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6  
7 Attorneys for R. Todd Neilson,  
Chapter 11 Trustee

8  
9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **LOS ANGELES DIVISION**

12 In re  
13 EZRI NAMVAR, an individual,  
14 Debtor.

) Case No. 2:08-bk-32349-BR  
)  
) Chapter 11  
)  
) **NOTICE OF MOTION AND MOTION**  
) **OF CHAPTER 11 TRUSTEE FOR**  
) **APPROVAL OF PARTIAL**  
) **SETTLEMENT AGREEMENT RE**  
) **DISPUTES OVER CERTAIN**  
) **COLLATERAL RELATED TO 127**  
) **WEST 25<sup>TH</sup> LLC AND 241 FIFTH AVE.**  
) **HOTEL, LLC; MEMORANDUM OF**  
) **POINTS AND AUTHORITIES;**  
) **DECLARATIONS OF R. TODD**  
) **NEILSON, BRADLEY D. SHARP, AND**  
) **LOUIS A. CICALESE IN SUPPORT**  
) **THEREOF**

) [F.R.Bank.P. Rule 9019]  
)  
) Date: March 10, 2010  
) Time: 10:00 a.m.  
) Place: Courtroom "1668"  
) 255 E. Temple Street  
) Los Angeles, California

25 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**  
26 **AND TO ALL INTERESTED PARTIES:**

27 PLEASE TAKE NOTICE THAT on March 10, 2010, at 10:00 a.m., in Courtroom "1668"  
28 at 255 E. Temple Street in Los Angeles, California, R. Todd Neilson, the Chapter 11 Trustee (the

1 "Trustee") for the bankruptcy estate of Ezri Namvar (the "Debtor") will, and hereby does, move  
2 (the "Motion") the Court, pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure, for  
3 an Order approving the Partial Settlement Agreement (the "Agreement") re Disputes Over Certain  
4 Collateral related to 127 West 25th LLC and 241 Fifth Ave. Hotel, LLC, executed by the following  
5 parties: Nader & Sons, LLC ("Nader")<sup>1</sup>, Sisko Enterprises LLC ("Sisko"),<sup>2</sup> Bradley D. Sharp (the  
6 "Namco Trustee"), as Chapter 11 trustee for the estate of Namco Capital Group, Inc. ("Namco" or  
7 "Borrower"), N.Y. 18, LLC ("NY 18"), Beshmada, LLC ("Beshmada"),<sup>3</sup> and R. Todd Neilson (the  
8 "Namvar Trustee"), as Chapter 11 trustee for the estate of Ezri Namvar ("Namvar" or "Debtor,"  
9 and collectively all of the above parties are referred to as the "Parties").<sup>4</sup>

10 The Agreement resolves a dispute between the Parties over Nader and Sisko's alleged rights  
11 to certain collateral (the "Collateral"), relating to a loan (the "Loan") that they made to Namco pre-  
12 petition, which includes (except as provided in Sections 5 and 6): (a) all of NY 18's membership  
13 interest in 127 West 25th LLC ("25 LLC"), a Delaware limited liability company, (b) all of  
14 Beshmada's membership interest in 241 Fifth Ave. Hotel, LLC ("Fifth Ave. LLC"), a Delaware  
15 limited liability company, (c) various interests and rights in respect of or resulting from such  
16 membership interests, and (d) all proceeds related to such membership interests.

17 The Agreement contains the following material terms, among others:

18 **1. Recognition by NY 18.**

19 NY 18 acknowledges and recognizes the Loan, Pledge and Security  
20 Agreement dated as of June 12, 2008, as amended by that certain First  
21 Amendment to Loan, Pledge and Security Agreement entered into as of  
22 July 16, 2008 (as amended, the "Pledge Agreement") and NY 18's  
23 assignments to Lender and Lender's assertion of their rights to the  
24 Collateral, and NY 18 agrees not to oppose or contest the validity of the

23 <sup>1</sup> The Namvar and Namco Trustees and Beshmada are informed that Nader Hakakian and Kay  
24 Khosro Hakakian, who are the Managing Members of Nader and Sisko, respectively, are brothers  
25 of Alex Hakakian, a member of the Namco Unsecured Creditors' Committee through a creditor  
26 entity.

25 <sup>2</sup> Nader and Sisko are collectively referred to as "Lender".

26 <sup>3</sup> NY 18 and Beshmada are collectively referred to as the "Pledgor".

27 <sup>4</sup> Namvar and Homayoun Namvar are collectively referred to as "Guarantor".

28

1 Pledge Agreement. NY 18 acknowledges, recognizes and agrees that it has  
2 no defenses to Lender's claims and that Lender's rights to the Collateral are  
3 senior to NY 18's rights and that the Collateral includes (except as provided  
4 in Sections 5 and 6) any and all rights of NY 18 with respect to 25 LLC,  
5 including NY 18's rights as a member of 25 LLC (including its rights  
6 pursuant to the 25 LLC Operating Agreement) or to any proceeds of its  
7 membership interest, NY 18's rights in the that certain Secured Promissory  
8 Note (the "Shavolian Note") dated August 7, 2008 made by Danny  
9 Shavolian ("Shavolian") payable to NY 18 in the principal amount of  
10 \$2,600,000.00, and its collateral, and all rights and remedies available to  
11 NY 18 against Shavolian and other interested parties, if any. NY 18 shall  
12 not contest any of the rights of Lender described in this Agreement  
13 (including those described in Section 2) or otherwise interfere with, inhibit  
14 or delay Lender in the enforcement of such rights.

8 **2. Recognition by Beshmada.**

9 Beshmada acknowledges and recognizes the Pledge Agreement and  
10 Beshmada's assignments to Lender and Lender's assertion of their rights to  
11 the Collateral, and Beshmada agrees not to oppose or contest the validity of  
12 the Pledge Agreement. Beshmada acknowledges, recognizes and agrees  
13 that it has no defenses to Lender's claims and that Lender's rights to the  
14 Collateral are senior to Beshmada's rights and that the Collateral includes  
15 (except as provided in Sections 5 and 6) any and all rights of Beshmada  
16 with respect to Fifth Ave. LLC, including Beshmada's rights as a member  
17 of Fifth Ave. LLC (including its rights pursuant to the Limited Liability  
18 Company Agreement of 241 Fifth Ave. Hotel, LLC [the "Fifth Ave. LLC  
19 Operating Agreement"] made and entered into as of March 20, 2007),  
20 Beshmada's rights pursuant to the "True-Up Provision" stated in Section  
21 4.02(c) of the Fifth Ave. LLC Operating Agreement (the "True-Up  
22 Provision"), and any and all rights and remedies available to Beshmada  
23 against Shavolian, Hazak Associate LLC ("Hazak") and other interested  
24 parties, if any. Beshmada shall not contest any of the rights of Lender  
25 described in this Agreement (including those described in Section 1) or  
26 otherwise interfere with, inhibit or delay Lender in the enforcement of such  
27 rights.

18 **3. Further Assignment of Collateral.**

19 To the extent not heretofore fully conveyed, and without limiting  
20 the rights heretofore asserted by Lender, the Namco Trustee on behalf of  
21 Namco, the Namvar Trustee on behalf of Namvar, and Pledgor hereby  
22 assign, transfer and convey to Lender (and their successors and assigns) any  
23 and all right, title and interest of Namco, Namvar and Pledgor in and to the  
24 Collateral (of record or beneficially, direct or indirect, matured or  
25 unmatured), including all Collateral rights as recognized and described in  
26 Sections 1 and 2 and release any and all claims that such described rights  
27 are not or were not included in the Collateral. Without limiting the  
28 generality of the preceding sentence, the Namco Trustee on behalf of  
Namco, the Namvar Trustee on behalf of Namvar, and Pledgor  
acknowledge, recognize and agree, on their own behalves and on behalf of  
their shareholders, members or affiliates, that none of them, nor any of their  
shareholders, members or affiliates, have retained or claim any further  
right, title or interest to the Collateral, including, as described above, any  
membership interest in 25 LLC, any membership interest in Fifth Ave.  
LLC, the Shavolian Note or its collateral, Beshmada's rights pursuant to the  
True-Up Provision, or any of the payments or proceeds paid, due or owing  
by Shavolian, Hazak or other interested parties, if any.

