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

In re:

OCEAN PLACE DEVELOPMENT, LLC,

Debtor.

Chapter 11

Cases Nos. 11-14295 (MBK)

Hon. Michael B. Kaplan, U.S.B.J.

**DISCLOSURE STATEMENT FOR FIRST AMENDED PLAN OF  
LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE  
PROPOSED BY AFP 104 CORP.**

Dated: November 15, 2011

**IMPORTANT DATES**

- Date by which Ballots must be received by the Voting Agent: January 6, 2012
- Date by which objections to the Plan must be filed and served: January 6, 2012
- Hearing on Confirmation of the Plan: January 18, 2012

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**EXHIBITS TO DISCLOSURE STATEMENT**

- Exhibit A: Plan of Liquidation, dated November 15, 2011  
Exhibit B: Order, dated \_\_\_\_\_, 2011, Approving Disclosure Statement  
Exhibit C: Liquidation Analysis

I.

**INTRODUCTION**

This first amended disclosure statement (this “Disclosure Statement”) is being furnished by AFP 104 Corp. (“AFP” or “Proponent”) in connection with the solicitation of votes to confirm the First Amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Proponent (the “Plan”) in the chapter 11 bankruptcy case of Ocean Place Development, LLC (the “Debtor”). A copy of the Plan is attached hereto as **Exhibit “A.”**<sup>1</sup>

The purpose of this Disclosure Statement is to set forth adequate information: (1) regarding the history of the Debtor, its business, operations, financial conditions and assets and its Chapter 11 Case; (2) concerning the Plan and alternatives to the Plan; (3) advising the Holders of Claims and Equity Interests of their rights under the Plan; (4) assisting the Holders of Claims entitled to vote in making an informed judgment regarding whether they should vote to accept or reject the Plan; and (5) assisting the Bankruptcy Court in determining whether the Debtor have complied, and the Plan complies, with the provisions of chapter 11 of the Bankruptcy Code.

By Bankruptcy Court Order (the “Disclosure Statement Order,” a copy of which is attached hereto as **Exhibit “B”**), the Bankruptcy Court approved this Disclosure Statement, in accordance with Bankruptcy Code § 1125, as containing “adequate information” to enable a hypothetical, reasonable investor typical of Holders of Claims against, or Equity Interests in, the Debtor, to make an informed judgment as to whether to accept or reject the Plan, and authorized their use in connection with the solicitation of votes with respect to the Plan. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN. No solicitation of votes may be made except pursuant to this Disclosure Statement and Bankruptcy Code § 1125.

**A. Summary of the Plan.**

Through the Plan, the Proponent seeks to effectuate an orderly liquidation of the Debtor and the Debtor’s Assets for the benefit of Creditors of the Debtor’s Estate. In order to effectuate this liquidation, the Plan envisions a sale of substantially all the Debtor’s Assets, free and clear of all Liens, Claims and encumbrances, to a Purchaser, which will be the party that submits the highest and best offer for the Debtor’s assets at an Auction to be conducted after the Confirmation Date. The Auction will be open to any party that qualifies as a Qualified Bidder (as that term is defined in the Plan and/or the Bidding Procedures), and the Proponent believes that the Sale of the Debtor’s assets at the Auction will maximize the return for Creditors.

Although substantially all of the Debtor’s Assets will be sold to the Purchaser through the Sale, the Avoidance Actions, a Cash payment of \$600,000, and any proceeds from the Sale in excess of AFP’s Secured Claim will be transferred to a Liquidating Trust for the purpose of,

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<sup>1</sup> Capitalized terms that are not defined in this Disclosure Statement shall have the meanings set forth in the Plan.

among other things, liquidating those Assets and making Distributions to the Debtor's Unsecured Creditors.

The key terms of the Plan are summarized below:

- AFP shall be granted an Allowed Secured Claim in the amount of the lesser of (i) the Purchase Price paid by the Purchaser or (ii) the amount asserted by AFP in its Proof of Claim. The treatment of the AFP Secured Claim under the Plan depends upon whether AFP is the eventual Purchaser at the Sale.
  - If AFP is the eventual Purchaser at the Sale, AFP will receive under the Plan in full and final satisfaction of its Secured Claim, the AFP Collateral, except for: (i) Cash Collateral in an amount sufficient to fund the Unsecured Creditor Carveout (i.e., \$600,000) and (ii) Avoidance Actions.
  - If AFP is not the eventual Purchaser at the Sale, AFP will receive Cash on the Effective Date in the amount of the AFP Secured Claim in full and final satisfaction of the AFP Secured Claim.
- That portion of the AFP Claim (if any) that exceeds the amount of the AFP Secured Claim (*i.e.*, the AFP Deficiency Claim) shall be deemed an Allowed Unsecured Claim and shall be included within Class 3 under the Plan (discussed below), provided, however, that AFP shall not receive any Distribution from the Liquidating Trust on account of its AFP Deficiency Claim, thereby not diluting the Distributions to Holders of Allowed Unsecured Claims.
- Holders of Allowed Other Secured Claims (if any) shall receive in full and final satisfaction of their Allowed Other Secured Claims any Collateral upon which Holders of Allowed Other Secured Claims hold valid first priority Liens.
- A Liquidating Trust, which will be administered by the Liquidating Trustee, will be established under the Plan for the benefit of Holders of Class 3 Unsecured Claims. After the Effective Date, the Liquidating Trustee will be charged with, among other things, liquidating the Assets of the Liquidating Trust and making Distributions to Holders of Allowed Unsecured Claims on a *Pro Rata* basis.
- Upon the Effective Date, the Debtor will transfer to the Liquidating Trust the following Assets, which will inure to the benefit of Holders of Allowed Unsecured Claims:
  - Cash in the amount of \$600,000 (*i.e.*, the Unsecured Creditor Carveout);
  - Any Excess Sale Proceeds; and
  - All of the Estate's Avoidance Actions.
- The Plan proposes to reclassify the Other Equity Claims, which were filed in the Bankruptcy Case as unsecured Claims, as Equity Interests. Assuming that the Sale does not generate sale proceeds in excess of the amount needed to pay Class 3 Unsecured

Claims in full, Holders of Equity Interests and Other Equity Claims in Class 4 will not receive any Distributions under the Plan.

AFP will guarantee the payment of Allowed Administrative Expenses of the Estate in the eventuality that the Plan is confirmed by the Bankruptcy Court but the Effective Date of the Plan fails to occur.

**THE PROPONENT BELIEVES THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE THE VALUE OF THIS ESTATE AND PROVIDES THE BEST RECOVERY TO CREDITORS. AT THIS TIME, THE PROPONENT DOES NOT BELIEVE THAT THERE IS A VIABLE ALTERNATIVE FOR COMPLETING THIS CHAPTER 11 CASE OTHER THAN THROUGH CONFIRMATION OF THE PLAN, AS THE PROPONENT STRONGLY BELIEVES THAT THE DEBTOR'S RECENTLY-FILED PLAN HAS NUMEROUS LEGAL DEFICIENCIES AND IS INCAPABLE OF BEING CONFIRMED AS A MATTER OF LAW. IN ANY EVENT, THE PROPONENT BELIEVES THAT THE PLAN PROVIDES FOR THE HIGHEST DISTRIBUTION TO CREDITORS. THE PROPONENT STRONGLY RECOMMENDS THAT THE HOLDERS OF CLAIMS IN ALL SOLICITED CLASSES VOTE TO ACCEPT THE PLAN.**

**B. Important Information About This Disclosure Statement.**

This Disclosure Statement is not intended to replace a careful and detailed review and analysis of the Plan by each Holder of a Claim or Interest. The Plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary provided herein. This Disclosure Statement is intended to aid and supplement that review. The description of the Plan herein is a summary only. Holders of Claims and Interests and other parties in interest are cautioned to review the Plan and any related attachments in their entirety for a full understanding of the Plan's provisions. This Disclosure Statement is qualified in its entirety by reference to the Plan. No statements or information concerning the debtor or its assets or securities are authorized, other than those set forth herein. Any representations made in order to secure an acceptance or rejection of the Plan that are not contained herein are to be reported to the Proponent, the United States Trustee and the Bankruptcy Court for such action as may be appropriate.

The statements contained in this Disclosure Statement are made as of the date hereof by the Proponent unless otherwise specified herein, and the delivery of this Disclosure Statement does not imply that there has been no change in the information set forth herein since such date. This Disclosure Statement has been prepared by the Proponent. The Proponent has made reasonable efforts under the circumstances to provide accurate information in this Disclosure Statement. Holders of claims entitled to vote should read the Disclosure Statement carefully and in its entirety and, where possible, consult with counsel or other advisors prior to voting on the Plan.

This Disclosure Statement summarizes the terms of the Plan, which summary is qualified in its entirety by reference to the full text of the Plan. If any inconsistency exists between the terms and provisions of the Plan and this Disclosure Statement, the terms and provisions of the



Plan shall control. Certain of the statements contained in this Disclosure Statement are forward looking forecasts and are based upon certain estimates and assumptions. There can be no assurance that such statements will be reflective of actual outcomes.

**C. Holders of Claims and Equity Interests Entitled to Vote.**

Your ability to vote and your Distribution under the Plan, if any, depends on what kind of Claim or Equity Interest you hold. A summary of the Classes of Claims and Equity Interests is below. Greater detail regarding the treatment of Claims and Equity Interests is set forth in Section VI of this Disclosure Statement.

<b><u>Class</u></b>	<b><u>Designation</u></b>	<b><u>Treatment</u></b>	<b><u>Entitled to Vote</u></b>
1	AFP Secured Claim	Impaired	Yes (entitled to vote on the Plan)
2	Other Secured Claim	Unimpaired	No (deemed to accept)
3	Unsecured Claims	Impaired	Yes (entitled to vote on the Plan)
4	Equity Interests and Other Equity Claims	Impaired	No (deemed to reject)

Under the Plan, only Holders of Claims in Classes 1 and 3 are impaired by the Plan and entitled to vote to accept or reject the Plan. Claims in Class 2 are unimpaired by the Plan and the Holders thereof are conclusively presumed to have accepted the Plan. Claims and Equity Interests in Class 4 are not receiving any property under the Plan, and therefore, are presumed by the Bankruptcy Code to have rejected the Plan.

**D. Voting Procedures.**

If you are entitled to vote to accept or reject the Plan, enclosed is a ballot (the “Ballot”) for the acceptance or rejection of the Plan and a pre-addressed envelope for the return of the Ballot. Holders should read the Ballot carefully and follow the instructions contained therein. Please use only the official Ballot that accompanies this Disclosure Statement. If you are the Holder of a Claim in Classes 1 or 3 and did not receive a Ballot, received a damaged or illegible Ballot, or lost your Ballot, or if you are a party in interest and have any questions concerning this Disclosure Statement, any of the Exhibits hereto, the Plan or the voting procedures in respect thereof, please contact:

Silva Dechoyan  
Riker Danzig Scherer Hyland & Perretti LLP  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07962-1981  
Tel: (973) 538-0800

Riker Danzig Scherer Hyland & Perretti LLP, AFP’s counsel, will serve as the voting agent for all claims and will generally oversee the voting process. After carefully reviewing this Disclosure Statement and the Exhibits attached hereto, please indicate your vote with respect to

the Plan on the enclosed Ballot and return it either by overnight courier or regular mail in the envelope provided. **BALLOTS SUBMITTED BY FACSIMILE OR OTHER ELECTRONIC TRANSMISSION WILL NOT BE ACCEPTED AND WILL BE VOID.** Voting requirements are explained elsewhere in this Disclosure Statement.

PLEASE VOTE AND, ON OR BEFORE **JANUARY 6, 2012**, RETURN YOUR BALLOT TO:

Riker Danzig Scherer Hyland & Perretti LLP  
Attn: Silva Dechoyan  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07962-1981  
Tel: (973) 538-0800

**THE DEADLINE TO VOTE TO ACCEPT OR REJECT THE PLAN IS JANUARY 6, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME). TO BE COUNTED YOUR BALLOT MUST BE ACTUALLY RECEIVED AT THE ABOVE ADDRESS BY THIS DEADLINE. IF YOUR VOTE IS RECEIVED AFTER THIS VOTING DEADLINE, THE PROPONENT, IN ITS SOLE DISCRETION, WILL DECIDE WHETHER YOUR VOTE IS COUNTED.**

If you wish to obtain an additional copy of the Plan, this Disclosure Statement or any exhibits to such documents, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), please submit your request to Silva Dechoyan, at the foregoing address.

Any creditor with a Claim to which an objection has been filed may not vote on the Plan unless the Claim has been temporarily allowed for voting purposes. Temporary allowance of a Claim shall be sought in accordance with the procedures set forth herein and in Bankruptcy Code. The Proponent believes that prompt confirmation and implementation of the Plan is in the best interests of the Debtor, all Holders of Claims and Equity Interests and the Debtor's chapter 11 Estate.

**E. Confirmation Hearing.**

In accordance with the Disclosure Statement Order and section 1128 of the Bankruptcy Code, a hearing on confirmation of the Plan (the "Confirmation Hearing") will be held on **January 18, 2012 at 10:00 a.m.** (prevailing Eastern Time), and will continue on January 19 and January 20, 2012, in the courtroom of The Honorable Michael B. Kaplan, U.S.B.J., United States Bankruptcy Court for the District of New Jersey, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, to consider confirmation of the Plan. Objections, if any, to confirmation of the Plan must be served and filed so that they are received on or before **January 6, 2012** in the manner set forth in the Disclosure Statement Order. The hearing on confirmation of the Plan may be adjourned from time to time without further notice except for the announcement of the adjourned date and time at the hearing on confirmation or any adjournment thereof.

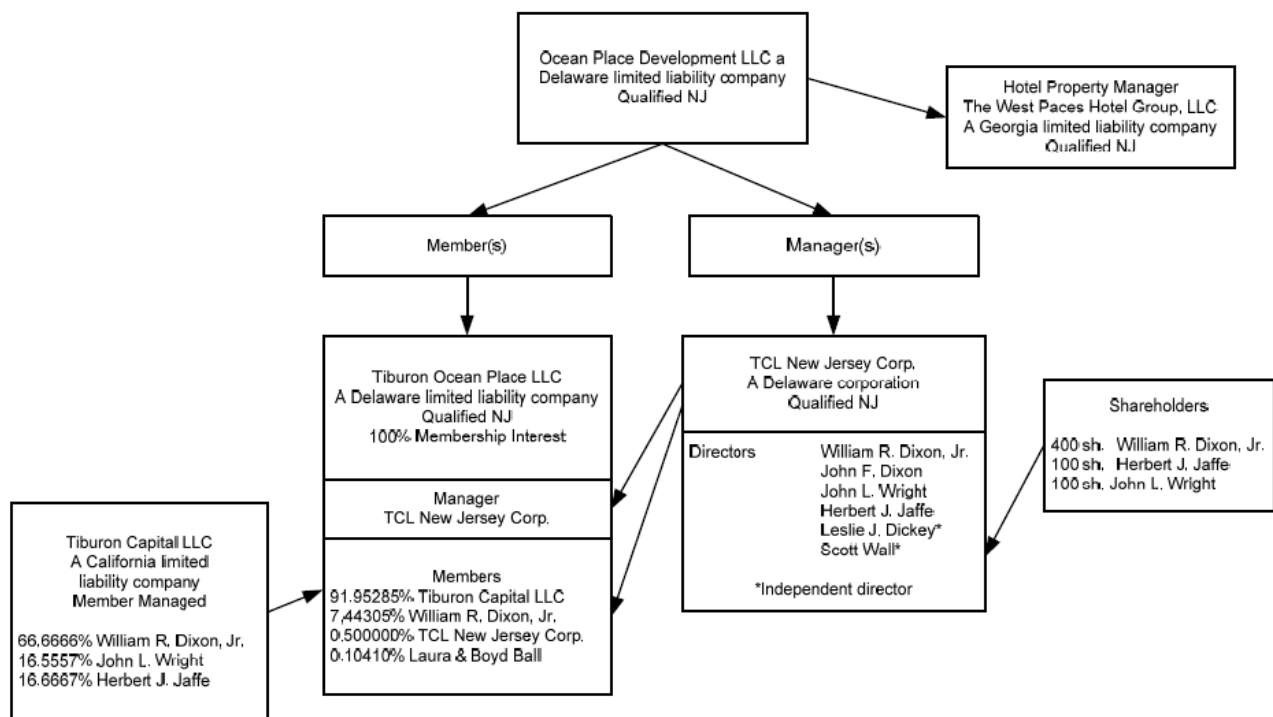
## II.

### GENERAL INFORMATION

#### A. Description of the Debtor and the Debtor's Business.

The Debtor primarily conducts its business under its trade name of Ocean Place Resort & Spa. The Debtor commenced the Chapter 11 Case years after the Debtor had defaulted under the Prepetition Credit Facility, described in more detail below, and to stave-off a pending foreclosure sale with respect to the Debtor's Assets. The following chart generally depicts the Debtor's prepetition organizational and governing structure:

**Organizational Chart**



#### B. Company Overview

Tiburon Ocean Place LLC, the related predecessor to the Debtor, originally purchased the Ocean Place Resort & Spa in 2000, chiefly as an operating hotel and resort with certain zoning entitlements for potential additional development. In 2006, the property was refinanced and all of the assets and liabilities of Tiburon Ocean Place LLC were simultaneously transferred into the Debtor. The property is located on the Atlantic beachfront in Long Branch, New Jersey, just 55 miles south of New York City and 82 miles north of Atlantic City. The existing resort is sited on 17-acres featuring approximately 1,000 feet of ocean frontage and is improved with a 254-room hotel that includes 40,000 square feet of meeting space, three restaurants, a bar/lounge, a full-service spa, and numerous resort amenities. An aerial west-view of the property is below.



On August 22, 2007, the Debtor signed a Redevelopment Agreement with the City of Long Branch and other agencies, which, if completed, would have provided for substantial development on the site. The City of Long Branch has asserted that, among other things, the Debtor is in breach of the Redevelopment Agreement. The Debtor disputes that assertion. Under the Plan, the Purchaser will have a short period following the Effective Date to determine whether to cause the Debtor to assume or reject the Redevelopment Agreement.

As of the Petition Date, all personnel working at the property were employed and paid by an affiliate of the Hotel's former property manager, The West Paces Hotel Group, LLC, pursuant to the terms of an Operating Agreement dated October 24, 2005. Depending on the season - with the summer season being the peak - the number of people employed full time at the Debtor's property ranges between approximately 95 and 340. The costs of the employees at the resort were part of the "Gross Operating Expenses" that were reimbursed to The West Paces Hotel Group, LLC under the Operating Agreement. None of the employees are represented by labor unions and there are no collective bargaining agreements in place.

Following the Petition Date, the Debtor severed its relationship with The West Paces Hotel Group, LLC and its affiliate. Coakley & Williams Hotel Management Company ("C&W") now manages the Debtor's operations and A-1 Contract Staffing II, LLC, employs substantially

all personnel working at the premises. The Operating Agreement between the Debtor and C&W requires C&W to cooperate in an orderly transition upon the sale of the Hotel.

**C. Prepetition Capital Structure**

***1. Secured Loans.***

As of the Petition Date, the Debtor's secured obligations totaled more than \$57,245,372.26.<sup>2</sup> The debt obligations arose under the Loan Agreement dated as of April 25, 2006, Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of April 3, 2006 and effective as of April 25, 2006 and two (2) promissory notes in the amount of \$44 million and \$8.875 million (together with other documents related thereto, as amended from time to time, the "Loan Documents" and obligations thereunder the "Loan Obligations"), by and among Barclays Capital Real Estate Inc ("Barclays"), as lender, and the Debtor, as borrower. The Debtor's obligations under the Loan Documents matured more than three (3) years before the Petition Date, on January 8, 2008, when the Debtor failed to repay the Loan Obligations, causing a default under the Loan Documents.

The Debtor's obligations under the Loan Documents are unconditionally guaranteed by William R. Dixon, Jr., Tiburon Capital LLC, Tiburon Ocean Place LLC, David L. Orr and Orr Partners, LLC. The Debtor's obligations under the Loan Documents are secured by Liens on and security interests in substantially all of its assets (the "AFP Collateral"). The borrowings under the Loan Documents matured on January 9, 2008 (the "Maturity Date").

On or about August 12, 2010, the Superior Court of New Jersey entered a Final Judgment against the Debtor, among other parties, awarding Barclays \$53,205,177.94, plus interest from September 30, 2009, on account of the Loan Documents. On or about June 29, 2010, Barclays was awarded additional attorney fees in the amount of \$95,000.

On or about October 26, 2010, AFP purchased from Barclays all of Barclays' rights under the Loan Documents. By an Assignment of Judgment of the same date, AFP acquired from Barclays its rights under the Final Judgment in the amount of \$53,300,177.94 (consisting of the amount of the August 12, 2010 judgment and the June 29, 2010 award of attorney fees), plus interest from August 12, 2010.

Shortly after purchasing Barclays' interest under the Loan Documents and obtaining an assignment of the Judgment, AFP sought to protect its rights with respect to the AFP Collateral and utilized its control over a lockbox account, which is the Debtor's depository account, and swept the Debtor's lockbox account by making two withdrawals: \$3 million on or about December 7, 2010 and \$1 million on or about January 5, 2011, thereby reducing the amount of AFP's Claim. On February 10, 2011 and February 15, 2011 AFP made protective advances to

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<sup>2</sup> AFP filed a Proof of Claim in the Debtor's Chapter 11 Case (Claim No. 64) asserting that the AFP Claim as of the Petition Date was \$57,245,372.26 (plus attorneys' fees and costs). The Debtor has asserted in pleadings filed with the Bankruptcy Court that the AFP Claim as of the Petition Date was in the amount of \$52,328,189.94. The differing claim amounts arise from the parties' applications of different interest rates to the principal debt obligations owed to AFP by the Debtor.

the Debtor in the amounts of \$218,242.82 and \$306,764.12, respectively. Following the purchase of Barclays' claim against the Debtor, AFP received a foreclosure judgment and scheduled a sheriff foreclosure sale of the Debtor's Assets for February 22, 2011. On February 15, 2011, on the eve of the scheduled foreclosure sale, the Debtor filed this Chapter 11 Case, in an effort to avoid foreclosure.

