

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SC SJ HOLDINGS LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 21-10549 (JTD)

(Jointly Administered)

Related to Docket Nos. 88, 89, 295, 296, 342 & 343

**NOTICE OF FILING OF (1) BLACKLINED AMENDED JOINT
CHAPTER 11 PLAN OF REORGANIZATION AND (2) BLACKLINED
AMENDED DISCLOSURE STATEMENT WITH RESPECT TO
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION**

PLEASE TAKE NOTICE that, on March 22, 2021, the Debtors filed the Joint Chapter 11 Plan of Reorganization [Docket No. 88] (the “Plan”) and Disclosure Statement with Respect to Joint Chapter 11 Plan of Reorganization [Docket No. 89] (the “Disclosure Statement”).

PLEASE TAKE FURTHER NOTICE that, on May 11, 2021, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization [Docket No. 295] (the “Amended Plan”) and a revised Disclosure Statement (the “Revised Disclosure Statement”) [Docket No. 296].

PLEASE TAKE FURTHER NOTICE that, on May 24, 2021, the Debtors filed a revised Amended Joint Chapter 11 Plan of Reorganization [Docket No. 342] (the “Revised Amended Plan”) and an Amended Disclosure Statement with Respect to Amended Joint Chapter 11 Plan of Reorganization [Docket No. 343] (the “Amended Disclosure Statement”).

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 3016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, attached hereto as **Exhibit A** and **Exhibit B** are blacklines reflecting all revisions to the Amended Plan and the Revised Disclosure Statement, respectively. A substantial amount of edits were made at the request of (and drafts provided to) various creditor constituents prior to the May 17, 2021 disclosure statement hearing. The balance of the edits are comprised of primarily the (a) disclosure of the brand manager selection, (b) sources and uses, (c) comments from Accor Management US Inc. (“Fairmont”) (with the Debtors’ responses), and (d) additional updates on developments in these chapter 11 cases and the AAA proceeding involving the Debtors and Fairmont.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: SC SJ Holdings LLC (5141) and FMT SJ LLC (7200). The mailing address for both Debtors is 3223 Crow Canyon Road, Suite 300 San Ramon, CA 94583.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all of their rights to further amend or modify the Revised Amended Plan and the Amended Disclosure Statement.

PLEASE TAKE FURTHER NOTICE that the Revised Amended Plan and Second Amended Disclosure Statement may be examined by any party in interest: (i) between the hours of 8:00 a.m. and 4:00 p.m. (Eastern Time), Monday through Friday, excluding federal holidays, at the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; (ii) viewed and downloaded free of charge at Debtors' case website (<https://cases.stretto.com/FairmontSJ>), or at the Court's website for a fee (<http://www.deb.uscourts.gov>) (a PACER account is required); or (iii) obtained by written request to SC SJ Holdings LLC, c/o Stretto, 410 Exchange, Suite 100 Irvine, CA 92602, or by email at TeamFairmontSJ@stretto.com; or (iv) by telephone at (855) 266-4998 (toll free) or (949) 398-0567 (international).

Dated: May 24, 2021
Wilmington, Delaware

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EXHIBIT A

Blacklined Amended Plan

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Chapter 11

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AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION

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May ~~11~~24, 2021

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: SC SJ Holdings LLC (5141) and FMT SJ LLC (7200). The mailing address for both Debtors is 3223 Crow Canyon Road, Suite 300, San Ramon, CA 94583.

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SECTION 1.DEFINITIONS, RULES OF INTERPRETATION, AND CONSTRUCTION

1.1 Defined Terms

For the purpose of the Plan, the following terms shall have the respective meanings set forth below.

“Administrative Expense Claim” means a Claim for costs and expenses of administration of the Chapter 11 Cases that are Allowed under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Professional Fee Claims; and (c) all United States Trustee Fees due prior to the Effective Date. For the avoidance of doubt, DIP Claims are not Administrative Expense Claims.

“Administrative Expense Claim Bar Date” means the date that requests for payment of Administrative Expense Claims (other than Professional Fee Claims) must be filed with the Bankruptcy Court and served on the Debtors or the Post-Effective Date Debtors, as applicable, that is thirty (30) days after the Effective Date.

“Allowed” means, with reference to any Claim against the Debtors, a Claim (a) as to which no objection or request for estimation has been filed on or before any deadline therefor set by the Bankruptcy Court or the expiration of such other applicable period fixed by the Bankruptcy Court or the Plan; (b) as to which any objection has been settled, waived, withdrawn, or denied by a Final Order or in accordance with the Plan; or (c) that is allowed (i) by a Final Order, (ii) by an agreement between the Holder of such Claim and the Debtors or Post-Effective Date Debtors, or (c) pursuant to the terms of the Plan; *provided, however*, that, notwithstanding anything herein to the contrary, by treating a Claim as “Allowed” under clause (a) above, neither the Debtors nor the Post-Effective Date Debtors waive their rights to contest the amount and validity of any disputed, contingent, and/or unliquidated Claim in the time, manner and venue in which such Claim would have been determined, resolved, or adjudicated if the Chapter 11 Cases had not been commenced. An Allowed Claim shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable law. Moreover, any portion of a Claim that is satisfied, released, or waived during the Chapter 11 Cases is not an Allowed Claim. Unless otherwise specified in the Plan, Allowed Claims shall not, for purposes of Distributions under the Plan, include interest on such Claim accruing from and after the Petition Date.

“Assets” means all assets of the Debtors of any nature whatsoever, including, without limitation, all property of the Estates pursuant to section 541 of the Bankruptcy Code, Cash (including proceeds from the sale of Assets), Causes of Action, accounts receivable, tax refunds, claims of right, interests and property, real and personal, tangible and intangible, and proceeds from all of the foregoing.

“Assumption Dispute” means an unresolved objection regarding assumption, Cure Amount, “adequate assurance of future performance” (within the meaning of section 365 of the

Bankruptcy Code), or other issues relating to assumption of an executory contract or unexpired lease.

“Avoidance Actions” means any and all avoidance, recovery, subordination, or similar actions or remedies that may be brought by and on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, or any other court having original jurisdiction over the Chapter 11 Cases.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Local Rules, in each case as amended from time to time and as applicable to the Chapter 11 Cases.

“Budget” shall mean the budget governing the use of cash collateral and funding under the DIP Facility attached to the Financing Final Order (as may be amended or modified pursuant to the Financing Final Order).

“Business Day” means any day except a Saturday, Sunday, or “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

“Cash” means cash and cash equivalents denominated in U.S. dollars.

“Causes of Action” means any claim, cause of action, controversy, demand, agreement, right (including to legal or equitable remedies), action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Dates, in contract or in tort, in law or in equity, or pursuant to any other theory of law, asserted or which may be asserted by or on behalf of the Debtors and/or the Estates, including: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any Avoidance Action; and (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Chapter 11 Case(s)” means (a) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court, and (b) when used with reference to all Debtors, the jointly administered chapter 11 cases for all of the Debtors.

“Claim” means a “claim,” as defined in section 101(5) of the Bankruptcy Code, against a Debtor, whether or not asserted, whether or not the facts or legal bases therefor are known or unknown, and specifically including, without limitation, any rights under sections 502(g), 502(h),

or 502(i) of the Bankruptcy Code, any claim of a derivative nature, any potential or unmatured contract claims, and any other contingent claim.

“Claims Agent” means Stretto or any successor thereto.

“Class” means any group of Claims or Interests classified under the Plan pursuant to section 1122(a) of the Bankruptcy Code.

“Collateral” means any property or interest in property of the Estates subject to a Lien, charge or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or other applicable law.

“Collective Bargaining Agreements” means, collectively, (a) that certain collective bargaining agreement, dated as of November 1, 2019, by and between the Fairmont Hotel, San Jose and the International Union of Operating Engineers, Stationary Engineers, Local 39, (b) that certain collective bargaining agreement, dated as of July 1, 2018, by and between UNITE H.E.R.E.! Local 19 International Union and Debtor FMT, (c) that certain collective bargaining agreement dated May 1, 2016 by and between the Fairmont Hotel, San Jose and Freight Checkers, Clerical Employees & Helpers Union Local No. 856, International Brotherhood of Teamsters, and (d) that certain collective bargaining agreement dated July 1, 2017 by and between District Council 16 and Northern California Painting and Finishing Contractors Association and the Fairmont Hotel, San Jose.

“Committee” means the official committee of unsecured creditors appointed in these Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code.

“Confirmation Date” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court in the Chapter 11 Cases.

“Confirmation Hearing” means the hearing held by the Bankruptcy Court under section 1128 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code, including all exhibits, appendices, supplements, and related documents.

“Contingent Claim” means any contingent or unliquidated Claim asserted or which may be asserted against the Debtors.

“Creditor” means a Holder of a Claim.

“Cure Amount” means the payment of Cash or the distribution of other property (as the Debtors or the Post-Effective Date Debtors, as applicable, and the counterparty to an executory contract or unexpired lease of the Debtors may agree or the Bankruptcy Court may order) necessary to (a) cure a monetary default by the Debtors in accordance with the terms of an

executory contract or unexpired lease and (b) permit the Debtors to assume such executory contract or unexpired lease under section 365(a) of the Bankruptcy Code.

“D&O Liability Insurance Policies” means any insurance policy, including tail insurance policies, providing coverage for officers, managers and employees maintained by the Debtors’ Estates as of the Effective Date.

“Debtors” means, collectively, SC SJ Holdings LLC and FMT SJ LLC.

“Debtor FMT” means FMT SJ LLC.

“Debtor SC SJ” means SC SJ Holdings LLC.

“Debtors-in-Possession” means the Debtors in their capacity as debtors-in-possession in the Chapter 11 Cases pursuant to sections 1101, 1107(a), and 1108 of the Bankruptcy Code.

“Debtor Releases” has the meaning set forth in Section 10.6 of the Plan.

“Debtor Released Parties” means, collectively, (a) the Debtors; (b) the Post-Effective Date Debtors; (c) the DIP Lender; (d) the Prepetition Secured Lender; (e) all other Restructuring Support Parties; (f) New Lessee; (g) the Qualified Manager; (h) the Qualified Mezzanine Lender; and (i) with respect to the Persons in clauses (a) through (h), each of their Related Persons. For the avoidance of doubt, Fairmont San Jose Lessee LLC is not a Debtor Released Party. Notwithstanding the foregoing, any Person that opts out of the releases set forth in Section 10.7 of the Plan shall not be deemed a Released Party thereunder.

“Default Interest” shall mean the difference between the interest accruing prior to the Effective Date on the Prepetition Secured Loan Claim at the contractual default rate and the amount of interest that would have accrued on the Prepetition Secured Loan Claim if the contractual nondefault rate were applied.

“DIP Claim” means all Claims held by the DIP Lender under the DIP Facility Term Sheet, the DIP Facility, or the Financing Orders, which includes Claims for all principal amounts outstanding of up to \$9,000,000 (subject to increase pursuant to the Financing Final Order), plus interest pursuant to the terms of the DIP Facility Term Sheet and the Financing Orders.

“DIP Facility” means that superpriority unsecured non-amortizing credit facility of up to \$9 million (subject to increase pursuant to the Financing Final Order) provided by the DIP Lender pursuant to the DIP Facility Term Sheet.

“DIP Facility Term Sheet” means that certain DIP Facility Term Sheet between Debtor SC SJ, as borrower, and the DIP Lender, as lender, attached as Exhibit A to the Financing Interim Order (as such term sheet was amended pursuant to the Financing Final Order and as may be further amended, supplemented, or otherwise modified from time to time).

“DIP Lender” means FMT SJ Catering LLC.

“Disallowed Claim” means any Claim or portion thereof which has been disallowed by a Final Order and includes any Claim which is not an Allowed Claim for any other reason.

“Disclosure Statement” means the disclosure statement (including all exhibits and schedules thereto or referenced therein) that relates to the Plan, as such disclosure statement may be altered, modified, or amended.

“Disputed Claim” means a Claim that has neither been Allowed nor disallowed pursuant to a Final Order of the Bankruptcy Court, and (a) if no Proof of Claim has been filed by the applicable deadline: (i) a Claim that has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated; or (ii) a Claim that has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but as to which the Debtors, Post-Effective Date Debtors, or any other party in interest has interposed an objection or request for estimation which has not been withdrawn or determined by a Final Order; or (b) if a Proof of Claim or other request for payment has been filed by the applicable deadline: (i) a Claim for which no corresponding Claim has been or hereafter is listed on the Schedules or Allowed in the Plan; (ii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but the nature or amount of the Claim or as asserted in the Proof of Claim varies from the nature and amount of such Claim as listed on the Schedules to the extent of such positive variance; (iii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated; or (iv) a Claim for which a timely objection or request for estimation is interposed by the Debtors, Post-Effective Date Debtors, or any other party in interest which has not been withdrawn or determined by a Final Order.

“Disputed Claims Reserve” means the reserve established pursuant to Section 7.7 of the Plan.

“Distribution Record Date” means five (5) Business Days prior to the Confirmation Date.

“Effective Date” means the first Business Day selected by the Debtors on which (a) the conditions specified in Section 9.1 of the Plan have been satisfied or waived in accordance with the terms of Section 9, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors shall have filed notice of the Effective Date with the Bankruptcy Court.

“Entity” is as defined in section 101(15) of the Bankruptcy Code.

“Equity Interests” means the FMT Equity Interest and the SC SJ Equity Interest.

“Estate(s)” means, individually, the estate of each of the Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

“Exculpated Parties” means, collectively, and in each case in their capacity as such: (a) the Debtors; (b) the Debtors’ officers, directors, managers, independent managers, principals, and Professionals; (c) the Committee; (d) the Committee’s Professionals; and (e) the members of the Committee.

“Executory Contract” means all contracts and leases to which any Debtors are a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Fairmont” means Accor Management US Inc., f/k/a Fairmont Hotels & Resorts (U.S.) Inc.

“Fairmont General Unsecured Claim” means (a) any Allowed Unpaid Management Fees Claim, (b) any Allowed HMA Damages Claim, and (c) any Allowed Claim for reimbursement or indemnification by Fairmont against the Debtors.

“Final Order” means an order or judgment of the Bankruptcy Court, or court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek *certiorari* or move for a new trial, reargument, or rehearing has expired and no appeal or petition for *certiorari* or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for *certiorari* that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which *certiorari* was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

“Financing Final Order” means the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Lender; and (III) Granting Related Relief* [Docket No. 172] entered by the Bankruptcy Court on April 8, 2021.

“Financing Interim Order” means the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Lender; and (III) Granting Related Relief* [Docket No. 59] entered by the Bankruptcy Court on March 12, 2021.

“Financing Orders” means the Financing Interim Order and the Financing Final Order.

“First Day Declaration” means the *Declaration of Neil Demchick in Support of Chapter 11 Petitions and First Day Pleadings*, dated as of March 10, 2021.

“FMT Collateral Payment” means a distribution to the Prepetition Secured Lender from the Prepetition FMT Collateral on account of the FMT Prepetition Secured Loan Claim equal to \$25,000.

“FMT Deficiency Claim” means the Allowed amount of the Prepetition Secured Loan Claim, minus the FMT Prepetition Secured Loan Claim, which shall be Allowed as an FMT General Unsecured Claim.

“FMT Equity Interest” means the membership interest in Debtor FMT held by FMT SJ Holdings LLC or its successors and assigns.

“FMT General Unsecured Claim” means any Claim against Debtor FMT that is not a Secured Claim, Administrative Expense Claim, Priority Tax Claim, DIP Claim, Professional Fee Claim, Subordinated Claim, or Fairmont General Unsecured Claim. For the avoidance of doubt, the FMT Deficiency Claim is an FMT General Unsecured Claim. For the further avoidance of doubt, FMT General Unsecured HMA Claims are FMT General Unsecured Claims.

“FMT General Unsecured HMA Claim” means any unsecured Claim against Debtor FMT of any third-party other than Fairmont that is not a Secured Claim, Administrative Expense Claim, Priority Tax Claim, DIP Claim, Professional Fee Claim, Subordinated Claim, or Fairmont General Unsecured Claim, which arises from or relates to transactions entered into on behalf of, or expenses, liabilities, costs, or debts incurred on behalf of, Debtor FMT by Fairmont under the HMA.

“FMT GUC Cash Pot” means Cash in an amount equal to \$500,000.

“FMT Prepetition Secured Loan Claim” means the Prepetition Secured Loan Claim against Debtor FMT in an amount equal to the value of the Prepetition FMT Collateral, as determined by mutual agreement of Prepetition Secured Lender and Debtor FMT, which amount shall be included in the Plan Supplement.

“FMT Petition Date” means March 5, 2021.

“FMT Subordinated Claim” means any Subordinated Claim against Debtor FMT.

“Governmental Unit” is as defined in section 101(27) of the Bankruptcy Code.

“Guarantors” means Sam Hirbod and Eagle Canyon Capital, LLC.

“Guaranty” means that Amended and Restated Guaranty of Recourse Obligations (Unsecured), dated as of August 7, 2020, issued by Guarantors in favor of the Prepetition Secured Lender, and all other obligations of Guarantor to the Prepetition Secured Lender under the Prepetition Loan Documents.

“Guarantors’ Additional Guarantees” means new agreements, in addition to the Guaranty, pursuant to which the Guarantors shall enter into a completion guaranty and an interest and carry guaranty in favor of the Prepetition Secured Lender, and any other form of guaranty to which Guarantors and the Prepetition Secured Lender agree which shall, in each case, include terms that are acceptable to the Prepetition Secured Lender in its sole discretion (*provided*, that the Prepetition Secured Lender shall not refuse consent based on the inclusion of any term included in the Restructuring Term Sheet) and may be in the forms of amendments to existing documents included in the Prepetition Secured Loan Documents and reaffirmation of existing guarantees.

“Guaranty Reaffirmation” means an agreement pursuant to which the Guarantors reaffirm and acknowledge such Guarantors’ continuing obligations under the Guaranty and the Prepetition Secured Lender waives past defaults, if any, arising from the filing of the Chapter 11 Cases.

“Holder” means the legal or beneficial holder of a Claim or Interest.

“Hotel” means the hotel located at 170 South Market Street, San Jose, California.

“HMA” means that certain Amended and Restated Hotel Management Agreement, dated as of December 2, 2005 (as amended, supplemented, or otherwise modified from time to time), pursuant to which Fairmont managed the Hotel, which agreement is attached as **Exhibit D** to the First Day Declaration.

“HMA Damages Claim” means any Allowed Claim of Fairmont against the Debtors that is not an Allowed Unpaid Management Fees Claim or any Allowed Claim for reimbursement or indemnification by Fairmont against the Debtors, including but not limited to any Claim for breach, termination, and/or rejection of the HMA and Owner Agreement.

“Impaired” means, when used in reference to a Claim or Interest, a Claim or Interest that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.

“Indemnification Obligation” means any existing or future obligation of any Debtor to indemnify current and former officers, members, or managers of any of the Debtors pursuant to the Debtors’ respective limited liability company agreements in effect as of the Effective Date.

“Insurance Policy” and, collectively, the **“Insurance Policies”** means each of the insurance policies issued to or for the benefit of any Debtor(s) or any of their predecessors-in-interest and any agreements, documents, or instruments related thereto.

“Inter-Debtor Claim” means any Claim against a Debtor held by another Debtor.

“Interest” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any of the Debtors, and any other security or equity interest in any of the Debtors (including the Equity Interests), including all ordinary shares, units, common stock, preferred stock, membership interest, partnership interest or other instrument, evidencing any fixed or contingent ownership interest in any of the Debtors, whether or not transferable and whether fully vested or vesting in the future, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in the Debtors, that existed immediately before the Effective Date, and including any equity interest issued to any of the Debtors’ current or former employees and non-employee directors various forms of long-term incentive compensation including stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares/units, incentive awards, Cash awards, and other stock-based awards.

“Lien” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any property or asset, includes, without limitation, any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of

preferential arrangement that has the practical effect of creating a security interest, in respect of such property or asset.

“Local Rules” means the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court.

“New Lease” means a lease agreement to be entered into by Debtor SC SJ and New Lessee pursuant to which Debtor SC SJ will lease the Hotel to New Lessee as of the Effective Date, which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.

“New Lessee” means an entity to be formed pursuant to the New Lessee LLC Agreement, which shall be a borrower under the Post-Effective Date Loan Documents.

“New Lessee LLC Agreement” means a limited liability company agreement to be entered into by FMT SJ Holdings LLC (or its successor, assign, or designee), as the sole member of New Lessee, which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.

“New Hotel Management Agreement” means ~~a customary~~ an agreement or agreements for ~~a, among other things, the~~ Qualified Manager ~~or its affiliate or designee~~ to manage the Hotel, including any related owner agreement, which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.

“New Manager Condition” means the condition that shall be satisfied upon agreement by the (a) Qualified Manager and/or affiliates or designees of ~~at~~ the Qualified Manager to ~~(a)~~ enter into a New Hotel Management Agreement; ~~(b)~~ provide a Qualified Manager Guarantee of a Qualified Mezzanine Loan; and ~~(e)~~ enter into a Qualified Manager SNDA; and ~~(b)~~ the Qualified Manager Mezzanine Lender and/or affiliates or designees of the Qualified Mezzanine Lender to provide a Qualified Mezzanine Loan and enter into a Qualified Mezzanine Intercreditor Agreement.

“Other Post-Effective Date Loan Amendment” means an amendment to the Prepetition Secured Loan, to be entered into by the Prepetition Secured Lender, Debtor SC SJ, and New Lessee on the Effective Date in the event the New Manager Condition is not satisfied, which (a) may be in the form of amended and restated Prepetition Secured Loan Documents or separate amendment(s), (b) shall provide for, among other things, an extension to the maturity date of the Prepetition Secured Loan until nine (9) months after the Effective Date, and (c) shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion; *provided, however,* that the Prepetition Secured Lender shall not refuse consent based on the inclusion of any term included in the Restructuring Term Sheet.

“Other Priority Claim” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim, an Administrative Expense Claim, a DIP Claim, or a Professional Fee Claim.

“Other Secured Claim” means a Secured Claim other than the Prepetition Secured Loan Claim.

“Owner Agreement” means that certain Owner Agreement, dated as of January 2, 2018, between the Debtors and Fairmont, which is attached as **Exhibit E** to the First Day Declaration.

“Parent Capital Contribution” means a capital contribution to be made to Reorganized SC SJ and Post-Effective Date FMT on or after the Effective Date in accordance with the terms of the Plan and any Qualified-~~Manager~~ Mezzanine Loan Agreement, as applicable.

“Parent Preferred Equity” means the preferred equity issued by ST SJ LLC to CLNC Fair Jose Pref, LLC in or around August 2020, which had an outstanding balance of approximately \$4.8 million as of the Petition Dates. Notwithstanding anything to the contrary in the Plan, the Restructuring Support Agreement, or the Restructuring Term Sheet, the Parent Preferred Equity was not issued by a Debtor.

“Person” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

“Petition Dates” means the FMT Petition Date and the SC SJ Petition Date.

“Plan” means this joint chapter 11 plan, including all appendices, exhibits, schedules, and supplements hereto (including any appendices, schedules, and supplements to the Plan contained in the Plan Supplement), as may be modified from time to time in accordance with the Bankruptcy Code and the terms hereof.

“Plan Supplement” means a supplement or supplements to the Plan containing certain documents and forms of documents, schedules, and exhibits relevant to the implementation of the Plan, to be filed twenty-one (21) days prior to the Confirmation Hearing, as amended, supplemented, or modified from time to time in accordance with the terms hereof, the Bankruptcy Code and the Bankruptcy Rules.

“Post-Effective Date Debtors” means Post-Effective Date FMT and Reorganized SC SJ.

“Post-Effective Date FMT” means FMT SJ LLC on or after the Effective Date.

“Post-Effective Date FMT Manager” means the Person designated to serve the functions set forth in section 5.3(b) of the Plan, the identify of which shall be disclosed in the Plan Supplement.

“Post-Effective Date Secured Loan Amount” means the principal of \$173,485,000, issued pursuant to and governed by the Post-Effective Date Secured Loan Documents, subject to reduction for the Cash payment made pursuant to Section 4.4 of the Plan.

“Post-Effective Date Secured Loan Documents” means the Prepetition Secured Loan Documents, as amended, modified, or supplemented by (a) (i) in the event the New Manager Condition is satisfied, the Qualified Manager Loan Amendment, or (ii) in the event the New Manager Condition is not satisfied, the Other Post-Effective Date Loan Amendment, and (b) the Guaranty Reaffirmation and the Guarantors’ Additional Guarantees, in all cases in form and substance acceptable to the Prepetition Secured Lender in its sole discretion; *provided, however*, that in all cases, the Prepetition Secured Lender shall not refuse consent based on the inclusion of any term included in the Restructuring Term Sheet.

“Prepetition FMT Collateral” means that portion of the Prepetition Secured Loan Collateral that constitutes an Asset of Debtor FMT.

“Prepetition Secured Loan Documents” means the Prepetition Secured Loan Agreement, and any other agreements and documents executed or delivered in connection therewith.

“Prepetition Secured Lender” means CLNC Fair Jose Finance, LLC, as successor in interest to CLNC 2019-FL1 Funding, LLC.

“Prepetition Secured Loan” means the term loan provided by the Prepetition Secured Lender pursuant to the Prepetition Secured Loan Documents in the principal amount of \$173,485,000.

“Prepetition Secured Loan Agreement” means that certain Loan Agreement, dated as of January 2, 2018 between the Debtors, as co-borrowers, and the Prepetition Secured Lender, as lender (as amended, modified, and supplemented from time to time).

“Prepetition Secured Loan Claim” means all Claims against any Debtor arising from or based upon the Prepetition Secured Loan or the Prepetition Secured Loan Documents, including accrued but unpaid interest, costs, fees, and indemnities, which shall be deemed Allowed.

“Prepetition Secured Loan Collateral” shall have the meaning ascribed to it in the Financing Orders.

“Prepetition Secured Loan Liens” means a first-priority security interest in and continuing lien on the Prepetition Secured Loan Collateral.

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

“Pro Rata” shall mean the proportion that the amount of a Claim in a particular Class or Classes bears to the aggregate amount of all Claims in such Class or Classes, unless the Plan otherwise provides.

“Professionals” means all Persons (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, 331,

or 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

“Professional Fee Claims” means all Claims for fees and expenses incurred by a Professional on or after the FMT Petition Date or SC SJ Petition Date, as applicable, to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent that there is a Final Order denying some or all of a Professional’s fees or expenses, such denied amounts shall no longer be considered a Professional Fee Claim.

“Professional Fee Claims Estimate” means the aggregate unpaid Professional Fee Claims through the Effective Date as estimated in accordance with Section 2 of the Plan.

“Proof of Claim” means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

~~**“Qualified Manager Intercreditor Agreement”** means an intercreditor agreement, which, in the event the New Manager Condition is satisfied, shall be entered into by the Qualified Manager or its designated affiliate and the Prepetition Secured Lender, and which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.~~

~~**“Qualified Manager”** means a firm with the expertise, experience and financial resources to enter into a long-term management agreement for the Hotel that is approved by the Prepetition Secured Lender in its sole discretion; provided that the Prepetition Secured Lender approves Hilton, J.W. Marriott, and Grand Hyatt. [Signia Hotel Management LLC](#).~~

~~**“Qualified Manager Guarantee”** means an unconditional payment guarantee of the unpaid “par” principal amount of the Qualified Mezzanine Loan (excluding any penalties, fees, protective advances, default interest or other amounts that may be added to such principal as a result of or in connection with any default), in an amount not to exceed \$25,000,000, which shall be provided by an affiliate of Hilton Worldwide Holdings Inc., which shall be in form and substance acceptable to the Qualified Manager, Qualified Mezzanine Lender, and the Prepetition Secured Lender in their respective sole discretion.~~

“Qualified Manager Loan Amendment” means an amendment to the Prepetition Secured Loan to be entered into by the Prepetition Secured Lender, Debtor SC SJ, and New Lessee on the Effective Date in the event the New Manager Condition is satisfied, which (a) may be in the form of amended and restated Prepetition Secured Loan Documents or separate amendment(s), (b) shall provide for, among other things, an extension to the maturity date of the Prepetition Secured Loan until three (3) years after the Effective Date with two one-year extension options, and (c) shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion; *provided, however*, that the Prepetition Secured Lender shall not refuse consent based on the inclusion of any term included in the Restructuring Term Sheet.

~~**“Qualified Manager SNDA”** means a subordination, non-disturbance, and attornment agreement, which, in the event the New Manager Condition is satisfied, shall be entered into by the Qualified Manager or its designated affiliate and the Prepetition Secured Lender, which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.~~

“Qualified Mezzanine Intercreditor Agreement” means an intercreditor agreement, which, in the event the New Manager Condition is satisfied, shall be entered into by the Qualified Mezzanine Lender and the Prepetition Secured Lender, and which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.

“Qualified Mezzanine Lender” means the Entity or Person that provides the Qualified Mezzanine Loan, and that is approved by the Prepetition Secured Lender in its sole discretion.

“Qualified Mezzanine Loan” means a loan to be provided to the Holder of the SC SJ Equity Interest on the Effective Date, which loan (a) ~~shall be in an amount of not less than \$45 million,~~ (b) shall be for a term of at least five (5) years, (c) shall bear interest at a rate of no more than seven percent (7.00%) per annum, (c) shall be the obligation of the immediate owner of Reorganized SC SJ as a first priority mezzanine loan that is junior to the obligations under the Post-Effective Date Loan Documents, and (d) shall otherwise be on terms acceptable to the Prepetition Secured Lender ~~in its~~ and the Qualified Mezzanine Lender in their respective sole discretion; *provided, however,* that the Prepetition Secured Lender shall not refuse consent based on the inclusion of any term included in the Restructuring Term Sheet.

“Qualified ~~Manager~~ Mezzanine Loan Agreement” means an agreement or agreements by a Qualified ~~Manager or its affiliate or designee~~ Mezzanine Lender to lend and/or commit to fund a Qualified ~~Manager~~ Mezzanine Loan to the Holder of the SC SJ Equity Interest, which agreement or agreements shall require, among other things, use of a portion of the proceeds to retire the Parent Preferred Equity, ~~which Qualified Manager Mezzanine Loan Agreement and~~ shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion; *provided, however,* that the Prepetition Secured Lender shall not refuse consent based on the inclusion of any term included in the Restructuring Term Sheet.

~~**“Qualified Manager SNDA”** means a subordination, non-disturbance, and attornment agreement, which, in the event the New Manager Condition is satisfied, shall be entered into by the Qualified Manager or its designated affiliate and the Prepetition Secured Lender, which shall be in form and substance acceptable to the Prepetition Secured Lender in its sole discretion.~~

“Related Persons” means, with respect to any Person, such Person’s predecessors, successors, assigns, and present and former affiliates (whether by operation of law or otherwise) and each of their respective subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, participants, management companies, fund advisors, advisory board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, investors, lenders, servicers, trustees, bondholders, rating agencies, representatives, and other professionals, and any Person claiming by or through any of them, including such Related Persons’ respective heirs, executors, estates, servants, and nominees. Notwithstanding anything to the contrary set forth herein, (a) no insurer of any Debtors shall constitute a Related Person of any Debtors or Post-Effective Date Debtors, and (b) Fairmont shall not constitute a Related Person of any Debtors or Post-Effective Date Debtors.

“Released Parties” means, collectively, Debtor Released Parties and Third-Party Released Parties.

“Releasing Parties” means, collectively, (a) the Holders of all Claims or Interests that vote to accept the Plan, (b) the Holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but that do not vote either to accept or to reject the Plan, (c) the Holders of all Claims or Interests that vote to reject the Plan but do not opt out of granting the releases set forth herein, (d) the Holders of all Claims and Interests that were given notice of the opportunity to opt out of granting the releases set forth herein but did not opt out, (e) the Holders of all Claims or Interests that are presumed to accept the Plan and do not file objections to confirmation of the Plan, and (f) the Released Parties. Notwithstanding anything to the contrary set forth herein, any Holders of Claims or Interests that would otherwise fall into (a) – (e) but that do not receive actual notice are not Releasing Parties.

“Reorganized SC SJ” means Debtor SC SJ, or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date, including any new entity formed to directly or indirectly acquire the assets of Debtor SC SJ.

“Restructuring” means the restructuring of the Debtors, the principal terms of which are set forth in the Plan and Plan Supplement.

“Restructuring Support Agreement” means that certain Restructuring Support Agreement, dated as of March 9, 2021 (as may be amended, supplemented, or otherwise modified from time to time), which is attached as Exhibit C to the First Day Declaration.

“Restructuring Support Parties” means the Debtors, Sam Hirbod, Eagle Canyon Capital, LLC, CLNC Fair Jose Pref, LLC, and the Prepetition Secured Lender.

“Restructuring Term Sheet” means that certain Restructuring Term Sheet, dated as of March 9, 2021 (as may be amended, supplemented, or otherwise modified from time to time), which is attached as Exhibit A to the Restructuring Support Agreement.

“Restructuring Transactions” means one or more transactions pursuant to section 1123(a)(5) of the Bankruptcy Code to occur on the Effective Date or as soon as reasonably practicable thereafter, that may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including (a) the consummation of the transactions provided for under or contemplated by the Plan and any mergers, amalgamations, consolidations, arrangements, continuances, transfers, conversions, sales, dispositions, or other corporate transactions necessary or appropriate to implement the Plan, (b) the execution and delivery of appropriate agreements or other documents containing terms that are consistent with or reasonably necessary to implement the terms of the Plan and that satisfy the requirements of applicable law, (c) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan, and (d) all other actions that the Debtors or the Post-Effective Date Debtors, as applicable, determine are necessary or appropriate and consistent with the Plan.

“SC SJ Equity Interest” means the membership interest in SC SJ Holdings LLC held by FMT SJ Holdings LLC or any of its successors and assigns.

“SC SJ General Unsecured Claim” means any Claim against Debtor SC SJ that is not a Secured Claim, Administrative Expense Claim, Priority Tax Claim, DIP Claim, Professional Fee Claim, Other Priority Claim, Fairmont General Unsecured Claim, Inter-Debtor Claim, or Subordinated Claim.

“SC SJ Petition Date” means March 10, 2021.

“SC SJ Prepetition Secured Loan Claim” means the Prepetition Secured Loan Claim against Debtor SC SJ in an amount equal to the Prepetition Secured Loan Claim.

“SC SJ Subordinated Claim” means any Subordinated Claim against Debtor SC SJ.

“Schedules” means, unless otherwise specified, the respective schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by the Debtors in accordance with section 521 of the Bankruptcy Code and the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended on or prior to the Confirmation Date.

“Schedule of Assumed Contracts” means the schedule of executory contracts and unexpired leases to be assumed or assumed and assigned by the Debtors pursuant to the Plan, if any, as the same may be amended, modified, or supplemented from time to time.

