loan Documents as of the Effective Date. The first (1st) payment shall be due on the fifteenth (15th) day of the first (1st) full month following the Effective Date, and shall be in an amount equal to a percentage of a Full monthly installment payment derived from the number of days remaining in the month in which the Effective Date occurs (the numerator) divided by the number of days in the month in which the Effective Date occurs (the denominator). Thereafter, payments shall be due on the fifteenth (15th) day of each month until the sixtieth (60th) month after the Effective Date at which time the entire outstanding balance due under the PCG Replacement Loan Documents shall be due and payable. Upon payment in full of the balance due under the PCG Replacement Loan Documents, the liens evidenced by the PCG Replacement Loan Documents shall be deemed satisfied and shall be deemed canceled.

If the Reorganized Debtor defaults in its obligation to pay each payment due and payable under the PCG Replacement Loan Documents the holder of the PCG Replacement Loan Documents shall be entitled to pursue all its rights to judicially foreclose including the recordation of a lis pendens and accelerate the entire unpaid indebtedness and/or exercise such other remedies as provided under the PCG Replacement Loan Documents and under applicable Kentucky law. The Reorganized Debtor shall be entitled to cure and reinstate any such default under applicable Kentucky law.

Nothing in the Plan shall enhance or otherwise increase the rights of the holder of the Class 1 claim to seek recovery on its claim as against any party other than the Reorganized Debtor.

6.5.2 **Class 2: Dogwood Hotels, LLC** Class 2 consists of the Allowed Secured Claim of Dogwood Hotels, LLC ("Dogwood ") in the total amount of $437,000 as of the Petition Date, plus applicable interest from the Petition Date through the Confirmation Date, and applicable costs of collection as provided in its original contract, less all payments received by Dogwood by the Effective Date.

(a) **Debts Comprising the Class 2 Claim.** The Class 2 Claim is comprised of indebtedness in the original principal amount of approximately $430, 000 that was incurred by the Debtor on September 28, 2015, the remaining purchase price of the original acquisition that was retained by the Seller and secured by a 2nd mortgage behind PCG.

(b) **Assets Securing the Class 1 Claim.** The Class 2 Claim is secured by a second mortgage lien on the Debtor's Property and all buildings and improvements thereon.

The Plan provides that Dogwood will retain its 2nd mortgage lien securing the Class 2 Claim until paid in full as set forth herein.

(b) **Class 2 Treatment Under the Plan**

Class 2 is impaired under the Plan. In full and complete satisfaction of the Allowed Class 2 Claim, Dogwood or the holder of the Allowed Class 2 Claim shall receive the following:

Within five (5) business days after the Confirmation Date or such date as the parties agree, Dogwood and the Reorganized Debtor shall execute the Dogwood Replacement Loan Documents which shall amend the Dogwood Loan Documents to implement and reflect the terms of the Plan.

The Dogwood Replacement Loan Documents

The Dogwood Replacement Loan Documents shall be in substantially the same form as the Dogwood Loan Documents. In the event there is any provision of the Dogwood Replacement Loan Documents which is inconsistent with the terms of the Plan, the terms of the Plan shall control. The Dogwood Replacement Loan Documents shall secure a lien on the collateral that is subject to the Dogwood Loan Documents with the same priority and validity that existed prior to the Debtor's alleged pre-petition default(s). Said collateral is hereinafter referred to as the Dogwood Collateral. The Dogwood Collateral shall secure repayment of the Dogwood Replacement Loan Documents Any event of default that may have existed pre-petition with respect to the Dogwood Loan Documents shall be deemed cured and any lis pendens which may have been recorded pre or post-petition with respect to the Dogwood Loan Documents and the shall be deemed null and void and of no further force or effect, and Dogwood or the holder of the Dogwood Loan Documents shall execute any documents or instruments necessary to reflect the same, including the execution and recordation of a release of lis pendens.

Payments on the Dogwood Replacement Loan Documents shall be made in monthly installments of interest only calculated at a fixed interest rate of six percent (6.0%) for the first 30 months, and then amortized over 360 months for the final 30 months, calculated at a fixed interest rate of six percent (6.0%).

Interest shall begin to accrue on the Dogwood Replacement Loan Documents as of the Effective Date. The first (1st) payment shall be due on the fifteenth (15th) day of the first (1st) full month following the Effective Date, and shall be in an amount equal to a percentage of a Full monthly installment payment derived from the number of days remaining in the month in which the Effective Date occurs (the numerator) divided by the number of days in the month in which the Effective Date occurs (the denominator). Thereafter, payments shall be due on the fifteenth (15th) day of each month until the sixtieth (60th) month after the Effective Date at which time the entire outstanding balance due under the Dogwood Replacement Loan Documents shall be due and payable. Upon payment in full of the balance due under the Dogwood Replacement Loan Documents, the liens evidenced by the Dogwood Replacement Loan Documents shall be deemed satisfied and shall be deemed canceled.

If the Reorganized Debtor defaults in its obligation to pay each payment due and payable under the Dogwood Replacement Loan Documents the holder of the Dogwood Replacement Loan Documents shall be entitled to pursue all its rights to judicially foreclose including the

recordation of a lis pendens and accelerate the entire unpaid indebtedness and/or exercise such other remedies as provided under the Dogwood Replacement Loan Documents and under applicable Kentucky law. The Reorganized Debtor shall be entitled to cure and reinstate any such default under applicable Kentucky law.

Nothing in the Plan shall enhance or otherwise increase the rights of the holder of the Class 2 claim to seek recovery on its claim as against any party other than the Reorganized Debtor.

6.5.3 **Class 3: Allowed Secured Claim All Trades Services.** Class 3 consists of the Allowed Secured Claim All Trades Services ("All Trades") in the total amount of $32,794.97 as of the Petition Date, applicable costs of collection as provided in its original contract, less all payments received by All Trades by the Effective Date.

The Plan provides that All Trades will retain its mechanic's lien securing the Class 3 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of All Trades. As set forth more fully in the Plan, will accrue on the Class 3 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 3 Claimants claim all due and payable on or before the 60th month following the Effective Date The Class 3 Claim is Impaired.

