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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
Central Division**

In re:	Bankruptcy No. 16-26470
THE KIRK LLC	(Chapter 11)
Debtor.	Honorable Kevin R. Anderson

**DISCLOSURE STATEMENT
FOR
CHAPTER 11 PLAN DATED OCTOBER 28, 2016**

***** DISCLAIMER: THIS DISCLOSURE STATEMENT HAS NOT YET
BEEN APPROVED BY THE BANKRUPTCY COURT, AND UNTIL IT IS, IT
SHOULD NOT BE RELIED UPON [This paragraph will be removed from
circulation copies once conditional or final approval is obtained] *****

The Kirk LLC (the “**Debtor**”) provides this disclosure statement (the “**Disclosure Statement**”) to you in your capacity as a holder of a claim or as a party in interest in the above-captioned bankruptcy case. The purpose of this Disclosure Statement is to provide information as may be necessary and appropriate to allow you to make an informed judgment about the Chapter 11 Plan dated October 28, 2016 (the “**Plan**”) filed by the Debtor, which Plan is attached as Exhibit A to this Disclosure Statement. As required by § 1125 of the Bankruptcy Code, this Disclosure Statement has been presented to the Court, and the Court has made a preliminary determination that it contains information adequate to meet the purposes of the Bankruptcy Code.

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EXHIBITS

EXHIBIT A	Plan Dated October 28, 2016
EXHIBIT B	Post-Confirmation Financial Projections
EXHIBIT C	Loan Commitment Letter

INCORPORATION OF THE PLAN

This Disclosure Statement incorporates the terms of the Plan. The capitalized terms in this Disclosure Statement have the same meaning as set forth in the Plan. Where there is a discrepancy between the Plan and this Disclosure Statement, the Plan is the controlling document. You are, therefore, strongly encouraged to read the Plan with this Disclosure Statement.

CONCEPT OF THE PLAN

The Plan contemplates the Reorganized Debtor borrowing from Private Money Utah funds sufficient to pay a compromised amount of MRZ's claim, and all other claims in full, on or shortly after the Effective Date. The Debtor projects that its post-confirmation income will be sufficient to pay interest on the new loan while continuing to pay operating expenses. The new loan shall come due two years after funding, and be the Reorganized Debtor anticipates that by that time it will either qualify for more conventional bank financing or sell the Property.

VOTING AND CONFIRMATION OBJECTIONS

A. *Voting.*

Only classes S1 and U3 are impaired and entitled to vote. Each creditor with an impaired Allowed Claim has the right to vote. Creditors in classes S1 and U3 have been provided a ballot, and are encouraged to indicate their acceptance or rejection of the Plan on the enclosed ballot. A class of creditors will be deemed to have accepted the Plan if at

least two-thirds in amount and more than one-half in number of the holders of Allowed Claims of the class (that actually vote) accept the Plan.

If an objection to your Claim is filed prior to Confirmation, then your Claim will no longer be an Allowed Claim and you will not have the right to vote. Nevertheless, under Bankruptcy Rule 3018, the Court, after notice and hearing, may temporarily allow your Claim in an amount which the Court deems proper for the purpose of accepting or rejecting the Plan. If an objection to your Claim has been filed and you desire that your Claim be temporarily allowed for purposes of voting, you must take appropriate steps to obtain such relief.

B. Ballots.

To be counted, each ballot must be completed and delivered to the Debtor's counsel. The instructions and deadlines for submitting ballots are contained in the Ballot and in the Order Conditionally Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan Combined with Notice Thereof and Notice of Confirmation Hearing (the "**Confirmation Hearing Notice**") which have been mailed to you with this Disclosure Statement.

C. Objections to the Plan.

You have the right to object to the Plan. The instructions and deadlines for filing an objection to confirmation of the Plan are set forth in the Confirmation Hearing Notice. Unless the Court determines otherwise, only those objections that are in writing and timely filed with the Court and served on the Debtor's counsel may be considered by the Court at the Confirmation Hearing.

HISTORY

The real property constituting the Kirk Hotel and Apartments was acquired by the family of Garth Jones (“**Jones**”) and David Carscadden (“**Carscadden**”) in approximately 1930. The property has been continuously operated through various business forms and entities since that time. In approximately March 2014, Jones and Carscadden determined to hire a professional management company, and distance themselves from the day-to-day operations of the Property. The Kirk LLC was formed, and title to the Property was transferred from Jones to The Kirk. Encore Real Estate, LLC was hired to manage the Property, and a loan for \$100,000 was obtained from MRZ to allow Jones to access some of the equity in the property while infusing working capital. The MRZ loan was obtained in June 2014, and contemplated interest-only payments until December 2015, when the entire principal balance would come due.

