

**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. 485 & 546.

**NOTICE OF FILING OF BLACKLINED SECOND AMENDED JOINT
CHAPTER 11 PLAN OF REORGANIZATION**

PLEASE TAKE FURTHER NOTICE that, on June 24, 2021, the Debtors filed a Revised Amended Joint Chapter 11 Plan of Reorganization [Docket No. 485] (the “Revised Amended Plan”).

PLEASE TAKE FURTHER NOTICE that, on July 13, 2021, the Debtors filed a Second Amended Joint Chapter 11 Plan of Reorganization [Docket No. 546] (the “Second Amended Plan”).

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** is a blackline reflecting all revisions to the Revised Amended Plan.

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

PLEASE TAKE FURTHER NOTICE that the Second Amended Plan 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).

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.

Dated: July 13, 2021
Wilmington, Delaware

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EXHIBIT A

Blacklined Second Amended Plan

**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)

REVISEDSECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION

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~~June 24~~July 13, 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 (iii) 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. Notwithstanding anything to the contrary set forth in the Plan, the Debtors, prior to the Effective Date, may affirmatively determine to allow any Claim notwithstanding the fact that the period within which an objection may be interposed has not yet expired. Notwithstanding anything to the contrary set forth in the Plan, no Claim asserted by Fairmont shall become an Allowed Claim until either (a) Allowance of such Claim is agreed to between the Debtors or the Post-Effective Date Debtors, as applicable, and Fairmont, or (b)(i) all objections to such Claim are resolved by Final Order; (ii) the adversary proceeding styled *SC SJ Holdings LLC and FMT SJ LLC v. Accor Management US Inc., f/k/a Fairmont Hotel & Resorts (U.S.) Inc.*, Adv. Proc. No. 21-50882-JTD (Bankr. D. Del.) is disposed of on a final basis by Final Order; (iii) the Arbitration is completed and any award or other final resolution issued by the appointed arbitrator(s) is (A) agreed to by the Debtors or Post-Effective Date Debtors, as

applicable, and Fairmont, (B) confirmed by Final Order, or (C) subject to a Final Order denying a motion to vacate such award or resolution; and (iv) any setoff, recoupment, or other similar right of the Debtors is determined by Final Order.

“Arbitration” means the arbitration captioned *Accor Management US, Inc. v. FMT SJ LLC and SC SJ Holdings LLC - Case 01-21-0002-1684*, which is pending before the American Arbitration Association, including, without limitation, any claims, counterclaims, or defenses asserted therein.

“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.

“Committee Settlement” means that certain Settlement Agreement with the Committee, which shall be included in the Plan Supplement.

“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; (i) with respect to the Persons in clauses (a) through (h), each of their Related Persons; (j) the Committee and (k) the Committee’s Professionals. For the avoidance of doubt, neither Fairmont San Jose Lessee LLC nor Fairmont is 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.

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

“Eagle Canyon” means Eagle Canyon Capital LLC.

“Eagle Canyon Commitment Letter” means that certain Commitment Letter for New Money to Address Certain Allowed Claims Under the Amended Joint Chapter 11 Plan of Reorganization, a copy of which ~~is attached as Exhibit 5 to the Disclosure Statement~~ shall be included in the Plan Supplement (as ~~they~~the same may be amended, modified, or supplemented from time to time), pursuant to which Eagle Canyon has committed, subject to the terms and conditions set forth therein, to provide certain contributions to the Debtors to make specified payments under the Plan.

“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 solely in their capacity as such. For the avoidance of doubt, Fairmont is not an Exculpated Party in its individual, non-Committee member capacity or with respect to any actions, omissions, or other conduct taken in its individual, non-Committee member capacity, including, but not limited to, actions, omissions, or other conduct that resulted in a violation of the automatic stay or otherwise caused harm to the Debtors or their estates.

“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.

“Fairmont Outside Payment Date” means the first Business Day that is twelve (12) months after the date on which the Fairmont General Unsecured Claim becomes an Allowed Fairmont General Unsecured Claim.

“Fairmont Payment Date” means the date on which the Allowed Fairmont General Unsecured Claim, if any, is paid in accordance with Section 4.7(a) of the Plan.