“Secured Claim” means a Claim to the extent (a) secured by a Lien on property of a Debtor’s Estate, the amount of which is equal to or less than the value of such property as (i) set forth in the Plan, (ii) agreed to by the Holder of such Claim and the Debtors, or (iii) determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (b) secured by the amount of any right of setoff of the Holder thereof in accordance with section 553 of the Bankruptcy Code, to the extent of the amount subject to setoff, as provided in section 506(a) of the Bankruptcy Code.

“Subordinated Claim” means any Claim subordinated by law or contract including pursuant to section 510(b) of the Bankruptcy Code.

“Taxing Authorities” means all federal and state taxing agencies.

“Third-Party Release” shall have the meaning ascribed to it in Section 10.7 of the Plan.

“Third-Party Released Parties” means, collectively, (a) the Debtors; (b) the Post-Effective Date Debtors; (c) the DIP Lender; (d) the Prepetition Secured Lender; (e) all other Restructuring Support Parties; (f) New Lessee; (g) Fairmont, but solely with respect to FMT General Unsecured HMA Claims; ~~(h) Qualified Manager;~~ ~~(i) Qualified Mezzanine Lender;~~ and ~~(g)~~ with respect to the Persons in clauses (a) through ~~(f)~~, each of their Related Persons. For the avoidance of doubt, Fairmont San Jose Lessee LLC is not a Third-Party Released Party.

Notwithstanding the foregoing, any Person that opts out of the releases set forth in Section 10.7 of the Plan shall not be deemed a Released Party thereunder.

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

“Unimpaired” means any Class of Claims or Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

“Unpaid Management Fees Claim” means any Claim of Fairmont against the Debtors for accrued and unpaid “Management Fees” (as defined in the HMA) under the HMA and/or Owner Agreement as of the FMT Petition Date.

“United States Trustee” means the Office of the United States Trustee for the District of Delaware.

“United States Trustee Fees” means fees arising under 28 U.S.C. § 1930(a)(6).

“Voting Record Date” shall have the meaning ascribed to such term in the Disclosure Statement.

1.2 Interpretation, Application of Definitions and Rules of Construction

Unless otherwise specified, all section or exhibit references in the Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, supplemented, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in the Plan to an existing document, exhibit or schedule means such document, exhibit or schedule as it may have been amended, restated, revised, supplemented, or otherwise modified. If a time or date is specified for any payments or other distribution under the Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral. In the event of any ambiguity or conflict between the Plan and the Disclosure Statement, the provisions of the Plan shall govern.

1.3 Computation of Time

Unless otherwise specifically stated in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan. If the date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any references to

the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

SECTION 2.ADMINISTRATIVE AND PRIORITY CLAIMS

2.1 Administrative Expense Claims

(a) Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to different treatment with the Debtors or the Post-Effective Date Debtors, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) shall receive Cash in an amount equal to the unpaid amount of such Allowed Administrative Expense Claim on the later of the Effective Date or the date on which such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is reasonably practicable; *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors, as Debtors-in-Possession, or liabilities arising under obligations incurred by the Debtors, as Debtors-in-Possession, prior to the Effective Date, shall be paid by the Debtors in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions, including, but not limited to, the Budget, Financing Orders and all other orders entered by the Bankruptcy Court related to the foregoing. United States Trustee Fees that have been incurred but remain unpaid shall be paid on the Effective Date by the Debtors. For the avoidance of doubt, the treatment provided for in this Section 2.1 of the Plan shall not apply to DIP Claims.

(b) Administrative Expense Claim Bar Date. To be eligible to receive distributions under the Plan on account of an Administrative Expense Claim (other than Professional Fee Claims) that is not otherwise Allowed by the Plan, a request for payment of an Administrative Expense Claim must be filed with the Bankruptcy Court on or before the Administrative Expense Claim Bar Date. Any Administrative Expense Claim (other than Professional Fee Claims) that is not filed with the Bankruptcy Court and served on the Debtors or the Post-Effective Date Debtors, as applicable, by the Administrative Expense Claim Bar Date shall be disallowed and forever barred against the Debtors, the Debtors' Estates, the Post-Effective Date Debtors, or any of their Assets or property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim. Notwithstanding anything to the contrary set forth in the Plan, the United States Trustee Fees shall not be subject to the Administrative Expense Claim Bar Date.

2.2 Professional Fee Claims

(a) Final Fee Applications. Except as otherwise provided herein, all Professionals seeking payment of Professional Fee Claims for services rendered or reimbursement of expenses through and including the Effective Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 1103 of the Bankruptcy Code shall file, on or before the date that is thirty (30) days after the Effective Date, their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred. Any Professional Fee Claim that is not asserted in accordance with this Section 2.2 of the Plan shall be deemed

disallowed under the Plan, waived, and shall be forever barred against the Debtors, the Debtors' Estates, the Post-Effective Date Debtors, or any of their Assets or property, and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup, or recover such Claim.

(b) Professional Fee Claims Estimate. Professionals shall estimate in good faith their unpaid Professional Fee Claims and other unpaid fees and expenses incurred in rendering services to the Debtors before and as of the Effective Date and shall deliver such good faith estimate to the Debtors no later than five (5) Business Days prior to the Effective Date.

(c) Professional Fee Escrow Account. If the Professional Fee Claims Estimate is greater than zero, as soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow with Cash equal to the Professional Fee Claims Estimate, and no Liens, Claims, or interests shall encumber the Professional Fee Escrow in any way. The Professional Fee Escrow (including funds held in the Professional Fee Escrow) (x) shall not be and shall not be deemed property of the Debtors or the Post-Effective Date Debtors and (y) shall be held in trust for the Professionals; *provided that* funds remaining in the Professional Fee Escrow after all Allowed Professional Fee Claims have been irrevocably paid in full shall revert to the Post-Effective Date Debtors. An Allowed Professional Fee Claim shall be paid (i) in Cash from funds held in the Professional Fee Escrow when such Professional Fee Claim is Allowed by an order of the Bankruptcy Court, or (ii) upon such other terms as may be mutually agreed upon between the Holder of such Professional Fee Claim and the Debtors or the Post-Effective Date Debtors, as applicable.

(d) Post-Effective Date Fees and Expenses. Except as otherwise provided in the Plan, on and after the Effective Date, the Debtors or the Post-Effective Date Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and consummation of the Plan incurred by Professionals retained by the Debtors or the Post-Effective Date Debtors, as applicable. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code after such date shall terminate, and the Debtors or the Post-Effective Date Debtors, as applicable, may employ any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

2.3 **Priority Tax Claims**

Except as otherwise provided in the Plan, on the Effective Date or as soon thereafter as is reasonably practicable, each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction of such Claim, either (a) Cash in an amount equal to the Allowed amount of such Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code or (b) such other less favorable treatment as may be mutually agreed upon by the Debtors or the Post-Effective Date Debtors, as applicable, and the Holder of such Allowed Priority Tax Claim; *provided*, that Allowed Priority Tax Claims representing liabilities incurred in the ordinary course of business by the Debtors, as Debtors in Possession, shall be paid by the Debtors or the Post-Effective Date Debtors, as applicable, in the ordinary course of business,

consistent with past practice and in accordance with the terms and subject to the conditions of any orders or agreements governing, instruments evidencing, or other documents establishing, such liabilities.

2.4 Treatment of DIP Claims and DIP Commitments

All DIP Claims shall be deemed Allowed as of the Effective Date in an amount equal to the principal amount outstanding under the DIP Facility on such date, and all interest accrued and unpaid thereon to the date of payment. The treatment of the Allowed DIP Claims shall be subject to a final agreement among Debtor SC SJ, the DIP Lender, and the Prepetition Secured Lender.

SECTION 3.CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

3.1 Summary of Classification

Claims and Interests, except for Administrative Expense Claims, Professional Fee Claims, DIP Claims, and Priority Tax Claims, are classified in the Classes set forth in this Section 3 of the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest also is classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against each Debtor pursuant to the Plan is as set forth below. The Plan shall apply as a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein shall apply separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes.

3.2 Formation of Debtor Groups for Convenience Only

The Plan groups the Debtors together solely for the purpose of describing treatment under the Plan, confirmation of the Plan, and making Plan distributions in respect of Claims against and Interests in the Debtors under the Plan. Such groupings shall not affect any Debtor's status as a separate legal entity, change the organizational structure of a Debtor, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any Assets; and, except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities.

3.3 Summary

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Plan is as follows:

Class	Class	Status	Entitled to Vote
1	Other Priority Claims	Unimpaired	No (Deemed to accept)
2	Other Secured Claims	Unimpaired	No (Deemed to accept)
3(A)	SC SJ Prepetition Secured Loan Claims	Impaired	Yes
3(B)	FMT Prepetition Secured Loan Claims	Impaired	Yes
4(A)	SC SJ General Unsecured Claims	Unimpaired	No (Deemed to accept)
4(B)	FMT General Unsecured Claims	Impaired	Yes
4(C)	Fairmont General Unsecured Claims	Unimpaired	No (Deemed to accept)
5	Inter-Debtor Claims	Impaired	No (Deemed to reject)
6(A)	SC SJ Subordinated Claims	Unimpaired	No (Deemed to accept)
6(B)	FMT Subordinated Claims	Impaired	No (Deemed to reject)
7(A)	SC SJ Equity Interest	Unimpaired	No (Deemed to accept)
7(B)	FMT Equity Interest	Impaired	No (Deemed to reject)

3.4 Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Post-Effective Date Debtors, as applicable, in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

3.5 Separate Classification of Other Secured Claims

Although all Other Secured Claims have been placed in one Class for purposes of nomenclature within the Plan, each Other Secured Claim, to the extent secured by a Lien on Collateral different from the Collateral securing a different Other Secured Claim, shall be treated as being in a separate sub-Class for the purposes of voting to accept or reject the Plan and receiving Plan distributions.

3.6 Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes that votes on the Plan shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

3.7 Voting Classes; Presumed Acceptance by Non-Voting Classes

With respect to each Debtor, if a Class has Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

3.8 Voting; Presumptions; Solicitation

(a) Acceptance by Certain Impaired Classes. Only Holders of Allowed Claims and Interests in Classes 3(A), 3(B), and 4(B) are entitled to vote to accept or reject the Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the Holders of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. An Impaired Class of Interests shall have accepted the Plan if the Holders of at least two-thirds (2/3) in amount of the Allowed Interests actually voting in such Class have voted to accept the Plan.

(b) Deemed Acceptance by Unimpaired Classes. Holders of Claims and Interests in Classes 1, 2, 4(A), 4(C), 6(A), and 7(A) are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote on the Plan.

(c) Deemed Rejection by Certain Impaired Classes. Holders of Claims and Interests in Classes 5, 6(B) and 7(B) are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote on the Plan.

3.9 Cramdown

If any Class is deemed to reject the Plan or is entitled to vote on the Plan and does not vote to accept the Plan, the Debtors may (a) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (b) amend or modify the Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Interests, or any class of Claims or Interests, are impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

3.10 No Waiver

Nothing contained in the Plan shall be construed to waive a Debtor's or other Person's right to object on any basis to any Disputed Claim.

SECTION 4.TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1 Other Priority Claims (Class 1)

(a) Treatment. The legal, equitable, and contractual rights of the Holders of Allowed Other Priority Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will, at the option of the Debtors or the Post-Effective Date Debtors, as applicable, (i) be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or, in each case, as soon as reasonably practicable thereafter.

(b) Impairment and Voting. Allowed Other Priority Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed Other Priority Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed Other Priority Claims.

4.2 Other Secured Claims (Class 2)

(a) Treatment. The legal, equitable, and contractual rights of the Holders of Allowed Other Secured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of the Debtors or the Post-Effective Date Debtors, as applicable, such Holder will receive (i) payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, in each case, or as soon as reasonably practicable thereafter or (ii) such other treatment so as to render such Holder's Allowed Other Secured Claim Unimpaired.

(b) Impairment and Voting. Allowed Other Secured Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed Other Secured Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed Other Secured Claims.

4.3 SC SJ Prepetition Secured Loan Claim (Class 3A)

(a) Treatment. On the Effective Date or as soon as reasonably practicable thereafter: the Prepetition Secured Lender will release its right to receive Default Interest and shall receive, on account of the SC SJ Prepetition Secured Loan Claim (i) payment in Cash of (A) any unpaid interest on the Prepetition Secured Loan accrued prior to the Effective Date at the non-default rate set forth in the Prepetition Secured Loan Agreement, minus the FMT Collateral Payment received under Section 4.4(a) of the Plan and any recovery received on account of its Allowed FMT Deficiency Claim under Section 4.6(a) of the Plan, and (B) any unpaid reasonable costs and expenses owed pursuant to the Restructuring Support Agreement, Prepetition Secured Loan Documents, or Financing Orders incurred prior to the Effective Date; and (ii) payment in full

over time of the Post-Effective Date Secured Loan Amount by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents, which shall be delivered on or before the Effective Date.

(b) Impairment and Voting. The SC SJ Prepetition Secured Loan Claim is Impaired. The Holder of the SC SJ Prepetition Secured Loan Claim is entitled to vote on the Plan.

4.4 FMT Prepetition Secured Loan Claim (Class 3B)

(a) Treatment. On the Effective Date or as soon as reasonably practicable thereafter, the Prepetition Secured Lender shall receive, on account of the FMT Prepetition Secured Loan Claim, the FMT Collateral Payment, and all Prepetition FMT Collateral, other than cash collateral, shall be delivered in kind to Reorganized SC SJ and repayment of the debt secured by the Prepetition FMT Collateral shall be made over time by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents.

(b) Impairment and Voting. The FMT Prepetition Secured Loan Claim is Impaired. The Holder of the FMT Prepetition Secured Loan Claim is entitled to vote on the Plan.

4.5 SC SJ General Unsecured Claims (Class 4A)

(a) Treatment. The legal, equitable, and contractual rights of the Holders of Allowed SC SJ General Unsecured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed SC SJ General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed SC SJ General Unsecured Claim, such Holder will receive payment in full in Cash plus interest at the Federal judgment rate, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such SC SJ General Unsecured Claim becomes an Allowed SC SJ General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.

(b) Impairment and Voting. Allowed SC SJ General Unsecured Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed SC SJ General Unsecured Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed SC SJ General Unsecured Claims.

4.6 FMT General Unsecured Claims (Class 4B)

(a) Treatment. Each Holder of an Allowed FMT General Unsecured Claim will receive on account of such Allowed FMT General Unsecured Claim, in full and final satisfaction of such Allowed FMT General Unsecured Claim, its Pro Rata share of the FMT GUC Cash Pot. For the avoidance of doubt, the FMT Deficiency Claim is an Allowed FMT General Unsecured Claim. If Class 4B votes to accept the Plan, the Prepetition Secured Lender will voluntarily waive its right to receive its Pro Rata share of the FMT GUC Cash Pot on account of the FMT Deficiency Claim. If Class 4B votes to reject the Plan the Plan the Prepetition Secured Lender shall receive its Pro Rata share of the FMT GUC Cash Pot on account of the FMT Deficiency Claim.

(b) Impairment and Voting. Allowed FMT General Unsecured Claims are Impaired. Holders of Allowed FMT General Unsecured Claims are entitled to vote on the Plan.

4.7 Fairmont General Unsecured Claims (Class 4C)

(a) Treatment. The legal, equitable, and contractual rights of the Holders of Allowed Fairmont General Unsecured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Fairmont General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Fairmont General Unsecured Claim, such Holder will receive payment in full in Cash plus interest at the Federal judgment rate, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Fairmont General Unsecured Claim becomes an Allowed Fairmont General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.

(b) Impairment and Voting. Allowed Fairmont General Unsecured Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed Fairmont General Unsecured Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed Fairmont General Unsecured Claims.

4.8 Inter-Debtor Claims (Class 5)

(a) Treatment. On or after the Effective Date, all Inter-Debtor Claims shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect.

(b) Impairment and Voting. Inter-Debtor Claims are Impaired. In accordance with section 1126(g) of the Bankruptcy Code, Inter-Debtor Claims are conclusively deemed to reject the Plan and are not entitled to vote on reject the Plan.

4.9 SC SJ Subordinated Claims (Class 6A)

(a) Treatment. The legal, equitable, and contractual rights of the Holders of Allowed SC SJ Subordinated Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed SC SJ Subordinated Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed SC SJ Subordinated Claim, such Holder will receive payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such SC SJ Subordinated Claim becomes an Allowed SC SJ General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.

(b) Impairment and Voting. Allowed SC SJ Subordinated Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed SC SJ Subordinated Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed SC SJ Subordinated Claims.

4.10 FMT Subordinated Claims (Class 6B)

(a) Treatment. All FMT Subordinated Claims, if any, shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed FMT Subordinated Claims will not receive any distribution on account of such Allowed FMT Subordinated Claims.

(b) Impairment and Voting. Allowed FMT Subordinated Claims are Impaired. In accordance with section 1126(g) of the Bankruptcy Code, Holders of FMT Subordinated Claims are conclusively presumed to reject the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to FMT Subordinated Claims.

4.11 SC SJ Equity Interest (Class 7A)

(a) Treatment. The legal, equitable, and contractual rights of the Holder of the SC SJ Equity Interest are unaltered by the Plan. The SC SJ Equity Interest shall be deemed Allowed as of the Effective Date. On the Effective Date, the SC SJ Equity Interest shall be reinstated, and the Holder of the SC SJ Equity Interest shall retain such SC SJ Equity Interest.

(b) Impairment and Voting. The SC SJ Equity Interest is Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holder of the SC SJ Equity Interest is conclusively presumed to accept the Plan and is not entitled to vote on the Plan, and its vote shall not be solicited with respect to such SC SJ Equity Interest.

4.12 FMT Equity Interest (Class 7B)

(a) Treatment. The FMT Equity Interest shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and the Holder of the FMT Equity Interest will not receive any distribution on account of such FMT Equity Interest.

(b) Impairment and Voting. The FMT Equity Interest is Impaired. In accordance with section 1126(g) of the Bankruptcy Code, the Holder of the FMT Equity Interest is conclusively presumed to reject the Plan and is not entitled to vote on the Plan, and the votes of such Holder shall not be solicited with respect to the FMT Equity Interest.

SECTION 5.MEANS FOR IMPLEMENTATION OF THE PLAN

5.1 Compromise and Settlement of Claims, Interests and Controversies

Except as otherwise set forth in the Confirmation Order, pursuant to sections 363 and 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a creditor or an Interest Holder may have with respect to any Allowed Claim or Allowed Interest or any distribution to be made on account of such Allowed Claim or Allowed Interest. Except as otherwise set forth in the Confirmation

Order, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Allowed Claims, Allowed Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of such Allowed Claims and Allowed Interests, and is fair, equitable, and reasonable.

5.2 Plan Funding

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Debtors or Post-Effective Date Debtors, as applicable, to make payments required pursuant to or contemplated under the Plan shall be funded from proceeds advanced under the DIP Facility, Cash on hand as of the applicable date of such payment, the Qualified Mezzanine Loan, and proceeds of the Parent Capital Contribution.

5.3 Corporate Existence

(a) Reorganized SC SJ. Debtor SC SJ will continue to exist after the Effective Date as a separate legal entity, with all the powers of a limited liability company pursuant to the applicable law in its state of incorporation or organization. After the Effective Date, Reorganized SC SJ shall exist pursuant to the same organizational documents that were in effect prior to the SC SJ Petition Date. Reorganized SC SJ will continue to be a member managed limited liability company, and its independent managers will be C. Anthony Shippam and Candace R. Corra.

(b) Post-Effective Date FMT. From and after the Effective Date, Post-Effective Date FMT shall continue in existence solely for purposes of: (i) winding down its business, Assets, and affairs as expeditiously as reasonably possible; (ii) resolving and making distributions on all Allowed Claims against Debtor FMT; (iii) filing appropriate tax returns, if any; (iv) administering the Plan in an efficacious manner, with no objective to continue or engage in the conduct of a trade or business; (v) maintaining, transferring, or terminating any Insurance Policies, as deemed necessary by Post-Effective Date FMT; and (vi) taking the steps necessary to dissolve Post-Effective Date FMT under applicable state law. Post-Effective Date FMT shall delegate all management and governance responsibility of Post-Effective Date FMT to the Post-Effective Date FMT Manager solely for the foregoing purposes. The Post-Effective Date FMT Manager shall be replaced only for cause. It is the intention of the parties that Post-Effective Date FMT shall be treated as a disregarded entity for U.S. federal income tax purposes.

(c) Post-Effective Date United States Trustee Fees and Reports. From and after the Effective Date, the Post-Effective Date Debtors shall pay all United States Trustee Fees in Cash as such United States Trustee Fees come due until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first. The Post-Effective Date Debtors shall file all reports required by the United States Trustee guidelines.

(d) On or after the Effective Date, each Post-Effective Date Debtor may, in its sole discretion, take such action as permitted by applicable law and its corporate governance documents, as such Post-Effective Date Debtor may determine is reasonable and appropriate,

including: (i) dissolving under applicable law; (ii) changing its legal name; (iii) converting its form of entity; or (iv) closing its Chapter 11 Case without the need for further action or approval (other than any requisite filings required under applicable state, local, and federal or foreign law).

(e) On the Effective Date or as soon thereafter as is reasonably practicable, the Post-Effective Date Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, or necessary or appropriate to effectuate the Plan, including: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and the Plan Supplement and that satisfy the requirements of applicable law and any other terms to which the applicable entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any Asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree; (iii) the filing of appropriate organizational documents governing the Post-Effective Date Debtors, or any documents governing any Post-Effective Date Debtor's reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable law and, as necessary, other constituent documents, as permitted by the laws of their respective states of incorporation; (iv) the Restructuring Transactions; and (v) all other actions that the applicable entities determine to be necessary or appropriate, including, making filings or recordings that may be required by applicable law.

(f) The Confirmation Order shall be deemed to, under both section 1123 and section 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

5.4 Corporate Action

(a) Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including (i) the assumption of executory contracts and unexpired leases as provided herein, (ii) the selection of managers and/or officers of the Post-Effective Date Debtors, (iii) entry into the Qualified Manager Loan Amendment or Other Post-Effective Date Amendment, as applicable, (iv) entry into the New Hotel Management Agreement, (v) issuance of the Post-Effective Date Secured Loan Amount to the Prepetition Secured Lender, which shall be governed by the Post-Effective Date Loan Documents, (vi) entry into the New Lease, (vii) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date), in each case in accordance with and subject to the terms hereof. All matters provided for in the Plan involving the corporate or limited liability company structure of the Debtors or the Post-Effective Date Debtors, and any corporate or limited liability company action required by the Debtors or the Post-Effective Date Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, managers, or officers of the Debtors or the Post-Effective Date Debtors.

(b) On or before (as applicable) the Effective Date, the appropriate officers and managers of the Debtors or the Post-Effective Date Debtors, as applicable, shall be authorized

and directed to issue, execute, and deliver the agreements, documents, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan). The authorizations and approvals contemplated by this Section 5.4 of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

5.5 Cancellation of Existing Securities and Agreements

Except for the purpose of evidencing a right to and allowing Holders of Claims to receive a distribution under the Plan, and except as otherwise set forth in the Plan, or in the Plan Supplement or any related agreement, instrument, or document, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, security documents, and other instruments or documents evidencing or creating any prepetition Claim or Interest (collectively, the “Cancelled Agreements”) (except that the following shall not be Cancelled Agreements: (i) the Prepetition Secured Loan Documents; and (ii) the SC SJ Equity Interest, which is not modified by the Plan) and any rights of any Holder in respect thereof shall be deemed cancelled and of no force or effect and the Debtors shall not have any continuing obligations thereunder; *provided, however*, that each of the Cancelled Agreements shall continue in effect solely for the purposes of allowing Holders of Claims or Interests to receive distributions under the Plan on account of such Claims or Interests.

5.6 Cancellation of Certain Existing Security Interests

Upon the full payment or other satisfaction of an Allowed Other Secured Claim, or promptly thereafter, the Holder of such Allowed Other Secured Claim shall deliver to the Debtors or the Post-Effective Date Debtors, as applicable, any Collateral or other property of a Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Other Secured Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics’ or other statutory Liens, or lis pendens, or similar interests or documents. Notwithstanding anything to the contrary in the Plan, including this paragraph, the Liens of the Prepetition Secured Lender pursuant to the Prepetition Secured Loan Documents shall be deemed to become Liens under the Post-Effective Secured Loan Documents, and shall not be discharged hereby.

5.7 Private Company

The Post-Effective Date Debtors shall not have any class of equity securities listed on a national securities exchange and shall take the steps necessary to be a private company without Exchange Act reporting obligations upon emergence.

SECTION 6.DISTRIBUTIONS

6.1 Distributions Generally

Except as otherwise specifically provided for in the Plan, the Confirmation Order, or another order of the Bankruptcy Court, the Disbursing Agent shall make all Plan Distributions to the appropriate Holders of Allowed Claims and Allowed Interests in accordance with the terms of the Plan.

6.2 No Postpetition Interest on Claims

Except as otherwise specifically provided for in the Plan, the Confirmation Order, or another order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

6.3 Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their agents shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims or Interests. The Debtors shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring after the Distribution Record Date. The Debtors shall be entitled to recognize and deal for all purposes under the Plan only with those record Holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

6.4 Date of Distributions

Unless otherwise provided in the Plan, any distributions and deliveries to be made under the Plan shall be made on the Effective Date or as soon thereafter as is practicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions for Disputed Claims set forth in the Plan.

6.5 Disbursing Agent

Except as otherwise provided in the Plan, all distributions under the Plan shall be made by the Debtors or Post-Effective Date Debtors as “Disbursing Agent” or such other Person designated by the Debtors or Post-Effective Date Debtors as a Disbursing Agent on the Effective Date.

6.6 Rights and Powers of Disbursing Agent

(a) Powers of Disbursing Agent. The Disbursing Agent shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (ii) make all applicable distributions or payments provided for under the Plan; (iii) employ professionals to represent it with respect to its responsibilities; and

(iv) exercise such other powers (x) as may be vested in the Disbursing Agent by order of the Bankruptcy Court (including any Final Order issued after the Effective Date) or pursuant to the Plan or (y) as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

(b) Expenses Incurred on or After the Effective Date. Except as otherwise ordered by the Bankruptcy Court and subject to the written agreement of the Post-Effective Date Debtors, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including for reasonable attorneys' and other professional fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Post-Effective Date Debtors in the ordinary course of business.

6.7 Delivery of Distributions

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Disbursing Agent. Distributions to Holders of Allowed Claims will be made at the address of each such Holder as set forth in the Debtors' books and records. Distributions under the Plan on account of such Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. In the event that any distribution to any Holder is returned as undeliverable, no distribution or payment to such Holder shall be made unless and until the Disbursing Agent has been notified of the then-current address of such Holder, at which time or as soon thereafter as reasonably practicable such distribution shall be made to such Holder without interest. None of the Debtors, the Post-Effective Date Debtors, and the Disbursing Agent shall incur any liability whatsoever on account of any distributions under the Plan.

6.8 Manner of Payment

Except as specifically provided herein, at the option of the Disbursing Agent, any Cash payment to be made under the Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

6.9 Unclaimed Property

Six months from the later of: (a) the Effective Date and (b) the date that is ten Business Days after the date a Claim is first Allowed, all distributions that remain payable on account of such Claim shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revert to the respective Post-Effective Date Debtor or its successors or assigns, and all claims of any other Person (including the Holder of a Claim in the same Class) to such distribution shall be discharged and forever barred. The Post-Effective Date Debtors and the Disbursing Agent shall have no obligation to attempt to locate any Holder of an Allowed Claim other than by reviewing the Debtors' books and records and the Bankruptcy Court's filings.

For the avoidance of doubt, a distribution shall be deemed unclaimed if a Holder has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated

such check; (b) given notice to the Post-Effective Date Debtors of an intent to accept a particular distribution; (c) responded to the Debtors' or Post-Effective Date Debtors' requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

6.10 Satisfaction of Claims

Unless otherwise provided herein, any distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

6.11 Withholding and Reporting Requirements

In connection with the Plan and all instruments issued in connection therewith, the Disbursing Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements.

6.12 No Distribution in Excess of Amount of Allowed Claim

Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall receive, on account of such Allowed Claim, Plan Distributions in excess of the Allowed amount of such Claim (plus any postpetition interest on such Claim solely to the extent permitted by Section 6.2 of the Plan.

6.13 Setoffs and Recoupments

Each Post-Effective Date Debtor, or such entity's designee as instructed by such Post-Effective Date Debtor, may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, offset or recoup against any Allowed Claim, and the distributions to be made pursuant to the Plan on account of such Allowed Claim any and all claims, rights, and Causes of Action that a Post-Effective Date Debtor or its successors may hold against the Holder of such Allowed Claim after the Effective Date to the extent such setoff or recoupment is either (a) agreed in amount among the relevant Post-Effective Date Debtor(s), and Holder of the Allowed Claim or (b) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; provided, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Post-Effective Date Debtor or its successor of any claims, rights, or Causes of Action that a Post-Effective Date Debtor or its successor or assign may possess against such Holder.

6.14 Claims Paid by Third Parties

A Claim shall be reduced in full, and such Claim shall be disallowed without an objection to such Claim having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on

account of such Claim from a party that is not a Debtor or Post-Effective Date Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Post-Effective Date Debtor on account of such Claim, such Holder shall repay, return or deliver any distribution held by or transferred to the Holder to the applicable Post-Effective Date Debtor to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

6.15 Claims Payable by Insurance Carriers

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any such satisfaction.

6.16 Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be made in accordance with the provisions of any applicable Insurance Policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors, Post-Effective Date Debtors, or any Person may hold against any insurers under any of the Debtors' Insurance Policies, nor shall anything contained in the Disclosure Statement or herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

6.17 Distributions Free and Clear

Except as may be otherwise provided herein, all distributions under the Plan shall be free and clear of any Liens, Claims, encumbrances, and other interests.

6.18 Fractional Dollars; De Minimis Distributions

Notwithstanding any other provision of the Plan, Cash payments of fractions of dollars shall not be made. Whenever any distribution to a Holder of a Claim would otherwise call for distribution of Cash in a fractional dollar amount, the actual distribution of such Cash shall be rounded to the nearest whole dollar (up or down), with half dollars (or less) being rounded down. Neither the Debtors nor the Post-Effective Date Debtors shall be required to make any Cash payment of less than ten dollars (\$10.00) with respect to any Claim unless a request therefor is made in writing to the Debtor or the Post-Effective Date Debtors, as applicable; *provided, however*, that neither the Debtors nor Post-Effective Date Debtors shall have any obligation to make any distribution, whether final or not, unless and until the total amount of such distribution to a specific Holder of an Allowed Claim is equal to or greater than ten dollars (\$10.00).

SECTION 7. PROCEDURES FOR DISPUTED CLAIMS

7.1 Allowance of Claims

Except as expressly provided herein, or in any order entered in the Chapter 11 Cases prior to the Effective Date, including the Confirmation Order, no Claim shall be deemed Allowed unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or Allowed by the Bankruptcy Court by entry of a Final Order allowing such Claim. On and following the Effective Date, the Post-Effective Date Debtors shall be vested with any and all rights and defenses the Debtors had with respect to any Claim immediately prior to the Effective Date.

7.2 Objections to Claims

Except insofar as a Claim is Allowed under the Plan, the Debtors or the Post-Effective Date Debtors, as applicable, shall be entitled to object to Claims; *provided, however*, that any objection to the Prepetition Secured Loan Claims is waived and barred in exchange for Prepetition Secured Lender's agreement to accept the treatment provided for such Claims under the Plan, including the waiver of Default Interest and the extension of the maturity date to be implemented through the Post-Effective Date Secured Loan Documents. Except as otherwise expressly provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Post-Effective Date Debtors shall have the authority (a) to file, withdraw, or litigate to judgment objections to Claims; (b) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (c) to administer and adjust the Debtors' claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

7.3 Time to File Objections to Claims

Any objections to a Claim shall be filed on or before the date that is the later of (a) 180 days after the Effective Date and (b) such later date as may be fixed by the Bankruptcy Court, after notice and a hearing, upon a motion by the Post-Effective Date Debtors, as such deadline may be extended from time to time.

7.4 Estimation of Claims

Before or after the Effective Date, the Debtors or the Post-Effective Date Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or Disputed Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. In the event that the Bankruptcy Court estimates any Disputed, contingent, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation of the amount of such Claim, the Debtors or the Post-Effective Date Debtors, as applicable, may elect to pursue any supplemental proceedings

to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated

7.5 Adjustment to Claims Register Without Objection

Any duplicate Claim or any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the claims register by the Debtors or the Post-Effective Date Debtors upon stipulation between the parties in interest without a Claims objection having to be filed and without any further notice or action, order, or approval of the Bankruptcy Court.

7.6 No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, if any portion of a Claim is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

7.7 Disputed Claims Reserve

(a) There shall be withheld from the FMT GUC Cash Pot to be distributed to Holders of Allowed FMT General Unsecured Claims an amount of Cash that would be distributable to Disputed FMT General Unsecured Claims had such Disputed Claims been Allowed on the Effective Date. No interest shall be paid with respect to any Disputed FMT General Unsecured Claim that becomes an Allowed Claim after the Effective Date. The Debtors intend to seek a determination by the Bankruptcy Court of the estimated amount (on an aggregate basis) of Disputed FMT General Unsecured Claims for purposes of determining the amount of Cash from the FMT GUC Cash Pot attributable to such Disputed Claims. The Disputed Claims Reserve shall be determined prior to the Confirmation Hearing, based on the Debtors' good faith estimates, and shall be established prior to the Effective Date.

(b) Subject to definitive guidance from the Internal Revenue Service (the "IRS") or a court of competent jurisdiction to the contrary, or the receipt of a determination by the IRS, the Disbursing Agent shall treat any cash and other property held in the Disputed Claims Reserve as held by a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 and to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including, without limitation, the Debtors, the Post-Effective Date Debtors, the Disbursing Agent and the Holders of Disputed Claims) will be required to report for tax purposes consistently with the foregoing.

(c) The Disbursing Agent shall hold in the Disputed Claims Reserve all payments and other distributions made on account of, as well as any obligations arising from, property held in the Disputed Claims Reserve, to the extent that such property continues to be so held at the time such distributions are made or such obligations arise, and such payments, or other distributions shall be held for the benefit of Holders of Disputed FMT General Unsecured Claims whose

Claims are subsequently Allowed. The Disbursing Agent shall be responsible for payment, out of the assets of the Disputed Claims Reserve, of any taxes imposed on the Disputed Claims Reserve or its assets.

7.8 Distributions after Allowance

At such time as a Disputed Claim becomes an Allowed Claim, a distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order. To the extent that all or a portion of a Disputed Claim is disallowed, the Holder of such Claim shall not receive any distribution on account of the portion of such Claim that is disallowed.

7.9 Preservations of Rights to Settle Claims

In accordance with section 1123(b) of the Bankruptcy Code, the Debtors or Post-Effective Debtors, as applicable, shall have the discretion to retain and enforce, sue on, settle, or compromise all claims, rights, causes of action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their Estates may hold against any person or entity without the approval of the Bankruptcy Court, subject to the terms of the Plan, the Confirmation Order, and any contract, instrument, release, indenture, or other agreement entered into in connection herewith.

