

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**In re:**

**EMERALD GRANDE, LLC**

**Debtor.**

**Case No. 1:17-bk-00021**

**Chapter 11**

**DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE  
PROPOSED BY EMERALD GRANDE, LLC**

**KAY CASTO & CHANEY, PLLC**

Steven L. Thomas (WVSB #3738)  
Thomas H. Ewing (WVSB #9655)  
P.O. Box 2031  
Charleston, West Virginia 25327-2031  
Telephone: (304) 345-8900  
Facsimile: (304) 345-8909  
[stthomas@kaycasto.com](mailto:stthomas@kaycasto.com)  
[tewing@kaycasto.com](mailto:tewing@kaycasto.com)

*Counsel for the Debtor Emerald Grande, LLC*

TABLE OF CONTENTS

	<u>Page</u>
I. OVERVIEW OF THE DISCLOSURE STATEMENT .....	1
PURPOSE OF DISCLOSURE STATEMENT .....	1
PROCEDURAL INFORMATION .....	1
II. SUMMARY AND OVERVIEW OF THE PLAN .....	4
III. SOURCES OF FUNDING AND PROJECTED DISTRIBUTIONS TO CREDITORS .....	8
IV. BACKGROUND.....	9
A. Background of EG.....	9
B. Filing of Bankruptcy Petition and Significant Events in Bankruptcy Case and Related Litigation.....	12
C. Claims Bar Date and Summary of Filed Claims .....	14
D. Unexpired Leases and Executory Contracts.....	17
E. Means for Implementation and Execution of the Plan .....	18
V. REORGANIZED DEBTOR .....	19
VI. EFFECTIVENESS OF THE PLAN.....	19
A. Conditions Precedent to Effective Date .....	19
B. Satisfaction of Conditions .....	19
C. Effect of Nonoccurrence of Conditions to Effective Date .....	19
VII. EFFECT OF CONFIRMATION.....	20
A. Vesting of Assets.....	20
B. Release of Assets.....	20
C. Binding Effect .....	20
D. Satisfaction of Claims and Termination of Interests .....	20
E. Term of Injunctions or Stays.....	20
F. Retention of Causes of Action .....	21
G. Injunction Against Interference with Plan.....	21
VIII. ALTERNATIVES TO THE PLAN .....	21
A. Other Plans of Reorganization .....	21
B. Liquidation Under Chapter 7 of the Bankruptcy Code .....	21
IX. CONFIRMATION REQUIREMENTS .....	22
A. The Confirmation Hearing .....	22

B.	Acceptances Necessary to Confirm the Plan.....	22
C.	Best Interests of Creditors.....	23
D.	Feasibility.....	24
E.	Confirmation of the Plan.....	24
X.	CERTAIN RISK FACTORS TO BE CONSIDERED.....	24
A.	Parties-In-Interest May Object to the Classification of Claims.....	24
B.	EG May Not Be Able to Secure Confirmation of the Plan.....	24
C.	EG May Object to the Amount or Classification of Your Claim.....	25
XI.	WHERE YOU CAN OBTAIN MORE INFORMATION.....	25
XII.	CONCLUSION AND RECOMMENDATION.....	25

CERTIFICATE OF SERVICE

**IMPORTANT NOTICE**

**This Disclosure Statement<sup>1</sup> and its related documents are the only documents authorized by the Bankruptcy Court to be used in connection with the solicitation of votes to accept the Plan. No representations have been authorized by the Bankruptcy Court concerning the Debtor, its business operations or the value of its assets, except as explicitly set forth in this Disclosure Statement.**

**Unless specifically defined herein, please refer to the Plan (or, where indicated, certain motions filed with the Bankruptcy Court) for definitions of the capitalized terms used in this Disclosure Statement.**

**Debtor reserves the right to file an amended Plan and Disclosure Statement from time to time. Debtor urges you to read this Disclosure Statement carefully for a discussion of voting instructions, recovery information, classification of claims, the history of Debtor and the Case and a summary and analysis of the Plan.**

**This Disclosure Statement contains only a summary of the Plan. This Disclosure Statement is not intended to replace a careful and detailed review of the Plan, only to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the Plan, and the exhibits attached thereto, if any, and the agreements and documents described therein. If there is a conflict between the Plan and this Disclosure Statement, the provisions of the Plan will govern. You are encouraged to review the full text of the Plan and to read carefully the entire Disclosure Statement, including all exhibits, before deciding how to vote with respect to the Plan.**

**Except as expressly otherwise indicated, the statements in this Disclosure Statement are made as of September \_\_, 2017, and the delivery of this Disclosure Statement will not, under any circumstances, imply that the information contained in this Disclosure Statement is correct at any time after September \_\_, 2017. Any estimates of claims or interests in this Disclosure Statement may vary from the final amounts of claims or interests allowed by the Bankruptcy Court. In addition, the treatment of creditors under the Plan described herein is subject to change as such treatment continues to be negotiated.**

**YOU SHOULD NOT CONSTRUE THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. YOU SHOULD, THEREFORE, CONSULT WITH YOUR OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS IN CONNECTION WITH THE PLAN, THE SOLICITATION OF VOTES ON THE PLAN AND THE TRANSACTIONS CONTEMPLATED BY THE PLAN.**

---

<sup>1</sup>Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Proposed by Emerald Grande, LLC (the "Plan").

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

EMERALD GRANDE, LLC

Case No. 1:17-bk-00021

Debtor.

Chapter 11

DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE  
PROPOSED BY EMERALD GRANDE, LLC

I. OVERVIEW OF THE DISCLOSURE STATEMENT

PURPOSE OF DISCLOSURE STATEMENT

The debtor and debtor-in-possession in the above-captioned case, Emerald Grande, LLC (“**EG**” or “**Debtor**”), has prepared this Disclosure Statement (the “**Disclosure Statement**”) to accompany the Plan of Reorganization under Chapter 11 of the Bankruptcy Code Proposed by EG (the “**Plan**”), and in connection with its solicitation of acceptances of Plan filed in EG’s chapter 11 Case under the Bankruptcy Code. Upon order of the Bankruptcy Court entered Month/Day, 2017, the Bankruptcy Court approved this Disclosure Statement and scheduled the Confirmation Hearing.

A copy of the Plan is attached to this Disclosure Statement and incorporated into this Disclosure Statement by reference as **Exhibit A**. Unless otherwise specifically noted, all capitalized terms utilized herein shall have the meanings ascribed to such terms as set forth in the Plan.

You should read this Disclosure Statement and the Plan in their entirety before voting on the Plan. No statements or information concerning EG, its affiliates or any other entity described in this Disclosure Statement or the Plan, particularly, but not limited to, EG’s profits, financial condition, assets or liabilities are authorized by EG other than as set forth in this Disclosure Statement or Exhibits hereto.

The financial information set forth in this Disclosure Statement has not been audited by independent certified public accountants, nor has it necessarily been prepared in accordance with generally accepted accounting principles, except as specifically set forth herein. For that reason, and as a result of the complexity of the financial affairs of EG, EG is not able to represent and warrant that the information set forth in this Disclosure Statement is without any inaccuracy. To the extent possible, however, the information has been prepared from EG’s Schedules and other information available to EG, and every reasonable effort has been made to ensure that all information in this Disclosure Statement has been fairly presented.

PROCEDURAL INFORMATION

**Voting**

**Which Classes of Claims and Interests are Entitled to Vote on the Plan?**

Classes of Claims entitled to vote on the Plan are as follows:

- Claims and Interests in Classes 1, 2, 3, 4, 5 and 6 are Impaired and entitled to vote on the Plan (each a “**Voting Class**” and together the “**Voting Classes**”). The Class 7 Equity Interest will be canceled, and is deemed to reject the Plan.

Under the Bankruptcy Code, the Plan will be deemed accepted by an Impaired Class of Claims if EG receives votes accepting the Plan representing at least:

- two-thirds of the total dollar amount of the allowed Claims in Classes that vote; and
- more than one-half of the total number of allowed Claims in the Class that cast a vote.

All properly completed ballots received by EG on or before **Month/Day, 2017 at 5:00 p.m. (prevailing eastern time)** (the "**Voting Deadline**"), will be counted in determining whether each Impaired Class entitled to vote on the Plan has accepted the Plan. Any ballots received after the Voting Deadline will not be counted. All ballots must contain an original signature to be counted. No ballots received by facsimile will be accepted.

