The relief described hereinbelow is SO ORDERED.

SIGNED this 30th day of January, 2018.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

JOHN Q. HAMMONS FALL 2006, LLC, et al.,	Case No. 16-21142
	Chapter 11
Debtors.	Jointly Administered

ORDER NUNC PRO TUNC
DENYING APPROVAL OF DEBTORS' DISCLOSURE STATEMENT

As all parties to these 76 bankruptcy cases[1] involving a billion-dollar business[2] are aware, Debtors are The Revocable Trust of John Q. Hammons dated December 28, 1989 as Amended and Restated ("Trust") and 75 of the Trust's subsidiaries and affiliates. Beginning in 2012, the

[1] These cases are administratively consolidated under Case No. 16-21142.

[2] This billion-dollar operation is controlled by a business trust, which in turn is controlled by two individual trustees.

Trust and other (but not all) Debtors were involved in Delaware state court litigation with creditor JD Holdings, L.L.C., regarding a right-of-first-refusal agreement ("ROFR") between those parties. The Delaware litigation was pending for almost four years before the bankruptcy cases were filed. To avoid the substantial risk that the Delaware court would order specific performance under the ROFR (which Debtors considered onerous), Debtors filed for bankruptcy in 2016.[3]

Debtors' initial strategy in these bankruptcy cases was to reject the ROFR and, having achieved this goal, to engage in an orderly sale of their hotel portfolio to satisfy all claims in full (including the ROFR-rejection damages allowed to JD Holdings).[4] However, while this case is populated by capable lawyers in all quarters, bankruptcy cannot cure all that ails Debtors, and Debtors' competent strategy of an orderly sale of assets simply has not come to fruition.

This is not a traditional real-estate bankruptcy; rather, it is largely a battle between Debtors and JD Holdings for control over Debtors' hotels. The Court notes that few successful Chapter 11 plans are confirmed through litigation; instead, most successful plans are negotiated and ultimately consensual. Here, certain parties have already attempted mediation, albeit not to resolution. Perhaps management is recalcitrant and unyielding to the logic that demands a difficult, but nevertheless successful, agreement. For this reason, by separate order, the Court will direct that Debtors, JD Holdings, and creditor SFI Belmont, LLC, return to mediation, with the caution that Debtors owe a fiduciary duty to the entire creditor body and that after more than

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[3] *See* Disclosure Statement § III(B)(1) (ECF 1686), "JD Holdings Right of First Refusal Litigation." It is not unusual for corporate entities to employ bankruptcy in order to avoid potentially debilitating judgments. *See, e.g.*, *In re Texaco, Inc.*, 81 B.R. 806, 807 (Bankr. S.D.N.Y. 1998) ("The Texaco debtors filed their petitions for reorganizational relief on April 12, 1987 as a result of a $10.3 billion dollar judgment obtained by Pennzoil against Texaco in a state court in Texas.").

[4] The adjudication of the amount of these damages is pending before the Court.

18 months of bankruptcy proceedings, new management may be demanded at some point. The Court is confident that counsel who represent the parties-in-interest are capable of a compromise that considers and reflects the diverse interests of the parties to whom duties are owed. These parties include Debtors' approximately 4,000 employees, who have not had an active voice in these proceedings, but whose interests the Court considers.[5]

This matter now comes before the Court for the consideration of Debtors' Amended Disclosure Statement with Respect to Debtors' Joint Unimpairment Plan of Reorganization ("Disclosure Statement")[6] filed in conjunction with Debtors' Joint Unimpairment Plan of Reorganization ("Plan").[7] Having considered the Disclosure Statement and the Plan, creditors' objections thereto, and the parties' arguments at the January 23, 2018 hearing, and for the reasons stated below, the Court declines to approve the Disclosure Statement.

I. <u>Not All Claims Are Unimpaired Under the Plan.</u>

As an initial matter, the Court rejects Debtors' contention that all claims are unimpaired under the Plan. Section 1124 of the Bankruptcy Code provides, in relevant part:

> [Unless the holder of a claim agrees to a less-favorable treatment of that claim,] a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—
>
> (1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or
>
> (2) . . . after the occurrence of a default—
>
> (A) cures any such default that occurred before or after

[5] "Justice is indiscriminately due to all, without regard to numbers, wealth, or rank." *Georgia v. Brailsford*, 3 U.S. 1, 3 (1794).