## **2. Trade Claims.**

On the Petition Date, pursuant to the Debtor's Schedules filed in the Chapter 11 Case, the Debtor had approximately \$1.1 million in unpaid trade claims.

## **3. Indemnity Obligations.**

The Debtor's obligations under the Loan Documents are presently guaranteed, jointly and severally, by William R. Dixon, Jr., Tiburon Capital LLC, Tiburon Ocean Place LLC, David L. Orr and Orr Partners, LLC. These parties are defendants in the pending Guaranty Litigation brought by AFP.

In addition, the City of Long Branch (the "City") and the Debtor entered into a purchase and sale agreement for real property known as the "Abbotsford Property" on December 29, 2006. In connection therewith, on March 30, 2007, John F. Dixon, William R. Dixon, Jr. and David L. Orr executed a promissory note (the "City Note") in favor of the City in the amount of \$3,015,370.52. Pursuant to the Assignment, Assumption and Consent Agreement Concerning Abbotsford Promissory Note of the same date, Obligations under the City Note were thereafter assigned to and assumed by Tiburon Capital LLC and Orr Partners, LLC. Although John F. Dixon, William R. Dixon, Jr. and David L. Orr personally guaranteed, jointly and severally, the obligations under the City Note pursuant to a Guaranty dated March 30, 2007, John F. Dixon's obligations have been discharged as a result of John F. Dixon's personal bankruptcy and subsequent discharge of debts.

In connection with the promissory notes, the City filed a complaint against the obligors and guarantors in connection with the City Note in the Superior Court of New Jersey, Docket No. MON-L-4604-08 (the "City Action"). In or about August, 2010, consent orders were entered in the City Action in the amount of \$3,656,669.08 (plus post-judgment interest pursuant to New Jersey Court Rules) against William R. Dixon, Jr., David L. Orr and Orr Partners, LLC and Tiburon Capital LLC.

With respect to the above obligations, one or more of the obligors has asserted that the Debtor is liable to it for the underlying obligations based on certain indemnification provisions set forth in the Debtor's Operating Agreement. As a result, one or more of the obligors has filed a Claim for indemnification against the Debtor in the Chapter 11 Case (collectively, the "Indemnification Claims").

AFP has filed objections with the Bankruptcy Court to the allowance of the Indemnification Claims, asserting that the Indemnification Claims should be expunged and Disallowed. As a result, although the Indemnification Claims are included in Class 3 under the Plan, the Proponent does not believe that the Holders of Indemnification Claims will receive any Distributions under the Plan, and therefore believes that the Indemnification Claims will in no



way dilute the Distributions under the Plan to Holders of Allowed Unsecured Claims. The Debtor has asserted that the Indemnification Claims are valid claims against the Debtor's estate and should be allowed in full.

**4. *Other Obligations.***

Several Holders of Claims have filed Proofs of Claim or were listed on the Debtor's Schedules in the Chapter 11 Case asserting that they provided unsecured loans to the Debtor. These Claims are asserted by Insiders of the Debtor or Persons controlled by and/or related to Insiders of the Debtor, and include claims in the amount of: (i) \$49,584,684.85 by Tiburon Shores LLC; (ii) \$6,211,152.94 by Tiburon Capital, LLC; (iii) \$207,211.21 to William Dixon, Jr.; (iv) \$18,960.77 to TCL New Jersey Corp., and (v) \$286,077.73 to Orr Partners (collectively, the "Other Equity Claims").

The Proponent does not believe that the Other Equity Claims constitute valid unsecured loan obligations of the Debtor, but instead arise from capital investments made by the Holders of the Other Equity Claims to the Debtor. As a result, through the Plan, the Other Equity Claims shall be reclassified and/or recharacterized as Equity Interests. The Debtor has asserted in pleadings filed with the Bankruptcy Court that it believes the Other Equity Claims are valid unsecured loan obligations of the Debtor. In the event the Proponent is unsuccessful in seeking to have the Other Equity Claims recharacterized as Equity Interests, the Plan may potentially be unconfirmable.

**5. *Membership Interests.***

On the Petition Date, Tiburon Ocean Place, LLC was the sole member of the Debtor, owning one hundred percent (100%) of the Debtor's equity. As is detailed in the Debtor's Organizational Chart above, Tiburon Ocean Place, LLC is controlled by William R. Dixon, Jr.

**III.**

**SUMMARY OF LEGAL PROCEEDINGS AND EVENTS LEADING TO  
THE DEBTOR'S CHAPTER 11 FILING.**

**A. Pending Legal Proceedings Outside of the Bankruptcy Court.**

The Debtor is involved in litigation from time to time in the ordinary course of its business.

In addition to this "ordinary course" litigation, the guarantors under the Loan Documents are defendants in an action commenced against them following the Petition Date by AFP in a New York Supreme Court, Index No. 650436/11 (the "Guaranty Litigation"). Generally, and among other things, through the Guaranty Litigation, AFP seeks payment from the defendants on account of the outstanding Loan Obligations.

On or about October 18, 2011, the judge presiding over the Guaranty Litigation granted summary judgment in full in favor of AFP against the Guarantors in the Guaranty Litigation and

scheduled a hearing for November 3, 2011 solely to liquidate the amount of the Guarantors' liability to AFP under the Guaranty.

Prior to the November 3, 2011 hearing in the Guaranty Litigation, on October 27, 2011, the Debtor filed a verified complaint with the Bankruptcy Court, whereby the Debtor sought a temporary restraining order and a preliminary injunction enjoining AFP from further prosecuting the Guaranty Action (the "Injunction Adversary Proceeding"). In response to the Debtor's filing of its verified complaint against AFP, on October 28, 2011, the Bankruptcy Court entered an Order to Show Cause for Injunctive Relief to Stay Prosecution of State Court Litigation Against Guarantors (the "Order to Show Cause"), which temporarily restrained AFP from prosecuting the Guaranty Action and directed, among other things, AFP to show cause before the Bankruptcy Court why a preliminary injunction should not be issued preventing AFP from further prosecuting the Guaranty Action.

Following a hearing, on November 4, 2011, the Bankruptcy Court terminated the temporary restraining order set forth in the Order to Show Cause and ruled that AFP would be permitted to continue the Guaranty Action to liquidate and obtain a judgment against the Guarantors. In so doing, the Bankruptcy Court restrained AFP from enforcing its judgment against the Guarantors pending a further order of the Bankruptcy Court or the conclusion of the confirmation hearing with respect to the Debtor's proposed plan of reorganization. On November 9, 2011, the Bankruptcy Court entered an Order memorializing its November 4, 2011 ruling and closing the Injunction Adversary Proceeding (the "Injunction Order").

**B. Events Leading to the Debtor's Chapter 11 Filing.**

The Debtor contends that a number of factors contributed to the Debtor's decision to commence the Chapter 11 Case. AFP believes that the primary cause of the Debtor's bankruptcy filing was the Debtor's attempt to forestall AFP's attempts to foreclose upon the AFP Collateral based upon the foreclosure judgment obtained by Barclay's and assigned to AFP. According to pleadings filed by the Debtor with the Bankruptcy Court, prior and subsequent to the Maturity Date under the Loan Documents, the Debtor solicited a full refinance of the secured obligations from over 100 prospective lenders without success. The Debtor also made various formal and informal "workout" proposals that were not acceptable to Barclays or, subsequently, to AFP.

**IV.**

**THE CHAPTER 11 CASE**

On February 15, 2011, the Debtor filed a voluntary petition in the United States Bankruptcy Court for the District of New Jersey seeking relief under the provisions of chapter 11 of the Bankruptcy Code. The Chapter 11 Case is being administered under the caption Ocean Place Development LLC, Case No. 11-14295 (MBK). The Debtor continues to operate its business and manage its property as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.



**A. First Day Relief.**

Concurrent with its bankruptcy filing, the Debtor filed various “first day” motions with the Bankruptcy Court to provide the Debtor with, among other things, flexibility in cash management, the payment of outstanding employee wages, health benefits, and certain other employee obligations, the ability to honor certain prepetition obligations.

On the Petition Date and thereafter, the Debtor filed several motions seeking orders authorizing the Debtor to pay various Prepetition Claims. Entry of these orders authorized the Debtor to: (a) honor customer obligations and continue certain customer obligations and practices [Docket No. 167]; (b) pay and honor all prepetition obligations associated with the employee obligations and to continue to pay wages and honor employee benefit programs, within certain limitations imposed by the Bankruptcy Code [Docket No. 19]; (c) continue to operate the cash management system [Docket No. 21].

Additionally, on March 16, 2011, the Bankruptcy Court entered an order which prohibited utility providers from altering, refusing or discontinuing utility services to the Debtor solely on the basis of the commencement of this Chapter 11 Case or a debt owed by the Debtor to such utility provider for services rendered before the order for relief that was not paid when due [Docket No. 88]. The order also created both procedures for utility providers to request additional adequate assurance in the event that a utility provider is not satisfied with the assurance of payment provided, as well as procedures for the Debtor to challenge these requests.

In addition to these requests, the Debtor severed its relationship with The West Paces Hotel Group LLC, its manager at the property [Docket No. 123], and replaced it with Coakley & Williams Hotel Management Company [Docket No. 113]. Further, the Debtor retained A-1 Contract Staffing II, LLC, an employee staffing agency, to, among other things, administer payroll and provide other employee-related services.

**B. Cash Collateral.**

On the Petition Date, the Debtor filed a motion requesting permission to use AFP’s cash collateral and providing AFP with related adequate protection. AFP opposed the Debtor’s motion for use of its cash collateral and, in addition, filed a motion seeking to dismiss the Chapter 11 Case and, alternatively, requested relief from the automatic stay to pursue its foreclosure action. The Debtor opposed AFP’s requests.

The Bankruptcy Court held a final hearing on these motions on March 9, 2011. Subsequently, by an order entered on March 16, 2011, the Bankruptcy Court denied AFP’s motion to dismiss the Chapter 11 Case and adjourned the hearing on AFP’s motion for relief from the automatic stay to July 18, 2011 [Docket No. 92]. By an order dated March 11, 2011, the Bankruptcy Court granted the Debtor’s motion to use AFP’s cash collateral pursuant to a cash collateral budget and scheduled a further hearing on the motion for July 18, 2011 [Docket No. 77]. Subsequently, on March 31, 2011, the Bankruptcy Court issued an Opinion setting forth its ruling on the Debtor’s cash collateral motion in further detail. See In re Ocean Place Development LLC, 447 B.R. 726 (Bankr. D.N.J. 2011).

On July 18, 2011, the Bankruptcy Court held a further hearing on the Debtor's continuing request to use AFP's cash collateral and with respect to AFP's motion for relief from the automatic stay. By Order dated August 1, 2011, the Bankruptcy Court granted the Debtor authority to continue using AFP's cash collateral through October 18, 2011 pursuant to a cash collateral budget [Docket N. 246]. By Order dated July 20, 2011, the Bankruptcy Court denied AFP's motion for relief from the automatic stay [Docket No. 236].

**C. Debtor-in-Possession Financing.**

On March 11, 2011, the Debtor filed an emergency motion seeking approval of up to \$1.5 million in debtor in possession financing (the "DIP Facility"). The DIP Facility was provided by OPN Acquisitions, LLC ("OPN" or "DIP Lender"). In connection with the DIP Facility, OPN required a 50% equity stake in the Debtor or its successor and said request was memorialized in a Fourth Amendment to Debtor's Operating Agreement. AFP objected to the Debtor's request to enter into the DIP Facility, arguing, among other things, that the Debtor was relinquishing control over its Estate and Assets to OPN through the DIP Facility.

On March 25, 2011, over AFP's objection and pursuant to significant changes agreed to by the Debtor and OPN to the original terms of the DIP Facility, the Bankruptcy Court entered a final order approving the DIP Facility [Docket No. 112]. Through the DIP Facility, Tiburon Ocean Place LLC pledged to OPN (or its designee) 50% of its interest in Debtor. Pursuant to the Fourth Amendment to Operating Agreement [Docket No. 111], but subject to confirmation by the Bankruptcy Court of a plan of reorganization in this Chapter 11 Case proposed by the Debtor so providing, Tiburon Ocean Place LLC, the sole member of the Debtor as of the Petition Date, agreed to transfer to OPN 50% of its interest in the Debtor.

**D. Retention of Professionals by the Debtor.**

To assist the Debtor in carrying out its duties as debtor-in- possession and to represent its interest in the Chapter 11 Case, the Debtor obtained Bankruptcy Court approval to retain Lowenstein Sandler PC as its restructuring attorneys.

In addition to Lowenstein Sandler, the Debtor received Bankruptcy Court authorization to retain certain other attorneys and professionals to represent or assist it in a variety of situations arising in the ordinary course of the Debtor's business in matters unrelated to the Chapter 11 Case. *See Order (I) Authorizing The Retention And Employment Of Stephen M. Herbstman, M. S., C.P.A. As Tax Accountant To The Debtor, Nunc Pro Tunc To March 1, 2011 And (II) Approving Related Thereto Fees [Docket No. 160]; Order Pursuant To 11 U.S.C. §§ 327(e), 328, and 1107 and Fed. R. Bankr. P. 2014 Authorizing The Employment And Retention Of Morgan Melhuish Abrutyn As Special Counsel To The Debtor [Docket No. 136].*

By Order dated June 20, 2011, the Debtor received Bankruptcy Court approval to retain Stephen M. Herbstman, M. S., C.P.A. as an auditor to the Debtor in connection with the Debtor's audit of certain transactions among and between the Debtor and The West Paces Hotel Group. *See Order Authorizing The Retention And Employment Of Stephen M. Herbstman, M. S., C.P.A. As An Auditor To The Debtor, Nunc Pro Tunc To June 20, 2011 [Docket No. 214].*

By Order dated August 9, 2011, the Debtor received Bankruptcy Court approval to retain CBRE Valuation and Advisory Services to provide further services to the Debtor [Docket No. 254].

V.

**DEVELOPMENTS DURING THE CHAPTER 11 CASE**

**A. Motions to Reject Certain Executory Contracts and Unexpired Leases.**

The Debtor is a party to numerous contracts and lease agreements. After analyzing and reviewing the terms and conditions of many of these agreements, the Debtor determined that some of the agreements were no longer beneficial to the Debtor's ongoing business operations. Accordingly, the Debtor sought to reject various executory contracts and unexpired leases. To date, the Debtor has rejected its management agreement with The West Paces Hotel Group, LLC ("West Paces"), effective as of March 31, 2011. The Debtor's application to reject its management agreement with West Paces was approved by the Bankruptcy Court only after AFP brought to the Debtor's attention certain unexplained transactions by West Paces with respect to its management of the Debtor's finances. As a result of AFP bringing this issue to light, the Debtor retained the right to conduct an audit with respect to its operations while West Paces managed the Debtor's Hotel.

**B. Entry into Agreements.**

**1. *Coakley & Williams.***

On March 23, 2011, by an order of the Bankruptcy Court, the Debtor retained Coakley & Williams Hotel Management Company as its new management company [Docket No. 113]. C&W's engagement began on April 1, 2011.

**2. *A-1 Contract Staffing.***

By an order of the Bankruptcy Court dated April 20, 2011, the Debtor entered into an agreement with A-1 Contract Staffing II, LLC ("A-1"), effective as of April 1, 2011 [Docket No. 153]. Pursuant to the agreement, A-1 employs all personnel working at the Debtor's premises and provides related services.

**C. Settlement with West Paces.**

On June 17, 2011, the Debtor filed a motion with the Bankruptcy Court seeking approval of a compromise by and between the Debtor and West Paces [Docket No. 204]. The compromise, approved by the Bankruptcy Court on July 14, 2011 [Docket No. 224], (i) results in the elimination of the approximate \$11 million proof of Claim filed against the Debtor's Estate and (ii) resolves West Paces' motion seeking the allowance and payment of a post-petition administrative expense claim [Docket No. 137]. Under the compromise, at AFP's request, the Debtor retained the right to conduct an audit of its operations while being managed by West Paces, and bring claims against West Paces and object to certain employee claims. The Debtor

asserts that it has undertaken and completed the audit provided for in the Bankruptcy Court's Order.

**D. Claims Bar Date.**

The Bankruptcy Code provides for the bankruptcy court to fix the time within which proofs of claim must be filed in a chapter 11 case. Any creditor whose claim is not scheduled in the debtor's schedules or whose claim is scheduled as disputed, contingent or unliquidated must file a proof of claim.

On March 4, 2011, a Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines was filed in this Chapter 11 Case [Docket No. 57] (the "Notice"). Pursuant to the Notice, (a) June 27, 2011 was established as the deadline for filing Claims in this Chapter 11 Case and (b) August 15, 2011 was established as the deadline for all governmental units (as defined in section 101(27) of the Bankruptcy Code) to file Claims in this Chapter 11 Case ((a) and (b) together, the "Bar Dates").

**E. Termination of Exclusivity and the Debtor's Plan.**

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief (the "Exclusive Filing Period"). If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the commencement date to solicit acceptance of the Plan (the "Exclusive Solicitation Period," and together with the Exclusive Filing Period, the "Exclusive Periods"). During these Exclusive Periods, no other party in interest may file a competing plan of reorganization, however, a court may extend these periods upon request of a party in interest. The Debtor's initial Exclusive Filing Period and Exclusive Solicitation Period were set to expire on June 15, 2011 and August 15, 2011, respectively.

On May 13, 2011, the Debtor filed a motion seeking to extend the Exclusive Periods [Docket No. 174]. On June 20, 2011, the Court entered an order extending the Exclusive Periods through and including July 31, 2011 and September 29, 2011, respectively [Docket No. 207].

On July 17, 2011, the Debtor filed a Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, which the Debtor subsequently amended (the "Debtor's Plan") and an accompanying disclosure statement, which the Debtor subsequently amended (the "Debtor's Disclosure Statement"). Several parties in interest, including AFP, filed objections to the approval of the Debtor's Disclosure Statement. On August 22, 2011, at a hearing to consider the adequacy of the Debtor's Disclosure Statement, the Bankruptcy Court refused to approve the Debtor's Disclosure Statement, and adjourned the hearing. At the August 22, 2011 hearing to consider the adequacy of the Debtor's Disclosure Statement, the Bankruptcy Court also ruled that the Debtor's Exclusive Periods should be terminated. On August 31, 2011, the Bankruptcy Court entered an Order terminating the Debtor's Exclusive Periods [Docket No. 265], thereby allowing the Proponent to file the Plan.

It is the Proponent's belief that the Debtor's Plan is incapable of being confirmed by the Bankruptcy Court because of numerous legal deficiencies contained in the Debtor's Plan that

cause the Debtor's Plan to violate the Bankruptcy Code. The legal deficiencies that the Proponent believes exist in the Debtor's Plan include, but are not limited to, the following:

- Improperly enjoining Creditors from asserting claims against non-Debtor parties and providing nonconsensual releases to the same non-Debtor parties;
- Improperly classifying Creditor's Claims in an attempt to gerrymander an impaired accepting class, in violation of the Bankruptcy Code;
- Improperly providing Tiburon Ocean Place, LLC, the Debtor's current 100% owner, with a significant post-confirmation ownership interest in the Debtor, despite the fact that Creditors are not being paid in full;
- Proposing to settle a dispute with the City of Long Branch (the "City") for the sum of \$3.8 million, relating in large part to a \$3.6 million obligation owed to the City by certain non-Debtor insider parties that have been adjudged to be liable to the City. This proposed payment is improper because it is to be made in exchange for non-Debtor obligations and will be paid to the City ahead of the Claims of other Creditors; and
- Improperly shifting the risk of failure to Creditors by basing the success of the Debtor's Plan almost entirely upon speculative and optimistic future income projections such that the Debtor's Plan is not feasible.

The Bankruptcy Court has not ruled with respect to the viability of the Debtor's Plan, and has not yet been presented with the opportunity to determine whether these purported legal deficiencies in the Debtor's Plan cause the Debtor's Plan to violate the Bankruptcy Code.

Additionally, as is set forth herein, the Proponent believes that the Proponent's Plan will cause Creditors to obtain a greater distribution on account of their Allowed Claims than the distribution that those Creditors would receive under the Debtor's Plan.

**F. The Injunction Adversary Proceeding.**

On October 27, 2011, the Debtor filed a verified complaint against AFP commencing the Injunction Adversary Proceeding [Adv. Pro. No. 11-02529 (MBK)]. The Injunction Adversary Proceeding is thoroughly discussed at Section III.A of this Disclosure Statement. The Injunction Adversary Proceeding was closed pursuant to an Order dated November 9, 2011.

**VI.**

**TREATMENT OF HOLDERS OF CLAIMS AND EQUITY INTERESTS  
UNDER THE PLAN**

**A. Summary of Classification and Treatment.**

The following table summarizes the Classes of Claims against and Equity Interests in the Debtor and specifies which of those Classes are (i) impaired or unimpaired by the Plan; (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy

Code; (iii) deemed to have accepted or rejected the Plan; (iv) the estimated amount of Claims in each Class; and (v) the projected recovery by the Holders of Allowed Claims in each Class.

