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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
STATION CASINOS, INC.

- ☒ Affects this Debtor
- ☐ Affects all Debtors
- ☐ Affects FCP Holding, Inc.
- ☐ Affects FCP Voteco, LLC
- ☐ Affects Fertitta Partners LLC
- ☐ Affects FCP MezzCo Parent, LLC
- ☐ Affects FCP MezzCo Parent Sub, LLC
- ☐ Affects FCP MezzCo Borrower VII, LLC
- ☐ Affects FCP MezzCo Borrower VI, LLC
- ☐ Affects FCP MezzCo Borrower V, LLC
- ☐ Affects FCP MezzCo Borrower IV, LLC
- ☐ Affects FCP MezzCo Borrower III, LLC
- ☐ Affects FCP MezzCo Borrower II, LLC
- ☐ Affects FCP MezzCo Borrower I, LLC
- ☒ Affects FCP PropCo, LLC
- ☐ Affects Northern NV Acquisitions, LLC
- ☐ Affects Reno Land Holdings, LLC
- ☐ Affects River Central, LLC
- ☐ Affects Tropicana Station, LLC

Chapter 11

Case No. BK-09-52477-GWZ
Jointly Administered

REPLY OF FCP PROPCO, LLC TO THE OPPOSITION AND OBJECTIONS FILED AGAINST THE JOINT MOTION OF STATION CASINOS, INC. AND FCP PROPCO, LLC PURSUANT TO 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) AND 365(d)(4)(B)(ii) AND FED. R. BANKR. 9019 FOR ENTRY OF AN ORDER APPROVING SECOND AMENDMENT TO AMENDED AND RESTATED MASTER LEASE COMPROMISE AGREEMENT

Hearing Date: May 4, 2010
Hearing Time: 2:00 p.m.
Place: 300 Booth Street
Reno, NV 89509

TO THE HONORABLE GREGG W. ZIVE, UNITED STATES BANKRUPTCY JUDGE, OFFICE OF THE UNITED STATES TRUSTEE AND ALL PARTIES IN INTEREST:

FCP PropCo, LLC ("PropCo") hereby submits this Reply to the objections to the *Joint Motion of Station Casinos, Inc. and FCP PropCo, LLC pursuant to 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) and 365(d)(4)(B)(ii) and Fed. R. Bankr. 9019 for Entry of an Order Approving Second Amendment to Master Lease Compromise Agreement* (the "Motion") filed on April 21, 2010 by the Official Committee of Unsecured Creditors (the "Committee's Objection") and the Independent Lenders (the

"Independent Lenders' Objection" together with the Committee's Objection, the "Objections").[1] PropCo respectfully submits that the Objections should be overruled and the Motion approved.

I.

INTRODUCTION

A. The Revised Agreement Is Supported By All Major Stakeholders Of Both PropCo and OpCo Estates.

The Revised Compromise Agreement[2] (the "Revised Agreement") has the support of not only PropCo and OpCo[3], as stewards of their respective debtor estates, but also the major economic stakeholders from both estates: (i) the PropCo Lenders, (ii) the administrative agent of the OpCo Lenders and (iii) the OpCo Lenders. It bears emphasizing early, as will be detailed below and likely in additional responses that will be filed with the Court, that the creditors who stand to gain or lose the most over any shifts in value between PropCo and OpCo not only support the approval of the Revised Agreement, but were, in fact, active participants in the negotiation of the Revised Agreement.

B. The Revised Agreement Is The Lynchpin To Advancing These Bankruptcy Cases, In A Manner Consistent With The Requests Of The Major Economic Stakeholders Of The PropCo And OpCo Estates, Toward Plan Confirmation.

As correctly noted by the Independent Lenders, there are several other motions and agreements that interrelate with the Revised Agreement that will concurrently be before the Court for approval (the Bid Procedures and Restructuring Support Agreement with the OpCo Lenders (the

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[1] Boyd Gaming Corp. has withdrawn its objection to the Revised Agreement pursuant to its *Notice of Withdrawal of Documents* filed April 26, 2010 [Docket 1290].