[6] ECF 1686. Debtors filed their original disclosure statement on December 20, 2017. (ECF 1583.)

[7] ECF 1584.

> the commencement of the case under this title . . . ;
>
> (B) reinstates the maturity of such claim or interest as such maturity existed before such default; [and]
>
> . . .
>
> (E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

"The standard for impairment is very lenient and 'any alteration of the rights constitutes impairment even if the value of the rights is enhanced.'" *In re Wabash Valley Power Ass'n*, 72 F.3d 1305, 1321 (7th Cir. 1995) (quoting 5 *Collier on Bankruptcy* ¶ 1124.03[1] (15th ed. 1994)[8]), *cert. denied*, 519 U.S. 965.[9]

JD Holdings, SFI Belmont, and the "CMBS Lenders"[10] pointed out (both at oral

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[8] *Cf.* Richard Levin & Henry J. Sommer, 7 *Collier on Bankruptcy* ¶ 1124.03 (16th ed. 2017) ("Any alteration of these rights constitutes impairment, even if the value of the rights is enhanced.").

[9] *See also In re G.L. Bryan Invs., Inc.*, 340 B.R. 386, 390 (Bankr. D. Colo. 2006) ("Generally, a class is impaired when the legal, equitable and contractual rights out of which [a creditor's] claim arises are altered in *any* way.") (alteration in original) (quoting *In re Dean*, 166 B.R. 949, 954 n.3 (Bankr. N.M. 1994)).

[10] The "CMBS Lenders" are (a) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-LDP7, by and through LNR Partners, LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Nomura Portfolio Loan"); (b) Wilmington Trust, National Association, as Trustee for the registered holders of Wells Fargo Commercial Mortgage Trust 2015-C26, Commercial Mortgage Pass-Through Certificates, Series 2015-C26 by and through Midland Loan Services, a division of PNC Bank, National Association, solely in its capacity as Special Servicer (holder of the loan known as the "Chateau Lake Loan"); (c) Deutsche Bank Trust Company Americas, as Trustee, on behalf of the Registered Holders of Citigroup Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2015-GC33, by and through LNR Partners, LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Goldman Portfolio Loan"); (d) U.S. Bank National Association, as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-3, by and through C-III Asset Management LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Euro-Hypo Loan"); and (e) Wells Fargo Bank, N.A., as successor to LaSalle Bank National Association, as Trustee for the registered holders of COMM 2006-C8

argument and in their objections[11]) so many ways in which their claims are impaired under the Plan that this Order will not address them all. In omitting some of those arguments from this Order, the Court does not imply that such arguments lack validity.

In short, the Plan proposes to pay all allowed claims in full on the "Effective Date." The Effective Date, however, is not the Plan's confirmation date or even a reasonable time thereafter. Rather, the Effective Date is 270 days from the time when both (1) JD Holdings' appeals[12] are concluded and (2) Debtors possess sufficient funds from operations, sales, and refinancing to pay all allowed claims in full.[13] Under the Plan, the Effective Date may occur as late as five years after confirmation.[14]

SFI Belmont and two of the CMBS Lenders have secured claims arising out of unmatured loans. SFI Belmont's loan (the "Atrium Loan") matures on March 15, 2021.[15] As to the two CMBS Lenders, the Chateau Lake Loan matures on January 1, 2025, and the Goldman Portfolio Loan matures on September 6, 2025.[16] In order to leave these claims unimpaired under section 1124, the Plan would have to leave the respective creditors' contractual rights unaltered by reinstating the original maturity dates of the loans. By providing that those claims will be

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Commercial Mortgage Pass-Through Certificates, by and through LNR Partners, LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Barclays Portfolio Loan").

[11] JD Holdings' Obj., ECF 1617; SFI Belmont's Obj., ECF 1647; CMBS Lenders' Obj., ECF 1648.

[12] By orders dated September 13, 2017, and October 13, 2017, this Court denied JD Holdings' motions for dismissal and stay relief. (ECF 1297, 1378.) Both orders are currently in the briefing stage on appeal at the Bankruptcy Appellate Panel of the Tenth Circuit.

[13] *See* Plan §§ 1.26, 1.37, 13.01. The Plan places other conditions on the Effective Date as well, but the ones listed here are sufficient for purposes of this Order.

[14] *See* Plan § 13.02.

[15] SFI Belmont's Obj. ¶ 54.

