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6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF NEVADA**

8 WINGATE AIRPORT SOUTH, LLC,
9 Debtor.

Case No.: BK-S-11-11950-MKN
Chapter 11
Hearing Date: November 29, 2011
Hearing Time: 9:30 a.m.

10 **DISCLOSURE STATEMENT TO ACCOMPANY CHAPTER 11 PLAN OF**
11 **REORGANIZATION**

12 **I. INTRODUCTION**

13 Debtor, Wingate Airport South, LLC (“Wingate” or the “Debtor”), hereby submits this
14 Disclosure Statement pursuant to §1125 of the Bankruptcy Code (11 U.S.C. §101 et seq.) to all
15 known creditors, equity holders, and parties-in-interest of the Debtor to disclose information to
16 enable them to make an informed decision in exercising their rights to accept or reject Debtor’s
17 Chapter 11 Plan of Reorganization (the “Plan”) filed with the United States Bankruptcy Court for
18 the District of Nevada (the “Bankruptcy Court”) and attached hereto as Exhibit 1.

19 The information contained in this Disclosure Statement is subject to the approval of the
20 Bankruptcy Court. Unless otherwise specified, the information and analysis set forth herein is
21 current as of the date of this Disclosure Statement.

22 The following is a disclosure of all known information deemed to be material, important,
23 and necessary for all parties-in-interest to arrive at a reasonably informed decision in exercising
24 their right to vote for the acceptance or rejection of the Plan.
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1 Debtor provides this Disclosure Statement to all known holders of claims and Allowed
2 Equity Interests¹ in the Debtor. The purpose of this Disclosure Statement is to provide adequate
3 information, as far as is reasonably practicable, to the holders of claims and Allowed Equity
4 Interests so they can make an informed judgment about the Plan.

5 Before deciding whether to accept or reject the Plan, you should carefully read the
6 contents of this Disclosure Statement and the Plan. The information contained in this Disclosure
7 Statement has not been audited, and therefore, the Debtor does not warrant or represent that the
8 information contained in this Disclosure Statement is completely accurate, but is accurate insofar
9 as information is available to Debtor.

10 You should not rely upon any representations or other inducements made to secure your
11 acceptance or rejection of the Plan other than contained in this Disclosure Statement or in
12 another disclosure statement approved by the Bankruptcy Court. You should report any such
13 additional representations or inducements to the Bankruptcy Court or to counsel for the Debtors,
14 who will deliver such information to the Bankruptcy Court.

15 The Plan may have tax consequences to the Debtor and to the holders of claims and
16 Allowed Equity Interest in the Debtor. For this reason, parties in interest may wish to consult
17 their tax advisors regarding the provisions of the Plan and the particular tax consequences
18 applicable to them of the Plan.

19 The definitions contained in Section 1 of the Debtor's Plan of Reorganization are
20 applicable throughout this Disclosure Statement and are incorporated herein by reference.

21 **II. HISTORY OF DEBTOR**

22
23 Wingate Airport South, LLC is a Nevada limited liability company that owns real
24 property located at 355 E. Warm Springs Road, Las Vegas, Nevada, consisting of a partially
25 completed Wyndham Hotel and land (the "Property"). The sole members of Wingate Airport
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27 ¹ As defined herein shall mean any equity interest which has not been timely disputed, which has been
28 allowed by order of the Court which has become a Final Order.

1 South are Ronald J. Robinson (“Robinson”) and Alisa M. Davis (“Davis”). Robinson has
2 decades of experience as a builder, broker, developer, and successful businessman, and is a
3 reputable and proven investor who knows the Las Vegas, Nevada market.

4 The Project location is just one mile from the Las Vegas Strip and less than ¼ mile from
5 McCarran International Airport and is slated to be a hi-tech executive lodging facility which will
6 include 211 rooms, including 39 suites, 3,500 square feet of conference rooms, a restaurant and
7 bar, fitness center, a tropical outdoor pool area, with a spa and extensive hardscape design.
8 There will be complimentary limousine service to the airport and strip locations.

