

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

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**In Re:**

**Hanish, LLC**

**Debtor(s)**

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**Chapter 11  
Case No. 16-10602-BAH  
  
Hearing Date: May 31, 2017  
Hearing Time: 11:00 a.m.  
  
Objection Deadline: May 5, 2017**

**DEBTOR IN-POSSESSION’S THIRD DISCLOSURE STATEMENT FOR THIRD  
PLAN OF REORGANIZATION DATED MARCH 15, 2017 (SECOND AMENDED)**

Hanish, LLC (the “Debtor”) submits this Third Disclosure Statement (second amended)(the “Disclosure Statement”) for its Third Plan of Reorganization dated March 15, 2017, (hereinafter the “Plan”) pursuant to Chapter 11 of Title 11 of the United States Code. The Plan is attached to a Disclosure Statement to be approved by the Bankruptcy Court. The Disclosure Statement discusses the history, business, and prospects of the Debtor and provides a summary and analysis of the Plan. All creditors are encouraged to review the Disclosure Statement; it is the only document approved by the Bankruptcy Court for use in soliciting the acceptance or rejection of this Plan.

**THE DEBTOR IS THE OWNER OF A 59 UNIT HOTEL, LOCATED AT 8 BELL AVENUE, HOOKSETT, NEW HAMPSHIRE. (THE ‘HOTEL’) THE HOTEL OPERATES AS A “FAIRFIELD INN AND SUITES BY MARRIOTT.” THE HOTEL IS A 3 STORY 72,000+/- SQUARE FOOT BUILDING WITH AN INDOOR POOL/FITNESS CENTER /BUSINESS CENTER. THIS IS THE DEBTOR’S PRIMARY ASSET. ALL OTHER ASSETS ARE IN THE FORM OF CLAIMS. THE HOTEL IS OPERATING AT THIS TIME.**

**THE DEBTOR BELIEVES THE PLAN IS IN THE BEST INTERESTS OF ALL PARTIES UNDER THE CIRCUMSTANCES OF THIS CASE. IT PROVIDES FOR THE CONTINUED OPERATION OF THE DEBTOR UNDER CURRENT MANAGEMENT WITH A RESTRUCTURE OF THE DEBT OF DEBTOR’S MAJOR LENDER, PHOENIX, REO, LLC, (“LENDER” OR “PHOENIX”) IN A MANNER THAT FAVORS THE LENDER AND OTHER CREDITORS. THE DIVIDEND UNDER THE PLAN IS UP TO 100%<sup>1</sup> FOR GENERAL UNSECURED CLAIMS AND IS 100% FOR THE LENDER’S SECURED AND UNSECURED CLAIM.**

<sup>1</sup> Small unsecured claim of under \$5,000.00 will be paid 80% of their claims in cash on the Effective Date.

**THIS IS A DISCLOSURE STATEMENT TO ACCOMPANY A PLAN OF REORGANIZATION. IT IS THE ONLY DOCUMENT YOU SHOULD READ TO DETERMINE WHETHER TO VOTE IN FAVOR OR AGAINST THE PLAN. THE PLAN IS PROPOSED BY THE DEBTOR IN A BANKRUPTCY CASE AS A RESTRUCTURE OF ITS AFFAIRS. AS A CREDITOR OR INTERESTED PARTY YOU BOTH HAVE THE OPPORTUNITY TO VOTE ON THE PLAN AND OBJECT TO IT (OR SUPPORT IT). VOTING ON THE PLAN IS BY CLASS. A CLASS VOTES FOR A PLAN IF 2/3 IN AMOUNT AND MAJORITY IN NUMBER OF THE CLAIMS VOTES FOR THE PLAN. IF YOUR CLASS VOTES AGAINST THE PLAN, THE PLAN CAN STILL BE CONFIRMED OVER YOUR OBJECTION IF IT MEETS CERTAIN REQUIREMENTS CALLED CRAMDOWN. CRAMDOWN REQUIRES THAT THE PLAN BE FAIR AND EQUITABLE AND NOT DISCRIMINATE UNFAIRLY AGAINST YOUR CLASS. HOWEVER, IT IS POSSIBLE FOR A PLAN TO BE APPROVED OVER YOUR OBJECTION AND A NEGATIVE VOTE UNDER CERTAIN CIRCUMSTANCES.**

**THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE COURT BY ORDER DATED \_\_\_\_\_[DOC NO \_\_\_\_\_]. IT IS THE ONLY DOCUMENT APPROVED FOR PURPOSES OF SOLICITING VOTES.**

**THERE IS A BALLOT ATTACHED TO THIS PLAN PACKAGE. THERE ARE INSTRUCTIONS ON IT HOW TO FILL IT OUT AND RETURN IT.**

**THE DEBTOR ANTICIPATES A JULY 1, 2017 DATE FOR COMMENCEMENT OF THE PAYMENTS UNDER THE PLAN.**

### **BACKGROUND**

Prior to the bankruptcy filing on April 26, 2016 (“the Petition Date”), Debtor was formed as a New Hampshire Limited Liability Company to construct, own and operate a 59 unit Hotel under the “Fairfield Inn and Suites by Marriott” flag, located at 8 Bell Avenue, Hooksett, New Hampshire (the “Hotel”). The Hotel is operating by and through a management arrangement with Jiten Hotel Management, Inc. (“JHM”), an affiliated company. JHM is the managing agent for Debtor, which means it manages the Hotel for the Debtor’s account, in consideration for a management fee. There is also a franchise agreement (the “Marriott Agreement”) with Marriott International, Inc. (“Marriott”) for the franchise at the Hotel.