EVENTS LEADING TO BANKRUPTCY

At the end of November 2014, Carscadden believed that Encore was mismanaging the Property, had stolen various items of personal property from the Property, and was over-billing The Kirk for services that were not actually, completely, or competently provided. The Kirk terminated Encore as its property manager, and Carscadden resumed the role of actively managing the property. During January-February 2015, a dispute with MRZ arose regarding the proper mailing address for monthly interest payments, and whether payments had actually been tendered. Eventually, that dispute was at least partially resolved, and monthly payments resumed until December 6, 2015, when the note was due. At that time, The Kirk identified a new lender that was prepared to lend the funds necessary to refinance the MRZ note, but a dispute arose as to whether \$100,000 was the proper payoff. MRZ asserted that it was entitled to default interest, and refused to accept the \$100,000 tendered by The Kirk. Negotiations regarding the payoff continued, until ultimately MRZ noticed a foreclosure sale to be held on July 26, 2016. Before that sale could occur, Jones sought and was denied a temporary restraining order, and The Kirk commenced this bankruptcy case. Before commencing the Chapter 11 case, the Kirk hired Andrew H. Patten as Chief Restructuring Officer (“CRO”). The Kirk filed its Chapter 11 petition on the morning of July 26, 2016 (the “**Petition Date**”), prior to the scheduled 11:45 a.m. foreclosure sale.

SIGNIFICANT EVENTS IN BANKRUPTCY CASE

During the Bankruptcy Case, the Debtor has continued to operate as Debtor in Possession. The Property has generated revenue (through September 30, 2016) of approximately \$51,500, expended funds to operate the Property, in the amount of approximately \$20,600, leaving a profit of \$30,900. An entire year's tax bill (\$15,633.43) will be paid from three months' revenue in November 2016. The Debtor has negotiated with its secured creditors for the use of cash collateral, and has attempted to negotiate a compromise of the major secured claim in the case.

PROPOSED TREATMENT OF SECURED CREDITORS

The Debtor believes that post-petition, it can generate revenues sufficient to meet its operating expenses, and also repay all the claims in the Bankruptcy Case. It is prepared to do so by obtaining a new loan to repay all creditors shortly after Confirmation.

In the Plan, the Debtor proposes to compromise the MRZ claim, and then borrow to pay all claims in full (or in compromised amounts).

The Debtor has three classes of fully-secured creditors: S1 (MRZ), S2 (Tooele County Assessor, and S3 (ForwardLine). The Debtor contests the amount of MRZ's claim, but has reached a tentative compromise to pay \$210,000.00 as a compromise position. The Debtor does not dispute the claim filed by the Tooele County Assessor, and will pay it in full on the Effective Date, with proceeds from the takeout loan. The Debtor does not dispute the amount of ForwardLine's claim, which has recently been informally

asserted in the amount of \$8,227.35. The Debtor will repay that amount in full on the Effective Date, with proceeds from the takeout loan.

PROPOSED TREATMENT OF PRIORITY AND UNSECURED CREDITORS

The Plan also contemplates repayment in full of all unsecured claims, either through the take-out financing contemplated above, or through Estate Cash. Class U1 is comprised of parties holding priority unsecured claims, all of which have either already been paid, are extinguished because of failure of a condition precedent, or are currently contingent claims belonging to apartment tenants who may become entitled to a refund of their deposit by paying all rents due and returning the premises in satisfactory condition. The Reorganized Debtor will repay all Class U1 claims in full either on the Effective Date, or when they become non-contingent. Class U2 is comprised of general unsecured claims. The Reorganized Debtor will repay these claims in full with interest within thirty days following the Effective Date. Class U3 is comprised of insider claims, which will be repaid in full within four years of the Effective Date (but not until other Claims and the take-out loan have been paid in full), from Estate Cash or future earnings of the Reorganized Debtor.

POST-CONFIRMATION FINANCIAL PROJECTIONS

Attached as Exhibit B is a spreadsheet prepared by the Debtor's professionals and adopted by the Debtor's CRO showing sources and uses of Estate Cash on the Effective Date and post-confirmation financial projections for the Reorganized Debtor. These projections have been prepared based upon the Debtor's pre- and post-petition financial

performance and the anticipated structure of post-petition lending. The greatest variables (and risk factors) relating to these projections concern the occupancy rates at the Property, and the Debtor's ability to continue to attract suitable tenants.

Based upon its projections, the Debtor believes that it will be able to pay all amounts committed under the Plan, and continue to make the payments necessary for operations.

RISKS TO SUCCESS OF PLAN

The primary risk to successful consummation of the plan is the possibility that something will go wrong with the loan the Debtor has arranged for. The Debtor has no reason to believe that will occur, and has obtained a pre-qualification letter from Private Money Utah, which is attached hereto as Exhibit C. The Debtor has also identified a back-up lender who may be willing to make a similar loan if something were to go wrong with Private Money Utah.