[16] CMBS Lenders' Obj. 5.

paid not on the original maturity dates, but instead on the Effective Date, the Plan alters the contractual rights to which the holders of those claims are entitled. The Plan therefore impairs those claims under section 1124.[17]

As to the claims held by JD Holdings and the three CMBS Lenders whose loans have already matured, the Court declines to allow Debtors to inappropriately manipulate the "effective date" (which the Bankruptcy Code does not define) by potentially extending it five years post-confirmation. Courts have routinely held that a claim is impaired if it is not paid in full within a short time after plan confirmation. *See, e.g.*, *In re K Lunde, LLC*, 513 B.R. 587, 596 (Bankr. D. Colo. 2014) (finding impairment where full payment would be made "over the course of one year following confirmation"); *In re Valley View Shopping Ctr., L.P.*, 260 B.R. 10, 32 (Bankr. D. Kan. 2001) (observing that a 90-day deferral of payment "undisputedly impairs" unsecured claims); *In re Haardt*, 65 B.R. 697, 701 (Bankr. E.D. Pa. 1986) (finding impairment where plan proposed paying claims in full, in cash, 120 days after plan confirmation); *cf. In re Wonder Corp. of Am.*, 70 B.R. 1018, 1021 (Bankr. D. Conn. 1987) (reasoning that unimpairment requires "some reasonable limitation on the interval between the confirmation order and the effective date of the plan"). Here, Debtors propose to pay the claims held by JD Holdings and the three CMBS Lenders whose loans have already matured as late as five years following confirmation. This massive delay materially impairs those claims.

For all of the foregoing reasons, the Court holds that the Plan impairs the claims of JD Holdings, SFI Belmont, and the CMBS Lenders.

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[17] The Plan also impairs the claims of SFI Belmont and all CMBS Lenders under section 1124 by omitting any provision for payment of costs, fees, and default interest due under the relevant loan documents, which—again—alters the contractual rights to which the holders of those claims are entitled.

II. Debtors' Disclosure Statement Does Not Contain Adequate Information.

Under section 1125(b) of the Bankruptcy Code, acceptances or rejections of a plan may not be solicited "unless, at the time of or before such solicitation, there is transmitted . . . the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information."

Section 1125(a)(1) defines "adequate information" as

> information of a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

Section 1125(a)(2) further defines "investor typical of holders of claims or interests of the relevant class" as an investor having—

> (A) a claim or interest of the relevant class;
>
> (B) such a relationship with the debtor as the holders of other claims or interests of such class generally have; and
>
> (C) such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have."

The determination of "adequate information" is subjective, made on a case-by-case basis, and left largely to the discretion of the bankruptcy court. *See, e.g.*, *In re Tex. Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988); *In re Aspen Limousine Serv.*, 193 B.R. 325, 334 (D. Colo. 1996). As discussed below, the Disclosure Statement does not contain adequate information, and this Court declines to approve it.

It is axiomatic that no hypothetical investor (or anyone else) could make an informed judgment based on materially misleading or inaccurate information. *Cf. In re Dakota Rail, Inc.*, 104 B.R. 138, 148 (Bankr. D. Minn. 1989) (denying approval of disclosure statement as materially misleading); *id.* ("A disclosure statement is misleading where it contains glowing opinions or projections, having little or no basis in fact and/or contradicted by known fact."). Here, the foundation of the Plan is the value of Debtors' assets, which determines the funds available to satisfy (among other things) JD Holdings' unsecured claims.[18] However, so difficult is the chore thrust upon Debtors' counsel by Debtors' management that the Disclosure Statement is plagued with materially misleading and inaccurate information as to valuation.

Debtors base the hotel values listed in Appendix 4 to the Disclosure Statement largely on appraisals provided by TS Worldwide, LLC d/b/a HVS ("HVS"), as of June 26, 2016. Each appraisal gives two values for a hotel: a hypothetical "as improved" value that could be achieved through significant capital improvement expenditures, and an "as-is" value that deducts the cost of the requisite expenditures.[19] Appendix 4 to Debtors' Disclosure Statement lists the "as improved" values for each of Debtors' 35 hotels, but nowhere deducts the cost of the capital improvements necessary to reach those values. As a result, Appendix 4 overstates Debtors' "Net Hotel Value" by as much as $240 million (the total cost of the capital improvements).[20]

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[18] According to Appendix 4 to the Disclosure Statement, approximately $571 million will be available to satisfy (among other things) JD Holdings' claims, which largely overlap: one $587 million claim for pre-petition damages and one $565 million claim for rejection of the ROFR.