[2] Capitalized terms not defined herein have the meaning described in the Motion and the *Notice of Submission of Redline Comparison of Revised Second Amended and Restated Master Lease Compromise Agreement in Connection with Joint Motion of Station Casinos, Inc. and FCP PropCo, LLC pursuant to 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) and 365(d)(4)(B)(ii) and Fed. R. Bankr. 9019 for Entry of an Order Approving Second Amendment to Master Lease Compromise Agreement* dated April 19, 2010 [Docket 1216] (the "Redline").

[3] For the sake of uniformity, "OpCo" in this Reply means the same thing as "Opco" or "OpCo" as used in the Motion. The same is true for the use of "PropCo" herein, which means the same as "Propco" in the Motion.

"OpCo Plan Support Agreement"). The Revised Agreement also interrelates to the Joint Plan currently on file and the support agreement executed by the PropCo Lenders (the "PropCo Plan Support Agreement").

Rather than being viewed nefariously, however, the fact that the various interrelated agreements have been consensually reached between the major economic constituencies in these bankruptcy cases and brought before the Court should be lauded for bringing previously irreconcilable and divergent positions at PropCo and OpCo together and in furtherance of a plan of reorganization that will benefit their respective estates. That reconciliation has resulted in, among other things, both the PropCo Lenders and the OpCo Lenders entering into agreements to support the currently filed Joint Plan. It should further be noted that because the PropCo Lenders and the OpCo Lenders were actively involved in and support the Revised Agreement, if the Revised Agreement is not approved (prior to May 10th), both the OpCo Plan Support Agreement and the PropCo Plan Support Agreement will be subject to termination. Following no less of an authority than our own Supreme Court which stated that "Compromises are 'a normal part of the process of reorganization,'" PropCo and OpCo seek approval of the Revised Agreement. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 424 (1968); *see also Tindall v. Mavrode (In re Mavrode),* 205 B.R. 716, 719 (Bankr. D.N.J. 1997) ("Settlements are generally favored in bankruptcy proceedings, in that they provide for an often needed and efficient resolution of the bankruptcy case.").

C. The Objections Fail To Acknowledge The Benefits Of The Revised Agreement And The Fact That The Revised Agreement Is Consistent With The First Compromise Agreement.

Notwithstanding the objectors' remarkably virulent, over-the-top attacks on and gross mischaracterizations of the Revised Agreement, the fact is that the Revised Agreement (i) maintains the course already approved by this Court in the First Compromise Agreement—a course that was designed by PropCo and OpCo to govern, if necessary, a controlled separation of the two estates, and (ii) advances the case timetable toward plan confirmation.

Instead of acknowledging the significant benefit provided by the Revised Agreement, which is the lynchpin between the plan support agreements with the major economic stakeholders of both PropCo (the PropCo Lenders) and OpCo (the OpCo Lenders), the Objections focus on specific line items in the Revised Agreement and complain that each identified line item potentially strips valuable assets from SCI to the detriment of SCI's creditors, solely to benefit PropCo. But PropCo is *not* stealing the Colonel's secret recipe or Coke's secret formula – or any "secret sauce" for that matter. The Revised Agreement is about seriously preparing PropCo for a transfer of its equity to the PropCo Lenders and an "amicable divorce" with its tenant, all in a manner that clarifies potential property ownership issues between the estates (related to the computer systems located at the various properties and various assets covered by the License and Reservation Services Agreement between PropCo and OpCo) and provides operational detail with respect to agreed-upon concepts in the First Compromise Agreement regarding Transition Services and the transfer of the OpCo Group's PropCo-related assets. By way of example, Section K of the First Compromise Agreement lists all the elements of the Transition Services at issue in the Revised Agreement, and Section K(iv)(d) specifically provides for the transfer of non-collateral property for mutually agreed-upon or court-determined consideration. The Revised Agreement fleshes out the IP-IT Transfer in such a way to provide both the OpCo Group and PropCo direction and mutual accommodations for the minimally disruptive transfers of assets necessary for PropCo to operate.

Accordingly, the additional detail provided in the Revised Agreement is designed to maximize the value of both the SCI and PropCo estates (and avoid costly litigation over inevitable disputes), and is fully consistent with the Bankruptcy Code's goal of providing Debtors reasonable latitude to enter into such agreements.

D. As "Locals" Casinos, PropCo And OpCo Casinos Do Not Directly Compete, And The Revised Agreement Was Designed To Allow Both PropCo And OpCo Estates To Continue Operating If Separation Is Required.