“Fairmont Post-Effective Date Interest Rate” means the rate of interest that shall accrue on the Allowed Fairmont General Unsecured Claim, if any, from the Effective Date until the Fairmont Payment Date in the event that Class 4C is treated under Section 4.7(a)(iii) of the Plan, which rate shall be set at a rate that the Bankruptcy Court concludes, in the Confirmation Order, is required to ensure that the payment to be made on account of the Allowed Fairmont General Unsecured Claim, if any, has a value, as of the Effective Date, equal to such Allowed Fairmont General Unsecured Claim.

“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 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.

“Net Cash Proceeds” means, with respect to the sale of one or more of the Real Properties, the cash proceeds of the sale of such Real Properties net of (a) any bona fide direct costs or expenses incurred in connection with such sale, including, without limitation, any applicable transfer taxes or recording charges payable by the Debtors or the Real Estate Affiliates in connection with such sale together with any reasonable attorneys’ fees and costs in connection with such sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any indebtedness that is secured by a Lien on such Real Properties, and (c) reasonable investment banker or broker fees payable in connection with such sale.

“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 an agreement or agreements for, among other things, the Qualified Manager 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 the Qualified Manager to (i) enter into a New Hotel Management Agreement; and (ii) enter into a Qualified Manager SNDA; and (b) the Qualified 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 contributions to be made to Reorganized SC SJ and Post-Effective Date FMT by Eagle Canyon on or after the Effective Date in accordance with the terms of the Plan and the Eagle Canyon Commitment Letter.

“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. For the avoidance of doubt the definition of Priority Tax Claim expressly includes, but is not limited to, (a) the alleged \$2,023,825.23 Claim asserted by County of Santa Clara, Department of Tax & Collections in proof of claim number 163, and (b) any and all alleged Priority Tax Claims that have been or may be asserted by the City of San Jose, including the \$1,672,383.79 Claim asserted by the City of San Jose in communications with the Debtors.

“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” means Signia Hotel Management LLC.

“Qualified Manager Guarantee” means an unconditional payment guarantee of a portion 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), which shall be provided by an affiliate of the Qualified Manager, which shall be in form and substance consistent with the Qualified Manager Guarantee Term Sheet and acceptable to the Qualified Manager, Qualified Mezzanine Lender, and the Prepetition Secured Lender in their respective sole discretion.

“Qualified Manager Guarantee Term Sheet” means the term sheet for the Qualified Manager Guarantee attached to the Disclosure Statement as part of Exhibit 6 (as the same may be amended, modified, or supplemented from time to time).

“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, the Qualified Manager, and the Qualified Mezzanine Lender in their respective 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 for a term of at least five (5) years, (b) 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, the Qualified Manager, 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 Mezzanine Loan Agreement” means an agreement or agreements by a Qualified Mezzanine Lender to lend and/or commit to fund a Qualified 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 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.

“Real Estate Affiliates” means [Canyon Commons SR LLC, Riveria WC LLC, Terraces PH LLC, and Centerpoint SR LLC, which have the same indirect equity owner as the Debtors.](#)

“Real Properties” means, collectively, the following real properties in which a Real Estate Affiliate owns fee simple title: [\(a\) that certain office building located at 1600 Riviera Ave., Walnut Creek CA 94596, which is owned by Riveria WC LLC, \(b\) that certain office building located at 2300 Contra Costa Blvd, Pleasant Hill CA 94523, which is owned by Terraces PH LLC, \(c\) that certain office building located at 3130 Crow Canyon Place, San Ramon, CA 94583, which is owned by Canyon Commons SR LLC, and \(d\) that certain office building located at 18 Crow Canyon Ct, San Ramon CA 94583, which is owned by Centerpoint SR LLC.](#)

“Real Property Commitments” shall have the meaning ascribed to it in Section 5.9 of the [Plan.](#)

“Real Property Sales” shall have the meaning ascribed to it in [Section 5.9 of the Plan.](#)

“Real Property Sale Proceeds” means the Net Cash Proceeds from Real Property Sales.