1                   **4.     Cooperation.**

2                   Except as provided in Sections 5.2.3 and 6, each of the Namco  
3                   Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar,  
4                   Beshmada and NY 18 agrees, upon request by Lender from time to time  
5                   and at the sole cost and expense of Lender (including Lender's payment of  
6                   the other parties' reasonable fees and expenses incurred in response to  
7                   acting upon Lender's request), to execute and deliver, and use its best  
8                   efforts to cause other persons to execute and deliver, to Lender (or other  
9                   persons) all such further documents and instruments, and to do such other  
10                  acts, as Lender may reasonably request more completely to consummate  
11                  and make effective the transactions contemplated by this Agreement,  
12                  including vesting Lender with all rights with respect to the Collateral.  
13                  Without limiting the generality of the preceding sentence, each of the  
14                  Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of  
15                  Namvar, Beshmada and NY 18 will cooperate with Lender to take any  
16                  reasonable steps necessary to perfect Lender's rights to and interest in the  
17                  Collateral, will cooperate to acquire Court Approval and, if required, will  
18                  support, Lender's request for relief from the automatic stay in favor of  
19                  Lender to enforce all the rights of NY 18 and Beshmada respectively in 25  
20                  LLC and Fifth Ave. LLC, all at the sole cost and expense of Lender (except  
21                  as provided in Sections 5.2.3 and 6). NY 18 has delivered the Shavolian  
22                  Note to Lender and shall upon request of Lender endorse the Shavolian  
23                  Note to or as directed by Lender. The Namco Trustee on behalf of Namco,  
24                  the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 will also  
25                  advise 25 LLC, Fifth Ave. LLC, Shavolian, Hazak and other interested  
26                  parties, if any, that all payments with respect to any Collateral are to be  
27                  made directly to Lender. Each of the Namco Trustee on behalf of Namco,  
28                  the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 hereby  
                  authorizes Lender to perform (in Lender's name or in the name of any of  
                  Namco, Namvar, Beshmada, or NY 18) any and all necessary or  
                  appropriate acts (including endorsement of the Shavolian Note) and to  
                  institute or continue any proceedings (including the Action)<sup>5</sup> against 25  
                  LLC, Fifth Ave. LLC, DHD, Shavolian, Hazak, or other interested parties,  
                  if any, to collect, enforce or determine any and all rights, claims, credits and  
                  interests of Lender in and to the Collateral. Lender shall keep the Namco  
                  Trustee and the Namvar Trustee regularly informed on the progress of any  
                  litigation matters or other related matters involving Shavolian, Hazak, or  
                  other interested parties, if any. Notwithstanding anything in the preceding  
                  sentence to the contrary, Lender is not required to disclose any confidential  
                  or privileged information, nor need Lender separately provide notice to the  
                  Namco Trustee or the Namvar Trustee regarding the substance of any  
                  matter filed in a litigation matter where the Namco Trustee or the Namvar  
                  Trustee is copied on the filing, whether or not as a party to the litigation.

23                   **5.     Rights Retained by Pledgor.**

24                   5.1     Notwithstanding anything in this Agreement to the  
25                   contrary, and as part of the compromise concerning rights to and the  
26                   composition of the Collateral, Pledgor has retained an interest in certain

25 \_\_\_\_\_  
26 <sup>5</sup> DHD127 LLC ("DHD"), a New York limited liability company and member of 25 LLC, and 25  
27 LLC have raised various disputes concerning the Collateral, which disputes are pending in an  
28 action in the Supreme Court of the State of New York, County of New York, entitled 127 West  
25th LLC v. N.Y. 18, LLC, et al., Index No. 101755/2009 (the "Action").

1 rights otherwise included in the Collateral, all pursuant to the terms and  
2 conditions of this Section 5. Lender is granted the exclusive right to collect  
3 or otherwise realize upon the Collateral, including the retained interest, and  
4 all decisions regarding pursuing, releasing or settling any issue in any  
5 dispute regarding the Collateral, including the retained interest, shall be  
6 made in Lender's sole discretion and at Lender's sole cost and expense  
7 (except as provided in Sections 5.2.3 and 6).

8 5.2 As Lender receives proceeds in good funds with  
9 respect to the Collateral, including the True Up Provision and the Shavolian  
10 Note, Lender shall pay to Pledgor, as its sole right, and in full satisfaction  
11 of the retained interest, an amount equal to (such amount the "Retained  
12 Proceeds"):

13 5.2.1 50% of any proceeds received by Lender in good  
14 funds with respect to the True-Up Provision PLUS

15 5.2.2 50% of any proceeds received by Lender in good  
16 funds with respect to the Collateral other than the True-Up Provision, but  
17 not to exceed \$250,000 MINUS

18 5.2.3 Lender's costs and expenses of collection  
19 (including actual legal fees, it being acknowledged and agreed that Wolf  
20 Haldenstein Adler Freeman & Herz LLP is presently acting as Lender's  
21 counsel), including costs and expenses incurred prior to the date of this  
22 Agreement and costs and expenses incurred by Lender on behalf of the  
23 Namco Trustee, the Namvar Trustee, Beshmada, and NY 18 pursuant to  
24 this Agreement, but not to exceed \$200,000. In order to assure Lender's  
25 full recovery of its costs and expenses pursuant to this Section 5.2.3, the  
26 first proceeds shall be applied to Lender's prior costs and expenses before  
27 any payment is made to Pledgor and, further, until Lender has determined  
28 in its sole discretion to discontinue further collection efforts it may retain  
from the next proceeds an amount that, with the prior costs and expenses  
from time to time, equals \$200,000 as a reserve against future costs and  
expenses. Once Lender determines to discontinue further collection efforts  
without having incurred at least \$200,000 in costs and expenses, any excess  
reserve shall be paid in accordance with the other provisions of this Section  
5.2.

6. **Effect of Partial Settlement on Claims.**

No party is giving or receiving a release pursuant to this Agreement, and this Agreement represents a resolution of only the matters provided with respect to the Collateral. However, in determining any remaining claim by Lender against the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, there shall be credited on a dollar for dollar basis the full amount of all proceeds received in good funds with respect to the Collateral, whether received by Lender for its own account or as Retained Proceeds. For the avoidance of doubt, the parties acknowledge and agree that Lender is entitled to various costs and expenses pursuant to the Pledge Agreement and other Loan Documents and that its rights to such costs and expenses, including as against the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, are not limited by the \$200,000 limitation provided in Section 5.2.3, which limitation applies only with regard to the determination of the Retained Proceeds. Further, and notwithstanding the credit to the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, it is the intention of the parties that the retention of the Retained Proceeds as part of this partial settlement is an exclusion to the recoveries of Lender and shall

1 not be counted for the benefit of any person liable to Lender other than the  
2 bankruptcy estates in the Namco Bankruptcy Case, the Beshmada  
3 Bankruptcy Case and the Namvar Bankruptcy Case.

4 **7. Bankruptcy Court Approval.**

5 Except as to the obligations set forth in this paragraph, it is a  
6 condition to the effectiveness of this Agreement and the parties' obligations  
7 thereunder that an order or orders be entered by the Bankruptcy Court,  
8 effective in each of the Bankruptcy Cases, authorizing the Namco Trustee,  
9 Beshmada and the Namvar Trustee to enter into this Agreement. Promptly  
10 upon the execution and delivery of this Agreement, the Namco Trustee,  
11 Beshmada and the Namvar Trustee shall file all required motions to obtain  
12 such order or orders.

13 A true and correct copy of the Agreement is attached to the Declaration of R. Todd Neilson  
14 as Exhibit "1".

15 The Agreement is in the best interest of the Namvar, Namco, and Beshmada bankruptcy  
16 estates (collectively the "Estates") and their creditors, as it resolves disputes between the Parties  
17 over who owns Pledgor's rights to the Collateral, while allowing the Pledgor to receive 50% of any  
18 net recovery the Lender ultimately receives with regard to the Collateral, with no financial risk to  
19 the Pledgor. Moreover, to the extent the Lender recovers on the Collateral, any obligations the  
20 Namvar and Namco estates may have as a result of their obligations under the Pledge Agreement  
21 will be reduced. Finally, to the extent Beshmada and NY 18 receive financial benefits from the  
22 Collateral, any distributions to these entities' owners could result in a benefit to the Namvar estate,  
23 as a result of the Debtor's indirect ownership interests in the Pledgor.


24 **PLEASE TAKE FURTHER NOTICE** that the Motion is based upon the Notice of  
25 Motion, filed concurrently herewith, the Motion, the attached Memorandum of Points and  
26 Authorities, the Declarations of R. Todd Neilson, Bradley D. Sharp, and Louis A. Cicalese, and  
27 such other and further grounds as may be properly presented to the Court.

28 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-1(f),  
you are hereby advised that any party who opposes or otherwise objects to the Motion must file and  
serve their response or opposition within fourteen (14) days before the hearing date. Any response  
or opposition to the Motion shall be stated in writing, filed with the Court and served on the United  
States Trustee, 725 S. Figueroa Street, Suite 2600, Los Angeles, California 90017, the Namvar  
Trustee and Namvar Trustee's counsel at the address noted in the upper left-hand corner of the first  
page of the Motion, and on all creditors and other parties in interest who are entitled to notice. If

1 you fail to file a written response within fourteen (14) days before the date designated for the  
2 hearing, the Court may treat such failure as a waiver of your right to oppose the Motion and may  
3 grant the requested relief.

4  
5 Dated: February 11, 2010

DANNING, GILL, DIAMOND & KOLLITZ, LLP

6  
7 By:   
8 UZZI O. RAANAN  
9 Attorneys for R. Todd Neilson, Chapter 11  
Trustee

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Court is requested to approve the terms of the Agreement, including  
4 the recognition of Lender's rights to the following Collateral, relating to a loan that Lender made to  
5 Namco (except as provided in Sections 5 and 6 of the Agreement): (a) all of NY 18's membership  
6 interest in 25 LLC, (b) all of Beshmada's membership interest in Fifth Ave. LLC, (c) various  
7 interests and rights in respect of or resulting from such membership interests, and (d) all proceeds  
8 related to such membership interests.