9 Wingate will offer amenities that are uncommon to equivalent executive hotels. These
10 will include upgraded bedding, 40 inch high definition wall-mounted flat screen TV’s, WI-FI
11 internet access, guest clothing steamers, a state-of-the-art exercise room, free hot breakfast in the
12 morning, complimentary wine and cheese happy hour, and 24 hour room service. The meeting
13 and board room technology will include full audio/visual distribution, wireless remote control
14 units, a boardroom table with 3.5 inch touch screen video selection devices and presenter
15 connections for network connectivity, DSLIB input, audio input, lighting, HVAC, and television
16 controls.

17 The Warm Springs Road corridor is noted for its high traffic count as a result of its
18 proximity to retail, industrial, and millions of square feet of office facilities. With more than
19 two million square feet of commercial office space in an immediate three block radius of the
20 Property, it is designed as a business traveler’s hotel with no gaming. The Property is adjacent to
21 commercial units developed over the last 15 years by Robinson.

- 22 • Robinson paid approximately \$1,000,000 for the land;
- 23 • has a capital investment of \$7,512,367 into the property, not including the land value
24 (Exhibit 2);
- 25 • From February through September 2011, Robinson contributed an additional
26 \$38,882.07 to the Project (Exhibit 3);

- 1 • In 2008 an M.A.I. appraisal valued the land at \$4,100,000. Multibank ordered an
2 appraisal from CBRE Richard Ellis and it came in at \$1,010,000 (Exhibit 4);
- 3 • Debtor obtained an appraisal through HVS Consulting and Valuation Services a
4 Division of DFW Hospitality Consulting, LLC and they valued the land and building
5 as is as of September 12, 2011 at \$10,600,000 (Exhibit 5).

6 On May 25, 2007, Silver State Bank and Wingate entered into a Business Loan
7 Agreement regarding a loan to Wingate in the principal amount of \$1,100,000 to supplement the
8 money invested in the project by Robinson and was intended as a bridge loan until Robinson
9 could obtain permanent financing on the project. In connection with the Business Loan
10 Agreement, Debtor delivered a Promissory Note in the principal amount of \$1,100,000 to Silver
11 State Bank. In order to secure payment of the amounts owed under the Promissory Note, Debtor
12 delivered to Silver State Bank a Revolving Credit Deed of Trust Security Agreement and
13 Assignment of Rents (“Deed of Trust”) which Silver State Bank caused to be recorded on May
14 31, 2007.

15 Due to the downturn in the economic climate, Debtor was unable to pay the Promissory
16 Note on its scheduled maturity date of May 25, 2008. Silver State Bank and Debtor then entered
17 into a Change in Terms Agreement which extended the maturity date of the Promissory Note
18 from May 25, 2008 to September 25, 2008.

19 On September 5, 2008, the Nevada Department of Business and Industry closed Silver
20 State Bank when it issued a Summary Order for Revocation of Charter and Appointment of
21 FDIC as Receiver and Liquidator of Silver State Bank and appointed the Federal Deposit
22 Insurance Corporation (“FDIC”) to act as receiver. On February 19, 2010, the FDIC executed an
23 Assignment of Deeds of Trust and Other Loan documents, assigning its interest in the Note to
24 Multibank, along with a block of other properties for an unknown amount. The Assignment of
25 Deeds of Trust and Other Loan Documents was recorded on April 9, 2010 in Clark County,
26 Nevada.

1 Wingate's default under the Promissory Note prompted Multibank to commence
2 foreclosure proceedings against the Property. Multibank caused a notice of Default and Election
3 to Sell Under Deed of Trust to be recorded against the Property. Multibank claims to hold a
4 perfected first priority security interest against the Property, which Debtor does not dispute.

5 Debtor, through its counsel, has made attempts to work with Multibank to allow it to
6 secure additional financing and complete the project it started on the Property. Unfortunately
7 Debtor and Multibank have been unable to reach a compromise. Multibank has insisted on being
8 paid in full, despite the fact, as outlined above, Multibank is an oversecured creditor.

9 On June 10, 2011, Nevada Governor Brian Sandoval signed into law Assembly Bill 273
10 ("A.B. 273"), which, in part, added section (1)(c) to NRS 40.459, to limit deficiency judgments
11 against debtors, guarantors, and sureties as follows:

12 If the person seeking the judgment acquired the right to obtain the judgment from
13 a person who previously held that right, the amount by which the amount of
14 consideration paid for that right exceeds the fair market value of the property sold
15 at the time of sale or the amount for which the property was actually sold,
16 whichever is greater, with interest from the date of the sale and reasonable costs.

