

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
Eastern Division**

_____)	
In re:)	
)	
OLD COLONY, LLC,)	Chapter 11
)	Case No. 10-21100-HJB
)	
Debtor)	
_____)	

**MODIFIED SECOND AMENDED JOINT PLAN OF REORGANIZATION UNDER
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

TABLE OF CONTENTS

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION1
A. Defined Terms.....1
B. Rules of Interpretation and Computation of Time..... 9
ARTICLE II. ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS 10
A. Administrative Claims 10
B. Priority Tax Claims..... 10
ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS.....11
A. Summary..... 11
B. Summary of Classification and Treatment of Classified Claims and Interests. ... 11
C. Classification and Treatment of Claims and Interests against the Debtor 11
ARTICLE IV. PROVISIONS FOR IMPLEMENTATION OF THE PLAN 14
A. Operations Between the Confirmation Date and the Effective Date 14
B. Cancellation of Existing Membership Interests, Issuance of New Membership Interests and Funding of Plan Payments..... 14
C. Releases and Dismissal of the Teton County Action..... 15
D. Second Amended and Restated Operating Agreement..... 16
E. Vesting of Assets in the Reorganized Debtor 17
F. Automatic Action..... 17
G. Effectuating Documents and Further Transactions..... 17
H. Exemption from Certain Transfer Taxes and Recording Fees..... 18
I. Preservation of Rights of Action..... 18
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....19
A. Assumption and Rejection of Executory Contracts and Unexpired Leases19
B. Insurance Policies 19
C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases 20
D. Claims Based on Rejection of Executory Contracts and Unexpired Leases 21
ARTICLE VI. PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS21
A. Allowance of Claims..... 21
B. Objections/Objection Deadline..... 21
C. Claims and Interests Administration Responsibilities 22
D. Estimation of Claims..... 22
E. Disallowance of Claims or Interests 22
F. Offer of Judgment..... 23
ARTICLE VII. PROVISIONS GOVERNING DISTRIBUTIONS.....23
A. Distributions on Account of Claims Allowed as of the Effective Date..... 23
B. Distributions on Account of Claims Allowed After the Effective Date 23
C. Delivery of Distributions 24
ARTICLE VIII. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS..... 27
A. Discharge of Claims and Termination of Interests 27
B. Compromise and Settlement..... 28

C.	Exculpation	28
D.	Injunction	28
E.	Document Retention	29
ARTICLE IX. ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS.....		29
A.	Professional Claims	29
B.	Other Administrative Claims	29
ARTICLE X. CONDITIONS PRECEDENT TO EFFECTIVE DATE.....		30
A.	Conditions Precedent to the Effective Date	30
B.	Extension of Effective Date	32
C.	Effect of Non-Occurrence of Conditions to the Effective Date.....	32
ARTICLE XI. MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN.....		33
A.	Withdrawal, Modification and Amendments.....	33
ARTICLE XII. RETENTION OF JURISDICTION.....		33
ARTICLE XIII. MISCELLANEOUS PROVISIONS.....		35
A.	Immediate Binding Effect.....	35
B.	Substantial Consummation	36
C.	Payment of Statutory Fees	36
D.	Reservation of Rights.....	36
E.	Successors and Assigns.....	36
F.	Entire Agreement.....	36
G.	Governing Law	36
H.	Closing of Chapter 11 Cases.....	37
I.	Conflicts and Interpretation of Plan.....	37
J.	Cooperation Prior to Effective Date.....	37

INTRODUCTION

Old Colony, LLC, the debtor and debtor-in-possession in the above-captioned Chapter 11 Case, and Molokai Hospitality Funding, LLC, hereby respectfully propose this Modified Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code for the resolution of outstanding Claims against and Interests in the Debtor pursuant to the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined herein shall have the meanings ascribed to such terms in Article IA hereof. Reference is made to the Disclosure Statement for a discussion of the Debtor's history, businesses, assets, results of operations, and projections of future operations, as well as a summary and description of the Second Amended Plan and certain related matters. The Debtor and Molokai are the proponents of the Plan (collectively, the "Plan Proponents") within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms

As used in the Plan, the capitalized terms below have the following meanings, unless the context otherwise requires.

1. "Administrative Claim" means any Claim for costs and expenses of administration of the Estates under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of the Debtor; (b) the claims of creditors, equity security Holders in making a substantial contribution to the Chapter 11 Case; (c) Professional Fee Claims; (d) all fees and charges assessed against the Estates under chapter 123 of Title 28 of the United States Code, 28 U.S.C. §§ 1911–1930; and (e) Claims arising under section 503(b)(9) of the Bankruptcy Code.

2. "Administrative Claim Bar Date" means the deadline for filing requests for payment of Administrative Claims set by the Bankruptcy Court, provided that the Administrative Claim Bar Date shall not apply to Claims that may be entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code, which Claims shall be subject to the General Bar Date.

3. "Allowed" means with respect to a Claim or Interest, or any portion thereof: (a) any Claim, proof of which is timely filed by the applicable Claims Bar Date (or for which Claim under the Bankruptcy Code or Final Order of the Bankruptcy Court a proof of claim is not or shall not be required to be Filed); (b) any Claim that is not listed in the Debtor's Schedules as

contingent, unliquidated, or disputed, whether or not a proof of claim has been timely filed; or (c) any Claim or Interest expressly deemed Allowed pursuant to the Plan; provided that with respect to any Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, (i) no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; or (ii) it is designated as an Allowed Claim in the Plan and, as to any objection which has been timely interposed, such objection has been overruled or otherwise determined by a Final Order in favor of the Holder of such Claim. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no proof of claim is or has been timely filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to or action, approval, or order of the Bankruptcy Court.

4. “Avoidance Actions” means any and all actual or potential claims or causes of action to avoid a transfer of property or of an obligation incurred by the Debtors pursuant to sections 502(d), 544, 545, 547, 548, 549, 550, and 551 of the Bankruptcy Code.

5. “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as applicable to the Chapter 11 Case.

6. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Massachusetts.

7. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under 28 U.S.C. § 2075 and the general, local, and chambers rules of the Bankruptcy Court.

8. “Bullock” means John Bullock, an individual who holds 31.53% of the membership interests in the Debtor.

9. “Cause of Action” means any claim, cause of action, controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes any of the following either against or held by the Debtor: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to sections 362, 510, 541, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any state law fraudulent transfer claim; (f) any claim or cause of action of any kind against any Exculpated Party based in whole or in part upon acts or omissions occurring before, on, or after the Petition Date; (g) any cause of action listed in the Disclosure Statement; and (j) any Avoidance Action.

10. “Chapter 11 Case” means the chapter 11 case pending for the Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

11. “Claim” means any claim against the Debtor as defined in section 101(5) of the Bankruptcy Code.

12. “Claims Bar Date” means, as applicable: (a) the General Bar Date; (b) the Administrative Claim Bar Date; (c) the Rejection Damages Bar Date or (d) such other period of limitation as was fixed in the Claims Bar Date Order or any other order of the Bankruptcy Court fixing the dates for filing proofs of such Claims or Interests.

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

14. “Class 1 Payment” means the payment of \$11,500,000.00 to be made under the Plan to the Holder of the Class 1 Secured Claim in full satisfaction of said claim.

15. “Conditions Precedent” means the conditions precedent as described in Article X. A.1. of the Plan to the Effective Date and Molokai’s obligation to fund the Plan.

16. “Confirmation” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

17. “Confirmation Date” means the date upon which the Confirmation Order is entered by the Bankruptcy Court on its docket, with respect to the Chapter 11 Case.

18. “Confirmation Hearing” means the hearing at which the Confirmation Order is first considered by the Bankruptcy Court.

19. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

20. “Creditor” means any creditor of a Debtor as defined in section 101(10) of the Bankruptcy Code.

21. “Cure” means the distribution in the ordinary course of business following the later of (a) the Effective Date or (b) the date on which an Executory Contract or Unexpired Lease is assumed pursuant to an order of the Bankruptcy Court, of Cash or such other property as may be ordered by the Bankruptcy Court or agreed upon by the applicable non-debtor counterparty to such Executory Contract or Unexpired Lease and the Debtors or the Reorganized Debtor, as applicable, in an amount equal to all unpaid monetary obligations under applicable law (including, to the extent provided for under the applicable Executory Contract or Unexpired Lease assumed pursuant to section 365 of the Bankruptcy Code, post-petition interest at the contract rate as agreed between the parties or determined by the Bankruptcy Court) or such lesser amount as may be agreed upon by the parties, under an Executory Contract or Unexpired Lease

assumed pursuant to section 365 of the Bankruptcy Code, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

22. “Cure Bar Date” means the deadline for filing requests for payment of Cure or otherwise objecting to assumption, which shall be the later of: (a) 30 days after the Effective Date; and (b) 30 days after the effectiveness of the assumption of the applicable Executory Contract or Unexpired Lease, unless otherwise ordered by the Bankruptcy Court or agreed to by the counterparty to the applicable Executory Contract or Unexpired Lease and the Debtors.

23. “Cuzzupoli” means Joseph Cuzzupoli, an individual and the managing member of the Debtor who also holds 41.63% of the membership interests in the Debtor.

24. “Debtor” means Old Colony, LLC, a Wyoming limited liability company with an address of P.O. Box 1245 Saugus, Massachusetts 01906 in its capacity as the debtor and debtor-in-possession in the Chapter 11 Case.