(a) **Debt Comprising the Class 3 Claim.** The Class 3 Claim is comprised of amounts owed for All Trades' charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 3 Claim.** The Class 3 Claim is secured by a mechanic's lien on the Property. The Class 3 Claim is impaired.

6.5.4 **Class 4: Allowed Secured Claim of Jerome Smyser.** Class 4 consists of the Allowed Secured Claim Jerome Smyser ("Smyser") in the total amount of $155,315 as of the Petition Date, and applicable costs of collection as provided in its original contract, less all payments received by Smyser by the Effective Date.

The Plan provides that Smyser will retain his mechanic's lien securing the Class 4 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Smyser. As set forth more fully in the Plan, interest will accrue on the Class 4 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 4 Claimant claim all due and payable on or before the 60th month following the Effective Date. The Class 4 Claim is Impaired.

(a) **Debt Comprising the Class 4 Claim.** The Class 4 Claim is comprised of amounts owed for Smyer's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 4 Claim.** The Class 4 Claim is secured by a mechanic's lien on the Property

6.5.5. **Class 5 Allowed Secured Claim Quality Choice Construction** Class 5 consists of the Allowed Secured Claim Quality Choice Construction ("Quality Choice ") in the approximate disputed amount of $104,372.77 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by Quality Choice by the Effective Date.

The Plan provides that Quality Choice will retain its mechanic's lien securing the Class 5 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Quality Choice. As set forth more fully in the Plan, interest will accrue on the Class 5 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 5 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 5 Claim is Impaired.

(a) **Debt Comprising the Class 5 Claim.** The Class 5 Claim is comprised of amounts owed for Quality Choice's charges for constructing certain improvements to the Property. Debtor states that the amount is in dispute and Debtor will work to attempt to reach an "agreed" Allowed Amount.

(b) **Asset Securing the Class 5 Claim.** The Class 5 Claim is secured by a mechanic's lien on the Property

6.5.6 **Class 6 Allowed Secured Claim Dunn & Tackett Glass, LLC** Class 6 consists of the Allowed Secured Claim Dunn & Tackett Glass, LLC ("Dunn & Tackett ") in the approximate disputed amount of $13,810.42 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by Dunn & Tackett by the Effective Date.

The Plan provides that Dunn & Tackett will retain his mechanic's lien securing the Class 6 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Dunn & Tackett. As set forth more fully in the Plan, interest will accrue on the Class 6 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 6 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 6 Claim is Impaired.

(a) **Debt Comprising the Class 6 Claim.** The Class 6 Claim is comprised of amounts owed for Dunn & Tackett's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 6 Claim.** The Class 6 Claim is secured by a mechanic's lien on the Property

6.5.7 **Class 7 Allowed Secured Claim Ken Tyson Plumbing, Inc** Class 7 consists of the Allowed Secured Claim Ken Tyson Plumbing, Inc ("Ken Tyson ") in the approximate disputed amount of $82,604.06 as of the Petition Date and applicable costs of

collection as provided in its original contract, less all payments received by Ken Tyson by the Effective Date.

The Plan provides that Ken Tyson will retain his mechanic's lien securing the Class 7 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Ken Tyson. As set forth more fully in the Plan, interest will accrue on the Class 7 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 7 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 7 Claim is Impaired.

(a) **Debt Comprising the Class 7 Claim.** The Class 7 Claim is comprised of amounts owed for Ken Tyson's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 7 Claim.** The Class 7 Claim is secured by a mechanic's lien on the Property

6.5.8 **Class 8 Allowed Secured Claim HWZ Distribution Group, LLC** Class 8 consists of the Allowed Secured Claim HWZ Distribution Group, LLC ("HWZ ") in the approximate disputed amount of $6,661.79 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by HWZ by the Effective Date.

The Plan provides that HWZ will retain his mechanic's lien securing the Class 8 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of HWZ. As set forth more fully in the Plan, interest will accrue on the Class 8 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 8 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 8 Claim is Impaired.

(a) **Debt Comprising the Class 8 Claim.** The Class 8 Claim is comprised of amounts owed for HWZ 's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 8 Claim.** The Class 8 Claim is secured by a mechanic's lien on the Property

6.5.9 **Class 9 Allowed Secured Claim Smithers Sign Co., Inc** Class 9 consists of the Allowed Secured Claim Smithers Sign Co., Inc ("Smithers") in the approximate disputed amount of $25,481.56 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by Smithers by the Effective Date.

The Plan provides that Smithers will retain his mechanic's lien securing the Class 9 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Smithers. As set forth more fully in the Plan, interest will accrue on the Class 9 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly

with the Class 9 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 9 Claim is Impaired.

(a) **Debt Comprising the Class 9 Claim.** The Class 9 Claim is comprised of amounts owed for Smithers's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 9 Claim.** The Class 9 Claim is secured by a mechanic's lien on the Property

6.5.10 **Class 10 Allowed Secured Claim Lumber King, Inc** Class 10 consists of the Allowed Secured Claim Lumber King, Inc ("Lumber King ") in the approximate disputed amount of $6,661.79 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by Lumber King by the Effective Date.

The Plan provides that Lumber King will retain his mechanic's lien securing the Class 10 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Lumber King. As set forth more fully in the Plan, interest will accrue on the Class 10 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 10 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 10 Claim is Impaired.

(a) **Debt Comprising the Class 10 Claim.** The Class 10 Claim is comprised of amounts owed for Lumber King 's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 10 Claim.** The Class 10 Claim is secured by a mechanic's lien on the Property

6.5.11 **Class 11 Allowed Secured Claim of Collins Fire Protection, Inc.** Class 11 consists of the Allowed Secured of Collins Fire Protection, Inc. ("Collins Fire ") in the approximate disputed amount of $2,143.56 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by Collins Fire by the Effective Date.

The Plan provides that Collins Fire will retain his mechanic's lien securing the Class 11 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Collins Fire. As set forth more fully in the Plan, interest will accrue on the Class 11 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 11 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 11 Claim is Impaired.