The construction of the Hotel ran into immediate problems. A burned out house was buried on the property and the site costs for the project skyrocketed. In addition, the Hotel opened in 2008 in the midst of a recession. The Hotel has had the challenge of climbing out of its difficulties, and it has done so.

The Hotel is a management success. Due to Debtor’s efforts and the efforts of JHM and its employees, the Hotel has won many awards from Trip Advisor, Booking.com, and Marriott (Marriott 2012 Silver Award and 2014 Gold Award).

JHM is owned by Nayan Patel, one of the owners of the Hotel. All Management Fees during the case have been approved in budgets approved by the Court.

### **MARRIOTT DEBTOR'S FRANCHISOR**

Marriott entered the Marriott Agreement with the Debtor. The contract provides many things, but among other things, provides for the payment of franchise fees in exchange for use of the Marriott flag and marks (i.e., the name "Fairfield Inn and Suites by Marriott"). The franchise fee is current at this time. There are other obligations due from the Debtor to Marriott, including the property improvement plan (the "PIP") which obligates the Debtor to upgrade the facility every five to seven years under the Marriott Agreement. Debtor is behind on the PIP and has recently commenced work on the 2017 PIP. The 2017 PIP should come in below budget at a cost of approximately \$443,000.00 (the previous budgets in the case suggest a cost of \$670,000, but the cost is lower due primarily to lower labor costs). Debtor is in technical default of the Marriott Agreement since the PIP was commenced after it was due. The Debtor is confident this issue will be cured to the satisfaction of Marriott and that the Marriott Agreement will be assumed under the Plan.

### **PHOENIX, DEBTOR'S SECURED LENDER**

Phoenix NPL, LLC ("Phoenix NPL", a Delaware limited liability company, purchased the loans underlying the Hotel and the Debtor evidenced by, among other things, a Construction Loan Agreement dated October 5, 2007 (the "Construction Loan Agreement"), a Promissory Note in the original principal amount of \$5,900,000 also dated October 5, 2007 (the "2007 Note") and a Promissory Note dated March 6, 2009 in the original principal amount of \$450,000 (the "2009 Note" and collectively with the 2007 Note the "Loans") from the Federal Deposit Insurance Corporation (the "FDIC"), as Receiver for The National Republic Bank of Chicago, the original lender to Hanish, on or about February 20, 2015. Thereafter Phoenix NPL assigned the Loans to Phoenix REO, LLC ("Phoenix REO" or "Phoenix" or "Lender") on or about September 2, 2015. The 2007 Note is secured by a Security Agreement, Assignment of Rents and Mortgage recorded in the Merrimack County Registry of Deeds. The 2007 Note is guaranteed by Nayan Patel. The 2009 Note is not guaranteed by Nayan Patel.

The loan matured. Phoenix refused to extend it.

Phoenix REO moved for a receiver to take over the Hotel in the Merrimack (State of New Hampshire) Superior Court. That request was denied. In the order denying the request the Court expressed concern that if a receiver was appointed the franchise with Marriott could be lost. The Court also noted the Hotel was managed properly stating "this is not the case where the defendant's financial distress stems from mismanagement of the Hotel." Prior to the Petition Date, Phoenix had scheduled a foreclosure of the Hotel and refused to delay it. Phoenix also sued Nayan Patel as the guarantor of the 2007 Note and restrained the transfer of substantial assets of his and obtained attachments against his assets. The Plan presumes that Phoenix will continue to oppose the Plan. The Plan is confirmable over Phoenix's objection.

Debtor has developed this plan of reorganization ("the Plan") not only for Marriott, but largely to address the claims of Phoenix. The Plan proposes to pay Phoenix's unsecured claim in full in the Plan and Phoenix's unsecured claim over time with a significant initial paydown.

See confirmation budget (the “Confirmation Budget”) attached as Exhibit A. The Confirmation Budget uses conservative projections to ensure that even in the worst case scenario, the Debtor can make its Plan payments. The Plan payments moreover are guaranteed by JHM.

## **THE CHAPTER 11**

The Chapter 11 was precipitated solely to stop the foreclosure. There were no other operational or debtor-creditor reasons for the filing. All other matters would have been worked out in the ordinary course, absent the foreclosure efforts. The case was commenced on April 26, 2016 (the “Petition Date”). The first order of business after stopping the foreclosure was to obtain the emergency use of cash collateral, which Debtor obtained by Court order. After obtaining such usage, Debtor began negotiating with its Lender for the consensual use of cash to use as a platform to engage the lender in settlement discussions and develop consensual means to file this plan. Debtor and Lender reached agreement on the use of cash collateral which provides for replacement liens, \$20,000.00 a month in cash payments and other protections.