The objectors' contention that the Revised Agreement will allow PropCo to compete unfairly with SCI is without merit. In the first instance, SCI and PropCo are *not* direct competitors. SCI's management has strategically placed each casino so that each SCI-managed casino has its own local,

geographic market. In view of their geographical and market separation, it is specious to argue that PropCo, once it acquires assets necessary to be able to continue operating, will somehow cannibalize the other SCI-managed casinos. Moreover, the Revised Agreement does not provide for PropCo to acquire competitive information regarding the SCI-managed casinos. Rather, the Revised Agreement allows for SCI to provide services and infrastructural support to PropCo for the operation of the Leased Hotels. By way of example, PropCo will acquire the SCI-maintained customer list identifying customers whose primary casino play is at a Leased Hotel. SCI will *not* be disclosing customer lists of other SCI-managed casinos. SCI's competitors might unfairly benefit from sabotaging PropCo's efforts to reorganize by holding hostage SCI-owned assets that enable PropCo to continue to operate, but SCI itself benefits from a controlled rejection of the Master Lease and a reasonable sale of PropCo-related assets in the event PropCo and the OpCo Group separate (here, a price bargained for by the parties most affected by any price fluctuation – the lenders of PropCo and OpCo).

E. Rejection Of The Master Lease Would Be Destructive Of Value, Disruptive And Result In The Loss Of The Support Of The Major Stakeholders For The Joint Plan.

While the Committee has spared us the pejorative moniker "PropCo Windfall" when referring to the Revised Agreement, the Objections nevertheless argue that an outright rejection of the Master Lease would significantly benefit SCI and avoid the alleged harms of the Revised Agreement. The Objections fail to adequately account for the following facts:

- The secured creditors of SCI (the OpCo Lenders and PropCo) and the secured creditors of PropCo (the PropCo Lenders), all of whom represent the overwhelming majority of the Debtors creditor body, support the approval of the Revised Agreement.
- After months of painstaking negotiations, the secured creditors of SCI and the secured creditors of PropCo have entered into plan support agreements which, if the Master Lease is rejected, will be subject to termination and the significant work to obtain the support of the major stakeholders at PropCo and OpCo will be lost.
- The Revised Agreement—which further reduces the rent to a break-even level and eliminates the adequate-protection floor—provides Transition Services that are wholly

consistent with the First Compromise Agreement and are meant to clarify and provide necessary detail regarding certain terms to aid a transition in the event of a SCI-PropCo separation.

- An immediate rejection of the Master Lease could have significant disruptive effect, both on SCI and on its non-debtor Operating Subsidiaries, if PropCo were left to exercise its remedies against the collateral held by the OpCo Group that secures SCI's payment obligations under the Master Lease – likely resulting in the need for the non-filing OpCo subsidiaries to file for bankruptcy protection.
- The Revised Agreement actually provides OpCo a favorable concession concerning the "Texas Put Right" that was important to and negotiated for by the OpCo Lenders to enhance the value of the OpCo Assets in a future sale.

Also, as discussed in more detail below, the Objections unfairly mischaracterize certain terms of the Revised Agreement to make it appear that the Agreement is not consistent with the terms of the First Compromise Agreement. For example, the Committee Objection compiles a list of "Additional Services" for which there is "no additional compensation", but for each example there is a simple explanation or correction of fact:

- The Revised Agreement clarifies that SCI's and the Operating Subsidiaries' obligation to operate the PropCo Properties in the same general manner will include marketing activities "*consistent with prior marketing practices*." (Committee Objection 10:11-16, emphasis added.) While the Committee objects that this requirement that SCI engage in marketing activities will force SCI to compete against itself, the fact is that, as the language itself makes clear, SCI would simply be maintaining the same level of service until the end of the Transition Period that it has provided since before the bankruptcy filing, consistent with its practice prior to entering into the First Compromise Agreement.
- The First Compromise Agreement provided for PropCo's use of trademarks, and for the provision to PropCo of lists of Primary Customers for Leased Hotels, and "other intellectual property and reservation services to the same extent currently provided

under the License Agreement". (First Compromise Agreement, ¶ K(ii).) The Second Compromise Agreement more fully describes the intellectual property and reservation services as "Transaction Data", and so as to assure that PropCo can actually use this data, provides that, "for the avoidance of doubt", PropCo will have access to software to *access* the Transaction Data. (*See* Committee Objection 10:17-19.) In view of the fact that the Revised Agreement simply provides a mechanism to assure that PropCo can utilize the data already provided to it under the terms of the First Compromise Agreement, it is disingenuous for the Committee to characterize this provision as an additional Transition Service.