17 NRS 40.459(1)(c), as amended. Accordingly, Multibank's claim in Debtor's Chapter 11 case
18 may be limited to the difference between the value of the Property and the amount Multibank
19 paid to acquire the Deed of Trust. However, it is unknown how much Multibank acquired the
20 \$1,100,000 loan for, as it was acquired and bundled with other loans from the FDIC, who it is
21 believed still retains a 40% interest in the Property.

22 Debtor has been striving to obtain financing to allow this Chapter 11 case to be dismissed
23 and to satisfy Multibank and other unsecured creditors.

24 **III. SUMMARY AND MEANS OF IMPLEMENTING THE PROPOSED PLAN**

25 An agreement has been negotiated with Lenders Mortgage of Las Vegas to loan Debtor
26 sufficient funds to bring its Plan of Reorganization to fruition. Concurrent with the filing of this
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1 Disclosure Statement, Debtor has also file a Motion to Allow Post-Petition financing to fund the
2 Plan.

3 **IV. GENERAL INFORMATION ON REORGANIZATION PROCEEDINGS**

4 Chapter 11 of the Bankruptcy Code is a remedial statute designed to effect the
5 rehabilitation and reorganization of financially distressed individuals and entities. The statutory
6 aims of a reorganization proceeding include the following:

- 7 1) preservation of the Debtors' property as a going concern and preservation of any
8 going concern value of the Debtors' business and operations;
- 9 2) avoidance of a forced and destructive liquidation of the Debtors' assets;
- 10 3) the protection of the interest of Creditors, both secured and unsecured; and
- 11 4) the restructuring of the debts of the Debtors and the finances of the Debtors, such
12 as would enable it to retain those assets necessary to rehabilitate its finances and (at
13 the same time) produce the greatest recovery for its Creditors.

14 The formulation and confirmation of a plan of reorganization is the principal function of
15 a Chapter 11 case. Such a plan normally includes provisions for: (1) altering and modifying
16 rights of creditors; (2) dealing with the property of the Debtors; (3) paying costs and expenses of
17 administering the Chapter 11 case; and (4) execution of the Plan. The Plan may affect the
18 interests of all parties and Creditors, reject executory contracts, and provide for prosecution or
19 settlement of claims belonging to the Debtors. In order to be confirmed by the Court, the Code
20 requires that there be a finding that the Plan received the votes of certain requisite classes and
21 that the Plan be "fair, equitable, and feasible," as to any dissenting classes of creditors.

22 In order for a plan to be "feasible" the Bankruptcy Code requires, as a condition to
23 confirmation, that the Bankruptcy Court find that the liquidation of Wingate or the need for
24 future reorganization is not likely to follow after confirmation. For the purpose of determining
25 whether the Plan meets this requirement, Wingate has analyzed its ability to meet its obligations
26 under the Plan. Wingate reasonably believes that it will be able to make all payments required to
27 be made pursuant to the Plan.

1 In order for a plan to be “fair and equitable” it must comply with the so-called absolute
2 priority rule. The absolute priority rule requires that beginning with the most senior rank of
3 claims of creditors against Debtor, each class in descending rank or priority must receive full and
4 complete compensation before inferior or junior classes may participate in the distribution. The
5 Plan must be accepted by the affirmative vote of a majority (in number of creditors holding two-
6 thirds, in amount) of claims filed and allowed by each class, unless adequate provisions are made
7 for the classes of dissenting Creditors. In order to fully understand how a Plan is confirmed,
8 each individual Creditor should check with his or her own attorney and received full advice on
9 the inter-workings of Section 507(a), 1111, 1112, 1123, 1124 and 1129 of the Bankruptcy Code.