7.10 Amendments to Claims

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court, and the Post-Effective Date Debtors.

7.11 Disallowed Claims

All Claims held by persons or entities against whom or which the Debtors or Post-Effective Date Debtors, as applicable, have commenced a proceeding asserting a cause of action under sections 542, 543, 544, 545, 547, 548, 549, 550, and or 553 of the Bankruptcy Code shall be deemed Disallowed Claims pursuant to section 502(d) of the Bankruptcy Code and Holders of such Claims shall not be entitled to vote on the Plan. Disallowed Claims pursuant to this Section 7.11 of the Plan shall continue to be Disallowed Claims for all purposes until the avoidance action against such party has been settled or resolved by Final Order and any sums due to the Debtors or Post-Effective Date Debtors from such party have been paid.

7.12 Claims Resolution Procedures Cumulative

All of the Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved in accordance with the Plan or any mechanism approved by the Bankruptcy Court.

SECTION 8. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 General Treatment

(a) As of and subject to the occurrence of the Effective Date, all executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such contract or lease (i) was previously assumed, assumed and assigned, or rejected by the Debtors pursuant to a Final Order of the Bankruptcy Court, (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto, (iii) is the subject of a pending motion to assume filed by the Debtors before the Effective Date, or (iv) is specifically designated as a contract or lease to be assumed or assumed and assigned on the Schedule of Assumed Contracts. The assumption of executory contracts and unexpired leases hereunder may include the assignment of certain such contracts, including assignment to New Lessee. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of the assumptions or rejections provided for in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed pursuant to the Plan shall vest in and be fully enforceable by the applicable Post-Effective Date Debtor (subject to any assignment) in accordance with its terms, except as modified by the provisions of the Plan, any Final Order of the Bankruptcy Court authorizing and providing for its assumption, or applicable law.

(b) To the maximum extent permitted by law, to the extent any provision in any executory contract or unexpired lease assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assignment of such executory contract or unexpired lease, then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such executory contract or unexpired lease or to exercise any other default-related rights with respect thereto.

(c) The Debtors reserve the right, on or before 5:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days before the Confirmation Hearing, or such other time as may be agreed in writing between the Debtors and the applicable counterparty, to amend the Schedule of Assumed Contracts to add or remove any executory contract or unexpired lease; *provided that* if the Confirmation Hearing is adjourned or continued, such amendment right shall be extended to 5:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days before the rescheduled or continued Confirmation Hearing, and this proviso shall apply in the case of any and all subsequent adjournments and continuances of the Confirmation Hearing; *provided, further that* the Debtors may amend the Schedule of Assumed Contracts to add or delete any executory contracts or unexpired leases after such date to the extent agreed with the relevant counterparties and entry of an order of the Bankruptcy Court.

8.2 Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise specified, each Executory Contract and Unexpired Lease assumed, assumed and assigned or rejected by the Debtors shall include any and all modifications,

amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such Executory Contract or Unexpired Lease.

8.3 Determination of Cure Amounts and Deemed Consent

(a) The Debtors shall file, as part of the Plan Supplement, the Schedule of Assumed Contracts, which shall be reasonably acceptable to the Prepetition Secured Lender.

(b) The Schedule of Assumed Contracts shall be served on parties to executory contracts and unexpired leases that the Debtors are seeking to assume by no later than twenty-one (21) days prior to the Confirmation Hearing. The Schedule of Assumed Contracts shall include the proposed Cure Amount for each executory contract or unexpired lease. If a Cure Amount is not listed, the proposed Cure Amount for such executory contract or unexpired lease shall be deemed to be zero dollars (\$0).

(c) Any objection to the proposed assumption, assumption and assignment, or related Cure Amount listed on the Schedule of Assumed Contracts must be filed and served on the Debtors' counsel within fourteen (14) days prior to the Confirmation Hearing.

(d) The Bankruptcy Court will determine any Assumption Dispute by entry of an order; *provided, that* the Debtors or the Post-Effective Date Debtors, as applicable, may settle any Assumption Dispute without any further notice to any other party or any action, order, or approval of the Bankruptcy Court; *provided, further,* that where an Assumption Dispute relates solely to the applicable Cure Amount, the Debtors may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of such Assumption Dispute. If there is an Assumption Dispute, the Debtors or the Post-Effective Date Debtors, as applicable, reserve the right to reject or nullify the assumption or assignment of the applicable executory contract or unexpired lease no later than thirty (30) days after an order of the Bankruptcy Court resolving such Assumption Dispute becomes a Final Order.

8.4 Payments Related to Assumption of Contracts and Leases

(a) Any Cure Amounts shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code by payment of the Cure Amount as reflected in the Schedule of Assumed Contracts, in Cash on the Effective Date, subject to the limitations described in Section 8.1 of the Plan, or on such other terms as the parties to such executory contracts or unexpired leases and the Debtors may otherwise agree. Any Cure Amounts related to executory contracts or unexpired leases that are assumed and assigned to New Lessee shall be paid by New Lessee. If no Cure Amount is reflected for a particular executory contract or unexpired lease in the Schedule of Assumed Contracts, no Cure Amount shall be deemed to be owing, unless otherwise ordered by the Bankruptcy Court.

(b) Assumption or assumption and assignment of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims against any Debtor or defaults by any Debtor, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest

composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time before the date that the Debtors assume or assume and assign such executory contract or unexpired lease. Any proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed or assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, upon the assumption of such executory contract or unexpired lease.

8.5 Rejection Damages Claims

Unless otherwise provided by a Final Order of the Bankruptcy Court, any proofs of Claim based on the deemed rejection of an executory contract or unexpired lease pursuant section 8.1 of the Plan, must be filed with the Claims Agent and served on the Debtors or the Post-Effective Date Debtors, as applicable, by no later than thirty (30) days after the Confirmation Date. Any objection to the deemed rejection of an executory contract or unexpired lease pursuant to section 8.1 of the Plan must be filed with the Bankruptcy Court and served on the Debtors or Post-Effective Date Debtors, as applicable, by no later than fourteen (14) days after entry of the Confirmation Order.

Any Holders of Claims arising from the rejection of an executory contract or unexpired lease for which proofs of Claims were not timely filed as set forth in this Section 8.5 of the Plan shall not (a) be treated as a creditor with respect to such Claim; (b) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection; or (c) participate in any distribution in the Chapter 11 Cases on account of such Claim. Any Claims arising from the deemed rejection of an executory contract or unexpired lease pursuant to section 8.1 of the Plan not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Post-Effective Date Debtors, the Debtors' Estates, or any of their respective property. Any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a proof of Claim to the contrary.

8.6 Survival of the Debtors' Indemnification Obligations

Notwithstanding anything in the Plan to the contrary, any Indemnification Obligation to indemnify current and former officers, members, and managers shall (a) remain in full force and effect, (b) not be discharged, impaired, or otherwise affected in any way, including by the Plan, the Plan Supplement, or the Confirmation Order, (c) not be limited, reduced or terminated after the Effective Date, and (d) survive unimpaired and unaffected irrespective of whether such Indemnification Obligation is owed for an act or event occurring before, on or after the Petition Date, *provided, that* the Post-Effective Date Debtors shall not indemnify officers, members, or managers, as applicable, of the Debtors for any claims or Causes of Action that are not indemnified by such Indemnification Obligation. All such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors under the Plan and shall continue as obligations of the Post-Effective Date Debtors. Any claim based on the Debtors' obligations

under the Plan shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code.

8.7 Insurance Policies

(a) All insurance policies to which Debtor SC SJ is a party as of the Effective Date, other than any insurance policy related to workers' compensation, shall be deemed to be and treated as executory contracts and shall be assumed by Debtor SC SJ or Reorganized SC SJ, as applicable, and shall continue in full force and effect thereafter in accordance with their respective terms.

(b) In addition, after the Effective Date, all officers or managers of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of any D&O Liability Insurance Policy (including any "tail" policy) for the full term of such policy regardless of whether such officer or managers of the Debtors remain in such positions after the Effective Date, in each case, to the extent set forth in such policies.

8.8 Collective Bargaining Agreements

Notwithstanding anything to the contrary set forth in the Plan, treatment of the Collective Bargaining Agreements shall be addressed in the Plan Supplement or in a motion to be filed prior to the Effective Date.

8.9 ~~8.8~~ Reservation of Rights

(a) Neither the exclusion nor the inclusion by the Debtors of any contract or lease on any exhibit, schedule, or other annex to the Plan or in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is or is not an executory contract or unexpired lease or that the Debtors or the Post-Effective Date Debtors or their respective affiliates has any liability thereunder.

(b) Except as explicitly provided in the Plan, nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors or the Post-Effective Date Debtors under any executory or non-executory contract or unexpired or expired lease.

(c) Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors or the Post-Effective Date Debtors, as applicable, under any executory or non-executory contract or unexpired or expired lease.

(d) If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under the Plan, the Debtors or the Post-Effective Date Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

SECTION 9.CONDITIONS PRECEDENT TO OCCURRENCE OF EFFECTIVE DATE

9.1 Conditions Precedent to Effective Date

The Effective Date shall not occur unless all of the following conditions precedent have been satisfied or waived in accordance with the Plan:

(a) the documents in the Plan Supplement contain terms and conditions consistent in all material respects with the Restructuring Support Agreement, the Restructuring Term Sheet, and the Plan, including any consent or approval rights therein;

(b) if the New Manager Condition is satisfied, the New Hotel Management Agreement, Qualified ~~Manager~~Mezzanine Loan Agreement, Qualified Manager Guarantee, Qualified Manager SNDA, and Qualified ~~Manager~~Mezzanine Intercreditor Agreement shall have been executed and delivered by all of the Entities that are party thereto, and all conditions precedent to the effectiveness of the foregoing documents (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived in accordance with the terms thereof;

(c) the Financing Final Order shall be in full force and effect and shall not have been reversed, stayed, dismissed, or vacated;

(d) the Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Prepetition Secured Lender in its sole discretion (*provided* that the Prepetition Secured Lender shall not withhold consent based solely on any term in the Confirmation Order that is consistent with the Restructuring Support Agreement or the Restructuring Term Sheet), which order (i) shall be on terms consistent with the Restructuring Support Agreement and the Restructuring Term Sheet, (ii) shall provide that the provisions in the Confirmation Order and the Plan are non-severable and mutually dependent, and (iii) shall not have been reversed, stayed, dismissed, or vacated;

(e) the Debtors shall have complied, in all material respects, with the terms of the Plan, the Restructuring Support Agreement, and the Restructuring Term Sheet that are to be performed by the Debtors on or prior to the Effective Date; and

(f) the Post-Effective Date Secured Loan Documents shall have been executed and delivered by all of the Persons that are party thereto, all conditions precedent to the effectiveness of the Post-Effective Date Secured Loan Documents (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived in accordance with the terms thereof;

(g) the Restructuring Support Agreement shall be in full force and effect and shall not have been terminated; *provided, however*, that the Debtors are not required to seek or obtain approval of, or authorization to enter into or assume the obligations under, the Restructuring Support Agreement from the Bankruptcy Court;

(h) the Parent Preferred Equity shall be paid to the holder thereof in full in Cash;

(i) Debtor FMT shall have funded the FMT GUC Cash Pot;

(j) (i) the New Lessee LLC Agreement shall have been executed and all steps required with respect to the formation of New Lessee under applicable non-bankruptcy law shall have been taken, (ii) the New Lease shall have been executed and delivered by all of the Entities that are party thereto, and (iii) and all conditions precedent to the effectiveness of the foregoing documents (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived in accordance with the terms thereof;

(k) all consents, actions, documents, certificates and agreements necessary to implement the Plan will have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws; and

(l) all actions, documents, certificates, and agreements necessary to implement the Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws.

9.2 Waiver of Conditions Precedent

(a) Each of the conditions precedent to the occurrence of the Effective Date may be waived in writing by the Debtors and the Prepetition Secured Lender without leave of or order of the Bankruptcy Court. If any such condition precedent is waived pursuant to this Section 9.2 of the Plan and the Effective Date occurs, each party agreeing to waive such condition precedent shall be estopped from withdrawing such waiver after the Effective Date or otherwise challenging the occurrence of the Effective Date on the basis that such condition was not satisfied, the waiver of such condition precedent shall benefit from the “equitable mootness” doctrine, and the occurrence of the Effective Date shall foreclose any ability to challenge the Plan in any court. If the Plan is confirmed for fewer than all of the Debtors, only the conditions applicable to the Debtor or Debtors for which the Plan is confirmed must be satisfied or waived for the Effective Date to occur.

(b) Except as otherwise provided herein, all 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.

(c) The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon the entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

9.3 Effect of Failure of a Condition

Subject to Section 11.3 of the Plan, if the conditions listed in Section 9.1 of the Plan are not satisfied or waived in accordance with Section 9.2 of the Plan on or before the Effective Date, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against or any

Interests in the Debtors, (b) prejudice in any manner the rights of any Person, or (c) constitute an admission, acknowledgement, offer, or undertaking by the Debtors.

SECTION 10.EFFECT OF CONFIRMATION

10.1 Binding Effect

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of the Plan shall bind every Holder of a Claim against or Interest in any Debtor and inure to the benefit of and be binding on such Holder's successors and assigns, regardless of whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has accepted the Plan.

10.2 Vesting of Assets

Except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all Assets of the Estates, including all claims, rights, and Causes of Action and any property acquired by the Debtors or the Post-Effective Date Debtors during the Chapter 11 Cases or under or in connection with the Plan shall vest in each respective Post-Effective Date Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests, other than the rights of the Prepetition Secured Lender under the Post-Effective Date Secured Loan Documents. Subject to Section 5.3(b) of the Plan, on and after the Effective Date, the Post-Effective Date Debtors may operate their business and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Expense Claims) and Causes of Action without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Post-Effective Date Debtors may pay the charges that they incur on or after the Effective Date for Professional Persons' fees, disbursements, expenses, or related support services without application to the Bankruptcy Court.

10.3 Discharge

(a) Upon the occurrence of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, the distributions, rights and treatment to be made under the Plan, shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their Assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by

employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or noncontingent 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: (a) a proof of claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests (subject to the Effective Date occurring).

(b) Each Holder (as well as any trustee or agent on behalf of such Holder) of a Claim or Interest, and any affiliate of such Holder, shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in the Plan, upon the Effective Date, all such Holders of Claims and Interests and their affiliates shall be forever precluded and enjoined, pursuant to sections 105, 524, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in any Debtor or any Post-Effective Date Debtor.

(c) Notwithstanding the foregoing or anything to the contrary set forth in the Plan or the Confirmation Order, the SC SJ Equity Interest and the rights of the Prepetition Secured Lender under the Post-Effective Date Secured Loan Documents and the Plan shall not be subject to the foregoing discharge.

10.4 Pre-Confirmation Injunctions and Stays

Unless otherwise provided in the Plan or a Final Order of the Bankruptcy Court, all injunctions and stays arising under or entered during the Chapter 11 Cases, whether under sections 105 or 362 of the Bankruptcy Code or otherwise, and in effect on the date of entry of the Confirmation Order, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

10.5 Injunction Against Interference With Plan

Except as otherwise provided in the Plan or in the Confirmation Order, upon the entry of the Confirmation Order, all Holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees, agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date. For the avoidance of doubt, the injunction provided for in this Section 10.5 of the Plan shall apply to efforts by Holders of FMT General Unsecured HMA Claims to assert such FMT General Unsecured HMA Claims against, or recovery on account of such FMT General Unsecured HMA Claims from, Fairmont.

10.6 Releases by the Debtors

AS OF THE EFFECTIVE DATE, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER AND EXCEPT FOR THE RIGHTS AND REMEDIES THAT REMAIN IN EFFECT FROM AND AFTER THE EFFECTIVE DATE TO ENFORCE THE PLAN AND THE OBLIGATIONS CONTEMPLATED BY THE PLAN, ON AND AFTER THE EFFECTIVE DATE, THE DEBTOR RELEASED PARTIES WILL BE DEEMED CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED, BY THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS, AND THE ESTATES, IN EACH CASE ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AND REPRESENTATIVES AND ANY AND ALL OTHER PERSONS THAT MAY PURPORT TO ASSERT ANY CAUSE OF ACTION DERIVATIVELY, BY OR THROUGH THE FOREGOING PERSONS, FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, AND CAUSES OF ACTION, LOSSES, REMEDIES, OR LIABILITIES WHATSOEVER (INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS, OR THE ESTATES), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ACCRUED OR UNACCRUED, EXISTING OR HEREINAFTER ARISING, WHETHER IN LAW OR EQUITY, WHETHER SOUNDING IN TORT OR CONTRACT, WHETHER ARISING UNDER FEDERAL OR STATE STATUTORY OR COMMON LAW, OR ANY OTHER APPLICABLE INTERNATIONAL, FOREIGN, OR DOMESTIC LAW, RULE, STATUTE, REGULATION, TREATY, RIGHT, DUTY, REQUIREMENTS OR OTHERWISE THAT THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS, THE ESTATES, OR THEIR AFFILIATES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE CHAPTER 11 CASES, THE RESTRUCTURING, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE POST-EFFECTIVE DATE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN ANY DEBTOR AND ANY DEBTOR RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, PREPARATION, OR CONSUMMATION OF THE PLAN, THE DOCUMENTS IN THE PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS RELATING THERETO, OR THE SOLICITATION OF VOTES WITH RESPECT TO THE PLAN, IN ALL CASES BASED UPON ANY ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES IN SECTION 10.6 OF THE PLAN (THE "DEBTOR RELEASES"), WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS UNDER THE PLAN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASES ARE: (I) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE DEBTOR RELEASED PARTIES, (II) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE RELEASED CLAIMS RELEASED BY THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS AND THE ESTATES, (III) IN THE BEST INTERESTS OF THE DEBTORS, THE ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS, (IV) FAIR, EQUITABLE AND REASONABLE, (V) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING, AND (VI) A BAR TO ANY OF THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS, OR THE ESTATES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

10.7 Releases by Holders of Claims

AS OF THE EFFECTIVE DATE, EXCEPT FOR THE RIGHTS AND REMEDIES THAT REMAIN IN EFFECT FROM AND AFTER THE EFFECTIVE DATE TO ENFORCE THE PLAN AND THE OBLIGATIONS CONTEMPLATED BY THE PLAN, ON AND AFTER THE EFFECTIVE DATE, THE THIRD-PARTY RELEASED PARTIES WILL BE DEEMED CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED BY THE RELEASING PARTIES, FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS, OR THEIR ESTATES), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT, OR OTHERWISE BY STATUTE, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, THAT SUCH HOLDERS OR THEIR ESTATES, AFFILIATES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS, ASSIGNS, MANAGERS, ACCOUNTANTS, ATTORNEYS, REPRESENTATIVES, CONSULTANTS, AGENTS, AND ANY OTHER PERSONS CLAIMING UNDER OR THROUGH THEM WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE POST-EFFECTIVE DATE DEBTORS, OR THEIR ESTATES OR ASSETS, THE CHAPTER 11 CASES, THE RESTRUCTURING, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE POST-EFFECTIVE DATE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO,

ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS OR INTERACTIONS BETWEEN ANY DEBTOR AND ANY THIRD-PARTY RELEASED PARTY, THE RESTRUCTURING, THE RESTRUCTURING OF ANY CLAIMS OR INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, PREPARATION, OR CONSUMMATION OF THE PLAN, THE DOCUMENTS IN THE PLAN SUPPLEMENT, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, RELATING THERETO, OR THE SOLICITATION OF VOTES WITH RESPECT TO THE PLAN, IN ALL CASES BASED UPON ANY ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCES TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES IN SECTION 10.7 OF THE PLAN (THE "THIRD-PARTY RELEASE"), WHICH INCLUDES, BY REFERENCE, EACH OF THE RELATED PROVISIONS AND DEFINITIONS UNDER THE PLAN, AND, FURTHERMORE, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD-PARTY RELEASE IS (I) CONSENSUAL, (II) ESSENTIAL TO THE CONFIRMATION OF THE PLAN, (III) GIVEN IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE THIRD-PARTY RELEASED PARTIES, (IV) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD-PARTY RELEASE, (V) IN THE BEST INTERESTS OF THE DEBTORS AND THEIR ESTATES, (VI) FAIR, EQUITABLE AND REASONABLE, (VII) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING, AND (VIII) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE THIRD-PARTY RELEASE.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NOTHING IN THE PLAN OR THIS SECTION 10.7 SHALL CONSTITUTE A RELEASE OF ANY CLAIMS OF THE PREPETITION SECURED LENDER UNDER THE POST-EFFECTIVE DATE SECURED LOAN DOCUMENTS, INCLUDING THE GUARANTY REAFFIRMATION AND THE GUARANTORS' ADDITIONAL GUARANTEES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THE PLAN OR IN THE CONFIRMATION ORDER, THE THIRD-PARTY RELEASE SHALL APPLY TO FAIRMONT ONLY WITH RESPECT TO FMT GENERAL UNSECURED HMA CLAIMS.

10.8 Release of Liens

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document contemplated under or executed in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made

pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is secured and Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Post-Effective Date Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or filing being required to be made by the Debtors. Notwithstanding anything to the contrary in the Plan, including this paragraph, the Liens of the Prepetition Secured Lender pursuant to the Prepetition Secured Loan Documents shall be deemed to become Liens under the Post-Effective Date Secured Loan Documents (to the extent set forth in such Post-Effective Date Secured Loan Documents), and shall not be discharged hereby.

10.9 Exculpation

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO EXCULPATED PARTY WILL HAVE OR INCUR, AND EACH EXCULPATED PARTY WILL BE RELEASED AND EXCULPATED FROM, ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH OR ARISING OUT OF THE ADMINISTRATION OF THE CHAPTER 11 CASES; THE NEGOTIATION AND PURSUIT OF THE DIP FACILITY, THE DISCLOSURE STATEMENT, THE RESTRUCTURING SUPPORT AGREEMENT, THE RESTRUCTURING TERM SHEET, THE RESTRUCTURING, AND THE PLAN (INCLUDING THE DEFINITIVE DOCUMENTS AND THE DOCUMENTS IN THE PLAN SUPPLEMENT), OR THE SOLICITATION OF VOTES FOR, OR CONFIRMATION OF, THE PLAN; THE FUNDING OF THE PLAN; THE OCCURRENCE OF THE EFFECTIVE DATE; THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN; THE ISSUANCE OF SECURITIES UNDER OR IN CONNECTION WITH THE PLAN; THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE POST-EFFECTIVE DATE DEBTORS; OR THE TRANSACTIONS IN FURTHERANCE OF ANY OF THE FOREGOING; OTHER THAN CLAIMS OR CAUSES OF ACTION ARISING OUT OF OR RELATED TO ANY ACT OR OMISSION OF AN EXCULPATED PARTY THAT CONSTITUTES INTENTIONAL FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL ORDER, BUT IN ALL RESPECTS SUCH PERSONS WILL BE ENTITLED TO REASONABLY RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES. THE EXCULPATED PARTIES HAVE ACTED IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE WITH REGARD TO THE SOLICITATION AND DISTRIBUTION OF SECURITIES PURSUANT TO THE PLAN AND, THEREFORE, ARE NOT, AND ON ACCOUNT OF SUCH DISTRIBUTIONS WILL NOT BE, LIABLE AT ANY TIME FOR THE VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO

THE PLAN, INCLUDING THE ISSUANCE OF SECURITIES. THE EXCULPATION WILL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ALL OTHER RELEASES, INDEMNITIES, EXCULPATIONS, AND ANY OTHER APPLICABLE LAW OR RULES PROTECTING SUCH EXCULPATED PARTIES FROM LIABILITY.

10.10 Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, FROM AND AFTER THE EFFECTIVE DATE, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTEREST IN THE DEBTORS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN THE PLAN, THE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE DEBTOR RELEASED PARTIES AND THE THIRD-PARTY RELEASED PARTIES, AS APPLICABLE, AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN.

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, OR FOR OBLIGATIONS PURSUANT TO THE PLAN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED, OR ARE SUBJECT TO EXCULPATION UNDER THE PLAN OR THE CONFIRMATION ORDER, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (C) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATES OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (D) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT

OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED OR DISCHARGED PURSUANT TO THE PLAN.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREUNDER SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND THE INTERESTS SHALL BE CANCELLED (EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER).

EXCEPT AS OTHERWISE PROVIDED FOR IN THE PLAN OR IN THE CONFIRMATION ORDER, FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

10.11 Retention of Causes of Action of the Debtors

Except as otherwise provided in the Plan, including Sections 10.5, 10.6, 10.7, 10.8, 10.9, and 10.10, nothing in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately prior to the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. The Post-Effective Date Debtors shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Confirmation Date and Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

10.12 Ipso Facto and Similar Provisions Ineffective

Any term of any prepetition policy, prepetition contract, or other prepetition obligation applicable to a Debtor shall be void and of no further force or effect with respect to any Debtor to the extent that such policy, contract, or other obligation is conditioned on, creates an obligation

of the Debtor as a result of, or gives rise to a right of any entity based on any of the following: (a) the insolvency or financial condition of a Debtor; (b) the commencement of the Chapter 11 Cases; (c) the confirmation or consummation of the Plan, including any change of control that shall occur as a result of such consummation; or (d) the Restructuring.

10.13 Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and their respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

SECTION 11. MODIFICATION, REVOCATION OR WITHDRAWAL OF PLAN

11.1 Modification and Amendments

The Plan or any exhibits thereto may be amended, modified, or supplemented by the Debtors in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, subject to the approval of the Prepetition Secured Lender in its sole discretion; *provided, however*, that the Prepetition Secured Lender shall not refuse to consent based solely on the inclusion of any term included in the Restructuring Term Sheet. In addition, after the Confirmation Date, the Debtors or the Post-Effective Date Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court.

11.2 Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

11.3 Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date as to any or all of the Debtors. If, with respect to a Debtor, the Plan has been revoked or withdrawn prior to the Effective Date, or if confirmation or the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then: (a) with respect to such Debtor: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (iii) nothing contained in the Plan shall (x) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person; (y) prejudice in any manner the rights of such Debtor or any other Person; or (z) constitute an admission of any sort by any Debtor or any other Person; and (b) with respect to the remaining Debtor, with the consent of the Prepetition Secured Lender in its sole discretion, the Plan may be confirmed and implemented solely as it relates to such remaining Debtor.

SECTION 12.RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in or related to the Chapter 11 Cases, including to:

- (a) hear and determine motions and/or applications for the assumption or rejection of executory contracts or unexpired leases and any disputes over Cure Amounts resulting therefrom;
- (b) determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the entry of the Confirmation Order;
- (c) hear and resolve any disputes arising from or related to (i) any orders of the Bankruptcy Court granting relief under Bankruptcy Rule 2004 or (ii) any protective orders entered by the Bankruptcy Court in connection with the foregoing;
- (d) ensure that distributions to Holders of Allowed Claims are accomplished as provided in the Plan and the Confirmation Order and to adjudicate any and all disputes arising from or relating to distributions under the Plan;
- (e) consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;
- (f) enter, implement, or enforce such orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (g) issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person or other Entity with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(h) hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code;

(i) hear and determine all Professional Fee Claims;

(j) resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(k) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or payments in furtherance of either, or any agreement, instrument, or other document governing or related to any of the foregoing;

(l) take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan, including any release, exculpation, or injunction provisions set forth in the Plan, following the occurrence of the Effective Date;

(m) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code);

(o) hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or title 28 of the United States Code;

(p) resolve any disputes concerning whether a Person had sufficient notice of the Chapter 11 Cases, the Disclosure Statement, any solicitation conducted in connection with the Chapter 11 Cases, any bar date established in the Chapter 11 Cases, or any deadline for responding or objecting to a Cure Amount, in each case, for the purpose for determining whether a Claim or Interest is discharged hereunder or for any other purpose;

(q) hear and determine any rights, Claims, or Causes of Action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory;

(r) recover all Assets of the Debtors and property of the Estates, wherever located;

(s) hear and determine matters related to the DIP Facility and the Financing Orders;
and

(t) enter a final decree closing each of the Chapter 11 Cases.

SECTION 13.MISCELLANEOUS PROVISIONS

13.1 Exemption from Certain Transfer Taxes

To the fullest extent permitted by section 1146 of the Bankruptcy Code, (a) the issuance, transfer or exchange of any securities, instruments or documents, (b) the creation of any Lien, mortgage, deed of trust or other security interest, (c) all sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Confirmation Date through and including the Effective Date, including any transfers effectuated under the Plan, (d) any assumption, assignment, or sale by the Debtors of their interests in unexpired leases of nonresidential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, and (e) the issuance, renewal, modification or securing of indebtedness by such means, and the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including the Confirmation Order, shall not be subject to any document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, sales tax, use tax or other similar tax or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or Governmental Unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument without requiring the payment of any filing fees, documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or similar tax.

13.2 Request for Expedited Determination of Taxes

The Debtors shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

13.3 Dates of Actions to Implement Plan

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

13.4 Severability

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the consent of the Prepetition Secured Lender, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation by the Bankruptcy Court, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with this Section 13.4 of the Plan, is (a) valid and enforceable pursuant to its terms,

(b) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Post-Effective Date Debtors (as the case may be) and (c) nonseverable and mutually dependent.

13.5 Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable or to the extent that a Plan Supplement document provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof (other than section 5-1401 and section 5-1402 of the New York General Obligations Law).

13.6 Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the Post-Effective Date Debtors, the Holders of Claims and Interests, the Released Parties, and each of their respective successors and assigns.

13.7 Successors and Assigns

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, or permitted assign, if any, of each such Person.

13.8 Entire Agreement

On the Effective Date, the Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects.

13.9 Computing Time

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth in the Plan or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

13.10 Section 1125(e) Good Faith Compliance

As of and subject to the occurrence of the Confirmation Date, the Debtors and their Related Persons shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation.

13.11 Exhibits to Plan

All exhibits, schedules, supplements, and appendices to the Plan (including any other documents to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date) are incorporated into and are a part of the Plan as if set forth in full in the Plan.

13.12 Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated within the meaning set forth in section 1101 and pursuant to section 1127(b) of the Bankruptcy Code.

13.13 Further Assurances

The Debtors or the Post-Effective Date Debtors, as applicable, all Holders of Claims or Interests receiving distributions hereunder and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order. On or before the Effective Date, the Debtors may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

13.14 Dissolution of Statutory Committees

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases (including the Committee) shall dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases on the Effective Date; *provided* that the Committee shall be deemed to remain in existence solely with respect to, and shall not be heard on any issue except, applications filed by the Committee pursuant to sections 330 and 331 of the Bankruptcy Code. Neither the Debtors nor the Post-Effective Date Debtors shall be responsible for paying any fees or expenses incurred by the members of or advisors to the Committee after the Effective Date.

13.15 Inconsistency

In the event of any inconsistency among the Plan, the Disclosure Statement, and any exhibit to the Disclosure Statement, the provisions of the Plan shall govern.

13.16 No Admissions

If the Effective Date does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors, (b) prejudice in any manner the rights of the Debtors or any other party in interest, or (c) constitute an admission of any sort by the Debtors or other party in interest.

13.17 Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court has entered the Confirmation Order and the Effective Date has occurred. None of the Plan, any statement or provision contained in the Plan or any action taken or not taken by the Debtors with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests before the Effective Date.

13.18 Notices

All notices, requests, and demands to or upon the Debtors in the Chapter 11 Cases shall be in writing and, unless otherwise provided herein, shall be deemed to have been duly given or made when actually delivered:

SC SJ Holdings LLC., *et al.*
Attn: Sam Hirbod
3223 Crow Canyon Road Suite 300
San Ramon, CA 94583

with copies to:

PILLSBURY WINTHROP SHAW PITTMAN LLP
Attn: Patrick Potter
1200 Seventeenth Street NW
Washington, DC 20036
Tel: (202) 663-8928
E-mail: patrick.potter@pillsburylaw.com

All notices and requests to Persons holding any Claim or Interest in any Class shall be sent to them at their last known address or to the last known address of their attorney of record in the Chapter 11 Cases. Any such Holder of a Claim or Interest may designate in writing any other address for purposes of this Section 13.17 of the Plan, which designation will be effective upon receipt by the Debtors.

13.19 Request for Confirmation

The Debtors request entry of the Confirmation Order under section 1129(a) of the Bankruptcy Code and, to the extent necessary, section 1129(b) of the Bankruptcy Code.

Dated: May ~~H~~24, 2021

Respectfully submitted,

SC SJ Holdings LLC, *et al.*

By: /s/Neil Demchick
Neil Demchick
Chief Restructuring Officer

Document comparison by Workshare 10.0 on Monday, May 24, 2021 10:17:22 PM

Input:	
Document 1 ID	iManage://coleschotz-dms.imatech.com/CSDOCS/40733628/1
Description	#40733628v1<CSDOCS> - SC SJ Holdings - Amended Plan
Document 2 ID	iManage://coleschotz-dms.imatech.com/CSDOCS/40810102/1
Description	#40810102v1<CSDOCS> - SC SJ Holdings - Second Amended Plan 4848-1540-3744 v.10
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	118
Deletions	96
Moved from	5
Moved to	5
Style change	0
Format changed	0

Total changes	224
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EXHIBIT B

Blacklined Amended Disclosure Statement

THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE COURT
This proposed Disclosure Statement is not a solicitation of acceptance or rejection of the Joint Chapter 11 Plan of Reorganization of SC SJ Holdings LLC and FMT SJ LLC. Acceptances or rejections may not be solicited until the Bankruptcy Court has approved this Disclosure Statement under section 1125 of the Bankruptcy Code. This proposed Disclosure Statement is being submitted for approval only and has not yet been approved by the Bankruptcy Court.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SC SJ HOLDINGS LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 21-10549 (JTD)

(Jointly Administered)

**AMENDED DISCLOSURE STATEMENT WITH RESPECT TO AMENDED JOINT
CHAPTER 11 PLAN OF REORGANIZATION**

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*Counsel to the Debtors and
Debtors in Possession*

May ~~11~~24, 2021

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: SC SJ Holdings LLC (5141) and FMT SJ LLC (7200). The mailing address for both Debtors is 3223 Crow Canyon Road, Suite 300 San Ramon, CA 94583.

DISCLAIMER²

THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, INCLUDING THE EXHIBITS ANNEXED HERETO, IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF SC SJ HOLDINGS LLC AND FMT SJ LLC AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO VOTE ON THE PLAN. NO PERSON IS AUTHORIZED BY THE DEBTORS IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ANNEXED HERETO, INCORPORATED BY REFERENCE OR REFERRED TO HEREIN, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTORS.

ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE ADVISED AND ENCOURAGED TO (I) READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETIES; (II) CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VIII; AND (III) CONSULT WITH THEIR OWN ADVISORS WITH RESPECT TO THIS DISCLOSURE STATEMENT, THE PLAN AND ALL ACCOMPANYING DOCUMENTS BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT WITH RESPECT TO THE PLAN ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ATTACHED TO THE PLAN AND ANY PLAN SUPPLEMENT(S). THE STATEMENTS IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAWS. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), AND THE SEC HAS NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING

² Terms used in this disclaimer that are not otherwise defined shall have the meanings ascribed to such terms elsewhere in this Disclosure Statement or the Plan.

OR TRANSFERRING SECURITIES OR CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSES FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO CONSTITUTE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTORS.

THE PLAN PROVIDES THAT THE FOLLOWING PARTIES ARE DEEMED TO GRANT THE RELEASES PROVIDED FOR THEREIN: (I) HOLDERS OF ALL CLAIMS OR INTERESTS THAT VOTE TO ACCEPT THE PLAN, (II) HOLDERS OF ALL CLAIMS OR INTERESTS WHOSE VOTE TO ACCEPT OR REJECT THE PLAN IS SOLICITED BUT THAT DO NOT VOTE EITHER TO ACCEPT OR TO REJECT THE PLAN, (III) HOLDERS OF ALL CLAIMS OR INTERESTS THAT VOTE TO REJECT THE PLAN BUT DO NOT OPT OUT OF GRANTING THE RELEASES SET FORTH THEREIN, (IV) HOLDERS OF ALL CLAIMS AND INTERESTS THAT ARE GIVEN NOTICE OF THE OPPORTUNITY TO OPT OUT OF GRANTING THE RELEASES SET FORTH THEREIN BUT DO NOT OPT OUT, (V) THE HOLDERS OF ALL CLAIMS OR INTERESTS THAT ARE PRESUMED TO ACCEPT THE PLAN AND DO NOT FILE OBJECTIONS TO CONFIRMATION OF THE PLAN, AND (VI) THE RELEASED PARTIES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN THE PLAN, ANY HOLDERS OF CLAIMS OR INTERESTS THAT WOULD OTHERWISE FALL INTO (I)–(V) BUT THAT DO NOT RECEIVE ACTUAL NOTICE ARE NOT RELEASING PARTIES. A DESCRIPTION OF THE RELEASES AND RELATED PROVISIONS OF THE PLAN IS SET FORTH IN EXHIBIT 4 HERETO.

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TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
1	Amended Joint Chapter 11 Plan of Reorganization
2	Restructuring Support Agreement and Restructuring Term Sheet
3	Liquidation Analysis
4	Release Provisions

I.
INTRODUCTION

A. Purpose of the Disclosure Statement

On March 5, 2021 and March 10, 2021 (the “*Petition Dates*”), SC SJ Holdings LLC and FMT SJ LLC (“*Debtor SC SJ*” and “*Debtor FMT*” respectively, and collectively, the “*Debtors*”) filed voluntary petitions for relief (the “*Chapter 11 Cases*”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

The Debtors have filed the *Amended Joint Chapter 11 Plan of Reorganization* (including all exhibits thereto, and as may be amended, altered, modified or supplemented from time to time, the “*Plan*”) with the Bankruptcy Court. A copy of the Plan is attached hereto as **Exhibit 1**.

Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Plan; *provided, however*, that any capitalized term used herein that is not defined herein or in the Plan but is defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) has the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

The Debtors submit this disclosure statement (as may be amended, altered, modified or supplemented from time to time, the “*Disclosure Statement*”) pursuant to section 1125 of the Bankruptcy Code to Holders of certain Claims against the Debtors in connection with (i) the solicitation of acceptances of the Plan and (ii) the Confirmation Hearing.

The purpose of this Disclosure Statement is to describe the Plan and its provisions and to provide certain information, as required under section 1125 of the Bankruptcy Code, to Creditors who will have the right to vote on the Plan so that they can make informed decisions in doing so. Creditors entitled to vote to accept or reject the Plan will receive a ballot with this Disclosure Statement for purposes of voting on the Plan.

This Disclosure Statement includes information about the Debtors’ prepetition business operations, financial history, the events leading to the filing of the Chapter 11 Cases and significant events that have occurred during the Chapter 11 Cases. This Disclosure Statement also includes an overview of the Plan that describes certain provisions of the Plan, the effects of confirmation of the Plan, risk factors associated with the Plan and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the procedures for voting, which procedures must be followed by the Holders of Claims entitled to vote under the Plan for their votes to be counted.

B. Disclosure Statement Enclosures

Accompanying this Disclosure Statement are:

1. Order Approving the Disclosure Statement. A copy of the Bankruptcy Court's order (the "***Solicitation Procedures Order***") approving this Disclosure Statement, establishing procedures for voting on the Plan, setting the deadline for objecting to the Plan and scheduling the Confirmation Hearing.
2. Ballot. A ballot (the "***Ballot***") for voting to accept or reject the Plan, if you are the record Holder of a Claim in a Class entitled to vote on the Plan (each, a "***Voting Class***").
3. Notice. A notice setting forth: (i) the deadline for casting Ballots either accepting or rejecting the Plan; (ii) the deadline for filing objections to confirmation of the Plan; and (iii) the date, time and location of the Confirmation Hearing (the "***Notice***").

C. Final Approval of the Disclosure Statement and Confirmation of the Plan

1. Requirements. The requirements for confirmation of the Plan are set forth in section 1129 of the Bankruptcy Code. The requirements for the Disclosure Statement are set forth in section 1125 of the Bankruptcy Code.
2. Approval of the Plan and Confirmation Hearing. Before entering an order confirming the Plan, the Bankruptcy Court must hold a hearing to determine whether the Plan meets the requirements of section 1129 of the Bankruptcy Code.
3. Effect of Confirmation. Confirmation serves to make the Plan binding on the Debtors and all Creditors, Holders of Equity Interests, and other parties in interest, regardless of whether they cast a Ballot to accept or reject the Plan.
4. Only Impaired Classes Vote. Pursuant to the provisions of the Bankruptcy Code, only classes of claims or equity interests that are "impaired" under a plan may vote to accept or reject such plan. Generally, a claim or equity interest is impaired under a plan if the holder's legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or equity interests in an impaired class do not receive or retain any property under a plan on account of their claims or equity interests, such impaired class is deemed to have rejected such plan under section 1126(g) of the Bankruptcy Code and, therefore, such holders are not entitled to vote on such plan.

Under the Plan, Holders of Claims in Classes 1, 2, 4(A), 4(C), and 6(A), and Equity Interests in Class 7(A) are Unimpaired and therefore deemed to accept the Plan; Holders of Claims in Classes 3(A), 3(B), and 4(B) are Impaired and are entitled to vote on the Plan; and Holders of Claims in Classes 5 and 6(B) and Equity Interests in Class 7(B) are deemed to reject the Plan and are not entitled to vote on the Plan.

Accordingly, a Ballot for acceptance or rejection of the Plan is being provided only to Holders of Claims in Classes 3(A), 3(B), and 4(B).

D. Treatment and Classification of Claims and Equity Interests; Impairment

The table below shows the classification of Claims and Equity Interests for all purposes, including voting on the Plan and distributions under the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The table is qualified in its entirety by reference to the full text of the Plan. A more detailed summary of the treatment of each Class of Claims and Equity Interests is provided below in Article IV.

As noted above, the Debtors have prepared the Disclosure Statement using the best information regarding their assets, liabilities, and affairs available to them as of the date hereof. From the outset of these Chapter 11 Cases, the Debtors have sought the turnover of vital books and records that are in Fairmont's possession, custody, or control of Fairmont. The Debtors believe that the information regarding estimated creditor recoveries and estimated claims amounts set forth herein is based on adequate information from their books and records, but they cannot guarantee that Fairmont has not failed to turn over or otherwise withheld pertinent information that would impact the estimated claims amounts or recoveries set forth herein. The recoveries estimated for each Class are based on the best information available to the Debtors. Actual recoveries will depend on a number of factors, including, but not limited to, the amount of Claims that are ultimately Allowed.

The Plan provides for treatment of Allowed Claims against each Debtor based on the assets of that Debtor. The Committee is investigating whether there is any basis for it to seek substantive consolidation of the Debtors, in which case the assets of each Debtor's estate would be consolidated for purposes of making creditor distributions. However, the Debtors believe that the assets and liabilities of each Debtor should and must be addressed independently.

As of the date hereof, it is unlikely that Debtor FMT will have sufficient unencumbered assets on its balance sheet to pay Allowed Priority Tax Claims in full on the Effective Date. Under section 1129(a)(9)(C) of the Bankruptcy Code, a chapter 11 plan may be confirmed only if it provides for payment in full of Allowed Priority Tax Claims over a five-year period or the holders of such Allowed Priority Tax Claims agree to a less favorable treatment. Thus, with respect to Debtor FMT, confirmation of the Plan depends on (a) the holders of Allowed Priority Tax Claims against Debtor FMT agreeing to a less favorable treatment, or (b) Debtor FMT securing funds from an external source (e.g., from its direct or indirect equity owner) in an amount sufficient to provide treatment for Allowed Priority Tax Claims in a manner permitted under section 1129(a)(9)(C) of the Bankruptcy Code. There is no guarantee that Debtor FMT will be able to satisfy these conditions. **If Debtor FMT is unable to secure external funding or if the holders of Allowed Priority Tax Claims are unwilling to agree to a different or less favorable treatment than is provided in section 1129(a)(9)(C) of the Bankruptcy Code, there is a risk that Debtor FMT's chapter 11 case will have to be converted to a liquidation under chapter 7 of the Bankruptcy Code.**

As of the date hereof, it is also unlikely that Debtor FMT will have sufficient unencumbered assets on its balance sheet to pay Other Priority Claims (Class 1) in full on the Effective Date. Section 1129(a)(9)(B) provides that with respect to Other Priority Claims—which include [priority claims such as](#) certain employee claims and customer deposit claims—a chapter 11 plan must provide for payment in full on the Effective Date or payment over a five-year period unless the holders of such claims agree to a less favorable treatment. Debtor FMT anticipates securing Cash necessary to satisfy Other Priority Claims in full on the Effective Date from external sources ([e.g., from its direct or indirect equity owner](#)). However, there is no guarantee that Debtor FMT will be able to secure such funds. **If Debtor FMT is unable to secure external funding or otherwise negotiate consensual treatment with holders of Allowed Other Priority Claims, there is a risk that Debtor FMT’s chapter 11 case will have to be converted to a liquidation under chapter 7 of the Bankruptcy Code.**

Finally, as of the date hereof, it is unlikely that Debtor FMT will have sufficient unencumbered assets on its balance sheet to fund a recovery for holders of Allowed FMT General Unsecured Claims (Class 4B). However, the Plan provides holders of Allowed FMT General Unsecured Claims will receive their Pro Rata share of a \$500,000 FMT GUC Cash Pot. Debtor FMT anticipates securing Cash necessary to fund the FMT GUC Cash Pot from external sources, including, for example, ~~a portion of and in the proceeds~~ [absence of the Qualified Manager Mezzanine Loan](#) [other sources, funds provided by its direct and indirect equity owners, as detailed in Article IV.E.4 hereof.](#) **The Plan provides, as a condition precedent to the Effective Date, that Debtor FMT shall have funded the FMT GUC Cash Pot. There is no guarantee that Debtor FMT will be able to secure the funds necessary to satisfy that condition precedent.**

[The contemplated sources and uses for Plan payments is summarized in section VI.B.3. hereof.](#)

Class Description	Impairment and Entitlement to Vote	Proposed Treatment
Class 1: Other Priority Claims Estimated Allowed Amount: \$389,000 Estimated Recovery: 100%	Unimpaired (not entitled to vote; presumed to accept)	Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will, at the option of the Debtors or the Post-Effective Date Debtors, as applicable, (i) be paid in full in Cash or (ii) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or, in each case, as soon as reasonably practicable thereafter.

Class Description	Impairment and Entitlement to Vote	Proposed Treatment
Class 2: Other Secured Claims Estimated Allowed Amount: \$207,481 Estimated Recovery: 100%	Unimpaired (not entitled to vote; presumed to accept)	Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of the Debtors or the Post-Effective Date Debtors, as applicable, such Holder will receive (i) payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, in each case, or as soon as reasonably practicable thereafter or (ii) such other treatment so as to render such Holder's Allowed Other Secured Claim Unimpaired.
Class 3A: SC SJ Prepetition Secured Loan Claim Estimated Allowed Amount: \$173,485,000 ³ Estimated Recovery: 100%	Impaired (entitled to vote)	On the Effective Date or as soon as reasonably practicable thereafter: the Prepetition Secured Lender will release its right to receive Default Interest and shall receive, on account of the SC SJ Prepetition Secured Loan Claims (i) payment in Cash of (A) any unpaid interest on the Prepetition Secured Loan accrued prior to the Effective Date at the non-default rate set forth in the Prepetition Secured Loan Agreement, minus the FMT Collateral Payment received under Section 4.4(a) of the Plan and any recovery received on account of its Allowed FMT Deficiency Claim; under Section 4.6(a) of the Plan; and (B) any unpaid reasonable costs and expenses owed pursuant to the Restructuring Support Agreement, Prepetition Secured Loan Documents, or Financing Orders incurred prior to the Effective Date; and (ii) payment in full over time of the Post-Effective Date Secured Loan Amount by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents, which shall be delivered on or before the Effective Date.
Class 3B: FMT Prepetition Secured Loan Claim Estimated Allowed Amount: \$728,600 ⁴ Estimated Recovery: 3.4%	Impaired (entitled to vote)	On the Effective Date or as soon as reasonably practicable thereafter the Prepetition Secured Lender shall receive, on account of the FMT Prepetition Secured Loan Claim, the FMT Collateral Payment, and all Prepetition FMT Collateral, other than cash

³ This is the principal amount owing on account of the Prepetition Secured Loan. It does not include any applicable interest, fees, expenses, penalties, taxes, insurance and other costs that may be included in the SC SJ Prepetition Secured Loan Claim.

⁴ The amount listed herein is an estimate only, and pursuant to the Plan the FMT Prepetition Secured Claim shall be included in the Plan Supplement.

Class Description	Impairment and Entitlement to Vote	Proposed Treatment
		collateral, shall be delivered in kind to Reorganized SC SJ and repayment of the debt secured by the Prepetition FMT Collateral shall be made over time by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents.
Class 4A: SC SJ General Unsecured Claims Estimated Allowed Amount: \$1,536,463 ⁵ Estimated Recovery: 100%	Unimpaired (not entitled to vote; presumed to accept)	Except to the extent that a Holder of an Allowed SC SJ General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed SC SJ General Unsecured Claim, such Holder will receive payment in full in Cash plus interest at the Federal judgment rate, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such SC SJ General Unsecured Claim becomes an Allowed SC SJ General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.
Class 4B: FMT General Unsecured Claims Estimated Allowed Amount: \$18,182,000 - \$192,476,857 ⁶ Estimated Recovery: 0.26% - 2.75%	Impaired (entitled to vote)	Each Holder of an Allowed FMT General Unsecured Claim will receive on account of such Allowed FMT General Unsecured Claim, in full and final satisfaction of such Allowed FMT General Unsecured Claim, its Pro Rata share of the FMT GUC Cash Pot. For the avoidance of doubt, the FMT Deficiency Claim is an Allowed FMT General Unsecured Claim. If Class 4B votes to accept the Plan, the Prepetition Secured Lender will voluntarily waive its right to receive its Pro Rata share of the FMT GUC Cash Pot on account of the FMT Deficiency Claim. If Class 4B votes to reject the Plan the Prepetition Secured Lender shall receive its Pro Rata share of the FMT GUC Cash Pot on account of the FMT Deficiency Claim.
Class 4C: Fairmont General Unsecured Claims Estimated Allowed Amount: \$3,976,655 Estimated Recovery: 100%	Unimpaired (not entitled to vote; presumed to accept)	The legal, equitable, and contractual rights of the Holders of Allowed Fairmont General Unsecured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Fairmont General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed

⁵ This estimate does not include several hundred thousand dollars of claims asserted against Debtor SC SJ in proofs of claim, which amounts are inconsistent with the Debtors' books and records and, in many cases, appear to have been asserted against the wrong Debtor. Debtor SC SJ intends to object to such Claims in due course.

⁶ This includes the Prepetition Secured Lender's FMT Deficiency Claim of approximately \$174,294,857.

Class Description	Impairment and Entitlement to Vote	Proposed Treatment
		Fairmont General Unsecured Claim, such Holder will receive payment in full in Cash plus interest at the Federal judgment rate, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Fairmont General Unsecured Claim becomes an Allowed Fairmont General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.
Class 5: Inter-Debtor Claims Estimated Recovery: 0%	Impaired (not entitled to vote; deemed to reject)	This Class consists of all Allowed Claims held by another Debtor. On or after the Effective Date, all Inter-Debtor Claims shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect. ⁷
Class 6A: SC SJ Subordinated Claims Estimated Allowed Amount: \$0 Estimated Recovery: N/A	Unimpaired (not entitled to vote; presumed to accept)	Except to the extent that a Holder of an Allowed SC SJ Subordinated Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed SC SJ Subordinated Claim, such Holder will receive payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such SC SJ Subordinated Claim becomes an Allowed SC SJ General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.
Class 6B: FMT Subordinated Claims Estimated Allowed Amount: \$0 Estimated Recovery: N/A	Impaired (not entitled to vote; deemed to reject)	All FMT Subordinated Claims, if any, shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed FMT Subordinated Claims will not receive any distribution on account of such Allowed FMT Subordinated Claims.
Class 7A: SC SJ Equity Interest Estimated Recovery: 100%	Unimpaired (not entitled to vote; presumed to accept)	On the Effective Date, the SC SJ Equity Interest shall be reinstated pursuant to section 1124(1) of the Bankruptcy Code, and the Holder of the SC SJ Equity Interest shall retain such SC SJ Equity Interest.
Class 7B: FMT Equity Interest	Impaired	The Holder of the FMT Equity Interest will not

⁷ Inter-Debtor Claims include, but are not limited to, Debtor SC SJ's claim against Debtor FMT for damages arising from pre-petition termination of the lease (which is approximately \$26 million, subject to any reduction for mitigation of damages) and Debtor SC SJ's claim against Debtor FMT for \$2,203,000 of accrued but unpaid prepetition Additional Rent under the lease. Inter-Debtor Claims arising from other transactions include a \$212,000 Claim of Debtor SC SJ against Debtor FMT, and a Claim of \$1,379,000 of Debtor FMT against Debtor SC SJ. Thus, after setoff, Debtor SC SJ has net claims of approximately \$27 million against Debtor FMT. Until entry of a final order of the Bankruptcy Court confirming the Plan, all Inter-Debtor Claims are preserved.

Class Description	Impairment and Entitlement to Vote	Proposed Treatment
Estimated Recovery: 0.00%	(not entitled to vote; deemed to reject)	receive or retain any property under the Plan on account of such FMT Equity Interest. The FMT Equity Interest will be discharged, cancelled, released, and extinguished as of the Effective Date.

E. Voting Procedures and Voting Deadline

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. To ensure your vote is counted, you must (i) complete the Ballot, (ii) indicate your decision either to accept or reject the Plan in the boxes provided, and (iii) sign and return the Ballot(s) in the envelope provided.

To be counted, your Ballot with your original signature indicating your acceptance or rejection of the Plan must be received no later than 4:00 p.m. (Eastern Time) on [_____] (the “*Voting Deadline*”).

The following Ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

- (i) any Ballot received after the Voting Deadline (unless extended by the Debtors);
- (ii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- (iii) any Ballot cast by a Person or Entity that does not hold a Claim or Equity Interest in a Class that is entitled to vote to accept or reject the Plan;
- (iv) any Ballot cast for a Claim scheduled as contingent, unliquidated or disputed or as zero or unknown in amount and for which no Rule 3018(a) Motion has been filed by the Rule 3018(a) Motion Deadline (as such terms are defined in the Solicitation Procedures Order);
- (v) any Ballot that indicates neither an acceptance nor a rejection, or indicates both an acceptance and a rejection, of the Plan;
- (vi) any Ballot that casts part of its vote in the same Class to accept the Plan and part to reject the Plan;
- (vii) any form of Ballot other than the official form sent by Stretto (the “*Claims Agent*” or the “*Voting Agent*”), or a copy thereof;

- (viii) any Ballot received that the Voting Agent cannot match to an existing database record;
- (ix) any Ballot that does not contain a signature;
- (x) any Ballot that is submitted by facsimile or email; or
- (xi) any Ballot sent to the Debtors' professionals.

For the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of insiders, must vote to accept the Plan.

You are urged to complete, date, sign and promptly mail your Ballot if you are a Holder of a Claim entitled to vote on the Plan. Please be sure to complete the Ballot properly and legibly and identify the exact amount of your Claim and the Creditor's name. If you are a Holder of a Claim entitled to vote on the Plan and you did not receive a Ballot, you received a damaged Ballot or you lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan or procedures for voting on the Plan, please contact the Voting Agent, Stretto, at (855) 266-4998 (U.S., and Canada, toll free), (949) 398-0567 (International) or at TeamFairmontSJ@stretto.com. The Voting Agent is not authorized to and will not provide legal advice.

F. Confirmation Hearing

The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan for _____, 2021 at __:__ (Eastern Time) in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 (the "**Confirmation Hearing**"). The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be filed and served on or before _____, 2021 at __:__ (Eastern Time) in the manner described in the Notice accompanying this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by way of announcement of such continuance in open court or otherwise, without further notice to parties in interest.

The Debtors urge all Holders of Claims entitled to vote on the Plan to vote to accept the Plan.

II.

GENERAL INFORMATION REGARDING THE DEBTORS⁸

A. The Debtors' Business

1. The Hotel

⁸ The information herein is solely for informational purposes and nothing herein shall be deemed an admission by the Debtors in any Cause of Action.

Debtor SC SJ is the owner of a luxury convention hotel (the “*Hotel*”) located at 170 South Market Street, San Jose, California, in the heart of Silicon Valley near many tech-industry corporate offices. The 20-story, two tower Hotel has 805 rooms and suites, 65,000 square feet of state-of-the-art meeting and event space, three restaurants with bars, a café bakery, a fitness center, and a rooftop pool and gazebo. The Hotel features grand ballrooms for large conferences and conventions, as well as intimate spaces for smaller gatherings. The Hotel historically hosted many conferences and conventions, particularly in the technology industry.

Opened in 1987 and expanded in 2002, the Hotel is one of the tallest buildings in San Jose and is often described as an iconic landmark. It is in the heart of San Jose’s financial, entertainment, and convention districts. San Jose is Silicon Valley’s largest city, and the downtown area is in the midst of robust growth with numerous development projects underway thanks to tremendous growth fueled by the information and technology industries. The following photograph illustrates the Hotel’s size and grandeur:



2. Acquisition of the Hotel

The Debtors⁹ purchased the Hotel in January 2018 from Light Tower Associates, L.P., Light Tower Properties I, L.L.C., Light Tower Associates Sub, LLC, San Jose Fairmont Lessee, LLC, and Light Tower Restaurant Associates, LLC. The total purchase price was \$249,500,000. Of that amount, \$20 million was allocated to the land and approximately \$201,650,000 was allocated to the Hotel and other improvements on the land. The balance was allocated to a variety of other items, including moveable personal property, the Grill on the Alley, and other assets.

In connection with a March 2020 potential refinancing of the Prepetition Secured Loan, which was derailed by the pandemic, a draft appraisal report was prepared by LW Hospitality Advisors (for the prospective lender), which states that (a) as of March 1, 2020, the value of the Hotel was \$261 million on an “as is” basis (including an estimated market value of the fee simple interest in the real property of \$246,510,000), (b) as of March 1, 2021, the “prospective market

⁹ The Debtors’ non-debtor affiliate, GA SJ LLC, was also party to the sale and purchase agreement of the Hotel. GA SJ LLC owns a partial interest in the Grill on the Alley, a restaurant located off the lobby of the Hotel.

value upon completion of renovation” would be \$285.5 million (including an estimated market value of the fee simple interest in the real property of \$263,595,000),¹⁰ and (c) as of March 1, 2023, the “prospective market value upon stabilization” would be \$304 million (including an estimated market value of the fee simple interest in the real property of \$292,425,000). However, the Debtors do not possess an appraisal report that reflects any developments since March 1, 2020, which include, among other things (x) the COVID-19 pandemic, and the affects thereof, and (y) the March 5, 2021 closure of the Hotel. That said, a marketing process undertaken in the late summer of 2020 suggests at least a liquidation value at that time of less than \$200 million.

As detailed below, in August 2020, the Debtors retained Jones Lang Lasalle to solicit investors to purchase the Hotel or provide debt or equity financing sufficient to help fund the Hotel’s operations during the pandemic. As a result of that process, the Debtors received a proposal to purchase 100% of the property for a purchase price of \$185,000,000. The proposal contemplated quick diligence and closing periods and reflected the terms of a distressed sale.

3. Operation of the Hotel

Before the Petition Date, Debtor FMT leased the Hotel from Debtor SC SJ and the Hotel operated as the Fairmont San Jose under the management of Fairmont Hotels & Resorts (U.S.) Inc.¹¹ (“*Fairmont*”) pursuant to that certain Amended and Restated Hotel Management Agreement, dated as of December 2, 2005 (the “*HMA*”). The HMA is attached as **Exhibit D** to the *Declaration of Neil Demchick in Support of Chapter 11 Petitions and First Day Pleadings* [Dkt. 11] (the “*First Day Declaration*”). Fairmont and San Jose Fairmont Lessee, LLC were original parties to the HMA, pursuant to which Fairmont managed the day-to-day operations of the Hotel. The HMA was assigned to Debtor FMT in connection with Debtor SC SJ’s acquisition of the Hotel on January 2, 2018. The Lease between Debtor SC SJ and Debtor FMT also was dated as of January 2, 2018, and provided for base rent of \$11.124 million in 2020 and base rent of \$11.46 million in 2021.

Under the HMA, Fairmont was obligated to manage the Hotel on Debtor FMT’s behalf in exchange for a management fee. The HMA imposed various obligations on Fairmont in furtherance of its general duty to manage the Hotel’s operations. For example, Fairmont was required to consult with Debtor FMT on certain material decisions affecting the Hotel (*see, e.g.*, HMA §§ 4.1, 5.3, 5.8), prepare annual budgets for the Hotel and submit them for the Debtors’ approval (HMA § 4.1), maintain full and adequate books and records (HMA § 8.1), prepare and submit monthly, quarterly, and annual financial reports (HMA §§ 8.3, 8.4, 8.5), and make certain repairs and capital improvements to the Hotel (HMA §§ 10.1, 10.2).

¹⁰ The contemplated renovations, which entailed updates to the lobby and bar/lounge areas, was completed in February 2021.

¹¹ Upon information and belief, Fairmont Hotels & Resorts (U.S.) Inc. is now known as Accor Management US Inc. (“**Accor**”). For continuity and convenience, the Disclosure Statement will continue to refer to Accor and its predecessor as “**Fairmont**.”

Debtor FMT also had various ongoing obligations under the HMA. For example, it was obligated to pay Fairmont a management fee for services rendered under the HMA (HMA § 9.1), reimburse Fairmont for certain Hotel operating expenses (*see, e.g.*, HMA §§ 5.2, 7.2), review Fairmont's proposed annual budgets and approve them or work with Fairmont to make appropriate changes (HMA § 4.1), consider Fairmont's requests to hire executive-level hotel employees (HMA § 5.3) and consultants (HMA § 5.8), and provide working capital to operate the Hotel.

Although Debtor SC SJ, as the owner of the Hotel, was not a signatory to the HMA, it was obligated to perform certain duties under the HMA pursuant to that certain Owner Agreement, dated as of January 2, 2018, between the Debtors and Fairmont ("**Owner Agreement**"). The Owner Agreement is attached as **Exhibit E** to the First Day Declaration.

B. The Debtors' Corporate Structure

The Debtors are both organized as member-managed limited liability companies under Delaware law. FMT SJ Holdings LLC is the sole member of both Debtors. C. Anthony Shippam and Candace R. Corra with Stewart Management Company are the Debtors' independent managers, and their approval is required for the Debtors to take certain material actions. Neil Demchick is the Chief Restructuring Officer for both Debtors.

FMT SJ Holdings LLC, the Debtors' sole member, is indirectly owned by Sam Hirbod. A full organizational chart, with the Debtors shown in purple squares and the Debtors' non-debtor affiliates shown in blue squares, follows:



C. The Debtors' Capital Structure

1. Secured Debt

The Debtors' acquisition of the Hotel in January 2018 was funded in part by the Prepetition Secured Loan pursuant to that certain Loan Agreement, dated as of January 2, 2018 (the "*Prepetition Secured Loan Agreement*"), between the Debtors, as co-borrowers, and CLNC Fair Jose Finance, LLC, as successor in interest to CLNC 2019-FL1 Funding, LLC, as lender (the "*Prepetition Secured Lender*"). The Prepetition Secured Loan Agreement provides for a term loan of up to \$173,485,000 secured by a first-priority mortgage lien on the Hotel and the underlying real property and a first-priority security interest on substantially all of the Debtors' personal property.¹² As of the Petition Dates, approximately \$175 million of principal and accrued interest was outstanding under the Prepetition Secured Loan. Both Debtors are borrowers under the Prepetition Secured Loan.

The Prepetition Secured Loan's maturity date was initially January 9, 2020, but the Prepetition Secured Loan Agreement allowed for "extended maturity dates" subject to satisfaction of certain conditions. The maturity date under the Prepetition Secured Loan Agreement was first extended to January 9, 2021. On January 8, 2021, the Prepetition Secured Lender agreed to

¹² The Prepetition Secured Loan is also supported by (a) unsecured guarantees from Eagle Canyon Holdings LLC, the Debtors' indirect parent company, and Sam Hirbod, the Debtors' ultimate beneficial owner, and (b) secured guarantees from non-debtor affiliates GA SJ LLC and FB SJ Holdings LLC.

waive certain conditions precedent to the occurrence of the second extended maturity date, resulting in a further extension of the maturity date to April 9, 2021. The Prepetition Secured Loan is presently due and payable absent confirmation of a Plan extending the maturity date.

2. Unsecured Debt

As of the Petition Dates, Debtor SC SJ has very little unsecured debt other than damages owed to Fairmont for termination of the HMA, unpaid management fees, and indemnification Claims that Fairmont has asserted but which the Debtors dispute. As detailed below, the Debtors believe that Fairmont's Claim is worth less than \$4 million, whereas Fairmont has filed a proof of claim asserting that it is owed more than \$35 million. In addition to the Fairmont debt, Debtor SC SJ has unsecured obligations owed to affiliates, including Riveria WC LLC and Eagle Canyon Capital LLC—each of which are indirectly owned by the same indirect owners of the Debtors—for amounts that they paid on behalf of Debtor SC SJ to retain the Debtors' Professionals. The dates and amounts of these payments are detailed in the Debtors' initial monthly operating report, which was filed on the Bankruptcy Court's docket on March 22, 2021 as docket number 84.

Debtor FMT is also an obligor on Fairmont's damages claim, as detailed below. Additionally, Debtor FMT has approximately another \$18 million of unsecured debt, which includes, among other things, garden-variety trade debt and a \$6,141,854.90 loan (the "**PPP Loan**") borrowed by Debtor FMT pursuant to a Promissory Note, dated April 30, 2020, made pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Act (the "**Cares Act**"), [in addition to the approximately \\$174,294,857 estimated herein for the Prepetition Secured Lender's FMT Deficiency Claim.](#) Debtor FMT is in the process of seeking forgiveness of the PPP Loan and believe that all or substantially all of the PPP Loan amount will be forgiven as set forth in the Cares Act.

A number of creditors have filed proofs of claim against Debtor FMT, which are inconsistent with its books and records or are otherwise not factored into the estimated claims pool amounts set forth in Section I.D. of the Disclosure Statement. Although Debtor FMT intends to object to these Claims, it cannot guarantee that such objections will prevail. If such disputed Claims are Allowed by the Bankruptcy Court as FMT General Unsecured Claims (Class 4B), they will be entitled to a Pro Rata share of the FMT GUC Cash Pot under the Plan. That would dilute the Pro Rata Share of such FMT GUC Cash Pot to which other Holders of Allowed FMT General Unsecured Claims would be entitled and would result in a lower recovery than what is estimated in Section I.D. of the Disclosure Statement.

Several of the disputed Claims are asserted in significant amounts. For example, Fairmont has asserted, in its proofs of claim (claim nos. 137 and 140), that Debtor FMT may have significant employee liabilities that are not factored into the estimated Class 4B claims pool, including \$2,586,945.56 of severance obligations arising from the closure of the Hotel. Fairmont also alleged that Debtor FMT is liable for \$417,451.55 owed on account of various nonqualified deferred compensation plans and arrangements, including, but not limited to, the FRHI Hotels &

Resorts Executive Deferred Compensation Plan and the Fairmont Raffles Hotels International (U.S.) Inc. Salary Continuation Plan. Debtor FMT disputes these Claims and reserves all rights.

In addition, the UNITE H.E.R.E.! Retirement Fund (the “*Unite Retirement Fund*”) has filed a proof of claim (claim no. 70) against Debtor FMT for \$5,927,974, asserting a potential withdrawal liability claim related to Debtor FMT’s alleged obligation to make contributions to certain multiemployer pension plans on behalf of certain employees represented by UNITE H.E.R.E.! Local 19. The Unite Retirement Fund concedes that the claim is not yet accrued and would only be triggered if Debtor FMT permanently ceases to make contributions on behalf of employees as a result of the treatment of its collective bargaining agreement with UNITE H.E.R.E.! Local 19 under the Plan. The treatment of such collective bargaining agreement is discussed in Section III.E. of the Disclosure Statement. Debtor FMT disputes Unite Retirement Fund’s proof of claim and reserves its rights in all respects.

UNITE H.E.R.E.! Local 19 has also filed a proof of claim (claim no. 149) against Debtor FMT asserting a Claim of \$2,294,167.50 (more than \$1.1 million of which it contends is entitled to priority under sections 507(a)(2) and 507(a)(4) of the Bankruptcy Code). The Claim is comprised of various amounts that are allegedly due and owing under its collective bargaining agreement with Debtor FMT for employees it represents. The most significant amounts include (a) \$1,027,200 of alleged accrued vacation balances, (b) \$633,600 of alleged unpaid sick leave balances, and (c) \$543,921 of contributions that are allegedly required to be made to a Health and Welfare Fund. Debtor FMT disputes these obligations and notes that the asserted amounts owed for accrued vacation and sick leave significantly exceed the amounts reflected in its books and records. The amounts of such obligations in Debtor FMT’s books and records are factored into the estimated claims pool amounts in Section I.D. of the Disclosure Statement. Debtor FMT reserves its rights in all respects.

Debtor FMT intends to object to the disputed Claims in due course. However, it cannot guarantee that its objections will prevail or that the disputed Claims will not ultimately be Allowed by the Bankruptcy Court.