9 As noted below, the Namvar estate has, at best, an indirect, somewhat speculative, interest  
10 in the Collateral, through its ownership interests in Beshmada and NY 18. On the other hand, the  
11 Namvar estate has a direct obligation under the Pledge Agreement, based on the Debtor's pre-  
12 petition guaranty of Namco's obligations. Similarly, the Namco estate's obligations under the  
13 Pledge Agreement could be reduced as a result of the Agreement, despite the fact that the Namco  
14 Estate has no ownership interest in the Collateral.

15 This Agreement results in an acknowledgement of the Pledge Agreement, which the  
16 Debtor's estate has no apparent standing to contest, and the Namco and Beshmada estates have no  
17 legal grounds to set aside, and gives the Lender an incentive to legally pursue rights it likely owns  
18 anyway. However, unlike the result that would have occurred were the Lender to assume all rights  
19 under the Pledge Agreement, the Agreement contains the proviso that any net proceeds obtained by  
20 the Lender as a result of the Collateral shall be shared with the Pledgor on a 50/50 basis.

21 In sum, the Agreement has the potential of reducing the Namvar personal guaranty and  
22 Namco loan obligations under the Pledge Agreement, while at the same time creating the potential  
23 that other entities in which the Debtor's estate has indirect ownership interests, including  
24 Beshmada, could receive a financial benefit. On the other hand, the Estates are giving away very  
25 little by way of legal rights, as the Lender may have the right to the Collateral under the Pledge  
26 Agreement, regardless of the Agreement.

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1           **II.           STATEMENT OF FACTS**

2           A.       On December 22, 2008, involuntary chapter 11 petitions were filed against Namco  
3 Capital Group, Inc., (“Namco”) and its sole shareholder, Ezri Namvar (“Namvar”). On January 29,  
4 2009, orders for relief were entered in both the Namco bankruptcy case and the Namvar bankruptcy  
5 case.

6           B.       On March 11, 2009, the Court entered an order approving the appointment of R.  
7 Todd Neilson as the chapter 11 trustee in the Namvar bankruptcy case. On May 8, 2009, the Court  
8 entered an order approving the appointment of Bradley D. Sharp as the chapter 11 trustee in the  
9 Namco bankruptcy case.

10          C.       On June 19, 2009, an involuntary chapter 7 petition was filed against Beshmada.  
11 Pursuant to a stipulation and order entered by this Court, Beshmada has not yet answered or  
12 otherwise responded to the involuntary petition. No order for relief has been entered with respect  
13 to the Beshmada involuntary case.

14          D.       On August 13, 2009, an Interim Order was entered by this Court approving a certain  
15 “Stipulation Between Debtor Ezri Namvar and the Trustees re Control of Affiliated Limited  
16 Liability Companies.” Pursuant to that Stipulation and Interim Order, among other things, Louis  
17 Cicalese, LLC, a Delaware limited liability company (“Cicalese”) became the new manager of  
18 certain limited liability companies, including Beshmada.

19          E.       Lender, Borrower, Pledgor, and the Guarantors are all parties to that certain Loan,  
20 Pledge and Security Agreement dated as of June 12, 2008, as amended by that certain First  
21 Amendment to Loan, Pledge and Security Agreement entered into as of July 16, 2008 (as amended,  
22 the “Pledge Agreement”), which Pledge Agreement is in full force and effect.

23          F.       Under the Loan, Namco borrowed as much as \$12,500,000 from Lender, which  
24 Loan was guaranteed by Ezri Namvar, among other, in his individual capacity.

25          G.       Under the Loan agreement, Pledgor granted to Lender a security interest in the  
26 following rights: (1) all of NY 18’s membership interest in 25 LLC, (2) all of Beshmada’s  
27 membership interest in Fifth Ave. LLC, (3) various interests and rights in respect of or resulting  
28 from such membership interests, and (4) all proceeds related to such membership interests.

1 H. The Parties acknowledge and agree that the Loan is in default.

2 I. DHD127 LLC (“DHD”), a New York limited liability company and member of 25  
3 LLC, and 25 LLC have raised various disputes concerning the Collateral, which disputes are  
4 pending in an action in the Supreme Court of the State of New York, County of New York, entitled  
5 127 West 25th LLC v. N.Y. 18, LLC, et al., Index No. 101755/2009 (the “Action”).

6 J. Lender has raised additional disputes in its answer, counterclaims and cross-claims  
7 in the Action. The disputes pending in the Action include: (1) the effect of that certain Termination  
8 Agreement (the “Termination Agreement”) made as of July 31, 2008 among NY 18, DHD and  
9 Namvar purporting to terminate the Amended and Restated Limited Liability Company Agreement  
10 of 127 West 25th LLC (the “25 LLC Operating Agreement”) made and entered into as of May 2,  
11 2008, and (2) whether the Collateral includes that certain Secured Promissory Note (the “Shavolian  
12 Note”) dated August 7, 2008 made by Danny Shavolian (“Shavolian”) payable to NY 18 in the  
13 principal amount of \$2,600,000.00, and NY 18’s rights as against the collateral securing the  
14 Shavolian Note.

15 K. Namco, Beshmada and Namvar are respectively subject to the following bankruptcy  
16 proceedings: In re Namco Capital Group, Inc., Case No. 2:08-bk-32333-BR (the “Namco  
17 Bankruptcy Case”); In re Beshmada LLC, Case No. 2:09-bk-25523-BR (the “Beshmada  
18 Bankruptcy Case”); In re Ezri Namvar, Case No. 2:08-bk-08-32349-BR (the “Namvar Bankruptcy  
19 Case”) (collectively, and with all other proceedings under the Code jointly administered with those  
20 cases, the Bankruptcy Cases”), each pending in the United States Bankruptcy Court for the Central  
21 District of California, Los Angeles Division (the “Bankruptcy Court”).

22 L. The Agreement contains the following material terms, among others:

23 **1. Recognition by NY 18.**

24 NY 18 acknowledges and recognizes the Loan, Pledge and Security  
25 Agreement dated as of June 12, 2008, as amended by that certain First  
26 Amendment to Loan, Pledge and Security Agreement entered into as of  
27 July 16, 2008 (as amended, the “Pledge Agreement”) and NY 18’s  
28 assignments to Lender and Lender’s assertion of their rights to the  
Collateral, and NY 18 agrees not to oppose or contest the validity of the  
Pledge Agreement. NY 18 acknowledges, recognizes and agrees that it has  
no defenses to Lender’s claims and that Lender’s rights to the Collateral are  
senior to NY 18’s rights and that the Collateral includes (except as provided  
in Sections 5 and 6) any and all rights of NY 18 with respect to 25 LLC,

1 including NY 18's rights as a member of 25 LLC (including its rights  
2 pursuant to the 25 LLC Operating Agreement) or to any proceeds of its  
3 membership interest, NY 18's rights in the that certain Secured Promissory  
4 Note (the "Shavolian Note") dated August 7, 2008 made by Danny  
5 Shavolian ("Shavolian") payable to NY 18 in the principal amount of  
6 \$2,600,000.00, and its collateral, and all rights and remedies available to  
7 NY 18 against Shavolian and other interested parties, if any. NY 18 shall  
8 not contest any of the rights of Lender described in this Agreement  
9 (including those described in Section 2) or otherwise interfere with, inhibit  
10 or delay Lender in the enforcement of such rights.

11 **2. Recognition by Beshmada.**

12 Beshmada acknowledges and recognizes the Pledge Agreement and  
13 Beshmada's assignments to Lender and Lender's assertion of their rights to  
14 the Collateral, and Beshmada agrees not to oppose or contest the validity of  
15 the Pledge Agreement. Beshmada acknowledges, recognizes and agrees  
16 that it has no defenses to Lender's claims and that Lender's rights to the  
17 Collateral are senior to Beshmada's rights and that the Collateral includes  
18 (except as provided in Sections 5 and 6) any and all rights of Beshmada  
19 with respect to Fifth Ave. LLC, including Beshmada's rights as a member  
20 of Fifth Ave. LLC (including its rights pursuant to the Limited Liability  
21 Company Agreement of 241 Fifth Ave. Hotel, LLC [the "Fifth Ave. LLC  
22 Operating Agreement"] made and entered into as of March 20, 2007),  
23 Beshmada's rights pursuant to the "True-Up Provision" stated in Section  
24 4.02(c) of the Fifth Ave. LLC Operating Agreement (the "True-Up  
25 Provision"), and any and all rights and remedies available to Beshmada  
26 against Shavolian, Hazak Associate LLC ("Hazak") and other interested  
27 parties, if any. Beshmada shall not contest any of the rights of Lender  
28 described in this Agreement (including those described in Section 1) or  
otherwise interfere with, inhibit or delay Lender in the enforcement of such  
rights.

**3. Further Assignment of Collateral.**

To the extent not heretofore fully conveyed, and without limiting  
the rights heretofore asserted by Lender, the Namco Trustee on behalf of  
Namco, the Namvar Trustee on behalf of Namvar, and Pledgor hereby  
assign, transfer and convey to Lender (and their successors and assigns) any  
and all right, title and interest of Namco, Namvar and Pledgor in and to the  
Collateral (of record or beneficially, direct or indirect, matured or  
unmatured), including all Collateral rights as recognized and described in  
Sections 1 and 2 and release any and all claims that such described rights  
are not or were not included in the Collateral. Without limiting the  
generality of the preceding sentence, the Namco Trustee on behalf of  
Namco, the Namvar Trustee on behalf of Namvar, and Pledgor  
acknowledge, recognize and agree, on their own behalves and on behalf of  
their shareholders, members or affiliates, that none of them, nor any of their  
shareholders, members or affiliates, have retained or claim any further  
right, title or interest to the Collateral, including, as described above, any  
membership interest in 25 LLC, any membership interest in Fifth Ave.  
LLC, the Shavolian Note or its collateral, Beshmada's rights pursuant to the  
True-Up Provision, or any of the payments or proceeds paid, due or owing  
by Shavolian, Hazak or other interested parties, if any.