#### **Voting on the Plan**

***When does the vote need to be received?*** The deadline for the receipt by EG of properly completed ballots is **Month/Day, 2017 at 5:00 p.m. (prevailing eastern time)**.

***Which Classes may vote?*** Persons may vote to accept or reject the Plan with respect to Allowed Claims that belong to a Class that is Impaired under the Plan and is not deemed to have rejected the Plan- i.e. Classes 1, 2, 3, 4, 5, and 6.

***Which members of the Impaired Classes may vote?*** The *voting record* date for determining which members of Impaired Classes may vote on the Plan is **Month/Day, 2017**. Persons may vote on the Plan only with respect to Claims that were held on the voting record date.

***How do I vote on the Plan?*** For a vote to be counted, EG must receive an original signed copy of the ballot form approved by the Bankruptcy Court. Faxed copies and votes sent on other forms will not be accepted.

***Who should I contact if I have questions or need a ballot?*** You may contact EG at the address or phone number listed below.

This Disclosure Statement, the Plan, attachments thereto and documents filed by EG in connection therewith are the only materials that you should use in determining how to vote on the Plan. EG submits that approval of the Plan provides the greatest return to holders of Claims in the Voting Classes.

#### **Voting Recommendations**

EG submits that the Plan presents the best opportunity for holders of Claims to maximize their respective recoveries. **EG encourages holders of Impaired Claims to vote to accept the Plan.**

The ballots have been specifically designed for the purpose of soliciting votes on the Plan from each Class entitled to vote. If you hold Claims in more than one Class, you must use a separate ballot for voting with respect to each Class of Claims that you hold.

Please complete and sign your ballot and return it in the enclosed pre-addressed envelope to the office of the bankruptcy counsel to EG. All correspondence in connection with voting on the Plan should be directed to the following address:

**By mail or overnight delivery:**  
**Kay Casto & Chaney PLLC**  
**Attn: Deadra Cummins**  
1500 Chase Tower  
707 Virginia Street East  
Charleston, WEST VIRGINIA 25301  
(304) 345-8900

EG will prepare and file with the Bankruptcy Court a certification of the results of the voting on the Plan on a Class-by-Class basis.

Additional copies of the ballots, this Disclosure Statement and the Plan are available upon request made to EG at the address and telephone number above.

**Your Vote Is Important**

Your vote on the Plan is important because:

- Under the Bankruptcy Code, a chapter 11 plan can only be confirmed if certain majorities in dollar amount and number of claims (as described above) of each Voting Class under the plan vote to accept the plan, unless the “cram down” provisions of the Bankruptcy Code are used.
- Under the Bankruptcy Code, only the votes of those holders of claims or interests who actually submit votes on a plan are counted in determining whether the specified majorities of votes in favor of the plan have been received.
- If you are eligible to vote with respect to a Claim and do not deliver a properly completed ballot relating to that Claim by the Voting Deadline, you will be deemed to have abstained from voting with respect to that Claim and your eligibility to vote with respect to that Claim will *not* be considered in determining the number and dollar amount of ballots needed to make up the specified majority of that Claim’s Class for the purpose of approving the Plan.

All pleadings and other documents referred to in this Disclosure Statement as being on file with the Bankruptcy Court are available for inspection and review during normal business hours at the Office of the Clerk of the United States Bankruptcy Court for the Northern District of West Virginia, U.S. Bankruptcy Court, 1125 Chapline Street Wheeling, West Virginia 26003.

### **Confirmation Hearing**

The Bankruptcy Court will hold the Confirmation Hearing at the following time and place:

**Confirmation Hearing**

**Date and Time:** Commencing at \_\_\_\_\_ (\_\_\_\_\_ time), on [Month/Day], 2017.  
**Place:** U.S. Bankruptcy Court, L. Edward Friend II Bankruptcy Courtroom, 1125 Chapline Street Wheeling, West Virginia 26003.



**Judge:** Patrick M. Flatley, United States Bankruptcy Judge, Northern District of West Virginia.

The Confirmation Hearing may be adjourned from time to time on announcement in the Bankruptcy Court on the scheduled date for the hearing. No further notice will be required to adjourn the hearing.

At the Confirmation Hearing, the Bankruptcy Court will:

- determine whether sufficient majorities in number and dollar amount, as applicable, from each Voting Class have delivered properly executed votes accepting the Plan;
- hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of;
- determine whether the Plan meets the confirmation requirements of the Bankruptcy Code; and
- determine whether to confirm the Plan.

Any objection to confirmation of the Plan must be in writing and filed and served as required by the Bankruptcy Court under the order approving this Disclosure Statement. That order requires any objections to the confirmation of the Plan to be served so as to be received on or before 4:00 p.m. (prevailing eastern time) on Month/Day, 2017, by (i) Counsel for the Debtor: Kay Casto & Chaney PLLC, 1500 Chase Tower, 707 Virginia Street East, Charleston, WEST VIRGINIA 25301, Attn: Steven L. Thomas, Esquire, and (ii) Office of the United States Trustee, 300 Virginia Street East, Room 2025, Charleston, WEST VIRGINIA 25301, Attn: David Bissett.

**II. SUMMARY AND OVERVIEW OF THE PLAN**

The following table briefly summarizes the classifications and treatment of Claims and Equity Interests under the Plan.

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
N/A	Administrative Expense Claims	Paid in full, in Cash, according to ordinary business terms.	100%	Unimpaired	No
N/A	Professional Fee Compensation and Reimbursement Claims	Paid in full, in Cash. These expenses are classified as Reorganization Expenses in the Projected Financial Statements, attached to the Plan as Exhibit 2	100%	Unimpaired	No
N/A	U.S. Trustee Fees	All fees payable in the Case under 28 U.S.C. §1930, as agreed by EG or as determined by the Bankruptcy Court, will, if not previously paid by EG, be paid in Cash on the Effective Date or as soon thereafter as is practicable, and will continue to be paid by EG	100%	Unimpaired	No



<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
		as required under 28 U.S.C. §1930 until such time as an order is entered by the Bankruptcy Court closing the Case.			
N/A	Priority Tax Claims	<p>The following Priority Tax Claims have been filed:</p> <ul style="list-style-type: none"> <li>• West Virginia Department of Tax and Revenue--\$70,684.41 per Claim No. 1</li> <li>• Internal Revenue Service--\$800.00 per Claim No. 2</li> <li>• West Virginia State Auditor's Office--\$36,684.67 per Claim No. 5 (Nicholas County real estate taxes)</li> <li>• Kanawha County Sheriff--\$259,290.31 per Claim No. 6-1<sup>2</sup></li> <li>• Kanawha County Sheriff's Office--\$80,000 per Claim No. 15 (hotel/motel taxes).</li> </ul> <p>The Priority Tax Claims of the West Virginia State Auditor's Office, which relate to property taxes for the Summersville Hotel, and that portion of the Priority Tax Claims of the Sheriff of Kanawha County which relate to property taxes associated with the Elkview Hotel, will be paid in full, in Cash on the later of the (i) Effective Date (or as soon as practicable thereafter), (ii) the closing date for the sale of the Debtor's Elkview Hotel and Summersville Hotel, or (iii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim. The Priority Tax Claims of the Sheriff of Kanawha County which relate to the Debtor's Charleston Property, will be paid through post- petition</p>	100%	Unimpaired	No

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
		loans made by First Bank of Charleston, and added to the amounts of its Class 3 Secured Claims. All other Priority Tax Claims will be paid in equal monthly installments commencing on the later of (i) the Effective Date (or as soon as reasonably practicable thereafter) and (ii) the date such other Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon as practicable thereafter) and ending no later than five years after the Petition Date.			
<b>Class 1</b>	Carter Bank Secured Claim	Carter Bank & Trust has filed a secured claim in the amount of \$10,749,445.99 per Claim No. 8. Carter Bank's secured claim will be paid out of the Net Proceeds of the sales of the Elkview Hotel and the Summersville Hotel.	100%	Impaired	Yes
<b>Class 2</b>	First Bank Secured Claim	First Bank of Charleston has filed a secured claim in the amount of \$1,983,878.77 per Claim No. 12, consisting of Loan 330005, having a balance of \$1,656,823.96 as of 9/6/2017, and Loan 351018, having a balance of \$364,199.17 as of 9/6/2017. Debtor will continue paying the contractual loan payments to First Bank in the normal course of business. First Bank currently collects the Rent Income, and is receiving monthly payments from the Tenant Settlements with respect to the Charleston Property. After the Effective Date, First Bank will continue to receive those payments, apply the Rent Income to the contractual loan payments, and remit the balance to the Debtor for payment of Claims under the Plan.	100%	Impaired	Yes