## **CURRENT CIRCUMSTANCES AND PLAN STRUCTURE**

Currently, Debtor is operating under a cash collateral order. Debtor has used this opportunity during the case to develop its plan of reorganization, which provides full payment to the Lender. The Lender will be paid down One Million Dollars (\$1,000,000.00) on its unsecured and secured claim on the Effective Date (30 days after confirmation) with an equity infusion which will payoff Lender’s unsecured claim and reduce the Lender’s secured claim to \$5,472,462.02<sup>2</sup>. (the “Remaining Debt”). The Remaining Debt is fully secured. The Remaining Debt will be amortized over 25 years and paid in 78 months (due December 31, 2023), with the Lender retaining its lien post-confirmation. On the fifth anniversary of the Effective Date, the interest rate charged on the Remaining Debt (currently proposed at 5%) will be reset to the so-called two year Classic Advance Rate of the Federal Home Loan Bank of Boston plus a spread of 265 basis points, but the interest shall not fall below 5% per year. As of the date hereof, the two-year Classic Advance Rate for the FHLBB is 2.25% which when added to the proposed spread is 4.90%. At the end of 78 months (December 31, 2023) the Remaining Debt will be re-financed and paid off. The Remaining Debt will be unconditionally guaranteed by Nayan Patel, who will pledge collateral<sup>3</sup> to secure the guaranty. A copy of the Nayan Patel guaranty is attached as Exhibit B. JHM will also guaranty payments of the Confirmation Budget, this means that if there is a shortfall in the Confirmation Budget on a monthly or yearly basis, JHM will be responsible for covering the shortfall. The guaranty from JHM does not apply to the Remaining Debt, just the Confirmation Budget, and its guaranty is attached as Exhibit C. The \$1 million dollar payment will be funded by an equity infusion from Nayan Patel who obtained the funds from a loan from one or more of the affiliates of the Debtor in which Mr. Patel controls, which will be demonstrated at confirmation.

In addition to the Lender’s claim, the Plan provides for the curing of the default of the Marriott Agreement, the late PIP. The refurbishing of the Hotel will not only cure the Marriott

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<sup>2</sup>Includes reduction for \$200,000.00 of adequate protection payments, which may be more depending upon when the plan is confirmed.

<sup>3</sup> Land in Canton, Massachusetts and his interest in Bijal Hospitality, LLC, which is already attached by Phoenix

default, but it will increase (rather than reduce) the value of the Hotel, which is in everyone's interest.

The Plan provides for Nayan Patel to provide up to a \$199,219.00 line of credit to the Debtor for operations. The line will backstop the Confirmation Budget attached as Exhibit A. The Confirmation Budget is very conservative. Nevertheless, the line may be drawn on by the Debtor at any time during the Plan to meet shortfalls from the Confirmation Budget.. If available cash is not needed at the end of a plan year the line may be paid down if the shortfall is less than projected in the Confirmation Budget.

The Credit line is the remaining balance of a credit line Nayan Patel has with InterBank of Enid, Oklahoma. The credit line will only be used for shortfalls in the Debtor's cash flow and for no other purpose.

JHM will pay \$200,000.00 towards the Confirmation Budget. JHM received a preference pre-petition and the \$200,000.00 is repayment for the preference. Payment will be made on the Effective Date and JHM shall be released of all claims upon payment.

General Unsecured Creditors are few in the case and will be paid in in cash installments over 6.5years. Small Unsecured Claims, below \$5,000 will be paid 80% of their claims on ther Effective Date unless their class is not allowed, then they will be paid as General Unsecured Creditors.

Priority claims, if any, will be paid in accordance with the Code.

Equity—will retain their interests.

### **CHANGES FROM PREVIOUS PLAN**

Debtor filed a plan<sup>4</sup> (the "Second Plan") with the Court in the fall of 2016. The Second Plan is different from this Third Plan in that it does not provide for a \$1,000,000.00 cash payment to the lender upon the Effective Date, and for up to a \$199,219.00 line of credit (obtained pre-confirmation) for the Debtor to use to cover cash shortfalls and the next PIP.<sup>5</sup> The Second Plan was denied approval because it was found not to be feasible. Debtor is confident this Third Plan is feasible in that: (1) the Lender retains its full lien as a secured creditor; (2) the Lender is paid deferred cash payments; (3) after 78 months the Debtor will be able to pay any balloon payment through a refinance and (4) the \$1,000,000.00 equity infusion payment and the line (to the extent of the shortfall) will be available on or before the Confirmation Date. All creditors who voted, approved the Second Plan except Phoenix.

Counsel has attempted to address all of the Court's concerns in this Third Plan by pre-funding several of the plan obligations in addition to providing guarantees. This Plan also avoids the issue of whether Debtor can partially prime the Lender's lien, an issue that was

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<sup>4</sup> The Second Amended Plan dated November 23, 2016.