25. “Deposit” means the Deposit to be given by Molokai in connection with its funding of the Plan as described in Article IV. B. 6. of the Plan.

26. “Disclosure Statement” means the disclosure statement for the Plan, as amended, supplemented, or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

27. “Disputed” means with respect to any Claim or Interest, any Claim or Interest that is not yet allowed.

28. “Distribution Date” means the date not later than thirty days after the Effective Date when distributions under the Plan shall commence.

29. “Distribution Record Date” means the date for determining which Holders of Allowed Claims are eligible to receive distributions pursuant to the Plan, which shall be the Confirmation Date or such other date as designated in the Plan, the Confirmation Order or other Final Order of the Bankruptcy Court.

30. “Distribution Reserves” means Cash or some other consideration not otherwise inconsistent with the treatment of a Disputed Claim that would be provided pursuant to Article VII.B if such Disputed Claim were to become an Allowed Claim, which the Reorganized Debtor shall hold in reserve pursuant to Article VII.B.3 hereof, to satisfy the Reorganized Debtor’s obligations under the Plan, if any, with respect to Disputed Claims that become Allowed Claims on or after the Effective Date.

31. “Effective Date” means the date upon which all of the Conditions Precedent have been satisfied or waived in writing by Molokai and provided that no Termination Event has occurred, but not later than the first Business Day that is sixty (60) days after the Confirmation Date and not earlier than the date that is thirty (30) days after the Confirmation Date.

32. “Estate” means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

33. “Exculpated Parties” means each of: Molokai and the Debtor and the Reorganized Debtor, their members, managers, agents, attorneys, employees, heirs, successors and assigns.

34. “Executory Contract” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

35. “Exit Facility” means any loan or other financing arranged by Molokai to fund some or all of the payments required under the Plan and any agreements to be entered into by the Reorganized Debtor in connection therewith.

36. “Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket in the Chapter 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

37. “General Bar Date” means June 24, 2011, the date set by the Bankruptcy Court in the Claims Bar Date Order dated May 3, 2011, pursuant to which all proofs of claim except Administrative Claims and Rejection Damage Claims against the Debtor must be filed; provided that all proofs of claim based on Administrative Claims that may be entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code must be filed by the General Bar Date pursuant to the terms of the Claims Bar Date Order.

38. “Holder” means any Person or Entity holding a Claim or an Interest.

39. “Impaired” means, with respect to any Class of Claims or Interests, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

40. “Inn” means the real estate and improvements thereon known as the Inn at Jackson Hole with an address of 3345 West Village Drive, Teton Village, Teton County, Wyoming, and more particularly described as: Lots 10 and 11 of the Jackson Hole Ski Corporation Addition, First Filing - Amended, Teton County, Wyoming, according to that plat recorded in the Office of the Teton County Clerk on April 21, 1972 as Plat No. 209 (PIN Number 22-42-17-24-4-01-017); and that part of Lot 209 of the Jackson Hole Ski Corporation Addition Seventeenth Filing, recorded as Plat No. 968 in the Office of the Clerk of Teton County, Wyoming (PIN Number 22-42-17-24-4-23-009). The property is also known as Lot 222 of that plat recorded in the Office of the Teton County Clerk on July 20, 2007 as Jackson Hole

Ski Corporation Addition, Twenty-First Filing, as Plat No. 1207(PIN Number 22-42-17-24-4-34-003).

41. “Interest” means any membership interest, managing member interest or other ownership interest in the Debtor existing prior to the Effective Date, all of which Interests shall be cancelled and extinguished under the Plan.

42. “JH Lending Trust” means JH Lending Trust, of which Steven Ross is the current Trustee, a pre-petition secured Creditor of the Debtor under the JH Lending Trust Loan Documents.

43. “JH Lending Trust Claim” means any Claim as of October 11, 2010 derived from, based upon, or arising under any JH Lending Trust Loan Document or otherwise including the Class 3 Unsecured Claim of JH Lending Trust in the approximate amount of \$3,400,000.00 secured by a second priority mortgage lien on the Inn, which Claim is in its entirety an Unsecured Claim under the Plan.

44. “JH Lending Trust Loan Document(s)” means each of: (a) that certain Promissory Note by and among JH Lending Trust, as Lender, and Old Colony, LLC, as Borrower, dated May 20, 2008, in the stated amount of \$3,500,000.00; (b) that certain Environmental Compliance and Indemnification Agreement by and among JH Lending Trust, as Bank, and Old Colony, LLC, as Borrower, dated May 20, 2008; (c) that certain Second Mortgage by and among JH Lending Trust, as Lender, and Old Colony, LLC, as Borrower, dated May 20, 2008, securing the Promissory Note described in clause (a) above, as each of the above documents has been or may be further amended, restated, supplemented, or otherwise modified from time to time, including all agreements, documents, guarantees, notes, instruments, security agreements, financing statements, and any other instruments and agreements evidencing any claims of JH Lending Trust.

45. “Lien” has the meaning set forth at section 101(37) of the Bankruptcy Code.

46. “Molokai” means Molokai Hospitality Funding, LLC, a Delaware limited liability company with an address of 6 School Street P.O. Box 691 Peapack, New Jersey 07977, or its nominee.

47. “New Managing Member” means the new managing of the Reorganized Debtor who shall be selected by Molokai in its sole discretion.

48. “New Membership Interests” means newly-issued membership interests including managing member interests in the Reorganized Debtor to be issued to Molokai pursuant to the Plan.

49. “Petition Date” means October 11, 2010, the date on which the Debtor commenced the Chapter 11 Case.

50. “Plan” means this Third Amended Joint Plan of Reorganization and any subsequent amendments thereto agreed to by the Plan Proponents.

51. “Plan Funding Agreement” means any agreement between Molokai or its nominee and the Debtor to provide funding for the Plan whether in the form of a separate agreement or as incorporated into the terms of the Plan itself.

52. “Priority Tax Claim” means any Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

53. “Professional Fee Claim” means any Allowed Claim arising under sections 328, 330(a), 331, 363, or 503 of the Bankruptcy Code for accrued professional compensation including professional fees and expenses.

54. “Rejection Damages Bar Date” means 30 days after the effective date of the rejection of an executory contract or lease as set forth in the Claims Bar Date Order.

55. “Rejection Damages Claim” means any Claim on account of the rejection of an Executory Contract or Unexpired Lease to which a Debtor is a party pursuant to section 365 of the Bankruptcy Code.

56. “Reorganized Debtor” means either (a) Old Colony, LLC, as reorganized pursuant to and under the Plan, on and after the Effective Date, or (b) any successor thereto, by merger, consolidation or otherwise.

57. “Reorganized Debtor’s Distribution Reserves” has the meaning set forth in Article VII.B.3, hereof.

58. “Reserve Fund” means a separate fund maintained by the Reorganized Debtor in the amount of \$200,000.00 established on the Effective Date under the Plan to pay Allowed Administrative Claims including Professional Fee Claims.

59. “Schedules” means the schedules of assets and liabilities, schedules of Executory Contracts or Unexpired Leases, and other schedules and statement of financial affairs filed by the Debtor pursuant to section 521 of the Bankruptcy Code, the official bankruptcy forms, and the Bankruptcy Rules, as they may have been amended, modified, or supplemented from time to time currently filed with the Bankruptcy Court.

60. “Second Amended and Restated Operating Agreement” shall mean any operating agreement of the Debtor currently in effect as it shall be amended and restated as required by Molokai.

61. “Secured” means, when referring to a Claim secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the

Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code, or as otherwise agreed to, in writing, by the Debtors or the Reorganized Debtor, as applicable, and the Holder of such Claim.

62. "Secured Claim" means a Claim that is Secured.

63. "Termination Event" shall mean the events described in Article X.A.2. of the Plan, the occurrence of any of which may cause the Plan to have no further force or effect.

64. "Teton County Action" shall mean those certain consolidated civil actions pending in the District Court of Teton County Wyoming, captioned Joseph Cuzzupoli and John Bullock vs. Wells Fargo Bank, N.A. and Peter Lawton, Docket No. 15984, and Wells Fargo Bank, N.A. v. Joseph Cuzzupoli and John Bullock, Docket No. 16043, respectively.

65. "Unexpired Lease" means a lease to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

66. "Unsecured Claim" means any unsecured Claim against the Debtor including any Rejection Damages Claim that is not an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Secured Claim; or (e) Interest.

67. "Unsecured Claim Distribution" means the distribution by the Reorganized Debtor to the Holders of Class 3 Claims under the Plan of an amount equal to five (5%) percent of the amount of their Allowed Unsecured Claims. However, the Unsecured Claim Distribution shall not exceed in the aggregate the amount of \$210,000.00. In the event that 5% of all Allowed Unsecured Claims exceeds \$210,000.00, the Unsecured Claim Distribution with respect to each Allowed Unsecured Claim shall be reduced so that each Holder of an Allowed Unsecured Claim receives a pro-rata share of \$210,000.00.

68. "Wells Fargo" means Wells Fargo Bank, National Association, a pre-petition Secured Creditor of the Debtor under the Wells Fargo Loan Documents.