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
Class 3	Franchise Default Cure Claim	<p>La Quinta Franchising, LLC has filed a claim for unpaid franchise fees in the amount of \$181,605.55.</p> <p>EG will defer the decision on assumption and/or assignment of the La Quinta Franchise Agreements until the sale of the Elkview Hotel and the Summersville Hotel, to determine if the buyer desires to retain the La Quinta franchise. If the purchaser elects to retain the La Quinta franchise, and satisfies the conditions published by La Quinta for its franchisees, EG will assume the Franchise Agreements and cure the prepetition defaults in payment of franchise fees from the Net Proceeds from sale. If the purchaser elects to not retain the La Quinta franchise, then the claims of La Quinta will be treated under 11 U.S.C. § 365(g) to be paid in full, in deferred Cash payments without interest, beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15<sup>th</sup> day of the month following the date the Class 3 Claim becomes an Allowed Claim, and continuing on the 15<sup>th</sup> day of each month thereafter, ending no later than ten (10) years after the date that the first such payment is made.</p>	100%	Impaired	Yes
Class 4	Comm 2013 Disputed Secured Claim	<p>Comm 2013 has filed a claim against EG related to the costs of constructing the new bridge at the Crossings Mall, which provides access to the Elkview Hotel, in the amount of \$1,112,664.50, which is the full amount of the cost of rebuilding the bridge. EG has employed conflicts counsel, and filed an adversary proceeding (A.P. 17-0036) in the Bankruptcy Court ("<u>Adversary Proceeding</u>") against Tara Retail Group, LLC, asking for</p>	50%	Impaired	

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Recovery</u>	<u>Impairment</u>	<u>Voting</u>
		<p>a declaration resolving the issues relating to the amount it should contribute to the cost of rebuilding the bridge.</p> <p>EG disputes Comm 2013's standing to file the Class 4 Claim. The Class 4 Claim will receive no distribution per se. The amount to be contributed by EG for the cost of rebuilding the bridge providing access to the Elkview Hotel will be determined by the Bankruptcy Court's resolution of the Adversary Proceeding.</p>			
<b>Class 5</b>	General Unsecured Claims	Paid in full, in deferred Cash payments without interest, beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15 <sup>th</sup> day of the month following the date such General Unsecured Claim becomes an Allowed General Unsecured Claim, and continuing on the 15 <sup>th</sup> day of each month thereafter, ending no later than ten (10) years after the date that the first such payment is made.	100%	Impaired	Yes
<b>Class 6</b>	Insider Unsecured Claims	Holders of Insider Unsecured Claims will retain their claims, but will receive no distributions over the Plan period.	0%	Impaired	Yes
<b>Class 7</b>	Equity Interests	The pre-petition Equity Interests will be cancelled, and new equity interests will be issued to William and Rebecca Abruzzino.	100%	Impaired	Yes

**III. SOURCES OF FUNDING AND PROJECTED DISTRIBUTION TO CREDITORS**

The sources of funding for the Plan are

- (1) income from the operation of the Elkview Hotel, until it is sold;
- (2) income from the operation of the Summersville Hotel, until it is sold;
- (3) Net Proceeds from the sale of the Elkview Hotel and related assets as a going-concern;

- (4) Net Proceeds from the sale of the Summersville Hotel and related assets as a going-concern;
- (5) Net Proceeds from the sale of the Unencumbered Property adjacent to the Charleston Property;
- (6) monthly Rent Income from the Charleston Property;
- (7) monthly settlement payments received from Loma Brothers under the Tenant Settlement relating to unpaid real estate taxes for the La Carreta in the Charleston Property, which are being paid directly to First Bank ;
- (8) the proceeds of the civil action pending against the Zhen Yu Weng and Fa Fa Corporation, Civil Action No. 17-C-908 in the Circuit Court of Kanawha County, West Virginia, relating to unpaid real estate tax contributions under the lease at the Charleston Property, which will be assigned to First Bank;
- (9) proceeds from insurance for claims of EG, and;
- (10) additional equity contributions by William A. Abruzzino and Rebecca Abruzzino.

EG projects that distributions under the Plan, after resolution of objections to claims, will return 100% to holders of Allowed Claims.

#### IV. BACKGROUND

##### A. Background of EG.

###### **General Background**

EG is a Georgia limited liability company. Until December 1, 2016, Debtor's principal place of business was 205 Marion Square, Fairmont, West Virginia 26554. Currently, Debtor's principal place of business is P.O. Box 190, Bonita Springs, Florida 34144-0190.

Prior to the Petition Date, EG was engaged principally in operating two hotels, one in Elkview, West Virginia and one in Summersville, West Virginia, as well as a commercial development along 5760 – 5790 MacCorkle Ave. S.E., Charleston, West Virginia ("**Charleston Property**"). Prior to June 23, 2016, EG's businesses were successful. However, as detailed below, the fallout from the 2016 floods severely impacted EG's business and its ability to timely pay its creditors and vendors.

Debtor owns and operates two hotel properties: the La Quinta Inn adjacent to the Elkview Crossings Shopping Mall ("**Crossings Mall**") in Elkview, West Virginia ("**Elkview Hotel**"), and the La Quinta Inn adjacent to the Merchant's Walk Shopping Mall in Summersville, West Virginia ("**Summersville Hotel**"). The address for the Summersville Hotel is 106 Merchant's Walk, Summersville, West Virginia 26651. The address for the Elkview Hotel is 101 Crossing Shopping Mall, Elkview, West Virginia 25071.

Emerald Coast Hospitality, LLC ("**Emerald Coast**") is party to franchise agreements with La Quinta Franchising, LLC ("**La Qunita**") effective August 21, 2012, having a twenty (20)-year term, with respect to each hotel (collectively "**Franchise Agreements**"). Although Emerald Coast is the franchisee

under the Franchise Agreements, EG is the real party in interest. Under the terms of that agreement, EG pays certain fees and royalties to La Quinta. EG has operated the hotels under the La Quinta banner since 2012. At the time the hotels switched to La Quinta branding, EG remodeled and upgraded the hotels and their respective grounds.

The Charleston Property is currently leased to three tenants under long-term, triple net leases. There are two commercial buildings located on the Charleston Property. In the first building, Loma Brothers leases space from which it currently operates a La Carreta Mexican Restaurant ("**La Carreta**"). LaCarreta's monthly base rent is \$7359.00. Zhen Yu Weng and Fa Fa Corporation also lease space in this building from which they operate "Fujiyama Japanese Steakhouse ("**Fujiyama**"). The monthly base rent for Fujiyama is \$ 10,627.38.

The second building on the Charleston Property is leased by Conway Communications, which operates a Verizon Wireless store ("**Verizon**"). Verizon's monthly base rent is \$4,530.

The combined monthly base rental from these three tenants for the Charleston Property totals \$22,516.38. All three tenants pay additional rent for reimbursement of insurance, taxes, and CAM Fees.

In addition to the hotels and the Charleston Property, Debtor owns a parcel of real property containing 1.758 acres, more or less, adjacent to the Charleston Property, which is unencumbered by any liens other than the lien for property taxes ("**Unencumbered Property**"). Debtor has requested and the Bankruptcy Court has authorized Debtor to retain the services of Realcorp, LLC to market and sell the Unencumbered Property. The Unencumbered Property is currently listed for sale at \$850,000.00.

#### **Real Estate Secured Loans**

On October 17, 2014, Debtor obtained a loan from Carter Bank & Trust ("**Carter Bank**") evidenced by a promissory note payable to the order of Carter Bank in the original principal amount of \$10,850,000.00 (the "**Note**"), which was secured by (i) a deed of trust and assignment of rents on the Elkview Hotel, and (ii) a deed of trust and assignment of rents on the Summersville Hotel.