10 **THE FOREGOING IS A BRIEF SUMMARY OF THE HIGHLIGHTS OF**
11 **A PLAN AND CONFIRMATION OF SUCH, AND THIS FOREGOING**
12 **SUMMARY SHOULD NOT BE RELIED ON FOR VOTING PURPOSES.**
13 **CREDITORS ARE URGED TO CONSULT WITH THEIR OWN**
14 **COUNSEL BEFORE MAKING ANY DECISIONS ON A PLAN FILED**
15 **HEREIN.**

16 In addition to the above, Section 1125 of the Code requires that there be a post-petition
17 disclosure in the form of a Disclosure Statement which provides “adequate information” to
18 Creditors before anyone may solicit acceptances of a Chapter 11 Plan.

19 **THIS DISCLOSURE STATEMENT IS PREPARED IN ACCORDANCE**
20 **WITH SECTION 1125 SO AS TO PROVIDE “ADEQUATE**
21 **INFORMATION” TO THE CREDITORS IN THIS PROCEEDING.**
22 **CREDITORS ARE URGED TO CONSULT WITH THEIR OWN**
23 **INDIVIDUAL COUNSEL AND TO REVIEW ALL OF THE PLEADINGS**
24 **FILED IN THIS BANKRUPTCY PROCEEDING IN ORDER TO FULLY**
25 **UNDERSTAND THE DISCLOSURES MADE HEREIN, ANY PLAN OF**
26 **REORGANIZATION FILED HEREIN, AND ANY OTHER PERTINENT**
27 **MATTERS IN THIS PROCEEDING. ANY PLAN OF**
28 **REORGANIZATION WILL BE COMPLEX, ESPECIALLY SINCE IT**
29 **REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BY**
30 **THE DEBTOR (OR ANY OTHER PROPONENT OF A PLAN), AND ANY**
31 **INTELLIGENT JUDGMENT CONCERNING ANY PROPOSED PLAN**
32 **CANNOT BE MADE WITHOUT FULLY UNDERSTANDING THE**
33 **INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT**
34 **AND THE FULL COMPLEXITIES OF ANY PLAN PROPOSED HEREIN.**

1 The Debtor is suited for, and in need of, the broad protection afforded by Chapter 11.
2 The Debtor should be able to effectuate a reconstruction of its financial condition through a plan
3 of reorganization. The Debtor is proposing a plan of reorganization in accordance with a Plan
4 submitted herewith and will move to solicit approval and acceptance of it by creditors, but only
5 after there has been a judicial approval of this Disclosure Statement, including any amendments
6 hereto.

7 **V. LIQUIDATION VALUE OF THE ESTATE'S ASSETS**

8 Debtor believes that the value at liquidation of the Debtor's sole asset, real property
9 located at 355 E. Warm Springs Road, Las Vegas, Nevada, consisting of a partially completed
10 Wyndham Hotel and land (the "Property") through a foreclosure action does not exceed the
11 value of the claims secured by the Property. The Debtor believes that if the case were to proceed
12 under Chapter 7 of the Bankruptcy Code, the unsecured creditors would not receive the full value
13 of their claims.
14

15 **VI. SUMMARY OF ASSETS AND LIABILITIES**

16
17 The statement of affairs and schedules of assets and liabilities of Debtor have previously
18 been filed herein, and to the best of the knowledge, information and belief of Debtor, these
19 statements, together with the monthly operating statements which have been filed on behalf of
20 Debtor, contain an accurate itemization of Debtor's assets and liabilities prior to filing. Debtors'
21 post-petition finances are, it feels, accurately reflected in the Monthly Operating Reports filed on
22 behalf of Debtor since the date of the filing of this petition.

23 **DEBTOR BELIEVES, TO THE BEST OF ITS KNOWLEDGE,**
24 **INFORMATION AND BELIEF THAT THE ASSETS AND LIABILITIES**
25 **SET FORTH HEREIN AND ON SAID SCHEDULES CONSTITUTE A**
26 **FULL AND COMPLETE ESTIMATION OF ALL ASSETS AND**
27 **LIABILITIES OF THE DEBTOR, AND AMOUNTS THEREOF**
(EXCLUDING INTEREST, ATTORNEY'S FEES AND ANY OTHER
UNKNOWN OR VARIABLE FACTS, BEARING ON THE AMOUNT OF
THE LIABILITIES). CREDITORS ARE URGED TO FULLY REVIEW
WITH THEIR ATTORNEYS (AND CONSULT WITH THE DEBTOR AND