[19] *See* JD Holdings' Obj. 12.

[20] *See id.* Put differently—and as SFI Belmont pointed out at oral argument—if Debtors plan to sell non-hotel assets to fund the capital improvements, Debtors' Appendix 4 double-counts the value (approximately $240 million) of those improvements by incorporating it into both the Net Hotel Value and the Net Value of Trust's Non-Hotel Land.

"Courts have emphasized that disclosure statements must contain factual support for any opinions contained therein since opinions alone do not provide the parties voting on the plan with sufficient information upon which to formulate decisions." 7 *Collier on Bankruptcy* ¶ 1125.02[2]; *see In re Fierman*, 21 B.R. 314, 315 (Bankr. E.D. Pa. 1982) (denying approval of disclosure statement for failure to provide adequate factual basis for valuation); *see also In re Reilly*, 71 B.R. 132, 135 (Bankr. D. Mont. 1987) (denying approval of disclosure statement for failure to provide adequate factual basis for valuation). Here, Debtors attempt to justify their use of "as improved" values by stating in the Disclosure Statement that such values were "confirmed by the bids actually received in the marketing and sale process undertaken by Debtors during the pendency of [this case]."[21] However, the Disclosure Statement contains no facts to support this opinion regarding the bids, "making it impossible for any hypothetical investor to assess whether those bids actually support Debtors' claimed values."[22] In fact, the Disclosure Statement contains nothing to support the conclusion that those "bids" were actual bids at all, as opposed to informal or preliminary expressions of interest. Debtors respond that they "will not disclose the bids received on the hotels because such information constitutes confidential information about an ongoing sale process and/or communications with an expert who has not been designated to testify and is therefore protected from disclosure under Fed. R. Civ. P. 26(b)." However, neither confidentiality nor Rule 26(b) obviates the requirement that a disclosure statement provide factual support for its opinions. If Debtors are unwilling or unable to include facts to support their "bids" opinion, then the Disclosure Statement contains inadequate information as to that opinion.

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[21] Disclosure Statement § III(F), "Appraisal Data for Debtors' Assets."

[22] JD Holdings' Obj. 21.

The HVS appraisals were also based on financial projections now known by Debtors to be overly—and materially—optimistic. According to JD Holdings, "using HVS's own income approach financial model, but substituting the hotels' actual performance and the revised financial projections contained in Appendix 5 for HVS's projected financial performance, and changing no other assumptions, would *reduce the HVS Appraisal values by over $200 million*."[23] Furthermore, in selecting the discount and capitalization rates for each appraisal, HVS used data from the SITUS RERC Real Estate Report, which classifies hotels as either First Tier (best), Second Tier, or Third Tier (worst).[24] The better the Tier, the lower the discount and capitalization rates tend to be (and the greater the derived present value for the hotel at issue).[25] However, while each HVS appraisal used First Tier rates, the appraiser testified in connection with the Delaware litigation that, of the thirty-five hotels, only three hotels were actually First Tier; thirteen were Second Tier and nineteen were Third Tier.[26] This suggests a third material inaccuracy (along with the ones concerning capital expenditures and financial projections) in Debtors' Net Hotel Value.

Rather than respond to the substance of these arguments, Debtors argue:

> Here, the Disclosure Statement accurately sets forth the appraised values of the Debtors' assets, appraised by nationally renowned appraisal firms – Alvarez & Marsal, and HVS. That other creditors may disagree as to the values is an issue for confirmation, not an issue for disclosure. . . .
>
> In Section 1125(b), the Code specifically permits approval of a disclosure statement with no valuation or appraisal information, signaling Congress' express intent that if the Debtors disclose the

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[23] JD Holdings' Obj. 11.

[24] JD Holdings' Obj. 15.

[25] *Id.*

[26] *Id.*

most current valuation of their assets, the disclosure is sufficient.[27]

However, Debtors' omission of capital improvement costs and HVS's use of overly-optimistic financial projections are not opinions subject to disagreement; they are facts that render the Disclosure Statement materially misleading, and therefore inadequate. While Debtors are correct that a court "may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets," 11 U.S.C. § 1125(b), that provision of the Bankruptcy Code is not a license to provide facially inaccurate valuations or materially misrepresent the appraisals. No "hypothetical investor" could ever make an "informed decision" based on such information, particularly where—as here—just two such inaccuracies reduce the funds available to satisfy JD Holdings' claims from the $571 million listed in Appendix 4 to as little as $131 million.[28] Thus, contrary to Debtors' argument, valuation is an issue for disclosure (in addition to confirmation) in this case.