- Contrary to the Committee's assertion, PropCo will not be able to "steal away every valuable corporate employee" from SCI. (Committee Objection 11:1-6.) Instead, for certain corporate-level employees, PropCo and OpCo "must cooperate in effecting a reasonable allocation of the corporate employees . . . to ensure that Opco and Propco are adequately staffed from a corporate employee standpoint." (Annex 1, ¶ 11.)[4]
- The Committee also misstates and misinterprets the calculation of PropCo's claim against the OpCo estate and the application of the section 502(b)(6) cap, but because any difference in interpretation, although large in number (perhaps more that $100 million), only increases or decreases PropCo's out-of-the-money unsecured claim in the OpCo case, the dispute is academic and not material when compared to the issues resolved by the Revised Agreement and to keeping the plan support agreements in tact (as with the First Compromise Agreement, the Revised Agreement reserves the rights of all parties regarding the calculation of PropCo's rejection claim).

To be clear, the Revised Agreement has numerous provisions designed to ease the burden of separation on *both* OpCo and PropCo. For this reason, and because the Objections unfairly

[4] To be sure, the Revised Agreement does increase the pool of employees with whom PropCo can have contact, as well as any successful bidder of the OpCo Assets, but the reality is that the increased employee contact may well be required by law and provides the best opportunity for employees to remain employed after separation.

mischaracterize the nature of the separation as if SCI were being set up to fail, PropCo urges the Court to grant the Motion and approve the Revised Agreement.

II.

DISCUSSION

PropCo and SCI, each a debtor in possession, seek Court approval under Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019 to enter into the Revised Agreement. The Revised Agreement reflects a proposed use, sale or lease of the Debtors' property based upon the Debtors' sound business judgment, (Motion, ¶¶ 33-36), and is a compromise between SCI and PropCo that is fair and equitable. (Motion, ¶¶ 37-38.)

The Revised Agreement embodies several principal characteristics:

(1) further reduction of rent for SCI (in short, providing OpCo the economic benefit of lease rejection without the negative consequences of rejection);

(2) more detailed description of transition services for PropCo in the event the Master Lease is rejected or the separation of PropCo and the OpCo Group becomes more likely;

(3) resolution of several critical disputes over asset ownership or continued license or property use; and

(4) transfer of PropCo's collateral and other assets to PropCo for an orderly separation at the agreed-upon purchase price of $35 million, and, in addition, OpCo receives, though New PropCo, the establishment of a floor bid on OpCo Assets without the requirement of substantial break-up fees.

PropCo clearly benefits from the Revised Agreement and its clarification and refinement of Transition Services to be provided PropCo, and by reaching further agreement with SCI regarding assistance for a replacement operator upon a separation of PropCo and SCI and the transfer of certain assets critical to PropCo's reorganization. SCI also benefits from maintaining the Master Lease at a further reduced rent rate—about $2 million less per month than the First Compromise Agreement and about $8 million less per month under the Master Lease itself—and avoids disruption to its operation, or its Operating Subsidiaries' operations, and the attendant loss of value, if the Master Lease were

rejected and PropCo exercised its rights to foreclose on the collateral securing SCI's lease payment obligations. SCI also benefits from the Joint Plan being formed in concert with the OpCo Lenders and PropCo Lenders, the two groups with the principal economic interests in these Chapter 11 Cases,[5] that proposes a stalking horse bid of $772 million for the OpCo Assets. The Revised Agreement takes into account the Joint Plan and sale of OpCo Assets by specifying in more detail the Transition Services and Excluded Assets sold to PropCo that are critical to PropCo's operations.

The Committee and Independent Lenders nevertheless advocate the immediate rejection of the Master Lease, arguing that the Revised Agreement siphons value from OpCo to PropCo without adequate consideration. The Objections are short-sighted and mischaracterize the scope and purportedly one-sided reach of the Revised Agreement, as discussed in more detail below.

A. The Revised Agreement Benefits Both The OpCo Group And PropCo By Avoiding The Uncertainty And Potentially Damaging Effects Of An Immediate Rejection Of the Master Lease.