“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, (f) the Released Parties, and (g) the Committee. 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; (j) with respect to the Persons in clauses (a) through (i), each of their Related Persons; (k) the Committee; and (l) the Committee’s Professionals. 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 of a total value, as of the Effective Date,~~ equal to the Allowed amount of such Claim, plus interest on such Allowed Priority Tax Claim to the extent that such Allowed Priority Tax Claim is paid after the Effective Date to the extent required under sections 511 and 1129(a)(9)(C) of the Bankruptcy Code, 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~~ On the Allowed Effective Date, each DIP Claims Claim shall ~~be~~ at the DIP Lender's election (subject to ~~a final agreement~~ approval of Debtor SC SJ and the Prepetition Secured Lender) either be (a) converted into equity in Reorganized SC SJ, (b) waived and forgiven, or (c) receive such other treatment as may be agreed to 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 Impaired	No (Deemed to accept) Yes
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), ~~4(B)~~, and ~~4(BC)~~ 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 conclusively deemed to have rejected the Plan pursuant to section 1126(~~g~~f) 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, Cash distributions totaling twenty-five percent (25%) of the amount of each such Allowed FMT General Unsecured Claim to be distributed as follows:

- i. 6.25% on the Effective Date of the Plan;
- ii. 6.25% on the date that is 180 days after the Effective Date of the Plan;
- iii. 6.25% on the date that is 365 days after the Effective Date of the Plan; and
- iv. 6.25% on the date that is 545 days after the Effective Date of the Plan.

If an FMT General Unsecured Claim becomes an Allowed FMT General Unsecured Claim on a date that is *after* any of the payment dates referenced in sections 4.6(a)(i) through 4.6(a)(iv) above, then a distribution shall be made to the relevant Holder as soon as practicable after the date that such FMT General Unsecured Claim becomes an Allowed FMT General Unsecured Claim, with such distribution to be in a percentage equal to (but not exceeding) the total percentage that would have then been distributed to such Holder if the relevant FMT General Unsecured Claim had been an Allowed FMT General Unsecured Claim on the Effective Date of the Plan.

For the avoidance of doubt, the FMT Deficiency Claim is an Allowed FMT General Unsecured Claim. If the Committee Settlement is approved and the Effective Date occurs, the Prepetition Secured Lender will voluntarily waive its right to receive distributions 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 The Fairmont General Unsecured Claims Claim (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 or different treatment, in full and final satisfaction of such any Allowed Fairmont General Unsecured Claim, ~~such Holder then in full and final satisfaction of any~~ Allowed Fairmont General Unsecured Claim, Fairmont will receive the following treatment:

(i) If Fairmont votes to accept the Plan, it shall receive \$4,000,000 in Cash within thirty (30) days after the Effective Date in full and final satisfaction of any and all Allowed Fairmont General Unsecured Claims.

(ii) If Fairmont does not vote to accept the Plan but section 1129(b) of the Bankruptcy Code nevertheless does not apply to Class 4C, Fairmont shall receive, in full and final satisfaction of any Allowed Fairmont General Unsecured Claim, Cash equal to the amount Fairmont is entitled to receive on account of such Allowed Fairmont General Unsecured Claims under section 1129(a)(7)(A)(ii) plus \$50,000, which shall be paid in whole or in part from the Real Property Sale Proceeds.

(iii) If section 1129(b) of the Bankruptcy Code does apply to Class 4C, Fairmont shall receive payment in full in Cash of any Allowed Fairmont General Unsecured Claim plus interest on such outstanding Allowed Fairmont General Unsecured Claim (i) at the Federal judgment rate, ~~payable on from the later of~~ SC SJ Petition Date through the Effective Date, and (ii) ~~at 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.~~ Fairmont Post-Effective Date Interest Rate from the Effective Date until the Fairmont Payment Date, which shall be paid in whole or in part from the Real Property Sale Proceeds.

To the extent that Section 4.7(a)(ii) of the Plan or Section 4.7(iii) of the Plan apply, the Real Estate Affiliates shall make reasonable efforts to ensure that the Allowed Fairmont General Unsecured Claim is paid as set forth in Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, from Real Property Sale Proceeds within six (6) months after the date on which the Fairmont General Unsecured Claim becomes an Allowed Claim; *provided that*, the Allowed Fairmont General Unsecured Claim shall be paid as set forth in Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, by no later than the Fairmont Outside Payment Date. Subject to the terms and conditions of the Plan, if Section 4.7(a)(ii) or Section 4.7(iii) apply, the Real Property Sale Proceeds shall be the sole source of payment of the Allowed Fairmont General Unsecured Claim; *provided that* the Real Estate Affiliates may, in their sole discretion subject to the terms and conditions of the Plan, pay or arrange for one or more designees to pay the Allowed Fairmont General Unsecured Claim from alternate funding sources at any time.