<sup>5</sup> Due in about 5-6 years

raised by the Lender in its objection to the previous Plan. The Lender rejected a \$4.0 million dollar cash partial refinance that paid \$4.0 million up front and interest only over time on the remaining balance. The Lender stated that the Debtor could not partially prime its lien. In this Plan, Lender's claim is amortized, and is paid down and then off, not primed.

### **VALUE**

Debtor has a recent appraisal on the Hotel, which values it at \$5.7 million dollars "as is." Since Debtor is paying Lender \$1,000,000.00 on the Effective Date, Lender's Remaining Debt (which will also be reduced by at least \$260,000 for adequate protection payments) is fully secured.

### **NAYAN PATEL**

Nayan Patel is the founding member of JHM, majority owner of the Debtor and a guarantor of the Lender and Marriott's debt. He has been sued personally by the Lender in state court in Massachusetts on his guaranty. Nayan Patel is willing to arrange for payment to the Lender of \$1,000,000.00 at closing as equity and provide a \$199,219 line of credit to the Debtor by Confirmation in order to make this Plan feasible. Nayan Patel is not going to provide this value to the Debtor if he is going to continue to be sued in Massachusetts and have his other assets liquidated. Subject to Court approval, Nayan Patel has requested, and the Debtor agrees to request, a temporary injunction stopping the litigation against him unless there is a default under the Plan. There is ample consideration for this relief. Patel not only provides a a million dollars in cash and a line of credit, but pledges two personal assets to secure payment (the Canton property and Bijal Hospitality, LLC, which assets have been previously attached by Phoenix). Plus, Patel has asserted a 93A claim against the Lender and Capital Crossing (the loan servicer) for attempting to collect the debt improperly. In fact there is litigation in Cook County, Illinois involving debtors and guarantors like Patel against the Lender and Capital Crossing for taking advantage of solvent guarantors. See <http://cookcountyrecord.com/stories/511080261-lawsuit-lenders-commercial-real-estate-players-ran-racket-to-bilk-unsophisticated-investors-of-assets>. See Exhibit D. The injunction does not affect the liability of Nayan Patel on his guaranty.

Nayan Patel has considerable wealth to backstop the Plan as will be demonstrated at confirmation. JHM has access to cash from all of the Patel controlled hotels to be used to fund any shortfall in the Confirmation Budget, a further backstop to any feasibility issues of this Plan. Both Nayan Patel and JHM have a long track record of making payments to creditors. Under the circumstances, the Debtor believes that the Plan is feasible.

### **LOAN DOCUMENTS AND FUNDING**

Proposed loan documents not separately listed above are attached as Exhibit E. Nayan Patel shall additionally provide up to a \$199,219.00 line of credit to the Debtor evidenced by a loan agreement attached as Exhibit F. The one million dollar cash payment is evidenced by funds on account at this time. Exhibit G. Therefore, at the time of Confirmation there will be fully funded the cash payment in addition to the guarantees of Nayan Patel and JHM. The Patel

guaranty shall be secured by, among other things, his interest in Bijal Hospitality, LLC, an entity which owns hotels in Texas. Patel's interest in this entity is believed to be worth approximately \$2,000,000.00. There are multiple layers of payments and guarantees to provide a strong backstop in the unlikely event Debtor is not able to make payments under this Plan.

Even though the Plan provides for payment to Phoenix in full and multiple layers of protection, both secured and unsecured, it is expected that Phoenix will not vote for the Plan. Phoenix will not negotiate a settlement with the Debtor. The Plan will have to be approved over Phoenix's objection. Notwithstanding the foregoing, the Debtor believes the Plan is confirmable and in the best interests of all parties, including Phoenix, who is pursuing a different agenda in this case.

The claim amount after the \$1,000,000 pay-down plus \$260,000.00 of adequate protection payments is \$5,472,462 which may be lower depending the actual payment of adequate protection payments made by the debtor above \$260,000.00 at the time of confirmation. The Plan calls for equal monthly installments of principal and interest (at 5% per annum) for 77 months with maturity in the 78 th month assuming the Plan commences July 1, 2017. Payment will be due December 31, 2023. Based on this claim amount and interest rate, the principal balance of the claim will be approximately \$4,626,000 on December 31, 2023. If we assume the value of the hotel is \$5.7MM without the PIP; \$6MM with the PIP; and a low average yearly appreciation rate of 1% (compounded monthly) over the 78 months, the hotel will have a value of approximately \$6,406,000 at the end of the Plan. A loan of 70% of that value brings approximately \$4,484,000 in loan proceeds, which is approximately \$142,000 less than the principal balance of the claim at the end of the Plan term. If the appreciation averages 2% per year, the value of the hotel at the end of the Plan is approximately \$6,835,000. 70% of \$6,835,000 is approximately \$4,794,000, more than enough to refinance the balance of the claim at the end of the Plan. What makes this Plan feasible is the value of the Hotel at commencement of the Plan (\$5.7MM) and the increase in value caused by the PIP in year 1. Even if the assumption is made that the hotel does not appreciate at all after the PIP (i.e. starting at \$6,000,000), the short fall at the end of the Plan is approximately \$ 426,000 which is more than covered by the security for Nayan Patel's guaranty and the additional collateral provided under the Plan.