**4. Cooperation.**

Except as provided in Sections 5.2.3 and 6, each of the Namco  
Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar,  
Beshmada and NY 18 agrees, upon request by Lender from time to time  
and at the sole cost and expense of Lender (including Lender's payment of

1 the other parties' reasonable fees and expenses incurred in response to  
2 acting upon Lender's request), to execute and deliver, and use its best  
3 efforts to cause other persons to execute and deliver, to Lender (or other  
4 persons) all such further documents and instruments, and to do such other  
5 acts, as Lender may reasonably request more completely to consummate  
6 and make effective the transactions contemplated by this Agreement,  
7 including vesting Lender with all rights with respect to the Collateral.  
8 Without limiting the generality of the preceding sentence, each of the  
9 Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of  
10 Namvar, Beshmada and NY 18 will cooperate with Lender to take any  
11 reasonable steps necessary to perfect Lender's rights to and interest in the  
12 Collateral, will cooperate to acquire Court Approval and, if required, will  
13 support, Lender's request for relief from the automatic stay in favor of  
14 Lender to enforce all the rights of NY 18 and Beshmada respectively in 25  
15 LLC and Fifth Ave. LLC, all at the sole cost and expense of Lender (except  
16 as provided in Sections 5.2.3 and 6). NY 18 has delivered the Shavolian  
17 Note to Lender and shall upon request of Lender endorse the Shavolian  
18 Note to or as directed by Lender. The Namco Trustee on behalf of Namco,  
19 the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 will also  
20 advise 25 LLC, Fifth Ave. LLC, Shavolian, Hazak and other interested  
21 parties, if any, that all payments with respect to any Collateral are to be  
22 made directly to Lender. Each of the Namco Trustee on behalf of Namco,  
23 the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 hereby  
24 authorizes Lender to perform (in Lender's name or in the name of any of  
25 Namco, Namvar, Beshmada, or NY 18) any and all necessary or  
26 appropriate acts (including endorsement of the Shavolian Note) and to  
27 institute or continue any proceedings (including the Action) against 25  
28 LLC, Fifth Ave. LLC, DHD, Shavolian, Hazak, or other interested parties,  
if any, to collect, enforce or determine any and all rights, claims, credits and  
interests of Lender in and to the Collateral. Lender shall keep the Namco  
Trustee and the Namvar Trustee regularly informed on the progress of any  
litigation matters or other related matters involving Shavolian, Hazak, or  
other interested parties, if any. Notwithstanding anything in the preceding  
sentence to the contrary, Lender is not required to disclose any confidential  
or privileged information, nor need Lender separately provide notice to the  
Namco Trustee or the Namvar Trustee regarding the substance of any  
matter filed in a litigation matter where the Namco Trustee or the Namvar  
Trustee is copied on the filing, whether or not as a party to the litigation.

20 **5. Rights Retained by Pledgor.**

21 5.1 Notwithstanding anything in this Agreement to the  
22 contrary, and as part of the compromise concerning rights to and the  
23 composition of the Collateral, Pledgor has retained an interest in certain  
24 rights otherwise included in the Collateral, all pursuant to the terms and  
25 conditions of this Section 5. Lender is granted the exclusive right to collect  
26 or otherwise realize upon the Collateral, including the retained interest, and  
27 all decisions regarding pursuing, releasing or settling any issue in any  
28 dispute regarding the Collateral, including the retained interest, shall be  
made in Lender's sole discretion and at Lender's sole cost and expense  
(except as provided in Sections 5.2.3 and 6).

26 5.2 As Lender receives proceeds in good funds with  
27 respect to the Collateral, including the True Up Provision and the Shavolian  
28 Note, Lender shall pay to Pledgor, as its sole right, and in full satisfaction  
of the retained interest, an amount equal to (such amount the "Retained  
Proceeds"):

1                   5.2.1   50% of any proceeds received by Lender in good  
funds with respect to the True-Up Provision PLUS

2                   5.2.2   50% of any proceeds received by Lender in good  
funds with respect to the Collateral other than the True-Up Provision, but  
3 not to exceed \$250,000 MINUS

4                   5.2.3   Lender's costs and expenses of collection  
(including actual legal fees, it being acknowledged and agreed that Wolf  
Haldenstein Adler Freeman & Herz LLP is presently acting as Lender's  
5 counsel), including costs and expenses incurred prior to the date of this  
Agreement and costs and expenses incurred by Lender on behalf of the  
6 Namco Trustee, the Namvar Trustee, Beshmada, and NY 18 pursuant to  
this Agreement, but not to exceed \$200,000. In order to assure Lender's  
7 full recovery of its costs and expenses pursuant to this Section 5.2.3, the  
first proceeds shall be applied to Lender's prior costs and expenses before  
8 any payment is made to Pledgor and, further, until Lender has determined  
in its sole discretion to discontinue further collection efforts it may retain  
9 from the next proceeds an amount that, with the prior costs and expenses  
from time to time, equals \$200,000 as a reserve against future costs and  
10 expenses. Once Lender determines to discontinue further collection efforts  
without having incurred at least \$200,000 in costs and expenses, any excess  
11 reserve shall be paid in accordance with the other provisions of this Section  
5.2.

12                   **6.       Effect of Partial Settlement on Claims.**

13                   No party is giving or receiving a release pursuant to this  
Agreement, and this Agreement represents a resolution of only the matters  
14 provided with respect to the Collateral. However, in determining any  
remaining claim by Lender against the bankruptcy estates in the Namco  
15 Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar  
Bankruptcy Case, there shall be credited on a dollar for dollar basis the full  
16 amount of all proceeds received in good funds with respect to the  
Collateral, whether received by Lender for its own account or as Retained  
17 Proceeds. For the avoidance of doubt, the parties acknowledge and agree  
that Lender is entitled to various costs and expenses pursuant to the Pledge  
18 Agreement and other Loan Documents and that its rights to such costs and  
expenses, including as against the bankruptcy estates in the Namco  
19 Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar  
Bankruptcy Case, are not limited by the \$200,000 limitation provided in  
20 Section 5.2.3, which limitation applies only with regard to the  
determination of the Retained Proceeds. Further, and notwithstanding the  
21 credit to the bankruptcy estates in the Namco Bankruptcy Case, the  
Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, it is the  
22 intention of the parties that the retention of the Retained Proceeds as part of  
this partial settlement is an exclusion to the recoveries of Lender and shall  
23 not be counted for the benefit of any person liable to Lender other than the  
bankruptcy estates in the Namco Bankruptcy Case, the Beshmada  
24 Bankruptcy Case and the Namvar Bankruptcy Case.

25                   **7.       Bankruptcy Court Approval.**

26                   Except as to the obligations set forth in this paragraph, it is a condition to  
the effectiveness of this Agreement and the parties' obligations thereunder  
27 that an order or orders be entered by the Bankruptcy Court, effective in  
each of the Bankruptcy Cases, authorizing the Namco Trustee, Beshmada  
and the Namvar Trustee to enter into this Agreement. Promptly upon the  
28 execution and delivery of this Agreement, the Namco Trustee, Beshmada

1 and the Namvar Trustee shall file all required motions to obtain such order  
2 or orders.

3 A true and correct copy of the Agreement is attached to the Declaration of R. Todd Neilson  
4 as Exhibit "1".

5 **III. THE AGREEMENT IS IN THE BEST INTEREST OF THE DEBTOR'S**  
6 **ESTATE AND ITS UNSECURED CREDITORS AND, THEREFORE,**  
7 **SHOULD BE APPROVED.**

8 **A. Standards for Approval of Compromises of Claims.**

9 Federal Rule of Bankruptcy Procedure 9019(a) provides that on the trustee's motion and  
10 after a hearing on notice to creditors, the debtor and indenture trustees, as provided in Rule  
11 2002(a), and such other entities as the Court may designate, the Court may approve a compromise  
12 or settlement.

13 The Supreme Court in Protective Committee for Independent Stock Holders of TNT Trailer  
14 Fairy, Inc. v. Anderson, 390 U.S. 414, 425 (1968), held that a bankruptcy court, in considering  
15 whether to approve a compromise, should apprise itself of all facts necessary for an intelligent and  
16 objective opinion of the probabilities of ultimate success should the claim be litigated. It also  
17 explained that the court should form an educated estimate of the complexity, expense and likely  
18 duration of such litigation, the possibility of collection on any judgment that might be obtained, and  
19 all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.  
20 See also In re A&C Properties, 784 F.2d 1377, 1380-84 (9th Cir. 1986), cert. denied, 479 S. Ct.,  
21 854 (1986). The Court need not, however, conduct an exhaustive investigation into the validity of  
22 the claims to be compromised nor is the Court expected to conduct a mini-trial on the merits. In re  
23 Walsh Construction, Inc., 669 F.2d 1325, 1328 (9th Cir. 1982).