1 **ITS ATTORNEY) THE SCHEDULES OF ASSETS AND LIABILITIES**
2 **FILED HEREIN.**

3 Debtor believes that the valuation of its assets, set forth in the schedules of assets and
4 liabilities filed herewith and in monthly post-petition operating reports, is a fair estimate of the
5 book value thereof, if the assets are liquidated in an orderly fashion. However, in the event of
6 the conversion of the Debtors' estate into a Chapter 7 bankruptcy proceeding and the subsequent
7 liquidation of its property over a short period of time (and possible at forced sale values), it is
8 highly possible that a significantly lower value might be received for Debtors' property.
9 Therefore, Debtor believes that it would achieve the greatest value for its property and recovery
10 for creditors through a Plan of Reorganization, which will be proposed by Debtor herein.

11 **VII. CLASSIFICATION OF CLAIMS AND INTERESTS**

12 **A. CLASSIFICATION OF CLAIMS**

13 Classes of Claims. The Claims of the Creditors are separated into designated Classes
14 based upon the nature of the Claim. The following provisions identify the different Classes of
15 Claims that have been designated for the purposes of this Plan. Pursuant to Bankruptcy Code
16 §1123(a)(1), Administrative Claims under Bankruptcy Code §507(a)(2); and Priority Tax Claims
17 under Bankruptcy Code §507(a)(8) are excluded from class designation. The treatment of these
18 claims is provided in Section 3 of this Plan separately from the treatment of the Claims included
19 in the following designated Classes.

20 Class 1. Class 1 consists of the claim of Multibank 2009-1 CRE Venture, LLC, to
21 the extent allowed as a secured claim under §506 of the Bankruptcy Code.

22 Class 2. Class 2 consists of the claims of Crowne Tradewinds, LLC, All Trades
23 Concrete Construction, Inc., Exclusive Landscape Maintenance, Hanson Structural Precast, Inc.,
24 and United Subcontractors, Inc., to the extent allowed as secured claims under §506 of the
25 Bankruptcy Code.

26 Class 3. Class 3 consists of the claim of Park Place Properties, LLC, to the extent
27 allowed under §502 of the Bankruptcy Code (except Administrative Claims and Priority Tax
28 Claims).

1 Class 4. Class 4 consists of all equity interests of the Debtor.

2
3 **B. TREATMENT OF CLAIMS**

4 Treatment of Claims. The treatment of any claim under this Plan is determined by
5 whether the Claim is an Allowed Claim by the Class into which such Claim is placed. In order
6 for the Holder of a Claim to participate in this Plan, the Claim must be an Allowed Claim. Only
7 the Holders of Allowed Claims will receive the payments and distributions provided for the
8 various Classes of Claims under this Plan.

9 Class 1. Class 1 will be paid the sum of \$1,100,000 for a full release of all claims it
10 has against Debtor. Payment shall be made upon confirmation of the Plan.

11 Class 2. Holders of Allowed Claims in Class 2 will be paid their Pro Rata share of
12 the sum of \$500,000 per dollar claimed as of the date of Debtor's Chapter 11 Petition filing.
13 This sum will be paid upon the Effective Date.

14 Class 3. Holders of Class 3 claims will be paid \$0.00.

15 Class 4. Allowed Equity Interest Holders shall retain their interest in the Debtor
16 and the Reorganized Debtor. All interest holders have agreed to remain employed by the
17 Reorganized Debtor during the term of the Plan. The retention of these interest holders as key
18 employee insiders is essential to the Debtor's proposed reorganization.

19 Administrative Claims. The amount of each Allowed Administrative Claim shall be
20 determined using normal procedures for the establishment and verification of Claims. Under the
21 Plan, each holder of an Allowed Administrative Claim will be paid the amount of such Allowed
22 Administrative Claim, in cash, on the Effective Date.

23 Gap Period Claims. The amount of each Allowed Gap Period Claim shall be
24 determined using normal procedures for the establishment and verification of Claims. Under this
25 Plan, each Holder of an Allowed Gap Period Claim will be paid the amount of such Allowed
26 Gap Period Claim, in cash, on the Effective Date. Debtor is not aware of any Allowed Gap
27 Period claims against it.