In addition to the Note with Carter Bank, Debtor has an existing credit line loan in the original principal amount of \$2,400,000 from First Bank of Charleston, Inc. ("**First Bank**") secured by a deed of trust and assignment of rents on the Charleston Property and a credit line loan in the amount of \$400,000 secured by a second priority lien on the Charleston Property.

#### **2016 Flood and Aftermath**

On June 23, 2016, thunderstorms brought torrential rain to much of southern West Virginia, resulting in accumulations of up to 10 inches (250 mm) in 12 hours. According to meteorologists at the National Weather Service, this rainfall qualifies as a 1,000 year event. The tremendous rainfall produced widespread and destructive flash floods in the state ("**Flood**"). The Elk River rose to an all-time high of 33.37 ft (10.17 m), surpassing the previous record of 32 ft (9.8 m) set in 1888. In Kanawha County, the flood waters of Little Sandy Creek, a tributary of the Elk River, washed away the culvert bridge located in the right of way maintained by the West Virginia Division of Highways connecting the Elkview Hotel and the Crossings Mall to Kanawha County Route 45, stranding approximately 500 people for nearly 24 hours. At least six people died in Kanawha County as a result of the Flood.<sup>3</sup>

---

<sup>3</sup>See Wikipedia Article, 2016 West Virginia Flood, [https://en.wikipedia.org/wiki/2016\\_West\\_Virginia\\_flood](https://en.wikipedia.org/wiki/2016_West_Virginia_flood).



The culvert bridge was the only viable commercial access to the Elkview Hotel and the adjacent Crossings Mall from the public road. Between June 23, 2016 and August 1, 2017, there was no viable commercial access to Elkview Hotel, and the Elkview Hotel did not operate and did not generate any income. On or about August 1, 2017, a newly constructed bridge was completed and opened for traffic, thereby once again connecting the Elkview Hotel to the public road. This has enabled EG to re-open the Elkview Hotel for business.

The Flood did not affect the operations of the Summersville Hotel. However, because the Elkview Hotel did not generate any income for over 13 months, Debtor was unable to pay the monthly payment required under the Note with Carter Bank. Carter Bank declared Debtor in default on the Note, accelerated the balance owed, and demanded immediate payment in full from Debtor. Based on this alleged default, Carter Bank initiated foreclosure on the Summersville Hotel pursuant to the terms of the deed of trust. The foreclosure was scheduled for Wednesday, January 11, 2017, at 10:00 a.m., at the front door of the Nicholas County Courthouse in Summersville, West Virginia. Based on this alleged default, Carter Bank thereafter filed a civil action against the guarantors, William A. Abruzzino and Rebecca Abruzzino, in the Circuit Court of Martinsville, Virginia.

To avoid foreclosure on the Summersville Hotel, Debtor was forced to file for protection under Chapter 11 of the Bankruptcy Code.

As a further result of the Flood, EG has been unable to timely pay its real estate and hotel/motel taxes and franchise fees owed to La Quinta under the Franchise Agreements, which further necessitated the filing of the Chapter 11 Case.

**Related Bankruptcy Case of Tara Retail Group, LLC**

Tara Retail Group, LLC ("Tara"), owns the Crossings Mall property, adjacent to the Elkview Hotel. Though not technically an affiliate of Debtor, Tara and Debtor are both controlled by William A. Abruzzino. After the Flood, the tenants at the Crossings Mall ceased making lease payments. As a result, U.S. Bank, as trustee for Tara's secured lender, declared Tara in default. Tara undertook efforts to re-construct the bridge to restore access to the Crossings Mall and the Elkview Hotel, including negotiations with U.S. Bank, as trustee. However, U.S. Bank refused to add the missed loan payments to the end of the loan term, instead insisting that Tara must make up the missed loan payments over the ensuing 12 months. As the rents from the Crossings Mall were insufficient to amortize the missed payments over 12 months, Tara's negotiations with its secured lender to rebuild the bridge broke down.

Eventually, U.S. Bank, as trustee, filed a lawsuit against Tara in the United States District Court for the Southern District of West Virginia, alleging default under the loan between Tara and U.S. Bank and seeking the appointment of a receiver to restore access to the shopping center and manage the tenant relationships. See Civil Action No. 16-cv-09232. The Court granted U.S. Bank's request and appointed a receiver by order entered on December 23, 2016. The receiver obtained construction bids to re-store access to the Crossings Mall, which included access to the Elkview Hotel.

Immediately after appointment of a receiver, Tara's secured lender initiated foreclosure proceedings against Tara. Thus, on January 24, 2017, Tara filed its own petition under Chapter 11 of the Bankruptcy Code in this Court, pending as Case No. 1-17-bk-00057. After Tara's bankruptcy filing, the receiver was dispossessed. In Tara's case, on April 14, 2017, the Bankruptcy Court entered its Order on Debtor's Renewed Motion to Obtain Post-Petition Financing, Granting Superpriority Administrative Expense Claim and Priming Lien on Crossings Mall Property, paving the way for construction of the new bridge. Construction on building the bridge started thereafter in earnest and was completed on or about August 1, 2017.



### **Lawsuits Against Tenants and Settlements**

After filing its petition initiating this Case, Debtor determined that it had not been billing its tenants at the Charleston Property for actual amounts of real estate taxes, insurance and common area maintenance (“**CAM fees**”) as required under the leases. After consultation with First Bank, on April 17, 2017, Debtor transmitted invoices to the tenants of the Charleston Property for additional rent as follows: Verizon, \$15,494.96; La Carreta, \$63,712.52; and Fujiyama, \$99,402.83.

As of this date, arrangements with the tenants of the Charleston Property for payment of this additional rent are incomplete, but EG has undertaken the following with respect to these claims:

- EG has reached a settlement with La Carreta under which the tenant has agreed to pay EG a total of \$60,000.00, as follows: (a) credit for \$5,000 already paid; (b) starting 9/15/2017, a payment of \$2,000 per month for 26 months; and (c) one final payment of \$1,000.00. This payment is being made directly to and for the benefit of First Bank.
- EG reached a settlement with the predecessor of Conway Communications, which obligated it to pay a total of \$12,000, in three payments of \$5,000, \$5,000, and \$2,000 per month to EG. This obligation has been fully paid under this settlement agreement. These funds have been paid directly to First Bank.
- EG has filed a civil action against the owners of the Fujiyama, which is pending in the Circuit Court of Kanawha County, Civil Action No. 17-C-908 (“**Civil Action**”). In this action, EG seeks recovery of \$99,402.83, plus attorney’s fees and interest.

Collectively the settlements with La Carreta and Verizon, and the Civil Action and any settlement relating thereto are collectively referred to as “**Tenant Settlements**.” All proceeds from the Tenant Settlements are being paid to or will be paid to First Bank, pursuant to the fifth interim Cash Collateral order between EG and First Bank.

In addition to the unresolved contingency relating to additional rent at the Charleston Property, a Complaint has been filed by John F. Wiley, special counsel for EG, to resolve the issue regarding contribution towards the cost of rebuilding the bridge to the Crossings Mall, which has restored access to the Elkview Hotel.

Debtor’s financial distress leading it to bankruptcy was a direct consequence of the complications from the continued lack of commercial access to the Elkview Hotel following destruction of the public access way. The lack of income from the Elkview Hotel placed significant stress on Debtor’s overall financial performance. Now that access has been restored, EG anticipates that its business operations will normalize and it can successfully re-organize.

### **B. Filing of Bankruptcy Petition and Significant Events in Bankruptcy Case and Related Litigation.**

EG determined that the most efficient and equitable way to address the significant issues faced as a result of the Flood, was through a chapter 11 bankruptcy proceeding. On January 11, 2017 (“**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (“**Bankruptcy Code**”).