<u>Class</u>	<u>Designation</u>	<u>Treatment</u>	<u>Estimated Amount of Claims<sup>3</sup></u>	<u>Estimated Recovery</u>
1	AFP Secured Claim	Impaired Entitled to Vote	Unknown	<p>The AFP Secured Claim will be Allowed and deemed an Allowed Claim in the amount of the lesser of (x) the Purchase Price or (y) the AFP Claim. The treatment of the AFP Secured Claim under the Plan will depend upon whether AFP is the Purchaser of the Purchased Assets through the Sale.</p> <p>(i) To the extent AFP is the Purchaser of the Purchased Assets, and in exchange for the Purchase Price, which will include a credit bid pursuant to section 363(k) of the Bankruptcy Code that may be made up to the amount of the AFP Claim, the Holder of the AFP Secured Claim will receive in full and final satisfaction of the AFP Secured Claim the AFP Collateral free and clear of all Liens, Claims, interests or encumbrances, <u>except that</u>, the Holder of the AFP Secured Claim will not receive from the AFP Collateral: (x) that portion of AFP's Cash Collateral in an amount necessary to fund the Unsecured Creditor Carveout and (y) Avoidance Actions, which Assets shall be transferred to the Liquidating Trust by the Debtor on the Effective Date.</p> <p>(ii) To the extent AFP is not the Purchaser of the Purchased Assets, AFP will receive Cash on the Effective Date in the amount of the AFP Secured Claim in full and final satisfaction of the AFP Secured Claim.</p>
2	Other Secured Claims	Unimpaired Not entitled to vote (deemed to accept)	The Proponent does not believe there are any Other Secured Claims	100%. In full and final satisfaction of any Allowed Other Secured Claims, the Debtor shall surrender to Holders of Allowed Other Secured Claims any Collateral upon which Holders of Allowed Other Secured Claims hold valid first priority Liens.

<sup>3</sup> The estimated amounts of Claims in each Class are based upon the best information available to the Proponent as of the date of the Disclosure Statement, which includes statements and representations made in the Debtor's Plan and the Debtor's Disclosure Statement.

<u>Class</u>	<u>Designation</u>	<u>Treatment</u>	<u>Estimated Amount of Claims<sup>3</sup></u>	<u>Estimated Recovery</u>
3	Unsecured Claims  (This Class includes the following Claims: General Unsecured Claims, Indemnification Claims and the AFP Deficiency Claim.)	Impaired  Entitled to Vote	\$1,100,000 <sup>4</sup>	<p>The Proponent believes that Holders of Allowed Unsecured Claims will receive a Distribution in an amount in excess of fifty percent (50%) of their Allowed Claims (see footnote 4 below). Holders of Allowed Unsecured Claims will receive in full and final satisfaction of their Allowed Unsecured Claims, their <i>Pro Rata</i> share of Assets held by the Liquidating Trust. Upon the Effective Date, the Liquidating Trust will have title to the following Assets:</p> <ul style="list-style-type: none"> <li>• The Unsecured Creditor Carveout, which will consist of cash in the amount of \$600,000,</li> <li>• The Avoidance Actions;<sup>5</sup> and</li> <li>• The Excess Sale Proceeds.</li> </ul> <p>An initial Distribution of at least \$550,000 shall be made by the Liquidating Trustee to Holders of Allowed Unsecured Claims as soon as practicable after the Effective Date, but in no event later than ninety (90) days after the Effective Date.</p> <p>In addition, and notwithstanding the foregoing, AFP shall not receive any Distribution from the Liquidating Trust on account of its Class 3 AFP Deficiency Claim, thereby further increasing the <i>Pro Rata</i> Distribution being made to the other Unsecured Creditors in Class 3.</p>

<sup>4</sup> AFP has filed objections to the allowance of the Indemnification Claims. Although the Indemnification Claims are treated as Class 3 Claims under the Plan, the Proponent does not believe that the Indemnification Claims will ever become Allowed Claims. The Debtor asserts that the Indemnification Claims may potentially become Allowed. To the extent (i) the Indemnification Claims are Allowed by the Bankruptcy Court over AFP's objections or (ii) any claims yet to be filed by creditors, including potential claims for damages stemming from the rejection of executory contracts, become Allowed Claims, the recovery by Holders of Class 3 Claims would be diluted.

<sup>5</sup> As of the date of this Disclosure Statement, the Proponent has been unable to perform any analysis with respect to the value of the Avoidance Actions, in large part because this information is contained in the Debtor's books and records which are not readily accessible to the Proponent. The Debtor has asserted that it believes that Avoidance Actions have little value to the Estate. In order to assist the Liquidating Trustee in performing his fiduciary duties in determining what, if any, Avoidance Actions, should be pursued by the Liquidating Trust for the benefit of Unsecured Creditors, pursuant to the Plan, on the Effective Date, the Plan provides for \$50,000 to be allocated to enable the Liquidating Trustee to perform his duties under the Liquidating Trust Agreement.

<u>Class</u>	<u>Designation</u>	<u>Treatment</u>	<u>Estimated Amount of Claims<sup>3</sup></u>	<u>Estimated Recovery</u>
4	Equity Interests and Other Equity Claims	Impaired Not entitled to vote (deemed to reject)	<i>Equity Interests:</i> 100% of Debtor's equity  <i>Other Equity Claims:</i> \$56,025,957.40 <sup>6</sup>	Assuming that the Sale does not generate Sale proceeds in excess of the amount needed to pay Class 3 Unsecured Claims in full, Holders of Allowed Equity Interests and Allowed Other Equity Claims will not receive any Distribution under the Plan.

The Proponent and its professionals are in the process of reviewing the Claims filed against the Debtor's Estate. Other than those Claims specifically discussed herein as being subject to an objection and Disputed, as of the date of this Disclosure Statement, the Proponent has not yet determined the number and amount of Claims in each Class to which an objection should be filed.

**B. Description and Treatment of Unclassified Claims.**

***1. Administrative Expenses.***

Except to the extent that a Holder of an Allowed Administrative Expense agrees in writing with the Purchaser to less favorable treatment, the Purchaser shall pay to each holder of an Allowed Administrative Expense an amount equal to such Claim in full in Cash on the later of: (i) on or within thirty (30) days after the Effective Date, (ii) on or within thirty (30) days after the date such Administrative Expense becomes Allowed and (c) such other date as may be ordered by the Bankruptcy Court.

Except as otherwise provided in Section 2.1(a) of the Plan, unless previously filed or paid, requests for payment of Administrative Expenses must be filed and served on the Purchaser pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Administrative Expenses that are required to file and serve a request for payment of such Administrative Expense that do not file and serve such a request by the deadline set forth in the Confirmation Order shall be forever barred, estopped and enjoined from asserting such Administrative Expense against the Debtor's estate or and such Administrative Expense shall be deemed discharged as of the Effective Date. All such Administrative Expenses shall, as of the Effective Date, be subject to the permanent injunction set forth in Section 11.2 of the Plan. Objections to such requests must be filed and served on the Proponent, the Purchaser, the Liquidating Trustee, the Disbursing Agent and the requesting party by thirty (30) days after the filing of the applicable request for payment of Administrative Expenses, if applicable, as the same may be modified or extended from time to time by order of the Bankruptcy Court.

<sup>6</sup> The Debtor disagrees with AFP's assertion that the Other Equity Claims should be recharacterized and/or subordinated pursuant to the Plan.



In the event the Confirmation Order is entered by the Bankruptcy Court and becomes a Final Order, but the Effective Date of the Plan fails to occur, the Proponent will (x) pay to each holder of an Allowed Administrative Expense an amount equal to such Holder's Allowed Administrative Expense that has accrued through the Confirmation Date, in full in Cash on the later of: (i) within thirty (30) days after the date such Administrative Expense becomes Allowed; (ii) within ten (10) days after the scheduled date of the Auction; or (iii) such other date as may be ordered by the Bankruptcy Court.

For the avoidance of doubt, and except as provided in Section 6.2 of the Plan: (i) the Proponent shall have no obligation under Section 2.1(b) of the Plan to pay any Administrative Expenses that accrue after the Confirmation Date and (ii) to the extent the Effective Date of the Plan occurs, the Purchaser shall have the exclusive obligation and responsibility to pay Administrative Expenses pursuant to Section 2.1(a) of the Plan, and Section 2.1(b) of the Plan shall have no force or effect.

Based upon estimates provided by the Debtor, the Proponent estimates that, as of the Effective Date, accrued Administrative Expenses, inclusive of Professional Compensation Claims, will total, at a minimum, between \$850,000 and \$950,000.

## **2. *Professional Compensation Claims.***

Any Person asserting a Professional Compensation Claim shall file a final Fee Application by no later than thirty (30) days after the Effective Date. Objections to any Professional Compensation Claim must be Filed and served upon the Debtor, the Proponent, the Purchaser and the requesting party no later than sixty (60) days after the Effective Date. A Professional Compensation Claim shall not become Allowed until approved by a Final Order of the Bankruptcy Court. All Professional Compensation Claims shall be paid in accordance with Section 2.1 of the Plan. To the extent necessary, the Plan and the Confirmation Order shall amend and supersede any previously entered order regarding the payment of Professional Compensation Claims. For the avoidance of doubt, Section 2.1(b) of the Plan shall apply to Allowed Professional Compensation Claims.

As stated, based upon estimates provided by the Debtor, the Proponent estimates that, as of the Effective Date, accrued Administrative Expenses, inclusive of Professional Compensation Claims, will total, at a minimum, between \$850,000 and \$950,000.

## **3. *Priority Tax Claims.***

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive from the Purchaser, at the sole option of the Purchaser, one of the following treatments: (1) on the Initial Distribution Date, Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; or (3) such other treatment as may be agreed upon by such Holder and the Purchaser, or as otherwise determined upon an order of the Bankruptcy Court.

Based upon estimates provided by the Debtor, the Proponent estimates that Priority Tax Claims are between \$29,000 and \$40,000.

**4. Other Priority Claims.**

Except to the extent that a holder of an Allowed Other Priority Claim agrees to less favorable treatment, each holder of an Allowed Other Priority Claim shall receive from the Purchaser, at the sole option of the Purchaser, one of the following treatments: (1) on the Initial Distribution Date, Cash in an amount equal to the amount of such Allowed Other Priority Claim; (2) Cash in an aggregate amount of such Allowed Other Priority Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; or (3) such other treatment as may be agreed upon by such Holder and the Purchaser or otherwise determined upon an order of the Bankruptcy Court.

Based upon estimates provided by the Debtor, the Proponent estimates that Other Priority Claims are between \$0.00 and \$190,000.

**5. Statutory Fees.**

On the Initial Distribution Date, the Purchaser shall pay, in full in Cash, any fees due and owing to the U.S. Trustee at the time of Confirmation. On and after the Confirmation Date, the Liquidating Trustee shall pay the applicable U.S. Trustee fees until the entry of a final decree in the Debtor's Chapter 11 Case or until such Chapter 11 Case is converted or dismissed.

**C. Description and Treatment of Classified Claims and Equity Interests.**

**1. Class 1 - AFP Secured Claim.**

(a) *Classification:* Class 1 consists of the AFP Secured Claim.

(b) The AFP Secured Claim shall be Allowed and deemed an Allowed Claim in the amount of the lesser of (x) the Purchase Price or (y) the AFP Claim. The treatment of the AFP Secured Claim under the Plan shall depend upon whether AFP is the Purchaser of the Purchased Assets through the Sale.

(i) To the extent *AFP is the Purchaser* of the Purchased Assets, and in exchange for the Purchase Price, which shall include a credit bid pursuant to section 363(k) of the Bankruptcy Code that may be made up to the amount of the AFP Claim, the Holder of the AFP Secured Claim shall receive in full and final satisfaction of the AFP Secured Claim the AFP Collateral free and clear of all Liens, Claims, interests or encumbrances, including successor liability. The AFP Deficiency Claim, if any, will not be released by AFP's purchase of the Purchased Assets. The Debtor shall execute any and all documents necessary to effectuate the Sale. Notwithstanding the foregoing, if AFP is the Purchaser, the Holder of the AFP Secured Claim shall not receive from the AFP Collateral: (x) that portion of AFP's Cash Collateral in an amount necessary to fund the Unsecured Creditor Carveout and (y) Avoidance Actions, which Assets shall be transferred to the Liquidating Trust by the Debtor on the Effective Date.

(ii) To the extent *AFP is not the Purchaser* of the Purchased Assets, AFP shall receive Cash from the Purchaser on the Closing Date in the amount of the AFP Secured Claim in full and final satisfaction of the AFP Secured Claim. The AFP Deficiency Claim, if any, will not be released by any purchase of the Purchased Assets by a third party Purchaser.

(c) *Voting*: Class 1 is Impaired under the Plan. Therefore, the Holder of the Class 1 Claim is entitled to vote to accept or reject the Plan.

**2. Class 2 - Other Secured Claims.**

(a) *Classification*: Class 2 shall consist of all Other Secured Claims.

(b) *Treatment*: In full and final satisfaction of any Allowed Other Secured Claims, the Debtor shall surrender to Holders of Allowed Other Secured Claims any Collateral upon which Holders of Allowed Other Secured Claims hold valid first priority Liens.

(c) *Voting*: Class 2 is Unimpaired under the Plan, and therefore, pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Class 2 - Other Secured Claims are presumed to have accepted the Plan.

**3. Class 3 - Unsecured Claims.**

(a) *Classification*: Class 3 shall consist of all Unsecured Claims, which include: General Unsecured Claims, Indemnification Claims and the AFP Deficiency Claim.

(b) *Treatment*: Holders of Allowed Class 3 Claims will receive in full and final satisfaction of their Allowed Unsecured Claims, their *Pro Rata* share of all Assets held by the Liquidating Trust, which Assets shall include: (i) the Unsecured Creditor Carveout, (ii) the Avoidance Actions and (iii) the Excess Sale Proceeds. The Liquidating Trust shall make an initial Distribution to Holders of Allowed Class 3 Claims as soon as practicable, and in no event later than ninety (90) days after the Effective Date. Notwithstanding the foregoing, the Holder of the AFP Deficiency Claim shall not receive any Distribution from the Liquidating Trust.

(c) *Voting*: Class 3 is Impaired under the Plan. Therefore, Class 3 shall be entitled to vote to accept or reject the Plan.

**4. Class 4 - Equity Interests and Other Equity Claims.**

(a) *Classification*: Class 4 shall consist of the Holders of Equity Interests and Other Equity Claims, which AFP will seek to have recharacterized and/or subordinated pursuant to the Confirmation Order.

(b) *Treatment*: Holders of Allowed Class 4 Other Equity Claims or Equity Interests shall not receive or retain any Property under the Plan on account of such Claims or Equity Interests. On the Effective Date, all Equity Interests shall be cancelled.

(c) *Voting*: Holders of Class 4 Claims or Equity Interests are not receiving any Property under the Plan, and therefore, pursuant to section 1126(g) of the Bankruptcy Code, these Holders are presumed to have rejected the Plan.

## **VII.**

### **TRANSACTIONS TO BE CONSUMMATED UNDER THE PLAN AND CERTAIN CORPORATE LAW MATTERS**

#### **A. Means for Implementation of the Plan.**

##### ***1. The Sale.***

The Plan and Confirmation Order shall authorize the sale of the Purchased Assets to the Purchaser under sections 363(b), 363(f), 363(m), 365, 1123(a)(5), 1123(b)(4), 1129(b)(2)(A), 1141, 1145 and 1146(a) of the Bankruptcy Code under the terms and conditions set forth in the Plan and the Confirmation Order, free and clear of any and all Claims, Liens, interests or encumbrances, including successor liability claims. Upon Confirmation of the Plan, the Debtor shall be authorized and directed to take any and all actions, and execute any and all documents necessary to consummate and effectuate the Sale. The Sale shall be conducted pursuant to the Bidding Procedures, which the Proponent will seek to have approved pursuant to the Confirmation Order. Only Persons that are Qualified Bidders will be permitted to participate in the Auction. AFP shall automatically be deemed a Qualified Bidder, and shall be permitted to submit a credit bid up to the full amount of the AFP Secured Claim at the Auction. The Sale shall be approved by the Confirmation Order and shall be permitted to close without the need for any further Order of the Bankruptcy Court.

##### ***2. Post-Confirmation Date Management of the Hotel.***

After the Confirmation Date, C&W shall continue to manage the Hotel pursuant to the C&W Management Agreement and any fees earned by C&W under the C&W Management Agreement between the Confirmation Date and the Effective Date shall be paid by AFP. Pursuant to Section 6.2 of the Plan, any payments made by AFP to C&W between the Confirmation Date and the Effective Date shall be deemed an Allowed Administrative Expense, and shall be paid in accordance with Section 2.1 of the Plan. Any fees earned after the Effective Date shall be the exclusive obligation of the Purchaser.

##### ***3. Dissolution of the Debtor and Resignation of Managers.***

The Debtor shall be dissolved, effective upon the Liquidating Trustee's filing of a certificate of dissolution (or its equivalent) with secretary of state or similar official of the jurisdiction in which the Debtor was organized. The Debtor, its managers and members, including the Manager, shall be authorized and directed to take any and all actions, including the execution of any and all documents, necessary to effectuate the dissolution contemplated hereunder. On the Effective Date, the officers or directors of the Debtor shall be deemed to have resigned from all of their respective positions.

**4. Liquidating Trust.**

The Liquidating Trust shall be established to receive on the Effective Date: (a) the Unsecured Creditor Carveout, (b) the Avoidance Actions and (c) any Excess Sale Proceeds, all of which Assets shall vest in the Liquidating Trust on the Effective Date free and clear of all Liens, Claims, encumbrances and Interests in accordance with section 1141 of the Bankruptcy Code, but subject to the ratable benefit of the Holders of Allowed Class 3 Claims, to obtain the Distributions provided for in the Plan. The Purchaser shall be solely responsible for funding the Unsecured Creditor Carveout, provided however, that if AFP is the Purchaser, the Unsecured Creditor Carveout shall be funded directly from AFP's Cash Collateral, which portion of AFP's Cash Collateral AFP will not purchase pursuant to the Sale.

**5. Transfer of Assets; Valuation of Assets.**

(a) On the Effective Date, the Purchased Assets shall be transferred to the Purchaser free and clear of all Liens, Claims, encumbrances and interests, including claims based upon successor liability. The Debtor shall take any and all actions, and shall execute any and all documents necessary to effectuate the Sale.

(b) Immediately on the Effective Date, those Assets of the Debtor that are not Purchased Assets, including any Excess Sale Proceeds, shall be transferred to the Liquidating Trust. The transfer of the Assets to the Liquidating Trust will be made for the benefit of the beneficiaries thereof, but only to the extent such beneficiaries are entitled to receive Distributions under the Plan. Upon completion of the transfer of Assets into the Liquidating Trust, the Debtor, the Purchaser and the Proponent will have no interest in, or with respect to, such Assets or the Liquidating Trust, except as otherwise expressly provided for herein, which shall include that the Holder of the AFP Deficiency Claim shall be a beneficiary of the Liquidating Trust (although not entitled to share in the *res* of the Liquidating Trust).

(c) Notwithstanding those sections of the Plan describing the actual transfer of Assets to the Liquidating Trust, solely for federal income tax purposes, all parties (including, without limitation, the Debtor, the Proponent, the Liquidating Trustee, the Disbursing Agent and the beneficiaries) will treat the transfer of Assets to the Liquidating Trust, in accordance with the terms of the Plan, as (i) a deemed transfer of such Assets by the Debtor to the Holders of Class 3 Claims with each such Holder receiving an undivided interest in the specific Assets, the liquidation proceeds of which such Holder is entitled to share in pursuant to Sections 4.3 of the Plan, followed by (ii) a deemed transfer of such Assets by such Holders to the Liquidating Trust. The foregoing shall apply whether or not such Holders' Claims are Allowed as of the Effective Date, with each such Holder deemed to have received Assets, and to have contributed such Assets to the Liquidating Trust, having a value that equals, as nearly as possible, the amount such Holder would receive if, on the Effective Date, all Assets transferred to the Liquidating Trust are liquidated, converted to Cash and distributed to the Holders of Class 3 Claims in accordance with the Plan. In exchange for the deemed transfer of Assets to the Liquidating Trust described in this Section 6.4(c) of the Plan, the Holders of Allowed Class 3 Claims as of the Effective Date will receive beneficial interests in the Liquidating Trust and will be treated as the grantors and owners thereof; Holders of Disputed Class 3 Claims as of the Effective Date will receive contingent beneficial interests in the Liquidating Trust and will become grantors and

owners of the Liquidating Trust if and when, and to the extent that, their Class 3 Claims become Allowed Class 3 Claims.

(d) The Liquidating Trustee shall make an initial good faith determination of the fair market value of the Assets transferred to the Liquidating Trust as of the Effective Date, solely for the purpose of determining the income tax consequences to the parties of the transfer of the Assets to the Liquidating Trust and for no other purpose, and the Liquidating Trustee shall apprise the beneficiaries thereof in writing of such valuation (and indicate in such writing each beneficiary's percentage ownership interest in the Liquidating Trust based on each such beneficiary's relative beneficial interest in the Liquidating Trust or portion thereof as of the Effective Date). This valuation shall be used consistently by all parties (including, without limitation, the Liquidating Trustee and the beneficiaries of the Liquidating Trust) for federal income tax purposes.

#### **6. *Powers and Duties of the Liquidating Trustee.***

The Liquidating Trustee shall administer the Liquidating Trust and its assets in accordance with the Plan, the Liquidating Trust Agreement, and the other Liquidating Trust Documents and shall be responsible for, among other things, making Distributions required under the Plan to Holders of Allowed Class 3 Claims. From and after the Effective Date and continuing through the date of entry of a Final Decree, the Liquidating Trustee shall: (a) have and be entitled to exercise all rights and powers of the Debtor and the Estate, including but not limited to those provided for in the Bankruptcy Code, including section 1107 thereof; (b) possess all rights and powers granted in the Liquidating Trust Agreement, including the authority to direct the affairs of, and dissolve, the Debtor (and all bylaws, articles or certificates of incorporation, and related corporate documents are deemed amended by this Plan to permit and authorize such appointment); (c) possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under, or related to the Chapter 11 Case and, in connection therewith, shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts, (ii) be entitled to notice and opportunity for hearing on all such issues, (iii) participate in all matters brought before the Bankruptcy Court, and (iv) receive notice of all applications, motions, and other papers and pleadings Filed in the Bankruptcy Court; (d) have the authority to act as and for and on behalf of the Debtor in all adversary proceedings and contested matters pending in the Bankruptcy Court and in all actions and proceedings pending elsewhere; (e) have the power and standing to prosecute, compromise and settle Avoidance Actions; (f) have the right to object to Claims; (g) have the authority to retain such personnel or professionals (including, without limitation, legal counsel, financial advisors or other agents) as it deems appropriate and compensate such personnel and professionals as it deems appropriate, all without prior notice to Creditors or approval of the Bankruptcy Court; and (h) borrow money for such purposes as financing the costs of prosecuting the Avoidance Actions, on terms and conditions it deems appropriate, upon Bankruptcy Court approval after notice and hearing. Professionals and personnel retained or employed by the Liquidating Trust or the Liquidating Trustee need not be disinterested as that term is defined in the Bankruptcy Code.