1 Priority Tax Claims. The amount of each Allowed Priority Tax Claim shall be
2 determined using normal procedures for the establishment and verification of Claims. All
3 Allowed Priority Tax Claims will be paid in full, with cash, upon the Effective Date.

4 Objections to Claims. Any Claim set forth on a Proof of Claim that was filed with the
5 Bankruptcy Court prior to the Bar Date shall be deemed to be an Allowed Claim unless the
6 Debtor, or any Creditor or other party in interest files an Objection to the allowance of such
7 Claim, the amount of such Claim, or the classification of such Claim. All Objections to Claims
8 under this Plan, including Objections as to whether a Claim is an Allowed Claim, the amount of
9 any Allowed Claim, and the Class to which any Allowed Claim belongs, shall be determined by
10 the Bankruptcy Court. Unless extended by the Bankruptcy Court, all Objections to Claims in
11 this Plan shall be filed within sixty (60) days after the Effective Date.

12 Disputed Claims. Notwithstanding any other provisions of this Plan, the Holder of
13 any Disputed Claim will not receive any distributions for the disputed portion of such Claim
14 until the disputed portion of such Claim, or some portion of such disputed amount, is allowed by
15 the Bankruptcy Court. On the Effective Date, Debtor shall establish a Disputed Claims Reserve
16 to hold Trust Receipts with respect to Disputed Claims to which the Disputed Claim belongs.
17 Any Trust Receipts allocated to the Disputed Claims Reserve with respect to a Disputed Claim
18 shall be held until the Bankruptcy Court determines the allowed portion of the Disputed Claim or
19 until further order of the Bankruptcy Court.

20 **VIII. MISCELLANEOUS**

21 **A. RETENTION OF JURISDICTION**

22 The Court shall retain jurisdiction of this case for the following purposes:

- 23
- 24 1. allowance of compensation and other administrative expenses;
 - 25 2. resolution of objections to claims;
 - 26 3. resolution of all objections, conflicts, controversies or disputes arising out of the
27 sale of assets of the estate and to provide for additional time for sale of any assets if necessary;
- 28

1 4. correction of any defect, omission or inconsistency in the Plan, or the order
2 confirming the Plan as may be necessary to carry out the purposes and intent of the Plan;

3 5. modification of the Plan in accordance with the provisions of 11 U.S.C. §1127;

4 6. resolution of all questions and disputes regarding title to property and resolution
5 of all causes of action, controversies, disputes or conflicts arising out of the Plan, the order
6 confirming the Plan, or any other order issued with respect to the Plan, including, without
7 limitation, disputes arising out of the failure of the Debtors, any creditor, or other party in
8 interest to perform obligations requires under the Plan;

9 7. resolution of requests to close or reopen this case; and

10 8. assumption or rejection of Executory Contracts which are not discovered or
11 proved to be valid as against the Debtor prior to the Confirmation Date, and allowance of claims
12 for damages as to rejection of such Executory Contracts.

13 **B. EFFECT OF CONFIRMATION**

14 The Plan provides that the entry of the confirmation order discharges and terminates, as
15 of the Effective Date, all Claims against Wingate that arose at any time before the confirmation
16 order was entered. The discharge of Wingate under the Plan will be effective as to any claims
17 against Wingate, regardless of whether a proof of claim was scheduled or filed, whether the
18 claim is an Allowed Claim or whether the holder thereof has voted to accept or reject the Plan.

19 **C. EFFECTIVE DATE**

20 The Effective Date is defined in the Plan.

21 **D. SUBSTANTIAL CONFIRMATION**

22 The Plan will be deemed to be substantially consummated upon the Effective Date.

23 **E. RESERVATION OF RIGHTS**

24 The filing of a Plan, any statement or provision contained in the Plan, or any action by
25 any party with respect to the Plan, shall not be considered an admission against interest or a
26 waiver of any rights, except as stated in the Plan as finally confirmed. In the event the Plan is
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1 not confirmed, the Plan, any statement or provision contained in the Plan may not be used or
2 relied upon in any suit, action, controversy or other proceeding.