Upon filing the Petition, EG filed an Emergency Motion for Use of Cash Collateral. Thereafter, the Debtor and its Lenders have entered into a series of interim agreements providing for Debtor's continued use of cash collateral:

a. the Debtor and Carter Bank have entered into five (5) stipulations and interim orders with respect to the Debtor's continued use of cash collateral (as defined in § 363(a) of the Bankruptcy Code) ("**Cash Collateral**") in which Carter Bank has an interest, upon the provision of adequate protection to Carter Bank until a final hearing may be held. *See, Fifth Stipulation and Interim Order Authorizing Debtor's Use of Carter Bank and Trust's Cash Collateral and for Adequate Protection* [Doc. 203]; and

b. the Debtor and First Bank have entered into five (5) stipulations and interim orders with respect to the Debtor's continued use of Cash Collateral in which First Bank has an interest, upon the provision of adequate protection to First Bank until a final hearing may be held. *See, Fifth Stipulation and Interim Order Authorizing Debtor's Use of First Bank of Charleston's Cash Collateral and for Adequate Protection* [Doc. 202].

Pursuant to the stipulations and interim orders entered into by and between the Debtor and Carter Bank and First Bank, the Debtor is currently operating under a Cash Collateral budget and is not authorized to spend money outside of that budget without the approval of Carter Bank and First Bank.

On January 31, 2017, EG filed an application to employ Jonathan Cavendish of Realcorp, to market the Unencumbered Property in Kanawha County. [Doc. 58]. This was granted by order entered February 17, 2017 [Doc. 90]. Realcorp currently has the property listed for sale at \$850,000.00.

On May 18, 2017, Carter Bank, filed a motion to dismiss or convert the Case, due to a temporary lapse in the Debtor's insurance coverage. Upon reinstatement of insurance coverage, Carter Bank withdrew the motion on June 7, 2017. [Doc. 155].

The Bankruptcy Court granted EG's Motion to Extend the Exclusivity Period by order entered on June 9, 2017 [Doc. 159], thus setting September 8, 2017, as the deadline for EG to file its Chapter 11 plan and disclosure statement.

On June 22, 2017, EG filed a motion to employ John Wiley as conflicts counsel to address claims by Tara that EG is responsible for contribution to the costs of re-building the bridge to restore access to the Crossings Mall. [Doc. 164]. The Bankruptcy Court granted EG's motion to employ Attorney Wiley on July 18, 2017 [Doc. 177]. On August 8, 2017, EG, through Attorney Wiley, filed an Adversary Proceeding 17-00036 against Tara, to resolve the issues relating to contribution by EG for the cost of rebuilding the bridge ("**Adversary Proceeding**"). [See Doc. 192]. The Complaint filed by EG alleges that the cost of rebuilding the bridge should be shared equally by EG and Tara. On September 1, 2017, Tara filed its Answer in the Adversary Proceeding, admitting the allegations. A pretrial conference is set in this Adversary Proceeding on September 14, 2017.

The Debtor's property, including the Elkview Hotel, Summersville Hotel and Charleston Property, were previously insured by Zurich, the insurance premiums for which totaled \$45,743.19 for the past year. Zurich non-renewed the insurance. Thus, EG filed a motion for post-petition financing for continued insurance coverage, and the Bankruptcy Court approved EG's request for post-petition financing to enable EG to pay these insurance premiums. [Doc. 181, 184, 194].

EG has filed its Statement of Financial Affairs, Schedules of Assets and Liabilities, and lists of Equity Security Holders, each as amended from time to time. On February 21, 2017, the Office of the United States Trustee conducted a meeting of creditors pursuant to section 341 of the Bankruptcy Code

(the “Meeting of Creditors”). EG has filed monthly operating reports and paid all quarterly fees as and when due to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930.

**C. Claims Bar Date and Summary of Filed Claims.**

The Bankruptcy Court set May 22, 2017, as the date by which to file proofs of claim against EG (the “Bar Date”). As of the Bar Date, the Bankruptcy Court’s Claims Register reflects that 17 claims were filed and two claims (Claim Nos. 18 and 19) were filed after the Bar Date. The total amount of claims filed is \$14,751,246.23.

**1. Priority Tax Claims**

The following Priority Tax Claims have been filed:

<b>Claim No.</b>	<b>Claimant</b>	<b>Total Claim Amount</b>	<b>Claimed Priority Amount Per 11 U.S.C §507 (a)(8)</b>	<b>Nature of Claim</b>
1	WEST VIRGINIA Department of Tax and Revenue	\$236,355.23	\$70,684.41	Sales/Use/Liquor/Wine taxes
2	Internal Revenue Service	\$3,200.00	\$800.00	FICA and FUTA taxes
5	WEST VIRGINIA State Auditor’s Office	\$36,684.67	\$36,684.67	Delinquent Nicholas County 2015 real estate taxes on Summersville Hotel Property
6	Kanawha County Sheriff	\$259,290.31	\$259,290.31	Kanawha County real estate taxes on Elkview Hotel, Charleston Property, and Unencumbered Property
15	Kanawha County Sheriff’s Office	\$80,000.00	\$80,000	County hotel/motel occupancy taxes

All Priority Tax Claims for property taxes relating to the Elkview Hotel and the Summersville Hotel, will be paid from the Net Proceeds from the sales of these two hotels contemplated by the Plan. The Priority Tax Claims relating to the Charleston Property will be paid through a post-petition loan to be made by First Bank, which will be added to its Class 2 Secured Claim under the Plan.

All remaining Priority Tax Claim will be paid in full, in Cash in monthly installments commencing on the later of (i) the Effective Date (or as soon as reasonably practicable thereafter) and (ii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon as practicable thereafter) and ending no later than five years after the Petition Date.

**2. Class 1: Secured Claims of Carter Bank**

As of the date hereof, the Class 1 Secured Claims of Carter Bank total \$10,749,445.99 per Claim No. 8. EG will satisfy Carter Bank’s Secured Claim from the Net Proceeds from the sales of the Elkview Hotel and the Summersville Hotel on a going-concern basis. Following the sales, Carter Bank’s lien will attach to the Net Proceeds from the sale(s) consistent with 11 U.S.C. § 363. The balance of the proceeds from

the sale of the Elkview Hotel and the Summersville Hotel will be applied to payment of Claims under the Plan.

**3. Class 2: Secured Claims of First Bank**

As of August 31, 2017, the Class 2 Secured Claims of First Bank total \$2,021,023.13. EG will continue making the loan payments required by the loan agreements with First Bank, in the normal course of business. First Bank is currently receiving monthly payments from the Tenant Settlements. After the Effective Date, First Bank will continue to receive those payments, to be applied to the repayment of the post-petition loan for Priority Tax Claims relating to the Charleston Property.

4. **Class 3: La Quinta--Franchise Default Cure Claim**

La Quinta and Emerald Coast have entered into the Franchise Agreements effective August 21, 2012 pertaining to the La Quinta branded hotels referred to herein as the Summersville Hotel and the Elkview Hotel. Debtor has listed La Quinta as an unsecured creditor with an unliquidated claim on its Schedule E/F with respect to the Franchise Agreements. La Quinta has not approved any assignment of the Franchise Agreements from Emerald Coast to the Debtor;<sup>4</sup> however, EG has owned and operated the hotels during the entirety of the term of the Franchise Agreements. La Quinta has filed a claim for unpaid franchise fees under the Franchise Agreement in the amount of \$181,605.55 (“**Franchise Cure Claim**”). [See Claim No. 14]. Of that amount, \$109,982.33 is attributed to the Summersville Hotel and \$62,047.62 is attributed to the Elkview Hotel. The remaining amount of the claim is attributable to attorney’s fees La Quinta has incurred post-petition. In addition, La Quinta has communicated the conditions that it contends that EG must satisfy if it wishes to assume the Franchise Agreements.

EG will defer a decision on whether to assume or reject the Franchise Agreements. In the Plan, EG has proposed the sale of the Elkview Hotel and the Summersville Hotel, which are subject of the Franchise Agreements. Until a purchaser is identified, EG does not know whether the purchaser will desire to maintain the La Quinta franchise. Accordingly, EG’s Plan will delay the decision on assumption or rejection under 11 U.S.C. § 365(d)(2) and 1123(b)(2) to coincide with the sale of the Elkview Hotel and/or the Summersville Hotel. This ride-through approach has been sanctioned by various courts.<sup>5</sup>

If the purchaser elects to retain the La Quinta franchise, EG will assume the Franchise Agreements and cure the prepetition defaults in payment of franchise fees from the Net Proceeds from sale. If the purchaser elects to not retain the La Quinta franchise, then the claims of La Quinta will be treated under 11 U.S.C. § 365(g) to be paid in full, in deferred Cash payments without interest, beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15<sup>th</sup> day of the month following the date the Class 3 Claim becomes an Allowed Claim, and continuing on the 15<sup>th</sup> day of each month thereafter, ending no later than ten (10) years after the date that the first such payment is made.