**7. *Corporate Action.***

The entry of the Confirmation Order shall constitute authorization for the Proponent and/or the Debtor to take or to cause to be taken all 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 shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation: (a) pre-Auction Date actions in preparation for the Auction that are provided for in the Confirmation Order and Bidding Procedures; (b) the execution, delivery and consummation of any documents required to effectuate the Sale, and all of the transactions contemplated therein; and (c) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable nonbankruptcy law and the Bankruptcy Code, without any requirement of further action by the members or directors of the Debtor. On or (as applicable) before the Effective Date, the appropriate members, officers and/or managers of the Debtor, the Proponent, the Purchaser, or the Liquidating Trustee are, as applicable, authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan), the Plan Supplement in the name and on behalf of the Debtor.

**B. Treatment of Executory Contracts and Unexpired Leases.**

**1. *General Treatment.***

As of, and subject to the occurrence of the Effective Date, and subject to Section 7.2 of the Plan, all Executory Contracts and unexpired leases (including in each case, any related amendments, supplements, consents, estoppels or ancillary agreements) to which the Debtor is a party shall be rejected, except for any Executory Contract or unexpired lease that (i) previously has been assumed or rejected pursuant to a Final Order of the Bankruptcy Court, (ii) is specifically designated by the Purchaser as an Executory Contract or unexpired lease that will be assumed and assigned in the Schedule of Assumed Contracts, or (iii) is the subject of a separate assumption or rejection motion filed by the Debtor under section 365 of the Bankruptcy Court prior to the Confirmation Date; provided however, that the Purchaser shall have the exclusive right to amend the Schedule of Assumed Contracts for a period of up to forty-five (45) days after the Effective Date, or by any other means approved by the Bankruptcy Court, or to delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to Section 7.1 of the Plan or to add an executory contract or unexpired lease thereto, thus providing for its assumption and assignment pursuant Section 7.1 of the Plan. Such rejection or assumption and assignment shall be deemed final and effective upon the Purchaser's filing and serving a final version of the Schedule of Assumed Contracts, which final version of the Schedule of Assumed Contracts shall be filed and served no later than forty-five (45) days after the Effective Date.

The determination with respect to the assumption and assignment or rejection of the Redevelopment Agreement will be made by the Purchaser pursuant to the terms of the Plan. To the extent AFP is the eventual Purchaser, as of the date hereof, AFP has not yet made a determination as to how it will choose to treat the Redevelopment Agreement. The Debtor has

asserted that the rejection of the Redevelopment Agreement could have negative consequences with respect to the operation of the Debtor's Hotel. AFP does not necessarily agree with the Debtor's assertion.

## **2. *Cure of Defaults.***

Except to the extent that different treatment has been agreed to by the nondebtor party or parties to any Executory Contract or unexpired lease to be assumed pursuant to Article VII of the Plan, the Proponent shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, list the cure amounts of all Executory Contracts or unexpired leases to be assumed in the Plan Supplement. Any party that fails to object to the applicable cure amount within seven (7) days prior to the Confirmation Hearing shall be forever barred, estopped and enjoined from disputing the cure amount and/or from asserting any Claim against the Debtor, the Proponent, the Purchaser or the Liquidating Trust arising under section 365(b)(1) of the Bankruptcy Code, except as set forth in the list of cure amounts on the Plan Supplement. Any cure amount listed in the Plan Supplement to which no timely objection is filed in accordance with Section 7.2 of the Plan shall be paid in full by the Purchaser on the Effective Date or as soon thereafter as is reasonably practicable. If there are any timely objections filed, the cure payments, if any, required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such dispute. The Purchaser, on the Debtor's behalf, shall retain the right to reject any Executory Contracts or unexpired leases that are subject to a dispute, including Executory Contracts or unexpired leases that are subject to a dispute regarding amounts necessary to cure any defaults, until the entry of a Final Order resolving such dispute. In the event the Purchaser amends the Schedule of Assumed Contracts after the Confirmation Date, the Purchaser shall provide the nondebtor party to such contract with an opportunity to object to the cure amount. In the event of a dispute, the Bankruptcy Court shall make a final determination as to the cure amount.

## **3. *Rejection Damage Claims.***

In the event that the rejection of an Executory Contract or unexpired lease pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not previously evidenced by a timely filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Proponent, the Purchaser, the Liquidating Trustee or their respective properties or interests, unless a proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtor, the Proponent, the Purchaser and the Liquidating Trustee on or before the date that is thirty (30) days after the Effective Date or such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults. Allowed Rejection Damage Claims shall be paid as Class 3 Claims pursuant to the Plan.

## **4. *Assignment and Effect of Assumption.***

Any Executory Contract or unexpired lease assumed under the Plan shall be deemed assigned to the Purchaser effective on the Effective Date, and shall remain in full force and effect for the benefit of the Purchaser in accordance with its terms, notwithstanding any provision in



such executory contract or unexpired lease (including those of the type described in sections 365(b)(2) of the Bankruptcy Code) that prohibits, restricts or conditions such assumption, transfer or assignment. Any provision that prohibits, restricts or conditions the assignment or transfer of any such Executory Contract or unexpired lease or that terminates or modifies such executory contract or unexpired lease or allows the counterparty to such Executory Contract or unexpired lease to terminate, modify, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon any such transfer and assignment constitutes an unenforceable anti-assignment provision and is void and of no force or effect.

**5. Insurance Policies.**

All insurance policies pursuant to which the Debtor has any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as Executory Contracts pursuant to the Plan and shall be treated in accordance with Article VII of the Plan.

**C. Provisions Governing Distributions.**

**1. Record Date for Distributions**

As of the Voting Deadline, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Bankruptcy Court, the Debtor or its agents shall be deemed closed, and there shall be no further changes made to reflect any new record holders of any Claims or Interests. The Proponent and/or the Debtor shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Voting Deadline.

**2. Timing and Calculation of Amounts to Be Distributed.**

Each Holder of an Allowed Claim shall receive Distributions as provided for in the Plan. In the event that 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. If and to the extent that there are Disputed Claims, Distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Section 8.6 of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the Distributions provided for in the Plan, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

**3. Liquidating Trust.**

The Liquidating Trust shall be established to receive the Unsecured Creditor Carveout, the Avoidance Actions, and any Excess Sale Proceeds, and to distribute such Property and the proceeds of such Property in accordance with the Plan. On the Effective Date, the Unsecured Creditor Carveout, the Avoidance Actions, and any Excess Sale Proceeds, shall be transferred to and vested in the Liquidating Trust, free and clear of any Claims, Liens and Interests, to be managed and used by the Liquidating Trustee for the sole purposes of carrying out the terms of the Plan and effectuating the Distributions provided in the Plan. The Liquidating Trust shall qualify as a liquidating trust as described in Treasury Regulation section 301.7701 – 4(d) and shall be treated as a grantor trust for United States federal income tax purposes. AFP shall

appoint the Liquidating Trustee, who shall have the authority to manage the day-to-day operations of the Liquidating Trust, including, without limitation, by disposing of the assets of the Liquidating Trust, appearing as a party in interest, calculating Distributions, paying taxes and such other matters as more particularly described in the Plan and the Liquidating Trust Agreement. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall be responsible for making Distributions to Holders of Allowed Class 3 Claims. Expenses and fees of the Liquidating Trust, including the expenses of the Liquidating Trustee and his representatives and professionals, will be satisfied from the assets of the Liquidating Trust and its proceeds, as set forth in the Liquidating Trust Agreement.

**4. *Disbursing Agent.***

Except as otherwise provided for in the Plan (i) with respect to Distributions to Holders of Allowed Class 3 Claims or (ii) in Section 2.1(b) of the Plan, all Distributions under the Plan shall be made by the Purchaser as Disbursing Agent, or such other Entity designated on or before the Effective Date by the Purchaser as a Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

**5. *Rights and Powers of Disbursing Agent***

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all Distributions contemplated by the Plan; and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or the Confirmation Order, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

**6. *Distributions on Account of Claims Allowed After the Effective Date.***

(a) Payments and Distributions on Disputed Claims. Notwithstanding any other provision of the Plan, no Distributions shall be made under the Plan on account of any Disputed Claim, unless and until such Claim becomes an Allowed Claim. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

(b) Distributions to Holders of Disputed Claims. Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Disbursing Agent or the Liquidating Trustee, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

**7. *Delivery of Distributions.***

The following terms shall govern the delivery of Distributions and undeliverable or unclaimed Distributions with respect to Claims.

(a) Delivery of Distributions in General. Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made to Holders of record as of the Voting Deadline by the Liquidating Trustee or the Disbursing Agent, as appropriate: (a) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent or the Liquidating Trustee, as appropriate, after the date of any related Proof of Claim; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Liquidating Trustee or the Disbursing Agent, as appropriate, has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Case on the Holder's behalf. Distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set forth in the Plan. The Proponent, the Debtor, the Liquidating Trustee and the Disbursing Agent, as applicable, shall not incur any liability whatsoever on account of any Distributions under the Plan except for gross negligence or willful misconduct.

(b) Minimum Distributions. The Liquidating Trustee and Disbursing Agent shall not be required to make partial or fractional Distributions or Distributions of \$20 or less.

(c) Undeliverable Distributions. In the event that any Distribution to any Holder is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Disbursing Agent or the Liquidating Trustee, as applicable, has determined the then current address of such Holder, at which time such Distribution shall be made as soon as practicable after such Distribution has become deliverable or has been claimed to such Holder without interest; provided, however, such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of six (6) months from the Effective Date. After such date, all "unclaimed property" or interests in property shall belong to Purchaser (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be discharged and forever barred.

(d) Time Bar to Payment. Checks issued by the Disbursing Agent or the Liquidating Trustee in respect of Allowed Claims shall be null and void if not cashed within sixty (60) days after the date of issuance. Requests for reissuance of any check shall be made directly to the Disbursing Agent or the Liquidating Trustee, as applicable, by the Holder of the Allowed Claim with respect to which such check was originally issued. Any claim in respect of such a voided check shall be made on or before the later of 120 days after the date of issuance of such check. After such date, all Claims in respect of voided checks shall be discharged and forever barred.

#### **8. *Allocation of Plan Distributions between Principal and Interest.***

Except as otherwise expressly provided in the Plan, to the extent that any Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued by unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount

of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of the such Claim representing accrued but unpaid interest.

**9. Means of Cash Payment.**

Payments of Cash made pursuant to the Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of Liquidating Trustee or the Disbursing Agent, by (a) checks drawn on or (b) wire transfers from a bank selected by the Liquidating Trustee or the Disbursing Agent, as applicable. Cash payments to foreign creditors, if any, may be made, at the option of the Liquidating Trustee or the Disbursing Agent, as applicable, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**10. Withholding and Reporting Requirements.**

In connection with the Plan and all Distributions hereunder, the Liquidating Trustee and the Disbursing Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trustee and the Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding or reporting requirements. All persons holding Claims or Interests shall be required to provide any information to the Liquidating Trustee or Disbursing Agent necessary to affect the reporting of such information and the withholding of such taxes, including, but not limited to, providing executed W-8 and/or W-9 tax forms, and to the extent such executed W-8 and/or W-9 tax forms are required for the Liquidating Trustee or the Disbursing Agent to make Distributions hereunder, all Holders of Claims who fail to provide the Liquidating Trustee or the Disbursing Agent with such executed W-8 and/or W-9 tax forms within ninety (90) days of receipt of a written request shall not be entitled to receive any Distribution under this Plan.

**11. Fractional Cents.**

Notwithstanding any other provision of the Plan, no payments or Distributions under the Plan of or on account of fractions of cents will be made. When any payment or Distribution of or on account of a fraction of a cent to any Holder of an Allowed Claim would otherwise be required, the actual payment or Distribution made will reflect a rounding of such fraction to the nearest whole cent.

**D. Preservation of Causes of Action and Procedures for Resolving Disputed Claims.**

**1. Preservation of Rights.**

Except to the extent that any Claim is Allowed during the Chapter 11 Case or expressly by the Plan, the Confirmation Order, or other order of the Bankruptcy Court, nothing, including, but not limited to, the failure of the Debtor, the Liquidating Trustee, the Disbursing Agent, the Purchaser or the Proponent to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Case, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Disbursing Agent, the Liquidating Trustee, the Purchaser or the Proponent with respect to any Claim or Interest, including, but not limited to, all rights of the Disbursing Agent,

Liquidating Trustee, the Purchaser or the Proponent to contest or defend themselves against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

**2. *Rights of Action.***

Except as otherwise provided in the Plan or the Confirmation Order, all Avoidance Actions shall automatically be transferred to and become the property of the Liquidating Trust, and the Liquidating Trustee shall have standing to pursue such Avoidance Actions. All other Causes of Action, other than the Avoidance Actions, shall automatically be transferred to and become property of the Purchaser.<sup>7</sup> Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trustee, or the Purchaser, as applicable, will have the right to enforce and prosecute such Avoidance Actions and other Causes of Action against any Entity, that arose before the Effective Date, other than those expressly conveyed, released or compromised as part of or pursuant to the Plan.

**3. *Setoffs.***

The Proponent, the Purchaser, the Liquidating Trustee or the Disbursing Agent, as applicable, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made), any claims of any nature whatsoever that the Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release of any such claim the Debtor (or the Liquidating Trustee or the Disbursing Agent) may have against the holder of such Claim.

**4. *Allowance of Claims.***

Except as expressly provided in the Plan or the Confirmation Order, no Claim shall be deemed Allowed unless and until such Claim is deemed Allowed under the Bankruptcy Code, under the Plan, or the Bankruptcy Court enters a Final Order in the Chapter 11 Case allowing such Claim under section 502 of the Bankruptcy Code. Except as expressly provided in the Plan or the Confirmation Order, or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), the Liquidating Trustee and/or the Disbursing Agent, as applicable, after the Effective Date will have and retain any and all rights and defenses held by the Debtor with respect to any Claim as of the Petition Date. All claims of any Entity that owes money to the Debtor shall be disallowed unless and until such Entity pays, in full, the amount it owes the Debtor.

**5. *Objections to Claims.***

Unless otherwise ordered by the Court after notice and a hearing, the Proponent, the Purchaser, the Disbursing Agent or the Liquidating Trustee, as applicable, shall have the right, on and after the Effective Date, to File Objections to Claims (except those specifically Allowed

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<sup>7</sup> AFP is not aware that any Causes of Action exist that could be of material value to the Purchaser.

by this Plan) and shall serve a copy of each such objection upon the Holder of the Claim to which the Objection is made as soon as practicable. An Objection to any Claim shall be deemed properly served on the Holder thereof if the objecting party effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004; (b) by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified in the Proof of Claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Case. Any objections to Claims shall be filed and served on or before the later of: (a) one hundred eighty (180) days after the Effective Date, unless extended by order of the Bankruptcy Court and (b) such date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) above.

**6. *No Payment or Distribution Pending Allowance.***

All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by agreement of the Disbursing Agent, Liquidating Trustee, the Purchaser, or the Proponent and the Holder of such Claim, by operation of law, by Final Order, or by the Plan. Notwithstanding any other provision in the Plan, no payment or Distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim.

**7. *Estimation of Claims.***

Prior to the Effective Date, the Debtor, and after the Effective Date, the Liquidating Trustee, the Disbursing Agent or the Purchaser, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim, including, without limitation, during the pendency of any appeal relating to any objection to a Claim. In the event the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor (before the Effective Date) or the Liquidating Trustee, the Disbursing Agent or the Purchaser (after the Effective Date) may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

**VIII.**

**OTHER ASPECTS OF THE PLAN**

**A. Conditions to Occurrence of Effective Date.**

The occurrence of the Effective Date of the Plan is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Confirmation Order shall authorize the Sale and direct that the Debtor take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases and other agreement or document created in connection with the Plan and the Sale and the transactions contemplated thereby.

(b) The transactions contemplated by the Sale shall have been consummated.

(c) The Confirmation Order shall have become a Final Order.

(d) The Disbursing Agent has been appointed.

(e) The Liquidating Trust has been established and the Liquidating Trustee has been appointed.

(f) The statutory fees owing to the U.S. Trustee shall have been paid in full.

(g) All other actions, authorizations, consents and regulatory approvals required (if any) and all documents necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Proponent, or, if waivable, waived by the Person or Persons entitled to the benefit thereof.

(h) No order of a court shall have been entered and shall remain in effect restraining the consummation of the Plan.

Notwithstanding the foregoing, the Proponent shall have the sole discretion and right to waive one or more of the conditions precedent set forth in the Plan.

If the Effective Date does not occur on or before the date that is ninety (90) days after the Confirmation Date or if the Confirmation Order is vacated, (i) except as provided in Section 2.1(b) and 6.2 of the Plan, no Distributions under the Plan shall be made, (ii) AFP shall be deemed entitled to relief from the automatic stay pursuant to Section 362(d) of the Bankruptcy Code, and (iii) all the Debtor's obligations with respect to the Claims and the Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor or any other entity or to prejudice in any manner the rights of the Debtor or any other Entity in any further proceedings involving the Debtor or otherwise.

**B. Effects of Plan Confirmation.**

**1. *Releases.***

(a) **Releases by the Debtor.** Section 11.1(a) of the Plan provides for customary releases by the Debtor of third parties defined in the Plan as Released Parties. Excepted from these releases are Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including fraud) or gross negligence.

(b) **Releases by Holders of Claims and Interests.** Section 11.1(b) of the Plan provides for customary releases by Holders of Claims and Interests in favor of the Proponent, the Purchaser, the Debtor and the Estate. Excepted from these releases are Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct (including fraud) or gross negligence.

**2. *Discharge, Injunction and Exculpation.***

(a) **Discharged Claims and Terminated Interests.** Because the Plan provides for the liquidation of the Debtor, pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation of the Plan will not discharge Claims against the Debtor; provided, however, that no Holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other Distribution from, or seek recourse against, the Debtor's successors or their property, except as expressly provided in the Plan.

(b) **Exculpation and Limitation of Liability.** Section 11.2(b) of the Plan contains a customary exculpation provision in favor of the Liquidating Trustee, the Disbursing Agent, the Purchaser and the Proponent. Exculpated claims exclude any act or omission that is determined by a Final Order to have constituted gross negligence or willful misconduct.

(c) **Injunction.** Section 11.2(c) of the Plan provides for an injunction to be entered prohibiting the Holder of any Claim or Cause of Action from pursuing any Claim or Cause of Action specifically released in the Plan.

**3. *Terms of Injunctions or Stay.***

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105(a) or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, provided, however, that the injunction imposed under the Injunction Order shall dissolve in accordance with the terms of the Injunction Order.

**C. Retention of Jurisdiction.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case and all matters arising out of, or related to, the Chapter 11 Case and the Plan, as more fully set forth in Article XII of the Plan.



**D. Modification, Revocation or Withdrawal of the Plan.**

Subject to Article XII of the Plan, the Proponent reserves the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019. The Proponent further reserves the right to revoke or withdraw the Plan before the Confirmation Date.

**E. Miscellaneous Provisions.**

Article XIII of the Plan contains various miscellaneous provisions, including provisions related to the binding effect of the Plan and the Plan Supplement, the filing and service of documents before and after the Effective Date, a reservation of rights by the Proponent, the severability of Plan provisions, incorporation of exhibits and Plan Supplement into the Plan, solicitation of votes, closing of Chapter 11 Case and resolution of conflicts.

**IX.**

**VOTING REQUIREMENTS**

**A. Classes Entitled to Vote.**

Subject to the provisions of the Disclosure Statement Order, any Holder of a Claim against the Debtor as of the Petition Date in Classes 1 or 3, which Claim has not been deemed Disallowed by the Bankruptcy Code or order of the Bankruptcy Court and, as to which, no objection has been filed, shall be entitled to vote to accept or reject the Plan if: (i) such Holder's Claim has been scheduled by the Debtor (and such Claim is not scheduled as disputed, contingent or unliquidated) or (ii) such Holder has filed a proof of Claim on or before the Bar Date.

**B. Classes Not Entitled to Vote.**

Any Holder of a Claim in Class 2 is not entitled to vote because Class 2 is deemed to have accepted the Plan pursuant section 1126(f) of the Bankruptcy Code.

Any Holder of a Claim or Interest in Class 4 is not entitled to vote to accept or reject the Plan because Class 4 is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Unless otherwise permitted in the Plan, the Holder of any Disputed Claim is not entitled to vote with respect to such Disputed Claim, unless the Bankruptcy Court, upon application by such Holder, prior to the Confirmation Hearing, temporarily allows such Disputed Claim for the limited purpose of voting to accept or reject the Plan. In addition, any Holders of Claims deemed Disallowed pursuant to the Bankruptcy Code shall not be entitled to vote with respect to such Disallowed Claim until the Holder of such Claim has complied with the provisions of the Bankruptcy Code. A vote on the Plan may be disregarded if the Bankruptcy Court determines,

after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

**C. Votes Required for Acceptance by Classes of Claims**

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the claims of that class which actually cast ballots for acceptance or rejection of the Plan. Thus, acceptance by a class of claims occurs only if at least two-thirds in dollar amount and a majority in number of the holders of such claims actually voting cast their ballots in favor of acceptance. A Class of Holders of Claims shall be deemed to accept the Plan in the event that no Holder of a Claim within that Class submits a Ballot by the Ballot Date.

