

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

*In re:* ) Chapter 11  
)  
JER/JAMESON MEZZ BORROWER I LLC, ) Case No. 11-13392 (MFW)  
*et al.*,<sup>1</sup> )  
) (Jointly Administered)  
Debtors. )

**SECOND AMENDED JOINT PLAN OF REORGANIZATION OF JER/JAMESON MEZZ  
BORROWER I LLC AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF  
THE BANKRUPTCY CODE, AS MODIFIED**

December 11, 2012

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors' federal tax identification numbers, are JER/Jameson Mezz Borrower I LLC (6488), JER/Jameson Properties LLC (6426), JER/Jameson NC Properties LP (8691), and JER/Jameson GP LLC (6272). On October 18, 2011, JER/Jameson Mezz Borrower II LLC filed in this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which was dismissed by the Court on December 22, 2011. The Debtors' mailing address is 2500 North Dallas Parkway, Suite 600, Plano, Texas 75093.

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<u>Exhibit</u>	<u>Name</u>
A.	Operating Lease
B.	New Management Agreement
C.	Wyndham Worldwide Corporation Franchise Agreement
D.	Choice Hotels International, Inc. Franchise Agreement
E.	Forbearance Agreement
F.	Agreement between Mortgage Lender and Holder(s) of Mezz I Loan and any related documents
G.	Assumed Executory Contract and Unexpired Lease List
H.	Amended Corporate Documents
I.	Identity and Affiliations of Individuals Proposed to Serve as Directors or Officers of the Reorganized Debtors Following the Effective Date (Including Insiders to be Employed or Retained by the Reorganized Debtors and the Nature of Compensation for such Insiders)

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<sup>2</sup> These exhibits will be included as part of the Plan Supplement (as hereinafter defined) to be filed with the Bankruptcy Court (as hereinafter defined) no later than three (3) days before the Voting Deadline (as hereinafter defined). Exhibit G, however, will be filed on or before November 20, 2012. Upon filing, the Plan and Plan Supplement will be posted on the following website: <http://www.epiqsystems.com>.

## **INTRODUCTION**

JER/Jameson Mezz Borrower I LLC, JER/Jameson Properties LLC, JER/Jameson NC Properties LP and JER/Jameson GP LLC (each a “Debtor” and collectively, the “Debtors”), as debtors and debtors in possession in the Chapter 11 Cases (as hereinafter defined), together with CDCF JIH Funding, LLC and ColFin JIH Funding, LLC (the “Plan Proponents”), hereby propose the following joint chapter 11 plan of reorganization (the “Plan”).

This Plan is proposed by and on behalf of each Debtor as its individual, separate plan under chapter 11 of the Bankruptcy Code (as hereinafter defined). Reference is made to the Disclosure Statement (as hereinafter defined) for a discussion of the Debtors’ history, businesses, properties, results of operations and projections of future operations, as well as a summary and description of the Plan and certain related matters. No materials other than the Disclosure Statement and any exhibits and schedules attached thereto or referenced therein have been authorized by the Debtors for use in soliciting acceptances or rejections of the Plan.

ALL HOLDERS OF CLAIMS OR EQUITY INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THIS PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT CAREFULLY AND IN THEIR ENTIRETY BEFORE VOTING.

### **ARTICLE I.**

#### **DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

##### **Section 1.01            Scope of Defined Terms; Rules of Construction**

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms used but not defined in the Plan shall have the meanings ascribed to them in Article I of this Plan. Any term used but not defined in the Plan that is defined in the Bankruptcy Code or the Bankruptcy Rules, as the case may be, shall have the meaning ascribed in the Bankruptcy Code or the Bankruptcy Rules. Whenever the context requires, such terms shall include the plural as well as the singular. The masculine gender shall include the feminine, and the feminine gender shall include the masculine.

##### **Section 1.02            Defined Terms**

(1) “Administrative Claim” means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code and incurred prior to the Effective Date, including, but not limited to (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) the Professional Fee Claims; (c) all fees and charges assessed against the Estates pursuant to 28 U.S.C. §§ 1911-1930 or the Bankruptcy Rules; and (d) all obligations designated as Administrative Claims pursuant to an order of the Bankruptcy Court.

(2) “Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code.

(3) “Aimbridge” means Aimbridge Hospitality, L.P. or an affiliate thereof.

(4) “Allowed” means, when used with reference to any Claim or Equity Interest: (a) any Claim or Equity Interest or any portion thereof proof of which was timely and properly filed and as to which no objection to allowance or request for estimation has been interposed on or before the Claims Objection Deadline; (b) any Claim or Equity Interest or any portion thereof that is listed on the Schedules as liquidated, non-contingent and undisputed; (c) any Claim or Equity Interest or any portion thereof as to which any objection to its allowance has been settled, waived through payment, withdrawn, or denied by a Final Order; (d) any Claim or Equity Interest or any portion thereof as to which the liability of the Debtors and the amount thereof are determined by a Final Order or are not subject to an objection filed by the Reorganized Debtors on or before the Claims Objection Deadline; (e) any Claim or Equity Interest or any portion thereof as to which the liability of the Debtors and the amount thereof are determined by Final Order of a court of competent jurisdiction other than the Bankruptcy Court; or (f) any Claim or Equity Interest or any portion thereof that is expressly deemed allowed in a liquidated amount in the Plan; *provided, however*, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which the Debtors (x) have not interposed a timely objection or (y) have interposed a timely objection and such objection has been settled, waived through payment, withdrawn, or denied by a Final Order.

(5) “Assigned Contracts” has the meaning ascribed to such term in Section 5.01 of this Plan.

(6) “Assumed Executory Contract and Unexpired Lease List” means the document (as may be amended), as determined by the Debtors, that shall be filed with the Bankruptcy Court and served upon Persons entitled to notice pursuant to Bankruptcy Rule 2002, which indicates the Executory Contracts and Unexpired Leases to be assumed and/or assigned by the Reorganized Debtors pursuant to sections 365 and 1123 of the Bankruptcy Code and identifies the amounts proposed by the Debtors to satisfy Cure Claims.

(7) “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date or heretofore or hereafter amended if such amendments are made applicable to the Chapter 11 Cases.

(8) “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Cases.

(9) “Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the Local Rules of Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

(10) “Brand” has the meaning ascribed to such term in Section 4.06 of this Plan.

(11) “Business Day” means any day, excluding Saturdays, Sundays or “legal holidays” (as this term is defined in Bankruptcy Rule 9006(a)).

(12) “Cash” means legal currency of the United States of America or equivalents thereof, including bank deposits and checks.

(13) “Causes of Action” means any and all actions, proceedings, causes of action, obligations, suits, judgments, damages, demands, debts, accounts, controversies, agreements, promises, liabilities, legal remedies, equitable remedies, and claims (and any rights to any of the foregoing), whether known, unknown, reduced to judgment, not reduced to judgment, unmatured, disputed, undisputed, then existing



or thereafter arising, secured or unsecured, fixed, contingent, or assertable directly or derivatively, in law, equity or otherwise including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law.

(14) “Channel Point” means Channel Point Hospitality LLC or an affiliate thereof.

(15) “Chapter 11 Cases” means (a) when used in reference to a particular Debtor, the chapter 11 case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and (b) when used in reference to all of the Debtors, the above-captioned procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

(16) “Claim” means any claim against a Debtor, whether or not asserted or Allowed, as defined in section 101(5) of the Bankruptcy Code.

(17) “Claims Objection Deadline” means, for each Claim, 90 days after the Effective Date or such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to Claims or Equity Interests.

(18) “Class” means a category of Holders of Claims or Equity Interests as set forth in Article III below pursuant to section 1122(a) of the Bankruptcy Code.

(19) “Class 1” means any or all of the Classes 1A, 1B, 1C and 1D, as the context may require.

(20) “Class 2” means any or all of the Classes 2A, 2B, 2C and 2D, as the context may require.

(21) “Class 3” means any or all of the Classes 3A, 3B, 3C and 3D, as the context may require.

(22) “Class 4” means any or all of the Classes 4A, 4B, 4C and 4D, as the context may require.

(23) “Class 5” means any or all of the Classes 5A, 5B, 5C and 5D, as the context may require.

(24) “Class 6” means any or all of the Classes 6A, 6B, 6C and 6D, as the context may require.

(25) “ColFin” means ColFin JIH AHI Propco JV, LLC.

(26) “Collateral” means any property or interest in property of the Debtors subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

(27) “Compensation Procedures Order” means the *Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Pursuant to Sections 331 of the Bankruptcy Code* entered by the Bankruptcy Court on December 5, 2011.

(28) “Colony JIH Lenders” means CDCF JIH Funding, LLC and ColFin JIH Funding, LLC.

(29) “Completion Guaranty” has the meaning ascribed to such term in Section 4.08 of this Plan.

(30) “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order on the docket of the Chapter 11 Cases.

(31) “Confirmation Date” means the date on which the Confirmation Order is entered on the docket in the Chapter 11 Cases.

(32) “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned from time to time.

(33) “Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

(34) “Consummation” means the occurrence of the Effective Date.

(35) “Corporate Documents” means the certificate of incorporation, bylaws, limited liability company agreement and limited partnership agreement (or any other applicable organizational documents), as the case may be, of each Debtor in effect as of the Petition Date.

(36) “Creditor” means any Person who holds a Claim against any Debtor.

(37) “Cure Claim” means any Claim against any Debtor based upon the Debtors’ defaults under an Executory Contract or Unexpired Leases at the time the contract or lease is assumed by any Debtor or Reorganized Debtor under sections 365 and 1123 of the Bankruptcy Code.

(38) “Debtors” means collectively the following debtors and debtors in possession: (a) JER/Jameson Mezz Borrower I LLC (Case No. 11-13392 (MFW)); (b) JER/Jameson Properties LLC (Case No. 11-13408 (MFW)); (c) JER/Jameson NC Properties LP (Case No. 11-13409 (MFW)); and (d) JER/Jameson GP LLC (Case No. 11-13407 (MFW)).

(39) “Disallowed” means, when used with respect to a Claim or Equity Interest, a Claim or an Equity Interest that has been disallowed pursuant to a Final Order or by operation of the Bankruptcy Code and Bankruptcy Rules.