(a) **Debt Comprising the Class 11 Claim.** The Class 11 Claim is comprised of amounts owed for Collins Fire 's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 11 Claim.** The Class 11 Claim is secured by a mechanic's lien on the Property

6.5.12 **Class 12 Allowed Secured Claim of KM Development, LLC.** Class 12 consists of the Allowed Secured of KM Development, LLC. ("KM Development ") in the approximate disputed mount of $85,000.00 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by KM Development by the Effective Date.

The Plan provides that KM Development will retain his mechanic's lien securing the Class 12 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of KM Development. As set forth more fully in the Plan, interest will accrue on the Class 12 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 12 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 12 Claim is Impaired.

(a) **Debt Comprising the Class 12 Claim.** The Class 12 Claim is comprised of amounts owed for KM Development 's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 12 Claim.** The Class 12 Claim is secured by a mechanic's lien on the Property

6.5.13 **Class 13 Allowed Secured Claim of Bookman's Electrical Service, LLC**. Class 13 consists of the Allowed Secured of Bookman's Electrical Service, LLC. ("Bookman's Electrical ") in the approximate disputed amount of $106,166.86 as of the Petition Date and applicable costs of collection as provided in its original contract, less all payments received by Bookman's Electrical by the Effective Date.

The Plan provides that Bookman's Electrical will retain his mechanic's lien securing the Class 13 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Bookman's Electrical. As set forth more fully in the Plan, interest will accrue on the Class 13 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 13 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 13 Claim is Impaired.

(a) **Debt Comprising the Class 13 Claim.** The Class 13 Claim is comprised of amounts owed for Bookman's Electrical 's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 13 Claim.** The Class 13 Claim is secured by a mechanic's lien on the Property.

6.5.14 **Class 14 Allowed Secured Claim of Graham Interiors, LLC.** Class 14 consists of the Allowed Secured of Graham Interiors, LLC. ("Graham Interiors ") in the approximate disputed amount of $12,669.00 as of the Petition Date and applicable costs of

collection as provided in its original contract, less all payments received by Graham Interiors by the Effective Date.

The Plan provides that Graham Interiors will retain his mechanic's lien securing the Class 14 Claim until paid in full as set forth herein. On or after the Effective Date, the Debtor will execute a Promissory Note in favor of Graham Interiors. As set forth more fully in the Plan, interest will accrue on the Class 14 Claim at an annual fixed rate of two (2.0%) percent interest only, payable monthly with the Class 14 Claimants claim all due and payable on or before the 60th month following the Effective Date. The Class 14 Claim is Impaired.

(a) **Debt Comprising the Class 14 Claim.** The Class 14 Claim is comprised of amounts owed for Graham Interiors 's charges for constructing certain improvements to the Property.

(b) **Asset Securing the Class 14 Claim.** The Class 14 Claim is secured by a mechanic's lien on the Property.

6.5.15 **Other Secured Claims.** Class 15 consists of all other Secured Claims, if any, excluding the Class 1 through 14 Secured Claims. The Plan provides that, in satisfaction of the Allowed Secured Claim of any Class 6 Claimant, if any, the Debtor shall, on the Effective Date, or such other date as may be agreed on, at the Debtor's option, either: (i) surrender the collateral to the Claimant to allow it to liquidate said collateral at its discretion; or (ii) pay the amount of such Allowed Secured Claim to the Class 15 Creditor over time during the life of the Plan. The Class 15 Claims are Impaired. There are no known claims in this Class.

6.5.16 **Class 16: Allowed General Unsecured Claims.** Class 16 consists of the Allowed Unsecured Claims against the Debtor other than unclassified Claims, Cure Claims, Priority Tax Claims, Priority Non-Tax Claims, and Insider Loan Claims (except as otherwise specified herein). The Plan provides that each holder of an Allowed Claim in Class 16 shall receive a Distribution equal to two percent annually of its claim. The Reorganized Debtor shall deposit in a separate escrow account the monthly sum from the Net Cash Flow beginning with the first full month after the Effective Date for the purpose of paying Class 16 Claims. Distributions to holders of Class 16 Claims shall be made semi-annually beginning on June 15, 2018, and continuing for five (5) years at which time a final balloon payment shall pay the Class 16 Claims in full.

Pursuant to the Debtor's financial projections attached hereto as **Exhibit F** the Class 16 Claims will be paid to the greatest extent possible over time without interest, and based on the Debtor's Projections, holders of Class 16 Claims will receive 100% on account of their Claim, without any interest, by the end of the Plan Term. The Class 16 Claims are Impaired.

6.5.17 **Class 17: Allowed Insider Loan Claims.** Class 17 consists of the Allowed Insider Loan Claims against the Debtor by Kenneth Moore of approximately $600,000. No payments on the Class 17 Claims will made unless and until classes 1 through 16 are paid in full.

6.5.18 **Class 18: Equity Membership Interests in the Debtor.** Class 18 consists of those Persons or entities holding equity membership Interests in the Debtor. The Plan provides that in order to retain any such membership interest, the member, within 10 days of the notice of the new value capital call by the Managing Member, shall make its *pari passu* contribution to a "new value" fund in the total amount of $500,000, which shall be used to pay Allowed Administrative Claims and Allowed Cure Claims, as available, and also a certain portion of which shall be held by the Reorganized Debtor as a dedicated "operating reserve" in order to fund months when added cash is needed for post-confirmation operations or to pay Allowed Claims under the Plan.

The *pari passu* amounts of "new value" contributions called for under the Plan, which equal the current membership percentages, are: Janee, $200,000; 5532 Athens, $250,000; Patel, $25,000; Dubrs, $25,000.

Janee has committed to making its new value contribution, subject to the below, which amount, even if no other member elects to contribute new value to preserve its membership interests, is estimated to be adequate to meet minimum Plan confirmation requirements and have a smaller post- confirmation reserve. Janee's new value contribution written commitment will be received by the end of November, 2017, and is anticipated to be closed by the end of December, 2017. Janee is prepared to share the written information at this time only with the Court, and not the parties. The Debtor anticipates that the Managing Member will make the new value capital call prior to or shortly after year end, and give the other members 10 days' notice to contribute or be removed from membership.