(b) Impairment and Voting. ~~The 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~~ Claim, if any, is Impaired. Fairmont is 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 and Eagle Canyon Commitment Letter

(a) Funding for Distributions On Account of Any Allowed Class 4(C) Claim. Funding for the distribution to be made on account of the Allowed Fairmont General Unsecured Claim, if any, as set forth in Section 4.7(a) of the Plan, shall come from Real Property Sales, as set forth in Section 5.9 of the Plan.

(b) ~~(a)~~ Plan Funding Generally. 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. For the avoidance of doubt, if any payments pursuant to or contemplated under the Plan would cause a breach of, or are not permitted under, the Post-Effective Date Secured Loan Documents or the Qualified Mezzanine Loan Agreement, then such payments must be funded with proceeds of the Parent Capital Contribution.

(c) ~~(b)~~ The Eagle Canyon Commitment Letter. The Parent Capital Contribution shall be made in accordance with the terms of the Eagle Canyon Commitment Letter. In accordance with the Eagle Canyon Commitment Letter and subject to the terms and conditions thereof, Eagle

Canyon has agreed to make certain contributions to the Debtors that the Debtors will be permitted to use to make distributions to holders of certain Allowed Claims under the Plan. The Eagle Canyon Commitment Letter is incorporated herein by reference.

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, except to the extent set forth in the Plan Supplement. 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) retaining, preserving, and distributing Assets for the benefit of the Holders of Allowed Claims, (ii) winding down its business, Assets, and affairs as expeditiously as reasonably possible; (iii) resolving and making distributions on all Allowed Claims against Debtor FMT, including enforcing all commitments necessary to make such distributions; (iv) filing appropriate tax returns, if any; (v) administering the Plan in an efficacious manner, with no objective to continue or engage in the conduct of a trade or business; (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.

(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); *provided*, that each Post-Effective Date Debtor shall comply with the requirements set forth in the Bankruptcy Code, the Bankruptcy Rules, and Local Rule 3022-1 and shall seek and obtain approval from the Bankruptcy Court prior to closing its Chapter 11 Case.

(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.

5.8 ~~5.8~~ Committee Settlement

The Plan implements the Committee Settlement and incorporates the terms of the Committee Settlement by reference as though fully stated herein. Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code, the Plan shall constitute a motion for approval of, and the Confirmation Order shall constitute Bankruptcy Court approval of, the Committee Settlement.

5.9 Real Property Sales

(a) Real Property Sales. The Real Estate Affiliates own fee simple title to the Real Properties. If the Fairmont General Unsecured Claim is treated under Section 4.7(a)(ii) of the

Plan or Section 4.7(a)(iii) of the Plan, on the date that such Fairmont General Unsecured Claim becomes an Allowed Claim, the Real Estate Affiliates shall either pay such Allowed Fairmont General Unsecured Claim in the amount required under Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, or list the Real Properties for sale with a licensed broker and use commercially reasonable efforts to consummate one or more sale transactions ("Real Property Sales") to ensure that the Real Property Sales yield Real Property Sale Proceeds sufficient to make payment on account of the such Allowed Fairmont General Unsecured Claim in the amount required under Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, by six (6) months after the date on which the Fairmont General Unsecured Claim becomes an Allowed Claim, *provided* that, the Allowed Fairmont General Unsecured Claim shall be paid in the amount required under Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, by no later than the Fairmont Outside Payment Date. Following consummation of each Real Property Sale, the applicable Real Estate Affiliate shall promptly distribute the Real Property Sale Proceeds to Fairmont pursuant to Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, in satisfaction of any remaining unpaid amount of the Allowed Fairmont General Unsecured Claim. Notwithstanding anything to the contrary set forth in this Section 5.9 of the Plan, if Section 4.7(a)(ii) of the Plan or Section 4.7(iii) of the Plan apply, the Real Property Sale Proceeds shall be the sole source of payment of the Allowed Fairmont General Unsecured Claim; *provided* that the Real Estate Affiliates may, in their sole discretion subject to the terms and conditions of the Plan, pay or arrange for one or more designees to pay the Allowed Fairmont General Unsecured Claim from alternate funding sources at any time. In the event that the Allowed Fairmont General Unsecured Claim is paid in Cash in the amount required under Section 4.7(a)(ii) of the Plan or Section 4.7(a)(iii) of the Plan, as applicable, from such alternate funding sources, the Real Estate Affiliates shall have no further obligation to consummate Real Property Sales. For the avoidance of doubt, if the Fairmont General Unsecured Claim is treated under Section 4.7(a)(i) of the Plan, the foregoing provisions of this Section 5.9 of the Plan shall not apply and the Real Estate Affiliates shall have no obligation to consummate Real Property Sales.