(40) “Disclosure Statement” means the disclosure statement that relates to the Plan, as such disclosure statement may be amended, modified or supplemented from time to time, including all exhibits and schedules thereto, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

(41) “Disputed” means, in reference to a Claim or Equity Interest, any Claim or Equity Interest not otherwise Allowed or paid pursuant to the Plan or an order of the Bankruptcy Court (a) which has been or hereafter is listed on the Schedules as unliquidated, contingent, or disputed, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court; (b) proof of which was required to be filed by order of the Bankruptcy Court but as to which a proof of Claim or Equity Interest was not timely or properly filed, or deemed timely or properly filed by the Bankruptcy Court; (c) proof of which was timely and properly filed and which has been or hereafter is listed on the Schedules as unliquidated, disputed or contingent; (d) that is disputed in accordance with the provisions of this Plan; or (e) as to which the Debtors have interposed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court, or is otherwise disputed by the Debtors in accordance with applicable law, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order.

(42) “Effective Date” means the Business Day on which all conditions to consummation of the Plan set forth in Section 8.02 of the Plan have been satisfied or waived as permitted hereunder.

- (43) “Entity” means any entity as defined in section 101(15) of the Bankruptcy Code.
- (44) “Estate” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.
- (45) “Equity Interest” means any equity interest in any of the Debtors, including, but not limited to, all issued, unissued, authorized or outstanding limited liability interests, partnership interests, membership interests, units, shares or stock (including common stock or preferred stock).
- (46) “Executory Contracts” and “Unexpired Leases” means any executory contract or unexpired lease, as appropriate, as referenced in section 365 of the Bankruptcy Code, to which one or more of the Debtors is a party.
- (47) “Federal Judgment Rate” means the federal judgment rate in effect as of the Petition Date.
- (48) “Final Cash Collateral Order” means the *Final Order Authorizing Use of Cash Collateral* entered by the Bankruptcy Court on January 24, 2012.
- (49) “Final Order” means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with response to the relevant subject matter, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.
- (50) “Forbearance Agreement” has the meaning ascribed to such term in Section 3.04 of this Plan.
- (51) “Franchise Agreements” has the meaning ascribed to such term in Section 4.06 of this Plan.
- (52) “General Unsecured Claim” means any Claim against any of the Debtors that is not (a) included in Classes 1 through 4, inclusive; (b) an Administrative Claim; or (c) a Priority Tax Claim.
- (53) “GP” means JER/Jameson GP LLC.
- (54) “Gramercy” means Gramercy Warehouse Funding I LLC and Gramercy Loan Services LLC.
- (55) “Holder” means the beneficial holder of any Claim or Equity Interest.
- (56) “Hotels” means the hotels owned by Properties and NC Properties.
- (57) “Impaired” means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.
- (58) “Initial Term” has the meaning ascribed to such term in Section 3.04 of this Plan.
- (59) “Intercreditor Agreement” means that certain *Amended and Restated Intercreditor Agreement* by and between Wachovia Bank, N.A., as Senior Lender and Wachovia Bank, N.A., as Mezzanine A Lender, Wachovia Bank, N.A., as Mezzanine B Lender, Wachovia Bank, N.A., as Mezzanine C Lender and Wachovia Bank, N.A., as Mezzanine D Lender dated as of September 28, 2006.

- (60) “Key Money Notes” has the meaning ascribed to such term in Section 4.06 of this Plan.
- (61) “Licensor(s)” has the meaning ascribed to such term in Section 4.06 of this Plan.
- (62) “Lien” means a charge against or interest in property to secure payment of a debt or performance of an obligation within the meaning of section 101(37) of the Bankruptcy Code.
- (63) “Mezz I” means JER/Jameson Mezz Borrower I LLC.
- (64) “Mezz I Claim” means any and all Claims arising under or related to the Mezz I Loan Documents.
- (65) “Mezz I Lender” means the holder of the Mezz I Loan.
- (66) “Mezz I Loan” means the secured loan in the principal amount of approximately \$40 million entered into pursuant to the Mezz I Loan Agreement.
- (67) “Mezz I Loan Agreement” means that certain *First Mezzanine Loan Agreement* dated as of July 27, 2006 between Mezz I, as borrower, and Wachovia Bank, National Association, as lender.
- (68) “Mezz I Loan Documents” means collectively (a) the Mezz I Loan Agreement; (b) each security agreement, guaranty, pledge agreement, mortgage, and any other document entered into pursuant to or in connection with the Mezz I Loan Agreement; and (c) each other agreement that creates or purports to create or perfect a Lien in favor of the Mezz I Lender.
- (69) “Mezz II” means JER/Jameson Mezz Borrower II LLC.
- (70) “Mezz III” means JER/Jameson Mezz Borrower III LLC.
- (71) “Mezz IV” means JER/Jameson Mezz Borrower IV LLC.
- (72) “Mezzco” means ColFin JIH Mezzco A, LLC.
- (73) “Mortgage Lender” means U.S. Bank National Association, as Trustee for the Registered Holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-WHALE 7.
- (74) “Mortgage Lender Claim” means any and all Claims arising under or related to the Mortgage Loan Documents.
- (75) “Mortgage Loan” means the secured loan in the principal amount of approximately \$175 million entered into pursuant to the Mortgage Loan Agreement.
- (76) “Mortgage Loan Agreement” means that certain *Mortgage Loan Agreement* dated as of July 27, 2006 between Properties and NC Properties, as borrowers, and Wachovia Bank, National Association, as lender.
- (77) “Mortgage Loan Documents” means collectively (a) the Mortgage Loan Agreement; (b) each security agreement, guaranty, pledge agreement, mortgage, and any other document entered into pursuant to or in connection with the Mortgage Loan Agreement; and (c) each other agreement that creates or purports to create or perfect a Lien in favor of the Mortgage Lender.

(78) “New Management Agreement” has the meaning ascribed to such term in Section 4.05 of this Plan.

(79) “NC Properties” means JER/Jameson NC Properties LP.

(80) “Opco” has the meaning ascribed to such term in Section 4.04 of this Plan.

(81) “Operating Debtors” means Properties and NC Properties.

(82) “Operating Lease” has the meaning ascribed to such term in Section 4.04 of this Plan.

(83) “Other Priority Claim” means a Claim entitled to priority under sections 507(a)(2), (3), (4), (5), (6), (7) and/or (9) of the Bankruptcy Code.

(84) “Other Secured Claim” means any Secured Claim against Debtors other than the Mortgage Lender Claims and the Mezz I Claims.

(85) “Person” means an individual, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or an agreed or political subdivision thereof) or other entity of any kind.

(86) “Petition Date” means the dates on which each of the respective Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

(87) “PIP Expenditures” has the meaning ascribed to such term in Section 4.06 of this Plan.

(88) “Plan” means this joint chapter 11 plan of reorganization and all exhibits and schedules annexed hereto or referenced herein, as may be amended, modified or supplemented from time to time.

(89) “Plan Proponents” means the Colony JIH Lenders.

(90) “Plan Proponent Fee Claims” has the meaning ascribed to such term in Section 7.06 of this Plan.

(91) “Plan Proponent Fee Claims Categories” has the meaning ascribed to such term in Section 7.06 of this Plan.

(92) “Plan Supplement” means the compilation of documents and forms of documents, schedules and exhibits to the Plan to be filed with the Bankruptcy Court not later than three (3) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court.

(93) “Prepetition Lenders” means the Mortgage Lender and the Mezz I Lender.

(94) “Priority Tax Claim” means a Claim that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

(95) “Professional” means any professional (a) approved by the Bankruptcy Court to be employed in the Chapter 11 Cases pursuant to sections 327, 328 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330 or 331 of the Bankruptcy Code or (b) seeking compensation and reimbursement pursuant to section 503(b)(4) of the Bankruptcy Code.

(96) “Professional Fees” means compensation for services rendered or expenses incurred by a Professional after the Petition Date through the Effective Date.

(97) “Professional Fee Claim” means any and all Claims arising under or related to Professional Fees.

(98) “Properties” means JER/Jameson Properties LLC.

(99) “Reinstate” means (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim or Equity Interest entitles the Holder thereof so as to leave such Claim or Equity Interest Unimpaired or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the holder of such Claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the holder of such Claim; *provided, however*, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be required to be reinstated in order to accomplish Reinstatement.

(100) “Releasees” has the meaning ascribed to such term in Section 10.03 of this Plan.

(101) “Releasing Parties” has the meaning ascribed to such term in Section 10.04 of this Plan.

(102) “Reorganized Debtors” means the Debtors, as reorganized under the Plan.

(103) “Reorganized GP” means JER/Jameson GP LLC, as reorganized under the Plan.

(104) “Reorganized Mezz I” means JER/Jameson Mezz Borrower I LLC, as reorganized under the Plan.

(105) “Reorganized NC Properties” means JER/Jameson NC Properties LP, as reorganized under the Plan.

(106) “Reorganized Operating Debtors” means the Reorganized Properties and Reorganized NC Properties.

(107) “Reorganized Properties” means JER/Jameson Properties LLC, as reorganized under the Plan.

(108) “Restructuring Transactions” means each of the various transactions described in Article IV of this Plan.

(109) “Schedules” means the schedules of assets and liabilities and statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007(b), as such schedules or statements have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

(110) “Secured Claim” means a Claim that is secured by a security interest in or Lien upon property, or the proceeds of the sale of such property, in which the Debtors have an interest, to the extent of the value, as of the Effective Date or such later date as is established by the Bankruptcy Court, of such interest or Lien as determined by a Final Order of the Bankruptcy Court pursuant to section 506 of the Bankruptcy Code or as otherwise agreed upon in writing by the Debtors or Reorganized Debtors and the Holder of such Claim.

(111) “Setoff Claim” means a Claim of a Holder that has a valid right of setoff with respect to such Claim, which right is enforceable under section 553 of the Bankruptcy Code as determined by a Final Order or as agreed in writing by the Debtors, to the extent subject to such right of setoff.