Upon the new value capital call notice from the Managing Member, each member who makes its *pari passu* contribution (a "New Value Member") shall retain its current share of equity membership interest, or a reallocated share of the total depending on the other members participation. If any of the respective current members decline to make their *pari passu* contribution amount (a "Declining Member"), then another current member may elect to fund the Declining Member's *pari passu* amount and will take ownership of their membership interests. If no other members elect to do so, then those who do fund their respective New Value amounts will thereafter reallocate the ownership membership percentages based on their respective new value contributions, and the prior owners will have their membership interests terminated as of the New Value Funding Date. By way of example:

Janee funds $200,000 and 5532 Athens funds $250,000 while Patel and Dubrs do not fund.
Total new value funded is $450,000.
Patel and Dubrs lose their member interests and ownership is reallocated.
Janee interest is adjusted to $200,000/450,000 = 44.45%
5532 Athens interest is adjusted to $250,000/450,000 = 55.55%

Except as otherwise set forth in the Plan, there will be no dividends, member distributions, or any other payments to or on account of the Equity Membership Interests unless and until all Allowed Claims have been paid in full. The Class 18 Claims are Impaired.

6.6 **Plan Implementation**

6.6.1 **Parties Responsible for Implementation of the Plan.** Upon Confirmation, the Plan provides that Mr. Moore, acting on behalf of Janee as the Managing Member of the Reorganized Debtor, will continue to manage the Debtor's operations, subject to the terms of the Plan. Mr. Moore will have the authority to take all actions desirable in his business judgment to continue the operations of the Reorganized Debtor, including implementation of the Plan and administration of the Debtor's Estate. For these duties, Mr. Moore will continue to receive the same compensation as current: $112,500 as salaried compensation plus expense reimbursements. The Debtors believe that Mr. Moore's compensation is fair and reasonable given the Debtor's operations and finances. The Reorganized Debtor will pay all United States Trustee fees and will file all post-Confirmation reports required by the United States Trustee's Office. The Reorganized Debtor will also file the necessary final reports and will request to close the Bankruptcy Case as soon as practicable after Plan payments have begun.

6.6.2 **Means of Implementation.** The Debtor will continue to operate post-Confirmation as the Reorganized Debtor in the ordinary course of business, receiving ongoing income from its operations and using all income to pay its customary operating expenses, necessary capital expenditures, and Plan payments. The Debtor has projected and assumed increased revenue through a conservatively-projected growth in its business following Confirmation. Additionally, the Debtor is anticipating the post-confirmation Facility financing from Mungeon Statutory Trust, which consist of both a secured lending facility in addition to a preferred equity facility, in exact amounts still under calculation. Reorganized Debtor will use funds obtained therefrom to fully satisfy the Class 1 and 2 Claims. Some or all of the Reorganized Debtor's Assets may be transferred to a newly created entity in order to consummate the Facility. Any new entity would assume all obligations of the Reorganized Debtor under the Plan.

6.6.3 **Continued Engagement of Professionals**. The Reorganized Debtor shall continue the engagement of DelCotto Law Group PLLC and such other professionals as may be necessary for the purposes of rendering services in connection with implementing the Plan, resolving Claims, and performing routine post-Confirmation Chapter 11 administration, such as final reporting and moving to have the Case closed upon Plan completion. Post-Confirmation, any professional services will not require Court approval.

6.6.4. **Ongoing Post-Confirmation Reporting and Financial Recordkeeping.** In this case, Debtor has acknowledged its challenges in the bookkeeping aspects of its business, and the reasons therefore, with the Restaurant opening at the almost exact same time that PCG aggressively began its litigation collection efforts, and the CUSA staff losing the one person who had the background knowledge of the Hotel's operations who kept up with the books and records. While the details are not yet fully decided upon, the Reorganized Debtor will take extra steps and efforts to put added protections in place for reporting and bookkeeping, including possible new hires of accounting/bookkeeping staff, which have been recommended by Enderle. It is anticipated that the Confirmation Order may have added protections that are put in place as a part of the Plan confirmation process, and the Debtor will work with all parties in interest if they have reasonable suggestions for improvement and added systems and processes to create more trust and accuracy in the financial reporting. Janee continues to work with the Enderle firm for recommendations on

the Restaurant books, and Debtor will work with CUSA and others on possible improvements for the hotel books.

ARTICLE VII

RISK FACTORS

7.1 **Risks of Non-Confirmation.** Even if all impaired classes accept or could be deemed to have accepted the Plan, the Plan may not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things: (a) that the confirmation of a plan not be followed by a need for further liquidation or reorganization, and is "feasible" ; (b) that the value of distributions to dissenting holders not be less than the value of distributions to such holders if the debtor were liquidated under Chapter 7 of the Bankruptcy Code; and (c) that the plan and the debtor otherwise comply with the applicable provisions of the Bankruptcy Code and have proposed the Plan in good faith. Although the Debtor believes that the Plan will meet all applicable tests and that it has proposed a confirmable Plan, there can be no assurance that the Bankruptcy Court will reach the same conclusion. The Court has previously expressed its own concerns about the reliability of future projections for operations, based on the ongoing accuracy issues which the Debtor has acknowledged.

If no Plan can be confirmed, the Chapter 11 Bankruptcy Case may be converted to a Case under Chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to liquidate the Debtor's Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. More likely, the case would be dismissed, at which time it is anticipated that PCG would seek to take over operations through a court-appointed receiver, and thereafter foreclose on the Property, with the right to credit bid under state law up to the full amount of its claim, which in state court, could include its claim of 36% interest; in effect, assuring that there would be no fair market exposure of the Property to the market. The Debtor believes that Confirmation is preferable to Chapter 7 liquidation or a dismissal/state court foreclosure, because the Plan maximizes the distributions to all Classes of Creditors and interest holders, and any alternative to Confirmation would most likely result in substantial delays and potentially lesser recoveries as persons unfamiliar with the Debtor's Assets would assume administration of the Case, and the property would ultimately be sold, wiping out all the mechanics liens as well as the 2nd mortgage.