Although the First Compromise Agreement provided valuable transition services to PropCo in the event SCI were to reject the Master Lease, the Agreement did not eliminate the harm that could result to SCI in the event of lease rejection. The Committee and Independent Lenders lose sight of the fact that SCI's obligations to PropCo under the Master Lease are secured by SCI Lease Collateral and Operating Subsidiaries Lease Collateral (as defined in the Revised Agreement, ¶¶ 6-7). If SCI rejects the Master Lease, PropCo is entitled to exercise remedies against such collateral, including with respect to the collateral held by non-debtor Operating Subsidiaries that SCI has sought to protect from the disruption of bankruptcy. SCI and PropCo "disagree as to the extent, ramifications, and even availability of an immediate rejection of the Master Lease and License Agreement" (*id.*, ¶ 15), but clearly SCI and its Operating Subsidiaries benefit from avoiding a rejection of the Master Lease

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[5] *Declaration of Richard J. Haskins in support of (A) Debtor's Motion for Order pursuant to 11 U.S.C. 105I(a) and 363(b) and Fed. R. Bankr. P. 9019 Authorizing OpCo Debtors to Enter into Restructuring Support Agreement with OpCo Lenders and (B) Ex Parte Application to Shorten Notice for Hearing on Motion* dated April 19, 2010 [Docket 1221], ¶ 8 (the "Second Haskins Declaration").

that might force PropCo to exercise its rights against property of SCI (assuming relief from stay was granted) and its Operating Subsidiaries (where no stay is currently in effect).

In this respect, the "decision tree" provided in the Flachs Declaration filed in support of the Committee Objection is overly simplistic and erroneous. (Flachs Decl., ¶ 12.) Flachs has no basis to assume that PropCo would simply offset its unsecured claim with the value of the FF&E and FF& E Reserve. The FF&E itself is valuable to the operation of PropCo. Furthermore, Flachs does not account for the bankruptcy risk such a rejection places on SCI's Operating Subsidiaries.

An uncontrolled rejection benefits neither SCI nor PropCo. The Revised Agreement provides further detail and clarification to PropCo regarding its Transition Services upon a rejection, and benefits SCI by avoiding the uncertain but real risks attached to rejection of the Master Lease.

In a similar vein, the Independent Lenders clamor for the appointment of an Examiner to conduct the sale of OpCo's assets. Such extraordinary relief is not justified where OpCo and PropCo have presented valid business reasons for entering into the Revised Agreement, and each has vigorously advocated the interests of each estate. For example, the Excluded Assets OpCo has agreed to transfer to PropCo—for $35 million—relate to the operation of the PropCo's Leased Hotels and do not in any way undermine the integrity and operation of the other SCI-managed hotels. Annex 1 to the Revised Agreement, which describes the proposed asset transfers and licenses at the end of the Transition Period, has numerous protections for OpCo's operations:

- PropCo cannot use OpCo signature branding features in its new website, but will otherwise be able to use existing website infrastructure. (Annex 1, ¶ 7.)
- PropCo will only receiver customer lists for those customers whose primary casino play is at a PropCo casino. (Annex 1, ¶ 8.)
- Prior to the transfer of IT hardware at the PropCo casinos, "Propco and OpCo will cooperate with Opco Lenders to ensure that Opco acquires a duplicate IT system and necessary hardware to operate the same." Also, "[e]ach of OpCo and PropCo will be able, post-separation, to use and develop its IT system independently from the other company based on the one in use just prior to the separation, and to independently develop new back-up systems." (Annex 1, ¶ 10.)

- "Opco and Propco must consult and cooperate in effecting a reasonable allocation of [certain] corporate employees" so that each is adequately staffed at the corporate level. (Annex 1, ¶ 11.)

OpCo will not be pillaged by PropCo in the event the amicable divorce comes to pass: PropCo cannot raid OpCo of its senior management, and OpCo will have operational IT systems. The Agreement neither unfairly discriminates against OpCo nor unjustly enriches PropCo as if PropCo were a direct competitor of OpCo. Other SCI-managed casinos are generally not geographically situated in locations that compete with PropCo's Leased Hotels, so selling assets used exclusively or in support of the PropCo casinos does not cripple OpCo's ability to remain competitive.