(112) “Solicitation Agent” means Epiq Bankruptcy Solutions, LLC, 757 Third Avenue, New York, New York 10017, which has been appointed as the Debtors’ notice, claims and balloting agent, or such other Entity as the Bankruptcy Court may appoint as the Debtors’ notice, claims and balloting agent.

(113) “Supplemental Term” has the meaning ascribed to such term in Section 3.04 of this Plan.

(114) “Unexpired Leases” and “Executory Contracts” means any unexpired lease or executory contract, as appropriate, as referenced in section 365 of the Bankruptcy Code, to which one or more of the Debtors is a party.

(115) “Unimpaired” means a Claim or Equity Interest that is not Impaired.

(116) “United States Trustee” means the Office of the United States Trustee for Region 3.

(117) “Voting Deadline” means the deadline established by the Bankruptcy Court for voting on the Plan.

### **Section 1.03 Rules of Interpretation**

#### **(a) General**

For purposes of the Plan (i) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (ii) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, (iii) unless otherwise specified, all references in the Plan to Sections, Articles, Schedules, and Exhibits are references to Sections, Articles, Schedules, and Exhibits of or to the Plan, (iv) the words “herein,” “hereto” and “hereof” refer to the Plan in its entirety rather than to a particular portion of the Plan, (v) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (vi) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

#### **(b) Rule of “Contra Proferentum” Not Applicable**

This Plan is the product of extensive negotiations between and among, *inter alia*, the Debtors, the Plan Proponents and certain other Creditors and constituencies. Each of the foregoing was represented by independent counsel of their choice who either (i) participated in the formulation and documentation of or (ii) was afforded the opportunity to review and provide comments on, the Plan, the Disclosure Statement, and the documents ancillary thereto. Accordingly, unless explicitly stated otherwise, the general rule of

contract construction known as “*contra proferentum*” shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, or any exhibit, schedule, contract, instrument, release, or other document generated in connection therewith as concerns such parties identified above.

**Section 1.04 Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**Section 1.05 Reference to Monetary Figures**

All references in the Plan to monetary figures shall refer to legal currency of the United States of America, unless otherwise expressly provided.

**Section 1.06 Reference to Debtors or Reorganized Debtors**

Unless specifically provided otherwise in the Plan, references to the Debtors or Reorganized Debtors shall mean the Debtors and/or Reorganized Debtors, as the context may require.

**ARTICLE II.**

**UNCLASSIFIED CLAIMS**

*(Not Entitled to Vote on the Plan)*

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Equity Interests set forth in Article III hereof. These unclassified Claims are treated as follows:

**Section 2.01 Administrative Claims**

Except as otherwise provided for herein, each Holder of an Allowed Administrative Claim shall, in full satisfaction, release, settlement and discharge thereof: (a) to the extent such Claim is due and owing on the Effective Date, be paid in full, in Cash, on the Effective Date or as soon as reasonably practical thereafter; (b) to the extent such Claim is not due and owing on the Effective Date, be paid in full, in Cash, in accordance with the terms of any agreement between the Debtors and such Holder, or as may be due and owing under applicable non-bankruptcy law or in the ordinary course of business; or (c) receive such other treatment as may be agreed to between the Holder and the Debtors or Reorganized Debtors, *provided, however*, Holders of Administrative Claims that are based on liabilities incurred in the ordinary course of the Debtors’ businesses (including Claims of governmental units for taxes (and for interest and/or penalties related to such taxes)) shall be paid by the Debtors, in Cash, pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claim.

**Section 2.02 Professional Fee Claims**

All final requests for compensation or reimbursement of Professional Fees pursuant to sections 327, 328, 330, 331, 363, 503(b) or 1103 of the Bankruptcy Code for services rendered to or on behalf of the Debtors prior to the Effective Date must be filed and served on the Reorganized Debtors and their counsel no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals or other entities for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtors and their counsel and



the requesting Professional or other entity no later than seven (7) days (or such longer period as may be allowed by order of the Bankruptcy Court) prior to the date on which the applicable application for compensation or reimbursement will be heard by the Bankruptcy Court.

Without limiting the foregoing, any Debtor or Reorganized Debtor may pay the charges incurred by the Debtors on and after the Confirmation Date for any Professionals' fees, disbursements, expenses or related support services without application to or approval by the Bankruptcy Court.

**Section 2.03 Payment of Statutory Fees**

On or before the Effective Date, the Debtors shall have paid in full, in Cash (including by check or wire transfer), in U.S. dollars, all fees payable pursuant to section 1930 of title 28 of the United States Code.

**Section 2.04 Priority Tax Claims**

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, each Holder of an Allowed Priority Tax Claim shall, in full satisfaction, release, and discharge thereof: (a) to the extent such Claim is due and owing on the Effective Date, be paid in full, in Cash, on the Effective Date or as soon as reasonably practical thereafter; (b) to the extent such Claim is not due and owing on the Effective Date, be paid in full, in Cash, in accordance with the terms of any agreement between the Debtors and such Holder, or as may be due and owing under applicable non-bankruptcy law, or in the ordinary course of business; or (c) receive such other treatment as may be agreed to between the Holder and the Debtors or Reorganized Debtors.

**ARTICLE III.**

**CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**Section 3.01 Classification of Claims and Equity Interests**

The categories of Claims and Equity Interests set forth below classify Claims and Equity Interests for all purposes, including for purposes of voting, confirmation and distribution pursuant to this Plan and sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that it qualifies within the description of such Class, and shall be deemed classified in other Classes to the extent that any portion of such Claim or Equity Interest qualifies within the description of such other Classes. Notwithstanding anything to the contrary in this Plan, a Claim or Equity Interest shall be deemed classified in a Class only to the extent that such Claim or Equity Interest has not been paid, released, or otherwise settled prior to the Effective Date.

All Claims (except for Administrative Claims and Priority Tax Claims, which are not classified pursuant to section 1123(a)(1) of the Bankruptcy Code) are classified as follows:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1A, 1B, 1C, 1D	Mortgage Lender Claims	Impaired	Entitled to Vote (Impaired)
2A, 2B, 2C, 2D	Mezz I Claims	Impaired	Entitled to Vote (Impaired)

3A, 3B, 3C, 3D	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
4A, 4B, 4C, 4D	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
5A, 5B, 5C, 5D	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
6A, 6B, 6C, 6D	Equity Interests	Unimpaired	Not Entitled to Vote (Deemed to Accept)

### **Section 3.02 Voting; Presumptions**

#### *(a) Acceptance by Impaired Classes*

Each Impaired Class of Claims that will (or may) receive or retain property or any interest in property under the Plan shall be entitled to vote to accept or reject the Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan or are deemed to have accepted the Plan and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan or are deemed to have accepted the Plan.

#### *(b) Voting Presumptions*

Claims and Equity Interests in Unimpaired Classes are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan. Claims and Equity Interests in Impaired Classes that do not entitle the Holders thereof to receive or retain any property under the Plan are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

If no holder of a Claim or Equity Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan will be deemed accepted by the holders of such Claims or Equity Interests in such Class. Accordingly, if you do not wish such a presumption with respect to any Class for which you hold Claims or Equity Interests to become effective, you should timely submit a ballot accepting or rejecting the Plan for any such Class.

### **Section 3.03 Unimpaired Classes of Claims and Equity Interests**

#### *(a) Class 3: Other Secured Claims*

Class 3A consists of all Other Secured Claims against Mezz I. Class 3B consists of all Other Secured Claims against Properties. Class 3C consists of all Other Secured Claims against NC Properties. Class 3D consists of all Other Secured Claims against GP.

The Debtors do not believe that there are any Class 3 Other Secured Claims against any of the Debtors.

Each Holder of an Allowed Claim in Classes 3A, 3B, 3C and 3D, Other Secured Claims, will, in full satisfaction, release, settlement, discharge thereof: (i) at the option of the Debtors or Reorganized Debtors, either (a) have the property that serves as Collateral for its Claim returned, (b) have its Claim cured and Reinstated within the meaning of section 1124(2) of the Bankruptcy Code or (c) retain, as unaltered, all legal, equitable and contractual rights to which an Allowed Class 3A, 3B, 3C and 3D, Other Secured Claim, entitles the Holder; or (ii) receive such other treatment as may be agreed to between the Holder and the Debtors or Reorganized Debtors.

(b) *Class 4: Other Priority Claims*

Class 4A consists of all Other Priority Claims against Mezz I. Class 4B consists of all Other Priority Claims against Properties. Class 4C consists of all Other Priority Claims against NC Properties. Class 4D consists of all Other Priority Claims against GP.

The Debtors do not believe that there are any Class 4A Other Priority Claims against Mezz I or Class 4D Other Priority Claims against GP.

With respect to each Allowed Class 4A, 4B, 4C and 4D Claim, the legal, equitable and contractual rights to which such Allowed Claim entitles its Holder shall be Reinstated in full on the Effective Date. Each Holder of an Allowed Class 4A, 4B, 4C and 4D Claim, will, in full satisfaction, release, settlement, and discharge thereof: (i) to the extent such Claim is due and owing on the Effective Date, have such Allowed Claim paid in full, in Cash, on or as soon as practicable after the Effective Date; (ii) to the extent such Allowed Claim is not due and owing on the Effective Date, be paid in full, in Cash, in accordance with the terms of any agreement between the parties, or as may be due and owing under applicable non-bankruptcy law or in the ordinary course of business; or (iii) receive such other treatment as may be agreed to between the Holder and the Debtors or Reorganized Debtors.

(c) *Class 5: General Unsecured Claims*

Class 5A consists of all General Unsecured Claims against Mezz I. Class 5B consists of all General Unsecured Claims against Properties. Class 5C consists of all General Unsecured Claims against NC Properties. Class 5D consists of all General Unsecured Claims against GP.

The Debtors do not believe that there are any Class 5A General Unsecured Claims against Mezz I or Class 5D General Unsecured Claims against GP.