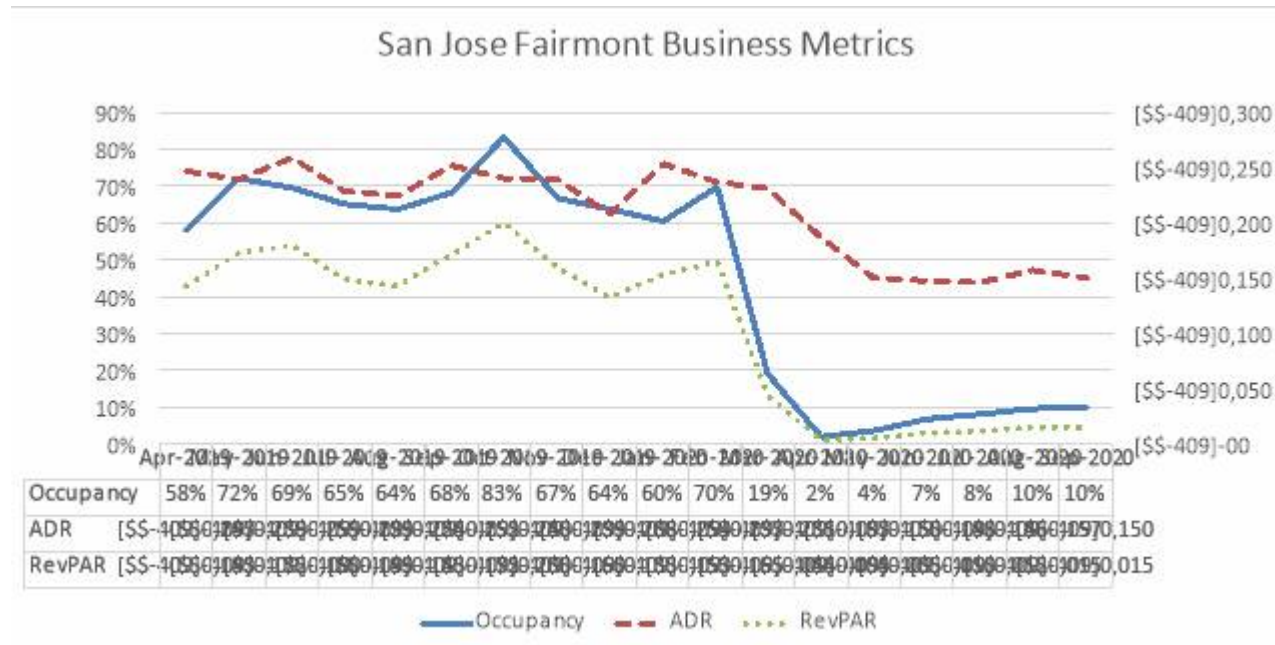
D. Summary of Events Leading to the Debtors’ Chapter 11 Filing

1. The Effects of the Global Pandemic

Though normally a profitable enterprise, the Debtors’ business took a dramatic and sudden downturn following the spread of the COVID-19 virus and the related travel, gathering, and other restrictions implemented to reduce the infection rate. As the pandemic spread to the United States in early March 2020, all conventions that were scheduled to be held at the Hotel were canceled for the remainder of the year. Thereafter, all conventions for 2021 were also cancelled. As a result, the Hotel’s average occupancy during the pandemic was approximately 7.7%. Because the Hotel is not a “vacation-destination” resort, much of its business during the pandemic has been to accommodate airline pilots, flight attendants, and essential health workers. The Hotel’s losses for 2020 exceeded \$18.6 million, and losses for 2021 are projected to exceed

\$18.8 million. The losses incurred have substantially exhausted the Debtors’ immediately available cash resources. As a result, the Hotel closed its doors on March 5, 2021.

Three business metrics commonly used to measure the health of a hotel are occupancy, average daily rate or “ADR,” and revenue per available room or “RevPAR.” These metrics for the Hotel illustrate the extraordinary business downturn affecting the Debtors due to the COVID-19 pandemic.

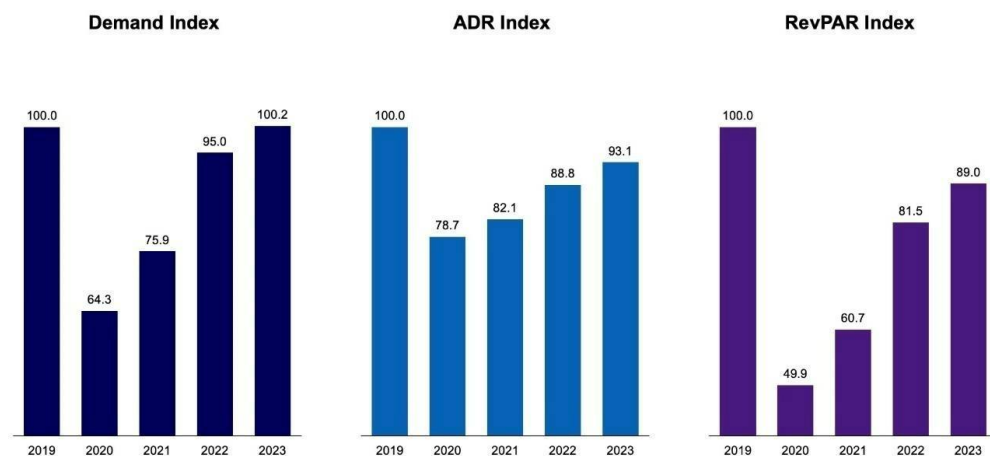


Analysts’ forecasts predict a long recovery period for the entire hospitality sector. One industry analyst predicts that occupancy will not approach pre-pandemic levels until 2022.¹³

¹³ See CoStar, *Half of the Hotel Rooms Forecast to Be Empty in 2021* (Jan. 26, 2021), available at <https://www.costar.com/article/1290818947/half-of-hotel-rooms-forecast-to-be-empty-in-2021>.

U.S. Annual Forecast Indexed To 2019

Room demand is expected to surpass 2019's level by 2023 while ADR and RevPAR will lag.



Source: STR, 2021 © CoStar Realty Information, Inc.



2. The Debtors' Efforts to Raise Capital During the Pandemic

Since the start of the pandemic, the Debtors have relied on approximately \$14 million of capital contributions from their equity owner to pay ordinary course expenses and monthly debt service on the Prepetition Secured Loan. During August of 2020, in an effort to provide funding to survive the impact of the pandemic, ST SJ LLC, the Debtors' indirect parent company issued preferred equity to CLNC Fair Jose Pref, LLC, a Delaware limited liability company (the "***Preferred Member***"), in exchange for funds that were then contributed to the Debtors so that the Debtors could cover, among other things, one or more shortfalls on their monthly debt service payments. Approximately \$4.8 million was ultimately advanced by the Preferred Member and used to fund debt service payments. ST SJ LLC, the issuer of the preferred equity, must redeem that preferred equity as a condition precedent to the Effective Date of the Plan.

As the pandemic persisted, the Debtors sought a longer-term solution. They retained Jones Lang Lasalle ("***JLL***") in August 2020 to solicit investors to purchase the Hotel or provide debt or equity financing sufficient to help fund the Hotel's operations during the pandemic. JLL undertook a comprehensive solicitation process, but its efforts only yielded indications of interest in potentially providing new capital on "rescue capital" or "lender of last resort" terms (including interest rates of up to 15% and austere corporate control provisions) that the Debtors determined, in their business judgment, would not be in the company's best interests. Notably, several interested parties submitted indications of interest that would have required termination (or in one case modification) of the HMA with Fairmont. In the end, JLL did not obtain any actionable commitments.

CHMWarnick, a hotel owner advisory firm, was also retained to perform a market analysis and contact competing management companies to assess their level of interest in the Hotel on the assumption that the Hotel could be rebranded. All major brands potentially suited to manage the Hotel responded positively, and at least one indicated that it would be willing to provide subordinate financing to the Hotel as part of the package. The brands that expressed interest also offered improved marketing prospects for the Hotel and other advantages, such as robust guest booking pipelines and the ability to capture a larger share of the convention and conference business as travel restrictions ease.

3. The Debtors' Efforts to Engage Fairmont in Constructive Solutions

In conjunction with the Debtors' outreach to competing hotel brands, the Debtors also engaged with Fairmont to see if it would be willing to provide new capital for the Hotel or alternatively fix Fairmont's "liquidated damages" claim under section 16.11 of the HMA, so that the Debtors could transition Hotel management to a brand willing to advance new financing. Fairmont, however, refused on both points.

Fairmont's "solution" to an undisputed amount of almost \$2 million per month in losses was a combination of (a) further "cost cutting" measures, (b) defaulting on the Prepetition Secured Loan, and (c) demanding that the Debtors, which have no available funds, fund large monthly operational shortfalls and Fairmont's fee. In addition, Fairmont demanded that the Debtors, whose cash has been completely depleted by the massive losses during the pandemic, pay Fairmont almost \$2 million in allegedly past due management fees and continue to fund millions of dollars of accounts payable incurred or to be incurred at the Hotel.

Given Fairmont's unwillingness to consider viable solutions for the Hotel, on February 4, 2021, the Debtors terminated the HMA effective March 10, 2021 to allow them to approach and negotiate a transition with a brand willing to provide subordinate financing. On February 5, 2021, Fairmont responded (a) disputing any termination of the HMA, (b) asserting that disputes should be addressed through arbitration, and (c) asking FMT to engage in pre-arbitration discussions. Debtor FMT agreed to engage in discussions with Fairmont, and during those discussions, Fairmont representatives agreed to consider providing financing to the Hotel.

Given Fairmont's efforts to provide financing to the Debtors, on February 23, 2021, the Debtors withdrew their earlier termination of the HMA. Later that day, however, Fairmont representatives stated unequivocally that Fairmont would not provide financing to the Hotel.

4. The Debtors' Decision to Close the Hotel in Anticipation of Chapter 11 and Terminate the Lease

At about the same time, the Debtors decided that the Hotel should be temporarily closed to reduce the negative cash flow. On or around February 25, 2021, the Debtors contacted Fairmont to request that it promptly begin the process of closing the Hotel. In response,

Fairmont (a) contested the owner's right to close the Hotel, (b) stated that the Hotel's economic woes could be resolved through further "cost cutting" measures, (c) demanded immediate payment of nearly \$2 million in allegedly delinquent management fees, and (d) insisted on a litigated resolution through arbitration. On March 1, 2021, Debtor FMT advised Fairmont that the Hotel would be closed imminently and that Debtor FMT would file chapter 11 to, among other things, reject the HMA and restructure the Debtors' obligations. To protect the Hotel, its employees, and guests, Debtor FMT again asked Fairmont to work cooperatively on closing the Hotel, but Fairmont reiterated its position that the Hotel could not be closed.

On March 4, 2021, after Fairmont contacted the Prepetition Secured Lender to discuss what the Prepetition Secured Lender was going to do about its subordination and non-disturbance agreement ("*SNDA*") with Fairmont.¹⁴ Fairmont then commenced an arbitration proceeding ("*Arbitration Proceeding*") with the American Arbitration Association ("*AAA*"), asserting a \$30 million claim and seeking a temporary restraining order to prevent closure of the Hotel. *See Accor Management Us Inc. (F/K/A Fairmont Hotels & Resorts (U.S.) Inc.) v. FMT SJ LLC*, Case No. 01-21-0002-1684).

On March 5, 2021, the Hotel was closed with all care being given to the guests, employees and preservation of the property. At the same time, Debtor FMT filed its chapter 11 petition and promptly advised the AAA of the same. No action whatsoever has been taken by the AAA in the Arbitration Proceeding.

Before the FMT Petition Date, Debtor FMT determined that if it commenced a chapter 11 case, it would be forced to reject its Lease with Debtor SC SJ because (i) Debtor FMT had not paid rent since February 2020 (shortly before the spread of the COVID-19 virus to the United States), (ii) Debtor FMT had very little cash and negative gross operating profits and thus could not pay any rent under the Lease and had no reasonable prospect of paying rent in the reasonably foreseeable future. To save costs associated with a motion to reject the Lease pursuant to section 365 of the Bankruptcy Code, Debtor FMT decided to surrender the Hotel premises and terminate the Lease. Consequently, the Debtors entered into that certain Lease Termination and Surrender Agreement, dated as of March 5, 2021, which provided for a mutual and unconditional termination of the Lease immediately upon execution.

5. The Restructuring Support Agreement and Restructuring Term Sheet

The Debtors' only outstanding secured funded indebtedness is the Prepetition Secured Loan provided by the Prepetition Secured Lender. In weighing their options and ultimately determining to pursue a chapter 11 filing, the Debtors engaged with the Prepetition Secured Lender and the Preferred Member to build a consensus around the terms of the Debtors' restructuring and an extension of the Prepetition Secured Loan.

¹⁴ The SNDA is only relevant if the Prepetition Secured Lender becomes the owner of the Hotel. The only path to the Prepetition Secured Lender becoming the owner of the Hotel is by foreclosure. Therefore, the only logical import of Fairmont's outreach to the Prepetition Secured Lender was to encourage the Prepetition Secured Lender to foreclose on the Hotel.

After extensive discussions, on March 9, 2021, the Debtors entered into a Restructuring Support Agreement (“**RSA**”) with the Prepetition Secured Lender on the material terms of a chapter 11 plan. The RSA and the accompanying Restructuring Term Sheet are attached hereto as **Exhibit 2**. The RSA and Restructuring Term Sheet are designed around the Debtors’ goals of transitioning from Fairmont to a new hotel operator that is ~~willing to provide mezzanine financing that~~approved by the Prepetition Secured Lender and raising exit financing, which, subject to the other terms and conditions of the RSA, will ~~in turn enable~~allow the Debtors to extend the maturity date of the Prepetition Secured Loan by up to five years, and carry the ~~ongoing~~ costs of preserving the Hotel through the pandemic, ~~and pay all claims against SC SJ, including the liquidated damages for the termination of the HMA, in full. The.~~ As detailed in section IV.E.1. hereof, the RSA provides that if the Debtors are successful in ~~raising \$45 million in mezzanine debt or equity contribution~~entering a new hotel management agreement with an approved hotel operator and raising exit financing that satisfies the terms of the RSA, the Prepetition Secured Loan will be extended by three years from the effective date of an agreed chapter 11 plan, with options for two 1-year maturity extensions. The extension of the maturity date, which otherwise occurred on April 9, 2021, means that the Debtors will not be required to pay in full or refinance their secured indebtedness until after the pandemic has passed and the hotel industry has begun recovering. By then, the Hotel will likely have better access to the capital markets than it does today. Even if the Debtors are unable to ~~raise \$45 million of mezzanine debt or equity contribution~~satisfy the RSA’s conditions for such extension of up to five years, the Prepetition Secured Loan would be extended nine months after the Effective Date.

The RSA also requires the Debtors to file certain documents and satisfy certain objectives (“**Milestones**”) within a specified period of time. The Debtors have committed to (i) file a disclosure statement and chapter 11 plan by March 20, 2021 (which was consensually extended until March 22, 2021), (ii) obtain approval of a disclosure statement by April 29, 2021 (which was consensually extended until May ~~17~~18, 2021), and (iii) obtain confirmation of a plan by June 23, 2021 (which was consensually extended until July 10, 2021).

III. **THE CHAPTER 11 CASES**

A. Commencement of the Chapter 11 Cases

On March 5, 2021 and March 10, 2021, respectively, Debtor SC SJ and Debtor FMT filed voluntary petitions for relief under chapter 11 of Bankruptcy Code in the Bankruptcy Court. No trustee or examiner has been appointed in the Chapter 11 Cases. Since the Petition Dates, the Debtors have continued to manage their affairs and property as debtors and debtors-in-possession.

B. “First Day” Motions

On March 10, 2021, the Debtors filed various motions designed to ease their transition into chapter 11 and to minimize the effects of the commencement of the Chapter 11 Cases, including motions seeking entry of orders (a) authorizing the Chapter 11 Cases to be jointly administered for procedural purposes only [Dkt. 4] (“*Joint Administration Motion*”), (b) authorizing the Debtors to file a consolidated creditor matrix in lieu of submitting separate mailing matrices for each Debtor [Dkt. 5] (“*Consolidated Matrix Motion*”), (c) authorizing the Debtors to retain Stretto as their claims and noticing agent [Dkt. 6] (“*Claims and Noticing Agent Application*”), (d) prohibiting the Debtors’ utility companies from altering, refusing or discontinuing service to, or discriminating against, the Debtors and approving the form of adequate assurance of postpetition payment to such utility companies [Dkt. 7] (“*Utilities Motion*”), (e) authorizing the Debtors to pay prepetition wages and continue certain employee benefit programs in the ordinary course [Dkt. 8] (“*Wages Motion*”); and (f) authorizing the Debtors to obtain postpetition financing and use cash collateral, and granting adequate protection to the Prepetition Secured Lender [Dkt. 10] (“*Financing Motion*”).

Following a first day hearing held on March 12, 2021, the Bankruptcy Court entered orders granting the Joint Administration Motion [Dkt. 54], the Consolidated Matrix Motion [Dkt. 55], and the Claims and Noticing Agent Application [Dkt. 56]. The Bankruptcy Court also entered interim orders granting the Utilities Motion [Dkt. 57], the Wages Motion [Dkt. 58], and the Financing Motion [Dkt. 59] on an interim basis.

Thereafter, on April 5, 2021, the Bankruptcy Court entered final orders granting the Utilities Motion [Dkt. 154] and the Wages Motion [Dkt. 171] on a final basis. The Bankruptcy Court entered a final order granting the DIP Motion on a final basis [Dkt. 172] on April 8, 2021.

C. Retention of Debtors’ Professionals

The Debtors filed applications to retain several professionals in the Chapter 11 Cases, including: (i) an application to retain Neil Demchick, as chief restructuring officer, and Verity LLC to provide restructuring, management, and advisory services [Dkt. 137], which the Bankruptcy Court granted on April 26, 2021 [Dkt. 251]; (ii) an application to retain Pillsbury Winthrop Shaw Pittman LLP, as bankruptcy counsel [Dkt. 140], which the Bankruptcy Court granted on April 26, 2021 [Dkt. 252]; (iii) an application to retain Cole Schotz P.C., as bankruptcy counsel [Dkt. 136], which the Bankruptcy Court granted on April 26, 2021 [Docket No. 250]; (iv) an application to retain Katz, Abosch, Windesheim, Gershman & Freedman, P.A., as accountant and tax advisors [Docket No. 138], which remains pending as of the date hereof; and (v) an application to retain CHMWarnick, as a special advisor to the Debtors [Dkt. 141], which remains pending as of the date hereof.

D. Significant Events During the Chapter 11 Cases

1. Appointment of the Official Committee of Unsecured Creditors

On March 26, 2021, the United States Trustee filed a notice [Dkt. 179] indicating the appointment of a three-member Official Committee of Unsecured Creditors (the “*Committee*”), consisting of San Jose Water Company, Minibar North America, Inc., and Pacific Coast Trane Service. On April 9, 2021, the United States Trustee filed that certain *Notice of Appointment of Committee of Unsecured Creditors – Amended** [Dkt. 179] adding Fairmont as a fourth member of the Committee. With the exception of Fairmont, all three Committee members are creditors of Debtor FMT only and, as of the May 7, 2021 general bar date, have filed proofs of claim against Debtor FMT only.

The Committee has selected Seward & Kissel LLP and Benesch, Friedlander, Coplan & Aronoff LLP as its counsel and FTI Consulting, Inc. as its financial advisor.

2. Debtor-in-Possession Financing and Use of Cash Collateral

When the Debtors filed the Chapter 11 Cases, all of their cash was the cash collateral of the Prepetition Secured Lender. Even if the Debtors had free access to their cash, they still would not have had sufficient liquidity to maintain their operations and fund their expenses during the Chapter 11 Cases.

Accordingly, on March 10, 2021, the Debtors filed a motion seeking Bankruptcy Court approval of their proposed funding for the Chapter 11 Cases from two sources: (a) an unsecured, superpriority non-amortizing revolving credit facility of up to \$7.5 million (the “*DIP Facility*”) provided to SC SJ by FMT SJ Catering LLC, an affiliate of an insider of the Debtors (the “*DIP Lender*”), and (b) FMT Debtor’s use of cash collateral, which is subject to a first-priority lien securing the Prepetition Secured Loan [Dkt. 10] (“*Financing Motion*”). On March 12, 2021, the Bankruptcy Court approved the DIP Facility on an interim basis and authorized SC SJ to draw up to \$2.5 million of the DIP Facility [Dkt. 59] (the “*Financing Interim Order*”), and authorizing FMT Debtor to use Prepetition Secured Lender’s cash collateral to pay, among other things, employees’ priority wage claims.

The original size of the DIP Facility is based on the Debtors’ cash flow projections, which are reflected in the 13-week budget attached as an exhibit to the Financing Interim Order (the “*Budget*”). Thereafter, following the appointment of the Committee, the Debtors negotiated an amendment to the DIP Facility, which increased the size of the DIP Facility to \$9.0 million, and gave the Borrower (as defined in the Financing Motion) the ability to borrow up to an additional aggregate principal amount of \$500,000 (the “*Additional Borrowing*”) if it determines, in its reasonable business judgment, that the Additional Borrowing is required. The amendments to the DIP Facility were made to account for the estimated additional administrative expense arising

from the appointment of the Committee and certain other post-petition expenses that were not accounted for in the initial Budget.

The Budget, as amended, was prepared to reflect a reasonable and detailed estimate of, among other things, the Debtors' sources and uses of liquidity during the Chapter 11 Cases. The use of cash collateral and the amounts available under the DIP Facility, as amended, were projected to provide the Debtors with the liquidity they need to pay their ordinary-course post-petition expenses and fund the costs and expenses of the Chapter 11 Cases.

A hearing to consider the Financing Motion on a final basis was held on April 6, 2021. On April 8, 2021, the Bankruptcy Court entered an order granting the Financing Motion on a final basis [Dkt. 172] (the "**Financing Final Order**"). The Financing Final Order incorporates comments from, among other parties, the United States Trustee, the Committee, Minibar North America, Inc, Fairmont, the Prepetition Secured Lender and the DIP Lender.

The Financing Final Order provides standard adequate protection liens and adequate protection claims to the Prepetition Secured Lender, which the Prepetition Secured Lender required as a condition to, among other things, the Debtors' use of cash collateral. The Financing Final Order also includes releases and stipulations regarding the validity and enforceability of the Prepetition Secured Lender's claims and liens on the Debtors' collateral. Prior to agreeing to these stipulations, the Debtors undertook appropriate efforts to verify that the Prepetition Secured Lender's liens were properly perfected. The Debtors, through counsel, reviewed the recorded mortgage documents on the Hotel and real property and ordered and reviewed current UCC-1 financing statements covering the Prepetition Secured Lender's liens on the other collateral. The Debtors, through counsel, have undertaken other measures as well. Before agreeing to the releases provided for in the Financing Interim Order, the Debtors and their advisors also discussed and considered whether any potential meritorious causes of action against the Prepetition Secured Lender exist.

The Financing Final Order provides that the stipulations set forth therein shall be binding upon all parties in interest, including, without limitation, the Debtors' estates and the Committee unless (a)(i) the Committee has filed an adversary proceeding or contested matter by no later than seventy-five days after its appointment (x) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Loan Obligations or the Prepetition Secured Loan Liens (each, as defined in the Financing Final Order), or (y) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, a "**Challenge Proceeding**") against the Releasees (as defined in the Financing Final Order), or (ii) another party in interest commenced such a Challenge Proceeding by no later than seventy-five days after entry of the Financing Interim Order; and (b) the other conditions related to a Challenge Proceeding set forth in the Financing Final Order are satisfied. The Challenge Period has not yet expired and the Committee has informed the Debtors that it is still investigating whether it believes grounds exist to assert any claims against the Prepetition Secured Lender.

3. The Debtors' Rejection Motion

As detailed in the Estimation Motion (as defined below) and the *Debtors' Memorandum of Points and Authorities in Support of Debtors' Motion to Estimate Maximum Amount of Fairmont Hotel & Resorts (U.S.) Inc.'s Contingent and Unliquidated Claim* [Dkt. 226], the Debtors terminated the HMA.¹⁵ Nonetheless, the Debtors' effort to negotiate a new hotel management agreement with a leading hotel brand and secure subordinate financing to fund the Hotel's operations beyond the end of the pandemic are cornerstones of the Debtors' reorganization. Accordingly, the Debtors also filed a motion seeking to reject the HMA and Owner Agreement pursuant to section 365 of the Bankruptcy Code [Dkt. 22] (the "**Rejection Motion**"). The Rejection Motion was granted by the Bankruptcy Court as to the HMA on April 5, 2021 [Dkt. 152]. Fairmont contends that the Owner Agreement is not an executory contract. The Bankruptcy Court's order states that "[a]t this time this Court need not resolve whether the Owner Agreement constitutes an executory contract." It further provides: "To the extent that the Owner Agreement is an executory contract, pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006, or is, together with the HMA, part of a single integrated agreement that constitutes an executory contract, the Motion is GRANTED as to the Owner Agreement, with any such rejection being effective as to each Debtor as of such Debtors' petition date."

4. The Debtors' Motion to Approve Marketing Process to Solicit Hotel Brands

As explained above, Debtor SC SJ believes that it can negotiate a favorable management agreement with a leading hotel brand, coupled with a significant and affordable mezzanine loan (or other subordinated financing), the proceeds of which will be used to fund ~~certain~~ distributions under the Plan as necessary, satisfy ~~post-petition~~ debt-service ~~payments~~ on the Prepetition Secured Loan, and pay for the Hotel's ~~post-petition operating~~ expenses.

Accordingly, on March 11, 2021, the Debtors asked the Bankruptcy Court to approve procedures for soliciting and negotiating a new management agreement with qualified hotel operators [Dkt. 41] ("**Procedures Motion**"). The ~~Debtors intend to solicit only leading hotel brands specializing in operating and booking reservations for convention-style hotels like the Hotel to ensure that the Hotel's operations improve after the pandemic~~ Bankruptcy Court granted the Procedures Motion on April 6, 2021 [Dkt. 159] (the "Procedures Order"). The Procedures ~~Motion contemplates a competitive process~~ Order approved procedures that ~~eovers~~ prescribed: (i) the timeline for the solicitation process; (ii) the nature and type of hotel brands, including experience, that ~~will~~ would be considered; (iii) the requirements that a bid must satisfy to be considered; (iv) the deadline to submit bids; ~~and~~ (v) the method and criteria by which such bids will be evaluated; and (vi) the ability of the Debtors to modify the procedures as they deem

¹⁵ Fairmont and the Debtors dispute the date of termination of the HMA.

necessary to procure the best brand manager for the Hotel. ~~Consistent with the terms of the RSA and in recognition of the limited available cash and inevitable added expense of any delays, the Procedures Motion contemplates an expeditious marketing process:~~

Event	Deadline
Solicitation Process Commences	April 6, 2021
Initial Bid Deadline	No later than May 7, 2021
Selection of Winning Bid (Hotel Operator)	No later than May 12, 2021

~~The Bankruptcy Court granted the Procedures Motion on April 6, 2021 [Dkt. 159] (the “Procedures Order”).~~

~~On May 7, 2021, the Debtors received bids from three hotel brands. The Debtors are evaluating the bids. The Debtors anticipate extending the deadline for selection of a winning bid until May 21, 2021 to give them further time to fully consider all options and select the best bid. Procedures Motion initially contemplated a bid deadline of May 7, 2021 (which the Debtors subsequently extended until May 21st) and a deadline for selecting a prevailing bidder of May 12, 2021 (which the Debtors subsequently extended until May 24th).~~

As of May 21, 2021, the Debtors received bids from four hotel brands. The Debtors and their advisors have analyzed the bids and compared the terms with an overarching goal of identifying the best brand for the Hotel’s short-term and long-term success.

5. The Debtors’ Selection of Hilton as the Prevailing Hotel Brand

After considering the bids, on May 24, 2021, the Debtors filed a notice on the Bankruptcy Court’s docket announcing Signia Hotel Management LLC (“Hilton”) as the prevailing bidder and “Signia by Hilton” as the prevailing hotel brand. The bid (“Hilton Bid”) contemplates that the Hotel will assume the name “Signia by Hilton San Jose” or another name that includes “Signia” in it and that it will be managed by Hilton upon its reopening. The bid remains non-binding, subject to, among other things, finalization of definitive documentation and satisfaction of certain other conditions. The terms of the Hilton Bid are confidential and have been shared with the Prepetition Secured Lender and the Committee pursuant to confidentiality agreements.

Under the terms of the bid, Hilton would enter into a Branding and Management Agreement (“New Hotel Management Agreement”) to manage the Hotel after the Effective Date. Upon reopening, the Hotel would feature, among other things, 805 guest rooms, approximately 51,210 square feet of meeting space, a spa and fitness facility and outdoor pool facility, and a “Club Signia” lounge. The Hilton Bid includes financial support that the Debtors believe is commensurate with the needs of the Hotel and the Debtors’ needs to exit chapter 11, and contemplates that a mezzanine loan will be procured by Debtor SC SJ’s parent (the “Qualified

Mezzanine Loan”). Neither the financial support to be provided by Hilton nor the Qualified Mezzanine Loan will be used to fund recoveries to general unsecured creditors of Debtor FMT or Debtor SC SJ.

Although Hilton has been selected as the prevailing bidder, the terms of the Hilton Bid are not binding and will not be binding until, among other things, the parties finalize definitive documentation and other conditions precedent are finalized. Nothing set forth herein shall be construed as a guarantee that all of the requisite conditions precedent will be satisfied or that the terms summarized herein are final terms (which they are not). Moreover, although Hilton’s bid contemplates that Reorganized SC SJ’s parent will procure a Qualified Mezzanine Loan, no final commitment for such Qualified Mezzanine Loan has been obtained as of the date hereof. Particularly given the interest expressed by numerous mezzanine lenders in the Hotel during these cases (solicited and unsolicited), the Debtors are optimistic that such a Qualified Mezzanine Loan will be secured in the near future, but they cannot guarantee it. The Debtors have reserved, and continue to reserve, all rights to pursue any and all options for exit financing that are in the best interests of their estates.

6. ~~5.~~ The Debtors’ Estimation Motion and Fairmont’s Lift Stay Motion

On March 16, 2021, the Debtors moved for an order estimating Fairmont’s claim for breach of contract damages and resulting from the Debtors’ termination and rejection of the HMA and all other amounts owed to Fairmont (other than unpaid management fees under the HMA) (the “*HMA Damages Claim*” and together with any other Claim of Fairmont against the Debtors, the “*Fairmont General Unsecured Claim*”) [Dkt. 71] (the “*Estimation Motion*”). The Debtors asked the Bankruptcy Court to estimate the HMA Damages Claim at no more than \$2,004,408 (the “*Estimated Amount*”) for all purposes, including final allowance and treatment under the Plan. The initial hearing on the Estimation Motion was noticed for April 29, 2021.

After the ~~filing of~~ Debtors filed the Estimation Motion, on March 23, 2021, Fairmont filed that certain *Motion to (I) Modify the Automatic Stay to Permit Arbitration of Disputes; and (II) Enforce Arbitration Clause Compelling Arbitration of Disputes* [Dkt. 92] (“*Lift Stay Motion*”), seeking entry of an order modifying the automatic stay to allow Fairmont to pursue arbitration to quantify and liquidate its claims against the Debtors arising from the HMA and the termination and rejection thereof. From the Debtors’ perspective, the centerpiece of the Lift Stay Motion was Fairmont’s argument that arbitration could be completed on the truncated 62-day schedule it had proposed in a March 18th letter to the Debtors and that, as such, lifting the stay so that it could pursue arbitration would not interfere with reorganization on the Debtors’ contemplated timeframe. Fairmont also argued that, for the same reason, estimating Fairmont’s Breach Termination claim was unnecessary and that arbitration would not delay the Debtors’ reorganization efforts. A hearing on the Lift Stay Motion was noticed for April 6th.

The Debtors objected to the Lift Stay Motion on several grounds [*see* Dkt. 108], including that arbitration would ~~cause undue~~ unduly delay these Chapter 11 Cases within the meaning of section 502(c) of the Bankruptcy Code. ~~The Debtors argued and~~ that the Estimation

Motion, if granted, would result in liquidation of the HMA Damages Claim in the Bankruptcy Court ~~pursuant to section 502(e), which~~ and would obviate the need for arbitration. The Debtors also contended that Fairmont's proposed 62-day arbitration was not feasible and that a rushed process would compromise the Debtors' substantive rights and would lack the same safeguards present in proceedings before this Court. The Debtors asserted that the truncated schedule was premised on a waiver by the Debtors of the timing and procedure specified in the AAA rules and in the California Code of Civil Procedure for selected arbitrators to disclose potential conflicts and for the parties to seek disqualification of those arbitrators. Given the private nature of arbitration, conflicts rules are given statutory recognition in California to ensure that a party selected neutral arbitrator is actually neutral. The Prepetition Secured Lender [Dkt. 103] and the Committee [Dkt. 126] also objected to the Lift Stay Motion.

A hearing on the Lift Stay Motion was held on April 6th and April 7th. On April 9, 2021, the Bankruptcy Court entered an order granting the Lift Stay Motion in part [Dkt. 181]. The Bankruptcy Court's order modified the automatic stay to allow Fairmont to pursue its arbitration. The Bankruptcy Court also (a) scheduled a hearing on the Estimation Motion for April 29, 2021, ~~at 3:00 p.m. (ET)~~, and (b) ordered the parties to submit supplemental briefing in advance of the hearing to address whether section 502(c) of the Bankruptcy Code allows a bankruptcy court to estimate an unliquidated claim for all purposes, including for the purpose of final allowance and distribution under a chapter 11 plan.

~~As a result of the Court's order on the Lift Stay Motion, arbitration on the HMA Damages Claim is moving forward. On May 3rd, the AAA confirmed the appointment of the two party-appointed arbitrators, subject to objections as to conflicts to be raised within ten business days. On May 6th, the Debtors objected to Fairmont's appointed arbitrator on the basis of an apparent conflict. The arbitrator's law firm was involved in drafting amendments to the HMA that is the subject of the arbitration, and one of his partners is a witness in the proceeding. It also appears that is law firm represented Fairmont when the HMA was originally drafted. On March 6th, the AAA inquired whether Fairmont would appoint a new arbitrator or contest the asserted conflict. As of the date hereof, Fairmont has not responded.~~

On April 3, 2021, Fairmont filed its Amended Claim for Declaratory and Injunctive Relief and Damages against both Debtors. On April 19, 2021, Fairmont filed its Notice of Appointment of David Neff as Arbitrator with the AAA. Mr. Neff is an attorney with the law firm of Perkins Coie LLP. On April 23, 2021, Debtors filed their Appointment of Maurice Robinson as Arbitrator with the AAA. Mr. Robinson is with Robinson & Associates LLC. On May 3rd, the AAA issued a letter stating that it had appointed David Neff and Maurice Robinson as the neutral party-appointed arbitrators, and advising the parties that each had seven days to object to the other's appointment. The letter also included the required disclosures from each arbitrator.