7.2 **Risks of Non-Consensual Confirmation.** Pursuant to the "cramdown" provisions of 11 U.S.C. § 1129, the Bankruptcy Court can confirm the Plan at the Debtor's request if at least one impaired Class has accepted the Plan (with such acceptance being determined without including the acceptance of any "insider" in such Class) and, with respect to each Impaired class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to impaired Classes. In accordance with 11 U.S.C. §§ 1129(a)(8) and (b), the Debtor will request Confirmation of the Plan without the acceptance of all impaired Classes entitled to vote.

The Debtor reserves the right to modify the terms of the Plan as necessary for Confirmation without the acceptance of all Impaired Claims. Such modification could result in less favorable treatment for any non-accepting Classes than the treatment currently provided for in the Plan. Such less favorable treatment could include a distribution of property of a lesser value than that currently provided for in the Plan or no distribution of property whatsoever.

7.3 **Risks of Delays in Confirmation.** Any delay in Confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims or contested fights with secured creditors. These or any other negative effects of delays in Confirmation of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court. In this case, the Debtor immediately needs the cash infusions called for by both the "new value" member contributions as well as the post- confirmation Facility, both the loan and the preferred equity. Any delay is likely fatal to the Debtor's ability to attempt to reorganize, as the operations are now entering the winter months when cash drops to an annual low point.

7.4 **Risks of Shut Down of Operations.** In its business judgment, the Debtor has determined that maintaining and reorganizing its business operations pursuant to the Plan will provide a much better return for all parties in interest. Due to the nature of the Debtor's business, its assets are worth much more if operated or sold as a going concern, than a "go dark" hotel/restaurant that would almost certainly lose both flags of operation, the Clarion as well as the Bennigan's. If that occurred, the Debtor's Creditors stand to receive zero recovery in satisfaction of their Claims, with the exception of the real property taxes and the 1st mortgage holder PCG.

ARTICLE VIII

PLAN CONFIRMATION

8.1 **Generally.** To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtor, including that the:

(a) Plan has classified Claims and Interests in a permissible manner;

(b) Plan complies with the applicable provisions of the Bankruptcy Code;

(c) Debtor comply with the applicable provisions of the Bankruptcy Code;

(d) Debtor, as proponents of the Plan, have proposed the Plan in good faith and not by any means forbidden by law;

(e) Disclosure required by 11 U.S.C. § 1125 has been made;

(f) Plan has been accepted by the requisite votes of creditors and equity interest holders (except to the extent that cramdown is available under 11 U.S.C. § 1129(b));

(g) Plan is feasible;

(h) Plan is in the "best interests" of all holders of Claims or Interests in an impaired Class by providing to creditors or interest holders, on account of such Claims or Interests, property of value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a Chapter 7 liquidation unless each holder of a Claim or Interest in such Class has accepted the Plan;

(i) Fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date;

(j) Plan provides for the continuation after the Effective Date of all retiree benefits, as defined in 11 U.S.C. § 1114, at the level established at any time prior to Confirmation pursuant to 11 U.S.C. §§ 1114(c)(1)(B) or 1114(g), for the duration of the period that the applicable Debtor has obligated itself to provide such benefits; and

(k) Disclosures required under 11 U.S.C. § 1129(a)(5) concerning the identity and affiliations of persons who will serve as officers, directors, and voting trustees of the successors to the Debtor has been made.

8.2 **Voting Requirements for Confirmation under the Bankruptcy Code.**

8.2.1 **General Voting Information.**

PLEASE CAREFULLY FOLLOW ALL OF THE INSTRUCTIONS CONTAINED ON THE BALLOT PROVIDED TO YOU. ALL BALLOTS MUST BE COMPLETED AND RETURNED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED.

TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE DEADLINE SET BY THE COURT AND AT THE ADDRESS SET FORTH ON YOUR BALLOT. IT IS OF THE UTMOST IMPORTANCE TO THE DEBTOR THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE DEBTOR OR ITS COUNSEL.

IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS, IF YOU HOLD MULTIPLE GENERAL UNSECURED CLAIMS, OR UNDER CERTAIN OTHER CIRCUMSTANCES, YOU MAY RECEIVE MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN, AND RETURN EACH BALLOT YOU RECEIVE.

ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED, PURSUANT TO THE BANKRUPTCY CODE, BASED UPON THE BALLOTS OF THE CREDITORS HOLDING ALLOWED CLAIMS THAT *ACTUALLY VOTE* ON THE PLAN. THEREFORE, IT IS IMPORTANT THAT CLAIMANTS EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.

IF ANY OF THE CLASSES OF HOLDERS OF IMPAIRED CLAIMS VOTE TO REJECT THE PLAN: (A) THE DEBTOR MAY SEEK TO SATISFY THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN UNDER THE CRAMDOWN PROVISIONS OF 11 U.S.C. § 1129(b) AND, IF REQUIRED, MAY AMEND THE PLAN TO CONFORM TO THE STANDARDS OF SUCH SECTION; OR (B) THE PLAN MAY BE MODIFIED OR WITHDRAWN WITH RESPECT TO A PARTICULAR CREDITOR, OR (C) THE PLAN MAY BE WITHDRAWN IN ITS ENTIRETY.

8.2.2 **Classes Entitled to Vote on the Plan.**

(a) **Generally.** Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are "impaired" under the terms of a plan of liquidation or reorganization are entitled to vote to accept or reject a plan. A class is "impaired" if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of Claims and Interests that are not impaired are *not* entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan unless such Class otherwise indicates acceptance. *The classification of Claims and Interests under the Plan is summarized, together with an indication of whether each Class of Claims or Interests is impaired, in Section 6.5.*

(b) **Contested and Unliquidated Claims.** Contested, disputed, contingent, and/or unliquidated Claims are *not* entitled to vote to accept or reject the Plan. If your Claim has been estimated for voting purposes by Court Order, you will be allowed to vote your Claim in the amount estimated by said Order. If ballots are erroneously sent to a Creditor not entitled to vote, then the ballot will not be counted in the calculation of the Creditors voting to accept or reject the Plan. If you are a Creditor holding a contested or disputed claim, you may ask the Court to have your Claim temporarily allowed for the purpose of voting pursuant to Fed. R. Bankr. P. 3018.