**D. Voting Procedures.**

Riker Danzig Scherer Hyland & Perretti LLP, the Proponent's counsel, will serve as the voting agent for all claims and will generally oversee the voting process. After carefully reviewing this Disclosure Statement and the Exhibits attached hereto, please indicate your vote with respect to the Plan on the enclosed Ballot and return it either by overnight courier or regular mail in the envelope provided. **BALLOTS SUBMITTED BY FACSIMILE OR OTHER ELECTRONIC TRANSMISSION WILL NOT BE ACCEPTED AND WILL BE VOID.** Voting requirements are explained elsewhere in this Disclosure Statement.

PLEASE VOTE AND, ON OR BEFORE **JANUARY 6, 2012**, RETURN YOUR BALLOT TO:

Riker Danzig Scherer Hyland & Perretti LLP  
Attn: Silva Dechoyan  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07962-1981  
973-538-0800

**THE DEADLINE TO VOTE TO ACCEPT OR REJECT THE PLAN IS JANUARY 6, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME). TO BE COUNTED YOUR BALLOT MUST BE ACTUALLY RECEIVED AT THE ABOVE ADDRESS BY THIS DEADLINE. IF YOUR VOTE IS RECEIVED AFTER THIS VOTING DEADLINE, THE PROPONENT, IN ITS SOLE DISCRETION, WILL DECIDE WHETHER YOUR VOTE IS COUNTED.**

**X.**

**CONFIRMATION OF THE PLAN**

**A. The Confirmation Hearing.**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to begin on **January 18, 2012 at 10:00 a.m.** (prevailing Eastern Time), and to continue on January 19 and 20, 2012, in the courtroom of The Honorable Michael B. Kaplan, U.S.B.J., United States Bankruptcy Court for the District of New Jersey, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, NJ 08608. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to confirmation of the Plan must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court and set forth the name of the objecting party, the nature and amount of the Claim or Equity Interest held or asserted by the objecting party against the Debtor's estate or property, the basis for the objection and the specific grounds therefor. The objection, together with proof of service thereof, must then be filed with the Bankruptcy Court, with a copy to chambers, and served upon: counsel to the Proponent, Riker, Danzig, Scherer, Hyland & Perretti LLP, One Speedwell Avenue, Morristown, New Jersey 07962-1981, Attn.: Joseph L. Schwartz, Esq. (jschwartz@riker.com) and all parties filing notices of appearance in the Debtor's Chapter 11 Case.

Objections to confirmation of the Plan are governed by Federal Rule of Bankruptcy Procedure 9014. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY AND PROPERLY SERVED AND FILED BY JANUARY 6, 2012 (PREVAILING EASTERN STANDARD TIME), IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**B. Statutory Requirements for Confirmation of the Plan.**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan (a) is accepted by all Impaired Classes of Claims and Equity Interests or, if rejected by an Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class, (b) is feasible and (c) is in the "best interests" of Holders of Claims and Equity Interests impaired under the Plan. Specifically, in addition to other applicable requirements, the Proponent believes that the Plan satisfies or will satisfy the applicable Confirmation requirements of section 1129 of the Bankruptcy Code set forth below:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Proponent has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.

- Either each Holder of an impaired Claim has accepted the Plan, or will receive or retain under the Plan on account of such Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount that the Holder would receive or retain if the Debtor were liquidated on that date under chapter 7 of the Bankruptcy Code, including pursuant to section 1129(b) of the Bankruptcy Code for Equity Interests deemed to reject the Plan.
- Each Class of Claims that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of the Class pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims and Priority Tax Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successors thereto under the Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee, will be paid as of the Effective Date.

***1. Fair and Equitable Test.***

The Proponent will seek to confirm the Plan notwithstanding the nonacceptance or deemed nonacceptance of the Plan by any impaired Class of Claims. To obtain such confirmation, the Proponent must demonstrate to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such dissenting impaired Class. A plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class receives more than it is entitled to for its claims or interests. The Debtor believes that the Plan satisfies this requirement.

The Bankruptcy Code establishes different “fair and equitable” tests for secured claims, unsecured claims and interests, as follows:

Secured Claims: Either the plan must provide: (i) for the holders of such claims to retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims, and each holder of a claim receives deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the Plan, of at least the value of such holder’s interest in the estate’s interest in such property; (ii) for the sale of any property that is subject to the liens securing such claims, free and clear of such

liens, with such liens to attach to the proceeds of such sale; or (iii) for the realization by such holders of the indubitable equivalent of such claims.

Unsecured Claims: Either (i) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

Equity Interests: Either (i) each interest holder will receive or retain under the Plan property of a value equal to the greater of (y) the fixed liquidation preference or redemption price, if any, of such equity interest or (z) the value of the equity interest, or (ii) the holders of interests that are junior to the equity interest will not receive any property under the plan.

The Proponent believes that the Plan will satisfy the “fair and equitable” requirement.

THE PROPONENT BELIEVES THAT THE PLAN MAY BE CONFIRMED ON A NONCONSENSUAL BASIS (PROVIDED AT LEAST ONE IMPAIRED CLASS OF CLAIMS VOTES TO ACCEPT THE PLAN). ACCORDINGLY, THE PROPONENT MAY DEMONSTRATE AT THE CONFIRMATION HEARING THAT THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(b) OF THE BANKRUPTCY CODE AS TO ANY NON-ACCEPTING CLASS.

## **2. *Feasibility***

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor other than as set forth in such plan. Here, because the Plan specifically provides for the liquidation of the Debtor, the Proponent believes that feasibility requirements under section 1129(a)(11) of the Bankruptcy Code will be satisfied. Furthermore, the Purchaser has the financial wherewithal to make all of the payments required to be made in order for the Plan to become Effective.

## **3. *No Unfair Discrimination.***

This test applies to Classes of Claims or Equity Interests that are of equal priority and are receiving different treatment under the Plan. This test does not require that the treatment be the same or equivalent, but that such treatment is “fair.” The Proponent believes that the proposed treatment of the Classes of Claims and Equity Interests are fair and will satisfy this test.

## **4. *“Best Equity Interests” Test and Liquidating Analysis.***

With respect to each impaired Class of Claims and Equity Interests, confirmation of the Plan requires that each such Holder either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

This analysis requires the Bankruptcy Court to determine what the Holders of Allowed Claims and Allowed Equity Interests in each Impaired Class would receive from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. To determine if the Plan is in the best interests of each impaired class, the value of the Distributions from the proceeds of the liquidation of the Debtor's unencumbered Assets (after subtracting the amounts attributable to the aforesaid Claims) is then compared with the value offered to such classes of Claims and Equity Interests under the Plan. Here, as set forth on the "Liquidation Analysis," which is attached hereto as **Exhibit "C,"** the Proponent believes that Holders of Allowed Claims and Allowed Equity Interests will receive more pursuant to the Plan than in a chapter 7 liquidation.

This belief is based upon the fact that the Plan provides for the Sale on a going concern basis and will provide Holders of Claims with at least the amount, if not more, than Holders would receive in a Chapter 7 liquidation. Further, this belief is based upon consideration of the effects that a chapter 7 liquidation would have upon the ultimate proceeds available for Distribution to Holders of impaired Claims and Equity Interests, including: (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a chapter 7 trustee and professional advisors of the trustee, (b) the Proponent's belief that the Debtor's Assets are more valuable as a going concern than as a result of the "forced sale" atmosphere that would prevail in a chapter 7 proceeding, (c) the adverse affects upon the Hotel and the Debtor's business as a result of the likely loss of key employees and customers upon conversion to a chapter 7 proceeding, (d) the potential reduction in value associated with a chapter 7 trustee's operation of the Hotel and (e) the substantial delay in Distributions to the holders of impaired Claims and Equity Interests that would likely ensue in a chapter 7 liquidation.

Additionally, under the Plan, the Unsecured Creditor Carveout will be available for the benefit of Unsecured Creditors. Under a chapter 7 liquidation scenario, the Unsecured Creditor Carveout would not be available for the benefit of Unsecured Creditors.

## **XI.**

### **PLAN RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

**ALL HOLDERS IN IMPAIRED CLASSES SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.**

The alternatives to the Plan are (i) the Debtor's liquidation under Chapter 7 of the Bankruptcy Code (ii) confirmation of the Plan or (iii) confirmation of the Debtor's Plan. After evaluating these alternatives, the Proponent has concluded that the Plan is the best alternative and will maximize recoveries to claimants assuming confirmation of the Plan. Nonetheless, there are a number of risk factors that Holders of Claims should consider.

**A. The Proponent May Not Be Able to Secure Confirmation of the Plan.**

The Proponent cannot assure you that the Proponent will receive the requisite acceptances to confirm the Plan. Even if the Proponent receives the requisite acceptances, the Proponent cannot assure you that the Bankruptcy Court will confirm the Plan. A non-accepting Creditor might challenge the adequacy of this Disclosure Statement or the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

**B. Parties in Interest May Object to the Amount of a Claim.**

The Proponent and the other parties as authorized in the Plan each reserve the right to object to the amount of any Claim or Equity Interest. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim or Equity Interest whose Claim or Equity Interest is subject to an objection. Any such Holder of a Claim or Equity Interest may not receive its specified share of the estimated Distributions described in this Disclosure Statement.

**C. Other.**

No legal or tax advice is provided by this Disclosure Statement. This Disclosure Statement is not legal advice to any person. The contents of this Disclosure Statement should not be construed as legal, business or tax advice. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation of the Plan.

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including, without limitation, the Proponent) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Proponent, Holders of Allowed Claims, Interests or any other parties in interest.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Proponent, the Disbursing Agent and the Liquidating Trustee may seek to investigate, File and prosecute Claims and Interests and may object to Claims after the Confirmation or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such Claims or objections to Claims.

No representations concerning or relating to the Debtor, the Chapter 11 Case or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to counsel to the Proponent and the Office of the United States Trustee for the District of New Jersey.

## **XII.**

### **CERTAIN TAX CONSEQUENCES OF THE PLAN**

#### **A. Tax Consequences of Confirmation.**

**IRS CIRCULAR 230 DISCLOSURE:** To ensure compliance with requirements 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.

Confirmation may have federal income tax consequences for the Proponent, the Debtor and Holders of Claims or Equity Interests. The Proponent has not obtained and does not intend to request a ruling from the IRS, nor has the Proponent obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by Confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each Holder of a Claim is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan.

NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF A CLAIM OR EQUITY INTEREST. SUBSTANTIAL UNCERTAINTY EXISTS WITH RESPECT TO THE TAX ISSUES DISCUSSED BELOW. EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT A TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.

#### **B. Certain U.S. Federal Tax Consequences to the Holders of Claims and Equity Interests.**

A Holder of an Allowed Claim or Equity Interest will generally recognize ordinary income to the extent that the amount of Cash or property received (or to be received) under the Plan is attributable to interest that accrued on a Claim but was not previously paid by the Debtor or included in income by the Holder of the Allowed Claim or Equity Interest. A Holder of an Allowed Claim or Equity Interest will generally recognize gain or loss equal to the difference between the Holder's adjusted basis in its Claim and the amount realized by the Holder upon consummation of the Plan that is not attributable to accrued but unpaid interest. The amount realized will equal the sum of Cash and the fair market value of other consideration received (or to be received). The character of any gain or loss that is recognized will depend upon a number of factors, including the status of the Holder of the Claim, the nature of the Claim or Equity Interest in its hands, whether the Claim was purchased at a discount, whether and to what extent the creditor has previously claimed a bad debt deduction with respect to the Claim, and the



creditor's holding period of the Claim or Equity Interest. If the Claim or Equity Interest in the creditor's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Holder of the Claim is a non-corporate taxpayer and held such Claim or Equity Interest for longer than one year or short-term capital gain or loss if the Holder of the Claim held such Claim or Equity Interest for less than one year.

A Holder of an Allowed Claim or Equity Interest who receives, in respect of its Claim, an amount that is less than its tax basis in such Claim or Equity Interest may be entitled to a bad debt deduction if either: (i) the Holder is a corporation; or (ii) the Claim or Equity Interest constituted (a) a debt created or acquired (as the case may be) in connection with a trade or business of the Holder or (b) a debt the loss from the worthlessness of which is incurred in the Holder's trade or business. A Holder that has previously recognized a loss or deduction in respect of its Claim or Equity Interest may be required to include in its gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Claim or Equity Interest. Holders of Claims or Equity Interests who were not previously required to include any accrued but unpaid interest with respect to in their gross income on a Claim or Equity Interest may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. Holders previously required to include in their gross income any accrued but unpaid interest on a Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan.

**C. Disclaimer.**

The foregoing is intended to be only a summary of certain of the United States federal income tax consequences of the Plan and not a substitute for careful tax planning with a tax professional. Holders of Claims or Equity Interests are strongly urged to consult with their own tax advisors regarding the federal, state, local and foreign income and other tax consequences of the Plan, including, in addition to the issues discussed above, whether a bad debt deduction may be available with respect to their Claims and, if so, when such deduction or loss would be available.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE RESTRUCTURING, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

**XIII.**

**RECOMMENDATION**

In the opinion of the Proponent, the Plan is preferable to all other alternatives described in this Disclosure Statement, including the alternative treatment proposed in the Debtor's Plan, because the Plan will provide Creditors with the largest distribution on account of their Allowed Claims. Accordingly, the Proponent recommends that the Holders of Claims entitled to vote with respect to the Plan support Confirmation of the Plan and vote to accept the Plan.

[Signature page to follow]

Respectfully submitted,

AFP 104 CORP.

By: /s/ Anthony Miceli

Name: Anthony Miceli

Title: President

Dated: November 15, 2011

Prepared by:

Joseph L. Schwartz, Esq.

Kevin J. Larner, Esq.

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# EXHIBIT A

## Plan

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

In re:

OCEAN PLACE DEVELOPMENT, LLC,

Debtor.

Chapter 11

Cases Nos. 11-14295 (MBK)

Hon. Michael B. Kaplan

**FIRST AMENDED PLAN OF LIQUIDATION UNDER CHAPTER 11 OF  
THE BANKRUPTCY CODE PROPOSED BY AFP 104 CORP.**

Dated: November 15, 2011

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## **INTRODUCTION**

This First Amended Plan of Liquidation (the “Plan”) is proposed by AFP 104 Corp. (“AFP,” or the “Proponent”) in the above-captioned Chapter 11 Case of Ocean Place Development, LLC (the “Debtor”), pursuant to section 1121(a) of title 11 of the United States Code, 11 U.S.C. § 1121(a). Filed contemporaneously herewith, is the Proponent’s First Amended Disclosure Statement (the “Disclosure Statement”), which is provided to you to help you understand the Plan. The Disclosure Statement contains, among other things, a discussion of the Debtor’s history, a description of the Debtor’s business, a summary of the material events that have occurred during the Chapter 11 proceeding and a summary of the Plan.

ALL CREDITORS AND OTHER PARTIES-IN-INTEREST ARE ENCOURAGED TO CAREFULLY REVIEW THE PLAN AND THE DISCLOSURE STATEMENT PREPARED BY THE PROPONENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

## **ARTICLE I**

### **RULES OF INTERPRETATION, COMPUTATION OF TIME AND DEFINED TERMS**

#### **A. Rules of Interpretation.**

For purposes of interpreting the Plan: (i) any reference herein to a contract, instrument, release, indenture or other agreement or document being a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (ii) any reference herein to an existing document or exhibit filed, or to be filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented from time to time; (iii) unless otherwise specified, all references herein to articles and sections are references to articles and sections of the Plan; (iv) the words “herein,” “hereof,” and “hereto” refer to the Plan in their entirety rather than to a particular portion of the Plan; (v) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (vi) the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply; (vii) all exhibits to the Plan are incorporated into the Plan, and shall be deemed to be included in the Plan, regardless of when filed with the Bankruptcy Court; and (viii) whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date, or as soon as practicable thereafter.

#### **B. Computation of Time.**

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

C. Defined Terms.

For purposes of the Plan, unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them below. Any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable.

1.1. “Administrative Expense” means a Claim for costs and expenses of administration pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; (b) compensation for legal, financial advisory, accounting, and other services and reimbursement of expenses Allowed pursuant to sections 328, 330(a), or 331 of the Bankruptcy Code or otherwise for the period commencing on the Petition Date; (c) all fees and charges assessed against the Estate pursuant to chapter 123 of the Judicial Code; (d) all requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code; and (e) Claims pursuant to section 503(b)(9) of the Bankruptcy Code.

1.2. “Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code.

1.3. “AFP” means AFP 104 Corp., together with its successors and assigns.

1.4. “AFP Action” means the action filed by AFP in the Supreme Court of the State of New York, County of New York, against William R. Dixon, Jr., Tiburon Capital LLC, Tiburon Ocean Place LLC, David L. Orr, and Orr Partners, LLC, Index No. 650436/2011.

1.5. “AFP Action Defendants” means, collectively, William R. Dixon, Jr., Tiburon Capital LLC, Tiburon Ocean Place LLC, David L. Orr, and Orr Partners, LLC, defendants in the AFP Action.

1.6. “AFP Claim” means the Allowed Claim of AFP against the Debtor’s estate in the amount of \$57,245,372.26, plus attorneys’ fees and costs.

1.7. “AFP Collateral” means all of the Debtor’s Assets, which Assets are subject to properly perfected Liens in favor of AFP pursuant to, among other things, the Prepetition Security Agreement.

1.8. “AFP Deficiency Claim” means AFP’s Claim in the amount of any remaining deficiency after deducting the AFP Secured Claim from the AFP Claim.

1.9. “AFP Judgment” means, collectively, any and all judgments entered in the Foreclosure Action.

1.10. “AFP Secured Claim” means AFP’s Allowed Secured Claim in the amount of the lesser of (a) the Purchase Price or (b) the AFP Claim.

1.11. “Allowed” when used as an adjective preceding the words “Claims” or “Equity Interest,” shall mean any Claim against or Equity Interests of the Debtor, proof of which was filed on or before the date designated by the Bankruptcy Court as the last date for filing proofs of such Claim or Equity Interest against the Debtor, or, if no proof of such Claim or Equity Interest is filed, which has been or hereafter is listed by the Debtor as liquidated in amount and not disputed or contingent and, in either case, a Claim as to which no objection to the allowance thereof has been interposed within the applicable period of limitations fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or as to which any objection has been interposed and such Claim has been allowed in whole or in part by a Final Order. Unless otherwise specified in the Plan, “Allowed Claim” and “Allowed Equity Interest” shall not, for purposes of computation of Distributions under the Plan, include interest on the amount of such Claim or Equity Interest from and after the Petition Date.

1.12. “Allowed Administrative Expense” means any Administrative Expense allowed under section 507(a)(2) of the Bankruptcy Code.

1.13. “Assets” means each and every item of property and interest of the Debtor or the Estate as of the Effective Date, whether tangible or intangible, legal or equitable, liquidated or unliquidated, and includes without limitation: (a) all Cash; (b) Real Property; (c) all Actions; (d) any other rights, deferred taxes, claims, causes of action or defenses, whether arising by statute or common law, and whether arising under the laws of the United States, other countries, or applicable state or local law; and (e) all of the Debtor’s books, records and privileges.

1.14. “Auction” means the auction for the sale of the Purchased Assets that will be held on the Auction Date in accordance with the Plan and Confirmation Order.

1.15. “Auction Date” means the date of the Auction, which will occur on a date that is within forty-five (45) days after the Confirmation Date.

1.16. “Avoidance Actions” mean all Claims and Causes of Action which the Debtor has asserted or has the power to assert pursuant to Chapter 5 of the Bankruptcy Code.

1.17. “Ballot” means the ballot accompanying the Disclosure Statement upon which certain Holders of Impaired Claims and Interests entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process, and which must be actually received by the Balloting Agent on or before the Voting Deadline.

1.18. “Balloting Agent” means Riker Danzig Scherer Hyland & Perretti LLP, whose address is Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey, 07962-1981.

1.19. “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended, and as codified in Title 11 of the United States Code, to the extent applicable to the Chapter 11 Case.

1.20. “Bankruptcy Court” means the United States District Court for the District of New Jersey having jurisdiction over the Chapter 11 Case and, to the extent of any reference

made pursuant to 28 U.S.C. § 158, the unit of such District Court constituted pursuant to 28 U.S.C. § 151.

1.21. “Bankruptcy Rules” means the rules and forms of practice and procedure in bankruptcy, promulgated under 28 U.S.C. § 2075 and also referred to as the Federal Rules of Bankruptcy Procedure and the General and Local Rules of the Bankruptcy Court for the District of New Jersey.

1.22. “Barclays” means Barclays Capital Real Estate, Inc.

1.23. “Bidding Procedures” means the procedures for conducting the Auction, which procedures shall be approved as part of the Confirmation Order.

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

1.25. “Cash” means the legal tender of the United States of America or the equivalent thereof.

1.26. “Cash Collateral” means all of the Debtor’s Cash, which Cash has been determined to be AFP’s Cash Collateral by orders of the Bankruptcy Court.

1.27. “Causes of Action” means any action, claim, cause of action, controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to sections 362 or chapter 5 of the Bankruptcy Code, including Avoidance Actions; (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state law fraudulent transfer claim.

1.28. “Chapter 11 Case” means the chapter 11 case pending for the Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court under Case No. 11-14295 (MBK).

1.29. “City” means the City of Long Branch, New Jersey.

1.30. “City Judgments” means, collectively, judgments and orders in favor of the City and against William R. Dixon, Jr. Tiburon Capital LLC, David L. Orr and Orr Partners, LLC, entered in case Docket No. MONL-4604-08.