The Debtors contend that a declaration filed by Fairmont's counsel in the Bankruptcy Court on April 23, 2021 included a reference indicating that Alexandra Cole, a partner with Perkins Coie, had represented a predecessor owner of the Hotel with respect to the HMA at issue

in the AAA proceedings. The Debtors also contend that additional diligence, including a review of the Perkins Coie website, revealed representation by the firm of the prior Hotel ownership on a variety of matters in addition to the HMA. The Debtors assert that inasmuch as Fairmont seeks to reform the HMA based upon alleged mistake, Ms. Cole is a witness and the Debtors have issued a subpoena for her deposition. Nothing about the prior involvement of Perkins Coie and its lawyers with the HMA and Hotel was included in Mr. Neff's AAA disclosures.

On May 6, 2021, the Debtors wrote to the AAA and requested that it disqualify Mr. Neff based upon the conflict posed by him serving as an arbitrator where (a) his firm represented prior Hotel ownership, including with respect to the HMA, and (b) his law firm partner is a witness. On May 10, 2021, Fairmont submitted its opposition letter to the AAA, acknowledging that Ms. Cole "represented the prior owner in drafting the hotel management agreement with Fairmont in 1999," but contending that no conflict existed and contesting the Debtors' asserted legal and factual bases for the alleged conflict. Fairmont also asserted that that a conflict could be resolved by creating a "wall" between Mr. Neff and "any timekeepers to the former owner relating to the Hotel." The Debtors replied on May 13, 2021, and on May 19, 2021, the AAA's Administrative Review Council wrote to the parties, stating:

On May 18, 2021, the AAA's Administrative Review Council ("Council") considered the Respondent's objection to the continued service of Arbitrator Neff and any response received. After careful consideration of the parties' contentions, the Council has determined that Arbitrator Neff shall be removed in this case. This decision will be made a part of our administrative file.

The AAA's rule on disqualification provides that an arbitrator shall be subject to disqualification for partiality or lack of independence, inability or refusal to perform his or her duties with diligence and in good faith, and any grounds for disqualification provided by applicable law. The Council has carefully reviewed and considered the parties' submissions in this matter. Based upon the Council's Review Standards available at <https://www.adr.org/arc>, the Council is removing Arbitrator Neff.

The AAA requested that Fairmont select a new party-appointed arbitrator at its earliest convenience. On May 21, 2021, Fairmont filed its Notice of Appointment of Michael C. Schindler as Arbitrator. Based on the AAA's process regarding Mr. Neff, the Debtors anticipate that the AAA will provide Mr. Schindler's disclosure sometime within the next two weeks.

Estimation of the HMA Damages Claim is also moving forward in the Bankruptcy Court. At the initial hearing on the Estimation Motion held on April 29th, the Bankruptcy Court scheduled an evidentiary hearing for June 10th and 11th and directed the parties to submit a scheduling order mapping out a discovery schedule for the same. The Bankruptcy Court did not rule on whether estimation of the HMA Damages Claim would be for all purposes or a more limited purpose (e.g., for the purpose of ~~making a determination on~~ assessing Plan feasibility). However, the Bankruptcy Court noted that if, by June 10th, it appeared that arbitration would

take an additional 30 or 60 days, the Bankruptcy Court would likely estimate the HMA Damages Claim for all purposes. The Bankruptcy Court also clarified that the Debtors are not required to compromise their arbitration rights under the HMA and applicable arbitration rules and procedures. That direction has enabled the Debtors to avoid being unduly pressured by Fairmont into compromising their rights, and in turn, helped the Debtors avoid what could have been a disastrous result had Mr. Neff's conflict not been discovered and acted upon by the Debtors and the AAA.

Scheduling and protective orders were subsequently negotiated by the parties and entered by the Court. As of this filing, the parties have exchanged at least 50,000 pages of documents. Depositions and dates have been agreed upon by the parties. From the Debtors' perspective, the parties will be prepared to litigate and try the Estimation Motion on the dates set by the Court.

The dispute between the Debtors and Fairmont ultimately hinges on damages. The Debtors believe that the HMA Damages Claim must be quantified based on the liquidated damages provision in the HMA and that under that provision, Fairmont is entitled to no more than \$2,004,408.¹⁵¹⁶ In the arbitration commenced by Fairmont, Fairmont contends that it is entitled to nearly \$30 million in breach of contract damages. Fairmont has suggested several theories for setting aside the HMA's liquidated damages provision, including that the HMA should be reformed due to an alleged mistake of fact. The Debtors do not believe that there is any merit to Fairmont's factual or legal theories and do not believe that Fairmont can circumvent the HMA's liquidated damages provision.

On May 7, 2021, Fairmont filed proofs of claim against both Debtors in the amount of \$35,568,647.60. The Debtors dispute the dollar amount asserted in Fairmont's proof of claim for the reasons set forth above. The Debtors also believe that there ~~may be~~ claims against Fairmont for violation of the automatic stay and, ~~potentially, equitable subordination of the Fairmont General Unsecured Claim~~ intend to commence an action asserting such claims. FMT's bankruptcy petition was filed on March 5, 2021 at 12:00 p.m. (ET). After the petition was filed, Fairmont terminated ~~the Debtors' FMT's~~ access to various computer systems that stored ~~the Debtors' FMT's~~ financial and operational records. Also, as a part of the bidding process set forth in the Procedures Order, Fairmont made a bid that included financing for the Hotel on terms that it steadfastly refused to provide pre-petition, which (coupled with Fairmont's refusal to engage in a process to protect the Hotel and stem negative cashflow, as set forth above) caused the Debtors to seek chapter 11 relief. To the extent that Fairmont now seeks to take advantage of a situation it caused, and to use an inflated HMA Damages Claim as currency to purportedly negotiate a global resolution of these Chapter 11 Cases, the Debtors and their estates may have equitable subordination claims against Fairmont, which are also being investigated.

~~The Debtors and~~ Fairmont ~~have agreed to participate~~ disputes that there is any merit to the Debtors' factual or legal theories. Fairmont has reserved all rights with respect to these

¹⁵¹⁶ Fairmont also contends it is owed past due management fees of ~~more than~~ approximately \$2 million. The Debtors reserve all rights with respect to this assertion, but any past due management fees that may be owing would be in addition to the liquidated damages.

potential claims, including with regard to the Debtors' recitation and characterization of the underlying facts.

At the Bankruptcy Court's suggestion, the Debtors and Fairmont participated in a mediation of their dispute before the Honorable Craig T. Goldblatt of the United States Bankruptcy Court for the District of Delaware during the week of May 10th. Mediation sessions were held concluded on or around May 10th and May 11th. A third session is expected to occur on May 12th 14th without any resolution of the parties' disputes.

E. The Debtors' Employees and Collective Bargaining Agreements

As of March 5th, approximately forty or more employees were staffed at the Hotel. The Debtors initially anticipated that some of those employees will continue working at the Hotel while it is closed. As noted above, on April 6, 2021, the Bankruptcy Court granted the Wages Motion on a final basis [Dkt. 171]. The order authorizes the Debtors to, among other things, pay certain accrued and outstanding prepetition wages of such employees. As of the date hereof, there are approximately eight staff at the Hotel along with security guards.

Prior to the temporary closing of the Hotel, certain Hotel staff were union members. Some of them were covered by collective bargaining agreements (the "*Collective Bargaining Agreements*"), including (a) that certain collective bargaining agreement, dated as of November 1, 2019, by and between the Fairmont Hotel, San Jose and the International Union of Operating Engineers, Stationary Engineers, Local 39, (b) that certain collective bargaining agreement, dated as of July 1, 2018, by and between UNITE H.E.R.E.! Local 19 International Union and Debtor FMT, (c) that certain collective bargaining agreement dated May 1, 2016 by and between the Fairmont Hotel, San Jose and Freight Checkers, Clerical Employees & Helpers Union Local No. 856, International Brotherhood of Teamsters, and (d) that certain collective bargaining agreement dated July 1, 2017 by and between District Council 16 and Northern California Painting and Finishing Contractors Association and the Fairmont Hotel, San Jose.

The From the outset of these Chapter 11 Cases, the Debtors are have constructively engaged in ongoing discussions with the unions regarding potential treatment of the Collective Bargaining Agreements in these Chapter 11 Cases and under the Plan.

The Following extensive discussions, as of May 21st, the Debtors have commenced the process prescribed by section 1113 of the Bankruptcy Code with UNITE H.E.R.E.! Local 19 International Union. The Debtors anticipate that its collective bargaining agreement will be the subject of a motion to reject pursuant to section 1113 of the Bankruptcy Code or any other remedy that satisfies the business objectives of the Debtors. The Debtors nonetheless are continuing discussions with UNITE H.E.R.E.! regarding a consensual resolution, as required by law or otherwise, and anticipate that such discussions will continue through the hearing on any section 1113 motion reached an agreement in principle with each of the unions that will entail assumption or assumption and assignment of the Collective Bargaining Agreements. Notwithstanding anything to the contrary set forth herein or in the Plan, treatment of the

[Collective Bargaining Agreements shall be addressed in the Plan Supplement or in a motion to be filed prior to the Effective Date.](#)

IV.
SUMMARY OF PLAN

This section provides a summary of the structure and means for implementing the Plan and the classification and treatment of Claims and Equity Interests under the Plan. This section is qualified in its entirety by and is subject to the Plan, as well as the exhibits thereto and definitions therein. The Plan is attached to this Disclosure Statement as Exhibit A.

The statements in this Disclosure Statement include summaries of the provisions in the Plan and in documents referred to therein. The statements in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein. Reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions.

The Plan and the documents referred to therein control the actual treatment of Claims against and Equity Interests in the Debtors under the Plan. Upon occurrence of the Effective Date, the Plan and all such documents will be binding upon all Holders of Claims against and Equity Interests in the Debtors and their Estates and all other parties in interest. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan or such other operative document will control.

A. Classification and Treatment of Claims and Equity Interests

Section 1123 of the Bankruptcy Code provides that a plan must classify the claims and equity interests of a debtor's creditors and equity interest holders. In accordance with section 1123 of the Bankruptcy Code, the Plan divides Claims and Equity Interests into Classes and sets forth the treatment for each Class (other than the Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims, which pursuant to section 1123(a)(1) of the Bankruptcy Code need not be and have not been classified). The Debtors also are required, under section 1122 of the Bankruptcy Code, to classify Claims against and Equity Interests in the Debtors (except for certain Claims classified for administrative convenience) into Classes that contain Claims and Equity Interests that are substantially similar to the other Claims and Equity Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or equity interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or equity interest. The Debtors believe that they have complied with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the Claimholders and Equity Interest Holders affected do not consent to the treatment afforded them under the Plan.

A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Equity Interests in compliance with the provisions of section 1122 of the Bankruptcy Code and applicable case law. It is possible that a Holder of a Claim or Equity Interest may challenge the Debtors' classification of Claims and Equity Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect Holders of Claims or Equity Interests by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan. **Unless such modification of classification materially adversely affects the treatment of a Holder of a Claim or Equity Interest and requires resolicitation, acceptance of the Plan by any Holder of a Claim or Equity Interest pursuant to this solicitation will be deemed to be a consent to the Plan's treatment of such Holder of a Claim or Equity Interest regardless of the Class as to which such Holder ultimately is deemed to be a member.**

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims also may vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the value of property that ultimately will be received by a particular Holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class.

The classification of Claims and Equity Interests and the nature of distributions to members of each Class are summarized below. The Debtors believe that the consideration, if any, provided under the Plan to holders of Claims and Equity Interests reflects an appropriate resolution of their Claims and Equity Interests, taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Equity Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of Holders of Claims or Equity Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

B. Classification of the Prepetition Secured Lender's Claims

The Plan classifies and treats the Prepetition Secured Lender's Claims against each of the Debtors, based on the fact that each Debtor is jointly and severally liable under the Prepetition

Secured Loan Agreement for the entire Allowed Claim of the Prepetition Secured Lender. The Plan provides that all distributions made by FMT on account of the Prepetition Secured Lender's Allowed Claims against FMT (both Class 3B and Class 4B) will be credited against any distributions to be made by Debtor SC SJ on account of the SC SJ Secured Loan Claim (Class 3A) and that Prepetition Secured Lender will then receive payments over time of its remaining SC SJ Prepetition Secured Loan Claim pursuant to the Post-Effective Date Secured Loan Documents. The Debtors and the Prepetition Secured Lender contend that this treatment provides for the allowance of Prepetition Secured Lender's Claim against each Debtor, because it is entitled to such an Allowed Claim against each Debtor under its Prepetition Secured Loan Documents, but prevents a double recovery. The Committee has indicated that it is investigating whether the Prepetition Secured Lender should be entitled to assert a Claim against each Debtor and whether there is a basis to avoid Debtor FMT's obligations under the Prepetition Secured Loan Agreement. The Debtors wholly dispute the Committee's contentions. The Prepetition Secured Lender is entitled to assert a Claim against each Debtor because both Debtors are borrowers under the Prepetition Secured Loan and both Debtors are thus liable for the full outstanding amount. The Debtors do not believe that there is any basis to avoid Debtor FMT's obligations under the Prepetition Secured Loan Agreement and dispute the Committee's contentions in all respects.

The Committee has also raised an issue with respect to the classification of the Prepetition Secured Loan Claim at each Debtor FMT and Debtor SC SJ, specifically with respect to the FMT Deficiency Claim. Whether the Prepetition Secured Lender is entitled to an FMT Deficiency Claim is an issue that will be addressed at the Confirmation Hearing if Class 4B (FMT General Unsecured Claims) votes to reject the Plan. Under the Plan, if Class 4B accepts the Plan, then Prepetition Secured Lender will waive its right to any recovery on account of the FMT Deficiency Claim and, therefore, this dispute will be rendered moot. The Committee contends that if the Plan's classification of the FMT Deficiency Claim with other Allowed FMT General Unsecured Claims is determined to be improper, holders of Allowed FMT General Unsecured Claims in Class 4B will not be required to share their recovery on account of such Allowed Claims pro rata with the Prepetition Secured Lender, irrespective of how they vote on the Plan.

The Debtors do not believe that there is anything improper about the Plan's classification scheme and dispute the Committee's contentions in all respects. The Debtors intend to demonstrate the propriety of the Plan's classification scheme during the confirmation hearing.

C. Unclassified Claims

1. Administrative Expense Claims

An Administrative Expense Claim is a Claim for costs and expenses of administration of the Chapter 11 Cases that are Allowed under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses

incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors.

Certain Allowed Administrative Expense Claims will be paid by the Debtors in the ordinary course of business during the Chapter 11 Cases. Otherwise, each Holder of an Allowed Administrative Expense Claim will receive Cash in an amount equal to the unpaid amount of such Allowed Administrative Expense Claim on the later of the Effective Date or the date on which such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is reasonably practicable.

2. Professional Fee Claims

Professionals are attorneys, financial advisors, and other advisors that are employed pursuant to an order of the Bankruptcy Court pursuant to sections 327, 363, or 1103 of the Bankruptcy Code. Professional Fee Claims are Claims for fees and expenses incurred by Professionals during the Chapter 11 Cases. Under the Plan, all Professionals seeking payment of Professional Fee Claims are required to file applications for final allowance of compensation for services rendered and reimbursement of expenses incurred by no later than thirty (30) days after the Effective Date of the Plan.

Professionals are required to provide the Debtors with their good faith estimate of unpaid Professional Fee Claims to be incurred through the Effective Date by no later than five (5) Business Days prior to the Effective Date. The Debtors shall set up a Professional Fee Escrow with Cash equal to the amount of the Professional Fee Claims Estimate. Allowed Professional Fee Claims shall be paid (a) in Cash to such Professionals from funds held in the Professional Fee Escrow when such Claims are Allowed by an order of the Bankruptcy Court, or (b) upon such other terms as may be mutually agreed upon between the Holder of such a Professional Fee Claim and the Debtors or Post-Effective Date Debtors, as applicable.

3. Priority Tax Claims

A Priority Tax Claim is a Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code. Except as otherwise provided in the Plan, on the Effective Date or as soon thereafter as is reasonably practicable (but in no event later than 30 days after the Effective Date), each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction of such Claim, either (a) Cash in an amount equal to the Allowed amount of such Claim or such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code or (b) or such other less favorable treatment as to which the Debtors or the Post-Effective Date Debtors, as applicable, and the Holder of such Allowed Administrative Expense claim have agreed upon in writing; *provided*, that Allowed Priority Tax Claims representing liabilities incurred in the ordinary course of business by the Debtors, as Debtors in Possession, shall be paid by the Debtors or the Post-Effective Date Debtors, as applicable, in the ordinary course of business, consistent with past practice and in accordance with the terms and

subject to the conditions of any orders or agreements governing, instruments evidencing, or other documents establishing, such liabilities.

4. DIP Claims and DIP Commitments

DIP Claims are Claims of the DIP Lender arising under or relating to the DIP Facility Term Sheet, the DIP Facility, or the Financing Orders, which includes Claims for all principal amounts outstanding of up to \$9,000,000 (subject to increase pursuant to the Financing Final Order), plus interest and any other amounts arising and required to be repaid under the DIP Facility Term Sheet, the DIP Facility, or the Financing Orders.

All DIP Claims shall be deemed Allowed as of the Effective Date in an amount equal to the principal amount outstanding under the DIP Facility on such date, and all interest accrued and unpaid thereon to the date of payment. The treatment of the Allowed DIP Claims shall be subject to a final agreement among Debtor SC SJ, the DIP Lender, and the Prepetition Secured Lender.

D. Classified Claims and Interests

1. Class 1: Other Priority Claims

An Other Priority Claim is a Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Expense Claim.

The legal, equitable, and contractual rights of the holders of Allowed Other Priority Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will, at the option of the Debtors or the Post-Effective Date Debtors, as applicable, (a) be paid in full in Cash or (b) otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or, in each case, as soon as reasonably practicable thereafter.

Allowed Other Priority Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Allowed Other Priority Claims are conclusively presumed to accept the Plan and are not entitled to vote to accept or reject the Plan, and the votes of such holders shall not be solicited with respect to such Allowed Other Priority Claims.

2. Class 2: Other Secured Claims

Other Secured Claims include any Secured Claims that are not Prepetition Secured Loan Claims.

The legal, equitable, and contractual rights of the holders of Allowed Other Secured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Other Secured Claim, at the option of the Debtors or the Post-Effective Date Debtors, as applicable, such Holder will receive (a) payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, in each case, or as soon as reasonably practicable thereafter or (b) such other treatment so as to render such holder's Allowed Other Secured Claim Unimpaired.

Allowed Other Secured Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Allowed Other Secured Claims are conclusively presumed to accept the Plan and are not entitled to vote to accept or reject the Plan, and the votes of such holders shall not be solicited with respect to such Allowed Other Secured Claims.

3. Class 3A: SC SJ Prepetition Secured Loan Claims

On the Effective Date or as soon as reasonably practicable thereafter: the Prepetition Secured Lender will release its right to receive Default Interest and shall receive, on account of the SC SJ Prepetition Secured Loan Claim (i) payment in Cash of (A) any unpaid interest on the Prepetition Secured Loan accrued prior to the Effective Date at the non-default rate set forth in the Prepetition Secured Loan Agreement, minus the FMT Collateral Payment received under Section 4.4(a) of the Plan and any recovery received on account of its Allowed FMT Deficiency Claim; under Section 4.6(a) of the Plan; and (B) any unpaid reasonable costs and expenses owed pursuant to the Restructuring Support Agreement, Prepetition Secured Loan Documents, or Financing Orders incurred prior to the Effective Date; and (ii) payment in full over time of the Post-Effective Date Secured Loan Amount by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents, which shall be delivered on or before the Effective Date

The SC SJ Prepetition Secured Loan Claim is Impaired. The Holder of the SC SJ Prepetition Secured Loan Claims is entitled to vote on the Plan.

4. Class 3B: FMT Prepetition Secured Loan Claims

On the Effective Date or as soon as reasonably practicable thereafter: the Prepetition Secured Lender shall receive, on account of the FMT Prepetition Secured Loan Claim, the FMT Collateral Payment, and all Prepetition FMT Collateral, other than cash collateral, shall be delivered in kind to Reorganized SC SJ and repayment of the debt secured by the Prepetition FMT Collateral shall be made over time by Reorganized SC SJ pursuant to the Post-Effective Date Secured Loan Documents

The FMT Prepetition Secured Loan Claim is Impaired. The Holder of the FMT Prepetition Secured Loan Claims is entitled to vote on the Plan.

5. Class 4A: SC SJ General Unsecured Claims

The legal, equitable, and contractual rights of the Holders of Allowed SC SJ General Unsecured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed SC SJ General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed SC SJ General Unsecured Claim, such Holder will receive payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such SC SJ General Unsecured Claim becomes an Allowed SC SJ General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.

Allowed SC SJ General Unsecured Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed SC SJ General Unsecured Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed SC SJ General Secured Claims.

6. Class 4B: FMT General Unsecured Claims

Each Holder of an Allowed FMT General Unsecured Claim will receive on account of such Allowed FMT General Unsecured Claim, in full and final satisfaction of such Allowed FMT General Unsecured Claim, its Pro Rata share of the FMT GUC Cash Pot. For the avoidance of doubt, the FMT Deficiency Claim is an Allowed FMT General Unsecured Claim. If Class 4B votes to accept the Plan, the Prepetition Secured Lender will voluntarily waive its right to receive its Pro Rata share of the FMT GUC Cash Pot on account of the FMT Deficiency Claim. If Class 4B votes to reject the Plan the Plan the Prepetition Secured Lender shall receive its Pro Rata share of the FMT GUC Cash Pot on account of the FMT Deficiency Claim.

Allowed FMT General Unsecured Claims are Impaired. Holders of Allowed FMT General Unsecured Claims are entitled to vote on the Plan.

7. Class 4C: Fairmont General Unsecured Claims

The legal, equitable, and contractual rights of the Holders of Allowed Fairmont General Unsecured Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed Fairmont General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed Fairmont General Unsecured Claim, such Holder will receive payment in full in Cash plus interest at the Federal judgment rate, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Fairmont General Unsecured Claim becomes an Allowed Fairmont General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.

Allowed Fairmont General Unsecured Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed Fairmont General Unsecured Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed Fairmont General Unsecured Claims.

8. Class 5: Inter-Debtor Claims

Inter-Debtor Claims are Claims of one Debtor against another Debtor. On or after the Effective Date, all Inter-Debtor Claims shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect.

Inter-Debtor Claims are Impaired. In accordance with section 1126(g) of the Bankruptcy Code, Inter-Debtor Claims are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.

9. Class 6A: SC SJ Subordinated Claims

The legal, equitable, and contractual rights of the Holders of Allowed SC SJ Subordinated Claims are unaltered by the Plan. Except to the extent that a Holder of an Allowed SC SJ Subordinated Claim agrees to a less favorable treatment, in full and final satisfaction of such Allowed SC SJ Subordinated Claim, such Holder will receive payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such SC SJ Subordinated Claim becomes an Allowed SC SJ General Unsecured Claim, in each case, or as soon as reasonably practicable thereafter.

Allowed SC SJ Subordinated Claims are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Allowed SC SJ Subordinated Claims are conclusively presumed to accept the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to such Allowed SC SJ Subordinated Claims.

10. Class 6B: FMT Subordinated Claims

All FMT Subordinated Claims, if any, shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed FMT Subordinated Claims will not receive any distribution on account of such Allowed FMT Subordinated Claims.

Allowed FMT Subordinated Claims are Impaired. In accordance with section 1126(g) of the Bankruptcy Code, Holders of FMT Subordinated Claims are conclusively presumed to reject the Plan and are not entitled to vote on the Plan, and the votes of such Holders shall not be solicited with respect to FMT Subordinated Claims.

11. Class 7A: SC SJ Equity Interest

The legal, equitable, and contractual rights of the Holder of the SC SJ Equity Interest are unaltered by the Plan. The SC SJ Equity Interest shall be deemed Allowed as of the Effective Date. On the Effective Date, the SC SJ Equity Interest shall be reinstated, and the Holder of the SC SJ Equity Interest shall retain such SC SJ Equity Interest.

The SC SJ Equity Interest is Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holder of the SC SJ Equity Interest is conclusively presumed to accept the Plan and is not entitled to vote on the Plan, and its vote shall not be solicited with respect to such SC SJ Equity Interest.

12. Class 7B: FMT Equity Interest

The FMT Equity Interest shall be discharged, cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and the Holder of the FMT Equity Interest will not receive any distribution on account of such FMT Equity Interest.

The FMT Equity Interest is Impaired. In accordance with section 1126(g) of the Bankruptcy Code, the Holder of the FMT Equity Interest is conclusively presumed to reject the Plan and is not entitled to vote on the Plan, and the votes of such Holder shall not be solicited with respect to the FMT Equity Interest.

E. Means for Implementation

1. Rebranding of Hotel Under New Management Agreement with Subordinate Financing and Amendment of the Prepetition Secured Loan

Emergence from the Chapter 11 Cases will center on (i) entry into a new management agreement with ~~a leading hotel brand~~ (“Hilton (defined above as the New Hotel Management Agreement)”), pursuant to which it will ~~assume responsibility for operating~~ manage the Hotel after the Effective Date, (ii) ~~a mezzanine loan (or other subordinated financing) to be provided to procurement of a Qualified Mezzanine Loan by Debtor SC SJ’s parent company by that hotel brand or its designee (“Qualified Manager Mezzanine Loan”)~~, and (iii) an amendment to the Prepetition Secured Loan Agreement that, among other things, extends the maturity date of the Prepetition Secured Loan, as set forth in the RSA.

Under the terms of the RSA, if, among other things, (a) a Qualified Manager (i.e., a hotel manager approved by the Prepetition Secured Lender) enters into a New Hotel Management Agreement, and (b) Debtor SC SJ’s parent company obtains a Qualified Mezzanine Loan on terms and conditions acceptable to the Prepetition Secured Lender, including the terms and conditions set forth in the RSA (e.g., interest rate of 7% per annum and a maturity date of 5 years from the Effective Date) ((a) and (b) together, the “New Manager Condition”), the maturity date on the Prepetition Secured Loan will be extended for three (3) years after the Effective Date with two one-year extension options (the “Qualified Manager Loan Amendment”).

~~Debtor SC SJ has agreed to seek a Qualified Mezzanine Loan (i) in an amount of not less than \$45 million, (ii) that has a term of at least five (5) years, and (iii) that bears interest at a rate of no more than seven percent (7.00%) per annum. Part of the Qualified Manager Mezzanine Loan proceeds will be contributed to Debtor SC SJ to be used to make certain payments under the Plan, provide funding for the Hotel’s operating expenses after the Effective Date, and cover~~

~~any post-Effective Date shortfalls on monthly debt service payments owed on the Prepetition Secured Loan.~~

~~The Qualified Manager Mezzanine Loan will not be made to the Debtors directly, but to their direct or indirect equity holder, who will contribute a portion of the Qualified Manager Mezzanine Loan to fund the Plan pursuant to the Parent Capital Contribution.¹⁶~~

~~If a new management agreement or Qualified Manager Mezzanine Loan that satisfies the conditions required under the RSA (the “the New Manager Condition”) cannot be obtained is not satisfied, the parties will not enter into the Qualified Manager Loan Amendment. Instead, the Prepetition Secured Loan Agreement will be amended to, among other things, extend the maturity date of the Prepetition Secured Loan for nine (9) months after the Effective Date (the “*Other Post-Effective Date Loan Amendment*”).~~

In the case of either the Qualified Manager Loan Amendment or Other Post-Effective Date Loan Amendment, the terms and conditions of the Prepetition Secured Loan will be amended and reinstated with the following modifications: (i) default interest accruing before the Effective Date will be forgiven and default interest will not accrue after the Effective Date, absent a new default; (ii) interest at the nondefault contract rate accruing before the Effective Date that has not yet been paid will be paid in cash on the Effective Date; (iii) Reorganized SC SJ will pay regular monthly payments of all accruing interest after the Effective Date; (iv) interest and carry reserve will be funded for initial twelve (12) months subject to replenishment as reasonably required by the Prepetition Secured Lender; (v) the affiliate Guaranty will be reinstated on existing terms; (vi) the Guarantors, which are non-debtor affiliates of the Debtors, will enter into a completion guaranty and an interest and carry guaranty on terms acceptable to the Prepetition Secured Lender.

The RSA identifies Hilton as a Qualified Manager. However, a Qualified Mezzanine Loan has not yet been secured. Although the Debtors believe that such loan will be secured, nothing set forth herein shall be construed as a guarantee of that. If such a loan cannot be obtained, the Debtors will not be able to satisfy the New Manager Condition and the parties will enter into the Other Post-Effective Date Loan Amendment.

Notwithstanding anything to the contrary set forth herein, the Debtors have reserved, and continue to reserve, all rights to pursue all options with respect to a New Hotel Management Agreement and exit financing that are in the best interests of their estates.

2. Formation of New Lessee

The Plan provides for the formation of “New Lessee,” a limited liability company to be formed by FMT SJ Holdings LLC, as the sole member of New Lessee. On the Effective Date, Debtor SC SJ will enter into a lease agreement with New Lessee pursuant to which New Lessee

¹⁶~~The non-debtor equity holder will also use part of the proceeds of the Qualified Manager Mezzanine Loan to redeem the Parent Preferred Equity.~~

would lease the Hotel after the Effective Date. ~~It is also anticipated that New Lessee will and would likely~~ be a party to the New Hotel Management Agreement. As FMT SJ Holdings LLC is Debtor SC SJ's direct member, Debtor SC SJ and New Lessee will be affiliated entities.

3. Compromise and Settlement of Claims, Interests and Controversies

To the extent provided for by the Bankruptcy Code in consideration for the classification, distributions, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

4. Plan Funding

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Debtors or Post-Effective Date Debtors, as applicable, to make payments required pursuant to the Plan shall be funded from proceeds advanced under the DIP Facility, Cash on the Debtors' balance sheets as of the date on which the applicable payment is made, ~~and proceeds of the Qualified-Manager Mezzanine Loan that Debtor SC SJ's parent contributes~~ (subject to the terms and conditions thereof), the Parent Capital Contribution, and any other sources that are or become available to the Debtors ~~as a capital contribution~~.

A chart summarizing contemplated sources and uses for Plan payments is set forth in section VI.B.3. below.

5. Corporate Existence

Debtor SC SJ will continue to exist after the Effective Date as a separate legal entity, with all the powers of a limited liability company pursuant to the applicable law in its state of incorporation or organization. After the Effective Date, Reorganized SC SJ shall exist pursuant to the same organizational documents that were in effect prior to the SC SJ Petition Date. Reorganized SC SJ will continue to be a member managed limited liability company, and its independent managers will be C. Anthony Shippam and Candace R. Corra.

From and after the Effective Date, Post-Effective Date FMT shall continue in existence for solely purposes of: (i) winding down its business, Assets, and affairs as expeditiously as reasonably possible; (ii) resolving and making distributions on all Allowed Claims against Debtor FMT; (iii) filing appropriate tax returns, if any; (iv) administering the Plan in an efficacious manner, with no objective to continue or engage in the conduct of a trade or business; (v) filing any reports required by the United States Trustee guidelines; (vi) maintaining, transferring, or terminating any Insurance Policies, as deemed necessary by Post-Effective Date FMT; and (vii) taking the steps necessary to dissolve Post-Effective Date FMT under applicable state law. Post-Effective Date FMT shall delegate all management and governance responsibility of Post-Effective Date FMT to the Post-Effective Date FMT Manager solely for the foregoing purposes. The Post-Effective Date FMT Manager shall be replaced only for cause. It is the

intention of the parties that Post-Effective Date FMT shall be treated as a disregarded entity for U.S. federal income tax purposes.

On or after the Effective Date, each Post-Effective Date Debtor may take actions in accordance with applicable law and its corporate governance documents, as such Post-Effective Date Debtor may determine is reasonable and appropriate, including: (i) dissolving under applicable law; (ii) changing its legal name; (iii) converting its form of entity; or (iv) closing its Chapter 11 Case, in each case without the need for further action or approval (other than any filings required under applicable state, local and federal or foreign law).

6. Corporate Action

On the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including (i) the assumption of executory contracts and unexpired leases as provided in the Plan, (ii) the selection of managers and/or officers of the Post-Effective Date Debtors, (iii) entry into the Qualified Manager Loan Amendment or Other Post-Effective Date Amendment, as applicable, (iv) entry into the New Hotel Management Agreement, (v) entry into the Post-Effective Date Loan Documents, (vi) entry into the New Lease, and (vii) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date), in each case in accordance with and subject to the terms of the Plan and the Confirmation Order. All matters provided for in the Plan involving the corporate or limited liability company structure of the Debtors or the Post-Effective Date Debtors, and any corporate or limited liability company action required by the Debtors or the Post-Effective Date Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without the need for further action by the security holders, managers, or officers of the Debtors or the Post-Effective Date Debtors.

On or before (as applicable) the Effective Date, the appropriate officers and managers of the Debtors or the Post-Effective Date Debtors, as applicable, shall be authorized and directed to issue, execute, and deliver the agreements, documents, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan). Additionally, on or after the Effective Date, the Post-Effective Date Debtors may take all actions necessary or appropriate to effect any transaction described in, approved by, or necessary or appropriate to effectuate the Plan.

7. Cancellation of Existing Securities, Agreements and Security Interests

Except for the purpose of evidencing a right to and allowing Holders of Claims to receive a distribution under the Plan and as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, security documents, and other instruments or documents evidencing or creating any prepetition Claim or Interest (collectively, the “*Cancelled Agreements*”) and any rights of any Holder in respect thereof shall be deemed cancelled and of no force or effect and the Debtors shall not have any continuing obligations thereunder. Notwithstanding anything to the contrary in the Plan, the following shall not be

Cancelled Agreements: (i) the Prepetition Secured Loan Documents; and (ii) the SC SJ Equity Interest, which is not modified by the Plan.

Upon the full payment or other satisfaction of an Allowed Other Secured Claim, or promptly thereafter, the Holder of such Allowed Other Secured Claim shall deliver to the Debtors or the Post-Effective Date Debtors, as applicable, any Collateral or other property of a Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Other Secured Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or lis pendens, or similar interests or documents. Notwithstanding anything to the contrary in the Plan, the Liens of the Prepetition Secured Lender pursuant to the Prepetition Secured Loan Documents shall be deemed to become Liens under the Post-Effective Date Secured Loan Documents, and shall not be discharged under the Plan.

F. Distributions

1. Distributions Generally

Except as otherwise provided in the Plan, the Confirmation Order, or another order of the Bankruptcy Court, all distributions under the Plan shall be made on the Effective Date or as soon thereafter as is practicable by the Debtors or such other Person designated by the Debtors as "Disbursing Agent." The Disbursing Agent shall make all Distributions to the appropriate Holders of Allowed Claims and Allowed Interests in accordance with the terms of the Plan.