B. The Revised Agreement Is Wholly Consistent With The First Compromise Agreement And Should Not Be Undermined By The Committee's and Independent Lenders' Exaggerations And Mischaracterizations Of The Additional Details And Provisions Of The Revised Agreement.

As set forth in the preface to the Revised Agreement filed on April 19, 2010, such Agreement "represents the resolution of complex issues and asset transfers necessary to permit PropCo to reorganize and SCI to conduct an orderly sale process . . . ." (Redline Introduction.) SCI is benefited by the Revised Agreement and related "Plan Facilitation Motions" (referred to in the Second Haskins Declaration, p. 4) by an orderly and amicable separation of SCI and PropCo, further reduced rent, an agreed-upon purchase price of $35 million for transferred assets upon such separation, and a stalking horse bid of $772 million to support the OpCo auction.

Both Objections focus on the expanded section of Transition Services and argue that PropCo is receiving benefits "*not included* in the First Compromise Agreement" (Committee's Objection 10:6-7) that "change the Original MLC" for no consideration (Independent Lenders' Objection p. 20). The vast majority of revisions to Transition Services simply clarify rights that were included in the First Compromise Agreement and describe in more detail how SCI and PropCo will take the steps necessary to continue the uninterrupted operation of the Leased Hotels in the Transition Period –

wholly consistent with the intent of the compromise. Several examples from the Objections expose their unnecessary rhetoric:

1. *Continued operations*. The First Compromise Agreement provides that the Leased Hotels will be operated in the same general manner as immediately prior to the date of such Agreement. (Section K(i).) The Revised Agreement merely describes what "same general manner" means: "including performance by SCI and the Operating Subsidiaries of al performance covenants and other obligations under the Master Lease . . ., subject to the same level of care and diligence . . ., including but not limited to marketing activities consistent with prior marketing practices". (Section K(i).) The Committee balks, speculating that such marketing "could serve to attract SCI's regular customers to the casinos of Propco, a direct competitor." (Committee's Objection 10:15-16.) There is nothing unfair about continuing the level of operating services, including marketing services. Furthermore, SCI was not competing against itself prior to entering into the First Compromise Agreement, so continuing its marketing services at the pre-First Compromise Agreement level is not a threat to the other SCI-operated casinos.

2. *Employees*. The First Compromise Agreement permitted PropCo to make offers of employment to non-corporate employees, below the level of general manager, who were predominately engaged in the operation of a Leased Hotel, but prohibited offers to similar employees predominately engaged in the provision of services to all the SCI hotel and gaming facilities on a shared basis. (Section K(vi).) Because of the real likelihood of separation, the Revised Agreement reasonably expanded PropCo's access to employees to include corporate employees below vice president who exclusively provided service to a Leased Hotel and other corporate employees, but only in consultation and cooperation with OpCo to ensure the reasonable allocation of corporation employees between OpCo and PropCo. (Annex 1, ¶ 11.) This compromise between PropCo and SCI helps protect the employees of both the Leased Hotels and of the other SCI-managed properties, and gives PropCo and SCI flexibility, acting in good faith, to separate its corporate-level employees through the Transition Period in anticipation of a separation of the two estates. There is no credibility to the argument that PropCo now has the ability to "steal away every valuable corporate employee

currently employed by SCI" or "is given free reign to raid the most important, senior-level OpCo management". (Committee's Objection 11:6; Independent Lenders' Objection, p. 20.)

3. *IT Systems*. Under the Revised Agreement, PropCo and the OpCo Group reached an agreement regarding the transfer of certain assets in exchange for $35 million in the event the Transition Period results in the permanent separation of PropCo and SCI. By way of example, the parties agree that "[a]ll hardware and wires located at any PropCo property" will be acquired by PropCo and that both parties "will cooperate with Opco Lenders to ensure that Opco acquires a duplicate IT system and necessary hardware to operate the same." (Annex 1, ¶ 10.) The parties do acknowledge in the Revised Agreement that "[t]he cost of Opco's duplicate IT system will be a factor in determining the final purchase price". (Annex 1, ¶ 10.) Here, the parties have negotiated the cost of the asset transfers in the $35 million purchase price, and the OpCo Lenders, in order to consent to such pricing, have sought and obtained, among other things, a favorable stalking horse bidder for the OpCo Assets (without any break-up fee concessions). The parties have taken into account the fact that there are issues concerning the ownership of the underlying computer system, cost of transferring the IT system and related assets (which is housed at PropCo's properties), so the parts of the Objections attacking the costs and transfer of value should be overruled.