In the event that EG determines to assume the Franchise Agreements, EG will submit certain

---

<sup>4</sup> Need to address this issue.

<sup>5</sup> See DJS Properties, L.P. v. Simplot, 397 B.R. 493, 498 (D. Idaho 2008) (“[T]hese sections arguably allow the bankruptcy court to approve a plan that provides for post-confirmation assumption or rejection of an executory contract. After all, both sections are permissive, and nothing expressly prohibits a plan from “providing” for assumption or rejection by selecting a post-confirmation date for that action.”); see also In re UAL Corp., 635 F.3d 312, 320 (7th Cir. 2011), as amended on denial of reh’g (Apr. 13, 2010) (citing cases and stating: “Some courts have held that this permissive language leaves open the possibility that an executory contract not be assumed or rejected prior to plan confirmation. For example, some courts have concluded that where a plan does not provide for treatment of an executory contract, that contract may “ride through” plan confirmation unaffected, neither assumed nor rejected. See Stumpf v. McGee (In re O’Connor), 258 F.3d 392, 404–05 (5th Cir.2001) (describing the “general agreement” among courts that the “pass-through” or “ride-through” theory applies in Chapter 11 cases where an assumable executory contract is neither assumed nor rejected in the terms of the plan); Consolidated Gas Electric Light & Power Co. of Baltimore v. United Railways & Electric Co. of Baltimore, 85 F.2d 799, 805 (4th Cir.1936) (holding under the former Bankruptcy Act that an executory contract remains in force “until it is rejected, and unless rejected, it passes with other property of the debtor to the reorganized corporation”); Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 424–25 (9th Cir.BAP 2007) (recognizing “ride-through” option for executory contracts); see generally Data-Link Systems, Inc. v. Whitcomb & Keller Mortgage Co. (In re Whitcomb & Keller Mortgage Co.), 715 F.2d 375, 379 (7th Cir.1983) (holding that bankruptcy court did not abuse discretion in denying request to require debtor to assume or reject executory contract immediately, before confirmation of plan of reorganization)”).



forms, including a “Consent to Transfer Application,” to have EG substituted as the franchisee under the Franchise Agreements in place of Emerald Coast.

**5. Class 4: Comm 2013 Disputed Claim**

Comm 2013 has filed a claim against EG related to the costs of constructing the new bridge at the Crossings Mall. The claim amount is \$1,112,664.50, which is the full cost of rebuilding the bridge restoring access to the Crossings Mall. EG has filed the Adversary Proceeding in the Bankruptcy Court against Tara, asking for a declaration that Tara is responsible for at least one-half of the amount claimed by Comm 2013. EG disputes Comm 2013’s claim. The Class 4 Claim of Comm 2013 will receive no distribution, per se. The amount to be contributed by EG to the cost of rebuilding the bridge will be resolved by the Bankruptcy Court in the context of the Adversary Proceeding.

**6. Class 5: General Unsecured Claims**

After any objections to the General Unsecured Claims have been resolved, all Class 5 Allowed General Unsecured Claims will be paid in full, in monthly deferred Cash payments without interest, beginning on the later of the (i) Effective Date (or as soon as practicable thereafter), or (ii) on the 15<sup>th</sup> day of the month following the date such General Unsecured Claim becomes an Allowed General Unsecured Claim, and continuing on the 15<sup>th</sup> day of each month thereafter, ending no later than ten (10) years after the first such payment is made.

**7. Class 6: Insider Unsecured Claims**

Plaza Management, LLC, (the “Insider Creditor”), which is also controlled by William Abruzzino, holds unsecured claims against EG in the amounts of \$40,212. [See Claim No. 16]. The Insider Creditor will retain its claims, but will receive no distributions under the Plan.

**8. Class 7: Equity Interests**

On the Effective Date, all Equity Interests will be cancelled, and new equity interests will be issued to William A. Abruzzino and Rebecca Abruzzino.

**D. Unexpired Leases and Executory Contracts**

In the Plan, EG will address unexpired leases and executory contracts consistent with Article VIII but will handle the following leases and executory contracts as follows:

<b>Description of Lease or Contract</b>	<b>Treatment Plan under 11 U.S.C. § 365(d)(2) and 1123(b)(2)</b>
Lease with Loma Brothers for LaCarreta Mexican Restaurant	Assume as of Effective Date
Lease with Conway Communications for Verizon Store	Assume as of Effective Date
Lease with Weng and Fa Fa Corporation for Fujiyama Japanese Steakhouse	Assume as of the Effective Date
La Quinta Inn Franchise Agreements	Ride-through with decision to be deferred to coincide with the sale of the Elkview Hotel and the Summersville Hotel.

**E. Means for Implementation and Execution of the Plan.**

**1. Resumption of Elkview Hotel Operations Following Reopening of the Crossings Mall and the Summersville Hotel.**

An initial main source of funding for distributions under EG's Plan will be the income from the operations of the Summersville Hotel and Elkview Hotel.

**2. Rent Income from the Charleston Property**

The excess monthly Rent Income from the Charleston Property after payment to First Bank on its loan will be used to fund distributions under the Plan.

**3. Sale of Elkview Hotel and Related Assets under 11 U.S.C. § 363**

EG plans to market and sell the Elkview Hotel and its related assets as a going-concern under 11 U.S.C. § 363, free and clear of liens, with liens to attached to the Net Proceeds. EG will file the necessary motions and applications to retain a broker for the purpose of selling the Elkview Hotel and approving any such sale obtained. The Net Proceeds will be used to pay Carter Bank's Secured Claim and all property Tax Claims relating to the Elkview Hotel, which attach to the proceeds.

**4. Sale of Summersville Hotel and Related Assets under 11 U.S.C. § 363**

EG plans to market and sell the Summersville Hotel and its related assets as a going-concern under 11 U.S.C. § 363, free and clear of liens, with liens to attached to the Net Proceeds. EG will file the necessary motions and applications to retain a broker for the purpose of selling the Summersville Hotel and approving any such sale obtained. The Net Proceeds will be used to pay Carter Bank's Secured Claim and all property Tax Claims relating to the Summersville Hotel, which attach to the proceeds.

**5. Sale of Unencumbered Property**

The Net Proceeds from the sale of the Unencumbered Property, which is currently listed for sale at \$850,000.00, will be used to fund the Plan, including administrative expenses associated with the construction of the bridge, Professional fees in the Case, and any post-petition loan made by First Bank to pay Priority Tax Claims relating to the Charleston Property.

**6. Tenant Settlements and Civil Action**

La Carreta will make payments of \$2,000/month to First Bank pursuant to the Tenant Settlements related to unpaid taxes and insurance on the Charleston Property, until it has paid a total of \$60,000.00. Verizon has fully performed its agreement and has paid the settlement payments directly to First Bank.

EG has filed the Civil Action against the remaining tenant, Fujiyama, to recover the unpaid expenses from that tenant. The complaint seeks nearly \$100,000 from Fujiyama. Both the payments and any recovery in this Civil Action will be paid to First Bank to repay any post-petition loan made by First Bank to pay Priority Tax Claims relating to the Charleston Property.



**7. Proceeds from Insurance for Claims Asserted by EG**

EG has filed a claim with its Insurers, for losses resulting from the Flood. Proceeds from this, if any, will be devoted to the Plan.

**8. Additional Contributions by William A. Abruzzino and Rebecca Abruzzino**

To the extent that additional Cash is required to fund the Plan, William A. Abruzzino and Rebecca Abruzzino will make additional contributions of Cash, which will be treated as equity contributions.

**V. REORGANIZED DEBTOR**

Upon completion of the Plan, EG will only own and operate the Charleston Property as its primary asset with First Bank as its only secured creditor.