Except as specifically provided for in the Plan, the Confirmation Order, or another order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

2. Rights and Powers of Disbursing Agent

Under the terms of the Plan, the Disbursing Agent will have the power to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (ii) make all applicable distributions or payments provided for under the Plan; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers (x) as may be vested in the Disbursing Agent by order of the Bankruptcy Court (including any Final Order issued after the Effective Date) or pursuant to the Plan or (y) as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

Except as otherwise ordered by the Bankruptcy Court and subject to the written agreement of the Post-Effective Date Debtors, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including for reasonable attorneys'

and other professional fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Post-Effective Date Debtors in the ordinary course of business.

3. Manner and Delivery of Distributions

At the Disbursing Agent's option, any Cash payment to be made under the Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date¹⁷ by the Disbursing Agent. Distributions to Holders of Allowed Claims will be made at the address of each such Holder as set forth in the Debtors' books and records. Distributions under the Plan on account of such Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. If any distribution to any Holder is returned as undeliverable, then no distribution or payment to such Holder shall be made unless and until the Disbursing Agent has been notified of the then-current address of such Holder, at which time or as soon thereafter as reasonably practicable, such distribution shall be made to such Holder without interest. None of the Debtors, the Post-Effective Date Debtors, and the Disbursing Agent shall incur any liability whatsoever on account of any distributions under the Plan.

4. Unclaimed Property

Six months from the later of: (i) the Effective Date and (ii) the date that is ten (10) Business Days after the date a Claim is first Allowed, all distributions that remain payable on account of such Claim shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revert to the respective Post-Effective Date Debtor or its successors or assigns, and all claims on account of such distribution shall be discharged and forever barred. The Post-Effective Date Debtors and the Disbursing Agent shall have no obligation to attempt to locate any Holder of an Allowed Claim other than by reviewing the Debtors' books and records and the Bankruptcy Court's filings.

For the avoidance of doubt, a distribution shall be deemed unclaimed if a Holder has not: (i) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (ii) given notice to the Post-Effective Date Debtors of an intent to accept a particular distribution; (iii) responded to the Debtors' or Post-Effective Date Debtors' requests for information necessary to facilitate a particular distribution; or (iv) taken any other action necessary to facilitate such distribution.

¹⁷ The "Distribution Record Date" is the date that is five (5) Business Days before the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court in the Chapter 11 Cases (*i.e.*, the Confirmation Date). As of the close of business on the Distribution Record Date, the transfer registers maintained by the Debtors or their agents for each Class of Claims or Interests will be closed, and there shall be no further changes in the record Holders of any of the Claims or Interests.

5. Setoffs and Recoupments

Pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, each Post-Effective Date Debtor or its designee may offset or recoup against any Allowed Claim and the distributions to be made on account of such Allowed Claim any and all claims, rights, and Causes of Action that a Post-Effective Date Debtor or its successors may hold against the Holder of such Allowed Claim after the Effective Date to the extent such setoff or recoupment is either (a) agreed in amount among the Post-Effective Date Debtor(s) and Holder of the Allowed Claim or (b) adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided*, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim shall constitute a waiver or release by a Post-Effective Date Debtor or its successor of any claims, rights, or Causes of Action against such Holder.

6. Claims Paid by Third Parties or Insurance Carriers

If the Holder of a Claim receives payment in full on account of such Claim from a party that is not a Debtor or Post-Effective Date Debtor, then such Claim will be reduced in full and will be disallowed without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent that a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Post-Effective Date Debtor on account of such Claim, such Holder shall repay, return or deliver any distribution held by or transferred to the Holder to the applicable Post-Effective Date Debtor to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any such satisfaction.

7. Fractional Dollars; De Minimis Distributions

Whenever any distribution to a Holder of a Claim would otherwise call for distribution of Cash in a fractional dollar amount, the actual distribution of such Cash shall be rounded to the nearest whole dollar (up or down), with half dollars (or less) being rounded down. Neither the Debtors nor the Post-Effective Date Debtors shall be required to make any Cash payment of less than ten dollars (\$10.00) with respect to any Claim unless a request therefor is made in writing to the Debtor or the Post-Effective Date Debtors, as applicable; *provided, however*, that neither the Debtors nor Post-Effective Date Debtors shall have any obligation to make any distribution, whether final or not, unless and until the total amount of such distribution to a specific Holder of an Allowed Claim is equal to or greater than ten dollars (\$10.00).

G. Procedures for Disputed Claims

1. Generally

Except as provided in the Plan or in any order entered by the Bankruptcy Court prior to the Effective Date, no Claim shall be Allowed unless it is deemed Allowed under the Plan or the Bankruptcy Code. On and following the Effective Date, the Post-Effective Date Debtors shall be vested with any and all rights and defenses the Debtors had with respect to any Claim immediately prior to the Effective Date. The Debtors or the Post-Effective Date Debtors, as applicable, shall also be entitled to settle any claims dispute. At such time as a Disputed Claim becomes an Allowed Claim, a distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan as soon as practicable.

Except insofar as a Claim is Allowed under the Plan, the Debtors or the Post-Effective Date Debtors, as applicable, shall be entitled to object to Claims until the later of (i) 180 days after the Effective Date and (ii) such later date(s) as may be fixed by the Bankruptcy Court, after notice and a hearing, upon a motion by the Post-Effective Date Debtors. Additionally, before or after the Effective Date, the Debtors or the Post-Effective Date Debtors may at any time request that the Bankruptcy Court estimate any Disputed Claim or Disputed Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason.

2. Disputed Claims Reserve

There shall be withheld from the FMT GUC Cash Pot to be distributed to Holders of Allowed FMT General Unsecured Claims an amount of Cash that would be distributable to Disputed FMT General Unsecured Claims had such Disputed Claims been Allowed on the Effective Date. No interest shall be paid with respect to any Disputed FMT General Unsecured Claim that becomes an Allowed Claim after the Effective Date. The Debtors intend to seek a determination by the Bankruptcy Court of the estimated amount (on an aggregate basis) of Disputed FMT General Unsecured Claims for purposes of determining the amount of Cash from the FMT GUC Cash Pot attributable to such Disputed Claims. The Disputed Claims Reserve shall be determined prior to the Confirmation Hearing, based on the Debtors' good faith estimates, and shall be established prior to the Effective Date.

Subject to definitive guidance from the Internal Revenue Service (the "*IRS*") or a court of competent jurisdiction to the contrary, or the receipt of a determination by the IRS, the Disbursing Agent shall treat any cash and other property held in the Disputed Claims Reserve as held by a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 and to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including, without limitation, the Debtors, the Post-Effective Date Debtors, the Disbursing Agent and the Holders of Disputed Claims) will be required to report for tax purposes consistently with the foregoing.

The Disbursing Agent shall hold in the Disputed Claims Reserve all payments and other distributions made on account of, as well as any obligations arising from, property held in the Disputed Claims Reserve, to the extent that such property continues to be so held at the time such

distributions are made or such obligations arise, and such payments, or other distributions shall be held for the benefit of Holders of Disputed FMT General Unsecured Claims whose Claims are subsequently Allowed. The Disbursing Agent shall be responsible for payment, out of the assets of the Disputed Claims Reserve, of any taxes imposed on the Disputed Claims Reserve or its assets.

H. Treatment of Executory Contracts and Unexpired Leases

1. General Treatment

As of and subject to the occurrence of the Effective Date, all executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such contract or lease (i) was previously assumed, assumed and assigned, or rejected by the Debtors pursuant to a Final Order of the Bankruptcy Court, (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto, (iii) is the subject of a pending motion to assume filed by the Debtors before the Effective Date, or (iv) is specifically designated as a contract or lease to be assumed on the Schedule of Assumed Contracts. The assumption of executory contracts and unexpired leases hereunder may include the assignment of certain such contracts, including assignment to New Lessee.

To the maximum extent permitted by law, to the extent any provision in any executory contract or unexpired lease assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assignment of such executory contract or unexpired lease, then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such executory contract or unexpired lease or to exercise any other default-related rights with respect thereto.

The Debtors reserve the right, on or before 5:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days before the Confirmation Hearing, or such other time as may be agreed in writing between the Debtors and the applicable counterparty, to amend the Schedule of Assumed Contracts to add or remove any executory contract or unexpired lease. If the Confirmation Hearing is adjourned or continued, such amendment right shall be extended to 5:00 p.m. (prevailing Eastern Time) on the date that is seven (7) days before the rescheduled or continued Confirmation Hearing. The Debtors also may amend the Schedule of Assumed Contracts to add or delete any executory contracts or unexpired leases after such date to the extent agreed with the relevant counterparties and entry of an order of the Bankruptcy Court.

2. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise specified, each Executory Contract and Unexpired Lease assumed, assumed and assigned or rejected by the Debtors shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any

agreement, instrument, or other document that in any manner affects such Executory Contract or Unexpired Lease.

3. Determination of Cure Amounts and Deemed Consent

Contracts that are to be assumed pursuant to the Plan shall be listed on the Schedule of Assumed Contracts. The Schedule of Assumed Contracts shall be served on parties to executory contracts and unexpired leases that the Debtors are seeking to assume by no later than twenty-one (21) days prior to the Confirmation Hearing. The Schedule of Assumed Contracts shall include the proposed Cure Amount for each executory contract or unexpired lease. If a Cure Amount is not listed, the proposed Cure Amount for such executory contract or unexpired lease shall be deemed to be zero dollars (\$0).

Any objection to the proposed assumption, assumption and assignment, or related Cure Amount listed on the Schedule of Assumed Contracts must be filed and served on the Debtors' counsel within fourteen (14) days prior to the Confirmation Hearing.

The Bankruptcy Court will determine any Assumption Dispute by entry of an order; *provided, that* the Debtors or the Post-Effective Date Debtors, as applicable, may settle any Assumption Dispute without any further notice to any other party or any action, order, or approval of the Bankruptcy Court; *provided, further,* that where an Assumption Dispute relates solely to the applicable Cure Amount, the Debtors may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of such Assumption Dispute. If there is an Assumption Dispute, the Debtors or the Post-Effective Date Debtors, as applicable, reserve the right to reject or nullify the assumption or assignment of the applicable executory contract or unexpired lease no later than thirty (30) days after an order of the Bankruptcy Court resolving such Assumption Dispute becomes a Final Order.

4. Payments Related to Assumption of Contracts and Leases

Any Cure Amounts shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code by payment of the Cure Amount as reflected in the Schedule of Assumed Contracts, in Cash on the Effective Date, subject to the limitations described in Section 8.1 of the Plan, or on such other terms as the parties to such executory contracts or unexpired leases and the Debtors may otherwise agree. Any Cure Amounts related to executory contracts or unexpired leases that are assumed and assigned to New Lessee shall be paid by New Lessee. If no Cure Amount is reflected for a particular executory contract or unexpired lease in the Schedule of Assumed Contracts, no Cure Amount shall be deemed to be owing, unless otherwise ordered by the Bankruptcy Court.

Assumption or assumption and assignment of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims against any Debtor or defaults by any Debtor, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at

any time before the date that the Debtors assume or assume and assign such executory contract or unexpired lease. Any proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed or assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, upon the assumption of such executory contract or unexpired lease.

5. Rejection Damages Claims

Unless otherwise provided by a Final Order of the Bankruptcy Court, any proofs of Claim based on the deemed rejection of an executory contract or unexpired lease pursuant section 8.1 of the Plan, must be filed with the Claims Agent and served on the Debtors or the Post-Effective Date Debtors, as applicable, by no later than thirty (30) days after the Confirmation Date. Any objection to the deemed rejection of an executory contract or unexpired lease pursuant to section 8.1 of the Plan must be filed with the Bankruptcy Court and served on the Debtors or Post-Effective Date Debtors, as applicable, by no later than fourteen (14) days after entry of the Confirmation Order.

Any Holders of Claims arising from the rejection of an executory contract or unexpired lease for which proofs of Claims were not timely filed as set forth in this section 8.5 shall not (a) be treated as a creditor with respect to such Claim; (b) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection; or (c) participate in any distribution in the Chapter 11 Cases on account of such Claim. Any Claims arising from the deemed rejection of an executory contract or unexpired lease pursuant to section 8.1 of the Plan not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Post-Effective Date Debtors, the Debtors' Estates, or any of their respective property. Any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a proof of Claim to the contrary.

6. Survival of the Debtors' Indemnification Obligations

Notwithstanding anything in the Plan to the contrary, any Indemnification Obligation to indemnify current and former officers, members, and managers shall (a) remain in full force and effect, (b) not be discharged, impaired, or otherwise affected in any way, including by the Plan, the Plan Supplement, or the Confirmation Order, (c) not be limited, reduced or terminated after the Effective Date, and (d) survive unimpaired and unaffected irrespective of whether such Indemnification Obligation is owed for an act or event occurring before, on or after the Petition Date, *provided, that* the Post-Effective Date Debtors shall not indemnify officers, members, or managers, as applicable, of the Debtors for any claims or Causes of Action that are not indemnified by such Indemnification Obligation. All such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors under the Plan and shall continue as obligations of the Post-Effective Date Debtors. Any claim based on the Debtors' obligations

under the Plan shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code.

7. Insurance Policies

All insurance policies to which Debtor SC SJ is a party as of the Effective Date, other than any insurance policy related to workers' compensation, shall be deemed to be and treated as executory contracts and shall be assumed by Debtor SC SJ or Reorganized SC SJ, as applicable, and shall continue in full force and effect thereafter in accordance with their respective terms.

8. Collective Bargaining Agreements

Notwithstanding anything to the contrary ~~set forth~~[herein or](#) in the Plan, treatment of the Collective Bargaining Agreements shall be addressed in the Plan Supplement or in a motion to be filed prior to the Effective Date.

9. Reservation of Rights

Neither the exclusion nor the inclusion by the Debtors of any contract or lease on any exhibit, schedule, or other annex to the Plan or in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is or is not an executory contract or unexpired lease or that the Debtors or the Post-Effective Date Debtors or their respective affiliates has any liability thereunder.

Except as explicitly provided in the Plan, nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors or the Post-Effective Date Debtors under any executory or non-executory contract or unexpired or expired lease.

Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors or the Post-Effective Date Debtors, as applicable, under any executory or non-executory contract or unexpired or expired lease.

If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under the Plan, the Debtors or the Post-Effective Date Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

I. Conditions Precedent to the Effective Date

1. Conditions Precedent to Effective Date

The Effective Date shall not occur unless all of the following conditions have been satisfied or waived in accordance with the Plan:

a. the documents in the Plan Supplement contain terms and conditions consistent in all material respects with the Restructuring Support Agreement, the Restructuring Term Sheet, and the Plan, including any consent or approval rights therein;

b. if the New Manager Condition is satisfied, the New Hotel Management Agreement, Qualified ~~Manager~~ Mezzanine Loan Agreement, Qualified Manager SNDA, and Qualified ~~Manager~~ Mezzanine Intercreditor Agreement shall have been executed and delivered by all of the Entities that are party thereto, and all conditions precedent to the effectiveness of the foregoing documents (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived in accordance with the terms thereof;

c. the Financing Final Order shall be in full force and effect and shall not have been reversed, stayed, dismissed, or vacated;

d. the Bankruptcy Court shall have entered the Confirmation Order in form and substance acceptable to the Prepetition Secured Lender in its sole discretion (*provided* that the Prepetition Secured Lender shall not withhold consent based solely on any term in the Confirmation Order that is consistent with the Restructuring Support Agreement or the Restructuring Term Sheet), which order (i) shall be on terms consistent with the Restructuring Support Agreement and the Restructuring Term Sheet, (ii) shall provide that the provisions in the Confirmation Order and the Plan are non-severable and mutually dependent, and (iii) shall not have been reversed, stayed, dismissed, or vacated;

e. the Debtors shall have complied, in all material respects, with the terms of the Plan, the Restructuring Support Agreement, and the Restructuring Term Sheet that are to be performed by the Debtors on or prior to the Effective Date;

f. the Post-Effective Date Secured Loan Documents shall have been executed and delivered by all of the Persons that are party thereto, all conditions precedent to the effectiveness of the Post-Effective Date Secured Loan Documents (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived in accordance with the terms thereof;

g. the Restructuring Support Agreement shall be in full force and effect and shall not have been terminated; *provided, however*, that the Debtors are not required to seek or obtain approval of, or authorization to enter into or assume the obligations under, the Restructuring Support Agreement from the Bankruptcy Court;

h. the Parent Preferred Equity shall be paid to the holder thereof in full in Cash;

i. Debtor FMT shall have funded the FMT GUC Cash Pot;

j. (i) the New Lessee LLC Agreement shall have been executed and all steps required with respect to the formation of New Lessee under applicable non-bankruptcy law shall have been taken, (ii) the New Lease shall have been executed and delivered by all of the Entities

that are party thereto, and (iii) and all conditions precedent to the effectiveness of the foregoing documents (other than any conditions related to the occurrence of the Effective Date) shall have been satisfied or waived in accordance with the terms thereof;

k. all consents, actions, documents, certificates and agreements necessary to implement the Plan will have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws; ~~and~~[andg](#)

l. all actions, documents, certificates, and agreements necessary to implement the Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws.

2. Waiver of Conditions Precedent

Each of the conditions precedent to the occurrence of the Effective Date may be waived in writing by the Debtors and the Prepetition Secured Lender without leave of or order of the Bankruptcy Court. If any such condition precedent is waived pursuant to this section and the Effective Date occurs, each party agreeing to waive such condition precedent shall be estopped from withdrawing such waiver after the Effective Date or otherwise challenging the occurrence of the Effective Date on the basis that such condition was not satisfied, the waiver of such condition precedent shall benefit from the “equitable mootness” doctrine, and the occurrence of the Effective Date shall foreclose any ability to challenge the Plan in any court. If the Plan is confirmed for fewer than all of the Debtors, only the conditions applicable to the Debtor or Debtors for which the Plan is confirmed must be satisfied or waived for the Effective Date to occur.

Except as otherwise provided in the Plan, all 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.

The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon the entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

3. Effect of Failure of a Condition

Subject to Section 11.3 of the Plan, if the conditions listed in Section 9.1 of the Plan are not satisfied or waived in accordance with Section 9.2 of the Plan on or before the Effective Date, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against or any Interests in the Debtors, (b) prejudice in any manner the rights of any Person, or (c) constitute an admission, acknowledgement, offer, or undertaking by the Debtors.

J. Effect of Confirmation

1. Binding Effect

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of the Plan shall bind every Holder of a Claim against or Interest in any Debtor and inure to the benefit of and be binding on such Holder's respective successors and assigns, regardless of whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has accepted the Plan.

2. Vesting of Assets

Except as otherwise provided in the Plan or the Confirmation Order (including, for the avoidance of doubt, the provisions regarding the rights of the Prepetition Secured Lender under the Post-Effective Date Secured Loan Documents), on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all Assets of the Estates, including all claims, rights, and Causes of Action and any property acquired by the Debtors or the Post-Effective Date Debtors during the Chapter 11 Cases or under or in connection with the Plan shall vest in each respective Post-Effective Date Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests, other than the Prepetition Secured Lender's liens, claims, and interests.

3. Discharge

Except as otherwise provided in the Plan or in the Confirmation Order, the distributions, rights and treatment to be made under the Plan, shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their Assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or noncontingent 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: (a) a proof of claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Interest has accepted the Plan. Any default or "event of default" by the Debtors or affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests (subject to the Effective Date occurring).

Each Holder (as well as any trustee or agent on behalf of such Holder) of a Claim or Interest, and any affiliate of such Holder, shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in the Plan, upon the Effective Date, all such Holders of Claims and Interests and their affiliates shall be forever precluded and enjoined, pursuant to sections 105, 524, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in any Debtor or any Post-Effective Date Debtor.

Notwithstanding anything to the contrary in the Plan, the Confirmation Order, or this Disclosure Statement, the SC SJ Equity Interest and the rights of the Prepetition Secured Lender under the Post-Effective Date Secured Loan Documents are not subject to the Plan discharge.

4. Pre-Confirmation Injunctions and Stays

Unless otherwise provided in the Plan or a Final Order of the Bankruptcy Court, all injunctions and stays arising under or entered during the Chapter 11 Cases, whether under sections 105 or 362 of the Bankruptcy Code or otherwise, and in effect on the date of entry of the Confirmation Order, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

5. Injunction Against Interference with Plan

Except as otherwise provided in the Plan or in the Confirmation Order, upon the entry of the Confirmation Order, all Holders of Claims and Interests and all other parties in interest, along with their respective present and former affiliates, employees, agents, officers, directors, and principals, shall be enjoined from taking any action to interfere with the implementation or the occurrence of the Effective Date.

6. Retention of Causes of Action by the Debtors

Except as otherwise provided in the Plan, including Sections 10.5, 10.6, 10.7, 10.8, 10.9, and 10.10 thereof, nothing in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately prior to the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. The Post-Effective Date Debtors shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Confirmation Date and Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

7. Ipso Facto and Similar Provisions Ineffective

Any term of any prepetition policy, prepetition contract, or other prepetition obligation applicable to a Debtor shall be void and of no further force or effect with respect to any Debtor to the extent that such policy, contract, or other obligation is conditioned on, creates an obligation of the Debtor as a result of, or gives rise to a right of any entity based on any of the following: (a) the insolvency or financial condition of a Debtor; (b) the commencement of the Chapter 11 Cases; (c) the confirmation or consummation of the Plan, including any change of control that shall occur as a result of such consummation; or (d) the Restructuring.

K. Modification, Revocation or Withdrawal of the Plan

1. Modification and Amendments

The Plan or any exhibits thereto may be amended, modified, or supplemented by the Debtors in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, subject to the approval of the Prepetition Secured Lender in its sole discretion; *provided, however*, that the Prepetition Secured Lender shall not refuse to consent based solely on the inclusion of any term included in the Restructuring Term Sheet. In addition, after the Confirmation Date, the Debtors or the Post-Effective Date Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court.

2. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

3. Revocation or Withdrawal of the Plan

The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date as to any or all of the Debtors. If, with respect to a Debtor, the Plan has been revoked or withdrawn prior to the Effective Date, or if confirmation or the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then: (a) with respect to such Debtor: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (iii) nothing contained in the Plan shall (x) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person; (y) prejudice in any manner the rights of such Debtor or any other Person; or (z) constitute an admission of any sort by any

Debtor or any other Person; and (b) with respect to the remaining Debtor, with the consent of the Prepetition Secured Lender in its sole discretion, the Plan may be confirmed and implemented solely as it relates to such remaining Debtor.

L. Retention of Jurisdiction

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in or related to the Chapter 11 Cases, including to:

(a) hear and determine motions and/or applications for the assumption or rejection of executory contracts or unexpired leases and any disputes over Cure Amounts resulting therefrom;

(b) determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the entry of the Confirmation Order;

(c) hear and resolve any disputes arising from or related to (i) any orders of the Bankruptcy Court granting relief under Bankruptcy Rule 2004 or (ii) any protective orders entered by the Bankruptcy Court in connection with the foregoing;

(d) ensure that distributions to Holders of Allowed Claims are accomplished as provided in the Plan and the Confirmation Order and to adjudicate any and all disputes arising from or relating to distributions under the Plan;

(e) consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;

(f) enter, implement, or enforce such orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(g) issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person or other Entity with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(h) hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code;

(i) hear and determine all Professional Fee Claims;

(j) resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(k) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or

payments in furtherance of either, or any agreement, instrument, or other document governing or related to any of the foregoing;

(l) take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan, including any release, exculpation, or injunction provisions set forth in the Plan, following the occurrence of the Effective Date;

(m) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code);

(o) hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or title 28 of the United States Code;

(p) resolve any disputes concerning whether a Person had sufficient notice of the Chapter 11 Cases, the Disclosure Statement, any solicitation conducted in connection with the Chapter 11 Cases, any bar date established in the Chapter 11 Cases, or any deadline for responding or objecting to a Cure Amount, in each case, for the purpose for determining whether a Claim or Interest is discharged hereunder or for any other purpose;

(q) hear and determine any rights, Claims, or Causes of Action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory;

(r) recover all Assets of the Debtors and property of the Estates, wherever located;

(s) hear and determine matters related to the DIP Facility and the Financing Orders;
and

(t) enter a final decree closing each of the Chapter 11 Cases.

V.

ACCEPTANCE AND CONFIRMATION OF THE PLAN

A. General

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtors, including that (i) the Plan has classified Claims and Equity Interests in a permissible manner; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) the Plan has been proposed in good faith and not by any means forbidden by law; (iv) the disclosure required by section 1125 of the Bankruptcy Code has been made; (v) the Plan has been accepted by the requisite votes of Holders of Claims (except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code) and

Interests; (vi) the Plan is feasible and confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors unless such liquidation or reorganization is proposed in the Plan; (vii) the Plan is in the “best interests” of all Holders of Claims in an Impaired Class by providing to such Holders on account of their Claims property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holders would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim in such Class has accepted the Plan; and (viii) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date.

B. Parties Entitled to Vote

Pursuant to the Bankruptcy Code, only Classes of Claims and Equity Interests that are “impaired” (as defined in section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan. A Class is Impaired if the legal, equitable or contractual rights to which the Claims or Equity Interests of that Class entitle the Holders of such Claims or Equity Interests are modified, other than by curing defaults and reinstating the Claims or Equity Interests. Classes that are not Impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes that receive no Distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan.

C. Classes Impaired and Entitled to Vote under the Plan

Holders of Claims in Classes 3(A), 3(B), and 4(B) are Impaired under the Plan and entitled to vote.

D. Voting Procedures and Requirements

1. Ballots

The Solicitation Procedures Order sets ●, 2021 as the record date for voting on the Plan (the “*Record Date*”). Accordingly, only Holders of record as of the Record Date that are otherwise entitled to vote under the Plan will receive a Ballot and may vote on the Plan.

In voting for or against the Plan, please use only the Ballot sent to you with this Disclosure Statement. If you are a Holder of a Claim in Class 3 or 5 and did not receive a Ballot, your Ballot is damaged or lost, or you have any questions concerning voting procedures, please contact the Voting Agent, Stretto, at (855) 266-4998 (U.S., and Canada, toll free), (949) 398-0567 (International) or at TeamFairmontSJ@stretto.com. The Voting Agent is not authorized to and will not provide legal advice.

2. Returning Ballots

If you are entitled to vote to accept or reject the Plan, you should read carefully, complete, sign and return your Ballot, with original signature, in the enclosed envelope.

To be counted, your Ballot with your original signature indicating your acceptance or rejection of the Plan must be received no later than the Voting Deadline.

3. Voting

Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(7) and 3003(c)(2), any Creditors whose Claims (a) are Scheduled in the Debtors' Schedules as disputed, contingent or unliquidated and which are not the subject of a timely-filed Proof of Claim, or a Proof of Claim deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any order of the Bankruptcy Court, or otherwise deemed timely filed under applicable law; or (b) are not Scheduled and are not the subject of a timely-filed Proof of Claim, or a Proof of Claim deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any order of the Bankruptcy Court, or otherwise deemed timely filed under applicable law, will be denied treatment as Creditors with respect to such Claims for purposes of (a) voting on the Plan, (b) receiving Distributions under the Plan and (c) receiving notices, other than by publication, regarding the Plan.

For purposes of voting, the amount of a Claim used to calculate acceptance or rejection of the Plan under section 1126 of the Bankruptcy Code will be determined in accordance with the following hierarchy:

- a. if an order has been entered by the Bankruptcy Court determining the amount of such Claim, whether pursuant to Bankruptcy Rule 3018 or otherwise, then in the amount prescribed by the order;
- b. if no such order has been entered, then in the liquidated amount set forth in a timely-filed Proof of Claim that is not the subject of an objection as of the Claims Objection Deadline (as defined in the Solicitation Procedures Order); and
- c. if no such Proof of Claim has been timely filed, then in the liquidated, noncontingent and undisputed amount set forth in the Schedules.

For purposes of voting, the following conditions will apply to determine the amount and/or classification of a Claim:

- a. if a Claim is partially liquidated and partially unliquidated, such Claim will be allowed for voting purposes only in the liquidated amount;
- b. if a Scheduled or filed Claim has been paid, such Claim will be disallowed for voting purposes; and
- c. the Holder of a timely-filed Proof of Claim that is filed in a wholly unliquidated, contingent, disputed and/or unknown amount, and is not the subject of an objection as of the Claims Objection Deadline (as defined in

the Solicitation Procedures Order), is entitled to vote in the amount of \$1.00.

Pursuant to the Solicitation Procedures Order, the deadline for filing and serving motions pursuant to Bankruptcy Rule 3018(a) seeking temporary allowance of claims for the purpose of accepting or rejecting the Plan is ____ __, 2021 at __: __ (Eastern Time) (the “**Rule 3018(a) Motion Deadline**”).

E. Acceptance of Plan

As a condition to confirmation of a plan, the Bankruptcy Code requires that each class of impaired claims vote to accept the plan, except under certain circumstances. *See* “Confirmation Without Necessary Acceptances; Cramdown” in Article V.F below. A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and more than one-half in number of claims of those that vote in such class vote to accept the plan. A plan is accepted by an impaired class of interests if holders of at least two-thirds in amount of interests of those that vote in such class vote to accept the plan. Only those holders of claims and equity interests who vote count in these tabulations. Holders of claims and equity interests who fail to vote are not counted as either accepting or rejecting a plan.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim or equity interest in an impaired class or that the plan otherwise be found by a court to be in the best interests of each holder of a claim or equity interest in such class. *See* “Best Interests Test” in Article VI.A below. Moreover, each impaired class must accept the plan for the plan to be confirmed without application of the “fair and equitable” and “unfair discrimination” tests set forth in section 1129(b) of the Bankruptcy Code discussed below. *See* “Confirmation Without Necessary Acceptances; Cramdown” in Article V.F below.

F. Confirmation Without Necessary Acceptances; Cramdown

If any impaired class of claims or equity interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the “cramdown” requirements set forth in section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code requires that a court find that a plan (i) “does not discriminate unfairly” and (ii) is “fair and equitable,” with respect to each non-accepting impaired class of claims or equity interests.

Here, because Classes 5, 6 and 7(B) are deemed to reject the Plan, the Debtors will seek confirmation of the Plan from the Bankruptcy Court by satisfying the “cramdown” requirements set forth in section 1129(b) of the Bankruptcy Code. The Debtors believe that such requirements are satisfied as no Claim or Equity Interest Holder junior to those in Classes 5, 6 and 7(B) will receive any property under the Plan.

1. No Unfair Discrimination

A plan “does not discriminate unfairly” if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class, and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or equity interests. The Debtors believe that under the Plan all Impaired Classes of Claims and Equity Interests are treated in a manner that is consistent with the treatment of other Classes of Claims and Equity Interests that are similarly situated, if any, and no Class of Claims or Equity Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the Debtors believe the Plan does not discriminate unfairly as to any Impaired Class of Claims or Equity Interests.

2. Fair and Equitable Test

With respect to a dissenting class of claims or equity interests, the “fair and equitable” standard requires that a plan provide that either the claims or equity interests in each class received everything to which they are legally entitled or that classes junior in priority to the class receive nothing. The strict requirement of the allocation of full value to dissenting classes before any junior class can receive distribution is known as the “absolute priority rule.”

The Bankruptcy Code establishes different “fair and equitable” tests for holders of secured claims, unsecured claims and equity interests, which may be summarized as follows:

a. Secured Claims. Either (i) each holder of a claim in an impaired class of secured claims retains its liens securing its secured claim and it receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim; (ii) each holder of a claim in an impaired class of secured claims realizes the indubitable equivalent of its allowed secured claim; or (iii) the property securing the claim is sold free and clear of liens, with such liens to attach to the proceeds and the treatment of such liens on proceeds as provided in clause (i) or (ii) of this subparagraph.

b. Unsecured Claims. Either (i) each holder of a claim in an impaired class of unsecured claims receives or retains under the plan property of a value equal to the amount of its allowed claim; or (ii) the holders of claims and equity interests that are junior to the claims of the dissenting class will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

c. Equity Interests. Either (i) each holder of an equity interest in an impaired class of interests will receive or retain under the chapter 11 plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such stock or (b) the value of the stock; or (ii) the holders of interests that are junior to the stock will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

As discussed above, the Debtors believe that the distributions provided under the Plan satisfy the absolute priority rule.

G. The Debtor Releases and Third-Party Releases

As set forth in further detail in Exhibit 4 hereto, section 10.6 of the Plan provides for releases of certain claims and Causes of Action the Debtors may hold against the Debtor Released Parties. The Debtor Released Parties are each of the following in their capacity as such: (a) the Debtors; (b) the Post-Effective Date Debtors; (c) the DIP Lender; (d) the Prepetition Secured Lender; (e) all other Restructuring Support Parties; (f) New Lessee; and (g) with respect to the Persons in clauses (a) through (f), each of their Related Persons. Related Persons include predecessors, successors, assigns, and present and former affiliates (whether by operation of law or otherwise) and each of their respective subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, participants, management companies, fund advisors, advisory board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, investors, lenders, servicers, trustees, bondholders, rating agencies, representatives, and other professionals, and any Person claiming by or through any of them, including such Related Persons' respective heirs, executors, estates, servants, and nominees.

Section 10.7 of the Plan provides for releases of certain claims and Causes of Action of the Releasing Parties against the Third-Party Released Parties. The Third-Party Released Parties (a) the Debtors; (b) the Post-Effective Date Debtors; (c) the DIP Lender; (d) the Prepetition Secured Lender; (e) all other Restructuring Support Parties; (f) New Lessee; (g) Fairmont, but solely with respect to FMT General Unsecured HMA Claims, and (g) with respect to the Persons in clauses (a) through (f), each of their Related Persons. Any Person that opts out of the releases set forth in Section 10.7 of the Plan shall not be deemed to be a Released Party.

The Releasing Parties include: (a) the Holders of all Claims or Interests that vote to accept the Plan, (b) the Holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but that do not vote either to accept or to reject the Plan, (c) the Holders of all Claims or Interests that vote to reject the Plan but do not opt out of granting the releases set forth herein, (d) the Holders of all Claims and Interests that were given notice of the opportunity to opt out of granting the releases set forth herein but did not opt out, (e) the Holders of all Claims or Interests that are presumed to accept the Plan and do not file objections to confirmation of the Plan, and (f) the Released Parties. However, any Holders of Claims or Interests that would otherwise fall into (a) – (e) but that do not receive actual notice are not Releasing Parties.

The Debtors do not believe that significant claims or Causes of Action exist against the Released Parties. As noted, with respect to the Prepetition Secured Lender, which is a Released Party under the Plan, the Debtors conducted an analysis before agreeing to the releases and stipulations as to the validity and enforceability of the Prepetition Secured Lender in the Final Financing Order. Prior to agreeing to these stipulations, the Debtors undertook appropriate efforts to verify that the Prepetition Secured Lender's liens were properly perfected. The Debtors, through counsel, reviewed the recorded mortgage documents on the Hotel and real property and ordered and reviewed current UCC-1 financing statements covering the Prepetition

Secured Lender's liens on the other collateral. The Debtors, through counsel, have undertaken other measures as well. Before agreeing to the releases provided for in the Financing Interim Order, the Debtors and their advisors also discussed and considered whether any potential meritorious causes of action against the Prepetition Secured Lender exist.