24 The purpose of any compromise agreement is to allow the trustee and the creditors to avoid  
25 the expenses and burdens associated with litigating sharply contested and dubious claims. In re  
26 Walsh Construction, Inc., 669 F.2d 1325, 1328 (9th Cir. 1982) (citing In re California Associated  
27 Products, 183 F.2d 946, 949-50 (9th Cir. 1950)). The law favors compromise and not litigation for  
28 its own sake. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976).

1 The Ninth Circuit in In re A&C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986) reiterated  
2 that in determining the fairness, reasonableness and adequacy of a proposed settlement agreement,  
3 a court should consider: (1) the probability of success in litigation, (2) the difficulties, if any, to be  
4 encountered in the matter of collection, (3) the complexity of the litigation involved and the  
5 expense, inconvenience and delay necessarily attending it, and (4) the paramount interest of the  
6 creditors and the proper deference to their reasonable views. Consideration of these factors does  
7 not require the Court to decide questions of law and fact in the parties' dispute, or to determine that  
8 the settlement is the best possible resolution; instead the Court need only determine whether the  
9 settlement falls below the lowest point of the range of reasonableness. In re Schmitt, 215 B.R. 417,  
10 423 (B.A.P. 9th Cir. 1997).

11  
12 **B. The Agreement Should Be Approved Under Bankruptcy Rule 9019.**

13 Applying the above standards to the circumstances herein, the Agreement should be  
14 approved.

15 **1. The Probability of Success in Litigation.**

16 The Namvar and Namco Trustees, and Beshmada do not contemplate any lawsuits with  
17 regard to the Collateral, as the Namvar and Namco estates have no direct interest in these assets.  
18 To the extent Beshmada has an interest in a portion of the Collateral, that interest was likely  
19 transferred to Lender pursuant to the Pledge Agreement.

20 **2. The Probability of Collection.**

21 This is also not a relevant issue with regard to the Namvar and Namco estates, which have  
22 no direct interest in the Collateral. On the other hand, collection is an important concern to the  
23 Beshmada estate, which has reason to believe that collection against Hazak and Shavolian may be  
24 costly and difficult.

25 **3. The Agreement Avoids the Need for Expensive, Inconvenient and**  
26 **Protracted Litigation.**

27 The Agreement provides an indirect potential benefit to the Namvar and Namco estates and,  
28 as such, may result in reduced litigation expenses in the future. The Namvar and Namco estates

1 have no direct interests in the Collateral. However, were the Lender to receive a financial benefit  
2 as a result of the Collateral, such proceeds could also benefit the Namvar and Namco estates by  
3 reducing the Lender's ultimate claim against the two estates.

4 Additionally, based on the Namvar Debtor's indirect ownership interests in Beshmada and  
5 NY 18, the Namvar estate may ultimately receive a financial benefit as a result of the Lender's  
6 realization on the Collateral. Finally, were the Lender to collect on the Collateral, the Beshmada  
7 estate would likely receive a direct financial benefit.

8 Any of the above benefits to the Estates would occur without the need for expensive,  
9 speculative, or time-consuming litigation.

10 **4. The Agreement Benefits the Paramount Interests of Creditors.**

11 As noted above, the Namvar and Namco estates have, at best, indirect, somewhat  
12 speculative, interests in the Collateral. On the other hand, the two estates have direct obligations  
13 pursuant to the Pledge Agreement. This Agreement results in an acknowledgement of the Pledge  
14 Agreement, which the Namvar estate has no apparent standing to contest, and which the Namco  
15 and Beshmada estates believe they have limited legal reasons to set aside, and gives the Lender the  
16 incentive to pursue legal rights it likely owns anyway. However, unlike the result that would have  
17 occurred were the Lender to assume all rights under the Pledge Agreement, the Agreement contains  
18 the proviso that any net proceeds obtained by the Lender as a result of the Collateral shall be shared  
19 with the Pledgor, including the Beshmada estate, on a 50/50 basis.

20 In sum, the Agreement has the potential of reducing obligations that the Namvar and  
21 Namco estates may have with regard to the Pledge Agreement, while at the same time creating the  
22 potential that other entities in which the Debtor's estate has indirect ownership interests, including  
23 Beshmada, could receive financial benefits. These benefits, if realized, would affect the paramount  
24 interests of the Namvar and Namco estates' creditors, by reducing the estates' obligations to the  
25 Lender, and increasing the likelihood that the Namvar estate could receive some financial benefit  
26 from Beshmada and NY18. Were the Lender successful in recovering on the Collateral, the  
27 Beshmada estate will also receive a portion of such proceeds.

28

1 On the other hand, the Estate are giving away very little, as the Namvar and Namco estates  
2 have no direct interest in the Collateral. Similarly, the Beshmada estate has concluded that  
3 litigation over its obligations under the Pledge Agreement would not be as financially  
4 advantageous as are the terms of this Agreement.

5

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Namvar and Namco Trustees, and Beshmada request that the  
8 Court approve the proposed Agreement. The latter also request such further relief as the Court  
9 deems just and proper.


10

11 Dated: February 11, 2010

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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By:   
Uzzi O. Raanan  
Attorneys for R. Todd Neilson,  
Chapter 11 Trustee

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**DECLARATION**

**DECLARATION OF R. TODD NEILSON**

I, R. Todd Neilson, declare and state as follows:

1. I am the Chapter 11 Trustee for the bankruptcy estate of Ezri Namvar (the “Debtor”), Case No. 2:08-bk-32349-BR (the “Bankruptcy Case”). I make this declaration in support of the Motion (the “Motion”) of Chapter 11 Trustee for Approval of Partial Settlement Agreement re Disputes Over Certain Collateral Related to 127 West 25th LLC and 241 Fifth Ave. Hotel, LLC.

2. The facts stated herein are true of my personal knowledge, except for those stated on information and belief, and I believe those to be true.

3. This Bankruptcy Case was commenced on or about December 22, 2008, when creditors filed an involuntary petition for relief against the Debtor under Chapter 11 of Title 11 of the United States Code. The Debtor consented to an order for relief, and pursuant to an order entered on or about January 29, 2009, the Court entered an order for relief. The Debtor continued as the debtor-in-possession until the Court ordered the U.S. Trustee to appoint a Chapter 11 Trustee.

4. Pursuant to an order entered on March 9, 2009, the Court approved my appointment as the Chapter 11 Trustee for the Debtor’s estate. I continue to serve in that capacity for the benefit of creditors.

5. Attached herein as Exhibit “1” is a true and correct copy of the Partial Settlement Agreement (the “Agreement”) entered between the following parties (collectively the “Parties”): Nader & Sons, LLC (“Nader”), Sisko Enterprises LLC (“Sisko”, collectively Nader and Sisko are referred to as “Lender”), Bradley D. Sharp (the “Namco Trustee”), as Chapter 11 trustee for the estate of Namco Capital Group, Inc. (“Namco” or “Borrower”), N.Y. 18, LLC (“NY 18”), Beshmada, LLC (“Beshmada”, collectively NY 18 and Beshmada are referred to as “Pledgor”), and R. Todd Neilson (the “Namvar Trustee”), as Chapter 11 trustee for the estate of Ezri Namvar (“Namvar”).

6. Lender, Borrower, Pledgor, and personal guarantors Namvar and Homayoun Namvar (collectively “Guarantors”) are all parties to that certain Loan, Pledge and Security

1 Agreement dated as of June 12, 2008, as amended by that certain First Amendment to Loan, Pledge  
2 and Security Agreement entered into as of July 16, 2008 (as amended, the "Pledge Agreement"),  
3 which Pledge Agreement is in full force and effect.

4 7. Under the Loan, Namco borrowed as much as \$12,500,000 from Lender, which  
5 Loan was guaranteed by Ezri Namvar, among other, in his individual capacity.

6 8. Under the Loan agreement, Pledgor granted to Lender a security interest in the  
7 following rights: (1) all of NY 18's membership interest in 25 LLC, (2) all of Beshmada's  
8 membership interest in Fifth Ave. LLC, (3) various interests and rights in respect of or resulting  
9 from such membership interests, and (4) all proceeds related to such membership interests.

10 9. The Parties acknowledge and agree that the Loan is in default.

11 10. On information and Belief, DHD127 LLC ("DHD"), a New York limited liability  
12 company and member of 25 LLC, and 25 LLC have raised various disputes concerning the  
13 Collateral, which disputes are pending in an action in the Supreme Court of the State of New York,  
14 County of New York, entitled 127 West 25th LLC v. N.Y. 18, LLC, et al., Index No. 101755/2009  
15 (the "Action").

16 11. On information and Belief, Lender has raised additional disputes in its answer,  
17 counterclaims and cross-claims in the Action. The disputes pending in the Action include: (1) the  
18 effect of that certain Termination Agreement (the "Termination Agreement") made as of July 31,  
19 2008 among NY 18, DHD and Namvar purporting to terminate the Amended and Restated Limited  
20 Liability Company Agreement of 127 West 25th LLC (the "25 LLC Operating Agreement") made  
21 and entered into as of May 2, 2008, and (2) whether the Collateral includes that certain Secured  
22 Promissory Note (the "Shavolian Note") dated August 7, 2008 made by Danny Shavolian  
23 ("Shavolian") payable to NY 18 in the principal amount of \$2,600,000.00, and NY 18's rights as  
24 against the collateral securing the Shavolian Note.