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

In accordance with § 1123(a)(1) of the Bankruptcy Code, all Claims against the Debtor, of whatever nature, and all Interests, whether or not scheduled, absolute, unliquidated or contingent, including all Claims arising from the rejection of executory contracts, whether resulting in an Allowed Claim or not, are classified as set forth herein. A Claim shall be in a particular class only to the extent it is within the definition of the class and only to the extent it is an Allowed Claim.

- A. Secured Claims and Unsecured Claim of Phoenix-
  - 1.1 Class 1 - Secured Tax Claims of the Town of Hooksett (if any).
  - 1.2 Class 2 – Secured Claim of Phoenix.

- 1.3 Class 2A- Unsecured Claim of Phoenix.
- B. Section 507 Priorities -
  - 1.4 507(a)(2) Administrative Expense Claims and Senior Priority Claims.
  - 1.5 Class 3 – Section 507(a) (8) Priority Claims (if any).
- C. Unsecured Claims -
  - 1.6 Class 4A- Unsecured Claims Under \$5,000.00
  - 1.7 Class 4- Unsecured Claims.
- D. Interests -
  - 1.8 Class 5 – Equity.

### **TREATMENT OF CLASSES**

The Plan proposes the following treatment to each of the classes of creditors:

E. Secured Claims – Class 1 Town of Hooksett. The Town of Hooksett is believed to be paid in full.

F. Secured Claims. Class 2 Phoenix—Phoenix has an allowed secured claim in the maximum amount of \$5,472,462.02 dollars (after payment of one million dollars in cash to class 2A and credit for adequate protection payments) paid as follows: (1) \$5,472,462.02 (or less depending upon the amount of pre-confirmation adequate protection payments) in a note amortized over 25 years and payable in 78 months at 5.0% interest subject to an increase in the interest rate as described above under the heading, **CURRENT CIRCUMSTANCES AND PLAN STRUCTURE**. Payment in full shall be due December 31, 2023. Phoenix shall retain its lien post-confirmation. The Note shall be guaranteed by Nayan Patel unconditionally and JHM shall guaranty the Confirmation Budget. The Nayan Patel guaranty shall be secured by his membership interest in Bijal Hospitality, LLC and land in Canton, Massachusetts he owns through a trust. Phoenix shall be paid in full when it receives item (1) above.. Class 2 is impaired.

Class 2 will vote against the Plan. The Plan can be approved over Phoenix’s objection as a secured creditor if the plan is fair and equitable. A plan is fair and equitable to a secured creditor if the secured creditor retains its lien and is paid in deferred cash payments on the full amount of its claim or is paid the indubitable equivalent of its claim. In this case Class 2 will retain its lien and receive cash payments at a fair interest rate equal to the full amount of its claim. The Plan is fair and equitable to Phoenix.

Class 2A-Unsecured Claim of Phoenix in the amount of \$772,462.00 (having been reduced by adequate protection payments of at least \$260,000.00). The \$772,462.00 will be paid in cash on the Effective Date to reduce the Unsecured Claim of Phoenix dollar for dollar to zero and the remainder of the \$1 million dollar equity infusion will then reduce Phoenix's secured claim. In addition, the claim already has been reduced by adequate protection payments of at least \$260,000.00, leaving the Remaining Debt of at most \$5,472,462.02. Class 2A is unimpaired.

G. Administrative Expense claims. Administrative expense claims consisting of the claim of Notinger law, PLLC will be paid if and when the Court approves such fees out of cash on hand and the Pre-Petition Payment. Fees are estimated to be \$120,000, and Notinger law has a \$25,000 retainer. All other administrative claims outstanding as of the Effective Date will be paid in the ordinary course of debtor's affairs out of cash flow.

H. Unsecured Priority Tax claims. Class 3 consists of unsecured priority tax claims consisting of New Hampshire room and meals tax and business profits tax. Any such claim is believed to be paid in full.

I. General Unsecured Claims Class 4A Administrative Convenience Class. This class has an administrative convenience claim component for small claims totaling less than \$5,000.00. Claims totaling less than \$5,000 will be paid 80% of their claim in full from cash on hand on the Effective Date, which shall constitute a separate administrative convenience class. Class4A claims are impaired. If this class is not allowed as a separate class then members will be paid as General Unsecured Claims.

J. General Unsecured Claims over \$5,000 shall be paid as follows: \$7,500 per year on the first anniversary of the Effective Date for 6.5 consecutive years (depending upon the amount of claims) shall constitute complete payment under the Plan—a total payment of approximately \$75,000 for the term of the plan. The dividend is 100% for unsecured claims. Claims in class 4 are impaired.