With respect to each Allowed Class 5A, 5B, 5C and 5D Claim, the legal, equitable and contractual rights to which such Allowed Claim entitles its Holder shall be Reinstated in full on the Effective Date. Each Holder of an Allowed Class 5A, 5B, 5C and 5D General Unsecured Claim, will, in full satisfaction, release, settlement, and discharge: (i) have such Claim paid in the ordinary course of business when due; (ii) if such Claim is past due, have such unpaid portion of its Allowed Class 5A, 5B, 5C and 5D General Unsecured Claim paid in full, in Cash, on or as soon as practicable after the Effective Date; or (iii) if such Claim is Allowed after the Effective Date, have such Claim paid on the date such Claim is Allowed or as soon thereafter as practicable.

(d) *Class 6: Equity Interests*

Class 6A consists of all Equity Interests in Mezz I. Class 6B consists of all Equity Interests in Properties. Class 6C consists of all Equity Interests in NC Properties. Class 6D consists of all Equity Interests in GP.

With respect to each Allowed Class 6A, 6B, 6C and 6D Equity Interest, the legal, equitable and contractual rights to which such Allowed Equity Interest entitles its Holder shall be Reinstated in full on the Effective Date.

### **Section 3.04          Impaired Classes of Claims**

(a)      *Class 1: Mortgage Lender Claims*

Class 1A consists of all Mortgage Lender Claims against Mezz I. Class 1B consists of all Mortgage Lender Claims against Properties. Class 1C consists of all Mortgage Lender Claims against NC Properties. Class 1D consists of all Mortgage Lender Claims against GP.

The Class 1B and Class 1C Mortgage Lender Claims against Properties and NC Properties shall be Allowed and deemed to be Allowed Claims in Classes 1B and 1C in the full amount outstanding under the Mortgage Loan Agreement with respect to the Mortgage Loan as of the Effective Date.

The Debtors do not believe that there are any Class 1A or 1D Mortgage Lender Claims.

On the Effective Date, the Reorganized Operating Debtors shall be obligated under the Mortgage Loan Documents, as modified pursuant to a forbearance agreement (the “Forbearance Agreement”), in the form attached hereto as Exhibit E or the Plan Supplement.

Without limiting the foregoing, on or before the Effective Date, the Operating Debtors shall enter into the Forbearance Agreement with the Mortgage Lender subject to the specific terms and conditions contained therein, pursuant to which the Mortgage Lender shall forbear from exercising its remedies for a term of two years (the “Initial Term”) provided, among other things (i) the Mortgage Lender receives a pay down of the outstanding principal balance of the Mortgage Loan by the Operating Debtors of an amount at least equal to \$10,000,000 from existing cash collateral and (ii) the Mortgage Loan Documents are revised to provide an increase in the interest rate payable on the Mortgage Loan to 1 month LIBOR plus 1.541428570% during the second year of the Initial Term. In addition to the Initial Term, the Forbearance Agreement shall provide for an additional year forbearance term at the request of the Reorganized Debtors (the “Supplemental Term”) provided, among other terms and conditions, (a) the Mortgage Loan Documents are revised to provide an increase in the interest rate payable on the Mortgage Loan to 1 month LIBOR plus 3.50% during the Supplemental Term, (b) no Event of Default (under the Mortgage Loan Documents as modified by the Forbearance Agreement and otherwise in accordance with the Plan) shall have occurred and be continuing, and (c) the minimum Debt Yield (as described in the Forbearance Agreement) is satisfied.

All Mortgage Loan Documents, as modified by the Forbearance Agreement, shall remain in full force and effect on and after the Effective Date, and all Liens, rights, interests, duties and obligations thereunder shall survive the Effective Date and shall continue to secure all Mortgage Lender Claims against the Reorganized Operating Debtors and all other obligations under the Forbearance Agreement. Without limiting the generality of the foregoing, all Liens and security interests granted pursuant to the Mortgage Loan Documents, as modified by the Forbearance Agreement, to the Mortgage Lender shall be (i) valid, binding, perfected, enforceable, Liens on, assignments of and security interests in the personal and real property described in such documents, with the priorities established in respect thereof under applicable non-bankruptcy law and (ii) not subject to avoidance, recharacterization or subordination under any applicable law. In addition to the foregoing, the relative priorities and rights in such property as among the Mortgage Lender and the Mezz I Lender shall be governed by the Intercreditor Agreement, as the same may be amended in accordance with the Plan and the Forbearance Agreement.

The Forbearance Agreement shall be executed, delivered and performed by the Operating Debtors and the Reorganized Operating Debtors, as the case may be, in accordance with its terms.

Class 1B and 1C is Impaired by the Plan. Therefore, Holders of Mortgage Lender Claims in Class 1B and 1C are entitled to vote to accept or reject the Plan.

(b) *Class 2: Mezz I Claims*

Class 2A consists of all Mezz I Claims against Mezz I. Class 2B consists of all Mezz I Claims against Properties. Class 2C consists of all Mezz I Claims against NC Properties. Class 2D consists of all Mezz I Claims against GP.

The Class 2A Mezz I Claims against Mezz I shall be Allowed and deemed to be Allowed Claims in Class 2A in the full amount outstanding under the Mezz I Loan Agreement with respect to the Mezz I Loan as of the Effective Date.

The Debtors do not believe that there are any Class 2B, 2C or 2D Mezz I Claims.

On the Effective Date, Reorganized Mezz I shall assume the Mezz I Loan Documents as modified to provide that all accrued interest shall be paid in kind and added to the principal amount of the Mezz I Loan until the Mortgage Loan is paid in full.

All Mezz I Loan Documents shall remain in full force and effect on and after the Effective Date, and all Liens, rights, interests, duties and obligations thereunder shall survive the Effective Date and shall continue to secure all Mezz I Claims assumed by the Reorganized Mezz I and all other obligations under the Mezz I Loan Agreement. Without limiting the generality of the foregoing, all Liens and security interests granted pursuant to the Mezz I Loan Agreement to the Mezz I Lender shall be (i) valid, binding, perfected, enforceable, Liens on, assignments of and security interests in the personal and real property described in such documents, with the priorities established in respect thereof under applicable non-bankruptcy law and (ii) not subject to avoidance, recharacterization or subordination under any applicable law. In addition to the foregoing, the relative priorities and rights in such property as among the Mortgage Lender and the Mezz I Lender shall be governed by the Intercreditor Agreement, as the same may be amended, and/or other applicable agreements in either case entered into as part of the Restructuring Transactions under the Plan. Thus, pursuant to the Intercreditor Agreement or related agreements between the Mezz I Lender and the Mortgage Lender, Mezz I Lender will agree (a) to forbear from exercising any remedies against Mezz I, (b) that the Mezz I Loan shall at all times be held by an affiliate of Mezz I, and (c) that the Mezz I Lender shall have no cure or purchase option rights under the Intercreditor Agreement, in each case until the Mortgage Loan is repaid in full. Furthermore, the Mezz I Lender will modify the Mezz I Loan to provide that all accrued interest will be paid in kind and added to the principal amount of the Mezz I Loan until the Mortgage Loan is repaid in full.

Class 2A is Impaired by the Plan. Therefore, Holders of Mezz I Claims in Class 2A are entitled to vote to accept or reject the Plan.

**Section 3.05 Special Provision Regarding Unimpaired Claims**

Except as otherwise provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to Setoff Claims or recoupments against Unimpaired Claims.

### **Section 3.06 Cram Down**

If any Class of Claims or Equity Interests entitled to vote on the Plan shall not vote to accept the Plan, the Debtors and the Plan Proponents shall (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with Article IX of the Plan. With respect to any Class of Claims or Equity Interests that is deemed to reject the Plan, the Debtors and the Plan Proponents shall request that the Bankruptcy Court confirm or “cram down” the Plan pursuant to section 1129(b) of the Bankruptcy Code.

## **ARTICLE IV.**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

The Plan shall be implemented on the Effective Date. In addition to the provisions set forth elsewhere in the Plan regarding means of execution, the following shall constitute the principal means for the implementation of the Plan.

#### **Section 4.01 Continued Existence**

Following the Effective Date, the Reorganized Debtors shall continue to exist as separate limited liability companies or limited partnerships, as the case may be, in accordance with applicable non-bankruptcy law and pursuant to their Corporate Documents in effect prior to the Effective Date, except to the extent that such Corporate Documents are amended pursuant to the Plan.

#### **Section 4.02 Revesting of Assets**

Except as otherwise set forth herein, in the Plan Supplement or in the Confirmation Order, as of the Effective Date, all property of the Estates shall revert in the Reorganized Debtors free and clear of all Claims, Liens, encumbrances and other Equity Interests. From and after the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire and dispose of property and settle and compromise Claims or Equity Interests without supervision by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation Order. Without limiting the generality of the foregoing, the Reorganized Debtors may, without application to or approval by the Bankruptcy Court, pay fees that they incur after the Effective Date for professional fees and expenses, including without limitation the retention and reimbursement of any fees and expenses incurred in connection with any audit of the Reorganized Debtors.

#### **Section 4.03 Sources of Cash for Plan Distributions**

All consideration necessary to fund any payments on behalf of the Debtors or Reorganized Debtors pursuant to the Plan shall be obtained from Cash from the Reorganized Debtors, including Cash from the Hotels’ business operations. The costs of making planned improvements to the Hotels will be funded with Cash from the Debtors or Reorganized Debtors, as the case may be, as well as key money to be provided by the Licensors on or after the confirmation of the Plan pursuant to the terms of the Key Money Notes.

#### **Section 4.04 The Opco/Propco Structure**

On or before the Effective Date, the Operating Debtors shall enter into an operating lease (the “Operating Lease”) with ColFin JIH AHI Opco, LLC (“Opco”), an affiliate of the Operating Debtors to

be formed on or before the Effective Date, in the form attached hereto, the Plan Supplement or as otherwise approved by the Debtors, the Plan Proponents and Opco. Pursuant to the Operating Lease, Opco shall have the right to operate the Hotels and receive all revenues therefrom, in consideration of rental payments to the Operating Debtors, as more particularly described in the Operating Lease. The Operating Debtors may also sell or assign certain personal property relating to the Hotels to Opco in connection with the Operating Lease. As described in more detail below, pursuant to the Plan, the Debtors may assign certain Executory Contracts and Unexpired Leases to Opco. Such Assigned Contracts may revert back to the Reorganized Debtors upon the termination of the Operating Lease.