8.2.3 **Voting Procedures and Requirements.**

(a) **Ballots and Voting.** Creditors holding Allowed Claims entitled to vote on the Plan will be sent a ballot, together with instructions for voting, with this Disclosure Statement. Creditors should read the ballot carefully and follow the instructions contained therein. In voting to accept or reject the Plan, you must use *only* the ballot sent to you with this Disclosure Statement. Creditors entitled to vote must complete, sign, and return their ballots to counsel for the Debtor on or before the Voting Deadline. Fed. R. Bankr. P. 3018(a) permits a Creditor, for cause, to petition the Court to permit it to change or withdraw its vote on a plan. Any such petition

must be made before the Confirmation Hearing, unless otherwise permitted by the Court. The Debtor will present the results of the voting to the Bankruptcy Court at the Confirmation Hearing.

(i) **Lost or Damaged Ballots.** If you are entitled to vote and you did not receive a ballot, received a damaged ballot, or lost your ballot, please contact Pam Lickert* at DelCotto Law Group PLLC at (859) 231-5800 or plickert@dlgfirm.com. Also, this Disclosure Statement, the Plan, and all of the related Exhibits are available upon request to any party in interest by contacting the Debtor's counsel.

(ii) **Effective Transmittal of Ballots.** Votes cannot be transmitted orally or by facsimile. Accordingly, you are urged to return your signed and completed ballot by hand delivery, overnight service, email, or regular U.S. mail, promptly.

(b) **Requirements for Class Acceptance.** As a condition of Confirmation, the Bankruptcy Code requires that each class of Claims that is impaired vote to accept the Plan, subject to the exception of 11 U.S.C. § 1129(b), which still requires one class of Claims that is impaired to have voted to accept the Plan. A class of Claims accepts the Plan if: (i) holders of at least two-thirds in the total dollar amount of Allowed Claims in that class, and (ii) a majority in number of holders of Claims in that class, vote to accept the Plan.

8.3 **General Requirements for Confirmation under the Bankruptcy Code.**

8.3.1 **Best Interests of Creditors/Liquidation Analysis.** Notwithstanding acceptance of the Plan by each impaired Class, to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such impaired Class who has not voted to accept the Plan. Accordingly, if an Impaired Class does not unanimously accept the Plan, the "best interests" test requires that the Bankruptcy Court find that the Plan provides to each member of such Impaired Class a recovery on account of the member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such member would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each impaired Class of Claims or Interests would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be available if the Chapter 11 Bankruptcy Case was converted to case under Chapter 7 of the Bankruptcy Code and the Debtor's Assets were liquidated by a Chapter 7 trustee (the "Liquidation Value"). The Liquidation Value would consist of the net proceeds from the disposition of the assets of the Debtor, augmented by any cash held by the Debtor.

The Liquidation Value available to holders of Unsecured Claims and Interests would be reduced by, among other things: (a) the Claims of secured creditors to the extent of the value of their collateral; (b) the costs, fees, and expenses of the liquidation, as well as other administrative expenses of the Debtor's Chapter 7 case; (c) unpaid Administrative Claims of the

Chapter 11 Case; and (d) Priority Tax and Non-Tax Claims. The Debtor's costs of liquidation in Chapter 7 would include the compensation of a trustee, as well as of counsel and of other professionals retained by a trustee, asset disposition expenses, applicable taxes, litigation costs, claims arising from the operation of the Debtor during the pendency of the Chapter 7 case, and all unpaid Administrative Claims incurred by the Debtor during the Chapter 11 case that are allowed in the Chapter 7 case. The liquidation itself would likely accelerate the payment of certain Priority Claims and Priority Tax Claims that would otherwise be payable in the ordinary course of business. These Priority Claims and Priority Tax Claims would be paid to the extent possible out of the net liquidation proceeds, after payment of Secured Claims, before the balance would be made available to pay Unsecured Claims or to make any distribution in respect of Interests. The Debtor believes that the liquidation also would generate an increase in Unsecured Claims, such as rejection damages Claims, and Tax and other governmental Claims.

The information contained in **Exhibit E** attached hereto provides a summary of the Liquidation Values of the Debtor's Assets, assuming a hypothetical Chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the Debtor's Assets.

The Liquidation Analysis attached hereto reflects that impaired Creditors would receive less than full repayment at a liquidation, if it were to occur on the Effective Date of the Plan, in comparison to the full repayment they are projected to receive over the term of the plan. In order for the Plan to be confirmed under these circumstances, each impaired class of creditors must accept the Plan or receive at least as much under the Plan than they would in a liquidation on the Effective Date of the Plan.

In summary, the Debtor believes that Chapter 7 liquidation of the Debtor would result in less than full payment to the PCG, no payment to the other 13 secured creditors and no payment to the unsecured creditors whereas under the proposed distributions under the Plan all creditors will be paid in full, because of, among other factors: (a) the depressed value of the Lexington in a liquidation sale, (b) the negative impact of conversion to a Chapter 7 case and additional costs and expenses involved in the appointment of a Chapter 7 trustee and attorneys, accountants, and other professionals to assist such trustee in the Chapter 7 case; and (c) additional expenses and Claims, some of which would be entitled to priority in payment, that would arise by reason of a liquidation. Consequently, the Debtor believes that the Plan will provide a greater ultimate return to holders of Claims than a Chapter 7 liquidation.