25 12. Namco, Beshmada and Namvar are respectively subject to the following bankruptcy  
26 proceedings: In re Namco Capital Group, Inc., Case No. 2:08-bk-32333-BR (the "Namco  
27 Bankruptcy Case"); In re Beshmada LLC, Case No. 2:09-bk-25523-BR (the "Beshmada  
28 Bankruptcy Case"); In re Ezri Namvar, Case No. 2:08-bk-08-32349-BR (the "Namvar Bankruptcy

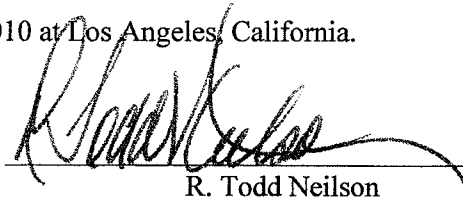
1 Case”) (collectively, and with all other proceedings under the Code jointly administered with those  
2 cases, the Bankruptcy Cases”), each pending in the United States Bankruptcy Court for the Central  
3 District of California, Los Angeles Division (the “Bankruptcy Court”).

4 13. I believe that the Agreement is in the best interest of the Debtor’s estate and its  
5 creditors for the reasons expressed in the Motion, including that the Agreement has the potential of  
6 reducing guaranty obligations that the Debtor’s estate may have with regard to the Loan, while at  
7 the same time creating the potential that other entities in which the Debtor’s estate has indirect  
8 ownership interests could receive financial benefits. On the other hand, the estate is giving away  
9 no legal right, as it does not have any direct interest in the Collateral.

10 14. For the above reasons, and those stated in the Motion, I request that the Court  
11 approve the Agreement in its entirety.

12  
13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct.

15  
16 Executed on this 11<sup>th</sup> day of February 2010 at Los Angeles, California.

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19 R. Todd Neilson

**DECLARATION**

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**DECLARATION OF BRADLEY D. SHARP**

I, Bradley D. Sharp, declare and state as follows:

1. I am the Chapter 11 Trustee for the bankruptcy estate of Namco Capital Group, Inc. (“Namco”), Case No. 2:08-bk-32333-BR (the “Bankruptcy Case”). I make this declaration in support of the Motion (the “Motion”) of Chapter 11 Trustee for Approval of Partial Settlement Agreement re Disputes Over Certain Collateral Related to 127 West 25th LLC and 241 Fifth Ave. Hotel, LLC.

2. The facts stated herein are true of my personal knowledge, except for those stated on information and belief, and I believe those to be true.

3. On December 22, 2008, involuntary chapter 11 petitions were filed against Namco Capital Group, Inc., (“Namco”) and its sole shareholder, Ezri Namvar (“Namvar”). On January 29, 2009, orders for relief were entered in both the Namco bankruptcy case and the Namvar bankruptcy case.

4. On March 11, 2009, the Court entered an order approving the appointment of R. Todd Neilson as the chapter 11 trustee in the Namvar bankruptcy case. On May 8, 2009, the Court entered an order approving my appointment as the chapter 11 trustee in the Namco bankruptcy case.

5. Attached herein as Exhibit “1” is a true and correct copy of the Partial Settlement Agreement (the “Agreement”) entered between the following parties (collectively the “Parties”): Nader & Sons, LLC (“Nader”), Sisko Enterprises LLC (“Sisko”, collectively Nader and Sisko are referred to as “Lender”), Bradley D. Sharp (the “Namco Trustee”), as Chapter 11 trustee for the estate of Namco Capital Group, Inc. (“Namco” or “Borrower”), N.Y. 18, LLC (“NY 18”), Beshmada, LLC (“Beshmada”, collectively NY 18 and Beshmada are referred to as “Pledgor”), and R. Todd Neilson (the “Namvar Trustee”), as Chapter 11 trustee for the estate of Ezri Namvar (“Namvar”).

6. Lender, Borrower, Pledgor, and personal guarantors Namvar and Homayoun Namvar (collectively “Guarantors”) are all parties to that certain Loan, Pledge and Security Agreement dated as of June 12, 2008, as amended by that certain First Amendment to Loan, Pledge

1 and Security Agreement entered into as of July 16, 2008 (as amended, the "Pledge Agreement"),  
2 which Pledge Agreement is in full force and effect.

3 7. Under the Loan, Namco borrowed as much as \$12,500,000 from Lender, which  
4 Loan was guaranteed by Ezri Namvar, among other, in his individual capacity.

5 8. Under the Loan agreement, Pledgor granted to Lender a security interest in the  
6 following rights: (1) all of NY 18's membership interest in 25 LLC, (2) all of Beshmada's  
7 membership interest in Fifth Ave. LLC, (3) various interests and rights in respect of or resulting  
8 from such membership interests, and (4) all proceeds related to such membership interests.

9 9. The Parties acknowledge and agree that the Loan is in default.

10 10. On information and Belief, DHD127 LLC ("DHD"), a New York limited liability  
11 company and member of 25 LLC, and 25 LLC have raised various disputes concerning the  
12 Collateral, which disputes are pending in an action in the Supreme Court of the State of New York,  
13 County of New York, entitled 127 West 25th LLC v. N.Y. 18, LLC, et al., Index No. 101755/2009  
14 (the "Action").

15 11. On information and Belief, Lender has raised additional disputes in its answer,  
16 counterclaims and cross-claims in the Action. The disputes pending in the Action include: (1) the  
17 effect of that certain Termination Agreement (the "Termination Agreement") made as of July 31,  
18 2008 among NY 18, DHD and Namvar purporting to terminate the Amended and Restated Limited  
19 Liability Company Agreement of 127 West 25th LLC (the "25 LLC Operating Agreement") made  
20 and entered into as of May 2, 2008, and (2) whether the Collateral includes that certain Secured  
21 Promissory Note (the "Shavolian Note") dated August 7, 2008 made by Danny Shavolian  
22 ("Shavolian") payable to NY 18 in the principal amount of \$2,600,000.00, and NY 18's rights as  
23 against the collateral securing the Shavolian Note.

24 12. Namco, Beshmada and Namvar are respectively subject to the following bankruptcy  
25 proceedings: In re Namco Capital Group, Inc., Case No. 2:08-bk-32333-BR (the "Namco  
26 Bankruptcy Case"); In re Beshmada LLC, Case No. 2:09-bk-25523-BR (the "Beshmada  
27 Bankruptcy Case"); In re Ezri Namvar, Case No. 2:08-bk-08-32349-BR (the "Namvar Bankruptcy  
28 Case") (collectively, and with all other proceedings under the Code jointly administered with those

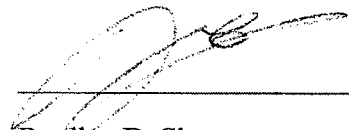
1 cases, the Bankruptcy Cases”), each pending in the United States Bankruptcy Court for the Central  
2 District of California, Los Angeles Division (the “Bankruptcy Court”).

3 13. I believe that the Agreement is in the best interest of the Namco estate and its  
4 creditors for the reasons expressed in the Motion, including that the Agreement has the potential of  
5 reducing Namco’s obligations under the Pledge Agreement. On the other hand, the Namco estate  
6 is giving away no legal right, as it does not have any direct interest in the Collateral.

7 14. For the above reasons, and those stated in the Motion, I request that the Court  
8 approve the Agreement in its entirety.

9  
10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12  
13 Executed on this 11<sup>th</sup> day of February 2010 at Los Angeles, California.

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18 Bradley D. Sharp

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**DECLARATION**

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**DECLARATION OF LOUIS A. CICALESE**

I, Louis A. Cicalese, declare and state as follows:

1. I am the principal and managing member of Louis Cicalese, LLC, a Delaware limited liability company (“Cicalese, LLC”), which is the manager of Beshmada, LLC (“Beshmada”). I make this declaration in support of the Motion (the “Motion”) of Chapter 11 Trustee for Approval of Partial Settlement Agreement (the “Agreement”) re Disputes Over Certain Collateral Related to 127 West 25th LLC and 241 Fifth Ave. Hotel, LLC.

2. The facts stated herein are true of my personal knowledge, except for those stated on information and belief, and I believe those to be true.

3. On June 19, 2009, an involuntary chapter 7 petition was filed against Beshmada (the “Beshmada Case”). Pursuant to a stipulation and order entered by this Court, Beshmada has not yet answered or otherwise responded to the involuntary petition. No order for relief has been entered with respect to the Beshmada involuntary case.

4. On August 13, 2009, an Interim Order was entered by this Court in the Beshmada Case, approving a certain “Stipulation Between Debtor Ezri Namvar and the Trustees re Control of Affiliated Limited Liability Companies.” Pursuant to that Stipulation and Interim Order, among other things, Cicalese, LLC became the new manager of certain limited liability companies, including Beshmada.

5. For the reasons stated in more detail in the Motion, I believe that the Agreement is in the best interest of the Beshmada estate and its creditors. The Agreement resolves disputes between Beshmada, Nader & Sons, LLC (“Nader”) and Sisko Enterprises LLC (“Sisko”), among others, with regard to the Loan, Pledge and Security Agreement dated as of June 12, 2008, as amended by that certain First Amendment to Loan, Pledge and Security Agreement entered into as of July 16, 2008 (as amended, the “Pledge Agreement”).