#### **Section 4.05          New Management Agreement**

On or before the Effective Date, Opco will enter into the New Management Agreement with Channel Point, in substantially the form attached hereto or the Plan Supplement or as otherwise approved by the Debtors, the Plan Proponents, the Mortgage Lender and Channel Point. Pursuant to the New Management Agreement, Channel Point shall manage the Hotels for an initial term of five years (which may be subject to renewal and/or early termination as set forth in the New Management Agreement) in consideration of a management fee which is a percentage of gross revenue, as such fee may be further described in the New Management Agreement. In connection with the New Management Agreement, an affiliate of Aimbridge shall invest approximately \$6 million in three joint ventures with the Colony JIH Lenders, in exchange for a minority non-controlling equity interest in ColFin and a supplemental profit-sharing component in the event certain return hurdles are met, and a minority non-controlling direct or indirect equity interest in Opco and a subsidiary of Mezzco.

#### **Section 4.06          Franchise Agreements**

On or before the Effective Date, the Operating Debtors shall enter into franchise agreements (“Franchise Agreements”) with Wyndham and Choice (each, a “Licensor” and together with other potential licensors, “Licensors”), in substantially the forms attached hereto or the Plan Supplement or as otherwise approved by the Debtors, the Plan Proponents and the Licensors, in respect of all or substantially all of the Hotels. Pursuant to each Franchise Agreement, the Operating Debtors shall have the right to operate the applicable Hotel(s) using a brand name licensed to them by a Licensor for a period of twenty years subject to earlier termination as set forth more particularly therein. The brands being licensed for the Hotels may include Baymont Inn & Suites®, Days Inn®, Howard Johnson®, Quality Inn®, Comfort Inn® and Econolodge® (each, a “Brand”), with the terms of Brand use set forth in the applicable Franchise Agreement. As of the date of filing this Disclosure Statement, the Debtors have not negotiated a franchise arrangement for the Hotel located in Wilmington, North Carolina. The Debtors or the Reorganized Debtors may choose to have this property operating using a Knights Inn® brand, another brand, or as an independent hotel. The Debtors may also choose to enter into a Franchise Agreement with another Licensor with respect to one or more other Hotel(s) or choose to operate such Hotel(s) as independent hotel(s).

The Operating Debtors will be required to pay certain fees, and each Licensor shall advance certain funds in connection with the conversion of the Hotels to the applicable Brand, in each case as further described in the applicable Franchise Agreement or related agreement. Among other things, under the Franchise Agreements, it is contemplated that the Operating Debtors will implement a “Property Improvement Plan” and in support thereof make certain expenditures (the “PIP Expenditures”) to convert the properties to the new brands and bring them into compliance with brand standards. In connection with the Franchise Agreements, on or following the confirmation of the Plan, the Reorganized Operating Debtors and Opco will execute promissory notes (the “Key Money Notes”), pursuant to which Licensors will advance funds to be used in connection with operation of the Hotels under the applicable Brands, including making PIP Expenditures. Absent an accelerating event, such as a termination of the applicable

Franchise Agreement or a prohibited transfer of the underlying assets, the Key Money Notes will be forgiven over a period of ten years at a rate of one tenth of originally disbursed amounts at the end of each year, such that on the tenth anniversary following disbursement, the obligation to repay the Key Money Notes will have been completely forgiven and the applicable Key Money Note will be cancelled and discharged.

On or following the Effective Date, the Reorganized Operating Debtors will (i) assign their rights and obligations under the Franchise Agreements to Opco and (ii) enter into a guaranty of Opco's obligations under the Franchise Agreements.

As part of the new franchise arrangements, on the Effective Date, the Debtors will change their corporate names to eliminate references to "Jameson". Thus, on the Effective Date, the Reorganized Debtors will be renamed to "ColFin JIH AHI Mezz Borrower I LLC", "ColFin JIH AHI GP LLC", "ColFin JIH AHI NC Properties LP" and "ColFin JIH AHI Properties LLC".

#### **Section 4.07 Forbearance Agreement**

On or prior to the Effective Date, the Forbearance Agreement, in the form attached hereto, the Plan Supplement or as otherwise approved by the Debtors, the Plan Proponents and the Mortgage Lender, shall become effective. The Forbearance Agreement shall be binding on all Holders of Class 1B and 1C Claims and the Reorganized Debtors.

#### **Section 4.08 Entry Into Guarantees**

On or after the Effective Date, an affiliate of the Colony JIH Lenders will enter into a completion guaranty ("Completion Guaranty") in favor of the Mortgage Lender in respect of the PIP Expenditures required by the Licensors, and the Mortgage Lender shall permit all key money provided by the Licensors to be used to pay for such improvements as and when received by the Colony JIH Lenders or the Reorganized Debtors. Upon completion of the initial property improvements, the Mortgage Lender shall deliver a full and final release of the obligations of the affiliate of the Colony JIH Lenders under the Completion Guaranty.

Additionally, on or after the Effective Date, an affiliate of the Colony JIH Lenders will enter into a "bad boy" guarantee in favor of the Mortgage Lender, whereby such affiliate will conditionally guarantee certain obligations of the Reorganized Debtors upon the occurrence of certain events, including among others the Reorganized Debtors' fraud, misappropriation of funds, and intentional physical waste to the properties, and the Reorganized Debtors voluntarily filing, consenting to or colluding in a bankruptcy or other insolvency proceeding, or commencing any legal proceeding (other than a good faith defense) to contest any foreclosure action or other exercise of the Mortgage Lender's remedies following an event of default.

#### **Section 4.09 Corporate Governance and Corporate Action**

##### *(a) New Corporate Documents*

The Corporate Documents of the Debtors shall be amended and restated as necessary to satisfy the provisions of the Plan and to prohibit the issuance of non-voting equity securities pursuant to section 1123(a)(6) of the Bankruptcy Code.



(b) *New Management of the Reorganized Debtors*

Unless otherwise identified on Exhibit I to the Plan, the directors, officers and managers of the Debtors in existence prior to the Effective Date shall continue in office following the Effective Date for the Reorganized Debtors until the designation of new directors and officers in accordance with the Corporate Documents.

On the Effective Date or as soon thereafter as practicable, the Reorganized Debtors shall pay to Mr. Pearlman and Mr. Marinucci, or any of their affiliates, \$100,000.00 and \$50,000.00, respectively, in connection with the emergence of the Debtors from bankruptcy for the services rendered on behalf of, and the benefits accorded to, the Debtors during the administration of the Chapter 11 Cases. Such payments shall be made only upon the occurrence of the Effective Date.

(c) *Corporate Action*

The chairman of the board of directors, president, chief financial officer, manager, or any other appropriate officer of the Debtors or, after the Effective Date, the Reorganized Debtors, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The secretary of the Debtors or, after the Effective Date, the Reorganized Debtors, shall be authorized to certify or attest to any of the foregoing actions.

Without limiting the foregoing, the Reinstatement of the Equity Interests, the election and appointment of directors, officers and managers, the implementation of the Restructuring Transactions contemplated by the Plan, and any other matter involving the corporate structure of the Reorganized Debtors, shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to section 303 of the Delaware General Corporation Law (or the laws of each state pursuant to which a Reorganized Debtor is organized) without requiring any further action by the members or partners, as the case may be, of the Debtors and/or Reorganized Debtors.

**Section 4.10 Exemption from Certain Transfer Taxes**

Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making of delivery of an instrument of transfer from the Debtors to the Reorganized Debtors or any other Person or entity pursuant to the Plan may not be taxed under any law imposing a stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**Section 5.01 Assumption, Assignment or Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, or in any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, all Executory Contracts and Unexpired Leases shall be deemed rejected as of the Effective Date *unless* such Executory Contract or Unexpired Lease: (a) was assumed or rejected previously by the Debtors; (b) previously

expired or terminated pursuant to its own terms; (c) is the subject of a motion to assume filed with the Bankruptcy Court on or before the Effective Date; or (d) is identified as an Executory Contract or Unexpired Lease on the Assumed Executory Contract and Unexpired Lease List and not removed by the Debtors from such list prior to the Effective Date.

Certain of the Debtors' Executory Contracts and/or Unexpired Leases may be assumed and assigned to Opco on the Effective Date. The Debtors shall identify any such Executory Contracts and/or Unexpired Leases to be assigned (the "Assigned Contracts") on the Assumed Executory Contract and Unexpired Lease List prior to the Effective Date. Pursuant to the Operating Lease, Opco will receive income from the Hotels, and will be able to use such funds to satisfy its payments obligations under the Assigned Contracts.

The Debtors shall provide notice to the affected non-debtor counterparties to the Executory Contracts and Unexpired Leases of (a) any proposed assumption or rejection of Executory Contracts and Unexpired Leases, (b) any related cure amounts related to a proposed assumption, and (c) any proposed assignment, as applicable. The Debtors believe that all counterparties have been paid in full in the ordinary course, and that the cure amount for all Executory Contracts and/or Unexpired Leases to be assumed is \$0 unless stated otherwise in the Assumed Executory Contract and Unexpired Lease List. If the Debtors remove an Executory Contract or Unexpired Lease from the Assumed Executory Contract and Unexpired Lease List prior to the Effective Date, the Debtors will file a notice of such removal with the Bankruptcy Court and provide notice to the affected contract or lease counterparty.

The entry of the Confirmation Order shall constitute an order of the Bankruptcy Court, effective as of the Effective Date, (a) approving the assumption and/or assignment, or rejection, as applicable, of the Executory Contracts and Unexpired Leases as provided for in the Plan and pursuant to sections 365 and 1123 of the Bankruptcy Code; (b) finding that the Debtors have properly provided for the cure of any defaults that might have existed; (c) finding that each assumption and/or assignment, or rejection, as applicable, is in the best interest of the Debtors, their estates and all parties in interest in the Chapter 11 Cases; and (iv) finding the requirements for assumption and/or assignment of any Executory Contract or Unexpired Lease to be assumed and/or assigned have been satisfied.