(b) Real Estate Affiliate Commitments. The Real Estate Affiliates shall stipulate to, or shall take such other action as may be necessary (as determined by the Debtors in their sole discretion), to (i) be bound by, and perform pursuant to, Sections 4.7 and 5.9 of the Plan (ii) consent to the jurisdiction of the Bankruptcy Court to enforce such obligations, and (iii) covenant, until the date on which the Allowed Fairmont General Unsecured Claim, if any, is paid pursuant to Section 4.7 of the Plan, to not cause or permit (A) the Real Properties to be subject to any Liens that do not exist as of the Confirmation Hearing, (B) the incurrence of indebtedness outside the ordinary course of business, or (C) the transfer, assignment, or other conveyance of the Real Properties except as expressly provided in the Plan or Confirmation Order (collectively, the "Real Property Commitments"). The Confirmation Order shall authorize and approve the Real Property Commitments.

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.

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 [Intentionally Omitted]

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, upon notice to the affected counterparty; *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 and counsel, at the address listed in Section 13.18 hereof, 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 and counsel, at the address listed in Section 13.18 hereof, 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 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, the Committee Settlement, and the Plan, including any consent or approval rights therein;

(b) if the New Manager Condition is satisfied, the New Hotel Management Agreement, Qualified Mezzanine Loan Agreement, Qualified Manager Guarantee, Qualified

Manager SNDA, and Qualified 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 Qualified Manager and the Prepetition Secured Lender in their respective 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) and in form and substance reasonably acceptable to the Committee (solely with respect to the treatment provided on account of Holders of Allowed FMT General Unsecured Claims) (*provided*, that any proposed Confirmation Order shall be drafted in consultation with the Committee), which order (i) shall be on terms consistent with the Restructuring Support Agreement, the Restructuring Term Sheet, and the Committee Settlement, (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, the Restructuring Term Sheet, and the Committee Settlement 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) [intentionally omitted];

(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) the conditions precedent to the Eagle Canyon Commitment Letter shall have been satisfied, and Eagle Canyon shall have contributed all amounts that are required thereunder to be contributed on the Effective Date;

(l) 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

(m) 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 (and with respect to the conditions set forth in Sections 9.1(a), (d) or (e) of the Plan to the extent that such conditions implicate the Committee Settlement, by the Committee) 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. For the avoidance of doubt, and notwithstanding anything to the contrary set forth in the Plan, the distributions to be made on account of the Allowed Fairmont General Unsecured Claim, if any, as set forth in Section 4.7 of the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of any and all Claims of Fairmont from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in Debtor SC SJ, Reorganized SC SJ, or any of their Assets or properties. 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~~ IN THIS SECTION 10.7 OF THE PLAN 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. Notwithstanding the foregoing, on the Effective Date the Debtors shall forever waive, relinquish, and release any and all Causes of Action the Debtors and their Estates had, have, or may have had that arise under section 547 of the Bankruptcy Code against any Person with whom the Debtors conducted business prior to the Effective Date; *provided, however,* that the foregoing waiver, relinquishment and release shall not apply to any claims and Causes of Action the Debtors and their Estates had, have or may have against Fairmont.

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 (a) 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, and (b) the approval of the Committee solely with respect to the treatment provided on account of Holders of Allowed FMT General Unsecured Claims or otherwise implicating the Committee Settlement. 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: ~~June 24~~July 13, 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 Tuesday, July 13, 2021 10:34:06 PM

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Description	#41022665v1<CSDOCS> - SC SJ Holdings - Plan 6.24.2021 (for filing)
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<u>Insertion</u>	
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Deleted cell	
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