6. Under the Pledge Agreement, Beshmada agreed to give to Nader and Sisko a security interest in its membership interest in 241 Fifth Ave. Hotel, LLC (“Fifth Ave. LLC”), a Delaware limited liability company, various interests and rights in respect of or resulting from such membership interests, and all proceeds related to such membership interests.

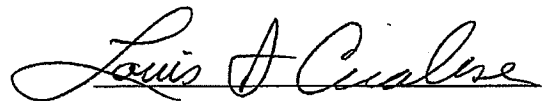
1           7.       Though Beshmada may have some grounds to try to set aside the prior transfer of  
2 the above interests to Nader and Sisko, I do not believe that the legal expenses of such an action,  
3 even if it were successful, and subsequent actions necessary to enforce Beshmada's rights with  
4 regard to Fifth Ave., LLC, are justified. It appears that the property owned by Fifth Ave., LLC has  
5 no equity, and will likely be foreclosed upon shortly. Moreover, I believe that any rights that  
6 Beshmada may have against other persons or entities may be difficult to enforce, due to the low  
7 likelihood of collection.

8           8.       On the other hand, under the Agreement, Beshmada will share in any net proceeds  
9 obtained by Nader and Sisko with regard to the above rights, without any financial risk to  
10 Beshmada.

11           9.       For the reasons stated above and in the Motion, I request that the Court approve the  
12 Agreement in its entirety.

13  
14           I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct.

16  
17           Executed on this 11<sup>th</sup> day of February 2010 at Los Angeles, California.

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20           

21           Louis A. Cicalese  
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**EXHIBIT "1"**

## PARTIAL SETTLEMENT AGREEMENT

AGREEMENT made as of January 18, 2010 among:

NADER & SONS, LLC (“Nader”), a New York limited liability company with a place of business at 34 Elmridge Road; Kings Point, New York 11024;

SISKO ENTERPRISES LLC (“Sisko”), a New York limited liability company with a place of business at 32 Evans Drive, Glen Head New York 11545;

BRADLEY D. SHARP (the “Namco Trustee”), as trustee of the estate under chapter 11 of the United States Bankruptcy Code (the “Code”), for NAMCO CAPITAL GROUP, INC. (“Namco” or “Borrower”), a California corporation with a place of business at 12121 Wilshire Blvd, Suite 1400, Los Angeles, CA 90025;

N.Y. 18, LLC (“NY 18”), a Delaware limited liability company with a place of business at 12121 Wilshire Blvd, Suite 200, Los Angeles, CA 90025

BESHMADA LLC (“Beshmada”), a California limited liability company with a place of business at 12121 Wilshire Blvd, Suite 200, Los Angeles, CA 90025; and

R. TODD NEILSON (the “Namvar Trustee”), as trustee of the estate under chapter 11 of the Code of EZRI NAMVAR (“Namvar”).

### RECITALS:

A. Nader and Sisko (collectively, “Lender”), as lender, Borrower, as borrower, NY 18 and Beshmada (collectively, “Pledgor”), as pledgor, and Namvar and Homayoun Namvar, as guarantors, are all of the parties to that certain Loan, Pledge and Security Agreement dated as of June 12, 2008, as amended by that certain First Amendment to Loan, Pledge and Security Agreement entered into as of July 16, 2008 (as amended, the “Pledge Agreement”), which Pledge Agreement is in full force and effect. Capitalized terms used without definition in this Agreement that are defined in the Pledge Agreement have the meanings provided in the Pledge Agreement.

B. The parties acknowledge and agree that the Loan is in default and all Obligations, as the same may be determined from time to time, are fully due and payable to Lender. Lender has effectively asserted its rights in the Collateral, which includes (except as provided in Sections 6 and 7) (1) all of NY 18’s membership interest in 127 West 25th LLC (“25 LLC”), a Delaware limited liability company, (2) all of Beshmada’s membership interest in 241 Fifth Ave. Hotel, LLC (“Fifth Ave. LLC”), a Delaware limited liability company, (3) various interests and rights in respect of or resulting from such membership interests, and (4) all Proceeds.

C. DHD127 LLC (“DHD”), a New York limited liability company and member of 25 LLC, and 25 LLC have raised various disputes concerning the Collateral, which disputes are pending in an action in the Supreme Court of the State of New York, County of New

York, entitled *127 West 25th LLC v. N.Y. 18, LLC, et al.*, Index No. 101755/2009 (the “Action”). Lender has raised additional disputes in its answer, counterclaims and cross-claims in the Action. The disputes pending in the Action include (1) the effect of that certain Termination Agreement (the “Termination Agreement”) made as of July 31, 2008 among NY 18, DHD and Namvar purporting to terminate the Amended and Restated Limited Liability Company Agreement of 127 West 25th LLC (the “25 LLC Operating Agreement”) made and entered into as of May 2, 2008 and (2) whether the Collateral includes that certain Secured Promissory Note (the “Shavolian Note”) dated August 7, 2008 made by Danny Shavolian (“Shavolian”) payable to NY 18 in the principal amount of \$2,600,000.00, and NY 18’s rights as against the collateral securing the Shavolian Note.

D. Namco, Beshmada and Namvar are respectively subject to the following bankruptcy proceedings: In re Namco Capital Group, Inc, Case No. 2:08-bk-32333-BR (the “Namco Bankruptcy Case”); In re Beshmada LLC, Case No. 2:09-bk-25523-BR (the “Beshmada Bankruptcy Case”); In re Ezri Namvar, Case No. 2:08-bk-08-32349-BR (the “Namvar Bankruptcy Case”) (collectively, and with all other proceedings under the Code jointly administered with those cases, the Bankruptcy Cases”), each pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”).

E. E.N.Y. 18 LLC is Delaware Limited Liability company duly incorporated and validly existing and in good standing under the law of Sate of Delaware. The parties desire, pursuant to the terms and conditions of this Agreement, to partially resolve the disputes among Lender, Borrower, Pledgor and Namvar.

NOW, THEREFORE, the parties agree as follows, conditioned upon approval of the Bankruptcy Court as provided in Section 8 (“Court Approval”):

1. Incorporation of Recitals. The parties hereby adopt as part of this Agreement each of the Recitals set forth above, and agree that such Recitals are binding upon the parties by way of contract and not merely by way of recital or inducement; and such clauses are hereby confirmed and ratified as being true and accurate by each party as to himself or itself.

2. Recognition by NY 18. NY 18 acknowledges and recognizes the Pledge Agreement and NY 18’s assignments to Lender and Lender’s assertion of their rights to the Collateral, and NY 18 agrees not to oppose or contest the validity of the Pledge Agreement. NY 18 acknowledges, recognizes and agrees that it has no defenses to Lender’s claims and that Lender’s rights to the Collateral are senior to NY 18’s rights and that the Collateral includes (except as provided in Sections 6 and 7) any and all rights of NY 18 with respect to 25 LLC, including NY 18’s rights as a member of 25 LLC (including its rights pursuant to the 25 LLC Operating Agreement) or to any proceeds of its membership interest, NY 18’s rights in the Shavolian Note and its collateral, and all rights and remedies available to NY 18 against Shavolian and other interested parties, if any. NY 18 shall not contest any of the rights of Lender described in this Agreement (including those described in Section 3) or otherwise interfere with, inhibit or delay Lender in the enforcement of such rights.

3. Recognition by Beshmada. Beshmada acknowledges and recognizes the Pledge Agreement and Beshmada's assignments to Lender and Lender's assertion of their rights to the Collateral, and Beshmada agrees not to oppose or contest the validity of the Pledge Agreement. Beshmada acknowledges, recognizes and agrees that it has no defenses to Lender's claims and that Lender's rights to the Collateral are senior to Beshmada's rights and that the Collateral includes (except as provided in Sections 6 and 7) any and all rights of Beshmada with respect to Fifth Ave. LLC, including Beshmada's rights as a member of Fifth Ave. LLC (including its rights pursuant to the Limited Liability Company Agreement of 241 Fifth Ave. Hotel, LLC [the "Fifth Ave. LLC Operating Agreement"] made and entered into as of March 20, 2007), Beshmada's rights pursuant to the "True-Up Provision" stated in Section 4.02(c) of the Fifth Ave. LLC Operating Agreement (the "True-Up Provision"), and any and all rights and remedies available to Beshmada against Shavolian, Hazak Associate LLC ("Hazak") and other interested parties, if any. Beshmada shall not contest any of the rights of Lender described in this Agreement (including those described in Section 2) or otherwise interfere with, inhibit or delay Lender in the enforcement of such rights.

4. Further Assignment of Collateral. To the extent not heretofore fully conveyed, and without limiting the rights heretofore asserted by Lender, the Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar, and Pledgor hereby assign, transfer and convey to Lender (and their successors and assigns) any and all right, title and interest of Namco, Namvar and Pledgor in and to the Collateral (of record or beneficially, direct or indirect, matured or unmatured), including all Collateral rights as recognized and described in Sections 2 and 3 and release any and all claims that such described rights are not or were not included in the Collateral. Without limiting the generality of the preceding sentence, the Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar, and Pledgor acknowledge, recognize and agree, on their own behalves and on behalf of their shareholders, members or affiliates, that none of them, nor any of their shareholders, members or affiliates, have retained or claim any further right, title or interest to the Collateral, including, as described above, any membership interest in 25 LLC, any membership interest in Fifth Ave. LLC, the Shavolian Note or its collateral, Beshmada's rights pursuant to the True-Up Provision, or any of the payments or proceeds paid, due or owing by Shavolian, Hazak or other interested parties, if any.