1.31. “Claim” means any claim against the Debtor as defined in section 101(5) of the Bankruptcy Code.

1.32. “Claims Bar Date” means the dates established in the Bankruptcy Case by which Proofs of Claim must be Filed.

1.33. “Claims Register” means the official register of Claims maintained by Bankruptcy Court.

1.34. “Class” means a grouping of substantially similar Claims or Equity Interests for common treatment thereof pursuant to the terms of the Plan.

1.35. “Closing Date” means the date of the closing of the Sale.

1.36. “Confirmation” means the entry of the Confirmation Order.

1.37. “Confirmation Date” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of Bankruptcy Rules 5003 and 9021.

1.38. “Confirmation Hearing” means a hearing conducted before the Bankruptcy Court for the purpose of considering Confirmation of the Plan.

1.39. “Confirmation Order” means an Order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

1.40. “Consummation” means the occurrence of the Effective Date.

1.41. “Creditor” means any person that has a Claim against the Debtor that arose on or before the Petition Date or a Claim against the Debtor’s estate of any kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code. This includes all persons, corporations, partnerships, or business entities holding claims against the Debtor.

1.42. “Cure” means the distribution of Cash, or such other property as may be agreed upon by the parties or as ordered by the Bankruptcy Court, with respect to the assumption of an Executory Contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties, under such Executory Contracts or unexpired leases, to the extent such obligations are enforceable under the Bankruptcy Code and applicable law.

1.43. “CW” means Coakley & Williams Hotel Management Company, a Maryland corporation.

1.44. “CW Management Agreement” means the certain Hotel Management Agreement dated as of March 23, 2011 between the Debtor and CW.

1.45. “Debt” means, refers to and shall have the same meaning ascribed to it in section 101(12) of the Bankruptcy Code.

1.46. “Debtor” means Ocean Place Development, LLC, in its individual capacity as a debtor and debtor-in-possession in the Chapter 11 Case.

1.47. “Debtor’s Plan” means the Plan of Reorganization filed by the Debtor, along with any modifications thereto.

1.48. “Debtor’s Professionals” means Lowenstein Sandler, PC; CB Richard Ellis and any other Persons or Entities employed by the Debtor and to be compensated pursuant to sections 326, 327 or 1103 of the Bankruptcy Code during the Chapter 11 Case.

1.49. “DIP Credit Agreement” means that certain Loan and Security Agreement dated as of March 28, 2011 among the Debtor, as borrower, and OPN, as lender, and all documents related thereto.

1.50. “DIP Facility” means that certain debtor in possession credit facility entered into pursuant to the DIP Credit Agreement.

1.51. “DIP Lender” means OPN Acquisitions, LLC, a party to the DIP Credit Agreement.

1.52. “DIP Order” means the Order (a) Authorizing The Debtor To Obtain Postpetition Financing, Grant Security Interests And Liens And Accord Priority Status Pursuant To 11 U.S.C. §§ 361 and 364(c); (b) Modifying Automatic Stay Pursuant To 11 U.S.C. § 362(d); And (c) Granting Related Relief [Docket No. 112].

1.53. “Disallowed” means, with reference to a Claim, a Claim or any portion thereof that has been disallowed or expunged by a Final Order of the Bankruptcy Court or filed after the applicable Bar Date unless such late filing has been authorized by Final Order of the Bankruptcy Court.

1.54. “Disclosure Statement” means and refers to the Disclosure Statement filed by the Proponent, as required pursuant to section 1125 of the Bankruptcy Code *et seq.*, along with restatements, amendments, modifications or additional disclosures, if any, provided by the Proponent to comply with the provisions of the Bankruptcy Code and which has been approved by the Bankruptcy Court.

1.55. “Disclosure Statement Order” means the order of the Bankruptcy Court approving the Disclosure Statement.

1.56. “Disputed” means, with reference to any Claim, any Claim which has been or hereafter is listed on the Schedules as unliquidated, disputed or contingent or which is disputed under the Plan or as to which the Debtor has interposed a timely objection, has objected through the institution of a Cause of Action and/or has requested an estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection and/or request for estimation has not been withdrawn or determined by a Final Order of the Bankruptcy Court.

1.57. “Distribution” means any consideration to be distributed to any Entity pursuant to the Plan.

1.58. “Distribution Date” means the date upon which a Distribution is made in accordance with the Plan to Holders of Allowed Claims entitled to receive Distributions under the Plan.

1.59. “Distribution Record Date” means the date established by the Plan for determining the Holders of Claims and Interests entitled to Distributions pursuant to the Plan; and with respect to all Classes, shall be the Confirmation Date or such other date as may be set forth in the Confirmation Order.

1.60. “Effective Date” means the first Business Day after the last of the following occurs, unless some condition for the occurrence of the Effective Date is waived by the Proponent: (a) the date on which the Confirmation Order is entered by the Bankruptcy Court and (b) satisfaction of all other conditions precedent to the effectiveness of the Plan set forth herein.

1.61. “Entity” means an entity as defined in section 101(15) of the Bankruptcy Code.

1.62. “Equity Interest” means any membership interest or other ownership interest in the Debtor, including any warrants, options, or other rights to purchase any such ownership interest in the Debtor.

1.63. “Equity Interest Holder” means the holder of an Equity Interest in the Debtor.

1.64. “Estate” means the bankruptcy estate of the Debtor created under section 541 of the Bankruptcy Code.

1.65. “Excess Sale Proceeds” means any proceeds from the Sale in excess of the amount that is required to pay the AFP Secured Claim.

1.66. “Exculpated Claim” means any claim related to any act or omission in connection with, relating to, or arising out of the Debtor’s Chapter 11 Case, formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement or the Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other agreement; provided, however, that Exculpated Claims shall not include any act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct. For the avoidance of doubt, no Claim, obligation or liability expressly set forth in, arising under, or preserved by the Plan or the Plan Supplement constitutes an Exculpated Claim.

1.67. “Executory Contract” means every unexpired lease and other contract that is subject to being assumed or rejected by the Debtor under section 365 of the Bankruptcy Code, pursuant to the Plan or by separate motion.

1.68. “Final Decree” means the decree contemplated by Bankruptcy Rule 3022.

1.69. “File,” “Filed,” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

1.70. “Final Order” means an order of the Bankruptcy Court or a court of competent jurisdiction to hear appeals from the Bankruptcy Court which, not having been reversed, modified, or amended, and not being stayed, and the time to appeal from which or to seek review or rehearing of which having expired, has become final and is in full force and effect.

1.71. “Foreclosure Action” means the action filed by Barclays in the Superior Court of the State of New Jersey, Chancery Division, Monmouth County, against the Debtor, the State of New Jersey and Ricoh Americas Corporation, Docket No. F-38481-08.

1.72. “Fourth Amendment” means the Fourth Amendment to Operating Agreement dated as of March 28, 2011 [Docket No. 111].

1.73. “General Unsecured Claims” means any unsecured Claim against the Debtor that is not an Administrative Claim, a Priority Tax Claim, an Other Priority Claim, an Other Equity Claim, or a Professional Compensation Claim.

1.74. “Governmental Unit” means a governmental unit as defined in section 101(27) of the Bankruptcy Code.

1.75. “Holder” means the beneficial holder of any Claim.

1.76. “Hotel” means the Debtor’s hotel, The Ocean Place Resort and Spa, located on the Atlantic beachfront in Long Branch, New Jersey.

1.77. “Impaired” when used as an adjective preceding the words “Class of Claims” or “Class of Equity Interests,” means that the Plan alters the legal, equitable, or contractual rights of the member of that class.

1.78. “Impaired Class” means an impaired Class within the meaning of section 1124 of the Bankruptcy Code.

1.79. “Indemnification Claim” means, collectively, (I) any indemnification Claim of William R. Dixon, Jr., Tiburon Capital LLC, David L. Orr and Orr Partners LLC related to the City Judgments and (II) any indemnification Claim of William R. Dixon, Jr., Tiburon Capital LLC, Tiburon Ocean Place LLC, David L. Orr and Orr Partners LLC related to the Prepetition Credit Facility and the Foreclosure Action, including the Guaranty Dated as of April 25, 2006 in favor of Barclays (as assigned to AFP) and the AFP Action.

1.80. “Injunction Order” means the Order entered by the Bankruptcy Court on November 9, 2011 in Adversary Proceeding No. 11-02529 (MBK).

1.81. “Insider” means “insider” as defined in section 101(31) of the Bankruptcy Code.

1.82. “Initial Distribution Date” means the first Distribution Date following the Effective Date, which date shall be as soon as practicable after the Effective Date, but no later than twenty (20) days after the Effective Date.



- 1.83. “Lien” means a lien as defined in section 101(37) of the Bankruptcy Code.
- 1.84. “Liquidating Trust” means the trust to be established in accordance with Section 6.4 of the Plan.
- 1.85. “Liquidating Trust Agreement” means the agreement to be executed among the Liquidating Trustee, the Debtor and AFP establishing the Liquidating Trust, which shall be filed with the Court as part of the Plan Supplement.
- 1.86. “Liquidating Trust Documents” means the Liquidating Trust Agreement and any ancillary documents relating thereto, each of which shall be subject to the consent of AFP.
- 1.87. “Liquidating Trustee” means the trustee of the Liquidating Trust, who shall be selected by the Proponent.
- 1.88. “Local Rules” means the Local Bankruptcy Rules for the District of New Jersey.
- 1.89. “Manager” means TCL New Jersey Corp., a Delaware corporation.
- 1.90. “Operating Agreement” means the Operating Agreement of the Debtor dated as of April 25, 2006 and all amendments related thereto.
- 1.91. “OPN” means OPN Acquisitions, LLC.
- 1.92. “Other Priority Claim” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim or (b) a Priority Tax Claim.
- 1.93. “Other Secured Claim” means any Secured Claim other than the AFP Secured Claim.
- 1.94. “Other Equity Claim” means, collectively, the Claims filed by Tiburon Shores LLC (\$49,584,684.85), Tiburon Capital, LLC (\$6,211,152.94), William Dixon, Jr. (\$207,211.21) and TCL New Jersey Corp. (\$18,960.77), and the Claim listed on the Debtor’s Schedules in favor of Orr Partners in the amount of \$286,077.73, which shall be recharacterized as Equity Interests under the Plan.
- 1.95. “Person” means a “person” as defined in section 101(41) of the Bankruptcy Code.
- 1.96. “Petition Date” means February 15, 2011.
- 1.97. “Plan” means this First Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code, as amended, supplemented, or modified from time to time, including the Plan Supplement, which is incorporated herein by reference.
- 1.98. “Plan Supplement” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan to be Filed by the Proponent by the Plan Supplement Deadline, as it may thereafter be altered, amended, modified, or supplemented from time to time

in accordance with the terms hereof and in accordance with the Bankruptcy Code and the Bankruptcy Rules, and additional documents Filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement.

1.99. “Plan Supplement Deadline” means no later than ten (10) days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court.

1.100. “Prepetition Credit Facility” means the Loan Agreement, dated as of April 25, 2006 (as amended, restated, supplemented or otherwise modified from time to time) and all promissory notes related thereto (as amended from time to time), among the Debtor, as borrower, and Barclays, as lender, as assigned to AFP.

1.101. “Prepetition Security Agreement” means the “Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing” dated as of April 3, 2006 and effective as of April 25, 2006 (as amended, restated, supplemented or otherwise modified from time to time).

1.102. “Priority Tax Claim” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

1.103. “Pro Rata” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

1.104. “Proof of Claim” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

1.105. “Purchase Price” means the amount the Purchaser pays for the Purchased Assets in accordance with the Bidding Procedures.

1.106. “Purchased Assets” means all of the Assets of the Debtor to be purchased by the Purchaser through the Plan, and which shall include all of the Debtor’s Assets, except for: (i) Avoidance Actions and (ii) any Assets upon which Holders of Other Secured Claims hold properly perfected first priority Liens.

1.107. “Purchaser” means the Person that purchases the Purchased Assets through the Sale.

1.108. “Qualified Bidder” shall have the meaning ascribed to it in the Bidding Procedures, and, at a minimum, means a bidder at the Auction who has demonstrated the financial ability to (a)(i) close on the Sale within the time periods required by the Plan and (ii) make the payments to Creditors required by the Plan and (b) who has made a Qualified Bid. For avoidance of doubt, AFP shall automatically be deemed a Qualified Bidder.

1.109. “Qualified Bid” shall have the meaning ascribed to it in the Bidding Procedures, and, at a minimum, means a Cash bid and/or a credit bid at the Auction to purchase the Purchased Assets from a Person that the Proponent, in its reasonable discretion, deems

financially able to consummate the Sale of the Purchased Assets. A bid will only be deemed a Qualified Bid if, prior to making a bid, the bidder demonstrates at the Auction the ability to make a Cash deposit into Escrow with the Proponent's counsel in the amount of twenty percent (20%) of the bidder's Cash bid amount, plus the sum of \$1,600,000, which is the projected minimum amount required to pay Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed other Priority Claims, U.S. Trustee fees and the Unsecured Creditor Carveout. The Qualified Bidder shall be required to demonstrate the ability to make such deposit prior to making any bid.

1.110. "Rejection Claim" means a Claim arising from the rejection of an Executory Contract or Unexpired Lease.

1.111. "Released Parties" means AFP and the Purchaser, and their parents, subsidiaries, affiliates, officers, directors, members, as well as their employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants and representatives.

1.112. "Sale" means the sale of certain or substantially all of the Debtor's assets to the Purchaser at the Auction and pursuant to sections 363(b), (f) and (m), 365, 1125, 1123(b)(4), 1123(b)(2)(A), 1141, 1145 and 1146(a) of the Bankruptcy Code, which Sale shall be consummated through the Plan.

1.113. "Schedules" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.114. "Schedule of Assumed Contracts" means the schedule listing certain executory contracts and unexpired leases to be assumed by the Debtor and assigned to the Purchaser, under and in connection with the Plan, which schedule shall be set forth in or as an attachment to the Plan Supplement.

1.115. "Secured" means when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan as a Secured Claim.

1.116. "Secured Claim" means a Claim that is Secured.

1.117. "Securities Act" means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, as amended.

1.118. “Successful Bidder” means the Qualified Bidder at the Auction that the Proponent determines, in its reasonable discretion, to have made the highest and best Qualified Bid for the Purchased Assets.

1.119. “Unexpired Lease” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

1.120. “Unimpaired” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

1.121. “Unsecured Claim” means every Claim or portion thereof, regardless of the priority of such Claim, which is not a Secured Claim or Other Equity Claim.

1.122. “Unsecured Creditor Carveout” means the Cash to be paid to the Liquidating Trust on the Effective Date in the amount of \$600,000, which shall be distributed by the Liquidating Trustee on a *Pro Rata* basis to the Holders Allowed Unsecured Claims, except for \$50,000, which shall be used by the Liquidating Trustee in accordance with the Liquidating Trust Agreement.

1.123. “U.S. Trustee” means the United States Trustee for the District of New Jersey.

1.124. “Voting Deadline” means 5:00 p.m. (prevailing Eastern Time) on January 6, 2012.

## ARTICLE II

### **TREATMENT OF UNCLASSIFIED CLAIMS**

#### 2.1. Administrative Expense.

(a) Subject to this Section 2.1, except to the extent that a Holder of an Allowed Administrative Expense agrees in writing with the Purchaser to less favorable treatment, the Purchaser shall pay to each holder of an Allowed Administrative Expense an amount equal to such Claim in full in Cash on the later of: (i) on or within thirty (30) days after the Effective Date, (ii) on or within thirty (30) days after the date such Administrative Expense becomes Allowed and (c) such other date as may be ordered by the Bankruptcy Court.

Except as otherwise provided in this Section 2.1(a), unless previously filed or paid, requests for payment of Administrative Expenses must be filed and served on the Purchaser and the Proponent pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Administrative Expenses that are required to file and serve a request for payment of such Administrative Expense that do not file and serve such a request by the deadline set forth in the Confirmation Order shall be forever barred, estopped and enjoined from asserting such Administrative Expense against the Debtor’s estate and such Administrative Expense shall be deemed discharged as of the Effective Date. All such Administrative Expenses shall, as of the Effective Date, be subject to the permanent injunction set forth in Section 11.2 of the Plan. Objections to such requests must be filed and served on the

Purchaser, the Proponent, the Liquidating Trustee, the Disbursing Agent and the requesting party by thirty (30) days after the filing of the applicable request for payment of Administrative Expenses, if applicable, as the same may be modified or extended from time to time by order of the Bankruptcy Court.

(b) In the event the Confirmation Order is entered by the Bankruptcy Court and becomes a Final Order, but the Effective Date of the Plan fails to occur, the Proponent will (x) pay to each holder of an Allowed Administrative Expense an amount equal to such Holder's Allowed Administrative Expense that has accrued through the Confirmation Date, in full in Cash on the later of: (i) within thirty (30) days after the date such Administrative Expense becomes Allowed; (ii) within ten (10) days after the scheduled date of the Auction; or (iii) such other date as may be ordered by the Bankruptcy Court.

For the avoidance of doubt, and except as provided in Section 6.2 of the Plan: (i) the Proponent shall have no obligation under this Section 2.1(b) of the Plan to pay any Administrative Expenses that accrue after the Confirmation Date and (ii) to the extent the Effective Date of the Plan occurs, the Purchaser shall have the exclusive obligation and responsibility to pay Administrative Expenses pursuant to Section 2.1(a) of the Plan and this Section 2.1(b) of the Plan shall have no force or effect.

## 2.2. Professional Compensation Claims.

Any Person asserting a Professional Compensation Claim shall file a final Fee Application by no later than thirty (30) days after the Effective Date. Objections to any Professional Compensation Claim must be Filed and served upon the Debtor, the Purchaser and the Proponent and the requesting party by no later than sixty (60) days after the Effective Date. A Professional Compensation Claim shall not become Allowed until approved by a Final Order of the Bankruptcy Court. All Allowed Professional Compensation Claims shall be paid in accordance with Section 2.1 of the Plan. To the extent necessary, the Plan and the Confirmation Order shall amend and supersede any previously entered order regarding the payment of Professional Compensation Claims. For the avoidance of doubt, Section 2.1(b) of the Plan shall apply to Allowed Professional Compensation Claims.

## 2.3. Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive from the Purchaser, at the sole option of the Purchaser, one of the following treatments: (1) on the Initial Distribution Date, Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; or (3) such other treatment as may be agreed upon by such Holder and the Purchaser, or as otherwise determined upon an order of the Bankruptcy Court.

2.4. Other Priority Claims.

Except to the extent that a holder of an Allowed Other Priority Claim agrees to less favorable treatment, each holder of an Allowed Other Priority Claim shall receive from the Purchaser, at the sole option of the Purchaser, one of the following treatments: (1) on the Initial Distribution Date, Cash in an amount equal to the amount of such Allowed Other Priority Claim; (2) Cash in an aggregate amount of such Allowed Other Priority Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; or (3) such other treatment as may be agreed upon by such Holder and the Purchaser, or as otherwise determined upon an order of the Bankruptcy Court.

2.5. Statutory Fees.

On the Initial Distribution Date, the Purchaser shall pay, in full in Cash, any fees due and owing to the U.S. Trustee at the time of Confirmation. On and after the Confirmation Date, the Liquidating Trustee shall pay the applicable U.S. Trustee fees until the entry of a final decree in the Debtor's Chapter 11 Case or until such Chapter 11 Case is converted or dismissed.

**ARTICLE III**

**CLASSIFICATION OF CLAIMS AND INTERESTS.**

Pursuant to section 1122 of the Bankruptcy Code, Claims and Equity Interests have been designated and assigned into Classes of Claims against and Equity Interests in the Debtor's estate. A Claim or Equity Interest is placed into a particular Class for the purposes of voting on the Plan and receiving distributions pursuant to the Plan only to the extent that such Claim or Interest has not been paid, released, withdrawn or otherwise settled before the Effective Date. The following table designates the Classes of Claim against and Equity Interests in the Debtor and specifies which of those Classes are (i) impaired or unimpaired by the Plan; (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (iii) deemed to have accepted or rejected the Plan:

<b><u>Class</u></b>	<b><u>Designation</u></b>	<b><u>Treatment</u></b>	<b><u>Entitled to Vote</u></b>
1	AFP Secured Claim	Impaired	Yes (entitled to vote on the Plan)
2	Other Secured Claim	Unimpaired	No (deemed to accept)
3	Unsecured Claims	Impaired	Yes (entitled to vote on the Plan)
4	Equity Interests and Other Equity Claims	Impaired	No (deemed to reject)

## ARTICLE IV

### TREATMENT OF CLAIMS AND INTERESTS

#### 4.1. Class 1 - AFP Secured Claim.

(a) *Classification:* Class 1 consists of the AFP Secured Claim.

(b) *Treatment:* The AFP Secured Claim shall be Allowed and deemed an Allowed Claim in the amount of the lesser of (x) the Purchase Price or (y) the AFP Claim. The treatment of the AFP Secured Claim under the Plan shall depend upon whether AFP is the Purchaser of the Purchased Assets through the Sale.

(i) To the extent *that AFP is the Purchaser* of the Purchased Assets, and in exchange for the Purchase Price, which shall include a credit bid pursuant to section 363(k) of the Bankruptcy Code that may be made up to the amount of the AFP Claim, the Holder of the AFP Secured Claim shall receive in full and final satisfaction of the AFP Secured Claim the AFP Collateral free and clear of all Liens, Claims, interests or encumbrances, including successor liability claims. The AFP Deficiency Claim, if any, will not be released by AFP's purchase of the Purchased Assets. The Debtor shall execute any and all documents necessary to effectuate the Sale. Notwithstanding the foregoing, if AFP is the Purchaser, the Holder of the AFP Secured Claim shall not receive from the AFP Collateral: (x) that portion of AFP's Cash Collateral in an amount necessary to fund the Unsecured Creditor Carveout and (y) Avoidance Actions, which Assets shall be transferred to the Liquidating Trust by the Debtor on the Effective Date.