The Debtors have also considered whether there are potential claims and ~~causes~~Causes of ~~action~~Action against their principals and other affiliates. The Debtors believe that claims and ~~causes~~Causes of ~~action~~Action against principals and affiliates most frequently arise from improper actions taken by such persons while exercising control over the company (e.g., breach of fiduciary duty claims) or from prepetition payments to such persons (e.g., preference and fraudulent transfer claims). As to the first category of potential causes of action, the Debtors ~~note~~believe that the Hotel's affairs were controlled ~~almost exclusively~~ by Fairmont prior to the Petition Dates, and, subject to a limited exception,¹⁸ Fairmont is not a Released Party under the Plan. Fairmont disputes the foregoing characterization of its role as to certain pre-petition activities, including, but not limited to, the decision to commence these Chapter 11 Cases. As to the second category of potential causes of action, the statements of financial affairs for both Debtors indicate that there have been no payments to or for the benefit of any insider within one year before the respective Petition Dates [Dkts. 168, 170]. To the contrary, as set forth above, the Debtors direct and indirect equity owners funded the Hotel's expenses out-of-pocket during the year prior to the Petition Dates. Since the start of the COVID-19 pandemic, the Debtors have relied on approximately several million of capital contributions from their direct and indirect equity owners to pay ordinary course expenses and monthly debt service on the Prepetition Secured Loan. Moreover, an affiliate of the Debtors' direct and indirect equity owners, FMT SJ Catering LLC, is the DIP Lender. Proceeds from the DIP Facility are funding the administrative costs of these chapter 11 cases, including the fees and expenses of the Committee's professional advisors, even though the DIP Lender did not receive a security interest in any of the Debtors' assets and its source of repayment is uncertain.

The Debtors believe that the releases set forth in the Plan are appropriate because, among other things, they are narrowly tailored to the Debtors' restructuring proceedings, and the Released Parties have afforded value to the Debtors and aided in the reorganization process, which allowed the Debtors to propose and pursue confirmation of the Plan. The Prepetition Secured Lender has agreed to waive default interest and extend the term of its fully matured secured Claims to facilitate confirmation of the Plan. The Debtors believe that the Released Parties have played an integral role in formulating the Plan and have expended time and resources in analyzing and negotiating the issues presented by the Debtors' prepetition capital structure. The Debtors will be prepared to meet their burden to establish the basis for the releases for the Released Parties as part of confirmation of the Plan.

¹⁸ Under the now-terminated HMA, Fairmont entered into various transactions and incurred various expenses on behalf of Debtor FMT. Those claims should be asserted directly against Debtor FMT. However, to the extent that a creditor seeks to enforce one of those obligations against Fairmont, Fairmont could then seek reimbursement/indemnification from Debtor FMT. The Plan accordingly provides a limited release for Fairmont from such third-party claims.

The Committee has asserted that it is investigating potential claims and Causes of Action against certain of the Released Parties, including the Prepetition Secured Lender and the Debtors' principals and other affiliates. The Committee states that its independent investigation is focused on claims and Causes of Action (a) against the Debtors' management and ownership related to the termination of the Lease, (b) against Debtor SC SJ for claims related to the Lease and its termination; and (c) against the Prepetition Secured Lender for, among other things, avoidance of Debtor FMT's obligations under the Prepetition Secured Loan. The Committee states that to the extent that it believes that colorable claims against the Released Parties exist, the Committee will challenge the releases set forth in the Plan and seek to pursue such claims.

The Committee has not provided the Debtors with any further detail to support the existence of any colorable Causes of Action against the Debtors' management and ownership, Debtor SC SJ, or the Prepetition Secured Lender, and the Debtors do not believe that any exist.

VI.

BEST INTERESTS AND FEASIBILITY TESTS

A. Best Interests Test

Before the Plan may be confirmed, the Bankruptcy Court must find the Plan provides, with respect to each Impaired Class, that each Holder of a Claim or Interest in such Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount such Holder would receive or retain if the Debtors liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the "best interests test."

This test requires a bankruptcy court to determine what the holders of allowed claims and allowed equity interests in each impaired class would receive from a liquidation of the debtor's assets and properties in the context of a liquidation under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the value of the distributions from the proceeds of the liquidation of the debtor's assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the plan.

The Debtors believe that under the Plan all holders of impaired Claims and Interests will receive property with a value not less than the value such holder would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Debtors' belief is based primarily on: (a) consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of impaired Claims and Interests; and (b) the Liquidation Analysis attached hereto as **Exhibit 3**.

The Liquidation Analysis provided in **Exhibit 3** is solely for the purpose of disclosing to holders of Claims and Interests the effects of a hypothetical chapter 7 liquidation of the Debtors, subject to the assumptions set forth therein. There can be no assurance as to values that would actually be realized in a chapter 7 liquidation nor can there be any assurance that a bankruptcy

court will accept the Debtors' conclusions or concur with such assumptions in making its determinations under section 1129(a)(7) of the Bankruptcy Code.

B. Feasibility

Section 1129(a)(11) of the Bankruptcy Code provides that a debtor must demonstrate that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” See 11 U.S.C. § 1129(a)(11). This is often referred to as the “feasibility” requirement.

1. Debtor FMT

The Plan provides for the liquidation of Debtor FMT. The Debtors thus believe that the Plan with respect to Debtor FMT satisfies the letter of section 1129(a)(11) in that liquidation is proposed.

2. Debtor SC SJ

The Debtors also believe that the Plan is feasible with respect to Debtor SC SJ, which will reorganize under the Plan. The Debtors believe that the restructuring contemplated by the Plan will provide Reorganized SC SJ with the liquidity it needs to satisfy its monthly debt service obligations on the Prepetition Secured Loan, as reinstated under the Plan, and other post-Effective Date expenses that arise in the ordinary course of business.

a. Exit Financing

~~That belief is based in part on the anticipated results of the marketing process set forth in the Procedures Order. The Procedures Order provides that to be a “Qualified Bid” that is eligible for selection as the winning bid, a proposal must, among other things, (a) be made by a leading national hotel brand that is approved by the Prepetition Secured Lender (a “Qualified Manager”) and (b) be accompanied by a term sheet for a subordinated loan or capital infusion of at least \$45 million (defined above as the “Qualified Manager Mezzanine Loan”).~~

~~Prior to the Petition Dates, CHMWarnick, a hotel owner advisor, was retained to perform a market analysis for the Hotel. All major brands potentially suited to manage the Hotel responded positively, and at least one indicated that it would be willing to provide substantial subordinated financing to the Hotel as part of the package. The evidence from CHMWarnick’s prepetition efforts thus suggests that the solicitation process will succeed and will generate exit financing in the form of a Qualified Manager Mezzanine Loan of at least \$45 million. The Qualified Manager Mezzanine Loan may be issued by a parent or indirect parent entity of Debtor SC SJ.~~

As noted above, as of May 7~~21~~, 2021, the Debtors received ~~three~~ bids from four hotel brands and, ~~each of which proposes \$45 million of exit financing. The Debtors are evaluating the bids but, as~~ on May 24, 2021, selected Hilton as the prevailing bidder. The Hilton Bid

provides for financial support, and contemplates a mezzanine loan to be obtained by Debtor SC SJ's parent. As of the date hereof, ~~have not selected a winning bidder~~the mezzanine loan has not been obtained.

~~A portion of the Qualified Manager Mezzanine Loan proceeds would be used to fund payments under the Plan and repay the Parent Preferred Equity. However, a bulk of the proceeds would likely remain available to (a) cover any shortfalls on post-Effective Date debt service payments, (b) satisfy other obligations under the Prepetition Secured Loan, as reinstated on the Effective Date, and (c) fund operating expenses, working capital, and capital expenditures for the Hotel.~~

As noted above, absent availability from other sources, the Debtors anticipate raising additional exit financing from their direct and indirect equity owners, which shall be contributed to the Debtors pursuant to the Parent Capital Contribution. The additional contributions would be used to satisfy certain payments required under the Plan. A chart summarizing contemplated sources and uses is set forth in section VI.B.3. below.

b. Future Operating Revenue

The Hotel's expenses and other obligations will also be supported by operating revenue it generates after it ultimately reopens. The hotel industry is expected to improve as more people receive COVID-19 vaccinations and related restrictions on travel and large gatherings are eased. The White House has announced a goal of getting the nation closer to normal by Independence Day 2021.¹⁹

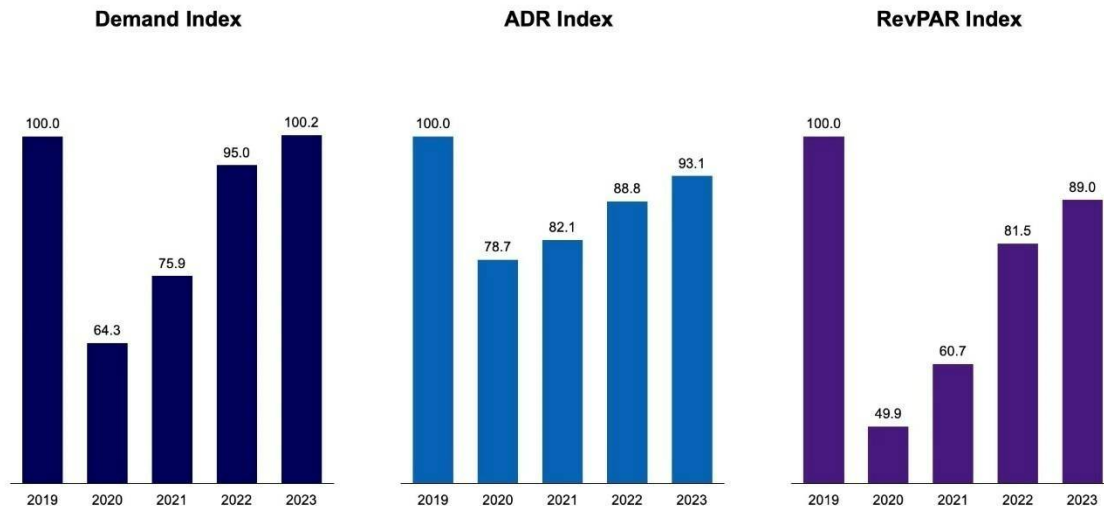
A hotel's projected revenues are typically the result of assumptions such as occupancy demand, average daily rate (or "**ADR**") and revenue per available room (or "**RevPar**"). Even prior to the White House's announcement, some industry analysts forecasted that occupancy and average daily rates for U.S. hotels would begin to approach their pre-pandemic levels in 2022.²⁰

¹⁹ See Fact Sheet: President Biden to Announce All Americans to be Eligible for Vaccinations by May 1, Puts the Nation on a Path to Get Closer to Normal by July 4th (March 11, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/11/fact-sheet-president-biden-to-announce-all-americans-to-be-eligible-for-vaccinations-by-may-1-puts-the-nation-on-a-path-to-get-closer-to-normal-by-july-4th/>.

²⁰ See CoStar, *Half of the Hotel Rooms Forecast to Be Empty in 2021* (Jan. 26, 2021), available at <https://www.costar.com/article/1290818947/half-of-hotel-rooms-forecast-to-be-empty-in-2021>.

U.S. Annual Forecast Indexed To 2019

Room demand is expected to surpass 2019's level by 2023 while ADR and RevPAR will lag.



Source: STR, 2021 © CoStar Realty Information, Inc.



Expectations for the Hotel are generally in line with industry-wide forecasts. ~~Although the Debtors do not anticipate disclosing a business plan or forward-looking projections for the Hotel until after the Procedures Motion is approved and a winning bidder is selected,~~ ~~high~~ High-level expectations for the Hotel are ~~currently~~ as follows:

Revenue Expectations Upon Hotel Reopening

- *Occupancy Rate*: Expected to grow through 2021 and 2022 and reach pre-pandemic levels by the end of 2022
- *ADR*: Expected to increase to its pre-pandemic levels by the end of 2022.
- *Food & Beverage Revenue*: Expected to increase as occupancy increases.
- *Impact of Qualified Manager*: The Hotel's performance is expected to improve under the post-Effective Date management of a new Qualified Manager. Hotel brands that have expressed interest in the Hotel thus far generally offer improved marketing prospects for the Hotel, broader guest/booking pipelines, and better positioning to capture a larger share of the convention business as COVID-19-related restrictions continue to ease.
- *Operating Profit*: Expected to become positive in calendar year 2022.

The Hotel's operations are expected to become positive during calendar year 2022. That net operating income would be available to help support the Hotel's operating, financing, and other expenses in the ordinary course of business.

The expectations disclosed above are based on numerous assumptions, including confirmation of the Plan in accordance with its terms, the occurrence of the Effective Date in the summer of 2021, realization of the operating strategy of Reorganized SC SJ, no material adverse changes in applicable legislation or regulations, or the administration thereof, or generally accepted accounting principles, no material adverse changes in general business and economic conditions, no material adverse changes in competition, that travel, gathering, and other restrictions implemented in response to COVID-19 will continue to ease, the absence of material contingent or unliquidated litigation, indemnity or other claims, and other matters, many of which will be beyond the control of the Post-Effective Date Debtors and some or all of which may not materialize. Consequently, the estimates and assumptions set forth herein are inherently uncertain and are subject to material business, economic, public health, and other uncertainties. Therefore, the expectations disclosed herein are not necessarily indicative of future performance, which may be significantly less or more favorable than set forth herein. Readers are thus encouraged not to place undue reliance on the disclosed expectations.

The disclosed information regarding future Hotel performance should be read together with the information in Article VIII of this Disclosure Statement entitled “Certain Risk Factors to be Considered,” which sets forth important factors that could cause actual results to differ from expectations.

c. Prepetition Secured Loan

The Debtors filed these Chapter 11 Cases in part to extend the maturity date on the Prepetition Secured Loan, which, absent confirmation of the Plan, expired ~~last month on April 9, 2021~~. The Plan and RSA provides a toggle for the Prepetition Secured Loan. If the New Manager Condition is satisfied (that is, if, among other things, (a) a hotel brand approved by the Prepetition Secured Lender enters into a New Hotel Management Agreement to operate the Hotel after the Effective Date, and (b) ~~a hotel brand or its designee agree to provide~~ Debtor SC SJ’s parent procures a Qualified ~~Manager~~-Mezzanine Loan ~~of at least \$45 million on terms consistent with those set forth in the RSA~~), the Prepetition Secured Loan’s maturity date will be extended for three (3) years after the Effective Date with two one-year extension options.

Even if the New Manager Condition is not satisfied, the Plan and RSA provide that the Prepetition Secured Loan Agreement will be amended to, among other things, extend the maturity date of the Prepetition Secured Loan for nine (9) months after the Effective Date (defined above as the Other Post-Effective Date Amendment). In that scenario, the Hotel would likely ~~still~~ reopen after the Effective Date, but ~~(a)~~ it would not be managed ~~by a manager that is a “Qualified Manager” under the RSA.~~

~~The Committee contends that if the New Manager Condition is not satisfied, the Plan might not be feasible—that is, in the Committee’s view, if the parties enter into the Other Post-Effective Date Amendment, there is a risk that the Debtors will default on the Prepetition Secured Loan, as reinstated, and wind up back in bankruptcy in nine months. Although a~~

~~nine-month extension to the maturity date is not as effective as a three-year extension, the Debtors wholly disagree with the Committee's conclusion~~ pursuant to a New Hotel Management Agreement that satisfies the terms and conditions of the RSA, (b) it would not be supported by a Qualified Mezzanine Loan that meets the conditions set forth in the RSA, or (c) the Debtors shall have failed to satisfy some other provision of the RSA.

If the Plan is confirmed, the Debtors anticipate that the Effective Date will occur in July or August, in which case, the Prepetition Secured Loan's maturity date would be set for April or May of 2022. As noted above, many analysts have forecasted that occupancy and average daily rates for U.S. hotels will begin to approach their pre-pandemic levels in 2022. As the industry improves, Hotels should begin to have increased access to the capital markets. Thus, the Debtors believe that they will have a better chance of refinancing the Prepetition Secured Loan in April or May of 2022 than they do today. It is, of course, not guaranteed that the capital markets for hotels will improve, and the foregoing statements are qualified in their entirety by section VIII hereof, headed "Certain Risk Factors to be Considered."

The Debtors believe that the Plan will be feasible regardless of whether the Prepetition Secured Loan's maturity date is extended by three years or nine months. The Debtors intend to carry their burden of establishing Plan feasibility at the confirmation hearing.

3. Sources and Uses for Qualified Mezzanine Loan, Parent Capital Contribution, and Other Amounts to be Used to Fund Payments Contemplated under the Plan

The Plan contemplates the following uses with respect to the Qualified Mezzanine Loan, the Parent Capital Contribution and other amounts to be used to fund payments contemplated by the Plan:

Debtor FMT

<u>Source</u>	<u>Approximate Amount</u>	<u>Use</u>
<u>Ownership²¹</u>	<u>\$ 1,700,000²²</u>	<u>Priority Tax Claims and Other Priority Claims</u>
<u>Ownership</u>	<u>\$ 500,000</u>	<u>General Unsecured Creditors</u>
<u>Balance Sheet Cash</u>	<u>\$25,000</u>	<u>FMT Collateral Payment</u>

Debtor SC SJ

<u>Source</u>	<u>Approximate Amount</u>	<u>Use</u>
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²¹ All references to "Ownership" include existing and prospective third-party financing sources.

²² FMT intends to negotiate terms with respect to at least \$1.4 million of the Priority Tax Claims, which are held by the City of San Jose.

<u>Hilton Contribution & Qualified Mezzanine Loan²³</u>	<u>\$ 40,000,000 (combined)</u>	<u>Hotel, and payments and reserves for interest, fees, and expenses in connection with Prepetition Secured Loan and Qualified Mezzanine Loan</u>
<u>Ownership</u>	<u>\$ 2,300,747</u>	<u>Priority Tax Claims (Terms)</u>
<u>Ownership</u>	<u>\$ 207,481</u>	<u>Other Secured Claims</u>
<u>Ownership</u>	<u>\$ 3,976,247</u>	<u>Fairmont General Unsecured Claim</u>
<u>Ownership</u>	<u>\$1,536,463</u>	<u>SC SJ General Unsecured Claims</u>

VII.

EFFECT OF CONFIRMATION

A. Binding Effect of Confirmation

Confirmation will bind the Debtors and all Holders of Claims and Equity Interests to the provisions of the Plan, regardless of whether the Claim or Equity Interest of any such Holder is Impaired under the Plan and any such Holder of a Claim or Equity Interest has accepted the Plan.

B. Good Faith

Confirmation of the Plan will constitute a finding that: (i) the Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code; and (ii) all solicitations of acceptances or rejections of the Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

VIII.

CERTAIN RISK FACTORS TO BE CONSIDERED

The Plan and its implementation are subject to certain risks, including, but not limited to, the risk factors set forth below. Holders of Claims who are entitled to vote on the Plan should read and carefully consider the risk factors, as well as the other information in this Disclosure Statement and the Plan, before deciding whether to vote to accept or reject the Plan.

A. Plan May Not Be Accepted

There can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Debtors believe the Plan is confirmable under the standards set forth in

²³ Hilton has not committed to providing any mezzanine financing at this time. Debtor SC SJ's parent company is seeking to procure a Qualified Mezzanine Loan from another source.

section 1129 of the Bankruptcy Code, there is no guarantee that the Plan will be accepted by the requisite Classes entitled to vote on the Plan.

B. Certain Bankruptcy Law Considerations

Even if the Holders of Claims who are entitled to vote accept the Plan, the Bankruptcy Court, which may exercise substantial discretion as a court of equity, may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that confirmation of the Plan will not be followed by the liquidation or the need for further financial reorganization of the Debtors, and that the value of Distributions to dissenting Holders of Claims or Equity Interests will not be less than the value such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe the Plan meets these requirements, there can be no assurance the Bankruptcy Court will reach the same conclusion.

C. Distributions to Holders of Allowed Claims Under the Plan

The Plan provides for the treatment of holders of Allowed Claims against each Debtor separately, respecting ~~to~~that they are separate legal entities. The Committee has informed the Debtors that it believes there are “preliminary indicia of interrelatedness of the Debtors” and that it is investigating whether the Debtors should be treated on a consolidated basis,~~but the Debtors believe there is no basis requiring such consolidation.~~ If the Committee successfully sought substantive consolidation the Debtors would be required to modify the Plan: such that the assets of each Debtor would be available to satisfy Allowed Claims of creditors of each Debtor. The Debtors do not believe that alleged indicia of interrelatedness are a basis to substantively consolidated their estates and do not believe there is any colorable grounds for substantive consolidation here. The Debtors dispute the Committee’s contentions in all respects.

The Committee has also indicated that it is investigating whether Debtor FMT may have claims against Debtor SC SJ that would exceed the claims that Debtor SC SJ has for unpaid rent. If such ~~intereompany~~Inter-Debtor claims against Debtor SC SJ existed this could theoretically be a source of recovery for holders of Allowed Claims against Debtor FMT,~~but.~~ The Committee is investigating the validity of the Claims of each Debtor against the other and whether additional Claims may exist, including Claims related to the Lease and its termination. To the extent that the Committee determines that Claims in favor of Debtor FMT exist that would provide value to holders of Allowed Claims against Debtor FMT that are not properly treated or are released under the Plan, the Committee will object to the Plan and will seek to pursue such Claims. The Committee has not provided the Debtors with any further detail to support any belief that Debtor FMT has net claims against Debtor SC SJ. Based on their books and records, and as detailed in Article I. D. hereof, the Debtors believe that Debtor FMT owes Debtor SC SJ far more than Debtor SC SJ owes Debtor FMT. Therefore, after the offset of the respective claim, Debtor FMT is a net obligor and does not have a right to recover any Claim against Debtor SC SJ.

As of the date hereof, it is unlikely that Debtor FMT will have sufficient unencumbered assets on its balance sheet to pay Allowed Priority Tax Claims in full on the Effective Date. Under section 1129(a)(9)(C) of the Bankruptcy Code, a chapter 11 plan may be confirmed only if it provides for payment in full of Allowed Priority Tax Claims over a five-year period or the holders of such Allowed Priority Tax Claims agree to a less favorable treatment. Thus, with respect to Debtor FMT, confirmation of the Plan depends on (a) the holders of Allowed Priority Tax Claims against Debtor FMT agreeing to a less favorable treatment, or (b) Debtor FMT securing funds from an external source in an amount sufficient to provide treatment for Allowed Priority Tax Claims in a manner permitted under section 1129(a)(9)(C) of the Bankruptcy Code. There is no guarantee that Debtor FMT will be able to satisfy these conditions. **If Debtor FMT is unable to secure external funding or if the holders of Allowed Priority Tax Claims are unwilling to agree to a different or less favorable treatment than is provided in section 1129(a)(9)(C) of the Bankruptcy Code, there is a risk that Debtor FMT's chapter 11 case will have to be converted to a liquidation under chapter 7 of the Bankruptcy Code.**

As of the date hereof, it is also unlikely that Debtor FMT will have sufficient unencumbered assets on its balance sheet to pay Other Priority Claims (Class 1) in full on the Effective Date. Section 1129(a)(9)(B) provides that with respect to Other Priority Claims—which include certain employee claims and customer deposit claims—a chapter 11 plan must provide for payment in full on the Effective Date or payment over a five-year period unless the holders of such claims agree to a less favorable treatment. Debtor FMT anticipates securing Cash necessary to satisfy Other Priority Claims in full on the Effective Date from external sources. However, there is no guarantee that Debtor FMT will be able to secure such funds. **If Debtor FMT is unable to secure external funding or otherwise negotiate consensual treatment with holders of Allowed Other Priority Claims, there is a risk that Debtor FMT's chapter 11 case will have to be converted to a liquidation under chapter 7 of the Bankruptcy Code.**

Lastly, there are risks related to Holders of Allowed FMT General Unsecured Claims (Class 4B). As of the date hereof, it is unlikely that Debtor FMT will have sufficient unencumbered assets on its balance sheet to fund a recovery for holders of Allowed FMT General Unsecured Claims (Class 4B). However, the Plan provides holders of Allowed FMT General Unsecured Claims will receive their Pro Rata share of a \$500,000 FMT GUC Cash Pot. Debtor FMT anticipates securing Cash necessary to fund the FMT GUC Cash Pot from external sources, including, for example, ~~a portion of and in the proceeds of the Qualified Manager Mezzanine Loan~~absence of funding from other sources, a capital contribution from its direct or indirect equity owner. **The Plan provides, as a condition precedent to the Effective Date, that Debtor FMT shall have funded the FMT GUC Cash Pot. There is no guarantee that Debtor FMT will be able to secure the funds necessary to satisfy that condition precedent.**

Similarly, even if Debtor FMT secures the funds necessary to fund the FMT GUC Cash Pot, the recovery for holders of Allowed FMT General Unsecured Claims may be material impacted by a number of circumstances. The Plan provides that each holder of an Allowed FMT General Unsecured Claim will receive its Pro Rata share of the FMT GUC Cash Pot. The Pro

Rata share will be impacted by whether Class 4B accepts or rejects the Plan. If Class 4B accepts the Plan, then the Prepetition Secured Lender has agreed to waive its right to receive any distribution on account of its FMT Deficiency Claim, which will likely exceed \$170,000,000, and the entire FMT GUC Cash Pot will be distributed to other FMT General Unsecured Creditors. If Class 4B rejects the Plan, then the FMT Deficiency Claim will share on a pro rata basis, which will reduce the distribution to all other Class 4B members from approximately 2.75% to approximately 0.26%. A substantial amount of time may elapse between the Effective Date and the receipt of distributions because of the time required to achieve final resolution of Disputed Claims. Moreover, although the Debtors have made a good faith estimate of projected recoveries to Holders of Allowed FMT General Unsecured Claims under the Plan, such recoveries will be less than projected if, for example, the aggregate amount of FMT General Unsecured Claims asserted against Debtor FMT which ultimately are Allowed exceeds the estimated amount of such Claims.

D. Conversion to Chapter 7 Liquidation

As noted, if Debtor FMT is unable to negotiate consensual treatment with holders of Priority Tax Claims or Other Priority Claims, or if it is unable to satisfy the confirmation requirements set forth in section 1129 of the Bankruptcy Code, Debtor FMT's chapter 11 case could be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate its assets for distribution in accordance with the priorities established by the Bankruptcy Code.

E. ~~D.~~ Conditions Precedent to the Effective Date of the Plan

The Plan provides for certain conditions that must be satisfied (or waived) prior to the Effective Date of the Plan. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions precedent will be satisfied (or waived). Accordingly, there can be no assurance that the Plan, even if confirmed by the Bankruptcy Court, will become effective.

E. ~~E.~~ Liquidation of the Fairmont HMA Damages Claim

Fairmont's HMA Damages Claim is currently unliquidated. This creates a risk, both in respect of the timeframe for liquidating the Claim and in respect of the uncertainty regarding the ultimate Allowed amount of such Claim. As noted, the parties are pursuing arbitration to determine the amount of the Claim, but it is not clear when arbitration will finish. Fairmont has contended that arbitration can be completed by early to mid-June 2021, but the Debtors believe that arbitration could last until September 2021. The Bankruptcy Court has suggested that if the arbitration is not ~~likely~~ to be finished ~~by~~ until 30 to 60 days after June 10, 2021, it ~~could~~ will likely estimate the HMA Damages Claim for all purposes under section 502(c) of the Bankruptcy Code, which would obviate the need for further arbitration. The Bankruptcy Court has scheduled an evidentiary hearing on estimation for June 10th and June 11th. However, there is no guarantee that the Bankruptcy Court will ultimately determine to estimate the HMA Damages Claim for all purposes at the June 10-11 hearing.

As noted, the Debtors believe that Fairmont's HMA Damages Claim is governed by a liquidated damages provision and is worth no more than \$2,004,408. Fairmont, however, seeks to set aside the liquidation damages provision and contends that it is entitled to no less than \$30 million of damages. The Debtors do not believe there is any merit to Fairmont's legal theory for setting aside the liquidation damages provision. However, if Fairmont's HMA Damages Claim is Allowed for \$30 million, there is a risk that the Bankruptcy Court may find that the Plan does not satisfy section 1129(a)(11) of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(11) (providing that in order to confirm a chapter 11 plan, the court must find that confirmation of such plan 'is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan').

G. Projections and Other Forward-Looking Statements Are Not Assured, and Actual Results May Vary

Certain of the information contained in this Disclosure Statement is, by nature, forward-looking, and contains (i) estimates and assumptions which might ultimately prove to be incorrect, and (ii) projections which may be materially different from actual future experiences. There are uncertainties associated with any projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various Classes that might be Allowed

H. Risks Associated with COVID-19 in Hotel's Business and Industry

The COVID-19 pandemic has caused a significant decline in travel and demand for hotels and guestrooms. The extent to which COVID-19 will continue to negatively impact financial results will depend on future events, which are unknown and cannot be predicted, including how long the pandemic continues and its severity, new information which may emerge regarding the coronavirus (including, but not limited to, the development and transmission of any new strains of the virus), the efficacy and acceptance of any vaccines or other remedies developed and actions taken to contain the coronavirus pandemic or its impact, consumer preferences, and the duration of governmental and business restrictions on travel, among others. Additional waves of the coronavirus pandemic could lead to new travel restrictions and reductions in economic activity, resulting in further disruptions to the Hotel's future operations and cash flow.

I. Risks Associate with Capital Markets

The pandemic has also adversely impacted credit and capital market conditions and the Hotel may be unable to access these markets until conditions normalize. As a result, although the Debtors have been successful in negotiating a deferral of the maturity date on the Prepetition Secured Loan as set forth in the RSA, the impact of downward pressure on operating revenues arising from COVID-19-related restrictions and limited access to capital markets may render such obligations difficult to repay or refinance.

J. Reliance on the Value of the Hotel's Brand

The Hotel's success depends in part on the value of the brand and corporate reputation of the Hotel's manager. Maintaining, promoting, and positioning the brand depends largely on factors outside of the Debtors' control.

K. ~~F.~~Certain Tax Considerations

There are a number of material income tax considerations, risks and uncertainties associated with Consummation of the Plan. Holders of Claims voting on the Plan should read carefully the discussion of certain federal income tax consequences of the Plan set forth below.

IX.

CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain United States federal income tax consequences of the Plan to the Holders of FMT General Unsecured Claims.²¹²⁴ This discussion does not address the United States federal income tax consequences to Holders of Claims who (a) are Unimpaired or otherwise entitled to payment in full in Cash on the Effective Date under the Plan or (b) are otherwise not entitled to vote under the Plan. Moreover, this discussion assumes that the various debt and other arrangements to which the Debtors and Post-Effective Date Debtors are or will be parties will be respected for United States federal income tax purposes in accordance with their form.

This discussion is based on the Internal Revenue Code of 1986, as amended (the "*Tax Code*"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service ("*IRS*"), all as in effect on the date hereof.

Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, each Holder's status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Holders of FMT General Unsecured Claims.

This discussion does not purport to address all aspects of United States federal income taxation that may be relevant to the Holders of FMT General Unsecured Claims in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers

²¹²⁴ Because the Debtors are "pass through" entities for tax purposes, the Plan does not have tax consequences for Debtors. Moreover, while the Plan will have tax consequences for the Holders of Class 3 Claims, the Holders of such Claims are sophisticated commercial parties that were able to evaluate their tax consequences prior to entering into the RSA.

subject to special treatment under the United States federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, persons whose functional currency is not the United States dollar, persons subject to the alternative minimum tax, persons holding Claims or Equity Interests as part of a “straddle,” “hedge,” “constructive sale” or “conversion transaction” with other investments), and entities treated as partnerships for United States federal income tax purposes or beneficial owners of such entities. This discussion does not address the tax consequences to Holders of FMT General Unsecured Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

Each Holder of a FMT General Unsecured Claim is urged to consult with such Holder’s tax advisors concerning the United States federal, state and local, and non-United States and other tax consequences of the Plan.

A. Tax Consequences to Creditors

1. Holders of Claims

Generally, a Holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the “amount realized” by such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder’s Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder’s cost. To the extent applicable, the character of any recognized gain or loss (*e.g.*, ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder’s hands, the purpose and circumstances of its acquisition, the Holder’s holding period of the Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder’s hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year.

A Holder who received Cash (or other consideration) in satisfaction of its Claims may recognize ordinary income to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

2. Non-United States Persons

A Holder of a Claim that is a non-U.S. Person, as defined in the Tax Code, generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan, unless (i) such Holder is (or was) engaged in a trade or business in the United States to which income, gain or loss from the exchange is (or was) “effectively connected” for United States federal income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.

B. Withholding on Distributions and Information Reporting

All distributions to Holders of Claims under the Plan are subject to any applicable tax withholding, including backup withholding and withholding on distributions to non-U.S. Person Holders (such as due to the application of the Foreign Investment in Real Property Tax Act).

Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then applicable withholding rate. Backup withholding generally applies if a U.S. Person Holder (a) fails to furnish its social security number or other taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. *Holders are urged to consult their own tax advisors regarding the potential application of U.S. withholding taxes to the transactions contemplated under the Plan and whether any distributions to them would be subject to withholding.*

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds.

C. Importance of Obtaining Professional Tax Assistance

The foregoing discussion is intended only as a summary of certain United States federal income tax consequences of the Plan. The above discussion is for informational purposes only and is not tax advice. The tax consequences are in many cases uncertain and may vary depending on a Holder’s particular circumstances. Accordingly, Holders are urged to consult their own tax advisors about the United States federal, state and local, and applicable non-United States income and other tax consequences of the Plan.

X.

RECOMMENDATION AND CONCLUSION

This Disclosure Statement was approved by the Bankruptcy Court after notice and a hearing. The Bankruptcy Court has determined that this Disclosure Statement contains information adequate to permit Holders of Claims to make an informed judgment about the Plan. The Bankruptcy Court's approval, however, does not mean that the Bankruptcy Court recommends either acceptance or rejection of the Plan.

The Debtors believe that confirmation and consummation of the Plan is in the best interests of the Debtors, the Estates and their creditors. The Plan provides for an equitable distribution to creditors. The Debtors believe that any alternative to confirmation of the Plan, such as liquidation under chapter 7 of the Bankruptcy Code, could result in significant delay, litigation and additional costs, as well as a material reduction in the distributions to Holders of Claims in Classes 3(A), 3 (B), and 4(B). Consequently, the Debtors urge all eligible Holders of Impaired Claims in Classes 3(A), 3 (B), and 4(B) to vote to **ACCEPT** the Plan, and to complete and return their Ballots so that they will be **RECEIVED** by the Voting Agent on or before __:__ p.m. (Eastern Time) on __ __, 2021.

| Dated: May ~~H~~24, 2021

Respectfully submitted,

SC SJ Holdings LLC, *et al.*

By: /s/Neil Demchick

Neil Demchick

Chief Restructuring Officer

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