69. "Wells Fargo Claim" means any Claim asserted by Wells Fargo including, without limitation, any Claim derived from, based upon, or arising under any Wells Fargo Loan Document. According to a proof of claim filed with the Court by Wells Fargo on December 30, 2010, the Wells Fargo Claim totaled \$17,786,019.99 as of the Petition Date. The Wells Fargo Claim has been reduced by adequate protection payments made during the course of the Chapter 11 Case. The Wells Fargo Claim includes any Secured Claim, Unsecured Claim and Claim arising from Wells Fargo's election under 11 U.S.C. section 1111(b).

70. "Wells Fargo Loan Document(s)" means each of: (a) that certain Promissory Note: Loan No. 33056103 by and among The Jackson State Bank & Trust, as Lender, and Old Colony, LLC, as Borrower, dated May 10, 2007, in the stated amount of \$16,500,000.00 (the "Wells Fargo Note"); (b) that certain Loan Agreement - Loan No. 33056103 by and among The Jackson State Bank & Trust, as Lender, and Old Colony, LLC, as Borrower, dated May 10, 2007 (the "Wells Fargo Loan Agreement"); (c) that certain Old Colony, LLC Mortgage by and among

The Jackson State Bank & Trust, as Lender, and Old Colony, LLC, as Grantor, dated May 10, 2007 and recorded in Book 664, page 570 of the Teton County Clerk's office securing the Wells Fargo Note (the "Wells Fargo Mortgage"); (d) a certain Environmental Indemnity Agreement by and among The Jackson State Bank & Trust, as Lender, and Old Colony, LLC, as Borrower, dated May 10, 2007 (the "Wells Fargo Environmental Agreement"); and a certain Guaranty from Joseph Cuzzupoli and John A. Bullock in favor of The Jackson State Bank & Trust, as Lender, dated May 11, 2007 (the "Wells Fargo Guaranty") as each of said Wells Fargo Loan Documents has been amended, restated, supplemented, or otherwise modified from time to time, and including all agreements, documents, notes, instruments, security agreements, financing statements, and any other agreements delivered pursuant thereto or in connection therewith and any other instruments and agreements evidencing any Claims of Wells Fargo against the Debtor and/or the guarantors under the Wells Fargo Guaranty.

B. Rules of Interpretation and Computation of Time

1. Rules of Interpretation: For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, 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; (c) unless otherwise specified, any reference in the Plan to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and assigns; (e) unless otherwise specified, all references in the Plan to Articles are references to Articles of the Plan or to the Plan; (f) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan and the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (g) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) unless otherwise set forth in the Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (i) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

2. Computation of Time: In computing any period of time prescribed or allowed, the provisions of Bankruptcy Rule 9006(a) shall apply. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

**ARTICLE II.
ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS**

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 Interests set forth in Article III hereof.

A. Administrative Claims

On the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim shall be paid in full in Cash for the unpaid portion of such Allowed Administrative Claim, in full, final, and complete satisfaction of such Claim; provided that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice.

All requests for payment of an Administrative Claim must be filed with the Court and served upon counsel to the Debtor or the Reorganized Debtor, as applicable, on or before the Administrative Claim Bar Date or such other date as may be established by the Bankruptcy Court. Any request for payment of an Administrative Claim that is not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against the Reorganized Debtor without the need for any objection by the Reorganized Debtor or further notice to or action, order, or approval of the Bankruptcy Court or other Entity. With the exception of Professional Fee Claims which must be Allowed by the Bankruptcy Court, the Reorganized Debtor may settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity. In the event that any party with standing objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Professional Fee Claims are estimated by the Debtor to total \$200,000.00.

B. Priority Tax Claims and Municipal Lien Claims

On the later of the Effective Date or the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive, in full, final, and complete satisfaction of such Claim, one of the following to be determined in the sole discretion of the Debtor, or the Reorganized Debtor, as applicable: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in an amount agreed to by the Debtor or the Reorganized Debtor, as applicable, and such Holder; provided that such parties may further agree for the payment of such Allowed Priority Tax Claim at a later date; (3) in the sole discretion of the Debtor or the Reorganized Debtor, as applicable, and in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending

not more than five years after the Petition Date; or (4) such other treatment as the Debtor or the Reorganized Debtor, as applicable, and the Holder of a Priority Tax Claim may otherwise agree. The Wyoming Department of Revenue has filed a proof of claim in the amount of \$59,195.62. The Debtor asserts that \$2,166.53 of this claim is for interest and penalties that could not have been assessed prior to the Petition Date and has proposed that said claim be an Allowed Priority Tax Claim in the amount of \$57,029.09. Teton Village Water & Sewer has filed a proof of claim in the amount of \$7,817.16 which claim it asserts is secured by a statutory lien and shall be paid in full on the Effective Date.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. Summary

All Claims and Interests against the Debtor except Administrative Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest against the Debtor, as applicable, is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest against the Debtor in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

B. Summary of Classification and Treatment of Classified Claims and Interests against the Debtor.

Class	Claim or Interest	Status	Voting Right
1	Wells Fargo Secured Claim	Impaired	Entitled to Vote
2	Wells Fargo Unsecured Claim	Impaired	Waived right to Vote
3	Unsecured Claims, Exclusive of the Wells Fargo Unsecured Claim	Impaired	Entitled to Vote
4	Interests	Impaired	Deemed to Reject

C. Classification and Treatment of Claims and Interests against the Debtor.

1. Class 1 Secured Claim currently held by Wells Fargo.

a. Classification. Class 1 consists of the Secured Claim against the Debtor currently held by Wells Fargo under the Wells Fargo Loan Documents or otherwise as effected by its election under 11 U.S.C. Section 1111(b).

b. Treatment: The Holder of the Class 1 Secured Claim shall receive in full and complete satisfaction of the Class 1 Secured Claim the sum of \$11,500,000.00 on or before the Effective Date of the Plan such payment to be made in immediately available funds (the "Class 1 Payment"). Any and all liens securing the Class 1 Secured Claim shall be extinguished

upon the Holder of the Class 1 Secured Claim's receipt of the Class 1 Payment and the Holder of the Class 1 Secured Claim shall as soon as practicable file or record with all appropriate filing offices notices of the release of its liens securing all or any portion of the Wells Fargo Claim, such notices to be prepared by the Debtor or Reorganized Debtor in a form mutually acceptable to it and Wells Fargo. Upon the Holder of the Class 1 Secured Claim's receipt of the Class 1 Payment, the Wells Fargo Loan Documents shall have no further force or effect, with respect to the Debtor or the Reorganized Debtor.

c. Voting for the Plan. The Class 1 Secured Claim is Impaired under the Plan and the Holder of the Class 1 Secured Claim will, therefore, be entitled to vote to accept or reject the Plan. The Holder of the Class 1 Secured Claim shall be deemed to have changed its previous vote to reject the Plan to a vote to accept the Plan.

2. Class 2 Unsecured Claim currently held by Wells Fargo.

a. Classification: Class 2 consists of the Unsecured Claim against the Debtor currently held by Wells Fargo under the Wells Fargo Loan Documents or otherwise as effected by its election under 11 U.S.C. Section 1111(b).

b. Treatment: Class 2 shall receive no distribution under the Plan and the Holder of the Class 2 Claim shall not be entitled to vote to accept or reject the Plan.

3. Class 3 Unsecured Claims exclusive of the Class 2 Unsecured Claim.

a. Classification: Class 3 consists of all Unsecured Claims against the Debtor including, without limitation, Rejection Damages Claims in an as yet undetermined amount, the JH Lending Trust Claim in the approximate amount of \$3,400,000.00, trade creditor and other Unsecured Claims in the approximate total amount of \$403,000.00, but exclusive of the Class 2 Unsecured Claim currently held by Wells Fargo. Class 3 Unsecured Claims currently total approximately \$3,803,000.00.

b. Treatment: The Holders of Allowed Class 3 Unsecured Claims shall receive the following treatment under the Plan:

(i) Each Holder of an Allowed Class 3 Unsecured Claim shall receive an Unsecured Claim Distribution in an amount equal to 5% of the amount of its Allowed Class 3 Unsecured Claim. Such Unsecured Claim Distribution will be paid in full on the Distribution Date. The Unsecured Claim Distribution, however, shall not exceed in the aggregate the amount of \$210,000.00. In the event that 5% of all Allowed Unsecured Claims exceeds \$210,000.00, the Unsecured Claim Distribution with respect to each Allowed Unsecured Claim shall be reduced so that each Holder of an Allowed Unsecured Claim receives a pro-rata share of \$210,000.00.

(ii) Class 3 Claims are Impaired under the Plan and the Holders of Class 3 Unsecured Claims will, therefore, be entitled to vote to accept or reject the Plan.

4. Class 4 Holders of Interests in the Debtor

a. Classification: Class 4 consists of all Interests in the Debtor.

b. Treatment: The Holders of the Class 4 Interests shall receive the following treatment under the Plan:

(i) On the Effective Date, all Interests in the Debtor shall be deemed canceled and extinguished, and shall be of no further force and effect, whether surrendered for cancellation or otherwise. No property shall be retained by or distributed to the Holders of Interests under the Plan.

(ii) Holders of Class 4 Interests will be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 4 Interests will not be entitled to vote to accept or reject the Plan.

5. Acceptance by Impaired Classes of Claims: Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

6. Elimination of Vacant Classes for Voting Purposes: Any Class of Claims that has no Holders of any Allowed Claims or any Claims temporarily Allowed under Bankruptcy Rule 3018 due to no ballots having been cast in such Class entitled to vote on the Plan, shall be deemed eliminated from the Plan for purposes of voting and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

7. Tabulation of Ballots: The Debtor will tabulate all votes on the Plan for the purpose of determining whether the Plan satisfies Sections 1129(a)(8) and (10) of the Bankruptcy Code.

8. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code: Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims. The Debtor and Molokai shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

**ARTICLE IV.
PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

A. Operations Through and After the Effective Date.

During the period through and until the Effective Date, the Debtor shall continue to operate its business as a debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, all orders of the Bankruptcy Court that are then in full force and effect, and as set forth herein. The automatic stay of Section 362 of the Bankruptcy Code shall continue in effect through the Effective Date. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtor may operate its business and may use, acquire, or dispose of property and prosecute or compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules. Both before and after the Effective Date, the Debtor and Reorganized Debtor, respectively, shall be authorized to continue to use their cash on hand in the operation of their business.

B. Cancellation of Existing Membership Interests, Issuance of New Membership Interests and Funding of the Plan.

1. Subject to the terms and conditions of the Plan including, without limitation, satisfaction or waiver in writing by Molokai of the Conditions Precedent and non-occurrence of a Termination Event, on the Effective Date, Molokai will advance to the Debtor to fund the Plan and the cash needs of the Debtor up to the sum of \$12,000,000.00. On the Effective Date, all then existing Interests shall be deemed cancelled and extinguished immediately prior to the Plan becoming effective and prior to the issuance of the New Membership Interests. On the Effective Date, the New Membership Interests shall be issued to Molokai and Molokai shall designate a New Managing Member of the Debtor. On and after the Effective Date, Molokai shall hold all (100%) of the membership interests in the Reorganized Debtor. The Holders of Interests prior to the Effective Date shall hold no Interests after the Effective Date. The funds made available by Molokai together with the Debtor's cash on hand shall be used as follows: (i) to fund the Class 1 Payment; (ii) to fund the Unsecured Claim Distribution; (iii) to fund the Reserve Fund in the amount of \$200,000.00 to pay Allowed Administrative Claims to the extent necessary in the event that the Debtor or the Reorganized Debtor have insufficient funds on hand to pay such Claims; (iv) to be made available to the New Managing Member for working capital needs of the Reorganized Debtor including to pay Priority Tax Claims, and day to day operating expenses (v) to pay for capital improvements to the Inn; and (vi) for any other purpose in the sole discretion of the New Managing Member. On the Effective Date, the Confirmation Order shall have entered and become a Final Order and shall provide for, among other things, delivery to Molokai and its representatives of possession and control of the Inn and of the Debtor's books and records and all other property of the Debtor wherever located including all records with respect to any operating agreement or organizational documents and any other documents reasonably required in order to consummate the transactions contemplated by the Plan.

2. On the Distribution Date, in accordance with the Plan, the Reorganized Debtor will pay the Unsecured Claim Distribution to Holders of Allowed Class 3 Unsecured Claims.

3. The \$200,000.00 Reserve Fund shall be available for the Reorganized Debtor to pay Allowed Administrative Claims to the extent that such Allowed Administrative Claims have not been paid with cash on hand held by the Debtor or the Reorganized Debtor. The Reserve Fund shall be dissolved upon payment in full of Allowed Administrative Claims which are unpaid as of the Effective Date and any excess funds remaining in the Reserve Fund shall be released to the Reorganized Debtor and may be used for any purpose in the sole discretion of the New Managing Member.

4. Molokai shall provide the funding for the Plan at a "Closing." Some or all of the funding for the Plan may be provided by way of a refinancing or other transaction arranged by Molokai (the "Exit Facility"). The Closing shall occur on the Effective Date subject to the terms of the Plan so long as all Conditions Precedent have been satisfied or waived in writing by Molokai and no Termination Event has occurred. At the Closing, the Reorganized Debtor, shall, if so required, enter into an Exit Facility, the proceeds of which will be used to fund some or all of the payments required under the Plan and the New Membership Interests shall be issued to Molokai. The Reorganized Debtor shall make payments of principal and interest in accordance with the terms of any agreement that is part of the Exit Facility. If required by the terms of any Exit Facility and, provided that Wells Fargo is simultaneously paid the Class 1 Payment, the Reorganized Debtor shall grant any refinancing lender a first priority mortgage and assignment of leases and rents in the Inn and a first priority security interest in the personal property of the Reorganized Debtor to secure any refinancing loan made under such Exit Facility and the Reorganized Debtor shall otherwise enter into any agreements, affidavits, documents or instruments reasonably required by said lender to consummate said refinancing. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the Exit Facility and, upon the Effective Date, the Exit Facility shall be deemed to become valid, binding, and enforceable in accordance with its terms. The Exit Facility agreement is expected to contain standard and customary representations and mortgage loan terms, collateral requirements, warranties, affirmative and negative covenants, financial covenants, agency and closing conditions for a debt facility of this nature, type and size.

C. Releases and Dismissal of the Teton County Action.

Upon Wells Fargo's receipt of the Class 1 Payment, the following releases shall automatically be deemed to be immediately in full force and effect.

1. Wells Fargo on behalf of itself and its respective officers, directors, predecessors, successors, subsidiaries, agents, attorneys, heirs and assigns (individually and collectively, the "Wells Fargo Releasers"), hereby release the Debtor, the Reorganized Debtor and Molokai and each of them and each of their respective managers, interest holders, predecessors, successors, subsidiaries agents, attorneys, heirs and assigns (individually and collectively, the "Debtor Releasees") from any and all claims, debts, demands, actions, causes of actions, damages and any and all other claims of every name, kind, nature and description whatsoever, whether in

LAW or EQUITY, which the Wells Fargo Releasors and each of them now or ever had from the beginning of the world to the date hereof constituting, arising under or relating to:

- (i) the Wells Fargo Claim,
- (ii) the Wells Fargo Loan Documents,
- (iii) any claims arising under any loans or other financial accommodations made to the Debtor or arising under any guarantee executed by the Debtor; and
- (iv) the claims, counterclaims and defenses that were raised, could have been raised, or should have been raised in the Teton County Action.

2. The Debtor, the Reorganized Debtor and Molokai, and each of them, on behalf of themselves and their respective managers, members, predecessors, successors, subsidiaries, agents, attorneys, heirs and assigns (collectively and individually, the “Debtor Releasors”), hereby release Wells Fargo, and each of its officers, directors, predecessors, successors, subsidiaries, agents, attorneys, heirs and assigns (collectively and individually, the “Wells Fargo Releasees”), from any and all claims, debts, demands, actions, causes of actions, damages and any and all other claims of every name, kind, nature and description whatsoever, whether in LAW or EQUITY, which the Debtor Releasors and each of them has now or ever had from the beginning of the world to the date hereof constituting or arising under or relating to:

- (i) the Wells Fargo Claim,
- (ii) the Wells Fargo Loan Documents,
- (iii) any claims arising under any loans or other financial accommodations made to the Debtor or arising under any guarantee executed by the Debtor; and
- (iv) the claims, counterclaims and defenses that were raised, could have been raised, or should have been raised in the Teton County Action.

D. Second Amended and Restated Operating Agreement.

Pursuant to the Plan, the Reorganized Debtor shall be deemed to have amended and restated its current Amended and Restated Operating Agreement dated June 2008 so that, from and after the Effective Date, it shall be in full force and effect in the form of the Second Amended and Restated Operating Agreement annexed hereto as **Exhibit A**. The Reorganized Debtor will be permitted to engage in any lawful act or activity for which limited liability companies may be organized under Wyoming law and will have perpetual existence. The business and affairs of the Reorganized Debtor will be managed by or under the direction of the new managing member of the Reorganized Debtor selected by Molokai. Any and all debt forgiveness income arising from any transactions under the Plan shall be allocated to the Holders of Interests and no such debt forgiveness income shall be allocated to Molokai or any other Holder of the New Membership Interests or the New Managing Member. Holders of existing Interests cancelled under the Plan shall receive K-1s in the ordinary course showing their COD income, if any.

E. Vesting of Assets in the Reorganized Debtor

On the Effective Date, all property in the Debtor's Estate, all Causes of Action not previously waived, released or settled in writing, and any property acquired by the Debtor pursuant to the Plan shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges, Interests or other encumbrances. Upon the Holder of the Class 1 Secured Claim's receipt of the Class 1 Payment, any and all Liens securing the Class 1 Secured Claim including, without limitation, any liens granted under any of the Wells Fargo Loan Documents, shall be deemed extinguished and the Holder of the Class 1 Secured Claim shall as soon as practicable file or record with all appropriate filing offices notice of the release of its Liens including, without limitation, the Wells Fargo Mortgage, securing all or any portion of the Wells Fargo Claim. On the Effective Date, any and all Liens on property of the Debtor that are junior in priority to the Liens securing the Class 1 Secured Claim including, without limitation, any Liens granted under any of the JH Lending Trust Loan Documents to secure the JH Lending Trust Claim, shall be deemed extinguished and the Holders of such Liens shall as soon as practicable file or record with all appropriate filing offices notice of the release of their Liens in the Debtor's property. Provided, however, that this Section E shall have no effect upon any mortgage, assignment of leases and rents, security interest or other Lien or agreement granted by the Reorganized Debtor in connection with any Exit Financing.