(ii) To the extent *that AFP is not the Purchaser* of the Purchased Assets, AFP shall receive Cash from the Purchaser on the Effective Date in the amount of the AFP Secured Claim in full and final satisfaction of the AFP Secured Claim. The AFP Deficiency Claim, if any, will not be released by any purchase of the Purchased Assets by a third-party Purchaser.

(c) *Voting:* Class 1 is Impaired under the Plan. Therefore, the Holder of the Class 1 Claim is entitled to vote to accept or reject the Plan.

#### 4.2. Class 2 - Other Secured Claims.

(a) *Classification:* Class 2 shall consist of all Other Secured Claims.

(b) *Treatment:* In full and final satisfaction of any Allowed Other Secured Claims, the Debtor shall surrender to Holders of Allowed Other Secured Claims any Collateral upon which Holders of Allowed Other Secured Claims hold valid first priority Liens.

(c) *Voting:* Class 2 is Unimpaired under the Plan, and therefore, pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Class 2 - Other Secured Claims are presumed to have accepted the Plan.

4.3. Class 3 - Unsecured Claims.

(a) *Classification:* Class 3 shall consist of all Unsecured Claims, which include General Unsecured Claims, Indemnification Claims and the AFP Deficiency Claim.

(b) *Treatment:* Holders of Allowed Class 3 Claims will receive in full and final satisfaction of their Allowed Unsecured Claims, their *Pro Rata* share of all Assets held by the Liquidating Trust, which Assets shall include: (i) the Unsecured Creditor Carveout, (ii) the Avoidance Actions and (iii) any Excess Sale Proceeds. The Liquidating Trust shall make an initial Distribution to Holders of Allowed Class 3 Claims of at least \$550,000 as soon as practicable, and in no event later than ninety (90) days after the Effective Date. Notwithstanding the foregoing, the Holder of the AFP Deficiency Claim shall not receive any Distribution from the Liquidating Trust.

(c) *Voting:* Class 3 is Impaired under the Plan. Therefore, Class 3 shall be entitled to vote to accept or reject the Plan.

4.4. Class 4 - Equity Interests and Other Equity Claims.

(a) *Classification:* Class 4 shall consist of the Holders of Equity Interests and Other Equity Claims.

(b) *Treatment:* Assuming that the Sale does not generate Sale proceeds in excess of the amount needed to pay Class 3 Unsecured Claims in full, Holders of Allowed Class 4 Claims or Equity Interests shall not receive or retain any Property under the Plan on account of such Claims or Equity Interests. On the Effective Date, all Equity Interests shall be cancelled.

(c) *Voting:* Holders of Class 4 Claims or Equity Interests are not receiving any Property under the Plan, and therefore, pursuant to section 1126(g) of the Bankruptcy Code, these Holders are presumed to have rejected the Plan.

## ARTICLE V

### ACCEPTANCE REQUIREMENTS

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an impaired class of claims has accepted the applicable Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of Allowed Claims in such Class actually voting have voted to accept the applicable Plan.

5.1. Acceptance or Rejection of the Plan.

Classes 1 and 3 are Impaired under the Plan and are entitled to vote to accept or reject the Plan. Class 2 is Unimpaired under the Plan, and therefore is presumed under the Bankruptcy Code to accept the Plan. Class 4 is not receiving any Property under the plan, and therefore is presumed under the Bankruptcy Code to have rejected the Plan.



5.2. Cramdown Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims. The Proponent shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Proponent reserves the right to modify the Plan in accordance with Section 13.3 hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**ARTICLE VI**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

6.1. The Sale.

The Confirmation Order shall authorize the sale of the Purchased Assets to the Purchaser under sections 363(b), 363(f), 363(m), 365, 1123(a)(5), 1123(b)(4), 1129(b)(2)(A), 1141, 1145 and 1146(a) of the Bankruptcy Code under the terms and conditions set forth in the Plan and the Confirmation Order, free and clear of any and all Claims, Liens, interests or encumbrances, including successor liability claims. Upon Confirmation of the Plan, the Debtor shall be authorized and directed to take any and all actions, and execute any and all documents necessary to consummate and effectuate the Sale. The Sale shall be conducted pursuant to the Bidding Procedures, through which the Purchased Assets will be sold at the Auction. Only Persons that are Qualified Bidders will be permitted to participate in the Auction. AFP shall automatically be deemed a Qualified Bidder, and shall be permitted to submit a credit bid up to the full amount of the AFP Secured Claim at the Auction. The Sale shall be approved by the Confirmation Order and shall be permitted to close without the need of any further Order of the Bankruptcy Court.

6.2. Post-Confirmation Date Management of the Hotel.

After the Confirmation Date, C&W shall continue to manage the Hotel pursuant to the C&W Management Agreement and any fees earned by C&W under the C&W Management Agreement between the Confirmation Date and the Effective Date shall be paid by AFP. Any payments made by AFP to C&W under the terms of this Section 6.2 of the Plan shall be deemed an Allowed Administrative Expense, and shall be paid in accordance with Section 2.1 of the Plan. Any fees earned by C&W under the terms of the C&W Management Agreement after the Effective Date shall be the exclusive obligation of the Purchaser.

6.3. Dissolution of the Debtor and Resignation of Managers.

The Debtor shall be dissolved, effective upon the Liquidating Trustee's filing of a certificate of dissolution (or its equivalent) with secretary of state or similar official of the jurisdiction in which the Debtor was organized. The Debtor, its managers and members, including the Manager, shall be authorized and directed to take any and all actions, including the execution of any and all documents, necessary to effectuate the dissolution contemplated

hereunder. On the Effective Date, officers or directors of the Debtor shall be deemed to have resigned from all of their respective positions.

6.4. Liquidating Trust.

The Liquidating Trust shall be established to receive on the Effective Date: (a) the Unsecured Creditor Carveout, (b) the Avoidance Actions, and (c) any Excess Sale Proceeds, all of which Assets shall vest in the Liquidating Trust on the Effective Date free and clear of all Liens, Claims, encumbrances and Interests in accordance with section 1141 of the Bankruptcy Code, but subject to the ratable benefit of the Holders of Allowed Class 3 Claims, to obtain the Distributions provided for in this Plan. The Purchaser shall be solely responsible for funding the Unsecured Creditor Carveout, provided however, that if AFP is the Purchaser, the Unsecured Creditor Carveout shall be funded from AFP's Cash Collateral, which portion of AFP's Cash Collateral AFP will not purchase pursuant to the Sale.

6.5. Transfer of Assets; Valuation of Assets.

(a) On the Effective Date, the Purchased Assets shall be transferred to the Purchaser free and clear of all Liens, Claims, encumbrances and interests. The Debtor shall take any and all actions, and shall execute any and all documents necessary to effectuate the Sale.

(b) Immediately on the Effective Date, those Assets of the Debtor that are not Purchased Assets, including the Excess Sale Proceeds, shall be transferred to the Liquidating Trust. The transfer of the Assets to the Liquidating Trust will be made for the benefit of the beneficiaries thereof, but only to the extent such beneficiaries are entitled to receive Distributions under the Plan. Upon completion of the transfer of Assets into the Liquidating Trust, the Debtor, the Proponent and the Purchaser will have no interest in, or with respect to, such Assets or the Liquidating Trust, except as otherwise expressly provided for herein, which shall include that the Holder of the AFP Deficiency Claim shall be a beneficiary of the Liquidating Trust (although not entitled to share in *res* of the Liquidating Trust).

(c) Notwithstanding those sections of the Plan describing the actual transfer of Assets to the Liquidating Trust, solely for federal income tax purposes, all parties (including, without limitation, the Debtor, the Proponent, the Purchaser, the Liquidating Trustee, the Disbursing Agent and the beneficiaries) will treat the transfer of assets to the Liquidating Trust, in accordance with the terms of the Plan, as (i) a deemed transfer of such assets to the holders of Class 3 Claims with each such holder receiving an undivided interest in the specific Assets, the liquidation proceeds of which such Holder is entitled to share in pursuant to Sections 4.3 of the Plan, followed by (ii) a deemed transfer of such assets by such Holders to the Liquidating Trust. The foregoing shall apply whether or not such Holders' Claims are Allowed as of the Effective Date, with each such Holder deemed to have received Assets, and to have contributed such Assets to the Liquidating Trust, having a value that equals, as nearly as possible, the amount such Holder would receive if, on the Effective Date, all assets transferred to the Liquidating Trust are liquidated, converted to Cash and distributed to the Holders of Class 3 Claims in accordance with the Plan. In exchange for the deemed transfer of Assets to the Liquidating Trust described in this Section 6.5(c) of the Plan, the Holders of Allowed Class 3 Claims as of the

Effective Date will receive beneficial interests in the Liquidating Trust and will be treated as the grantors and owners thereof; Holders of Disputed Class 3 Claims as of the Effective Date will receive contingent beneficial interests in the Liquidating Trust and will become grantors and owners of the Liquidating Trust if and when, and to the extent that, their Class 3 Claims become Allowed Class 3 Claims.

(d) The Liquidating Trustee shall make an initial good faith determination of the fair market value of the Assets transferred to the Liquidating Trust as of the Effective Date, solely for the purpose of determining the income tax consequences to the parties of the transfer of the Assets to the Liquidating Trust and for no other purpose, and the Liquidating Trustee shall apprise the beneficiaries thereof in writing of such valuation (and indicate in such writing each beneficiary's percentage ownership interest in the Liquidating Trust based on each such beneficiary's relative beneficial interest in the Liquidating Trust or portion thereof as of the Effective Date). This valuation shall be used consistently by all parties (including, without limitation, the Liquidating Trustee and the beneficiaries of the Liquidating Trust) for federal income tax purposes.

#### 6.6. Powers and Duties of the Liquidating Trustee.

The Liquidating Trustee shall administer the Liquidating Trust and its assets in accordance with this Plan, the Liquidating Trust Agreement, and the other Liquidating Trust Documents and shall be responsible for, among other things, making Distributions required under this Plan to Holders of Allowed Class 3 Claims. From and after the Effective Date and continuing through the date of entry of a Final Decree, the Liquidating Trustee shall: (a) have and be entitled to exercise all rights and powers of the Debtor and the Estate, including but not limited to those provided for in the Bankruptcy Code, including section 1107 thereof; (b) possess all rights and powers granted in the Liquidating Trust Agreement, including the authority to direct the affairs of, and dissolve, the Debtor (and all bylaws, articles or certificates of incorporation, and related corporate documents are deemed amended by this Plan to permit and authorize such appointment); (c) possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under, or related to the Chapter 11 Case and, in connection therewith, shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts, (ii) be entitled to notice and opportunity for hearing on all such issues, (iii) participate in all matters brought before the Bankruptcy Court, and (iv) receive notice of all applications, motions, and other papers and pleadings Filed in the Bankruptcy Court; (d) have the authority to act as and for and on behalf of the Debtor in all adversary proceedings and contested matters pending in the Bankruptcy Court and in all actions and proceedings pending elsewhere; (e) have the power and standing to prosecute, compromise and settle Avoidance Actions; (f) have the right to object to Claims; (g) have the authority to retain such personnel or professionals (including, without limitation, legal counsel, financial advisors or other agents) as it deems appropriate and compensate such personnel and professionals as it deems appropriate, all without prior notice to Creditors or approval of the Bankruptcy Court; and (h) borrow money for such purposes as financing the costs of prosecuting the Avoidance Actions, on terms and conditions it deems appropriate, upon Bankruptcy Court approval after notice and hearing. Professionals and personnel retained or employed by the

Liquidating Trust or the Liquidating Trustee need not be disinterested as that term is defined in the Bankruptcy Code.

6.7. Corporate Action.

The entry of the Confirmation Order shall constitute authorization for the Proponent and/or the Debtor to take or to cause to be taken all 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 shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation: (a) pre-Auction Date actions in preparation for the Auction that are provided for in the Confirmation Order and Bidding Procedures; (b) the execution, delivery and consummation of any documents required to effectuate the Sale, and all of the transactions contemplated therein; and (c) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable nonbankruptcy law and the Bankruptcy Code, without any requirement of further action by the members or directors of the Debtor. On or (as applicable) before the Effective Date, the appropriate members, officers and/or managers of the Debtor, the Proponent, the Purchaser or the Liquidating Trustee are, as applicable, authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan), the Plan Supplement in the name and on behalf of the Debtor.

**ARTICLE VII**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7.1. General Treatment.

As of, and subject to the occurrence of the Effective Date, and subject to Section 7.2 of the Plan, all Executory Contracts and unexpired leases (including in each case, any related amendments, supplements, consents, estoppels or ancillary agreements) to which the Debtor is a party is hereby rejected, except for any Executory Contract or unexpired lease that (i) previously has been assumed or rejected pursuant to a Final Order of the Bankruptcy Court, (ii) is specifically designated by the Purchaser as an Executory Contract or unexpired lease that will be assumed and assigned in the Schedule of Assumed Contracts, or (iii) is the subject of a separate assumption or rejection motion filed by the Debtor under section 365 of the Bankruptcy Court prior to the Confirmation Date; provided however, that the Purchaser shall have the exclusive right to amend the Schedule of Assumed Contracts for a period of up to forty-five (45) days after the Effective Date, or by any other means approved by the Bankruptcy Court, or to delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to Section 7.1 of the Plan or to add an executory contract or unexpired lease thereto, thus providing for its assumption and assignment pursuant Section 7.1 of the Plan. Such rejection or assumption and assignment shall be deemed final and effective upon the Purchaser's filing and serving a final version of the Schedule of Assumed Contracts, which final version of the

Schedule of Assumed Contracts shall be filed and served no later than forty-five (45) days after the Effective Date.

7.2. Cure of Defaults.

Except to the extent that different treatment has been agreed to by the nondebtor party or parties to any Executory Contract or unexpired lease to be assumed pursuant to Section 7.1 of the Plan, the Proponent shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of section 365 of the Bankruptcy Code, list the cure amounts of all Executory Contracts or unexpired leases to be assumed in the Plan Supplement. Any party that fails to object to the applicable cure amount within seven (7) days prior to the Confirmation Hearing shall be forever barred, estopped and enjoined from disputing the cure amount and/or from asserting any Claim against the Debtor, the Proponent, the Purchaser or the Liquidating Trust arising under section 365(b)(1) of the Bankruptcy Code, except as set forth in the list of cure amounts on the Plan Supplement. Any cure amount listed in the Plan Supplement to which no timely objection is filed in accordance with Section 7.2 of the Plan shall be paid in full by the Purchaser on the Effective Date or as soon thereafter as is reasonably practicable. If there are any timely objections filed, the cure payments, if any, required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such dispute. The Purchaser, on the Debtor's behalf, shall retain the right to reject any Executory Contracts or unexpired leases that are subject to a dispute, including Executory Contracts or unexpired leases that are subject to a dispute regarding amounts necessary to cure any defaults, until the entry of a Final Order resolving such dispute. In the event the Purchaser amends the Schedule of Assumed Contracts after the Confirmation Date, the Purchaser shall provide the nondebtor party to such contract with an opportunity to object to the cure amount. In the event of a dispute, the Bankruptcy Court shall make a final determination as to the cure amount.

7.3. Rejection Damage Claims.

In the event that the rejection of an Executory Contract or unexpired lease pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not previously evidenced by a timely filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Proponent, the Liquidating Trustee or the Purchaser, or their respective properties or interests, unless a proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtor, the Proponent, the Purchaser and the Liquidating Trustee on or before the date that is thirty (30) days after the Effective Date or such later rejection date that occurs as a result of a dispute concerning amounts necessary to cure any defaults. Allowed Rejection Damage Claims shall be paid as Class 3 Claims pursuant to the Plan.

7.4. Assignment and Effect of Assumption.

Any Executory Contract or unexpired lease assumed under the Plan shall be deemed assigned to the Purchaser effective on the Effective Date, and shall remain in full force and effect for the benefit of the Purchaser in accordance with its terms, notwithstanding any provision in

such executory contract or unexpired lease (including those of the type described in sections 365(b)(2) of the Bankruptcy Code) that prohibits, restricts or conditions such assumption, transfer or assignment. Any provision that prohibits, restricts or conditions the assignment or transfer of any such Executory Contract or unexpired lease or that terminates or modifies such executory contract or unexpired lease or allows the counterparty to such Executory Contract or unexpired lease to terminate, modify, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon any such transfer and assignment constitutes an unenforceable anti-assignment provision and is void and of no force or effect.

7.5. Insurance Policies.

All insurance policies pursuant to which the Debtor has any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as Executory Contracts pursuant to the Plan and shall be treated in accordance with Article VII of the Plan.

**ARTICLE VIII**

**PROVISIONS GOVERNING DISTRIBUTIONS**

8.1. Record Date for Distributions.

As of the Voting Deadline, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Bankruptcy Court, the Debtor or its agents shall be deemed closed, and there shall be no further changes made to reflect any new record holders of any Claims or Interests. The Proponent and/or the Debtor shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Voting Deadline.

8.2. Timing and Calculation of Amounts to Be Distributed.

Each Holder of an Allowed Claim shall receive Distributions as provided for in the Plan. In the event that 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. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Section 8.6 of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the Distributions provided for in the Plan, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

8.3. Liquidating Trust.

The Liquidating Trust shall be established to receive the Unsecured Creditor Carveout, the Avoidance Actions and any Excess Sale Proceeds, and to distribute such Property and the proceeds of such Property in accordance with the Plan. On the Effective Date, the Unsecured Creditor Carveout, the Avoidance Actions and any Excess Sale Proceeds shall be transferred to and vested in the Liquidating Trust, free and clear of any Claims, Liens and Interests to be managed and used by the Liquidating Trustee for the sole purposes of carrying out the terms of

the Plan and effectuating the Distributions provided herein. The Liquidating Trust shall qualify as a liquidating trust as described in Treasury Regulation section 301.7701 – 4(d) and shall be treated as a grantor trust for United States federal income tax purposes. The Proponent shall appoint the Liquidating Trustee, who shall have the authority to manage the day-to-day operations of the Liquidating Trust, including, without limitation, by disposing of the assets of the Liquidating Trust, appearing as a party in interest, calculating Distributions, paying taxes and such other matters as more particularly described in the Plan and the Liquidating Trust Agreement. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall be responsible for making distributions to Holders of Allowed Class 3 Claims. Expenses and fees of the Liquidating Trust, including the expenses of the Liquidating Trustee and his representatives and professionals, will be satisfied from the assets of the Liquidating Trust and its proceeds, as set forth in the Liquidating Trust Agreement.

8.4. Disbursing Agent.

Except as otherwise provided for in the Plan (i) with respect to Distributions to Holders of Allowed Class 3 Claims or (ii) in Section 2.1(b) of the Plan, all Distributions under the Plan shall be made by the Purchaser as Disbursing Agent, or such other Entity designated on or before the Effective Date by the Purchaser as a Disbursing Agent. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

8.5. Rights and Powers of Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all Distributions contemplated hereby; and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or the Confirmation Order, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

8.6. Distributions on Account of Claims Allowed After the Effective Date.

(a) Payments and Distributions on Disputed Claims. Notwithstanding any other provision of the Plan, no Distributions shall be made under the Plan on account of any Disputed Claim, unless and until such Claim becomes an Allowed Claim. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

(b) Distributions to Holders of Disputed Claims. Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Disbursing Agent or the Liquidating Trustee, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

8.7. Delivery of Distributions.

The following terms shall govern the delivery of Distributions and undeliverable or unclaimed Distributions with respect to Claims.

(a) Delivery of Distributions in General. Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made to Holders of record as of the Voting Deadline by the Liquidating Trustee or the Disbursing Agent, as appropriate: (a) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent or the Liquidating Trustee, as appropriate, after the date of any related Proof of Claim; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Liquidating Trustee or the Disbursing Agent, as appropriate, has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Case on the Holder's behalf. Distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set forth in the Plan. The Proponent, the Debtor, the Liquidating Trustee and the Disbursing Agent, as applicable, shall not incur any liability whatsoever on account of any Distributions under the Plan except for gross negligence or willful misconduct.

(b) Minimum Distributions. The Liquidating Trustee and the Disbursing Agent shall not be required to make partial or fractional distributions or distributions of \$20 or less.

(c) Undeliverable Distributions. In the event that any Distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent or the Liquidating Trustee, as applicable, has determined the then current address of such Holder, at which time such Distribution shall be made as soon as practicable after such Distribution has become deliverable or has been claimed to such Holder, without interest; provided, however, such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of six (6) months from the Effective Date. After such date, all "unclaimed property" or interests in property shall belong to the Purchaser (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be discharged and forever barred.

(d) Time Bar to Payment. Checks issued by the Disbursing Agent or the Liquidating Trustee in respect of Allowed Claims shall be null and void if not cashed within sixty (60) days after the date of issuance. Requests for reissuance of any check shall be made directly to the Disbursing Agent or the Liquidating Trustee, as applicable, by the Holder of the Allowed Claim with respect to which such check was originally issued. Any claim in respect of such a voided check shall be made on or before the later of 120 days after the date of issuance of



such check. After such date, all Claims in respect of voided checks shall be discharged and forever barred.

8.8. Allocation of Plan Distributions between Principal and Interest.

Except as otherwise expressly provided in the Plan, to the extent that any Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued by unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of the such Claim representing accrued but unpaid interest.

8.9. Means of Cash Payment.

Payments of Cash made pursuant to the Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of Liquidating Trustee or the Disbursing Agent, by (a) checks drawn on or (b) wire transfers from a bank selected by the Liquidating Trustee or the Disbursing Agent, as applicable. Cash payments to foreign creditors, if any, may be made, at the option of the Liquidating Trustee or the Disbursing Agent, as applicable, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

8.10. Withholding and Reporting Requirements.

In connection with the Plan and all Distributions hereunder, the Liquidating Trustee and the Disbursing Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trustee and the Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding or reporting requirements. All persons holding Claims or Interests shall be required to provide any information to the Liquidating Trustee or Disbursing Agent necessary to affect the reporting of such information and the withholding of such taxes, including, but not limited to, providing executed W-8 and/or W-9 tax forms, and to the extent such executed W-8 and/or W-9 tax forms are required for the Liquidating Trustee or the Disbursing Agent to make Distributions hereunder, all Holders of Claims who fail to provide the Purchaser or the Disbursing Agent with such executed W-8 and/or W-9 tax forms within ninety (90) days of receipt of a written request shall not be entitled to receive any Distribution under this Plan.