5. Cooperation. Except as provided in Sections 6.2.3 and 7, each of the Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 agrees, upon request by Lender from time to time and at the sole cost and expense of Lender (including Lender's payment of the other parties' reasonable fees and expenses incurred in response to acting upon Lender's request), to execute and deliver, and use its best efforts to cause other persons to execute and deliver, to Lender (or other persons) all such further documents and instruments, and to do such other acts, as Lender may reasonably request more completely to consummate and make effective the transactions contemplated by this Agreement, including vesting Lender with all rights with respect to the Collateral. Without limiting the generality of the preceding sentence, each of the Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 will cooperate with Lender to take any reasonable steps necessary to perfect Lender's rights to and interest in the Collateral, will cooperate to acquire Court Approval and, if required, will support, Lender's request for relief from the automatic stay in favor of Lender to enforce all the rights of NY 18 and Beshmada respectively in 25 LLC and Fifth Ave. LLC, all at the sole cost and expense of Lender (except as

provided in Sections 6.2.3 and 7). NY 18 has delivered the Shavolian Note to Lender and shall upon request of Lender endorse the Shavolian Note to or as directed by Lender. The Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 will also advise 25 LLC, Fifth Ave. LLC, Shavolian, Hazak and other interested parties, if any, that all payments with respect to any Collateral are to be made directly to Lender. Each of the Namco Trustee on behalf of Namco, the Namvar Trustee on behalf of Namvar, Beshmada and NY 18 hereby authorizes Lender to perform (in Lender's name or in the name of any of Namco, Namvar, Beshmada, or NY 18) any and all necessary or appropriate acts (including endorsement of the Shavolian Note) and to institute or continue any proceedings (including the Action) against 25 LLC, Fifth Ave. LLC, DHD, Shavolian, Hazak, or other interested parties, if any, to collect, enforce or determine any and all rights, claims, credits and interests of Lender in and to the Collateral. Lender shall keep the Namco Trustee and the Namvar Trustee regularly informed on the progress of any litigation matters or other related matters involving Shavolian, Hazak, or other interested parties, if any. Notwithstanding anything in the preceding sentence to the contrary, Lender is not required to disclose any confidential or privileged information, nor need Lender separately provide notice to the Namco Trustee or the Namvar Trustee regarding the substance of any matter filed in a litigation matter where the Namco Trustee or the Namvar Trustee is copied on the filing, whether or not as a party to the litigation.

6. Rights Retained by Pledgor.

6.1 Notwithstanding anything in this Agreement to the contrary, and as part of the compromise concerning rights to and the composition of the Collateral, Pledgor has retained an interest in certain rights otherwise included in the Collateral, all pursuant to the terms and conditions of this Section 6. Lender is granted the exclusive right to collect or otherwise realize upon the Collateral, including the retained interest, and all decisions regarding pursuing, releasing or settling any issue in any dispute regarding the Collateral, including the retained interest, shall be made in Lender's sole discretion and at Lender's sole cost and expense (except as provided in Sections 6.2.3 and 7).

6.2 As Lender receives proceeds in good funds with respect to the Collateral, including the True Up Provision and the Shavolian Note, Lender shall pay to Pledgor, as its sole right, and in full satisfaction of the retained interest, an amount equal to (such amount the "Retained Proceeds"):

6.2.1 50% of any proceeds received by Lender in good funds with respect to the True-Up Provision **PLUS**

6.2.2 50% of any proceeds received by Lender in good funds with respect to the Collateral other than the True-Up Provision, but not to exceed \$250,000 **MINUS**

6.2.3 Lender's costs and expenses of collection (including actual legal fees, it being acknowledged and agreed that Wolf Haldenstein Adler Freeman & Herz LLP is presently acting as Lender's counsel), including costs and expenses incurred prior to the date of this Agreement and costs and expenses incurred by Lender on behalf of the Namco Trustee, the Namvar Trustee, Beshmada, and NY 18 pursuant to this Agreement, but not to

exceed \$200,000. In order to assure Lender's full recovery of its costs and expenses pursuant to this Section 6.2.3, the first proceeds shall be applied to Lender's prior costs and expenses before any payment is made to Pledgor and, further, until Lender has determined in its sole discretion to discontinue further collection efforts it may retain from the next proceeds an amount that, with the prior costs and expenses from time to time, equals \$200,000 as a reserve against future costs and expenses. Once Lender determines to discontinue further collection efforts without having incurred at least \$200,000 in costs and expenses, any excess reserve shall be paid in accordance with the other provisions of this Section 6.2.

7. Effect of Partial Settlement on Claims. No party is giving or receiving a release pursuant to this Agreement, and this Agreement represents a resolution of only the matters provided with respect to the Collateral. However, in determining any remaining claim by Lender against the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, there shall be credited on a dollar for dollar basis the full amount of all proceeds received in good funds with respect to the Collateral, whether received by Lender for its own account or as Retained Proceeds. For the avoidance of doubt, the parties acknowledge and agree that Lender is entitled to various costs and expenses pursuant to the Pledge Agreement and other Loan Documents and that its rights to such costs and expenses, including as against the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, are not limited by the \$200,000 limitation provided in Section 6.2.3, which limitation applies only with regard to the determination of the Retained Proceeds. Further, and notwithstanding the credit to the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, it is the intention of the parties that the retention of the Retained Proceeds as part of this partial settlement is an exclusion to the recoveries of Lender and shall not be counted for the benefit of any person liable to Lender other than the bankruptcy estates in the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case.

8. Bankruptcy Court Approval. Except as to the obligations set forth in this paragraph, it is a condition to the effectiveness of this Agreement and the parties' obligations thereunder that an order or orders be entered by the Bankruptcy Court, effective in each of the Bankruptcy Cases, authorizing the Namco Trustee, Beshmada and the Namvar Trustee to enter into this Agreement. Promptly upon the execution and delivery of this Agreement, the Namco Trustee, Beshmada and the Namvar Trustee shall file all required motions to obtain such order or orders.

9. Representations. Each Lender represents and warrants to the Namco Trustee, Beshmada, NY 18 and the Namvar Trustee, and each of the Namco Trustee, Beshmada, NY 18 and the Namvar Trustee represents and warrants to Lender, for itself or himself as follows:

9.1 Existence. Except for the Namco Trustee and the Namvar Trustee, it is a corporation or limited liability company, as identified in the opening to this Agreement, organized, validly existing and in good standing under the laws of the state of its organization as so identified.

9.2 Litigation. Except for the Action and the Namco Bankruptcy Case, the Beshmada Bankruptcy Case and the Namvar Bankruptcy Case, there are no legal or arbitral proceedings or any proceedings by or before any governmental authority or agency or any other person, now pending or (to its or his knowledge) threatened against it or him.

9.3 No Breach. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and compliance with the terms and provisions hereof will not conflict with or result in a breach of, or require any consent (except Court Approval) under its organizational documents, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which it or he is a party or by which it or he is bound or to which it or he is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of its or his revenues or assets pursuant to the terms of any such agreement or instrument, in each case, except for rights created by the provisions of this Agreement.

9.4 Necessary Action. It or he has all necessary power and authority to execute, deliver and perform its or his obligations under this Agreement. Its or his execution, delivery and performance of this Agreement has been approved by all necessary action. This Agreement has been duly and validly executed and delivered by it or him and constitutes its or his legal, valid and binding obligations, enforceable in accordance with its terms.

9.5 Approvals. No authorizations, approvals and consents of, and no filings and registrations with, any governmental or regulatory authority or agency are necessary for (i) the execution, delivery or performance by Pledgor or Guarantors of this Agreement or for the validity or enforceability thereof (other than the filing of financing statements with applicable governmental authorities), (ii) the grant by Pledgor or Guarantors of the assignments and security interests granted hereby, or the pledge by Pledgor of the Collateral pursuant hereto, (iii) the perfection or maintenance of the pledge and the Guarantees, assignment and security interest created hereby, except for the filing of financing statements under the applicable uniform commercial code, or (iv) the exercise by Lender of all rights and remedies in respect of the Collateral pursuant to this Agreement other than as required by the non-waivable provisions of the Uniform Commercial Code and other applicable law.

## 10. General Provisions.

10.1 Incorporation by Reference. The provisions of Sections 11 and 14 of the Pledge Agreement shall apply to this Agreement *mutatis mutandis* as if set forth herein at length.

10.2 Entire Agreement. This Agreement represents the entire agreement between the parties regarding the subject matter hereof. Except as set forth in this Agreement, this Agreement supersedes in all respects any and all prior oral or written negotiations, discussions, commitments, representations, agreements and other understandings between the parties with respect to the subject matter of this Agreement, and all such prior understandings are merged herein. There are no representations, warranties or covenants between the parties with respect to the subject matter of this Agreement, except as set forth in this Agreement.