F. Automatic Action

Each of the matters provided for by the Plan involving the limited liability company structure of the Reorganized Debtor or related actions to be taken by or required of the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by Holders of Claims or Interests, the managers, managing members or Holders of membership interests of the Debtor. Without limiting the foregoing, such actions may include the adoption, approval and filing of the Second Amended and Restated Operating Agreement and the issuance of the New Membership Interests to Molokai.

G. Effectuating Documents and Further Transactions

On and after the Effective Date, the Reorganized Debtor, and its manager or managing member, are authorized to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity except for those expressly required pursuant to the Plan, including, but not limited to, the following: (1) issuance, execution, delivery, filing, or recording such contracts, securities, instruments, releases, notes and other agreements or documents as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan; (2) execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms necessary or appropriate to

effectuate, implement, and further evidence the terms and conditions of the Plan; (3) execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any property, right, liability, duty, or obligation necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan; (4) the filing of appropriate certificates of organization or reorganization with the appropriate governmental authorities pursuant to applicable law; and (5) all other actions that the Reorganized Debtor determines are necessary or appropriate.

H. Exemption from Certain Transfer Taxes and Recording Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from the Debtor to the Reorganized Debtor or to any Entity in accordance with, in contemplation of, in connection with the Plan, or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, or other Interest in the Debtor or the Reorganized Debtor; (2) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

I. Preservation of Rights of Action

Except for the rights, claims, Causes of Action, and defenses against Wells Fargo and Peter Lawton and such other Causes of Action that are expressly settled, waived or released under the Plan in Article IV(C) or otherwise, the Reorganized Debtor may pursue, prosecute to judgment or settle, as it deems appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically described in the Disclosure Statement, and the Reorganized Debtor's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Disclosure Statement, or the Confirmation Order to any Cause of Action against them as any indication that the Debtor or the Reorganized Debtor, as applicable, will not pursue any and all available Causes of Action against them. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Reorganized Debtor expressly reserves all Causes of Action for later prosecution and adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of, the Confirmation or the Consummation of the Plan. The Debtor or the Reorganized Debtor, as applicable, shall have the

exclusive right, authority, and discretion, to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

1. Except as otherwise provided in the Plan, the Debtor's Executory Contracts or Unexpired Leases not assumed or rejected pursuant to a Final Order prior to the Effective Date shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts or Unexpired Leases: (a) listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Disclosure Statement; (b) that are the subject of a motion to assume or reject pending on the Effective Date (in which case such assumption or rejection and the effective date thereof shall remain subject to a Final Order); (c) that are subject to a motion to reject with a requested effective date of rejection after the Effective Date; or (d) that are otherwise expressly assumed or rejected pursuant to the Plan.

2. Except as expressly provided otherwise in this Article V, entry of the Confirmation Order shall constitute a Final Order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases in the Plan are effective as of the Effective Date. Each such Executory Contract and Unexpired Lease assumed pursuant to the Confirmation Order or other Final Order but not assigned to a third party prior to the Effective Date shall revert in, and be fully enforceable by, the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the Plan or such Final Order. Notwithstanding anything to the contrary in the Plan, the Debtor, or the Reorganized Debtor, as applicable, reserves the right to alter, amend, modify, or supplement the schedules of Executory Contracts or Unexpired Leases identified in this Article V and in the Disclosure Statement at any time through and including the later of (a) 30 days after the Effective Date and (b) the entry of the Final Order or Confirmation Order assuming such Executory Contract or Unexpired Lease or entry of the Final Order or Confirmation Order establishing the Cure for such Executory Contract or Unexpired Lease.

B. Insurance Policies

Notwithstanding anything contained in the Plan to the contrary, unless specifically listed on a schedule of "Rejected Insurance Policies," if any, in the Disclosure Statement as being rejected or specifically rejected by order of the Bankruptcy Court, or unless subject to a motion for approval of rejection that has been filed and served prior to the Confirmation Date, all insurance policies to which the Debtor is a party including, without limitation, any policies of title insurance, that have not expired or terminated on or before the Effective Date are treated as Executory Contracts under the Plan and will be assumed pursuant to the Plan.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

1. With respect to the Debtor's Executory Contracts or Unexpired Leases to be assumed pursuant to the Plan, the Debtor shall have designated a proposed Cure, and the assumption of such Executory Contract or Unexpired Lease may be conditioned upon the disposition of all issues with respect to such Cure. Any provisions or terms of the Debtor's Executory Contracts or Unexpired Leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default, shall be satisfied solely by Cure, or by an agreed-upon waiver of such Cure. Except with respect to Executory Contracts and Unexpired Leases in which the Debtor and the applicable counterparties have stipulated in writing to payment of Cure, all requests for payment of Cure that differ from the amounts proposed by the Debtor must be filed with the Court on or before the Cure Bar Date. Any request for payment of Cure that is not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against the Reorganized Debtor without the need for any objection by the Reorganized Debtor or further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim for Cure shall be deemed fully satisfied, released, and discharged upon payment of the amounts listed on the Debtor's proposed Cure schedule, notwithstanding anything included in the Schedules or in any to proof of claim the contrary; provided that nothing shall prevent the Reorganized Debtor from paying any Cure despite the failure of the relevant counterparty to timely File such request for payment of such Cure. The Reorganized Debtor also may settle any Cure without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

2. If the Debtor or the Reorganized Debtor, as applicable, object to any Cure, or any other matter related to assumption is disputed, the Bankruptcy Court shall determine the Allowed amount of such Cure and any related issues. If there is a dispute regarding such Cure, the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter relating to assumption, then payment of the Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtor or the Reorganized Debtor, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption. The Debtor or the Reorganized Debtor, as applicable, reserves the right either to reject, or nullify the assumption of, any Executory Contract or Unexpired Lease no later than 30 days after a Final Order determining the Cure, any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease, and any other matter related to assumption.

3. Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising

under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Anything in the Schedules and any proofs of claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

D. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Any proofs of claim asserting Claims arising from the rejection of the Debtor's Executory Contracts and Unexpired Leases pursuant to the Plan or otherwise must be filed within 30 days following the date of the effective date of rejection. For any claim that has not been rejected prior to entry of the Confirmation Order the effective date of rejection shall be the Effective Date. Any proofs of claim arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases that are not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtor or further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a proof of claim to the contrary. All Allowed Claims arising from the rejection of the Debtor's Executory Contracts and Unexpired Leases shall be classified as Rejection Damages Claims and shall be treated in accordance with Article III of the Plan.

**ARTICLE VI.
PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

A. Allowance of Claims

1. After the Effective Date, the Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had with respect to any Claim or Interest immediately prior to the Effective Date, including the Causes of Action, other than the rights, defenses, Claims and Interests against Wells Fargo and Peter Lawton and such other rights, defenses, Claims and Interests expressly excluded, waived or settled under the Plan, referenced in Article IV(C) hereof or otherwise.

2. Except as expressly provided herein or in any order entered in the Chapter 11 Case prior to the Effective Date, including the Confirmation Order, no Claim or Interest shall be deemed Allowed unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases expressly allowing such Claim.

B. Objections/Objection Deadline

1. Objections to all Claims against the Debtor may be filed and prosecuted only by the Debtor and the Reorganized Debtor, as applicable.

2. The Reorganized Debtor shall be entitled to object to any Claim through and after the Effective Date. Any objections to Claims shall be served and filed with the Bankruptcy Court on or before the later of (a) 180 days after the Effective Date, as such time may be extended by order of the Bankruptcy Court, and (b) such later date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) above.

C. Claims and Interests Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtor shall have the sole and exclusive authority to: (1) to file, withdraw, or litigate to judgment, objections to Claims or Interests; (2) to settle or compromise any Disputed Claim subject to approval of the Bankruptcy Court.

D. Estimation of Claims

Before or after the Effective Date, the Debtor or the Reorganized Debtor, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any Entity previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been disallowed by the Bankruptcy Court, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

E. Disallowance of Claims or Interests

Any Claims or Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that are transferees of transfers avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims and Interests may not receive any distributions on account of such Claims and Interests until such time as such Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid.

EXCEPT AS PROVIDED HEREIN OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE

WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS ON OR BEFORE THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

F. Offer of Judgment

The Debtor or Reorganized Debtor is authorized to serve upon a Holder of a Claim an offer to allow judgment to be taken on account of such Claim, and, pursuant to Bankruptcy Rules 7068 and 9014, Rule 68 of the Federal Rules of Civil Procedure shall apply to such offer of judgment. To the extent the Holder of a Claim must pay the costs incurred by the Reorganized Debtor after the making of such offer, the Reorganized Debtor is entitled to setoff such amounts against the amount of any distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**ARTICLE VII.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Distributions on Account of Claims Allowed as of the Effective Date

Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, initial distributions under the Plan on account of Claims Allowed on or before the Effective Date shall be made on the Distribution Date.

B. Distributions on Account of Claims Allowed After the Effective Date

1. Payments and Distributions on Disputed Claims: Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made within 60 days after the Disputed Claim becomes an Allowed Claim; provided that Disputed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtor on or before the Effective Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice.

2. Special Rules for Distributions to Holders of Disputed Claims: Notwithstanding any provision in the Plan, except as otherwise agreed by the relevant parties: (a) no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order; and (b) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any distribution on any Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order and the Disputed Claim has been Allowed.