**VI. EFFECTIVENESS OF THE PLAN**

**A. Conditions Precedent to Effective Date.**

The following are conditions precedent to the Effective Date of the Plan:

- (a) The Bankruptcy Court shall have entered a Confirmation Order in form and substance satisfactory to EG;
- (b) No stay of the Confirmation Order shall then be in effect;
- (c) Entry of orders by the Bankruptcy Court confirming the sale of the Elkview Hotel and the Summersville Hotel, pursuant to Bankruptcy Code §363, free and clear of all liens and encumbrances, with all liens and encumbrances attaching to the Net Proceeds of the sale(s).

**B. Satisfaction of Conditions.**

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If EG determines that one of the conditions precedent set forth in Section 9.1 of the Plan cannot be satisfied and the occurrence of such condition is not waived by EG or cannot be waived by EG, then EG shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

**C. Effect of Nonoccurrence of Conditions to Effective Date.**

If each of the conditions to consummation and the occurrence of the Effective Date has not been satisfied or duly waived on or before the Effective Date, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to Section 9.3 of the Plan, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims against EG.

## VII. EFFECT OF CONFIRMATION

### A. Vesting of Assets.

As of the Effective Date, all property of the estate will be vested in EG, subject only to the interests recognized in the Plan, pursuant to Bankruptcy Code §1141(b). EG will commence monthly payments to the holders of Allowed Class 2 Claims, Allowed Class 3 Claims, and Allowed Class 5 Claims pursuant to the Plan. The pre-petition Equity Interests in EG will be cancelled, and new equity interests will be issued to William A. Abruzzino and Rebecca Abruzzino on the Effective Date.

### B. Release of Assets.

Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of EG, the Estate and the Debtor's assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matter set forth in Article XI of the Plan.

### C. Binding Effect.

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and to the fullest extent permitted by section 1141 of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, EG, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

### D. Satisfaction of Claims and Termination of Interests.

To the maximum extent provided by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, and release, effective as of the Effective Date, of Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, against, Liens on, obligations of, rights against, liabilities of, and Equity Interests in EG or any of its assets or properties, whether known or unknown, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Equity Interests relate to any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a proof of claim or proof of interest based upon such debt, right, or interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Equity Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Equity Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date occurring.

### E. Term of Injunctions or Stays.

Unless otherwise expressly provided herein, all injunctions or stays arising under or entered during the Case under sections 105 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, at which time such injunctions or stays shall be deemed lifted.

**F. Retention of Causes of Action.**

Except as otherwise waived and released in accordance with the Plan, on and after the Effective Date, the Reorganized Debtor shall have the exclusive right to enforce and shall retain, all Causes of Action against any Persons. The Reorganized Debtor may prosecute, defend, enforce, abandon, settle or release any and all Claims and Causes of Action as it deems appropriate, subject to Bankruptcy Court approval as set forth in the Plan. The Reorganized Debtor may, in its sole discretion, offset any such claim held against a Person, against any payment due such person under the Plan; *provided, however*, that any Claims of EG arising before the Petition Date shall first be offset against Claims against EG arising before the Petition Date, subject in each instance, however, to the limitations of Section 10.6 of the Plan. All privileges, defenses and rights of avoidance of EG not otherwise waived and released in accordance with the Plan, shall be retained and may be exercised by the Reorganized Debtor. Without limiting the preservation of Claims and Causes of Action as set forth in Section 10.6 of the Plan, the Claims and Causes of Action of EG against Tara in the Adversary Proceeding and Fujiyama in the Civil Action, and any Insurers, are expressly preserved.

**G. Injunction Against Interference with Plan.**

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

**VIII. ALTERNATIVES TO THE PLAN**

EG submits that the Plan is the best means of providing maximum recoveries to creditors. Alternatives to the Plan that have been considered and evaluated by EG during the course of the Case include (i) liquidation of EG's assets under chapter 7 of the Bankruptcy Code, which would provide no significant recovery to any Class of creditors other than Carter Bank and First Bank, and (ii) dismissal of the Case. EG submits that the proposed Plan provides a greater recovery to creditors or a more equitable distribution of Estate assets on a more expeditious timetable than any other course of action available to EG. EG cannot predict potential recoveries in litigation at this time, but submits that the Plan gives the best chance to creditors to achieve a substantial recovery.

**A. Other Plans of Reorganization.**

If the Plan was not confirmed, EG or any other party in interest could attempt to formulate an alternative chapter 11 plan. The Plan, however, optimizes the resources available to EG for the benefit of all of EG's creditor Classes.

**B. Liquidation Under Chapter 7 of the Bankruptcy Code.**

If the Plan is not confirmed under section 1129(a) of the Bankruptcy Code, the Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which event a chapter 7 trustee would be appointed (or subsequently elected) to liquidate any remaining assets of EG for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. EG does not believe that conversion to chapter 7 is in the best interests of EG's estate and creditors, because it is highly unlikely that any Class of creditors other than Carter Bank and First Bank of Charleston would receive any recovery in a chapter 7 liquidation. Significantly, if the Case is converted to a chapter 7 liquidation, the Debtor's hotels would likely have to be closed, as the Trustee is not ordinarily authorized to operate a business in a chapter 7 case. This means

that the hotels could not be sold as going concerns by the a chapter 7 trustee. A liquidation analysis reflecting the most likely result of a liquidation of EG's assets is attached to the Plan as Exhibit 1.

## **IX. CONFIRMATION REQUIREMENTS**

### **A. The Confirmation Hearing.**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing before a plan of reorganization may be confirmed. The Confirmation Hearing to confirm the Plan has been scheduled for the date set forth on page 3 of this Disclosure Statement before the Honorable Patrick M. Flatley, United States Bankruptcy Judge in the United States Bankruptcy Court, L. Edward Friend II Bankruptcy Courtroom, located on the third floor of the U.S. Courthouse, 1125 Chapline Street, Wheeling, West Virginia. 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. Any objection to confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or number and type of shares of Equity Interests held by the objector. Any such objection must be filed with the Bankruptcy Court and served so that it is received by the Bankruptcy Court and certain other parties when and as set forth in the attached notice of confirmation hearing.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. At the hearing on the confirmation of the Plan, the Bankruptcy Court will confirm the Plan only if the requirements of the Bankruptcy Code, particularly those set forth in section 1129 of the Bankruptcy Code, have been satisfied. Objections to final approval of the Disclosure Statement are governed by Bankruptcy Rules 3017 and 9014. At the final hearing on approval of the Disclosure Statement, the Bankruptcy Court will approve the Disclosure Statement on a final basis if the requirements of Bankruptcy Code section 1125 are satisfied.

### **B. Acceptances Necessary to Confirm the Plan.**

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether the Plan has been accepted by the requisite amount and number of Allowed Claims and Allowed Equity Interests in each impaired class. Under the Bankruptcy Code, a class of creditors or equity security holders is impaired if its legal, equitable or contractual rights are altered by a proposed plan of reorganization or liquidation. If a Class is not impaired, each creditor or equity security holder in such unimpaired class is conclusively presumed to have accepted the plan pursuant to section 1126(f) of the Bankruptcy Code.

An impaired class of creditors and each holder of a claim in such class will be deemed to have accepted the Plan if the holders of at least two-thirds in amount and more than one-half of those in number of the Allowed Claims in such impaired class for which complete and timely ballots have been received have voted for acceptance of the Plan. An impaired class of equity securities and each holder of an interest in such class will be deemed to have accepted a plan if the Plan has been accepted by at least two-thirds in amount of the interests in such class who actually vote on the Plan.

In the event that all Classes do not vote to accept the Plan, EG reserves the right to seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Under section 1129(b), the Bankruptcy Court must determine, among other things, that the Plan does not discriminate unfairly and

that it is fair and equitable with respect to each class of impaired Allowed Claims and Allowed Equity Interests that have not voted to accept the Plan.

**C. Best Interests of Creditors.**

The Bankruptcy Code requires that each holder of an impaired Claim or Equity Interest either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if EG was liquidated under chapter 7 of the Bankruptcy Code.

The first step in determining whether this test has been satisfied is to determine the dollar amount that would be generated from the liquidation of EG's assets and properties in the context of a chapter 7 liquidation case. The gross amount of Cash that would be available for satisfaction of Claims and Equity Interests would be the sum consisting of the proceeds resulting from the disposition of the unencumbered assets and properties of EG, augmented by the unencumbered Cash held by EG at the time of the commencement of the liquidation cases.