### **Section 5.02            Executory Contracts and Unexpired Leases Assumed or Entered Into After Petition Date**

Any Executory Contract and Unexpired Lease assumed or entered into by any Debtor during the Chapter 11 Cases may be performed by the applicable Reorganized Debtor in the ordinary course of its business. The Debtors may seek to assign to Opco on the Effective Date certain Executory Contracts and Unexpired Leases assumed by the Debtors during Chapter 11 Cases. Such proposed assignments, if any, will be identified on the Assumed Executory Contract and Unexpired Lease List prior to the Effective Date.

### **Section 5.03            Objections to Assumption and/or Assignment of Executory Contracts and Unexpired Leases**

#### *(a)        Objection Procedure Generally*

Any party objecting to the proposed assumption and/or assignment of an Executory Contract or Unexpired Lease based on a lack of adequate assurance of future performance (within the meaning of section 365 of the Bankruptcy Code) or on any other ground, including the adequacy of the "cure" amount set forth on the Assumed Executory Contract and Unexpired Lease List shall file and serve a written objection to the assumption and/or assignment of such contract or lease on or before the deadline

to objection to Confirmation. Failure to timely file an objection shall constitute consent to the assumption and/or assignment of the applicable Executory Contract or Unexpired Lease, including an acknowledgment that the proposed assumption and/or assignment provides adequate assurance of future performance and that the applicable “cure” amount set forth on the Assumed Executory Contract and Unexpired Lease List is proper and sufficient for purposes of section 365 of the Bankruptcy Code.

(b) *Objection Based on Grounds Other than “Cure” Amount*

If any party timely and properly files an objection to assumption and/or assignment based on any ground other than the adequacy of the applicable “cure” amount set forth on the Assumed Executory Contract and Unexpired Lease List and the Bankruptcy Court ultimately determines that the Debtors cannot assume (and/or assign) the Executory Contract or Unexpired Lease or that adequate assurance of future performance cannot be provided as proposed, then (a) the Executory Contract or Unexpired Lease shall automatically thereupon be deemed to have been excluded from the Assumed Executory Contract and Unexpired Lease List and shall be rejected, or (b) the proposed assignment of such Executory Contract or Unexpired Lease shall not be permitted.

(c) *Objection Based on “Cure” Amount*

If any party timely and properly files an objection to assumption based on the adequacy of the applicable “cure” amount set forth the Assumed Executory Contract and Unexpired Lease List and such objection is not resolved between the Debtors and the objecting party, the Bankruptcy Court shall resolve such dispute at the Confirmation hearing or another hearing date to be determined by the Bankruptcy Court. The resolution of such dispute shall not affect the assumption and/or assignment of the Executory Contract or Unexpired Lease that is the subject of such dispute but rather shall affect only the “cure” amount that must be paid for the assumption of such contract or lease. Notwithstanding the immediately preceding sentence, if the Debtors, in their discretion, determine that the amount asserted to be the necessary “cure” amount would, if ordered by the Bankruptcy Court, make the assumption and/or assignment of the Executory Contract or Unexpired Lease imprudent, then the Debtors may elect to (1) reject the Executory Contract or Unexpired Lease or (2) request an expedited hearing on the resolution of the “cure” dispute, exclude assumption or rejection of the contract or lease from the scope of the Confirmation Order, and retain the right to reject the Executory Contract or Unexpired Lease pending the outcome of such dispute.

**Section 5.04 Payment Related to Assumption of Executory Contracts and Unexpired Leases**

If not the subject of dispute as of the Confirmation Date, any monetary defaults under each Executory Contract and Unexpired Lease to be assumed (and/or assigned) under the Plan shall be satisfied by the Reorganized Debtors pursuant to section 365(b) of the Bankruptcy Code: (a) by payment in Cash on the Effective Date or as reasonably practical thereafter, of (1) the applicable “cure” amount set forth in the Assumed Executory Contract and Unexpired Lease List; (2) such other amount as ordered by the Bankruptcy Court; or (3) such other amount as agreed upon by the contract or lease counterparty and the Reorganized Debtors; or (b) on such other terms as agreed upon by the contract or lease counterparty and the Reorganized Debtors. In the event of a dispute regarding the appropriate “cure” amount, payment of the amount otherwise payable hereunder shall be made following entry of Final Order or agreement.

**Section 5.05 Assumed Executory Contracts and Unexpired Leases**

Each Executory Contract and Unexpired Lease to be assumed (and/or assigned) pursuant to the Plan will include (a) all amendments, modifications, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such

executory contract or unexpired lease, and (b) all other rights appurtenant to the property, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other equity interests in real estate or rights in rem related to such premises.

Amendments, modifications, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during their Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contracts and Unexpired Leases, or the validity, priority, or amount of any claims that may arise in connection therewith.

#### **Section 5.06            Claims Based on Rejection of Executory Contracts and Unexpired Leases**

All proofs of Claim arising from the rejection of Executory Contracts and Unexpired Leases must be filed on or before thirty (30) days following the later of: (a) the date of entry of an order of the Bankruptcy Court approving any such rejection; and (b) any other order of the Bankruptcy Court governing such rejection. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease for which proofs of Claim are not timely filed will be forever barred from assertion against the Debtors, the Reorganized Debtors, Estates, their successors and assigns and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the discharge and permanent injunction set forth in Article 10.

#### **Section 5.07            Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection or repudiation of any Executory Contract and Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such Executory Contract and Unexpired Lease. In particular, notwithstanding any nonbankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the contracting Debtors or Reorganized Debtors, as applicable, from counterparties to rejected or repudiated Executory Contracts and Unexpired Leases.

#### **Section 5.08            Reservation of Rights**

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an executory contract or unexpired lease or that any Reorganized Debtor has any liability thereunder.

#### **Section 5.09            Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request by the Debtors to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

## ARTICLE VI.

### PROVISIONS GOVERNING DISTRIBUTIONS

#### **Section 6.01 Distributions for Claims as of the Effective Date**

Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made by the Reorganized Debtors on the Effective Date or as soon thereafter as practicable. The Debtors or the Reorganized Debtors shall make further distributions to Holders of Claims that subsequently are determined to be Allowed Claims as soon as practicable thereafter.

#### **Section 6.02 Interest on Claims**

Unless otherwise specifically provided by this Plan, the Confirmation Order, any other order of the Bankruptcy Court, or by applicable bankruptcy law, post-petition interest shall not accrue and not be paid on Allowed Claims (except for Allowed Priority Tax Claims) when due under the contract, agreement, or other instrument governing the terms and conditions of the obligation comprising such Allowed Claim.

#### **Section 6.03 Means of Cash Payment**

Cash payments made pursuant to this Plan shall be by check, wire or ACH transfer in U.S. funds or by other means agreed to by the payor and payee or, absent agreement, such commercially reasonable manner as the payor determines in its sole discretion.

#### **Section 6.04 Delivery of Distributions**

##### *(a) Delivery of Distributions*

Distributions to Holders of Allowed Claims shall be made (a) at the addresses set forth on the proofs of Claim filed by such Holders, (b) at the addresses set forth in any written notices of address changes delivered after the date of any related proof of Claim, (c) at the addresses reflected in the Schedules if no proof of Claim has been filed and the Debtors or Reorganized Debtors have not received a written notice of a change of address, or (d) in the case of the Holder of a Claim that is governed by an indenture or other agreement and is administered by an indenture trustee, agent, or servicer, at the addresses contained in the official records of such indenture trustee, agent, or servicer.

##### *(b) Undeliverable Distributions*

If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Reorganized Debtors or the appropriate indenture trustee, agent, or servicer is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. All claims for undeliverable distributions must be made on or before the second (2nd) anniversary of the Effective Date, after which date all unclaimed property shall revert to the Reorganized Debtors free of any restrictions thereon and the Claim of any Holder or successor to such Holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

## **Section 6.05          Claims Paid or Payable by Third Parties**

### *(a)          Claims Paid by Third Parties*

The Debtors or the Reorganized Debtors, as applicable, shall reduce a Claim, and such Claim shall be disallowed without an objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full or in part on account of such Claim from a party that is not a Debtor or Reorganized Debtor. If a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall repay, return or deliver any distribution held by or transferred to the Holder to the applicable Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

### *(b)          Claims Payable by Third Parties*

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged without an objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### *(c)          Applicability of Insurance Policies*

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any cause of action that the Debtors or any entity may hold against any other entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses.

## **Section 6.06          Withholding and Reporting Requirements**

In connection with this Plan and all distributions made hereunder, the Reorganized Debtors shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtors shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

## **Section 6.07          Setoffs**

Except as otherwise expressly provided for in the Plan, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, each Reorganized Debtor may set off against any Allowed Claim (other than an Allowed Claim in Classes 1B, 1C or 2A) and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before such distribution is made), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any

Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such Holder.

**Section 6.08 Subordination Rights Under the Intercreditor Agreement**

Subject in all respects to the provisions of this Plan, any distributions under the Plan to Holders of Mezz I Claims shall be received and retained free from any obligations to hold or transfer the same to any other creditor, and shall not be subject to levy, garnishment, attachment or other legal process by any Holder by reason of claimed contractual subordination rights. With respect to any distributions under the Plan to Holders of Mezz I Claims, the subordination rights set forth in the Intercreditor Agreement shall be (and will be deemed to be) waived and the Confirmation Order shall constitute an injunction enjoining any Person from enforcing or attempting to enforce any contractual, legal or equitable subordination rights to property or other interests distributed under the Plan to Holders of Mezz I Claims other than as provided in the Plan.

**ARTICLE VII.**

**PROCEDURES FOR RESOLVING DISPUTED,  
CONTINGENT, AND UNLIQUIDATED CLAIMS**

**Section 7.01 No Filing Proofs of Claim**

Except as otherwise provided under the Plan or pursuant to an order of the Bankruptcy Court, Holders of Claims shall not be required to file a proof of Claim and no parties should file a proof of claim.

The Reorganized Debtors intend to attempt to resolve consensually or through judicial means any Claim or Equity Interest disputed by the Reorganized Debtors pursuant to the terms of the Plan. Nevertheless, on or before the Claims Objection Deadline, the Reorganized Debtors may, in their discretion, file with the Bankruptcy Court an objection to the allowance of such Claim or Equity Interest or any other appropriate motion or adversary proceeding with respect thereto. All such objections shall be litigated to Final Order, *provided, however*, that the Reorganized Debtors may compromise, settle, withdraw or resolve any objections to Claims or Equity Interests without further of the Bankruptcy Court.