3. Reserve: On the Effective Date, the Reorganized Debtor shall maintain reserves (the "Reorganized Debtor's Distribution Reserves") to make distributions pursuant to the terms of the Plan. The amount withheld as a part of the Reorganized Debtor's Distribution Reserves for the benefit of a Holder of a Disputed Claim shall be equal to the lesser of the amount set forth in the following clause (a) and the amount set forth in the following clause (b): (a) (i) if no estimation is made by the Bankruptcy Court pursuant to Article VI.D hereof, the amount necessary to satisfy the distributions required to be made pursuant to the Plan based on the asserted amount of the Disputed Claim or, if the Claim is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code as of the Distribution Record Date, the amount that the Debtor or the Reorganized Debtor, as applicable, choose to withhold on account of such Claim in the Reorganized Debtor's Distribution Reserves; or (ii) the amount necessary to satisfy the distributions required to be made pursuant to the Plan for such Disputed Claim based on an amount as estimated by and set forth in a Final Order for purposes of allowance and distributions; and (b) the amount necessary to satisfy the distributions required to be made pursuant to the Plan based on an amount as may be agreed upon by the Holder of such Disputed Claim and the Reorganized Debtor. As Disputed Claims are Allowed, the Distribution Agent shall distribute, in accordance with the terms of the Plan, the appropriate consideration to Holders of Allowed Claims, and the appropriate Reorganized Debtor's Distribution Reserves shall be adjusted accordingly.

4. Tax Reporting Matters: Subject to definitive guidance from the Internal Revenue Service or an applicable court to the contrary (including the receipt by the Reorganized Debtor of a private letter ruling or the receipt of an adverse determination by the Internal Revenue Service upon audit, if not contested by the Reorganized Debtor), the Reorganized Debtor shall treat each Reorganized Debtor's Distribution Reserve as a single trust, consisting of separate and independent forms of consideration to be established with respect to each Disputed Claim, in accordance with the trust provisions of the Internal Revenue Code, and, to the extent permitted by law, shall report consistently with the foregoing for federal, state, and local tax purposes. All Holders of Claims shall report, for federal, state, and local tax purposes, consistently with the foregoing.

C. Delivery of Distributions

1. Delivery of Distributions in General: Except as otherwise provided in the Plan, and notwithstanding any authority to the contrary, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Debtor or Reorganized Debtor: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the signatory set forth on any proof of claim filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no proof of claim is filed or if the Debtor has been notified in writing of a change of address of the Holder); (c) at the addresses set forth in any written notices of address changes delivered to the Debtor after the date of filing of any related proof of claim; (d) at the addresses reflected in the Schedules if no proof of claim has been filed and the Debtor has not received a written notice of a change of address; or (e) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf; provided that distributions to Holders of Allowed Claims governed by a separate agreement and administered by a Servicer may be deposited by the Debtor or

Reorganized Debtor with the appropriate Servicer, at which time such distributions shall be deemed complete, and the Servicer shall deliver such distributions in accordance with the Plan and the terms of the governing agreement. Except as set forth herein, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtor and the Reorganized Debtor, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

2. Compliance with Tax Requirements and Allocations: In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan, including the Debtor and the Reorganized Debtor, shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations. For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims

3. Fractional, De Minimis, Undeliverable, and Unclaimed Distributions:

a. Fractional Distributions: Notwithstanding any other provision of the Plan to the contrary, payments of fractions of dollars shall not be required. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar, with half dollars being rounded down.

b. Minimum/De Minimis Distributions: Notwithstanding anything herein to the contrary, distributions or payments of less than \$100.00 (whether in Cash or otherwise) shall not be required.

c. Undeliverable Distributions of Cash and Cash Equivalents:

(i) Holding of Certain Undeliverable Distributions: If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to the Debtor as undeliverable, no further distributions shall be made to such Holder unless and until the Reorganized Debtor is notified in writing of such Holder's then current address, at which time all currently due missed distributions shall be made to such Holder on the next Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized Debtor until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any interest, dividends, or other accruals of any kind.

(ii) Failure to Claim Undeliverable Distributions: No later than 90 days after the first Distribution Date, the Reorganized Debtor shall File with the Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtor for as long as the Debtor's Chapter 11 Case remains open. Any Holder of an Allowed Claim, irrespective of when a Claim becomes an Allowed Claim, that does not notify the Reorganized Debtor of such Holder's then current address in accordance herewith within the latest of (a) 180 days after the first Distribution Date, (b) 60 days after the attempted delivery of the undeliverable distribution, or (c) 180 days after the date such Claim becomes an Allowed Claim shall have its Claim for such undeliverable distribution discharged and expunged and shall be forever barred, estopped, and enjoined from asserting any such Claim against the Reorganized Debtor or its property. In such cases, any Cash, Cash Equivalents, or otherwise held for distribution on account of such Allowed Claims shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and become property of the Reorganized Debtor, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim. The provisions of the Plan regarding undeliverable distributions and unclaimed distributions shall apply notwithstanding any otherwise applicable federal or state escheat, abandoned or unclaimed property law.

(iii) Failure to Present Checks: Checks issued by the Debtor on account of Allowed Claims shall be null and void if not negotiated within 120 days after the issuance of such check. In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, no later than 120 days after the issuance of such checks, the Reorganized Debtor shall File with the Bankruptcy Court a list of the Holders of any un-negotiated checks. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtor for as long as the Debtor's Chapter 11 Cases remains open. Requests for reissuance of any check shall be made directly to the Reorganized Debtor by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 180 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and expunged and be discharged and forever barred, estopped, and enjoined from asserting any such Claim against the Reorganized Debtor or its property. In such cases, any Cash held for payment on account of such Claims shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and become property of the Reorganized Debtor, free of any Claims of such Holder or any such entity with respect thereto notwithstanding any otherwise applicable federal or state escheat, abandonment or unclaimed property law. Nothing contained herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

4. Manner of Payment Pursuant to the Plan: Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Reorganized Debtor by check or by wire transfer.

5. Timing and Calculation of Amounts to Be Distributed: On the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that is at least 30 days after the Disputed Claim becomes an Allowed

Claim, or as soon as reasonably practicable thereafter), each Holder of a Claim Allowed as of the Effective Date shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII.B hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise expressly provided in the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in full and complete discharge, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment or a termination of any employee regardless of whether such termination occurred prior to or after the Effective Date, any contingent or non-contingent or liquidated or non-liquidated liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a proof of claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest failed to vote to accept or reject the Plan, voted to accept or reject the Plan, or was deemed to accept or reject the Plan. Any default by the Debtors with respect to any Claim or Interest that existed immediately prior to the Petition Date or on account of the filing of the Chapter 11 Cases shall be deemed Cured on the Effective Date. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors, their Estates, or any successor thereto at any time obtained to the extent it relates to a Claim discharged. Upon the Effective Date, all persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim against the Debtor, its Estate, or any successor thereto. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring. All debt under the Plan that shall be surrendered, redeemed, exchanged or cancelled shall be deemed for all purposes, including income tax purposes, to be outstanding until the Effective Date, and such debt shall not be deemed surrendered, redeemed, exchanged or cancelled on any date earlier than the Effective Date.

B. Compromise and Settlement

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate, and Holders of Claims and Interests and is fair, equitable, and reasonable.

C. Exculpation

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or post-petition act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming, or effecting the Consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtor; provided, that the foregoing "Exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided further that each Exculpated Party shall be entitled to rely upon the advice of his or her individual counsel concerning his, her or its duties pursuant to, or in connection with, the Plan. Nothing in this paragraph shall be deemed to release Cuzzupoli or any other co-obligor with the Debtor with respect to Claims arising prior to the Petition Date from any Cause of Action.

D. Injunction

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Interests that have been released, discharged, or subject to exculpation pursuant to the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors or the Reorganized Debtor: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to

any such Claims or Interests released or settled pursuant to the Plan. Such injunction shall extend to any successors of the Debtor and the Reorganized Debtor and their respective properties and interests in properties. Upon entry of the Confirmation Order, all Holders of Claims and Interests and other parties-in-interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan. Creditors holding Claims secured by Liens which Claims are determined to be entirely unsecured or undersecured under the Plan shall, upon request of the Reorganized Debtor, provide discharges and satisfactions of such Liens suitable for recording.

E. Document Retention

On and after the Effective Date, the Reorganized Debtor may maintain documents in accordance with its current document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtor without further notice.

ARTICLE IX.

ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

A. Professional Claims

1. Final Fee Applications: All final requests for payment of Professional Fee Claims shall be filed no later than the Administrative Claim Bar Date. The Administrative Claim Bar Date shall be set prior to the Confirmation Hearing. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Final Orders, the Allowed amounts of the Professional Fee Claims shall be determined by the Bankruptcy Court. All Allowed Professional Fee Claims shall be paid by the Reorganized Debtor within ten (10) days after such claim is Allowed by a Final Order unless the Holder of such Professional Fee Claim and the Debtor or Reorganized Debtor agree in writing to a different time for payment.

2. Post-Effective Date Fees and Expenses: Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Reorganized Debtor shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and consummation of the Plan incurred by the Reorganized Debtor. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

B. Other Administrative Claims

All requests for payment of an Administrative Claim must be filed with the Bankruptcy Court and served upon counsel to the Debtor or the Reorganized Debtor, as applicable, on or before the Administrative Claim Bar Date. Any request for payment of an Administrative Claim

pursuant to Article II.A hereof that is not timely filed and served shall be disallowed automatically without the need for any objection by the Debtor or the Reorganized Debtor. The Reorganized Debtor may settle and pay any Administrative Claim in the ordinary course of business subject to approval of the Bankruptcy Court.