3 **F. RIGHT TO WITHHOLD CONFIRMATION ORDER OR NOT TO**
4 **PROCEED**

5 If there are any impediments or delays in confirming the Plan, Debtor reserves the right
6 to withhold the order confirming the Plan or proceed under the Plan until such time as the Plan
7 has been confirmed by the Court and the Effective Date under the Plan has passed.

8 **IX. RISK FACTORS**

9 In addition to other matters addressed elsewhere in this Disclosure Statement, the Plan
10 involves certain significant risks that should be taken into consideration, including those material
11 risk factors set forth below.

12 **A. RISK OF NON-PAYMENT**

13 Upon the effectiveness of the Plan, Wingate will have substantial debt. It has obtained a
14 commitment for a bridge loan to satisfy the Plan. Any forecast of future financial results must be
15 based upon a number of assumptions that are subject to inherent uncertainties and contingencies,
16 many of which are beyond the control of Wingate. Accordingly, there can be no assurance in
17 this regard that Wingate will be able to satisfy its debt obligations.

18 **B. TAX RISKS**

19 The federal, state, local and foreign tax consequences of the Plan are complex, and in
20 many areas, uncertain. Holders of Claims are strongly urged to consult their tax advisers for
21 specified reference to the federal, state, local and foreign tax consequences of the Plan with
22 respect to their Claim. Wingate makes no assurances regarding the federal state, local and
23 foreign tax consequences of the Plan with respect to any Claim.

24 **C. RISK OF NON-CONFIRMATION OF THE PLAN**

25 Even if the requisite acceptances are received, the Plan may not be confirmed by the
26 Bankruptcy Court, which sits as a court of equity and may exercise substantial discretion.
27 Confirmation of the Plan requires, among other things, a finding by the Bankruptcy Court that
28 there will not be a need for further financial reorganization, and that the value of distributions to

1 Classes of dissenting Creditors not be less than the value of distributions such creditors would
2 receive if Wingate was liquidated under Chapter 7 of the Bankruptcy Code. Although Wingate
3 believes that the Plan will not be followed by a further need for financial reorganization and that
4 dissenting Creditors will receive distributions at least as great as they would receive in a
5 liquidation under Chapter 7 of the Bankruptcy Code, there can be no assurance that the
6 Bankruptcy Court will conclude that these tests have been met. Furthermore, the effectiveness of
7 the Plan is subject to certain conditions and there can be no assurance that such conditions will
8 be satisfied.

9 **X. ACCEPTANCE AND CONFIRMATION**

10 **A. VOTING PROCEDURES**

11 1. Generally.

12 Only those classes that are impaired under the Plan are entitled to vote to accept or reject
13 the Plan. In that regard, Classes 1, 2, 3 and 4 are impaired under the Plan and are entitled to
14 vote. Classes entitled Priority Tax Claims, Administrative Claims, and Disputed Claims are not
15 impaired under the Plan and are deemed to have accepted the Plan without voting. Debtor
16 reserves the right to supplement this Disclosure Statement (if necessary) and to solicit any of the
17 Classes which may prove to be impaired, as the Reorganization Case develops further.

18 Ballots will be sent to the known holders of Claims whether or not such Claims are
19 disputed. (Attached hereto as Exhibit 6 are forms of Ballots proposed by the Debtor). However,
20 only the holders of Allowed Claims (or Claims that have been temporarily allowed or have been
21 estimated by the Bankruptcy Court), who are impaired are entitled to vote on the Plan. A Claim,
22 to which an objection has been filed is not an Allowed Claim unless and until the Bankruptcy
23 Court rules on the objection and any appeals are determined. The holders of such Disputed
24 Claims are not entitled to vote on the Plan unless they request that the Bankruptcy Court,
25 pursuant to Bankruptcy Rule 3018, temporarily allow the Claims in an appropriate amount solely
26 for the purpose of enabling the holders of such Disputed Claims to vote on the Plan; and the
27 Bankruptcy Court does so.

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2. Incomplete Ballots.

Ballots that are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will be regarded as a vote for acceptance of the Plan. In addition, unless otherwise indicated, a vote cast by a Person will constitute an acceptance or rejection of the Plan with respect to each Allowed Claim held, directly or indirectly, by such Person.