**Section 7.02 Claims Administration Responsibility**

After the Effective Date, the Reorganized Debtors shall have the exclusive authority to file, settle, compromise, withdraw, resolve or litigate to judgment any objections to Claims or Equity Interests; *provided, however*, the Reorganized Debtors shall obtain the consent of the Mortgage Lender to settle, compromise, resolve or litigate to judgment any Claims of the Colony JIH Lenders against any of the Debtors; provided, further, that any disputes concerning such Claims will be resolved by the Bankruptcy Court in the event a consensual resolution is not reached. From and after the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim or Disputed Equity Interest without approval of the Bankruptcy Court. The Debtors also reserve the right to resolve any Disputed Claim or Disputed Equity Interest outside the Bankruptcy Court under applicable governing law.

**Section 7.03 Objections to Claims**

After the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Equity Interest immediately before the Effective Date. Any objections to Claims or Equity Interests shall be filed on or before the Claims Objection Deadline.

#### **Section 7.04 Estimation of Claims**

Any Debtor or Reorganized Debtor, as applicable, may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether such Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any claim, including during the pendency of any appeal related to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors or Reorganized Debtors, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanism.

#### **Section 7.05 No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, no payments or distributions shall be made on account of a Disputed Claim, even if a portion of the Claim is not disputed, unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. If a Disputed Claim becomes an Allowed Claim, as soon as practicable thereafter, the Holder of such Allowed Claim will receive all payments and distributions to which that Holder is then entitled under the Plan.

#### **Section 7.06 Plan Proponent Fees**

The Plan Proponents shall be entitled to reimbursement of their reasonable fees and expenses (including those of their professionals) actually incurred (the “Plan Proponent Fee Claims”) in connection with (i) the Plan, (ii) the IMA, (iii) the New Management Agreement, (iv) the Franchise Agreements, (v) the Forbearance Agreement, (vi) the Disclosure Statement and (vii) related documents and transactions (the “Plan Proponent Fee Claims Categories”) as Administrative Claims. The Plan Proponent Fee Claims shall be subject to a cap of \$700,000.

All requests for reimbursement of Plan Proponent Fee Claims must be filed and served on the United States Trustee, Wells Fargo, and the Reorganized Debtors no later than thirty (30) days after the Effective Date. Supporting materials may be redacted to exclude privileged and otherwise sensitive information. The United States Trustee, Wells Fargo, and the Reorganized Debtors shall have the right to object to such requests on the basis that such requested fees are not reasonable or are not properly allocated to the Plan Proponent Fee Claims Categories, provided that such party files and serves an objection (if any) to the requested fees no later than thirty (30) days after service of the request. In the event an objection is filed, payment of the Plan Proponent Fee Claims shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(4) of the Bankruptcy Code. If no objection is filed, the Confirmation Order shall constitute an order approving payment of the Plan Proponent Fees pursuant to section 1129(a)(4) of the Bankruptcy Code.

### **ARTICLE VIII.**

#### **CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

#### **Section 8.01 Condition Precedent to Confirmation**



The Bankruptcy Court shall have entered a Final Order, in form and substance acceptable to the Plan Proponents, approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

#### **Section 8.02            Conditions Precedent to Consummation**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be (x) satisfied or (y) waived in accordance with Section 8.04:

(a)        The Confirmation Order shall have been entered and become a Final Order, in form and substance reasonably acceptable to the Debtors, the Mortgage Lender and the Plan Proponents.

(b)        All actions, documents, certificates and agreements necessary to implement the Plan, in form and substance reasonably acceptable to the Debtors or Reorganized Debtors, as applicable, the Mortgage Lender and the Plan Proponents, shall have been executed and delivered, and all conditions precedent thereto shall have been satisfied.

(c)        All necessary amendments to the Debtors' Corporate Documents shall have been filed with the Secretary of State of Delaware.

(d)        All schedules, documents, supplements and exhibits to the Plan shall have been filed in form and substance acceptable to the Debtors and the Plan Proponents.

(e)        All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of this Plan shall have been obtained.

(f)        There shall not be in effect on the Effective Date any (i) order entered by a court or (ii) any order, opinion, ruling or other decision entered by any other court or governmental entity or (iii) any applicable law staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan.

(g)        No request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall remain pending.

#### **Section 8.03            Substantial Consummation**

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

#### **Section 8.04            Waiver of Conditions**

Each of the conditions set forth in Section 8.02 hereof may be waived in whole or in part by written consent of the Debtors, the Mortgage Lender and the Plan Proponents, without any notice to other parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors or the Reorganized Debtors, as applicable, or the Mortgage Lender regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Debtors or Reorganized Debtors). The failure of the Debtors or the Reorganized Debtors, as applicable, or the Mortgage Lender to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

## **Section 8.05 Revocation, Withdrawal or Non-Consummation**

The Debtors and the Plan Proponents reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtors and the Plan Proponents revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then (i) the Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (iii) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (a) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors, the Plan Proponents or any other Person, (b) prejudice in any manner the rights of the Debtors, the Plan Proponents or any Person in any further proceedings involving the Debtors, or (c) constitute an admission of any sort by the Debtors, the Plan Proponents or any other Person.

## **ARTICLE IX.**

### **AMENDMENTS AND MODIFICATIONS**

#### **Section 9.01 Amendments and Modifications**

Except as otherwise specifically provided herein, the Debtors and the Plan Proponents reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions set forth in the Plan, the Debtors and the Plan Proponents expressly reserve their rights to alter, amend or modify materially the Plan with respect to any or all Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article IX.

In addition, prior to the Effective Date, the Debtors (with the consent of the Plan Proponents) may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court, *provided, however*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Claims or Equity Interests.

#### **Section 9.02 Effect of Confirmation on Modifications**

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

## ARTICLE X.

### RELEASE, INJUNCTIVE AND RELATED PROVISIONS

#### Section 10.01      **Compromise and Settlement**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtors. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, the Estates, Creditors and other parties in interest, and are fair, equitable and within the range of reasonableness.

#### Section 10.02      **Discharge of the Debtors**

Except as otherwise provided herein, all rights afforded herein, the treatment of all Claims and Equity Interests provided herein (including the Reinstatement of Class 5A-D General Unsecured Claims), and all consideration distributed pursuant to and under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims or Equity Interests of any nature whatsoever against the Debtors or any of their assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, upon the Effective Date, (a) the Debtors, shall be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, or (iii) the Holder of a Claim based upon such debt accepted the Plan; and (b) all Equity Interests and other rights of Equity Interest Holders in the Debtors shall be terminated. The Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtors, subject to the Effective Date occurring.

#### Section 10.03      **Releases by the Debtors**

Effective as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, the Reorganized Debtors and any successors shall be deemed, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors and Reorganized Debtors and any successors to enforce the terms of the Plan and the contracts, instruments, releases, indentures, and other agreements or documents assumed, passed through or delivered in connection with the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date and in any way relating to the Debtors, the Reorganized Debtors or any successors or their property, the Chapter 11 Cases (including the commencement thereof), the Plan or the Disclosure Statement and

that could have been asserted by or on behalf of the Debtors, the Estates or the Reorganized Debtors against (i) any individual serving as of the Confirmation Date as an officer, director or manager of any of the Debtors; (ii) all Persons engaged or retained by the Debtors in connection with the Chapter 11 Cases; (iii) the Prepetition Lenders; (iv) all Persons engaged or retained by the Prepetition Lenders in connection with the Chapter 11 Cases; (v) the Plan Proponents and all Persons engaged or retained by the Plan Proponents in connection with the Chapter 11 Cases; and (vi) any and all affiliates, members, managers, directors, shareholders, partners, representatives, employees, attorneys, advisors and agents of any of the foregoing (collectively, the “Releasees”); *provided, however*, that there shall be no such release, waiver or discharge on account of claims or obligations in respect of (x) any express continuing contractual obligation owing by any such Releasee to or for the benefit of the Debtors, or (y) the willful misconduct, gross negligence, intentional fraud or criminal conduct of a Releasee.

#### **Section 10.04        Releases by Holders of Claims and Equity Interests**

Upon the Effective Date, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan and the Cash and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, all Holders of Claims or Equity Interests (“Releasing Parties”) that vote in favor of the Plan shall be deemed to unconditionally, forever release, waive and discharge all claims (including any Claims), Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors and Reorganized Debtors and any successors to enforce the terms of the Plan and the contracts, instruments, releases, indentures, and other agreements or documents assumed, passed through or delivered in connection with the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors and any successors, the Chapter 11 Cases, the Plan or the Disclosure Statement against any of the Releasees.

#### **Section 10.05        Exculpation and Limitation of Liability**

None of (i) the Debtors, (ii) the Reorganized Debtors, (iii) any individual serving as of the Confirmation Date as an officer, director or manager of any of the Debtors; (iv) all Persons engaged or retained by the Debtors in connection with the Chapter 11 Cases, (v) the Plan Proponents and all Persons engaged or retained by the Plan Proponents in connection with the Chapter 11 Cases, and (vi) any and all affiliates, members, managers, directors, shareholders, partners, representatives, employees, attorneys, advisors and agents of any of the foregoing, shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or Equity Interest, or any other party in interest in the Chapter 11 Cases, or any of their respective current or former employees, agents, representatives, financial advisors, attorneys, or affiliates, or their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, negotiation or implementation of the Disclosure Statement or the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence, willful misconduct, fraud or criminal conduct as determined by a Final Order entered by a court of competent jurisdiction. Without limiting the generality of the foregoing, the Debtors, the Reorganized Debtors and the Releasees shall, in all respects, be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

## **Section 10.06 Discharge Injunction**

Except as otherwise expressly provided herein (including the Reinstatement of Class 5A-D General Unsecured Claims), the Confirmation Order and the contracts, instruments, releases, indentures, and other agreements or documents assumed, passed through or delivered in connection with the Plan, all Entities who have held, hold or may hold Claims against, or Equity Interests in, the Debtors, and all other parties in interest in the Chapter 11 Cases, or any of their respective current or former employees, agents, officers, directors, principals and affiliates, permanently are enjoined, from and after the Effective Date, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors or Reorganized Debtors with respect to any such Claim or Equity Interest, (ii) the enforcement, attachment, collection, or recovery by any manner or means of judgment, award, decree or order against the Debtors or Reorganized Debtors on account of any such Claim or Equity Interest, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors on account of any such Claim or Equity Interest, and (iv) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtors or Reorganized Debtors or against the property or interests in property of the Debtors or Reorganized Debtors on account of any such Claim or Equity Interest.