**ARTICLE X.
CONDITIONS PRECEDENT TO EFFECTIVE DATE; TERMINATION EVENTS**

A. Conditions Precedent to the Effective Date and Termination Events

1. Each of the following shall be satisfied or waived in writing by Molokai, in each case, as conditions precedent to the Effective Date and to any obligation of Molokai to fund the Plan ("Conditions Precedent"):

(i) on or before March 15, 2013, the Bankruptcy Court shall have entered the Confirmation Order which shall have become a Final Order;

(ii) the Effective Date shall have occurred on or before May 15, 2013;

(iii) the Plan, Disclosure Statement and Confirmation Order shall be in a form acceptable to Molokai in its sole discretion;

(iv) the Debtor, as of the Effective Date and following Wells Fargo's receipt of the Class 1 Payment, shall own the Inn free and clear of any Liens, claims, interests or encumbrances except as otherwise expressly provided in the Plan;

(v) the Confirmation Order or a separate Final Order of the Bankruptcy Court shall have entered authorizing the assumption or rejection of any Executory Contracts and/or Unexpired Leases by the Debtor or the Reorganized Debtor as provided in the Plan on terms acceptable to either Molokai in its sole discretion and the Debtor shall have provided copies of all such Executory Contracts and/or Unexpired Leases to Molokai or its counsel;

(vi) the Debtor shall have operated during the period prior to the Effective Date in a prudent and normal fashion, consistent with past practices, applicable zoning laws and in accordance with any other governmental laws, permits, licenses and regulations and any Budget which has been approved by the Bankruptcy Court and the Plan. The Debtor shall not have made or instituted any unusual or novel methods of purchase, sale, lease, management, accounting, or operation. The Debtor shall have maintained the Inn in the same repair, working order and condition as it was in on the date of this Plan, excepting normal wear and tear. Maintenance and repairs shall have been performed by the Debtor consistent with its customary post-petition practices;

(vii) the Debtor shall not have made any structural modifications to the Inn, except to the extent consented to by Molokai or except as reasonably required in connection with any emergency or casualty and there shall not have occurred any casualty respecting any material part of the Inn;

(viii) the Debtor shall not have granted any security interest, lien or mortgage in, or agreed to the imposition of any restriction, lien or charge of any kind or lease with respect to the Inn or any personal property which constitutes all or any portion of the Inn exclusive of any rollover or replacement liens or security interests granted to Wells Fargo as adequate protection for the use of its cash collateral;

(ix) the Debtor shall not have modified, amended, or terminated any of the contracts to which the Debtor is a party that may in any respect have a materially adverse effect on the business, assets, financial condition, or results of operations of the Debtor except as is acceptable to the Debtor and Molokai after consultation between said parties;

(x) the liabilities of the Debtor shall not exceed or differ in any material respect from the liabilities as described by the Schedules and proofs of claim currently filed with the Bankruptcy Court, the Plan and the Disclosure Statement and the Schedules currently filed with the Bankruptcy Court and the Disclosure Statement shall not be otherwise materially inaccurate in any respect;

(xi) the Debtor shall have accurately identified for Molokai all of the current members of the Debtor and any entity having any right to purchase a membership interest in the Debtor;

(xii) with the exception of claims for taxes described in proofs of claim filed with the Bankruptcy Court, the Debtor shall not be delinquent in the payment of any taxes to that extent that interest and/or penalties shall have begun to accrue on said taxes prior to the Effective Date;

(xiii) the Debtor shall have no employees as of the Effective Date;

(xiv) the Debtor's monthly operating reports filed with the office of the United States Trustee are not be materially inaccurate in any respect;

(xv) there shall not have occurred a material adverse change in the use, value, or condition of the Debtor or the Inn, or the legal status or financial condition or business operations of the Debtor or the Inn;

(xvi) there shall not have occurred a material disruption or material adverse change in the financial, real estate, banking, or capital markets;

(xvii) no consent, approval, authorization, qualification or filing with any governmental entity shall be required for the consummation of the transactions contemplated by the Plan;

(xviii) on or before January 31, 2013, Molokai shall have received a written report from its investigator satisfactory in form and content to Molokai, in its sole discretion, with respect to the existence of hazardous materials located on or within the Inn property;

(xix) Wells Fargo shall have withheld from filing or withdrawn and not prosecuted any objection to the Plan;

(xx) As of the Effective Date, the Debtor shall have not less than \$500,000.00 of cash on hand available which may be used in whole or in part to fund the Plan.

(xxi) A Final Order of the Bankruptcy Court shall have entered approving that certain Stipulation Regarding Modification of Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, between Wells Fargo, Molokai, the Debtor, Cuzzupoli and John Bullock, a fully executed stipulation of dismissal of the Teton County Action shall have been delivered into escrow and no party shall have breached said Stipulation.

2. This Plan shall be of no further force or effect and Molokai shall have no obligation to fund the Plan immediately upon the occurrence of any of the following events ("Termination Events"), except such Termination Events as Molokai may waive in writing:

(i) the entry of an order of the Bankruptcy Court converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or dismissing the Chapter 11 Case or authorizing the appointment of a trustee or an examiner with expanded powers in the Chapter 11 Case;

(ii) the entry of an order of the Bankruptcy Court denying (i) approval of the Disclosure Statement or (ii) confirmation of the Plan or granting Wells Fargo or JH Lending Trust relief from the automatic stay with respect to the Inn; or

(iii) Any sale, liquidation, wind-down or other disposition of the Inn or any material portion thereof that is inconsistent with the terms of the Plan.

The provisions of this Article X are without prejudice to and shall not limit the rights of Molokai under Article XI of this Plan.

B. Extension of Effective Date

The Debtor or the Reorganized Debtor and Molokai or its nominee may seek an extension of the Effective Date by filing a motion in the Bankruptcy Court on notice to parties in interest, provided that the Effective Date may not be extended beyond June 15, 2013.

C. Effect of Non-Occurrence of Conditions to the Effective Date

Each of the conditions to the Effective Date must be satisfied or waived pursuant to Article X hereof, and the Effective Date must occur not more than 60 days following the Confirmation Date, or by such later date established by Final Order on motion to the Bankruptcy Court with Molokai's consent. If the Effective Date has not occurred within 60 days of the Confirmation Date, then upon motion by a party in interest made before the Effective Date and a hearing, the Confirmation Order may be vacated by the Bankruptcy Court; provided that notwithstanding the filing of such motion to vacate, the Confirmation Order may not be vacated if the Effective Date occurs before the Bankruptcy Court enters a Final Order granting any motion seeking to extend the Effective Date. If the Confirmation Order is vacated pursuant to this Article X.C or otherwise, then except as provided in any Final Order vacating the

Confirmation Order, the Plan will be null and void in all respects, including the discharge of Claims and termination of Interests pursuant to the Plan and section 1141 of the Bankruptcy Code and the assumptions, assignments, and rejections of Executory Contracts or Unexpired Leases pursuant to Article V, and nothing contained in the Plan or Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action; (2) prejudice in any manner the rights of the Debtor or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtor or any other Entity.

**ARTICLE XI.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Withdrawal, Modification and Amendments

The Plan Proponents shall have the right to modify, amend or supplement the Plan and seek Confirmation consistent with Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Molokai shall have the right to revoke or withdraw the Plan at any time for any reason and in its sole discretion. Without limiting the foregoing and for the avoidance of doubt, Molokai shall have the right to at any time revoke or withdraw the Plan whether or not the Debtor joins in or consents to such revocation or withdrawal. Molokai shall not have any liability or obligation to any party arising from or as a result of any revocation or withdrawal of the Plan. Molokai may indicate such withdrawal or revocation by filing with the Court a notice of such withdrawal or revocation of the Plan.

Every modification of the Plan will supersede the previous version of the Plan as and whenever each modification is effective. When superseded, any previous version of the Plan or Plan provision will be in the nature of a withdrawn or rejected settlement proposal, and will be null, void and unusable by the Debtor or any other party for any purposes whatsoever with respect to any of the contents of such version of the Plan.

**ARTICLE XII.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

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

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including Cure or Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtor amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that distributions to Holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to Causes of Action;

7. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

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

9. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

11. 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 Consummation or enforcement of the Plan; resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in Article VIII hereof, and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. Resolve any and all cases, controversies, suits, disputes, or Causes of Action, with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim for amounts not timely repaid;

13. Enter an order or final decree concluding or closing the Chapter 11 Cases;
14. Adjudicate any and all disputes arising from or relating to payments or distributions under the Plan;
15. Consider any and all modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Final Order, including the Confirmation Order;
16. Hear and determine any and all disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;
17. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
18. Hear and determine any and all disputes involving the existence, nature, or scope of the Debtor's discharge, including any dispute relating to any liability arising out of the termination of employment, regardless of whether such termination occurred prior to or after the Effective Date;
19. Determine any other matters that may arise in connection with or relate to the interpretation, implementation, or enforcement of the Plan, the Disclosure Statement, or the Confirmation Order, including disputes arising under agreements, contracts, instruments, releases, indentures, or other agreement or document created in connection with the Plan or the Disclosure Statement;
20. Enforce any orders previously entered by the Bankruptcy Court; and

ARTICLE XIII. MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Disclosure Statement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all Holders of Claims or Interests (irrespective of whether any such Holders of Claims or Interests failed to vote to accept or reject the Plan, voted to accept or reject the Plan, or are deemed 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 and Unexpired Leases with the Debtors.