The next step is to reduce that gross amount by the costs and expenses of liquidation and by such additional Administrative Expense Claims and priority Claims that might result from the use of chapter 7 for the purposes of liquidation. Any remaining net Cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code. Finally, the present value of such allocations (taking into account the time necessary to accomplish the liquidation) are compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The costs of liquidation of EG under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. Other liquidation costs include the expenses incurred during the Case and subsequently allowed in the chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants and other professionals for EG, as well as other compensation claims.

The foregoing types of claims, costs, expenses, fees and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay prepetition priority and unsecured Claims.

EG submits that each impaired Class will receive under the Plan a recovery value far in excess of the recovery value such Class would receive pursuant to a liquidation of EG under chapter 7 of the Bankruptcy Code, due to (i) the statutory fees to which a chapter 7 trustee is entitled for administering assets and (ii) the other matters discussed in this Section.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Case – including the viability of claims and Causes of Action held by the Estate and a Claims resolution process for the administrative expense, professional fee and prepetition Claims against EG and the Estate – EG has determined that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of EG under chapter 7.

EG also submits that the present value of any distributions to each Class of Allowed Claims in a chapter 7 case, would be less than the value of distributions under the Plan because it is highly unlikely that any distribution would be made to the holder of any claim other than the Lenders in a chapter 7 case,



and in any event, any such distributions in a chapter 7 case would not occur for a substantial period of time. In the event litigation was necessary to resolve claims asserted in a chapter 7 case, the delay could be prolonged and administrative expenses increased, such that ultimate creditor recoveries will be decreased.

**D. Feasibility.**

Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor. The Bankruptcy Court will find that the Plan is feasible if it determines that the conditions precedent to the Effective Date can be satisfied and sufficient funds are available from tenant rental payments, sales of asserts, proceeds from litigation, proceeds from Insurers and proceeds from EG, to enable EG to meet its post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Case. EG submits that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code. Attached to the Plan as **Exhibit 2** are EG's Projected Financial Statements from October, 2017 until September, 2029, demonstrating that EG will have sufficient sources of income to fund the plan. Copies of EG's 2015 Financial Statements are attached to the Plan as **Exhibit 3**, for comparison purposes.

**E. Confirmation of the Plan.**

In the event the Bankruptcy Court determines that all of the requirements for the confirmation of the Plan are satisfied, the Bankruptcy Court will issue the Confirmation Order confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

**X. CERTAIN RISK FACTORS TO BE CONSIDERED**

HOLDERS OF IMPAIRED CLAIMS AGAINST OR EQUITY INTERESTS IN EG ARE ENCOURAGED TO READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THOSE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

**A. Parties-In-Interest May Object to the Classification of Claims.**

Section 1122 of the Bankruptcy Code provides that a plan of reorganization or liquidation may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. EG submits that the classification of claims and interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, EG cannot give assurances that the Bankruptcy Court will reach the same conclusion.

**B. EG May Not Be Able to Secure Confirmation of the Plan.**

EG cannot assure you that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, EG cannot assure you that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or equity security holder of EG might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the 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. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization, and that the value of distributions to non-accepting holders of Claims and Equity Interests within a particular class under the Plan will not be less than the value of distributions such holders would receive if EG was liquidated under chapter 7 of the Bankruptcy Code. While EG cannot give assurances that the Bankruptcy Court will conclude that these requirements have been met, EG submits that the Plan will not be followed by a need for further financial reorganization and that non-accepting holders within each class under the Plan will receive distributions at least as great as would be received following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and the costs and uncertainty associated with any such chapter 7 case.

The confirmation and consummation of the Plan are also subject to certain conditions.

**C. EG May Object to the Amount or Classification of Your Claim.**

EG reserves the right to object to the amount or classification of any Claim or Equity Interest. The estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose claim or interest is subject to an objection. Any such Claim or Equity Interest holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

**XI. WHERE YOU CAN OBTAIN MORE INFORMATION**

Pursuant to the requirements of the Office of the U.S. Trustee, EG is required to and has filed monthly operating reports for the post-petition period with the Bankruptcy Court. These monthly operating reports may be obtained at prescribed per page copy rates by writing to the Office of the Clerk of the United States Bankruptcy Court for the Northern District of West Virginia, U.S. Bankruptcy Court located on the third floor of the U.S. Courthouse, 1125 Chapline Street, Wheeling, West Virginia.

**XII. CONCLUSION AND RECOMMENDATION**

EG submits that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims and Equity Interests. EG urges holders of Claims and Equity Interests entitled to vote on the Plan to vote to ACCEPT the Plan.

Dated: September 8, 2017

EMERALD GRANDE, LLC



By: /s/ William A. Abruzzino

Its: Managing Member and President



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**In re:**

**EMERALD GRANDE, LLC**

**Case No. 1:17-bk-00021**

**Debtor.**

**Chapter 11**

**CERTIFICATE OF SERVICE**

I do hereby certify that on **September 8, 2017**, I filed the *Disclosure Statement to Accompany the Plan of Reorganization Under Chapter 11 of The Bankruptcy Code Proposed by Emerald Grande, LLC* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following participants:

David L. Bissett, Esq.  
Trial Attorney, Office of the U.S. Trustee  
2025 United States Courthouse  
300 Virginia Street, E.  
Charleston, WEST VIRGINIA 25301  
[David.L.Bissett@usdoj.gov](mailto:David.L.Bissett@usdoj.gov)

Christopher P. Schueller, Esq.  
Buckhanan Ingersoll & Rooney LLP  
301 Grant Street, 20<sup>th</sup> Floor  
One Oxford Centre  
Pittsburgh, PA 15219  
[Christopher.schueller@bipc.com](mailto:Christopher.schueller@bipc.com)  
*Trustee for the Benefit of the Holders of COMM 2013-CCRE12  
Mortgage Trust Commercial Mortgage Pass-Through Certificates*

Julia A. Chincheck, Esq.  
Daniel J. Cohn, Esq.  
Bowles Rice LLP  
600 Quarrier Street  
P.O. Box 1386  
Charleston, WEST VIRGINIA 25325-1386  
[jchincheck@bowlesrice.com](mailto:jchincheck@bowlesrice.com)  
[dcohn@bowlesrice.com](mailto:dcohn@bowlesrice.com)  
*Counsel for Carter Bank & Trust*

Jonathan L. Hauser, Esq.  
Virginia State Bar No. 18688 (*pro hac vice*)  
Troutman Sanders LLP  
222 Central Park Avenue, Suite 2000  
Virginia Beach, VA 23462  
[jonathan.hauser@troutmansanders.com](mailto:jonathan.hauser@troutmansanders.com)  
*Counsel for Carter Bank & Trust*

Kevin W. Barrett, Esq.  
Marc R. Weintraub, Esq.  
Bailey & Glasser, LLP  
209 Capitol Street  
Charleston, WEST VIRGINIA 25301  
[kbarrett@baileyglasser.com](mailto:kbarrett@baileyglasser.com)  
[mweintraub@baileyglasser.com](mailto:mweintraub@baileyglasser.com)  
*Counsel for First Bank of Charleston*

Gregory G. Hesse, Esq.  
Nicole M. Collins, Esq.  
Hunton & Williams LLP  
1445 Ross Avenue, Suite 3700  
Dallas, TX 75202-2799  
[ghesse@hunton.com](mailto:ghesse@hunton.com)  
[ncollins@hunton.com](mailto:ncollins@hunton.com)  
*Counsel for La Quinta Franchising LLC*

D. Carol Sasser, Esq.  
Samuel I. White, P.C.  
5040 Corporate Woods Drive, Suite 120  
Virginia Beach, VA 23462  
[dsasser@siwpc.com](mailto:dsasser@siwpc.com)  
*Counsel for the Kanawha County Commission*

/s/ Steven L. Thomas  
\_\_\_\_\_  
Steven L. Thomas (WVSB # 3738)  
Thomas H. Ewing (WVSB #9655)  
Kay Casto & Chaney PLLC  
P.O. Box 2031  
Charleston, West Virginia 25327  
[sthamas@kaycasto.com](mailto:sthamas@kaycasto.com)  
[tewing@kaycasto.com](mailto:tewing@kaycasto.com)