Debtors also respond that they "will make the appraisals dated as of June 26, 2016 available to any creditor or party in interest who (a) requests copies of one or more appraisals in writing; and (b) executes a written non-disclosure agreement in the form attached as Exhibit B to this reply."[29] However, the Disclosure Statement does not even mention the potential availability of the appraisals. Furthermore, the availability of the appraisals does not render the Disclosure Statement itself any less materially misleading and inaccurate; creditors should not be required to compare the Disclosure Statement to the HVS appraisals under a microscope in order

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[27] Debtors' Mem. Supp. of Approval of Disclosure Statement and § 1121 / 105 Mot. 6. (ECF 1674.)

[28] As discussed *supra*, the Disclosure Statement omits capital improvement costs (as much as $240 million) and relies on overly-optimistic financial projections (the corrected version of which reduces the value of Debtors' assets by $200 million).

[29] Debtors' Mem. 19.

to independently identify such deficiencies for themselves.[30]

For all of the foregoing reasons, the Court holds that the Disclosure Statement does not contain adequate information as required by section 1125.

III. <u>Debtors' Proposed Plan Is Patently Unconfirmable.</u>

In the alternative, the Court declines to approve Debtors' Disclosure Statement because Debtors' proposed Plan is patently unconfirmable. "[A] bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the statement is patently unconfirmable." *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012); *see, e.g.*, *In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bankr. N.D. Cal. 2003) ("Because the underlying plan is patently unconfirmable, the disclosure statement may not be approved."). As with the issue of claim impairment, *supra*, JD Holdings, SFI Belmont, and the CMBS Lenders point out so many ways in which the Plan is patently unconfirmable that this Order will not address them all. Again, in omitting some of those arguments from this Order, the Court does not imply that such arguments lack validity.

As an initial matter, the Plan is patently unconfirmable because it impairs creditors but

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[30] Here, perhaps, reality parallels fiction:

> "But the plans were on display . . ."
> "On display? I eventually had to go down to the cellar to find them."
> "That's the display department."
> "With a flashlight."
> "Ah, well, the lights had probably gone."
> "So had the stairs."
> "But look, you found the notice, didn't you?"
> "Yes," said Arthur, "yes I did. It was on display in the bottom of a locked filing cabinet stuck in a disused lavatory with a sign on the door saying 'Beware of the Leopard.'"

Douglas Adams, *The Hitchhiker's Guide to the Galaxy* 9-10 (Pocket Books 1981) (1979).

impermissibly denies them a vote in violation of 11 U.S.C. § 1129(a)(8).

"Feasibility" is "the shorthand term for the requirement of confirmation as set forth in § 1129(a)(11)." *In re Inv. Co. of the Sw.*, 341 B.R. 298, 310 (B.A.P. 10th Cir. 2006). A debtor "bears the burden to show feasibility by a preponderance of the evidence." *Id.* "The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise[] creditors . . . more under a proposed plan than the debtor can possibly attain after confirmation." *In re Pikes Peak Water Co.*, 779 F.2d 1456, 1460 (10th Cir. 1985) (quoting *In re Pizza of Haw., Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985)).

A Chapter 11 plan is infeasible if it states, notwithstanding a confirmation order, that the plan is void and of no effect if conditions precedent set forth in the plan have not been satisfied or waived by debtors. *See In re Sis Corp.*, 120 B.R. 93, 95 (Bankr. N.D. Ohio 1990). Here, the Plan does just that:

> Section 13.02. Effect of Failure of Conditions. In the event the Effective Date has not occurred on the fifth anniversary of the Confirmation Date or (if earlier, all assets of the Debtors have been sold and the Debtors do not then possess [funds sufficient to pay all allowed claims in full], then the Plan shall become null and void in all respects . . .

For this reason alone, the Plan is infeasible, and therefore patently unconfirmable.