4. *Excluded Assets (Annex 1*): The First Compromise Agreement clearly described, and the Court approved, that SCI would cooperate with the PropCo Lenders (or Mortgage Lenders) enforcement of liens by agreeing to transfer the SCI Lease Collateral and the Operating Subsidiaries Lease Collateral, as well as "*sell to PropCo if so requested by PropCo, at a mutually agreed upon value and form of consideration or, if the Parties cannot mutually agree, as determined by the Bankruptcy Court*", a list of assets owned by OpCo but exclusively or closely associated with the Leased Hotels. (Section K (iv) (emphasis added).) Annex 1 and the transfer of Excluded Assets described in the Revised Agreement are wholly consistent with this provision of the First Compromise Agreement, *and* the Parties have arrived at a mutually agreed upon price of $35 million. The Objections are misguided at best to suggest that the Parties should now not be permitted to sell these specific assets that were listed in the Court-approved First Compromise Agreement.

The balance of comments in the Objections mainly dicker over the more-detailed and revised concepts related to the Transition Services and Transition Period, all of which were negotiated in connection with (i) reduced rent, (ii) an agreed-upon purchase price of the transferred assets and, importantly, with the active participation of the PropCo Lenders and OpCo Lenders, and (iii) support for the Joint Plan by the PropCo and OpCo major stakeholders. The Debtors, with the active participation and consent of the PropCo Lenders and the OpCo Lenders, are entitled to reach a compromise that is fair and equitable—nothing the Objections say about the Transition Services and the Debtors' agreement regarding an orderly separation undermines the fact that the Revised Agreement benefits both Debtors and falls well within a range of reasonable action the Debtors could take to address challenges posed by the Master Lease.

C. The Revised Agreement Falls Within The Range of Reasonableness.

The standard for approval of a settlement agreement is familiar: a bankruptcy court must find the settlement is fair and equitable, reasonable and in the best interest of the estate. *See Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988); *Martin v. Kane (In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Equally familiar is that no mini-trial need be conducted and a simple canvassing of the issues is all that is required. *See Port O'Call Inv. Co. v. Blair (In re Blair)*, 538 F.2d 849, 851 (9th Cir. 1976). The objectors have asserted that the Court must not accept the Debtors' views on the reasonableness of the Revised Agreement. But the objectors misunderstand the nature of the necessary inquiry under Rule 9019. It is *the Court* that must make its own informed, independent judgment on the reasonableness of the settlement. Further, as noted by the Court in *Adelphia,* opposition from creditors to "the approval of a settlement . . . must be considered in light of the *reasons* for any opposition." *In re Adelphia Comm. Corp.,* 327 B.R. 143, 165 (Bankr. S.D.N.Y. 2005). Here, the reasons for the Committee and Independent Lenders opposing the Revised Agreement are not because the Revised Agreement is not fair and reasonable and in the best interest of the Debtors' estates, but because (i) for the Committee, the objection strategically provides a much needed toe-hold to extract additional consideration from the Joint Plan, and (ii) for the Independent Lenders, an ability to attempt to extract additional consideration they feel owed by being out-voted

by the majority of the OpCo Lenders. Ultimately, the Debtors' assessment or the recalcitrant creditors' views are beside the point, because the process of determining whether or not a proposed settlement is reasonable is for the Court to determine. PropCo is confident that, upon canvassing the issues, the Court will find that the Revised Agreement is fair and reasonable and well within the range of reasonableness.

III.

CONCLUSION

The Debtors have made significant progress negotiating with its major creditor constituents, the OpCo Lenders and PropCo Lenders. The PropCo Independent Directors have acted consistent with their duty to maximize the value of the PropCo estate for the benefit of all its stakeholders, and the Objections should not derail the hard-fought compromise reached with the OpCo Group.

Because the Revised Agreement is fair, equitable and reasonable to all parties, PropCo respectfully requests that the Court grant the Motion and approve the Revised Agreement.

Dated: April 28, 2010

Respectfully submitted

By: /s/ *Oscar Garza*

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