8.11. Fractional Cents.

Notwithstanding any other provision of the Plan, no payments or Distributions under the Plan of or on account of fractions of cents will be made. When any payment or Distribution of or on account of a fraction of a cent to any Holder of an Allowed Claim would otherwise be required, the actual payment or Distribution made will reflect a rounding of such fraction to the nearest whole cent.

## ARTICLE IX

### **PRESERVATION OF CAUSES OF ACTION AND PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

#### 9.1. Preservation of Rights.

Except to the extent that any Claim is Allowed during the Chapter 11 Case or expressly by this Plan, the Confirmation Order, or other order of the Bankruptcy Court, nothing, including, but not limited to, the failure of the Liquidating Trustee, the Disbursing Agent, the Purchaser or the Proponent to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Case, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Liquidating Trustee, the Disbursing Agent, the Purchaser or the Proponent with respect to any Claim or Interest, including, but not limited to, all rights of the Liquidating Trustee, the Disbursing Agent, the Purchaser or the Proponent to contest or defend themselves against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

#### 9.2. Rights of Action.

Except as otherwise provided in the Plan or the Confirmation Order, all Avoidance Actions shall automatically be transferred to and become the property of the Liquidating Trust, and the Liquidating Trustee shall have standing to pursue Avoidance Actions. All other Causes of Action, other than the Avoidance Actions, shall automatically be transferred to and become property of the Purchaser. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trustee or the Purchaser, as applicable, will have the right to enforce and prosecute such Avoidance Actions and other Causes of Action against any Entity, that arose before the Effective Date, other than those expressly conveyed, released or compromised as part of or pursuant to the Plan.

#### 9.3. Setoffs.

The Purchaser, the Proponent, the Liquidating Trustee or the Disbursing Agent, as applicable, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release of any such claim the Debtor (or the Liquidating Trustee or the Disbursing Agent) may have against the holder of such Claim.

#### 9.4. Allowance of Claims.

Except as expressly provided herein, no Claim shall be deemed Allowed unless and until such Claim is deemed Allowed under the Bankruptcy Code, under the Plan, or the Bankruptcy Court enters a Final Order in the Chapter 11 Case allowing such Claim under section 502 of the

Bankruptcy Code. Except as expressly provided herein or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), the Liquidating Trustee and/or the Disbursing Agent, as applicable, after the Effective Date will have and retain any and all rights and defenses held by the Debtor with respect to any Claim as of the Petition Date. All claims of any Entity that owes money to the Debtor shall be disallowed unless and until such Entity pays, in full, the amount it owes the Debtor.

9.5. Objections to Claims.

Unless otherwise ordered by the Court after notice and a hearing, the Proponent, the Purchaser, the Disbursing Agent or the Liquidating Trustee, as applicable, shall have the right, on and after the Effective Date, to File Objections to Claims (except those specifically Allowed by this Plan) and shall serve a copy of each such objection upon the Holder of the Claim to which the Objection is made as soon as practicable. An Objection to any Claim shall be deemed properly served on the Holder thereof if the objecting party effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004; (b) by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified in the Proof of Claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Case. Any objections to Claims shall be filed and served on or before the later of: (a) one hundred eighty (180) days after the Effective Date, unless extended by order of the Bankruptcy Court and (b) such date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) above.

9.6. No Payment or Distribution Pending Allowance.

All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by agreement of the Liquidating Trustee, the Disbursing Agent or the Proponent and the Holder of such Claim, by operation of law, by Final Order, or by this Plan. Notwithstanding any other provision in the Plan, no payment or Distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim.

9.7. Estimation of Claims.

Prior to the Effective Date, the Debtor, and after the Effective Date, the Liquidating Trustee, the Disbursing Agent, the Purchaser or the Proponent, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim, including, without limitation, during the pendency of any appeal relating to any objection to a Claim. In the event the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount

of such Claim, the Debtor (before the Effective Date) or the Liquidating Trustee, the Disbursing Agent, the Purchaser or the Proponent (after the Effective Date) may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

## **ARTICLE X**

### **CONDITIONS TO EFFECTIVE DATE**

#### **10.1. Conditions to Occurrence of Effective Date.**

The occurrence of the Effective Date of the Plan is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Confirmation Order shall authorize the Sale and direct that the Debtor take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases and other agreement or document created in connection with the Plan and the Sale and the transactions contemplated thereby.

(b) The transactions contemplated by the Sale shall have been consummated.

(c) The Confirmation Order shall have become a Final Order.

(d) The Disbursing Agent has been appointed.

(e) The Liquidating Trust has been established and the Liquidating Trustee has been appointed.

(f) The statutory fees owing to the U.S. Trustee shall have been paid in full.

(g) All other actions, authorizations, consents and regulatory approvals required (if any) and all documents necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Proponent, or, if waivable, waived by the Person or Persons entitled to the benefit thereof.

(h) No order of a court shall have been entered and shall remain in effect restraining the consummation of the Plan.

#### **10.2. Waiver of Conditions to Effective Date.**

The Proponent shall have the sole discretion and right to waive one or more of the conditions precedent set forth in section 10.1 of the Plan.

10.3. Effect of Failure of Conditions to Effective Date.

If the Effective Date does not occur on or before the date that is ninety (90) days after the Confirmation Date or if the Confirmation Order is vacated, (i) except as provided in Section 2.1(b) and 6.2 of the Plan, no Distributions under the Plan shall be made, (ii) AFP shall be deemed entitled to relief from the automatic stay pursuant to Section 362(d) of the Bankruptcy Code, and (iii) all the Debtor's obligations with respect to the Claims and the Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor or any other entity or to prejudice in any manner the rights of the Debtor or any other Entity in any further proceedings involving the Debtor or otherwise.

**ARTICLE XI**

**EFFECTS OF PLAN CONFIRMATION**

11.1. Releases.

(a) Releases by the Debtor. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, in its individual capacity and as debtor-in-possession, will be deemed to have forever released, waived and discharged the Released Parties from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities, whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, or the Plan.

(b) Releases by Holders of Claims and Interests. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, in consideration for the obligations under the Plan and the payments, contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, each Person that has held, currently holds or may hold a Claim or Interest, and any Affiliate of any such Person (as well as any trustee or agent on behalf of each such Person), shall be deemed to have forever waived, released and discharged the Estate, the Proponent and the Purchaser from any and all Claims, obligations, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever (other than their right to enforce the performance of the Debtor's obligations under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, the Plan and/or the Disclosure Statement, other than Claims or liabilities arising out of or relating to any act or omission that constitutes a failure to perform the duty to act in good faith and where such failure to perform constitutes willful misconduct, gross

negligence, or fraud; provided, however, that this Section 11.1(b) shall not release any Person from any Claim or Cause of Action existing as of the Effective Date, based on (x) the Internal Revenue Code or any other domestic state, city or municipal tax code, (y) any liability that the Person may have as an owner or operator of real property after Confirmation under the environmental laws of the United States or any domestic state, city or municipality or (z) any criminal laws of the United States or any domestic state, city or municipality. For the avoidance of doubt, and notwithstanding the foregoing, nothing contained in this Article XI of the Plan shall be deemed to constitute a release by AFP of any claims against any guarantors of the Debtor's obligations to AFP.

## 11.2. Injunction.

(a) Discharged Claims and Terminated Interests. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtor; provided, however, that no Holder of a Claim against the Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against the Proponent, the Purchaser or their property, except as expressly provided in the Plan. Accordingly, except as otherwise provided herein, the Confirmation Order shall provide, among other things, that no Holder of a Claim against the Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against the Proponent or the Purchaser or their property, except that from and after the Confirmation Date, all Persons who have held, hold, or may hold Claims against or Interests in the Debtor are permanently enjoined from taking any of the following actions against the Proponent, the Purchaser, the Liquidating Trustee, and the Disbursing Agent, or any of their property on account of such Claims or Interests: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; and (iv) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan. Notwithstanding anything to the contrary in the Plan, creditors' rights of setoff and recoupment are preserved, and the injunctions referenced in this section or Section 11.1 of the Plan shall not enjoin the valid exercise of such rights of setoff and recoupment. By accepting distributions pursuant to the Plan, each Holder of an Allowed Claim or Allowed Interest shall be deemed to have specifically consented to the injunctions set forth in this Section 11.2.

(b) Exculpation and Limitation of Liability. Except as otherwise specifically provided in the Plan, to the maximum extent permitted by the Bankruptcy Code and applicable law, none of the Liquidating Trustee, the Disbursing Agent, the Proponent, the Purchaser, or any Exculpated Person shall have or incur any liability to any Person, including, without limitation, any Holder of a Claim or Interest or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates or any of their successors or assigns, for any act taken or omission made in connection with, relating to, or arising out of, the Chapter 11 Case, Filing, negotiating, prosecuting, administering, formulating, implementing, soliciting support or acceptance of, confirming or consummating this Plan, or the Property to be distributed under this Plan, including all activities leading to the promulgation and Confirmation

of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtor or these Chapter 11 Case, provided, however, that the foregoing exculpation shall not apply to any act of gross negligence or willful misconduct.

(c) Injunction. Except as otherwise specifically provided herein, on the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to this Section 11.1 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against the Purchaser or any of its Property.

### 11.3. Terms of Injunctions or Stay.

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105(a) or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, provided, however, that the injunction imposed through the Injunction Order shall dissolve in accordance with the terms of the Injunction Order.

## ARTICLE XII

### RETENTION OF JURISDICTION

Notwithstanding confirmation of the Plan and the occurrence of the Effective Date, the Bankruptcy Court will retain jurisdiction for the following purposes:

(a) To determine the allowance and payment of any Claims upon any objections thereto (or other appropriate proceedings) by the Disbursing Agent, the Liquidating Trustee or any other party-in-interest entitled to proceed in that manner. As part of such retained jurisdiction, the Bankruptcy Court will continue to determine the allowance of Administrative Expenses and any request for payment thereof, including Professional Compensation Claims.

(b) To ensure that Distributions to Holders of Allowed Claims are accomplished as provided in the Plan.

(c) To determine any dispute which may arise regarding the interpretation of any provisions of the Plan.

(d) To enforce any provisions of the Plan and any and all documents relating to the Plan, including but not limited to any documents or issues relating to the Sale. The Bankruptcy Court also will retain jurisdiction over any matter relating to the implementation and/or consummation of the Plan.

(e) To facilitate the performance of the Plan by entering, consistent with the provisions of the Plan, any further necessary or appropriate order regarding enforcement of the Plan and any provision thereof.

(f) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to facilitate compliance with, and to restrain interference by any person with the consummation, implementation or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court and the transactions contemplated thereby.

(g) To facilitate or implement the allowance, disallowance, treatment or satisfaction of any Claim, or any portion thereof, pursuant to the Plan.

(h) To enter an appropriate Final Decree in the Chapter 11 Case.

(i) To determine any and all motions regarding the determination of a contract as an Executory Contract, assumption or rejection of any Executory Contracts and any and all Claims arising therefrom.

(j) To determine such other matters and for such other purposes as may be provided in the Confirmation Order.

(k) To determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code.

(l) To (i) hear and determine any claim or cause of action arising in or related to the Chapter 11 Case; and (ii) to adjudicate any Causes of Action or other proceedings currently pending or which may be commenced by the Liquidating Trustee after the Effective Date or otherwise referenced here or elsewhere in the Plan, including, but not limited to, the adjudication of any actions and any and all "core proceedings" under 28 U.S.C. § 157(b), which are or may be pertinent to the Chapter 11 Case and which the Liquidating Trustee may commence and prosecute in support of implementation of the Plan.

(m) In the event of an appeal of the Confirmation Order or any other kind of review or challenge to the Confirmation Order, and to the extent the Confirmation Order has not been stayed, the Bankruptcy Court will retain jurisdiction to implement and enforce the Confirmation Order and the Plan according to their terms, including, but not limited to, jurisdiction to enter such orders regarding the Plan or the performance thereof as may be necessary to consummate the Plan.



## ARTICLE XIII

### GENERAL PROVISIONS

#### 13.1. Extension of Payment Dates.

If any payment date falls due on any day which is not a Business Day, then such due date will be extended to the next Business Day.

#### 13.2. Substantial Consummation.

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

#### 13.3. Amendments.

The Plan may be amended, modified or supplemented by the Proponent in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date, the Proponent may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

#### 13.4. Binding Effect.

On the Effective Date, and effective as of the Effective Date, the Plan shall be binding upon and inure to the benefit of the Debtor, the Holders of Claims and Equity Interests, and each of their respective successors and assigns, whether or not such Holder: (i) will receive or retain any property or interest in property under the Plan; (ii) has filed a proof of Claim or Interest in the Chapter 11 Case or (iii) failed to vote to accept or reject the Plan or affirmatively voted to reject the Plan.

#### 13.5. Notices.

All notices, requests and demands to or upon the Proponent to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Anthony Miceli  
AFP 104 Corp.  
c/o United Capital Corp.  
9 Park Place  
Great Neck, New York 11021

With a copy to:

Riker Danzig Scherer Hyland & Perretti LLP  
Joseph L. Schwartz, Esq.  
Kevin J. Lerner, Esq.  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07962

13.6. Interest.

Whenever interest is to be computed under the Plan, interest will be simple interest and not compounded. Unless otherwise specifically provided for in the Plan or the Confirmation Order, post-petition interest shall not accrue or be paid on Claims, and no Holder of a Claim will be entitled to interest accruing on or after the Petition Date on any Claim.

13.7. Severability.

If the Bankruptcy Court determines, before or after the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such Claims as to which the provision is determined to be invalid, void or unenforceable. The invalidity, voidness or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of the Plan.

13.8. Governing Law.

Except to the extent the Bankruptcy Code, Bankruptcy Rules, Local Rules, or other federal law is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey, without giving effect to the principles of conflicts of law of thereof.

13.9. Reservation of Rights.

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of the Proponent with respect to the holders of Claims or Interests prior to the Effective Date.

13.10. Revocation or Withdrawal.

The Plan may be revoked or withdrawn by the Proponent prior to the Confirmation Date. If the Plan is revoked or withdrawn prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by any Entity or to prejudice in any manner the rights of any Entity in an further proceedings involving the Debtor.

13.11. Successors and Assigns.

The rights and obligations of any Creditor referred to in the Plan will be binding upon, and will inure to the benefit of, the successors, assigns, heirs, devisees, executors and personal representatives of such Creditor.

13.12. Payment of Statutory Fees and Filing of Quarterly Reports.

All fees payable pursuant to 28 U.S.C. § 1930, along with any accrued interest thereon, as determined by the Bankruptcy Court at or in conjunction with the Confirmation Hearing, will be paid on or before the Effective Date and, thereafter, pending entry of the Final Decree. All post-confirmation quarterly reports of disbursements required to be filed by applicable bankruptcy law will be filed in accordance with applicable bankruptcy law. The U.S. Trustee will continue to be paid by the Liquidating Trustee until entry of the final order or decree, or upon conversion or dismissal of the Bankruptcy Case.

13.13. Plan Supplement.

Forms of all material agreements or documents related to the Plan, including, but not limited to those identified in the Plan, shall be contained in the Plan Supplement. The Plan Supplement shall be filed by the Proponent with the Clerk of the Bankruptcy Court no later than ten (10) days before the deadline to vote for or against the Plan. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. Holders of Claims or Equity Interests may obtain a copy of the Plan Supplement upon written request to the Proponent's counsel.

13.14. Headings.

Headings are used in the Plan for convenience and reference only, and shall not constitute a party of the Plan for any other purpose.

13.15. Exhibits/Schedules.

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth fully therein.

13.16. No Admissions.

Notwithstanding anything to the contrary in the Plan, nothing contained in the Plan shall be deemed as an admission by any Person or Entity with respect to any matter set forth in the Plan.

*[Signature page to follow]*

Respectfully submitted,

AFP 104 CORP.

By: /s/ Anthony Miceli  
Name: Anthony Miceli  
Title: President

Dated: November 15, 2011

# EXHIBIT B

## Disclosure Statement Order

# EXHIBIT C

## Liquidation Analysis

Ocean Place Development, LLC - Case No. 11-14295 (MBK)  
Liquidation Analysis

	Ref. Notes	Value	Liquidation Asset Retention Percentage	Estimated Liquidation Value	Claim Amount	Estimated Recovery Percentage
<b>Current Assets</b>						
Cash & Cash Equivalents	(1)	1,915,701	100%	1,915,701		
Accounts Receivable, net	(2)	893,104	50%	446,552		
Inventories	(3)	134,049	10%	13,405		
Prepaid and Other	(4)	495,745	0%	-		
<b>Total Current Assets</b>		<b>3,438,599</b>		<b>2,375,658</b>		
<b>Total Property &amp; Equipment</b>						
	(5)	Less than \$60 million	85%	Less than \$51 million		
<b>Other Assets</b>	(6)	<b>4,306,383</b>	12%	<b>516,766</b>		
<b>Gross Proceeds Available for Distribution</b>						
				Less than \$54 million		
<b>Wind-Down Costs</b>						
Wind-Down Costs	(7)			(150,000)		
Professional Fees	(8)			(325,000)		
Trustee Fees	(9)			Unknown		
<b>Net Proceeds Available for Distribution</b>						
				Less than \$52 million		
<b>Distribution to AFP</b>						
	(10)			Less than \$52 million	57,245,372	Less than 92%
<b>Distributions to Other Creditors</b>						
	(11)			0.00	114,228,190	0.0%

NOTES:

- Cash and cash equivalents are based upon the Debtor's June 30, 2011 unaudited financial statements.
- Accounts receivable, pursuant to the Debtor's June 30, 2011 unaudited financial statements, arise primarily from prior group meetings held at the Hotel. According to the Debtor, approximately \$250,000 are uncollectible.
- Inventory is based upon the Debtor's book value as of June 30, 2011 and is unaudited. Inventory is comprised largely of food, beverage, employee uniforms and miscellaneous items required to operate the Hotel. Based upon the type of inventory, the Proponent estimates that approximately 1/2 of the inventory could be sold at auction at a discount to book value based on traditional liquidation sales.
- Prepaid and Other as of the June 30, 2011 unaudited financial statement consists primarily of customer prepayments for future occupancies at the Hotel. These are moneys held on account of guests and are assumed not to be recoverable in a liquidation by the Debtor's creditors.
- Property & Equipment are generally comprised of land, buildings and improvements, and personal property used in the operation of the Hotel. The Auction will determine the value of the Property & Equipment, but based upon the Proponent's analysis of the Debtor's historical operations, and based upon the application of an income capitalization methodology to arrive at a value, the Proponent believes that the value of the Property & Equipment less than \$60 million. For purposes of this hypothetical liquidation analysis, however, the Proponent believes any value proscribed to the Property & Equipment that is less than \$60 million sufficiently demonstrates that the Plan is in the best interests of creditors. For purposes of determining liquidation value, the Proponent is estimating that approximately 15% of the value of the Property & Equipment will be consumed by selling and legal costs.
- Other Assets consist of book value as of the June 30, 2011 unaudited financial statement of (i) pre-opening expenses and loan fees, which have been paid previously and are amortized for reporting purposes on the Debtor's financial statements, (ii) deposits made by the Debtor to utility providers and others and (iii) Exchange and Suspense costs.
- Ordinary wind-down costs of the Debtor's estate are estimated to be \$150,000.
- Professional fees represent the estimated costs of professionals that would be incurred by a Chapter 7 trustee in a Chapter 7 liquidation.
- Pursuant to Section 326 of the Bankruptcy Code, the statutory maximum fee allowed to a Chapter 7 trustee is 3% of all monies disbursed by the trustee.
- Pursuant to this hypothetical Liquidation Analysis, under which all of the Debtor's assets would be sold by a Chapter 7 trustee, after the payment of administrative costs of a Chapter 7 liquidation, the entire amount of the Net Proceeds Available for Distribution would be distributed to AFP on account of its Claim, which is secured by all of the Debtor's assets.
- Pursuant to this hypothetical Liquidation Analysis, Holders of Priority Claims, Unsecured Claims and parties entitled to Administrative Expenses will receive no distribution from the Debtor's Estate.

**PROJECTED RECOVERIES UNDER THE PLAN:**

Creditor Type	Projected Allowed Claim Amount	Recovery Amount	Recovery %	Notes
<b>AFP Secured Claim</b>	Unknown	AFP will recover the full amount of its Allowed Secured Claim	100%	The AFP Secured Claim will be the lesser of the Purchase Price and \$57,245,372.
<b>Other Secured Claims</b>	-	-	100%	The Proponent does not believe that there are any Other Secured Claims. However, Allowed Other Secured Claims, if any, will receive all of their Collateral under the Plan.
<b>Administrative Expenses</b>	900,000	900,000	100%	Allowed Administrative Expenses will be paid in full by the Purchaser under the Plan.
<b>Unsecured Claims</b>	1,100,000	At least \$550,000	At least 50% (subject to dilution if additional unsecured claims are filed or allowed)	The Unsecured Creditor Carveout will provide Allowed Unsecured Claims with, at least, a pro rata share of \$550,000. Additionally, (i) any Avoidance Action recoveries by the Liquidating Trust and (ii) any Excess Sale Proceeds will inure to the benefit of Unsecured Creditors.
<b>Equity Interests &amp; Other Equity Claims</b>	Unknown	-	0%	Equity Interests and Other Equity Claims are not expected to receive anything under the Plan.