B. 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.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date shall be paid prior to the closing of the Chapter 11 Cases when due or as soon thereafter as practicable.

D. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Absent entry of the Confirmation Order, none of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan or the Disclosure Statement shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

E. 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, if any, of such Entity.

F. Entire Agreement

Except as otherwise indicated, the Plan and the Disclosure Statement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

G. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Wyoming, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; provided that corporate governance matters relating to the Debtor or the Reorganized Debtor, as applicable, not incorporated in Wyoming shall be governed by the laws of the state of incorporation of the applicable Debtor or Reorganized Debtor, as applicable.

H. Closing of Chapter 11 Cases

The Reorganized Debtor shall promptly after the full administration of its Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close its Chapter 11 Case.

I. Conflicts and Interpretation of Plan

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. To the extent that a term in the Plan is ambiguous, the Debtors before the Effective Date and the Reorganized Debtor after the Effective Date, may jointly interpret such term in their exclusive discretion or seek clarification from the Bankruptcy Court. To the extent that there may be any inconsistencies between the terms of the Plan on the one hand and the Confirmation Order on the other, the terms of the Confirmation Order shall govern. To the extent that the Disclosure Statement and Plan contain any examples or hypotheticals of treatment of claims or interests, such examples or hypotheticals do not constitute admissions or acknowledgements of liability as to the Allowed amounts of any claims or interests described therein.

J. Cooperation Prior to Effective Date

Between the date hereof and the Effective Date, Molokai, and its managers, agents, engineers, consultants and representatives (collectively, "Agents") shall have the right to (a) enter upon the Inn for the purpose of performing reasonable non-destructive inspections and tests of the Inn, (b) examine all books of account and records (including financial statements and income tax records) within the possession of the Debtor or subject to its control relating to the income and expenses of the Inn (collectively, the Records), (c) make investigations with regard to zoning, building code, permits and other legal requirements, and (d) review the terms and provisions of all leases, contracts, management agreements, permits, equipment leases, surveys, plats, engineering reports, plans and specifications and such other instruments and documents within the possession of the Debtor or subject to its control as Molokai may reasonably request (collectively, the "Inn Documents"). The Debtor shall deliver copies or make available to the Agents at the Inn, as appropriate, such books of account and records and the Inn Documents as soon as reasonably possible after Molokai request access to same. All such books of account and records and the Inn Documents shall be kept confidential by Molokai and its Agents.

OLD COLONY, LLC

MOLOKAI HOSPITALITY FUNDING, LLC

By its counsel,

By its counsel,

/s/ Donald F. Farrell, Jr.

Donald F. Farrell, Jr. (BBO 159580)

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Boston, MA 02110

617-723-3600

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/s/ James M. Liston

James M. Liston (BBO 301750)

BARTLETT HACKETT FEINBERG P.C.

155 Federal Street

Boston, MA 02110

617-422-0200

jml@bostonbusinesslaw.com

Dated: March ___, 2013

EXHIBIT A

OLD COLONY, LLC

(a Wyoming limited liability company)

**SECOND AMENDED AND RESTATED
OPERATING AGREEMENT**

THIS AGREEMENT is dated as of _____, ___, 2013 by Molokai Hospitality Funding, LLC, a Delaware limited liability company, as the sole member and manager (the “**Managing Member**”) of the Company (as defined below).

WHEREAS, Joseph Cuzzupoli, John Bullock, Donald W. Poole Jr., Donald W. Poole, III, M. Briggs Forelli, William A Coccola, Leonard Lucas and Susan E. Lucas and jco Wyoming LLC formed Old Colony, LLC, a Wyoming limited liability company (the “**Company**”), by filing Articles of Organization of the Company with the Wyoming Secretary of State on March 16, 2007 and Peter Carabillo thereafter became a member of the Company (collectively, the “**Former Owners**”);

WHEREAS, the Former Owners most recently operated the Company pursuant to a certain Amended and Restated Operating Agreement dated as of June __, 2008 (the “**Former Operating Agreement**”);

WHEREAS, This Second Amended and Restated Operating Agreement (the “**Agreement**”) is entered into in accordance with a certain Order confirming the Third Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code which Order was entered on _____, ___, 2013, by the United States Bankruptcy Court for the District of Massachusetts in the Chapter 11 Case captioned *In re Old Colony, LLC*, Case No. 10-21100 (respectively, the “**Order**” and the “**Plan**”). The Managing Member became the sole member of the Company by acquiring and being vested with all of the membership interests in the Company pursuant to the Order and the Plan;

WHEREAS, the Managing Member wishes to amend and restate the Former Operating Agreement to set out fully its respective rights, obligations and duties with respect to the Company and its business, management and operations.

WHEREAS, the Managing Member has agreed to continue to operate the Company as a limited liability company under the Wyoming Limited Liability Company Act, as amended from time to time, in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, THE FORMER OPERATING AGREEMENT IS HEREBY AMENDED AND RESTATED AS FOLLOWS:

1. Company Name; Registered Office and Agent. The name of the Company is Old Colony, LLC. The initial address of the Company's registered office in Wyoming is The Inn at Jackson Hole 3345 West Village Drive, Teton Village, Wyoming 83025. The name of the Company's registered agent at such address is _____.

2. Purposes and Powers. The Company is organized for the purposes of owning, operating, developing, managing and selling various real properties as determined by the Managing Member and engaging in any lawful act or activity for which a limited liability company may be organized under the laws of the State of Wyoming. The Company shall have the power to make and perform all contracts and to engage in all activities and transactions necessary or advisable to carry out the purposes of the Company, and all other powers available to it as a limited liability company under the laws of the State of Wyoming.

3. Members. The name and business address or place of residence of the sole Member is: Molokai Hospitality Funding, LLC, a Delaware limited liability company, c/o Molokai Partners, LLC, 6 School Street P.O. Box 691 Peapack, New Jersey 07977.

4. Term. The Company shall have perpetual existence from the date of filing of its Certificate of Formation, unless sooner dissolved by agreement of the Managing Member or by operation of law.

5. Interests in the Company. All income, gains and losses shall be allocated to the Managing Member. Anything to the contrary herein notwithstanding, upon liquidation of the Company, the Managing Member agrees to distribute the assets of the Company in accordance with Section 704(b) of the Internal Revenue Code of 1986, as amended.

7. Distributions to Managing Member. The Managing Member will receive distributions if, upon winding up of the Company, the assets or proceeds available exceed the amount required for the payment and discharge of all of the Company's debts and liabilities. Other than as stated above, distributions to the Member are in the discretion of the Member.

8. Management. The management, operation and policies of the Company are vested exclusively in the Managing Member. The Managing Member shall have the power on behalf of and in the name of the Company to carry out and to implement any and all of the purposes of the Company. The Manager may be removed and/or replaced by the Managing Member in its sole discretion.

9. Dissolution of the Company. The Company shall be dissolved upon the action of the Member.

10. Liability; Indemnity. Except as otherwise specifically provided in this Agreement the Managing Member shall not be personally liable for the return of any contributions made by it to the capital of the Company. In the absence of gross negligence, a willful and material breach of this Agreement, fraud, breach of fiduciary duty, or a material violation of applicable law (except in the case of

a violation of applicable law where the Managing Member reasonably believed that no such violation would occur in consequence of its action or inaction, as the case may be) on the part of the Managing Member, which misconduct shall have given rise to the matter at issue, the Managing Member shall not be liable to the Company for any act or omission concerning the Company's business. The Managing Member shall not be liable to the Company for losses due to the fraud, bad faith, willful misconduct or negligence, whether of omission or commission, of any independent contractor, employee or other agent of the Company. In the absence of any such misconduct (which misconduct shall have given rise to the matter at issue) on the part of the Managing Member, the Company shall indemnify and hold the Managing Member harmless from and against any loss, expense, damage or injury suffered or sustained by it by reason of any acts, omissions, or alleged acts or omissions arising out of any activity performed or required to have been performed by, for, on behalf of, or otherwise in furtherance of the interests of the Company. This indemnification shall include, but not be limited to, (i) payment of reasonable attorneys' fees and other expenses incurred in settling any claim or threatened action (where such settlement is approved by counsel to the Company) or in connection with any legal proceeding, and (ii) the removal of any liens affecting the property of the Managing Member. Neither any amendment or repeal of this Section 10, nor the adoption of any provision of this Agreement inconsistent with this Section 10, shall eliminate or reduce the effect of this Section 10 in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Section 10, would accrue or arise, prior to such amendment, repeal or adoption.

11. Amendments. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the written consent of the Managing Member.

12. Counterparts. This Agreement or any amendment hereto may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one Agreement (or amendment, as the case may be).

13. Applicable Law. This Agreement shall be construed in accordance with the laws of Wyoming.

[Remainder of Page Intentionally Left Blank]

IN WITNESS HEREOF, the undersigned have executed this Agreement as of the day and year first above written.

MANAGING MEMBER:

Molokai Hospitality Funding, LLC

By: Molokai Partners, LLC, its Manager

By: _____

Name: David Gibson _____

Title: Manager _____

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