POST-CONFIRMATION MANAGEMENT

The Plan provides that Jones and Carscadden will each continue in their role as 50% members of the Reorganized Debtor limited liability company. Mr. Patten may elect to continue to work as CRO, but his contract with Debtor allows him to resign on seven days' written notice, and the Debtor makes no representation about Mr. Patten's future intentions. The Debtor anticipates continuing to contract with Jason Koetting and Karmen Jesse as its on-site managers.

INSIDER COMPENSATION

The Debtor anticipates continuing to compensate its current management (Patten, Koetting, and Jesse). Additionally, the Debtor intends to begin to pay \$1,200/mo. to Jones as a rental fee for the parking lot adjacent to the Property, which is owned by Jones personally and was never conveyed to the Debtor. The Debtor may also determine to rehire Carscadden as an active part of its management team post-petition.

EXECUTORY CONTRACTS AND LEASES

A list of executory contracts and leases of the Debtor is attached as Exhibit C to the Plan. This list includes the Debtor's intention with respect to assumption and rejection under the Plan.

TAX CONSEQUENCES OF THE PLAN

The most common tax consequence of confirmation of a plan arises from the discharge. Pursuant to § 1141(d) of the Bankruptcy Code, Confirmation will result in a discharge of all pre-Confirmation debts. This discharge may result in tax deductions for each holder of a Claim that is discharged. The Debtor encourages each holder of Claim to consult its own tax advisor for specifics.

As to the Debtor, the tax consequences of the Plan are minimal. Because essentially all claims will be paid in full through the Plan, the Debtor does not anticipate having any "forgiveness of indebtedness income," which otherwise could affect the Debtor's tax obligations.

LIQUIDATION ANALYSIS

For the Debtor to obtain confirmation of the Plan, holders of impaired claims must either (1) accept the Plan or (2) 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 such holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on such date. The Debtor believes and represents that holders of Allowed Unsecured Claims would eventually receive full payment if this case were converted to chapter 7; however, a Chapter 7 Trustee would have to either shutter the apartments and seek a sale, or operate the apartments while awaiting a suitable offer, which would certainly take longer than the repayment program proposed under the Plan.

LITIGATION

The Reorganized Debtor anticipates that it will join as a plaintiff or cross-claimant post-petition in currently-stayed state court litigation commenced pre-petition against Encore, Mikas Law Group PLLC, the Debtor, and others. These legal claims are preserved under the Plan to be prosecuted by the Reorganized Debtor if not resolved prior to the Confirmation Hearing.

No claims objections are anticipated at this time; however, as claims are filed, the Debtor and Reorganized Debtor may elect to object to unforeseen or misstated claims, and other parties-in-interest that have a stake in the outcome of the matter may join.

The Debtor does not, at this juncture, anticipate litigation regarding the collection of pre- or post-petition accounts receivable. Nevertheless, such claims (or potential

claims) are retained under the Plan so that the Reorganized Debtor may (without argument that such claims have been abandoned) prosecute such claims if advisable.

Claims not specifically retained under the Plan are deemed abandoned. This would include, most notably, any avoidance claims that are not pending at the time of the Confirmation Hearing. Accordingly, any such claims (whether or not specifically identified in this Disclosure Statement) will be lost upon Confirmation.

The Plan provides for retention of jurisdiction by the Court for the resolution of the claims retained under the Plan as well as for several other reasons dealing primarily with questions relating to the Plan or modifications thereof.

DEFAULT

Upon Confirmation, the Plan governs the rights of creditors and parties in interest with respect to Claims that are discharged. The Plan, in a sense, becomes a new contract between the Reorganized Debtor and its creditors. In the event of the Reorganized Debtor's default with respect to a debt owed to the holder of Allowed Secured Claim, the Plan provides that the holder may enforce its lien rights according to the terms of its original loan documents as modified under the Plan. For a Default with respect to the holder of an Allowed Unsecured Claim, the Plan provides that such holder (after giving notice and an opportunity for the Reorganized Debtor to cure) may enforce payment under any applicable law in an amount of its Allowed Unsecured Claim minus any payments actually received. The Debtor does not anticipate any default with respect to payment of Administrative Expenses or priority Claims as such amounts are to be paid in

full on the Effective Date or as soon as they are allowed by the Court. Nevertheless, in the event of a default on such claims, the Plan would permit collections efforts in the full amount.

DATED this 28th day of October, 2016.

THE KIRK LLC

By: /s/ Andrew H. Patten
Andrew H. Patten, its CRO

PRINCE, YEATES & GELDZAHLER
A Professional Corporation

By: /s/ T. Edward Cundick
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Attorneys for The Kirk LLC

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