A plan is also infeasible if its success hinges on the outcome of pending litigation. Again, the success of the Plan does just that:

> The variable is the ultimate allowance of any JDH Contract Claims. Full allowance of these Claims would exceed the likely recovery from disposition of the Debtors' assets . . . .[31]

[31] Disclosure Statement 35. The Disclosure Statement goes on to state that "the historic recovery by the Debtors in excess of 10% more than the appraised value of their non-hotel real estate assets would cover the very unlikely scenario in which the JDH Contract Claims were estimated in the full amount sought. This 10% premium is reflected in Appendix 4 . . . ." By the Court's arithmetic (using the numbers in ECF 905, 1020, 1050, 1090, 1097, 1098, 1196, 1300, and

While Appendix 4 to the Disclosure Statement estimates this likely recovery at $571 million, the actual recovery is likely to be much lower—perhaps $440 million lower,[32] a material difference in light of the size of JD Holdings' claims.[33] There is also a substantial likelihood that Debtors have materially underestimated their liabilities for, *inter alia*, broker fees, mortgage debt, and yield maintenance premiums. *See, e.g.*, JD Holdings' Obj. 19 ("Debtors do not disclose that they intend to retain brokers to market and sell these land parcels and that at least in some, if not most, sales, Debtors would be responsible for paying the brokerage commission, which can run as high as 6% of the purchase price."); *id.* at 25 ("[T]he Plan appears to understate the debt owed by Richardson Hammons by $20,000,000.");[34] CMBS Lenders' Obj. 20-21 ("As reflected in the relevant proofs of claim, the yield maintenance premium due [at the time these bankruptcy cases were filed] under the Goldman Portfolio Loan was $66,354,124.30 and that due on account of the Chateau Lake Loan was $10,013,171.00.").[35] Under these circumstances, the success of the Plan clearly depends on the outcome of the pending litigation regarding the allowed amount of

1603), the figure is 9.4%, which would be more accurately rounded down to 9%, not up to 10%. In any event, it is unreasonable to extrapolate *any* premium for all non-hotel real estate assets (located in Texas, Colorado, Missouri, Oklahoma, Arkansas, Kansas, North Carolina, New Mexico, Nevada, and Iowa) from the sales of 50.72 acres in Lindon, Utah, and an overflow parking lot for a "captive" purchaser who owns an adjacent hotel in Middleton, Wisconsin (i.e., the three out of eight non-hotel properties sold by Debtors for more than their appraised values).

[32] *See supra* note 28.

[33] *See supra* note 18.

[34] *Compare* Plan Article IV, Class 3.41B (stating that U.S. Bank has a $130,724,159.76 secured claim against Richardson Hammons) *with* Disclosure Statement App. 13 (reflecting debts of individual Richardson Hammons properties). Although "[t]he Debtors believe that brokerage commissions would impact the ultimate net sale proceeds received by the Debtors, but do not impact the value of the assets" (Debtors' Mem. 25), it is ultimately the net sale proceeds, not asset value, that determine plan feasibility.

[35] Debtors acknowledged at oral argument that it would not be unreasonable to add around $50 million for yield maintenance to the amount CMBS would receive under the plan.

JD Holdings' claims. The Plan is therefore infeasible, and again patently unconfirmable.

In light of the Disclosure Statement (which contains inadequate information) and the Plan (which is patently unconfirmable) filed by Debtors, the Court agrees with SFI Belmont that creditors "should not have to endure the time and expense of a futile, but very expensive, confirmation process,"[36] and with the CMBS Lenders:

> In a case of this magnitude and complexity, with over a billion dollars in assets and a diverse set of creditors with sometimes competing interests, approval of the Disclosure Statement for an unconfirmable plan would set the parties on a path to incur millions of dollars in legal fees and expert and other litigation costs related to contested plan confirmation. Such an undertaking for a plan that cannot be confirmed under any circumstances would be an unconscionable waste of resources.[37]

IV. Conclusion.

It is therefore ordered by the Court, having found that the Disclosure Statement does not contain adequate information, that approval is denied. As stated above, the Court will enter a separate order directing the parties to return to mediation. The Court will also enter a separate order terminating Debtors' exclusivity periods as contemplated by the Court's prior order dated December 13, 2017.[38]

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[36] SFI Belmont's Obj. ¶ 6.

[37] CMBS Lenders' Obj. 9. The Court notes that there were more than twenty attorneys present at oral argument regarding the Disclosure Statement.

[38] ECF 1577.