K. Equity-Class 5- Equity will retain their interests post-confirmation.

L. Reservation of Rights. **Nothing contained herein shall be deemed to limit the right of the Debtor, or any other party to object to any Administrative Claims (including, without limitation, fee claims and cure amounts), Priority Claims, other Priority Claims, general Unsecured Claims (including without limitation Claims for rejection damages under Section 365 of the Bankruptcy Code) and Secured Claims. Nothing contained herein shall affect the Debtor's rights and defenses both legal and equitable, with respect to any holder of a Claim against the Debtor, including but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments.**

M. Debtor reserves the right to pay claims faster than proposed in the Plan should it have the means to do so.

### **MEANS FOR EXECUTION OF THE PLAN**

Upon entry of the Order of Confirmation, all matters provided under the Plan shall be deemed authorized and approved without any requirement of further action. The entry of the Order of Confirmation will constitute authorization and direction for the Debtor to take or cause to be taken all corporate or other actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken will be deemed to have been authorized and approved by the Bankruptcy Court. All such actions will be deemed to have occurred and will be in effect from and after the Effective Date pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the partners, members, stockholders, administrators, agents, officers or directors of the Debtor.

Upon entry of the Order of Confirmation, a Disbursing Agent will be appointed who shall perform the tasks listed in the Plan as otherwise described in the Plan. The Disbursing Agent shall be the Debtor. The Disbursing Agent will not be required to post a bond. The Disbursing Agent will be authorized to exercise and perform the rights, powers, and duties held by the Estate, including, without limitation, the authority under Section 1123(b)(3) of the Bankruptcy Code to provide for the prosecution, settlement, adjustment, retention, and enforcement of claims and interests of the Estate, including, but not limited to, any Avoidance Actions and objections to claims, and the authority to exercise all rights and powers under Sections 1106, 1107, and 1108 of the Bankruptcy Code. The Disbursing Agent shall be authorized, without further order of the Court, to employ and pay accountants and lawyers as needed.

The Disbursing Agent shall have the sole right to pursue and/or settle Avoidance Actions including, without limitation, Chapter 5 actions under the Bankruptcy Code. The Disbursing Agent shall have the discretion to pursue, not pursue, and/or settle any and all Causes of Action and objections to Claims as it determines is in the best interest of the Debtor and the Estate, and the Disbursing Agent shall not have any liability whatsoever for the outcome of that decision, except in the event that there is a final order of a court of competent jurisdiction determining that the Disbursing Agent committed gross negligence or fraud. The Disbursing Agent shall hold all funds to be distributed in the Plan in a trust account for the benefit of holders of Allowed Claims.

The powers and responsibilities of the Disbursing Agent shall include, but shall not be limited to: (i) prosecuting and/or settling the Causes of Action, (ii) prosecuting and/or settling objections to, and estimations of, Claims, (iii) collecting funds from cash on hand and other sources, and providing for the distribution of the net proceeds thereof, in accordance with the provisions of the Plan, (iv) calculating and implementing all distributions required under the Plan, (v) filing all required tax returns, and paying all taxes and all other obligations on behalf of the Debtor from Estate funds, and (vi) such other responsibilities as may be vested in the Disbursing Agent pursuant to the Confirmation Order or as may be necessary and proper to carry out the provisions of the Plan. In connection with the administration of the Debtor and the Estate, the Disbursing Agent is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the Plan.

**EXECUTORY CONTRACTS/RELEASE OF CLAIMS**

Any person or entity holding a Claim arising from the rejection of any executory contract shall hold an Unsecured Claim against the Debtor' estate and shall file a Proof of Claim for any damages arising from such rejection within thirty (30) days of rejection or such further time as shall be designated by the Bankruptcy Court or be forever barred from asserting such Claim. All executory contracts not specifically rejected or expressly assumed and assigned by the Debtor during the Chapter 11 Case or pursuant to this Plan shall be deemed rejected on the Effective Date of the Plan.

The Debtor will expressly assume the Marriott Agreement as part of the Plan, provided, however, nothing in this Plan shall be deemed a waiver or restriction of Marriott's rights to enforce the terms of the Marriott Agreement, including without limitation the right to enforce existing guaranties. In order to cure the Marriott Agreement and provide adequate assurances of future performance Debtor will apply the cash on hand to the upgrade requirement under the Marriott Agreement, known as "PIP". This will help partially cure the default in the Marriott Agreement. The remainder of the PIP shall be funded out of operations. An offer of proof will be made at confirmation with regard to cure, and adequate assurance of future performance of the Marriott Agreement. The Debtor also agrees to execute in connection with the assumption, an amendment to the Marriott Agreement reflecting any new ownership interests in the Debtor as well as new guaranties to the extent required by Marriott. When the PIP is completed any default in the Marriott Agreement will be cured..

Notwithstanding anything to the contrary in this Plan or the Disclosure Statement, in consideration for Marriott agreeing to a delayed cure for the assumed Marriott Agreement, upon the Effective Date of the Plan, the Debtors, the estate and the Disbursing Agent release any and all causes of action against Marriott arising under Chapter 5 of the Bankruptcy Code.