8.3.2 **Feasibility of Plan.** Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation of the Debtor or any successor to the Debtor, or the need for further financial reorganization, unless such liquidation or reorganization is proposed in the Plan. Based on the Debtor's analysis, the Reorganized Debtor will have sufficient assets and business operations to accomplish its tasks under the Plan. Therefore, the Debtor believes that its reorganization pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code. To support this contention, the Debtor's financial projections over the first five years of the Plan term are attached hereto as **Exhibit F**. **The current surrounding competitive Hotels have an average occupancy as of November 16, 2017 that is 28% higher than the Debtors occupancy. The Debtor conservatively projects that over the-5-year term of the plan, the occupancy at the Hotel will increase by an average of 4.113 %**

per year, meaning after 5 years the occupancy will increase by 20.57% from an average occupancy in 2018 of 44.31% to an average of 64.88% which is still 7% below the current occupancy of competitive hotels in the marketplace. Moreover, the projections contemplate a minor increase in the Average Daily Rate over the 5-year period of $2.40 per room per year.

The average daily room revenue and occupancy for the 2018 projections and going forward are based upon averages from the 2015 and 2016-year end Profit and Loss Statements as construction at the Hotel in 2017 has impacted revenue.

Also attached as **Exhibit G** are some of the historical operating results of the Property, and much more historical information is available in the Court's record. All parties should closely review the projections to support the Plan. The Court record shows that past projections have not always been accurate, and all parties and the Court have previously expressed concerns. Debtor's Plan projects certain improvements in operations, which it believes to be feasible, now that improved management is in place, and now that all construction is completed. However, there is no guaranty that the projections will prove accurate. That is why the Plan also provides for a "new value" contribution of up to $500,000, as well as a preferred equity contribution after confirmation, which funds will be used solely for ongoing operations and to pay Creditors under the Plan including Cure Claims.

8.3.3 **Compliance with Applicable Provisions of the Bankruptcy Code.** Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtor has considered each of these issues in the development of the Plan and believes that the Plan complies with all provisions of the Bankruptcy Code.

8.4 **Confirmation.**

8.4.1 **Confirmation Hearing.** The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtor has fulfilled the Confirmation requirements of 11 U.S.C. § 1129. The Confirmation Hearing has been or will be scheduled by Order of the Court and you will or have received notice of the hearing by separate notice/order. If you have any questions concerning the hearing, please contact the undersigned counsel.

8.4.2 **Objections to Confirmation.** Any objection to Confirmation must be made in writing and must specify in detail the name and address of the objector, all grounds for the objection, and the amount of the Claim or Interest held by the objector. Any such objections must be filed and served upon the persons designated in the notice of the Confirmation Hearing and in the manner and by the deadline described therein.

8.4.3 **Methods of Confirmation.**

(a) **Confirmation Based on Plan Acceptance.** A plan is accepted by an Impaired class of claims if holders of at least two-thirds in dollar amount and a majority in number of claims of that class vote to accept the plan. Only those holders of claims who actually vote (and are entitled to vote) to accept or to reject a plan count in this tabulation. In addition to

this voting requirement, 11 U.S.C. § 1129 requires that a plan be accepted by each holder of a claim or interest in an Impaired class or that the plan otherwise be found to be in the best interests of each holder of a claim or interest in an impaired class by the Bankruptcy Court.

(b) **Confirmation through Cramdown.** The Bankruptcy Code contains provisions for confirmation of a plan even if it is not accepted by all impaired classes, so long as at least one Impaired class of claims has accepted it. These "cramdown" provisions are set forth in 11 U.S.C. § 1129(b). As indicated above, the Plan may be confirmed under the cramdown provisions if, in addition to satisfying the other requirements of 11 U.S.C. § 1129(a), it: (a) is "fair and equitable;" and (b) "does not discriminate unfairly" with respect to each Class of Claims or Interests that is impaired under, and has not accepted, the Plan. The "fair and equitable" standard, also known as the "absolute priority rule," requires, among other things, that unless a dissenting class of unsecured claims or a class of interests with respect to a debtor receives full compensation for its allowed claims or allowed interests, no holder of allowed claims or interests with respect to such debtor in any junior class may receive or retain any property on account of such claims or interests. With respect to a dissenting class of secured claims, the "fair and equitable" standard requires, among other things, that holders either: (a) retain their liens and receive deferred cash payments with a value as of the effective date equal to the value of their interest in property of the debtor's estate; or (b) receive the indubitable equivalent of their secured claims. The "fair and equitable" standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims or allowed interests. The Debtor believes that, if necessary, the Plan may be crammed down over the dissent of certain Classes of Claims, in view of the treatment proposed for such Classes.

The requirement that the Plan not "discriminate unfairly" means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Debtor does not believe that the Plan unfairly discriminates against any Class that may not accept or otherwise consent to the Plan. Subject to the conditions set forth in the Plan, a determination by the Bankruptcy Court that the Plan, as it applies to any particular Debtor, is not confirmable pursuant to 11 U.S.C. § 1129 will not limit or affect: (a) the confirmability of the Plan as it applies to any other Debtor; or (b) the Debtor's ability to modify the Plan, as it applies to any particular Debtor, to satisfy the provisions of 11 U.S.C. § 1129(b).

8.5 **Alternatives to Confirmation.** If the Plan is not confirmed and consummated, the alternatives include preparation and presentation of an alternative plan of reorganization or a conversion of this case to one under Chapter 7 of the Bankruptcy Code, or more likely, a dismissal of the Case, and foreclosure by PCG. If the Court denies confirmation, the Debtor or any other party in interest could propose a different Plan. The Debtor believes such an alternative plan would result in less return to creditors than the distributions to creditors pursuant to the Plan. See **Section VII** of this Disclosure Statement for additional description. Before proposing the present Plan, the Debtor explored other alternatives and engaged in negotiations with PCG, its major Secured Creditor, but has been unable to reach agreements. The Debtor believes not only that the Plan, as described herein, fairly adjusts the rights of various classes of Creditors and enables Creditors to realize the most possible under the circumstances, but also that rejection of the Plan in favor of some alternative arrangement will not result in a better recovery for any Class.

ARTICLE IX

CERTAIN FEDERAL TAX CONSEQUENCES

IRS Circular 230 Disclosure: To ensure compliance with requirement imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

9.1 **General**.

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS, JUDICIAL DECISIONS, AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION MAY HAVE RETROACTIVE EFFECT, WHICH MAY CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW. NO RULING HAS BEEN REQUESTED FROM THE IRS, NO LEGAL OPINION HAS BEEN REQUESTED FROM COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN, AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.

THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF CLAIMS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX-EXEMPT ORGANIZATIONS, AND FOREIGN TAXPAYERS, NOR DOES IT ADDRESS TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTOR. THIS DESCRIPTION DOES NOT DISCUSS THE POSSIBLE STATE TAX OR NON-U.S. TAX CONSEQUENCES THAT MIGHT APPLY TO THE DEBTOR OR TO HOLDERS OF CLAIMS.

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

9.2 **Tax Consequences of Payment of Allowed Claims Pursuant to Plan Generally.** The federal income tax consequences of the implementation of the Plan to the holders of Allowed

Claims will depend, among other things, on the consideration to be received by the holder, whether the holder reports income on the accrual or cash method, whether the holder receives distributions under the Plan in more than one taxable year, whether the holder's Claim is Allowed or disputed on the Effective Date, and whether the holder has taken a bad debt deduction or worthless security deduction with respect to its claim.

9.2.1 **Recognition of Gain or Loss.** In general, a holder of an Allowed Claim should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim, less the holder's tax basis in the Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the holder, the length of time the holder held the Claim, and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation. The holder's tax basis for any property received under the Plan generally will equal the amount realized. The holder's amount realized generally will equal the sum of the cash and the fair market value of any other property received by the holder under the Plan on the Effective Date or a subsequent distribution date, less the amount (if any) treated as interest, as discussed below.

9.2.2 **Post-Effective Date Distributions.** Because certain holders of Allowed Claims, including Disputed Claims that ultimately become Allowed Claims, may receive cash distributions after the Effective Date, the imputed interest provisions of the Internal Revenue Code may apply and cause a portion of the subsequent distribution to be treated as interest. Additionally, because holders may receive distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the holder may be deferred. All holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

9.2.3 **Receipt of Interest.** Holders of Allowed Claims will recognize ordinary income to the extent that they receive cash or property that is allocable to accrued but unpaid interest which the holder has not yet included in its income. If an Allowed Claim includes interest, and if the holder receives less than the amount of the Allowed Claim pursuant to the Plan, the holder must allocate the Plan consideration between principal and interest. The holder may take the position that the amounts received pursuant to the Plan are allocable first to principal, up to the full amount of principal, and only then to interest. However, the proper allocation of Plan consideration between principal and interest is unclear, and holders of Allowed Claims should consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.

9.2.4 **Bad Debt or Worthless Securities Deduction.** A holder who receives, in respect of an Allowed Claim, an amount less than the holder's tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under 26 U.S.C. § 166(a) or a worthless securities deduction under 26 U.S.C. § 165(g). The rules governing the character, timing, and amount of bad debt and worthless securities deductions place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument

with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

9.2.5 **Information Reporting and Withholding.** Under the Internal Revenue Code's backup withholding rules, the holder of an Allowed Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan, unless the holder comes within certain exempt categories (which generally include corporations) and, when required, either demonstrates that categorization or provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax. Holders of Allowed Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

9.3 **Certain U.S. Federal Income Tax Consequences to the Debtor.** In the event that the Debtor sells any of its Assets, the Debtor will generally recognize a gain or loss on the sale of those Assets, equal to the difference between the amount realized on the sale and the adjusted tax basis of the Assets being sold. Additionally, if the Debtor conveys appreciated (or depreciated) property (i.e. property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of full recourse debt, the Debtor must recognize taxable gain or loss equal to the excess or shortfall, respectively, of such fair market value over that adjusted basis. This gain or loss may be ordinary income or loss, capital gain or loss, or a combination of each, and may be offset against any applicable net operating loss carry-forwards from previous tax years.

Further, the discharge of a recourse debt obligation by the Debtor in exchange for the Debtor's payment of cash and/or transfer of property with a fair market value that is less than the adjusted issue price of the debt obligation (as determined for U.S. federal income tax purposes) may give rise to cancellation of indebtedness ("COD") income. COD income must generally be included in the Debtor's gross income, subject to certain statutory or judicial exceptions that may limit the amount of COD income required to be included. One such statutory exception applies to certain Debtor whose discharge of indebtedness is granted in a case brought under Title 11 of the United States Code (relating to bankruptcy), pursuant to a court-approved plan of reorganization.

For the foregoing reasons, the precise amount of taxable gain or loss, COD income, or both that the Debtor may realize as a result of effectuation of the Plan cannot be determined until the date of the exchange.

ARTICLE X

ADDITIONAL INFORMATION, RECOMMENDATIONS, AND CONCLUSION

10.1 **Additional Information.** Any statements in this Disclosure Statement concerning the provisions of any document are not necessarily complete, and in each instance, reference is made to such document for the full text thereof. Certain documents described or referred to in this Disclosure Statement have not been attached as exhibits because of the impracticability of

furnishing copies of these documents to all recipients of this Disclosure Statement. The Debtor will file all exhibits to the Plan with the Bankruptcy Court, and the exhibits also will be available upon request from the Debtor's counsel.

10.2 **Recommendations and Conclusion.** The materials provided in this Disclosure Statement are intended to assist you in reviewing the Plan in an informed manner. If the Plan is confirmed, you will be bound by the terms of the Plan. You are urged to study these materials and make such further inquiries as you may deem appropriate.

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtor urge all holders of Claims in voting Classes to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before the Voting Deadline.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Dated: November 19, 2017

Respectfully submitted,

LEXINGTONHOSPITALITYGROUP LLC.

By: /s/ Kenneth Moore
Designated Representative of the Debtor and President, Janee Hotel Corporation

Tendered by:

DELCOTTO LAW GROUP PLLC

/s/ Laura Day DelCotto
Laura Day DelCotto, Esq.
KY Bar No. 81763
200 North Upper Street
Lexington, KY 40507
Telephone: (859) 231-5800
Facsimile: (859) 281-1179
ldelcotto@dlgfirm.com
COUNSEL FOR DEBTOR AND
DEBTOR IN POSSESSION

\Lexington Hospitality Group\Pleadings\DS and Plan and related\DS- LDD clean 20171119.docx