## **Section 10.07 Preservation of Rights of Action**

In accordance with section 1123(b) of the Bankruptcy Code, and except to the extent such rights, Claims, Causes of Action, defenses, and counterclaims are expressly and specifically released in connection with the Plan, the Confirmation Order or in any settlement agreement approved during the Chapter 11 Cases, or otherwise provided in the Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan: (a) any and all rights, Claims, Causes of Action (excluding avoidance actions or recovery actions under chapter 5 of the Bankruptcy Code), defenses, and counterclaims of or accruing to the Debtors or their Estates shall remain assets of and vest in the Reorganized Debtors, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such rights, Claims, Causes of Action, defenses and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and (b) neither the Debtors nor the Reorganized Debtors waive, relinquish, or abandon (nor shall they be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estates: (i) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (ii) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Debtors, and (iii) whether or not a defendant in any litigation relating to such right, Claim, Cause of Action, defense or counterclaim filed a proof of Claim in the Chapter 11 Cases, filed a notice of appearance or any other pleading or notice in the Chapter 11 Cases, voted for or against the Plan, or received or retained any consideration under the Plan.

Without in any manner limiting the generality of the foregoing, notwithstanding any otherwise applicable principal of law or equity, without limitation, any principals of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, Cause of Action, defense, or counterclaim, or potential right, Claim, Cause of Action, defense, or counterclaim, in the Plan, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Reorganized Debtors' right to commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, or counterclaims that the Debtors or the Reorganized Debtors have, or may have, as of

the Effective Date. The Reorganized Debtors may commence, prosecute, defend against, settle, and realize upon any rights, Claims, Cause of Action, defenses, and counterclaims in their sole discretion, in accordance with what is in the best interests, and for the benefit, of the Reorganized Debtors.

For the avoidance of doubt and notwithstanding anything to the contrary in the Plan (unless otherwise ordered by the Bankruptcy Court), the Debtors expressly preserve all rights, Claims, Causes of Action, defenses and counterclaims against Gramercy, JER Financial Products III, LLC, Corporate Service Company, James Gregory, any former director, officer or manager of the Debtors, and any of their respective affiliates.

#### **Section 10.08 Term of Injunctions or Stay**

Unless otherwise provided in the Plan or Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or Confirmation Order shall remain in full force and effect in accordance with their terms.

### **ARTICLE XI.**

#### **RETENTION OF JURISDICTION**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over the Chapter 11 Cases and, to the fullest extent permitted by law, over all matters arising under the Bankruptcy Code or arising in or related to the Chapter 11 Cases or the Plan, including, among other things, jurisdiction to:

A. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the secured or unsecured status, priority, amount or allowance of Claims or Equity Interests;

B. Hear and determine any and all disputes arising from or relating to distributions made under the Plan;

C. Hear and determine any cases, claims, controversies, suits, disputes or causes of action in connection with the consummation, interpretation or enforcement of the Plan or an Entity's obligations incurred in connection with the Plan;

D. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 327, 328, 330, 331, 503(b), 1103 or 1129(a)(4) of the Bankruptcy Code; *provided, however*, that from and after the Effective Date, the payment of fees and expenses of professionals retained by the Reorganized Debtors shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

E. Hear and determine all matters related to (i) the assumption or rejection of any Executory Contract or Unexpired Lease or with respect to which one or more of the Debtors may be liable in any matter and to hear, determine and, if necessary, liquidate, any Claims arising therefrom; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired.

F. Hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Cases;

G. Enter and enforce such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

H. Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

I. Consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

J. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;

K. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

L. Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

M. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;

N. Recover all assets of the Debtors and property of the Estates, wherever located;

O. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

P. Hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge;

Q. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

R. Enter an order or final decree, dismissing, concluding or closing the Chapter 11 Cases;

S. Enforce all orders previously entered by the Bankruptcy Court; and

T. Hear any other matter not inconsistent with the Bankruptcy Code.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **Section 12.01 Severability of Plan Provisions**

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

#### **Section 12.02 Successors and Assigns**

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

#### **Section 12.03 Subordinated Claims**

The allowance, classification, and treatment of all Allowed Claims and Equity Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise. Except as otherwise provided in the Plan, pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

#### **Section 12.04 Immediate Binding Effect**

Upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the Reorganized Debtors, the Plan Proponents and any and all present and former Holders of Claims against and Equity Interests in the Debtors (irrespective of whether such Claims or Equity Interests are Allowed or Disallowed or were voted to accept or reject the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-Debtor parties to Executory Contracts or Unexpired Leases.

#### **Section 12.05 Plan Supplement**

Any and all exhibits, lists, or schedules not filed with the Plan shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court not later than three (3) days prior to the Voting Deadline. Upon filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours or on its website (<http://www.deb.uscourts.gov>). In addition, the Plan Supplement will be made available for inspection



and printing at no charge at the internet site address of the Debtors' Solicitation Agent (<http://www.epiqsystems.com>). Holders of Claims or Equity Interests may also obtain a copy of the Plan Supplement upon written request to the Debtors.

#### **Section 12.06 Notices**

Any notice, request, or demand required or permitted to be made or provided under the Plan to or upon the Debtors or Reorganized Debtors shall be (i) in writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of facsimile transmission, when received and telephonically confirmed, addressed as follows:

JER/Jameson Mezz Borrower I, LLC  
c/o Channel Point Hospitality LLC  
2500 North Dallas Parkway, Suite 600  
Plano, Texas 75093  
Facsimile: (214) 432-9552  
Attention: Leslie V. Bentley

-and-

Ashby & Geddes, P.A.  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, Delaware 19899-1150  
Facsimile: (302) 654-2067  
Attn: Ricardo Palacio, Esq.

-and-

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Facsimile: (302) 571-1253  
Attn: Pauline K. Morgan, Esq.

-and-

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Facsimile: (212) 225-3999  
Attn: Sean A. O'Neal, Esq.

#### **Section 12.07 Release of all Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, mechanics

liens, deeds of trust, Liens, pledges, or other interests in any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, mechanics liens, deeds of trust, Liens, pledges, or other interests shall revert to the Reorganized Debtor and its successors and assigns.

**Section 12.08 No Admissions**

Notwithstanding anything herein to the contrary, nothing in the Plan shall be deemed as an admission by the Debtors or by the Plan Proponents with respect to any matter set forth herein, including liability on any Claim.

**Section 12.09 Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof, shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control) as well as corporate governance matters with respect to the Debtors.

**ARTICLE XIII.**

**BANKRUPTCY RULE 9019 REQUEST**

Pursuant to Bankruptcy Rule 9019, the Debtors hereby request that the Bankruptcy Court approve all compromises and settlements included in the Plan, including the releases set forth in Article X.

**ARTICLE XIV.**

**CONFIRMATION REQUEST**

The Debtors and the Plan Proponents request Confirmation of the Plan under section 1129 of the Bankruptcy Code. If any Impaired Class does not accept the Plan pursuant to section 1126 of the Bankruptcy Code, the Debtors request Confirmation pursuant to section 1129(b) of the Bankruptcy Code. In that event, the Debtors reserve the right to modify the Plan to the extent (if any) that Confirmation of the Plan under section 1129(b) of the Bankruptcy Code requires modification.

Dated: December 11, 2012

**AS DEBTORS AND DEBTORS IN POSSESSION:**

**JER/JAMESON MEZZ BORROWER I LLC,**

a Delaware limited liability comp

By:

Name: Emanuel R. Pearlman  
Title: President and Director



**JER/JAMESON PROPERTIES, LLC,**

a Delaware limited liability company

By: JER/Jameson Mezz Borrower I LLC  
Its: Sole Member

By:

Name: Emanuel R. Pearlman  
Title: President and Director



**JER/JAMESON GP LLC,**

a Delaware limited liability company

By: JER/Jameson Mezz Borrower I LLC  
Its: Sole Member

By:

Name: Emanuel R. Pearlman  
Title: President and Director



**JER/JAMESON NC PROPERTIES LP,**

a Delaware limited partnership

By: JER Jameson GP LLC  
Its: General Partner

By: JER/Jameson Mezz Borrower I LLC  
Its: Sole Member

By:

Name: Emanuel R. Pearlman  
Title: President and Director



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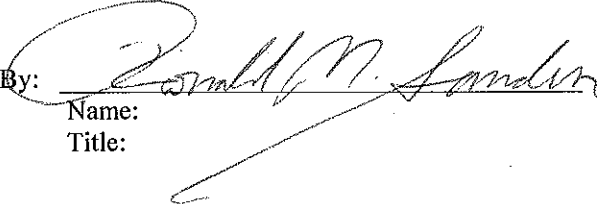
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Facsimile: (302) 654-2067

*Attorneys for the Debtors and Debtors-in-Possession*

**AS PLAN PROPONENTS:**

**CDCF JIH FUNDING, LLC**, a Delaware limited liability company

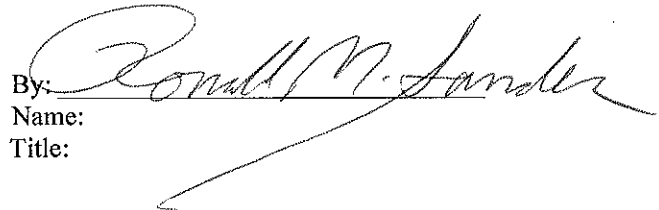
By:   
Name:  
Title:

**COLFIN JIH FUNDING, LLC**, a Delaware limited liability company

By: CFI RE Holdco, LLC, managing member

By: CFI RE Masterco, LLC, managing member

By: COLONY FINANCIAL, INC., managing member

By:   
Name:  
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