Upon the Effective Date, JHM will pay \$200,000.00 to Debtor. JHM shall be released of all claims upon payment of the \$200,000.00 to Debtor on the Effective Date and execution of the JHM guaranty

Debtor will also assume its management contract with Jiten Hotel Management, Inc.

**DISCHARGE**  
**DISCHARGE OF LIENS, DISPUTED CLAIMS**  
**CLAIMS OF THE TRUSTEE AGAINST THIRD PARTIES, CONTINUATION OF**  
**THIRD PARTY ACTIONS AND FOREBEARANCE**

Unless otherwise expressly preserved in the Plan, all mortgages, liens, attachments and other claims of record encumbering any Assets administered under the Plan shall be deemed discharged, released and extinguished as of the Confirmation Date. All Creditors holding such liens or Claims shall execute the necessary documents to release such liens or claims after the Confirmation Date, upon request in writing of the Disbursing Agent. The property administered under the Confirmed Plan shall be free and clear of liens except those liens expressly preserved in the Confirmed Plan. If any such Creditor fails to execute such documents, its lien or Claim shall be discharged under the Confirmed Plan as of the Confirmation Date or as otherwise

indicated in the Confirmed Plan, and same may be recorded in the appropriate public offices as evidence of such discharge. Debtor will receive a discharge on the Confirmation Date in accordance with Section 1141.

Objections to Disputed Claims or any other Claim in this case shall be filed by the Disbursing Agent with the Bankruptcy Court and served upon each holder of such Disputed Claim or other Claim as soon as practicable, but in no event later than sixty (60) days after the Confirmation Date, unless an extension of such date is requested by the Disbursing Agent. The Disbursing Agent shall litigate to judgment, settle or withdraw objections to Disputed Claims. No other entity will have authority to pursue any Disputed Claims on behalf of the Debtor, or the estate, arising under the Bankruptcy Code or other applicable law except the Disbursing Agent.

Disputed Claims not subject to final resolution at the time payments are due to the Class of which such Claims may be a part shall have such payments held in escrow by the Disbursing Agent pending final resolution. Any funds made available to a Class generally from such escrowed funds shall be disbursed to remaining holders of Claims in such Class.

Notwithstanding anything to the contrary in this Plan or the Disclosure Statement, the Disbursing Agent reserves the right to object to any claim, or portion thereof within the time frame provided by this Plan.

**Upon Confirmation of the Plan all defaults will be deemed cured and decelerated and creditors shall have no collection rights (including against third parties absent a further default post confirmation of the Plan). This means all litigation against Nayan Patel will be dismissed without prejudice It is the intention of this paragraph that the litigation involving Phoenix and Nayan Patel pending in Massachusetts be dismissed without prejudice and enjoined and the claims of the parties tolled under a tolling agreement. This means that the case will be dismissed, but that any statute of limitations will be tolled for all parties so that if there is a default under the Plan the litigation can be refiled and pursued by Phoenix and Patel on his counter-claims. At the conclusion of the Plan, Phoenix may have a claim for post-petition fees and interest that is not chargeable to the Debtor. It may pursue the claim for post-petition fees and interest at the conclusion of Plan payments unless there is a prior default**

#### **POST-PETITION CLAIMS**

All post-petition allowed administrative expenses of the Debtor will be paid in accordance with the Plan.

#### **SUBSTANTIAL CONSUMMATION**

Pursuant to 11 U.S.C. §1101, consummation of the Confirmed Plan shall occur on or after the Effective Date.

### **INFORMATION IN PLAN AND DISCLOSURE STATEMENT**

All information in the Plan and Disclosure Statement has been provided solely by the Debtor or from records of the Debtor. The Debtor has or will engage an accountant to review the tax consequences of the transactions contemplated in the Plan on the estate. Each Creditor is advised to contact its own accountant to determine the tax consequences to it.

### **CONFLICTING TERMS AND TIME OF THE ESSENCE**

Notwithstanding anything to the contrary in the Disclosure Statement, the terms of the Plan shall control. TIME IS OF THE ESSENCE with respect to all dates and time periods

### **POSSIBLE CLAIMS AGAINST THIRD PARTIES**

The Debtor is not aware of any claims against third parties except for the claims identified in the Disclosure Statement.

### **TAX CONSEQUENCES OF PLAN**

The Debtor is not federally taxed at the entity level. The Debtor anticipates it has sufficient cash flow to pay any taxes that are due in the ordinary course as it has done throughout its history.

### **STATUS OF THE DEBTOR POST-CONFIRMATION**

The Debtor will continue to exist post-confirmation in the same form, with the same management and it exists pre-confirmation. The Debtor will continue to be managed by Nayan Patel, who will not receive a salary from the Debtor.

### **MISCELLANEOUS PROVISIONS**

1.1 Pre-Confirmation Modification. On notice to and opportunity to be heard by the United States Trustee and the Lender, the Plan may be altered, amended or modified by the Debtor before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

1.2 Post-Confirmation Immaterial Modification. With the approval of the Bankruptcy Court and on notice to and an opportunity to be heard by the United States Trustee, the Lender and Disbursing Agent and without notice to any other holders of Claims and Interests, the Debtor may, insofar as it does not materially and adversely affect the interest of holders of Claims, correct any defect, omission or inconsistency in the Plan in such manner and to such extent as may be necessary to expedite consummation of this Plan.