3. Waivers of Defects, Irregularities, etc.

Unless otherwise directed by the Bankruptcy Court, all questions as to validity, form, eligibility (including time of receipt), acceptance and revocation or withdrawal of Ballots will be determined by Debtor in its sole discretion, whose determination will be final and binding. As indicated below under “Withdrawal of Ballots”, effective withdrawals of Ballots must be delivered to the Debtor prior to the voting deadline. Debtor reserves the absolute right to contest the validity of such withdrawal. Debtor further reserves the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. The interpretation (including the Ballot and instructions thereto) by Debtor, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities have not therefore been cured or waived, will be invalidated.

4. Withdrawal of Ballots; Revocation.

Any creditor holding an Allowed Claim which is impaired who has delivered a Ballot for or against the acceptance of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to Debtor at any time prior to the voting deadline.

A notice of withdrawal, to be valid, must (i) contain the description of the Claim to which it relates and the amount of such Claim; (ii) be signed by the voting Creditor, in the same manner as the Ballot, and (iii) be received by Debtor in a timely manner at the address set forth below. As indicated above, Debtor expressly reserves the right to contest the validity of any such withdrawals of Ballots.

1 Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of
2 Ballots which is not received in a timely manner will not be effective to withdraw a previously
3 furnished Ballot.

4 5. Submission of Ballots.

5 The forms of Ballot for each of the Classes entitled to vote on the Plan will be sent to all
6 Creditors with a copy of the Disclosure Statement approved by the Bankruptcy Court and the
7 Plan. Creditors should read the ballot carefully. If any Creditor has any questions concerning
8 voting procedures, that Creditor may contact:

9 Neil J. Beller, Esq.
10 Neil J. Beller, Ltd.
11 7408 W. Sahara Avenue
12 Las Vegas, NV 89117
13 (702) 368-7767

14 Ballots must be returned to:

15 Neil J. Beller, Esq.
16 Neil J. Beller, Ltd.
17 7408 W. Sahara Avenue
18 Las Vegas, NV 89117
19 (702) 368-7767

20 Ballots must be postmarked no later than 5:00 p.m. on the day which is 28 days after the Court
21 approves this Disclosure Statement.

22 **XI. ALTERNATIVES TO THE PLAN**

23 Wingate believes that the Plan will enable Wingate to continue with the construction and
24 development of the Project. Liquidation will not provide a full return on all Allowed Claims.
25 Wingate also believes that the Plan provides the greatest possible recovery to all Creditors.
26 Wingate believes that the Plan, as described herein, enables all Creditors to receive payment of
27 their Allowed Claims as quickly as possible.

28 **XII. HEARING ON CONFIRMATION**

29 The hearing on confirmation of the Plan has been set for November 29, 2011, at the hour
30 of 9:30 a.m., before the Honorable Mike K. Nakagawa, United States Bankruptcy Courthouse,

1 333 Las Vegas Boulevard South, Las Vegas, Nevada, 89101, on the Third Floor in Courtroom
2 No. 2. In addition, all objections must be in writing, filed with the Court, and a copy served on
3 Debtors' counsel no later than November 15, 2011. If there are any impediments or delays in
4 confirming the Plan, Debtor reserves its right to withhold any order confirming the Plan or not
5 proceed under the Plan until such time as the Plan has been confirmed by the Court and no
6 appeals have been filed related to the order confirming the Plan.

7 **A. EFFECT OF CONFIRMATION**

8 The provisions of the Plan shall bind on all parties in interest whether or not such parties
9 are impaired under the Plan and whether or not such parties have accepted the Plan.

10 **B. CONSEQUENCE OF FAILURE TO CONFIRM THE PLAN**

11 In the event that the requirements of confirmation of the Plan are not satisfied, Debtor
12 believes that it will be necessary to revise the Plan in order to achieve confirmation or move the
13 Court to convert the case to a case under Chapter 7.

14 DATED this 17th day of October, 2011.

15 NEIL J. BELLER, LTD.

16
17 /s/ Neil J. Beller, Esq.

18 Neil J. Beller, Esq.
19 Nevada Bar No. 002360
20 7408 W. Sahara Avenue
21 Las Vegas, Nevada 89117
22 Attorney for Debtor
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