1.3 Post-Confirmation Material Modification. On notice to and an opportunity to be heard by the United States Trustee and the Lender, the Plan may be altered or amended after the Confirmation Date by the Debtor in a manner which, in the opinion of the Bankruptcy Court, materially and adversely affects holders of Claims, provided that such alteration or modification

is made after a hearing and otherwise meets the requirements of section 1127 of the Bankruptcy Code.

1.4 Withdrawal or Revocation of the Plan. The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor withdraws this Plan or if confirmation or consummation of the Plan does not occur, then (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the allowance, fixing or limiting to an amount certain, any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by this Plan, shall terminate and be of no further force or effect in the case of a withdrawal and/or revocation of the Plan and any document or agreement executed pursuant to this Plan shall be deemed null and void and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other person, (ii) prejudice in any manner the rights of Debtor or any other Person or (iii) constitute an admission of any sort by the Debtor or any other person.

1.5 Successors and Assigns. The rights, benefits and obligations of any person or entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such person or entities.

1.6 Preservation of Insurance. This Plan shall not diminish or impair the enforceability of any insurance policy, right or claim that may cover Claims against the Debtor (including, without limitation, their members, managers or officers) or any other person or entity. Likewise, the Plan and Order of Confirmation shall not impair any insurance carrier's rights, claims, defenses or disputes under any policy and shall not act to increase or extend any rights of the Debtor or the carriers. To the extent your claim may be covered by insurance and you need to know how to contact the insurance carrier (if you have not already done so) please contact the Disbursing Agent. ¶

1.7 Saturday, Sunday or Legal Holiday. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

1.8 Severability. If any term or provision of the Plan is held by the Bankruptcy Court prior to or at the time of Confirmation to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan may, at the option of the Debtor, remain in full force and effect and not be deemed affected. However, the Debtor reserves the right not to proceed to Confirmation or consummation of the Plan if any such ruling occurs. The Order of Confirmation shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

1.9 Headings. The headings used in this Plan are inserted for convenience only and neither constitutes a portion of the Plan nor in any manner affects the provisions of the Plan.

### SUMMARY

The Debtor has made every effort to resolve as many issues as possible in this case prior to confirmation. The Debtor believes the Plan not only accomplishes these goals, but provides a realistic chance for Allowed Claim holders to receive significant recoveries in this case that would not otherwise occur absent confirmation of the Plan.

### LIQUIDATION ANALYSIS

The Hotel is encumbered by mortgage on all of its assets. The only alternative to reorganization is liquidation. If the Hotel closes or loses its franchise its value goes down substantially, perhaps by 50%. This would leave deficiency claims in excess of \$3.6 million dollars and little or no assets to cover such claims. There would also be disruption to guests, which will further depress value. In liquidation, unsecured creditors would receive maybe 0-10% of their claims (through avoidance actions), rather than up to 100% under the Plan (80% for class 4A). This would be the only recovery in Chapter 7, but it would be diluted by the deficiency claim of Phoenix. Under the Plan, Phoenix and the unsecured creditors get paid in full, except small unsecured creditors in Class 4A, which get paid 80% of their claims.

Hotel	\$3,500,000.00 <sup>6</sup>
Unsecured Claims	\$3,624,000.00 <sup>7</sup>
Unencumbered Funds	\$200,000.00 <sup>8</sup>
Admin Claims	\$75,000.00
Cash for U/C	\$125,000.00
Dividend	3.4% dividend (plan 100% or 80% dividend for small unsecureds)

Unsecured creditors will only receive a fraction of their claims in liquidation of the Debtor. There are two reasons for this: (1) the Hotel will be closed so it will not generate any revenue; and (2) Phoenix will foreclose and have a large deficiency claim. Therefore, under the Plan, which pays 100% of the unsecured claims rather than 3.4% of the unsecured claims, it is more likely that unsecured creditors will be paid. Employees at the Hotel will also lose their jobs if the Hotel is shut down.

**The Debtor has made every effort to resolve as many issues as possible in this case**

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<sup>6</sup> 70% LTV of Hotel as is, without the PIP completed.

<sup>7</sup> . The 3.624 million dollar number consists of the deficiency claim of Phoenix (\$3.2 million), the claim of Marriott for liquidated damages (\$324,000) under the Marriott Agreement and the unsecured claims in the case (\$100,000).

<sup>8</sup> Preference recoveries

**prior to confirmation. The Debtor believes the Plan not only accomplishes these goals, but also provides a realistic chance for Allowed Claim holders to receive significant recoveries in this case. Any defined term in the Plan shall apply to the Disclosure Statement. If there is a conflict between the Plan and Disclosure Statement, the Plan shall govern.**

Respectfully submitted,  
Hanish, LLC, Chapter 11 Debtor  
By Its Attorneys,  
Notinger Law PLLC,

Dated: April 19, 2017

By:

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